No. 8846-2003

IN THE MATTER OF DECLAN ADAMS, a solicitor and LIAQAT ALI MALIK, a registered foreign lawyer

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974
and the Courts and Legal Services Act 1990

Mr A H Isaacs (in the chair)
Mr J C Chesterton
Mrs V Murray-Chandra

Date of Hearing: 19th, 20th, 21st, 22nd and 23rd July 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors (the OSS) by Stephen John Battersby, solicitor and partner in the firm of Jameson and Hill of 72-74 Fore Street, Hertford, SG14 1BY on 1st July 2003 that Declan Adams (a solicitor) of Prestwich, Manchester, and Liaqat Ali Malik (a registered foreign lawyer) of Malik Laws solicitors, Cheetham Hill Chambers, 577-579 Cheetham Hill Road, Manchester, M8 7JE 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 thinks fit.

The allegations set out in the statement referred to in the application were amended following a hearing before the Tribunal on 25th March 2004.

The allegations against the Respondent are set out below in the amended form.

In these Findings the Tribunal has referred to Mr Adams the First Respondent as R1 and Dr Malik the Second Respondent as R2.

The allegations against the Respondents are set out below.

Against R1 and R2

(i) That they breached *or caused to be breached** regulation 72 of the Civil Legal Aid (General) Regulations 1989 by failing to ensure that reports were made to the Regional Director upon completion of publicly funded case;

(ii) That they have permitted overclaims to be made for payments on account in publicly funded cases;

(iii) That they have permitted to be used in connection with publicly funded cases an unreliable and inaccurate time recording system;

(iv) That they have failed to keep proper accounting records in connection with publicly funded cases;

(v) That they have permitted to be claimed as disbursements fees for translation services which were not justified in publicly funded cases.

Against R1 alone

(vi) That, contrary to Rule 1 of the Solicitors Practice Rules he allowed his position as a solicitor to be used by R2 so as to enable R2 to carry out a law practice without R1 supervising R2, nor making any or any proper inquiry as to the standard of the work being undertaken by R2 in R1's name.

Against R2 alone

(vii)(A) That he has provided misleading information to an officer of the Legal Services Commission;

(xii) That between 1996 and 1st October 1999, and whilst neither a solicitor nor registered foreign lawyer, he allowed R1's professional standing as a solicitor to be used so as to enable R2 to conduct a civil litigation practice without having any right to do so, but without involving R1 in the details of such practice nor causing or permitting R1 to have supervisory control over it.

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th, 20th, 21st, 22nd and 23rd July 2004 when the Applicant was represented by Timothy Dutton of Queens Counsel instructed by Mr Battersby of Jameson & Hill, R1 appeared in person and R2 was represented by Philip Engelman of Counsel instructed Messrs Widdows Mason, solicitors of 63 Market Street, Westhoughton, Bolton, BL5 3AG.

* - as amended with the consent of the Tribunal on 25th March 2004

Following the ruling of the Tribunal on 25th March 2004 the hearing commencing on 19th July 2004 was to consider allegations (i) to (vi), (vii)(A) and (xii) as a "first tranche" and these Findings relate only to the Tribunal hearing and the Tribunal's rulings in connection with those allegations.

The evidence before the Tribunal included documentation served in accordance with the Civil Evidence Act and the oral evidence of Mr Cowley, Mr Hussain and Mr Weisgard. The following documents were handed up at the hearing (by the Law Society): a schedule of ten exemplar cases; a better copy of page 29 of File 3; on behalf of Dr Malik a copy of the file relating to Dhillon and a copy Certificate of Conviction of Brian Wilson.

All of the allegations were contested. During the course of the hearing Mr Adams admitted allegation (vi).

The Tribunal had before it witness statements made by both of the Respondents but neither Respondent gave evidence.

At the conclusion of the hearing the Tribunal made the following orders:-

The Tribunal ordered that the Respondent, Declan Adams of Prestwich, Manchester, solicitor, be suspended from practice as a solicitor for the period of six months to commence on the 1st day of October 2004 and they further Order that he do pay 20% of the costs of and incidental to this application and enquiry in relation to allegations (i) - (v), (vi), (vii)(A) and (xii) to be subject to a detailed assessment unless agreed between the parties.

The Tribunal ordered that the Respondent, Liaqat Ali Malik of Bamford, Rochdale, (formerly of Cheetham Hill Chambers, 577-579 Cheetham Hill Road, Manchester, M8 7JE), registered foreign lawyer, be struck off the Register of Foreign Lawyers and they further order that he do pay all of the Applicant's costs relating to the interlocutory decisions and 80% of the remaining costs of and incidental to the application and enquiry in relation to allegations (i) - (v), (vi), (vii)(A) and (xii) to be subject to a detailed assessment unless agreed between the parties.

In relation to Allegation (xiii) (which was withdrawn) the Tribunal ordered that the Applicant pay (and set off against costs due to the Applicant) R2's costs of and incidental to his defence of that allegation.

And the Tribunal ordered that allegations (vii)(B), (viii), (ix), (x) and (xi) be stayed pending appeal and not to be proceeded with save with the leave of the Tribunal and it made no Order for costs in respect of those allegations.

Applications dealt with by the Tribunal

(A) R1 applied that he should not be required to give evidence and be subjected to cross-examination on his witness statement. R1 told the Tribunal that he had been served by the Applicant with a Witness Summons. He did not consider that he should be compelled to give oral evidence. The Applicant told the Tribunal that it was not intended to seek to enforce the summons and so far as the Applicant was concerned, it therefore remained R1's choice as to whether he gave oral evidence and submitted

himself to cross-examination. The Tribunal noted the position and made no order on the Application. The Tribunal considered that a solicitor had a duty to assist his own professional disciplinary Tribunal.

(B) On the second day of the hearing the Applicant made an application to call a witness to provide evidence claimed to be corroborative of Mr Cowley's evidence. R1 was neutral with respect to that application. R2 objected. To call such a witness at such a late stage did not comply with the Tribunal's Rules of Procedure. R2 had not suggested that Mr Cowley's evidence was untrue, but that his recollection was not accurate. R2 had made clear prior to the hearing that he challenged the accuracy of Mr Cowley's recollection. In the circumstances the Tribunal decided that the Applicant should not be permitted to call the witness.

(C) R2 made an application that the Tribunal had no jurisdiction over R2 as the matters complained of occurred before R2 was entered in the Register of Foreign Lawyers in September 1999. R2 also alleged that the Legal Services Commission had exceeded its authority.

The Tribunal's ruling

The Tribunal was satisfied that there was evidence before the Tribunal which justified the matter proceeding. The Tribunal considered that the evidence written and oral submitted by the Applicant calls for an answer from the two Respondents. It considers this is so without the inclusion of R1's Witness Statement. However the Tribunal was also of the view that R1's witness statement should be admitted notwithstanding R1's reluctance to give oral evidence on behalf of the Applicant which the Applicant did not seek to secure. R1 was invited to decide in the light of this ruling whether his interests were best served by not being cross-examined on his statement. If he decided not to do so the Tribunal will give his statement such weight as is appropriate.

The Tribunal accepted Mr Dutton's submissions that the Tribunal has jurisdiction over both Respondents and rejected the argument advanced by Counsel for R2 which was supported by R1 that the Tribunal is deprived of jurisdiction over R2 because the matters complained of concerned the actions of R2 before or arguably partly before he obtained registration as a Foreign Lawyer. The reasons are set out in detail at paragraphs 79 to 83.

Background facts

1. R1 was born in 1961 and admitted as a solicitor in 1992. R2 was born in 1958 and registered as a foreign lawyer in September 1999.

