SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11443-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[*FIRST RESPONDENT - NAME REDACTED*] First Respondent
MATTHEW CHARLES COBLEY Second Respondent
ANDREW SIMON WHITAKER Third Respondent

Before:

Mr R. Hegarty (in the chair)
Mr T. Smith
Mr S. Hill

Date of Hearing: 26 July 2016

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Andrew Blatt, solicitor of Murdochs Solicitors, 45 High Street, Wanstead E11 2AA for the First Respondent.

The Second and Third Respondents did not attend and were not represented.

JUDGMENT

Allegations

1. The Allegation against the Respondents, First Respondent, Matthew Charles Cobley and Andrew Whitaker made upon behalf of the Applicant was that on various dates between 6 March 2012 and 20 December 2013, Mr Cobley and/or Mr Whitaker, the employees of Legal Development Partners Ltd ("LDP"), a recognised body of which the First Respondent was a director, paid client money belonging to clients of that company, namely cheques to a minimum value of £41,493.59 into a bank account in the name of Cobley Johnson Partners Ltd ("CJP"), and the First Respondent, Mr Cobley and Mr Whitaker each thereby breached:

1.1 Principle 2 of the SRA Principles 2011 ("the Principles"); and/or

1.2 Principle 6 of the 6 Principles; and/or

1.3 Rule 14.1 of the Solicitors Accounts Rules 2011 ("SAR 2011")

2. The further Allegation against the First Respondent and Mr Cobley made upon behalf of the SRA was that on 21 December 2012 Mr Cobley paid further client monies, namely 23 cheques to a total value of £52,181, into the office account of LDP and the First Respondent and Mr Cobley each thereby further breached Rule 14.1 of SAR 2011 and Mr Cobley also further breached:

2.1 Principle 2 of the Principles; and/or

2.2 Principle 6 of the Principles.

3. The further Allegation against Mr Cobley and Mr Whitaker made upon behalf of the SRA was that on or about 2 January 2013 they improperly attempted to prevent the First Respondent and Ms GT, an employee of LDP, from reporting the misappropriation of client monies, referred to in the preceding Allegation, to the SRA in compliance with their obligations under Outcome 10.4 of the SRA Code of Conduct 2011 ("SCC 2011") and Mr Cobley and Mr Whitaker each thereby further breached:

3.1 Principle 2 of the Principles and/or;

3.2 Principle 6 of the Principles and/or;

3.3 Outcome 10.7 of SCC 2011.

4. The further Allegations against the First Respondent only were that:

4.1 On 30 October 2013 she caused client money to a total value of £13,381.73 to be transferred from the client account of LDP to the account of CJP, otherwise than in circumstances permitted by Rule 20.1 of SAR 2011 and thereby breached that Rule;

4.2 Between 5 October 2011 and 18 December 2013 she carried on in practice as a manager of LDP from offices in England and Wales subject to the direction and

control of Mr Cobley and Mr Whitaker and thereby breached Principle 3 of the Principles;

4.3 From January 2013 onwards, she knew that client monies had been misappropriated from LDP by Mr Cobley either acting alone or in conjunction with Mr Whitaker but did not report that misappropriation to the SRA and thereby further breached:

4.3.1 Principle 6 of the Principles and or;

4.3.2 Failed to achieve Outcome 10.3 of SCC 2011.

5. The further Allegations against Mr Cobley only were:

5.1 That between the 23 November 2012 and 14 November 2013 he caused correspondence to be created on client matter files which was backdated to 23 November 2012 in order to mislead an officer of the SRA as to the date upon which it been sent and thereby further breached:

5.1.1 Principle 2 of the Principles and/or;

5.1.2 Principle 6 of the Principles and or;

5.1.3 Principle 7 of the Principles.

5.2 On or about 3 January 2013 he attempted to procure the payment of client monies in the sum of £6,526.08 to Mrs AC, who was not entitled to be paid this or any sum, in breach of the SAR 2011 and thereby further breached:

5.2.1 Principle 2 of the principles and/or;

5.2.2 Principle 6 of the principles and/or;

5.2.3 Principle 10 of the principles.

6. The further Allegations against Mr Whitaker only were that:

6.1 From a date unknown after 1 January 2013 he knew of the misappropriation of client monies from LDP by Mr Cobley but did not report those misappropriations to the First Respondent and Mr KS and thereby breached:

6.1.1 Principle 8 of the Principles and or;

6.1.2 Principle 10 of the Principles.

6.2 That from a date unknown after 1 of January 2013 he knew of the misappropriation of client monies from LDP by Mr Cobley but did not report those misappropriations to the SRA and thereby failed to achieve Outcome 10.3 of SCC 2011.

7. Whilst dishonesty was alleged:

7.1 Against Mr Cobley in relation to each of the Allegations against him;

7.2 Against Mr Whitaker in relation to all the Allegations made against him in paragraphs 1 and 3 above;

Proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

8. In light of paragraphs 1 to 3 and 5 to 7 above the SRA requested that Mr Cobley and Mr Whitaker should each be subject of an order:

8.1 Pursuant to section 47 (2E) (a) of the Solicitors Act 1974 (as amended) directing the payment of a penalty to be forfeited to Her Majesty and/or;

8.2 Pursuant to section 47 (2E) (c) of the Solicitors Act 1974 (as amended) stating one or more of the matters mentioned in paragraphs (a) to (c) of Section 43(2) of that Act; or

8.3 (In the case of Mr Cobley only) pursuant to Section 43(2) of Solicitors Act 1974 (as amended).

Documents

9. The Tribunal considered all the documents in the case including:

Applicant

- Application and Rule 5 Statement dated 2 November 2015
- Witness Statement of Liz Bond dated 11 April 2016
- Witness Statement of GT dated 13 April 2016
- Schedule of Costs

Respondents

- First Respondent's Statement in Mitigation
- First Respondent's Mitigation Bundle including Character References
- First Respondent's Personal Financial Statement
- Third Respondent's Statement on Financial Position dated 10 March 2016

Preliminary Matters

Application to proceed in absence of Second and Third Respondents

10. The Second and Third Respondents did not attend the hearing, nor were they represented. The Applicant applied for the matters to proceed in their absence.

11. In respect of the Second Respondent, he had not engaged at any stage following the service of the Rule 5 statement. He had been served at his last known address and had subsequently been written to on three occasions at that address in relation to procedural matters. None of those letters had been returned through the post. The Applicant submitted that he would have received notification of the hearing date from the Tribunal itself. The Applicant had written to the Second Respondent on

5 July 2016 specifically referencing the date of the hearing. This correspondence had included the Certificate of Readiness, which again contained the date of the hearing. The Applicant submitted that the failure to respond to correspondence, and the absence of any indication that the correspondence was not being received, invited the conclusion that he had voluntarily absented himself from the proceedings. There was no indication that if the matter was to be adjourned, which was not being sought by the Second Respondent, that this would result in his attendance on a future date. He had not engaged at any stage in these proceedings and so there was no reason to believe that he would attend if the matter was delayed.

12. The position with regards to the Third Respondent was different. He had engaged with the Applicant and the Tribunal by way of email. He was aware of the hearing date as, on 9 May 2016, he had emailed the SRA to ask when the hearing was to take place and the SRA had replied to that email within minutes. The Third Respondent had indicated that he was unable to engage in the proceedings due to ongoing health issues as set out in an email to the Tribunal dated 27 April 2016. In that email he had stated that he did not agree with the Allegations but was not in a position to contest them because of his health. The Applicant informed the Tribunal that the Third Respondent had not provided any medical evidence to support his contention with regards to his health. He was not seeking an adjournment on medical grounds and he had not suggested to the Applicant or the Tribunal that he would be able to participate in proceedings if an adjournment was granted.

13. In the circumstances the Applicant invited the Tribunal to proceed with the matter in the absence of the Second and Third Respondents.

14. The Tribunal considered the representations made by the Applicant. The Second and Third Respondents were both aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged in respect of both of them. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
(vii) …;
(viii) …;
(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
(x) the effect of delay on the memories of witnesses;
(xi) …;”

15. The Tribunal reminded itself that it must proceed with the utmost care and caution in considering an application to proceed in absence.

The Tribunal’s Decision

16. In respect of the Second Respondent, the Tribunal noted that he had not engaged with the proceedings at any stage. He had not complied with any of the standard directions and had made no contact with the Applicant or with the Tribunal. The Tribunal was satisfied that he was fully aware of the proceedings and of the hearing date and that he had therefore deliberately chosen to absent himself and thereby waived his right to be present. It would not be in the interests of justice to adjourn this matter as this would cause delay to the other Respondents as well as to the Applicant. The memories of other Respondents and witnesses could be impaired by the passage of time. Furthermore there was no prospect of the Second Respondent attending even if the matter was to be adjourned, something that he had not, in any event, applied for. The Tribunal was satisfied that it would not be in the interests of justice to adjourn the matter and that in all the circumstances the proper course of action was to proceed in the absence of the Second Respondent.

