SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11298-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

EDWARD HUGH JOHNSON, First Respondent

[NAME REDACTED] Second Respondent

Before:

Mr R. Hegarty (in the chair)
Mr I. R. Woolfe
Mr P. Wyatt

Date of Hearing: 23-27 November 2015

Appearances

Mr Adam Solomon, Counsel of Littleton Chambers, 3 King's Bench Walk North, London EC4Y 7HR instructed by Bevan Brittan LPP, Fleet Place House, 2 Fleet Place, London EC4M 7RF for the Applicant

Ms Bernadette Baxter, Counsel of Lincoln House Chambers, Tower 12, The Avenue North, Spinningfields, 18-2 Bridge Street, Manchester 3, instructed by Slater & Gordon, 58 Moseley Street, Manchester, M2 3HZ for the First Respondent

The Second Respondent appeared and was not represented

JUDGMENT

Allegations

1. The allegations against the First Respondent, Edward Hugh Johnson, made on behalf of the Solicitors Regulation Authority ("SRA") as amended with the permission of the Tribunal were as follows:

1.1 He acted in breach of Principle 8 of the SRA Code of Conduct 2011 in that:

1.1.1 he did not run his business in accordance with sound financial principles; and/or

1.1.2 he did not run his business in accordance with sound risk management principles.

1.2 In relation to 1.1 above it was alleged that this was also a breach of Rule 5 of the Solicitors Code of Conduct 2007 and/or in relation to 1.1.2 above this was also a breach of Outcomes 7.6 and 7.8 of the SRA Code of Conduct 2011.

1.3 He failed to act in the best interests of clients contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 and/or Principle 4 of the SRA Code of Conduct 2011 and/or failed to provide a good standard of service contrary to Rule 1.05 of the Solicitors Code of Conduct 2007 and/or Principle 5 and/or Outcome 1.16 of the SRA Code of Conduct 2011 in the matters of DP and/or AB and/or AS and/or KP and/or AP and/or CG and/or GH and/or IT and/or others.

1.4 He failed to act with integrity by misleading GH as to the status of his case and/or SB at the SRA about the status of the loan from JCL contrary to Principle 2 and/or Principle 5 of the SRA Code of Conduct 2011.

1.5 He failed to inform the SRA of his Practice's financial difficulties, contrary to Principle 7 and/or Outcomes 10.1 and/or 10.3 of the SRA Code of Conduct 2011.

2 The allegations against the Second Respondent, made on behalf of the SRA were as follows:

2.1 He acted in contravention of an order dated 25 August 1982 made under section 43(2) of the Solicitors Act 1994.

2.2 He acted in breach of Principle 8 of the SRA Code of Conduct 2011 in that he did not carry out his role within the Practice in accordance with risk management principles.

2.3 He failed to act in the best interests of clients contrary to Principle 4 of the SRA Code of Conduct 2011 and/or failed to provide a good standard of service contrary to Principle 5 of the SRA Code of Conduct 2011 and/or Outcome 1.16 in the matters of DP and/or AB and/or AS and/or KP and/or AP and/or CG and/or GH and/or IT and/or others.

2.4 He failed to act with integrity by misleading the Court and/or the defendant on the matter of IT by submitting a witness statement to the Court which he knew or ought to have known was not a representation of the true facts contrary to Principle 2 of the SRA Code of Conduct 2011.

(In the Rule 5 Statement there were some erroneous references to the SRA Code of Conduct 2011 as the *Solicitors* Code of Conduct 2011. The correct description is used in this judgment.)

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 24 October 2014 with exhibit IGM1 comprising Files 1 and 2
- File 3 comprising (in the order within the file)
    - Information about Calibre Solicitors Ltd
    - First Respondent's Answer to the Rule 5 Statement with appendix EHJ1 dated 2 December 2014
    - Second Respondent's Answer to Rule 5 Statement dated 19 November 2014
    - Letter from Bevan Brittan to the Second Respondent dated 28 October 2015
    - Letter from the Second Respondent to Bevan Brittan dated 3 November 2015
    - Letter from Bevan Brittan to Slater & Gordon dated 28 October 2015
    - Witness statement of Steven Bint dated 30 April 2015
    - Witness statement of Raymond Butler dated 1 May 2015 with exhibit RDB1
    - Witness statement of Gordon Hair dated 21 April 2015
    - Witness statement of Geoffrey Hoe dated 24 April 2015 with exhibit GHH1
    - Witness statement of Ivan Tough with exhibit IT
    - Supplementary statement of the First Respondent dated 6 October 2015
    - Witness statement (undated) of Christine Cullum with attachments
    - Statement of the Second Respondent in response to the Rule 5 Statement allegations and/or made by the First Respondent dated 11 May 2015
    - Statement of AA dated 18 May 2015
    - Witness Statement of EB dated 24 April 2015
    - Witness statement of SH dated 11 May 2015
    - Witness statement of HM dated 5 April 2015
    - Witness statement of Philip Scholes dated 27 April 2015
    - Witness statement of SS dated 10 May 2015
- Applicant's authorities and materials
- Extract from Solicitors Act 1974 (as amended) sections 43 and 44
- Section 47 Solicitors Act 1974 (as amended)
- Schedule 2 Administration of Justice Act 1985 paragraphs 16 – 18A
- Applicant's opening skeleton argument drafted by Adam Solomon dated 16 November 2015
- Applicant's statement of costs dated 12 November 2015

First Respondent

- E-mail from Gordon Hair to the First Respondent dated 22 May 2013
- Email from the First Respondent to Gordon Hair dated 22 May 2013
- Statement (one page) by the Second Respondent dated 15 August 2012
- Financial statement of the First Respondent dated 20 October 2015

Second Respondent

- File of Second Respondent's additional documents
- Letter from the Applicant to the Second Respondent dated 1 May 2008
- Letter from the Second Respondent to the Applicant dated 22 May 2015
- Personal Financial Statement of the Second Respondent dated 16 November 2015

Preliminary and Other Issues

Attendance of the Second Respondent's witnesses

4. The Second Respondent's witnesses were not present. A direction was made at a Case Management Hearing ("CMH") on 3 March 2015:

> "Each party to notify the other(s) of the names of any witnesses whom they wish to attend the hearing for cross examination by no later than 4pm on 11 May 2015."

The Second Respondent submitted that no such notice had been served on him by any of the parties and that the direction was very specific.

5. Mr Solomon submitted that the Applicant's position was neutral in respect of the Second Respondent's witnesses. The witness statements did not deal with specific allegations made against the Second Respondent but dealt generally with the position regarding admissions made by the First Respondent in respect of various allegations and they went to the way the firm was conducted. Mr Solomon understood from Ms Baxter for the First Respondent that no Certificate of Readiness had been served on her client by the Second Respondent. The Certificate stated:

> "I will give evidence at the hearing and will also rely upon the six corroborative witness statements I have filed and served. Neither the Applicant nor the First Respondent has challenged these statements or requested that the deponents of those statements attend the hearing."

Mr Solomon informed the Tribunal that the Applicant had no positive evidence to call to challenge the content of the witness statements. There were one or two documents which they did not address and if the witnesses had been present he would have cross examined on them. It was for the Second Respondent to say why the statements did not deal with those documents. Mr Solomon suggested that if the Second Respondent relied on the witnesses it might be possible for some of the most important of them to attend during the week if the Tribunal so permitted. He noted that in his statement Mr AA said that he was willing to attend the Tribunal.

6. For the First Respondent, Ms Baxter submitted that the case had earlier been adjourned because the Second Respondent said that he had up to eight witnesses to put before the Tribunal and he asked for a longer hearing; consequent on that the CMH of 3 March 2015 took place. It was clear from the First Respondent's witness statement dated 6 October 2015 that he took issue with what the Second Respondent's witnesses said. The Second Respondent's Certificate of Readiness finally made the position clear. Ms Baxter still had not seen it; she had just received information about it from Mr Solomon. If she had seen it formal steps would have been taken. It was a matter for the Tribunal as to what weight if any it would attach to the statements of witnesses who were not called before it. Ms Baxter referred to a decision of the Tribunal in an email from the Tribunal dated 27 October 2015 determining objections by the Second Respondent to allowing into evidence the statement of the First Respondent dated 6 October 2015 and the undated witness statement of Ms Christine Cullum ("CC") the Practice Manager. The Tribunal did not consider it appropriate to disallow the statements but stated that as the contents of the statements were relevant to the defence of the Second Respondent, it would be appropriate for both the First Respondent and Ms CC to give evidence and confirm the contents of their statements and be subject to cross examination. If both gave evidence then the statements provided a useful indication of what they would say. If they did not give evidence then the Tribunal was unlikely to give much credence to the contents of the statements. The Tribunal also stated that now that the Second Respondent had warning as to what these witnesses would say he had the time to consider any rebuttal evidence he wished to make and if he served statements it was likely the Tribunal would take the same approach to those statements as it had done to the First Respondent and Ms CC's statements.

7. The Second Respondent submitted that his Certificate of Readiness had been sent to Slater & Gordon for the First Respondent on the same day it had been sent to the Applicant and the Tribunal. He had not received notification from either of the other parties that his witnesses should attend. Mr AA had indicated his availability on the basis that he would have some notice and this did not mean a couple of days.

8. The Tribunal considered the position at the outset of the hearing. It pointed out to the Second Respondent who was a litigator that if his witnesses were not present it would not attach as much weight to their evidence as if they were giving sworn evidence; it could not change the reality of the situation that the Second Respondent's witnesses were not present. The hearing was scheduled to last five days. It was a matter for him if he wished to call them. In the event the Second Respondent called Mr Philip Scholes.

<u>First Respondent's Admissions</u>

9. Ms Baxter confirmed that the First Respondent admitted allegations 1.1 and 1.3 and that the admissions extended to the considerable number of aspects of the allegations expressed to be "and/or". The First Respondent denied allegations 1.4 and 1.5. Mr Solomon suggested in his Skeleton that allegation 1.2 appeared to be disputed albeit on the same facts as allegation 1.1 but submitted that it might be that the First Respondent's position was more accurately described as mitigation than denial. Ms Baxter clarified that while there was a fine line between mitigation and defence, the First Respondent's position fell into mitigation. Allegation 1.3 was therefore also

admitted. Mr Solomon clarified that allegation 1.4 contained two discrete allegations; one concerning what the First Respondent told the client Mr Hoe ("GH") and the other about what he told Mr Bint of the Applicant about the status of a loan. Allegation 1.5 concerned only what the First Respondent told Mr Bint about the financial difficulties of his practice.

Correction to Rule 5 Statement

10. It was pointed out to Mr Solomon by the Tribunal that there was an error at paragraph 122 of the Rule 5 Statement sub paragraph (b) in a quotation from Schedule 2 paragraph 16(1A) of the Administration of Justice Act 1984 relating to the Tribunal having jurisdiction in respect of the complaint by a relevant "person" whereas the Rule 5 Statement referred to a "body".

Factual Background

11. The First Respondent was admitted in 1999. He was born in 1974. At the material time he was a partner and director at Legal Gateway Solicitors, trading as Calibre Solicitors Limited ("the firm"), having joined initially as an employee, becoming sole director and beneficial share owner in 2007. It was understood that the firm was managed jointly by the First Respondent and an un-admitted practice manager Ms Christine Cullum ("CC").

12. The firm dealt largely dealt with claimant personal injury work. The matters referred to in the Rule 5 Statement related to industrial disease claims for loss of hearing.

13. The Second Respondent was employed by the practice. He was not a solicitor and his exact status within the firm was disputed. His resignation became effective from 21 November 2012.

14. The Second Respondent had, on 25 August 1982 been made subject to an Order by the Tribunal under Section 43(2) of the Solicitors Act 1974 ("s 43"). The Applicant asserted that this was brought about following a conviction for the criminal offence of forging marriage documents whilst employed as a solicitor's clerk. The Tribunal's Order provided:

> "From the first day of December 1982 no solicitor shall except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in that permission employ or remunerate in connection with his practice [the Second Respondent]..."

15. The Second Respondent continued to work at law firms. During or before 1997 he was employed at BC Solicitors of Halifax. During that time he was the subject of an investigation into his conduct and the Adjudication Panel of the Office for the Supervision of Solicitors found the allegations made against him substantiated and made a s 43 order. The matter was subsequently appealed by the Second Respondent and the Law Society decided to rescind the decision on the basis that he had not had sufficient opportunity to make representations, and in view of the fact that the conduct related to matters which took place in 1997.

16. On 3 August 2012 Mr Steven Bint, a supervisor in the Supervision and Risk Department within the Applicant contacted the firm by telephone to get to know it, to determine its financial standing and to find out why there had been complaints of delays and 16 negligence claims with one paid made against it. He also contacted the firm to establish its supervision arrangements and about an issue regarding the Second Respondent. Mr Bint spoke to the First Respondent and made an attendance note of the telephone call which was before the Tribunal. It took the form of a chart.

17. Mr Bint's attendance note recorded that in recent years the firm had received files from insolvency practitioners appointed to firms which had become insolvent. It had taken 1,000 files personal injury files from a firm B & B in 2010 and 600 personal injury files from another such firm in 2011. The note also recorded that the firm currently had about 1,000 files.

18. Mr Bint understood that there were 11 unqualified fee earners with an average post-qualification experience of less than five years and one director.

19. The firm subsequently went into administration. This was brought about upon an application by the firm's funders JCL, which held a qualifying floating charge over the firm. The First Respondent had left sometime previously citing mental health reasons.

20. In the light of the concern that the firm was not being wound down effectively, Mr Gordon Hair a Forensic Investigation Officer ("IO") at the Applicant was instructed to carry out a review of the firm. He prepared a Forensic Investigation (FI) Report dated 23 July 2013.

21. The First Respondent informed the Applicant of the administration when it came to his attention and contacted the Ethics department at the Applicant by e-mail dated 11 February 2013.

22. A firm of Administrators was appointed. Solicitors OHP subsequently acquired a number of clients for whom the firm had previously acted. Upon a review of the files OHP noted that there appeared to be significant negligence on many of the cases they looked at. OHP was instructed on behalf of these former clients to pursue negligence claims against the firm and also against the First and Second Respondents in a personal capacity.

23. Mr Ray Butler ("RB") of OHP assisted the Applicant in its investigation into the firm and into the conduct of the First and Second Respondents. In a note to the Applicant produced on or around May 2014 RB explained that his firm was at that time investigating 227 cases where there had been suspected negligence. At that time his firm had sent of 97 letters before action alleging negligence. RB explained in the note that the total amount of damages claimed at that time was £1,986,284.89. For 97 cases, that meant an average claim of £20,000 per claimant. The note went on to state:

> "The cases fall into the following broad category of negligence. Where we have put the number of cases, these are the cases where [the firm] are likely to have made basic errors, that is an error requiring no judgment call on the part

of the file handler. In these cases breach of duty seems obvious. 71 of the 97 cases listed (74%) are likely to be basic error cases.

If we are right about [the firm's] negligence than (sic) there are so many basic errors that this must call into question [the firm's] judgment.

Limitation	18 cases
Issued but not served	23 cases
Discontinued	judgment call
Struck out	16 cases
Nullity/wrong Defendant	
Worthless judgment	12 cases
Undervalued	judgment call
Poor Prep for Trial	judgment call
Limitation/section 33	2 cases

We have not seen any cases where the fault lies with the client."

24. The FI Report highlighted a number of specific cases which were of concern. Following the referral to the Tribunal and consideration of the FI Report, Bevan Brittan served upon RB a section 44B notice requesting access to the files that had been transferred to OHP. Bevan Brittan requested that 10 files be forwarded so that they could review the position. It was considered that the 10 files reviewed showed significant negligence.

Mr DP

25. The firm was engaged by Mr DP in his claim for noise induced hearing loss. The Claim Form dated 14 December 2010 was signed by the Second Respondent as litigation manager. The Second Respondent disputed his involvement in a number of files including that of Mr DP but admitted signing various claim forms. References are therefore made to the firm rather than to him as an individual in this part of the background. A letter to Mr DP dated 2 August 2011 confirmed that the Second Respondent was dealing with the matter. In a letter from the firm to the client dated 27 July 2012 it was stated that proceedings had been issued and served but had not been acknowledged by the defendant and that judgment was therefore being requested.

26. The file was later transferred to Mr HM of the firm by the First Respondent with a memorandum dated 23 October 2012 stating:

> "[HM] will you take over conduct of this one please. We have allegedly served proceedings, entered Judgment, which I have requested.
>
> I am struggling to find the Particulars or the letter of service on this case. However, preceding fee earners both confirm it has been issued and served, not merely issued. I have read through the entirety of the documents, so it is probably in there somewhere
> Cheers

> Ed
> PS if it turns out it has not been, I think it is one you need to pass back to me and I will do a formal letter of advice to the client."

27. The same day Mr HM wrote to the other side's solicitors to state that the firm had requested judgment. On 30 October 2012 that firm responded to the letter. They stated in their response:

> "We note the position with considerable surprise. You last wrote to us in this case on 14 December 2010 indicating that your client was intending to pursue the claim, but not answering the questions we had previously posed or dealing with our requests for disclosure. In response on 16 December 2010 we reminded you of the outstanding matters. This was followed by letters from ourselves on 18 January 2011 and 2 February 2011, indicating that unless we heard from you with the relevant information we were proposing to close our file. Neither letter was answered by you.
>
> You now indicate that proceedings have been served. In our letter to your predecessors of 9 November 2009 we indicated that we had instructions to accept service. You have not served the proceedings at this firm, nor have you even had the courtesy to write to us to indicate that proceedings were being issued and served. We therefore take the view that service has not been effected in accordance with the rules and that any request to enter judgment is irregular…"

28. By memorandum dated 1 November 2012, HM wrote to the First Respondent:

> "You will note that the letter of claim was sent on 12 October 2009 and was acknowledged by the Defendant's Solicitors on 9 November 2009.
>
> Protective proceedings were issued on 14 December 2009 however we have never served proceedings despite a file note suggesting this has been the case. There is no Certificate of Service, there is no Particulars of Claim, No Counsel has ever been instructed, no Advice was ever sought in regards to prospects of success on this and obviously no papers exist which suggest that service was ever effective.
>
> We will need to advise the SRA and our Indemnity Insurers and we will also need to advise the client to obtain alternative legal advice."

29. In this instance Mr DP was contacted by letter dated 7 November 2012 from Mr HM and informed that it appeared from a review of his file that his claim was not ever served.

Mr AB

30. The firm took over Mr AB's file from B & B following their insolvency. B & B had initially made contact with the client in August 2007. At the front of the file which was passed on to the firm limitation was stated as 2 September 2010 as this appeared

three years after the client was first referred for a hearing test and was also the date he became aware that he could make a claim.

31. On 20 July 2010, a letter was written under the Second Respondent's reference to Mr AB explaining that he had taken over the file. It was clear that an offer of settlement was received prior to the transfer of the file to the firm and by an attendance note dated 22 July 2010 with reference HN. The note recorded:

> "With regard to [RR], the position is that an offer of settlement was received but does not appear to have been disclosed to the client. We should now do that and give him appropriate advice regarding that proposed settlement…"

The letter from the firm dated 22 July 2010 to the client advised him of the settlement proposal.

32. On 30 November 2010, the First Respondent sent a memorandum to the Second Respondent, stating:

> "Harry, I have issued a claim form on this one. Limitation is round about Autumn/Winter 2010 for issuing rather than leave it to find out what the client says in detail once we have re-examined him. I have gone off the date contained in his original witness statement.
>
> It looks like there is an offer from the 4th Defendant which the Claimant has not come back to us on. I have done an IDC51 chasing up on that".

At the time the First Respondent sent the memorandum, the limitation date had expired.

33. On 9 December 2010, a letter with an HN reference was sent to the court enclosing the claim form and confirming that the firm would be responsible for effecting service upon three named defendants. The client was updated by letter of 2 August 2011.

34. On 17 May 2012, a file note was produced with an HN reference. There was no evidence of any work being undertaken following the previous letter. The review note reported that the file did not disclose that any form of judgment was ever issued by the court but that a letter had been sent enclosing a request for judgment and certificate of service. It was necessary to write to the court to find out the position regarding entering judgment and a disposal hearing and to write to the client updating him. A letter was sent to the client the following day updating him. A further letter was sent on 27 July 2012 to the client.

35. On 29 October 2012, the First Respondent sent a memorandum to a member of staff BS asking him to take over conduct of the matter where judgment had been requested. On 8 November 2012, BS contacted the client to explain that he had taken over the file and during the conversation Mr AB explained that he wanted to speed up the claim as he had been diagnosed with terminal cancer.

36. On 9 November 2012, BS produced a file note listing issues with the matter and commenting adversely on the way it had been conducted. It listed the following issues:

- in relation to the funding there was no evidence on the file that the ATE insurer had authorised the issue and service of proceedings;
- the limitation period had passed as the claim appeared to have been issued in December 2010;
- there had been no advice from Counsel about liability;
- there was no evidence on file that proceedings had been served with no copy service letters or certificates of service on file.

37. Subsequently there was contact between BS and the client and Mr AB disputed that he had been advised that there was an offer of settlement made in 2009. On 27 November 2012, the First Respondent wrote to him setting out what the First Respondent considered to be his options. He recommended that the case go forward on the basis that only one offer of settlement had been received. He also advised that there was clearly a risk that any fresh proceedings could not be concluded successfully within Mr AB's lifetime. He concluded by requesting instructions on commencing fresh proceedings.

Mr AS

38. Mr AS instructed the firm in relation to a claim for personal injury following his hearing loss. By letter of 31 August 2011 the Second Respondent was named as dealing with the matter. A file note dated 16 May 2012 stated that documents for issue, together with a cheque, had been sent to Altrincham County Court in November 2010 and Mr AS was informed by letter of 17 May 2012. On the same date a chaser letter was also sent to the Court. However an internal e-mail of 2 October 2012 stated that the claim was not issued and limitation had passed 18 months before. It also confirmed that there were no copy pleadings on file; that the Court had not received any of the documents and that the cheque sent the Court was cancelled and not cashed.

Mr KP

39. The FI Report detailed that Mr KP had been awarded £20,000 in damages but not received any payment in respect thereof. At the time of the FI Report the file could not be found.

Mr CG

40. Mr CG understood that he was awarded damages £16,000 and received two payments totalling £5,000 which were transferred with a reference Mr HN – [REDACTED]. A further payment of £5,000 was also said to have been made with the same reference although the copy bank statement had not been seen. It was understood that Mr CG did not receive the remainder of his damages.

Mr AP

41. Mr AP understood that damages were paid into Court. Copy letters apparently prepared by the Second Respondent did not confirm the sum of those damages and no record of his claim was found. There was a draft letter on the file stated 8 February 2013, apparently prepared by The First Respondent to the Applicant advising it that he had become aware of the serious failings in this case, stating that the court confirmed that no action was taken since the issue of proceedings in 2010. OHP had issued a letter before action in this case on 6 June 2014.

Mr GH

42. Mr GH instructed the firm on or around October 2007 for a claim for loss of hearing against his previous employer. The limitation date for issuing a claim was noted on the front of the file, on a document marked "Strategy Plan" as being 23 March 2010.

43. On 11 January 2008, a letter was sent out to Mr GH from Ms VR of the firm which stated that she was dealing with the claim. She explained in the letter that the First Respondent was the supervising partner. On 25 September 2008, the conduct of the file was transferred to NT of the firm who explained that he was a paralegal but that the supervisor had not changed.

44. On 23 March 2010, an attendance note recorded:

> "HN reviewed the file and drafting the Claim Form in readiness for issue at County Court."

45. On 7 April 2010, a letter was written apparently from the Second Respondent to GH explaining that conduct of the claim had been passed to him and that his claim had been lodged ready for issue and that there would be a four-month period within which to review matters following service of the claim form.

46. A second letter was sent out 1 July 2010 stating that the Claim Form was issued on 29 March 2010. The claim form was also stamped with that date. By an attendance note with reference HN/CM…, It was recorded that "service must be effected not later than 27 July". The note went on to refer to the need to instruct counsel to settle Particulars of Claim and to advise and made other comments about preparation for instructing counsel including "... Dictating Instructions to Counsel to Advise and to settle Particulars of Claim".

47. Instructions to counsel were sent on 8 July 2010 and on the same day a letter was sent to Mr GH advising him of the action which had been taken.

48. On 26 July 2010, the claim form appeared, from letters on the file' to have been served on the defendants. On 27 September 2010, a file note recorded that counsel had been chased.

49. On 5 January 2011 a letter was written to Mr GH stating that proceedings had been served upon the Defendants and that the firm would write further to advise whether they were to be defended or whether it had been able to enter judgment for damages and costs to be assessed.

50. On 22 June 2011, the First Respondent asked to see the Second Respondent about the file. On 28 June 2011, a letter was written to GH stating judgment had been requested and they were awaiting hearing from the Defendant.

51. A memorandum the same day stated:

> "Harry,
>
> This is one where we seem to have served ages ago [B Solicitors] on records (sic) but do not seemed (sic) to have put in any Defence can we just enter judgment please. Thank you, can you send it to someone else to run the Disposal Hearing."

52. On 10 August 2011, a letter was written to Mr GH stating:

> "We can confirm that your current status is we confirm that we have now served proceedings on the Defendants."

53. On 18 October 2012 while the Second Respondent was on garden leave a letter was written to the court to find out what the status was when judgment had been requested over a year ago. The court responded on 22 October 2012 stating that judgment had been returned as no Certificate of Service had been filed.

54. On 25 October 2012, Mr JR of the firm who was reviewing files which had belonged to the Second Respondent sent a memorandum to the First Respondent reporting on his review of the case. He had concluded that it was questionable whether proceedings had been issued within the limitation period and that proceedings had never been served. The memorandum included:

> "We have requested judgment but it has been knocked back due to no cert of service filed. Court has sent copy letter to HN dated 7/7/2011 advising accordingly. That letter isn't on file…"

55. On 30 October 2012 a file note with the First Respondent's reference recorded its conclusions in respect of the file and on 23 October 2012 he made contact with Mr GH by e-mail. That e-mail and a subsequent letter of 15 November 2012 to the client were the subject of allegation 1.4 against the First Respondent.

<u>Mr IT</u>

56. Mr Ivan Tough ("IT") instructed the firm on or around 11 June 2008 in respect of a claim for industrial hearing loss. The engagement letter on the file stated that the First Respondent had final responsibility for dealing with the case. The Strategy Plan on the file indicated that the limitation date was 13 November 2010.

57. Proceedings were issued on 2 December 2008 and the claim form appeared to have been served on K Ltd on 1 April 2009. On 21 April 2009, B Solicitors wrote to the firm explaining they had instructions to accept service of any proceedings that had been commenced.

58. An extension of time to serve the particulars of claim appeared to be granted by the Court with the agreement of B Solicitors. Counsel was instructed to prepare the Particulars of Claim. B Solicitors acknowledged receipt on 8 June 2009. In July 2009 B Solicitors filed a defence on behalf of their client. Liability was denied on the basis that the defendants were not in fact successors in title and that proceedings had been issued against the wrong defendant.

59. On 19 August 2009, the First Respondent wrote to Mr IT advising him that he had taken up "full-time managing of the business I will be transferring your case to another fee earner who will be in contact shortly." He indicated that he remained the overall supervisor.

60. On 3 August 2009, B Solicitors wrote to the firm explaining that they considered the wrong defendant had been pursued. Following a series of chasers they wrote on 29 September 2009.

> "We understand from the court that they have received no correspondence from you further to their order of 25 August 2009 requiring you to file and serve particulars of claim, medical evidence and an allocation questionnaire.
>
> As such, we assume that this case is struck out."

61. On 5 October 2009, the firm wrote to the court enclosing a previous letter dated 21 September 2009 which had referred to the inclusion of the allocation questionnaire. In this further letter the firm said it understood that the cheque to the court had not been cashed. A Case Management Conference ("CMC") was listed for 17 November 2009 although the client was not updated as to the position. The client chased the First Respondent on 10 November 2009 for an update.

62. On 17 November 2009, the case was taken over by JA, a litigation executive at the firm. A letter informed Mr IT of the case transfer but stated that the First Respondent remained the overall supervisor of the case. Following the CMC, an attendance note dated 17 November 2009 was drafted by JA apparently addressed to the First Respondent although that was not in the heading but he was referred to in the body of the note, explaining that it was the defendant's case that the firm were proceeding against the wrong defendant.

63. On 28 January 2010, an attendance note was sent by JA to the First Respondent setting out the problems with the case and concluding:

> "I think this case is fraught with difficulty and would like your opinion.
> We should of course apply to discontinue against [K] in the meantime."

64. On 9 March 2010, the First Respondent replied to JA stating:

> "Agree need to discontinue v defendant we have on record (given latest disclosure no order as to costs should be possible)."

65. On 10 March 2010, without taking instructions from the client or notifying him as to the position in relation to his claim, JA filed a notice of discontinuance. An attendance note stated:

> "[JA] engaged discussing case with [the First Respondent] – it is to be discontinued as per his note. I have written to the Court and [B Solicitors] discontinuing, but since part of the file is missing I cannot write to the client enclosing the personnel records.
> I will to (sic) locate the missing part of the file, so I will have to do the best I can when writing to the client explaining the reasons for closure."

On 16 March 2010, B Solicitors wrote to the firm acknowledging receipt of the notice of discontinuance and stating that they would arrange for a bill of costs to be drawn up, an automatic consequence of filing a notice of discontinuance.