2. R2 had been engaged in the period up to 1996 in a legal practice with his then wife (who was a solicitor) which he was leaving following divorce. At the time he was not qualified as he was neither a solicitor nor a registered foreign lawyer.

3. In about January 1996 R1 was approached by Counsel known to him and known to and instructed by R2 as a result of which R1was introduced to R2 and all three had a meeting at Heathrow Airport. R2 explained that he had been engaged in a practice in Manchester and the upshot of the meeting was that R1 agreed to relocate to

Manchester in effect to inherit R2's practice derived from the practice conducted at 577-579 Cheetham Hill Road Manchester by his wife on the basis that R2 would provide premises, bring with him staff and an established connection and on the footing that R1 would not need to provide any capital or purchase goodwill.

4. R1 stated in his witness statement dated 17th April 2002 (the status of which is discussed below) that at the meeting at Heathrow Airport, R2 had indicated that he was a solicitor but not currently holding a Practising Certificate and that the arrangements therefore made with R1 were likely to be of a temporary nature. It was asserted by R1 in his witness statement that his role would be as a "caretaker solicitor" until R2 was admitted to the Roll and that when he was, R2 would become a partner in the firm.

5. R2 in his witness statement of 29th June 2004 (as to the status of which see also below) acknowledged the introduction by a mutual friend but did not comment on or refer to the meeting at Heathrow Airport. He referred to another meeting (not mentioned by R1) at which it was said R1 agreed to take over 80 files and the premises paying as rent the mortgage costs. R2 did not comment on the statement by R1 that R2 had represented that he had been a solicitor who would shortly obtain a Practising Certificate.

6. Pursuant to these arrangements R1 relocated to Manchester early in 1996, in effect becoming the sole principal of the firm to which R2 was a consultant. The firm however included R2's name as well as R1's. R2's name appeared prominently on the firm's letterhead as holding a PhD in law, an LLB, and later on LLM and as a Member of the Institute of Arbitrators. R1 was sole signatory on the firm's client account but R2 a signatory on the firm's office account.

7. R1 in his witness statement stated that it was only some months later he became aware of the fact that R2 was not in fact a solicitor about to obtain a Practising Certificate but that he was seeking either to qualify as a solicitor or as a registered foreign lawyer based upon qualification abroad. The Tribunal received no evidence which cast any doubt on these assertions and finds them compelling.

8. The firm which was called Malik Adams conducted a practice in Manchester very substantially engaged in publicly funded work. R1 was a criminal law specialist and his evidence was (and the Tribunal finds) that R2 effectively conducted a civil law practice specialising in immigration matters for a largely ethnic or foreign clientele. R1 said that he did not in fact supervise R2 some of whose practice and discussion with staff took place in a language not understood by R1. For a period R1 believed R2 was effective in the practice and, according to R1's evidence, because he thought R2 was in the process of seeking admission as a solicitor or as a registered foreign lawyer (which he understood from R2 was being encouraged by the Law Society) he allowed the situation to continue. R2 in fact became a registered foreign lawyer in September 1999 by which point R1 had decided he wished to leave the practice and he formally did so in May 2000.

9. R1 had been told by R2 about six months after the arrangement began that he had failed to be admitted as a solicitor. At that stage R1 was prepared to continue working under the existing arrangement and had been reassured when R2 informed him that he had been advised by the Law Society to reapply in the following year. He

also told R1 that while waiting to reapply for a Practising Certificate he could be registered as a foreign lawyer in order to enter into partnership. R1 and R2 had continued to work together until early 2000.

10. R2 said that R1 recruited several members of staff both admitted and unadmitted to deal with immigration or criminal law, public law, matrimonial law, welfare law, personal injuries and civil litigation.

11. R2 said that in about September 1996 he became a full time student at the University of Manchester studying for a PhD and was also a part time lecturer in public law. He continued to work with Malik Adams on a part time basis. He said that arrangements between himself and R1 were that he would invoice R1 for the work he carried out on a self-employed basis. His main duties were to represent clients before immigration tribunals or on judicial reviews in such matters. He had a number of assistants and in most of the cases he said he did not have day-to-day care and conduct of such matters.

12. R2 said that the accounts department of Malik Adams was controlled by R1 and there were a number of accounting personnel who had the day-to-day control of the bookkeeping. The chief cashier/bookkeeper was Mr K Iqbal. R2 said his work was supervised by R1 and external accountants attended on a regular basis to check the entries. He went on to say that client account was strictly controlled by R1 and he was the only signatory on the client account mandate at the bank. Transfers from client account could be authorised only by R1. He went on to say that R1 had an independent accountant who would prepare the annual Accountant's Report to be filed with the Law Society.

13. R1 said that although he was the sole solicitor principal of the practice he in fact had limited control over anything other than his own work. The practice had been one in which R2 had been engaged for a long time and staff were accustomed to deferring to his views and looked to him for instructions. Most of the discussions between the staff took place in Punjabi, a language with which R1 was not familiar.

14. R1 accepted that he was responsible for dealing formally with personnel matters but was expected to take action only upon R2's suggestion.

15. R1 said that R2 monitored the financial position of the firm and had the most prominent casework. R1 characterised R2 as the senior partner who had the effective control of the practice.

16. R1 said that when R2 became a partner in 1999, following his registration as a foreign lawyer, R1's role reduced still further so that even matters which previously had been the subject of discussion and elements of joint control ceased to be so. R2 had complete control. The staff were aware of that and acted accordingly.

17. The majority of claims upon the Legal Services Commission were signed by R1. Bills of costs were drafted by costs draftsmen or by in-house costing clerks. Legal aid certificates had been issued in favour of R1 or other solicitors within the firm. R2 became a signatory on client account together with the other partners Mr Iqbal and R1 when he became a registered foreign lawyer in September 1999. R2 said that R1 left the partnership in or about June 2000 and that the partnership was dissolved on 31st

December 2000. At that juncture a new partnership was formed between R2 and others under the name of Malik Laws Solicitors.

18. R1 said he had found it difficult to practise with R2. R1 considered that R2's working methods were chaotic and lacked care. His manner and approach in the office was domineering and overbearing. A number of staff had as a result decided to leave the practice. It was the view of R1 that R2 had taken on every prospective new case without vetting the case or considering the firm's capacity. R2 did not delegate matters or when he did so he would do so too late and deadlines were frequently missed. There was no proper case management.

19. By the time R1 left the practice the bookkeeper/cashier, Mr Iqbal, had been replaced with R2's nephew. R1 said that after receiving a warning from the Law Society in 1998 that the firm's accounts had not been kept up to date he had carried out spot checks on Mr Iqbal.

20. R1 said he could never get clear financial figures on the work in progress. R2's cases appeared to be lengthy and complicated and it was difficult to assess what was the position on each file. R2 had assured R1 that the matters he was dealing with were either still live or going through the taxation process. Mr Z Iqbal joined the practice as a partner in November 1999. R2 had made Mr Z Iqbal a partner and had not discussed the decision with R1. At that stage R1 was already planning to leave so he did not make an issue of his decision. R1 said it was at about that time that he became concerned about the way the firm dealt with legal aid issues.

21. R1 said he ceased to be a partner in the firm on 31st May 2000. He agreed to continue to act as a consultant for three months. He was not paid for the first month's consultancy and he terminated the relationship on 11th July 2000. R1 had obtained a County Court Judgement against R2 for breach of contractual relationship.

22. R1 said he had been concerned that he had been held out to be with Malik Adams after he had left in order that the firm might obtain a criminal franchise from the LSC following an audit on 14th July 2000. The franchise was obtained and R1 believed he was deliberately held out to be the nominated criminal supervisor as there was no-one else who could fill that role.