17. In respect of the Third Respondent the Tribunal noted that he had engaged to a limited extent and had denied the Allegations. He had not complied with the standard directions although he had submitted information concerning his finances. The Third Respondent had raised the issue of ill-health in his correspondence with the Tribunal. However in the absence of any medical evidence the Tribunal was unable to take those assertions into account. The Third Respondent had not applied for an adjournment on medical grounds nor had he suggested that he would be able to attend any future hearing date if the matter was adjourned. The Tribunal was satisfied that he was fully aware of the proceedings and of the hearing date and that he had therefore deliberately chosen to absent himself and thereby waived his right to be present. It would not be in the interests of justice to adjourn this matter as that would cause delay to the other Respondents as well as to the Applicant. The memories of other Respondents and witnesses could be impaired by the passage of time. The Tribunal was satisfied that it would not be in the interests of justice to adjourn the matter and that in all the circumstances the proper course of action was to proceed in the absence of the Third Respondent.

18. The Applicant was reminded that the Tribunal’s attention should be drawn to all matters that the Second or Third Respondents may have raised had they been present

and such points should be fully addressed by the Applicant who was still required to prove all the Allegations beyond reasonable doubt.

Severance and Joinder of the Respondents

19. The Application and Rule 5 Statement had been submitted in relation to all three Respondents as part of a single set of proceedings. However at the Case Management Hearing on 22 March 2016, following a joint application by the Applicant and the First Respondent, the Tribunal had directed that the Second and Third Respondents should have their cases heard separately from the First Respondent. The Second and Third Respondent were to have their cases heard at 10.00am and the First Respondent was to have her case before the same division of the Tribunal at 2.00pm.

20. On the morning of the hearing the First Respondent and her solicitor, Mr Blatt, attended before the hearing in respect of the Second and Third Respondents had commenced. Following discussions between Mr Blatt and Mr Bullock, a joint application was made to re-join the Respondents in order that all matters could be dealt with together.

21. Mr Blatt and Mr Bullock informed the Tribunal that, following amendments to the Rule 5 statement subsequent to the Case Management Hearing, the First Respondent had now made an admission to Allegation 1.1, which had been the only matter in dispute. The position had therefore changed since the application to sever, when it had been anticipated that First Respondent’s hearing would be a contested matter. Mr Blatt and Mr Bullock submitted that it would now be proportionate to hear all matters together as had originally been envisaged.

22. The Tribunal noted the change in circumstances since the decision to sever the matters at the Case Management Hearing. The First Respondent, the only Respondent to have attended, no longer challenged any part of the Applicant’s case. The Tribunal found that it would be proportionate in those circumstances to hear all matters together and granted the application to re-join the Respondent’s cases.

23. The case against the First Respondent appeared on the Daily Cause List as “not before 2.00pm”. The Tribunal would not ordinarily hear a case before the scheduled time. However in this instance, having re-joined the cases, it would have been disproportionate to delay the commencement of the hearing until 2.00pm as this would have resulted in the case not concluding on the day and having to be adjourned part-heard. This would cause prejudice to both the Applicant and the Respondents. In this particular case, the Tribunal directed that the substantive hearing commence at 11.00am. The Tribunal was still sitting at 2.00pm and no member of the public attended the hearing. The Tribunal had regard for the fact its judgment would be published.

Factual Background

24. The First Respondent was born in 1970 and admitted to the Roll of solicitors on 1 October 1997. As at the date of the Rule 5 statement her name remained upon the Roll, however she did not hold a current practising certificate.

25. The Second Respondent was born in 1975. The Third Respondent's date of birth was unknown to the Applicant. Both the Second and Third Respondent were unadmitted persons.
26. The First and Second Respondents were, with others, formerly directors of LDP, a recognised body carrying on in practice from offices in Harrogate. Both were appointed as such at the date of its incorporation on 5 October 2011 and continued in that role until (in the case of the Second Respondent) 18 October 2011 and (in the case of the First Respondent) 18 December 2013.

27. Following his resignation of his directorship on 18 October 2011, the Second Respondent continued to be employed by LDP as its Chief Executive Officer ("CEO") at all times up until January 2013. In addition to that employment, the Second Respondent was also a director of CJP. This was a company incorporated in England and Wales on 8 April 2005 which carried on in business as a claims management company regulated by the Ministry of Justice.

28. The Second Respondent held the position of CEO of LDP jointly with the Third Respondent who was also a director of Rule of Five Ltd, a company incorporated in England and Wales on 4 August 2011, which formerly carried on business as an advertising agency and which was struck off the Register of Companies on 18 March 2014. Despite the separate corporate and regulatory personalities enjoyed by LDP and CJP, both companies were run as a group under the overall management and control of Second Respondent, either acting by himself or in conjunction with Third Respondent. Strategic decisions concerning the group were taken by the Second Respondent, either acting alone or in conjunction with the First Respondent and/or the Third Respondent. The First Respondent, as the Head of the Litigation Department at LDP, reported to the Second and Third Respondent, whilst assets employed by CJP the course of the business were paid for by LDP.

29. By virtue of s34A(1) of the Solicitors Act 1974 (as amended by the Legal Services Act 2007), paragraph 3.1 of the Principles and the Glossary to the SRA Handbook, SCC 2011 and SAR 2011 applied to the Second Respondent and Third Respondent as the unadmitted employees of LDP as they did to the First Respondent as a solicitor.

30. The Applicant's case was that in respect of the Second Respondent, notwithstanding that he ceased to be joint CEO of LDP in January 2013, he continued to be an employee of that company by virtue of the fact that LDP continued thereafter to be managed under his direction and control. Up until November 2012 the practice carried on by LDP included the bringing of claims upon behalf of clients against financial institutions arising from the mis-selling of PPI. Such claims were conducted by it under the trading style of Ashworth Law ("AL"). Following concerns expressed by the SRA to LDP with respect to the propriety of it acting in relation to such claims, the conduct of those claims was purportedly transferred from LDP to CJP.

31. On 30 November 2013, the supervision department of the SRA commissioned an investigation because of concerns in respect of PPI claims against MBNA. A duly authorised Forensic Investigator ("the FIO") in the employment of the SRA commenced an inspection of the books of accounts and other documents of LDP pursuant to that commission. In addition to investigating books of account and

documents, in the course that investigation the FIO obtained a witness statement from Ms GT, who had formerly been a cashier of LDP. Statements were also taken from Mr GL, formerly the assistant cashier of CJP and Mrs LB, a former client of AL.

32. The FIO carried out interviews with the following individuals on the following dates:

- Mr KS, a solicitor who was a director of LDP between 5 October 2011 and 18 December 2013. This interview took place at the offices of LDP on 12 March 2014.

- The Third Respondent, again at the offices of LDP on 13 March 2014.

- The Second Respondent, again at the offices of LDP on 13 March 2014.

- The First Respondent at the offices of the SRA in London on 3 April 2014.

33. In the course of that investigation, and on the basis of an interim report prepared by the FIO dated 13 December 2013, on 17 December 2013 the SRA decided to intervene into the practice of LDP and the First Respondent, such intervention being effected on 18 December 2013. That inspection culminated in a final report dated 13 April 2014 ("the FIR"). The report identified an estimated ongoing cash shortage of £410,522.90 upon the client account of LDP arising from the misappropriation of client monies by the Second Respondent either acting by himself or in conjunction with the Third Respondent and/or other persons unknown. Of that total sum, £345,326.59 represented the proceeds of cheques received from MBNA in settlement of PPI claims conducted by LDP which had, in some cases, settled after the purported transfer of such claims from LDP to CJP in November 2012.

Allegation 1

34. In the course of her investigation the FIO came into possession of a spreadsheet entitled "historic case settlement letter and chq letter (no chq attached)" which was held upon electronic files belonging to Mr BJ, the business development manager of CJP. The spreadsheet provided details of 100 client matters being undertaken by LDP and in each case recorded the dates the matter was settled, the settlement figure, the date of the settlement cheque and whether the cheque had been sent to the client. On the basis of information supplied to her, the FIO understood the spread-sheet to record cheques sent by MBNA in settlement of claims for compensation for mis-selling of PPI to clients of AL, whose claims were being processed by CJP which had been presented for payment into the client account CJP.

35. The FIO subsequently undertook a review of nine of the client matters identified with the spreadsheet, the purpose of that exercise being to verify the accuracy of the anonymous information which she had received. The review established that in relation to six of those matters, cheques received from MBNA in settlement of PPI claims and made payable to AL had been paid into the account of CJP. The total value of the cheques misappropriated was £41,493.59. On two of the client matter files which the FIO had reviewed, payments to a total of £3381.04 in respect of damages had subsequently been made by CJP to the clients concerned. In relation to one of

those matters, CJP had also subsequently transferred the sum of £3018.20 to the client account of LDP.

36. In respect of each of those six matters, and notwithstanding the purported transfer of all PPI matters from LDP to CJP in November 2012, the FIR confirmed that LDP continued to have conduct of the matters in question.

Allegation 2

37. On the 21 December 2012, 23 cheques to the total value of £52,181 were paid into a bank account held by LDP. The FIO confirmed that this account was one of the firm's office accounts. In the course of her investigation the FIO spoke to Ms GT, the cashier, about that credit slip. Ms GT confirmed to the FIO that she had obtained a copy of that document from the bank because she had been unable to reconcile the relevant entry on the bank statements and had recognised the handwriting and signature on the paying in slip as that of the Second Respondent. This was confirmed by the Second Respondent in interview with the FIO on 13 March 2014, in which he admitted that he had paid-in the relevant cheques. Copies of the various cheques paid into the office account by the Second Respondent on 21 December 2012 were obtained by the FIO in the course of her investigation. In each case the cheque was made payable to AL and was signed by two signatories "For and on behalf of MBNA Europe Bank Ltd". Copies of letters which accompanied 14 of those cheques were also obtained from MBNA by the FIO. In each case the letter was addressed to AL, the address being that of LDP but referenced a partially anonymized account number and named individual and then went on to state "Further to our recent correspondence regarding your payment protection insurance (PPI) complaint, please find enclosed a cheque for the sum of £737.53 as promised. This cheque is in full and final settlement of your complaint".

