No. 8751-2003

IN THE MATTER OF *RESPONDENT 1 – NAME REDACTED* AND JANETTE ENTWISLE, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr J R C Clitheroe
Mr D Gilbertson

Date of Hearing: 6th March 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society on the 4th day of February 2003 by David Elwyn Barton, Solicitor Advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE that *RESPONDENT 1*, solicitor of 16 Nicholas Street, Chester, CH1 2NX and Janette Entwisle, solicitor c/o David T Morgan, 9 Gray's Inn Square, London, WC1R 5JF might be required to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thought right.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when David Elwyn Barton appeared as the Applicant, *RESPONDENT 1* was represented by Jim Sturman of Queen's Counsel and Andrew Hopper of Queen's Counsel and Ms Entwisle was represented by David Morgan, solicitor, of 9 Gray's Inn Square, London, WC1R 5JX.

The history of the matter

Although the application had been made in 2003 and the substantive hearing had not taken place until March of 2006, all parties had been active. There had been four interim hearings before the Tribunal. During the course of two of the interim hearings there had been

discussion as to the appropriate form that the Applicants' allegations should take. The statement made pursuant to Rule 4(2) of the Solicitors Disciplinary Proceedings Rules 1994 before the Tribunal was in a redrafted form dated 28th February 2005.

The substantive hearing proceeded on the basis of those allegations. At the opening of the hearing it was indicated to the Tribunal that *RESPONDENT 1* accepted the Solicitors Accounts Rules breaches on the basis of his absolute liability as a partner but he strenuously denied the allegation of dishonesty in allegation 3. Ms Entwisle admitted the allegations made against her but denied that she had been dishonest on the basis that she had acted upon *RESPONDENT 1*'s instructions.

It was confirmed by the Applicant that the allegation of dishonesty made against *RESPONDENT 1* related only to letters written by *RESPONDENT 1* to the Office for the Supervision of Solicitors (hereinafter referred to as The Law Society).

The Tribunal heard the Applicant's allegation against *RESPONDENT 1* that he had been dishonest as a preliminary matter. Upon reaching its conclusion that it was not satisfied that he had been dishonest at the end of the first day of the hearing, the Tribunal rose.

At the beginning of the second day of the hearing the parties informed the Tribunal that they had further discussed the form of the allegations and had reached agreement as to a redrafting. In the redrafted form, *RESPONDENT 1* admitted all of the allegations against him as did Ms Entwisle save that she continued to deny dishonesty on her part. The Tribunal consented to the amendments.

The allegations as drafted on 28th February 2005 and the allegations in the amended form of 7th March 2006 are set out below.

The 28th February 2005 allegations

The allegations against the First Respondent were that he had been guilty of conduct unbefitting a solicitor in that he:

1. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors Accounts Rules 1998) he has drawn from clients account money other than in accordance with the said Rules;

2. Acted in breach of the Solicitors accounts rules 1991 in that contrary to the provisions of Rule 6 of the said Rules (Rule 15 of the Solicitors accounts rules 1998) he paid into his client bank account monies other than those permitted to be paid in;

3. Compromised or impaired his integrity, good repute and that of the solicitors' profession by making statements to The Law Society in the course of an enquiry that were materially false and misleading. In this respect he was dishonest;

4. Compromised his duty to act in the best interests of his clients through his failure to adequately supervise and deal with complaints against the Second Respondent;

5. Having discovered acts or omissions which would have justified negligence claims by clients, he failed to inform such clients that independent advice should be sought and

that his firm could no longer act, thereby compromising his integrity and bringing himself and the solicitors' profession into disrepute;

6. He acted or continued to act for clients in circumstances where his own interests conflicted with those of the clients;

7. He failed to reply promptly to correspondence from clients, former clients, the Law Society and other solicitors;

8. He accepted instructions to act against a former client having acquired relevant confidential information concerning that former client during the course of acting for him;

9. He failed to comply with provisions of Rule 15 of the Solicitors Practice Rules in each of the following respects:

   (a) there was a failure to operate any, or any adequate, complaints handling procedure;

   (b) there was a failure to ensure that procedures were in place to keep their clients properly informed about the progress of their matter;

   (c) there was a failure to ensure that procedures were in place to ensure that clients were informed who should be contacted in the event of a problem with the service provided;

   (d) there was a failure to have a written complaints procedure and to ensure that complaints were handled in accordance with it;

   (e) there was a failure to ensure clients were given proper information on costs.

The allegations against the Second Respondent were that she had been guilty of conduct unbefitting a solicitor in that she:

1. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors Accounts Rules 1998) she had drawn from clients account money other than in accordance with the said Rules;

2. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rule 6 of the said Rules (Rule 15 of the Solicitors Accounts Rules 1998) she paid into her client bank account monies other than those permitted to be paid in;

3. Compromised or impaired her duty to act in the best interests of her clients through her failure to properly conduct personal injury claims on their behalf;

4. Having discovered acts or omissions which would have justified negligence claims by clients, she failed to inform such clients that independent advice should be sought and that her firm could no longer act, thereby compromising her integrity and bringing herself and the solicitors' profession into disrepute;

5. She acted or continued to act for clients in circumstances where her own interests conflicted with those of the clients;

6. She failed to reply promptly to correspondence from clients, former clients, the Office and other solicitors.

7. She accepted instructions to act against a former client having acquired relevant confidential information concerning that former client during the course of acting for him;

8. She failed to comply with provisions of Rule 15 of the Solicitors Practice Rules in each of the following respects:

   (a) there was a failure to operate any, or any adequate, complaints handling procedure;

   (b) there was a failure to ensure that procedures were in place to keep their clients properly informed about the progress of their matter;

   (c) there was a failure to ensure that procedures were in place to ensure that clients were informed who should be contacted in the event of a problem with the service provided;

   (d) there was a failure to have a written complaints procedure and to ensure that complaints were handled in accordance with it;

   (e) there was a failure to ensure clients were given proper information on costs.

The allegations in the amended form of 7th March 2006

The allegations against the First Respondent were that he:

1. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors Accounts Rules 1998) he had drawn from clients account money other than in accordance with the said Rules;

2. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rule 6 of the said Rules (Rule 15 of the Solicitors Accounts Rules 1998) he paid into his client bank account monies other than those permitted to be paid in;

He had been guilty of conduct unbefitting a solicitor in that he:

3. Compromised or impaired his integrity, good repute and that of the solicitors' profession by making statements to The Law Society in the course of an enquiry that were materially false and misleading.

4. Compromised his duty to act in the best interests of the firm's clients as a consequence of his failure adequately to deal with complaints made against Bartlett and Son and the Second Respondent;

5. Having been informed of acts or omissions which would have justified a negligence claim against Bartlett and Son he failed to take adequate steps to ensure that the client was informed that she should seek independent legal advice and that his firm could no longer act for her;

6. Having been informed that Bartlett and Son was acting in a civil claim on behalf of one client against a former client in circumstances where their respective interests conflicted he failed to take adequate steps to bring the conflict to an end;

7. Failed to comply with the provisions of Rule 15 of the Solicitors Practice Rules 1990 in that he failed to operate an adequate complaints handling procedure;

8. Failed to reply with reasonable promptness to correspondence from Rausa Mumford and The Treasury Solicitor thereby compromising his good repute.

The Allegations against the Second Respondent were that she:

1. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors Accounts Rules 1998) she has drawn from clients' account money other than in accordance with the said Rules;

2. Acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rule 6 of the said Rules (Rule 15 of the Solicitors Accounts Rules 1998) she paid into her client bank account monies other than those permitted to be paid in;

She had been guilty of conduct unbefitting a solicitor in that she:

3. Compromised or impaired her duty to act in the best interests of her clients through her failure properly to conduct personal injury claims on their behalf;

4. Having discovered acts or omissions which would have justified negligence claims by clients, she failed to inform such clients that independent advice should be sought and that her firm could no longer act, thereby compromising her integrity and bringing herself and the solicitors' profession into disrepute;

5. She acted or continued to act for clients in circumstances where her own interests conflicted with those of the clients;

6. She failed to reply promptly to correspondence from clients, former clients, The Law Society and other solicitors;

7. She accepted instructions to act against a former client having acquired relevant confidential information concerning that former client during the course of acting for him;

8. She failed to comply with the provisions of Rule 15 of the Solicitors Practice Rules 1990 in that she failed to operate an adequate complaints handling procedure.

The evidence

The evidence before the Tribunal included the oral evidence of Trevor Morris, John Bartlett, Tracy Hughes, Catrin Morris and the Second Respondent. During the course of the hearing Ms Entwisle handed up a draft reference letter and a small bundle of documents which included copy internal paying-in slips. In relation to submissions on costs Mr Hopper handed up copy Judgment in the case of an appeal by a solicitor Mr Hayes and relevant correspondence.

At the conclusion of the hearing the Tribunal made the following Orders:

The Tribunal Orders that the Respondent *RESPONDENT 1* of 16 Nicholas Street, Chester, CH1, 2NX, solicitor, do pay a fine of £28,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that the respondent pay the costs of and incidental to the interim application heard on the 24th January 2006. With regard to the costs of and incidental to this application and enquiry, excluding the costs of the interim applications heard on 18th September 2003, 16th January 2005, 13th December 2005, but including the costs of the investigation accountant, the respondent do pay 80% to be subject to a detailed assessment if not agreed between the parties. As to the interim applications of 18th September 2003, 6th January 2005 and 13th December 2005, each party is to bear its own costs.