23. With regard to matters relating to the Legal Services Commission R2 said that a direction was made by the LSC in February 1998 that where the firm made claims for payments on account for £1,000 or more together with any claims for disbursements exceeding £250 the claim had to be accompanied by the file. That requirement caused administrative chaos and delay.

24. R2 said that Malik Adams made a number of franchise applications which were rejected by the Legal Services Commission and a number of appeals had been lodged and a complaint had been made to the OSS about members of the LSC staff who were solicitors.

25. R2 said the complaint he made about the LSC resulted in an audit being carried out in November 2000 by Mr Cowley. Mr Cowley carried out a further audit in December.

26. As can be noted from the foregoing paragraphs, the extent to which R2 was engaged in the practice was a matter of some dispute. R1 said that R2 effectively controlled the civil side of the firm's practice. R2 said that R1 was the sole principal and therefore solely responsible. R2 said that from September 1996 for part of the time he was studying full time for his PhD but working part time for the firm. Later he said he was engaged in lecturing in public and international law at the University of Manchester. Counsel for the Applicant pointed to the fact that much of the documentation in the period 1996 to 1999 showed R2 as the person whose reference appeared on letters which related to the civil law practice, including instructions to Counsel. One of the witnesses (Mr Weisgard) whose evidence was heard said in relation to a limited number of cases of which he had knowledge that he regarded R2 as having day to day control over matters. R1 said that effectively all the civil side of the practice was controlled by R2, that R2 was only absent from the practice on occasion and that for practical purposes R2 was the senior partner of the firm.

27. The Tribunal finds that the evidence of R2's involvement in the firm is overwhelming and it does not accept R2's assertions that R1 solely had the conduct of and responsibility for the firm's practice.

Mr Cowley's evidence

28. Mr Cowley stated he was a civil contracts manager employed by the Legal Services Commission ("LSC"). His report to the LSC dated 2nd January 2001 and two witness statements dated 9th April 2002 and 23rd April 2004 were before the Tribunal and he gave oral evidence. Mr Cowley told the Tribunal that his investigative audit in December 2000 had been made because of his concerns about the way Malik Adams was conducting its legally aided work.

29. Mr Cowley said that he had made a report in connection with a possible franchise application by the Bradford office of the firm of Malik Adams. At the time the Bradford office had been newly opened and had not begun to undertake publicly funded work. For the purpose of the audit Malik Laws produced files for cases run from their office in Manchester. The audit revealed that the firm was not meeting the LSC's quality requirements in a number of ways. Mr Cowley met with the firm's practice manager in September 2000 and indicated that he remained concerned about a number of matters and in particular the fact that the firm's computerised records of financial transactions in publicly funded cases appeared to be substantially inaccurate. Mr Cowley also expressed concern that the firm's method of managing payments on account made by the LSC appeared to be insufficient to ensure that the financial position of the LSC was properly guarded in every case.

30. On 1st November 2000 Mr Cowley wrote to the practice manager expressing his concerns and seeking a response. On 7th November having learned that the practice manager had left, he wrote to R2 requesting a response within 28 days. No response was received and on 21st November Mr Cowley wrote to the R2 confirming the institution of two new payment verification measures to protect the financial position of the LSC. These were:-

1) further payments on account would not be authorised unless the claims were supported by a computerised record showing the current value of the work in progress on the case, and

2) final claims for payment would not be paid unless supported by the file of papers.

Mr Cowley's concerns led to the investigative audit which took place on 13th and 14th December 2000. A copy of Mr Cowley's report dated 2nd January 2001 was before the Tribunal. Mr Cowley in evidence had said that the LSC staff made only a cursory inspection of the file sent in support of applications for payments on account.

31. The general conclusions contained in that report were that the practice had:-

(i) been in breach of Regulation 72 of the Civil Legal Aid (General) Regulations 1989 and had not complied with the reporting obligations contained therein;

(ii) overclaimed for payments on account;

(iii) attributed time spent on cases retrospectively;

(iv) used obscure and contradictory accounting procedures;

(v) claimed improperly for payment of disbursements.

32. As a result of these findings Mr Cowley recommended that the Legal Services Commission should impose a hold on all payments to be made to the firm (a "vendor hold") and that the vendor hold should continue until the partners of the firm provided security against outstanding payments on account or made it clear that the financial interests of the LSC could be quantified and secured. Mr Cowley also recommended that a complaint be made to the OSS. The steps recommended by Mr Cowley were taken. The vendor hold was imposed and a formal complaint was made to the OSS on 17th January 2000.

33. Mr Cowley pointed out that Regulation 72 of the Civil Legal Aid (general) Regulations 1989 imposed an absolute obligation on a solicitor to report forthwith to the Regional Director either upon completion of a case (if the work authorised by the certificate had been completed), or if, for any reason, the solicitor was unable to complete the work.

34. A failure to report under Regulation 72 deprived the LSC of the earliest opportunity to determine whether payments on account had been properly claimed and to effect a timely financial reconciliation. In cases where claims "on account" had been exaggerated, failure to bill the case on completion masked the over-claim, allowing the firm to retain any over-payment.

35. Of the files submitted by Malik Adams to Manchester LSC, all but one concluded more than one year previously, in three cases, the work concluded more than three years before. The sum of payments on account made to the firm in those cases alone exceeded £49,000.

36. There was prima facie evidence that in at least one of the cases submitted the payment on account might have been improperly retained, costs having been settled by the other side. The payments made in one case appeared to exceed the likely level of final settlement by over £3,000.

37. The most recently available reports covering payments on account made to the firm suggested that the total paid was just over £775,000. Payments had been made on approximately 160 unbilled funding certificates. R2's response to Mr Cowley's letter suggested that of the certificates on which payments had been made, only 13 were still live. The vast majority of the remainder had not been prepared for taxation or assessment, although many had closed more than one year earlier.

38. It appeared that payments on account made to the firm by the LSC were processed through the firm's office account.

39. Mr Cowley's report went on to indicate that the firm systematically over-claimed payments on account relative to both the value of disbursements incurred and work done on cases when the claim was made. Where over-claims for payment on account were made, the amount due to the firm in final settlement when the case is billed can be less than the amount pre-paid, thereby leaving the LSC financially exposed to the extent of the shortfall. Mr Cowley set out some examples.

40. It was Mr Cowley's view that the tendency of the firm to fail to "beat" payments on account together with the wholesale breach of Regulation 72 left the LSC open to considerable financial risk, which was not possible to quantify, because the firm did not maintain reliable work in progress figures and any estimates of value might not be met on taxation.

41. Mr Cowley went on to report that the firm's allocation of time was wholly unreliable. Since September the firm had been unable to enter time/cost data about any live case onto its computer system. The records held on computer were not accurate. File notes were often untimed and contained little evidence as to what had actually taken place.

42. Questioned in interview as to how that problem was dealt with when files were costed for billing purposes, the costing clerk in the firm confirmed that time was simply attributed to files retrospectively, either by her on a "best guess" principle, or on the basis of an estimate of the time spent being provided by the fee earner. Where the file note did not appear to sustain the attribution of time made the costing clerk confirmed that the common practice of the firm was then to type and add a "more comprehensive" note to the file, to support the claim to be made.

43. The record of the firm in having bills dramatically reduced on taxation supported the view that in most cases the firm's claims for costs were unsustainable.