Allegation 3

38. In the witness statement which she provided to the SRA, Ms GT stated "on 2 January 2013, I showed [*Name Redacted*] copies of the paying in slip and copies of the cheque I had requested from the bank concerning the payment of £52,181.98 into office account. It was obvious what they were and there is no doubt in my mind that Lucy Ann knew that it was client damages". In the course of her interview with the FIO, the First Respondent accepted that this was correct and that "… When we went through things in a bit more detail, it turned out that clients cheques had been paid into the account…". Both Ms GT and the First Respondent further confirmed that a meeting was held with the Second and Third Respondents either the same day or the following day (i.e. 3 January 2013) to discuss the matter. The account of that meeting given by Ms GT and the First Respondent was that the Second and Third Respondents accepted that client monies had been misappropriated and that they were told by Ms GT and/or the First Respondent that it was necessary to report the matter to the SRA. The Applicant's case was that the Second and Third Respondents sought to dissuade Ms GT and the First Respondent from so doing.

Allegation 4.1

39. In the course of her inspection, the FIO noted a debit transfer on the client bank account statement on 30 October 2013 to CJP in the sum of £13,381.73. She questioned Ms GT about that payment and was informed "… That it was made up of 125 cheques relating to PPI matters which the clients had not as yet presented…". This being the case, the Applicant's case was that the funds held in client account pending presentation of those cheques constituted client money within the meaning of Rule 12.1 SAR 2011.

40. That payment was made by Ms GT on the instructions of Mr BJ. The email timed at 11.15 on 16 October 2013 by which those instructions were given confirmed that it had been discussed with the First Respondent before it was made. Additionally the First Respondent was copied into the relevant email. She explained in interview that she allowed that transfer to proceed because she believed the client matters in question had been transferred to CJP and that attempts had been made to inform the clients of the transfer.

Allegation 4.2

41. In the course of her interview with the First Respondent on 3 April 2014, the FIO questioned her about the management of LDP. She made a number of comments with respect to the nature of her working relationship with the Second and Third Respondents and her role within LDP. In response to a question as to the hierarchy she stated "well, they ran the firm, they were further up than me. They were my bosses. They had the business expertise, they had the business knowledge to be able to run the firm and, you know, my job was to run the PI and clinical negligence litigation as I've trained to do". In response to a suggestion by the FIO that the First Respondent was in a position where she was the only solicitor and there were two non-solicitors who were effectively running the Firm, she agreed. In response to a question as to whether she was an employee of the Second and Third Respondents as opposed to a director of LDP in her own right the she replied "yes, very much so. I mean I was an employee and I paid tax and NI in quite a different way to Andy". When asked who gave instructions for a change in the structure of the PPI team she stated "Matthew and Andy, they I mean I suppose if you want to see the head of hierarchy over there in any event, they were the ones that sort of had operational control of everything…".

42. The First Respondent was also questioned concerning the business relationship between LDP and CJP. In the course of a general description of the business rapport between LDP and CJP, she stated "… We shared certain contracts. We paid for the contract for CJP such as the lease on unit 7 because we had started life in there and when we moved out, I really didn't know how to go about subletting it". In response to a question as to how the post was managed she stated "I told them repeatedly we needed separate post functions, but apparently that would have been too expensive because there was such a lot of overlap in terms of financial claims, but now I understand why it was, but at the time, there were various different business reasons given to me as to why it would be done, but next month".

43. The FIO noted this nominal loan account ledger produced to her in the course of her investigation demonstrated payments by CJP in the period between December 2012 and October 2013 in the total sum of £492,183.66.

Allegation 4.3

44. The Applicant accepted that the reason the First Respondent did not make a report to the SRA in respect of the misappropriation of the cheques was because of improper pressure applied to her by the Second and Third Respondents in the course of the meeting on 2 or 3 January 2013. The Applicant's case, however, was that she should have remained resilient in the face of such pressure.

Allegation 5.1

45. On 13 November 2013 the FIO was informed by the First Respondent and Mr KS that clients were advised of the proposed transfer of the matters to CJP at the time of the purported transfer of all PPI claims by LDP. In order to verify that assertion the FIO reviewed approximately 50 of the files concerned. Many of the files which the FIO reviewed contained a letter dated 23 November 2012 and purportedly signed by the First Respondent which stated amongst other things that "in order to keep you fully informed, we write to advise that Legal Development Partners (Ashworth Law) have decided to leave the claims management sector. We propose to transfer your claims to Cobley Johnson Partners Ltd who are a well-established claims management company who will contact you in the coming weeks to introduce themselves and make arrangements to transfer your claims or give you the option to cancel. Please beware that if you do not respond to the Cobley Johnson Partners contact, your claims will be automatically transferred three months from the date of this letter…". Those letters were generated by reference to a pro forma document held on the case management system operated by LDP under the title "P150 company restructuring letter". A report extracted from the case management system by the FIO demonstrated that the letters generated under that title were not created on 23 November 2012 as they purported to be but were in each case generated at 18.37 on 14 November 2013. The FIR did not establish the identity of the author of those letters. In the course of his interview with the FIO, the Second Respondent confirmed that those letters were prepared in order to deceive the investigator and frustrate her investigation.

Allegation 5.2

46. In her witness statement, Ms GT confirmed that in January 2013 the Second Respondent had asked her to reissue a cheque to go to a client Mr W, which had not previously been presented. She then went on to confirm that although she did so, she was suspicious because it was unusual for the Second Respondent to try and chase a client in this way. She therefore asked the bank for a copy of it to be sent to her once it had cleared. When she received the cheque she noted that it was dated 3 January 2013 and was made payable to the Second Respondent's wife in the sum of £6,526.08. The signatories to the cheque were the Second and Third Respondents. Ms GT subsequently put a stop on the cheque which was therefore not paid.

47. In the course of his interview with the FIO, the Second Respondent stated that cheque was made payable to his wife in error "because I was doing a whole load of things at

the same time" and the cheque to his wife should instead have "been a cheque from the office account". He accepted that the amount of the cheque was the same amount which was in fact due to Mr W.

Allegation 6.1

48. In the course of her interview with the Third Respondent, the FIO asked him "were you aware clients weren't getting the money that was due to them". He replied "genuinely can't remember but at some stage yeah in early 2013, I realise that client account funds were not finding their way to the clients".

49. The Third Respondent was alleged to have failed to report the matters of the misappropriations to the First Respondent or Mr KS.

Allegation 6.2

50. The Applicant's case was that the Third Respondent, although an unadmitted person, was nevertheless bound to achieve the outcomes prescribed by SCC 2011 and was therefore under the same duty to report serious misconduct as the First Respondent. The Third Respondent was alleged to have failed to report the matters of the misappropriations to the SRA.

SRA Investigation

51. On 14 November 2014 a legal adviser in the employment of the SRA wrote to the First Respondent to seek an explanation for the matters which were the subject of the present allegations against her. Her solicitors responded to that letter on 23 January 2015. On 21 November 2014 the same legal adviser wrote to the Second and Third Respondents to seek their explanations for the matters which were the subject of the allegations against them. The Third Respondent provided a response to that letter by email on 19 December 2014. He denied he had paid cheques made payable to AL and/or LDP into the bank account of CJP but accepted he had acted without integrity and had failed to protect client money in his role as joint CEO of LDP. He denied having financial control over the firm. The Second Respondent, by email dated 12 December 2014, declined to comment further on the allegations against him.

52. On 27 April 2015 a duly authorised officer of the SRA considered the documents including the FIR and its appendices, the letters from the legal adviser dated 14 November 2014 and 21 November 2014 and the responses to those letters. It was decided to refer the conduct of the Respondents to the Tribunal.

Witnesses

53. Liz Bond (FIO)

53.1 The FIO confirmed that her Witness Statement was true to the best of her knowledge and belief. She was asked how the cheques made payable to AL ended up in the account of CJP. She believed that there was an agreement in place with the bank, which was not a usual way of conducting banking.

53.2 During the investigation she found the First Respondent to be nervous and felt she was under a degree of duress. The First Respondent had assisted the investigation as much as she could and had been "incredibly honest and forthcoming" in her interview. She did not think that the First Respondent had fully understood her role as a director or Compliance Officer for Legal Practice. In her opinion the First Respondent was "quite naïve".

Findings of Fact and Law

54. 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.

55. **Allegation 1 - The Allegation against the Respondents, made upon behalf of the Applicant was that on various dates between 6 March 2012 and 20 December 2013, Mr Cobley and/or Mr Whitaker, the employees of Legal Development Partners Ltd ("LDP"), a recognised body of which the First Respondent was a director, paid client money belonging to clients of that company, namely cheques to a minimum value of £41,493.59 into a bank account in the name of Cobley Johnson Partners Ltd (CJP), and the First Respondent, Mr Cobley and Mr Whitaker each thereby breached:**

1.1 Principle 2 of the SRA Principles 2011 ("the Principles"); and/or
1.2 Principle 6 of the Principles; and/or
1.3 Rule 14.1 of the Solicitors Accounts Rules 2011 ("SAR 2011")

Applicant's submissions

55.1 The Applicant informed the Tribunal that the figure of £41,493.59 was the figure calculated when the Rule 5 statement was drafted. However on review of the papers the Applicant was unable to calculate that exact figure, and the figure therefore relied upon was £40,649, as contained in the FIR.

