SOLICITORS DISCIPLINARY TRIBUNAL

<u>IN THE MATTER OF THE SOLICITORS ACT 1974</u> <u>Case No. 11366-2015</u>

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
[NAME REDACTED],	First Respondent
STEVEN PLATTS	Third Respondent

Before:

Mr E. Nally (in the chair)
Ms A. Horne
Mr G. Fisher

Date of Hearing: 19 and 20 January 2016

Appearances

Mr Paul Gott QC, Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant

Mr David Leigh-Hunt, Solicitor, Moore & Tibbits Ltd incorporating David Leigh-Hunt Solicitors, Bedford House, 76a Bedford Street, Leamington Spa CV32 5DT for the First Respondent

The Third Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondents made by the Solicitors Regulation Authority as amended with the permission of the Tribunal were as follows:

In respect of the First Respondent only:

1.1 On 11 June 2009 the firm raised and paid from funds held on client account nine bills of costs, totalling £31,791.49, without sending copies of those bills or other written notification of the costs incurred to the relevant clients, contrary to any or all of Rule 19(2) of the Solicitors Accounts Rules 1998 ("SAR 1998") and Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007").

1.2 In respect of the bills of costs described in allegation 1.1 above, with the exception of the bills of costs raised on the BS Working Men's Club and SJ matters, there was no justification for those bills of costs, contrary to any or all of Rules 1.02, 1.04 and 1.06 of the SCC 2007.

1.3 Having been notified of the breaches described in allegation 1.1 above by the firm's accountants no later than 13 October 2010, by 11 July 2014 the bill of costs raised in respect of the SU Football Club for £13,507.83 had not been reversed, contrary to any or all of Rules 7 of the SAR 1998, Rules 1.02, 1.04 and 1.06 of the SCC 2007 and (in so far as the breach continued after 5 October 2011), Rule 7 of the SRA Accounts Rules 2011 ("AR 2011") and Principles 2, 4, 6 and 7 of the SRA Principles 2011.

1.4 In respect of the nine client matters which were billed on 11 June 2009 referred to at allegation 1.1 above:

1.4.1 the firm failed to return client money to the clients promptly, as soon as there was no longer any proper reason to retain those funds, contrary to Rule 15(3) of the SAR 1998, and (insofar as the conduct continued after 5 October 2011) Rule 14.3 of the AR 2011; and

1.4.2 the firm failed to inform the clients of the sums of client money retained, and the reason for that retention, contrary to Rule 15(4) of the SAR 1998 and (insofar as the conduct continued after 5 October 2011) Rule 14.4 of the AR 2011.

1.5 Bills of costs in respect of the CS Club matter, dated 26 May 2009 and 22 April 2010 were paid from client funds without the bills or other written notification of the firm's costs being sent to the clients, contrary to any or all of Rules 19(2) of the SAR 1998 and Rules 1.02, 1.04, and 1.06 of the SCC 2007.

1.6 There was no justification for:

1.6.1 £500.00 of the £1,250.00 invoiced on the CS Club matter on 26 May 2009; and/or

1.6.2 the bill of costs dated 22 April 2010 referred to in allegation 1.5 above, contrary to any or all of Rules 1.02, 1.04 and 1.06 of the SCC 2007.

1.7 For a period of more than 10 years after being instructed by the CS Club to deal with the closure of the club, the First Respondent failed to complete that work, and in particular failed to disburse the club's funds to its creditors, in breach of any or all of Rules 1.04, 1.05 and 1.06 of the SCC 2007 and (insofar as the conduct continued after 5 October 2011), Principles 4, 5 and 6.

1.8 In respect of the S-B and CR client matters, the firm:

1.8.1 failed to return client funds to the clients when there was no longer any proper reason for retaining them, contrary to Rule 15(3) of the SAR 1998; and

1.8.2 provided banking facilities to those clients, contrary to the rule in Wood & Burdett (as described at note (ix) of Rule 15 of the SAR 1998) and (insofar as the conduct continued after 5 October 2011) Rule 14.3 of the AR 2011.

1.9 On 29 November 2011, the First Respondent provided inaccurate and/or misleading information to the SRA Forensic Investigation Officer in that he stated he was a sole practitioner when in fact Mr LF had been made a partner on 1 September 2011, contrary to any or all of Principles 2, 6 and 7.

1.10 The First Respondent failed to make arrangements for the effective management of his firm as a whole, contrary to Rule 5.01(1) of the SCC 2007.

1.11 As at 31 October 2011, there was a shortfall on the firm's client account of £24,503.10, contrary to any or all of Rule 1(b) of the SAR 1998 and Rules 1.04 and 1.06 of the SCC 2007 (insofar as the conduct arose before 6 October 2011) and Rule 1(b) of the AR 2011 and Principles 4, 6 and 10.

1.12 Following Mr LF becoming a partner on 1 September 2011, the First Respondent failed to inform the SRA of the fact until 13 December 2011, contrary to Rule 20.05(2)(b) of the SCC 2007 and (after 5 October 2011) Outcome O(10.3) of the SRA Code of Conduct 2011 ("CC 2011").

1.13 The First Respondent signed a professional indemnity insurance proposal form dated 19 September 2011 which contained incorrect and/or misleading information, in that he confirmed that:

1.13.1 no claims had been notified to the firm in the years 2009-2011, when in fact in or about 2009 the firm had been notified of a possible claim by the estate of J (deceased);

1.13.2 the firm's accounts had not been qualified in the previous six years, when in fact the firm's accounts had been qualified in 2009 and 2010; and

1.13.3 12 files of each fee earner were reviewed each quarter for supervision purposes, when in fact such structured file reviews were not undertaken,

contrary to either or both Rules 1.02 and 1.06 of the SCC 2007.

1.14 He failed to comply with a decision of the Legal Ombudsman for more than 15 months, contrary to either or both of Principles 6 and 7.

1.15 He failed to notify the SRA of the closure of the firm on 14 January 2014 either (i) prior to the closure of the firm, or (ii) promptly after the closure of the firm, contrary to either or both of Outcome O(10.13) and Principle 7.

In respect of the First and Third Respondents:

1.16 In respect of the L (deceased), E and W client matters, costs were paid from client funds without bills of costs or other written notification of the firm's costs first being sent to the clients, contrary to any or all of Rules 19(2) of the SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007.

1.17 In respect of the W and CH matters, bills of costs for £50 and £85 (both inclusive of VAT) respectively were raised and paid from client funds, when there was no proper justification for those, contrary to any or all of Rules 22 of the SAR 1998, and Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.

1.18 The Third Respondent admitted to the Forensic Investigation Officer that it had been the practice at the firm for a number of years for small residual balances on client accounts to be dealt with by way of raising bills of costs, contrary to any or all of Rules 22 of the SAR 1998, and Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.

1.19 There was an improper transfer of £35 between the ledgers of clients CH and K, contrary to any or all of Rules 30(1) of the SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007.

1.20 Costs were taken by the firm on the L and G matters in excess of the sums assessed by a costs draftsman, contrary to any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.

In respect of the Third Respondent a solicitor's clerk, the Applicant sought an order under section 43 of the Solicitors Act 1974 (as amended).

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 13 March 2015 with exhibit KEW1
- Amended Certificate of Readiness dated 15 January 2016 with Regulatory Settlement Agreement attached in respect of Mr LF dated 15 January 2016
- Witness statement of Mr LF dated 7 May 2015
- Witness statement of Ms Lindsey Barrowclough dated 15 May 2015
- Handwritten note of costs in various client matters prepared by Mr Gott QC on 20 January 2016
- Applicant's statement of costs as at 11 January 2016

First Respondent

- First Respondent's Answer dated 8 May 2015
- Witness statement of the First Respondent dated 10 August 2015 with exhibits:
    - A. Bundle of copy records with UFN references to criminal cases undertaken in 2009, 2010 and 2011
    - B. Copy accountant's Reports from 12 May 2003 to 21 July 2014
    - C. Bundle of miscellaneous correspondence from November 1999 to May 2013
    - D Copy First Respondent's records relating to client file reviews undertaken by him
    - E. Supplementary documents
    - F. Correspondence relating to issues with RBS
    - G. Documents relating to shortfall
    - H. Documents relating to claim in the case of J
- Certificate of Readiness dated 15 January 2016
- List of Law reports to be referred to by the First Respondent
- Personal Financial Statement of the First Respondent dated 18 January 2016
- Testimonials

Third Respondent

- Third Respondent's Answer dated 19 May 2015
- Correspondence/documents from the Third Respondent comprising:
    - E-mail from the Third Respondent dated 30 October 2015 enclosing a copy of medical report dated 23 October 2015
    - E-mail from the Third Respondent to the Tribunal dated 1 December 2015
    - Personal Financial Statement of the Third Respondent dated 10 December 2015

Preliminary Issues

Regulatory Settlement Agreement in respect of the Second Respondent

3. For the Applicant, Mr Gott reminded the Tribunal that originally there were three Respondents to this application. A Regulatory Settlement Agreement ("RSA") had been approved by the Tribunal at a Case Management Hearing on 13 January 2016 in respect of the Second Respondent (referred to as Mr LF in this judgment) whereby he admitted allegations set out in the RSA in respect of the shortfall on client account (allegation 1.11), failure to inform the Applicant of having been made a partner until 13 December 2011 (allegation 1.12), signing a professional indemnity insurance ("PII") proposal form which contained incorrect and/or misleading information (allegation 1.13) failing to comply with the decision of the Legal Ombudsman (allegation 1.14) and failure to notify the Applicant of the closure of the firm (allegation 1.15). Mr LF had made points in mitigation which were recorded in the RSA (information which was not available at the time of the decision to refer his conduct to the Tribunal). Mr LF had accepted the imposition of a fine in the sum of £2,000 and agreed to make a contribution towards the costs of the Applicant in the sum of £1,000. The Tribunal had consented to the withdrawal of all allegations brought against the Mr LF who played no further part in the proceedings. The

proceedings would therefore continue in respect of the First and Third Respondents only.

Absence of the Third Respondent

4. The Third Respondent was not present and, for the Applicant, Mr Gott submitted that he should be dealt with in his absence. Mr Gott referred the Tribunal to a report from the Third Respondent's GP dated 23 October 2015 in respect of an anxiety disorder and an e-mail from the Third Respondent to the Tribunal office dated 1 December 2015 which included:

> "It is my intention to allow the Tribunal to make a section 43 order without my attendance.
>
> Just to clarify I will not be attending the hearing from the 19-21 January 2016 following advise (sic) and the consultation with my consultant…
>
> Please proceed in my absence and I have no objection to you dealing with the allegations based on my Answer and all I would like to say is there was never any malicious intent on my behalf."

Mr Gott also referred to the Third Respondent's Answer to the Rule 5 Statement dated 19 May 2015. He submitted that the Third Respondent made a small number of admissions and a series of assertions about having no recollection of relevant matters. The Third Respondent consented to the application being heard in his absence and had said all that he wanted to say. The Tribunal was aware that it needed to exercise its discretion to proceed in the absence of a Respondent with great care. Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rule 2007 provided:

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

The Tribunal was satisfied that the Third Respondent had been properly served with notice of hearing and it was apparent from the documents to which Mr Gott had referred that he wished it to proceed in his absence. The Third Respondent was clearly aware of the potential consequences for him if the matter went ahead without him. The Tribunal would therefore exercise its discretion under Rule 16(2) and hear the application notwithstanding that the Third Respondent was not present or represented.

Withdrawal of allegation of dishonesty against the First Respondent

5. Mr Gott submitted that the Rule 5 Statement as originally drafted included at 1.21 an allegation of dishonesty against the First Respondent in relation to each of the allegations 1.6, 1.9 and 1.13. On the basis of an exchange of open correspondence between those instructing Mr Gott and Mr Leigh-Hunt for the First Respondent, the Applicant now proposed to apply to withdraw the allegation of dishonesty. The First Respondent proposed to acknowledge responsibility for breaches of the various regulations cited in allegations 1.1 to 1.20. Allegations 1.16 to 1.20 would still be

pursued against the Third Respondent. Mr Gott submitted that the allegation of dishonesty against the First Respondent had not been made lightly but in a case of this kind where the Third Respondent was not in attendance and Mr LF had been made the subject of an RSA, the withdrawal of the allegation of dishonesty should be permitted against an admission of the other 20 allegations. Mr Leigh-Hunt confirmed that he had been in discussion earlier with Penningtons Manches for the Applicant and this morning with Mr Gott. He was content that the allegation of dishonesty should be withdrawn across-the-board. He did not disagree that the Rule 5 Statement had been properly drawn at the outset, but submitted that if there had been a three-day trial in respect of three Respondents, once proceedings were underway and the Tribunal and the Applicant had the opportunity to see the Respondents' answers and witness statements, a whole spectrum of facts would become apparent which was not necessarily obvious from the Forensic Investigation Officer's report. The First Respondent had denied dishonesty in interview and Mr Leigh-Hunt submitted that additional information showed there was no case for dishonesty, rather that these were situations involving inefficiency. The First Respondent acknowledged that as principal of the firm he had a responsibility for technical breaches of the accounts rules. The Tribunal pointed out that the breaches alleged against the First Respondent, aside from dishonesty, were not simply technical but also involved breaches of conduct rules. Mr Leigh-Hunt further submitted that, over the Christmas break, the First Respondent had had the opportunity to identify additional documentation, which Mr Gott confirmed he had seen and read the day before, and which it was felt that it would be helpful for the Tribunal to read before arriving at its decision on the application to withdraw.

6. The Tribunal went through in some detail the additional documentation in bundles E, F, G and H which the First Respondent had provided, and also had regard to the First Respondent's witness statement dated 10 August 2015. The Tribunal noted that the First Respondent was out of the office much of the time and, until August 2010, was not, as he described it, physically involved in the administration of the firm. It also noted the First Respondent's admittedly unrigorous approach to particular bills, and the apparently heavy involvement of another individual, Mr W, for example in the billing process and handling the client J claim. The Tribunal considered that it was important to reflect on the effect of the withdrawal of the allegation of dishonesty on the proceedings as a whole and on the First Respondent in dealing with the rest of the hearing. Overall the Tribunal was satisfied that there was insufficient evidence to support a successful prosecution of the allegation of dishonesty in respect of allegations 1.6, 1.9 and 1.13 (the only ones in respect of which it was brought) against the First Respondent and was therefore prepared to permit allegation 1.21 to be withdrawn. The Tribunal pointed out that it still had available to it the full range of sanctions regarding allegations which were admitted and subsequently found proved.

Factual Background

7. The First Respondent was born in 1950 and admitted to the Roll in 1975. He held a current practising certificate and was a salaried partner at H Solicitors.

8. The Third Respondent was unadmitted and was employed by H Solicitors.

9. The First Respondent was one of two partners in Sergeant & Collins Solicitors ("the firm") in Scunthorpe. In January 2014, the firm merged with H Solicitors and ceased to exist.