44. Mr Cowley went on to report that the accounting procedures used by the firm to manage LSC monies paid to the firm were obscure and were made more difficult to understand because differing and contradictory accounts as to how records were maintained were provided to the audit team. All LSC monies paid to the firm were paid into office account; client account was not used for transactions in LSC funded cases. When asked to provide accounting ledgers in relation to files examined at

audit, the firm claimed to be unable to provide any complete ledger on any case, because "all the records have been sent to the accountants."

45. R2 had claimed that accurate manual records were maintained for each open case, using a card system run by Mr Iqbal, the book-keeper. Mr Iqbal had confirmed that cards were not maintained for all open cases, that the cards in existence were updated only "when time is available" and that the only information used to fill in the cards came from cheque book stubs provided to him by the firm.

46. A comprehensive set of cards for the files examined at audit was requested. Cards were produced for five cases only. These were maintained in pencil and noted financial transactions into and out of office account on the files involved, but Mr Iqbal confirmed that each of the cards had only been updated on the morning of the second day of the audit, even though some of the entries made on the cards related to transactions taking place more than twelve months ago.

47. Mr Cowley concluded that the accounting position on the files run by the firm was impossible to determine from the records maintained. This was not compliance with the Solicitors Accounts Rules nor could it be determined how money paid by the LSC on account was attributed to specific cases.

48. LSC costs assessors had expressed concern about Malik Adams' seemingly heavy use of a particular firm of translators, "Asian Media Services Limited", based at an address next door to the firm's offices in Cheetham Hill. In some instances the hourly rate for translation claimed had been considered to be excessive and could not be justified by the file.

49. In interview, the costing clerk at the firm was asked about the firm's use of this translation service. She suggested that the process of billing the LSC for translations through Asian Media Services was in effect, a sham; translations were done not through an independent translation service but done by fee-earners as part of the client interview process. Supplementary bills for translation were then compiled by the firm and submitted for payment as a separate disbursement on paper printed (or stamped) with the "Asian Media Services" heading.

50. R2 at interview denied this although he accepted that some of the fee-earners in the firm also did translation work for Asian Media Services, for which they were paid separately. Questioned as to whether he, or any partner in the firm, had any financial interest in, or was a director of Asian media Services Limited, R2 denied that any connection of this type existed.

51. Information gathered on 14th December from Companies House about Asian Media Services Limited demonstrated that R2 was appointed as one of two directors of the firm in September 1996 and had not resigned. The 100 ordinary shares issued in the company were all issued in his name. The other named director had been an employee of the firm.

52. R2 in his witness statement said there was a dispute about the conversations with himself or members of his staff had with Mr Cowley and R2 considered Mr Cowley's reports of such conversations were accurate.

53. Mr Cowley gave evidence in confirmation of his statement dated 23rd April 2004. He had been asked to arrange for the identification from cases examined by him of 10 examples in which the firm received a payment on account of costs and/or disbursements where the amount due to the firm in final settlement was less than the payment on account.

54. The LSC recognised that some publicly funded cases go on for a long time, sometimes many years and that it would be unfair for solicitors to have to wait for all of their costs at the end of the case. At the time when the exemplar cases were being conducted, it was open to firms to make claims for payment on account of profit costs on an annual basis. The rules governing those claims established that claims could be made only during the first three years after the issue of the legal aid certificate and that claims had to be based on the value of the work done up to the date when the claim was submitted. The LSC (or Legal Aid Board as it was then) was prepared to make a payment of up to 75% of the value of the claim for profit costs, deducting any previous payments on account of profit costs. A firm could also make claims for a payment on account for the full value of disbursements incurred or about to be incurred in connection with the proceedings to which the certificate related. A claim for payment on account of disbursements could be made at any time.

55. Mr Cowley gave evidence in relation to the identified cases. In the nine cases where the firm made a claim for payment on account of profit costs, the payment on account exceeded the final amount allowed.

56. In nine of the 10 cases where the firm made a claim (or claims) for payment on account of disbursements, the payment on account claimed exceeded the disbursements allowed. In seven of the 10 cases, the final claim for disbursements (ie the claim itself rather than what has been allowed) has been for less than the amount claimed on account.

57. The working practices of the firm revealed a widespread and long-running failure of the firm to report to the LSC Regional Director on completion of publicly funded cases.

58. Claims have been made for translation services provided by Asian Media Services Limited in the following cases cited: Texaria (£800); Jamil (£1,250); Jamil (£850); Jamil (£1,050); Peracha (£960); Patel (£950) and Singh (£750). Analysis of the outcome of these claims on taxation suggests that the Court regarded them as problematic. Against the total of £7,860 claimed, only £1,300 was allowed. The claims were reduced to nil in all cases other than those conducted on behalf of Mr Jamil, in which a total of £550 was allowed as against £4,400 claimed and M Singh where the claim (£750) was allowed in full. The only one of these claims assessed by the LSC (rather than taxed by the Court) was the first Jamil claim.

59. In relation to the firm's accounting practices Mr Cowley in his oral evidence confirmed his statement that the accounting practices of the firm, as they were in December 2000, were obscure, contradictory and unreliable and that in response to a request to produce ledgers he had been told that "all the records had been sent to the accountants". He denied R2's claim that accurate manual records were maintained for each open case, using a card system run by Mr Iqbal, the external book keeper.

60. Mr Cowley in his oral evidence confirmed that Mr Iqbal had been asked to provide a comprehensive set of cards for the files examined at the audit. He was able to produce only five such cards, copies of which were before the Tribunal. Mr Iqbal had confirmed that cards were not maintained for all open cases, that the cards were updated only when time was available and that the only information used to update the cards was the cheque book stubs provided to him by R2.

61. At the conclusion of Mr Cowley's evidence, R2 submitted that there was no case to answer in relation to R2 and made the following submissions.

R2's submission of no case to answer

62. The Legal Services Commission had no authority to conduct an audit of the firm. It had not been alleged that R2 had made a claim upon the Legal Services Commission for work which had not been done. Before the introduction of legal aid franchising, there was no authority (under the Civil Legal Aid (General) Regulations 1989 to have any particular system of time recording in place.

63. R2 claimed there was no breach of Regulation 72 as the sending of a file in support of a request for payment constituted a report.

64. All of the allegations related to a period before R2 became a registered foreign lawyer. Jurisdiction only commenced when he became so registered. It was submitted that once a Foreign Lawyer had been registered as such this was a determination of his fitness which could not be called into question by reference to prior actions or behaviour.

65. With regard to allegation (vii)(A) (against R2 alone) it could not be argued that R2 allowed R1 to run the practice at a time when R2 was not a registered foreign lawyer. Since R2 had no responsibility in law for securing due compliance with LSC requirements Mr Cowley had not been able to give evidence in support of that allegation. R1 had not given oral evidence. The Tribunal had no oral evidence before it to support the allegation that since R1 had responsibility for a solicitor for submitting claims to the LSC R2 could have no responsibility either before or after he became a Registered Foreign Lawyer unless he was to be regarded as a quasi partner.

66. It was submitted that as R1 had declined to give oral evidence the Tribunal should not admit R1's written statement in evidence.

Allegation (vii)(A) Against R2 alone

67. This allegation related to the alleged dishonest provision of misleading information to Mr Cowley. He had told the Tribunal that R2 had denied any connection with Asian Media Services Limited. Mr Cowley said that when he showed Company House records to the Second Respondent their conversation became heated. As a serious allegation against a professional man, it had to be proved to the highest standard. There was difference between Mr Cowley's written report and what he said in the witness box. It was a material matter. If what Mr Cowley had said had been true he could have included it in his report. Mr Cowley spoke to the accuracy of a

conversation which had taken place over four years earlier. R2 would not have tried to mislead Mr Cowley when he was well aware of the fact that the details of a company and those involved with the company were readily available by searching public records. If there were any room for doubt then the matter should be resolved in R2's favour.

