SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11695-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

IMRAN RASHID — First Respondent
HAFIZAH MENSURAH BEGUM — Second Respondent
ADAMSONS LAW LIMITED — Third Respondent

Before:

Mr D. Green (in the chair)
Mr P. Booth
Dr P. Iyer

Date of Hearing: 20-21 February 2018 and 14 March 2018

Appearances

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

The First Respondent appeared in person and also represented the Third Respondent.

The Second Respondent appeared and was represented by Simon Butler, Counsel of 9 Gough Square, London, EC4A 3DG.

JUDGMENT

Allegations

1. The Allegations against the Respondents were:

1.1 Between 1 April 2013 and 27 January 2015 the Respondents paid prohibited referral fees in a manner which contravened Section 56 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 to a minimum value of £2,000 and therefore breached or failed to achieve any or all of:

1.1.1 Principle 6 of the SRA Principles 2011;

1.1.2 Principle 7 of the SRA Principles 2011; and

1.1.3 Outcome 9.8 of the SRA Code of Conduct 2011.

1.2 Between 1 April 2013 and 27 January 2015 the Respondents allowed their decision on which medical agency to use in personal injury cases to be directly influenced by the introducer who referred the work to them, and therefore breached or failed to achieve any or all of:

1.2.1 Principle 3 of the SRA Principles 2011;

1.2.2 Principle 4 of the SRA Principles 2011;

1.2.3 Principle 5 of the SRA Principles 2011;

1.2.4 Principle 6 of the SRA Principles 2011; and

1.2.5 Outcome 9.2 of the SRA Code of Conduct 2011.

1.3 Between 1 April 2013 and 1 March 2016 the Respondents failed to provide their clients with accurate information regarding the financial or other interests which the introducers had in referring clients to the Third Respondent, and therefore breached or failed to achieve any or all of:

1.3.1 Principle 4 of the SRA Principles 2011;

1.3.2 Principle 5 of the SRA Principles 2011;

1.3.3 Principle 6 of the SRA Principles 2011;

1.3.4 Outcome 9.2 of the SRA Code of Conduct 2011;

1.3.5 Outcome 9.3 of the SRA Code of Conduct 2011; and

1.3.6 Outcome 9.4 of the SRA Code of Conduct 2011.

The First and Third Respondents admitted all the allegations.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents which included:

Applicant:

- Application dated 31 July 2017 together with attached Rule 5 Statement and all exhibits
- Witness statement of EP dated 31 January 2018
- Witness statement of Lindsey Barrowclough (SRA Forensic Investigation Officer) dated 5 February 2018
- Email dated 16 February 2018 from the Applicant to the Respondents
- Applicant's Statements of Costs dated 31 July 2017 and 12 February 2018

The First and Third Respondents:

- Witness statement in response to the Rule 5 Statement of the First Respondent, Imran Rashid, dated 2 October 2017
- Mitigation Statement of the First Respondent, Imran Rashid
- Statements of Means of the First Respondent dated 17 February 2018 and 12 March 2018 together with attached Monthly Expenses Schedule
- Financial Statements of the Third Respondent, Adamsons Law Ltd for the year ended 30 September 2016

The Second Respondent

- The Second Respondent's Response to the Rule 5 Statement dated 9 September 2017 together with attached exhibits
- Witness statement of the Second Respondent, Hafizah Begum, dated 27 January 2018 together with attached exhibit
- The Second Respondent's costs invoice dated 19 January 2018
- The Second Respondent's Personal Financial Statement dated 7 March 2018
- Witness statement of Mohammed Kawsar Amin dated 29 January 2018
- Witness statement of SJ dated 29 January 2018
- Bundle of Character References

Preliminary Issues

The Second Respondent's Application of No Case to Answer on Allegation 1.1

3. Mr Butler, on behalf of the Second Respondent, made a submission at the close of the prosecution case of no case to answer in relation to Allegation 1.1. He submitted that section 56(2) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("LASPO") was applicable only to the person who made the payment of referral fees. He submitted the Applicant accepted the Second Respondent had never made any payments. Mr Bullock had referred to two documents to support his case in relation to this allegation. One document was a request for payment but had not been signed by the Second Respondent and the other document was an email sent by the Second Respondent to KH dated 13 November 2014.

4. Mr Butler submitted the whole point of the Act was that the person who made the payment was responsible because the duty was on that person to make sure that the payment was legitimate. He submitted Allegation 1.1 made reference to the Respondents "paid" referral fees but there was no evidence that the Second Respondent had paid prohibited referral fees. Mr Butler invited the Tribunal to construe the word narrowly as it read. He submitted if Parliament intended to widen the scope of the responsibility, it would have done so in the Act.

5. Mr Butler submitted the interpretation given by Mr Bullock could not be correct otherwise many solicitors would be caught by LASPO as they requested payments to be made all the time. He submitted the duty fell on the regulated person who authorised the payment in circumstances where the Act had been breached. Mr Butler submitted only one person authorised and made the payment. He invited the Tribunal to dismiss Allegation 1.1.

6. Mr Bullock submitted this was a pleading point and reminded the Tribunal that Allegation 1.1 was formulated not on the basis that the Second Respondent paid prohibited referral fees, but that all three Respondents had paid prohibited referral fees. This was a joint enterprise and that was how the allegation was formulated. Mr Bullock had made it clear in his opening that even if the Tribunal found the Second Respondent had not physically made the prohibited payments, her overall role in the enterprise was such that she was a central player. She had signed the agreements with the introducers, she had allocated the referrals within the staff at the firm and she was a necessary part of the process for payment to be made.

7. Mr Bullock submitted that any well run firm had a number of stages that must be considered before payments would actually be made. There would be checks and balances in place which required authorisation to be given, usually from more than one person. He referred the Tribunal to an email dated 13 November 2014 from the Second Respondent to KH at the firm which attached an invoice from a referrer setting out details of fees rendered in respect of recommendations. In that email the Second Respondent clearly stated:

> "Please can this payment be made from the Adamsons benefit account tomorrow."

This was clear evidence that the Second Respondent was part of the payment process because she was making a request for a payment to be made. Mr Bullock submitted that email required an explanation from the Second Respondent.

8. Furthermore, the Tribunal had also been referred to a document entitled "Office (Nominal) Account Payment Out Chit" which indicated that approval of all payments needed to be made by the "Head of Department". This was another part of the payment process where there was reliance on others within the firm to confirm what was approved for payments and what was not. Whilst Mr Bullock accepted that the document he had referred the Tribunal to did not contain the Second Respondent's details, she was still required to provide an explanation as she was the Head of the department at the material time.

9. Mr Bullock further submitted that it was for the regulator to decide the appropriate arrangements for compliance with LASPO, which was not a penal statute. He submitted Allegation 1.1 should be construed in the regulatory context and as such, "paid" did not need to be strictly construed in the sense that liability only attached to the person who actually transferred the money. Furthermore, Mr Bullock reminded the Tribunal that within larger firms, it would be quite normal for a Head of the Personal Injury Department to request payments be made by a finance director who may not be a solicitor. If liability were only to attach to the finance director, then this would prevent the regulator from carrying out its regulatory function. Mr Bullock submitted that in ordinary business usage, the Tribunal should consider whether the payment had been authorised by the relevant person, and not whether the relevant person had actually made that payment.

10. Mr Bullock further submitted that it would create an oddity if a solicitor was not subject to regulation because an un-admitted person was physically making the payments from the business. In this case, Mr Bullock submitted the Second Respondent was a necessary part and key player of the enterprise and without her involvement the payment would not have been made. He submitted the Second Respondent's application should be dismissed.

The Tribunal's Decision on the Second Respondent's Application of No Case to Answer on Allegation 1.1

11. The Tribunal considered the submissions of the Second Respondent and the Applicant carefully. The Tribunal also considered the word "paid" as set out in Allegation 1.1.

12. The Tribunal rejected Mr Butler's submissions and was of the view that such a narrow interpretation that the only person to whom LASPO applied was the person who physically made the payment of prohibited referral fees would effectively put a coach and horses through the mischief that LASPO had intended to control. Parliament could not have intended to construe the act so narrowly so as to frustrate the regulator in going about its business, including in relation to the enforcement of the provisions of LASPO. If such a narrow interpretation was allowed, this would enable firms to have processes in place which would defeat the Act, by simply ensuring a non-regulated person made the actual payment. This could not possibly be what Parliament had intended.

13. It was quite clear to the Tribunal that the Second Respondent had sent an email to KH on 13 November 2014 requesting a payment to be made. She was the Head of the Personal Injury Department at that time and this was prima facie an email from her asking for payment of a referral fee to be made. The Tribunal was satisfied that there was a prima facie case to answer against the Second Respondent in relation to Allegation 1.1 and dismissed her application.

Factual Background

14. The First Respondent, born in 1977, was admitted to the Roll of Solicitors on 3 May 2005.

15. The Second Respondent, born in 1985, was admitted to the Roll of Solicitors on 15 May 2013.

16. The Third Respondent was a law practice which was a company limited by shares. It had been authorised to practice as a recognised body since 1 October 2011. Its head office was at 1st Floor, Portfolio Place, 498 Broadway, Oldham, Lancashire, OL9 9PY. It also had a branch office at 99 Blackburn Street, Radcliffe, Manchester, M26 3WQ. The practice specialised predominantly in personal injury and conveyancing, but also in immigration, family, litigation, criminal law, Wills and probate.

17. At all material times, the First Respondent was the only Member and Beneficial Share Owner of the Third Respondent. He remained the only Director and Beneficial Share Owner.

18. The Second Respondent was initially employed as an Assistant Solicitor in the Third Respondent's Family/Personal Injury Department from November 2013 until May 2014. She was then re-employed as a Director of the Third Respondent and Head of its Personal Injury Department from September 2014 to 15 January 2015.

19. As a result of concerns in respect of arrangements for the referral of work, the SRA commissioned an investigation into the Third Respondent. On 27 January 2015, an inspection of the books of account and other documents of the Third Respondent took place and resulted in a Forensic Investigation Report dated 30 September 2015 ("the FI Report").

Allegation 1.1

20. Section 56 of the Legal Aid and Punishment of Offenders Act 2013 ("LASPO") contains the rules against referral fees. A regulated person is in breach of Section 56 if prescribed legal business is referred to the regulated person and the regulated person pays or has paid for the referral. Prescribed legal business includes legal services relating to a claim or potential claim for damages for personal injury or death. A referral takes place if a person provides information to another, and the information is needed by a provider of legal services to offer the client relevant legal services, and the person providing the information is not the client.

21. EP, who was the Third Respondent's Practice Manager, provided the SRA's Forensic Investigation Officer ("FI Officer") with copies of 21 written agreements between the Third Respondent and its introducers of personal injury work. Eight of those were said to be "live arrangements". The following agreements were all signed by the Second Respondent:

- Agreement with Introducer BPL dated 5 January 2014 where the fee per accepted claim was stated to be £450
- Agreement with Introducer CCN dated 8 October 2014 where the fee per accepted claim was stated to be £500 plus VAT
- Agreement with Introducer TC dated 15 October 2014 where the fee per accepted claim was stated to be £425
- Agreement with Introducer AML dated 27 October 2014 where the fee per accepted claim was stated to be £550
- Agreement with Introducer AEL dated 13 November 2014 where the fee per accepted claim was stated to be £500 plus VAT
- Agreement with Introducer L4U dated 18 November 2014 where the fee per accepted claim was stated to be £500

22. In each case the agreement specified that a "recommendation" fee would be payable by the Third Respondent to the introducer in respect of each client. Six of the written agreements followed the same format and contained a paragraph which stated:

> "[The Third Respondent] will pay .... a fee for each Accepted Claim where the client has signed the CFA following a Recommendation and return of the signed CFA".