The Tribunal Orders that the Respondent, Janette Entwisle c/o David Morgan, 9 Gray's Inn Square, WC1R 5JF solicitor, be struck off the Roll of Solicitors and it further Orders that with regard to the costs of and incidental to the application and enquiry, excluding the costs of the interim applications heard on the 18th September 2003, 6th January 2005, 13th December 2005 and the 24th January 2006, but including the costs of the investigation accountant, the Respondent pay 20% to be subject to a detailed assessment if not agreed between the parties. As to the interim applications of 18th September 2003, 6th January 2005 and 13th December 2005, each party is to bear its own costs.

The Respondents' backgrounds

1. *RESPONDENT 1*, born in 1942, was admitted as a solicitor in 1967. Ms Entwisle, born in 1966, was admitted as a solicitor in 1992. The names of both Respondents remained on the Roll of Solicitors.

2. At the material times the Respondents carried on practice in partnership under the style of Bartlett and Son at 16 Nicholas Street, Chester.

3. *RESPONDENT 1* was one of two equity partners in the firm, the other being his brother Mr JA Bartlett. Ms Entwisle was a salaried partner.

4. It was recognised that Mr JA Bartlett was the firm's senior partner and the person to whom The Law Society wrote with regard to regulatory matters.

5. The firm of Bartlett and Son was an old established firm having offices in the Liverpool area, and three offices in the Chester area. *RESPONDENT 1* was the equity partner present at the Chester group of offices. Ms Entwisle was a salaried partner and worked in the "Chester group". Mr JA Bartlett ran the "Liverpool group".

6. Ms Entwisle had joined the firm in 1991 as a trainee solicitor, had gained admission to the Roll and upon invitation became a salaried partner in 1996. She resigned from the firm in August 2000.

7. Ms Entwisle was responsible for the supervision of certain fee earning staff in her department which dealt with claimant personal injury work.

8. The allegations against the Respondents arose following an inspection of the firm's books of account by a Law Society Investigation Officer (the IO).

9. The Law Society had been concerned about the firm's complaints record and wrote to JA Bartlett on 28th May 1999 about the number of unresolved complaints. Mr JA Bartlett had addressed letters to *RESPONDENT 1* about the complaints which related to the performance of Ms Entwisle. On 25th August 2000 The Law Society wrote to *RESPONDENT 1* enclosing a copy of the letters sent to Mr JA Bartlett so that he was informed that The Law Society was investigating nine complaints against the firm, the majority of which related to cases handled by the Chester group.

10. *RESPONDENT 1* and his brother, Mr JA Bartlett, were in dispute with regard to matters affecting the partnership. Mr JA Bartlett considered that *RESPONDENT 1* was profligate when it came to office expenditure which led Mr JA Bartlett to impose strict financial controls on the Chester group. Office expenditure above a relatively low level had to be authorised by Mr JA Bartlett. The firm's bookkeeping and its cashier's office was run at the firm's Liverpool office. Ms Entwisle had authority to sign office account cheques for modest sums and authority to sign client account cheques of high value.

11. The allegations in the main arose because the personal injury department at Chester, for which Ms Entwisle was responsible, had been negligent in several client matters.

Preliminary matter - Allegation 3 of the 28th February 2005 allegations against *RESPONDENT 1*, namely that he compromised or impaired his integrity, good repute and that of the solicitor's profession by making statements to The Law Society in the course of an enquiry that were materially false and misleading and in this respect he was dishonest.

12. In opening, Mr Barton confirmed that the allegation of dishonesty in allegation 3 of the 28th February 2005 allegations was only made in relation to the documents submitted concerning the First Respondent's explanation to The Law Society. In response to the Tribunal's enquiry Mr Barton confirmed that no other documentary evidence or witness evidence would be produced by The Law Society in relation to the allegation of dishonesty, and The Law Society did not adopt the evidence of the Second Respondent in so far as that might be relevant to the said allegation of dishonesty.

13. In view of this the Tribunal invited the parties to consider whether that dishonesty allegation against the First Respondent might be taken as a preliminary issue. The hearing was adjourned for a short while on 6th March with a view to the parties considering whether they were content for that allegation to be dealt with separately. On reconvening Counsel for the First Respondent with the consent of all parties

proceeded with an application that the dishonesty allegation could not, on the evidence relied upon, be proved beyond reasonable doubt.

Background facts in relation to the preliminary matter

14. On 30th August 2000 *RESPONDENT 1* telephoned The Law Society and spoke at length about the complaints being investigated. He discussed the matter of Mrs W and said that Ms Entwisle had been negligent. The Court had struck out the case. He said that in May Mrs W had been paid a payment to settle the claim but he had not been aware of the payments that had been made by Ms Entwisle to the client until 30th August 2000. The case had been struck out on 8th April 1999. He discussed also matters relating to Mrs O and Mr B.

15. In a letter dated 17th October 2000 addressed to *RESPONDENT 1* The Law Society referred to *RESPONDENT 1*'s belief that payments made to Mrs W and Mrs H had been made from costs paid in relating to other files, such costs subsequently having been transferred to the client account by Ms Entwisle. This followed a telephone conversation between *RESPONDENT 1* and The Law Society of 16th October when *RESPONDENT 1* asked for copies of the letters from Bartlett and Co to The Law Society on the W, RM and H files, as he wanted to establish when he had become involved as the complaints handling partner.

16. The Law Society's IO's Report was dated 30th January 2001. This Report expressed concerns about the handling of the matters of Mrs H and Mrs W.

17. After further exchanges with The Law Society, *RESPONDENT 1* wrote a letter to The Law Society dated 1st June 2001 in which he said that he had made it clear when dealing with the individual allegations against Ms Entwisle that she had been negligent in allowing the cases of Mrs W and Mrs H to be struck out. She had concealed her negligence from *RESPONDENT 1* for a long period of time in the cases both of Mrs W and Mrs H. On 30th August 2000 it had become clear to him what had happened. The files of Mrs H and Mrs W had been handed to him on 30th August when he had been completely thunderstruck by what he saw.

18. *RESPONDENT 1* went on to say that he had been misled by Ms Entwisle as to the fact that the cases of Mrs H and Mrs W had been struck out and she had concealed from him the fact that she had used large sums of money to "settle" the clients' claims. He said at no time did Ms Entwisle tell him that she had been negligent and that a case had been struck out as long ago as April 1999.

19. He said that in the case of Mrs H he had understood from Eversheds Solicitors that an application had gone wrong and that his firm owed the costs. Ms Entwisle had completely misled him on the matter as in fact the whole case had been struck out. *RESPONDENT 1* reaffirmed what he had said in an earlier letter of August 2001, namely that he did not know that the claims of Mrs H and Mrs W had been struck out until 30th August 2000.

20. On 25th November 1998 the solicitors acting for the defendant in Mrs H's claim, Eversheds, had written to *RESPONDENT 1* to complain about the conduct of Ms Entwisle. The letter was a fax addressed directly to *RESPONDENT 1* and on 27th November 1998 Mr L of that firm telephoned the Respondent. *RESPONDENT 1*

informed Mr L that he would arrange for Ms Entwisle to telephone. She did not do so but, of course, *RESPONDENT 1* was alerted to the problem by that conversation.

21. A faxed letter of 6th October 1999 from Eversheds to *RESPONDENT 1* contained the paragraph:

> "Yesterday 5th October, one of my assistants … attended Mold County Court and obtained an order that the claimant's action be struck out and the Court further ordered that our summarily assessed costs of the application of £648 plus VAT plus issue fee be paid within seven days. I trust you will ensure that this order is discharged."

22. The letter went on to confirm that it was Eversheds' intention to make a formal complaint to The Law Society about the Respondents' firm's conduct of the case.

23. On 7th October 1999 *RESPONDENT 1* telephoned Eversheds and spoke with their Mr L about his fax of the previous day. Mr L had made an attendance note in the following form:

> "Miss Entwistle (sic) works in Manchester
> His most important issue: complaint
> "Don't worry about the money"
> He doesn't want contention
> He will pay…. "obviously cocked-up"
> I said I not really concerned about a formal complaint but I want to recover cl's costs"

The Applicant's Submissions on the preliminary hearing matter

24. It was the Applicant's case that *RESPONDENT 1* did know well before 30th August 2000 that Mrs H's claim had been struck out. He knew on 6th October 1999. He had known of the negligence and had expressed his concern about a complaint to The Law Society. *RESPONDENT 1* knew the financial consequences in costs and it was no coincidence that within days of this the costs had been settled in full and Mrs H also received her payment from the firm.

25. *RESPONDENT 1* had not been truthful with The Law Society as to his state of knowledge of the strikeout and the negligence. He stated that Ms Entwisle had concealed that from him. It was plain that that was not the case and that *RESPONDENT 1* deliberately sought to mislead The Law Society. *RESPONDENT 1* had sought to blame Ms Entwisle. He was dishonest in his correspondence with The Law Society. He gave untruthful and misleading information.

26. *RESPONDENT 1* acknowledged that he was mistaken when he referred to his knowledge of the strikeout of Mrs H's case having been acquired for the first time in August 2000. It was right that 30th August 2000 was not he first time that he learned that Mrs W's claim had been struck out.

27. In the Applicant's submission *RESPONDENT 1* had made false and misleading statements to The Law Society and the Tribunal was invited to conclude that this was

not a mistake on his part. When a mistake is repeated on many occasions there is a point when it ceases to be a mistake and becomes a lie.