10. On 29 November 2011, Ms Lindsey Barrowclough, a Forensic Investigation Officer ("IO") of the Applicant commenced an inspection of the books of accounts and other documents of the firm. This inspection culminated in a Forensic Investigation ("FI") Report dated 3 April 2012.

11. In respect of bills of costs not sent to clients and sweeping up of old client balances, the firm's accountant's report for 2009 was qualified in that it identified nine invoices drawn up on 11 June 2009 in circumstances where those bills appeared to have been drawn up for the purpose of clearing long-standing client account balances on matters which had completed many years earlier; and the bills contained only the client name, but no address details, and had not been sent to the relevant clients. Those bills totalled £27,644.81 which the IO calculated including VAT at £31,791.49. The total figure was modified during the hearing based on varying rates of VAT which applied.

12. The firm's accountants HW set out their concerns regarding the nine bills in a letter dated 13 October 2010 to the First Respondent and his former partner Mr W. The background facts relating to the nine clients involved are set out under Mr Gott's submissions for the Applicant in respect of allegations 1.1 to 1.4 below as they form an integral part of the allegations.

13. The accountant's report for the year 2010 was again qualified, for reasons which included that on four files it had not been possible to establish whether bills had been sent to clients. The IO reviewed the firm's bill books for 2010 and 2011 and identified bills on 13 client matters which did not contain address details for clients. Of those 13 matters, it was not possible for the firm to locate files for two of the matters, so a further matter was selected by the IO and a total of 12 files were reviewed. On all 12 of those files, the IO identified instances where the firm had not sent bills to clients. Four of those files were exemplified in the FI Report: CS Club, Client L deceased, Client E - debt, and Client W - transfer of interest in property. The background facts are set out under Mr Gott's submissions relating to allegations 1.5, 1.6, 1.7, 1.16, 1.17, 1.18 and 1.19 below as they form an integral part of the allegations.

14. In interview on 26 January 2012, Third Respondent told the IO that it had been standard practice at the firm throughout his time there to "sweep up" small credit balances left on client ledgers. He also said that every year the cashier provided each fee earner with a list of client accounts and any small residual balances would be "put to costs". Neither the matter files nor client ledgers would be checked prior to billing as files would have already been "put away".

15. In his letter to the Applicant dated 24 April 2012, the First Respondent made various admissions. In his letter to the Applicant of 11 July 2014, the First Respondent denied personal involvement but accepted overall responsibility.

16. The FI Report raised concerns about an inter ledger client account transfer involving client Mr CH for whom the Third Respondent had acted in the purchase of a property. It completed on 12 July 2010 and a bill of costs was produced and sent to the client along with a refund. On 18 January 2011 a client account balance of £120 remained. The firm had acted for Mr K in the purchase of property. On 11 February 2011 a client to client transfer was made from Mr CH's ledger to that of Mr K in the sum of £35, with the entry narrative "transfer to KAZ2/2 To a/c to bal per SRP". SRP were the initials of the property purchased by Mr K. There was a simultaneous client to office account transfer of the £35 which reduced Mr K's client account balance on the matter to nil.

17. On two probate files, of which the Third Respondent had conduct, client L and client G both deceased, bills were raised for sums in excess of the amounts assessed by a cost draftsman; in the case of L billing exceeded fees assessed by £1,090.60 not including VAT, and in the case of G by £3,008.50.

18. The FI Report recorded that there was a client account shortfall of £24,503.10 as at 31 October 2011 comprising:

- Costs billed on 11 June 2009 against the matter of SU Football Club, as identified in the firm's 2009 accountant's report, when no bill had been sent or given to the client: £13,507.83

- Matters identified from the IO's review of the firm's 2010 and 2011 bill book, where bills had not been sent or given to the client: £6,633.10

- Probate matters of L deceased and G deceased where profit costs had been billed in excess of those assessed by an external costs draftsman: £4,362.17.

19. The FI Report also raised concerns about apparent failure to return client funds promptly, and the provision of banking services in the case of two clients. Mr SB acted for his father-in-law S in the sale of a property, where the proceeds of sale in excess of £249,000 were retained by the firm from February 2009 when received into client account. Those monies were reduced by payments out, and from 31 August 2010 the balance of the proceeds of sale were held in the client account in the sum of £200,551.26. In the case of Mr CR, in 2007 the firm opened a matter for this client with the matter type recorded as "miscellaneous". The ledger showed numerous transactions but the file contained no evidence of any underlying legal transaction.

20. In interview on 29 November 2011, the First Respondent told the IO that there were two other fee earners in the firm, namely Mr LF a solicitor, and the Third Respondent who was a fellow of ILEX. The completed professional history form provided to the IO on that date indicated that the First Respondent was a sole practitioner which was also the position shown in the Applicant's records.

21. The firm's PII proposal form for 2011/2012 indicated that Mr LF was a partner in the firm. The First Respondent later confirmed in interview with the IO on 26 January 2012 that Mr LF had become a partner on 1 September 2011.

22. The Applicant was only notified on 13 December 2011 of the change of status in the firm as a result of Mr LF becoming a partner.

23. There were other issues with the firm's PII proposal form in respect of negative answers to questions relating to any qualification of the firm's accounts in the previous six years (which qualification had occurred in 2009 and 2010) and about whether any claims or circumstances had previously been notified (a claim in respect of client J had been dealt with and notified to insurers by Mr W).

24. There was also an issue about the accuracy of a response to a question on the PII proposal form regarding supervision, particularly in the section relating to regular audits/reviews and formal file closure about how many files were audited, how often and by whom, where the reply given was "12 per quarter per fee earner".

25. In respect of a client, Mrs B, a complaint had been made to the Legal Ombudsman ("LeO") on 23 January 2013 and an award of £24,000 made in her favour. On 1 May 2014, the LeO commenced enforcement proceedings and on 6 May 2014 an order was made requiring that the firm comply with the LeO's decision by 23 May 2014.

26. By the First Respondent's own account, on 12 January 2014 the firm closed. On 14 January 2014 it merged with H Solicitors. However the Applicant had no record of being informed of the closure of the practice, either before the merger or within a reasonable period thereafter.

27. On 3 April 2012, the IO sent copies of the FI Report to the Respondents and sought their comments. On 24 April 2012, the First Respondent replied on behalf of himself and Mr LF. On the same day, the Third Respondent sent a reply to the IO.

28. On 20 June 2014, a supervisor of the Applicant sent letters to the Respondents seeking their comments on the proposed allegations against them arising out of the FI Report. On 11 July 2014, the First Respondent replied to the letters sent to him and Mr LF. No reply was received from the Third Respondent.

29. On 4 December 2014 an Authorised Officer of the Applicant decided to refer the Respondents' conduct to the Tribunal.

Witnesses

30. There were no witnesses.

Findings of Fact and Law

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

(Paragraph numbers in quotations have been omitted unless they aid comprehension. Submissions include those in the documents and those made orally at the hearing.)

Allegations against the First Respondent

General submissions for the First Respondent

32. Mr Leigh-Hunt submitted that the First Respondent was 65 years old, and had joined the firm as a young man and worked there ever since. He had been articled to Mr C the senior partner. The other partners were then Mr S, Mr P, and Mr E who left after the First Respondent joined. A year later Mr A joined. In his statement, the First Respondent set out that Mr W joined at the same time as he did in 1972 and was articled to Mr S, and subsequently they became salaried partners in the same year. Mr P administered the firm until his sudden death and thereafter Mr A did so. Neither Mr C nor Mr S had anything to do with the administration, and neither did Mr W or the First Respondent. Mr A retired in 2005, leaving the firm in the hands of the First Respondent and Mr W.

33. Mr Leigh-Hunt submitted that the First Respondent stated that he rarely saw Mr W:

> "He would come into the office at about 9:15am and would walk past my office without acknowledging my presence and go up to his office at the other end of the building. He would leave in a similar manner any time after 5:15pm".

Mr Leigh-Hunt commended to the Tribunal the statement of Mr LF dated 7 May 2015 which he submitted was very fair and accurate in respect of how the firm operated:

> "Mr [W] dealt with the administration and management of the practice until his departure. He dealt with arrangements regarding the indemnity insurance; practicing (sic) certificates; staff issues; and complaints. He ran the practice. [The First Respondent] had a busy criminal practice. Mr [W] would have dealt with both the firm's bankers and its accountants. From memory, Mr [W] did not call for fee earners files for review. Nor did Mr [W] have one-on-one meetings with fee earners at the end of each month…
>
> I understood from general gossip around the firm that there had been potentials (sic) for mergers in the past. I understood that those had failed because the merging firms were concerned despite Mr [W's] ability as a lawyer, about the amount of work that Mr [W] either did or failed to undertake. Additionally, there was also concern regarding the relationship between the First Respondent and Mr [W]…."

Mr Leigh-Hunt referred to the correspondence in bundle C as showing that Mr W handled correspondence with the Applicant, starting with the letter of 7 April 2008 from the Applicant to Mr W following up on a monitoring visit to the firm. Mr Leigh-Hunt submitted that Mr W had been the manager of the practice at the relevant time. Mr LF amplified in his statement what the First Respondent said in his. The First Respondent had not undertaken complaints work, professional indemnity insurance, or accounts work throughout this time. It might seem strange that the First Respondent allowed this situation to subsist but Mr Leigh-Hunt submitted that it was not uncommon for a partner to be isolated from management information, and their ultimate weapon would be to leave the firm. The First Respondent was occupied

with the firm's legal aid franchise, and was out and about communicating with clients at the "rough end" of legal practice. He was a higher court advocate, a Deputy District Judge, a Deputy Coroner and also a member of the Law Society's Child Care panel. His work was such that he would be out at court all day long and return to the office after everyone else had gone home with notes all over his desk, and the next day he would be back in court or attending at the police station. Mr Leigh-Hunt submitted that bundle A (which consisted of a handwritten list of file references and client names running to 21 pages) demonstrated the large number of criminal cases of which the First Respondent had conduct. He was also out of the office at certain times because he was involved in the community as evidenced by a testimonial relating to his work as a school governor.

34. Mr Leigh-Hunt submitted that there had been discussions about a merger with H Solicitors for years; they started in 1999 as demonstrated by a letter dated 29 November 1999 from Mr C to Mr A. These discussions were being conducted by Mr W of the firm with Mr C of H Solicitors at the material time.

35. Mr W retired from the partnership on 31 December 2009 but carried on running the business affairs of the firm until August 2010 when he announced without warning that he was leaving. (It was subsequently mentioned in evidence that Mr W had some continued connection with the firm until January 2014.) The situation of Mr W's sudden departure was compounded because scrutiny of the firm's accounts showed that Mr W was owed some £54,000. The First Respondent had to find the money to pay him.

36. Mr Leigh-Hunt submitted that the First Respondent conceded the allegations, but asked the Tribunal to take into account that Mr W was the "eminence grise" who ran the business side of the practice while the First Respondent was out. In sworn evidence, the First Respondent stated that he accepted the factual basis of the allegations. He also accepted that he was liable for those matters where he was personally involved, and where he was not personally involved he accepted liability as a partner. While he took issue with one or two of Mr Gott's comments, where Mr Gott said his explanation was unsustainable, the First Respondent confirmed that he admitted all 20 allegations.

37. **Allegation 1.1 - On 11 June 2009 the firm raised and paid from funds held on client account nine bills of costs, totalling £31,791.49, without sending copies of those bills or other written notification of the costs incurred to the relevant clients, contrary to any or all of Rule 19(2) of the Solicitors Accounts Rules 1998 ("SAR 1998") and Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007").**

Allegation 1.2 - In respect of the bills of costs described in allegation 1.1 above, with the exception of the bills of costs raised on the BS Working Men's Club and SJ matters, there was no justification for those bills of costs, contrary to any or all of Rules 1.02, 1.04 and 1.06 of the SCC 2007.

Allegation 1.3 - Having been notified of the breaches described in allegation of 1.1 above by the firm's accountants no later than 13 October 2010, by 11 July 2014 the bill of costs raised in respect of the SU Football Club for

£13,507.83 had not been reversed, contrary to any or all of Rules 7 of the SAR 1998, Rules 1.02, 1.04 and 1.06 of the SCC 2007 and (in so far as the breach continued after 5 October 2011), Rule 7 of the SRA Accounts Rules 2011 ("AR 2011") and Principles 2, 4, 6 and 7 of the SRA Principles 2011.

Allegation 1.4 - In respect of the nine client matters which were billed on 11 June 2009 referred to at allegation 1.1 above:

1.4.1 the firm failed to return client money to the clients promptly, as soon as there was no longer any proper reason to retain those funds, contrary to Rule 15(3) of the SAR 1998, and (insofar as the conduct continued after 5 October 2011) Rule 14.3 of the AR 2011; and

1.4.2 the firm failed to inform the clients of the sums of client money retained, and the reason for that retention, contrary to Rule 15(4) of the SAR 1998 and (insofar as the conduct continued after 5 October 2011) Rule 14.4 of the AR 2011.

37.1 For the Applicant, in respect of allegation 1.1 Mr Gott submitted that nine bills totalling £31,791.49 (£27,664.81 plus VAT) had been raised and paid without copies of those bills, or other written notification of costs incurred, being sent to the relevant clients. He referred the Tribunal to an addendum to the firm's qualified accountant's report for that year dated 31 December 2009. It included:

> "Whilst carrying out our work it was noted that invoices had been raised on accounts (sic) of costs on the 11 June 2009 by the practice on nine separate client ledgers which had long standing client ledger credit balances. Transfers also took place on this date to move the money from the client account to the practice office account in respect of these charges."

Mr Gott submitted that this was what the Third Respondent described as a sweeping up exercise, whereby client balances were reduced for the benefit of office account. The bills contained only the client name, but no address details. A letter dated 13 October 2010 from HW, accountants to the First Respondent and Mr W, dealt with each of the nine bills. The facts described by the accountants were as follows:

37.2 Client P – invoice for £3,777.57 plus VAT (£4,344.20)

37.2.1 No client file was available for the accountants to review. The client ledger card suggested that the firm had acted for the client in respect of two land sales (in June 1984 and July 1986). The credit balance on the client account appeared to have arisen from a receipt of £3,970 from the solicitors for the purchaser in respect of the first sale. There was no evidence to support the balance being left on the client account, and no evidence to support the invoice for £3,777.57 plus VAT which the firm raised in June 2009. The Rule 5 Statement also set out that it seemed that all work was fully billed at the time it was carried out. In its letter of response to HW dated 16 November 2010, the firm stated that the matter file was not available and in the absence of the file there was no "evidence to justify the argument that the money was being held on account of our costs". The letter also stated that the sum of £3,777 had been

re-credited to the account comprising the amount of the bill, plus £566.63 by way of VAT and £3.045.90 by way of interest, totalling £8,190.10.