23. EP also provided a copy of a report from the Third Respondent's case management system entitled "Cases by Source/Referrer" dated 4 February 2015 which provided details of client matters referred from each source, including the date each client file was opened, between June 2011 and January 2015.

24. A copy of a Nominal Ledger for "Marketing Fees" showed that payments totalling £75,417 were paid out to introducers by the Third Respondent between 3 October 2013 and 26 September 2014. The Nominal Ledger for "Recommendation Fees" provided by the First Respondent for the period 14 November 2014 to 28 June 2015 showed that payments totalling £70,200 were paid, with the largest payment of £7,000 being paid to CNN on 16 January 2015.

25. The FI Officer reviewed 20 client matter files during the inspection and identified 13 matters as personal injury matters where either details of the client's claims were passed directly from introducers to the Third Respondent, or the Third Respondent had made the initial call to the client, so it appeared that information had been passed to the Third Respondent from the introducer as opposed to via a 'Hot Key'.

26. Notwithstanding the First Respondent's assertion that initial contact would be made by a client contacting the Third Respondent through a 'Hot Key' system (where the introducer had the potential client on the phone and transferred him/her straight through to the Third Respondent), none of the thirteen files reviewed by the FI Officer contained any evidence of initial contact being via a 'Hot Key'. Each file did however contain file notes recording the Third Respondent making initial contact with the clients.

27. Based on the invoices provided by the First Respondent, recommendation fees had been paid on 12 of the 13 files.

28. In relation to matters referred to the Third Respondent by CCN, the arrangements for the receipt of new client information were detailed in an email dated 8 October 2014 from CCN to the Second Respondent. This stated:

> "New claims will be sent to you via email, we will arrange a call back time with the client and expect you to call the client at the arranged time".

The email made no reference to the use of the Hot Keys system.

29. The Third Respondent acted for JWS in respect of a road traffic accident on 16 March 2014. The file contained an email from CCN to the Third Respondent dated 10 November 2014 containing details of the client, her date of birth, National Insurance number, contact details and the circumstances of the accident. The email stated that it was a "PI recommendation" and specified a date and time for the Third Respondent to call the client back.

30. The file also contained a file note of a telephone conversation where a fee earner at the Third Respondent, S, telephoned the client as arranged to discuss her accident. An invoice dated 13 November 2014 from CCN showed that a fee of £500 was included in an invoice from CCN dated 13 November 2014 in respect of the recommendation for JSW.

31. In an email dated 13 November 2014 the Second Respondent requested that a payment of £3,600 be made the following day in respect of CCN's invoice dated 13 November 2014, which included the £500 "recommendation fee" in respect of JWS. This payment was made by the Third Respondent on 14 November 2014.

32. The First Respondent admitted that "on the face of it" this was a breach of LASPO.

33. The FI Report also referred to the case of BO which included an email from CCN providing significant information regarding the client and his accident. There was also a letter from A at the Third Respondent to CCN dated 4 February 2015 which stated:

> "We write to confirm safe receipt of your referral for the above client.
>
> We have contacted [BO] and are now writing to the client to enclose initial documentation.

Thank you for your instruction."

34. An invoice dated 20 November 2014 from CCN showed a fee of £500 was included in respect of the recommendation for BO. This was paid by the Third Respondent on 21 November 2014.

35. During his interview with the FI Officer on 25 March 2015, the First Respondent stated that an invoice would be raised by the introducer and the Third Respondent would pay the fee for the claim upon the "CFA being signed".

36. The First Respondent confirmed the information was "passed generally" through "Hot Keys" which he explained was when the introducer had:

> "…. got the client on the phone and then they'll ring us up and say we've got somebody who wants to speak to you and then they pass the client over to us and then we take all the appropriate details off the client and then take all the accident circumstances etc, etc, enough information so that we can vet the accident itself to see whether it's a claim that we want to pursue on behalf of that client…..
>
> ….. on occasions we've had a name and phone number being emailed to us, which you can argue that it's still compliant with that system because it's not necessarily enough information for you to have offered your legal services because we still need to ring the client and get the appropriate information off the client in order to then be in a position to offer our legal services if needs be."

37. The FI Officer drew the First Respondent's attention to the SRA's Guidance Note of 25 March 2013 entitled "The Prohibition of Referral Fees in Legal Aid Sentencing and Punishment of Offenders Act 2012" which stated:

> "14. We consider that the communication of a client's name and contact details to or by a regulated person would amount to a referral, as this information would enable the recipient to make an offer to the client to provide relevant services".

The First Respondent stated he had "never come across that".

38. During her interview with the First Respondent on 25 March 2015, the FI Officer discussed the files of LN and SA, both of which had been referred to the Third Respondent by an introducer, AE Ltd. Both files contained file notes which suggested the Third Respondent contact the client to introduce themselves, as opposed to the client contacting them via the Hot Key system.

39. Payment of a fee for the recommendation for SA was included in an invoice dated 27 November 2014 from AE Ltd which was paid by the Third Respondent on 29 November 2014. LN cancelled her claim on 27 November 2014.

40. The First Respondent could not explain why the clients were being contacted by various employees of the Third Respondent in this manner as opposed to the potential clients being transferred to the Third Respondent via the Hot Key system.

41. During his interview with the FI Officer, the First Respondent was asked about the day to day duties of the other directors at the Third Respondent. He stated that all responsibilities remained with him and that the directors would not have management responsibility because "there was no need for it". He stated:

> "I run my own business .....
>
> ..... as far as I'm concerned, I'm still in control of that aspect of it."

42. The First Respondent did however state that in respect of the Second Respondent:

> "..... there was more reason for her to be a genuine Director because she was bringing a lot to the table. She was bringing an investor to the table.....
>
> .....she knew what she was getting herself into."

43. The First Respondent advised the FI Officer that he did not know how the relationship was established with most of the introducers, apart from AE Ltd in which a relative was involved. He stated:

> ".... the rest of them, all of them more or less came through [the Second Respondent] or some contact like that. Now how she actually came across them I don't know ....
>
> ... It could be, it could be a case where - I mean I can remember, I can recall on occasions where I might have got like say someone come across somebody on Linkedin where somebody's added me on and I've just kind of passed the contact details onto [the Second Respondent] ...
>
> .... and said there's somebody who could potentially supply the work so, get in touch with them."

44. The First Respondent had been copied into emails between EP and CCN regarding the agreement between CCN and the Third Respondent dated 8 November 2014 signed by the Second Respondent. The First Respondent was therefore aware of the agreement.

45. The First Respondent stated he did not know how at least some of the introducers marketed themselves and did not know all of the introduces that were being used by his firm, or how they were generating work but he accepted that: "ultimately I know responsibility lies on my shoulders" and that he "should have known" who the company was dealing with". The First Respondent could not satisfactorily explain to the FI Officer how the payments made to the introducers were calculated for the service that was being delivered to them.

46. When he was asked what safeguards were in place to ensure information was not passed directly from the introducer to the Third Respondent, the First Respondent stated:

> "There is no real safeguard. I mean it depends. I mean you see it all comes down to; a lot of it comes down to interpretation. So, the information that we were being passed generally was Hot Keys, but then on occasions there's been other details passed as well."

47. The First Respondent confirmed that he:

> "….. noticed that there was information coming in apart from Hot Keys ….
>
> ……. an email that I've seen with the client's name and phone number on there …. it was a case of well it's not that we're getting information where we're able to assess the actual – what the clients….. whether we can offer them legal services we can't. Alls [sic] we're doing is contacting the client."

48. The First Respondent admitted to the FI Officer that a lot of information had been received from the introducer not the client. He confirmed to the FI Officer that he signed everything off that came in and out of the Third Respondent. He also confirmed that the terms of the directors' duties and the management of the Third Respondent were under his control, and that he was the COLP and COFA. The First Respondent stated that the Second Respondent had responsibility for drafting the agreements but he accepted that he was satisfied with them and that they were compliant with LASPO "at the time".

Allegation 1.2

49. During the investigation, the FI Officer noted the Third Respondent used the services of a number of medical agencies in respect of personal injury cases. She also noted that the selection of which medical agency was instructed on behalf of a client appeared to be directly linked to the introducer who referred that particular client to the Third Respondent.

50. During his interview with the FI Officer on 25 March 2015, the First Respondent stated:

> "…..we've had a situation where some people want us to use certain Medical Agencies and I can't hide that fact. That is, that is the case with some, some of these companies that they prefer us to use certain Medical Agencies…. obviously I'm aware now that that shouldn't be happening across the board at all."

51. On 4 November 2014, emails were sent from the Second Respondent to S, a Litigation Executive employed by the Third Respondent on the files of ALP and PK which stated:

> "This is a new file from SOVM [U] they have their own medical agency – genes [sic] on this one and the source needs all letters to the client emailing him as he deals with all correspondence."

52. On 24 and 30 October 2014 the Second Respondent formally instructed the medical agency owned by or connected to SOVM on behalf of ALP and PK.

53. The client file of ZH was introduced to the Third Respondent by the introducer TS. In an email dated 16 April 2013, TS instructed WH, an employee of the Third Respondent, to instruct CMS medical services.

54. During his interview with the FI Officer, the First Respondent confirmed that it should be the solicitor rather than the introducer who made the decision as to where the medical report was obtained.

Allegation 1.3

55. The Third Respondent's written recommendation agreements identified that the Third Respondent agreed to pay the introducers "a fee for each accepted claim where the client has signed a CFA following a recommendation". The Third Respondents nominal ledger for "Marketing Fees" recorded that individual payments were being made to introducers in respect of individual and identifiable clients.

56. In the Third Respondent's terms of business sent to clients in personal injury cases, a section entitled 'Referrals of Business' provided the client with details of the introducer who had referred their claim and stated:

> "As part of our agreement with the marketing agent we have agreed to pay the marketing agent a monthly fee regardless of the number of cases the marketing agent provided to us."

The FI Officer noted that:

> "it's on every single, pretty much every file I reviewed, it contained the same information….".

57. During his interview with the FI Officer on 25 March 2015, the First Respondent stated that this was not a correct description of the arrangements in place with introducers. He maintained he did not know who had drafted the letter and stated:

> "even though I would have had some involvement in it and maybe at that time when we were doing that because there has been a stage where we've done them kind of marketing agreements which I'd mentioned to you last time that they weren't really, they didn't work for the firm and the case that we lost money, so it might have been something that's drafted at that time and it's just not been altered. It should have been altered for that particular file, it should have been different."

58. In an email dated 10 May 2016, the First Respondent confirmed that the Terms of Business were changed from March 2016.

