SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11642-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

SIMON CHARLES BELFIELD — First Respondent
MARK ROBERT DAVIES — Second Respondent
JUDITH READ — Third Respondent

Before:

Ms J. Devonish (in the chair)
Mr P. Booth
Mrs N. Chavda

Date of Hearing: 9-13 October 2017

Appearances

Mr Rory Mulchrone, counsel, of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Mr Gregory Treverton-Jones QC of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD instructed by Mr Jonathan Greensmith, solicitor, of Keystone Law, 48 Chancery Lane, London WC2A 1JF for the First Respondent.

Mr Henry Mainwaring, counsel, of 218 The Strand, instructed by Mr Marriot of Brown Turner Ross, Granite Building, 6 Stanley Street, Liverpool, for the Second Respondent.

Mr Philip Dayle, counsel, of No.5 Barristers Chambers, Greenwood House, 4-7 Salisbury Court, London EC4Y 8AA for the Third Respondent.

JUDGMENT

Allegations

1. The allegations against the First Respondent made by the Solicitors Regulation Authority ("SRA") were that he, whilst he was a Director at Frisby Solicitors Limited ("the Firm"):

1.1 Caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limit prescribed by Rules 19 and 21 of the Solicitors Accounts Rules 1998 ("SAR 1998") on or prior to 5 October 2011 and/or Rule 17.1 and 19.1 of the SRA Accounts Rules 2011 ("SAR 2011") on or after 6 October 2011, and in doing so:

1.1.1 Insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007"); and

1.1.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the SRA Principles 2011 ("the Principles").

1.2 Failed to remedy promptly on discovery breaches of the SAR 1998 in breach of Rule 7 of the SAR 1998 and/or in breach of Rule 7 of the SAR 2011 and Principle 7 of the Principles.

1.3 Failed to run the Firm effectively and in accordance with proper governance and sound financial risk management principles in that they failed to ensure that the Firm had appropriate systems in place to identify, prevent and rectify the breaches of the SAR 1998 and/or the SAR 2011 identified at paragraphs 1.1 and 1.2 above and in doing so:

1.3.1 Insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 5.01 of the SCC 2007; and

1.3.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 8 and/or 10 of the Principles and failed to achieve outcomes 7.2, 7.3, 7.4 and/or 10.3 of the Solicitors Code of Conduct 2011 ("SCC 2011").

1.4 In relation to the matters set out at 1.1, 1.2 and/or 1.3, failed to act with integrity and in doing so:

1.4.1 Insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 1.02 of the SCC 2007; and

1.4.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principle 2 of the Principles.

2. The allegation made against the Second Respondent is that he has been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in legal practice in one of more of the ways mentioned in

Section 43(1)(a) of the Solicitors Act 1974 (as amended) ("SA 1974") in that he, whilst a Director at the Firm:

2.1 Caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limit prescribed by Rules 19 and 21 of the SAR 1998 on or prior to 5 October 2011 and/or Rule 17.1 and 19.1 of the SAR 2011 on or after 6 October 2011, and in doing so:

2.1.1 Insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the SCC 2007; and

2.1.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the Principles.

2.2 Failed to remedy promptly on discovery breaches of the SAR 1998 in breach of Rule 7 of the SAR 1998 and/or in breach of Rule 7 of the SAR 2011 and Principle 7 of the Principles.

2.3 Failed to run the Firm effectively and in accordance with proper governance and sound financial risk management principles in that he failed to ensure that the Firm had appropriate systems in place to identify, prevent and rectify the breaches of the SAR 1998 and/or the SAR 2011 identified at paragraphs 2.1 and 2.2 above and in doing so:

2.3.1 Insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 5.01 of the SCC 2007; and

2.3.2 Insofar as such conduct took place on or after 6 October 2011, breached Principles 8 and/or 10 of the Principles and failed to achieve outcomes 7.2, 7.3, 7.4 and/or 10.3 of the SCC 2011.

2.4 In relation to the matters set out at 2.1, 2.2 and/or 2.3, failed to act with integrity and in doing so:

2.4.1 Insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 1.02 of the SCC 2007; and

2.4.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principle 2 of the Principles.

3. The allegation made against the Third Respondent is that she has been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in legal practice in one of more of the ways mentioned in Section 43(1)(a) of the SA 1974 in that she, whilst employed at the Firm's Practice Manager and Head of Accounts:

3.1 Caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limit prescribed by Rules 19 and 21 of the SAR 1998 on or prior to 5 October 2011 and/or Rule 17.1 and 19.1 of the SAR 2011 on or after 6 October 2011:

3.1.1 Insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the SCC 2007; and

3.1.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the Principles.

3.2 Failed to remedy promptly on discovery breaches of the SAR 1998 in breach of Rule 7 of the SAR 1998 and/or in breach of Rule 7 of the SAR 2011 and Principle 7 of the Principles.

3.3 In relation to the matters set out at 3.1 and/or 3.2, failed to act with integrity and in doing so:

3.3.1 Insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 1.02 of the SCC 2007; and

3.3.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principle 2 of the Principles.

Documents

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

- Notice of Application dated 24 April 2017
- Rule 5 Statement and Exhibit MHW1 dated 24 April 2017
- First Respondent's Answer to the Rule 5 Statement dated 31 May 2017
- Second Respondent's Answer to the Rule 5 Statement dated 30 May 2017
- Third Respondent's Witness Statement/Answer dated 29 May 2017
- First Respondent's Application to stay/dismiss the proceedings as an abuse of process
- Second Respondent's Skeleton Argument in support of the application to stay/dismiss the proceedings as an abuse of process
- Applicant's Skeleton Argument in response to the application to stay/dismiss the proceedings
- Character references on behalf of the First, Second and Third Respondents
- Applicant's schedule of costs dated 29 September 2017
- First Respondent's schedule of costs (undated)
- Second Respondent's schedule of costs dated 13 October 2017
- Third Respondent's submissions on mitigation and costs dated 13 October 2017

Preliminary Matters

Application to stay/dismiss the proceeding for abuse of process on behalf of the First and Second Respondents

5. This matter when originally listed, had five Respondents. On 4 October 2017, the Tribunal approved an application in relation to Kevin Downes ("KD") and Andrew William Broome ("AB"), (two of the five Respondents), for an Agreed Outcome. The remaining three Respondents were not notified of the application for an Agreed Outcome and only became aware that an Agreed Outcome had been approved by the Tribunal on 5 October 2017, following an email sent to all parties by the Tribunal.

6. Mr Treverton-Jones submitted that the consideration and approval of the Agreed Outcome in relation to KD and AB, without their then co-Respondents' knowledge, amounted to an abuse of process; the procedure adopted was unfair to the co-Respondents as they had not had an opportunity to influence the outcome. Further there were facts contained in the agreed facts and statement of mitigation submitted in relation to the Agreed Outcome that were prejudicial to the First Respondent. Further, whilst there was no suggestion of conscious impropriety, the Applicant had completely flouted the Directions imposed by the Tribunal.

7. Mr Treverton-Jones referred the Tribunal to the case of R v Maxwell [2011] 1 WLR 1837 which held that the court had power to stay proceedings where:

   (i) it would be impossible to give the accused a fair trial, and

   (ii) it offended the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.

8. In addition, the submission of a statement by KD, upon which the Applicant intended to rely, added to the perceived unfairness to the First Respondent. If KD were allowed to give evidence, there was a substantial risk that the Respondents would suffer the prejudice that the Agreed Outcome Tribunal sought to avoid when it directed that the content of the Agreed Outcome could not be made public until the conclusion of the substantive hearing.