37.3 Client D – invoice for £2,220.05 plus VAT (£2,550 .05)

37.3.1 No client file was available for review. The client ledger card suggested that the firm acted for the client in respect of two matters between 1989 and 1993, during which time two fee notes had been raised. The credit balance on the client account appeared to have arisen following a receipt of £5,400 in November 1990 on account of costs, which was not then fully required. After the work carried out in 1993 had been completed and billed, a balance of £3,302.46 was left to accrue interest. Apart from some fees paid in 1998 no further work appeared to have been carried out. The office account started with a credit balance of £2,857.14 brought forward in 1989. As at 11 June 2009, the ledger card still showed a credit balance on office of £3,050.42. There was no evidence to support the balance being left on the client account, and no evidence to support the invoice of £2,220.05 plus VAT which was raised in June 2009. In the firm's letter 16 November 2010 to HW, it confirmed that the matter file was not available and stated that in the absence of the file: "we cannot show what work was undertaken to justify rendering an account". It further said that £3,305.99 had been re-credited to the account comprising the amount of the bill plus VAT and £755.94 interest.

37.4 Client JR Deceased – invoice of £1,690 plus VAT (£1,943.90)

37.4.1 No client file was available to review. Based on the ledger card the firm appeared to have acted on behalf of the estate between March 1982 and July 1985. When the matter concluded in 1985 a balance of £1,675.43 was left on client account. No final distribution appeared to have been made to the beneficiaries. Although there had been an interim bill in 1983 no final bill appeared to have been raised and there was no file or indication of work performed after September 1983 when the interim bill for £349.31 was raised, which would support the invoice of £1,690 plus VAT (£1,943.90) raised in June 2009. In its letter to HW of 16 November 2010, the firm confirmed that the client file was not available. It stated that the matter had been complex and the ledger suggested that work had been carried out for two years after the interim bill; that it was not unreasonable to assume that the balance held was to cover further costs. However, the firm noted HW's view that without the file it was not possible to show that the invoice was justified, and stated that £3,801.16 had been re-credited to the account, comprising the amount of the bill plus VAT and £1,857.47 interest.

37.5 S&D Working Men's Club – invoice for £4,802.05 plus VAT (£5,522.35)

37.5.1 No client file was available for review. The ledger suggested that the firm had acted for the club on various matters for a number of years. A credit balance on the client account appeared to have been created following the sale of a property. Three invoices were raised around that time in 1983, two in connection with the sale and one relating to help with the club's financial affairs. A balance of approximately £4,500 was left on the client ledger in

1983 and was later used to pay what appeared to be debts owed by the club to various external creditors, but these were approximately covered by the interest accrued on the client account. No further matters had been undertaken on behalf of the client. There was no indication as to why the balance was left on client account and no justification for raising the invoice in June 2009 for £4,802.05 plus VAT (£5,522.35). In its letter to HW of 16 November 2010, the firm confirmed that no file was available and stated that, in the absence of the file, it could not show the work was done and therefore had no alternative but to re-credit the amount of £10,869.58, comprising the amount of the bill plus VAT and interest of £5,347.23.

37.6 BS Working Men's Club – invoice for £877.70 plus VAT (£1,009.35)

37.6.1 The accountants were supplied with a client file. The firm acted for the club in January 1985 and acted in its subsequent disposal the following year after which the firm dealt with the distribution of monies to the club's creditors. No bill appeared to have been raised. The monies that were left on the client account totalled £918.06. The accountants accepted that the firm did not raise an invoice and so a charge might have been justified, however this should have been done at the time, 25 years before the accountants were reporting. A bill for £877 plus VAT was raised in June 2009. In its letter of 16 November 2010 to HW, the firm stated that it had re-credited £914.28 in interest and enquiries would be made as to whether the club still existed so that the invoice and an explanation could be sent to the trustees.

37.7 SU Football Club – invoice for £11,745.94 plus VAT (£13,507.83)

37.7.1 Although the ledger card did not state this, it appeared that the client was the Social Club attached to the Football Club. A client file covering the period 1982 to 1987 was available for review. The first matter dealt with was the purchase of the premises for the Social Club from the Football Club in 1982. This matter appeared to have been completed and fully invoiced and paid. Various other matters were then handled. The only invoice that appeared ever to have been raised was the 1982 bill for the purchase of the premises. The firm appeared to have then acted on behalf of the Social Club in connection with its winding up as evidenced by various items of correspondence on the file which indicated that the Social Club had debts in excess of £25,000. The client file which the accountants viewed ended in November 1987. A bill for £495 was raised in March 1993 but it was not clear to what work this related. The ledger indicated payments on behalf of the client in 1994. An invoice for £11,745.94 plus VAT was raised in June 2009. As at that date the invoice would have cleared the entire balance on client account. HW the accountants concluded:

> "There does appear to have been work carried out which has not been billed but it is difficult to conclude that any fee note should be in the order of the invoice raised."

In the firm's letter to HW dated 16 November 2010, it was stated that the firm had dealt with the sale of the club's stadium to a supermarket chain, which would have been a complex transaction and it was not unreasonable to assume that the amount of their bill was justified in connection with what was a high-value commercial transaction. The letter also stated that the First Respondent had carried out the work and "might be able to convince [HW] that the bill was justified". By the time of the IO's inspection in November 2011, this invoice had not been reversed. In interview with the IO on 26 January 2012, the First Respondent said he had been unable to find the file and although work had been completed on the matter, which had not been billed at the time, he could not provide any further evidence as to how much this might be. In his letter to the Applicant dated 11 July 2014, the First Respondent said that he had not had the funds available to reverse the bill totalling £13,507.83 although he had rectified the other matters identified by HW. He had borrowed money from RBS to reverse the nine bills and had been "upset" to discover that this had not covered the SU bill; and he would need to find the necessary sum and distribute it "sooner rather than later as I want the issue off my back".

37.8 Client H: Sale of 198 C Road – invoice for £181.93 plus VAT (£209.21)

37.8.1 No client file was available for review. The ledger card suggested the firm had acted in connection with the sale of property which completed and had been billed in September 2007. The credit balance of £220 on the account appeared to have arisen after the sale. No further work had been undertaken for the client. There was no indication as to why the balance was being held, and the accountants could see no justification for the bill of £181.93 plus VAT in June 2009. In its letter to the accountants dated 16 November 2010, the firm stated that no file was available and in the absence of the file they could not show why they had raised the account and the money would be re-credited.

37.9 Client L: sale of property – invoice for £1,657.40 plus VAT (£1,906.01)

37.9.1 A client file was made available for review. The firm acted for the client in three matters relating to a dispute between partners of a public house which ultimately led to the sale of the business, and finally the issue of monies owed to an entity, UBM. A bill was raised in July 2004 in respect of the sale of the business. A balance of £1,950.09 remained on client account, made up of the following: monies received from the sale of the public house in excess of the sale price, presumed to be for stock as per the original sale agreement £875.18; an excess of £15.83 in respect of a £10,000 retention regarding British Gas where the final bill was £9,984.17; overpayment of mortgage returned by Abbey National £1,015; interest on deposit received and not paid over to the client £44.08. It appeared that the client was not made aware of these additional monies, and HW saw no justification for the invoice raised in June 2009. In its letter to HW of 16 November 2010 the firm appeared to accept the analysis set out above and said the firm would re-credit the sum of £2,126.14 comprising the bill and interest of £220.13.

37.10 Client SJ – invoice for £691.57 plus VAT (£795.30)

37.10.1 A client file was available for review. The ledger suggested that the firm acted on behalf of the client in connection with licensing matters. The firm had acted in an abortive transaction in 2006, but no invoice was raised because the client did not respond to requests regarding who should be invoiced. HW considered that there was some justification for raising an invoice in June 2009 for £691.57 but questioned why it had not been raised sooner. In the firm's letter to HW of 16 November 2010, it stated that it was assumed that HW was not saying that the invoice should be reversed, and the fact that an invoice was not raised at the time was an oversight.

37.11 In the Rule 5 Statement it was set out that in interview on 26 January 2012, the First Respondent told the IO that all the bills of 11 June 2009 had been raised by Mr W, who undertook all the administration at the firm. The First Respondent said he could not perceive that Mr W would do anything that was against the rules. In the First Respondent's letter to the Applicant dated 24 April 2012, he stated that Mr W had come into his office and explained that there were a number of historic credit balances on which HW believed work had been done but not billed. The First Respondent said he recalled replying that, as long as Mr W was satisfied that the firm was able to bill the matters, he had no objection. He went on to say:

> "I accept that I hadn't given the matter much thought nor did I have any details of the accounts referred to".

37.12 Mr Gott submitted in respect of allegation 1.2 that, with the exception of the bills in respect of the BS Working Men's Club and the SJ matter, there was no justification for raising the bills in the other cases detailed in the Rule 5 Statement. In respect of allegation 1.3, by borrowing from RBS, the First Respondent reversed all the bills except that for the SU Football Club which was the highest of the bills that was raised. In respect of allegation 1.4.1 and the failure to return client money promptly, Mr Gott submitted that some of the funds had been in client account for more than 20 years without proper reason. In respect of allegation 1.4.2 there was no evidence that the clients were informed annually about the monies retained as they were entitled to be. Mr Gott submitted that on the evidence all of allegations 1.1 to 1.4 were proved.

37.13 Mr Leigh-Hunt drew the Tribunal's attention to documents at bundle E which comprised handwritten notes, which the First Respondent said were made by Mr W, by way of calculations for the bills. It was his case that they had been put through behind the back of the First Respondent. In evidence, the First Respondent stated that he was first aware of it when the firm's accountants raised the issue in its letter of 13 October 2010. The First Respondent had been unable to attend the meeting with the accountants as he was called to the Crown Court. It was the accountant's view that the bills had to be reversed. The sequence of events was that Mr W had indicated that he would leave the firm but not specifically when. Around August 2010, the First Respondent arranged a loan of £37,000 from the bank to pay off Mr W, money which he was still paying off. Then the letter from the accountants came in and the money was used to reverse the accounting entries. The accountants identified

£31,000 of bills that needed to be reversed, and the money which the First Respondent had obtained and put into office account was more than sufficient to cover in full the shortage which he asserted Mr W had left outstanding.

37.14 The First Respondent testified that when he became aware that interim bills had not been sent out, billing not being something that he did because his work did not involve it, he immediately issued a document to staff dated 9 December 2011 stating how interim billing should be carried out, including that work had to have been carried out to justify it. The document was in bundle C. He checked with the accounts department whether during the six months prior to the investigation any bills had been sent out, and looked at files. In evidence, the First Respondent also referred to documents (correspondence dated 2007 and 2008) in the case of H at bundle F, and stated that there had been difficulties with an undertaking because the bank had not produced the discharge form DS1 regarding the mortgage. These people were still clients.

37.15 The Tribunal considered the evidence including the oral evidence. The Tribunal had seen the breakdown of the nine bills raised and paid from funds held on client account without sending copies or other written notification to the clients. The total amount identified in the Rule 5 Statement in respect of the bills was £27,644.81 plus VAT (£31,791.49.). The Tribunal noted that, when added together, the amount of the nine bills given by the accountants totalled £24,800. Mr Gott checked the figures and submitted a handwritten schedule on the second day of the hearing. He clarified that VAT had been charged at varying rates across the bills and that the total figures given in the Rule 5 Statement net of VAT were correct. The Tribunal found that it was clear from the papers which bills had not been sent to clients because they were without addresses. The case of SU Football Club was a particularly serious example with a significant sum of money involved. The Tribunal was particularly concerned to see bills being raised in dormant matters many years after work on the file had ceased and to note that some of the money taken by the firm constituted interest due to the client. The Tribunal noted that in four of the cases: S&D Working Men's Club, BS Working Men's Club, SU Football Club and SJ, the First Respondent was the fee earner with conduct of the file, and he had given evidence that bills came back to the fee earner for approval as part of the firm's billing process.

37.16 The Tribunal considered in respect of allegation 1.1 that raising bills without the knowledge of the client constituted conduct in breach of Rule 1.02 (the requirement to act with integrity), Rule 1.04 (the requirement to act in the best interest of each client) and Rule 1.06 (the requirement not to diminish the trust of the public in the solicitor and the profession). The Tribunal therefore found allegation 1.1 proved on the evidence to the required standard; indeed it was admitted.

37.17 The Tribunal noted in respect of allegation 1.2 that many of the files had been dormant for a number of years and the Tribunal had heard no evidence of activity contemporaneous with the issuance of the bills. The manuscript documents which the First Respondent testified had been prepared by Mr W provided a reconciliation of how the figures to be used in the bills were arrived at. It was clear that they were designed to balance the amount, inclusive of interest, which was in the client account at the relevant time. In some cases no files had been produced by the firm. The Tribunal considered in respect of allegation 1.2 that clearing client balances without

any apparent justification for raising bills amounted to breaches of Rule 1.02, Rule 1.04 and Rule 1.06. The Tribunal therefore found allegation 1.2 proved on the evidence to the required standard; indeed it was admitted.

37.18 The Tribunal found in respect of allegation 1.3 that, at the latest from when the firm's accountants wrote to the firm on 13 October 2010 highlighting the nine bills, the First Respondent was under an obligation to reverse the transfers from client to office account. He had raised a loan of £37,000 which he intended to use to pay off Mr W's capital account when he left the firm. Instead the First Respondent applied it to reversing the various bill transfers save that in respect of SU Football Club. When the firm wrote to the accountants on 16 November 2010, it was putting the money back into client account but had not yet tracked down the clients. In respect of the SU Football Club, the firm referred in the letter to work being carried out which had not been billed, and that it might be possible to convince the accountants that the bill was justified. Apparently in due course, according to his submission to the Tribunal, the First Respondent thought that Mr W had re-credited the money, which the Tribunal found puzzling as Mr W had left the firm in August 2010. The First Respondent now acknowledged his obligation to repay the Football Club, and said in evidence that he would do so from the proceeds of sale of his late father's house. The Tribunal was concerned that with this particular client, because of its unclear ownership, there was particular susceptibility to having monies removed. The Tribunal found proved on the evidence, including the First Respondent's oral evidence, that the bill of costs raised in respect of the SU Football Club had not been reversed and that this constituted breaches of Rules 7 of the SAR 1998 and SRA Accounts Rules 2011 Rules/Principles 1.02/ 2, 1.04/4 and 1.06/6 of the SCC 2007 and SRA Principles 2011 respectively and Principle 7 (comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner) and that allegation 1.3 was proved on the evidence to the required standard; indeed it was admitted.

37.19 In respect of allegation 1.4.1, some of the nine matters in respect of which bills had been raised in breach of the rules, had lain dormant for some time, and the report of the firm's accountants drew attention to that; there were late and unexplained bills; money had clearly not been returned to clients promptly as required. In respect of allegation 1.4.2, a firm needed to have a robust system to refund monies promptly to clients where there was no reason to hold them, and for informing clients periodically that the money was held and seeking confirmation of the clients' instructions about their money, in order to avoid exactly what happened at this firm. The Tribunal found allegation 1.4 in both its aspects proved on the evidence to the required standard; indeed it was admitted.