The SRA's Investigation

59. On 8 April 2016, the First Respondent responded to the SRA's letter of investigation confirming he accepted the contents of the FI Report in respect of the payment of prohibited referral fees. He stated:

> "It was agreed that all work will be taken on board via a recommendation agreement which was strictly via 'hot keys' .....
>
> In these particular cases it seems like either that procedure was not adopted or the hot key was not documented. In the circumstances I have to accept your findings because I cannot prove otherwise.
>
> A few points I would like to be considered. As per the SRA's guidance in appendix 1 attached I have tried to follow the same guidance. The same can be interpreted in many ways.....
>
> ..... On a day to day basis I was monitoring and regularly witnessing hot keys.
>
> Notwithstanding I accept the findings of the FIO.....
>
> .....this was not intentional breaches of the code of the conduct and principles, if anything I took steps which I thought would reduce the element of risk but unfortunately some cases as I have said slipped through."

60. In relation to the choice of medical agencies being influenced by the introducer, the First Respondent contested:

> "... that using a medical agency of the choice of the CMC was not done with the intention as alleged."

He accepted the contents of the FI Report in respect of the inaccurate information in the Third Respondent's terms of business.

61. The Second Respondent responded to the SRA's letter of investigation on 3 November 2016. She advised she had originally joined the Third Respondent at the end of November 2013 and left in early May 2014, during which time she undertook a mixed caseload of family and personal injury cases under the supervision of a family law solicitor at the Third Respondent, and EP, the former practice manager. After leaving the Respondent in May 2014, the Second Respondent stated she did not work until she re-joined the Third Respondent in September 2014, at which time she stated she had approximately 6 months post qualification experience. The Second Respondent stated she stayed with the Third Respondent for approximately 4 months, doing primarily personal injury work.

62. The Second Respondent stated that as soon as she had joined the Third Respondent, the First Respondent asked her and the family law solicitor to sign a form to be directors. The Second Respondent stated:

"I was a little cautious at first, especially in respect of the responsibilities involved but [the First Respondent] assured me that he would be looking to only add me for a few months and then take me off ….. [The First Respondent] told me that there was nothing further I had to do. This was just something he needed to enable him to grow his business …. Having only recently qualified and eager to progress I agreed ……

The personal injury department was probably the firm's most well-established department. There were internal processes and procedures in place with respect to dealing and progressing the cases. This included and was not limited to dealing with external referrers - such as payment for the work, most of the referrers having distinct medical agencies that they use, sending referrer updates etc. The department had been running both pre and post Jackson reforms/Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which came into force in April 2013…….

…… The new cases came in via email or telephone. Each client was signed up via an online e-sign process on a CFA, a fee would subsequently be paid on a case by case basis. The reason I highlight this in particular is because this was the process before I had joined and part of my role, eventually was to expand the operations as the volume of work expanded …….

At the end of September, [the First Respondent] approached me about his vision, his big plans for the department. He informed me that he had a few investors on board and in time he was looking to invest this into the department but needed more work from various marketing companies. He needed to grow his firm exponentially. When [the First Respondent] spoke about investments within the department, it was to be used to acquire cases from referrers. He wanted to buy hundreds of cases a week.

[The First Respondent] wanted to focus on the business development side of things. He insisted that I provide him regular updates on the development of the department, so he could closely monitor both my progress in the role and the department's progress. He said that he would have the final say on everything. He told me that he was taking a much more active role in the running of the department as he was investing so much here. He was already speaking to lots of new companies that refer work…..

When I re-joined he was already buying cases form [sic] various referral companies ….. He was also in talks with a few new referral companies he wanted to work with for good quality work."

63. The Second Respondent stated in her letter that she commenced the role of Director/Head of the Personal Injury Department on 29 September 2014. Whilst in the role the Second Respondent stated she was supported and guided by EP. The Second Respondent said she would:

"…….review and run past internal policies with [EP] prior to them being introduced. All big changes in the department would be discussed and agreed with her to make sure they were okay.

> Any external agreements had to be approved by [Ms EP and the First Respondent….."

64. The Second Respondent stated:

> "…….[The First Respondent] provided me with various contacts of individuals he was keen to work with. I cannot remember every name, but they included a man called [A] in Birmingham, his friend [WK] at DS, L4U which was one of his old contacts named [K], a man named [U] at SOVM (I think whom he had previously worked with). I don't know what prior relations he had with all of them, only that I was asked to get in contact with them.

65. The Second Respondent also stated that:

> "[The First Respondent] told me that I should proactively contact various marketing companies and get them to sign up to do work with us, that I should look for companies that could send us hundreds of cases a week…… He didn't specify what type of company he wanted me to contact or if there were any accreditations that they need to have. Only companies that could send large volumes of work. So this was the focus of my search."

66. The Second Respondent admitted she had proactively contacted CCN but she needed approval from the First Respondent. She stated:

> "Having received approval on the agreement with CCN. I subsequently emailed back the contract with my signature on it as a representative of the firm.
>
> [The First Respondent] later told me that I should accept work from his brothers [sic] company [AEL] - they along with CCN were the largest source of work whilst I was there. I did not ask how [AEL] source their work as this was [the First Respondent's] contact….There may have been one other company [BPL] who were also signed up…..
>
> No payment in or out of the firm could be made without the approval of [the First Respondent]…. He had to review and approve each and every payment……
>
> …….. In hindsight, I realise there may have been errors of judgement on my part, but as this was never highlighted to me. [sic] I honestly believed that everything was fine, I placed my trust in people with more experience not just in this particular aspect of the law, but in many others.
>
> My personal failings come from my inexperience and naiivty [sic] in trusting people within the firm …..
>
> I found it peculiar that [the First Respondent] insinuated that he took very much a back seat approach to everything in the PI department, especially given that the PI department was the largest department in terms of volume of

work, revenue and personnel. Hundreds of thousands of pounds went through the firm, with his explicit approval, yet I cannot believe for one second that he was just blindly agreeing to the payments or approving contracts or external contacts without vetting them personally."

67. When asked about the First Respondent's comments that calls would be received via anonymous 'Hot Keys' the Second Respondent stated:

> "This is not entirely correct; in some rare instances the above was true.....
>
> Some cases came in via Hot Keys however most referrers would email me and copy [EP] into the email. This email included the time they wanted us to contact the client, brief details about the client such as name and contact number and very brief details of the accident.
>
> A paralegal would then contact the client and take most of the information over the phone.....
>
> All emails referring work were copied into [EP] and she was sat in the room where all calls were made and never raised an issue with this process. I assumed therefore this was fine.

68. The Second Respondent stated she had been involved in the agreements with CCN and BPL but she could not recall there being any other firms. She also stated she was aware of LASPO from her own reading but had never had any training on "the referral fee ban" and how this "translated on a practical level". She stated:

> "I just continued the procedures that were already in place".

69. The Second Respondent stated:

> ".... it was a very stressful part of my career, when I was expected to take on so much responsibility and I have tried to forget about the stress I was under."

70. The SRA wrote to the First Respondent on 20 January 2017 and he responded on 6 February 2017 stating he was the firm's principal but there were four other directors each of whom was in charge of their respective departments. He also stated:

> "[The Second Respondent] is not being entirely honest with you at all. She was appointed a head of department and Director based on her experience and her arranging an investment into that respective department.....
>
> The day to day operations was [sic] in her sole control. As far as I am aware she was taking all the hot keys to ensure her investors funds were being invested into quality cases.....
>
> I do not recollect ever seeing the agreement with CCN and therefore cannot comment at this stage, however ultimately this was a responsibility incorporated into the role of head of department and director within the

personal injury department to ensure the respective agreements were compliant ……

After reflecting further, I believe the cases which were found to be in breach of the relevant rules were only so because the respective file handlers had failed in their administrative duties. When logging the call on pro claim they were logging it incorrectly. They were logging it as call being made out as opposed to call made into the firm. Claims forms and other information was only ever received by the firm after the hot key however the same was not recorded as so. I accept administrative errors have been made. Supervising the staff was part of the responsibilities adopted by [the Second Respondent]…..

In these particular cases it seems like either that procedure was not adopted or the hot key was not documented. …..

…….I have since spoken to certain staff members who were present at the relevant time and they have confirmed that every case was introduced via a hot key….."

71. In respect of the introducer deciding which medical agency should be instructed, the First Respondent stated he noted:

"…the contents of the FIO report in this regard however contest that using a medical agency of the choice of the CMC was not done with the intention as alleged….

……..At no point would it have been expected that a medical agency would influence the contents of a medical report prepared by a regulated expert……

……..As for not acting in the client's best interest and not providing a proper standard of service to the clients, rightly or wrongly I took the view that using such agencies was beneficial to the client in that the medical assessments were arranged at the convenience of the client……"

72. The First Respondent confirmed that the firm's terms of business had been amended.

Witnesses

73. The following witnesses gave evidence:

- Lindsey Barrowclough (SRA Forensic Investigation Officer)
- Imran Rashid, the First Respondent
- Hafizah Mensurah Begum, the Second Respondent

Findings of Fact and Law

74. The Tribunal carefully considered all the documents provided, the evidence given and the submissions of all the parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

75. **Allegation 1.1: Between 1 April 2013 and 27 January 2015 the Respondents paid prohibited referral fees in a manner which contravened Section 56 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 to a minimum value of £2,000 and therefore breached or failed to achieve any or all of:**

1.1.1 Principle 6 of the SRA Principles 2011;

1.1.2 Principle 7 of the SRA Principles 2011; and

1.1.3 Outcome 9.8 of the SRA Code of Conduct 2011.

75.1 The Tribunal heard evidence from Ms Barrowclough, the FI Officer in this case. She confirmed that she had reviewed approximately 5 files in relation to one referrer, CCN, and on all of those instructions had been received by email from the introducer with details of the claim. There was nothing to indicate the referral came via a Hot Key.

75.2 The First and Third Respondents admitted Allegation 1.1. The First Respondent also gave evidence to the Tribunal. He explained he was the main director of the Third Respondent and he took responsibility for the breaches. The First Respondent admitted he had not been as organised as he should have been and had relied on each of the Heads of Department to ensure that their respective departments were functioning properly. He stated he had relied on the Second Respondent in that capacity. She had been made the Head of the Personal Injury Department as she had brought investors into the firm to invest in that particular department.

75.3 The First Respondent stated that a condition of the agreement reached with those investors was that the Second Respondent would be in charge of the personal injury department. She would handle the investors' money. She would receive a profit share for her department (as did the Heads of the Family and Immigration Departments). The First Respondent wanted to make it clear that there had been specific factors involved in his decision to make the Second Respondent the Head of the Personal Injury Department. Her family were investing money into the firm and the expectation was that extra care would be taken if she was overseeing that financial investment.

75.4 The First Respondent stated the Second Respondent had also been made a director of the firm as she was bringing in work linked to her family and friends. He accepted he should have been more vigilant and in hindsight realised things had not been done as they should have been. He accepted he had ultimate responsibility even though he had relied on others. The First Respondent wanted to make it clear that he had not simply brought the Second Respondent into the firm and given her a great deal of responsibility, expecting her to work long hours. The Second Respondent had

previously been an employee at the firm and came back as the Head of the Personal Injury Department with a large amount of investment money from her family.