55.2 The Applicant submitted that the clients had not been notified of the transfers of the matters and consequently had not given their consent to the novation of their retainer to CJP. This was confirmed by Mrs LB who had stated in a witness statement that "despite dealing with several people, I was never aware of being advised that a different firm had taken over my claim". In the absence of such consent, or the termination of the retainer by either LDP or the client, LDP continued to be retained in relation to those matters at the date that the settlement cheques were received at its offices. If any novation had occurred, or the retainer had been terminated, then LDP would have notified MBNA of the position and CJP would have confirmed that it was now dealing with the matter in its place. However this was not what had occurred in this instance, on the contrary MBNA understood that LDP was continuing to act for the clients concerned. This was confirmed by representatives of MBNA in a meeting with the FIO on 9 December 2013. MBNA had not been informed that any of the client matters reviewed by the FIO had been transferred to CJP. Furthermore, the covering letters that enclosed the cheques had in each case been sent to AL at the

address of the offices of LDP. As a consequence the settlement cheques received in relation to each of those individuals were "money held or received for a client" at the point of their receipt at LDP and were therefore client monies within the meaning of Rule 12.1 SAR 2011. The total value of the money misappropriated from LDP was understood to range between £270,000 as suggested by the Third Respondent and £353,075.18 as stated within a spreadsheet which the Second Respondent had accepted as correctly recording the sums misappropriated from client of LDP and be accurate as to the contents when he was interviewed.

55.3 In the course of his interview the Second Respondent admitted that he had paid cheques received from MBNA on account of damages into the account of CJP. The Second Respondent further stated that the Third Respondent "did it a few times, if I was away or anything he would do it…". The Applicant submitted that this assertion was corroborated by a statement given to the FIO by Mr GL, the assistant cashier at CJP until January 2014. Mr GL identified one specific occasion, on 11 September 2013, when the Third Respondent had made a payment of £840 into the client account of CJP which he had been unable to reconcile. The Applicant submitted that a person of integrity would not misappropriate cheques belonged to another and that if they did so in the context of legal practice that the trust and confidence which the public placed in them and in the provision of legal services be diminished.

55.4 The First Respondent, as a director of LDP was, by virtue of Rule 6 of SAR 2011 responsible for ensuring compliance with those rules by the Second and Third Respondents. The Applicant submitted that the failure to do so was reckless. She should not have permitted cheques made payable to AL or LDP in respect of client damages to be relinquished to a third party. There should have been systems and procedures in place to prevent such an occurrence. In interview with the FIO, the First Respondent admitted that in the summer of 2013 Mr KS, Mr GL and Ms GT all informed her that cheques payable to AL were being received by CJP and subsequently cashed. At that juncture she should have given specific instructions that such cheques were not to be sent to CJP and she should have put in place safeguards to prevent this happening. This could have involved arranging for herself or Mr KS to supervise the opening of the mail. The First Respondent further admitted that although she had asked Second and Third Respondent if any such cheques were being paid into the account of CJP, and been told that they were not, she had not probed that denial sufficiently. The Applicant submitted that her failure to take preventative action was caused by her decision to deliberately ignore the possibility that the Second and/or Third Respondent(s) were misappropriating client money despite having good reason to believe that this was the case. She had admitted to the FIO that she did not trust the Second Respondent by the summer of 2013. She stated in her interview "I think at that point I wanted to believe that Andy was telling me the truth, that there was no money going to CJP from Ashworth Law".

55.5 The Applicant submitted that a solicitor of integrity should be mindful of the sacrosanct nature of client monies and take all necessary steps to protect it. In particular they should not allow unadmitted persons who were not managers of the firm to come into possession of such money and if they received information that it was being misapplied they should conduct rigorous investigations. It was submitted that the First Respondent should not have ignored the possibility that such misappropriations were taking place where there was good reason to believe

otherwise. The misappropriation of substantial sums of client money would inevitably serve to diminish public trust and confidence in both the individual concerned and in the provision of legal services.

Dishonesty

55.6 The Applicant submitted that the Second and Third Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which requires that the person has a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly and had done so knowingly.

55.7 In the case of the cheques referred to above, the Second and Third Respondent both knew that AL was a corporate entity separate and apart from CJP. It was therefore apparent to them that they were paying the cheques into an account that was not that of the intended beneficiary. They further knew that the cheques had been paid in settlement of claims for compensation and must therefore have appreciated that LDP would ultimately be required to account to their clients. The Applicant submitted that if they held a genuine belief that those cheques should have been made payable to CJP then the honest course of action would have been for them to contact MBNA and request the existing cheque to be cancelled and reissued and made payable to CJP. If they did not hold such a belief they could have had no honest reason for paying the cheques into the account of CJP and under no circumstances should they have dealt with any of those cheques in such a manner without first seeking the consent of either Mr KS or the First Respondent, who were the directors of LDP at the relevant time. The Second Respondent had admitted in interview that he was misappropriating the cheques in order to pay their proceeds into the office account of LDP to subsidise the company. Consequently he knew that those cheques were being used otherwise than for their intended purpose namely the settlement of claims for compensation by clients. The Third Respondent had admitted in interview that he knew that the Second Respondent intended to pay their proceeds into the office account of LDP and consequently he also knew that those cheques were being used otherwise than for the for their intended purpose. If the Second and Third Respondents had believed they were entitled to use the money received by LDP for this purpose there would have been be no reason to pass those funds through the accounts in the name of CJP. The cheques could simply have been paid into the office account of LDP or else transferred from its client account to its office account. The Applicant submitted that the decision to take the intermediate step of paying such money into the accounts in the name of CJP demonstrated that they were seeking to conceal their actions and, hence, were aware that their actions were improper. These misappropriations took place over a period of 21 months and therefore represented a course of conduct for which there could be no plausible explanation. The irresistible inference was that the Second and Third Respondents were acting dishonestly and knew that by the ordinary standards of reasonable and honest people that they were acting dishonestly. There was no allegation of dishonesty in respect of the First Respondent.

First Respondent's Submissions

55.8 In her statement in mitigation, the First Respondent admitted Allegation 1. This admission has been contained in an email from her solicitor dated 28 April 2016 in which it was made clear that her admission was on the following basis "namely that

she accepts that she was a director responsible for the protection of client money but was not culpable for the physical movement of monies". The First Respondent accepted with the benefit of hindsight that she had been "incredibly naive" as far as the Second and Third Respondents were concerned. She accepted that she had responsibilities to ensure that there should have been risk management procedures in place to prevent such actions on their part. She stated that she believed that it was unfair to suggest that she was reckless. However she accepted that she should have had more robust procedures in place. She stated that having reflected on the wide definition of integrity she now admitted a lack of integrity under Principle 2 of the Principles. She further admitted the breach of rule 14.1 and breach of Principle 6.

The Tribunal's Decision

55.9 The Tribunal considered the spreadsheets exhibited by the Applicant in conjunction with the admissions made by each of the Respondents in their interviews with the FIO and the evidence of Ms GT. The Tribunal was satisfied beyond reasonable doubt that a minimum sum of £40,649 had been misappropriated by the Second and Third Respondents. The First Respondent was a director and was therefore strictly liable for the breaches of the SAR 2011 perpetrated by the Second and Third Respondents.

55.10 The First Respondent had admitted that she had lacked integrity by failing to put in place adequate safeguards to prevent such misappropriations taking place. She had further admitted that a consequence of this failure diminished public trust and confidence in both her and the provision of legal services. The Tribunal found beyond reasonable doubt that these admissions were properly made.

55.11 In respect of the Second and Third Respondents the Tribunal considered the allegation of dishonesty with reference to the test in Twinsectra.

55.12 The Tribunal considered the objective test. Cheques had been paid into the account of CJP when those cheques were made out to and intended to be paid into another account. This had been confirmed by MBNA during a meeting with the FIO on 9 December 2013. The Tribunal was satisfied beyond reasonable doubt that this would be regarded as dishonest by the ordinary standards of reasonable and honest people.

55.13 The Tribunal considered the subjective test. The Tribunal noted the following comments by the Second Respondent in his interview with the FIO:

> "LB (Investigator): how did cheques that were payable to Ashworth law only, come to be paid into CJP account.
>
> MC (Second Respondent): well because the £52,000 didn't work we had to then try and cover that up so the plan was hatched to pay money, Ashworth Law cheques into CJP and then transfer them to LDP
>
> LB: and when you say the plan was hatched up, who hatched the plan up
>
> MC: Andy and I
>
> LB: who was the master of it

MC: I'd of [sic] come up with the idea to be honest…"

55.14 The Second Respondent went on to confirm that some of the money from the client damages paid into CJP would have gone back into LDP to subsidise the firm.

55.15 The Tribunal was satisfied beyond reasonable doubt that the Second Respondent knew that the monies were not being used for the purpose for which the cheques were intended. His interview made clear that he was not only fully aware of what he was doing but he was, by his own admission, the instigator. The Second Respondent knew that he was acting dishonestly by the ordinary standards of reasonable and honest people and the Tribunal found dishonesty proved beyond reasonable doubt in respect of the Second Respondent.