The Submissions of R1

68. R1 relied upon the submissions made on behalf of R2. With regard to allegation (vi) against R1 alone, he adopted R2's submission that the Tribunal had before it no evidence to support the allegation.

69. R1 invited the Tribunal to bear in mind that Mr Cowley's first audit of the firm was carried out six months after R1 left and of the 10 cases relied upon as exemplars by the Applicant on all but one of those files bills had been submitted after R1 left the firm.

The Submissions of the Applicant

70. The Legal Services Commission's authority to conduct an audit was irrelevant as R2 had agreed that the audit should take place and this had been recorded in correspondence before the Tribunal.

71. It was for the Tribunal to decide whether a registered foreign lawyer had fallen below the standards required of members of the profession. It clearly had jurisdiction to make such a ruling even if the alleged behaviour had taken place before the registration of a registered foreign lawyer. This was also the case in relation to acts of a solicitor before his admission to the Roll.

72. The conduct complained of continued after R2 was registered as a Foreign Lawyer in September 1999. The breach of Rule 72 related to cases where bills had been submitted in the years 2001, 2002 and 2003.

73. Allegations (ii) to (v) did not depend on breach of statutory requirements. In each case it was necessary only for the Tribunal to establish that the conduct complained of did constitute conduct unbefitting a solicitor or a registered foreign lawyer.

74. The Applicant denied that the lack of an express statutory requirement to keep accounts and other financial records could lead to the conclusion that a professional man had no duty to maintain such records as would enable him to justify and explain the professional services he performed and the claims he made on public funds.

75. With regard to the allegations relating to the absence of supervision at the firm by R1 and the allegation that R2 had used R1's professional standing as a solicitor to enable R2 to conduct a civil litigation practice without having any right to do so, the Tribunal had before it a variety of documents which included R1's witness statement. R2 had not served a Civil Evidence Act Counter-notice and therefore R1's statement was evidence before the Tribunal. It was for the Tribunal to assess the quality of that

evidence. The Tribunal would of course apply the required standard of proof and give untested statements appropriate weight.

76. The Tribunal had before it documents indicating that R2's name was part of the firm's name, his name appeared on the firm's letterhead and his reference was on files and documents relating to numerous cases of which he had conduct. There was ample evidence that R2 played a big part in the running of the practice and in effect had control of a civil litigation practice.

77. With regard to the allegation that R2 had misled Mr Cowley, that was an allegation that R2 had been dishonest. There was evidence before the Tribunal that R2 had made a dishonest misrepresentation. Mr Cowley had given oral evidence and he had not retreated from such evidence. That evidence was credible and the Tribunal should not disregard it but should rely on it.

78. All of the contemporaneous documents showed that R2 had a heavy involvement in the practice at the material time.

The Tribunal's decision on the submission of no case to answer

79. Counsel for R2 submitted that the Tribunal has no jurisdiction over R2 as a registered foreign lawyer in respect of any act of his before his registration took effect. It is not disputed that R2 applied for his name to be entered in the Register of Foreign Lawyers and his registration was accepted in about September 1999. Certain of the complaints made against R1 and R2 were the subject of Mr Cowley's report relate to acts or omissions which took place between 1996 and 1999 before the date therefore on which R2 became a registered foreign lawyer. Counsel for R2 submitted that the Tribunal would have had no jurisdiction over R2 in the relevant period and acts committed during that period cannot confer jurisdiction on the Tribunal as a consequence of R2 becoming a registered foreign lawyer. Counsel for the Applicant submits otherwise.

80. In the light of the Tribunal's findings of fact and in the admittedly somewhat unusual circumstances of this case the Tribunal considered that the following facts are relevant to the question of the Tribunal's jurisdiction:-

(a) R2 acted from 1996 (and earlier) as an unqualified clerk in a legal practice conducted by his wife and later by R1;

(b) R2 claimed that he either was a solicitor awaiting the issue of a Practising Certificate or that he was awaiting registration as a Registered Foreign Lawyer;

(c) R2 must be taken to have acknowledged and accepted the Tribunal's jurisdiction upon becoming a Registered Foreign Lawyer;

(d) It would be anomalous that R2 should be subject to the jurisdiction of the Tribunal as an unqualified clerk but not as an aspiring solicitor or Registered Foreign Lawyer.

81. The argument that the behaviour of a solicitor before he applies for admission is only relevant to admission to the Roll and not to subsequent practice is not in the Tribunal's view sustainable unless the particular conduct is disclosed as part of the application for admission. The same is true in relation to a registered foreign lawyer.

82. There was no evidence before the Tribunal that full disclosure of relevant matters had been made by R2 in connection with his application for registration as a Registered Foreign Lawyer.

83. The Tribunal rejects the arguments advanced by Counsel for R2 that it has no jurisdiction. In the opinion of the Tribunal the Profession's reputation for independence, honesty, integrity and trustworthiness is a matter of public concern, and the acts or omissions of any member of the Profession whenever committed which adversely affect the reputation of solicitors fall within the Tribunal's jurisdiction. Foreign Lawyers are upon registration subject to the same obligations as solicitors, especially when they are involved in legal practice and are seeking admission to the Roll or registration as a Foreign Lawyer.

84. The Tribunal rejected the submission of no case to answer. The Tribunal were so satisfied on the basis of Mr Cowley's evidence and that of R1 which the Tribunal had admitted in evidence. The Tribunal as noted above ruled that it had jurisdiction in relation to R2.

The Second Respondent's evidence

85. R2 made a witness statement dated 26th June 2004. He did not give evidence or tender himself for cross-examination on his statements which the Applicant had stated he did not accept as accurate. The Tribunal indicated it would accept the statements in evidence but give them such weight as it considered appropriate.

R2's witness statement

86. R2 in his witness statement said that the 13 cases referred to by Mr Cowley could not give a true and accurate picture of the payments on account claimed by the firm. To make a finding on a small sample was unreliable and there were many reasons for the disallowance of costs by the Costs Judge.

87. On 7th February 1998 the Leeds area manager of the LSC had made a written direction that where any claim for payment of £2,000 and above for profit costs or £250 for disbursements was made, the file had to be submitted with the claim. R2 pointed out that it was not therefore possible from that date to make a claim for a payment on account which might be considered to be exaggerated.

88. R2 said that in most of the cases the LSC was seeking reviews of taxation/assessment on the basis that Malik Adams had acted outside the scope of the Legal Aid Certificate, had exceeded the cost condition on the certificate, some disbursements

were reduced despite prior authority and costs were reduced in view of the delay in some of the cases.

89. R2 said that no account had been taken of the burglary suffered by the firm in November 1999 and its effects. The firm's time records were kept on a computerised system and the computer was stolen. A number of files and papers had been removed.

90. During the course of the hearing the Respondent produced a copy of the Certificate of Conviction of Brian Wilson who was convicted on two counts, the first being burglary contrary to Section 9(1)(b) of the Theft Act 1968, the particulars of the offence being that he did "on the 25th day of November 1999 having entered as a trespasser a building, namely Malik Adams solicitors, 577-579 Cheetham Hill Road, Manchester, stole therein a quantity of computer equipment, a microwave oven and a vacuum cleaner."

Mr Hussein's evidence

91. Mr Hussein, who held a degree of Bachelor of Commerce and was an associate member of the Association of Chartered Certified Accountants (UK), had been employed at Malik Laws since May of 2003. He accepted that he had no personal experience of the systems in place prior to that date. He did not believe there had been any significant change in the systems except with regard to records of time recording. He had inspected some of the office account ledgers prior to his employment and had found none of them to have been written in pencil.