75.5 The First Respondent confirmed EP had been working for him for approximately 4 years prior to the Second Respondent becoming Head of the Personal Injury Department. The firm was growing and had four offices in various areas. Because there was so much going on, the First Respondent had appointed Heads of each department to ensure clients were looked after and the departments were progressing appropriately.

75.6 On cross-examination by the Applicant, the First Respondent confirmed the Second Respondent's family had invested approximately £80,000 into the firm and his decision to appoint her as Head of the Personal Injury Department was directly linked to this investment. The First Respondent stated that from his experience the Second Respondent was a very good personal injury lawyer and this had not been an issue. He considered with hindsight that they should both have planned the procedures and processes better. A Hot Key system was in place but it was not policed as it should have been. The real picture was that the First Respondent had many other responsibilities dealing with managing the firm, the accounts and a criminal law caseload. He accepted he should have been more involved to ensure the compliance was better and that the processes set out in the agreements with referrers were being followed.

75.7 On cross-examination by the Second Respondent, the First Respondent stated that he had started entering into agreements with referrers for personal injury work when his firm was first established. He had intended to conduct only criminal work but due to difficulties with legal aid tenders he had started to deal with personal injury work as well, as he also had experience in dealing with these types of claims. EP had joined the firm approximately two years later as a fee earner and progressed very quickly to managerial responsibilities in around 2011/2012.

75.8 The First Respondent confirmed that agreements were in existence with referrers prior to 1 April 2013 where payments were made on the conclusion of the case. However he stated that most of that work stopped overnight after April 2013 with the introduction of LASPO as the referrers wanted to receive payments in advance. This was not the firm's policy and as a result, contracts were terminated and the influx of new work came to a halt for a long period of time whilst everyone waited to see how the market would develop.

75.9 The First Respondent accepted the Second Respondent was a junior solicitor and that he had not raised the issue of LASPO with her during her interview. The First Respondent stated the Second Respondent had the necessary experience to handle the work and the decision to make her the Head of the Personal Injury Department was influenced by the fact that she was bringing an investor to the firm. It was also relevant that the work within that department consisted of low-level road traffic accident cases which were dealt with on the claims portal and were not complex at all.

75.10 The First Respondent denied he had initiated contacts with third parties to send work to the firm and stated that some contacts had been initiated by the Second Respondent who had focused on marketing companies registered with the Ministry of Justice. He accepted he had knowledge of the agreements entered into but believed they were compliant with LASPO which allowed for the payment of marketing fees.

75.11 The First Respondent confirmed he did not have day to day involvement with every case in every department and relied on the Heads of the various departments to ensure payments required were genuine. Each Head of Department would complete a "chit" for a fee to be paid, pass this to the accounts department for payment and then this would be checked by the First Respondent before making the actual payment.

75.12 The Second Respondent also gave evidence to the Tribunal. She did not dispute the underlying facts but did not accept the alleged breaches or that she had paid prohibited referral fees. She stated that when she had been interviewed by the First Respondent and EP, there had been no discussion about LASPO. The Second Respondent confirmed she was aware of LASPO and the fact that many changes were taking place as a result of it, but her training was primarily in relation to After the Event Insurance Policies and the recoverability of success fees. She stated she had been aware that there was a ban on referral fees and the purpose of this was to clamp down on the compensation culture and Claims Management Companies hounding potential clients. However, the Second Respondent confirmed that she had not received any training on referral fees.

75.13 The Second Respondent stated that when she first started working at the Third Respondent, she had taken over existing cases dealing with road traffic accidents, occupiers' liability and public liability. EP had been the Head of the Department and she allocated cases to the Second Respondent. The Second Respondent stated she was never involved in the payment of fees and nor did she authorise any payments. She left her employment with the Third Respondent in May 2014 as she had got married and moved away. She re-joined the Third Respondent in September 2014 when the First Respondent contacted her asking if she was interested in coming back to work there to deal with a backlog of cases. At that time the Second Respondent agreed to return to work for a salary although no fixed term was discussed. It was agreed that if she brought any family law cases to the firm she would also receive a proportion of the profit.

75.14 The Second Respondent stated that the First Respondent had spoken to her about expanding the firm and in particular growing the personal injury department. New sources of work were coming into the firm at a faster pace than before. She stated the First Respondent asked her to become the Head of the Department as he was of the view that she had a good work ethic, dealt with client care well and would be suitable for the role. The Second Respondent stated that at that time, in September 2014, no investor had agreed to provide funds and it was two months later when her husband's best friend and business partner agreed to invest money into the firm.

75.15 The Second Respondent stated that soon after she joined the firm in September 2014, the First Respondent approached her with the Head of the Conveyancing Department and they asked her to become a director of the firm so as to allow the firm to be appointed to various conveyancing panels. The Second Respondent stated the First

Respondent informed her that she would not have any director duties although may occasionally need to carry out some conveyancing. He said that her becoming a director for a short period of time would help to grow his firm. This reassured the Second Respondent and she agreed.

75.16 The Second Respondent stated that she had never paid any referral fees and had no authority to do so. All invoices were addressed to the Third Respondent and were all sent directly to the accounts department where the First Respondent would authorise payment. She stated that none of the invoices were addressed to her and she had never been asked to sign an "Office (Nominal) Account Payment Out Chit" form.

75.17 In relation to the email dated 13 November 2014 from the Second Respondent to KH, asking for a payment to be made from the firm's benefit account, the Second Respondent confirmed KH worked in the accounts department and she had simply forwarded an invoice to KH which had been sent to her by an Accounts Manager at one of the referrer companies. The Second Respondent stated that although KH had been copied on the original email from the referrer attaching the invoice, the Second Respondent had not realised this when forwarding the invoice to KH.

75.18 On cross-examination by the Applicant, the Second Respondent stated that whilst solicitors should be aware of the subjects they practised, they would not always have knowledge of absolutely everything in that area and they would often rely on their superiors to ensure things were being dealt with correctly. She stated she had never seen the guidance on LASPO before and nor had she been aware it existed when she was the Head of the Personal Injury Department. The Second Respondent accepted with hindsight it would have been "beneficial" for her to have been aware of this guidance but stated it was never brought to her attention and nor was she asked to consider or review it.

75.19 The Second Respondent accepted that as she was working within the personal injury department, she could see that referrers were giving the details of the client to the Third Respondent by email so that the firm could contact the client, rather than clients contacting the firm direct. She stated that her discussion with the First Respondent was that the referrers were receiving marketing fees, not referral fees, and that this was a legitimate process. The Second Respondent stated that she knew referral fees were going to be banned and that when she became aware of payments being made, she was "more curious than suspicious". She stated she had a discussion with the First Respondent as to whether the payments amounted to referral fees and he had informed her they were not, they were marketing fees. The Second Respondent stated the First Respondent was her superior and the Principal of the firm so she accepted what he had said. She believed the payments were for an advertising service from marketing companies and that clients were proactively responding to their marketing campaigns. The Second Respondent stated this did not fit in with what she believed a referral fee was.

75.20 The Second Respondent was asked whether she had pointed out to the First Respondent that the arrangement he described was not what was happening on the files. She stated that marketing companies had added the firm to their panels and would contact the firm. She stated the First Respondent had not provided her with

any guidance notes of how LASPO worked in practice, nor had she asked for these when she had become the Head of the Personal Injury Department. As this was some 18 months after the introduction of LASPO, she had assumed the correct procedures would be in place by then to ensure compliance. The Second Respondent stated she had been qualified one year by this time and had only six months of experience working. She stated she was not asked to facilitate or review LASPO but accepted she did not ask to be sent on any training courses concerning it.

75.21 The Second Respondent stated although she had not asked any questions about reviewing the processes in place, she had asked questions about the referral fees as she was "curious" as to whether they fell outside LASPO. She believed marketing fees were being paid and this arrangement had been in place for approximately 18 months before she joined the firm at a time when EP was the compliance expert. The Second Respondent stated that she did not think anything was amiss due to the assurances given to her.

75.22 The Second Respondent was asked on cross-examination by the Applicant whether, with the benefit of hindsight, she thought it would have been a good idea as the newly appointed Head of the Personal Injury Department to review the processes in place. The Second Respondent replied that as an individual with six months of experience, she would not have taken on that role. She considered this was not her duty as compliance with LASPO had been reviewed by EP. She stated she had informed the First Respondent, prior to accepting the role, that she had limited experience and had no managerial experience at all. The Second Respondent stated the First Respondent assured her that she would be supported fully by him and by EP (who had been the previous Head of the Department) and EP would assist with the regulatory framework.

75.23 The Second Respondent stated that compliance across the whole organisation fell within EP's remit. Any assistance given to the Second Respondent related to day to day tasks only. She stated it had been made clear to her that EP would deal with compliance and client care.

75.24 The Second Respondent confirmed that some cases came into the firm by 'Hot Keys' which was when the claims management company would call the firm with the prospective client on the phone and the client was transferred straight through to a fee earner. The Second Respondent accepted that the majority of referrals came by emails from the Claims Management Companies requesting the firm to call clients back. Each email would state the date and time a call back to the client was required, and provided the client's name, address and brief details of the accident. The Second Respondent confirmed the email requests were sent to both her and EP, and usually she would then allocate the call back to a member of her team.

75.25 In relation to the payment of fees, the Second Respondent stated she did not have authority to approve any payment out of the firm and every invoice was forwarded to the First Respondent. The Second Respondent accepted the First Respondent did not have detailed knowledge of what was happening on particular files and he would not know on an individual file whether the invoice had been properly incurred. However she maintained that every invoice would automatically be sent to the accounts department to be forwarded to the First Respondent.

75.26 The Second Respondent conceded that if an invoice was received for an incorrect amount, or work that had not been carried out, that invoice would not be forwarded to the accounts department. She accepted that someone was required to look at the invoice and decide if it should properly be paid. However, the Second Respondent stated that this decision was made by several people as invoices were sent to different members of staff. Sometimes invoices were sent to EP, sometimes to KH, sometimes to other fee earners and sometimes to the Second Respondent.

75.27 The Second Respondent was unable to explain why the "Office (Nominal) Account Payment Out Chit" form stated near the bottom "Approved by the Head of Department". She said she had not created that document, which appeared to have been created in February 2011, and that she had never seen it before.

75.28 In relation to the email sent by her to KH on 13 November 2014 attaching an invoice and stating: "Please can this payment be made from the Adamsons benefit account tomorrow", the Second Respondent said this was not an instruction to make a payment of referral fees. She said that if she received any invoice for a medical report, she would make the same request for payment. She said the procedures were clear. The invoices were addressed to the Third Respondent. KH would generate the "chits" with the invoice attached and pass them to the First Respondent for authorisation. The Second Respondent maintained she did not authorise payments and could not make payments.

75.29 On further questioning, the Second Respondent conceded that if that invoice had not been properly payable, she would have rejected it. She stated that the only reason invoices were sent to her by the Claims Management Companies was because she was the main point of contact and she was expected to pass the invoice onto the relevant person. The Second Respondent stated that KH and EP were also copied on emails containing invoices but accepted the relevant case worker would not receive invoices. The Second Respondent conceded that she was the first stage of a payment being made and that if she did not believe an invoice was properly payable, she would not forward it to the accounts department.