66. The client was not updated as to the position and on 24 May 2010, B Solicitors proceeded to serve on the firm a notice of commencement and bill of costs in the sum of £5,687.84. No action was taken by the firm and on 12 August 2010 B Solicitors served on the firm a Default Costs Certificate and requested payment of £6,499.72 by 20 August 2010.

67. On 5 October 2010, the First Respondent wrote to B Solicitors, stating:

> "We refer to the above matter and should be grateful if you will confirm that you will agree to set aside the Default Costs Certificate.
>
> The fee earner who had conduct of the case at the time has been extremely unwell and has unfortunately only recently brought this matter to our attention.
>
> He had thought the matter had been dealt with but, in part due to his illness, clearly that was an error."

68. On 5 October 2010, the First Respondent sent an e-mail to the Second Respondent asking if he could transfer the file to his name and for the Second Respondent to see if they could get the Default Costs Certificate set aside. What happened after that was the matter of dispute between the Respondents and was referred to extensively in the evidence.

Witnesses

69. **Mr Geoffrey Hoe** gave evidence.
(When RB subsequently gave evidence (see below) it became apparent that there was some confusion about statements given by Mr Hoe. Mr Solomon informed the Tribunal that RB had visited Mr Hoe and then drafted a witness statement for him in respect of a negligence claim. RB later sent that statement to Bevan Brittan and a

similar statement to it was drafted by Bevan Brittan for the Applicant in the Tribunal proceedings. The time associated with that work was shown in the costs schedule. Mr Solomon agreed with the assessment of the Tribunal that Mr Hoe was mistakenly confirming the truth of his statement drafted by Mr Butler while references to his witness statement below are to the one which Mr Hoe had signed in the Tribunal proceedings and which was before him when he gave evidence.)

70. The witness confirmed the truth of his statement dated 24 April 2015. In cross-examination by Ms Baxter the witness was referred to his statement where he said:

> "Getting in touch with [the Second Respondent] was almost impossible and whenever I rang him, I would never get past his secretary…"

The witness stated that he had telephoned about a dozen times and spoken to a secretary not necessarily the same person on each occasion. He asked to speak to the Second Respondent and was told he was not available and would call back. He had spoken to him twice. The witness was anxious to know what the state of the case was. He asked to have it put in writing and he was told there were too many clients. He was told not to worry. He could not remember back such a long time as to whether he had been told he was speaking to the wrong person. The Second Respondent's secretary told him the files were lost or removed from the premises leading to delay. The Second Respondent never said it was not his matter. The witness believed that First Respondent had started the matter and passed it to the Second Respondent.

71. In cross-examination by the Second Respondent, the witness was referred to his statement where he said:

> "I am now given to understand that the letter that [the Second Respondent] sent to the Court enclosing the Claim Form would have delivered the Claim Form to the Court too late for it to be lodged on time…"

The witness could not remember who told him that but he was sure it was the firm.

72. The witness was asked how he came to contact OHP and said that he believed RB contacted him but he could not remember. He agreed RB interviewed him at his home and that he sent a statement to the witness who signed it; it had his name misspelt otherwise there were no changes. The witness had not written anything. RB had asked him what his experience was of events and as the witness spoke Mr RB jotted it down. The Second Respondent wished to ascertain what in the draft came from the witness and what was provided by RB. In his statement, the witness referred to items of correspondence received from the firm with quotations. The witness confirmed that he did not hand anything to RB at the interview; he had a file of papers but he did not show it to RB. He agreed that when he received the draft statement that was the first time that the letter he received from the firm on 13 December 2012 was mentioned. It was put to the witness that he had never had a telephone conversation with the Second Respondent but he maintained that he had and could say so categorically but he could not remember the date. He had spoken to the Second Respondent a long time before he consulted RB in 2013. The Second Respondent had assured the witness that he was going to take on the matter personally and apologised for the delay and about how the

matter had previously been handled and the witness had thanked him. The witness agreed that this could not have taken place after September 2012.

73. **Mr Raymond Butler** gave evidence. He no longer worked for OHP Solicitors. He confirmed the truth of his witness statement dated 1 May 2015. He was cross examined by the Second Respondent. In his statement he referred to OHP being instructed in and around May 2013 to investigate the work of the firm. He stated that he had been instructed by individual clients the source of whom was the loan company JCL. Clients were allocated to him in respect of deafness claims. The witness had previous experience of long-standing loan accounts in deafness cases. He agreed that JCL provided the names of the firm's clients and the witness and a couple of other staff members went to their offices and looked at the paper files. Another firm of solicitors WS had been instructed by the Administrators to look at the files to see if the cases could be continued to a successful conclusion. Some of the files were passed to other firms. As to Mr GH saying that he had been telephoned by someone from OHP, the witness stated that there might have been a telephone call but he recalled that all the clients were written to first.

74. The witness was asked about his description of the Second Respondent in his statement as "a file handler and as the supervisor/head of department". The witness said that he knew from the statements filed at court that was how the Second Respondent was described. In Mr IT's statement the Second Respondent was described as Head of Department. His reference was on files and the witness assumed that meant he was the file handler and he recalled letters signed 'Yours sincerely' by the Second Respondent. He was not sure how Head of Department was different from Litigation Manager. In re-examination by Mr Solomon, the witness was asked about his description in his statement of the Second Respondent as Litigation Manager. He confirmed that the Second Respondent's witness statements dated 18 July 2012 and 15 August 2012 in Mr IT's proceedings in the County Court had that description along with Head of Industrial Disease Department. The witness recalled that case particularly because of the judgment.

75. The witness exhibited copies of strike out orders to his statement in which he said:

> "Of the 21 cases above that were struck out, 9 of the cases were being handled by [the Second Respondent] when they were struck out."

The witness agreed that the reference in the cases of Mr KL, Mr MB and Mr JS was EJ [the First Respondent] and each document had two sets of initials in the reference none of which was HN. He agreed that on the face of it the references were those of other people.

76. In his statement, the witness mentioned the case of Mr AB and that the Second Respondent had conduct of the file and had failed to lodge a claim form within the necessary time frame. The witness rejected the suggestion by the Second Respondent that his only reason for saying that the Second Respondent had conduct was because he had signed the claim form; he had reached this conclusion by looking at the file and seeing what the references on it were. Clients were not told when the fee earner changed and it was often difficult to tell who was dealing. He based his conclusions on the file references at the time. It was his view of a solicitor's

practice that if the client did not sign the claim form then the person with conduct of file should do so. In cross examination, Mr Solomon referred the witness to strike out orders in the cases of WB, TF, RT, JTB and MM all of which all bore the reference HN and so clearly what the Second Respondent had put to him was not correct. He was taken to the file of client AB and referred to particular documents bearing the reference HN with the Second Respondent's e-mail address. The witness confirmed that he had seen this file. The witness was also referred to the file of Ms CB and a letter of claim dated 23 May 2014. The witness confirmed that he had written the letter and had the file in front of him when he did so. He had reviewed the file in detail and typed the letter himself. This was one of a number of letters grouped together under the heading "Other cases" in the hearing bundle. In re-examination, the Second Respondent referred the witness to a strike out order for the client WB which following a reference HN had the reference JE. The witness was able to name the member of staff with those initials. He was also referred to various other strikeout orders bearing initials other than HN.

77. In his statement, the witness stated that the firm discontinued a large number of cases. He was very clear that in the case of Ms B to whom he had spoken, the client was told in a letter from the Second Respondent that the case was merely being adjourned when in fact Notice of Discontinuance had been served by the Second Respondent without instructions. He had also spoken to Mr R in respect of whom he said in his statement the wrong defendant had been pursued to judgment. The judgment was then set aside with the Second Respondent's agreement and the case continued. The client was not told of these developments. The case was then discontinued without instructions and the client was not told that this had been done. There were some cases that he did not specifically recall. He recalled the case of C where the claim was discontinued and the client was told that a joint statement from the medical experts undermined his case when there was in fact no such joint statement. The witness thought that he had issued 197 letters of claim to the firm. It was put to him that he had a substantial interest in establishing blame. The witness thought that his clients certainly did. His firm was acting on a no win no fee basis so to that extent it had an interest in the claims being successful; solicitors' firms were businesses. The clients had lost their chance of pursuing their claim successfully. He disagreed with the Second Respondent that for a successful negligence claim one needed to establish that the original claim would have succeeded at first instance; rather it was a loss of a chance. If there was a simple breach of duty by the solicitor for example procedural mistakes such as not issuing in time, the breach was clear as opposed to a situation where a judgment call was involved on the part of the lawyer dealing.

78. The witness stated that he might have sent Mr GH's statement (in respect of his negligence claim) to the Applicant; he obtained permission from a number of clients to do that. The witness would guess that he had not seen Mr GH during 2015 and Mr GH's statement for the Tribunal was dated 24 April 2015. He had prepared a statement for the purposes of a professional negligence claim by Mr GH and not for the Tribunal and there was a difference between the two. The witness was certain that he had seen Mr IT but was not sure that he took a statement from him

79. **Mr Steven Bint** gave evidence. He confirmed the truth of his statement dated 30 April 2015 and that a telephone attendance note (in the form of a chart) attached to the Rule 5 Statement was one that he had taken. In cross examination by Ms Baxter

for the First Respondent he stated that he had worked as a supervisor for the Applicant since March 2012 and that he was new to the Applicant and the role of supervisor at the material time. He had undertaken something in the order of 10 telephone calls to other firms in his supervisory role at that point. He would not usually give notice before making the call but when he called he would check if it was convenient time to speak and if not rearrange. Before calling he would review any documents held by the Applicant and if there were any issues. When he called he would give the purpose of the call and indicate some of the points he wanted to discuss. He had produced the attendance note of the discussion which he populated by hand as he spoke and then typed up. He would generally do that on the same day or the day after. The left-hand boxes headed "Discussion Point" would be completed in advance. Typically he would discard the handwritten copy afterwards. The document was not sent to the other party for agreement. He confirmed that the First Respondent was available to speak and cooperated with him when he called on 3 August 2012. He agreed that the first objective of supervision was to engage people at the coalface and build up a relationship.

80. Ms Baxter referred the witness to section 8 on the note headed "Firm's Finance":

> "How is the firm financed?
> (a) overdraft – if so current limit and balance
> (b) other loans and finance
> (c) when will facilities be reviewed by Bank
> (d) is the bank happy with arrangements"

The witness agreed by the time he reached these questions they had been on the telephone for a fair while. The answers were as follows:

> "a. £30K overdraft which is used to fnd (sic) practice
> b. [JCL] loan with about 12 months left to pay at c.£5k p/m
> c. 6 or 12 monthly
> d. They bank with Lloyds and believe them to be happy with the arrangement and currently await management accounts to review with Bank to see if overdraft could be extended. This is to offer more flexibility to the firm to fund the bigger cases as appose (sic) to any business plans."

81. The witness agreed that he did not ask how much was outstanding on the loan and for any details. He was asked if he understood that the First Respondent was saying that the loan was being renegotiated in order to end the relationship with the loan company in 12 months and was being paid off at the rate recorded in the answer. The witness stated that on reading his note it was his understanding that the firm was paying the loan to come to an end in the next 12 months and that the loan was coming to the end of its term. He confirmed to the Tribunal that the answer he had noted suggested that there was about £60,000 outstanding on the loan and that there was no mention of any other loan in that conversation. He agreed that the answers indicated that the loan facilities were reviewed by the bank six or 12 monthly.

82. The witness did not believe that in concluding the conversation he had given the First Respondent any idea of how regularly he would contact him. Typically he would say periodically or within three months. He agreed that the First Respondent would

have understood that the witness would contact him again and that he did not say how frequently. It would depend on the firm and what needed the witness's consideration.

83. The witness was cross examined by the Second Respondent about his role and that of Mr Hair. They worked together on investigations and he did not take direction from Mr Hair; he would ask Mr Hair to visit the firm and undertake an investigation. The witness stated that he kept a note of telephone calls. The Second Respondent put it to him that the witness had declined to speak to him on the telephone regarding the situation at the firm. The witness stated that he did not want to discuss the circumstances of the firm with the Second Respondent personally at that time. The witness could not recall whether he knew of the original s 43 order at that time. The witness rejected the suggestion that when the Second Respondent telephoned him his only concern was about financial issues at the firm. He agreed that other complaints had been mentioned to him referring specifically to the Second Respondent. As to whether it would be appropriate to speak to him to get background information, the witness said that he would have most likely written to the Second Respondent. As to whether nothing troubled him so much as to make the witness contact him, the witness said that he did not make the contact.

84. In respect of the s 43 order made in 1982, the witness could not recall how the information had come to him. Where concerns had been raised about a firm he could not look at all the employees since it would take too much time and the Applicant did not have information about every employee. The witness was referred to the Second Respondent's statement where he gave an account of attempts to have the original s 43 order rescinded. The witness had not found out anything about that. If he was to make enquiries he would look at the Applicant's records for the Second Respondent to see if any permissions had been given for him to be employed by the firm TIC that was referred to in the Second Respondent's statement and if the witness had not been satisfied he would write to the Second Respondent. He had made no such enquiries.

85. In respect of the s 43 order made in 2001 which had been rescinded, the witness recalled looking at it and making some enquiries on the Applicant's systems but he could not recall what if anything he found out. He could not recall whether the only copy order of rescission was one which had been provided by the Second Respondent. The witness was referred to three letters; one which the Second Respondent had written to the witness marked as received 2 April 2014, a holding reply from the witness stated 7 April 2014 and a substantive letter dated 19 May 2014 from the witness with attachments. The first of these referred to the Second Respondent's writing to Ms Palmer of the Applicant in July 1991 and being assured by her in a telephone conversation that the 1982 order was no longer in force. The Second Respondent put it to the witness that he had quoted her reference to the witness so that he could look the matter up. The witness confirmed that he was confident the Applicant's records were kept accurately. He relied on the Applicant's systems on a daily basis and had not encountered issues. He had looked on the Applicant's systems and asked colleagues what else they could do but they could not find anything. It was put to the witness that the Second Respondent's first and second names had been misquoted on documentation and the witness replied that he had not produced it. In re-examination by Mr Solomon, the witness was asked whether the Second Respondent provided him with any basis for asserting that the reference quoted in his April 2014 letter was in fact a reference and he stated that he had not and neither had

the Second Respondent provided any document with that reference on it. The witness could not say the reference actually existed and he did not accept that the file had been lost.

86. **Mr Gordon Hair** gave evidence. He confirmed the truth of his witness statement dated 21 April 2015. In cross-examination by Ms Baxter, the witness was referred to the FI Report which stated:

> "[The First Respondent] advised that the firm's practice funding had stopped early in 2011 at which point the firm owed £1,200,000.00 and that the firm's disbursement funding had stopped mid-2012 at which point the firm owed £800,000.00… [The First Respondent] further advised that during the period leading up to the firm being placed in Administration the Funder had demanded £1,500,000.00 from his firm and that in return his firm had offered £500,000.00 which had not been accepted by the Funder."

The witness confirmed that this was correct as far as it went. He had no reason to challenge that after the middle of 2012 disbursement funding had continued on a case-by-case basis; it might well be the case. He had to rely on his notes and he had not recorded anything other than what he said in the FI Report. In cross examination by Ms Baxter, the witness accepted that negotiations with the funder were still continuing when the First Respondent was speaking to him. The witness was not aware that a settlement had ultimately been reached. He could not recall whether at the conclusion of the investigation he had told the First Respondent that it was likely that he would be contacted again and that he might like to have legal representation. He agreed that was the type of advice he might have given. The witness confirmed that there had been no further contact between him and the First Respondent between that time and the issue of the Tribunal proceedings. (On the second day of the hearing, Ms Baxter obtained permission to admit a copy email dated 22 May 2013 from the witness to the First Respondent which stated that the witness would typically need to meet with the First Respondent again at some point and typically that the witness would have a colleague with him at that meeting which would probably be recorded and be more "formal".)

87. In cross-examination by the Second Respondent, the witness stated that it was not a typical first step in an investigation to review the employees. He could not recall whether it had been undertaken in respect of the firm. He agreed that he had visited the offices of the firm. The First Respondent was not present at his initial attendance and the rest of the staff were not engaged in the investigation. The Administrators were in place. The witness could not remember which members of staff remained at the firm at that time. He would speak to present and former fee earners if he had a reason to do so. His purpose on the first day was to establish the financial position of the firm. He had no other contact with members of the firm apart from the First Respondent and the Second Respondent as recorded in the FI Report.

88. The witness could not say for sure whether he was aware of the s 43 order made in 1982 when he conducted an interview with Second Respondent in Leeds. He became aware of the situation regarding the order through internal conversations with colleagues but he could not recall the precise date and time. He had not undertaken any research in term of searches. Once the FI Report had been signed, he had no

further involvement in the matter. He had required others to carry out searches about previous investigations. He felt able to rely on the Applicant's records; he had never known them to be inaccurate. He had no knowledge of files being misplaced. In terms of whether it would have been appropriate to give the Second Respondent an indication as to what he was looking at in the investigation, the witness stated that he provided a list of matters to be discussed and there was an opportunity for the Second Respondent to give his account of his role and the procedures and practices of the firm. He had allowed the Second Respondent to give his experiences of his time at the firm. It was the witness's recollection that he had not said to the Second Respondent at the end of the meeting that he should seek legal representation or that there was to be a further interview.

89. **Mr Ivan Tough** gave evidence. He confirmed the truth of his witness statement dated 24 April 2015. He was cross examined by the Second Respondent. The witness accepted that the Second Respondent did not have conduct of the main claim to the point where the costs issue arose; he took it on when it was quite well down the line. He agreed that the first contact he had with the Second Respondent was, as he set out in his statement:

> "I eventually spoke to [the Second Respondent] at [the firm]. [The Second Respondent] was very reassuring on the telephone and said that he would look into my case as a matter of urgency and revert to me. I followed up the conversation with a letter to [the Second Respondent] dated 27 June 2011 which enclosed the letter I had received from [the other side's solicitors]. It stated:
>
> > "This letter has certainly caused an awful lot of stress to my family during the proceeding (sic) weekend.
>
> I trust that you will deal with this as a matter of urgency and inform me by letter when this has been concluded.
>
> Due to the contents of this letter I felt the need to obtain advice from the Legal Ombudsman and the Solicitors Regulation Authority.
>
> I am hoping that this matter will be dealt with promptly and that I no longer need to pursue this course of action."

He agreed that he had telephoned the Second Respondent again and he confirmed the accuracy of a telephone note dated 10 July 2012 which stated:

> "Telephone call from Ivan Tough to advise that someone had called at the house to serve some papers. The assumption was that it was a Bailiff. I said I knew nothing about it but I would make enquiries of the Court and see what I could find out.
> He said he had been informed by his wife that the "Bailiff" had refused to leave the papers but had said that he would call back in a few days."

The witness was also referred to a further telephone note dated 17 July 2012 which stated:

> "Two telephone calls to Ivan Tough leaving messages with his voicemail to his mobile phone'
>
> Telephone call from Ivan Tough, advised him of my conversation with the Court and the steps that we were taking to resolve the situation. Confirmed that [the First Respondent] had received his letter and the covering letter from the Ombudsman and would be responding.
>
> I advised him that I would send him a copy of the proposed Application and supporting witness statement.
>
> Confirmed that in due course I would advise him of the Hearing date.
>
> I advised him of when I would be absent on annual leave and that if he needed to speak to me before then he should simply telephone on the direct line number or contact me as soon as I returned on the 13 August."

The witness stated that he had difficulty in confirming the two telephone calls leaving messages but otherwise the note seemed to correspond with what happened. He agreed that as much as he understood it, a letter with the Second Respondent's e-mail address and name at the foot dated 18 July 2012 was correct. There were lots of issues and it was a bit technical because he did not understand the process but the essence, dates etc were correct [the letter included that the firm had lodged an application with the court seeking to set aside the Default Costs Certificate.] He was then referred to his statement where he said:

> "On 22 August 2012 I was informed that the hearing was going to be conducted by telephone. I was then updated by letter from [the Second Respondent] dated 28 August 2012 that the hearing would take place on 12 October 2012. On 31 August 2012 I was informed that this was no longer going to be a telephone attendance and that it would be by personal attendance at Court. I offered to attend but was told that this was not necessary and that they would report back on what happened. On 3 October 2012 I was informed by [the Second Respondent] that a barrister had been instructed on a no win no fee basis."

The witness agreed that the letter set out what he understood the position to be but stated that it was difficult for him to remember every single letter. As to his being under the impression that the Second Respondent was the author of the letter of 3 October 2012 which had the Second Respondent's e-mail address, the witness stated that it bore his name as an e-mail contact but whether or not the Second Respondent originated the letter was difficult to say. The witness was not aware that the Second Respondent had resigned from the firm on 28 September 2012.

90. The witness confirmed in evidence that he recalled receiving the 3 October 2012 letter which was expressed to enclose a copy of the application and supporting witness statement but it did not and he could not remember if he actually received a copy. The witness did not recall receiving anything from the firm after the hearing on 12 October 2012 at Skipton County Court. He thought he received information from the other side's solicitors. He was referred to his statement where he said:

> "I was not updated as to the position of the hearing but upon numerous chasers I heard that the application to set aside the default costs certificate had been unsuccessful…"

The witness confirmed that he had telephoned and asked to speak to the Second Respondent or the First Respondent. He had to say that what happened did not surprise him as he felt regularly fobbed off by people and was certainly not told that the Second Respondent had left the firm. He had only become aware of that about five minutes previously.

91. **Ms Christine Cullum** gave evidence. She confirmed the truth of her undated witness statement. She had made the statement in August or September 2015. She also confirmed her statement dated 20 September 2013. In cross examination by Ms Baxter the witness said that when she looked back she could see that the First Respondent was struggling with depression and with the practice:

> "Over the last few years the strain of running a business where funds were always tight, although properly managed, showed on both of us. I became aware that it had made [the First Respondent] unwell in January 2013 but I had not been aware of how unwell he was until then, I do not believe he knew either, he had come to accept the stress of the business as part of normal life."

In examination in chief, she agreed that she was not aware of his illness before that but was aware that there were significant problems including negligence claims against the firm although she did not know the precise number; they had concerns about a significant number of cases, relating to a number of fee earners including the Second Respondent and the concerns arose because actions had not been taken. She was not referring to those where an individual fee earner had mental health issues which led to problems on a number of files. She was talking about other cases where from the "inactive reports" they knew that there were cases which had been unsuitably inactive for a period of time. She was certainly aware of this from June/July 2012 when the files were given the attention they needed. The Second Respondent was asked to take conduct of those files and a room was made available to him so he could concentrate on them. The witness had instigated that. In cross examination by Ms Baxter, the witness confirmed the files they were concerned about were referred to in her statement where she said:

> "When it became increasingly difficult to get [the Second Respondent] to work on files which appeared on his inactive list we moved him into an office on a different floor to give him the opportunity to work without interruption on the files…"

She did not have any access to the files to know if there were specific problems with them.

92. The witness confirmed that practice funding was stopped by JCL early in 2011. The firm owed £1.2 million in client funds. She agreed that disbursement funding ceased in mid-2012 and added that it was then was reinstated for specific cases after audit by JCL in each case. Initially JCL asked for allocation of funds affordable to the business of £5,000 a month to reduce the practice loan. There was not a timescale; cash flow

permitted that amount. There was then a meeting of JCL and the hedge funds and JCL suggested a "divorce"; they said they wanted to move out of funding. The First Respondent was asked to calculate the work in progress element on each file. The £5,000 was not interest. There was talk of freezing interest. The witness was not aware of a 12 month limit being put on the relationship with £5,000 a month to be paid over that period. She rejected the suggestion that it was increasingly clear from mid-2012 onwards that the firm was unable to repay its debts as they fell due and would inevitably go into administration. She stated that they had several meetings with JCL and the hedge funds and they wanted to leave the First Respondent with a firm in existence. In cross examination, Ms Baxter referred the witness to her statement where she said:

> "In 2011 we addressed how to take the business forward and prepared a plan for proposal to JCL, this can be seen at…. As can be seen we identified and calculated the payments to be made to JCL to extinguish the loans from them by the end of 2014. This document was prepared before the meetings in which JCL proposed the "divorced (sic) settlement".
>
> That meeting took place at one of our regular scheduled meetings in 2012 and in which I was present. [DC] a director of JCL who also worked for the hedge fund behind JCL ..., proposed that they wanted to be done with [the firm] and the funding of the cases within 12 months. That is what [the First Respondent] reported to Mr Bint when he spoke to [the Applicant] and I understand [the First Respondent] has explained this further in his supplemental statement, at no stage was what [the First Respondent] said to [the Applicant] about the end of the arrangement with JCL incorrect. We had discussed it with the [Applicant's] inspector in 2011 and what [the First Respondent] and I understood to be the case in 2012 was what he reported to Mr Bint."

The witness agreed that the timescale for the divorce settlement was 12 months. From the date of the meeting with JCL they were asked to look at what could be realised from the cases they were still running. The divorce settlement was in August/September. Initially they were going ahead with the divorce settlement but the First Respondent was ill and the hedge fund decided to put their own solicitor in to run the practice. The witness worked for a short time with a solicitor doing due diligence about taking over the practice.

93. The witness stated that without the disbursement funding they would have had to pay disbursements from files on which they were paid costs. It was sustainable for a short period of time, probably for 12 months. She rejected the suggestion that the disbursement funding from JCL was ad hoc and without it the end would be in sight; they had an agreement with JCL. The witness agreed with the Second Respondent's description of the system for payment of disbursements imposed by the funders as being Draconian; as files had to be presented and the funders had to be satisfied but she stated that it was very unusual for a disbursement not to be authorised.

94. The witness confirmed that she had seen the Second Respondent's resignation letter dated 28 September 2012 in which he said:

> "Upon my return from holiday in August last I was advised that the "Funders" were after blood the implication being that it was my "blood" they were after…"

The witness stated that August/September was around the time that they decided on a divorce settlement from the funders and so the relationship was really quite amicable at that point. As the Second Respondent said in his statement:

> "It is also very unsettling for me and for the other fee earners when we daily liaise with other firms to be asked "when are you closing" or "are they going into Administration". In the recent days I have had mentioned variously that there is to be a "merger"… is demoralising for me and for the fee earners."

The witness agreed that she was aware that the fee earners were discussing when the firm would go into administration and someone was speaking to the hedge funds. There was a lot a fabrication. She was not suggesting that this was the Second Respondent but someone was discrediting the firm. In cross examination by the Second Respondent, the witness was referred to her statement where she said:

> "On leaving the practice it became apparent that he [the Second Respondent] had been speaking to members of the fee earning staff and counsel..."

As to who told her, the witness said she interrupted a meeting and had spoken to the Second Respondent about it at the time. She discouraged a "doom and gloom" office. The meeting involved the Second Respondent and fee earners in his office.

95. The witness referred in her statement to an exchange of e-mails between herself and DC of the hedge fund who was also a director of JCL about registering a trademark for an entity Legal Gateway Ltd in June 2012. He asked whether, once it was registered, "LGL" was to be closed down. Her statement continued that while the First Respondent was on leave in 2012, DC called her saying they had been informed of something amiss and were in Manchester to talk to the firm. He and another person MB attended along with the company accountant and she was accused of creating Legal Gateway Ltd in order to steal files. As soon as she reminded MB that the reason behind Legal Gateway Ltd was to prevent anyone else using the name or trading style he remembered that this had been discussed before it was incorporated. MB and DC apologised for the accusation and she felt that they must have been misled. She had received a full apology from the funders. The company could not have been activated without professional indemnity insurance and the Applicant's consent. She rejected the suggestion that she had spoken to many solicitors about setting up a business. She agreed she had spoken to two named individuals in the firm but not about setting up a solicitors' practice; it was because they were worried about forthcoming redundancies. In her statement the witness said:

> "I note he [the Second Respondent] continues to suggest that there were problems regarding Legal Gateway Limited he describes it as a "fiasco""

It was put to the witness that she was suggesting that the Second Respondent was in some way the creator of that situation. She stated that they never found out who it was but the Second Respondent described a fiasco with Legal Gateway Ltd and it was not

a fiasco so internally people had been misinformed. The witness had no formal evidence about who the informant was but she still felt it was someone in the firm's employment. In her statement she said it seemed likely that it was the Second Respondent trying to cause problems so that his errors would not be picked up until he left.

96. The witness was asked whether there was a discussion about informing the Applicant of the financial situation in August/September or at any point before January 2014. A telephone call was made to the Applicant about the agreement with JCL to start some form of monthly repayment to the value of £5,000 until such time as the loan was repaid. She overheard the conversation. Weeks later the hedge fund proposed the divorce settlement.

97. The witness confirmed what she said in her first statement:

> "[The Second Respondent] continued to work for us and daily reported back to [the First Respondent] on the files he had worked and we had no reason to doubt his word. [The Second Respondent] was also responsible for ensuring the funders' audit of cases proceeded smoothly, the audits by 2012 were weekly reviews of all files on a rotation system and in addition any file on which disbursements were needed. This was to ensure that if the funder felt a case was not likely to be successful they would not fund a disbursement and we would fund it from our own resources. [The Second Respondent] was provided by [the First Respondent] or I with the audit lists as soon as possible after we received them, normally on a Friday for an audit starting on the following Tuesday. I make this point to show that the contents of [the Second Respondent's] resignation letter is manifestly and fundamentally incorrect and that the files, which it is said, cannot be found were in existence and worked on by [the Second Respondent] at that time. Had any files not been produced to the funder in audit they would have raised issues with us immediately."