9. Mr Mainwaring fully supported and adopted the submission made by Mr Treverton-Jones. He submitted that any fair-minded observer would be appalled by the circumstances in which KD and AB had been granted an Agreed Outcome, and that the actions of the Applicant were a subversion of the Standard Directions and the principles of natural justice. The findings of fact made by the Tribunal that considered and approved the Agreed Outcome would "colour" the determinations made by this Tribunal.

10. Mr Mulchrone agreed that the questions for the Tribunal to consider were as outlined in the case of Maxwell, as had been submitted by Mr Treverton-Jones. The Respondents' essential complaint was that KD and AB had admitted the allegations and had been sanctioned; that should not have happened. Mr Mulchrone submitted

that there was nothing unusual in those admissions, still less was there anything improper in the procedure adopted. The Standard Directions made clear that an Agreed Outcome could be considered for some of the Respondents and not necessarily all of them. Further, to have appraised the remaining Respondents of the terms of the Agreed Outcome prior to its approval, would have been a breach of the privilege of those seeking an Agreed Outcome; it was for the Tribunal to approve any Agreed Outcome, and until such approval was obtained, the documents remained privileged. A stay of the proceedings was, it was submitted, an exceptional course that should only be granted in exceptional circumstances – this was not such a case.

11. The Tribunal determined that the Applicant ought to have served notice of the application for an Agreed Outcome on all parties; this was clearly envisaged by the Standard Directions and Practice Direction 6. The failure to do so, whilst in breach of those provisions, was not such that the proceedings against the Respondents were rendered unfair. This Tribunal was unaware of any of the facts found in the Agreed Outcome, and thus its determination could not be "coloured" by those findings; anything that the Respondents considered prejudicial in that document was not before this Tribunal and thus the Respondents could suffer no prejudice. Accordingly, having considered that the criterial in Maxwell had not been met, the application to stay/dismiss the proceedings as an abuse of process was not granted.

Applicant's Application to rely on the statement of Lindsey Barrowclough

12. Mr Mulchrone applied for the statement of Lindsey Barrowclough dated 19 September 2017 to be admitted into evidence. The statement had been filed and served a day late due to IT issues. Notwithstanding the technical breach of the Directions, there would be no prejudice to any party to allow the statement into evidence. Further, the First Respondent had filed and served a statement in response.

13. The application was not opposed by any of the Respondents. The Tribunal determined that the statement was relevant to facts in issue in the proceedings, and that to admit the statement would not cause any unfairness or prejudice to any of the Respondents. Accordingly, the application to admit the statement was granted.

Applicant's Application to rely on the statement of KD dated 3 October 2017

14. The account in the statement of KD was, it was submitted, not a new one – it was consistent with answers he gave during his interview with the FIO; the inculpatory statements made in the statement had been previously made in 2015, before proceedings were issued. Mr Mulchrone submitted that the question was not one of admissibility, the statement was clearly admissible, but the weight to be attributed to it. Further, the statement was consistent with the evidence of the Third Respondent. Given the consistency with previous statements made by KD of which the Respondents were aware, it could not be suggested that this was an ambush. The statement had been disclosed to the parties as soon as was reasonably practicable as was the application to rely on it. KD was prepared to attend the Tribunal and submit himself to cross-examination.

15. Mr Treverton-Jones opposed the application. The fact that it was consistent with previous statements made was of limited value, and the consistency with the Third Respondent was of no relevance at all. To allow KD to give evidence would introduce the prejudice that it had been sought to avoid; if he gave evidence, the First Respondent would want to cross-examine him on the Agreed Outcome facts and the mitigation he had advanced. It was therefore an inevitable consequence that he could not fairly be called to give evidence.

16. Mr Mainwaring endorsed and supported Mr Treverton-Jones's application. In addition, the Applicant had failed to address why the statement had not been filed and served in compliance with the Tribunal's directions. To allow KD's statement to be relied upon would "drive a coach and horses" through the Tribunal's decision in relation to prejudice as regards the application to dismiss the proceedings.

17. Mr Dayle did not object to the application.

18. The Tribunal determined that to allow KD's statement to be admitted and for KD to attend to give evidence would be prejudicial to the Respondents. Further, there was a substantial risk that it would introduce the prejudice that the Tribunal had been careful to avoid. To allow him to give evidence and then direct that he could not give any evidence or be cross-examined as to the terms of the Agreed Outcome would prevent the Respondents from being able to effectively put their cases. Accordingly, the Tribunal determined that the prejudice to the Respondents far outweighed the probative value of KD's evidence, and thus the application to allow that evidence was refused.

Admissibility of a letter dated 9 August 2016 written by KM

19. Mr Mainwaring submitted that the letter dated 9 August 2016 contained a number of allegations that were prejudicial to the Second Respondent, were not relevant to the proceedings and had little or no probative value. This letter had been the subject of discussion with the Applicant who considered that it would not rely on the letter as it did not form part of the Applicant's case. This application was supported by Mr Treverton-Jones.

20. Mr Dayle objected to the removal of the letter in its entirety as it contained statements upon which the Third Respondent wished to rely. Mr Mulchrone was neutral in respect of the application.

21. The Tribunal determined that the parties should agree a redacted version of the letter such that any material prejudicial to the First and Second Respondents should be removed.

22. The parties did not agree a redacted version. The Third Respondent duly gave evidence during the course of which the letter was not referred to. In the circumstances the Tribunal treated the application as abandoned by the Third Respondent and granted the application for it to be removed from the trial bundle.

Submission of No Case To Answer by the First and Second Respondents

23. At the conclusion of the Applicant's case, Mr Treverton-Jones submitted that there was insufficient evidence to establish a case to answer on all allegations. The allegations had not been put as strict liability breaches, but as breaches of the core principles. Allegation 1.1 depended on proving that the First Respondent was aware of the cheques in the drawer prior to 27 July 2012. The Applicant's evidence in that regard was hopelessly inadequate. To suggest that he, having discovered the breaches, and remedying them in a short period of time, had not acted promptly (allegation 1.2) was an unacceptable submission from the regulator. There was limited documentary evidence relied upon, and the documents that were relied upon failed to show, to the requisite standard, that the First Respondent was aware of any impropriety before he took over the Firm. He had been left to sort out the mess left by KD and AB, and he did so admirably. There was no evidence to suggest that he had acted without integrity (allegation 1.4).

24. Mr Treverton-Jones referred the Tribunal to R v Galbraith [1981] 2 All ER 1060, which stated that when considering a submission of no case:

> "(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with some other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there *is* evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

25. Mr Treverton-Jones submitted that other than the documentary evidence which did not establish knowledge, the Applicant sought to rely on the statements made by KD, who, as a result of the Tribunal's ruling, would not be attending to give evidence, and the Third Respondent, who had not yet given evidence and so statements attributed to her were, at present, hearsay. The involvement of the Third Respondent was curious; she had made full admissions to all allegations at the outset and seemed to be in attendance simply to assist the Applicant and undermine the case of the First and Second Respondents.

26. Mr Mainwaring submitted that there was only one document in the 1200 pages of documents filed upon which the Applicant relied to show that the Second Respondent had any knowledge of the cheques in the drawer, and that document was far from providing evidence that he was aware of any impropriety.

27. Mr Dayle stated that he stood behind the submissions of the Applicant. He confirmed that the Third Respondent maintained her admission in relation to all matters. Whilst her account conflicted with that of her co-Respondents, that by no means meant that she was there merely to act as a second prosecutor; the main concern was for her was to ensure the consistency of the matters she put before Tribunal and that was the full extent of her involvement.