38. **Allegation 1.5 - Bills of costs in respect of the CS Club matter, dated 26 May 2009 and 22 April 2010 were paid from client funds without the bills or other written notification of the firm's costs being sent to the clients, contrary to any or all of Rules 19(2) of the SAR 1998 and Rules 1.02, 1.04, and 1.06 of the SCC 2007.**

Allegation 1.6 - There was no justification for:

1.6.1 £500.00 of the £1,250.00 invoiced on the CS Club matter on 26 May 2009;

and/or

1.6.2 the bill of costs dated 22 April 2010 referred to in allegation 1.5 above, contrary to any or all of Rules 1.02, 1.04 and 1.06 of the SCC 2007.

Allegation 1.7 - For a period of more than 10 years after being instructed by the CS Club to deal with the closure of the club, the First Respondent failed to complete that work, and in particular failed to disburse the club's funds to its creditors, in breach of any or all of Rules 1.04, 1.05 and 1.06 of the SCC 2007 and (insofar as the conduct continued after 5 October 2011), Principles 4, 5 and 6.

38.1 For the Applicant it was submitted that the CS Club closed in October 1998 and the First Respondent was instructed to deal with the winding up of its financial affairs including the settlement of outstanding debts. An interim bill for £750 plus VAT (£881.25) was raised on 24 February 1999 and paid from funds held in client account. It was expressed to be for work from November 1998 to February 1999 and was not the subject of the allegation. The Rule 5 Statement set out that, while there was correspondence between the firm and the club's creditors in April and December 1999, there was no evidence after that date of any work on the file. However, a significant sum of money continued to be held on client account, around £3,000 initially, but this increased as interest was added, and by January 2008, had reached £3,713. The IO pointed out to the First Respondent that it did not appear that the matter had completed as no creditors apart from HMRC appeared to have been paid. The First Respondent told the IO that he could not remember why the creditors had not been paid. Mr Gott submitted that, over 10 years after the first interim bill, on 26 May 2009 a second interim bill in the amount of £1,250 plus VAT (£1,468.75) was raised which was expressed to be for work from February 1999 to July 2000, and was paid from client funds. It covered:

> "– attending at the… Club on 21 March 1999 with members to confirm the winding up of the club's affairs
> – Collecting outstanding monies due to the Club
> – Writing to the Clerk to the Justices and the Police regarding the Club Registration Certificate
> – Entering into correspondence with a number of Creditors
> – Chasing the former Steward/Secretary for outstanding property due to the Club"

Mr Gott submitted that the bill was addressed to the club, but there was no evidence that the bill was ever sent and, in any event, it was known the club had closed down 10 years earlier in 1998. There was a further bill without an address dated 22 April 2010, again described as an interim account with a narrative: "To Our Professional Charges in connection with the [CS] Club" in the amount of £200 plus VAT (£235). There was no evidence of what the bill related to. Mr Gott submitted that it was not sent to the club, no effort having been made even to include the previous address. In his letter to the Applicant of 11 July 2014, the First Respondent admitted that he had not provided copies of these bills to the client, or informed the client about the sums being held by the firm, and the reason for holding those funds. The First Respondent told the IO that the 2009 bill had been justified, because he had done some work after the last interim bill in 1999, however, having reviewed the file,

he had reversed the second bill. When the IO asked the First Respondent how he had calculated the amount of the 2009 bill, he said he knew that he had done as much work after the 1999 interim bill as before it. When the IO pointed out that the 1999 bill had been for £750 plus VAT, the First Respondent said he had added £500 for care and conduct. The First Respondent admitted to the IO that the contents of the file would probably not reflect the amount billed in 2009, if the file were properly costed. He said he was prepared to reduce the 2009 bill by £500 to £750. In his letter to the Applicant dated 24 April 2012, the First Respondent said: "This is my mistake and I admit to carelessness here." He went on to say that he had reversed the two invoices of May 2009 and April 2010, and that the balance had now been apportioned and paid to various creditors so that the file and account was being closed. In his letter to the Applicant dated 11 July 2014, the First Respondent stated:

> "I should have been more pro-active in assessing the file before making the rash decision to render costs. It was my perception further costs were due but I should have checked before acting."

38.2 In respect of allegation 1.6, Mr Gott submitted that the First Respondent thought that he had done as much work when he rendered his invoice of 26 May 2009 as he had in respect of the invoice raised on 24 February 1999, and so there was no justification for the amount of £500 which he added to the latter bill for care and conduct. There was no evidence of any work done to support the later invoice and no indication on the face of the invoice that work had been done.

38.3 In respect of allegation 1.7, it was submitted that the First Respondent failed to complete work related to the closure of the club in the period of 10 years thereafter. The fact that work should have continued, as indicated by the May 2009 invoice, showed manifest breaches of the Rules and Principles alleged.

38.4 Mr Leigh-Hunt submitted that licensing applications in the Magistrate's Court were a major occupation for the First Respondent. It could be a very long-winded process with a large amount of paperwork and notices to be served. The First Respondent had provided a lot of free advice to working men's clubs, and when they received money he would put in a bill. Mr Leigh-Hunt submitted that this was the background to the sweeping up regarding those clubs.

38.5 In evidence, the First Respondent stated that what had happened was carelessness on his part. The First Respondent set out in his statement that there was a meeting with what was left of the Club's members and the committee, when it was agreed to wind up the CS club and not argue against forfeiture. When the CS Club closed there were issues, and the First Respondent obtained such documents as he could at the meeting, and then the officers of the club disappeared. They had vacated their premises and the brewery landlord had retaken possession He remembered receiving invoices addressed to the club from time to time. He accepted that he was not able to verify them with the former officials and after a period of time receive no more invoices. He paid the creditors but he could not establish with the officers if all the creditors' claims were accepted. He accepted in his statement that he did not fully argue his belief with the IO that he was entitled to costs for all the work he had done, but should have tried to work it out properly and not dictated a simple bill for the work that he had carried over the years and not billed. He had worked out a figure in his head

rather than spending time on the file and looking at earlier files and costing the file properly. He had paid off the creditors although he had not been able to establish with the officers that all the debts were accepted. He followed the IO's instructions and reversed the entries. He could not remember why he had added the extra amount of £500 to the second invoice. As to the billing process the First Respondent explained that the fee earner would prepare the bill and pass it to the cash office to check if there were any disbursements and that it was accurate, and once approved by the fee earner it would be sent out. The firm's system did not require that bills should be signed off by a partner. Stamps to be impressed on the bills were probably used, although the First Respondent did not have one. The Third Respondent probably did. The First Respondent and Mr W would each sign their own bills, and the Third Respondent would sign his whether by using a stamp or not. The bills did not go to the cash office from one source.

38.6 The Tribunal considered the evidence including the oral evidence. This was a matter in which the First Respondent was clearly directly involved. The CS Club had closed many years ago. There were no addresses on the invoices. It was the First Respondent's evidence that, acting on what he regarded as the instructions of the IO, he had paid off the creditors. The Tribunal noted the First Respondent's explanation for the way in which the bills of 26 May 2009 and 22 April 2010 were rendered. Ten years after billing an interim account on 24 February 1999, for winding up the affairs of the Club, in the amount of £750 plus VAT, the First Respondent rendered a bill in May 2009 for £1,250 plus VAT and took the trouble to dictate a detailed narrative. The Tribunal concluded that, although there was no one to receive that invoice, the First Respondent appeared to have constructed it to justify the outcome without particular regard to the work done. He accepted in evidence that he did not get the file out and should have paid more attention to what he could legitimately charge; he dictated the bill from his memory. Just under 11 months later a further bill was issued. On this occasion the First Respondent made no attempt to describe work done, which the Tribunal considered to be billing by way of sweeping up, although the First Respondent in his evidence said that he did not generally do that. The Tribunal considered that no rational explanation had been provided for what the First Respondent had done.

38.7 In respect of allegation 1.5, the Tribunal found that the First Respondent had breached Rule 19(2) of the SAR 1998 and in respect of allegations 1.5 and 1.6 that he had also breached Rules 1.02, 1.04 and 1.06 of the SCC 2007 and that allegations 1.5 and 1.6 were proved on the evidence to the required standard; indeed they had been admitted.

38.8 In respect of allegation 1.7, the First Respondent could not explain why he had not paid off the club's creditors and only did this when prompted by the IO. The Tribunal found that his conduct constituted breaches of Rules 1.04, 1.05 (the requirement to provide a good standard of service) and 1.06 of the SCC 2007 and that allegation 1.7 was proved to the required standard on the evidence; indeed it had been admitted.

39. **Allegation 1.8 - In respect of the S-B and CR client matters, the firm:**

1.8.1 failed to return client funds to the clients when there was no longer any proper reason for retaining them, contrary to Rule 15(3) of the SAR 1998; and

1.8.2 provided banking facilities to those clients, contrary to the rule in Wood & Burdett (as described at note (ix) of Rule 15 of the SAR 1998) and ((insofar as the conduct continued after 5 October 2011) Rule 14.3 of the AR 2011.

Mr S-B/Mr S

39.1 For the Applicant, it was submitted that the First Respondent told the IO that Mr S was elderly and resided in a nursing home. His daughter and S-B, his son, were dealing with his affairs. On 20 February 2009, sale proceeds of £249,999 were received into the firm's client account. Following payment of estate agents' and other costs, £245,521 was transferred to a deposit account in February 2009. On 13 March 2009, a payment of £10,000 was made to Mr S and a bill for £1,500 plus VAT was raised and posted. On 13 August 2009 a further £33,000 was sent to Mr S. Those sums were taken from the deposit account, leaving a balance of £200,776.51. Following two smaller transfers to office account, for what appeared to have been payments made on behalf of the client, on 31 August 2010, £200,551.26 remained on deposit account, and continued to be held as at the date of the IO inspection. In interview on 7 December 2011, the First Respondent told the IO that he had understood that the client had been happy for the money to stay with the firm, and that he was in the process of trying to contact Mr S-B to resolve the matter. He also accepted that he had not complied with Rule 15(4) of the SAR 1998, in that he had not written to the client every year to inform him of the amount of money being held, and the reason for it being held. On 26 January 2012, the First Respondent stated that he did not think there was anything wrong with retaining the money on the instructions of Mr S's family, but that the residual balance, along with interest, had been returned to the client. Mr Gott drew the Tribunal's attention to the fact that this money had been held for not quite three years after the sale of a domestic property. In respect of allegation 1.8.1, there had been a failure to return client funds to the client where there was no proper reason made out for their retention. The money should have gone on completion or shortly thereafter to Mr S-B. In respect of allegation 1.8.2 Mr Gott submitted that, when questioned by the IO, the First Respondent acknowledged that he was providing Mr S-B with what were in effect banking facilities by holding the money on deposit in client account, and periodically drawing from it for the client, in breach of the SAR.

Mr CR

39.2 It was set out in the Rule 5 statement that there was no evidence of any underlying legal transaction on the file established in 2007 for Mr CR. However, the client ledger showed numerous transactions including amongst others:

- various credits to the client account including one on 26 January 2007 of £3,807.50 with the narrative "Compensation cheque NatWest…"

- 26 cash payments to the client in sums ranging from £10 to £260

- a cash receipt of £80 from the client on 7 September 2009, and a cheque payment from client account on the same day for £77.50 in respect of a passport application

- cash receipts of £600 on 21 October 2011, £200 on 2 November 2011 and £100 on 17 November 2011 which were all posted to client account, followed by cash payments to the client for £20 and £30 on 24 and 26 October 2011 respectively

39.3 Mr Gott submitted that the First Respondent had represented Mr C on a publicly funded basis in criminal matters, and Mr C had no bank account. In 2007 the firm had agreed to Mr C depositing a cheque with the firm. Mr Gott drew attention to the various transactions particularly the receipt of money from the client to fund a passport application. He submitted that it was established that these were compensation monies which should never have been deposited with the firm and if they had been, they should have rapidly been returned. The First Respondent told the IO that the client would come into the firm on a regular basis and be paid cash from the balance held, and that there had been no underlying legal transactions. The remaining funds were returned to the client on 6 December 2011.

39.4 It was set out in the Rule 5 Statement that, in his letter to the Applicant of 24 April 2012, the First Respondent accepted that there had been breaches of the relevant accounts rules in relation to the matters of Mr S-B/S and Mr CR. He went on to say that the breaches had been unintentional and done in ignorance, and that both accounts had now been closed. In evidence, the First Respondent confirmed that Mr S-B was still a client. S-B's father-in-law could not decide what to do with the money arising from the sale of the property. The First Respondent stated that he should have dealt with it. In respect of Mr CR, the First Respondent stated that he was trying to help out a client without a bank account, and he should have thought through what he was doing more carefully.

39.5 The Tribunal considered the evidence including the oral evidence. In the case of Mr S-B/S, the Tribunal noted that the money arising from the sale of Mr S's property had been held for some three years. In respect of allegation 1.8.1, the only evidence of why the First Respondent held onto the money was to be found in a letter dated 14 December 2011 (two weeks following the IO's inspection visit) from Mr S-B to the First Respondent which referred to a telephone call between them the previous day, and in which Mr S-B stated:

> "Further to our conversation yesterday I believe it is appropriate to confirm in writing our situation concerning [S], my father-in-law.
>
> After the sale of his property in Sussex you kindly agreed to hold the balance of the sale proceeds pending a decision by [S] as to what he wanted to invest in.
>
> Subsequently he decided that he wanted [H], his daughter, and I to have powers of attorney to managers affairs…"

Mr S-B went on to describe difficulties in arriving at a consensus as how best to look after Mr S, concluding that with his impending 80th birthday they now wished to exercise the power of attorney and take control of his affairs. He asked to be provided with a final account and to be allowed to collect the papers. The Tribunal noted that this communication took place after the firm had received the accountant's letter the year before. The amount of money involved was significant; £200,551.26 remained

on deposit account from 31 August 2010. Even in the face of the explanation in Mr SB's letter, the Tribunal was not satisfied that this was a proper basis for the firm to hold onto the money and, in any event, the firm should have been writing regularly to the clients reciting the basis on which the money was being held, and seeking instructions. In respect of allegation 1.8.2, the Tribunal considered that merely holding onto the money for such a long period constituted provision of banking services. In respect of Mr CR, a long-standing client without a bank account, the way in which the firm had obliged him by handling his money was plainly inappropriate and lacked any underlying legal transaction particularly in the matter of his obtaining a passport. The sums involved were much smaller than those in respect of Mr S but, in principle, what the First Respondent had done was wrong. He acknowledged in hindsight that he should not have done it. The Tribunal found allegations 1.8.1 and 1.8.2 proved to the required standard on the evidence; indeed they were admitted in respect of both clients.