She was not always in the room. The meetings were formal in that the Second Respondent would present himself with the files. It took place in an office used for the fee earners' monthly reviews. She said that they had a very good working relationship at that time.

98. The witness was asked about the Second Respondent's role in the firm and stated that he was head of department and a supervisor. She had no personal experience of the files of DP or CG. She knew the Second Respondent was dealing; they had cheque requests for disbursements on those files from him.

99. In cross-examination by the Second Respondent, the witness accepted that the firm had problems with cheques. She did not agree that cheque requests were made with letters and then sent out by the accounts department or that cheques were held until "unless" orders were made. She found evidence that cheques were requested urgently, and she found cheques on fee earners' desks not sent out and she used to collect them up. They then put an electronic system in place so that the accounts department and fee earners would each do what was expected of them.

100. The witness stated that when a fee earner left, the First Respondent was given a report of the live files the fee earner was running and he would distribute them fairly to the fee earners. The fee earner reference was changed on the system. Files were in the filing cabinet, on the solicitor's desk or in audit with the funder; if the file was given to an individual it would be in their cabinet. In cross examination by the Second Respondent as to the allocation of files, it was put to the witness that there was a running theme of files disappearing and coming back and there was a practice of sending files in bulk to the ATE insurer. The witness agreed they did send files to that insurer to verify and audit. They were all suitably logged; booked out and back in. The witness stated she was part of the procedure that made it happen. Sometimes they struggled to find the files and they were found in the First or Second Respondents' offices; they had never gone missing completely. As to the suggestion that when the files came back they were put in a locked room, the witness stated that there was a problem when the ATE insurer withdrew the policy and files were kept downstairs in alphabetical order for review by its auditors because there was an ongoing court case with them. The insurer decided to do a U-turn and at the 11th hour withdrew insurance and so the firm protected clients' interests by keeping the files together. They were kept in alphabetical order by client. Access was given to the witness and JCL's auditors and the support staff if a file needed to be worked on but it would always go back into the "war room". The witness stated that these files were totally separate from any of the files that they were referring to as lost.

101. In respect of files being missing, the witness was again asked about the meeting on 1 October 2012 between her and the Second Respondent after he had resigned and it was put to her that the Second Respondent was not left unattended from when they had that meeting. She replied "Absolutely no". The Second Respondent put it to her that he did not take files (on that occasion) and she stated 'No'. She also stated that he was a trusted member of staff and predominantly he and the First Respondent took files home. It happened on many occasions in order for him to keep on top of his workload.

102. In her statement, the witness referred to a contact/client JF whom the Second Respondent had brought to the firm in relation to the mis-selling of derivative products. She stated that it was a contingency fee matter but it transpired that the Second Respondent had not secured any payments on account for counsel's fees which was in direct contradiction to the office manual and policies of the practice. She gave this as an example of hers and the First Respondent's increasing concerns about the Second Respondent's actions towards the middle of 2012. She agreed that there was a meeting in the office about this case at which she, the First Respondent, JF and his business manager were present. Terms of business were not agreed on that particular afternoon. She had become aware from the accounts department that counsel had been instructed with "astronomical fees" of around £25,000 which had not been authorised. She asserted that the Second Respondent had approached JF and signed the contract. The witness was referred to what she said in her statement about file removal:

> "It also seems likely that [the Second Respondent] had removed the file of [JF] this was the client for whom [the Second Respondent] had been working on the derivatives mis-selling case. [The Second Respondent] had denied removing the file although the client continued to pursue the case with another

> solicitor after our involvement, which would suggest the file, had been passed back to the client."

The witness stated that they could not find the JF file after the Second Respondent left the business.

103. In her statement, the witness also stated that the Second Respondent was responsible for ensuring the funders' audit of cases proceeded smoothly and that the audits by 2012 were weekly reviews of all files on a rotation system and in addition any file on which disbursements were needed. The witness stated that the funders e-mailed the First Respondent (with audit lists) on Friday which were circulated to the Second Respondent and then to the fee earners to put them on notice that their files would be audited on the following Tuesday. She asserted that the Second Respondent took action to ensure that the fee earners under his supervision could be audited. From memory the list/report was not sent to each individual fee earner.

104. Regarding the Second Respondent's resignation, in her statement the witness said:

> "Following further internal review of [the Second Respondent's] files we became suspicious that [the Second Respondent] had been negligent on some cases. The external auditor despite the audits being constant and allegedly thorough did not pick this up. We began a disciplinary investigation about which [the Second Respondent] would not have been aware and [the Second Respondent] was advised in writing of this towards the end of one week, [the Second Respondent] resigned on the Monday after he was notified of the disciplinary investigation."

The witness stated that all this was dealt by the HR department and from memory the Second Respondent was placed on garden leave until after such time as the First Respondent had reviewed the files. The witness agreed he had resigned on 28 September 2012. She could not remember if they had a meeting on 1 October 2012, the following Monday morning. She was not then aware he had resigned. It was possible that she had photocopied the resignation letter but rejected the suggestion that she had probably inadvertently left a copy on the copier and it had gone viral so that JCL was aware of it and so was Mr Bint. Copies would have been held securely by the HR Department.

105. The witness rejected the suggestion that she and another member of staff had conduct of the DP file which she referred to in her statement as being something which they had continued investigating when the business was in administration, along with the payments on the CG file. She was aware that the client stated on a couple of occasions that he had received payments and that the bank narrative referred to them coming from the Second Respondent. She agreed it did not necessarily mean that he had made the payment but it was an audit trail regarding where it had come from. She agreed the payment came from a bank (as it was BACS payment).

106. The witness stated that she was not aware of the Second Respondent's history until the First Respondent received a phone call from a client who wanted to advise the First Respondent that the Second Respondent was known to the Applicant.

107. The witness confirmed that she had previously worked for the firm's ATE insurer in Salford which was also a claims management company. They did not share premises with the firm.

108. **Mr Philip Scholes** gave evidence. He confirmed the truth of his statement dated 27 April 2015. In it he said that he was employed by the firm from January 2009 until August 2012 as a paralegal and then as a trainee solicitor. He had qualified as a solicitor in August 2012 and was admitted shortly afterwards. He was referred to his statement where he said:

> "Letters were often generated on these files under the file handlers personal reference, but drafted by persons other than the file handler."

Several update letters had been sent out under his reference but not by him. This practice did not apply to other documents. He was however aware that other colleagues complained about it but as the documents were not on his files he could not say what sort of documents they were. The witness stated that the case management system would automatically generate a document with the reference of the fee earner regardless of which person generated the letter. The case was assigned in the system to a particular fee earner and stayed with that reference until the matter was re-allocated. A letter on one of his files could be generated in his name from another computer and by another fee earner. He confirmed that he was unaware of the update letters sent in his name. In respect of the practice for dispersing the files of a fee earner who had departed, before the witness left, in the case of an individual AP a number were redistributed to fee earners in the team and he did not receive any.

109. The witness confirmed that his relationship with the accounts department was "not great". He agreed that one of the running sores was the issue of cheques mostly in respect of adverse costs. The accounts department demanded two weeks' notice for cheques creating a problem in complying with the court deadline of 14 days for payment.

110. The witness confirmed his statement where he said:

> "[The Second Respondent] was employed by Legal Gateway Solicitors as a team leader…"

He was also referred to the Second Respondent's statement of 15 August 2012 in the IT matter:

> "I am employed by Calibre Solicitors Limited t/a Legal Gateway Solicitors as Litigation Manager and Head of their Industrial Disease Department."

The witness recognised that description as accurate. He also confirmed the accuracy of his statement where he said:

> "[The Second Respondent's] duties were the day to day supervision of a team of industrial disease fee earners of which I was one. However due to management interference [the Second Respondent] was unable to carry out this role properly."

The witness agreed that the regime in place prevented proper supervision.

111. The witness was aware that files were regularly audited at the request of JCL. He confirmed that audit lists were provided to fee earners. He agreed there was a case forecaster spread sheet which each fee earner was asked to update in respect of when the case might settle and to make comments if there was a problem. The witness was asked whether, if there was a new file in his name he would be given the list and he responded that he was supposed to be but he rarely was.

112. The witness was referred to the case of AS. He did not recall the name but this person could be one of his clients. He was referred to several documents from the file and in evidence ultimately concluded that it was not his file.

Findings of Fact and Law

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

(The submissions below include those made by the parties in the documents and those made at the hearing. Paragraph numbers are omitted in quotations unless they aid comprehension.)

Allegations against the First Respondent

114. **Allegation 1.1 - He [the First Respondent] acted in breach of Principle 8 of the SRA Code of Conduct 2011 in that:**

1.1.1 he did not run his business in accordance with sound financial principles; and/or
1.1.2 he did not run his business in accordance with sound risk management principles.

Allegation 1.2 - In relation to 1.1 above it was alleged that this was also a breach of Rule 5 of the Solicitors Code of Conduct 2007 and/or in relation to 1.1.2 above this was also a breach of Outcomes 7.6 and 7.8 of the SRA Code of Conduct2011.

114.1 For the Applicant, it was set out in the Rule 5 Statement that Principle 8 provided:

> "You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles."

In respect of allegations 1.1.1 and 1.2 it was further submitted that the firm was placed into administration by the funders having run into financial difficulties by at least early 2011. At the time of the administration the firm owed £1.5 million. It was clear that the First Respondent should have addressed the issues much earlier than he did. Whilst it was acknowledged that he allegedly suffered a breakdown in early 2013

he had known about these problems for at least two years and had failed to manage the difficulties effectively.

114.2 In respect of allegations 1.1.2 and 1.2, it was submitted in the Rule 5 Statement that during the telephone conversation with Mr Bint of the Applicant on 3 August 2012, the First Respondent explained that he was the only legally qualified solicitor at the firm. It was clear from a review of the files that despite him being named as the supervisor on engagement letters he had minimal, if any, input into the running of the files. It was submitted that the widespread negligence found on the files clearly demonstrated the issues that arose and that the First Respondent often left it to paralegals to sort out the problems and failed to direct them adequately to ensure that matters were back on track, merely passing them on to another unqualified fee earner. The delays incurred in progressing cases were unacceptable and clients were rarely kept updated. Limitation dates were missed, claims were struck out, damages were not paid to clients, proceedings were not served, and costs orders were entered against the clients due to negligent acts and omissions of the fee earners in the firm. The list of failures was significant and on many files there was a series of issues not just one specific cause for the failure in progressing the case. Whilst the First Respondent stated in his telephone conversation with Mr Bint that he was checking every file, the files reviewed did not demonstrate adequate supervision. It was submitted that it was also clear from a review of the files and from correspondence from the First Respondent that he knew there were issues with the Second Respondent's files and with his conduct and yet the First Respondent appeared to have ignored these in many instances and continued to give the Second Respondent files to progress. It was submitted that this showed a distinct lack of care for his clients and also for his staff.

114.3 Mr Solomon submitted that it was not disputed that Mr Bint was asked to investigate the firm and that the First Respondent gave assurances (during a telephone conversation) about how the firm was run and its financial position and subsequently it went into administration. The First Respondent left shortly before that. Attempts were made to communicate with him. On 29 January 2013, the First Respondent sent an e-mail to Mr Bint informing him that he was going to leave the firm at some point in the next few months; that he had an interested party who might want to take it over and failing that he would want to close the business. Mr Bint had responded asking the First Respondent to telephone him. On 26 February 2013, after the administration had taken place on 8 February, Mr Bint sent him a further e-mail asking for his contact details having heard nothing. Mr Hair was then asked to investigate. The FI Report concluded that the firm owed significant amounts to its funder and a demand of £1.5 million had been made which the firm was liable to repay. This had not been mentioned in the telephone conversation with Mr Bint. Mr Hair also reported on significant numbers of files evidencing professional negligence. The FI Report included:

> "The Solicitor Manager [appointed by the Administrator] had advised each of the 126 clients as appropriate about the status of their claim and had also advised the Administrator about the possibility of claims arising out of these client matters."

Various breaches were identified. The First Respondent did not tell Mr Bint about the extent of such failures. OHP assisted the Applicant and was asked to investigate the

work of the firm. The individual who dealt with that investigation, RB, confirmed that he: "had never seen such widespread serious failings in any firm" notwithstanding his 30 years of experience. This was reported in a telephone attendance note made by Mr Bint on 7 May 2014 of a telephone conversation with RB. He reported in respect of a significant number of cases where there were failures and suggested that damages in the amount of £1.9 million flowed.

114.4 The First Respondent gave evidence. In cross examination, he accepted from what OHP had found that there was negligence on a lot of files and that this was a very serious situation. He had indicated in his statement which files were under the Second Respondent's control. He confirmed it was his case that the Second Respondent was not only a fee earner but also managing other fee earners; he was a team leader in industrial disease and confirmed that he dealt with clients and as a team leader was involved in internal administration. He confirmed the description which the Second Respondent had given himself in his statements in the IT case as Litigation Manager and Head of the Industrial Disease Department. The First Respondent also accepted the failures of the Second Respondent's work or lack of it. He accepted that he was ultimately responsible and that files had gone missing. In cross examination by the Second Respondent he was referred to his supplementary statement where he said;

> "Whilst it is true the Second Respondent handed his notice in it is my belief he did so as he knew that his errors would begin to come to light as we started looking at his cases more closely"

114.5 The First Respondent stated that the files he could recall having gone missing were those of CG, of the P file (AP or KP) and JF. In cross examination by the Second Respondent, the First Respondent agreed that it was possible that Mr JF had attended and collected the file but because he owed the firm money it was unlikely that the file would have been given to him. If the Administrators gave away files on which money was owed they would be in breach of their duty.

114.6 As to transferring cases among fee earners, in cross examination by the Second Respondent the First Respondent stated that whether files were new or had been taken over it took a day or two before the files were physically passed to the (new) fee earner. If a fee earner left the firm he or the Second Respondent would look at caseload and distribute that person's files between the remaining fee earners. As to whether there had been occasions when Ms CC just transferred files, the First Respondent stated that they might have been transferred en bloc but the fee earners signed off a list that they had received them.

114.7 The First Respondent was not aware of any non-payment to clients. He did not know if Mr KP, whom the FI Report recorded had been made an award, had been paid. In respect of Mr CG, the First Respondent referred to a memorandum to himself from JR of the firm dated 5 November 2012 who had been employed after the Second Respondent had left. JR had spoken to the other side (who enquired about progress). The note recorded that the Second Respondent advised that the file was closed due to the ill health of the client so there had been no settlement and no payment out. The First Respondent stated that after the Second Respondent left the firm, he wrote in October or November 2012 asking where the CG and other files had gone and what

had happened. The First Respondent did not accept that the firm failed to send money to CG when it should have done because no money had been received by the firm. The First Respondent said he had no evidence that there had been a hearing and understood from JR's memorandum that the other side, the defendant had closed the case. He had not previously seen the texts which had apparently been sent by the Second Respondent to CG (see below) about what the court would do and about monies being paid out until he saw them in these proceedings.

114.8 The First Respondent accepted that many of the cases involved vulnerable clients in that they had suffered injuries and that many involved missing limitation periods which undermined the clients' chances of recovering anything. He accepted the breaches of Outcomes 7.6 and 7.8 which had been put to him in the Applicant's letter of 3 September 2013 and his related failings.

114.9 As to whether it had come to his attention before the Second Respondent resigned that there were serious problems with the files he worked on, the First Respondent said it was about that time August/September 2012 when he started to become concerned. The Second Respondent said that all the files were fine. Regular file audits had been taking place but he accepted that that was not good enough; he accepted from the results that there must have been a systemic problem. The First Respondent thought he had a senior and well-qualified team leader who was looking after things. He agreed that by the time he was telephoned on 3 August 2012 by Mr Bint there had already been a series of complaints and negligence claims. He stated that some of these arose out of the cases taken over from B&B. The First Respondent confirmed that the Second Respondent did not have an incentivised pay arrangement but a fixed salary.

114.10 Mr Solomon referred the First Respondent to the points put to him at section 4 of Mr Bint's note about Complaints and Negligence Claims particularly about 16 negligence claims and one which had been paid, was this figure normal, why and what was being done. He agreed that he had said:

> "This is the result of two issues:
>
> (i) When they took files from [B&B] they were being sued for their involvement in a number of industrial disease cases and the solicitors pursuing these matters tried to transfer the claims to [the firm] on the basis they are a successor firm. [The firm] do not accept this as they took files only and are robust in their position and inform their insurers are opposing the matter.
> ...
> (ii) A staff member suffering a nervous breakdown which impacted on a couple of files and their insurer is aware of this and it is being dealt with..."

The First Respondent rejected the suggestion that he knew at the time that there was a systemic problem with cases and kept it from the Applicant when he gave the explanation above but he accepted that he should have known. He began to suspect there was an issue with the Second Respondent's files but he could not say exactly

when; the first time he knew there was such a large problem was when Mr Hair the IO told him that there was a number of negligence cases or when OHP began sending letters of claim. The First Respondent was referred to an e-mail sent to him by BS of the firm on 9 November 2012 concerning Mr AB:

> "I have to report to you on another file I'm afraid.
> ...
> He's had poor service...
> There is a claim form issued 14/12/10 but no evidence anywhere on file that it has ever been served."

To which the First Respondent replied that day:

> "If there's any sort of offer we need to advsie (sic) him to take it, but given he is terminally ill suggest we advise all parties and ask for drop hands…"

He was also referred to the memorandum from JR to himself 25 October 2012 quoted above on the case of Mr GH including that it had to be classed as another negligence file. He replied that in October/November 2012 people were starting to go through the files that had been transferred to them and raising issues; it became apparent that there were issues on the Second Respondent's files. He did not think that he informed the Applicant that there was a specific problem.

114.11 The First Respondent was referred by Mr Solomon to the questions he had been asked by Mr Bint about supervision arrangements. He said:

> "All incoming and outgoing post of legal nature is either checked by himself, [CC] or T/L. [Team leader]"

He confirmed that the Second Respondent was one of the team leaders and that he saw the incoming post if both the First Respondent and CC were out of the office. In cross examination by the Second Respondent, he stated that the post was normally opened by the administration staff and by the end of 2012 was being collated into folders and handed to team leaders or himself and then distributed to the fee earners. If he was not there it went to Ms CC as practice manager and then to the team leaders and fee earners. The First Respondent was recorded in the note as informing Mr Bint:

> "He [the First Respondent] is currently checking all files with a view to seeing when they will turn into cash for the firm in order to manage finances and identify issues on cases and with fee earners to assist development and progress.
>
> He is to make this an ongoing thing and review a number of files each quarter."

As to whether the First Respondent was checking all the files, he relied on the case forecaster indicating when cases would settle and turn into cash for the business. This involved going through files to see how accurate the predictions were. He had started doing a review himself but he did not get very far. He had not managed to get it done when he left. In cross examination by the Second Respondent the First Respondent

explained that the case forecaster was a spread sheet circulated to every fee earner and completed at least once a month. When a case settled it was moved on to a different spread sheet.

114.12 The First Respondent was asked about the situation regarding the entity Legal Gateway Ltd. He confirmed that it existed but strongly refuted the suggestion that at some point late in July/August 2012 he approached some of the solicitors employed at the firm about taking files there. It was "absolutely untrue".

114.13 The Tribunal asked whether the First Respondent attended the firm's offices every day. He said that he did so most days and worked full-time. He had his own caseload. He agreed that the case management system was used to generate a lot of the content of letters including the address of the solicitor but fee earners dictated letters and some typed them but the typing could be two weeks behind.

Determination of the Tribunal in respect of allegations 1.1 and 1.2 against the First Respondent

114.14 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant, the First Respondent and by the Second Respondent in respect of allegation 1.1.1. The history of the firm's financial difficulties was summarised in the Rule 5 Statement. The Tribunal found that the evidence supported the assertions in the Rule 5 Statement and found allegation 1.1.1 proved to the required standard; indeed it had been admitted.

114.15 In respect of allegation 1.1.2, the Tribunal noted that the First Respondent was the only legally qualified solicitor at the firm and that widespread negligence had been found on the firm's files. The Tribunal had seen evidence of the manner in which the First Respondent exercised his role without proper regard to risk management principles and of negligence. The Tribunal found allegation 1.1.2 proved to the required standard on the evidence; indeed it had been admitted.

114.16 In respect of allegation 1.2, Rule 5 of the Solicitors Code of Conduct 2007 required the First Respondent to make arrangements for the effective management of the firm. Outcome 7.6 of the SRA Code of Conduct 2011 required the First Respondent to train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility. Outcome 7.8 required him to have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people. The Tribunal considered that there was ample evidence to support allegation 1.2 culminating in the widespread negligence found at the firm. Concern had been expressed about errors involving 126 cases. It was clear that files within the practice were not being properly managed even without the assertions of the Applicant regarding the First Respondent's knowledge of the issues with the Second Respondent's files and conduct. The Tribunal found allegation 1.2 proved on the evidence to the required standard; indeed it was admitted.

115. **Allegation 1.3 - He [the First Respondent] failed to act in the best interests of clients contrary to Rule 1.04 of the Solicitors Code Conduct 2007 and/or Principle 4 of the SRA Code of Conduct 2011 and/or failed to provide a good standard of service contrary to Rule 1.05 of the Solicitors Code of Conduct 2007**

and/or Principle 5 and/or Outcome 1.16 of the SRA Code of Conduct 2011 in the matters of DP and/or AB and/or AS and/or KP and/or AP and/or CG and/or GH and/or IT and/or others.

115.1 Mr Solomon referred the Tribunal to the documents before it from the client files. The position of the respective Respondents was that the First Respondent admitted failures in respect of the client files. The Second Respondent's case was that he was either not working on the file and that evidence to the contrary was fabricated and that such work as he did do was following instructions and he did not know that he was doing wrong. It was not disputed that the failures were not in the best interests of the clients; they were obvious for example limitation periods had been missed; documents had not been served or there were files missing entirely.

Submissions for and evidence of the First Respondent

115.2 For the First Respondent, Ms Baxter submitted that there were only certain issues outstanding but she wished to make remarks regarding matters which had been raised for the first time in evidence. These included the text messages between the Second Respondent and Mr CG, the witness statements regarding Mr IT (which were mainly the subject matter of allegation 2.4 against the Second Respondent) and the allegation of wholesale fabrication of bogus files by the First Respondent, made by the Second Respondent which had not been put in evidence.

115.3 In cross-examination the First Respondent was asked to explain access to files on the case management system. He stated that in some cases the system had not been updated when the Second Respondent was on garden leave; not all his references had yet been changed. It was true that anyone could produce a letter with another fee earner's reference. The First Respondent denied the Second Respondent's assertion that he created letters in the names of other fee earners; sometimes secretaries would issue update letters to clients but other than that the fee earners dictated their own letters. There were times when as a team leader the Second Respondent would sign forms for junior staff but aside from that he would never sign claim forms.

DP

115.4 The First Respondent was taken to letters on Mr DP's file and asked to identify whether each was from a fee earner or a secretary. He accepted that a letter of 14 December 2010 bearing the Second Respondent's e-mail address at the top and name at the foot advised the client that signed court proceedings had that day been sent to the court for issue and service on the defendant(s) when there had been no service although he did not recall the case. It was put to him that on 23 October 2012, he sent an e-mail to HM of the firm stating that preceding fee earners both confirmed proceedings had been issued and served but he could not find the particulars or the letter of service. He asked HM to take over the case. He clarified that he had not spoken to the two preceding fee earners who had both left but had relied on letters on the file. AA had worked on the case under the Second Respondent's supervision. On 1 November 2012, HM replied to the First Respondent including:

> "Protective proceedings were issued on 14 December 2009 however we have never served proceedings despite a file note suggesting this has been the case.

> There is no Certificate of Service, there is no Particulars of Claim, No Counsel has ever been instructed, no Advice was ever sought…
>
> We will need to advise the SRA and our Indemnity Insurers and we will also need to advise the client to obtain alternative legal advice."

The firm's professional indemnity insurers were alerted by letter dated 7 November 2012. Also on 7 November, HM wrote to the client informing him that if it transpired that proceedings had not been served, the firm:

> "...will have to advise you on alternative actions..."

The First Respondent agreed that the client was not advised to take independent legal advice in either that letter or his letter to the client of 7 February 2013. He did not generally dispute OHP's letter of claim dated 11 December 2013. He accepted regarding clients DP and GH that he should have advised them to seek alternative legal advice and he did not know why he had not done so; he would have if he had been in his normal mind.

115.5 In cross examination by the Second Respondent, the First Respondent agreed that he had drafted the claim form in the DP case but the Second Respondent had possession of the file at that time. It was the Second Respondent's file which the First Respondent reviewed and passed back. He rejected the suggestion that he had conduct of the file because he worked on the claim form. The Second Respondent signed his team's claim forms to go to court and the Second Respondent was supervising the DP case.

AB

115.6 On the front of the file the limitation period was shown as expiring on 2 September 2010. A letter of 22 July 2010 bearing the Second Respondent's e-mail address and name at the foot included: "The file will be handled by the writer, [the Second Respondent]" The First Respondent agreed that the Second Respondent was working on the file and that by the time a letter dated 30 November 2010 bearing the reference HN and the Second Respondent's e-mail at the foot was sent as a reminder to an insurance company, the limitation period had come and gone. On 30 November 2010 he had sent his e-mail to the Second Respondent advising him that he had issued a claim form and that "Limitation is roundabout Autumn/Winter 2010…" The First Respondent stated that he would have thought that what he did was correct when he did it. The claim form had the Second Respondent's signature and the First Respondent said that he must have dictated it to be issued by the Second Respondent. He agreed there was no evidence that proceedings were ever served as with a pattern at the firm. A file note dated 9 November 2012 by BS of the firm reviewing the file after it had been transferred to him on 1 November 2012 included:

> "-no evidence on file that ATE has authorised issue/service of proceedings.
>
> ...

> -no evidence on file that proceedings have ever been served…
>
> ...-noted substantial periods of inactivity/delay in case progression; due an apology…"

Also on 9 November 2012, there was an exchange of e-mails between BS of the firm and the First Respondent. BS wrote to the First Respondent:

> "I have to report to you on another file I'm afraid.
> ...
> He's had poor service...
> There is a claim form issued 14/12/10 but no evidence anywhere on file that it has ever been served."

To which the First Respondent replied that day:

> "If there's any sort of offer we need to advsie (sic) him to take it, but given he is terminally ill suggest we advise all parties and ask for drop hands…"

The First Respondent stated that he should have advised the client to seek alternative legal advice rather than accept an offer or a drop hands settlement. His explanation for not having done so was that he suspected by that point he was "drowning". He was referred to a letter to the client from BS dated 16 November 2012 which included:

> "Conduct of proceedings
>
> As advised during our conversation it appears that your claim form issued at Manchester County Court on 14 December 2010 has not been served on the Defendants within four months of the date of issue, which is a procedural requirement. This situation is frankly unacceptable and I understand your concerns…"

The First Respondent accepted that the letter did not say that proceedings had been issued after the limitation date had expired and it should have. Later in the letter it was stated:

> "Please be advised I have reported the situation to my principal, [the First Respondent] following our conversation and he is aware of your concerns. Having reviewed your case with [the First Respondent] and considered the best way forwards is it has been decided to issue a new claim form and continue by way of fresh court proceedings…"

He agreed that this advice was entirely wrong in respect of taking fresh proceedings but he did not remember saying it. Mr Solomon acknowledged that a letter from BS on 27 November 2012 said:

> "I am obliged to recommend that you take independent legal advice on the matter..."

The First Respondent accepted that the client was still not told that proceedings had been issued outside the limitation period. He also accepted that reference later in the letter to the possibility of fresh proceedings being issued was incorrect advice.

AS

115.7 Mr Solomon put it to the First Respondent that this was another case allocated to the Second Respondent as shown by letter dated 22 November 2010 to Altrincham County Court, the letter to the client of the same date and another letter to the client to 31 August 2011 all bearing the Second Respondent's HN reference and e-mail address. Nothing had been done on the case, the limitation period had been missed and nothing had been received from the court. On 2 October 2012, JR's e-mail to the First Respondent included:

> "Limitation was 9/4/2011... Altrincham failed to reply and apparently our cheque was cancelled April 2011 – I'm guessing this may be due to age of uncashed cheque."

The First Respondent's replied by e-mail:

> "Sorry looks like one for you, suspect get counsel's view on it seems like we did everything albeit we weren't terribly proactive and court just didn't get it
>
> Try and settle in the meantime and draft a … good witness statement setting out the efforts made (and those that we think were probably made ont eh (sic) phone as well?)"

The First Respondent clarified that JR was a senior fee earner who joined the firm after the Second Respondent had gone and was taking on the majority of his cases. He agreed proceedings had never been issued or chased up and that he suggested trying to settle the matter but did not suggest independent legal advice. On 29 October 2012, he e-mailed J a legal executive:

> "Sorry to pass you this one, you will see the position I think we are pretty much stuffed but given that we have tried to issue the claim but then nothing has happened, see if there is any merit in going back to the Court with it".

The First Respondent clarified that his reference to "we" being "stuffed" referred to the client. On 8 November 2012, J wrote to the client about the case being transferred to her (and stating there had been confusion with regard to the issue of proceedings at court and that they had no evidence of the claim being filed) but the First Respondent accepted that there was no reference to obtaining independent legal advice.