28. Mr Mulchrone submitted that there could be no doubt that the First and Second Respondents caused or allowed the retention of monies in the office account subsequent to 27 July 2012. The evidence of the FIO was that cheques were retained, cancelled and re-issued during that time. Both the First and Second Respondents accepted that they had breached the accounts rules on a strict liability basis. It was the Applicant's position that even taking their case at its highest, allegation 1.1 was made out against them in relation to the period after 27 July 2012. Whilst it was accepted that there was limited evidence as to knowledge prior to 27 July 2012, it was not accepted that there was no evidence such that there was no case to answer. There was clear evidence from the Third Respondent that the First Respondent knew of the improper retention of cheques.

29. As regards allegation 1.2, it was not accepted that paying the withheld cheques "within 10 weeks of discovery" could be considered to be prompt given that the cheques constituted client money and thus should have been dealt with in accordance with the SAR's and the timeframes prescribed therein in relation to dealings with client money.

30. As regards allegation 1.3, the fact of the improper practices showed that the Respondents had failed to run the Firm effectively and in accordance with proper governance and financial and risk management principles.

31. Finally it was submitted that if the Tribunal found that there was a case to answer in relation to the other matters, it followed that there was a case to answer in relation to whether the Respondents had acted with integrity.

32. The Tribunal had regard to the criteria in Galbraith. It determined that whilst the documentary evidence against the First and Second Respondents was limited, it was not correct to say that there was no evidence such that a jury properly directed could not properly find the matters proved. Accordingly, the Tribunal dismissed the application made by the First and Second Respondents of no case to answer.

Application to amend the order of the Respondents' evidence

33. Mr Treverton-Jones submitted that as there was no issue between the Applicant and the Third Respondent, she ought to give her evidence first. This would avoid the need to re-call the First Respondent to give evidence in rebuttal of anything said by the Third Respondent. Mr Mainwaring endorsed and supported the application. Mr Dayle objected to the application; there were no issues of fairness to the other Respondents such that a change in the usual running order was necessitated.

34. The Tribunal determined that there would be no unfairness to the Third Respondent for her to give her evidence before the First and Second Respondents. Given her full admissions to all allegations, there was no issue between her and the Applicant. There was a strong possibility that both the First and Second Respondents may need to be recalled following her evidence if they gave their evidence prior to the Third Respondent. Accordingly, the Tribunal considered that it would be more efficient for the management of the proceedings for the Third Respondent to give her evidence prior to the First and Second Respondents.

Factual Background

35. The Firm was established in 1989 and became a limited company in 2005.

36. The First Respondent was a Partner in the Firm prior to its incorporation and was a Director and shareholder in the Firm from incorporation. He was born in 1975 and was admitted to the Roll of Solicitors in August 2001. He took over the financial management of the Firm in July 2012 and from January 2013 to December 2013 was the Firm's COFA. He ceased to be a Director of the Firm on 9 March 2016.

37. The Second Respondent was born in 1962. He joined the Firm in 2006 and became a Director on 1 May 2009. He ceased to be a Director at the Firm on 16 May 2016.

38. The Third Respondent was born in 1956. She was employed by the Firm as the Practice Manager and Head of Accounts from 2001.

The Accounts Rules

39. Rule 2.2(s) of the SAR 1998 and Rule 2.2 and the glossary of the SAR 2011 deem that the fees of counsel or other lawyers, or of a professional or other agent or expert instructed are "professional disbursements". Rule 13 of the SAR 1998 and Rule 12.2 of the SAR 2011 deem that money held or received for the payment of unpaid professional disbursements is client money.

40. Rule 6 of the SAR 1998 provided that:

> "All the principals in a practice must ensure compliance with the rules by the principals themselves and by everyone else working in the practice. This duty also extends to the directors of a recognised body which is a company, or to the members of a recognised body which is a limited liability partnership, and to the recognised body itself."

41. Rule 6 was retained in the SAR 2011 and extended the duty to the COFA of a firm.

42. Rule 1 of the SAR 1998 and Rule 1.2 of the SAR 2011 required the Respondents to comply with the following:

- Keep other people's money separate from money belonging to you or your firm;

- Keep other people's money safely in a bank or building society account identifiable as a client account (except where the Rules specifically provide otherwise);

- Use each client's money for that client's matter only;

- Establish and maintain proper accounting systems, and proper internal control over those systems, to ensure compliance with the Rules;

- Keep proper accounting records to show accurately the position with regard to money held for each client.

43. Rule 19 of the SAR 1998 and Rule 17.1 of the SAR 2011 required that where money is received in full or part settlement of a notification of costs and includes monies for unpaid professional disbursements, by the end of the second working day following receipt the disbursement must either be paid, or a sum for the settlement of any unpaid disbursement must be transferred to a client account.

44. Rule 21 of the SAR 1998 and Rule 19.1 of the SAR 2011 applied a special dispensation in relation to monies received from the LSC. Where payments received included monies for unpaid professional disbursements, those disbursement should be paid within 14 days, or a sum for the settlement of any disbursement must be transferred to a client account.

45. The Firm's work included matters for the HSE, where the Firm acted in the Prosecution of HSE matters, and matters funded by the Legal Services Commission ("the LSC").[1] In the course of this work, the Firm incurred the costs of disbursements including counsels and experts fees. From around 2011, delays in the receipt of monies due from the LSC exacerbated cash-flow problems at the Firm such that the Bank had threatened to withdraw the overdraft unless KD and AB left the firm. An agreement was reached and the two directors were bought out by the First and Second Respondents. It was notable that the sums paid to KD and AB did not in any way reflect the value of the 'cheques in the drawer'. Following the departure of KD and AB in July 2012 a number of loans were taken out. In July 2012, the Firm received investment from ML and AL in exchange for a shareholding in the Firm.

Forensic Investigation

46. A Forensic Investigation Officer ("FIO") commenced an inspection of the Firm on 3 September 2015 and produced a report ("the FI Report") dated 8 March 2016.

47. During the period March 2009 to July 2012, a number of cheques which had been drawn for the payment of professional fees were withheld. These included payments for counsel and experts fees incurred on HSE matters and cases funded by the LSC. The total value of cheques withheld over that period was £530,713.43.

[1] The LSC later became the Legal Aid Agency ("the LAA").

48. The practice of withholding cheques was instigated by KD. The Third Respondent was aware of the practice from 2009. Following the departure of KD, the outstanding payments due as a result of withheld cheques were not cleared until December 2012.

49. The Firm's SRA Accountant's Reports covering the period from 1 August 2008 to 31 July 2013 were qualified. In each of the reports completed during that time, the accountants had identified and notified the Firm that monies for unpaid professional disbursements were being retained in the office account in breach of the SAR's.

50. KD, in an email to the FIO dated 17 December 2015 explained that he had instructed the Third Respondent to withhold office account cheques due to be issued for unpaid professional disbursements. He undertook this course of action in response to pressure on the bank overdraft and the failure of the LSC to pay contracted and other legal aid payments.

51. As regards the procedure, the Third Respondent explained that KD would decide whether to hold on to a cheque. When a cheque was withheld, it would be retained in a locked drawer in the cashiers' office. KD would also decide the order of the re-issue of any withheld cheques. The Third Respondent also received instructions from AB in this regard, but instructions would only be provided by AB in KD's absence.

52. In an email to the FIO dated 6 March 2017, the Third Respondent explained that following a conversation with her when "it was realised that it would look very odd to send a cheque dated several months previously" KD decided to treat a cheque as "lost in the post". A fresh cheque was then raised to be sent out and that "This was the process used by the cashiers when any 'held back' cheque was re-issued if more than a couple of weeks had elapsed before it was sent out. The entries and the completion of the cheques was undertaken by the Cashiers...."