92. Mr Hussein accepted that in the specific cases before the Tribunal the figure for costs and/or disbursements ultimately allowed on taxation or assessment was less than the sum paid by the Legal Services Commission to the firm by way of payment on account.

93. Mr Hussein supported R2's view that there were total claims made by the firm to the LSC in the region of £791,789.75 which was greater than the sum of the payments on account at the time when the "vendor hold" was imposed which amounted to £775,000.

94. Mr Hussein said all post 1999 computer records were available but that he had not seen computer or other records for earlier periods which related to the cases identified by Mr Cowley. He said the room in which pre 1999 records were kept was in a state of chaos three years after the burglary.

95. In cross-examination Mr Hussein was shown letters written referring to Malik Laws (which did not come into existence until 2001) which purportedly recorded work done some years earlier which was used to justify claims made on the Legal Aid Fund. Mr Hussein said these letters had not been shown to him and were not his concern. He could not say the detail was or was not correct.

96. Mr Hussein believed that the pencilled documents produced by Mr Iqbal to Mr Cowley had been his working papers. He had not seen computer and other records

which supported individual claims for payments on account in respect of pre 1999 matters and he confirmed there was no computer backup system in place.

97. The Law Society had conducted regular and frequent visits to the firm and there had been no adverse findings. The firm's reporting accountants had lodged unqualified Annual Accountant's Reports.

Mr Weisgard's evidence

98. Mr Weisgard, an accountant instructed by R2 as an expert witness in connection with litigation outstanding between the LSC and Malik Laws, also confirmed that it was his view that the global position between the LSC and Malik Laws was that Malik Laws had money due to it and not that Malik Laws owed money to the Legal Services Commission. Mr Weisgard had no personal knowledge of the way the firm conducted itself at the material time. He had known and had dealings with R2 for some 12 years and had acted for him sometimes in an expert capacity since about 1996. He thought he might have met R1 but would not have recognised him. In matters of which he had knowledge he thought R2 was in day to day control though he knew he had taken time off for study. He was instructed in March 2004 and understood his function was to give objective and independent support to Mr Hussein's evidence. Mr Weisgard was not supplied with nor did he examine the detailed papers relating to Mr Cowley's report and witness statements.

The Submissions of the Law Society

99. The evidence before the Tribunal established that all the allegations were established against both Respondents. The evidence of Mr Cowley was wholly convincing despite the attack on his credibility by R2 in his witness statement and in cross-examination by Counsel. Mr Cowley's evidence was careful and balanced and should be accepted. It was not shaken by R2's evidence in his witness statement which was not tested by cross-examination.

100. The evidence of R1 in his witness statement of 17th April 2002 was accepted as accurate by the Law Society . He had, unlike R2, cooperated in the enquiries made by the Law Society. The attempt by R2 to shift all blame on to R1 was regrettable particularly when R2 was not himself willing to give evidence.

101. The Applicant had formally indicated that the evidence of all those who had given witness statements on behalf of R2 should be tested by cross-examination. Only Mr Hussein and Mr Weisgard gave evidence. The evidence of other witnesses should be ignored or given little weight.

102. R2's evidence was not accepted by the Law Society and was untested. R2 attacked Mr Cowley accusing him of misleading the Tribunal and misinterpreting the position. He also attacked Mr Cowley's good faith, claiming the exemplar files were deliberately selected to give an unbalanced view. R2's blatant hostility to Mr Cowley and his employers the LSC was misconceived.

103. Evidence of the burglary committed by Mr Wilson - apparently sometimes also known as Burton - was unsatisfactory. The Applicant would have wished to cross-examine him. Although convicted of theft of unspecified computer equipment, a microwave oven and a vacuum cleaner there was no evidence that files were stolen and the Law Society did not accept that there was any evidence of lost files. Mr Hussein had given evidence that 3½ years after the burglary the files in the cellar were in a state of chaos. The Applicant submitted that the burglary was a distraction and no excuse for existing deep underlying problems referred to by Mr Cowley.

104. The evidence of lack of proper accounting records was overwhelming and Mr Cowley's evidence that only five pencil written ledger cards were produced should be accepted as indicating that no records existed at the relevant time. R1's evidence in this respect should be given due weight.

105. No defence was established regarding allegation (i). There was no evidence of any report being made on the conclusion of the matter. R2's claim that the sending of a file in connection with a claim for a payment on account constituted a report satisfying Regulation 72 was wrong. R2's claim that in the circumstances of this case he had no obligation to ensure compliance with the Regulation was also wrong. Although the duty was cast by the LSC on solicitors, it was incumbent on those who worked for them not to prevent their due compliance with the Regulation. R2 was in charge of the cases and had their day to day conduct. He was bound to take steps to ensure compliance. R1 breached the Regulation; R2 caused it to be breached. R1 could point to grounds for excusing his breach.

106. R2's argument that the obligation to report "forthwith" on conclusion of the matter spoke only at a point of time (argued to be within three months at most) was wrong. The obligation to report was a continuing one and had not been complied with some years after the matters were in fact concluded. The obligation therefore subsisted after R2 had assumed further responsibility for the practice after his registration and after R1 left.

107. The Applicant did not accept the argument advanced on R2's behalf that the Tribunal had no jurisdiction in relation to matters of conduct where the complaint related to acts or omissions prior to R2's registration.

108. With regard to allegation (ii) the evidence was substantial that in the 10 exemplar cases the amounts claimed on payments on account were in the event greater than the amounts recovered after assessment. This coupled with the failure to make the reports required by Regulation 72 resulted in overclaims. The Law Society did not accept that the work had been done. The lack of records demonstrated that the Respondents could not show that it had been. Mr Cowley's evidence was strong. Mr Hussein's schedules conceded that in individual cases overpayments were made but said that the balance overall was in favour of the firm. The question of the overall balance between the firm and the LSC was not a matter for the Tribunal and even now in 2004 the balance was not established following the "vendor hold" in December 2000.

109. Mr Hussein's evidence did not cast doubt on the correctness of Mr Cowley's schedules. Mr Weisgard's evidence did not add anything and was not in truth expert evidence for the purposes of this case.

110. With regard to allegation (iii) there was no convincing evidence that any adequate time recording system existed. Mr Cowley's request was met with the production of five pencil written ledger sheets and nothing else. The burglary was not an explanation. The claim that there was no professional obligation to maintain records was wrong and may imply that R2 thought there was no need to maintain such records. Neither Mr Hussein's evidence nor that of Mr Weisgard assisted.

111. With regard to allegation (iv), it is well known that the LSC relies on records in publicly funded cases. No proper records were produced and the claim that the documents were "with the accountants" was untrue. The evidence of Mr Cowley shows that there were no records.

112. With regard to allegation (v) the evidence showed that two documents submitted to support recovery of disbursements due to Asian Media Services were manufactured after the event and were not backed by any documentary evidence as to time spent on services performed. They were not contemporaneous documents and were not just improper but dishonest. The LSC was not present when the bills were assessed and the Costs Judge may not have realised that the documents were not contemporaneous with the work claimed to be done. The firm was lucky to recover £150 rather than the amount claimed. The Law Society accepts that these documents post dated R1 leaving the firm. However in other cases there was evidence from Mr Cowley's report that claims for translation services were made for which there was no or no sufficient evidence as to the services performed.