KP

115.8 It was First Respondent's evidence that the Second Respondent was in charge of the file. He could not explain why it had been lost; it was there until the Second Respondent left and the First Respondent thought he had taken it because he knew that there was a problem in respect of the £20,000 damages.

CG

115.9 The First Respondent agreed that Second Respondent was also in charge of this file; a letter to the other side's solicitors of 16 June 2010 bore his HN reference. He agreed that on 21 January 2013, Ms CC sent an e-mail to him referring to a telephone call received from Mr CG. She stated:

> "Two payments received one to his wife's account of £4600 of which they obtained the statement and £5000 into his account of which he destroyed the statement.
> According to Mr [CG] his overall Damage's (sic) had been awarded £16,000 therefore, he was enquiring as to when he would receive the remaining £7000…"

The Respondent stated that he had no explanation for how these payments came to be made; the firm never had a Yorkshire building society or Yorkshire bank account; the firm's accounts were as listed in the FI Report. Given the references on the bank statement he suspected that the Second Respondent made the payments and guessed he was covering something up. He was referred to his letter to Mr Bint of 20 September 2013 in which he said of this case:

> "Mr [CG] was in the process of producing evidence to us that he had received damages allegedly from [the Second Respondent's] bank account when I became ill… It would seem that [the Second Respondent] had made a payment to the client I suspect to cover up his own misdealing on the file, the fact that you have been unable to locate the file again leads me to believe the file did not go missing but was taken by [the Second Respondent], or on his behalf, to prevent evidence of his misconduct..."

The First Respondent did not report the situation to the Applicant. It was not at the appropriate stage; he did not have evidence of the payments from Mr CG and it would be a significant allegation to make without evidence. He did not realise the file had gone until after the Second Respondent left. He did not know what to do.

115.10 In cross-examination by the Second Respondent, the First Respondent stated that he could not think of anyone else who would have taken the file. The Second Respondent knew that he was going to hand in his notice and he had an opportunity before then to remove the files on which he was the fee earner. The First Respondent agreed that the Second Respondent would not have known that he was being investigated by the firm. The First Respondent did not recall whether Ms CC was aware that the Second Respondent had given in his notice when they met on 1 October but as soon as CC became aware he was not left unattended and he agreed that after that he had no opportunity to remove files. The Second Respondent was still employed by the firm once he had given in his notice although he was on garden leave. The First Respondent believed a letter had been written to the Second Respondent about the garden leave (although it was not before the Tribunal).

AP

115.11 Mr Solomon referred the First Respondent to a letter marked "Draft" dated February 2013 addressed to Mr Bint. It included:

> "Upon his exiting we reviewed all his files and on two of the files, namely Mr [P unclear if AP or KP] and Mr [JF], it is apparent that the files have gone astray. What is important is that Mr [P] the case which was mentioned to you previously and I refer to my previous e-mails in respect of the updated position of that. Having recreated the file from the notes on the system, it is apparent that the version of events created by [the Second Respondent], we refer to the enclosed witness statement of the Claimant drafted by [the Second Respondent] and sent by [SB] who was a Paralegal in our employment, is a complete fabrication."

The First Respondent stated that he was not in the office at this time and the letter was not sent. The Administrators were in. It looked as if it was typed up by a particular secretary from something he dictated. At that time his conclusion about the witness statement it referred to was surmise. He agreed it was a witness statement created on the firm's system and that this was a case where no action had been taken other than the issue of proceedings. There was a letter from OHP dated 6 June 2014 in respect of the case and the First Respondent accepted the allegations in it which included:

> "Our client holds the First Respondent and/or the Second Respondent personally liable for the loss and damage…"

115.12 In cross-examination by the Second Respondent, the First Respondent was referred to the Second Respondent's statement dated 11 May 2015 where he said:

> "...I did speak with this client several times at (sic) the telephone but any information I passed to him was word for word what I had been told by the First Respondent. At the time I had no reason to suspect that this information was other than accurate."

In his own statement, the First Respondent asserted that this paragraph was incorrect:

> "This was a case on which he worked, he had conduct of and it was him who told me (not the other way round) what the position was. I recall this was one of the cases which was mentioned in the call from the investigating officer in August 2012 and I spoke to the Second Respondent about the case before reporting back to Mr Bint what I had been told."

The First Respondent was asked if he had sought a statement from SB for the Tribunal and he said he had no contact details.

Mr GH

115.13 The First Respondent was referred to a Strategy Plan which showed limitation in this case expiring on 23 March 2010. The First Respondent agreed that initially he was

supervising and that a letter dated 1 July 2010 showed the Second Respondent's e-mail address and reference HN. The letter included:

> "...we confirm that a Claim Form has been issued at Court, the date of issue being the 29 March 2010."

The First Respondent agreed that the Second Respondent was working on the file at that point. He could not explain why the limitation expiry date came and went and a claim form was not issued in time. He agreed that the claim form bore the Second Respondent's signature and that the Second Respondent would have issued it. The First Respondent explained that a memorandum which he had sent to the Second Respondent on 22 June 2011: "Please see me with file" would have been a periodical review but he did not know why he needed to see the file; he suspected that he could not see that the claim form had been served or had seen that it was issued out of time. (For the remainder of the First Respondent's evidence about the case of Mr GH see allegation 1.4 below.)

Mr IT

115.14 The First Respondent did not dispute that originally he was the supervisor for this case and stated in the letter of 19 August 2009 that he remained the overall supervisor. On 10 March 2010, notice of discontinuance was sent to the court and the First Respondent confirmed that this was after discussion with him as recorded in the note of that date by JA. He agreed that the normal process was that they would pay the other side's costs and a letter from the other side's solicitors on 16 March 2010 confirmed that they would now arrange for a detailed bill of costs to be drawn up and sent to the firm. His note dated 5 October 2010 to the Second Respondent included:

> "We discontinued, bill was served, but it wasn't sent out, I cannot see why not other than again, this seems to be where [JA] is managing to remove things from the post without anybody seeing them. As a result a Default Costs Certificate has been obtained. Can I transfer it to your name and can you keep an eye on this and see if we can get the Default Costs Certificate set aside…"

Mr Solomon submitted that the First Respondent had transferred the file to the Second Respondent who responded to him on 11 October 2010 saying that he would pass the file to the cost draftsmen. The First Respondent stated that he then left it to the Second Respondent to deal with the matter.

General evidence of the First Respondent relating to other issues

115.15 In cross examination by the Second Respondent, the First Respondent said that the meetings which they had daily consisted of a "chat" and discussing issues. He agreed the meetings were not formal and were not minuted and took place before nine o'clock each morning. The First Respondent said in his statement:

> "...I disagree that [the Second Respondent's] workload increased. Where files were transferred from [the Second Respondent] to other fee earners, he would regularly take them back. With the benefit of hindsight, I suspect that the Second Respondent was ensuring his omissions were not brought to light..."

The First Respondent stated that he did not recall an incident which was put to him by the Second Respondent that Ms LW the JCL auditor drew to his attention that something over 300 files had been transferred into the Second Respondent's name. He also rejected the suggestion that there were instances when hundreds of files were removed from the office at a time. There was one occasion when the ATE insurer asked to review files and they were sent away by recorded delivery and returned the same way. He could not recall how many files were taken but did not think that it was hundreds. Most auditing was done on the premises. The files placed in a separate room were subject to an ongoing dispute between the firm, clients and the insurer. They did not remain under the reference of the fee earner but were all changed to "COP" "Claim on Policy". In respect of the policy for cheques, the First Respondent's evidence was similar to that of Ms CC. He rejected the suggestion that the accounts department were not sending out court fees and waiting for "unless" orders rather they were trying to manage cash flow and so they needed to know as far in advance as possible what cheques were to go out. The First Respondent was also cross examined about staff training and described the involvement of counsels' chambers.

115.16 In cross examination by the Second Respondent, the First Respondent was challenged as to the qualifications of JR one of the fee earners who reviewed his files in the investigation which commenced before the Second Respondent left the firm. The First Respondent thought he joined the firm at the end of October 2012. He could not say whether the Second Respondent was correct that he had a background in RTA rather than industrial disease. In his statement the First Respondent he referred to those taking over the Second Respondent's files coming to him with concerns after the Second Respondent had left. He named three individuals, including BS and JR but could not remember if others had come as well. The Second Respondent referred to the witness statements that he had lodged from former employees. It was put to the First Respondent that he disagreed with all of them and was saying that they were all lying. The First Respondent stated that he had set out in his witness statement what the position was. He had tried to speak to one of them Ms SS to obtain a statement. He had not spoken to the others. He had e-mailed one of the secretaries but could not recall if he e-mailed anyone else. The response has been that they did not want to become involved and there was no other reason.

115.17 The First Respondent was referred to his supplementary statement where he said:

> "In respect of his denials… I have already dealt with his knowledge of the investigation. In respect of him being the mystery voice to JCL I cannot prove it but the amount of detail given regarding the visit of JCL about Legal Gateway Limited and the comments he makes in his statement it is evident that it was him or those acting on his behalf"

The First Respondent stated that because of the amount of information that JCL was willing to believe although it was all erroneous it had to be from someone with inside knowledge. He suspected this before the Second Respondent resigned. He could not recall when he started hearing about a mystery voice. As to Ms CC having photocopied the resignation letter, the First Respondent was not aware of this and he had not released the letter even to Mr Bint and had no idea how Mr Bint or JCL obtained a copy if they did.

Determination of the Tribunal in respect of allegation 1.3

115.18 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the First Respondent and by the Second Respondent. Breaches were alleged of Rule 1.04 of the SCC 2007 acting in the best interests of each client, Principle 4 of the SRA Code of Conduct 2011 in the same terms, Rule 1.05 of the SCC 2007 providing a good standard of service to your clients, Principle 5 of the SRA Code providing a proper standard of service to your clients and Outcome 1.16 informing current clients if a solicitor discovered any act or omission which could give rise to a claim against them. The Tribunal had seen and heard a considerable amount of evidence in respect of the clients exemplified and was satisfied to the required standard that all the rule breaches and the outcome breach alleged had been proved. Allegation 1.3 against the First Respondent was found proved to the required standard on the evidence; indeed it was admitted.

116. **Allegation 1.4 - He [the First Respondent] failed to act with integrity by misleading GH as to the status of his case and/or SB at the SRA about the status of the loan from JCL contrary to Principle 2 and/or Principle 5 of the SRA Code of Conduct 2011.**

Mr GH

116.1 For the Applicant, Mr Solomon referred the Tribunal in respect of this allegation, which the First Respondent denied, to the papers in respect of Mr GH's claim and the letter of claim from OHP dated 3 October 2013, setting out the failure to prosecute the case adequately or at all. The client was not informed or was misinformed. Mr Solomon referred the Tribunal to a Memorandum from JR of the firm to the First Respondent dated 25 October 2012 which stated:

> "We are well outside limitation on this one as med report done 8/6/2008.
>
> [The Second Respondent] has apparently issued 29/3/2010 and frankly it's questionable if that was inside limitation because he has history of tinnitus and hearing loss going back years. However, although service was allegedly 26/7/2010 there is no cert of service and we were still chasing Counsels (sic) POC [Particulars of Claim] on 27/9/2010.
>
> Basically, I don't believe we ever served. There has been no response to service from either defendant and… were instructed by one defendant so I am sure they would have responded.
>
> We have requested judgment but it has been knocked back due to no cert of service filed. Court have sent copy letter to the Second Respondent dated 7/7/2011 advising accordingly. That letter isn't on file.
>
> I don't think client had a great case on limitation anyway, but I have to class this as another negligence file."

Mr Solomon submitted that JR had looked into this case and was reporting back to the First Respondent. The court had written to the firm on 7 July 2011 after the firm had made an application for judgment. The request was returned because no certificate of service had been filed. On 22 October 2012, the court wrote again to the firm enclosing its requests for judgment dated 18 October 2012 and a copy of the court's earlier letter of 7 July 2011. Mr Solomon submitted that someone in the firm should have known from 7 July 2011 that no certificate of service had been filed presumably because there had been no service of the court documents. On 23 October 2012, two days before JR's e-mail to the First Respondent the latter had written to Mr GH by e-mail stating:

> "[The Second Respondent] has recently left and his e-mails have been forwarded to me, hence the delay in my responding.
>
> Firstly, I would like to apologise for the lack of communication from [the Second Respondent] and to assure you this will not happen again.
>
> Secondly, I can advise that [the Second Respondent] requested judgment on your claim in June 2011 and as yet this has not been received. Judgments are normally received within a month and so this should have been chased up some considerable time ago. In [the Second Respondent's] absence I cannot really explain why this was not done, but I can say that it has been chased up by post today, and the matter will receive my personal attention until it is resolved."

Mr Solomon submitted that the First Respondent might say that he did not know about the matter but he promised to give it his personal attention. There was no date received on the court's letter of 22 October 2012 but one could presume that it was received at the firm a day or so following that date. Even if he had not seen the document, the First Respondent did not write thereafter to Mr GH to confirm what the position was or to correct the indication in his e-mail that judgment should have been received following a request for it. A file note dated 30 October 2012 with the reference JR included:

> "EHJ reviewing file. Noting in actual fact the claimant's history goes back far more than three years, not sure why [the Second Respondent] even issued it…"

Mr Solomon referred the Tribunal to the letter marked "Draft" dated 15 November 2012 bearing reference EJ addressed to Mr GH which included:

> "We regret that our professional opinion based on the documents is that we are no longer prepared to deal with your claim on a CFA basis. The reason for this is because:
>
> Information and/or documentation received concerning the claim lead us to conclude that your claim no longer has sufficient prospects of success.
>
> …

> We believe that your limitation date has passed based on the current information but if our information is incorrect then the three year period always starts from the date of the accident, if any, or the date on which you first knew or ought to have known that you had a compensation claim if your injuries evolved over a period of time. If you do not start court action within 3 years of that date, your claim will be prevented from proceeding. For this reason you should seek advice from another solicitor as quickly as possible if you intend to proceed with the case…"

Mr Solomon pointed out that the First Respondent did not say that the firm had failed to file a certificate of service or that it was the firm's own fault and by then he had seen JR's note. A letter of 22 January 2013 to Mr GH again bearing the EJ reference stated:

> "Apologies if you have not received our previous letter advising you that the claim had failed. We enclose a further copy.
> In terms of the letter from [the ATE insurers], yes, it is correct that they have yet to pay the loan off, the case having failed…
>
> We trust this gives you sufficient information…"

The letter did not provide any further information.

Mr Bint

116.2 In respect of the First Respondent's telephone conversation with Mr Bint of the Applicant on 3 August 2012, Mr Solomon relied on the FI Report which gave Mr Hair's determination that the firm had gone into administration having been under significant financial pressure from the funder JCL for some time and where Mr Hair detailed its financial position vis a vis the funders leading to it being placed into administration. The First Respondent failed to inform the Applicant of the termination of the funding in spite of the telephone call between him and Mr Bint in August 2012 when finances were specifically discussed. Nor did the First Respondent inform the Applicant of the issues which had arisen when he sent the email dated 25 January 2013 to the Applicant. It was alleged that the First Respondent misled Mr Bint by stating the firm had a " [JCL] loan with about 12 months left to pay at £5,000 p/m" It was clear the loan would not be paid off within 12 months should the firm have paid £5,000 per month.

Submissions for and evidence of the First Respondent

116.3 Ms Baxter submitted that the Tribunal could make an honest assessment that the First Respondent was a young man who was genuinely contrite for the failings which he admitted and when he denied matters at allegations 1.4 and 1.5 he gave genuine and credible evidence regarding those matters.

Mr GH

116.4 Ms Baxter submitted that the allegation in respect of the client Mr GH was based on the inadequacy of the First Respondent's e-mail dated 23 October 2012 and his letter

dated 15 November 2012. The Applicant now accepted that the First Respondent had sent his e-mail before he became aware of the letter from the court dated 22 October 2012 and so the allegation was of failures to correct the position with the client; to tell the client to seek independent advice about non-service of the proceedings; and to observe the limitation period. The First Respondent accepted that the letter was inadequate and a failure to act in the best interests of the client as were the letters sent to Mr AB, Mr DP and Mr AS. In November 2012, the First Respondent's health was deteriorating; he said that candidly in evidence; he was not in his right mind and not paying sufficient attention to the document that went out on 15 November 2012. It was a standard form letter dealing with missing limitation as opposed to specifically advising the client of failings in his case and correcting what had been sent out in the letter dated 23 October 2012. The First Respondent accepted that. There was no evidence that he was deliberately or recklessly misleading the client. Most people when endeavouring to mislead did so for a motive that might create some benefit for them. The First Respondent knew there were failings on the file, that there was an outstanding loan account and that the client could not just disappear. He had not sought medical help. Ms Baxter asked whether the letter to Mr GH was materially different from the letters in the other cases. The question was what his motive was in not putting those matters in the communications and it was not a want of integrity.

116.5 In cross examination by Mr Solomon, the First Respondent agreed that his e-mail of 23 October left the client with the impression that he could obtain judgment and that the First Respondent knew when he sent the memorandum to JR why judgment had not been received and that the impression that he had given to the client two days earlier was wrong. He agreed that the client was never informed that his claim had not been issued within the limitation period and he could not recall whether he had ever been formed that it had not been served. The First Respondent agreed he had never corrected the impression he left the client with that it was possible to obtain judgment. He stated that his letter of 15 November 2012 which said that limitation had passed but not that there had been no service was a standard letter and it should have stated the need for independent legal advice. The First Respondent was referred to his further letter to client of 22 January 2013 also quoted above in Mr Solomon's submissions. He agreed that while it referred to arrangements with the insurance company it did not tell the client that the limitation problem had arisen because of the firm's failure. He agreed that he had kept significant information from the client and that he never wrote as promised to say why judgment was not received.

Mr Bint

116.6 In respect of Mr Bint, Ms Baxter submitted that the genesis of the complaint relating to the First Respondent's dealings with Mr Bint was the telephone attendance note particularly the contents of the exchanges regarding section 8 and whether the First Respondent in the course of the conversation deliberately gave misleading information to Mr Bint about the status of the JCL loan. The context of the conversation was that out of the blue Mr Bint made a telephone call in the course of introducing himself in his new role to firms which were the subject of his supervision. The call was not to discuss a particular issue but a general call and Mr Bint accepted as much. The First Respondent took the call and it was by chance he could spend that much time on the telephone with Mr Bint. The wide range of matters discussed was

clear from the note. The agenda was predetermined as indicated by the left-hand side of the note which was prepared by Mr Bint beforehand. The right-hand side was in manuscript and that was not before the Tribunal. Ms Baxter did not say that in a critical way but she asked the Tribunal to contrast the documents from the IO and those from Mr Bint. Even when the note was typed up it was not sent to the First Respondent and he had no opportunity to look at it and say that Mr Bint had misunderstood what he said about this or that point.

116.7 In respect of section 8, Mr Bint had no independent recollection of what the detail of the conversation was over and above the note. He did not ask about the amount of the loan. If the First Respondent had said that there was a £60,000 loan from JCL which he was paying off at £5,000 a month over 12 months that would be a deliberately misleading statement but that had not been said. Both Mr Bint and Ms CC's evidence was that the firm was in negotiation with JCL to end the relationship. Ms Baxter referred to the statement of CC at where she stated that JCL proposed that they wanted to end their relationship with the firm and the funding of the cases within 12 months and she continued:

> "That is what [the First Respondent] reported to Mr Bint when he spoke to the [Applicant]…"

Ms CC had been present during the conversation; she knew of the divorce settlement and said in her statement and in evidence that she had heard nothing from the First Respondent's end of the conversation which was incorrect or incompatible with what she knew to be the position. JCL wanted to end the relationship and to be paid off over 12 months at a minimum payment of £5,000 a month. If that was the information given, it was accurate information. If Mr Bint interpreted it in the way he had recorded as a loan of £60,000 to be paid off in 12 payments of £5,000, he was clearly wrong. The question was did the information that the First Respondent provided deliberately give Mr Bint the wrong impression or was it on the evidence a misunderstanding of what was being said? The Tribunal raised the possibility of the Respondent being reckless regarding the information he gave. Ms Baxter accepted that the Tribunal could still find want of integrity on that basis but she relied on the evidence of Ms CC about the conversation. She was not legally qualified but was continually involved in the accounts department of the business. Accordingly there was very little room for recklessness. The missing piece of information was the amount of the outstanding loan. Mr Bint did not ask about it and the First Respondent did not give it, either deliberately or recklessly because neither thought it relevant because the loan was coming to an end in 12 months. It was the First Respondent's evidence that it was the first time in a long time that he saw a glimmer of hope. JCL said they were terminating the loan and the First Respondent and JCL were content with the amount being paid. If the First Respondent had been sent the attendance note and had not clarified the answer at 8(b) there would be grounds for the allegation. He never had the opportunity to comment on it or correct it. A finding of lack of integrity was so serious that Ms Baxter submitted it would need much clearer evidence. Mr Bint thought the loan was only £60,000. The First Respondent thought that whatever the amount it was going to be resolved in 12 months. Unless each was aware of the other's misunderstanding it was all too obvious how they could remain at cross purposes at the end of the conversation. The Tribunal enquired whether there was any evidence that JCL had agreed to accept £5,000 a month over 12 months and to write

off the balance. Ms Baxter submitted that there was the evidence of the First Respondent and Ms CC and that they understood the divorce settlement to be that. Ms Baxter also relied on the First Respondent's witness statement where he told the Tribunal that the loan was finally resolved at £25,000. Ms CC said that the payments were variable; sometimes it was £5,000 per month and sometimes more. There was no clear evidence of a final decision that £5,000 was the acceptable amount but at that point they were paying at that rate and JCL had not said that that was not good enough. They were in the process of negotiation. She agreed with the Tribunal's proposition that JCL had all the cards but JCL said they wanted the relationship to end in 12 months. The timeframe was not ambiguous but the final figure to be paid off was. No one asked the question what was the amount of the outstanding loan. Some would say that was the most material information but at that point in the course of the negotiation it was not clear what JCL would accept.

116.8 In evidence the First Respondent in general did not challenge the accuracy of the attendance note. Mr Bint had given the reason for telephoning as being to introduce himself and he said there were issues. The First Respondent was referred to the questions he had been asked by Mr Bint about the firm's finances at section 8 of the note. It did not record his verbatim words; he did not say to Mr Bint that there was 12 months left on the loan. If Mr Bint understood that he was told that there was just £60,000 left on the loan he was wrong. The First Respondent stated that Mr Bint did not clarify that with him at the time. As to the firm owing £1.5 million to JCL at that point, JCL said they would take what the firm could pay; a figure had not been agreed. The First Respondent accepted that practice funding from JCL had stopped in 2011 and that he did not tell Mr Bint that. He was directed to what was recorded in the FI Report quoted above in Mr Hair's evidence and to Mr Hair's handwritten note where it was headed "The Crisis":

> "owed - £800k disb funding (stopped mid '12)
>
> owed - £1.2m practice funding (stopped early '11)
>
> interest frozen Apr 12 – chipping away at principal"

The First Respondent said that he could not remember telling Mr Hair that disbursement funding stopped in mid-2012; he did not make a distinction because disbursement funding continued on a case-by-case basis. In the terms put to him by Mr Solomon, funding had stopped before he spoke to Mr Bint (on 3 August 2012). He had not told the IO because it was all part of the divorce settlement. It was put to him that he did not tell Mr Bint that this was a terminal situation and there was no way the firm could repay what JCL was demanding. The question was how the firm could maximise monies for JCL and continue practising.

116.9 Ms Baxter accepted that the firm was put into administration on 8 February 2013; it was a considerable amount of time after the First Respondent's conversation with Mr Bint and there was a material intervening factor in terms of the First Respondent's illness. In an e-mail dated 29 January 2013, the First Respondent told Mr Bint: "I'm going to be leaving the company at some point in the next few months…" JCL had received the same information which represented a material change and led JCL to decide to take steps with no prior notice at all. Regardless of what Mr Bint knew or

did not know regarding the insolvency if there was any question of insolvency or if the point had been reached where the firm was no longer viable the accountants would have given that advice in their letter dated 20 September 2013. There was nothing in that letter that gave the First Respondent or others involved in the running of the business to understand that the situation was unsustainable. There were issues that needed to be resolved and managed. Ms Baxter asked the Tribunal to look at what had happened overall. Calling in the Administrators in February 2013 did not illustrate that the position was unsustainable in August 2012. There was a lot of room for misunderstanding but there was not deliberate or reckless misleading.

Determination of the Tribunal in respect of allegation 1.4

116.10 The Tribunal considered the evidence including the oral evidence, the submissions for the First Respondent and by the Second Respondent. Breach was alleged of Principle 2 acting with integrity and Principle 5 providing a proper standard of service to your clients.

Mr GH

116.11 It had become clear during the hearing that when Mr GH gave evidence about the way in which his statement had been prepared, he was not referring to his statement for the Tribunal proceedings but to a statement he had given in respect of a negligence claim against the firm prepared for him by Mr RB. The Tribunal found that the confusion did not undermine the case against the First Respondent as the facts of the matter were not disputed. The key communications were the First Respondent's email to Mr GH of 23 October 2012 and his letter to Mr GH of 15 November 2012. It was agreed that when he wrote to his client on 23 October 2012, the First Respondent had not seen the letter from the court of the previous day stating that the application for judgment had been returned on 7 July 2011 as no certificate of service had been filed. The Tribunal therefore found for the record that lack of integrity was not found proved to the required standard in respect of the 23 October 2012 email.

116.12 In respect of the 15 November 2012 letter, the First Respondent was alleged to have misled the client as to the status of his case. By the time that letter was written it was not disputed that the First Respondent knew what the true position was with the court. The Tribunal found the letter to be misleading as follows: the second paragraph about the firm's conclusion that the claim no longer had sufficient prospects of success did not disclose that was the firm's fault; the fifth paragraph about the limitation date having passed again did not disclose that occurred because of inaction by the firm; and at the conclusion of that paragraph where the client was told to seek advice from another solicitor it was only put on the basis that he should do so if he intended to proceed with the deafness claim and it related back to the possibility of there being another limitation date. He was not advised to seek advice about a potential negligence claim against the firm. The First Respondent had referred to the state of his mental health at the time but he had produced no medical evidence in support. Ms Baxter had relied on absence of motive in that what he had written would not cause the client to go away because he was still bound by a loan agreement but that was supposition. The Tribunal found that the First Respondent was under pressure and wrote the letter with its serious omissions in an attempt to resolve his situation and that in doing so he misled the client. The Tribunal found that he had displayed a

failure to act with integrity and that allegation 1.4 was proved to the required standard on the evidence in respect of the letter of 15 November 2012 to Mr GH.

Mr Bint

116.13 In respect of Mr Bint, the allegation related to a telephone call made by Mr Bint to the First Respondent on 3 August 2012 when Mr Bint a relatively newly appointed supervisor telephoned to introduce himself to the firm and the First Respondent took the call. Mr Bint had prepared for the conversation by drafting questions about issues he wanted to cover. The First Respondent had no notice of the conversation nor any opportunity to comment on the notes which Mr Bint typed up based on his handwritten notes taken during the conversation. The process which Mr Bint had adopted provided the context for what followed. It just happened that Ms CC the Practice Manager was in the room when the First Respondent took the call. She testified that she had heard nothing which was inconsistent with the facts of the firm's financial situation at the time and the state of its negotiations with its funder. However the Tribunal could not place much weight on her evidence because she only heard one side of the conversation. The Tribunal found as a fact that Mr Bint was misled by what he was told about the firm's finances. He came to the conclusion that the firm had a loan with JCL which had 12 months to run and which was being paid off at £5,000 per month, the implication being that the amount of the loan outstanding was around £60,000. The reality was quite different. The firm owed JCL more than £1 million and JCL had decided to cease funding it. The Tribunal accepted the evidence of the First Respondent and Ms CC that at the time of the conversation no final agreement had been reached in the ongoing negotiations with JCL about the amount which would be paid off. Amounts of £5,000 a month or sometimes more were being paid and the only thing which appeared to be certain was that the relationship between the firm and JCL would terminate in 12 months' time. At no point in the conversation on his own evidence, did Mr Bint ask what the amount of loan outstanding was and at no point on his evidence did the First Respondent volunteer that information. In the circumstances of the particular telephone call, unannounced and presented as on a getting to know you basis and which could well be the first of a series of conversations by a new supervisor to a solicitor whose firm owed a considerable amount of money but who, whether reasonably or not had expectations of extricating himself at a fixed point from an unsatisfactory financial relationship, the Tribunal could not be sure to the required standard that in providing information that proved to be misleading the Respondent failed to act with integrity. Accordingly the Tribunal found that allegation 1.4 was not proved on the evidence to the required standard.

117. **Allegation 1.5 - He [the First Respondent] failed to inform the SRA of his Practice's financial difficulties, contrary to Principle 7 and/or Outcomes 10.1 and/or 10.3 of the SRA Code of Conduct 2011.**

117.1 For the Applicant, it was set out in the Rule 5 Statement that Principle 7 provided:

> "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner."

Outcome 10.1 stated:

> "ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you."

Outcome 10.3 stated;

> "notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook."

The relevant indicative behaviours stated as follows:

> "IB (10.2) actively monitoring your financial stability and viability in order to identify and mitigate any risks to the public;
>
> IB (10.3) notifying the SRA promptly of any indicators of serious financial difficulty, such as inability to pay your professional indemnity insurance premium, or rent or salaries, or breach of bank covenants;
>
> IB(10.4) notifying the SRA promptly when you become aware that your business may not be financially viable to continue trading as a going concern, for example because of difficult trading conditions, poor cash flow, increasing overheads, loss of managers or employees and/or loss of sources of revenue;
>
> IB(10.05) notifying the SRA of any serious issues identified as a result of monitoring referred to in IB 10.1 and IB 10.2 above, and producing a plan for remedying issues that have been identified."