53. The effect of withholding the cheques was that client money was held in the office account for periods in excess of those allowed by the SAR's, with the longest period being for 270 days.

Witnesses

54. The following witnesses provided statements and/or gave oral evidence:

- Lindsey Barrowclough – Forensic Investigation Officer
- Judith Read – Third Respondent
- Simon Belfield – First Respondent
- Mark Davies – Second Respondent

55. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

56. 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 lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

57. The First and Second Respondents denied all of the allegations. The Third Respondent admitted all of the allegations.

58. **Allegation 1.1 – The First Respondent caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limit prescribed by Rules 19 and 21 of the SAR 1998 on or prior to 5 October 2011 and/or Rule 17.1 and 19.1 of the SAR 2011 on or after 6 October 2011, and in doing so insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the Principles.**

Allegation 2.1 – The Second Respondent caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limit prescribed by Rules 19 and 21 of the SAR 1998 on or prior to 5 October 2011 and/or Rule 17.1 and 19.1 of the SAR 2011 on or after 6 October 2011, and in doing so insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the Principles.

Allegation 3.1 – The Third Respondent caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limit prescribed by Rules 19 and 21 of the SAR 1998 on or prior to 5 October 2011 and/or Rule 17.1 and 19.1 of the SAR 2011 on or after 6 October 2011 insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the Principles.

Applicant's Submissions

Knowledge prior to July 2012

58.1 The First Respondent – the Applicant referred the Tribunal to emails which, it was submitted, demonstrated that the First Respondent was aware of the improper practice of cheque retention prior to July 2012:

- On 23 April 2009, the First Respondent emailed KD explaining that he had been chased by counsel's clerk who was concerned about outstanding fees. He stated that "…they are obviously concerned as to the delays. Can you see if any of them can be paid please." The Third Respondent responded to that email. In response the First Respondent explained that he would "fudge and fluff the issue when I am with counsel!!" Mr Mulchrone submitted that if it was simply the case that fee notes had been incorrectly invoiced, there would be no need for the First Respondent to "fudge and fluff" the issue, as he would simply be telling counsel the truth.

- On 30 May 2012, the First Respondent requested a cheque for counsel whose fees had been outstanding for "over 6 months". He understood that payment for those fees had already been received.

- On 19 July 2012, the Third Respondent emailed the First Respondent attaching an estimated cashflow up to the week ending 10 August 2012. The First Respondent replied with thanks. Thereafter the Third Respondent stated "I have ignored the figure for the cheques in my drawer :(" It was noted that there was no substantive response to that email; the First Respondent did not ask what was meant by "the cheques in my drawer". It could be inferred that the First Respondent knew what this meant, and therefore knew of the improper practice of cheque retention.

- On 27 July 2012 the Third Respondent emailed the First and Second Respondents and stated, inter alia, "As I was sure you knew, I was told to withhold cheques when we should have paid out counsel fees and other disbursements. [AB] and [KD] were aware and as I said, I was sure you both knew too." Following the Second Respondent's response to that email, the First Respondent stated "I was horrified as you know when I heard the extent of the situation. I had no idea. I understood we had the odd counsel fee situation … from time to time but did not know that it had escalated to over £150k." Mr Mulchrone submitted that it was clear from his response that the First Respondent was aware that cheques were being withheld; he was simply unaware of the "extent" and amount.

58.2 In addition to the evidence contained in the emails, Mr Mulchrone relied on the statements made by KD and the Third Respondent. In an email dated 17 December 2015 from KD to the FIO, KD stated:

> "I accept that [the First and Second Respondents] were not involved in the direct day to day running of the business until the end of June 2012. However, I do not accept that they were not aware of the existence of the raised, but not released, cheques. There were regular directors meetings involving all four equity directors or a combination of equity directors. The cashflow problem was well known to all equity directors. The cashflow issue was caused by the consistent failure of the LSC to pay sums due in a timely manner."

58.3 The Third Respondent, during her interview with the FIO on 24 November 2015 explained that the First Respondent was aware of the practice before July 2012, as he used to come into the accounts department and ask how things were going, at which point he would be told by her that she still had the cheques in her drawer. The

Third Respondent re-stated this in her oral evidence, and further explained that he would be told by her, or, in her absence, by the cashiers.

58.4 In her statement dated 29 May 2017, the Third Respondent explained that the First and Second Respondents "were aware of the situation of the withheld cheques prior to the departure of [KD and AB]." In particular it was stated that the First Respondent "was aware over the course of the period 2009-2012 as he came into the Accounts department regularly to ask how things were going and I would always comment on the withheld cheques."

58.5 The Second Respondent – the Applicant referred the Tribunal to an email chain dated 3 June 2011 which referred to outstanding counsels fees that the Second Respondent being chased for payment of. In a response to the Third Respondent (amongst others) the Second Respondent confirmed that "Counsel can be paid 2.5k immediately".

58.6 The Tribunal was also referred to the comments made by KD and the Third Respondent detailed above.

58.7 The Third Respondent confirmed that she was fully aware of the practice from the outset and was also fully aware that the practice was improper and in breach of the SAR's.

Knowledge post 27 July 2012

58.8 It was submitted that both the First and Second Respondents were aware of, and directed the continued and improper practice of withholding cheques until final payment was made on 6 December 2012. Ms Barrowclough's undisputed oral evidence was that cheques had been cancelled and re-issued during the period that the First and Second Respondents had taken over the financial control of the Firm.

58.9 Further, the Third Respondent had met with the First Respondent's wife to discuss the finances. There was also email communication in which the First Respondent's wife instructed the Third Respondent to pay outstanding fees using money received for the payment of LR on other matters.

58.10 The effect of the improper practice of withholding cheques was that client money was held in office account for periods of up to 270 days and were effectively used to support the Firm's cash flow at a time when the Firm was under financial pressure.

58.11 Responsibility for compliance with the SAR fell to the First and Second Respondents (amongst others) in accordance with Rule 6 of the SAR 1998 and 2011 (as applicable at the relevant time).

First Respondent's Submissions

58.12 Mr Treverton-Jones submitted that there was nothing in the email dated 23 April 2009 to support a contention that the First Respondent had any knowledge of the improperly retained cheques. It was clear and evident on the face of the email chain that he was being chased for outstanding fees due to counsel. Specific issues were highlighted by the Third Respondent in her response. There was no mention of

cheques in the drawer, and nothing in the email chain could suggest that the First Respondent was aware of that practice. In his evidence the First Respondent explained that when he stated that he would "fudge and fluff" the issue, it was apparent to him that certain invoices had not been sent out, or payment was still being awaited. It was not uncommon for fee notes to sit on a file for some time before the client was invoiced.

58.13 As regards the email dated 30 May 2012, this was a simple request for a cheque to pay counsel's fees that had been outstanding for over 6 months. It was again submitted that there was nothing said in that email chain that could be relied upon as evidence that the First Respondent was aware of the improper withholding of cheques.

58.14 The First Respondent stated that the 19 July 2012 email from the Third Respondent that mentioned "the cheques in my drawer" did not register with him. He had no recollection of receiving that email and had forwarded it to the Second Respondent at around 8.00pm.