***RESPONDENT 1*'s Submissions on the preliminary hearing matter**

28. *RESPONDENT 1* had in fact given the correct information to The Law Society as to the date of his knowledge in two documents. *RESPONDENT 1* had written a letter to The Law Society dated 3rd August 2001 with which he sent a chronology of the case of Mrs H which he had prepared on 2nd August 2001 in which he correctly referred to his telephone conversations and written exchanges with Messrs Eversheds and the relevant dates in 1999. He thereby confirmed his knowledge of the strikeout at that time.

29. *RESPONDENT 1* addressed a letter to The Law Society dated 7th August 2001 in which he said:

> "I sent by courier my response on 3rd August 2001 with chronology for Mrs H and Mrs W's cases. The work was done in some haste and unfortunately my normal secretary was unable to assist me as her mother had just died.
>
> On re-reading my letter of 3rd August I would like to point out an inaccuracy in clauses 1(d) and 2(c) on pages 1 and 2 of that letter.
>
> If you read the chronology for Mrs H's case for 6th October and 8th October 1999 you will see that I was made aware by Eversheds of the fact that that case had been struck out. I paid the interlocutory defence costs and asked Miss Entwisle to deal with the other defence costs that might arise.
>
> If you look at my entry in the chronology for December 1999 you will see that the OSS reminded me that Mrs H and Mrs W were still on their list and on questioning Miss Entwisle she said that she had dealt with these cases. It is true that she did not remind me that they had been struck out and neither of course did she tell me that she had broken the Accounts Rules or paid off supposed claims from Mrs H.
>
> This is also made clear by the first paragraph headed Paragraph 3 of actual page number 6 (incorrectly numbered 3 of my letter). After page 3 of my letter please renumber 4 to 8 instead of present numbers which are blank, 2, 3, 4 and 5.
>
> My letter of 1st June should be read in the light of the above qualification. I believe it is in the interest of completeness that this letter should be added to my response so that the Adjudication Committee can see it on the 8th instant. Please confirm that you will put it with my correspondence and further points."

30. It was *RESPONDENT 1*'s case that having made a mistake he corrected it as soon as he became aware of it. It was further the case that the files of Mrs W and Mrs H had been sent to The Law Society pursuant to a request made under Section 44(b) of the Solicitors Act 1974. At the time when the incorrect letter had been sent by

RESPONDENT 1 to The Law Society it was in possession of the full files from which the true position would have been self-evident.

31. The question had to be asked when does a mistake become a lie? In the submission of the Applicant it was when that mistake was repeated and if repeated many times it became a lie and not a mistake. It was submitted on behalf of *RESPONDENT 1* that there was no prima facie evidence that he had been dishonest. He had made a mistake. He had corrected it. He had not been dishonest. He had written a letter that corrected an earlier mistake. He had prepared a chronology that was correct and had explained his error by the fact that he had exercised some haste in responding to The Law Society and had not had the assistance of his usual secretary. The allegation of dishonesty had been made in the light of a suggestion that *RESPONDENT 1* and Ms Entwisle had been complicit in certain nefarious activities. It was a quantum leap to decide that *RESPONDENT 1*'s letter was misleading and that he misled The Law Society when he was in fact at the time not complicit with any nefarious activity and he was trying to sort out a considerable muddle.

32. There was no evidence before the Tribunal upon which it could safely rely to prove that *RESPONDENT 1* had been dishonest. The Applicant had a heavy burden of proof and the standard to be applied by the Tribunal in reaching its decision was the criminal standard.

33. It was conceded that *RESPONDENT 1* was in charge of the firm's Chester group of offices but Ms Entwisle was a partner and manager of her department and the supervisor of her staff. *RESPONDENT 1* trusted and respected Ms Entwisle who was running the firm's personal injury department.

34. The Applicant had not provided sufficient evidence to enable the Tribunal to conclude that *RESPONDENT 1* had been dishonest.

35. The Tribunal was invited to take into account the fact that Ms Entwisle had pursued a frolic of her own and had concealed her negligence and her subsequent actions from *RESPONDENT 1* over a long period of time.

36. Both parties agreed that the appropriate test to be applied by the Tribunal was that in the case of Twinsectra -v-Yardley making reference to Royal Brunei Airlines -v- Tan.

The Tribunal's Findings in relation to the allegation of dishonesty made against *RESPONDENT 1*

37. The Tribunal noted that much of what *RESPONDENT 1* told The Law Society was correct. The Tribunal noted that he fairly quickly, by letter, put right an incorrect assertion he had made in an earlier letter. He had sent a chronology to The Law Society which conflicted with the body of his letter in which he made an incorrect assertion. It was noted that the client files concerned were in the hands of The Law Society and they themselves would have disclosed the accurate position.

38. With regard to the matter of Mrs H the Tribunal had before it no evidence that *RESPONDENT 1* was aware of any claim made by Mrs H against his firm. The Tribunal were not satisfied that he had been aware that damages had been paid to Mrs H. The Tribunal accepted the possibility that following his conversation with

Eversheds and the exchange of letters with that firm addressed to him by fax *RESPONDENT 1* may have believed the matter to be one in which there was a relatively minor claim for costs which could be handled by Ms Entwisle. He was wrong not to have taken a more acute interest in the matter nor to have followed up how Ms Entwisle intended to, and did, deal with it and its resolution. The Tribunal accepted that *RESPONDENT 1* had made a mistake and had acted carelessly and indeed recklessly but were not satisfied that he had sought to mislead the Law Society.

39. *RESPONDENT 1* had not kept close control of the matters where complaint had arisen but had referred such matters to Ms Entwisle.

40. Against the background of complaints and the fact that *RESPONDENT 1* knew of other cases of negligence, the Tribunal considered that *RESPONDENT 1*'s laissez-faire attitude was wholly unacceptable but it concluded that a member of the public or a member of the solicitor's profession knowing all of the facts could not be satisfied that he had been dishonest. He had been less than careful but had recognised his error and had put it right within a reasonable period of time and had done so upon his own initiative without any question first being raised by The Law Society. The Tribunal accepted that the Respondent himself recognised that he had made a mistake and had not exercised the care that he should have done. He denied that he had behaved dishonestly and did not believe that anyone else would have thought that to be the case.

41. The Tribunal found that in relation to the statements made to The Law Society referred to in the said allegation 3 The Law Society had not discharged the burden of proof which fell upon it and had not proved its case to the high standard required for the Tribunal to make a finding that in relation to the said materially false and misleading statements *RESPONDENT 1* had also been dishonest.

42. The Tribunal stated that though the dishonesty allegation in the said allegation 2.3 had not been proved beyond reasonable doubt, the remainder of that allegation by which *RESPONDENT 1* was accused of making statements to The Law Society in the course of an enquiry that were materially false and misleading was a serious matter that had still to be decided. The Tribunal agreed that to the suggestion of the parties that the case be adjourned until the following day so that consideration could be given and views exchanged on how the remainder of the case might proceed.

The revised allegations

43. When the case continued on 7th March 2006 the parties announced, as stated above under 'the history of the matter', that *RESPONDENT 1* and Ms Entwisle admitted all of the allegations in the amended form of 7th March save that Ms Entwisle denied dishonesty. In issue also was the seriousness of the conduct overall of each Respondent. The case proceeded on the revised allegations.

<u>The Case of Mrs H</u>

44. On 16th September 1995, Mrs H was injured in an accident at work. Through legal expenses insurers she instructed Bartlett and Son in connection with a claim for

compensation for her personal injuries and other losses. At all material times Ms Entwisle had day to day responsibility for the claim.

45. Court proceedings were commenced on behalf of Mrs H on 6th May 1997. As a result of a failure adequately to prosecute the claim, it was struck out. The court made an order to this effect on 7th October 1999.

46. In about May 1999 Mrs H decided to change solicitors.

47. Mrs H complained to The Law Society on 9th September 1999 that she had received little information on her case from Bartlett and Son; that her telephone calls were rarely returned; and three complaints to *RESPONDENT 1* about service (he was the complaints handling partner) had not been dealt with. Her files and papers had not been forwarded to her new solicitors.

48. The Law Society's enquiry began after Mrs H's claim had been struck out. Neither she nor The Law Society knew that that had happened.

49. On 22nd October 1999 Bartlett and Son wrote to Mrs H. The letter acknowledged the complaint and offered apologies. The firm wished to resolve the matter to Mrs H's satisfaction, and said that it would instruct a barrister to advise on the value of the claim.

50. This letter was written October 1999 after a telephone conversation on the same date between Mrs H and *RESPONDENT 1*.

51. It was apparent from the telephone conversation of 22nd October that Ms Entwisle appreciated that Mrs H had a claim against Bartlett and Son, but she did not inform Mrs H of this and she was not told that she must obtain independent legal advice.

52. On 3rd November 1999 Ms Entwisle wrote to Mrs H with a copy of the barrister's opinion and Mrs H was thereby advised about the value of her claim.

53. Ms Entwisle paid the fees of Eversheds, the solicitors acting for the defendants to Mrs H's claim.

54. On 29th October 1999 Ms Entwisle wrote to EA, a consultancy which had been assisting Mrs H, in terms that were misleading. The letter was factually truthful to the extent that the claim was indeed being looked into but it did not tell the whole truth in that no mention was made of the strike out.