It was stated in the Rule 5 Statement that the First Respondent knew or ought to have known that the firm was in financial difficulty by virtue of the fact that JCL had stopped lending money during 2011. He failed to report this material fact to the Applicant and failed to inform Mr Bint of the Applicant of the correct financial situation during the telephone conversation of 3 August 2012. By the time the firm went into administration it was understood that JCL were owed approximately £1.5 million.

Submissions for and evidence of the First Respondent

117.2 For the First Respondent, Ms Baxter submitted there was a good deal of overlap regarding allegation 1.4 in respect of Mr Bint. It was asserted in the Rule 5 Statement that there should have been notification to the Applicant as early as 2011 when the funding for new work was stopped. She submitted that there was no basis for saying that the Applicant should have been informed at that point and that the cessation of funding for new work would have materially affected the financial stability of the business because of the accountant's letter dated 20 September 2013. There would

have to be transition and change when JCL ceased funding and the firm would have to find new work in a different way and that was the same for any business in today's climate. Ms Baxter also submitted that when the disbursement funding changed in 2012 it did not stop altogether but went to a different basis on which the firm could still run files. She relied on what the First Respondent said in his statement regarding these matters; every manager or partner involved in the financing of a company worried about the finances of the business but the accountants were involved all the time. There was no evidence of impending insolvency. Funders were involved on a daily basis and there were meaningful discussions with the funder who had a member of staff present in the building. It was an ordered transition and not the sort of situation where it would have crossed the First Respondent's mind to involve the Applicant. Part of the business was moving on and developing. Ms Baxter invited the Tribunal to conclude that it was a counsel of perfection to say that every time there were financial worries in a business the Applicant should be involved. Ms Baxter referred to the First Respondent's e-mails of 29 January 2013 informing the Applicant that he was leaving the business and what he understood was likely to happen and of 11 February 2013 after the Administrators came in. He understood his responsibilities and fulfilled them at the point he felt he needed to inform the Applicant.

117.3 In evidence, the First Respondent stated that the divorce settlement was first mooted in May, June or July 2012. He was not previously aware of rumours referred to in the Second Respondent's resignation letter. They were trying to agree a payment schedule with their main funder. Interest had been frozen in about May 2012 as one of the steps towards the divorce settlement. They were looking at files to see what money was coming in and when. It was a very good position to be in at that stage. The main debt to JCL was being serviced and they were dealing with JCL on a daily basis. The First Respondent rejected the suggestion that he knew there would be a guillotine because there was an unpayable debt. The First Respondent stated that he had had to accept allegation 1.1.1 as the firm went into administration. He knew that one had to inform the Applicant when a firm was in difficulty. He rejected the suggestion that he should have called the Applicant before the administration occurred because he was in negotiation with JCL. They were still making presentations to JCL the day before JCL called in the Administrators; they were still in negotiation with the First Respondent's solicitors. They had never given any indication that they would put the firm into Administration. He found out about the administration because he received a call from the firm's solicitors. In re-examination by Ms Baxter, the First Respondent was referred to the letter from the firm's accountants dated 20 September 2013 which listed the internal and external financial information produced at the firm. It referred to weekly performance indicators produced by the finance department. These KPI's were also calculated by JCL's forensic accountants DV and any differences were investigated. The information was also referred to in weekly conference calls held with JCL and DV when all significant matters affecting the business were discussed including cash levels, cash flow forecasts, and KPIs. The accountants stated that they were involved in these calls. He was asked to comment on Mr Solomon's assertion that it was unreasonable to think that JCL would just walk away. The First Respondent explained that they had an initial meeting with JCL talked of exiting in terms of a 12 month period. It was attended by the First Respondent, CC, DS of their accountants DC Director of JCL and MB the finance officer of JCL, SK from DV. JCL wanted to exit the litigation funding business. They agreed that the way forward was to agree a figure with which neither party would be happy and to draw a line

under it. He was delighted that they wanted to do such a beneficial deal and told all the staff that that was the case.

117.4 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and for the First Respondent and by the Second Respondent. The Tribunal found that the firm was in financial difficulties from before the conversation between the First Respondent and Mr Bint to when the Administrators were appointed. It was the First Respondent's evidence that he was negotiating with JCL and would be able to do a deal by which the amount owed would be reduced to something the firm could manage to pay and still survive. At least £1.5 million was owed to the funder and this was a debt which the First Respondent knew that he could never repay. He was therefore aware that there was a very serious risk that the firm would fail. Reliance had been placed on a letter from the firm's accountants dated 20 September 2013. The Tribunal noted that this letter was all about coping with cash requirements. The Tribunal concluded that having regard to the very difficult capital position that the firm was in regarding the debt to the funder, the First Respondent had an obligation to advise the Applicant of the financial status of his firm and the difficulty he was in. He had an opportunity to do that when Mr Bint telephoned on 3 August 2012 but the First Respondent did not take it The Tribunal found it proved on the evidence to the required standard that the First Respondent was in breach of Principle 7 and Outcome 10.1 and IB10.3 by virtue of failing to inform Mr Bint and the Applicant that the practice was in financial difficulty because of its significant debt to its main funder JCL. The SRA Code of Conduct 2011 came into force in October of that year. Practice funding had been frozen earlier in the year and the Tribunal found that the First Respondent was not in breach of IB10.3 by virtue of not disclosing a material change to the financial position of the firm because it had already occurred when the Code came into force. The Tribunal did not consider that the change in the way disbursements were funded which happened in mid-2012 after the Code came into force was material because disbursement funding continued on a case-by-case basis. The Tribunal found allegation 1.5 proved on the evidence to the required standard but subject to the qualification set out above.

<u>Allegations against the Second Respondent</u>

118. Mr Solomon submitted that the Second Respondent denied all the allegations and that there was significant overlap in the allegations against both the First and Second Respondents especially where acting in the best interests of certain clients was concerned. The law was not in dispute and was set out in his Skeleton.

119. **Allegation 2.1 - He [the Second Respondent] acted in contravention of an order dated 25 August 1982 made under section 43(2) the Solicitors Act 1994.**

119.1 Mr Solomon submitted that a s 43 Order lasted indefinitely unless and until revoked by the Tribunal. Such an order was in place in respect of the Second Respondent and there were no documents showing it had been revoked and there was a document from the Tribunal showing that it was still in place. The Second Respondent stated that the Applicant had informed him that it was no longer in place but that was not enough to revoke the order; only an order of the Tribunal could do that. At best his assertion went to mitigation. Mr Solomon referred to the Findings and Order of the Tribunal in case number 4635/1982 3452 which included:

> "On 24th of November 1980 in the Crown Court at Leeds, the respondent was on his own confession convicted upon indictment of one count of forgery and a second count of uttering a forged document. Upon conviction he was fined £150.00 on each charge in default six months imprisonment on each charge concurrent; the fine was to be paid within six months."

The facts were also set out in the Tribunal's judgment:

> "The Tribunal were told that in March 1979 a client instructed the firm in divorce proceedings the respondent having conduct of the matter. The divorce was uncontested but there was some delay and the petition was not served until August 1979 after which there were some further procedural delays. The client, a somewhat forceful character was anxious to remarry in church and he kept pressing the respondent to expedite matters. The respondent told him that it would not be possible to obtain a decree absolute by September 1979 which was what the client had wished; the client then arranged for the wedding to be on 27th October 1979 and he gave the respondent instructions to obtain a decree by that date. The respondent then started to lie. He wrote to the vicar who was to celebrate the marriage saying that a decree absolute had been issued. The wedding, on 27th October 1979 attracted some publicity which came to the notice of the client's "former wife" who made enquiries of the firm. The respondent then forged what purported to be a decree absolute (which was, it was said, immediately recognisable as bogus). This led to his conviction..."

Mr Solomon submitted that on 7 April 2014, Mr Bint of the Applicant wrote to the Tribunal enquiring about the status of the order made on 25 August 1982. A member of the Tribunal staff replied including:

> "We can confirm that we have checked our database and our manual records but there are no further cases in the name of N, therefore the section 43 Order should still be in force."

Mr Solomon referred the Tribunal to the Second Respondent's statement dated 11 May 2015, where he said by reference to the Rule 5 Statement:

> "Paragraph 7 of the statement fails to record that I was granted written permission to be employed by [TIC & Co] of Bradford and thereafter from 1982 for two years that written permission continued. In 1984 the relevant partner, [Mr F] applied for the original order to be rescinded and thereafter I was informed that the order had indeed been rescinded and no further applications for written permission to employ me needed to be made."

Mr Solomon submitted that the Second Respondent's case appeared to be that he was informed orally that the order had been rescinded and that the order was rescinded. In his letter to the Applicant received on 2 April 2014, he stated:

> "On 8 July 1991 I wrote to the then Authority's representative Ms DV Palmer (ref: FY 11040/005) and was subsequently given her assurance in a telephone

> conversation that the order of 25 August 1982 was no longer in force and that therefore I need take no further note of it."

The Applicant had seen no documents to show that the 1982 order was rescinded and Mr Solomon relied on the e-mail from the Tribunal. S 44(3) of the Solicitors Act 1974 stated in respect of offences in connection with s 43;

> "Any document purporting to be an order under section 43(2) and to be duly signed in accordance with section 48(1) shall be received in evidence in any proceedings under this section and be deemed to be such an order without further proof unless the contrary is shown."

Mr Solomon submitted that it was sufficient for him to produce the order in order to satisfy the criminal standard of proof that it existed.

119.2 Mr Solomon reminded the Tribunal that there was further action against the Second Respondent, and the Applicant (rather than the Tribunal) made a s 43 order in 2001 in respect of an allegation that the Second Respondent had misled a client as to the progress of her case. The order was rescinded on 16 May 2002. Mr Solomon submitted that it appeared that the order was made in ignorance of the order made in 1982 and the fact of the previous action was not made known to the Applicant by the Second Respondent or through the Applicant's own researches but Mr Solomon submitted that this was a side issue.

119.3 Mr Solomon submitted that the Second Respondent had acted in contravention of the 1982 order in accepting employment in a law firm and accordingly the Tribunal's fining powers came into play. In the Rule 5 Statement, the Applicant requested that pursuant to Schedule 2 to paragraph 18A of the Administration of Justice Act, the Second Respondent should be the subject of an order directing the payment of a penalty to be forfeited to Her Majesty the Queen. The Applicant asked that consideration be given to the Respondent's conduct incorporating allegations 2.2 to 2.4 when determining the amount that should be paid. Mr Solomon submitted that the remaining submissions relating to the Second Respondent were without prejudice to that primary position. At the conclusion of the Second Respondent's case, Mr Solomon submitted that the Second Respondent had said that as a matter of law an application for revocation of the 1982 s 43 order had to be made in the name of the firm. Mr Solomon submitted that s 43(3) sets out the procedure:

> "An order made by the Tribunal under subsection (2) may, on the application of the Society or of the person with respect to whom the application for the order was made, be revoked by a subsequent order of the tribunal…"

119.4 Mr Solomon submitted that the position regarding the case against the Second Respondent was somewhat unusual because he was in breach of a s 43 order. The sanction was a regulatory one of fine which was punitive and unlimited. The Tribunal asked if there was any precedent for a fine under the relevant section of the Solicitors Act and Mr Solomon said that he would come back on that. If the Tribunal found an order to be in force, it had been repeatedly ignored. The Second Respondent had been employed by a number of firms. After the Tribunal made its findings, it

invited Mr Solomon to address it more fully on the subject of a fine (see Sanction below).

Submissions and evidence of the Second Respondent

119.5 The Second Respondent submitted that the section 43 order had been made 32 years ago and the allegation of breach of the order was not produced from the Applicant's own records but came from an outside source. The Second Respondent maintained that TIC his then employers made an application to the Applicant to employ him with permission on two separate occasions in two following years and in 1984 it made a formal application through Mr F of TIC for an order which came before the Tribunal where representations were made by counsel and the s 43 order was rescinded. There were a number of relevant subsequent contacts with the Applicant (or its predecessors) which he referred to in his witness statement and in correspondence with the Applicant. In his statement the Second Respondent said:

> "In addition to those employees at the [Applicant] and their predecessors I have also had contact with the following…"

He named seven individuals. He also said:

> "Had the required detailed investigations been undertaken by the Applicant's employee, Stephen Bint, he would have noted the following:
>
> 1. On or about the 19 August 1991 the then Solicitors Complaints Bureau (Ms DV Palmer) confirmed to [AD] of Sheffield that no order was inforce (sic) against me.
>
> 2. In 1990 to the above statement was reiterated by the Bureau (Ms [JB])
>
> 3. In April 2008 I contacted the [Applicant] regarding the fact that they had failed to update their records as to the matters referred to at paragraph 8 of the statement in that it did not show that the order was rescinded. This was raised (sic) the [Applicant's] employees [AG], [KA] and [AR]. Throughout it was confirmed by them that no orders were in force against me."

119.6 In respect of the subsequent investigation when he was employed by BC the Second Respondent submitted that it was accepted that the 2001 order had been made and rescinded. There was a specific allegation which would have been looked at twice; when the initial application for the order was made and when the application was made to rescind. The investigation must have involved a search to see if anything was recorded against his name. No point was taken about the earlier order because the search showed no order recorded against him. He had also worked with two firms TF and B (as distinct from BC and B Solicitors) which had both been the subject of investigation. He submitted that at the point when each investigation was instituted note would be taken of employees of the firm and some check made to see if any employees had come to the attention of the disciplinary process. At no time did anyone come back regarding the order against him. He did not figure in these two investigations. In this investigation and in his statement, the Second Respondent

submitted that he had asked the Applicant to disclose all relevant files, notes and records regarding contacts that he said he had with the Applicant. He relied on his letter received by the Applicant on 2 April 2014 during the current investigation as making it clear that the reference and the file must have existed and would have triggered a check but they did not come back to him. Mr Bint said that he was relatively new to the role when he took on the investigation into the firm. The only attempt at a search amounted to one e-mail sent out by Mr Bint and one received. The Second Respondent submitted that the proof which the Applicant provided fell short of the criminal standard because it had not undertaken a proper detailed search of records of which it was the custodian. He gave as much detail as he could of names and some references. The Applicant produced some documents regarding BC and a couple of letters relating to contact at intervals over 20 or 30 years. (Later during that day's hearing Mr Solomon informed the Tribunal that the question of lost files had been investigated further and there was no other document or evidence relevant to the case not before the Tribunal and it was not clear that any file had been lost.)

119.7 The Second Respondent submitted that it was suggested by Mr Solomon that he had no copies of the order rescinding the s 43 order made in 1982 but an application was made under the name of the firm TIC. He was not provided with copies; the firm would have had the order. As to his asking the firm for a copy it ceased to exist 10 or more years ago. The Second Respondent agreed that he worked at a number of other firms after TIC. He did not think that he needed a copy of the revocation order because he believed that it had been rescinded.

119.8 The Second Respondent in cross examination by Mr Solomon about the order made against by the Tribunal on 25 August 1982, disputed that he had fabricated documents rather that he had made an error in passing a document on. The Second Respondent accepted that the Tribunal found that he started to lie. He had not appealed the order because it was made clear at the hearing that it was not intended that he would be prevented from working. He was employed by TIC who understood and accepted that his employment would continue subject to permission being sought in writing. In respect of the order not being on the Tribunal record; this was the same situation as with other records which had not been located. He agreed that as a careful man he would want to ensure that he was not committing an offence by working in breach of the s 43 order. He submitted that he had provided correspondence which confirmed that there was no existing order. In cross-examination by Ms Baxter the Second Respondent elaborated on his response to Mr Solomon about the criminal conviction denying various of the facts found by the Tribunal. He stated that he had not told his counsel that it needed to be corrected because it caused him and his family distress and he was just pleased to get it out of the way and because it was not indicated at the outset of the Tribunal proceedings that there would be an order that he could not work and TIC had already indicated that they wanted him to continue employment.

119.9 The Second Respondent stated that it was more likely that Ms Palmer gave him her reference on the telephone in 1991and he wrote it and the date of the letter on a piece of paper at the time. As to where it was now, this happened many years ago. He had provided that reference to the Applicant from the scrap of paper which he had at home. He also had reference to another file that could not be found. He could not recall the references now but he had the scrap of paper and a letter from the Applicant which he produced at the hearing during the afternoon of 23 November 2015

acknowledging his letter. Mr Solomon submitted that the Applicant's letter of acknowledgment was nothing to do with the s 43 order. It was a letter dated 1 May 2008 to the Second Respondent at his home address about a report he had made concerning a firm of solicitors which was not referred to otherwise in these proceedings. It informed him that a file had been opened in the Conduct Investigation Unit.

119.10 The Second Respondent was referred by Mr Solomon to his undated letter received by the Applicant on 2 April 2014 quoted above. The Second Respondent stated that his letter of 8 July 1991 to which it referred would be with the Applicant. He knew of the letter because it was noted on the scrap of paper. He was not saying that the note was lost and he probably could produce it if asked. It was at his home address. He denied that it could not be found because it did not exist and that the letter had not been sent. He did not keep a copy of the letter because it was hand written and he had no facility for copying. It was very clear that the recipient of his 1991 letter said that the order had been rescinded. He had written to the Applicant on 8 July 1991 because he was about to start a locum role with AD a firm of solicitors in Sheffield. A partner in AD had worked with the Second Respondent at his earlier firm up to the making of the order in 1982. His partners would have wanted confirmation that the Tribunal had revoked the order; he believed that they wrote to the Applicant. He assumed that there was a letter but he never had it.

119.11 The Second Respondent stated in cross examination by Mr Solomon that he certainly did not mention the 1982 order when the second set of s 43 proceedings was brought against him. The 2001 order had been rescinded because Applicant had sent the proceedings to him addressed just to "Halifax". He had not informed his current firm about it. The Second Respondent was referred by Mr Solomon to a letter from Mr Bint dated 27 March 2014 which asked him to confirm:

> "1. If any Order was made by the SDT further to that of the 25 August 1982 together with copies of any Orders..."

The Second Respondent stated that his reply was the letter received by the Applicant on 2 April 2014. It was pointed out to him that in it he did not mention that the order had been revoked by application of TIC in 1984. The Second Respondent said that he touched on it on the penultimate paragraph:

> "I believe that the information given to be my Ms Palmer in July 1991, that the order of the 25 August 1982 was no longer in force was correct."

It was put to the Second Respondent that he had been specifically asked about the Tribunal order and just said that the Applicant had told him in 1991 something about it; he did not say that that there was a Tribunal order revoking it. The Second Respondent replied that he referred to it and that he believed it was not in force; perhaps he should have referred to the revocation but he thought it was perfectly clear. He agreed that the first time he mentioned rescission having taken place in 1984 was in his witness statement in May 2015. There had been a lot of letters to and fro and so he could not be certain that he had not referred to the fact of rescission in any document prior to the witness statement.

119.12 As to the fact that only the Applicant or the person against whom a s 43 order was in force could apply to have it rescinded, the Second Respondent assumed that the application was made in his name and submitted by the partner F. He believed an affidavit had been sworn, one each by himself and F. He did not believe that he was required to attend the hearing and did not do so. He believed that he was represented by the same counsel who had represented him at the initial hearing when the order was made. The Respondent named the leading counsel concerned.

119.13 Ms Baxter accepted that the s 43 order made in 2001 had been set aside but wanted to know if the Second Respondent agreed that the finding was true. The Second Respondent did not accept that he had misled the client Mrs H and gave an account of what occurred. In respect of the breach of the 1982 s 43 order and the allegations against him in respect of events at the firm, the Second Respondent submitted that there was not sufficient credible evidence before the Tribunal to lead it to conclude that the allegations were made out.

119.14 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the First Respondent and by the Second Respondent. The allegation related to the time during which the Second Respondent had worked at BC and at the firm. It had been submitted for the Applicant that a s 43 order made against the Second Respondent in 1982 was, so far as the Tribunal and the Applicant were concerned still in force and the Tribunal office had confirmed that it had not been revoked or set aside. The Second Respondent had produced no evidence of consent from the Applicant for him to work for BC or the firm following that order. The Second Respondent had maintained in evidence that a firm TIC had applied for revocation of the s 43 order. The Tribunal noted that he made no reference to that application either in his Answer to the Rule 5 Statement or in his statement. He asserted that the application had been made by TIC as a firm and so the Applicant should have looked up the firm but the Tribunal was satisfied that the rules required the application to be in his name and no evidence of the application for revocation or of any order of revocation had been produced. The Tribunal found the Second Respondent was not a credible witness in respect of the evidence he gave about the application to revoke the order. The Tribunal therefore found proved that the Second Respondent acted in contravention of the s 43 order dated 25 August 1982 and that allegation 2.1 was proved on the evidence to the required standard.

120. **Allegation 2.2 - He [the Second Respondent] acted in breach of Principle 8 of the SRA Code of Conduct 2011 in that he did not carry out his role within the practice in accordance with risk management principles.**

120.1 For the Applicant it was alleged in the Rule 5 Statement that the Second Respondent acted with wilful disregard to the client cases which he was meant to be managing and/or supervising or that he had conduct of. There were widespread delays, deadlines missed, documents not served and a failure to adequately progress the claimants' cases effectively, often meaning clients were left without any further recourse.

120.2 The Second Respondent relied on his evidence in respect of his role at the firm.

120.3 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the First Respondent and by the Second Respondent. The Tribunal considered this allegation after allegation 2.3 because it considered that the Second Respondent's conduct of case work was relevant. The Second Respondent was found by the Tribunal to exercise a supervisory role in the firm although the situation around his claimed job titles of Litigation Manager and Head of the Industrial Disease Department was somewhat unclear but the First Respondent was the only qualified solicitor. It was part of the Second Respondent's role in the firm to follow risk management principles and he did not do that but the principles were somewhat vague in respect of him and the Tribunal considered that this allegation added nothing in the face of allegation 2.3. It was not made clear what the allegation referred to apart from his conduct in respect of allegation 2.3. The Tribunal found allegation 2.2 not proved on the evidence to the required standard against the Second Respondent.

121. **Allegation 2.3 - He [the Second Respondent] failed to act in the best interests of clients contrary to Principle 4 of the SRA Code of Conduct 2011 and/or failed to provide a good standard of service contrary to Principle 5 of the SRA Code of Conduct 2011 and/or Outcome 1.16 in the matters of DP and/or AB and/or AS and/or KP and/or AP and/or CG and/or GH and/or IT and/or others.**

121.1 Mr Solomon pointed out a correction to the Rule 5 Statement at paragraph 65 where it was alleged in respect of the GH case that the Second Respondent wrote to the court on 18 October 2012 to ascertain the status of the matter. He had already left the firm at that point. Mr Solomon made the following submissions in respect of the individual client matters.

Mr DP

121.2 The Second Respondent denied having conduct of Mr DP's file. The file however had his email address at the firm including his name "harry.naughton" and the reference appeared regularly on letters out, for example dated 30 November 2010 telling Mr DP that the firm was "chasing the defendants for a response to previous letters"; a letter dated 14 December 2010 about seeking counsel's advice; a letter to the other side's solicitor dated 14 December 2010; a letter to Mr DP dated the same date: "I confirm that the signed court proceedings have today been sent to the court for issue and service on the Defendant(s)." a letter dated 2 August 2011 to Mr DP saying that the Second Respondent was dealing with his claim and reviewing his file; a letter to Mr DP updating him and asking him to telephone the Second Respondent by name. There were files notes and what appeared to be his signature on the Claim Form which could be compared with the signature on his witness statement. The Second Respondent said that the First Respondent often interrupted incoming letters and he did not see them but he did not suggest emails and telephone calls did not get to him. There was plenty of evidence that he received emails and telephone calls. There were obvious failures to act in DP's best interests and obvious negligence.

Mr AB

121.3 The Second Respondent denied having conduct of Mr AB's file. The file however showed his e-mail address and references on documentation, and internal

communications to him, and what appeared to be his signature on the Claim Form. An attendance note with the Second Respondent's reference dated 22 July 2010 included:

> "… The position is that an offer of settlement was received but does not appear to have been disclosed to the client. We should now do that and give him appropriate advice regarding a proposed settlement."

A letter dated 22 July 2010 with his e-mail address and reference included: "The file will be handled by the writer, HN." and

> "We should be obliged if you would consider the offer as set out above and then telephone HN in order to discuss the same with him."

Following that letter there were telephone discussions, e-mails and incoming letters and internal communications to the Second Respondent. On 30 November 2010, the First Respondent sent a memorandum to the Second Respondent including "...Limitation is round about Autumn/Winter 2010…" Mr Solomon submitted that as a matter of fact it seemed that a claim had already been issued but it was already out of time. The claim form had the Second Respondent's signature. There was a letter dated 18 May 2012 to the client from the firm which gave AA's email address and included:

> "You will note that the continuing conduct of this claim is now with [AA] who will be supervised by the writer, HN, who is head of Industrial Disease."

The Second Respondent's case was that he was not supervising but was just an employee and he said that he did not work on this case.

Mr AP and Mr KP

121.4 Mr Solomon submitted that for these two clients there were no papers at all. They were covered by letters from OHP and referred to in the Rule 5 Statement. The FI Report detailed that Mr KP had been awarded £20,000 in damages but not received any payment. At the time of the FI Report the file could not be found. Mr AP understood that damages were paid into Court. Copy letters prepared by the Second Respondent did not confirm the sum of the damages and no record of the claim was found. The First Respondent's draft letter to the Applicant dated 8 February 2013, advised that he had become aware of serious failings in the case, stating that the Court confirmed that no action had been taken since the issuing of proceedings in 2010. OHP sent a letter before action to the administrators on 6 June 2014.

Mr AS

121.5 The Second Respondent did not address the case of Mr AS in his evidence at all. In any event, the file showed his e-mail address and references on documentation for example a chaser letter to the court dated 22 November 2010. It also had a "File Note to New Fee Earner" dated 4 October 2012 apparently from one of those whose witness statements he had submitted Mr AA, albeit he did not address this document, showing that the Second Respondent had passed the file to him Mr AA. An email to

the First Respondent from JR of the firm also indicated that the Second Respondent was dealing with the file. It included:

> "This was AA's file but for some reason HN was dealing...
> HN reviewed 17/5/2012 and chased Altrincham again and again 20/9/2012..."

Mr CG

121.6 Mr CG understood that he was awarded damages of £16,000 and received two payments totalling £5,000 into his TSB bank statement on 14 December 2011 of £4,600 and £400. The payments came from a Yorkshire Bank account but the firm did not have an account with that bank. The Second Respondent did not deny having conduct of Mr CG's file but denied having made payments to him. The First Respondent suggested that he had and the documents seemed to show payments. There was not an allegation against him about the payments but it was noted that his name was the reference for the payment, an indication that he had relevant conduct. There was an underpayment but it was not clear why.

121.7 Mr Solomon also submitted that the file showed the Second Respondent's e-mail address and references on documentation. There was a letter dated 25 May 2010 with the Second Respondent's email address beginning:

> "Further to your claim and your recent telephone conversation with the writer."

In the main, the documents were the Second Respondent's. It was noted that there were three direct e-mails to the Second Respondent and four file notes which evidenced telephone conversations between him and Mr CG. Further there was a letter showing that Mr R stated that he had taken over the file from the Second Respondent and evidence of a solicitor's attendance note of a call with the Second Respondent concerning this file. Mr CG produced texts that he received from the Second Respondent and recited them in a statement dated 14 May 2014 as follows:

Dated 8 November 2011 at 2.04pm:

> "Going into court in next few mins I will let you know wht happens asap"

On 9 November 2011 at 5.04pm:

> "Still at court the ins did not arrive so we will be back tomorrow I will call you in the am"

On 2 December 2011 at 7.46pm:

> "No money paid out the court will review Monday but the court funds say they have got the money."

On 5 December 2011 at 6.37pm:

"The money will be paid tomorrow I will call you in the am"

Mr GH

121.8 The Second Respondent denied having conduct of Mr GH's file but Mr Solomon submitted that the same pattern emerged as above. His contact details were on the documents including direct e-mails and telephone attendance notes including one dated 23 March 2010 stating that he was reviewing the file and drafting the Claim Form in readiness for issue at the County Court. There was an internal email dated 2 June 2010 advising him that a named person from an insurance company had called regarding Mr GH and asking him to call back that day. There were two copies of an attendance note of the call being returned that day with the Second Respondent's reference. There was a letter dated 8 July 2010 expressed to include instructions to counsel with his reference and an attendance note chasing counsel dated 27 September 2010 with a chaser letter of the same date. There was also an internal memorandum from the First Respondent to the Second Respondent dated 28 June 2011 concerning the case, and his signature on the claim form. Mr GH would say that he spoke to the Second Respondent albeit that he failed to answer Mr GH's questions.

121.9 (For the case of Mr IT see allegation 2.4 below)

Submissions and evidence of the Second Respondent

121.10 The Second Respondent submitted that initially he was employed by the firm as a fee earner. He accepted that later extended to a more supervisory role but he did not accept anything other than at best that he was a team leader. He was certainly not Head of Industrial Disease in the way that that title would suggest although he accepted that in his witness statements in the matter of Mr IT in Skipton County Court he had described himself as Head of Industrial Disease and people might have referred to him by that title. Whatever title he had was nominal and because of the way the firm was managed he could not discharge his duties as Head of Litigation. This was substantiated by the bulk of the corroborating witness statements that he had lodged with the Tribunal but there was a thread in the statements that whilst he had a supervisory role of some kind he was not allowed to discharge any management duties. He did not believe he was responsible for the mismanagement of files or contributed to mismanagement.