55.16 The Third Respondent, in his interview with the FIO was asked whether he had challenged the Second Respondent about the exemplified Case of client LB and he stated that he had not. He told the FIO "yeah and that was with hindsight, one of those lines in the sand but I should of [sic] been stronger should of [sic] turned around and said just can't do that it's stealing". The FIO then asked him "you are aware of the dishonesty at the time" to which the Third Respondent replied "yeah I hold my head in shame about that". The Third Respondent knew that he was acting dishonestly by the ordinary standards of reasonable and honest people and the Tribunal found dishonesty proved beyond reasonable doubt in respect of the Third Respondent.

55.17 Having found that the Second and Third Respondents had acted dishonestly, it followed as a matter of logic that a person acting dishonestly must lack integrity. The trust the public placed in those individuals and in the provision of legal services depended entirely on honesty and integrity and in the absence of those such trust is diminished. The Tribunal found that the Second and Third Respondents were in breach of rule 14.1 of SAR, Principle 2 and Principle 6 of the Principles.

55.18 The Tribunal therefore found this Allegation proved beyond reasonable doubt in respect of each of the Respondents.

56. **Allegation 2 - The further Allegation against the First Respondent and Mr Cobley made upon behalf of the SRA was that on 21 December 2012 Mr Cobley paid further client monies, namely 23 cheques to a total value of £52,181, into the office account of LDP and the First Respondent and Mr Cobley each thereby further breached Rule 14.1 of SAR 2011 and Mr Cobley also further breached;**

2.1 Principle 2 of the Principles; and/or
2.2 Principle 6 of the Principles.

Applicant's Submissions

56.1 The Applicant submitted that the evidence of this payment came from Ms GT, who had identified the Second Respondent's handwriting and signature on the paying-in slip. The Second Respondent had accepted in interview that each cheque was in respect of client damages in respect of PPI mis-selling claims. The FIO had looked at a sample of 14 relevant matters and in each of them it was clear from the covering

letter that the cheques were being sent in settlement of a claim rather than in respect of the firm's costs. There were no subsequent office account to client account transfers and therefore no evidence the £52,000 ever having been paid into client account. There was no suggestion that the First Respondent knew what the Second Respondent was doing at the time that he paid the monies in. She did however become aware that the Second Respondent had misappropriated this sum on 2 January 2013, when the meeting took place at which the First Respondent and Ms GT met the Second and Third Respondents. Since these cheques were being paid to LDP in settlement of claims brought by individuals other than that firm itself, they necessarily constituted client money within the meaning of SAR Rule 12.1 and therefore ought to have been paid into client account in compliance with Rule 14.1. It was submitted that the Second Respondent's failure to do so constituted a breach of that rule for which the First Respondent was again responsible by virtue of Rule 6 of SAR 2011.

Dishonesty

56.2 The Applicant submitted, on the same basis as in respect of Allegation 1, that the Second Respondent had acted dishonestly. He had understood, based on his admissions in respect of Allegation 1, that the payment of misappropriated cheques to the client account of CJP in order to subsequently transfer the proceeds into the office account of LDP was improper. He must necessarily therefore also have understood that his actions in paying cheques received in respect of client damages directly into the office account of LDP on 21 December 2012 was also improper. The Second Respondent had admitted in the interview with the FIO that he was aware that he was acting dishonestly at the time.

First Respondent's Submissions

56.3 In her statement in mitigation, the First Respondent stated "without any doubt I accept that I'm responsible (albeit not culpable) for the breach of Rule 14.1. The SRA now accept that I did not become aware of the position until January 2014 [sic] and the actions by Mr Cobley occurred completely without my knowledge and certainly without my authority".

The Tribunal's Decision

56.4 The Tribunal considered the evidence of Ms GT together with the admissions made by the First and Second Respondent that the monies had been paid into office account in breach of Rule 14.1 of SAR 2011. The Tribunal was satisfied beyond reasonable doubt that such a payment had been made and that there had been a breach of that rule.

56.5 The Tribunal considered the allegation of dishonesty made in respect of the Second Respondent only. The Tribunal considered the objective test. This was clearly client monies which had been paid into office account. The Tribunal was satisfied beyond reasonable doubt that this would be regarded as dishonest by the ordinary standards of reasonable and honest people.

56.6 The Tribunal considered the subjective test. The Tribunal had regard to the following exchange in the interview of the Second Respondent:

> "LB: okay are you, are you aware that it was dishonest at the time to do that
> MC: yes"

56.7 The Second Respondent had gone on to tell the FIO that the reason for making the payment into office account instead of client account was to cover the wages owing to the fact that fees from a contract anticipated in November 2012 had not materialised.

56.8 The Tribunal was satisfied beyond reasonable doubt, based on the Second Respondent's comments in his interview, that he knew that his actions were dishonest by the ordinary standards of reasonable and honest people. The Tribunal was therefore satisfied beyond reasonable doubt that he had acted dishonestly. Having found that the Second Respondent had acted dishonestly, it followed as a matter of logic that a person acting dishonestly must lack integrity. The trust the public placed in those individuals and in the provision of legal services depended entirely on honesty and integrity and in the absence of those such trust was diminished. The Tribunal found that the First and Second Respondents were in breach of rule 14.1 of SAR, and the Second Respondent was in breach of Principles 2 and 6 of the Principles.

57. **Allegation 3 - The further Allegation against Mr Cobley and Mr Whitaker made upon behalf of the SRA was that on or about 2 January 2013 they improperly attempted to prevent the First Respondent and Ms GT, an employee of LDP, from reporting the misappropriation of client monies, referred to in the preceding Allegation, to the SRA in compliance with their obligations under Outcome 10.4 of the SRA Code of Conduct 2011 ("SCC 2011") and Mr Cobley and Mr Whitaker each thereby further breached:**

3.1 Principle 2 of the Principles and/or;
3.2 Principle 6 of the Principles and/or;
3.3 Outcome 10.7 of SCC 2011.

Applicant's Submissions

57.1 The Applicant submitted that this allegation was supported by the evidence of Ms GT. Both she and the First Respondent, in interview with the FIO on 3 April 2014, further confirmed that a meeting was then convened with the Second and Third Respondents either the same day or the following day in order to discuss the misappropriation. The Second and Third Respondents sought to dissuade them from reporting it. They did this by implying that Ms GT and the First Respondent had allowed the misappropriation of the £52,000 to occur, that if the matter were to be reported to the SRA this would result in intervention and the loss of the employees' jobs, that the First Respondent would face disciplinary action by the SRA, that the financial implications for the First Respondent who was the main breadwinner in her household and who had dependent children would be extremely serious such that she might lose her home. They also suggested that the sums that had been misappropriated could be replaced as a result of an arrangement that was expected to be reached with an

insolvency practitioner. The Applicant submitted that further the Second and Third Respondents seeking to dissuade the First Respondent from complying with their obligation to report serious misconduct, by drawing attention to the personal consequences for them of making such a report, was inherently improper. Their statements were delivered in a coercive manner and resulted in both Ms GT and the First Respondent becoming so distressed that they were reduced to tears. The Second and Third Respondents were therefore fully aware of the effect their words were having on both but nevertheless persisted in their attempts to persuade them not to report the matter to the SRA. The Applicant submitted that a person of integrity would not seek to discourage a solicitor or an employee of a registered body from complying with the regulatory obligation and under no circumstances with the use of threats and coercion to prevent report matters of regulatory concern arising out of their own misconduct. To do so in the context of legal practice resulted in the trust and confidence which the public placed in them and in supply of legal services being diminished.

Dishonesty

57.2 The Applicant submitted that the Second and Third Respondents had acted dishonestly in accordance with the test in Twinsectra. The Applicant submitted that it was apparent from the fact that both Respondents sought to dissuade the First Respondent from reporting the payment of the cheques into the office account of LDP that they believed that it was regarded as improper to use such cheques in such a manner. Their joint belief that payment of those cheques into office account was improper was further demonstrated by the suggestion to the First Respondent that the SRA would be likely to take disciplinary action against her and intervene into LDP if it was discovered what had happened. An honest person would not have sought to dissuade the First Respondent from complying with the duty to report a breach of the accounts rules to the SRA. If they had a genuine belief that the Second Respondent's actions in paying such cheques into the office account did not constitute a breach of the rules that they would have said so and would have explained their reasons.

The Tribunal's Decision

57.3 The Tribunal considered the evidence of Ms GT and the comments made by the First Respondent in her interview with the FIO. The Second and Third Respondents had accepted that a meeting took place and that the First Respondent became distressed during the course of that meeting. They had denied in the interview however that they had sought to be coercive. The Tribunal accepted the evidence of Ms GT which had not been challenged by the Respondents. The Tribunal was satisfied beyond reasonable doubt that the Respondents had failed to achieve Outcomes 10.4 or 10.7. The Tribunal considered the allegation of dishonesty in respect of the Second and Third Respondents.

57.4 The Tribunal considered the objective test. To make a concerted attempt to prevent a solicitor from discharging their professional and regulatory obligations would be regarded as dishonest by the ordinary standards of reasonable and honest people.