58.15 The evidence of the Third Respondent in relation to the conversations she had with the First Respondent when he would 'pop into the accounts office' on a Friday was unrealistic. Mr Treverton-Jones referred the Tribunal to a document entitled "Events leading up to 27th July 2012" and dated 16 April 2014. That document was purportedly written by the Third Respondent. It stated:

> "The other two Shareholding Directors, [the First and Second Respondents] did not get involved in the day to day running of the business and were not aware of the existence of the withheld cheques until after [AB and KD] left the company. The outstanding cheques were cleared from funds received and the practice of withholding cheques ceased immediately and [the Firm has] never withheld cheques since"

58.16 In her oral evidence, the Third Respondent denied that she had prepared that document and did not know its provenance. The First Respondent stated that it had been created by the Third Respondent in relation to a due diligence exercise by potential investors. TC had suggested that the Third Respondent produce a document confirming her knowledge of the events leading up to the departure of KD and AB. Mr Treverton-Jones submitted that it was not until the Third Respondent gave evidence that there was any suggestion that the document was not written by her. Further, whilst the FIO had been cross-examined by the Third Respondent, no questions had been put to her about the authenticity of the document, or who in the Firm had provided that document to her. Further, no questions had been put to the First Respondent by the Third Respondent in relation to that document. It was submitted that the document had been written by the Third Respondent and was a true reflection of her beliefs as at April 2014. This contrasted markedly with the position she put forward in November 2015, and in her witness statement. The Third Respondent's evidence on the issue of knowledge had been inconsistent such that it was unreliable and could not establish, beyond reasonable doubt, that the First Respondent was aware of the withheld cheques prior to 27 July 2012.

58.17 The only other 'evidence' was that of KD. Mr Treverton-Jones submitted that the Tribunal was being asked to rely on the hearsay evidence of the person who was most culpable, had admitted his conduct lacked integrity and in circumstances where the Tribunal had ruled that it would be unfair for him to give live evidence. Accordingly the Tribunal should place no weight on that evidence.

Second Respondent's Submissions

58.18 Mr Mainwaring submitted that other than one email, the only evidence upon which the Applicant relied to establish knowledge of the improper practice by the Second Respondent, was the evidence of the Third Respondent and KD.

58.19 As regards the email, which was the 'high watermark' of the Applicant's documentary evidence, there was nothing in that email to suggest that the Second Respondent had any knowledge of the withheld cheques. The chain of emails referred only to the chasing of fees on behalf of counsel, and seeking the Second Respondent's authority for the payment to be made. That authority was provided. The email chain could not and did not provide any evidence in support of the Applicant's case that the Second Respondent was aware of the pernicious practice adopted by KD.

58.20 The Second Respondent explained that whilst he was an equity director, he was treated differently to the other directors as he was not qualified. He was often not copied into email chains and did not socialise with the other directors. As was accepted by the Third Respondent, the Second Respondent was rarely in the office. He stated that after KD and AB left, he became aware of the improper cheque retention. He then did all that he could to remedy the situation so as to ensure the continuance of the Firm and so that his staff could keep their jobs.

58.21 In response to the email dated 27 July from the Third Respondent where she explained the practice, the Second Respondent stated:

> "For my part it's absolutely shocking and I'm sure I speak for [the First Respondent]!!! I had no idea this was going on … I can understand a little slippage on occasions but I am appalled by what KD and AB asked you to do … I apologise for not getting involved earlier and I am sorry you were put in such a position … We need to resolve this quickly … I cannot express my horror and emphasise that I was completely unaware of the management of KD and AB … Again I am sorry …"

58.22 Mr Mulchrone asked the Second Respondent whether this was a case of 'the lady doth protest too much'. The Second Respondent stated that it was his true and natural reaction to the situation; he had not written that email in the anticipation that he would need to explain its contents five years later.

58.23 Mr Mainwaring submitted that the Third Respondent's evidence was inconsistent. In her witness statement she stated that the Second Respondent knew before July 2012, however this was in direct contradiction to her position in April 2014 as detailed in the document entitled "Events leading up to the 27th July 2012". It was noted that at no point prior to her evidence had the Third Respondent disclaimed authorship of that document.

58.24 Even if it were the case that the Third Respondent had not written that document, her evidence in relation to the Second Respondent's knowledge was still inconsistent. During her interview with the FIO, she stated that the Second Respondent "probably did not know" about the practice before July 2012.

58.25 In her letter of 9 August 2016 to the Applicant she stated:

> "In relation to [the Second Respondent], I am unable to comment as I don't know what was discussed between him and his co-directors, but he did appear surprised when he replied to the email setting out the value of the withheld cheques at the time of the takeover …"

58.26 In her oral evidence, she explained that she assumed he knew as others in his department were aware, but that she could not say that he knew as she did not speak to him directly about it. Mr Mainwaring submitted that even leaving aside the positive assertion that the Second Respondent did not know what was contained in the April 2014 document, the oral and written evidence of the Third Respondent was so inconsistent such that it could not be relied upon.

58.27 The Second Respondent remained at the Firm, obtained investment and managed the issues such that there was no loss to anyone; he was instrumental in saving the Firm. Allegation 1.1 ought to be dismissed on the basis that he had no knowledge prior to July 2012, and thereafter, following discovery he did all that he could and ought to have done.

Third Respondent's Submissions

58.28 The Third Respondent admitted allegation 3.1.

The Tribunal's Findings

58.29 The Tribunal firstly considered whether the documentary evidence relied upon by the Applicant showed that the First and Second Respondents had knowledge of the improper practice of cheque retention prior to their takeover of the Firm in July 2012. The Tribunal determined that there was nothing in any of the emails that showed that either Respondent was aware of the practice of improper cheque retention. The emails of 23 April 2009 and 30 May 2012 (as regards the First Respondent) and the email of 3 June 2011 (as regards the Second Respondent) related to counsel and the payment of counsels fees. There was nothing in those emails that demonstrated that the First and Second Respondents were aware of and complicit in the improper retention of cheques. The Tribunal noted that the email of 23 April 2009 was sent at a time when only three cheques had been retained. The Tribunal determined that as at 23 April 2009, improper cheque retention could not, in any event, be deemed to be a regular practice. As the Third Respondent had explained, she had initially assumed that it was not going to be a regular occurrence.

58.30 As regards the 19 July 2012 email, (sent by the Third Respondent to the First Respondent, and forwarded by the First Respondent to the Second Respondent) in which the Third Respondent stated "I have ignored the figure for the cheques in my drawer :(", the Tribunal found that whilst the "cheques in the drawer" would have

carried a special meaning to KD, AB and the Third Respondent, it had no particular meaning for the First and Second Respondents, who were unaware of the improper practice of cheque retention. The meaning of "the cheques in my drawer" was not obvious; it could not be said that this was a reference that would be clearly understood by the First and Second Respondents as referring to any improper practice.

58.31 The Tribunal determined that the Third Respondent's evidence as to knowledge was inconsistent and not specific enough; she had been unable to cite any conversation had with the First Respondent in which she informed him of the cheques other than vague mentions of regular visits made by the First Respondent to the office. Leaving aside the document dated 16 April 2014, her evidence as to the state of knowledge of the Second Respondent was particularly inconsistent. The Tribunal determined that her evidence could not be relied upon to show, beyond reasonable doubt that either the First or Second Respondents were aware of the practice prior to 2012.

58.32 The Tribunal placed very little weight on the hearsay evidence of KD.

58.33 Accordingly, the Tribunal found that the First and Second Respondents had no knowledge of the improper practice of cheque retention prior to their taking over the Firm on 27 July 2012, and thus found that there was no breach of Rules 1.04, 1.05 and 1.06.