40. **Allegation 1.9 - On 29 November 2011, the First Respondent provided inaccurate and/or misleading information to the SRA Forensic Investigation Officer in that he stated he was a sole practitioner when in fact Mr LF had been made a partner on 1 September 2011, contrary to any or all of Principles 2, 6 and 7.**

Allegation 1.12 - Following Mr LF becoming a partner on 1 September 2011, the First Respondent failed to inform the SRA of the fact until 13 December 2011, contrary to Rule 20.05(2)(b) of the SCC 2007 and (after 5 October 2011) Outcome O (10.3) of the SRA Code of Conduct 2011 ("CC 2011").

(These allegations are dealt with together as they arose out of related facts.)

40.1 Mr Gott referred to the facts set out in the Rule 5 Statement. The completed professional history form provided to the IO indicated that the First Respondent was a sole practitioner, in support of what the First Respondent told the IO in interview. The IO confirmed to the First Respondent that the Applicant's record showed him to be a sole principal. The First Respondent told the IO about a possible merger with another firm, which he hoped would happen soon, and confirmed to the IO that there were not likely to be any changes to the firm's structure before the merger. The First Respondent later confirmed in interview with the IO on 26 January 2012 that Mr LF had become a partner on 1 September 2011, and that the Applicant was not notified of the change in status of the firm as a result of Mr LF becoming a partner until 13 December 2011. The First Respondent also told the IO that Mr LF had no extra duties since becoming a partner and did not undertake any management duties at the firm; he was on the same salary as before he became a partner; no paperwork had been put in place in respect of the partnership; Mr LF was unable to operate the firm's client bank account; the firm had not notified its bank of its change back to partnership (having applied in December 2010 to convert to sole trader status following Mr W's retirement); the impending renewal of the firm's PII cover had been a factor in making Mr LF a partner at that time; the First Respondent could not explain why he had not initially told the IO of Mr LF's status, other than that he "wanted to protect him"; and the firm's failure to notify the Applicant of the change in status had been an oversight. A completed Notification of Manager Change form was then provided to the Applicant on 13 December 2011. Mr Gott submitted that in the PII proposal form for 2011/2012 dated 19 September 2011, two months before the

investigation began, the First Respondent had signed off that he and Mr LF were both partners in the firm.

40.2 In his letter to the Applicant on 24 April 2012, the First Respondent said, amongst other things: "as to the handling of [Mr LF], I accept that I made a complete mess of that"; it had not occurred to him that Mr LF would also need to complete a Professional History Form; he had assumed that the investigation would be "largely historic to verify the accountants report" and that Mr LF had not been made a partner until 1 September 2011; he had been made a partner for a number of reasons, including the fact that the First Respondent wanted to consolidate Mr LF's position within the new firm following the merger; and Mr LF had since taken on more responsibilities. In his letter to the Applicant dated 11 July 2014, the First Respondent said he had no credible reason why he had failed to inform the IO that Mr LF had become a partner but he had not had any ulterior motive for not doing so. Mr Gott emphasised to the Tribunal the chronology of events in respect of allegations 1.9 and 1.12; there was the appointment of Mr LF, the arrival of the IO for the investigation, and only then did the First Respondent inform the Applicant that Mr LF was a partner. There had never been a dispute about the facts in respect of these allegations.

40.3 In evidence, the First Respondent stated that he had known Mr LF since he was five years old; his father was the headmaster of a school of which the First Respondent was chair of governors. In respect of his being made a partner in the firm the First Respondent confirmed that there had been a combination of factors; an additional partner was needed in order to satisfy the lenders and the First Respondent also wanted to build up LF's position in anticipation of a merger; he wanted him on the letter heading to secure his position. What he had told the IO was factually incorrect but the investigation related to a time before Mr LF became a partner, and so the First Respondent did not see why it mattered. He had never been involved in an investigation before. The Tribunal asked why, if the First Respondent did not think that Mr LF's role was relevant, because he viewed the conversation with the IO as relating to the number of partners in the previous year, he considered there was a need to protect Mr LF. The First Respondent stated that he did not know that he had a satisfactory explanation. The letter about the investigation made it clear that it was about the qualification of the accountant's reports, and that related to a period before Mr LF had been made a partner. The First Respondent thought he had panicked.

40.4 The Tribunal considered the evidence including the oral evidence. In respect of allegation 1.9, the First Respondent clearly provided inaccurate and/or misleading information to the IO in stating that he was a sole practitioner. The Tribunal found that he had not been able to provide a plausible, or indeed any, reason for misstating the position other than that he wished to protect the recently promoted salaried partner. The Tribunal considered that it was a feeble excuse to say that he provided misleading information because a merger was imminent. The Tribunal considered that the misstatement constituted a failure to act with integrity and a breach of Principle 2. The public had a legitimate interest in a well regulated and compliant profession, and lying to one's regulator would undermine that. The First Respondent had therefore breached Principle 4. It had also been a clear breach of Principle 7. The Tribunal found allegation 1.9 proved to the required standard on the evidence; indeed it had been admitted.

40.5 In respect of allegation 1.12, the Tribunal again found the First Respondent's explanation difficult to comprehend; it seemed that he had simply failed to inform the Applicant that Mr LF had become a partner on 1 September 2011. There was no plausible or coherent explanation for why this occurred. The Tribunal found that the First Respondent's conduct constituted a breach of Rule 20.05(2)(b) of the SCC 2007 and of Outcome O(10.3) of the CC 2011. The Tribunal found allegation 1.12 proved on the evidence to the required standard; indeed it was admitted.

41. **Allegation 1.10 - The First Respondent failed to make arrangements for the effective management of his firm as a whole, contrary to Rule 5.01 (1) of the SCC 2007.**

41.1 Mr Gott referred the Tribunal to the FI Report, and submitted that what the First Respondent had said to the IO was very revealing:

> "[The IO] asked [the First Respondent] how he supervised the work of the fee earners within the firm on a day-to-day basis. The First Respondent said that he got involved when there were complaints or any unusual matters."

Mr Gott submitted that this did not meet the Applicant's requirements. Everyone in the firm thought that Mr W was undertaking all the supervision. The Third Respondent said that he was doing as he was told. The First Respondent made a general denial of involvement in individual invoices regarding the 2009 accounts. Mr Gott submitted that there was a clear failure of any effective input, even if the First Respondent's assertions of general ignorance were to be taken at face value, and he submitted that they were not, in the light of the admissions which the First Respondent had made at the commencement of the hearing.

41.2 In evidence the First Respondent stated that he was the only practitioner in the firm undertaking publicly funded child care work and crime, and he was permitted to undertake his own file reviews in legal aid matters. Regarding the other fee earners he was generally the first person in the office (to collect his files) and he opened the mail. He had learnt this practice from his former partner Mr P. He did it at least three times a week and nearly always at weekends. He accepted that this might not be a structured way of supervising but it gave him a first indication of problems or, for example, complaints. He carried out supervision by reviewing the files of Mr LF, and he said in his statement that from time to time he reviewed the conveyancing files of the Third Respondent, but he did not review 12 files per quarter. His documents included his file review notes; matters that he wanted to look at, especially with Mr LF as a newly qualified solicitor. The latter had said that the First Respondent undertook file reviews of his work. The First Respondent had to accept that his supervision was not at the level required. The First Respondent stated to the Tribunal that his responsibility for supervision while Mr W was in the firm, until August 2010, was by virtue of being a partner, but supervision became wholly his responsibility when Mr W left. He clarified that the firm was not fully computerised and so the majority of work was by hard copy, including that of the Third Respondent.

41.3 The First Respondent stated that he was a reluctant sole practitioner and never intended to be one. With W leaving the firm he was left alone, and he thought that the firm was working acceptably but it was not. With hindsight he did not know as much

about the firm as he should have done; he was at his happiest when he went in early and left late and was responding to clients. He had no intention, if he was permitted to continue practicing, of being a sole practitioner (he was currently a salaried partner). His only other option was to be a consultant.

41.4 The Tribunal considered the evidence including the oral evidence. The First Respondent had given an account of how the firm had been run over the years since he joined it. He said that he had no knowledge of many of the bills involved in the sweeping up process, and the way bills were processed did not require a partner to see them unless that partner was the fee earner. He accepted that after August 2010 effectively no one was managing the firm. When the management role fell upon him he simply ran on with processes of a different age and time which had been operated by his predecessor Mr P. He made assumptions about what was happening, and operated as if abdicating responsibility for management. The Tribunal found that the First Respondent considered that he was exempt from management responsibility, and when it fell on what, on his evidence, were his reluctant shoulders, he had no interest in it. The Tribunal found allegation 1.10 proved on the evidence to the required standard; indeed it was admitted.

42. **Allegation 1.11 - As at 31 October 2011, there was a shortfall on the firm's client account of £24,503.10, contrary to any or all of Rule 1(b) of the SAR 1998 and Rules 1.04 and 1.06 of the SCC 2007 (insofar as the conduct arose before 6 October 2011) and Rule 1(b) of the AR 2011 and Principles 4, 6 and 10.**

42.1 For the Applicant, Mr Gott referred the Tribunal to the FI Report where particulars of the cause of the cash shortage of £24,503.10 were given, as set out in the background to this judgment. He submitted that the existence of the shortfall was in breach of the Rules and Principles alleged.

42.2 In evidence the First Respondent was referred by Mr Leigh-Hunt to a document headed "Shortfall" which constituted an analysis of, and detailed, the reverse transfers and refunds. The papers before the Tribunal showed that money had been sent back to clients with a covering letter. The First Respondent submitted that this was dealt with as a priority. He confirmed that the only money left outstanding related to SU Football Club, where he did not have the funds once he had found out about the shortfall. He obtained funds in 2015, and would have dealt with it, but then there was further difficulty regarding Mr W who threatened to send to the First Respondent a statutory demand for the amount of £54,000 which he asserted was owing to him. A property which the First Respondent inherited from his father was due to be subject to a contract of sale, and from that and the First Respondent's jointly owned property, Mr W and the SU Football Club would be paid off.

42.3 The Tribunal considered the evidence including the oral evidence. The cash shortage which the IO found at the firm was explained in the FI Report as arising from costs billed on 11 June against SU Football Club, matters identified from the IO's review of the 2010 and 2011 bills book, where bills had not been sent or given to clients, and the probate matters of L and G deceased where profit costs had been billed in excess of those assessed; totalling £24,503.10. This was a strict liability breach under the accounts rules pleaded in the allegation, and the Tribunal considered that it also constituted a breach of Rules/Principles 1.04/4, and 1.06/6 and Principle 10 (the

requirement to protect client money and assets). The Tribunal found allegation 1.11 proved on the evidence to the required standard; indeed it had been admitted.

43. **Allegation 1.13 - The First Respondent signed a professional indemnity insurance proposal form dated 19 September 2011 which contained incorrect and/or misleading information, in that he confirmed that:**

1.13.1 no claims had been notified to the firm in the years 2009-2011, when in fact in or about 2009 the firm had been notified of a possible claim by the estate of J (deceased);

1.13.2 the firm's accounts had not been qualified in the previous six years, when in fact the firm's accounts had been qualified in 2009 and 2010; and

1.13.3 12 files of each fee earner were reviewed each quarter for supervision purposes, when in fact such structured file reviews were not undertaken,

contrary to either or both Rules 1.02 and 1.06 of the SCC 2007.

43.1 In respect of allegation 1.13.1, Mr Gott submitted that at section 18 of the PII proposal form for the year 2011 under the heading "Claims and Circumstances" was a question by reference to the previous six insurance years including 2009-2010 and 2010-2011:

> "Has your practice, or any prior practice, reported any circumstances or claims to the Assigned Risks Pool or to Qualifying Insurers…"

Both questions had been answered "No" but in fact the claim in the case of J was outstanding against the firm and had been notified to the firm's insurer for the 2009-2010 insurance year in or before February 2011.

43.2 In respect of allegation 1.13.2, Mr Gott referred the Tribunal to the PII proposal form for 2011 at section 16 and the question:

> "In the last 6 years has the S.R.A. qualified the practice's accounts or has the practice been the subject of an enquiry or investigation as a result of a breach of the Solicitors Accounts Rules?"

The question was answered "No". Mr Gott submitted that the form had been signed on 19 September 2011 which was prior to the commencement of the investigation but after the 2009 accounts had been qualified. The First Respondent told the IO that the insurance proposal form had been completed by a partner at H Solicitors, as that person saw fit, and that he and Mr LF then checked it. He had never dealt with PII before, and he had misunderstood the question at section 16 in that he concentrated on the part which he understood to refer to investigations by the Applicant. The First Respondent also informed the IO that Mr W had been dealing with the J claim, and that he had not been aware of it at that time.

43.3 In respect of allegation 1.13.3, at section 16 under the heading "Risk Management" was the question:

> "Does the practice carry out regular audits/reviews and formal file closure on all active files (including Partners casework)"

It had been completed "Yes". Below it was a further question:

> "If Yes, how many files are audited, how often and by whom?"

The question had been answered "12 per quarter per fee earner" however, as set out in respect of allegation 1.10, the First Respondent had told the IO that he "he got involved when there were complaints or any unusual matters." It was set out in the Rule 5 Statement that in his letter of 24 April 2012 that the First Respondent:

- confirmed that he had no records of his supervision of the files of others at the firm; and said that:
- he had "from time to time" reviewed Mr LF's files although "civil litigation is not my forte";
- he had dealt with five complaints in relation to the Third Respondent's files but did not claim to have reviewed them in a formal or structured way;
- he would "regularly look through mail received" for any potential issues;
- he believed he could rely on his cashier, whom he trusted implicitly, to ensure that there were no accounting irregularities;
- "I conceded that (a) I have no records of my supervision of files of others…(b) such supervision that I have undertaken may not be the level (sic) required by the rules";
- "with the benefit of hindsight, I didn't devote sufficient time to a proper supervision of files and develop a proper system for the same".

43.4 In the 24 April 2012 letter, the First Respondent also stated:

> "I certainly have never had any desire or inclination to administer the firm as evidenced above but I can't deny that the mantle of administrator passed to me and that I haven't shown any great aptitude for it. I will concede that I have been careless to say the least"

and

> "I have let the firm run itself and not taken control and I accept that. However I pray in aid my own heavy workload of criminal work, child care work and other legal work and my extracurricular activities"

43.5 Mr Leigh-Hunt submitted that the statement of Mr LF included:

> "Regarding paragraph 131 [of the FI Report], I believe [the First Respondent's] comments to be correct. I accept that [the First Respondent] had never dealt with insurance renewal before 2011; Mr [W] had always dealt with the renewal of the firm's insurance."