55. On 8th November 1999 Ms Entwisle spoke with Mrs H by telephone, when she informed Mrs H that she had been unable to find a pain clinic local to where she (Mrs H) resided. In that telephone conversation Ms Entwisle invited Mrs H to consider how much she would accept to see an end to her claim. The claim had by then become struck out, and there was a clear conflict of interest in seeking instructions and offering advice.

56. On 9th November Ms Entwisle had a further telephone conversation with Mrs H when it was agreed that Bartlett and Son would pay Mrs H £20,000 in full settlement. On the same day Ms Entwisle wrote to Mrs H with a cheque for that sum.

57. Mrs H's file was never released to her new solicitors. It was inspected after its production to The Law Society following a demand pursuant to section 44(B) Solicitors Act 1974. The first request for the file by The Law Society was met with Bartlett and Son's letter of 15th March 2000 stating:

> "We believed that we had resolved this matter to Mrs H's satisfaction last year and that her complaint was accordingly withdrawn".

58. On 13th July 2000 the Law Society wrote to Ms Entwisle to commence enquiries into the professional conduct issues that had emerged from an analysis of the file. She did not reply. The Law Society sent a further letter on 16th August 2000.

59. Ms Entwisle responded to The Law Society on 21st August 2000 confirming that she had spoken with Mrs H on 22nd October 1999 and that she made the handwritten attendance note on the file. She had been supervising the claim; she accepted that Mrs H had been inadequately informed about her claim. Ms Entwisle sought to explain the failure to recognise the conflict of interest or to insist that Mrs H obtain independent advice, but admitted that with hindsight she should have given further consideration to the professional conduct implications.

60. *RESPONDENT 1* wrote to The Law Society on 1st September 2000 acknowledging that he had requested Mrs H's file in January 1999. Ms Entwisle had been left to deal with the complaint notwithstanding the fact that *RESPONDENT 1* was responsible both as the sole equity partner at the office and as the designated "complaints partner". *RESPONDENT 1* did not retain and pursue Mrs H's matter despite the strongly worded letter of complaint from Eversheds.

61. *RESPONDENT 1* had been pressed by his brother to deal with complaints made to The Law Society.

62. Ms Entwisle had authority to sign large cheques on client account but had authority to sign only modest cheques on office account. Against the background of the dispute about financial matters between the two equity partners and the control of office account by Mr JA Bartlett Miss Entwisle had perceived (and she said *RESPONDENT 1* also perceived) that any large payment by the firm to Mrs H could not be paid from office account. *RESPONDENT 1* had explained that he believed that the sum required to satisfy Mrs H's claim was not significant. He was aware of the costs to be paid to Eversheds and he had believed that Mrs H's claim would be worth about £1,000. £1,000 had been paid into court by the defence. Mrs H had been videoed completing tasks which she claimed her injury prevented her from undertaking. *RESPONDENT 1* said he had trusted and relied upon Ms Entwisle to deal properly with the matter.

63. Ms Entwisle in her oral evidence said that she had not mentioned to the barrister instructed to advise on quantum that Mrs H's claim had been struck out. She said she did not consider it relevant to the advice being sought. Counsel's advice had been that at its upper end the claim might be worth some £12,000.

64. Ms Entwisle said it had been left to her to resolve Mrs H's matter. She had found it very hard to negotiate the terms of a settlement with Mrs H. She knew she had been

negligent. Mrs H was forceful. Eventually she had agreed to make a payment of £20,000 to Mrs H. Ms Entwisle had paid two tranches of costs to Eversheds and £20,000 to Mrs H by way of client account cheques which she signed herself.

65. She explained that because of the difficulties in the practice caused by the dispute between the two equity partners, cheques could not be drawn on office account. It was recognised that office money had to be utilised to make Mrs H's payments. To achieve this end cheques received by the firm from third parties to settle bills of costs due to Bartlett and Son were paid into the client account and credited to Mrs H's account.

66. Ms Entwisle said that she had completed client account "paying in slips". Copies of these were before the Tribunal. On two of the slips the narrative was "TP *(third party)* costs" and on one the narrative was "on account of costs". Ms Entwisle said that the latter narrative was an error, as all of money so utilised represented costs actually due to the firm.

67. It was Ms Entwisle's position that she acted as she did on *RESPONDENT 1*'s instructions. *RESPONDENT 1* had instructed her always to pay all cheques received into client account. The action of paying costs cheques into client account had not been unusual. The monies were monies due to the firm and in making payment to Mrs H she paid out the firm's money from client account. She had paid the costs cheques in direct and had not made any transfers to Mrs H's account.

68. Ms Entwisle said that she relied on her experienced senior partner in this regard. He had instructed her to take the steps she did. She believed that the client received the best compensation that she was likely to achieve if the case had reached a conclusion in the ordinary course. Ms Entwisle said she had accepted *RESPONDENT 1*'s assurance that the adoption of this strategy was not a breach because the firm was entitled to the money.

69. Ms Entwisle considered her authority at the firm to have been undermined. She said that *RESPONDENT 1* had been angry with her when she made mistakes. He shouted. She had remonstrated with him for putting her and her staff under too much pressure. Ms Entwisle had worked long and unsocial hours; she and her staff had costs targets to meet. *RESPONDENT 1* agreed unrealistic timescales for completing cases with an introducer of work without consulting with her, and she was acutely aware of the dispute between the two equity partners which might have led to the closure of the firm. She herself had acted as a mediator between them in an attempt to assist with the resolution of their dispute.

70. Ms Entwisle said she had never denied *RESPONDENT 1* access to her files. Where she had written letters, she had either drafted them for *RESPONDENT 1*'s approval or she had, for example, typed them while *RESPONDENT 1* had been telling her what to say. She cited the example of a letter she had written to The Law Society, stating that *RESPONDENT 1* was responsible for her supervision which he recalled from The Law Society replacing it with a letter that did not make reference to his responsibility for supervision.

71. In his letters *RESPONDENT 1* denied all knowledge of Ms Entwisle's attempt to compromise Mrs H's potential claim against the firm. He denied that he had

instructed her to act as she did and had not instructed her to pay the firm's costs on other matters into client account in order that funds be available in client account to make payments out to Mrs H or to make payments of costs to her opponents' solicitors.

The case of Mrs W

72. The firm had acted for Mr T, the driver of a car suffering an accident when Mrs W was a passenger. Mr T's claim had been concluded. Following the issue of proceedings on behalf of Mrs W, it became apparent to Ms Entwisle that Mr T might have to be joined as an additional defendant as the Treasury Solicitor, representing the other driver in the accident, denied liability for Mrs W's injuries, blaming Mr T. Ms Entwisle wrote to Mr T on 18th April 1997. It was apparent from her letter that she recognised the existence at least of a potential conflict of interest between Mr T and Mrs W. By then she had received Counsel's view on this difficulty.

73. By a letter of 23rd April 1997 Ms Entwisle intimated that she would have to serve proceedings on Mr T, thereby acting against a former client. The Treasury Solicitor expressed his concern about that state of affairs. Ms Entwisle should have informed Mrs W and ceased to act. She did neither.

74. Mr T instructed other solicitors. Ms Entwisle did not reply to three letters addressed to her by that firm.

75. Mrs W complained to The Law Society about a number of service issues. The Law Society wrote to the complaints handling partner at Bartlett and Son. This was *RESPONDENT 1*. Mrs W was concerned about her claim and instructed other solicitors who wrote to Ms Entwisle who did not reply.

76. Notwithstanding the existence of the conflict of interest between Mrs W and Mr T, Ms Entwisle continued with the prosecution of the claim. Mrs Entwisle appreciated that her conduct of the claim had been inadequate and that she had disregarded her own assessment of the existence of a conflict of interest. The file was passed by Ms Entwisle to a colleague to make an application to have Mrs W's claim set down for hearing. An attendance note showed the outcome of the application as follows:

"JE /T351 August 12, 1998

ATTENDANCE NOTE

Attendance at Mold County Court DJ Reeves

Plaintiff's Application to set down and transfer

Fax received from 1st defendant's solicitors opposing application They felt that matter already struck out and that not ready for trial in any event. Complained that we had not been in touch since June last year and that none of Auto Directions complied with.

Confirmed to Court that Plaintiff was passenger in the 2nd Def vehicle and dispute lay between the Defendant's here. Confirm that we had not been in conduct with Def sols

for some time due to difficulty obtaining instructions (Plaintiff having moved without telling us.). However Def sols had not contacted us either to progress matters.

DJ calculated that strike out was 21 July 1998 and Application dated 20 July 1998. felt further directions would be appropriate t in this matter.

ORDER

1 The Court, finding that the matter does not stand struck out pursuant to Order 17 rule 11, it is ordered that the Automatic Directions be set aside and that these further directions apply.

i) All parties do simultaneously exchange witness statements within 56 days of the date herein.
ii) Thereafter the matter be transferred to Wolverhampton County court and listed for final hearing on the next available date with a time estimate of 3 Hours.

2. Costs in this cause

CSM

Hearing 10 mins."

77. There had been inadequate communication on the part of Ms Entwisle with Mrs W. Letters addressed by Ms Entwisle to Mrs W had been sent to the wrong address, even though Mrs W had notified her change of address.

78. An internal memorandum on Mrs W's file confirmed that Ms Entwisle realised that as at 3rd December 1998 Mrs W's claim had been struck out. A striking out order was not made until 8th April 1999.