75.30 On cross-examination by the First Respondent, the Second Respondent accepted she had signed a number of the agreements entered into with referrers in her capacity as Head of the Department and director of the firm. She accepted that she could now see there were specific paragraphs contained within the agreements that dealt with the provisions of LASPO, but maintained that she was not aware, at the time, of the guidance or that those provisions related to LASPO. She thought they related to the passing of customer information. She stated that when she had signed the agreements, she did not believe these paragraphs had anything to do with LASPO.

75.31 The Second Respondent accepted she had been involved with the growth of her department and in finding new sources of work. She also accepted she was asked to supervise staff and had sent them an email dated 15 October 2014 which provided a link to the Ministry of Justice website containing information about the pre-action protocol for low value personal injury claims. That email also made reference to workload management and staff career prospects.

75.32 The Second Respondent conceded, on cross-examination by the First Respondent, that her husband had provided the initial investment funds in November 2014. She also conceded he had invested approximately £80,000 into the firm. She accepted there was an emphasis that she would manage that investment and look over the account. When asked if there was an agreement that she would benefit from a profit share, the Second Respondent stated there were no signed agreements and she only received her basic salary. She stated there had been lots of discussions around her potentially receiving bonuses, but she could not recall signing anything.

75.33 On further questioning, the Second Respondent conceded she was controlling the investment fund, as funds were being paid from her own bank account directly to the firm's account. She also conceded that shortly after she had made payments into the firm's account, she had sent emails to KH asking for payments of invoices to be made from the received funds. The Second Respondent accepted that she controlled the investors' fund but maintained that no agreement had been signed between her and the First Respondent. She also maintained that the funds paid into the firm's account did not belong to her even though they came from her personal account. On further questioning by the Tribunal, the Second Respondent conceded these funds belonged to her husband and she had been asked to transfer the monies to the firm's account at which point it became the Third Respondent's money.

75.34 The Second Respondent confirmed that the investment was roughly £50,000 per month. She was referred to an email dated 8 October 2014 that she had sent to a manager of a Claims Management Company in which she had stated:

> "For the first month of working with you, we would seek to purchase 2 cases a week, following this first month we would be seeking to purchase 25 cases a week. After a 6 – 8 month trial period we would be seeking to increase this to 300 cases a month and if you are able to service the level of work we require in 12 months we would seek to purchase 600 cases a month."

The Second Respondent stated she had been directed to send this email by the First Respondent as these were the volumes of cases he wanted to receive.

75.35 The Second Respondent accepted that an email from the same Claims Management Company to her dated 7 October 2014 made reference to the payment of £500 per case. She accepted she had been involved in the plan to grow the department but maintained this had been at the direction of the First Respondent. She accepted she regularly worked until 9pm or 10pm but maintained she was a salaried employee.

75.36 The Second Respondent accepted the First Respondent had asked her to:

> "... streamline the department and that included reviewing existing policies and updating them."

She accepted she introduced policies, usually by email but maintained that her emails to the staff in her department were highlighting "things" that had not been done. She stated she had been asked to streamline procedures, make the department more profitable and contact new sources of work. She also accepted she was involved with recruitment at the firm.

75.37 The Second Respondent accepted she had attended meetings with new referrers in relation to potential sources of work but maintained this was on the instructions of the First Respondent who wanted to grow the firm. The Second Respondent accepted that all 'Hot Keys' calls were put through to her mobile phone so that she could assess the quality of the cases received.

75.38 The Second Respondent was asked whether she was involved in training the team within her department. She stated KH had provided training. On further questioning, the Second Respondent accepted she had requested some training as she was worried that employees may request payments from the wrong account.

75.39 The Second Respondent accepted that when she resigned from the firm, no further money was invested by her husband. She stated that the funds had been withdrawn as the investor was disappointed because he had not been informed that she had resigned, or that an SRA investigation was taking place.

75.40 On re-examination, the Second Respondent stated the First Respondent had not wanted a large sum of money to be paid into the firm. As a result her husband had transferred the funds to her account for the purposes of the investment, to allow her to monitor it. Once the money was paid to the firm's account, interest would start to accrue and the First Respondent had wanted to avoid this until the cases came in. She stated that she expected the Claims Management Companies she contacted, who were on the Ministry of Justice website, to be compliant with LASPO.

75.41 On questioning from the Tribunal panel, the Second Respondent accepted that in her email to KH dated 13 November 2014 she had been requesting a payment to be made but she stated there was a distinction between requesting a payment and authorising a payment, as authorising was done by the person who actually sent the payment. The Second Respondent also accepted that there had been a verbal understanding that she would receive a bonus related to profit, although said she had never received it.

75.42 In closing submissions, the First Respondent submitted the Second Respondent had signed the referral agreements which specified the correct procedures to comply with LASPO. He also submitted the investment was a significant factor and that although the Second Respondent had tried to give the impression in her witness statement that she was a young and inexperienced solicitor who had been given a great deal of responsibility too soon, the level of investment was an indication of the reliance that both her investors and the First Respondent had placed on her. He submitted it was clear from the documentary evidence that the Second Respondent was part of the longer term plan into the success of the firm's personal injury department.

75.43 The Tribunal also took into account the witness statement of Mr Amin dated 29 January 2018 who had been a paralegal at the firm from November 2014 to February 2015. He confirmed many of the new cases were received by email and that the Second Respondent worked long hours in the office. He stated she was:

> "…..constantly sending emails to everyone in the department on ways of making our processes more efficient ….."

75.44 In his closing submissions, Mr Butler, on behalf of the Second Respondent, submitted the Second Respondent had no authority to make any payments and all payments were made on the authority of the First Respondent. He submitted that section 56 of LASPO referred to a payment actually being made by a regulated person. It did not and could not mean a request for a payment. Mr Butler submitted that even if an unregulated person made a payment, a regulated person must be conducting the business. He submitted all "Office (Nominal) Account Payment Out Chit" forms were completed and authorised by EP and the email sent by the Second Respondent to KH on 13 November 2014 was not a "payment". Mr Butler submitted that only the First Respondent had authority to make payments as he alone dealt with the management of the firm. Mr Butler submitted the Second Respondent had not made any payments.

75.45 The Tribunal, having heard evidence from the First Respondent, found him to be a credible, measured and straightforward witness. He was fair to the Second Respondent in the way that he presented his evidence. He accepted his share of responsibility and had made appropriate admissions, showing genuine insight into his conduct. It was clear to the Tribunal that he had been trying to expand his legal practice and, having seen an opportunity, took advantage of it. The Tribunal found Allegation 1.1 proved against the First and Third Respondents both on their admissions and on the evidence before it.

75.46 In relation to the Second Respondent, the Tribunal did not find her to be a reliable witness. She was inconsistent in her evidence and often evasive, avoiding answering direct questions which had been put to her. Some of the answers given by the Second Respondent were implausible and the Tribunal found she lacked credibility when giving her evidence on a number of issues. She had not been transparent with the Tribunal about the funds her husband had invested in the firm. There was no reference in her witness statement to her husband investing in the firm. When the Second Respondent did refer to the investment during her evidence in chief, it was in relation to her husband's best friend and business partner investing funds in the firm. She did not state that her husband had provided some investment monies. These issues were drawn out when she was cross-examined by the First Respondent. The Tribunal took the view that the Second Respondent's evidence in chief had been misleading as she tried to give the impression that the investment funds were being paid by a third party, rather than stating clearly they were from her husband.

75.47 Furthermore, the Second Respondent was evasive about the agreement that, as well as receiving a fixed salary, she had an agreed profit share arrangement with the First Respondent. She initially stated she had only received a salary and that there was no written agreement in relation to bonuses being paid to her. However, after being pressed on this point, she conceded there had been a verbal understanding that she would receive a bonus related to profit. The Tribunal found that the Second Respondent had not been forthcoming about her real interest in the personal injury department and therefore could not be relied upon to have given an accurate account.

75.48 The Tribunal carefully considered the Second Respondent's position in relation to Allegation 1.1 and section 56 of LASPO. The Second Respondent was a regulated person, as she was a person authorised by the Law Society to carry on a reserved legal

activity within the meaning of the Legal Services Act 2007. She was also the Head of the Personal Injury Department and a director of the Third Respondent.

75.49 The Tribunal considered whether the Second Respondent had "paid prohibited referral fees" in a manner which contravened section 56 which stated:

> "(1) A regulated person is in breach of this section if- .....
>
> (a) .....
>
> (b) prescribed legal business is referred to the regulated person, and the regulated person pays or has paid for the referral.....
>
> .....
>
> (4) 'Prescribed legal business' means business that involves the provision of legal services to a client, where –
>
> (a) the legal services relate to a claim or potential claim for damages for personal injury or death,.....
>
> .....
>
> (5) There is a referral of prescribed legal business if-
>
> (a) a person provides information to another,
>
> (b) it is information that a provider of legal services would need to make an offer to the client to provide relevant services, and
>
> (c) the person providing the information is not the client;
>
> and 'relevant services' means any of the legal services that the business involves."

75.50 The Tribunal took into account the guidance issued by the SRA on 25 March 2013 in relation to "The Prohibition of Referral Fees in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) Sections 56-60." In that guidance it was stated:

> "14. We consider that the communication of a client's name and contact details to or by a regulated person would amount to a referral, as this information would enable the recipient to make an offer to the client to provide relevant services.
>
> 15. Example: An insurance company has an agreement with a firm of solicitors for the referral of clients. The insurance company is contacted by the claimant who notifies the insurer of a claim involving personal injury. The client's details are provided to the firm, who write to the claimant/client offering their services. The firm pays a fee for each email sent from the

website. We would regard this as a referral because the insurer has passed to the firm information which will enable the firm to offer to act for the claimant.

...

21. Our view is that where there is a referral of a matter to ... a regulated person..... a payment will be prohibited to the extent that it is being paid for the referral or arrangement...."

75.51 The Tribunal considered carefully the arrangements that were in place at the Third Respondent. Whilst a Hot Key system had been set up which would have enabled referrers to pass the client immediately to the Third Respondent via telephone, there was clearly also a system in place whereby the referrers sent emails to the firm containing the client's contact details and requesting the firm to call the client at a specific time on a particular date. This was contrary to section 56.

75.52 The Tribunal did not accept the Second Respondent had been as naïve and inexperienced as she claimed to be. She had been involved in sourcing new work for the firm. She had attended meetings with new referrers. She had signed agreements with new referrers and had been responsible for managing and allocating the referrals when they came into the practice. This was against the background of her husband investing substantial sums into the firm.

75.53 On 7 October 2014, the Second Respondent had received an email from one of the new referrers of work which stated:

> "... It's £500 per case plus VAT. Unfortunately I cannot budge anymore on this price...."