Paragraph 131 related to what the First Respondent told the IO about how the PII proposal form had been completed. In evidence, the First Respondent stated that, at the time he signed the form, he had no idea about the claim in the matter of client J. He had now produced for the Tribunal an extract from the file of J. He had now read the file. The firm (Mr A) acted in the winding up of the estate of the late Mrs J. She set up a trust for one of her sons who had mental health issues. Mr A had instructed a financial adviser to set up the trust fund, of which he and a local accountant were trustees. There were also charities who were beneficiaries of Mrs J's will. There was a question about whether payments made to the son were out of capital or interest, which had consequences for the charities. The matter had initially been raised with Mr W because he had replaced Mr A. The matter had gone on for some time. and it was apparent that Mr W had informed the firm's insurers and took charge of the file without the First Respondent's knowledge. The IO had raised an issue about who was dealing with it. The First Respondent was not aware of the matter, and found out that no one was dealing with it. An individual at H Solicitors had then taken it over. Counsel's opinion had been obtained and the matter had been settled. The First Respondent's only involvement had been from the time of the investigation.

43.6 The Tribunal considered the evidence including the oral evidence. The Tribunal found that when the First Respondent signed the PII proposal form on 19 September 2011, he was a sole practitioner and it was a requirement for a sole practitioner to make proper enquiries about the accuracy of the information he signed off on. The Tribunal noted that Mr W had dealt with the claim relating to client J, but the First Respondent could easily by enquiry have remedied his lack of knowledge. Mr W had retired from the firm in August 2010. In his letter to the Applicant dated 24 April 2012, the First Respondent stated that Mr W finally left the firm in early 2011. This rekindled the merger talks. The First Respondent stated in the letter that:

> "my understanding and expectation was that the merger would take place in or around the 1st October 2011 to coincide with the renewal of the indemnity insurance which Mr [C] was to deal with. I had never dealt with it before and my understanding from our discussions was that three applications would be made, one for them, one for us and one for the newly merged firm.…
>
> I was asked to authorise the sending of our claims record from … (the broker) to [Mr C] and he completed the application which was signed. I accept, in my naivety, that I did not consider the issue of supervision, which I will deal with later, or the Qualified Accountants Report that had been received….
>
> Significantly, however, I confirm, as I have already done, that I knew nothing about the [J] estate and the issues of negligence that had arisen…"

The merger did not take place until January 2014, but in the interim the First Respondent was relying on Mr C to produce documents. The First Respondent said that the firm was hopeful of the merger, and so he did not assume the mantle of managing partner as he thought that he would not have to do so. The Tribunal determined that the First Respondent should have checked both the claims history which he sent to Mr C and the completed form which Mr C sent him to sign. The First Respondent abdicated responsibility to someone who was in no position to know the answers to the questions on the proposal form. In respect of allegations 1.13.1 and 1.13.2, the Tribunal found that the First Respondent's conduct was contrary to Rule 1.02 and 1.06 of the SCC 2007.

43.7 In respect of allegation 1.13.3, the First Respondent acknowledged that he had not carried out structured files reviews, and that his file review and supervision was not in any way systematic. He had undertaken occasional post opening, looking for the first signs of trouble, but this did not constitute adequate supervision. The documentation the First Respondent had provided all post dated 2012. There was no evidence to explain what had happened between 2009 and 2011, and no evidence that 12 files had been reviewed per quarter, and indeed the First Respondent admitted that he was not undertaking 12 file reviews per quarter. The Tribunal found that signing a PII proposal form indicating that he carried out such reviews constituted breaches of Rules 1.02 and 1.06.

43.8 The Tribunal accordingly found all three aspects of allegation 1.13 proved on the evidence to the required standard; indeed they had been admitted.

49. **Allegation 1.14 - He [the First Respondent] failed to comply with a decision of the Legal Ombudsman for more than 15 months, contrary to either or both of Principles 6 and 7.**

49.1 For the Applicant, Mr Gott submitted that the Legal Ombudsman ("LeO") had made a decision on 23 January 2013 in relation to a complaint by Mrs B, a client of the firm, requiring the firm to pay the sum of £24,000 to Mrs B. There was a considerable amount of material before the Tribunal about damage to an unoccupied property as a result of pipes bursting. The First Respondent was dissatisfied with the decision of the LeO, but it was a decision with which he failed to comply. It was set out in the Rule 5 Statement that, on 1 May 2014, the LeO commenced enforcement proceedings and on 6 May 2014 an order was made requiring that the firm comply with the LeO's decision by 23 May 2014. In his letter to the Applicant dated 11 July 2014, the First Respondent said that he did not consider that the decision had been fair or acceptable, but he had no choice but to pay the award in full; the firm's financial position caused him difficulty in paying it as quickly as he had hoped, and that for at least three months he went without drawings to pay the award; he would borrow money to clear the award, and he did not intend to let the matter rest but would seek counsel's opinion with a view to recovering what he believed he had had to pay unfairly.

49.2 Mr Leigh-Hunt referred to bundle H, which consisted of documentation relating to the claim in respect of client J. He submitted that Mr W's management role was clear from it. In evidence, the First Respondent stated that he knew nothing about this matter whatsoever until he was told that the deceased Mrs B's daughter was coming

to see him at 9.30am the next day; he did not have the file. There was an issue of liability, and he was asked what he was going to do, and he said he would look into it. The matter went from bad to worse. He was not happy with the LeO's decision which came "out of the blue". Counsel's opinion was that he could do nothing. More information had since come to light, and he might revisit the matter with Counsel and the LeO. The matter related to water damage at a property. The First Respondent stated that there was clear evidence on the files that the insurers had been told that it was unoccupied, but the insurers said they had not received the information. Of the amount ordered he had paid £12,000. He had an issue with the balance of monies owing in that a brother of the complainant had failed to turn off water pipes at the property. A surveyor's report which was in bundle C stated that only £5,000 or £6,000 was needed to put the property back into the state in which it had been before the flooding.

49.3 The Tribunal considered the evidence including the oral evidence. In respect of the LeO's complaint, the Tribunal found that the First Respondent had not mounted any challenge to the complaint or appealed the decision. He clearly did not see why he should submit to the LeO's jurisdiction, and saw fit simply to ignore it. The Tribunal considered that in this matter the First Respondent had been the author of his own misfortune. The Tribunal considered that his actions would undermine the trust the public placed in him and the profession (Rule 1.06) and that he had clearly failed to comply with his legal and regulatory obligations, and to deal with his regulators and ombudsmen in an open, timely and cooperative manner (Principle 7). The Tribunal found allegation 1.14 proved on the evidence to the required standard; indeed it was admitted.

50. **Allegation 1.15 - He [the First Respondent] failed to notify the SRA of the closure of the firm on 14 January 2014 either (i) prior to the closure of the firm, or (ii) promptly after the closure of the firm, contrary to either or both of Outcome O(10.13) and Principle 7.**

50.1 For the Applicant, Mr Gott submitted that the First Respondent failed to notify the Applicant of the closure of the firm. He referred to the facts in the Rule 5 Statement and the First Respondent's own account of the chronology of events. In his letter of 11 July 2014, the First Respondent said that, at the time of the merger, it had been agreed that H Solicitors would notify the Applicant and that, at the end of February 2014, he had discussed the issue with Mr C who had printed off the Applicant's guidance regarding closing practices. The First Respondent stated that he had sent an email to the Applicant confirming the closure at that time but he was unable to recover the email because he had had a virus on his computer; and the matter of notification had since been remedied.

50.2 The Tribunal considered the evidence including the oral evidence. The Tribunal found that the First Respondent had not notified the Applicant of the closure of the firm promptly as alleged, and that this was contrary to outcome O(10.13) and Principle 7. The Tribunal found allegation 1.15 proved on the evidence to the required standard; indeed it was admitted.

Allegations against the First Respondent and the Third Respondent

51. **Allegation 1.16 - In respect of the L (deceased), E and W client matters, costs were paid from client funds without bills of costs or other written notification of the firm's costs first being sent to the clients, contrary to any or all of Rules 19(2) of the SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007.**

51.1 For the Applicant, Mr Gott submitted that the matters of L, E and W were three exemplified instances of what the Third Respondent called "sweeping" (see allegation 1.18 below) where no bills were sent to clients.

Client L deceased

51.2 For the Applicant, it was set out in the Rule 5 Statement that an interim bill of costs dated 23 July 2010 for £1,500 plus VAT (£1,762.50) was addressed to "The Executors of [L]" but contained no address details. Additionally, the top copy of the invoice had been retained on the file and there was no evidence that the bill had been sent to the client. Mr Gott submitted that the July 2010 bill showed no particulars of work done. At that time, the file had been under the conduct of a probate executive, Ms S, but conduct passed to the Third Respondent in February 2011 after Ms S left the firm. On 21 November 2011, a further interim bill for £5,000 plus VAT was raised. No address details were shown on the bill and the top copy remained on file. There was no evidence that the bill had been sent to the client. In interview with the IO on 26 January 2012, the Third Respondent was unable to explain why the bills had not been sent to the client.

Client E – debt

51.3 The Third Respondent had conduct of the file. He billed fees totalling £647.17 plus VAT (£760 .65) on four separate occasions as follows:

- 19 January 2010 – £250 plus VAT (£293.75)
- 5 February 2010 – £138.31 plus VAT (£162.52)
- 14 July 2010 – £250 plus VAT (£293.75)
- 13 April 2011 – £8.86 plus VAT (£10.63)

The file contained both the top copy and duplicate invoices for the first three bills. The Third Respondent confirmed to the IO that these bills had not been sent or given to the client. The IO was unable to locate a copy of the 13 April 2011 invoice. The firm's cashier confirmed to the IO that no bill had been raised because there was no bill number recorded against the entry on the client ledger. On 13 April 2011, £10.63 remained on client account, meaning that the invoice of that date would have the effect of reducing the client account balance to nil. In his letter to the Applicant dated 11 July 2014, the First Respondent accepted that there had been breaches of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007 and SAR Rule 15(3) in respect of these invoices.

Client W –Transfer of Interest in Property

51.4 The Third Respondent had conduct of this file. The firm provided a costs estimate of £395 plus VAT, comprising profit costs of £269.57, VAT of £40.43 and disbursements of £85. On 14 September 2009, the firm received £50 from Ms W on account of a Land Registry fee. As well as transferring an interest in the property, the client was also remortgaging with Abbey plc. Abbey's solicitors were LMS. The Third Respondent sent the transfer document to LMS, rather than the Land Registry, which indicated that LMS was dealing with the registration of the transfer. There was nothing on the file to indicate that the firm paid the Land Registry fee, and no ledger posting to indicate this. On 9 November 2009, the client was sent an invoice for £345 which included profit costs of £296, VAT and £50 for Land Registry registration fees. There was nothing on the file to explain the increase in profit costs over those in the initial estimate, and the Third Respondent was unable to explain this increase. Following payment of the 9 November 2009 invoice, a balance of £50 remained on client account, being the funds provided by the client in September 2009 for Land Registry fees. On 11 February 2010, a bill of costs for £50 including VAT was produced. The bill was addressed, incorrectly to Mr SW and contained no address details. Both the top copy and duplicate remained on the file. The Third Respondent was unable to explain the reason for the bill. In his letter to the Applicant dated 11 July 2014, the First Respondent accepted that there had been breaches of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007 and SAR Rule 15(3).

51.5 In his answer to the Rule 5 Statement dated 19 May 2015, the Third Respondent stated in respect of allegation 1.16:

> "In this connection this is a matter of fact although I have no recollection at all of the matters relating to E and W"

and

> "[E] debt – again this was a long time ago and in view of the fact that this is (sic) matter of fact although I have no recollection I can say nothing further"

In connection with the Ms W matter the Third Respondent stated:

> "All I can say about this is that there would have been no malicious intent and again I can give no reason why the bill was raised."

51.6 The Tribunal considered the evidence including the oral evidence. In respect of the First Respondent, the same considerations applied here as in respect of allegation 1.1 and the Tribunal considered that the First Respondent's conduct constituted a breach of Rule 19(2) of the SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007. The Tribunal found allegation 1.16 proved on the evidence against the First Respondent to the required standard; indeed it was admitted.

51.7 In respect of the Third Respondent, in the case of L deceased this matter had been passed to the Third Respondent from a fee earner who had left the firm. A second interim account was generated on 21 November 2011 under the Third Respondent's

reference for £5,000. The Third Respondent could not explain why the bill had not been sent to the client. In the case of E, the Third Respondent had conduct of the file and he confirmed that three bills dated 19 January 2010, 5 February 2010 and 14 July 2010 had not been sent or given to the client, and the firm's cashier confirmed that a bill of 30 April 2011 had not been raised. In the case of W, the Third Respondent again had conduct of the file. A bill was produced dated 11 February 2010 in the sum of £50 with an incorrect client name and no address details, with the top copy and duplicate remaining on the file. The Rule 5 Statement recorded that the Third Respondent could not explain the reason for the bill. The Third Respondent had not positively rebutted this allegation, but he had not admitted it in his Answer. The Tribunal found in the cases of L, E and W that allegation 1.16 had been proved to the required standard on the evidence against the Third Respondent.

52. **Allegation 1.17 - In respect of the W and CH matters, bills of costs for £50 and £85 (both inclusive of VAT) respectively were raised and paid from client funds, when there was no proper justification for those, contrary to any or all of Rules 22 of the SAR 1998, and Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.**

52.1 For the Applicant, Mr Gott submitted that these were both matters where bills were raised with no proper justification. He drew attention to the bill on the file of Ms W dated 9 November 2009 showing the registration fee of £50. There was no evidence that the Land Registry was ever paid by reference to the ledger in this matter. In the case of Mr CH, Mr Gott drew to the attention of the Tribunal a bill dated 11 February 2011 addressed to Mr CH with a full address but without a narrative and without evidence of any work having been done. Both the original bill and duplicate copy were still on the file. Mr Gott submitted, with particular reference to the Third Respondent, that this was part of the sweeping exercise in which he was involved.

52.2 In his answer to the Rule 5 Statement, dated 19 May 2015, the Third Respondent had stated in respect of allegation 1.17:

> "Again although this is a matter of fact I have no recollection of the [W/CH] matters"

52.3 The Tribunal considered the evidence including the oral evidence. In respect of the First Respondent, the Tribunal agreed with Mr Gott that this was essentially a matter of sweeping out balances from client account. The Tribunal found the facts of the allegation proved and that they constituted breaches of Rules 22 of the SAR 1998 and Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007. The Tribunal found allegation 1.17 proved on the evidence to the required standard against the First Respondent; indeed it was admitted.

52.4 In respect of the Third Respondent, the Tribunal considered that he had not positively rebutted the allegation, but neither had he admitted it. The evidence showed his involvement with the files. The Tribunal found allegation 1.17 proved against the Third Respondent on the evidence to the required standard.