121.11 The Second Respondent stated that the firm was under considerable financial pressure from the funder JCL and he accepted that this had affected the First Respondent. The realisation that the financial pressure was overwhelming him led to other issues regarding the running of files. The Second Respondent drew attention to that fact in his statement for the Tribunal and in statements from his witnesses. There were considerable references to files disappearing and being moved about; being locked in the "war room" and taken offsite to be audited by the ATE provider. Quite often the case files would disappear from the cabinets overnight and be sent to the ATE insurers in quite large numbers not to be seen for several months when they came back into the 'war room'. As to Ms CC saying that they were logged in and out, the

Second Respondent would not know about that. They would go to the accounts department and suddenly appear on the shelf outside the accounts department and there were instances when files were in the boot of the First Respondent's car. He believed that indicated that files were isolated from the fee earners and he highlighted that in his letter of resignation. He believed that the evidence in his statement and to the Tribunal was consistent with what was in the letter.

121.12 The Second Respondent stated that the weight of the evidence about incoming post was that the task of post-opening was undertaken in a (locked) room in the accounts department and then post was distributed in folders by Ms CC. The Second Respondent stated that he certainly did not have the review of incoming post; it was given direct to the fee earners. He was not saying that the mail was intercepted but the post was opened and it was not always passed to the fee earners. He said that he did not name the First Respondent as being responsible. He did not dispute that the mail was checked by the First Respondent and Ms CC but he disputed that he checked it. He was referred in cross examination to the statement of his witness a paralegal Ms EB where she said

> "The daily incoming post would be opened by the accounts team. The same would then be passed to [the Second Respondent] to glance over before being distributed to all Fee Earners."

The Second Respondent stated that this was wrong. He had seen the witness statement before it was submitted to the Tribunal and served on the other parties but he had not raised the point because it would be inappropriate to put words in her mouth. Ms CC had confirmed the procedure; she delivered post in folders.

121.14 The Second Respondent accepted that it was an inescapable fact that many files there did not receive the attention they should have done and that a significant number of clients were let down but the Second Respondent did not have personal control of those files. In respect of files with significant failures, the Second Respondent confirmed that his case was that he was not working on those files; that someone else was working on them and that the First Respondent produced documents in his name or that his work was very limited.. He accepted the broad assertion of negligence and the failings on the files. He accepted that he had been interviewed by Mr Hair and said that he was a paralegal with conduct of files and had supervisory responsibility. He stated that the point was the staff were very young and relatively inexperienced and because he was older they would come to him. He accepted he was a fee earner and provided some supervision. He relied on the evidence of Mr Scholes and what the corroborating witnesses said. Anyone could access a file from their computer terminal and generate a letter bearing his reference and e-mail address which would come up automatically; it could have been generated at any time before or after his resignation. The Second Respondent drew attention to a number of letters written after 1 October 2012 when he left the firm that continued to go out with his reference and which he submitted continued for some weeks. There were a number of other cases where he was said to be the fee earner and where he had mentioned that he was not. The Second Respondent challenged the evidence of RB because he had in mind pursuing claims against the firm. As to the client files being sample files he stated that the list of files had been supplied by OHP.

121.15 The Second Respondent agreed his supervisor was the First Respondent but the latter did not exercise the duty of supervision. He did not recall the First Respondent giving him case lists. There were not daily meetings about cases. He did not accept that his cases had documents which were not on the system or which had not been sent out and he rejected the suggestion made by the First Respondent that the only files which went missing were ones on which he worked. It was put to him that Ms CC said that occasionally files went astray but were found in his or the First Respondent's rooms but when they permanently went astray they were ones which he had worked on. He said that was not true. As to her saying that he was covering his tracks and whether there was any other reason why they would permanently go missing, the Second Respondent said that it was a result of the general chaos evident there and when the Administration was pending; possibly other people were aware that things were not as they should be on files and had reason to remove them but not himself. The Second Respondent agreed that e-mails would come to his address and as to their being no possible way they could be intercepted he agreed that he had not previously suggested that but he did not know if it was possible. Similarly he could not say that it was impossible for the system to be set up to send an e-mail out in someone else's name. It was possible that someone would fabricate telephone attendance notes in his name. He disputed that documents sent after the date of his resignation might have been dictated before as they would not be left unattended for two weeks. He appreciated that it was a fraught time. The Second Respondent stated that he was not saying that the First Respondent was fabricating documents on every single file just those before the Tribunal; there were many other files that had not been raised and had not caused an issue but in respect of the files flagged up as causing concern that was what had happened. He agreed his case was that the First Respondent was not working on files, not supervising him properly and was just nominally there. This was because the First Respondent was so heavily involved in other issues arising with funders. He denied he was attempting to minimise his involvement and blame the First Respondent; he was doing the opposite trying to stop someone else being the scapegoat.

DP

121.16 In cross-examination by Mr Solomon the Second Respondent agreed that he had no recollection of this case. He referred to the letter of claim dated 11 December 2013 from OHP which quoted reference AA/002514001. A letter from the firm dated 12 April 2010 with the reference HYN was not his reference. He had no idea but he suspected that perhaps it came from a B & B file that the firm had taken over. As to a letter dated 30 November 2010 with his HN reference and e-mail address which said: "We are chasing the defendants for a response to previous letters", the Second Respondent stated that this was of a brief nature and created by a secretary from the system. He agreed that if someone responded to the e-mail address on the letter it would come to him. As to a longer letter again bearing his e-mail address and HN reference dated 14 December 2010 and another letter dated 14 December 2010 also to the client saying that signed court proceedings had been sent to the court and otherwise explaining the procedure, he agreed these were not generated by secretaries.

121.17 The Second Respondent agreed that the court form dated 14 December 2010 had his signature and HN reference; he signed lots of court forms and not always on files that he was dealing with. As to whether he looked at the file before signing, he did so just to check the accuracy of the court form for brief details of the claim its value and the

fees. Whoever had the file at the time would prepare the form. He may not have checked the reference. The details of the claim were generic; the same in every case. In terms of the value of the claim he would assume that the person who presented the file to him had a medical report which would either be on the file or brought him from the file by the fee earner and he would check it from JCL's guidelines. He would assume from the fee earner including people he did not supervise that the claim was being issued in time. A letter to the client dated 2 August 2011 bearing his e-mail address and the HN reference said:

> "As you are aware your claim is being dealt with by [the Second Respondent] who is currently in the process of reviewing your file of papers."

The Second Respondent questioned why he would write in those terms if he already was dealing; it would make no sense. He had no idea why someone in 2011 would fabricate all these documents to show that he was dealing and no idea if the documents were created on the dates shown; they could be created at any time to create a paper trail. It was not impossible that this had been done just to undermine him.

121.18 The Second Respondent was referred to a file note dated 17 May 2012 with the HN reference stating that they needed to write to the client to update him and inform him of steps to be taken regarding judgment and that the ATE insurer and funder should be updated. He said that the note could be his but he did not know if it was. It was put to him that proceedings had not been served although the note said they had been issued and served and the Second Respondent stated that he had no knowledge. If he did write the note, it could be that he had seen from the file that proceedings had been issued and served. He was not the file handler, AA was the fee earner and he had no idea why AA would say in letters to the client dated 18 May 2012 (reference AA) and 27 July 2012 (reference HN/AA) :

> "We will keep you informed as to developments but in the meantime if you have any questions regarding the contents of this letter then please telephone [the Second Respondent] to discuss the same with him."

He had contacted AA this week and he could not attend the Tribunal. It was the Second Respondent's case that the First Respondent generated many of the other documents with the Second Respondent's file reference. As to why if that was the case the First Respondent would generate a file note dated 23 October 2012 to another member of staff in which he said he was struggling to find the particulars or the letter of service on the case and the Second Respondent stated that he had no idea. It had not occurred to him to put it to the First Respondent that he had generated the documents on the DP file. The Second Respondent accepted that there had been a failure to act in DP's best interests.

AB

121.19 The Second Respondent stated that he did not recall this case and pointed out that the reference AA/0026790001 in OHP's letter of claim dated 1 July 2013 was not his. He had no reason to dispute the facts of the case as set out in the Rule 5 Statement. He was referred to the file insert sheet which showed the limitation expiry date to be

"2/9/10" He agreed that an attendance note dated 22 July 2010 recording a file review had his HN reference. It said:

> "The position is that an offer of settlement was received but does not appear to have been disclosed to the client. We should now do that and give him appropriate advice regarding that proposed settlement."

As to letter to the client dated 22 July 2010 which had his e-mail address and the HN reference and which had his name at the foot and said that the file would be handled by the writer the Second Respondent and asked the client to consider the offer and then telephone him by name he agreed it had been written to his signature. He agreed that had the client called or contacted the e-mail address he would have got directly in touch with the Second Respondent. He also agreed that a letter to insurers dated 22 July 2010 had his HN reference and e-mail address as did two letters of the same date to the two firms of solicitors representing different defendants and that if the recipients e-mailed back they would get directly in touch with him. He pointed out that on a letter dated 12 November 2010 from one of those firms of solicitors his firm's reference KMB had been crossed out and HN written in by hand. He agreed that a reminder letter dated 30 November 2010 to insurers bore the HN reference and his e-mail address but said that that it was an easy task to go into the case management system and generate those details. He agreed the letter was written after the expiry of the limitation period and that represented a significant failure by the fee earner.

121.20 As to the memorandum to him from the First Respondent dated 30 November 2010 referring to limitation being round about Autumn/Winter 2010, it indicated to the Second Respondent that the First Respondent had the file. He had no idea why if that was the case the First Respondent would write to him. As to whether it was because the First Respondent was supervising him, he suggested perhaps he was covering his back. The Second Respondent stated that it struck him that the First Respondent had the file and issued the claim form and was trying to create the illusion that the Second Respondent had the file. He did not recall the memorandum or believe that it had come to him. He did not believe he had written two letters to the Manchester County Court dated 9 December 2010 one requesting judgment and the other enclosing the claim form and a letter to the client of the same date all of which bore his HN reference and e-mail address. As to the claim form where the First Respondent's name in typed capital letters had been crossed out and the Second Respondent's name was written over it and where the form was signed by the Second Respondent as Litigation Manager, he agreed that it had his e-mail address and reference but that was because he signed the claim form but did not send it. He did not believe that file note dated 17 May 2012 with the HN reference relating to reviewing the file and future action was his. A letter bearing the reference HN/AA and his e-mail address dated 27 July 2012 to the client which said "I am" investigating the matter further and awaiting a response from the courts was not his. It had the reference AA. He was referred to a file note prepared by BS dated 9 November 2012 when BS had reviewed the file and reported there was no evidence the ATE insurer had authorised issue/service of proceedings or that proceedings had ever been served and which referred to substantial periods of inactivity/delay; and to a telephone note in handwriting recording a call from Mr BS to the client on 15 November 2010 after he left the firm. It recorded that the client was:

> "-advised of his options
> -he says he is gobsmacked; he had to chase HN throughout…"

The Second Respondent stated that he was not the fee earner; just because his name was provided that did not mean that he had the file because of the firm's processes. As to whether what had happened was in the clients' best interests he stated that they were not his files they were other peoples'.

AS

121.21 It was put to the Second Respondent by Mr Solomon that this file was not addressed in his witness statement and he responded that the reference in OHP's letter of claim dated 15 November 2013 AA/003014001 was not his. Mr Solomon acknowledged that the reference (and e-mail address) on a letter to the client dated 4 August 2010 was that of Mr Scholes. Letters to the Court manager dated 22 November 2010 and to the client of the same date had the HN reference and e-mail address. It was put to him that by 31 August 2011 when a letter was written to the client which had his HN reference and e-mail address the limitation period had passed as JR recorded in an e-mail to the First Respondent dated 2 October 2012:

> "This was AAs file but for some reason HN was dealing.
> …
> HN reviewed 17/5/2012 and chased Altrincham again and again 20/9/2012…"

The Second Respondent assumed that whoever had dealt was oblivious to the limitation date. He did not recognise the file note with the HN reference dated 16 May 2012 reporting on a review of the file as his. He would recognise it by the way it was worded. A letter dated 17 May 2012 to the client with the HN reference and e-mail address stated:

> "Further to your claim, we write to confirm that pursuant to our letter of the 31st August 2011 the required documentation was delivered to Altrincham County Court."

The recipient was requested to telephone the Second Respondent by name if he had any questions about the letter. The Second Respondent stated that he did not know if the letter was wrong in that the required documentation had not been delivered to the court. He could not comment on the review by JR where he said in his e-mail just mentioned that he had called the court that day and they had no record of receiving any claim in this name in 2010. The Second Respondent agreed that he did not dispute the Applicant's case in respect of this client that he did not recognise it as his work; other fee earners had been involved. He did not believe that the documents were his.

KP

121.22 In respect of this case where it was alleged £20,000 had not been paid and the file had been lost the Second Respondent stated that he did not know anything at all about the matter but agreed that it was very serious to lose the file.

CG

121.23 The Second Respondent accepted that he had some communication with Mr CG. A letter dated 25 May 2010 to the client with the reference HN and the Second Respondent's e-mail address began:

> "Further to your claim and your recent telephone conversations with the writer."

The Second Respondent agreed that in the letter he asked Mr CG to telephone him. In respect of the telephone attendance note addressed to him dated 25 May 2010 which had the HN reference he agreed that it appeared that people thought that he was the correct person to write to when the client called but not because he was the fee earner but because he did some work on file. He disputed that he was the sole file handler. The reference which appeared after his 'RH' could be that of a secretary. He did not know a fee earner with those initials. He could not remember back to June 2010; this was about the time that files were moved across from B & B. He was referred to other documents in the file which had his reference and e-mails addressed to him specifically one dated 24 August 2010 advising him that a firm of solicitors had called and:

> "Asked if you had taken our client's instructions regarding their offer of 23 July.
> Please can you call him back…"

The Second Respondent stated that this did not necessarily mean that he was the fee earner and the only way to find that out was to access the case management system. He was referred to e-mails dated 8 March 2011 and 10 June 2011 both about telephone conversations received from the other firm of solicitors and sent by the same member of staff to him. He assumed they were from the receptionist. He might have been the only person in the office at that time. It did not mean that this was his file. He agreed that a letter dated 27 August 2010 with the reference HN and sending the claim form to the court and with his e-mail address was from him. In respect of a letter from the court to the firm dated 30 January 2013 which confirmed that the matter was issued on 6 September 2010 and returned to the firm to arrange service, that nothing else that happened on the case since, the Second Respondent said he did not know whether the proceedings had been served or not. He knew that the client was under the impression that damages had been awarded because of telephone conversations with him. He had always conceded that the client rang him.

121.24 The Second Respondent was referred to the client's bank statement which showed receipts totalling £5,000 on 14 December 2011 with the reference "Mr H Naughton". He had no indication why the payments were made and would not have had £5,000 to pay for anybody. He had not made the payments. He had a Yorkshire Bank account, a Penny bank account while at school and until the late 1980s. He also stated that he had not removed, destroyed or retained any client files from the firm.

121.25 The Second Respondent was referred to the texts which were before the Tribunal and which had been signed with a statement of truth by the client. The Second Respondent accepted that he had sent the texts. In respect of him telling the client on

5 December 2011 at 6:37pm that the money would be paid tomorrow; he was given information to pass on. He did not accept that the text said that he was at court; he was passing on that someone had told him that they were going into court. He agreed he knew that there was a court hearing in this case because he had been told that, he assumed by the First Respondent. As to why he was dealing, he assumed the First Respondent was not in the office. As to why he was texting the client from his own mobile, he assumed that this was after office hours. As would be seen from their timings for the most part they were sent after office hours. His hours were from 9am to 4pm so if he had to make a communication with a client after 4pm it would have been by text. It was pointed out to him that the text on 8 November 2011 saying "Going into court in next few mins…" was sent at 2.04pm. The Second Respondent said that he might have had a call from the First Respondent and passed it on. The others were in the evening, the majority after his finishing time of 4pm. He agreed it was incumbent on him to keep a note of communications with the client and if he had communications with the client they would be on the file. He did not accept that the texts were not on file; it was not complete. As to why he had undertaken these communications, the client needed to be updated and if the First Respondent asked him to pass information on he saw no reason not to. In cross-examination by Ms Baxter for the First Respondent, the Second Respondent stated that it was more likely to be by telephone call if it was before 4pm and by text if it was post 4pm. As to why he had not provided the First Respondent with the client's details and said that he should deal with the client, it was because the Second Respondent assumed that the First Respondent did not have the opportunity or time to do it. Not one of the texts said or indicated anything other than that the Second Respondent was passing information on. He asked the Tribunal to note the culture of the firm and the way fee earners were expected to operate. He rejected the assertion that he sent the text without the First Respondent's knowledge.

121.26 The Second Respondent was referred to an e-mail from K, the other side's solicitors to JR dated 5 November 2012 which said:

> "Further to our recent conversation, please find attached the file note between the previous file handler and your Harry Norton (sic)."

The attached telephone note dated 30 May 2012 stated:

> "Called LGS and spoke to Harry Norton (sic), SK enquired if the matter was now closed, HN stated the file was closed due to his clients (sic) poor health."

The Second Respondent stated that he did not make or receive that call and referred to the misspelling of his surname. The caller could have assumed that it was the Second Respondent and it could have been anyone. He was referred to a file note dated 3 October 2012 with the HN/JR reference which began:

> "Client called – he spoke to Harry about 3 months ago – HN said he was trying to find out if there were any other potential defendants, and also if he could claim interest on the settlememnt(sic)"

It was put to him that the client did not think his claim had been settled due to his ill-health and it was not what the client instructed the firm. The Second Respondent stated that he was not aware of it; he did not make the call or the statement. He was referred to an e-mail from RH to JR for October 2012 which included that the client had telephoned and that he had received a further letter from JCL:

> "He is concerned about this and he said he spoke to Harry who mentioned he would not receive any more letters."

The Second Respondent stated that he did not recall the telephone conversation with the client and that the e-mail was sent after he left. He agreed that it would be wrong if he was without instructions to say they would not pursue the matter on health grounds but he had not done so. He continued to receive calls from Mr CG for sometime after he left the firm. He had not thought it necessary to call Mr CG as a witness. He personally spoke to Mr CG before he went to RB at OHP. He was surprised that the inference was that Mr CG was critical of him. It appeared that the criticisms set out in the Rule 5 Statement in Mr CG's case were made out.

121.27 The Tribunal referred the Second Respondent to the attendance note of 15 August 2012 about his discussions with the First Respondent, reviewing and amending the statement in support of the application etc and it was put to him that the note suggested that he prepared the statement for S Costs. He stated "No" it simply meant that it was done and if so it was his practice to record it.

AP

121.28 In cross-examination by Mr Solomon, it was pointed out that in his letter to Mr Bint of 29 May 2014 the Second Respondent said:

> "I am aware of Mr [P] and can confirm that such information as I imparted to him was as recorded on the case management system or passed to me by the Management…"

He agreed he had spoken to the client several times. He recalled him and had become confused because there were two clients with that surname. (He said in his letter in respect of KP that he had no knowledge of the client and did not believe he had any involvement with the file.) He could not confirm that proceedings had been issued and nothing had been done. He was referred to OHP's letter of claim dated 6 June 2014 which held him liable along with the First Respondent. The Second Respondent said this was a similar scenario to that with Mr CG; he was passing on information he was provided with. He did not dispute the failures alleged in the Rule 5 Statement.

GH

121.29 The Second Respondent stated that this was not his file. He had not seen the strategy plan which was on the file but he accepted the limitation date which it showed as 23 March 2010. As to the First Respondent supervising the case according to letters dated 11 January 2008 and 25 September 2008, this was before he went to the firm and so he did not know. He agreed that he appeared to attempt to issue the claim form on the limitation date according to a letter to the court dated 23 March 2010 and an

attendance note dated 23 March 2010 which also said that he was reviewing the file. He agreed the claim form had his signature and was dated 29 March 2010. The Second Respondent accepted that he signed the claim form, nothing more. The letter to the court dated 23 March 2010 was on the face of it a standard letter generated from the system. He might well have sent it. He might well have drafted the claim form and made the attendance note dated 23 March 2010. He acted in the best interests of the client by issuing even if it was six days late; there could be discretion in limitation. He agreed it was not in the client's best interests if Mr Solomon's assessment of the limitation date was correct. He accepted that Mr GH did not get a good standard of service. It was clear that other people had involvement and conduct of the file. He did not believe that his actions were detrimental to the client.

121.30 The Second Respondent doubted that he wrote a letter dated 7 April 2010 with his HN reference and e-mail address which started:

> "We write to advise that the conduct of your claim has now passed to the writer, HN…"

He could only hazard a guess as to why someone gave all that information to the client; there was only one obvious assumption to be drawn, they were using the Second Respondent's reference deliberately to mislead the client. He accepted that documents thereafter had his reference but pointed out that there were also documents signed by someone else. He referred to a memorandum dated 25 December 2010 to the First Respondent from JR. The Second Respondent agreed he received a note dated 2 June 2010 informing him that someone from an insurance company had called regarding Mr GH and made an attendance note dated the same day with the reference HN returning the call but that did not indicate that he had conduct of the file. He did not draft an attendance note dated 7 July 2010 with reference HN recording a review of the file and the date by which service had to be affected. He denied writing a letter to a second defendant dated 26 July 2010 and to a third defendant of the same date enclosing the claim form and other documents; these were cut and paste letters generated off the system which anyone could send. He also denied writing a letter to the client dated 5 January 2011 informing him that proceedings had been served and a letter dated 10 August 2011 to the client both with the reference HN and his e-mail address. The latter included:

> "As you are aware your claim is being dealt with by HN who is currently in the process of reviewing your file of papers."

The Second Respondent said he would not write a letter saying that HN was dealing. He could not say whether service had been affected. He agreed that he was still employed when the letter from the court dated 7 July 2011 stating that no certificate of service had been filed was received addressed to his reference HN. He accepted that the client received a standard of service well below that expected and the firm almost wholly failed to act in his best interests. The Second Respondent pointed out that a Request for judgment by default with reference EJ/HN did not have his signature; it would have been prepared by the person having conduct of the file.

IT

121.31 Submissions and evidence of the Second Respondent regarding his involvement in Mr IT's matter are recorded under allegation 2.4 below.

Determination of the Tribunal in respect of allegation 2.3

121.32 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the First Respondent and by the Second Respondent. It was alleged that the Second Respondent had failed to act in the best interests of each client named and to provide a good standard of service to his clients and that he was in breach of Outcome 1.16 informing current clients if a solicitor discovered any act or omission which could give rise to a claim against them. In arriving at its conclusions about the individual cases, the Tribunal had considered the Second Respondent's evidence and that of his witnesses about impediments to supervision at the firm. It related mainly to difficulties in obtaining cheques from the accounts department and there was no evidence that it caused any of the problems on the files. The Second Respondent had also asserted that letters could be written on files without the file being in the possession of the writer and the Tribunal concluded that not having possession of a file upon which he placed great emphasis did not prevent him carrying out his work. The Tribunal took into account the evidence that the firm's case management system permitted any person access and would produce correspondence with the original reference unless steps were taken to amend it. It also took into account that some of the letters referred to the Second Respondent in the third person but found that was not determinative of whether he had written a particular letter. The Tribunal noted that generally routine letters were produced by administrative staff. However the Tribunal by careful reading of all correspondence before it felt able to identify the letters, file notes and attendance notes which the Second Respondent had written. In respect of the absence of most of the Second Respondent's witnesses their evidence went to problems with the accounts department and the disappearance of files and in each case those matters did not form part of the allegations. The Tribunal considered that it had given fair weight to the statements of the Second Respondent's witnesses and had not discounted or ignored them because of the absence of their authors. The Second Respondent had also alleged that the First Respondent forged correspondence in his name but provided no evidence to support that allegation. In cross examining witnesses and the First Respondent, the Second Respondent had also emphasised his assertion that files commonly went missing at the firm. The First Respondent and Ms Cullum produced credible explanations for the movement of files and only those relating to a few clients had not been located. There was no allegation against either Respondent of improperly removing files and the Tribunal did not find the issue relevant to its determination of the allegations. There had also been an issue at the firm which had featured in oral evidence about who if anyone was in contact with the funders and providing them with information without the knowledge of the First Respondent and Ms CC the Practice Manager. Again the Tribunal determined that it had no relevance to the determination of the allegations before it. The Tribunal looked at the cases which were the subject of the allegation.

DP

121.33 The Tribunal first determined whether the Second Respondent had responsibility for the file of Mr DP. It went through each of the documents to which it had been referred

and taking into account the evidence, made findings of fact as to whether the Second Respondent was responsible for the document. The Tribunal found generally that on the evidence where routine letters were written such as brief updates to the client about process some or all would have been written by administrative staff as opposed to fee earners. An example was the letter of 30 November 2010 to Mr DP which simply said: "We are chasing the defendants for a response to previous letters." It bore the reference HN and the Second Respondent's e-mail address but the second reference was RH whom the Second Respondent's testified was a secretary. The Tribunal accepted that he had not sent that letter however a letter dated 14 December 2010 to the client with the same reference and the Second Respondent's name typed above the name of the firm at the end was of a much more substantive nature giving a fairly detailed explanation of the process. It made promises in the first person:

> "I have made a diary entry to review the case as soon as the deadline expires, so you should expect to hear from me no later than 6 weeks from now. Please be patient and bear with me in the meantime, as I will contact you in the event of any developments."

A file note dated 17 May 2012 was the Second Respondent's as it related to reviewing the file and what steps should be taken next. There were considerable problems with the conduct of this file, the File Discontinuance Sheet showed limitation as March 2011. The Tribunal found that the first letter that the Second Respondent had written was dated 14 December 2010. He accepted responsibility in the letter dated 14 December 2010 for the ongoing conduct of the matter and said that he had made a diary note. By 17 May 2012, while still at the firm he was reviewing the file. Based on this detailed review of the evidence the Tribunal found proved to the required standard that the Second Respondent had responsibility for the file of Mr DP and therefore for the failings in the way it had been conducted.

AB

121.34 On 22 July 2010, a letter was written to AB with the reference HN, the Second Respondent's e-mail address and included a statement: "The file will be handled by the writer, HN." Later it said:

> "We should be obliged if you would consider the offer as set out above and then telephone HN in order to discuss the same with him."

At the end of the letter the writer who according to the name at its foot was the Second Respondent gave his holiday dates which was consistent with the request to telephone the Second Respondent. On 30 November 2010, the First Respondent wrote a memorandum to the Second Respondent saying that he had issued a claim form on the file and informing him that "Limitation is round about Autumn/Winter 2010 for issuing…" The claim form had been signed by the Second Respondent with the typed name of the First Respondent crossed out. The Tribunal did not conclude anything turned on that and found that the First Respondent had produced the claim form and the Second Respondent had signed it. The Tribunal found that a file note with the initial reference HN dated 17 May 2012 recording a review of the file and indicating

the way ahead was the Second Respondent's. On 18 May 2012, Mr AA wrote a letter with his reference and his e-mail address to the client including:

> "You will note that the continuing conduct this claim is now with [AA] who will be supervised by the writer, HN, who is Head of Industrial Disease."

The Tribunal found that the Respondent was responsible for this file on which limitation expired on 2 September 2010. He had a supervisory role and was getting involved from time to time writing the important letters and indicating what was to be done. The Tribunal found proved on the evidence to the required standard that the Second Respondent had responsibility for the file of Mr AB and therefore for the failings in the way it had been conducted.

Mr AS

121.35 A letter dated 4 August 2010, the first letter in the file before the Tribunal which was addressed to the Court manager had the reference PS (Mr Scholes) and a partly obliterated e-mail address. On 16 May 2012, a file note including the reference HN reported on a file review and indicated the way ahead including that the firm needed to check with the court whether proceedings had been issued and needed to update the client about a medical report. The Tribunal found this to be a review note of the Second Respondent's. An exchange of e-mails between the First Respondent and JR of the firm indicated that the limitation date was 9 April 2011. The Tribunal found no evidence that the Second Respondent was dealing with this file prior to that date. There was evidence that the Second Respondent had the file at some point because of the note headed "File note to new fee earner" dated 4 October 2012 which referred to this having been a case passed to AA by the Second Respondent. The Tribunal found there was insufficient evidence on this file that the Second Respondent had responsibility for it at the relevant time that is before the expiry of the limitation period. Even after limitation expired it was not clear if proceedings had been issued and served at a time when the Second Respondent had conduct of the file. The Tribunal found that it was not proved to the required standard on the evidence that the Second Respondent was responsible for the failings on the file of Mr AS.

Mr KP

121.36 This file had been lost and there was no evidence on which the Tribunal could base conclusions. It therefore found not proved on the evidence to the required standard that the Second Respondent was responsible for the failings on the file of Mr KP.

Mr CG

121.37 It was stated in the Rule 5 Statement that Mr CG understood that he was awarded damages of £16,000 and received two payments totalling £5,000 which were transferred with a reference Mr H Naughton. A further payment of £5,000 was also said to have been made with the same reference although the copy bank statement had not been produced. It was understood that Mr CG did not receive the remainder of his damages. The Second Respondent accepted that he had responsibility for this matter. On 25 May 2010, he wrote to Mr CG under reference HN with his e-mail address and his name at the foot of the letter above the firm name beginning:

"Further to your claim and your recent telephone conversations with the writer."