75.54 The Second Respondent had sent an email to EP and the First Respondent dated 8 October 2014 at 15.39 which stated:

> "Please see below claw back terms I have negotiated with a new referral rate named .....
>
> In light of the claw back dates, the dates we submit claims and commence the protocol period is imperative for our new model to work - whilst we are low on staff during this initial period I would suggest that one of the front loaders completes the screens on the day it is received, the paper vetting including asking MID, vehicle search, phoning client insurers and third party insurers, and I can vet the clients on each case by phoning them personally on the first few cases and I can submit the cases on the portal.....
>
> They will shortly be drafting an agreement and sending it to us with a view to sending us two cases a week during the first month - the cost of the cases is £500 plus VAT. I had a word with [K] and she confirmed we can currently spend and offset more than £10,000 a month on VAT - which will allow us to purchase 100 cases a month. In 6 months we can reconsider the VAT and cash flow situation.

I will keep you informed of progress"

75.55 This contemporaneous email completely contradicted the Second Respondent's evidence that she believed marketing fees were being paid for advertising. The email made very clear reference to the Respondent negotiating terms with the new referrer and specifically mentioned payment of a fee per case, with the number of cases increasing gradually over a period of time.

75.56 Earlier that same day at 11.38 the Second Respondent had sent an email to a referrer which stated:

> "We can confirm we are happy to accept a 90 day claw back in the following cases: .....
>
> However in the cases of fraud alone, please confirm if the clawback [sic] period can be extended to 145 days .....
>
> For the first month of working with you, we would seek to purchase two cases a week, following this first month we would be seeking to purchase 25 cases a week. After a 6-8 month trial period we would be seeking to increase this to 300 cases a month and if you are able to service the level of work we require in 12 months we would seek to purchase 600 cases a month.....
>
> .....in the first instance all new cases should be sent directly to me."

75.57 The Tribunal rejected the Second Respondent's assertion that she had been told by the First Respondent to send this email. It was clear on the face of the email that she was negotiating claw back terms with a new referrer and her email to the First Respondent and EP later that day was to inform them of the outcome of this.

75.58 The Second Respondent had also sent a number of emails to staff within her department which contained clear instructions on how new claims were to be dealt with including a link to a website which contained the pre-action protocol for low value personal injury claims in road traffic accidents. The Second Respondent in an email dated 27 November 2014 to one member of her staff team stated:

> "... You will note that these policies have been implemented to ensure that the department runs a lot smoothly and everyone needs to comply with my policy emails .....
>
> .....
>
> We cannot afford as a department to let cases like this go by the wayside, not only are we jeopardising relationships with future referrers but we are losing clients - this will have a knock-on effect on the growth of the firm - it is imperative that we build long-term relationships with referrers."

75.59 The Tribunal having considered the contemporaneous documents and the evidence it had heard, had no doubt that the Second Respondent was clearly aware that new cases were being financed on a case by case basis, which amounted to a prohibited referral,

rather than by way of a marketing fee as she had referred to in her evidence. She was the Head of the Personal Injury Department. She had attended meetings with the new referrers. She was involved in negotiating terms including the amount payable per case and the number of cases, and she had signed the written agreements. She knew the majority of new referrals were being received by way of email containing the clients' contact details as she was allocating these to staff within her department herself.

75.60 In particular, the Tribunal's attention had been drawn to an email sent by the Second Respondent to KH dated 13 November 2014 which attached an invoice for payment of referral fees and which stated:

> "Please can this payment be made from the Adamsons benefit account tomorrow."

This email was a clear instruction from the Head of the Personal Injury Department for a payment to be made. Indeed the Second Respondent had eventually accepted this was her request for a payment to be made, as on cross-examination she accepted that if an invoice was incorrect, she would not have forwarded it for payment.

75.61 It was also pertinent that the bank statements for the firm confirmed that on 12 November 2014, the Second Respondent had transferred, from her own personal account to an account called "Adamsons Law Limited T/as Benefits" the sum of £10,000. Accordingly, the Second Respondent's request for payment of the invoice on 13 November 2014 "from Adamsons benefit account" was clearly made in the knowledge that she had personally paid investment funds into that account to cover payments such as these.

75.62 Mr Butler's argument was that the Second Respondent had not "paid" for referrals. He submitted that only the First Respondent was authorised to make such payments. At no point in the Second Respondent's Answer to the Rule 5 Statement dated 2 October 2017, or in her witness statement dated 27 January 2018 had this defence been pleaded. This had put the Applicant at somewhat of a disadvantage as it had not been in issue until the day of the hearing. The Tribunal did not accept that this was the correct interpretation of the Act. The mischief behind LASPO was to prevent payment of referral fees by solicitors and the Tribunal found it difficult to conceive that, in the regulatory context, this did not cover all solicitors who were directly involved in the payment of prohibited referral fees. Parliament could not have intended such a narrow interpretation as this thwarted the purpose of Parliament's will.

75.63 The Tribunal was entitled to take a common sense approach. A regulated person did not have to physically make a prohibited referral fee payment to be caught by LASPO. This was a case where the Second Respondent's husband had a significant vested financial interest in the firm as a result of which she had been appointed the Head of the Personal Injury Department. She was closely monitoring her husband's funds, she had control over the sources of new referrals, the manner in which new cases were received, she was instructing her staff in considerable detail and with acute business acumen on how to deal with new claims, and ultimately she was requesting

payments be made from the funds she had transferred to the firm. She was very much in charge and the person with authority in the Personal Injury Department.

75.64 As the Head of the Personal Injury Department, the Second Respondent had the requisite authority to authorise payments to be made and without her involvement, such payments would not have been effected. She was part of the chain in the payment process within the firm that had to be followed before a payment could be made. Indeed, she was a crucial part of that process as she was the Head of the department and therefore the only person who would have had the requisite knowledge as to whether the payment was appropriate.

75.65 The First Respondent, whilst making the actual transfer, had no knowledge of whether payments were proper and was entitled to rely on his Head of Department for confirmation of this. Many firms operate on the basis that there are numerous fee earners within the firm, and solicitors routinely trust their colleagues to confirm the appropriateness and accuracy of payments being proper so that the person authorising the payment can process it.

75.66 The Tribunal found it quite inconceivable that the Second Respondent was not involved in the payment of fees to referrers. There was no doubt in the Tribunal's mind that the Second Respondent had paid prohibited referral fees contrary to section 56 of LASPO. The Tribunal was also satisfied that the payment of such fees did not amount to behaviour that maintained the trust the public placed in the Second Respondent and in the provision of legal services. Members of the public would be concerned to know that payment was being made for referrals and this would diminish the trust the public had in the Second Respondent and in the provision of legal services. The public also expected solicitors to comply with rules that were in place to protect them. The Second Respondent had not complied with her legal and regulatory obligations and she had breached Outcome 9.8 of the SRA Code of Conduct 2011 by paying prohibited referral fees.

75.67 The Tribunal found Allegation 1.1 proved against the Second Respondent.

76. **Allegation 1.2: Between 1 April 2013 and 27 January 2015 the Respondents allowed their decision on which medical agency to use in personal injury cases to be directly influenced by the introducer who referred the work to them, and therefore breached or failed to achieve any or all of:**

1.2.1 Principle 3 of the SRA Principles 2011;

1.2.2 Principle 4 of the SRA Principles 2011;

1.2.3 Principle 5 of the SRA Principles 2011;

1.2.4 Principle 6 of the SRA Principles 2011; and

1.2.5 Outcome 9.2 of the SRA Code of Conduct 2011.

76.1 The First and Third Respondents admitted Allegation 1.2. The Tribunal found Allegation 1.2 proved against the First and Third Respondents on their admissions and on the evidence.

76.2 The Second Respondent, in her evidence, stated that a list of medical agencies was on each staff member's desk. All the staff were required to use the medical agency specified by each work provider. The Second Respondent stated that the instructions were sent to the medical agency with details of the type of medical expert required. The agencies all had a pool of experts of various disciplines and would select the relevant expert depending on the discipline required. They would then arrange for the client to be examined quickly. The Second Respondent stated that generally experts tended to be different on each file.

76.3 On cross-examination by the Applicant, the Second Respondent stated that the medical agencies usually chose an expert who was local and therefore geographically convenient to the client. She said that this was advantageous to the firm as it also saved time because various different experts did not have to be contacted. She stated there was an internal policy that stipulated the referrer's medical agency must be used, but maintained each agency had a diverse pool of experts. She said that if she did not want to use the expert chosen by the medical agency she would inform them of this. There had been odd occasions when an expert had provided an unsatisfactory report and she would not agree to instruct that expert again. The Second Respondent maintained she was acting independently and that the marketing company did not have any influence over whether the Third Respondent instructed a medical agency.

76.4 The Second Respondent stated that at her previous firm, medical experts were instructed direct but this was in relation to high level complex injuries where the leading experts in the field would be used. At the Third Respondent, the cases were low value, high volume and, the Second Respondent stated, there were masses of experts up and down the country who could do the work. She stated it would cost too much to instruct each expert directly. The rationale of using an agency was that it saved time where large volumes were involved.

76.5 Mr Butler, on behalf of the Second Respondent, submitted it was very common practice for firms to use specific medical agencies to instruct experts. He submitted all experts owed a duty to the court and their reports were independent. The agent was simply managing the instructions from the solicitor. In this case, Mr Butler submitted the First Respondent was quite entitled to decide which medical agency he wished to use and that was not a breach of the rules. There had been no issues with any of the medical reports and the agencies had provided a reliable service.

76.6 Mr Butler submitted the agreements signed by the Second Respondent did not require the Second Respondent to use a specific agency. If the Tribunal was to find she should not have instructed a medical agency, then solicitors all over the country would no longer be able to use them. He submitted there was no evidence that the introducers had made it a condition of using their services that a particular agency must be used. The decision to do so had been made by the First Respondent.

76.7 The Tribunal took into account the Second Respondent's evidence in which she stated that a list of medical agencies was placed on each fee earner's desk and everyone was required to only instruct the medical agencies preferred by the respective referrer. There was no discretion to do otherwise unless an unsatisfactory report was received, by which time the medical agency had already been instructed. It was clear to the Tribunal that the medical agencies had been selected by the Claims Management Company and the introducer was specifically informing the Third Respondent which medical agencies should be used. There was therefore a direct link between the introducer and the selection of the medical agency.

76.8 The First Respondent had informed the FIO during his interview on 25 March 2015 that referrers required the firm to use certain medical agencies.

76.9 It was clear from the documents before the Tribunal that although this arrangement has been in place prior to the Second Respondent becoming the Head of the Personal Injury Department, there were two Claims Management Companies that the Second Respondent had introduced to the firm where she had signed the relevant agreements. At this point, the Second Respondent could have introduced a new system and refused to continue instructing the medical agencies specified by the referrers. However, she did not do so.

76.10 The Tribunal was satisfied that the Claims Management Companies were instructing the Respondents to use the medical agencies that they had specified and as such, the Second Respondent, who was the Head of the Personal Injury Department, was following those instructions. As a result she was not exercising her independent professional judgment, based on the client's needs and the facts of the case. She had been constrained in the use of specific medical agencies and had not given consideration to the best expert on each case. This was a breach of Principle 3 of the SRA Principles 2011.