53. **Allegation 1.18 - The Third Respondent admitted to the Forensic Investigation Officer that it had been the practice at the firm for a number of years for small residual balances on client accounts to be dealt with by way of raising bills of costs, contrary to any or all of Rules 22 of the SAR 1998, and Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.**

53.1 Mr Gott relied on what the Third Respondent had told the IO in interview on 26 January 2012. In the FI Report it was also recorded that the IO asked how it was possible to determine that the residual client account balances were monies due to the firm, and not monies due to the client, without reviewing either the file or the ledger. The Third Respondent said that he could not, and that small client account balances would be swept up as part of normal practice. Mr Gott submitted that the accountants (who were new to the firm) had identified nine incidents of sweeping up in the 2009 accounts. They found 13 such bills referred to in the accounts for 2010. Mr Gott pointed out that the Third Respondent had been at the firm in the 1970s, 1980s, 1990s and 2000s and up to and including the time of the investigation, which also included the time that the First Respondent had been employed at the firm and then served as a partner. Mr Gott submitted that any suggestion that the First Respondent was unaware of the practice was unsustainable. In his letter to the Applicant dated 24 April 2012, the First Respondent said:

> "I have no defence to this. As part of the archiving process these small sums are, from time to time, identified.
>
> There is no excuse for not sending out the invoices if justified or returning the monies."

In his letter to the Applicant of 11 April 2014, the First Respondent said that each fee earner would be provided with a list at or near to the year-end showing unbilled disbursements and client balances. He did not personally sweep up, but he could not speak for others and accepted overall responsibility.

53.2 In evidence the First Respondent did not accept what the Third Respondent said in his general comments about sweeping up and in particular that it had been undertaken by the Third Respondent under orders. He could recall that they received a printout from the accounts department showing balances, in or around January, for the preceding year. He did not have any balances because his work was legally aided. If disbursements had not been paid the cash office needed to know if they were to be written off and the First Respondent dealt with the exercise on that basis. The process did not affect him much, and if he had client balances they could be explained. If the Third Respondent undertook sweeping under orders it was not from the First Respondent.

53.3 In his answer to the Rule 5 Statement dated 19 May 2015, the Third Respondent had stated in respect of allegation 1.18:

> "This is admitted but I was simply doing as I was told by the accounts manager"

53.4 The Tribunal considered the evidence including the oral evidence. The First Respondent admitted sweeping balances from client account in his first response to the Applicant dated 24 April 2012, relied on by Mr Gott. The First Respondent's oral evidence was inconsistent with what he said in that letter. He now admitted allegation 1.18 as a partner, but limited only to the specific cases referred to in the course of evidence, and disputed that there was a general policy so far as he was concerned. If the Tribunal applied the two differing accounts to the examples which had been brought before it, a pattern could be seen of transfers occurring in respect of both the First and Third Respondents' matters. The First Respondent had also put a defence that his work was mostly criminal legal aid, in which client account balances were not generated. However, the allegations against the First Respondent contained examples of other types of work carried out by him. The Tribunal accepted that a practice of sweeping existed at the firm to the extent to which it was specifically evidenced by the examples presented to it, and in respect of which had the Tribunal had seen evidence and of which there were numerous examples, but it did not choose to go any further. In respect of the First Respondent, the Tribunal found allegation 1.18 proved on the evidence to the required standard; indeed it was admitted.

53.5 The Tribunal noted that the Third Respondent had made a casual admission that he had been involved in sweeping up balances from client account, and had described the provision of lists by the cashier with details of small residual client balances on an annual basis, and that this was dealt with without recourse to the files or the ledgers. Based on the evidenced examples, the Tribunal accepted that it was proved that the practice of sweeping up had occurred, and to the extent that it constituted a system or an approach to billing, the Tribunal found allegation 1.18 proved against the Third Respondent, based on the same considerations as in respect of the First Respondent, on the evidence to the required standard.

54. **Allegation 1.19 - There was an improper transfer of £35 between the ledgers of clients CH and K, contrary to any or all of Rules 30(1) of the SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007.**

54.1 In the Rule 5 Statement it was alleged that the Third Respondent acted for Mr CH in a property purchase. After completion, on 12 July 2010, the firm sent the client a statement showing that he was due £411.87 and enclosed a cheque in that sum. The ledger card showed that after this the firm paid £80 in respect of Land Registry fees and transferred a further £10 from client to office account, following which a balance of £120 remained on client account. On 11 February 2011, the firm raised a bill for £85 (£70.84 plus VAT) with the narrative "To our update (sic) professional charges"; and transferred £35 (the balance of the £120) to the client ledger account of an unrelated client, Mr K, following which it was immediately transferred to office account, reducing the client account balance on Mr K's matter to nil. The top copy of the £85 bill dated 11 February 2011 had been retained on the file, and there was no evidence that it had been sent to the client. In a meeting with the IO on 26 January 2012, the Third Respondent was unable to explain the inter-ledger transfer, and agreed that this transfer had "probably not" been in accordance with Rule 30(1) of the SAR. Mr Gott submitted that this constituted a sweeping activity, with particular reference to the Third Respondent, through two accounts to pay a bill to the firm. In his letter to the Applicant dated 11 July 2014, the Third Respondent said he could not explain the inter-ledger transfer, and admitted that there had been a

breach of the SAR Rule 30. He said he had immediately refunded Mr CH from his own pocket.

54.2 In his answer to the Rule 5 Statement dated 19 May 2015, the Third Respondent had stated in respect of allegation 1.19;

> "I have no recollection at all this transaction referred to"

And

> "Again I have no recollection of this matter. As mentioned in the Rule 5 application immediately this was brought to my attention this sum of £35 was refunded from my own pocket"

54.3 The Tribunal considered the evidence including the oral evidence. This allegation related to a transfer between two unrelated client ledgers which was a serious matter. In respect of the First Respondent the Tribunal found that this constituted a breach of Rule 30(1) of the SAR 1998 and Rules 1.02, 1.04 and 1.06. The Tribunal found allegation 1.19 proved against the First Respondent on the evidence to the required standard; indeed it was admitted.

54.4 In respect of the Third Respondent, he did not admit allegation 1.19. He was the fee earner for both client matters. The circumstances were somewhat odd in that the Third Respondent prepared a conventional statement in respect of the matter of Mr CH when the matter was finalised and sent money back to the client, but he did not send everything that was left in the client account. He later cleared the balance on the CH file by raising a bill of £85, where there was no evidence it had been sent to the client, and transferred the balance of the monies remaining on the CH file, £35 to Mr K's ledger, which money was then swept into office account. He could not explain what had happened, and agreed it was a probable rule breach. The Tribunal found on the evidence that this had been a more convoluted process of sweeping up than was seen in the other evidenced cases, and found allegation 1.19 proved against the Third Respondent to the required standard on the evidence.

55. **Allegation 1.20 - Costs were taken by the firm on the L and G matters in excess of the sums assessed by a costs draftsman, contrary to any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.**

55.1 In the Rule 5 Statement it was set out that on two probate files, of which the Third Respondent had had conduct, bills were raised for sums in excess of the amounts assessed by a cost draftsman.

<u>Client L deceased</u>

55.2 On 23 July 2010 an interim bill of costs for £1,500 plus VAT of £262.50 had been raised by Ms S, the probate executive with conduct of the matter at that time. The file was subsequently sent to a cost draftsman for assessment of the firm's costs and, on 21 November 2011, a set of estate accounts were provided to the firm. They assessed the firm's overall charges for dealing with the estate at £5,409.40 plus VAT. By this time, the Third Respondent had conduct of the file. The covering letter from the cost

draftsman indicated that costs of £4,646.33 still needed to be charged, suggesting that an interim bill had already been raised. Notwithstanding this information, on 21 November 2011 a further interim bill of £5,000 plus VAT was raised, meaning that bills totalling £6,500 plus VAT were raised on the matter, amounting to £1,090.60 (not including VAT) more than the sum assessed by the cost draftsman. In interview with the IO on 26 January 2012, the Third Respondent said he had been unaware that an interim bill had been raised by Ms S, that he had not checked the ledger before billing this matter and would never have checked the client ledger before billing that particular matter. When asked about the note on the cost draftsman's covering letter, which suggested that an interim bill had been raised, the Third Respondent said he had not noticed it.

G deceased

55.3 It was set out in the Rule 5 Statement that, between 29 April 2009 and 7 June 2011, six bills had been raised, totalling £5,750.50. The cost draftsman's report dated 1 June 2011 assessed the firm's costs to that date as £2,742, a difference of £3,008.50. The Third Respondent told the IO that he had only looked at the figure on the front of the cost draftsman's report and had not checked the client ledger, and so had not been aware of the bills already raised.

55.4 Mr Gott referred the Tribunal to the FI Report in respect of the cases of L and G deceased. The Third Respondent confirmed that the firm used an external cost draftsman to assess costs on all probate matters. There was no real explanation from the Third Respondent of the overcharging, and no denial of it. Mr Gott suggested that this might have been another form of sweeping. He submitted that it demonstrated the Third Respondent's manifest want of integrity in that he had spent his entire professional career doing something which was fundamentally wrong. He was looking for dormant client accounts and sweeping funds out of them. It was not until 2009 that the accounts were qualified on the basis of this improper practice, which was exposed by the firm's new accountants. Mr Gott submitted that there was no issue that allegations 16 to 20 were made out in respect of the Third Respondent because, in respect of each of the particulars alleged, he was damned from his own mouth by his surprisingly candid admissions to the IO at the meeting on 26 January 2012. Mr Gott clarified for the Tribunal that, in respect of allegations of sweeping, the Applicant was not seeking to go back to 1969 when the Third Respondent joined the firm, although it appeared that the practice may have been going on since then. The Third Respondent had made a general admission about the practice, which Mr Gott submitted was sufficient to prove want of integrity and breaches of the other Rules as charged. Mr Gott submitted that, in the Third Respondent's Answer to the Rule 5 Statement dated 19 May 2015, he had made no positive rebuttal of the allegations and done no more than put Mr Gott to proof.

55.5 For the First Respondent, Mr Leigh-Hunt submitted that there were no qualified accounts before 2008; the accounts in 2009 triggered this allegation. The Third Respondent took responsibility for what he did, but the Tribunal should not extrapolate back into history.

55.6 In his Answer to the Rule 5 Statement, the Third Respondent had stated in respect of allegation 1.20:

> "I certainly do remember this situation. A lady who carried out of our probate work regrettably became very ill and had to leave the firm. I do recall that I took over 41 matters being carried out by this lady which again with my other work was excessive. With regard to [L] and [G] I sent these files to a cost draftsman in Doncaster without perusing the files, the cost draftsman prepared final estate accounts which I then automatically sent out. There were certainly no malicious intent in this regard and I can inform the Tribunal that matters in relation to L and G have indeed been rectified."

The Third Respondent also stated, in respect of having told the IO that he only looked at the figure on the front of the cost draftsman's report and did not check the client ledger:

> "This is certainly right and I can only add that due to pressure of work at that particular time that I would not check the client ledger balance but how this escaped the accounts department is beyond me"

55.7 The Tribunal considered the evidence including the oral evidence. This allegation related to overbilling, running to over £1,000 and over £3,000 in respect of the matters of L and G respectively. In respect of the First Respondent, the Tribunal found the facts of the allegation were proved and that they constituted a breach of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007. The Tribunal found allegation 1.20 proved against the First Respondent on the evidence to the required standard; indeed it was admitted.

55.8 In respect of the Third Respondent, the Tribunal noted that this was one allegation where the Third Respondent clearly remembered the situation, and admitted what he had done. In the matter of L deceased, in interview with the IO the Third Respondent admitted that he had not checked the ledger before billing, and would not generally do so. He also said that he had not noticed a note at the foot of the cost draftsman's one-page covering letter to the estate accounts, which she had drawn up dated 21 November 2011, which suggested that an interim bill had been raised. The note particularised "costs still to take of £4646.33…" The Tribunal noted incidentally that the bills raised did not match the figures in the footnote; £1,762.50 including VAT had been billed in July 2010 by Ms S (although the bill did not appear to have been delivered) and a bill for £5,000 plus VAT was raised by the Third Respondent. In the matter of G deceased, it was clear from what the Third Respondent told the IO that he had followed the same procedure, again only looking at the figure on the front of the cost draftsman's report before billing. The Tribunal found proved that costs had been taken by the firm on the matters of L and G in excess of the sums assessed by the cost draftsman, and that this constituted a breach of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007. The Tribunal found allegation 1.20 proved on the evidence against the Third Respondent to the required standard. The Third Respondent was not present and the Tribunal had to take very particular care in determining allegations 16 to 20 against him. It had noted any admissions that he had made, but they were not material to the extent that the Tribunal had, in any event, found all the allegations proved on the evidence.

Previous Disciplinary Matters

56. First Respondent – None.

57. Third Respondent – None.

Mitigation

First Respondent

58. Mr Leigh-Hunt submitted that the case had been a nightmare for the First Respondent. It was not easy for him ending up as a sole practitioner. When the firm merged with H Solicitors it was a great relief to the First Respondent to get away from management responsibility; as a salaried partner of H Solicitors he had nothing to do with management, insurance and accounting regulations. He did not sign cheques. If he was permitted to continue practising he would give an undertaking that he would not hold himself out as a sole principal or principal in a multiple partner practice. Mr Leigh-Hunt appreciated that the Tribunal had the full range of sanctions open to it including strike off, but hoped that it would see that the matters proved did not make strike off necessary. He took issue with the inferences that he submitted Mr Gott had tried to draw from the Third Respondent's statement. He was not here, and could not be cross examined. It was not known what was behind his assertions. Mr Leigh-Hunt asked the Tribunal to ignore the inferences.

59. Mr Leigh-Hunt submitted that the First Respondent had been very candid about accepting liability on a joint and several basis as a partner. He had been left with responsibility after the resignation of Mr W. He had been at pains to point this out in his Answer and witness statement. He did not know at the time of many of the instances which gave rise to the allegations. It could be said that as a partner he should have known, but where there was a managing partner others were entitled to trust him and if he could not be trusted it caused difficulties. Mr Leigh-Hunt submitted that there were no previous matters affecting the firm or the First Respondent. Prior to 2008 there had been no qualified accountant's reports and no issues of professional impropriety until Mr W decided to take action. Mr Leigh-Hunt submitted that Mr W's handwritten notes were very clear; he was gathering funds together. As soon as the First Respondent had this drawn to his attention he gave instructions to reverse the entries. The only outstanding balance was that of £12,000 due to SU Football Club. The First Respondent had strenuously made attempts to return the money, but the Club no longer had any members. Mr Leigh-Hunt appreciated Mr W was not present, but submitted that he had been preparing his exit from the firm for quite a while. The primary incident had been activated by Mr W. He wanted his capital account paid and he built up office account and was annoyed when the First Respondent's borrowing was diverted to repay client account.