57.5 The Tribunal considered the subjective test. The meeting on 2 or 3 January 2013 related to the misappropriation of £52,181. The Tribunal had already found that this

misappropriation was dishonest for the reasons set out above in relation to Allegation 2. It therefore followed as a matter of logic that the attempt to prevent the First Respondent from reporting the matter to the SRA, in accordance with her obligations, represented an attempt to conceal their dishonest conduct. The bullying of the First Respondent and Ms GT by the Second and Third Respondents was done in order to facilitate the dishonest misappropriation of funds belonging to clients. The Second and Third Respondents knew exactly they were doing and therefore knew that they were continuing to act dishonestly by the ordinary standards of reasonable and honest people. The Tribunal was satisfied beyond reasonable doubt that they had acted dishonestly.

57.6 Having found that the Second and Third Respondents had acted dishonestly, it followed as a matter of logic that a person acting dishonestly must lack integrity. The trust the public placed in those individuals and in the provision of legal services depended entirely on honesty and integrity and in the absence of those such trust was diminished. The Tribunal found that the Second and Third Respondents were in breach of Principle 2 of the Principles and Principle 6 of the Principles.

58. **Allegation 4 - The further Allegations against the First Respondent only were that:**

4.1 On 30 October 2013 she caused client money to a total value of £13,381.73 to be transferred from the client account of LDP to the account of CJP, otherwise than in circumstances permitted by Rule 20.1 of SAR 2011 and thereby breached that Rule.

Applicant's Submissions

58.1 The Applicant submitted that the First Respondent had acted recklessly. This was apparent from the fact that at the date the transfer was made the First Respondent knew that the Second Respondent had misappropriated client funds on at least one previous occasion. She was therefore on notice as to the propriety of the transfer on 30 October 2013. Furthermore, whilst the First Respondent believed that attempts had been made to inform the clients concerned of the transfer, she could not have known whether or not consent to the transfer had been given in any individual case. The First Respondent was a manager of LDP dealing with litigation. She therefore knew or ought to have known that at least some of the PPI claims which had purportedly been transferred to CJP were, in fact, still being conducted by LDP. In the circumstances the First Respondent ought to have verified that client consent had been given to the transfer of the matters from LDP to CJP by the individual clients whose monies were to be transferred before allowing it to proceed. This should have been done by reviewing the relevant client matter files. The First Respondent ought to have given instructions to Ms GT that the transfer should not be made pending the completion of such a review. Had the First Respondent carried out such a review she would have discovered that the clients in question had not been notified of the transfer of their matters.

First Respondent's Submissions

58.2 In her statement in mitigation the First Respondent admitted this allegation on the basis that she was responsible by virtue of Rule 6 of SAR 2011 for ensuring compliance with the rules and she accepted the allegation therefore on the basis of being responsible but not culpable. She had believed that what was being undertaken was "appropriate, pragmatic, expedient" and did not appreciate that it was wrong. She explained that in October 2013 she went on holiday to visit family in the United States. She received a telephone call from the Second Respondent in relation to the uncashed cheques in respect of old PPI claims. He proposed that CJP would carry out a tracing exercise to return the cheques to the clients. This transfer was thought to be perfectly legitimate at the time and neither the First Respondent nor Mr KS had believed or understood that this might be a breach of the SAR. The First Respondent stated that the principle of PPI claims being transferred to CJP was appropriate. This followed the SRA having made clear that they were unhappy with solicitors undertaking what was considered to be claims management company work.

The Tribunal's Decision

58.3 The Tribunal noted the admissions made by the First Respondent to this Allegation which it was satisfied were properly made. The Tribunal found this Allegation proved beyond reasonable doubt on the basis of the evidence and the admissions.

59. **Allegation 4.2 - Between 5 October 2011 and 18 December 2013 she carried on in practice as a manager of LDP from offices in England and Wales subject to the direction and control of Mr Cobley and Mr Whitaker and thereby breached Principle 3 of the Principles.**

Applicant's Submissions

59.1 The Applicant submitted that this was the most serious of the Allegations as everything that flowed from the consequences of the First Respondent losing her independence formed the basis of the remaining Allegations. The First Respondent had not been conducting her practice independently, but at all times had done so in conjunction with and subject to the overall direction and control of the Second Respondent either alone or in conjunction with the Third Respondent. Furthermore, LDP itself was not independent from CJP but was run in conjunction with that company as a single commercial entity by the Second and Third Respondents. The Applicant reminded the Tribunal of the comments made by the First Respondent in her interview with the FIO referred to above.

First Respondent's Submissions

59.2 In her response in mitigation the First Respondent said the following; "it is admitted that with the benefit of hindsight, the structure that existed was one that did on one occasion cause my independence to be compromised. It is also accepted that with the benefit of hindsight I was involved". She went on to explain that she understood all along that the Second and Third Respondents were her "bosses". The intention was that she would only be a director until an ABS was formed. She "headed up" LDP but not for any financial gain. She accepted that her independence was compromised in relation to the payment of £52,18 into office account as set out in Allegation 2. She accepted that she ought to have reported the material breach to the SRA but failed to

do so because of the pressure placed on her by the Second and Third Respondents. She accepted that so far as CJP and LDP were concerned the lines were "blurred from time to time". She explained that she was naive and did not appreciate the responsibilities of being a director. The First Respondent stated that she had been the victim of "calculated, manipulative and dishonest individuals".

The Tribunal's Decision

59.3 The Tribunal noted that there had been multiple instances of misappropriations of client monies over a period of almost 2 years. The First Respondent had known, following the meeting in January 2013, that the Second Respondent had misappropriated the £52,181 and that the Second and Third Respondents had bullied her into not reporting the matter to the SRA. She had also confirmed that by the Summer of 2013 she did not trust the Second Respondent. Nevertheless she continued in her role throughout that period. The Tribunal was satisfied beyond reasonable doubt that the First Respondent was subject to the direction and control of the Second and Third Respondents and that in doing so she had allowed her independence to be compromised. The Tribunal noted the admissions made by the First Respondent to this Allegation which it was satisfied were properly made. The Tribunal found this Allegation proved beyond reasonable doubt on the basis of the evidence and the admissions.

60. **Allegation 4.3 - From January 2013 onwards, she knew that client monies had been misappropriated from LDP by Mr Cobley either acting alone or in conjunction with Mr Whitaker but did not report that misappropriation to the SRA and thereby further breached:**

4.3.1 Principle 6 of the Principles and or;
4.3.2 Failed to achieve Outcome 10.3 of SCC 2011.

Applicant's Submissions

60.1 The Applicant submitted that the misappropriation of the cheques which was the subject of Allegation 2 was clearly a serious breach which ought to have been reported by the First Respondent to the SRA in compliance with her obligations under outcome 10.3. The Applicant accepted that the reason that she did not make a report was because of improper pressure applied to her by the Second and Third Respondents at the meeting on 2 or 3 January 2013. However the application of that pressure upon her did not obviate the need to make such a report as the public would trust a solicitor to remain resilient in the face of such pressure and comply with their obligations to report the misappropriation of client money

First Respondent's Submissions

60.2 The Respondent admitted that she ought to have reported the matter both at the time of discovery and latterly. The Respondent stated in her response in mitigation that at the time she believed that the Second Respondent had made a mistake and that the money would be replaced. She relied upon the assurances that she was given and at one stage believed that in fact the monies had been replaced. She stated that she had trusted the Second and Third Respondents in their assurances and was naive and

inexperienced in the role she had taken. In addition she was under considerable pressure with responsibilities in relation to her work and she accepted that she had failed to properly assess the situation. She stated that in setting out these matters she fully accepted the criticism made of her by the Applicant.

The Tribunal's Decision

60.3 The Tribunal found that the report to the SRA has clearly not be made as it should have been. As such the First Respondent had clearly failed to achieve Outcome 10.3. The trust the public placed in her and in the provision of legal services required that solicitors comply with all their regulatory and professional obligations particularly with regards to the safeguarding of client monies. The duty to report misappropriation was fundamental and the First Respondents failure to do so, notwithstanding the wholly improper pressure placed on her by the Second and Third Respondents, undermined that trust and confidence. The Tribunal noted the admissions made by the First Respondent to this Allegation which it was satisfied were properly made. The Tribunal found this Allegation proved beyond reasonable doubt on the basis of the evidence and the admissions.

61. **Allegation 5 - The further Allegations against Mr Cobley only were:**

5.1 That between the 23 November 2012 and 14 November 2013 he caused correspondence to be created on client matter files which was backdated to 23 November 2012 in order to mislead an officer of the SRA as to the date upon which it been sent and thereby further breached:

5.1.1 Principle 2 of the Principles and/or;
5.1.2 Principle 6 of the Principles and or;
5.1.3 Principle 7 of the Principles.

Applicant's Submissions

61.1 The Applicant submitted that it was uncontroversial that the First Respondent had prepared a letter in draft in November 2012 to notify clients that the matters were to be transferred across to CJP and there was no impropriety on her behalf in that regard. However when the FIO came to look at the files she found that they were showing as having been sent on 23 November 2012 and, on the majority of the inspected files, copies of the letter appeared with that date on it. However the metadata retrieved by the FIO revealed the letters were not sent on that date and could not have been created on that date as they were only generated on system on 14 November 2013, the day after the investigation had started. In interview with the FIO the Second Respondent was quite candid in admitting that the letters were backdated to try to deceive the FIO.

Dishonesty

61.2 The Applicant submitted that the Second Respondent had acted dishonestly in causing these letters to be backdated. The Applicant reminded the Tribunal of the admissions made in interview as to the purpose of the letters being backdated, namely to frustrate the investigation.