76.11 It followed that the Second Respondent had not acted in the best interests of each client or provided each client with a proper standard of service. This was a breach of Principles 4 and 5. The Tribunal was satisfied that a member of the public would be very concerned to learn that an introducer was making decisions relating to the instruction of medical experts and this would not maintain the trust placed in the Second Respondent and in the provision of legal services. This was a breach of Principle 6. The public and clients would expect independent experts to be instructed based on their expertise rather than based on the source of the referrer. The Tribunal was satisfied that clients' interests had not been protected and in fact, the interests of the referrers and the firm had been placed above the interests of clients. This was a breach of Outcome 9.2 of the SRA Code of Conduct 2011.

76.12 The Tribunal found Allegation 1.2 proved against the Second Respondent.

77. **Allegation 1.3: Between 1 April 2013 and 1 March 2016 the Respondents failed to provide their clients with accurate information regarding the financial or other interests which the introducers had in referring clients to the Third Respondent, and therefore breached or failed to achieve any or all of:**

1.3.1 Principle 4 of the SRA Principles 2011;

1.3.2 Principle 5 of the SRA Principles 2011;

1.3.3 Principle 6 of the SRA Principles 2011;

1.3.4 Outcome 9.2 of the SRA Code of Conduct 2011;

1.3.5 Outcome 9.3 of the SRA Code of Conduct 2011; and

1.3.6 Outcome 9.4 of the SRA Code of Conduct 2011.

77.1 The First and Third Respondents admitted Allegation 1.3. During his interview with the FI Officer on 25 March 2015, the First Respondent had admitted there were structural failures at the firm and that inaccurate client care documents were being sent to clients. The Tribunal found Allegation 1.3 proved against the First and Third Respondents on both their admissions and on the evidence.

77.2 The issue in this case was that the firm's Terms and Conditions of Business stated the firm had agreed to pay to the marketing agent, who had referred the claim for personal injury to the firm, a monthly fee regardless of the number of cases the marketing agent provided to the firm. Clearly this was incorrect as the firm was paying a fixed fee per case. The Tribunal had been referred to an invoice dated 13 November 2014 from CCN which indicated a fee of £500 per referral for 7 new referrals had been paid to one particular Claims Management Company.

77.3 The Second Respondent, in evidence, stated that she had not drafted the client retainer letters and she had not read the Terms and Conditions. She stated when she first joined the firm she dealt with files where retainer letters had already been sent to clients. She stated that on new cases, the paralegal at the firm would send out Terms and Conditions before the file came to the Second Respondent.

77.4 On cross-examination the Second Respondent stated that drafting the Terms and Conditions for clients was not part of the roles and responsibilities conveyed to her and that compliance fell with EP. She did not consider that as Head of the Personal Injury Department she should have been familiar with the Terms and Conditions sent to clients although conceded it would have been beneficial to her to have known.

77.5 On cross-examination by the First Respondent, the Second Respondent accepted she had been asked to streamline the department and that included reviewing existing policies and updating them.

77.6 Mr Butler, on behalf of the Second Respondent, submitted the Second Respondent was a recently qualified solicitor with a few months of experience. Whilst it was accepted she had to take some responsibility, she had been given responsibilities beyond her call and it was for the First Respondent to ensure she had the capability to deal with this issue.

77.7 The Tribunal had found that the Second Respondent was the recipient of all new cases as the Head of the Personal Injury Department. In such a senior position, it was imperative that she should have known what the Terms and Conditions sent to clients were informing them. This was particularly relevant to referral fees which were the subject of LASPO and had been introduced relatively recently, the impact of which she was aware.

77.8 The Tribunal found the Second Respondent's claim that she had not looked at the client care letters to be quite implausible. As Head of the Personal Injury Department, it was inconceivable that the Second Respondent had not looked at the contents of the Terms and Conditions of Business, even if she had not been involved in drafting them. These were documents that were being routinely sent out by the staff in her department and the Tribunal found the Second Respondent must have known what those documents said. It was particularly relevant that the Tribunal had seen an email dated 27 November 2014 sent by the Second Respondent to a member of staff where she was castigating him for failures in following policies she had implemented. That email was lengthy and contained a great deal of detail. The Subject heading of that email was: "Failure to set up and send paperwork to a client".

77.9 The Second Respondent, on her own admission, accepted part of her role was to review and update policies and streamline the department. The email of 27 November 2014 showed, to all intents and purposes, the Second Respondent was running the personal injury department. She had sent an email dated 9 October 2014 to the First Respondent and EP in which she had set out the terms she had negotiated with a new referrer and had made reference to reconsidering the VAT and cash flow situation in six months.

77.10 Whilst the Tribunal accepted that the Second Respondent may not have been able to access templates on the case management system at the firm, there was no reason why as, the Head of the Department, she could not have amended the Terms and Conditions and sent them to EP to update onto the system. The Tribunal concluded that the Second Respondent was very much aware of the nature of the introducers' interests as she was involved in negotiating what those interests were. She knew that fees per case were being paid to introducers and not marketing fees regardless of the number of cases received.

77.11 The Tribunal was satisfied that the Second Respondent had been directly involved in cases where payments of £500 plus VAT were being made to introducers. As such, she must have known that the firm's clients were being provided with inaccurate information. This was a failure to act in the best interests of each client, and a failure to provide a proper standard of service to clients. It was behaviour that did not maintain the trust the public placed in the Second Respondent and in the provision of legal services. The Tribunal was satisfied that the Second Respondent had breached Principles 4, 5 and 6 of the SRA Principles 2011.

77.12 The Tribunal was also satisfied that clients' interests had not been protected regardless of the interests of introducers or the firm's interest in receiving referrals. This was a breach of Outcome 9.2 of the SRA Code of Conduct 2011. Failing to provide information to clients about the financial interests that introducers had in referring the client to the firm meant that clients were not in a position to make

informed decisions about how to pursue their cases. They were not aware that referrers had a financial interest in referring the client to the firm. This was a breach of both Outcome 9.3 and Outcome 9.4.

77.13 The Tribunal found Allegation 1.3 proved against the Second Respondent.

Previous Disciplinary Matters

78. None.

Mitigation

The First and Third Respondents

79. The First Respondent provided mitigation for himself and the Third Respondent. He referred the Tribunal to his mitigation statement. He reminded the Tribunal that he had co-operated fully throughout the proceedings, providing full information to the SRA and concealing nothing. The First Respondent stated that he was happy to assist during his interview with the FI Officer so that he could get guidance on compliance issues. The investigation had taken over three months and every aspect of his business had been carefully analysed. The investigation had been very thorough and it was clear that the business was running well as the findings were only limited to the personal injury department. There had been no issues with the accounts or client money.

80. The First Respondent confirmed he was a director of the Third Respondent and a 100% shareholder. There had been other directors but their contributions had depended on their involvement in the business. The First Respondent stated he had been very involved with the business as every department was in growth at that time. He had been the Compliance Officer for Legal Practice (COLP), Compliance Officer for Finance and Administration (COFA), Money Laundering Reporting Officer (MLRO) and Human Resources Manager. In addition he had been dealing with 4 offices, all the departments, the firm's accounts and any complaints that came in.

81. The First Respondent stated that the SRA investigation had had a significant impact on the business and indeed, the First Respondent had taken on board everything raised with him and had accepted any guidance given. The investigation started in late 2014 but took a long time to conclude. The First Respondent received a letter from the Applicant on 11 March 2016 informing him of these proceedings. He responded quickly with admissions.

82. The First Respondent stated that he accepted mistakes had been made and that he should have been more involved with the personal injury department than he had been. He accepted he had ultimate responsibility. He reminded the Tribunal that he had tried to ensure an infrastructure was in place but that had not been adhered to fully. His breaches had not been wilful or due to neglect.

83. Each department within the firm had their own client care letters and only those relating to personal injury clients had been an issue.

84. As a result of these proceedings, the First Respondent stated he had lost staff members. The Second Respondent left a few days before the investigation commenced, the investment funds stopped immediately and that had ramifications as the business had incurred debts. EP had left the business having been there for four years and helping it to grow. There was a domino effect on the remaining staff, many of whom left when they became aware of the disciplinary proceedings.

85. The First Respondent stated that he was now working on his own with a legal cashier and had done so since mid to late last year. He stated a further visit had been undertaken by the SRA late last year and everything was fine. The First Respondent stated that his business was now back where it had started, but he was confident that it could be re-established. He accepted the current climate was tough and the market was very competitive as there were legal aid cutbacks in criminal law and in family law. However, he was confident that he would be able to continue in practice as he still received some criminal client referrals from the following he had built up over the years. He confirmed that his income fluctuated as he also worked as a Consultant.

86. This matter had been hanging over the First Respondent for a significant period and had affected his personal income. The First Respondent referred the Tribunal to his Statement of Means which contained copies of his year end accounts. He stated that his business expenses were now lower and he was confident that the business would be re-established. He informed the Tribunal of the value and status of his assets.

87. The First Respondent reminded the Tribunal that he had a previously unblemished record. He had worked hard in his career and had been careful in his life to try and abide by the rules. Indeed, the First Respondent stated he had been driving for 23 years and had never received any endorsements on his driving licence. He submitted this provided the Tribunal with an indication of his character. In relation to the matter of testimonials, the First Respondent stated that he had been too embarrassed to ask colleagues to give references as he would have to explain to them why he was appearing before the Tribunal, and they may think there was "no smoke without fire".

88. The First Respondent stated that the last three years had been a traumatic experience and felt like he had already been punished. He wanted to put the matter behind him but asked the Tribunal to consider the prospects for his business when deciding on sanction. He submitted a substantial financial penalty could destroy the business but if it was manageable, he would be able to pay it. He provided the Tribunal with details of his family circumstances.

The Second Respondent

89. Mr Butler, on behalf of the Second Respondent, submitted there was no suggestion that the Second Respondent had been motivated by the payment of referral fees. She was an inexperienced newly qualified solicitor who had only been at the practice for four months. Mr Butler submitted that those who came into the profession needed guidance and she had been put in a senior position for a limited period.

90. Mr Butler submitted there was no evidence that harm had been caused to anyone. The Second Respondent had not concealed her actions and had provided her version of events to the Tribunal. She had had limited involvement with the practice and, Mr Butler submitted, it had been irresponsible to make her the Head of the Personal Injury Department when she was so junior. He submitted there had been no deliberate attempt to conceal the payment of referral fees and there was no evidence that clients had been prejudiced by the use of medical agencies.

91. Mr Butler referred the Tribunal to the testimonials provided from a number of reputable solicitors. He also referred the Tribunal to the Second Respondent's Personal Financial Statement. He confirmed the Second Respondent was currently working as a recruitment consultant. These proceedings had had a detrimental effect on her career as she had had to disclose them to potential future employers.

92. Mr Butler provided the Tribunal with details of the Second Respondent's financial circumstances. She jointly owned a property with her husband which had no mortgage, but needed substantial renovation. She owed money to various family members. Mr Butler stated the Second Respondent intended to return to practise depending on the sanction imposed and that these proceedings had been a salutary lesson for her.

Sanction

93. The Tribunal had considered carefully each of the Respondents' submissions and documents. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The First Respondent

94. Dealing with the First Respondent, the Tribunal was satisfied that his conduct had not been deliberate and that his personal motivation had been to grow his business and make a profit. He had relied on others to ensure the correct procedures were followed. But he was the most senior solicitor within the practice and had control of the circumstances that had given rise to the breaches. As a result of this, the First Respondent's level of culpability was high although the Tribunal accepted he had not been directly involved in managing the cases that had led to the breaches.