60. Mr Leigh-Hunt submitted that to bring 20 allegations against the First Respondent was bureaucratic; they could have been reduced to half that number. Some clients affected, such as Mr H and Mr S-B continued to do business with the First Respondent. No problems had followed him to the merged firm. He had personally enjoyed untrammelled practising certificates throughout his career, and even after the investigation in 2011, two or three more practising certificates had been

issued. There had been no question of an intervention or of clients complaining direct to the Applicant. The First Respondent had the confidence of Mr C the senior partner of H Solicitors, and Mr Leigh-Hunt commended to the Tribunal his supportive testimonial. Mr Leigh-Hunt also asked the Tribunal to consider the other character references, including one from a fellow practitioner who stated that no one in the locality doubted the First Respondent's probity. The First Respondent said that he had spread himself too thin and in this connection Mr Leigh-Hunt referred the Tribunal to his involvement in the community and to the testimonials from two schools (in which he held non-executive positions). The First Respondent was a Deputy District Judge and Deputy Coroner and highly thought of. He had never been under investigation before and when he received the accountant's report he thought the problem would be straightened out. In respect of his failure to report Mr LF's partnership status he had only been appointed two months before, and the information was corrected within a few months. The First Respondent had not been aware of the claim in respect of client J, and there was no evidence of any other claim against the firm. Mr Leigh-Hunt submitted that there were papers on the file to show that the insurance brokers were untroubled by the "frisson" of the failure to declare the J claim, and there was an e-mail from them saying that the firm remained covered. The matter of client J had been settled. In respect of the award by the LeO, Mr Leigh-Hunt submitted that many solicitors had difficulty with the LeO, which he felt took a broad brush approach. It was the First Respondent's strong feeling that, if the firm had been sued in negligence, the case would not have been made out. The actions of a family member worsened the damage to the property, which would have constituted contributory negligence.

Third Respondent

61. In his answer to the Rule 5 Statement, the Third Respondent said:

> "With regard to all matters raised I once again state that I started with the firm at the age of 16 and I have now just reached the age of 62. I do hope the Tribunal will take this into consideration, which I hope goes some way to showing that my integrity cannot be questioned."

Sanction

First Respondent

62. The Tribunal had regard to its Guidance Note on Sanctions, the mitigation offered for the First Respondent and testimonials submitted on his behalf. The First Respondent had been the subject of 20 allegations covering breaches of the rules of conduct and of the accounts rules. The Tribunal considered that one overall sanction would be appropriate. Most significantly there were numerous admitted and proven allegations of the requirement to act with integrity. The definition of integrity was to be found in the case of Hoodless & Anor v Financial Services Authority [UKFTT] FSMT 007 (3 October 2003):

> "In our view "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code..."

The First Respondent had been woefully lacking in steady adherence to ethical principles. Findings had also been made of other breaches of core duties including: failure to act in client's best interests, failure to maintain public trust, failure to provide a good standard of service and failure to protect client money and assets. The First Respondent had had the opportunity to consider the rule breaches alleged and had admitted them. They went far beyond purely technical breaches.

63. In assessing the seriousness of the misconduct and the First Respondent's culpability, the Tribunal had regard to the fact that the First Respondent had been for a time a sole practitioner. The Tribunal had not overlooked that, when the nine cases were subject to billing without notification to the clients, Mr W was in effect the managing partner, but it did not help the First Respondent to say that he was entitled to leave everything to Mr W, because the First Respondent was a partner and should have been sufficiently alert to what was happening. Significantly, on the First Respondent's own evidence, Mr W came to see him about the client balances, told him that some of them were on his files, and that he proposed to render a bill. The First Respondent should have taken those files of which he had conduct and looked into them in the proper way, instead of simply acquiescing in Mr W going ahead. He had a high level of culpability. As to motivation, it seemed that the First Respondent wished to be excused from responsibility for running the firm. He preferred advocacy and the nature of his practice which took him out of the office a great deal, and he abdicated responsibility on that account – to that extent his actions constituted a deliberate course of conduct. The Tribunal had reflected on the personal involvement of the First Respondent, as opposed to that of Mr W, in the management and administration of the firm, and of others in some of the cases. The First Respondent had some direct control over what occurred because some of the files were under his reference and management, such as the CS Club matter, and he had direct responsibility for supervision as a sole practitioner. He was also personally involved in some of the other breaches, for example, in respect of the PII proposal form he should have checked the claims history elements and statements made in the form. The decision not to pay the LeO was a product of his feeling of injustice at the outcome of the complaint. He missed the point through that approach, and did not engage with the case appropriately or bring an appeal. He had benefited financially in all cases as a partner, although the monies had now been repaid to client account, save in the case of the SU Football Club where the First Respondent had expressed an intention to do so.

64. In terms of the harm which had been caused by the First Respondent's conduct, as events ultimately turned out only the SU Football Club lost out in the medium-term, and the Tribunal would take that into account appropriately. However there was, in general terms, harm to the reputation of the profession at large and to the First Respondent as an individual and to the firm. The process of applying client money to office account for costs in an unjustified manner would be of grave concern to the public. The preservation of client money was the bedrock and central plank of probity in the solicitor's profession and as had been said in the case of Bolton v The Law Society [1994] 1 WLR 512 one of the purposes of sanction was:

> "the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every member, of whatever standard, may be trusted to the ends of the earth.

The reality was that at a particular point in time the firm had generated £27,000 of questionable profit costs to assist with running costs, salaries and partner profit. In his letter of 24 April 2012 to the Applicant, the First Respondent admitted the sweeping away of small balances at the material time. No client complaints had been made in respect of the conduct complained of, but the clients in question would not have realised what had gone on because the affected matters were generally either probate matters with no live clients, or related to dissolved working men's clubs where the officers had ceased to be involved. Generally small amounts of money were sitting on ledgers without being returned for a long time.

65. As to aggravating factors, the First Respondent's behaviour was calculated, deliberate and repeated because the approach to billing had been proved, in certain exemplified cases, to be part of the firm's apparently general process. The nine cases of unjustified billing occurred over a period of time. The Tribunal found it aggravating that there was a lack of regard to any form of robust control that would have curtailed the potential for the breaches which occurred. The Tribunal had heard that these practices rolled on, and systems which had been set up by earlier managing partners in a completely different context continued. The Tribunal was unimpressed by the First Respondent's justification of his approach to supervision, which was that he simply adopted what Mr P had done in terms of post-opening. The Tribunal considered that on his own evidence the First Respondent had inadequate grasp of what was happening in this small firm. There was a disregard for the proper requirements of a responsible solicitor's firm in a modern environment. The misconduct occurred over a couple of years and two sets of accounts were qualified. It was very troubling that the firm took advantage of deceased clients, and the situation regarding working men's clubs which were unincorporated, unsophisticated organisations. Overall the Tribunal considered that the First Respondent's conduct amounted to a pattern of failure of control. This was a solicitor with 40 years' experience, many of them as a partner, with higher rights of audience, who held judicial appointments, and who should have known that he was in material breach of his obligations.

66. As to mitigating factors, the Tribunal had regard to the fact that many of the bills seemed to have been generated by Mr W, or by the Third Respondent. The First Respondent had made considerable efforts to make good the losses as soon as the situation was uncovered; he used money which he had borrowed to pay the capital account of Mr W, because it happened to be there, to pay back the client accounts. There was an issue about the fact that there was not quite enough money, and that SU Football Club remained unpaid. The Tribunal considered that the First Respondent had shown some carelessness in leaving it to Mr W to make the reimbursement. It was a quite unsatisfactory position, and demonstrative of why the mess had arisen. The First Respondent however had a previously unblemished career.

67. The Tribunal looked for signs of insight on the part of the First Respondent, but found a startling lack of it for one of his seniority. He seemed to retain a misplaced assumption that the breaches were technical or bureaucratic in nature, and were trivial or de minimis, and he had a misplaced belief that they had only arisen because of the actions of others. He had cooperated with the investigation, save that he had lied about the status of Mr LF, but he said that this had been caused by panic and a desire to protect him. It could not therefore be said that he had been open and frank. There

was also equivocation throughout the hearing about the nature of his submissions, which the Tribunal again put down to lack of insight. He accepted the facts of what had occurred, but in his evidence was equivocal about the consequential breaches.

68. The Tribunal considered the breaches overall to have been substantive (as opposed to technical) and serious. The Tribunal considered the full range of sanctions available to it. It considered the matter too serious for no order or a reprimand. The Tribunal considered suspension as a possible sanction, which gave an indication of the level of seriousness the Tribunal was faced with. Against that the Tribunal considered all the material before it including the testimonials, the First Respondent's evidence, and his current practice status at H Solicitors and the fact he was no longer involved in any administration of the firm he had joined, nor had any intention to be so involved again. The Tribunal had to impose an order which it felt reflected the gravity of the matters it had ruled upon and, most importantly, which would protect the public and maintain the reputation of the profession. After careful consideration the Tribunal considered that restriction upon the First Respondent's continued ability to practise was essential, coupled with a substantial fine. The Tribunal considered that a £20,000 fine would be affordable, based on the information disclosed in the First Respondent's Personal Financial Statement, and his continued ability to earn as a solicitor.

The Third Respondent

69. All five allegations brought against the Third Respondent had been found proved. He had been personally involved in the matters which were the subject of the allegations and his excuse was that he had no malicious intent in what he did, whether or not he could actually recall the case in question. In one matter, that of Mr K; the Tribunal understood that he had repaid £35 from his own pocket. Credit had to be given to him for his full and frank approach in not seeking to rebut most of the allegations. The Tribunal took into account that he had worked in the profession from the age of 16 until age 62, and spent his whole working life in one firm However he had fallen short of the standards expected of a professional man in the legal profession, including the failure to act with integrity which had been proved against him. He accepted in his communications with the Tribunal that a Section 43 order would be made against him. In all the circumstances the Tribunal considered it appropriate to impose a Section 43 order.

Costs

70. For the Applicant, Mr Gott applied for costs in the amount of £42,269 against the First Respondent, and sought a contribution from the Third Respondent However he pointed out that the matter had taken a shorter time than estimated, and had been dealt with differently from the way anticipated. A second full day of hearing was not required. Attendance and travel and waiting units could be reduced for Mr Gott's instructing solicitor from 120 to 90 and 20 to 18 respectively. Other than that, he submitted that the costs for a two-day hearing were eminently reasonable.

71. As to the Respondents' ability to pay, in respect of the Personal Financial Statement submitted by the First Respondent, it showed that he has a house which was free of charge. He had another property inherited from his father which he valued at around £77,000 which was subject to a mortgage of around £30,000. It was under contract for

sale. The First Respondent stated his income at £30,000 and Mr LF in his statement also referred to his belief that the First Respondent was paid that amount. That did not include his judicial income. Mr Gott submitted that the First Respondent and his wife's household income was healthy when added to the available equity in the two properties which he owned. Mr Gott submitted that the First Respondent should be liable for the entirety of any costs awarded against him. Mr Gott submitted that the Third Respondent had submitted a Personal Financial statement which Mr Gott stated that he took at face value. It showed that he had relatively limited means. He had not put the Applicant or the Tribunal to the cost of his attendance. He had been candid with the IO and Mr Gott suggested that a contribution towards costs of a set sum would be appropriate. The Applicant had in mind £5,000.

72. The Tribunal raised the issue of costs of the proceedings attributable to Mr LF. He had agreed to pay a set amount in the RSA. Some element of the forensic investigation costs and legal costs must have been referable to him. Mr Gott suggested that a broad brush approach would be to make a reduction of 10% on the total figure which the Tribunal assessed, because matters were really focused on the First and Third Respondents.

73. For the First Respondent, Mr Leigh-Hunt accepted that there were investigation costs but asked that the Tribunal take into account that a case based on dishonesty had been prepared and abandoned, and he submitted that this involved a lot of work by those representing the Applicant and those instructing them. The First Respondent had admitted technical breaches and he had been cooperative. From the beginning of the hearing the Applicant knew that it was an open and shut case. He questioned whether it was necessary for the Applicant to have instructed leading counsel and the involvement of two solicitors in case preparation when he, Mr Leigh-Hunt, was on his own. He asked for regard to be had to proportionality and the CPR, and to the First Respondent's means, and for his need to reimburse SU Football club to be taken into account. Mr Gott informed the Tribunal that he had stepped in because of unavailability of junior colleagues in Chambers, and that his fee was claimed at the same level as a junior. Moreover, when it became apparent to his instructing solicitors that the case would go short, the brief fee had been renegotiated with Mr Gott's approval.

74. The Tribunal asked for information about the First Respondent's judicial earnings. He had not sat as a Deputy Coroner since he joined H Solicitors. He served as a Deputy District Judge for two days a month on average, sometimes more. It was also submitted that the equity in the First Respondent's late father's house was not as much as Mr Gott had calculated, as the First Respondent had an undertaking to pay rent from it to the firm's former landlord. Rent just about covered the mortgage payments on the property; little or no income was derived from property. The intention had been to use it as an investment, but circumstances had changed.

75. The Tribunal summarily assessed costs at £40,000 taking into account the submissions made by the parties. It accepted that a further reduction of 10% should be made to reflect costs incurred in respect of Mr LF, reducing the figure to £36,000. Regarding the First Respondent, the Tribunal had regard to the case of Broomhead v Solicitors Regulation Authority [2014] EWHC 2772 (Admin) 42, but considered that the allegation of dishonesty had not extended the costs of the hearing

because it had been withdrawn. Mr Leigh-Hunt acknowledged that the case of dishonesty had been properly brought, and the Tribunal had reflected the situation in its overall assessment of the costs. It felt that the suggested contribution from the Third Respondent at £5,000 was rather high, and awarded costs against him in the sum of £4,000. Costs of £32,000 would be awarded against the First Respondent.

76. As to affordability, the First Respondent had ongoing income as a solicitor, an interest in one property which was free of any charge, and an inherited property with some equity. The Tribunal considered that an immediately enforceable order would be appropriate. In respect of the Third Respondent all the allegations brought against him had been found proved. The Tribunal noted that he owned a property valued at £150,000 which was subject to a mortgage of £135,000 and that he was in employment. On his Personal Financial Statement he had offered to make payment of £25 a month. The Tribunal considered that an immediately enforceable order for costs should be made against him in the sum of £4,000.

Statement of Full Order

77. First Respondent

1. The Tribunal Ordered that the Respondent, AWP [NAME REDACTED], solicitor, do pay a fine of £20,000.00, 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 £32,000.00.

2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:-

2.1 The Respondent may not:

2.1.1 Practise a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); or

2.1.1 Hold client money or be a signatory on any client account cheques or other banking instruments whether in electronic or paper form;

2.1.1 Be a Compliance Officer for Legal Practice (COLP) and/or Compliance Officer for Finance and Administration (COFA).

2.2 For the avoidance of doubt the Respondent may only work as a solicitor in employment approved by the Solicitors Regulation Authority.

78. Third Respondent

1. The Tribunal Ordered that as from 20th January 2016 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor STEVEN PLATTS;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Steven Platts
(iii) no recognised body shall employ or remunerate the said Steven Platts;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Steven Platts in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Steven Platts to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Steven Platts to have an interest in the body;

And the Tribunal further Ordered that the said Steven Platts do pay the costs of and incidental to this application and enquiry fixed in the sum of £ 4,000.00.

Dated this 6th day of May 2016
On behalf of the Tribunal

E. Nally
Chairman