79. A letter of complaint was addressed by the Treasury Solicitor to *RESPONDENT 1*. A letter of complaint written by Mr T's solicitors to *RESPONDENT 1* had the word 'Janette' written in manuscript on its face by *RESPONDENT 1*. This referred to Ms Entwisle. A fax from the Treasury Solicitor marked for the attention of *RESPONDENT 1* also had a handwritten note 'to Janette' on its face.

80. The Treasury Solicitor spoke to *RESPONDENT 1* on the telephone on more than one occasion. In January 1999, *RESPONDENT 1* had asked for Mrs W's file. Ms Entwisle, *RESPONDENT 1* said, refused to hand it over. *RESPONDENT 1* had asked Ms Entwisle to deal with the complaints.

81. On 15th April 1999 Mr T's solicitors wrote to Bartlett and Son to state that Mrs W's claim had been struck out for want of prosecution. Details of their costs were enclosed. Bartlett and Son did not respond.

82. Mrs W was not informed that her claim against Mr T had been struck out.

83. In an internal memorandum to *RESPONDENT 1* dated 19th October 1999 Ms Entwisle attached her draft letter to The Law Society showing that *RESPONDENT 1* delegated at least part of the process of dealing with complaints to Ms Entwisle. In that letter The Law Society was told that Mrs W had not been informed that her claim could not be pursued while there was a dispute about the liability of the drivers; her claim against the two drivers had not been abandoned as stated in the letter. The Law Society was not informed that the claim had been struck out.

84. Ms Entwisle had paid the costs of Mr T's solicitors. Mrs W had not been informed of what had transpired.

85. On 9th February 2000 The Law Society wrote to Ms Entwisle making reference to the receipt of *RESPONDENT 1*'s letter of 18th October 1999 and made further enquiries. *RESPONDENT 1* drafted a reply and Ms Entwisle replied by letter dated 22nd February 2000. In his letter to the Law Society *RESPONDENT 1* stated that he dealt with correspondence in February and March 2000. He should have called for the file again, if indeed he did not actually see it. Ms Entwisle admitted a failure adequately to scrutinise the conflict of interest question. She admitted that Mrs W's claim was never actively pursued and that she acted against Mr T when she should not have done. She also admitted her failure to reply to correspondence from both Mrs W and Mr T's solicitors.

86. Ms Entwisle reached an agreement with Mrs W whereby she was paid. Mrs W had received payment from the firm, but she had not been informed why the payment had been made or that she must obtain independent legal advice. Ms Entwisle acknowledged inadequate communication with Mrs W and accepted that she failed to act in her client's best interests. The Law Society was not informed of the mechanics of the settlement.

87. *RESPONDENT 1* knew that there was a conflict of interest and that "appropriate action should be taken". It was not. *RESPONDENT 1* told The Law Society in his letter of 4th May 2001 that Mrs W's complaint was referred to Ms Entwisle to be dealt with. *RESPONDENT 1*'s assertion that complaints were referred to him and investigated thoroughly by him was not supported by the documents.

88. Mr T's new solicitors, Rausa Mumford, had written to *RESPONDENT 1*. In his letter to The Law Society of 4th May 2001 *RESPONDENT 1* confirmed that he had received the letter and had asked Ms Entwisle to deal with the issues raised. *RESPONDENT 1* did not return telephone calls on two occasions.

89. Ms Entwisle accepted in her letter to the Law Society referred to in paragraph 85 above that in this matter, "This failure is mine and mine alone and the problems which transpired are not something I would seek to attribute to a lack of supervision". In a second letter *RESPONDENT 1* said that he had warned Ms Entwisle about conflict, as had Rausa Mumford and Counsel.

90. By the time these letters were written, *RESPONDENT 1* had received various letters from his brother expressing concern about complaints and had, he asserted, asked for files but had been denied them by Ms Entwisle. Ms Entwisle denied that she had refused to provide files. *RESPONDENT 1* said he had considered dismissing Ms Entwisle and was aware that there was a serious problem with his firm's complaints

record and in connection with the behaviour of Ms Entwisle. He accepted that with hindsight he handled the situation inadequately as an equity partner with overall responsibility.

The case of Mr B

91. Ms Entwisle acted for Mr B in a personal injury claim.

92. Mr B was not given the information on costs to which he was entitled under the provisions of Rule 15 of the Solicitors Practice Rules. He was not informed that he might be personally liable for costs orders against him. There was a payment into court: he was not informed of the costs consequences of it. He was not given information about his case as it progressed.

93. On 7th July 1999 Mr B complained to The Law Society. A hearing date in connection with the claim had been scheduled for 26th January 1999. The defendant to Mr B's action had paid into court the sum of £3,500 and Ms Entwisle telephoned Mr B on the morning of the hearing. Unbeknown to Mr B, Ms Entwisle put her signature to the minutes of a consent order. Mr B received £3,500 reasonably promptly after the hearing but there was a failure to account in relation to the balance of £900 in a reasonable time.

94. Mr B had been misled by Ms Entwisle. The balance of £900 was never to be paid by the defendants but had been drawn by Ms Entwisle from another source. A letter from Ms Entwisle falsely gave Mr B the impression that the entire sum of £4,400 which he had agreed to accept had come from the defendants.

95. Mr B was unaware that a costs order had been made against him until he was served with a warrant of execution in March 1999 compelling him to make enquiry of the County Court. Provision for the payment of costs by Mr B was contained in the minute of order signed by Ms Entwisle on his behalf without his knowledge or authority.

96. Mr B wrote a letter of complaint to *RESPONDENT 1* on 14th April 1999. He did not receive an answer to that letter.

97. On 16th December 1999, solicitors acting for the defendant in the action wrote to *RESPONDENT 1* enclosing a copy of the default costs certificate. An earlier letter to Ms Entwisle did not attract a response.

98. Ms C Morris, then a trainee solicitor wrote a letter dated 17th March 2000 commencing with the words "…the writer has been asked to write to you…". It was *RESPONDENT 1*'s contention that the letter was 'probably' written by Miss Morris at Ms Entwisle's request. Ms Entwisle asserted that *RESPONDENT 1* instructed Miss Morris.

99. Miss Morris's letter offered apologies to Mr B for the lack of communication and poor standard of client care. The letter correctly described the procedure for obtaining a consent order but failed to tell Mr B that the form had been signed on his behalf. The letter incorrectly told Mr B that costs orders for procedural matters were a common occurrence. They were only common when procedural matters were not

attended to properly: the costs order was made against Mr B because of the failure of his solicitors. In this respect Mr B was misled. A sum of money was paid to Mr B, although the letter itself was silent as to the amount. The amount was disclosed in an attendance note made by The Law Society of a conversation on the telephone with Mr B dated 14th April 2000 in which it was recorded that Mr B had been sent a cheque for £800 and a further cheque for £400. The first amount was to reimburse Mr B and the second was by way on compensation for his inconvenience.

100. In her oral evidence Ms Morris said that she had not been instructed by *RESPONDENT 1* but reported directly to Ms Entwisle who had autonomy from *RESPONDENT 1* to deal with matters including ethical matters.

The Case of Mrs O

101. Mrs O was introduced to Bartlett and Son in about November 1994 by a claims management company. Tracy Chaloner, an unadmitted clerk, had the conduct of the claim under the supervision of Ms Entwisle. She was described by *RESPONDENT 1* in his letter to The Law Society of 4th August 2000 as "an experienced legal clerk working under the supervision of Ms Entwisle".

102. The referral documentation of the claims management company showed that car hire for Mrs O had been authorised. Bartlett and Son received an interim payment of £2,000 for Mrs O in May 1998 and used some of it to pay for the hire charges incurred without Mrs O's authority.

103. In the first letter written by Bartlett and Son to Mrs O in connection with her claim dated 8th November 1994 she was not given information about costs and other matters required by Rule 15 of the Solicitors Practice Rules. No information was given to her about costs, the length of time it might take to deal with the claim, who was responsible for the day-to-day conduct of her case, and to whom she should complain in the event of a difficulty with service.

104. The defendants to Mrs O's claim made the following payments into court:

(a) £2,100 on 16th November 1995;

(b) £5,400 in 27th November 1996;

(c) £6,000 on 9th July 1998.

105. A letter from Bartlett and Son dated 9th January 1996 purported to be advice to Mrs O about the first payment of 16th November 1995. The Civil Procedure Rules required a decision on payments into court to be made within 21 days. That period had elapsed by the time the letter was written.

106. Bartlett and Son sent a letter dated 28th November 1996 to Mrs O following the receipt of the second notice of payment into court. The amount actually paid into court was £5,400, which the letter incorrectly described as £661.17. By the date of the letter the amount available to Mrs O for acceptance was £7,500.

107. Mrs O was not aware of the order made in December 1997 nor was she informed of the hearing date. Bartlett and Son had addressed a letter to Mrs O dated 21st December 1998 informing her that her claims for loss of earnings, treatment and prescription costs and parking charges, details of which had not been supplied, had been dismissed by the court. Her remaining claims for injury, vehicle damage, hire charges and sundry costs were continuing. Mrs O was given wholly inadequate guidance and assistance in connection with the preparation of the paperwork that was required. In fact proceedings were commenced in the court within six weeks of the incident, and without any medical evidence being available. The commencement of the proceedings led to the payment into court, which in turn enabled the hire charges to be paid promptly. These failures amounted to a failure to act in Mrs O's best interests.