The Tribunal's Decision

61.3 The Tribunal considered the content of the metadata and also the email sent from BJ at LDP to MM, also at LDP into which the Second Respondent was copied. This email was dated 11 November 2013 at 16.10 and read as follows "Further to the conversation with Matthew last week about backdating a document please can the attached letter be added to every financial mis-selling case that was open on the AL system on 23/11/2012. Can the letter be added with the same date (23/11/2012). Please can you confirm receipt and let Matthew and I know when [A] can implement this. Ideally needs to be on by Wednesday [sic]."

61.4 This email clearly referenced a conversation that had taken place with the Second Respondent about backdating of documents. The Second Respondent was copied into this email. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent caused correspondence to be created on client matter files in order to mislead an officer of the SRA. He had therefore breached his duty to comply with his legal and regulatory obligations and to deal with the SRA in an open and co-operative manner.

61.5 The Tribunal considered the allegation of dishonesty in accordance with the test set out in Twinsectra. The Tribunal considered the objective test. The backdating of any document would be regarded as dishonest by the ordinary standards of reasonable and honest people.

61.6 The Tribunal considered the subjective test. In doing so the Tribunal considered the following exchange between the Second Respondent and the FIO in his interview:

> "LB: are you acknowledging that you are aware that that letter has now been backdated or not
>
> MC: yes, I was aware that there was a letter about to be backdated but I haven't read the specifics of the letter
>
> SH: that letter was done to deceive wasn't it
>
> MC: yes
>
> SH: so who would have initiated that
>
> MC: I remember a conversation with me …that that letter should be there.
> SH… It was done to deceive Liz in effect and frustrate her investigation wasn't it
> MC: yes"

61.7 The Tribunal was entirely satisfied that the Second Respondent deliberately caused the letter to be backdated with the intention to deceive the FIO and to frustrate her investigation. He therefore knew that he was acting dishonestly by the ordinary standards of reasonable and honest people. The Tribunal found beyond reasonable doubt that he had acted dishonestly.

61.8 Having found that the Second Respondent had acted dishonestly, it followed as a matter of logic that a person acting dishonestly must lack integrity. The trust the public places in those individuals and in the provision of legal services depends entirely on honesty and integrity and in the absence of those such trust is diminished.

61.9 The Tribunal found the Second Respondent to have breached Principles 2, 6 and 7 of the Principles and to have acted dishonestly. This Allegation was proved in full beyond reasonable doubt.

62. **Allegation 5.2 - On or about 3 January 2013 he attempted to procure the payment of client monies in the sum of £6,526.08 to Mrs AC, who was not entitled to be paid this or any sum, in breach of the SAR 2011 and thereby further breached:**

5.2.1 Principle 2 of the Principles and/or;
5.2.2 Principle 6 of the Principles and/or;
5.2.3 Principle 10 of the Principles.

Applicant's Submissions

62.1 The Applicant submitted that the explanation presented by the Second Respondent in his interview with the FIO should not be accepted as he was not a fee earner within LDP and had no particular reason to check whether a specific client received a payment. As Ms GT had noted, for him to do so was out of the ordinary. Ms GT had further confirmed that the case management system had been updated on 3 January 2013 to state that the client had been found and the cheque had been reissued and any further communication with the client was to be passed to the Second Respondent. The Applicant submitted that the inference to be drawn was that he wished to ensure that no one else at the firm was aware that he had attempted to misappropriate client money. The Second Respondent had accepted in interview that the amount of the cheque was in exactly the same amount as that which was in fact due to Mr W. The attempted misappropriation of the client monies belonging to Mr W further demonstrated a lack of integrity upon his part which would serve to diminish the trust the public placed in him and in the provision of legal services in addition to placing client monies at risk. The Applicant described it as a "remarkable coincidence" that the amount of the cheque written to the Second Respondent's wife was in exactly the same amount as that which was properly due to the client. It also followed questions being asked by the Second Respondent as to why the cheque had not been presented and the inference that should be drawn was that he was doing this in order to see if the money was free to be taken. The alteration to the case management system but around the same time was an attempt to conceal the fact that the cheque had in fact been written to Second Respondent's wife.

Dishonesty

62.2 The Applicant submitted that the Second Respondent had acted dishonestly in attempting to procure the payment of client monies to his wife. The fact that the amounts were identical as set out above and the amendments to the case management system demonstrated knowledge on his part that he was acting dishonestly.

The Tribunal's Decision

62.3 The Tribunal noted from the interview of the Second Respondent that he accepted that he had written the cheque and made it payable to his wife. The fact that it was for exactly the same amount as what was owed to Mr W was more than a coincidence as the Second Respondent had no business checking whether or not a specific client had received payment. The Tribunal found that the Second Respondent's explanations that this was an error to be implausible given that the cheque was in fact made out to his wife. The Tribunal was satisfied beyond reasonable doubt that he had attempted to procure the payment of client monies in the sum of £6526.08 to Mrs AC. He had therefore failed to protect client money and was in breach of Principle 10 of the Principles.

62.4 The Tribunal considered the allegation of dishonesty in accordance with the test in Twinsectra. The Tribunal considered the objective test. The writing out of a cheque to his wife which should have been paid to a client would be regarded as dishonest by the ordinary standards of reasonable and honest people.

62.5 The Tribunal considered the subjective test. The Tribunal took into account the fact that the amount on the cheque was exactly the same as the amount due to Mr W, following the Second Respondent's enquiry. The Tribunal also noted that the case management system had been updated in such a way as to prevent further enquiry into the matter and thereby conceal the issuing of the cheque to Mrs AC. In circumstances where the Second Respondent would not normally be involving himself in this aspect of the business the Tribunal rejected his suggestion that this was an error. The Tribunal found beyond reasonable doubt that the Second Respondent knew that he was acting dishonestly by the ordinary standards of reasonable and honest people and therefore found him to be dishonest.

62.6 Having found that the Second Respondent had acted dishonestly, it followed as a matter of logic that a person acting dishonestly must lack integrity. The trust the public placed in those individuals and in the provision of legal services depended entirely on honesty and integrity and in the absence of those such trust is diminished.

62.7 The Tribunal found the Second Respondent to have breached Principle 2, 6 and 10 of the Principles and to have acted dishonestly. This allegation was proved in full beyond reasonable doubt.

63. **Allegation 6 - The further Allegations against Mr Whitaker only were that:**

6.1 From a date unknown after 1 January 2013 he knew of the misappropriation of client monies from LDP by Mr Cobley but did not report those misappropriations to the First Respondent and Mr KS and thereby breached:

6.1.1 Principle 8 of the Principles and or;
6.1.2 Principle 10 of the Principles.

Applicant's Submissions

63.1 The Applicant submitted that the effective performance by the Third Respondent of his role as CEO of LDP, in accordance with proper governance and sound financial and risk management principles required him to report evidence of financial impropriety to the board of directors as soon as he became aware that it had occurred. The Third Respondent did not do so as detailed above. His failure to make such a report inevitably had the effect of putting client money at risk.

The Tribunal's Decision

63.2 The failure to report misappropriation of client monies is discussed in detail in relation to Allegations 1 to 4 above. The Tribunal was satisfied beyond reasonable doubt that the Third Respondent had known of the misappropriation of monies by the Second Respondent but had not reported those misappropriations to the First Respondent or Mr KS. He had therefore not carried out his role in the business effectively or in accordance with proper governance and sound financial and risk principles. The Tribunal found this put him in breach of Principle 8 of the Principles. The trust the public placed in the provision of legal services depended on those individuals responsible for running the businesses to carry out their role effectively and to discharge their obligations to report matters such as misappropriations of client money. Given that it was client monies that were been misappropriated, the Third Respondent had also failed to protect client money or assets. The Tribunal found this allegation proved in full beyond reasonable doubt.

64. **Allegation 6.2 - That from a date unknown after 1 of January 2013 he knew of the misappropriation of client monies from LDP by Mr Cobley but did not report those misappropriations to the SRA and thereby failed to achieve Outcome 10.3 of SCC 2011.**

Applicant's Submissions

64.1 The Applicant submitted that this allegation was founded on the same basis as allegation 6.1, save that this related to his obligation to report the matter to the SRA. As set out above, the Third Respondent was bound by the outcomes as set out in SCC 2011 and shared the same duty to report serious misconduct as the First Respondent. The Applicant submitted that the factual basis underpinning this allegation was the same as for allegation 6.1, the facts of which are, again, set out in relation to Allegations 1-4.

The Tribunal's Decision

64.2 For the reasons set out in respect of allegation 6.1, the Tribunal found that the Third Respondent had been aware of the misappropriation of client monies. He had failed to report those matters to the SRA in the same way that he had failed to report them to Board of Directors. The Tribunal found this allegation proved beyond reasonable doubt for the same reasons as set out to allegation 6.1.

65. **Allegation 7 - Whilst dishonesty was alleged:**

7.1 Against Mr Cobley in relation to each of the Allegations against him;

7.2 Against Mr Whitaker in relation to all the Allegations made against him in paragraphs 1 and 3 above:

Proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

65.1 The Tribunal considered the allegations of dishonesty against the Second and Third Respondent separately in respect of each Allegation where it had been alleged by the Applicant. For the reasons set out above dishonesty was proved beyond reasonable doubt in respect of the Second Respondent in relation to each of the allegations against him and against the Third Respondent in relation to Allegations 1 and 3.