The Second Respondent accepted that he had sent texts to CG but there was no evidence before the Tribunal to enable it to understand the context in which they were sent. While he had responsibility for the file he denied making the payments to Mr CG. The Tribunal found that there was no evidence he made the payments except for the use of his name, nor any evidence that he was responsible for Mr CG's non receipt of the rest of the damages. Accordingly the Tribunal found not proved on the evidence to the required standard that the Second Respondent was responsible for the failings on the file of CG.

Mr AP

121.38 There was no file for this matter. OHP's letter of claim dated 6 June 2014 held the First and/or the Second Respondent liable for Mr AP's loss. The draft letter from the firm to the Applicant dated 8 February 2013, the circumstances of which were unclear, referred to the case but there was no evidence that the Second Respondent was in any way involved. The Tribunal found not proved on the evidence to the required standard that the Second Respondent was responsible for the failings on the file of Mr AP.

Mr GH

121.39 According to the letter from the firm to the client dated 11 January 2008 this matter was being dealt with by Ms VR a paralegal, whose reference and e-mail address were on the letter, supervised by the First Respondent. The Second Respondent stated that he did not recognise this as his document or a letter dated 25 September 2008 to the client informing him that the file had been transferred to Mr NT another paralegal and that the overall supervisor had not changed. The Second Respondent's reference appeared for the first time on a letter of 23 March 2010 to the Court manager with the claim form and a cheque bearing the reference HN and his e-mail address and his name above the firm name. He said that he might well have sent that letter on the day limitation ran out. There were then numerous occasions where the reference HN and his e-mail address appeared but the Tribunal did not find that all these letters were written by the Second Respondent. The Tribunal considered that the fact that the Second Respondent signed the claim form was not conclusive. He was recorded as reviewing the file on 23 March 2010 by an attendance note but there was no evidence he had any involvement before the expiry of limitation. He said he might well have drafted and issued the claim form on 23 March which was not unreasonable. The file note dated 24 March 2010 with his reference stating "HN reviewing file…" was consistent with the way that the Tribunal found he recorded file reviews. The Tribunal found that a letter to the insurers of the other side of 7 April 2010 referring to the Second Respondent as the writer and also indicating that he had reviewed the file and making other detail comments was his letter. It was a concern to the Tribunal that limitation period having expired on 23 March 2010 the Second Respondent was writing to the insurance company when he should have realised the position regarding limitation and informed the client. A telephone attendance note dated 2 June 2010 showed that the Second Respondent was in telephone communication with the

insurance company following his letter. The Tribunal found that he had reviewed the file again on 7 July 2010 and indicated the way ahead including dictating instructions to counsel to advise and settle particulars of claim. The Tribunal considered that he had carried out this review which was clearly not undertaken by a junior member of staff. He did not accept that the review and note was his but the Tribunal identified the style which he used and considered that the content was supporting evidence. There then followed a number of letters using the first person plural and on 28 June 2011 the First Respondent sent a memorandum to the Second Respondent saying that judgment needed to be entered and asking him to send it to someone else to run the Disposal Hearing. The Tribunal found that the Second Respondent was responsible for this file from the date that he actually issued the claim form albeit it was on the date of expiry of limitation. He was obliged to tell the client that he had issued even though it was on the date that limitation had expired and he did not ensure service within three months and did not advise the client of that and so he failed to provide a good standard of service and to act in the best interests of the client. The Tribunal did not rely on the oral evidence of Mr GH in arriving at its conclusions because the evidence of the correspondence was clear. The Tribunal found proved on the evidence to the required standard that the Second Respondent was responsible for the failings on the file of Mr GH from the time he issued proceedings on the date limitation expired.

Mr IT

121.40 The Tribunal found that the Second Respondent's involvement in this case began on 5 October 2010 when the First Respondent sent him an e-mail including:

> "We discontinued, bill was served but it wasn't sent out, I cannot see why not other than again, this seems to be where [JA] is managing to remove things from the post without anybody seen them. As a result a Default Costs Certificate has been obtained. Can I transfer it to your name and can you keep an eye on this and see if we can get the Defaults Costs Certificate set aside."

In his memorandum of 11 October 2010 to the First Respondent, the Second Respondent stated: "I have said that I will pass the file to [S]…" His memorandum to the First Respondent ended "Do you agree?" There was no response. In evidence the Second Respondent said he thought that he did not have the file and the First Respondent was dealing. There was no evidence that the Second Respondent passed the file to the First Respondent at that stage for action. In 2011 the other side's solicitors B Solicitors made contact with Mr IT and JCL also made contact with the firm having received an e-mail from Mr IT. Ms CC informed JCL on 12 July 2012 that the Second Respondent was dealing with the file and had spoken to the client the previous week. She also stated that he was reviewing all the court documents. The Second Respondent himself sent an e-mail on 13 July 2012 to JCL confirming that he had spoken to the client twice on 10 July and twice on 12 July. The Tribunal was satisfied that the file note of 17 July 2012 referring to reviewing the file and drafting an application to set aside the Default Costs Certificate and dictating a witness statement in support was made by the Second Respondent as was an attendance note of the same day referring to a telephone conversation with Mr IT in which he said he was sending IT a copy of the proposed Application and supporting witness statement. The Tribunal found that the letter dated 18 July 2012 which purported to send the

client those documents was also written by the Second Respondent whose name was at the foot of it. The letter stated that an application to set aside the Default Costs Certificate had been lodged with the county court. The Tribunal noted that this was the same date 18 July 2012 as the Second Respondent's first statement to the court. The Tribunal therefore found that the Second Respondent had conduct of this file from 5 October 2010 when he was asked by the First Respondent to look at it and still had conduct on 17 July 2012 when he spoke to the client and on 18 July when he drafted the application to set aside the Default Costs Order with the (first) statement in support. As the County Court Judge had found nothing was done during that period apart from the Second Respondent speaking to B Solicitors shortly after he received the First Respondent's note, the Tribunal found that the Second Respondent failed to provide a good standard of service and to act in the best interests of the client. The Tribunal found proved on the evidence to the required standard that from 5 October 2010 the Second Respondent was responsible for the failings on the file of Mr IT.

121.41 In summary the Tribunal found allegation 2.3 proved against the Respondent on the evidence to the required standard in respect of the clients DP, AB, GH and IT but not in respect of AS, KP, AP and CG.

122. **Allegation 2.4 - He [the Second Respondent] failed to act with integrity by misleading the Court and/or the defendant on the matter of IT by submitting a witness statement to the Court which he knew or ought to have known was not a representation of the true facts contrary to Principle 2 of the SRA Code of Conduct 2011.**

122.1 For the Applicant, Mr Solomon submitted that there was no dispute that the Second Respondent dealt with Mr IT's case. He was not initially handling the matter but it was passed to him by virtue of the First Respondent's email of 5 October 2010 quoted above. On 11 October 2010, there was a memorandum from the Second Respondent to the First Respondent stating:

> "Further to your e-mail. I have spoken to [B Solicitors] who are being very understanding and have agreed not to enforce the Default Costs Certificate. I have said that I will pass the file to [S Costs] for them to form a view to see whether we can resolve the cost issue without having to set the Certificate aside.
>
> The costs claimed are quite modest and it would make sense to do a deal if we can.
>
> Do you agree?"

The claim had been discontinued and the defendants had applied for costs which they were entitled to. The costs were not dealt with and so the defendants applied for a Default Costs Certificate. S Costs were the cost draftsmen for the firm. It was clear that the Second Respondent knew full well in October 2010 that a Default Costs Certificate was in existence as the above memorandum showed. Nothing was done and the matter was pursued by the defendants and their representatives. The firm eventually applied for relief from sanction in 2012. The Second Respondent swore a witness statement dated 18 July 2012 dealing with this application. It began:

> "I am employed by Calibre Solicitors Limited t/a Legal Gateway Solicitors as Litigation Manager and Head of their Industrial Disease Department."

Mr Solomon pointed out that there were manuscript additions to the statement but these were not on the original. The Tribunal queried that the copy statement in the bundle was not signed. Mr Solomon submitted that it was not disputed that there was a witness statement submitted to the court with the application notice. Mr Solomon referred the Tribunal to paragraphs 11 to 13 of the statement dated 18 July 2012 which said:

> "It does appear that the file and Bill of Costs was tendered to [S] Costs, who at that time represented the Claimant's Solicitors as Costs Draftsmen/Negotiators. It is unfortunately then that that the second problem arose with regard to the conduct of the file. Unfortunately, the relationship between my firm and [S] Costs broke down as concerns had been expressed at the degree of diligence being shown by [S] Costs in progressing the work they were doing on my firm's behalf. There were many instances of long delays and oversights which led to matters coming to a head and a decision being taken to withdraw all files from [S] Costs.
>
> All files were, at the involvement of Solicitors for both parties, returned to my firm but on that (sic) it was necessary to distribute files to fee earners, and clearly as the fee earner for this file had left the firm in the manner described above, there would have been no designated fee earner recorded on the system.
>
> Unfortunately the matter was not noticed until recently."

Later in the July statement, the Second Respondent said:

> "Although the present Application has not been made promptly so far as the date of the Default Costs Certificate is concerned, I submit that the Application has been made promptly once the matter was drawn to my attention."

Mr Solomon based his understanding that this version of the statement had been before the court on the court's own judgment. The Second Respondent blamed S Costs for the delay. Mr Solomon referred the Tribunal to the Second Respondent's witness statement dated 15 August 2012. It began:

> "I am employed by Calibre Solicitors Limited t/a Legal Gateway Solicitors as Litigation Manager and Head of their Industrial Disease Department."

121.2 The matter came to court and Mr Solomon referred the Tribunal to the judgment dated 30 December 2012 of Deputy District Judge Webster:

> "This is the judgment on the Claimant's application dated 15.8.2012 to set aside a default costs certificate issued against him on 6.8.2010 in the sum of £5832.84...

...

In deciding this application, I have considered written evidence in the form of two witness statements from the Claimant's Solicitors both made by HN, who, at the time of making those statements was a Litigation Manager and Head of the Industrial Disease Department at Legal Gateway. They are dated 18.7.2012 ("the First Statement") and 15.8 2012 ("the Second Statement") Legal Gateway sought to withdraw the First Statement by letter to [B Solicitors], the Solicitors for the Defendant, dated 3.8.12 on the grounds that they understood "from [S] Costs there may be factual inaccuracies" in the statement.

It was, however, put into evidence by [B Solicitors] as an exhibit to the witness statement of [AL], Partner and Head of the Firm's London Costs Department, made on 20.8.2012. I have therefore taken all three statements into account.

...

At the very outset of the application, Counsel for the Claimant,… conceded very wisely in my view in the face of overwhelming evidence, that the Claimant's Solicitors must have had at least imputed knowledge of the default costs certificate shortly after it was served."

Mr Solomon submitted that the firm and the Second Respondent in particular had actual knowledge of the Default Costs Certificate. The judgment continued:

"Up to that point, the Solicitors had been claiming that they only became aware of it in July of this year…"

Mr Solomon submitted that it could not be right that they only knew in July 2012. The judgment continued:

"In addition, [Counsel for the firm] also concedes, again most sensibly, that there is no good explanation for the failure and further that there has been an inordinate delay in making the application now before me."

121.3 Mr Solomon asked the Tribunal to read the judgment in detail but highlighted under Findings:

"In his First Statement, Mr Naughton explained that initially the failure to file points of dispute arose because of the fact that the conducting Solicitor, [JA], had been ill and had not given the case the necessary attention. He ultimately left the practice. His files, including that of the Claimant [the firm], had been distributed between the other Solicitors in the team.

Mr Naughton then went on to say that the Claimant's file appeared to have been sent to external Costs Draftsmen, [S] Costs. The relationship between the two practices then broke down due to alleged delays by [S] Costs, including

> on this case, he said and the files were returned and distributed amongst Legal Gateway's fee earners.
>
> None of that evidence in fact amounted to any reasonable explanation for the failure, as conceded.
>
> In his Second Statement, Mr Naughton admitted that the file never had been referred to [S] Costs. He was pressed in cross examination by ...Counsel for the Defendant to explain how he came to assert, quite wrongly, that the file had been referred to [S] Costs. The best he could offer was to say that that would have been the process usually followed. He went on to say "I didn't think it appropriate to check. I've said it many times in many cases and been accurate so I assumed it had been."

Mr Solomon submitted based on the evidence that what the Second Respondent said was plainly not correct; he had actual knowledge of the position because he was handling the case. He knew that no file had been sent to S Costs and he knew of the Default Costs Certificate since 2010. The Judge continued:

> "I have also considered the question of whether that failure [to comply with the CPR] was intentional on the part of Legal Gateway. [Counsel] for the Claimant submits it was not. Mr [AL] in his witness statement for the Defendant also submits that it was not and was "just a case of extreme incompetence." [Counsel for the Defendant] in his submissions today however urges me to find that the delay was indeed intentional.
>
> I find [Counsel for the Defendant's] submissions to be the most compelling on the evidence…
>
> Legal Gateway had failed to act in the intervening 22 month period, despite the many entreaties by [the Defendant's Solicitors] to do so. That failure cannot be said, in my view, to be unintentional. Other Solicitors in the firm, in addition to Mr [JA] knew of the problem by October 2010 at the latest; knew what must be done to solve it and failed to act, until forced to. I find that that failure was deliberate from, at the latest, the 1.11.2010..."

121.4 Mr Solomon submitted that there were six instances of letters or telephone calls from the Defendant's Solicitors asking the firm to deal and the Judge found deliberate failure from 1 November 2010. In the context of the Court's findings an allegation of lack of integrity was brought against the Second Respondent. Mr Solomon submitted that the Tribunal was bound by the findings of the Court on this issue. Mr Solomon submitted that the Second Respondent was aware that the file had not been passed to the cost draftsmen [S] Costs. He stated in a memorandum dated 11 October 2010 that he would send it himself. He failed to do so. The Second Respondent thereafter swore a witness statement dated 18 July 2012 in support of an application to set aside the Default Costs Certificate. In that statement, he asserted that: "It does appear that the file and Bill of Costs was tendered to [S] Costs." That was wrong and untrue. In the judgment of that application, the Second Respondent's first witness statement was held to be factually incorrect and Second Respondent explanation was "I didn't think it appropriate to check." He now stated that he was misled by the First Respondent. It

was clear that he was aware of the correct position prior to drafting his statement. For any further background information, Mr Solomon referred the Tribunal to a letter dated 31 July 2012 from S Costs Ltd which dealt paragraph by paragraph with the witness statement dated 18 July 2012 and said why it was wrong.

121.5 Mr Solomon cross examined the First Respondent about the case of Mr IT and the costs position. The First Respondent agreed that the Second Respondent's witness statement dated 18 July 2012 was sent to Skipton County Court with the court fee of £120 and an application relating to the Default Costs Certificate and it was copied to the other side's solicitors. He did not know why the firm had not kept a signed copy of the witness statement on the file; they normally would have done so. The First Respondent also stated that they could not have sent the witness statement to the court in the form it appeared before the Tribunal covered with handwritten annotations. He stated that he did not see the witness statement before it went out. He stated that the file had not been sent to S Costs when the costs certificate came in. He also agreed that contrary to what was stated at paragraph 13 of the statement that the matter had not been noticed until recently, it had actually been noticed two years earlier and that the Second Respondent knew about it from the First Respondent's memorandum to him of 5 October 2010.

121.6 It was put to the First Respondent that on 1 August 2012 he wrote S Costs confirming in the absence of the Second Respondent on leave that he would write to the court withdrawing the July statement and would advise the defendants that there was a misunderstanding as to fact which required correcting after correspondence from S Costs complaining about the witness statement. Initially the First Respondent agreed with Mr Solomon that he knew it was inaccurate but later conceded that he knew it was untrue. On the Second Respondent's return from leave the First Respondent had a conversation with him telling him to sort it out. A second version of the witness statement was produced which the First Respondent thought followed the manuscript amendment on the first version. It included:

> "Although the present Application has not been made promptly so far as the date of the Default Costs Certificate is concerned, I submit that the Application has been made promptly once the matter was drawn to my attention."

The First Respondent agreed that repeated an untruth. He could not remember seeing it before it went to the court. He rejected the Second Respondent's assertion that everything the latter wrote in the statement was what the First Respondent had told him; the Second Respondent had the file.

121.7 In cross examination by the Second Respondent of the First Respondent, the latter was referred to his supplementary statement where he said:

> "...I cannot recall whether [the Second Respondent] had conduct of the [IT] case prior to the issue of enforcement, however I did not tell him what the position was with the case, nor would I have done so. I did not instruct him what to include in his witness statement. The information came from the Second Respondent. It was his witness statement, not mine, and he signed the

> statement of truth. I recall having to get him to retract his comments abut (sic) the cost draftsman and to apologise."

The First Respondent agreed as Mr IT had given in evidence that the Second Respondent had no contact with his case until Mr IT was contacted by the defendant's solicitors about the default costs. He also confirmed that he was saying that the statement dated 18 July 2012 was prepared by the Second Respondent to support an application to set aside the Default Costs Certificate. He had made the hand written alterations to the statement after receiving a letter from S Costs. He agreed the statement was unsigned as was the Second Respondent's statement before the Tribunal dated 15 August 2012. He did not know if the statements were signed. The First Respondent stated that it was probably correct that the Second Respondent was not in the office when the First Respondent received the S Costs letter. On the Second Respondent's return in August 2012 he asked him to sort out the matter as team leader with the file. He rejected the suggestion that he was supervising preparation of the witness statement at that time. His e-mail to the Second Respondent about doing a deal was October 2010 two years before and not as the Second Respondent put to him that there were discussions about doing a deal between them in 2012. The Second Respondent had conduct, told the First Respondent about situation and the First Respondent said see what you can do (in 2010). It was not that the First Respondent was happy for the Second Respondent to agree any figure whatever, but he trusted the Second Respondent to use his common sense and had trusted him in the past. The Second Respondent might have to come back to him to say what was being proposed but he did not.

121.8 In respect of what happened in 2012, the First Respondent said in his statement:

> "Despite being on gardening leave he agreed he would attend the hearing to explain himself. His attendance was essential given the potential for him personally to be responsible for costs."

He stated that the initial order had come back from the County Court personally naming the Second Respondent as responsible for paying the costs that had been ordered on the IT file which the First Respondent thought unfair as the Second Respondent was only an employee. The order was dated 22 August 2012 but was not in the hearing bundle. It was the reason that the First Respondent wanted the Second Respondent to be in attendance. As the Second Respondent asserted, B Solicitors for the defendant might well have required his attendance as well but the First Respondent did not recall. The Second Respondent asserted that at no time was it suggested that he faced a cost penalty.

<u>Submissions and evidence of the Second Respondent</u>

121.9 The Second Respondent accepted that the exchange of memoranda between the First Respondent and himself took place in 2010. He submitted that it did not seem that he had the file; the work could be done from information on the case management system. He accepted that he made a call to B Solicitors and sent the 11 October 2010 memorandum back to the First Respondent regarding doing a deal. The procedure from then on was that the First Respondent would send the file to S Costs. The Second Respondent submitted that he had no contact from then to when IT contacted

him because he had had the letter from B Solicitors and a visit from someone he believed was a Bailiff.

121.10 As to the statements the Second Respondent subsequently made in the IT case, his position regarding the statement dated 18 July 2012 was perfectly clear. He had a meeting with the First Respondent and some information passed. He accepted that he would have dictated a witness statement based on the information the First Respondent gave him and as far as he was aware that was the end of that. He went on leave and returned on 15 August 2012 to a meeting with the First Respondent where it was made clear that S Costs were taking issue with the statement he had prepared. Either then (that is when they took issue) or on his return the statement was substantially amended. The handwriting was the First Respondent's.

121.11 The Second Respondent was asked about a one page statement which Ms Baxter had produced during the hearing. He returned from leave and was informed by the First Respondent that an issue had been broached by S Costs about the longer statement which was substantially amended by the First Respondent. Mr D at S Costs had written a fairly strongly worded letter to the First Respondent because the statement had been sent to S Costs. The short statement dated 15 August 2012 had not been prepared by him. It was drafted by the First Respondent and the Second Respondent signed it. It was prepared on the basis of correcting information that the Second Respondent had given earlier that he had been provided with by the First Respondent. As to the first paragraph of the statement describing his role as "Head of their Industrial Disease Department", it said what it said. The statement continued:

> "I make this statement in response to the issues raised by [AD] of [S] Costs Limited as to the content of a statement prepared by me in support of an application to be launched with the Court on behalf the client of my firm Mr [IT].
>
> Firstly, I confirm that that said statement/application was not lodged with the Court."

121.12 The statement was prepared to correct what was said in the 18 July statement. The Second Respondent denied that he was lying when he allowed a signed witness statement to go into the Court; he did not prepare the wording and possibly he should have been more careful reading it. The same wording was in the first paragraph of the July statement. He said "No" when asked if he was Head of the Industrial Disease Department. The statement was handed to him and it needed to be done urgently. He did not notice it. He signed it; it was all done in a panic. It was not done with the intention to mislead anybody. In respect of the July statement he had discussed it with the First Respondent and the information discussed was what was recorded in the statement but the Second Respondent did not draft it. He did not know that two witness statements were before the court in IT's case. It was put to him that it was clear from the judgment already quoted. The Second Respondent stated that it was his understanding that the witness statement was not sent to the court and that the letter which had his e-mail address and reference dated 18 July 2012 which referred to enclosing the application and witness statement and which was sent to the court was

not signed by him. He did not know whether the statement had been sent to the court without the manuscript amendments.

121.13 The Second Respondent was directed to his witness statement in the Tribunal proceedings dated 11 May 2015 where he said:

> "The statements referred to were made by me upon the information given to me by the First Respondent. At that time I had no reason to suspect that the First Respondent had misrepresented the facts to me…"

He was also referred to his short statement of 15 August 2012 where he said:

> "I confirm that because of the seniority of my position within the firm it was not the case that my witness statement [the original one to which S Costs objected] was checked by anyone else with in (sic) the firm."

He was asked if the short statement was untrue. The Second Respondent stated that what was true was what he said to the First Respondent. The Second Respondent did not concede that what he said had been untrue but he should have been more careful. He accepted that to say that the original statement had all been his own work was inaccurate and if Mr Solomon wished to interpret it as such it was untrue.

121.14 The Second Respondent stated that by the time he got to court he had resigned from the firm. The firm was represented by counsel and he was not provided with the statements which went before the court; he had no reason to be. He denied that he misled the court on that occasion. He was asked to give an explanation of how the situation regarding S Costs had arisen. The version of events given in the original statement (18 July 2012) represented his understanding of the firm's procedure with S Costs. The Second Respondent stated that he was unaware of the breakdown in the relationship between Mr AD of S Costs and the First Respondent.

121.15 It was put to the Second Respondent that he let the court proceed on the basis that he was the Head of Industrial Disease and that the contents of the first statement were all his own work. The Second Respondent stated that he did not believe that he intentionally misled the court and he did not accept that it had been misled by the substantive evidence that he gave. He agreed that it had been misled by some evidence; perhaps regarding how his status was described and his assertion that the original statement was prepared from his own knowledge; he accepted that was wrong and maintained these statements were the work of the First Respondent and not his. He was not asked to explain his status or if the statement was prepared from his personal knowledge.

121.16 In cross-examination by Mr Solomon the Second Respondent rejected the suggestion that the October 2010 email exchange showed that the First Respondent transferred the file to him. His response indicated to him that the file had stayed with the First Respondent. He had cause to speak to the defendant's solicitors regarding a specific point. He agreed that he said he would pass the file to S Costs but the system was such that one would pass it to the First Respondent and the administration department and they would pass it to S Costs. He did not have file. As to him having been chased by B Solicitors six times thereafter, the Second Respondent stated that if they rang he

would have passed messages on. He had referred the file to the First Respondent and the matter of negotiating costs was not in his remit. He was asked about the basis for his belief that the First Respondent had referred the file to S Costs. He relied on his knowledge of the process.

121.17 The Second Respondent was referred to a letter dated 27 June 2011 sent by e-mail by the client IT to the Second Respondent following a telephone conversation between them and it was put to him that the client thought that he was dealing with the matter. The Second Respondent agreed and stated that the client had telephoned him. As to why he had not said that the client should deal with the First Respondent when he telephoned, the Second Respondent stated that he would probably have said that he would review the file and get back to the client. He agreed that a telephone file note dated 17 July 2012 showed that he had telephoned the County Court but he had rung because the client was concerned about a 'Bailiff's' visit and had called the Second Respondent and to be blunt the Second Respondent was probably the only person whom the client had got to speak to. He did not dispute he had written a file note dated 17 July 2012 for two hours work, which indicated that he had reviewed the file, drafted an application to set aside the Default Costs Certificate and dictated a witness statement in support and which bore his reference HN but the Second Respondent stated that the witness statement was based upon the drafting and amendments of the First Respondent and it would have been passed to the First Respondent to ensure it matched what he had told the Second Respondent and what he had written (on the earlier version). He agreed he had cross examined the client Mr IT on the basis that he had written the letter to him dated 18 July 2012 which said "We have lodged with the court" etc. The Second Respondent emphasised that it said 'We'. It was put to him that the letters dated 18 July 2012 to the court and to the other side's solicitors were all his but he said he did not believe that he had written those letters. The letter to the client was accurate regarding the action the Second Respondent would take but he always maintained that he did not have personal possession of Mr IT's file.

121.18 The Second Respondent accepted that paragraph 11 of the witness statement he dictated dated 18 July 2012 was wrong when it said that: "It does appear that the file and Bill of Costs was tendered to [S] Costs." but at the time it was presented to him as being the case. He did not have the file. He dictated the statement from the case management system based on the information he had been given. He had no direct control over the procedures whereby S Costs was used. It was put to him that he said in paragraph 17 of the 18 July 2012 statement:

> "Although the present Application has not been made promptly so far as the date of the Default Costs Certificate is concerned, I submit that the Application has been made promptly once the matter was drawn to my attention."

and at paragraph 13:

> "Unfortunately the matter was not noticed until recently."

whereas he had known about the Default Costs certificate for two years. The Second Respondent said that he did not prepare the witness statement as such; he dictated it on information given to him; he did not dictate it based on the memorandum of 2010. He was not aware that the position regarding the Default Costs

Certificate had reached the state it had until the client called him about the visit of the "Bailiff". He did not accept that he was the creator of the first statement and he never signed it that he was aware of. It was put to him that paragraph 17 of the second witness statement repeated the point made in paragraph 17 of the first one. As to the fact he did not seek to amend the error, the Second Respondent said that this statement was prepared from the first one as amended and it was effectively prepared by the First Respondent.

121.19 The County Court judgment recorded:

> "In his Second Statement, [the Second Respondent] admitted that the file had never been referred to [S] Costs. He was pressed in cross-examination by Mr [B], Counsel for the Defendant, to explain how he came to assert, quite wrongly, that the file had been referred to [S] Costs. The best he could offer was to say that his understanding was that that would have been the process usually followed. He went on to say "I didn't think it appropriate to check."

It was put to the Second Respondent that he did not just have imputed knowledge but he had actual knowledge for a couple of years and he did not tell the Court. The Second Respondent stated that these comments were made by counsel for the firm who was not representing him; he was not employed by the firm. In the 15 August 2012 witness statement at paragraph 11, he stated:

> "The established procedure at that time would have been for the file of papers/Bill of costs to have been sent to the Costs Draftsmen, however for the reasons stated above this did not happen on this occasion."

The Second Respondent stated that he did not recall if he was asked whether he had physical possession of the file and if he had been asked he would have said that he did not. He had no reason to suspect that the file has not gone down the normal route to S Costs and when asked assumed that the normal route had been followed. The Second Respondent was asked why he had not said in court that he had no knowledge beyond the file note in respect of his telephone call with the other side and he said it was not put to him in a form whereby he could say that. He was referred to the fact it was in the judgment that he was asked what the procedure was and he answered what he understood it to be. No one enquired if it had been followed. The Second Respondent stated that his evidence was full and frank.

121.20 It was put to the Second Respondent that in the judgment it was stated:

> "I find that that failure was deliberate from, at the latest, the 1.11.2010..."

The Second Respondent rejected the suggestion that he was dealing with the matter and not in the best interests of the client. He also denied that he allowed the court to have information he knew to be wrong and so failed to act with integrity. He stated that in evidence Mr IT only said that he was involved from when IT rang him after he received the first letter from the other side's solicitors in 2011. The client had no problem with any contact with the Second Respondent.

121.21 In cross examination by Ms Baxter, the Second Respondent agreed that the history of the s 43 orders would have made him very cautious about putting his name to anything that was not accurate. He had not spelt out in his reply e-mail of 11 October 2010 that he did not have the file and had not gone on to say in order to avoid ambiguity that he would pass the file to S Costs because he did not think it necessary. There was an established procedure which would be automatic. As to whether there had then been a misunderstanding between himself and the First Respondent with each thinking the other would pass the file across, the Second Respondent stated that he did not give it any thought until IT contacted him saying that the other side had written to him. In order to find out what was going on even involving a visit by bailiffs he would look on the case management system and not necessarily the file. Mr IT was not his client but a client of the firm and the First Respondent. As to the file note of 17 July 2012 which began: "Reviewing file..." That meant he was reviewing it on the case management system. Access to the file on the case management system did not mean physical access to the paper file He assumed that the case management system would reveal his file note with the other side's solicitors of 2010.