108. Mrs O complained to the Law Society. She had written to Bartlett and Son to request detailed information about her claim and interpreted the reply she received as a refusal to provide the documents requested. The information provided to her about the payments into court was incorrect. Mrs O was not informed of the third payment into court on 9th July 1998. It was rejected without her instructions.

109. Mrs O had not been informed of an interim payment in her favour of £2,000. Mrs O had not been informed of the costs orders against her.

110. It was hoped that Mrs O's case might be resurrected.

111. Mrs Hughes (née Chaloner), the unadmitted clerk at Bartlett and Son, in her oral evidence said that she had written to the client, Mrs H, a letter that was not true. She had done so on the instruction of Ms Entwisle. Mrs Hughes agreed that she had heard Ms Entwisle and *RESPONDENT 1* shout at each other. She said that *RESPONDENT 1* did not take any direct interest in her work.

112. Miss Morris, a solicitor, who had formerly been a trainee and an assistant solicitor with Bartlett and Son, accepted that she had made an error in a case. She had handed the file to Ms Entwisle as the head of the department. She had not had direct contact with *RESPONDENT 1* about her cases.

113. Mr Morris, a solicitor at Bartlett and Son, had been asked to deal with a case where the firm had been negligent. He had written to Ms Entwisle asking how the matter was to be resolved making reference to the problems that there were in drawing office account cheques. He had not been told that the approach to be adopted was to pay office money into client account and then draw upon it to settle the client's claim against Bartlett & Son. Mr Morris had no doubt that the proper course to be adopted in such matters was to notify the firm's indemnity insurer and tell the client what had happened and that he should seek independent legal advice. Mr Morris had always found *RESPONDENT 1* to be honest and had no reason to doubt his integrity.

114. Mr JA Bartlett agreed that he found it necessary to keep a tight rein on the firm's financial affairs. He considered that his brother did not handle money well and fell down in management areas. Despite his brother's shortcomings, Mr JA Bartlett believed that *RESPONDENT 1* was an honest man who was to be trusted.

115. According to Ms Entwisle, at the end of August 2000 *RESPONDENT 1* informed her that he felt he could not admit to having known of her making payments to Mrs H or Mrs W as she had done. He said he had realised only recently that this was a serious breach of Law Society Rules, and that this was less of a problem for Ms Entwisle than for him as she had already decided to leave the profession (having given notice in June). Ms Entwisle was shocked and dismayed at *RESPONDENT 1*'s stance and told him so. She said she knew that other fee earners in her department were aware of *RESPONDENT 1*'s previous policy on potential claims against the firm, and made sure Ms Entwisle notified them of his change of heart. Ms Entwisle had advised them to forward any other potential claims to *RESPONDENT 1* and insisted that he handle them personally from then on.

The Submissions of the Applicant

116. *RESPONDENT 1* accepted that when he received complaints in matters of which Ms Entwisle had conduct he referred those matters to her to be dealt with. *RESPONDENT 1* in this manner abdicated the responsibility that was his. He was wrong to delegate the task of dealing with complaints to Ms Entwisle. He did not check up on what steps Ms Entwisle had taken after he had given her instructions or guidance. *RESPONDENT 1*'s position had been wholly unacceptable, even if he had not given instructions to Ms Entwisle to act as she did, as she claimed.

117. Ms Entwisle had not acted openly and honestly with certain clients.

118. Where Miss Morris had been instructed to deal with a complaint, it was inappropriate that such a junior member of staff had been given that task. It amounted to a failure to operate a proper complaints handling procedure. Letters written to clients were inadequate, inaccurate and represented a failure to act in the client's best interests.

The Tribunal's Findings of Fact

119. *RESPONDENT 1* did not give oral evidence. He had, however, explained his position in a number of written documents placed before the Tribunal. *RESPONDENT 1* was considered to be an honest and trustworthy solicitor by his equity partner, who was also his brother, and by Mr Morris, a solicitor employed by Bartlett and Son.

120. *RESPONDENT 1* had accepted that he had not dealt with complaints about his firm as he should have done. It was his assertion that he relied on Ms Entwisle, whom he had trusted.

121. *RESPONDENT 1* denied that he had given instructions to Ms Entwisle to act as she did. *RESPONDENT 1* said that Ms Entwisle had acted as she did, having been negligent in her conduct of clients' affairs, without his knowledge and certainly without his authority.

122. Ms Entwisle said that she took the steps she did upon the instruction of *RESPONDENT 1*, the equity partner in charge of the Chester group of offices where she worked as a salaried partner.

123. The Tribunal did not believe Ms Entwisle's evidence in this respect. The Tribunal had oral evidence from two witnesses that *RESPONDENT 1* was a man of honesty

and integrity. It was clear to another young solicitor in the practice, Mr Morris, how a client should be handled where the firm had been negligent. The "scheme" for avoiding payment of "compensation" from office account had not been communicated to him at any time even though he had been asked to handle a case where the firm had been negligent and he was aware of the limitation of payments from office account.

124. The Tribunal recognised that Ms Entwisle had been given a great deal of responsibility and subjected to considerable pressure of work at an early stage in her career, probably before she had sufficient experience to cope with such a workload. This was symptomatic of *RESPONDENT 1*'s lack of support and lack of "hands-on" management.

125. The Tribunal noted Ms Entwisle's evidence that *RESPONDENT 1* became angry and shouted at her when she had been negligent. Ms Chaloner in her oral evidence confirmed that she had overheard *RESPONDENT 1* shouting at Ms Entwisle in Ms Entwisle's office and that Ms Entwisle had shouted back at him.

126. Both Ms Chaloner and Ms Morris in their oral evidence said that *RESPONDENT 1* had taken no interest in their work and they had been supervised by Ms Entwisle. Both said they had been instructed by Ms Entwisle to send letters to clients that contained untruths.

127. The Tribunal found that in the light of the pressure upon her and the lack of support given to her Ms Entwisle was responsible for the practice of paying monies received for costs from other clients into client account for the credit of a particular client ledger in order to meet payments to be made to that particular client.

128. This scheme enabled Ms Entwisle to make payments which she recognised had to be made from office money thereby circumventing the controls on office account expenditure imposed by Mr JA Bartlett. She herself was authorised to sign client account cheques and this enabled her to sign the client account cheques for direct payment to the client concerned without the involvement of anyone else.

129. Ms Entwisle's oral evidence was that when implementing the scheme she had completed the paying-in slips and all of them referred to third party costs received by the firm. In fact one of the paying-in slips referred to "costs on account". Ms Entwisle in her evidence said that this narrative had been entered by her in error - the reality was that the sum paid in represented third party costs. The Tribunal was doubtful about this since the paying-in slip was completed contemporaneously with the receipt of the money and was more likely than not to be correct. However in the absence of clear evidence the Tribunal could not be certain whether in attempting to fund the settlement with the client Ms Entwisle sought to utilise money paid on account of costs in addition to monies paid to settle bills of costs.

130. The Tribunal concludes that Ms Entwisle adopted the above course of action in part to conceal the extent of her errors from *RESPONDENT 1* and also to conceal them from Mr JA Bartlett so that they could not be utilised to fuel the dispute between the two equity partners. Ms Entwisle was covering up her own errors.

131. The scheme had not been thought through. The apparent failure of third parties to pay costs would have come to light in early course and consequently the incorrect payment into client account would have been discovered.

132. Mr JA Bartlett had already been made aware of complaints received by the Law Society. *RESPONDENT 1* had little reason to attempt to conceal instances of negligence at the Chester offices from his brother. A further client negligence claim with which Mr Morris had been entrusted had not been dealt with in the manner of the scheme.

133. The costs monies utilised to pay "compensation" belonged to *RESPONDENT 1* and Mr JA Bartlett as the proprietors of the firm. If *RESPONDENT 1* had been complicit in this improper activity, he would have been depriving his brother of money to which he was entitled and this would, in any event, have been discovered before very long. *RESPONDENT 1*'s complicity in such circumstances is more than improbable.

134. The Tribunal concluded that Ms Entwisle devised the system to compensate clients as she could operate the system herself without reference to or authority from anyone else. Ms Entwisle was not frank with the Law Society, the clients or when seeking Counsel's advice. She had asked junior members of staff to write untrue letters.

135. The Tribunal concluded that Ms Entwisle had not acted upon instructions. Even if she had, she was a solicitor and would have been aware that what she had been instructed to do was wrong. She should not have acted in the way that she did.

136. As it was the Tribunal concluded that Ms Entwisle had devised and implemented the inappropriate scheme for paying clients who had a claim in negligence against the firm. The Tribunal accepted that Ms Entwisle believed that she had addressed the fact that she was not wrongly utilising clients' money. The Tribunal concluded that in her desperation, not the least because of overwork and lack of support, she adopted the course she had formulated. That was dishonest insofar as the clients were concerned and was a dishonest use of the firm's money.

The Mitigation of *RESPONDENT 1*

137. *RESPONDENT 1* admitted the allegations as amended. In general terms this case was principally concerned with the admitted defaults of Ms Entwisle in the four client matters upon which the Applicant relied.

138. The funds used to pay off the clients belonged to the firm, and Ms Entwisle manipulated the accounts of the firm, crediting the relevant client ledgers with funds due to the firm for costs in unrelated cases, to enable her to draw cheques on client account to pay the affected clients.