58.34 As regards the post July 2012 period, the Tribunal determined that the First and Second Respondents had, as they admitted, technically breached the SAR's. The Tribunal considered that the First and Second Respondents had acted appropriately and with all due diligence once the position was discovered. The Tribunal determined that whilst there had been SAR breaches, allegation 1.1 was not put on a strict liability basis, and in order to find the matter proved, the Applicant was required to prove that the First and Second Respondents had breached the core duties as pleaded. The Tribunal determined that the First and Second Respondents actions had demonstrated that they had acted in the best interests of their clients, had provided a proper service and had acted so as to protect client money and assets. Accordingly, the Tribunal did not find that they had breached Principles 4, 5 and 10. Further, the Tribunal determined that members of the public, in full possession of the facts, would not have diminished trust in the First and Second Respondents or in the profession because of their actions. Thus the Tribunal did not find that there had been a breach of Principle 6.

58.35 Accordingly the Tribunal found the allegations not proved and dismissed allegation 1.1 as regards the First Respondent and 2.1 as regards the Second Respondent.

58.36 The Third Respondent admitted allegation 3.1, and the Tribunal found it proved beyond reasonable doubt on the facts and her admission.

59. **Allegations 1.2, 2.2 and 3.2 - Failed to remedy promptly on discovery breaches of the SAR 1998 in breach of Rule 7 of the SAR 1998 and/or in breach of Rule 7 of the SAR 2011 and Principle 7 of the Principles.**

Applicant's Submissions

59.1 The Accountant's Reports covering the period from 1 August 2008 to 31 July 2012 were qualified and identified breaches of the SAR 1998 and/or 2011 in relation to unpaid professional disbursements that had not been either paid or transferred to the client account by the end of the second working day.

59.2 The First and Second Respondents were aware of the breach of the SAR's by at least 28 July 2012 as set out in the First Respondent's email to the accountant (which was copied to the Second Respondent) dated 28 July 2012 which stated: "My concern is how we deal with the SRA and, in particular, how this impacts on the role of the COFA going forward.....If it was in force now then we would have to report it as it is a breach of the rules, if not fraudulent." The First Respondent confirmed in his interview with the FIO that he was informed by the accountants that the disbursements came "under the umbrella of client monies".

59.3 Mr Mulchrone submitted that given the knowledge that the monies constituted client monies, it was no answer to say that the cheques had been paid off as soon as possible – this was tantamount to an admission that the Firm's interests had been prioritised over that of dealing appropriately with client money. Further, during the time that cheques remained unpaid, the First and Second Respondents still took remuneration from the Firm. Further, the Third Respondent stated that she had provided the First and Second Respondents with copies of the accountants' reports which highlighted the breaches.

59.4 In interpreting "promptly" the Tribunal should consider the mandatory timescales within the SAR's for dealing with client monies (namely the transfer of that money to a client account the second working day after receipt, or 14 days after receipt if it is Legal Aid money). Taking those timescales into account, it could not be said that the First and Second Respondent had acted "promptly" to rectify the breaches.

First Respondent's Submissions

59.5 Mr Treverton-Jones submitted that the word "promptly" was not defined in the SAR's; the Applicant had wrongly elided that with the mandatory provisions in relation to client monies. It was accepted, and the First Respondent had accepted that there had been strict liability breaches of the accounts rules. However the Applicant's case was not put on a strict liability basis. The First Respondent, with the assistance of the Second and Third Respondents had worked hard to fix the mess that had been left by KD and AB. It was unappealing for the Applicant to suggest that having inherited and fixed the situation, the First Respondent had not done so quickly enough such that his actions amounted to professional misconduct. As to the Third Respondent's contention that she had provided the First Respondent with copies of the accountants' reports, there was no evidence to support that.

Second Respondent's Submissions

59.6 Mr Mainwaring submitted that whilst it was accepted that there were technical breaches of the SAR's, the Second Respondent had done all that he could, and had

successfully acted such as to save the Firm, ensure no client suffered any loss, and repay all debts owed due to the improper cheque retention.

Third Respondent's Submissions

59.7 The Third Respondent admitted allegation 3.2.

The Tribunal's Findings

59.8 The Tribunal determined that the First and Second Respondents had acted with all due diligence in the rectification of the financial mismanagement instigated by KD. It noted that the vast majority of withheld cheques were reconciled by August 2012, a further number being reconciled in October 2012, and a final cheque in December 2012. The Tribunal found that in the particular circumstances of this case, it was not appropriate to define "promptly" in terms of the mandatory rules for dealing with client money in the SAR's; the First and Second Respondents had, in a short period of time, rectified an improper practice at the Firm that had been continuing for over three years. Further they had managed that situation such that no client lost any money, and all outstanding fees were paid. The Tribunal noted the references submitted on behalf of the First and Second Respondents, which included references from counsel whose cheques had been withheld.

59.9 The Tribunal noted that the evidence of Ms Barrowclough as regards the re-issue of cheques within the time that the First and Second Respondents were managing the practice went unchallenged. It was also noted that the only cheques that were re-issued were those that had been previously withheld upon the instruction of KD. There were no cheques written and then withheld under the instruction of the First and/or Second Respondents. The Tribunal did not accept that the First and Second Respondents were aware of the breaches of the accounts rules through possession of the accountants' reports. There was no evidence that those reports had been supplied to them.

59.10 Accordingly the Tribunal found the allegations not proved and dismissed allegation 1.2 as regards the First Respondent and 2.2 as regards the Second Respondent.

59.11 The Third Respondent admitted allegation 3.2, and the Tribunal found it proved beyond reasonable doubt on the facts and her admission.

60. **Allegation 1.3 - Failed to run the Firm effectively and in accordance with proper governance and sound financial risk management principles in that they failed to ensure that the Firm had appropriate systems in place to identify, prevent and rectify the breaches of the SAR 1998 and/or the SAR 2011 identified at paragraphs 1.1 and 1.2 above and in doing so insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 5.01 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 8 and/or 10 of the Principles and failed to achieve outcomes 7.2, 7.3, 7.4 and/or 10.3 of the SCC 2011**

Allegation 2.3 - Failed to run the Firm effectively and in accordance with proper governance and sound financial risk management principles in that he failed to ensure that the Firm had appropriate systems in place to identify, prevent and rectify the breaches of the SAR 1998 and/or the SAR 2011 identified at paragraphs 2.1 and 2.2 above and in doing so insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 5.01 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, breached Principles 8 and/or 10 of the Principles and failed to achieve outcomes 7.2, 7.3, 7.4 and/or 10.3 of the SCC 2011.

Applicant's Submissions

60.1 The fact that the improper practice of withholding cheques was instigated and persisted for as long as it did clearly demonstrated that the First and Second Respondents had failed to run the Firm effectively and in accordance with proper governance and sound financial and risk management principles. Neither the First not the Second Respondent were junior employees; as directors they were both under a duty to ensure the Firm's compliance with the prevailing accounts rules.

First Respondent's Submissions

60.2 Mr Treverton-Jones submitted that in order for the Applicant to prove this matter, it would have to establish that the First Respondent was culpable. As had been submitted in relation to allegation 1.1, the First Respondent had no knowledge of any breaches of the SAR's or otherwise prior to July 2012, and should not be held to be culpable for those breaches. When he took over management of the Firm, he ensured the adherence to proper governance and sound financial and risk management principles.

Second Respondent's Submissions

60.3 Mr Mainwaring submitted that on discovery of the breaches, the Second Respondent did all that he could to ensure that no breaches would re-occur in the future. Advice was sought and taken from a number of sources as to the best way to proceed. This, it was submitted, was evidence of the Second Respondent's diligence and his desire to abide by the Rules and Principles.