113. Allegations (vi) and (xii) relate to supervision. The Applicant submits that the contemporaneous correspondence and documents show that R2 was the controlling mind in relation to the civil law practice of the firm - mainly immigration. The Law Society accepts R1's witness statement particularly paragraph 9, 10, 11 and 14. There was no effective supervision by R1 and R2 before his registration in September 1999 should have been subject to R1's supervision but was not. Mr Cowley's evidence in this respect was unchallenged. There was no challenge to R1's evidence that R2 had represented he was a solicitor shortly to obtain a Practising Certificate or later that he was able to practise as a Foreign Lawyer following registration. R1 might well have thought R2 considered he was not in need of supervision.

114. With regard to allegation (vii)(A). The evidence was clear that R2 had denied any involvement with AMS. This was knowingly untrue. R2 took the risk that Mr Cowley would not check the position at the Companies Registry. Mr Cowley's evidence was clear and should be accepted.

The Submissions of R1

115. R1's evidence was set out in his witness statement dated 17th April 2002. The Tribunal accepts as accurate R1's account of the background to his involvement with Malik Adams and the manner in which the practise was run summarised at paragraphs 4 to 23 above.

116. With hindsight it had become clear to R1 that although he was the sole solicitor principal of the practice, he in fact had limited control over anything but his own work. This was a longstanding practice of R2 and staff were accustomed to defer to

R2's views and to look for him for instructions. Most discussions between the staff were in Punjabi with which R1 was not familiar.

117. Although R1 was responsible for dealing with any formal personnel matters, such as hiring and firing staff, he was expected to take such action only upon R2's suggestion. In reality R2 had the most important role in the office. R2 also monitored the financial position of the firm and had the most prominent casework in the firm. R1 said he would characterise R2 as the senior partner who had the effective control of the practice. Up to October 1999, whilst R2 did not do anything specific to the knowledge of R1 to hold himself out as a partner, a lay person coming into the office from the street or an existing client of his would have assumed that R2, if not a partner, had the same authority as one. Because many of the dealings with clients were not in English, R1 was not aware of the content of discussions with those clients. When he became a partner in 1999, following his registration as a Foreign Lawyer, R1's role reduced still further so that even matters which before were the subject of discussion and elements of joint control ceased to be so. R2 had complete control. The staff were aware of that and acted accordingly.

118. After the first refusal of a Practising Certificate R2 was evasive as to how his future applications were progressing or when they would be processed. R1 started to become a little concerned and attempted to make enquiries of the Law Society. He was informed that this was privileged information. R1's concern to clarify the position was because he wanted to leave the practice.

119. R1 had begun to find it more difficult to practise with R2. His working methods were chaotic and lacked care. His manner and approach in the office was domineering and overbearing. A number of staff could not cope with him and decided to leave as a result.

120. R1 became concerned that the firm was taking on a lot of civil work and yet there was no one with the relevant experience to deal with the cases. R2 took on every prospective new case. He would not vet a case and was unconcerned as to whether or not the firm had capacity. He would always assure prospective clients that he would help them. Having taken on the new work he would not delegate matters or when he did he would do so too late. Thus deadlines were frequently missed as there was no proper case management. On three occasions solicitors were hired to take on some of the workload, but none of them lasted. All three cited difficulties with R2 as their reason for leaving. Even when the solicitors left R2 did not refrain from taking on new cases.

121. There was also a considerable turnover of secretarial and administrative staff. Again when they left they often cited R2, referring to him as a bully and someone who frequently lost his temper. Basically R2 retained a hard core of staff whose competence R1 would question. They all spoke together in Punjabi, so R1 was not always aware of what they were doing. It was at that stage when R1 could not see how the situation was going to improve, given R2's influence and control in the office, that R1 began seriously to think about leaving.

122. On the financial side the services of a bookkeeper were employed. Mr Iqbal worked for the firm on a freelance basis. He was an employee of Asian Media Services, R2's company. In 1998 R1 received an official warning from the Law Society that the

firm's accounts were not kept up to date. From that time R1 carried out spot checks on Mr I where what was presented appeared to be in order. Once R1 had made his decision to leave the practice he found it far harder to keep up any degree of pressure and became more fatalistic. By the time he left the practice R2 had replaced Mr I with his nephew, Mr MM, as bookkeeper. They dealt with all financial matters. The firm's accountants were originally Mahindra & Co, of which R2's brother was a partner. Mahindra & Co was situated in the next door premises to the office of Malik Adams. R2 owned the next door premises. Mahindra & Co subsequently disbanded and a second firm of accountants, Riyaz Ahmed & Co, was instructed to prepare the accounts. MM had qualified as a solicitor and had become a partner of R2 at Malik Laws, the new name for the firm.

123. Because of the amount of work and the way R2's cases were conducted, R1 could never get clear financial figures on the work in progress. The cases appeared lengthy and complicated and it was difficult to assess what the position was on each file. R1 had often expressed concern to R2 but had been given assurances regarding the matters R2 was dealing with and confirmed they were either still live or going through the taxation process.

124. On 1st October 1999 (on being registered as a Foreign Lawyer) R2 became a partner of the practice. Another partner joined the practice in November 1999, Mr ZI. R2 made Mr ZI a partner. He did not discuss the decision with R1. By that stage R1 was already planning to leave so he did not make an issue of his decision. At about this time, R1 became concerned about the way the firm dealt with legal aid issues. Debts relating to the firm before R2 became a partner still remained outstanding. R1 had always understood that these would become a liability of the Adams Malik partnership by way of an indemnity. R2 represented to R1 that this was the case.

125. R1 ceased to be a partner on 31st May 2000. He had put arrangements in place to ensure that there was a smooth exit. Although the partnership was dissolved he agreed to continue to act as a consultant for three months until the firm had a criminal franchise. The firm had employed a new solicitor to undertake the criminal work. The audit for the criminal franchise was pending. During that time the dissolution argument was to be finalised.

126. R1 was not paid for the first month's consultancy. As a result he terminated his relationship with R2 on 1st July 2000. R1 also made an application to the County Court for judgement for breach of contractual relationship. R1 had obtained a County Court Judgment. This was served on R2 by post but was returned unmarked to the solicitor acting for R1 in the action.

127. R1 had been reminded of letters he addressed to the Law Society in support of R2's application to be registered as a solicitor or as a registered foreign lawyer. R2 drafted those letters but R1 accepted that he had signed them knowing they would be sent to the Law Society. The first letter was misleading in its representations about R2's role in the firm and assistance with R1's case work.

128. At the time when the other letters were written R1 was very eager to leave the firm and he signed those letters in the belief that it would assist R2 with his application, which in turn would mean that R1 could put proper arrangements in place to leave.

129. R1 had been misled by R2 about his application. R1 was also concerned about how R2 would react if R1 did not sign the letters. R2 could be aggressive and domineering when he did not get what he wanted. R1 had the feeling that R2 would make life difficult if he did not assist him.

130. R1 fully accepted that he was aware, when he signed the letters, that matters referred to regarding R2's conduct were not accurate. The true position was that now indicated to the Tribunal. Later R1 became aware of a number of complaints. R1 had been concerned about the way R2 promoted his practice. He had a friend who was a journalist, to whom R2 would pass articles exonerating himself if a complaint had been made or if he wanted to publicise a particular case. His articles were published in a paper called 'Friends' or 'The Jung'. He would give the impression that R2 had undertaken the advocacy when the case had been conducted by Leading Counsel.