139. It had been Ms Entwisle's position that although she did the things of which complaints was made, she did them in all respects under the direction of *RESPONDENT 1*. *RESPONDENT 1*'s case was that Ms Entwisle in all respects acted on her own, concealed the true facts from him, manipulated the accounts to enable her to make payments to clients that would never have been approved, and that Ms Entwisle as well as deceiving the clients and *RESPONDENT 1* had defrauded the firm in consequence. The Tribunal had found this to have been established as fact.

140. Having absolute liability as an equity partner, *RESPONDENT 1* had to admit the breaches of the Solicitors Accounts Rules.

141. Ms Entwisle was a partner in the firm and was treated as such. Although a salaried partner, she had all the responsibilities and authority of partner. For historical reasons connected with the capitalisation of the practice and the long involvement of the Bartlett family (for four generations), all partners since 1969 were and always had been salaried, with exception only (in the current generation) of *RESPONDENT 1* and his brother. Such salaried partners were nevertheless treated as equals.

142. Ms Entwisle did not, in terms of her experience and status, require to be supervised in client matters, nor would she herself have expected or readily accepted any such supervision. The work for which she was responsible was well within her capabilities and that of her staff.

143. *RESPONDENT 1* had admitted his shortcomings. The Tribunal had found that he had not behaved dishonestly.

144. The Tribunal was invited to take into account the excellent references written in his support all of which attested to his competence and his integrity. *RESPONDENT 1* had been in practice for 39 years and was 63 years of age. He had enjoyed an unblemished professional career. It was accepted that he and his brother had had partnership disputes. This could not be considered unusual in the case of siblings who practise together. *RESPONDENT 1* and his brother remained in partnership.

145. To a large degree *RESPONDENT 1* was a victim of Ms Entwisle's dishonesty. He had very properly admitted his own failures.

The Mitigation of Ms Entwisle

146. Ms Entwisle's understanding of the Solicitors Accounts Rules was far from complete: at the time she acted on *RESPONDENT 1*'s instructions to settle clients' claims out of the firm's funds without recourse to the firm's insurer. She had come to realise that this was wrong but she relied on the advice and instruction of her principal, and any breach had been unintentional. *RESPONDENT 1* instructed Ms Entwisle always to pay cheques received on behalf of the firm into client account. The accounts department would later transfer funds over into office account where such monies had been in respect of costs.

147. It was whilst under extreme pressure and work overload that Mr Entwisle failed to pursue certain client claims as diligently as she ought to have done.

148. Ms Entwisle had been under extreme pressure because of difficulties in managing a heavy workload and trying to deal with a number of difficulties arising from the firm's relationship with a referral source. This referrer had been putting Ms Entwisle and her staff under pressure to compromise clients' interests. Ms Entwisle received no support from *RESPONDENT 1* in resisting that pressure even though she had asked for assistance. She had been castigated by *RESPONDENT 1* for challenging an important source of work.

149. In the case of Mr T, Ms Entwisle accepted instructions in the belief that the information she held regarding this former client was immaterial as an agreed liability apportionment would be applied to his case without further negotiation. Her assumption transpired to be incorrect. She recognised that it was unwise to continue to act in the circumstances.

150. It was accepted that Ms Entwisle did not operate an adequate complaints handling procedure.

151. *RESPONDENT 1* reviewed Mrs W's file on a number of occasions in Ms Entwisle's presence, particularly when instructing her how to respond to letters from the Law Society. Apart from these requests, made orally, which Ms Entwisle always complied with promptly, he did not ask for the file.

152. Ms Entwisle had not been made aware of any contemplated dismissal nor was she ever subject to any disciplinary procedure. When she tendered her resignation from the firm in June 2000 *RESPONDENT 1* expressed his regret at losing her.

153. *RESPONDENT 1* had been fully aware of any complaints on cases of which Ms Entwisle had conduct. He was also aware of other difficulties experienced by Ms Entwisle in trying to manage her workload and the firm's relationship with the referrer of work.

154. *RESPONDENT 1* specifically told Ms Entwisle to "work out" a suitable settlement figure for Mrs H to save her the delay and distress of appointing separate solicitors to pursue a claim against the firm. She had been persuaded by those arguments despite her concerns.

155. Ms Entwisle had spent some time away from the office on compassionate leave which she believed explained some apparent failures to respond to letters.

156. Ms Entwisle sincerely regretted her failure to reply promptly to correspondence and for continuing to act when there was a conflict of interest but she did so believing this to be more apparent than real as she expected an agreed liability apportionment to be applied to Mrs W's claim.

157. Ms Entwisle had not intended to mislead either the Law Society or the client. She had confined herself to those matters *RESPONDENT 1* instructed her to refer to in correspondence.

158. It had been *RESPONDENT 1*'s practice to instruct Ms Entwisle on how to handle complaints against her rather than taking over complete conduct of the complaint itself.

159. Mr B would have received a standard leaflet on Rule 15 matters at the outset of his claim. Ms Entwisle regretted any failure to remind him of those provisions as and when appropriate.

160. Ms Entwisle had not been able to recall the detail of the case as she did not have day-to-day conduct at all times. She recalled stepping in at the last minute to record details of a settlement negotiated by another fee earner. She believed that there had

been some mix up between this case and another one. Ms Entwisle had to accept responsibility for any errors as she was responsible for the supervision of the fee earner, and particularly with regard to the firm's failure to notify Mr B of the costs order.

161. Ms Entwisle did not believe that she failed properly to supervise Miss Chaloner. She discussed Mrs O's case with her regularly and how to try to overcome the particular difficulties in obtaining appropriate documentation in support of quantum. With hindsight Ms Entwisle had come to see that the communication difficulties in this case were more severe than she appreciated at the time.

162. Ms Entwisle's judgment had been impaired because of pressures she was under. She was finding it increasingly difficult to keep on top of her work and particularly managing the office's relationship with its main referral source.

163. At the time of the hearing Ms Entwisle no longer practised as a solicitor. She had suffered a great deal. She had wished to preserve her good name by responding as she did to the allegations made against her. She regretted and apologised for the mistakes she had made.

The Tribunal's Decision and its Reasons

164. Although the Tribunal considered that Ms Entwisle had been subjected to considerable pressure of work and had not been given an appropriate level of support, it concluded that she had acted dishonestly, and found all of the admitted allegations (in the amended form) against Ms Entwisle to have been substantiated. The Tribunal found that Ms Entwisle had been dishonest applying the principles set out in Twinsectra -v- Yardley. In view of these findings the Tribunal considered that it was right both in the interest of protecting the public and of protecting the good name of the solicitors' profession to order that she be struck off the Roll of Solicitors.

165. The Tribunal took the view that *RESPONDENT 1* had fallen down very badly as an equity partner in the firm, as the partner in charge of the Chester group of offices and in his formal capacity as complaints partner. He had quite simply abdicated his responsibilities. He had permitted a relatively inexperienced solicitor to run a department of the firm in a situation where she was given little support.

166. At a time when he was being pressed by his fellow equity partner to deal with outstanding complaints made to the Law Society which related to a failure by Ms Entwisle to provide clients with a proper service he had simply passed those complaints to Ms Entwisle for her to deal with them. He had not assisted her or followed up the matters in any way. It was the Tribunal's view that as a senior member of the profession, the equity partner in charge of the office and the complaints partner it was incumbent upon him personally to deal satisfactorily with the complaints. It was unacceptable that he should simply pass them to someone else, and particularly not the solicitor whose failures were the subject of the complaints, and thereby wash his hands of the matter.

167. Whilst the Tribunal had not found that *RESPONDENT 1* was dishonest it considered that the case, including the allegation of dishonesty, had been properly, and indeed fairly, brought. The admitted allegations found substantiated against him were at the

serious end of the scale. He had been found to have been guilty of conduct unbefitting in that he had compromised or impaired his integrity by making materially false and misleading statements to The Law Society, and had wholly failed to comply with his duties to handle clients' complaints, ensure that clients were informed of the need for them to seek independent advice and bring conflicts to an end. His derelictions of duty as a solicitor had been so great as to play a principal part in the matters escalating and having to be placed before the Tribunal. The Tribunal considered it right to demonstrate to the solicitors' profession and to the public that such behaviour on the part of a senior member of that profession would not be tolerated. The Tribunal ordered *RESPONDENT 1* to pay a financial penalty of £28,000.

Submissions made by the parties in respect of costs

RESPONDENT 1's Submissions

168. *RESPONDENT 1* sought an order for costs against the Law Society as to some 90% of a total which was put at some £300,000. It was submitted on *RESPONDENT 1*'s behalf that it had been argued at an early stage that there was no evidence put forward by the Law Society that could establish a finding of dishonesty against *RESPONDENT 1*. Despite robust representations to that effect the Law Society had continued with the dishonesty allegation. It had been *RESPONDENT 1*'s strenuous denial of that allegation that had taken up the majority of his adviser's time. The correctness of *RESPONDENT 1*'s argument had been underlined by the fact that the Tribunal had as a preliminary matter found that a prima facie case of dishonesty had not been established.

169. The Tribunal was invited to consider the case of the solicitor Hayes who successfully appealed from an order of the Tribunal that he should pay the Law Society's costs even when an allegation had not been substantiated against him. In that case Mr Hayes had won on everything that mattered in the case. He had successfully rebutted the argument that he had been deliberately dishonest in all respects. It had been expressly rejected by the Tribunal that Mr Hayes had been dishonest. Mr Hopper had argued in that case as he did in this that had the only the allegation been certain honest failures the matter would have been resolved without any disciplinary complaint at all. There was no causal connection between the actions of another or *RESPONDENT 1* which had come before the Tribunal and the allegation against him of dishonesty.