Previous Disciplinary Matters

66. There were no previous disciplinary matters in respect of any of the Respondents.

Mitigation

67. The First Respondent had submitted a response in mitigation which she adopted as her evidence in the course of mitigation. Those parts of it relating to the specific Allegations themselves are set out above. Her statement set out in detail her involvement with the Second and Third Respondents and the setting up of AL. She described her role in the firm and the circumstances leading to the admitted breaches.

68. The First Respondent explained the effect on her of the intervention by the SRA and the stress that she experienced as a consequence. She had made strenuous efforts to direct clients to other firms that could assist with their cases. She had also paid the insolvency fee of £5500 from her own funds in order to properly instruct an insolvency practitioner so that the liquidation of the firm could happen in an orderly manner. She worked closely with the intervention manager of the SRA in order to recover the maximum amount of costs possible so as to rectify the shortfall on the client account. Approximately £140,000 had been recovered, partially due to the First Respondent's efforts. The Applicant confirmed this to be the case and submitted that it was to her credit. The First Respondent had spent more than 560 hours working with the SRA following the intervention, reflected in the fact that she had 1679 emails exclusively in connection with the intervention. The First Respondent explained in detail the personal toll that this had taken on her and her family, all of which the Tribunal noted.

69. It was submitted on her behalf that there had been no allegation of dishonesty and no suggestion that she had set out on a plan to set up a rogue business. She had failed to appreciate the character of the individuals that she was dealing with, namely the Second and Third Respondents. They had set out to use her for their own personal gain. She had made early admissions and had been responsible but not culpable for the breaches. Whilst there have been risk of significant harm her sterling and unrelenting efforts to address the shortfall were strong mitigating factors. She was now working outside the profession, her legal career having been irretrievably blighted. The Tribunal was urged to consider imposing a reprimand taking account of the efforts that she had taken to reduce the harm caused. Alternatively if a reprimand was not deemed an appropriate sanction the Tribunal was invited to consider imposing a financial penalty together with restrictions on her future practice. The

Tribunal was referred to the character references and testimonials contained within the Respondent's mitigation bundle.

70. No mitigation was presented by the Second or Third Respondents, however the Tribunal noted the lack of any previous disciplinary matters in relation to them.

Sanction

71. The Tribunal referred to its Guidance Note on Sanctions (December 2015) when considering sanction.

The First Respondent

72. The Tribunal assessed the seriousness of the misconduct with reference to the culpability and harm caused together with any aggravating and mitigating factors.

73. The Tribunal found that the motivation for the First Respondent's misconduct was the fear for the loss of her and her employees' jobs and resultant salaries. She did not wish to have the matters exposed for fear of the impact on her career. The Tribunal accepted that the misconduct was not planned, in that she was not the instigator of the misappropriations but it was her response upon discovering them that have given rise to the breaches. As a director of the firm she had a responsibility to protect client monies and to that extent she had breached the trust placed in her by those clients. Although she did not have direct control over the misappropriations at the time they were made, the Tribunal found that she did have direct control and responsibility subsequently which she failed to discharge. The First Respondent had qualified in 1997 and had been a director since 2009 and was therefore relatively experienced. The Tribunal considered the evidence of Liz Bond and found that the First Respondent had some experience as a director but also a degree of naiveté. She was experienced enough to know that she was in material breach of obligations but this naiveté led her to fail to respond appropriately. The Tribunal noted that the purpose of the SAR is to ensure that solicitors have a backbone when dealing with such situations. The Tribunal found the First Respondent's culpability to be at a medium level.

74. In determining the level of harm caused, the Tribunal noted that the First Respondent's failure to act was such that a systematic misappropriation of client monies continued over an extended period. In that time, significant sums of money went missing and the First Respondent had been aware of the misappropriations from January 2013 onwards. Had the First Respondent acted in January 2013 those losses could have been reduced. The protection of client money was fundamental to the maintenance of the reputation of the profession and as a consequence it had been substantially damaged in this case.

75. Matters were aggravated by the fact that they were repeated. By the very fact of her failure to report matters there was an element of concealment of wrongdoing on her part and she ought to have known that the conduct was in material breach of obligations to protect the public and the reputation of the profession.

76. The matters were mitigated however by the fact that this was her first appearance before the Tribunal in a previously unblemished career. She had undoubtedly been

deceived by the actions and representations of the Second and Third Respondents. The Tribunal noted that she had not sought or obtained any personal benefit from the misconduct, indeed she had worked closely with the intervention manager to do her best to replenish shortfall and the Tribunal considered this to be powerful mitigation. Following the commencement of the investigation and the intervention the First Respondent had been open and fully cooperative with the regulator as evidenced by the testimony of Liz Bond. The Tribunal accepted that she had been bullied and manipulated by the Second and Third Respondent and that her insight was genuine. The Tribunal took into account the impressive character references submitted in mitigation.

77. The Respondent's culpability was not at the lowest level and therefore the making of no order or the imposition of a reprimand was not justified given the need to protect the public and the reputation of the profession. The combination of a medium level of culpability and a substantial degree of harm caused meant that a fine was an insufficient sanction in all the circumstances. There was a need to protect both the public and the reputation of the profession from future harm from the Respondent by removing her ability to practice. The public needed to be reassured that these matters were taken extremely seriously.

78. The Tribunal found that the protection of the public and the reputation of the profession did not require the Respondent to be struck off the roll given her full admissions and her degree of cooperation with the SRA.

79. The Tribunal decided that this should be a fixed term of suspension of such length both to punish and deter, proportionate to the seriousness of the misconduct. In all the circumstances the shortest possible period of suspension was one of two years. The Tribunal considered whether it could justify a suspension of that suspension. The Tribunal concluded that the imposition of a restriction order combined with a suspended term of suspension would not proportionately constrain the risk of harm to the public and the public's confidence in the reputation of the legal profession. The Tribunal therefore decided that the fixed term of suspension should take effect immediately.

80. The Tribunal decided that following the expiry of the fixed term of suspension it was necessary in order to protect the public to impose restrictions in the form of conditions upon the way the First Respondent practised as set out below.

<u>The Second Respondent</u>

81. The purpose of section 43 order was regulatory, not penal. The Tribunal found that it would be undesirable for the Respondent to be employed by a solicitor without the permission of the SRA given the finding of dishonesty. It was therefore appropriate to make such an order.

82. The Tribunal found that in view of the seriousness of the misconduct of the Second Respondent, namely acting dishonestly and lacking integrity with all the consequences for client monies that resulted, it was necessary to impose a disciplinary sanction in addition to the Section 43 order. His culpability was at the highest level as he had been the instigator and the controlling mind behind the misconduct. This

required a significant sanction. Owing to the Respondent's status as an unadmitted person, the Tribunal's disciplinary powers were limited to the imposition of a financial penalty. The Tribunal found that the appropriate and proportionate level of that penalty in this instance was £25,000.

The Third Respondent

83. The purpose of a Section 43 order was regulatory, not penal. The Tribunal found that it would be undesirable for the Respondent to be employed by a solicitor without the permission of the SRA given the finding of dishonesty. It was therefore appropriate to make such an order.

84. The Tribunal found that in view of the seriousness of the misconduct of the Third Respondent, namely acting dishonestly and lacking integrity with all the consequences for client monies that resulted, it was necessary to impose a disciplinary sanction in addition to the Section 43 order. His culpability was a high level but the Tribunal accepted he had not been the instigator and the controlling mind behind the misconduct. The misconduct nevertheless required a significant sanction. Owing to the Respondent's status as an unadmitted person, the Tribunal's disciplinary powers were limited to the imposition of a financial penalty. The Tribunal found that the appropriate and proportionate level of that penalty in this instance was £10,000.

Costs

85. The Applicant and the First Respondent had reached an agreement in respect of her contribution towards the Applicant's costs. This was in the sum of £7,500. The Tribunal considered the cost schedule supplied by the Applicant and was satisfied that this was a reasonable and proportionate figure. The First Respondent was therefore ordered to pay costs in that sum.

86. The Applicant applied for costs against the Second and Third Respondent in the total sum of £18,353. The Tribunal, having taken into account the Second Respondent's financial position as set out in the documents provided to the Tribunal, considered that he should pay a greater level of costs on account of his higher level of culpability. The Tribunal decided that a reasonable and proportionate division of the costs was that the Second Respondent pay £10,000 and the Third Respondent pay £8,000.

Statement of Full Order

87.

1. The Tribunal Ordered that the First Respondent, [NAME REDACTED] solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on the 26th day of July 2016 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall for an indefinite period be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

2.1.2 Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

2.1.3 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

2.1.4 Hold client money;

2.1.5 Be a signatory on any client account;

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

88. The Tribunal Ordered that as from 26th day of July 2016 except in accordance with Law Society permission:-

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

The Tribunal further Ordered that the said Mathew Charles Cobley do pay a fine in the sum of £25,000.00. And it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

89. The Tribunal Ordered that as from 26th day of July 2016 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Andrew Simon Whitaker;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Andrew Simon Whitaker
(iii) no recognised body shall employ or remunerate the said Andrew Simon Whitaker;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Andrew Simon Whitaker in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Andrew Simon Whitaker to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Andrew Simon Whitaker to have an interest in the body.

The Tribunal further Ordered that the said Andrew Simon Whitaker do pay a fine in the sum of £10,000.00. And it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,000.00.

Dated this 30th day of August 2016
On behalf of the Tribunal

R. Hegarty
Chairman