The Tribunal's Findings

60.4 The Tribunal noted that the Applicant did not provide any evidence as to the systems that were in place at the time. The Tribunal determined that it was not enough for the Applicant to identify that breaches had occurred, and then rely on the occurrence of those breaches as proof that there were inappropriate systems in place. The Tribunal noted that the Third Respondent had explained that there was a system by which cheques were requested, drafted and recorded. The system described by the Third Respondent was not dissimilar to the system that a number of Firms operated. The Tribunal considered that the breaches of the accounts rules had occurred, not due to the lack of adequate systems, but because those systems had been subverted by KD and AB, with the assistance of the accounts department.

60.5 Accordingly, the Tribunal did not find that there were not appropriate systems in place to identify, prevent and rectify breaches of the SAR such that the First and Second Respondents had failed in their duty to run the Firm effectively and in accordance with sound financial and risk management principles. Thus the Tribunal found the allegations not proved and dismissed allegation 1.3 as regards the First Respondent, and allegation 2.3 as regards the Second Respondent.

61. **Allegation 1.4 - In relation to the matters set out at 1.1, 1.2 and/or 1.3, failed to act with integrity and in doing so insofar as such conduct took place during the period from on or around 18 March 2009 to and including 5 October 2011, acted in breach of Rule 1.02 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principle 2 of the Principles.**

Allegation 2.4 - In relation to the matters set out at 2.1, 2.2 and/or 2.3, failed to act with integrity and in doing so insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 1.02 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principle 2 of the Principles.

Allegation 3.3 - In relation to the matters set out at 3.1 and/or 3.2, failed to act with integrity and in doing so insofar as such conduct took place during the period from on or around 1 May 2009 to and including 5 October 2011, acted in breach of Rule 1.02 of the SCC 2007; and insofar as such conduct took place on or after 6 October 2011, acted in breach of Principle 2 of the Principles.

Applicant's Submissions

61.1 Mr Mulchrone submitted that the Respondents' conduct amounted to a failure of steady adherence to an ethical code and amounted to a failure to act with integrity in that each Respondent:

(a) caused or allowed client monies intended for professional disbursements to be paid into and retained in office account beyond the time limits allowed by the SAR;

(b) caused or permitted a cash shortage on client account;

(c) having been made aware of breaches of the SAR, failed promptly to rectify any such breaches;

(d) by retaining client monies in office account, allowed those sums to be available for use by the principals of the Firm, including in relation to personal expenses, or the Firm itself;

(e) caused or allowed, and failed to take steps to identify or prevent, recurrence of the previously-identified breaches;

(f) caused or allowed the recurrence of a systematic practice of retaining client funds in office account, and so the appropriation of client funds to support the Firm's cash flow.

First Respondent's Submissions

61.2 For the reasons advanced in relation to allegations 1.1, 1.2 and 1.3 it was denied that the First Respondent had acted without integrity. Indeed, his taking over of the Firm, together with the Second Respondent, and rectification of the breaches in a relatively short period of time, was a demonstration of his integrity.

Second Respondent's Submissions

61.3 For the reasons advanced in relation to allegations 2.1, 2.2 and 2.3 it was denied that the Second Respondent had acted without integrity. He was an unadmitted person and, together with the First Respondent, had been instrumental in saving the Firm. He had, it was submitted, done more than most to uphold the integrity of the profession.

Third Respondent's Submissions

61.4 The Third Respondent admitted allegation 3.3.

The Tribunal's Findings

61.5 The Tribunal had found allegations 1.1, 1.2, 1.3, 2.1, 2.2 and 2.3 not proved. Consequently the Tribunal did not find that the First or Second Respondents had acted without integrity and thus dismissed allegations 1.4 and 2.4.

61.6 The Third Respondent admitted allegation 3.3, and the Tribunal found it proved beyond reasonable doubt on the facts and her admission.

Previous Disciplinary Matters

62. None.

Mitigation

63. The Third Respondent had stated in her oral evidence that she deeply regretted her conduct in this matter. She admitted all of the allegations from the outset. Her insight was clear and well developed. She explained that she knew her actions were wrong, and knew that to be the case at the time. She had believed that in highlighting the breaches to KD, she had discharged her duty to report. It was not until she attended a whistle-blowing course in 2013 that she realised that she was under a duty to report the breaches herself. By that time all the breaches had been rectified. It was the Third Respondent that first brought the withholding of cheques to the attention of the FIO. She did not object to the Section 43 Order sought by the Applicant, but was open to working within a law firm at some point in the future.

64. As regards her personal circumstances, she cared for her elderly mother who suffered from dementia. She was currently unemployed, following the Firm going into administration.

Application for an Order under Section 43 Solicitors Act 1974 ("the Act")

65. The Tribunal referred to its Guidance Note on Sanctions (5th Edition–December 2016) when considering whether to make an order under Section 43(2) of the Act in accordance with Sections 43(1) and (1A) of the Act. The Tribunal had regard to the fact that the purpose of a Section 43 Order was regulatory and not penal.

66. The Applicant submitted that it would be undesirable for the Third Respondent to be employed by a solicitor without the permission of the Applicant. The Third Respondent had stated in her oral evidence that she did not object to the imposition of a Section 43 Order. The Tribunal found that it would be undesirable for the Third Respondent to be employed by a solicitor without the permission of the SRA given the nature of the admissions made, which included that she had acted without integrity. Accordingly, the Tribunal considered that it was appropriate to make a Section 43 Order. The Tribunal did not add an option for review of the Section 43 Order as had been requested, as that already existed in Section 43(3) of the Act which provided that the Applicant and/or the Third Respondent could, at any time, apply to the Tribunal to review the Order.

Costs

67. Mr Dayle submitted that the Third Respondent made an offer of an Agreed Outcome to the Applicant. This was rejected. In an email to the Third Respondent's then counsel, Mr Whiting, the solicitor with conduct of this case on behalf of the Applicant stated that "given the accounts between the Respondents differ, the SDT needs to hear from all the Respondents." In a letter dated 29 September 2017, the Applicant stated "Your account is not accepted by the [First and Second] Respondents and, as such, it will be necessary for you to give evidence."

68. The Tribunal were aware that an Agreed Outcome was approved in relation to KD and AB subsequent to the correspondence mentioned above. Mr Dayle submitted that as a result of the Applicant's conduct, the Third Respondent was left with a range of unpalatable choices:

- Disengage with the disciplinary process entirely, with all its attendant discourtesy to the Tribunal;
- Attend the hearing but remain mute and passive whilst she was discredited by the other Respondents in pursuit of their defence; or
- Engage with the hearing so far as it was confined to maintaining the consistency of her account.

69. The Third Respondent chose the latter option. Given the Applicant's conduct, it was submitted that there were compelling reasons that an order for costs should be made against the SRA:

- The Third Respondent had been required to attend the hearing when she had admitted the allegations in full.

- The reason given for the refusal of an offer of an Agreed Outcome was patently false.

- To say that it was "necessary" for her to attend at the hearing was based on the cynical calculation that her presence could bolster the case against the other Respondents.

- Expenses incurred by the Third Respondent could have been avoided on the acceptance of her early guilty plea.

70. Mr Dayle referred the Tribunal to the case of Murtagh v SRA [2013] EWHC 2024 (Admin) in which no order for costs was made against the Respondent on the basis that the allegations against him were only proved at a de minimis level. The court affirmed the costs principles in Baxendale-Walker v Law Society [2007] EWCA Civ 233 in which it was held that a professional regulator acting in the public interest was not to be discouraged from bringing proceedings by the risk of a costs order against it. That formulation, it was submitted, was qualified by the Moses LJ in the Divisional Court such that: "Absent dishonesty or a lack of good faith, a costs order should not be made against such a regulator unless there is good reason to do so. That reason must be more than that the other party has succeeded…"

71. The Court of Appeal described the circumstances that could result in a costs order against the regulator: "Unless the complaint is improperly brought, or …. a "shambles from start to finish", when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event."