121.22 The Second Respondent agreed that the statement dated 18 July 2012 for Skipton County Court was quite a long statement. It might have been typed by him badly or he would have dictated it. As to whether the First Respondent was standing there while he was dictating, the Second Respondent stated that there was a discussion between them and he took notes. The Second Respondent stated that had he known then what he knew now there would have been a reference to meeting the First Respondent or that he was a party to the witness statement in his attendance note dated 17 July 2012 when he referred to drafting the application and dictating the witness statement in support. He agreed perhaps he should have said to the First Respondent that it was necessary to explain in the witness statement that there was a misunderstanding and it was for the First Respondent to write it and not him.

121.23 The Second Respondent stated that he did not know if the corrected statement which was unsigned and attached to the shorter statement dated 15 August 2012 had been sent to the court. Ms Baxter referred the Second Respondent to an attendance note dated 15 August 2012 which stated:

> "Following discussions with Ed, reviewing and amending the statement in support of the application."

and

> "The application not issued court so need to be re-sent to court for issue with new statement.
>
> Statement prepared for [S] Costs."

The Second Respondent agreed that the longer of the statements prepared on dated 15 August 2012 was the one he referred to and that the shorter (one-page) statement of the same date was for S Costs. He agreed there were two statements but for different purposes. He stated 15 August 2012 was his first day back from leave. He agreed that the memorandum to him from the First Respondent dated 3 August 2012 had been written while he was on holiday. It said:

"READ THIS UPON YOUR RETURN TO THE OFFICE IMMEDIATELY!

Harry
On the case of [IT], [S] want to sue you for liable (sic), I need to discuss the complaint and [S's] actions and your witness statement with you in order that we can place a corrected statement on the court file."

The Second Respondent asserted that it was a self-serving memo intended to divert attention. The Second Respondent fully understood S Costs' concerns. He was challenged about saying that he did not bother to correct and had not read the short statement. The Second Respondent stated that he read it but he did not take note of the inaccuracies. It was not set out as a properly prepared statement which the other ones were. He rejected the suggestion that he signed it because it was true.

Determination of the Tribunal in respect of allegation 2.4

121.24 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and for the First Respondent and by the Second Respondent. The Tribunal found that three statements in this matter had been signed by the Second Respondent. There was a statement dated 18 July 2012 which on the evidence the Tribunal found had been submitted to the Court along with the application to set aside the Default Costs Certificate. The Second Respondent said as much in his letter to Mr IT dated 18 July 2012 and the Judge referred to it in his judgment by date and called it the First Statement. There were then two statements signed by the Second Respondent both dated 15 August 2012. One of these statements constituted an amended version of the statement of 18 July 2012. Both versions contained inaccuracies. The third statement a one-page document dated 15 August 2012 was produced during the course of the Tribunal hearing. In that statement the Second Respondent also described himself as Head of the Industrial Disease Department. It was not material to the allegation whether this third statement was submitted to the Court. On the evidence it was produced to placate S Costs and fend off a potential defamation action. The Tribunal concluded that the short statement dated 15 August 2012 never went to the Court but just to S Costs. Mr Solomon said that it went with the corrected statement but the judge referred to both versions of the long statement that is the version dated July and the corrected August version. The July statement asserted that the file and bill of costs was sent to S Costs which was incorrect. It also stated that the matter had not been noticed until recently when in fact the Second Respondent was aware of it at least on 5 October 2010. Furthermore in a letter dated 8 August 2012, Mr IT informed the First Respondent:

"As per my previous letter dated 13.07.12, I have still not received a copy of the Court application and support witness statement.

I am however, informed by [the other side's solicitors] that the accompanying statement provided by [the Second Respondent] is in fact inaccurate. I spoke with [the Second Respondent] on 27.06.11 (see documents enclosed) and made him fully aware of the situation, as this was when the opposition Solicitors began pursuing me for the outstanding costs. Apparently in the statement [the Second Respondent] claims to have only just become aware of the Default costs certificate. This is clearly not the case..."

The Tribunal found this letter from Mr IT who gave clear articulate evidence and who was clearly a witness of truth, to be accurate. The 15 August 2012 corrected statement repeated that the matter had not been noticed until recently and referred to it as an oversight. The Second Respondent also stated that the application had been made promptly once the matter was drawn to his attention which was incorrect. In both statements the Second Respondent stated that he was "Head of their Industrial Disease Department" but in evidence he denied that was the case. The Second Respondent had referred to the fact that the copies of the two statements were not signed but the Tribunal considered that the Judge who referred to both of them would not have accepted unsigned statements.

121.25 The Tribunal found that the Second Respondent tried to place all the blame for the inaccuracies in the various statements on the First Respondent by arguing that the statements were not his because they were based on information provided by the First Respondent. (The Tribunal noted incidentally that the short August 2012 statement specifically set out that the July statement was not checked by anyone else within the firm because of his seniority.) The Tribunal rejected his argument; the Second Respondent signed the statements and had an obligation to ensure that they were correct and he was the one who was to attend court to give evidence. In any event he did not dispute that he dictated the 18 July 2012 statement and the file note dated 17 July 2012 supported that. In the amended version of the statement dated 15 August 2012 he admitted that he based his first statement on what he thought was the usual process at the firm for referring files to S Costs and admitted that the file had not been referred. He must have known that the application to set aside the Default Costs Certificate was not made promptly once the matter was drawn to his attention because he had known of the matter since October 2010 and been reminded of it by the client in 2011 and the application was not made for around two years. The statement dated 18 July 2012, the subject of the allegation was relevant to what the Court was being asked to decide, to set aside the order. The Tribunal found as a fact that the 18 July 2012 statement misled the Court and/or the defendant on the matter of Mr IT by submitting a witness statement which the Second Respondent knew or ought to have known was not a representation of the true facts. The Tribunal found that the 15 August 2012 statement to the Court was also misleading as set out above but Mr Solomon's skeleton argument relied only on the earlier statement. The Tribunal found the actions of the Second Respondent in respect of the 18 July 2012 statement to lack integrity and found allegation 2.4 proved on the evidence to the required standard.

Previous Disciplinary Matters

122. None against the First Respondent.

123. The Second Respondent was subject to the s 43 order imposed by the Tribunal in case no. 4635/182/3452 dated 25 August 1982

Mitigation

First Respondent

124. The First Respondent stated in evidence that the witness statement of Ms CC and her evidence had given him the opportunity to reflect. He was thoroughly ashamed of having let so many people down and that his conduct was not up to the standard it should have been. He was pleased that Ms Baxter had been able to apologise on his behalf to the clients who gave evidence at the Tribunal. He realised that the purpose of sanction was to protect the public from harm and maintain the reputation of the profession. He acknowledged that the admitted and proved course of conduct had potentially undermined public confidence and in respect of clients at least, the potential harm depended ultimately on the resolution of their ongoing litigation. He also understood that there was an element of punishment and deterrence in sanction to which the finding of lack of integrity would be particularly relevant and that the misconduct found proved against him was serious. He had lived with that knowledge for many months and years of the proceedings and he understood that his continued ability to practice was very much at risk. Ms Baxter submitted that the lack of integrity found proved against the First Respondent was an isolated incident relating to two documents dated 15 November 2012 and 22 January 2013 and occurred very late on when it was clear that the First Respondent was approaching a mental health crisis and the business was becoming more and more stressful and difficult. The conduct found proved in respect of the case of Mr GH was a single instance and not indicative of fundamental flaws in character. This was not a root and branch issue or habitual carelessness in correspondence with clients whom he had failed. Ms Baxter asked for it to be put in the context of what was happening at the time. Ms Baxter submitted that the Second Respondent came to the First Respondent through an agency as an experienced fee earner in this type of work. It never crossed the First Respondent's mind that there was any type of regulatory issue. The First Respondent thought he could deal with the files and had the necessary integrity. He did not engage in proper supervision of the Second Respondent and the team he worked with. The First Respondent accepted responsibility but it was against this backdrop that what the Tribunal had found had taken place.

125. Ms Baxter recognised that personal mitigation was of lesser force but it was relevant to understanding the context of his misconduct and how he came to the Tribunal. He qualified in 1999 and became a partner in the firm in 2006. He only worked there for a relatively short time before the original partner decided that she wished to emigrate and floated the idea of him taking on responsibility. At that point he was 32 years old and relatively young. There were four fee earners in the firm. In a short period of three years it had risen to 30 fee earners at its zenith. He was used to working as a solicitor and fee earner but not used to dealing with the management requirements of the growing business especially in a changing legal profession and a climate of financial hardship with regulatory changes on an almost daily basis. Things became particularly hard towards the beginning of 2010. The firm took over the files of B&B. Instead of having the ability to stand back he tried to deal with the situation by engaging a practice manager and to contain the situation. He slipped into mental ill-health which was no excuse but was part of the context in which the misconduct occurred. Mental illness did not have clearly identifiable physical symptoms and was often allowed to continue longer than other illnesses before there was medical

intervention. According to his GP's letter to which Ms Baxter referred the Tribunal it reached crisis point in January 2013. There had been no formal diagnosis before that and Ms Baxter asked the Tribunal to accept the situation had been developing as things got more difficult and stressful. Ms Baxter also referred to a traumatic family situation in 2012 leading up to bereavement in early 2013. These issues coincided with problems in the firm. She also referred to the First Respondent's statement setting out the detail of his background and personal mitigation.

126. Ms Baxter submitted that since the collapse of the business the First Respondent had to take time off but began working two days a week with a firm in civil litigation/ commercial disputes. He had built up to full-time working under the direct supervision of a solicitor who was aware of these proceedings and had provided a testimonial. The First Respondent recognised his limitations and did not seek to take on management or supervisory responsibility and had no desire to do so in the future. His best mitigation consisted of the full and frank admissions regarding allegations 1.1, 1.2 and 1.3 prior to the commencement of proceedings. Ms Baxter referred the Tribunal to the First Respondent's supplementary statement dated 6 October 2015. Where he had contested the proceedings mixed findings had been made in respect of allegations 1.4 and 1.5. She asked the Tribunal to take account of the totality of the First Respondent's conduct in respect of the multiple breaches in imposing sanction. This was a course of conduct involving the decline of the firm into administration.

127. Ms Baxter submitted that the First Respondent had limited means and was responsible for two young children. His wife worked in the public sector. He had a real need to continue working and the Tribunal would see from his Financial Statement that every penny was accounted for. He had debts from running the business including an amount of £94,000 to RBS. Although he said in the statement that it was not actively pursuing the debt, enforcement proceedings had been issued the previous week and there was pending civil litigation about the failings on the files. It was at the stage of the letter of claim which the Tribunal had seen but the situation would be ongoing. The firm was in administration and had no insurers.

128. Ms Baxter hoped to persuade the Tribunal that it could fulfil its statutory functions and allow the First Respondent to remain on the Roll of Solicitors possibly in a restricted way but to allow him to continue working. It was acknowledged that there had been serious misconduct but she suggested that would be adequately reflected by a financial penalty or if the Tribunal was looking at a suspension a suspended suspension order and restrictions on his practice. She submitted that public confidence could be protected by the imposition of a restriction order to ensure that he worked within appropriate limits and even if he felt strong enough to take more responsibility the order would be in place which he could seek to vary. The misconduct had occurred in bad circumstances and the First Respondent was not getting away with it easily.

<u>Second Respondent</u>

129. The Second Respondent made his mitigation having heard submissions which the Tribunal had invited from Mr Solomon on the scope of it sanctioning powers. He did not accept he had deliberately flouted the section 43 order made in 1982. If in the subsequent 33 years he was off the radar that would seem a more credible allegation

but in his witness statement and in his evidence he had detailed multiple points of contact between himself and the Applicant and its predecessors. Proceedings in 2001 provided an opportunity for enquiries to be made. Mr Solomon had said that he did not alert the Applicant to the earlier order but as he said in his witness statement he understood that the order had been rescinded based on what he had been told by his employer at the time. He had no specific order to produce. Based on these submissions he said that he was hiding in plain sight. He accepted the finding. Regarding the other matters which had been found proved part of allegations 2.3 and 2.4 the Tribunal appreciated that he was not the manager of the practice; not the person having control and supervision as such. He found it difficult to see what distinction there was in respect of allegation 2.3 between the clients in respect of whom the allegation had been found proved and the others. He regretted if it was the Tribunal's view that he had let them down. Regarding integrity he accepted the finding but asked that the Tribunal bear in mind the state of play at the firm at the time; it was chaotic as evidenced by the corroborative witness statements all of which were supportive of what he said about files moving around and disappearing. He asked the Tribunal to attach weight to the fact that matters occurred in that environment. He did not believe that he bore all the responsibility for what had been presented to the Tribunal. He had shown naiveté and relied on others. He too readily accepted information that he was provided with and he should have been more worldly wise. The Applicant suggested that the appropriate sanction was a fine. The Second Respondent submitted that he was 65 years old and past retirement age; his working life was at an end. He did not see that he would have any employment elsewhere. He invited the Tribunal to note that as from now his earnings would drop to £777.88 per month the state pension and a very small monthly private pension. He would have to face and overcome that and he was not sure how he would do it. It would be pointless to impose a financial penalty which it was impossible for him to meet. The same applied in respect of any costs order.

Sanction

First Respondent

130. The Tribunal had regard to its Guidance Note on Sanctions, to the mitigation offered for the First Respondent and to his testimonials. It also noted the medical report from his GP. In assessing seriousness, the Tribunal had regard to the fact that an allegation of lack of integrity had been proved but the other allegations were also serious particularly that relating to failure to act in the best interests of the clients in a firm where around 126 cases showed significant signs of negligence. The Tribunal considered the First Respondent's culpability. He was a sole practitioner and therefore all the responsibility was his. He had direct control of the circumstances giving rise to the misconduct. His motivation was that he wanted to grow the firm but he did not have the resources to do so. The harm that he had caused was more significant taking all the allegations together including the number of clients who were potentially adversely affected. It was foreseeable that if the firm missed limitation deadlines the client would suffer harm and he had begun to be aware in advance of the firm going into administration because 16 claims had already registered. It was an aggravating factor that the misconduct in terms of failure to act in clients' best interests continued over a period of time. The First Respondent took advantage of the client Mr GH by not explaining the firm's failures and concealing them when he wrote the two letters

in question; he did not disclose that the firm had been negligent. He knew or reasonably ought to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession, extending to those clients who were disadvantaged by the firm's failures. In terms of mitigating factors, the First Respondent had made some admissions but was not in a position to make good the losses, had not notified the regulator of the circumstances giving rise to the misconduct and indeed that omission gave rise to one of the allegations. While the lack of integrity was confined to one particular client the misconduct particularly in respect of running a firm where the best interests of clients were not upheld and a good standard of service was not provided could not be described as being of very brief duration. The Tribunal did not consider that the First Respondent had shown genuine insight into what had gone wrong. As to the possible sanctions, this matter was far too serious for no order or a reprimand to be appropriate. The Tribunal considered whether a fine would be proportionate but felt that the sheer scale of the negligence which had been found at the firm taken together with the incidence of lack of integrity was such that the misconduct was too serious for a fine to be adequate. The Tribunal considered a suspension. Ms Baxter had asked for a suspended suspension but the Tribunal did not think that that could in any way be appropriate. Having regard to the scale of the failure in respect of clients which existed at the firm over a period of time the Tribunal did not think that the reputation of the profession would be maintained by any form of suspension either fixed term or indefinite. For a firm to have so many cases with grounds for a negligence claim was staggering. It would be a matter of great concern to the public and cause the utmost damage to the reputation of the profession. While recognising that Mr RB could only guesstimates the value of loss to clients and that the figure he gave was a likely maximum of £3.5 million the losses remained substantial. The Tribunal considered that it was no accident that the firm was said to have a procedure for dealing with costs thrown away. As the Guidance Note said where Tribunal had determined that the seriousness of the misconduct was at the highest level such that a lesser sanction was inappropriate and the protection of the public and/or the protection of the reputation of the legal profession required it the Tribunal would strike a solicitor's name off the Roll of Solicitors. In terms of personal mitigation the First Respondent had offered a report from his GP but he had no evidence to show that he had a mental illness that affected his ability to conduct himself to the standards of the reasonable solicitor. He did not take medical advice at the material time. The Tribunal had regard to the case of Bolton v The Law Society [1994] 1 WLR 512 that the reputation of the profession was more important than the fortunes of any individual member in terms of the impact of sanction. Accordingly the Tribunal considered that no lesser sanction than strike off would be proportionate and appropriate in this case.

Second Respondent

131. The circumstances of this case were unusual in that the order which the Second Respondent was found to have breached had been made in 1982. The Second Respondent had asserted that the order had been rescinded but the Tribunal had found that the order was still effective. In addition to the allegation of breach of the s 43 order allegations of misconduct had been brought against the Second Respondent many of which had been found proved. Meanwhile in 2001 a further s 43 order had been made by the Applicant and rescinded for procedural reasons both decisions having been taken in ignorance of the existence of the 1982

order. The Tribunal invited Mr Solomon to address it upon the scope of sanctions available in these circumstances. Mr Solomon referred the Tribunal to the case of SRA v Liaquat Ali [2013] EWHC 2584 (Admin) where it was stated:

> "It is to be observed that the power under section 43(2) is the power to make an order which runs from a specified date for a period which is unlimited in time…"

and

> "...The section 43 order has a regulatory function, not a penal function. That is why the order is of indefinite duration, subject to revocation upon review. The purpose of the order is to safeguard the public and the Society's reputation…"

Mr Solomon referred the Tribunal in respect of its jurisdiction in this matter to Schedule 2 of the Administration of Justice Act 1985 paragraph 16(1A):

> "The Tribunal shall have jurisdiction to hear and determine any of the following complaints made to it under this paragraph with respect to a manager or employee of a recognised body ("the relevant person") –
>
> ...
>
> (d) a complaint that the relevant person has knowingly acted in contravention of an order under section 43(2) of the 1974 Act or of any conditions subject to which a permission has been granted under such an order.]"

Paragraph 18A

> (1) Where, on the hearing of any complaint made to it under paragraph 16(1A) [or (1B)] of this Schedule, the Tribunal is satisfied that a manager or employee of a recognised body [, or the sole solicitor, or an employee, in a recognised sole solicitor's practice]-
>
> ...
>
> (c) [(in the case of a manager or employee of a recognised body)] has acted as mentioned in paragraph (c) or (d) of paragraph 16(A1), the Tribunal may, if it thinks fit, make one or more of the orders referred to in sub-paragraph (2).
>
> (2) Those orders are –
>
> ...
>
> (a) an order directing the payment by the relevant person of the penalty to be forfeited to Her Majesty;"

Mr Solomon submitted that the Tribunal had exercised its power under section 43(2) to make an order against the Second Respondent in 1982. The Tribunal had power to revoke the order under section 43(3)(b):

"Where an order has been made under subsection (2) with respect to a person by the Society or the Tribunal—

(a) that person or the Society may make an application to the Tribunal for it to be reviewed, and
(b) whichever of the Society and the Tribunal made it may at any time revoke it.

(3A) On the review of an order under subsection (3) the Tribunal may order-
(a) the quashing of the order;
(b) the variation of the order; or
(c) the confirmation of the order;

and where in the opinion of the Tribunal no prima facie case for quashing or varying the order is shown, the Tribunal may order its confirmation without hearing the applicant."

132. However Mr Solomon submitted that the Tribunal had not received any application by the Applicant or the Second Respondent to review the order under s 43. Mr Solomon submitted that the Tribunal had no need to make a new s 43 order because the existing one was permanent and the Tribunal's findings were still in existence. No Tribunal or court acted in a way that was unnecessary and he suggested that it might be ultra vires to make a further order in the circumstances. If the Second Respondent were to locate the revocation order of the 1982 order which he asserted had been made then it would be open to him to appeal any judgment made by this Tribunal based on the 1982 order in accordance with the principles in the case of Ladd v Marshall [1954] 1 WLR 1489. There were other issues about integrity and failing to act in the best interests of clients which Mr Solomon submitted would have led to the Tribunal to make a s 43 order if none existed and that could be set out in the Tribunal's judgment if that was its conclusion. He agreed that it was open to the Tribunal of its own motion to revoke the 1982 order under section 43(3)(b) and that it had power to quash the order under s 43(3A)(a). It could make a new order if that was its decision. It also had power to levy a fine in connection with breach of the s 43 order of 1982. If the Tribunal wished to impose a fine it could do so under the 1982 order then revoke it and make a fresh order but he submitted that was unnecessary; the Second Respondent had been found in breach of a s 43 order and that was the end of the matter. Mr Solomon submitted that he had not been able to locate a precedent for the imposition of a fine by the Tribunal either within Tribunal cases or those of higher courts. He submitted that the only jurisdiction which the Tribunal had in respect of the existing order was to award a fine under The Administration of Justice Act 1985 and section 47(2E) of the Solicitors Act 1974. It would have to weigh up the severity of the Respondent's conduct. Mr Solomon submitted that the Applicant not having discovered the existence of the early order in 2001 was not relevant to the fixing of the amount of the fine. It could only go to mitigation and not to liability. It could go to the length and duration of the breach but if the Second Respondent had dealt with the Applicant in an open and honest way he would have informed the Applicant of the existing order but he consistently denied it including in cross examination before the Tribunal. The fine was expressed as a penalty and so the Tribunal should take into account the conduct that gave rise to the penalty. He agreed that the fine only related to acting in

contravention of the existing order and not to the other misconduct found proved but he submitted that the lack of integrity and failure to act in the best interests of clients was part of the factual matrix and the background for the Tribunal in assessing the fine.

133. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation offered by the Second Respondent. As with the First Respondent, the Tribunal looked at all the allegations together. The Tribunal had found allegations 2.1, 2.3 (in respect of some of the clients) and 2.4 found proved against the Second Respondent. The Tribunal had paid careful regard to the submissions which it had invited from Mr Solomon and having found the order made in 1982 still to be in place it accepted that if it did not wish to disturb that order the only sanction open to it was the penalty of a fine for working in breach of the order. Mr Solomon had asked the Tribunal to take into account by way of context that the Second Respondent had been found lacking in integrity in respect of the witness statement he had submitted to the court. It was an appalling failing if, taking his evidence at its best he did not bother whether the witness statement was accurate or not, particularly where he admitted that he had dictated it and it contained material inaccuracies. The Tribunal had not found the Second Respondent to be a credible witness not least because he had signed three witness statements in which he described himself as the Head of Industrial Disease while in giving evidence he was adamant that he did not fulfil that role. The Tribunal noted that the Rule 5 Statement only related to the time during which the Second Respondent had worked at BC and at the firm and the Tribunal would restrict itself in imposing a penalty to what was pleaded. In addition to the finding of lack of integrity, the Tribunal had found the Second Respondent to be involved in a considerable number of the exemplified cases where he had failed to act in clients' best interests and to provide a proper standard of work. These findings were sufficient in the Tribunal's view to justify the imposition of a s 43 order were it not the case that one was already in effect. The Tribunal did not consider that in law it was open to it also to reflect in the fine the breaches found proved in respect of allegations 2.3 and 2.4. In fixing the amount of the fine it bore in mind that Mr Solomon had accepted that the Applicant's conduct in 2001 could go to mitigation. The Tribunal took into account that in that year the Applicant had not made itself aware that a s 43 order was in place and thereby lost the opportunity to deal with the fact that the Second Respondent was working in breach of it. Conversely the Tribunal did not find credible the Second Respondent's assertions about his contacts with the Applicant over the years in respect of the 1982 order; he had produced no substantive evidence in support of those assertions. In the circumstances and bearing in mind the severe limitations upon the range of conduct to which a fine could relate, the Tribunal considered that a fine of £1,000 would be appropriate.

Costs

134. For the Applicant, Mr Solomon applied for costs against the First and Second Respondents in the sum of £89,233.90. He suggested that each Respondent should be liable for 50% of the costs. He submitted that this was a case of some significance in which a lot of background work had been done and the case had run over a period of years. One of his instructing solicitors' fee earners had been on maternity leave and handed the matter over to another; this was why two fee earners were named in the claim. Duplication in terms of reading had not been charged for.

The second fee earner took over at the point of preparation for hearing in August 2015. The Tribunal queried that 47 hours had been claimed for reviewing documents and 48 hours for drafting the Rule 5 Statement. Mr Solomon submitted that the time spent was proportionate; there were two Respondents and the allegations ranged over a number of different clients and there were significant allegations over a period of time. The Rule 5 Statement was 39 pages long and had required a lot of work; a massive amount of documentation had to be marshalled in respect of it and inevitably it took a long time to produce. The hourly rates were low and the vast majority of the work had been done at senior associate and associate rate.

135. Ms Baxter invited the Tribunal to consider the amounts of time spent in the preparation of the file and highlighted the amounts of time which the Tribunal had picked up for reviewing documents and drafting the Rule 5 Statement. She also pointed to the amount of time spent on communications 17.7 hours in particular and attendance on documents 17.3 hours by one of the fee earners. Ms Baxter submitted that the bulk of the work had been done by Mr RB in preparing and filtering documents including witness statements to go to the Applicant. Therefore the times submitted for the preparation of the Applicant's witness statements were excessive for the amount of work involved. The Tribunal's decision should also take into account the admissions made and the financial means and circumstances of the First Respondent and his family. It was not a fanciful request for the order to be proportionate and significantly less than the costs asked for by the Applicant. Ms Baxter asked the Tribunal to consider suspending the costs order. She confirmed that the firm's professional indemnity insurers had gone into administration and the First Respondent had no personal indemnity insurance.

136. The Second Respondent adopted the points which Ms Baxter had made. He appreciated that there would be cost consequences for him. Mr Solomon had referred to the fact that on his Personal Financial Statement he had not completed the section relating to property because it did not relate to his situation. However in the section headed Wills he indicated he was a beneficiary of the estate of his late mother who died in 1993. He lived in a property which formed part of her estate. If he vacated the property it would pass to his another relative or their family. He had no information about title to the property. He paid the outgoings. There was nothing in the house that he purchased and his car had modest value. He did not have any assets, no financial savings and the modest pension arrangements already referred to. The monthly income surplus shown on his Personal Financial Statement would have dissipated on a recent holiday and he had to pay for repairs to the property. He asked that any costs order be suspended as he did not have the financial means to pay.

137. In respect of ability to pay, Mr Solomon noted from the First Respondent's Financial Statement that he had a jointly owned family property valued at £245,000 with an outstanding mortgage of £125,000 and so that there was at least £120,000 equity available to meet any order made and the Applicant could apply to put a charge on the property. In respect of the Second Respondent Mr Solomon raised issues about his Personal Financial Statement which the Second Respondent addressed. Mr Solomon accepted that the s 43 order would prevent him working at the firm where he was presently employed from the date of the order unless and until the Applicant gave permission but he had known about this situation for some time and could have saved money in order to meet an order. Mr Solomon asked for an order to be enforceable.

138. The Tribunal carefully considered the submissions it had received and summarily assessed costs as follows. It had concerns about the amount of time spent on reviewing documents and drafting the Rule 5 Statement having regard to the considerable amount of work which had already been done by the Investigation Officer and by Mr RB, the latter in analysing the individual files and the problems with how they had been handled and in preparing statements for the various clients which were then passed on to the Applicant. The Applicant was not starting from scratch in this matter. It considered that the amount claimed for the solicitors was somewhat excessive and that there must have been an element of duplication when one fee earner took the matter over from another. It therefore reduced the amount claimed for the solicitors to £25,000 plus VAT from around £44,000. It also made some reduction in the amount claimed for the forensic investigation reducing it from £11,402.30 to £10,000 including some deduction in respect of travel claimed. The Tribunal found counsel's fees to be reasonable and noted that he had charged little aside from his brief fee. The Tribunal assessed costs fixed in the amount of £64,383. Mr Solomon had suggested that liability for costs be split as to 50% for each of the Respondents and the Second Respondent did not challenge that. The Tribunal took into account that the First Respondent was the only solicitor in the practice but the length of the hearing to a considerable extent reflected the way it had been conducted by the Second Respondent; were it not for that the Tribunal considered that the hearing would have been somewhat shorter. Costs would be divided between the two Respondents equally.

139. As to affordability, while the Tribunal was removing the First Respondent's ability to practice he was still employable and quite young and had a half interest in the equity of his property in the amount of around £60,000. However proceedings had been commenced against him in respect of the debt of £94,000 and he had personal debts of around £7,000. There being no subsisting professional indemnity insurance he also faced claims for negligence from former clients. The Tribunal therefore considered that it would not be appropriate to make an immediately enforceable order against the First Respondent.

140. The Second Respondent had now reached retirement age and in the circumstances it seemed unlikely that he would be able to obtain future employment. His evidence was that he had no capital assets or savings and would be dependent upon the state and a small private pension. While he had not been particularly helpful in his answers about his capital position, the Tribunal was satisfied in his case also that an immediately enforceable order should not be made.

Statement of Full Order

141. The Tribunal Ordered that the Respondent Edward Hugh Johnson, 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 £32,191.50, such costs not be enforced without leave of the Tribunal.

142. The Tribunal Ordered that the Respondent, solicitor's clerk, do pay a fine of £1,000.00 such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £32,191.50, such costs not be enforced without leave of Tribunal.

DATED this 31st day of March 2016
On behalf of the Tribunal

R. Hegarty
Chairman