95. The Tribunal was satisfied that although the First Respondent had not intended to cause any harm, some harm had been caused to the reputation of the profession as the First Respondent had allowed the payment of prohibited referral fees which Parliament intended to prevent. He had also failed to ensure the firm was not directly influenced by referrers when instructing medical agencies and he had failed to ensure that clients had been provided with accurate information regarding the financial interests of those referrers. However, there was no evidence that any client suffered losses and there had been no deliberate intention on the part of the First Respondent to mislead clients. The Tribunal concluded the level of harm was low.

96. The Tribunal considered the aggravating factors in relation to the First Respondent. The Tribunal took into account that whilst the conduct had been repeated over a period of time, it had not been deliberate or calculated. However, the First Respondent ought reasonably to have known that the conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

97. The Tribunal then considered the mitigating factors in relation to the First Respondent. He had made early open and frank admissions, and he had shown genuine insight and remorse throughout the proceedings. During his evidence the First Respondent had been contrite and clearly regretted his actions. He had taken steps to rectify the breaches which had taken place over a brief duration during a previously unblemished career. The Tribunal was satisfied that there was a low risk of repetition.

98. The Tribunal, having considered whether this was a case where it could make No Order or order a Reprimand, determined that these were not minor breaches. The payment of prohibited referral fees, the failure to ensure the firm had not been influenced by the referrer in its use of medical agencies and the failure to provide accurate information to clients about the financial interests of referrers were all serious matters. The Tribunal concluded the protection of the public and the reputation of the legal profession required a greater sanction.

99. The Tribunal then considered whether a Fine was appropriate. The Tribunal was satisfied that this was a case where there was no issue relating to public protection which would require any interference with the First Respondent's ability to practise. The Tribunal was further satisfied that a Fine was a sufficient sanction to reflect the seriousness of the misconduct.

100. In relation to the level of the fine, the Tribunal decided the misconduct was moderately serious. It was not acceptable to pay prohibited referral fees, or allow referrers to influence the choice of medical agency, or fail to inform clients of the financial interests of referrers. The Tribunal was satisfied that a Level 2 Fine of £7,500 was appropriate in relation to the First Respondent. However, taking into account the strong mitigating factors and the low level of the First Respondent's culpability and harm caused, the Tribunal reduced the fine to £5,000 which it considered was the proportionate and appropriate amount. The First Respondent was earning income from his practice, he was confident of the future prospects and he had assets which would enable him to meet the financial penalty.

101. The Tribunal Ordered the First Respondent pay a Fine of £5,000.

The Second Respondent

102. The Tribunal then turned to the Second Respondent. Her level of culpability was higher than the First Respondent despite the fact that she was less experienced. It was clear to the Tribunal that the Second Respondent had a personal interest in looking after her husband's money and indeed, there had clearly been discussions about a bonus related to profit. This gave her the motivation and a financial incentive in ensuring she introduced more cases to the firm and completed them quickly.

103. The Tribunal rejected Mr Butler's submissions that the Second Respondent was not experienced enough to have been appointed the Head of the Personal Injury Department. She had accepted the position and indeed, it was clear from the contemporaneously documents provided that she was perfectly well capable of running the department in an efficient and authoritative manner. Furthermore, the fact that her husband had invested a large amount of money in the firm was an additional motivation for her to ensure he received a good return on his investment. The Tribunal also took into account the fact that the Second Respondent did not, at any point, request training on LASPO but regardless of this, as a qualified solicitor in charge of a personal injury department, the responsibility remained with the Second Respondent to ensure she was up to date with legislation and the requirements of her role.

104. The Second Respondent had direct control for the circumstances giving rise to the misconduct and had caused harm to the reputation of the legal profession. However, the Tribunal was satisfied that the Second Respondent had not acted intentionally in allowing the payment of prohibited referral fees, or failing to ensure the firm was not directly influenced by referrers or failing to ensure that clients had been provided with accurate information regarding the financial interests of those referrers. There was no evidence that any client had suffered losses and the harm caused had been low.

105. The Tribunal firstly considered the aggravating factors in relation to the Second Respondent. She had repeated the conduct over a period of approximately 4 months. She should have known that her conduct was in material breach of her obligations to protect the public and the reputation of the legal profession.

106. In relation to the mitigating factors concerning the Second Respondent, the Tribunal was satisfied that the misconduct took place over a brief duration and at a time early in the Second Respondent's legal career. She had also provided a number of good testimonials. However, the Tribunal did not find she had shown insight into her misconduct or any remorse during these proceedings.

107. The Tribunal, having already concluded that these were not minor breaches decided No Order or a Reprimand were not sufficient sanctions in this case. The breaches were all serious matters and the protection of the public and the reputation of the legal profession required a greater sanction.

108. The Tribunal then considered whether a Fine was appropriate. The Tribunal was also satisfied in relation to the Second Respondent, that this was a case where there was no issue relating to public protection which would require any interference with the Second Respondent's ability to practise. The Tribunal was further satisfied that a Fine was a sufficient sanction to reflect the seriousness of the misconduct.

109. In relation to the level of the fine, the Tribunal had already concluded the misconduct was moderately serious. It was not acceptable to pay prohibited referral fees, or allow referrers to influence the choice of medical agency, or fail to inform clients of the financial interests of referrers. The Tribunal was satisfied that a Level 2 Fine was appropriate in relation to the Second Respondent.

110. The Second Respondent was more culpable than the First Respondent although the Tribunal accepted that both the First Respondent and EP could have supported the Second Respondent more, particularly in light of the fact that she was a recently qualified solicitor. However, this did not absolve her from all responsibility as she had still accepted the position of Head of the Personal Injury Department knowing what this role entailed. Furthermore, the fact that her husband had invested a significant sum of money in the firm led to her having a vested interest in the financial performance of the Personal Injury Department. Taking into account the Second Respondent's culpability, the harm caused to clients, the aggravating and mitigating factors and the references provided, the Tribunal concluded that a fine of £5,000 was the appropriate amount for the Second Respondent.

111. The Tribunal Ordered the Second Respondent pay a Fine of £5,000.

The Third Respondent

112. Turning to the Third Respondent, this was a recognised body. The Tribunal found the same level of culpability, harm, aggravating and mitigating factors that had applied to the First Respondent. On that basis and for the same reasons, the Tribunal concluded that the fine of £5,000 that had been imposed on the First Respondent would also be an appropriate sanction for the Third Respondent.

113. However, the Tribunal took into account that to all intents and purposes the Third Respondent was effectively the First Respondent as he was the 100% shareholder and now sole director of the Third Respondent. Accordingly any Fine imposed on the Third Respondent would be payable solely by the First Respondent in addition to the Fine imposed on him. He had provided evidence of his financial circumstances which indicated that there had been a decrease in the income of the Third Respondent and a decrease in the work at the firm. The Tribunal was mindful that it should have regard to the principle of proportionality and balance this with the need to maintain the reputation of the solicitors' profession and the confidence which that inspires. Taking into account the Third Respondent's declining financial position the Tribunal was satisfied that the Fine should be reduced to £2,000. This would mean the First Respondent would effectively have to pay total Fines in the sum of £7,000. This was reasonable and proportionate in all the circumstances.

114. The Tribunal Ordered the Third Respondent pay a Fine of £2,000.

Costs

115. Mr Bullock, on behalf of the Applicant requested an Order for costs in the total sum of £24,712.40 and provided the Tribunal with a breakdown of those costs. He confirmed he had not submitted any additional claim for the costs which had been incurred on 14 March 2018. He submitted the costs claimed were reasonable and that it was clear both the First and Second Respondents were receiving salaries, owned properties and therefore had the ability to meet an order for costs. Mr Bullock submitted that the Second Respondent's liabilities which were largely to her family should not be favoured over the costs of the regulatory prosecution.

116. The First Respondent submitted he had accepted liability at an early stage, he had co-operated fully with the regulator and had attended before the Tribunal for what was essentially a sanction hearing in relation to his position. He submitted his case could have been dealt with within half a day or a day at most.

117. The First Respondent submitted that the Second Respondent was a director of the Third Respondent at the material time and the Tribunal should therefore consider whether she should contribute to any costs ordered against the Third Respondent. She had been involved in the business at that time, she was the Head of the Personal Injury Department on an agreed profit share and indeed, it was her department which had led to these proceedings. The First Respondent submitted that if the costs were to be divided between the three Respondents, he would end up having to pay two thirds of those costs which would not be a fair apportionment given that he had made admissions on behalf of himself and the Third Respondent at the earliest opportunity.

118. Mr Butler, on behalf of the Second Respondent, submitted that even if the Second Respondent had made admissions, the case would still have taken 1 – 1½ days. He submitted the costs incurred related to the time spent by the Applicant investigating various departments at the Third Respondent firm. He submitted the First Respondent should accept responsibility as he had confirmed during his interview with the FI Officer that none of the directors had any managerial responsibility at the firm.

119. The Tribunal considered carefully the matter of costs. The Tribunal considered the amount of costs claimed for preparation for the hearing were a little high. The Tribunal reduced these and assessed the overall costs at £24,000.

120. The Tribunal considered carefully the apportionment of the assessed costs of £24,000. The Tribunal noted that the First Respondent had admitted all of the allegations whereas the Second Respondent had denied all of the allegations, thereby substantially prolonging the hearing. The Tribunal further noted that the Second Respondent had made an application of no case to answer which had again prolonged the hearing and which had proved to be un-successful. The Tribunal further noted that the Third Respondent, although a separate legal entity, was, in effect, the First Respondent and that ordering the Third Respondent to pay an equal share of the costs would have the effect of doubling the costs burden on the First Respondent. Finally, the Tribunal noted that all of the proved allegations were directed against the Personal Injury Department, where the Second Respondent was Head of that Department and was a director of the company too.

121. Having taken all of these points into consideration, the Tribunal concluded that the Second Respondent should be responsible for a larger share of the costs that the First or Third Respondent. Having considered the matter carefully, the Tribunal concluded that the Second Respondent should pay two thirds of the costs and that the remaining one third should be paid by the First and Third Respondents.

122. The Tribunal directed that the First Respondent should pay £4,000 costs, the Second Respondent should pay £16,000 costs and the Third Respondent should pay £4,000 costs.

123. In relation to the enforcement of those costs, the Tribunal noted the Respondents had both provided statements of their financial circumstances. The Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

124. Both Respondents had interests in property but neither had provided independent evidence of valuations or liabilities. The Tribunal was satisfied that the Respondents had the means to pay these costs as both the First and Second Respondents were receiving an income in addition to their interests in properties which appeared to have some equity. There was therefore no need to restrict enforcement.

Statement of Full Order

125. The Tribunal Ordered that the Respondent, IMRAN RASHID, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00.

126. The Tribunal Ordered that the Respondent, HAFIZAH MENSURAH BEGUM, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,000.00.

127. The Tribunal Ordered that the Respondent, ADAMSONS LAW LIMITED, Recognised Body, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that it do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00

Dated this 13th day of April 2018
On behalf of the Tribunal

D. Green
Chairman

Judgment filed with the Law Society on 16 APR 2018