170. In the Hayes case Mr Justice Pitchers said that the decision by the Tribunal had been so clearly wrong that the Court should interfere with it. It was not a case where Mr Hayes should have been deprived of any of his costs. That was not a case where the solicitor's fault had led an honest client mistakenly to believe that he had been wrongly charged for an item. It gave a dishonest client the pretext to attempt to get out of paying fees that he knew to be due and owing. The author of the appellant's misfortune had been his dishonest client who made bogus complaints against him and supported them with perjured evidence. It was accepted that Mr Hayes had no option but to defend the charge of dishonesty with the utmost vigour.

171. Before deciding how the findings made by the Tribunal were properly to be reflected in the costs order, the Tribunal was bound to consider what impact the conduct of the

solicitor had on the costs incurred. There had to be a reasonable and just balance between the order made and what occurred in the proceedings.

172. There had also to be a causal connection between the default and the incurring of costs. It was recognised that in an extreme case it might be possible to say that, but for the solicitor's default, the unsuccessful proceedings would never have been started or would never have come so far as they did with all the costs that were incurred.

Ms Entwisle's Submissions

173. Ms Entwisle's representative did not consider that it was for him to make any submissions in connection with the matter.

The Applicant's Submissions

174. For the Law Society it was said that it was right that the Tribunal be given the opportunity to give a proper consideration as to whether or not *RESPONDENT 1* had been dishonest. The allegation of dishonesty made against *RESPONDENT 1* was put in a limited way. The Law Society's case was based on a relatively small number of documents and submissions. *RESPONDENT 1* did not deny any of the documents and submissions had been made on his behalf. It was accepted that *RESPONDENT 1*'s assertions had prevailed, but the dishonesty aspect of the case had been a small part of the overall picture. The Tribunal had a wide discretion as to costs and could order costs against a Respondent even where no allegation had been found to have been substantiated against him.

The Tribunal's Decision on Costs and its Reasons

175. The Tribunal rejected the submission made on behalf of *RESPONDENT 1* that it had found that there had been no prima facie case on the question of dishonesty. This question had been raised prior to one of the interlocutory hearings and the Tribunal had of its own motion considered whether or not a prima facie case was established by the Law Society's documents, as was required by the Tribunal's procedural rules, and had found such case to have been established.

176. The Tribunal accepted that it had agreed to deal with the allegation of dishonesty on the part of *RESPONDENT 1* as a preliminary matter. The Tribunal had heard the case put by the Law Society, had noted *RESPONDENT 1*'s denial of dishonesty and had considered the submissions made on his behalf.

177. The Tribunal points out that the finding of a prima facie case under its rules of procedure required only a finding that it appeared from the papers that there was a case to answer. That required a very low standard of proof.

178. At this hearing the Law Society had to prove its case to the highest standard of proof if it were to establish that *RESPONDENT 1* has been dishonest.

179. Having heard both parties with regard to the question of dishonesty in a very limited aspect of the case against *RESPONDENT 1* the Tribunal had concluded that the Law Society had not met the high burden of proof which it was bound to meet. The reality of the situation had been that *RESPONDENT 1* had been adamant that he had not been dishonest and had made representations to the Law Society which had not been accepted.

180. It was right and proper that the matter should have been referred to the Tribunal not as an isolated matter but as part and parcel of the other allegations made against *RESPONDENT 1*. It was not the main and only matter alleged against *RESPONDENT 1*. Other extremely serious failings had been alleged against him and, indeed, *RESPONDENT 1* had come to admit them.

181. At the end of the first day, on the basis of the only evidence to be presented by The Law Society on that topic, the Tribunal had found the allegation of dishonesty against *RESPONDENT 1* concerning allegation 3 not proved to the requisite standard. The Tribunal made it clear however that the issue of dishonesty had been properly raised, fairly brought and that the case remained a serious one. *RESPONDENT 1*'s representatives had asked for time to discuss the residual allegations with each other and with the Law Society and the Tribunal agreed to adjourn. The parties reported back to the Tribunal on the second day.

182. On the second day amended allegations were presented to the Tribunal by consent. *RESPONDENT 1* admitted all of them. Then, in addition to the Solicitors Accounts Rules breaches and conduct unbefitting relating to his failures under allegations 4 to 8, *RESPONDENT 1* admitted conducted unbefitting in that he had:

> "compromised or impaired his integrity, good repute and that of the solicitors' profession by making statements to the Office for the Supervision of Solicitors in the course of an enquiry that were materially false and misleading."

This was the same allegation as that initially made absent the allegation that such behaviour had been dishonest.

183. The Tribunal agreed that the case would then proceed on the basis of the admitted amended allegations.

184. *RESPONDENT 1*'s representatives had stated that they would not attend the remainder of the hearing but would leave a notetaker until the case had been concluded so far as Ms Entwisle was concerned, when they would address the Tribunal in mitigation.

185. The Tribunal had pointed out that whilst it was not for the Tribunal to advise *RESPONDENT 1*'s representatives how to conduct their client's case, the case against him was far from over; the Law Society had not finished presenting its case; a determination of guilt or culpability had not yet been made by the Tribunal; the admitted allegations were serious; the issue in the case for *RESPONDENT 1*, as for Ms Entwisle, was the seriousness of the conduct overall, and the gravity of the personal culpability; and that there could be a risk of prejudice to *RESPONDENT 1* were his Counsel to leave the hearing on the second day of a case which had been scheduled to last for five days. They decided to stay and in fact took an active part

over the rest of the hearing, not least in cross-examining the Law Society's witnesses and Ms Entwisle.

186. The issue that had remained to be decided by the Tribunal in relation to *RESPONDENT 1*'s admitted unbefitting conduct was the degree of seriousness to be attached to it. The Law Society maintained throughout that *RESPONDENT 1*'s admitted misconduct was at the serious end of the scale and that all options as to sanction were available to the Tribunal. The Tribunal agreed. The fact that out of those sanctions the Tribunal decided not to strike off was not relevant to the issue of whether the case was successful or unsuccessful as far as the Law Society was concerned, nor did it inhibit the Tribunal in the exercise of its discretion in relation to costs.

187. Conduct which involves admitted compromise and impairment of integrity, and making statements to the Law Society that were materially false and misleading is clearly conduct that could have resulted in a striking off order. The fact that it did not for the reasons given by the Tribunal in its findings did not convert the case into a success for *RESPONDENT 1* such as to justify his being awarded his costs, or avoiding payment of the Law Society's costs.

188. In answer to *RESPONDENT 1*'s assertion that if the matter had been put essentially as a failure to operate the complaints procedure correctly without the accusation of dishonesty the case would have been admitted much earlier and costs would have been avoided, the Tribunal found that the dishonesty allegation had been properly raised for adjudication. It was relevant that the same conduct that involved "compromise and impairment of integrity" and "making statements to the Law Society that were materially false and misleading" (most serious matters) was not admitted until the second day of the hearing, nor was its seriousness decided until the conclusion of the hearing. It was because of his reprehensible behaviour that *RESPONDENT 1* was the author of his own misfortune.

189. Even though the Tribunal found *RESPONDENT 1* not to have been guilty of dishonesty, he had admitted that the conduct leading to the allegation of dishonesty did amount to conduct unbefitting a solicitor in that he compromised or impaired his integrity, good repute and that of the solicitor's profession by making statements to the Law Society in the course of an enquiry that were materially false and misleading. That admitted allegation was based on precisely the same conduct upon which the allegation of dishonesty had been founded. It was an extremely serious matter for that allegation to have been substantiated against *RESPONDENT 1*. It was because of this that the Tribunal considered that *RESPONDENT 1*'s case was very far from being on all fours with that of the successful solicitor appellant from an order of the Tribunal that he should be required to pay the Law Society's costs, Mr Hayes.

190. The Tribunal concluded that it could exercise its discretion on the question of costs in the light of all of the facts in the case before it.

191. In its Reasons the Tribunal had made it plain that it considered that *RESPONDENT 1* had abdicated his clear responsibilities. It was in the main for that reason that the allegations against him had arisen and because of his failure to support and assist a junior partner at a time when she had been placed under very considerable pressure the whole debacle had occurred. It is the Tribunal's view that in such circumstances,

even though Ms Entwisle had been found to have acted dishonestly, culpability for what occurred was in no small measure that of *RESPONDENT 1*. It remained until the evidence had been aired a distinct possibility that a finding of dishonesty might have been made against both *RESPONDENT 1* and Ms Entwisle.

192. The Tribunal made no order that the Law Society should make any contribution towards the costs of *RESPONDENT 1*'s defence.

193. Having regard to the respective responsibilities and culpabilities of the two Respondents, the Tribunal concluded that it would be right that *RESPONDENT 1* pay 80% of the main costs and that Ms Entwisle pay 20% of the main costs, which were to be subject to a detailed assessment if not agreed between the parties.

194. The Tribunal also gave careful consideration to the costs incurred as a result of the four interlocutory hearings. It had been *RESPONDENT 1*'s application on 24th January 2006 that his case be severed from that of Ms Entwisle. He had been unsuccessful in that application and it was right that in the ordinary way costs should follow the event.

195. In the light of the outcome of the other three interim applications it was right that each party should bear its own costs relating to each of those applications.

Dated this 7th day of June 2006
On behalf of the Tribunal

A G Ground
Chairman