72. Mr Dayle submitted that given the reasons outlined above, the Third Respondent should be awarded costs of £8,850.

73. Mr Treverton-Jones submitted that:

- the starting point for any consideration of an order for costs against the regulator was Baxendale-Walker. That case made clear that the mere fact of success was not even a starting point, but was a factor to be taken into account. It was not submitted that the allegations were improperly brought or that the case was a shambles from start to finish, however, it became a shambles when the Applicant, without the knowledge of the remaining Respondents applied for an Agreed Outcome in relation to KD and AB.

- as the current Respondents were not on notice of the application, things had crept into the Agreed Outcome that may have been disputed.

- had the matter proceeded as it ought to have done, KD, AB and the Third Respondent would have made their admissions at the beginning of the hearing. What would then follow would be a short trial against the First and Second Respondents.

- the Applicant had wrongly maintained a case that the First Respondent had misconducted himself after 27 July 2012 in failing to clear up the mess left by KD and AB quicker. Whilst the First Respondent did not seek thanks for his actions, he expected that he would not be accused of misconduct.

- the Applicant had not reviewed its case in light of the detailed response received from the First Respondent, instead it had sought to bolster its case by getting KD and the Third Respondent on board.

- that anyone would regard as unfair that AB had not had to attend the proceedings and had paid circa £30,000 in fines and costs whilst the First Respondent's legal fees were circa £43,000. Whilst it was not submitted that he should recover all of those costs, he should recover a percentage of those costs.

74. Mr Mainwaring did not invite the Tribunal to make a finding of improper motive. He submitted that the Applicant ought to have given a significantly greater amount of thought to the fairness of its decisions and its failure to do so had resulted in a significant increase in the Second Respondent's costs. There could be no doubt that the decisions taken by the Applicant would have been deeply troubling to someone with an objective standpoint. It was submitted that whilst the Second Respondent ought to recover some of his costs, he was not applying for the recovery of the entirety of his costs. Whilst the Tribunal was careful when considering the making of a costs order against a Respondent who had been successful, it should also ensure that the regulator did not consider itself free to behave in the manner that it had without any costs being awarded against it.

75. Mr Mulchrone submitted that it was proper for the First and Second Respondents to concede that there was no allegation of bad faith on the part of the Applicant. It was surprising that the Third Respondent was making an application for her costs in circumstances where the allegations against her had been admitted from the outset. The Third Respondent had positively alleged bad faith – this allegation was categorically denied. The Applicant had not required her attendance, and as Mr Dayle was aware, the Applicant had no power to compel her attendance at the hearing. When she asked the solicitor with conduct whether she had to attend, he quite properly told her that he was unable to advise her and suggested that she seek independent legal advice. She had attended voluntarily and had been represented throughout the hearing; it had been open to her to make an application to be excused attendance until such point that the Tribunal had made its determination.

76. The basis upon which an allegation of bad faith was founded was unclear. The allegation that the reasons for the refusal of agreement to an Agreed Outcome was "patently false" was wholly misconceived. It had remained the Applicant's views that all Respondents should be heard at the hearing, and to that end an application was made for KD to attend the hearing to give evidence. It was not the function of the Applicant to decide which of the versions given by the Respondents was truthful, that was a matter for the Tribunal. The expenses and costs claimed by the Third Respondent were wholly unparticularised despite the Tribunal's very clear direction that any party seeking to make an application for costs should provide a fully particularised schedule of those costs.

77. As regards the costs applications by the First and Second Respondents, Mr Mulchrone was grateful for the concession that the proceedings were properly brought and that there was no allegation of bad faith. The proceedings were not a shambles from start to finish – the application for a stay of the proceedings had not been granted, and the application to dismiss the case at the conclusion of the presentation of the prosecution evidence had likewise not succeeded. The complaint by the First and Second Respondents was that the procedure adopted by the Applicant in relation to the Agreed Outcome was unfair. It was submitted that whilst the Tribunal had determined that the Applicant had not complied with the Standard Directions and Practice Direction 6, it was not obvious that the Applicant was in breach, and its reliance on protecting the privilege of KD and AB was reasonable in all the circumstances.

78. Mr Mulchrone submitted that absent dishonesty or bad faith, an application for costs against the Applicant ought not to succeed.

79. As regards quantum, Mr Mulchrone noted that the costs of the First Respondent were £43,800 in comparison to the Applicant's total costs for the investigation and bringing of the proceedings which amounted to £53,054.25. The costs of £10,607.50 were reasonable.

The Tribunal's Decision

80. The Tribunal determined that the allegations were properly brought against the Respondents, and that the case was not a shambles from start to finish. The concessions made by the First and Second Respondents in that regard were properly made. Further, it was not accepted that the Applicant had acted with bad faith when it submitted an Agreed Outcome for approval in relation to KD and AB; the Third Respondent's allegation in that regard was rejected. There was no justification for an award of costs against the Applicant in favour of the Third Respondent, who had admitted the allegations from the outset. The Tribunal noted that the cross-examination of the FIO by the Third Respondent did not assist her mitigation, and crucially, there had been no cross-examination in relation to the document of which the Third Respondent denied authorship. The Tribunal considered that notwithstanding its decision in relation to the breach of its directions, the Third Respondent had not suffered any prejudice, particularly in circumstances where she had admitted all the allegations against her; the core of her complaint was that KD and AB had received an Agreed Outcome, whereas she had not. There was no justification in making no order for costs in respect of the Third Respondent given her admissions, and the application for costs was without merit. The Tribunal determined that it was appropriate, having considered the Third Respondent's means, for her to pay one fifth of the costs claimed by the Applicant and ordered that she pay costs in the sum of £10,610.85

81. The position in relation to the First and Second Respondents was different. They had successfully defended all allegations. The Tribunal considered Baxendale-Walker and in particular noted the following:

> "... an order for costs should not ordinarily be made against [the Law Society] on the basis that costs follow the event. The "event" is simply one factor for consideration. It is not a starting point. There is no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct will automatically follow. One crucial feature which should inform the Tribunal's costs decision is that proceedings were brought by the Law Society in exercise of its regulatory responsibility, in the public interest and the maintenance of proper professional standards. For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage."

82. The Tribunal had found that the proceedings were properly brought. Notwithstanding the irregularity of the Applicant's approach to the Agreed Outcome, the Tribunal did not find that the Applicant had acted dishonestly or with bad faith. In addition, the Tribunal did not consider that the irregularity provided a "good reason" to award the First and Second Respondents their costs in this matter. Accordingly, the Tribunal made no costs order against the Applicant. The Tribunal considered that the procedure adopted by the Applicant in submitting an Agreed Outcome for the most culpable parties could well be considered by an independent observer to be unfair. That perception would be exacerbated when it was discovered that the application was made without the knowledge of the other parties. The Tribunal considered that whilst it was inappropriate to order costs against the Applicant, it was, in the circumstances also appropriate not to order that the First and Second Respondents be ordered to pay any of the Applicant's costs. Accordingly, the Tribunal made no order for costs in relation to the First and Second Respondents.

Statement of Full Order

83. The Tribunal Ordered that the allegations against the First and Second Respondents be dismissed. The Tribunal further Ordered that there be no order for costs.

84. The Tribunal Ordered that as from the 13th day of October 2017 except in accordance with Law Society permission:-

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

And the Tribunal further Ordered that the said Judith Read do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,610.85.

Dated this 1st day of November 2017
On behalf of the Tribunal

Jacqueline Devonish

J. Devonish
Chair