131. From around 1999 R2 had a part time lecturing position with the University. This took up no more than one afternoon a week. He had not been appointed to lecture by the University and was not paid by them. R2 had to teach in order to complete his doctorate. R1 believed that this was required of all PhD students in his position. As well as his weekly lectures he would also have to mark student papers relating to the matters about which he lectured. On the whole R2 spent most of the time with the firm. R2 was always in the office and was fully involved with the running of the firm and conducting his cases. In respect of his trips to Pakistan, R1 was not aware of R2's being asked to appear as an advocate, it was understood that R2 had been called as a witness.

132. During the course of his contact with R2, R1 became increasingly concerned about R2's practices and R1's role in the firm. As a result, R1 wrote to the Law Society about a number of issues. One matter related to additional office premises used by Malik Adams from 1996-1999. The firm had one office at 17 New Hall Lane, Preston, which was looked after by Mr A who picked up the post etc. In an attempt to put arrangements in place for R1's departure, R1 carried out checks on this and other firm addresses. He had been concerned to learn that during the period when the office premises were used, six people appeared on the electoral roll, two of whom, R2 and Mr A, were employees of the firm. R1 recognised the other names as their associates. The premises had been for office use and R1 was not aware of anyone living there. No one had R1's authority to use the property as residential premises.

133. R1 was further concerned that he was held out to be with Malik Adams after he had left in order that the firm might obtain a criminal franchise following the audit on 14th July 2000. There being no other nominated criminal supervisor, the franchise could not have been obtained unless R1 was deliberately, either impliedly or expressly, held out to be with the firm.

The Submissions of Counsel on behalf of R2

134. Mr Cowley had identified 10 cases which allegedly demonstrated wrongdoing on the part of R2. The documents produced by Mr Cowley dealt with more than 10 cases.

135. The Tribunal was invited to bear in mind that the sample was 10 of many cases dealt with by R2's practice. The taxation of bills was outside the control of the receiving

party. The variation between what was claimed and what was allowed on taxation might have a number of explanations which were irrelevant to the question of wrongful overclaim.

136. There were proceedings between R2 and the LSC in respect of a claim for substantial underpayment by the LSC after deduction of the POAs. LSC who had not considered the matter itself but had simply imposed a vendor hold. The LSC acknowledged that £878,592.48 was due to R2 in respect of its LA account. In December 2000 there were 93 cases awaiting authorisation for which £791,789.75 were claimed.

137. In every case where a claim for payment on account was made, the claim was accompanied by the file. In February 1998 the LSC gave directions to R2 that files were to accompany claims for POA in excess of £2,000 profit costs and £250 disbursements. The LSC could make its own judgement as to the amount of the POA and Regulation 72 was thereby complied with. There has always existed a mechanism to enable the LSC automatically to recoup POAs.

138. The 13 sample cases constituted 2% of the total number of LSC funded cases conducted by the firm. In relation to the totality of the cases, that claimed on taxation against that allowed equalled 85.02%.

139. As all the LSC matters involved an allegation of dishonesty, the criminal standard of proof was to be applied by the Tribunal.

140. In most cases the LSC sought reviews of taxation/assessments on the basis that the firm acted outside the scope of the legal aid certificate or exceeded the costs condition on the legal aid certificate or there was a reduction because of delay.

141. A burglary was suffered by the firm in November 1999. Case papers had gone missing. Papers in some cases could not be provided.

142. The Firm's Reporting Accountants had filed with the Law Society unqualified Annual Accountant's Reports, demonstrating that all was in order at the firm.

143. The name on the legal aid certificates was that of R2. He was a solicitor. By virtue of Regulation 72 responsibility for legal aid matters rested with R1 and other admitted solicitors. R2 as an RFL could not be liable for any of the LSC matters.

144. With regard to the sample cases R2 said that some cases were handled by qualified solicitors employed by the firm. There were valid explanations as to why bill finally accepted were lower than the amounts claimed as payments on account. In many cases there was no suggestion by the Taxing Judge of dishonesty. In some cases the submission for a payment on account was made by R1 .

Breach of Regulation 72 of the Civil Legal Aid [General] Regulations

145. The burden of this complaint was that there was a failure to report matters on completion. The practice of the LSC was that upon conclusion of the taxation a file of papers should be submitted to it: this constitutes a report. There was no evidence before the Tribunal of any such failure.

Accounting practices

146. The gist of what was alleged was that the accounting practices of the firm were obscure, contradictory and unreliable. R2 denied this.

147. There had been no adverse finding by the Law Society of any breach of the Solicitors Accounts Rules in relation to the accounts. The pencil written ledgers were the cashier's working papers.

Asian Media Services Ltd

148. The allegation here appeared to be that the claims for translation services provided by AMS were "problematic".

149. Allegation (v) related to the claiming as disbursements fees which were "not justified". If it was alleged that such AMS fees were a "sham" that was denied. The denial was supported by the evidence of R2, Mr Hussain, Mr Weisgard and AMS themselves. It was denied that Asian Media Services Ltd was a sham. R2's interest in AMS was obtainable from Companies House and there would have been no point in endeavouring to mislead Mr Cowley.

The "professional standing" issue

150. It had been suggested that "R2 deliberately used R1 as a means to operate a litigation practice within a law firm without being supervised". That bald allegation was denied. Very little evidence was called by the Applicant to support this allegation.

151. R2 could not be liable in respect of any professional matter before he was admitted as an RFL on 1st October 1999. In the submission of R2 there had been no breach of Regulation 72 by him. He had not caused any such breach to be made. The inference as to causation was insufficient. What was meant by "forthwith" had to be considered.

152. Regulation 72 imposed a duty upon a solicitor to report the completion of a case to the LSC. R2 was not and never had been a solicitor. Accordingly there could be no breach of this Regulation by him.

153. The alternative way that the matter had been put by the Applicant was that R2 caused a breach. That required the acceptance of the proposition advanced by the Applicant that R2 was using R1 as a "front" and at all material times R2 in reality controlled the practice. The problem with that analysis was that R1 had declined to go into the witness box. R1's witness statement had little or no weight.

154. If R1 had given oral evidence R2 would have made the following points: R1 contended in a claim form and on other occasions that he was a sole practitioner in the firm of Malik Adams until 1st October 1999 and that monies were due to him from the LSC relating to the period when he was a sole practitioner; Mr T observed that R1 was in charge of the practice whilst he was at Malik Adams; Mr H said that his

business proposition was with R1 and not with R2; Mr H contended that R1 employed him; R1 also asserted that R2 rarely attended the premises.

155. It was Mr Weisgard's evidence that on the occasions that he had dealings with R2 in the 90s, R2 may have had day-to-day control of three or four cases but he was in no position to comment as to whether or not he was in charge - in any event he was aware that R2 took time off to study for his PhD in Law at Manchester.

156. The inferences relied upon by the Applicant were wholly insufficient to justify the conclusion that R2 was using R1 as a "front".

157. It was unsurprising that given R2's expertise he should be involved in various cases. However there were a number of persons involved in the various cases as was indicated by staff initials in references.

158. In the accounts of the practice, and for example in relation to the 1998 accounts, there was no evidence as to who was receiving the various wages. The supposition that R2 was taking large consultancy fees was not supported by evidence. Even if it were, that assertion would go nowhere.

159. The breach of Regulation 72 was not a continuing breach. The Regulation required compliance "forthwith". The latest period of work was November 1998. Giving the word "forthwith" a wide latitude of three months still left the latest date for the submission of a report as the end of February 1999.

160. Again R2 questioned the Tribunal's jurisdiction in the case of all the LSC matters. R2 repeated his contention that the Rule 4(2) statement was directed at him in his capacity as an RFL. When he did not have that capacity, which was the case prior to 1st October 1999, he could commit no offence of "conduct unbefitting an RFL" because he was not one.

161. The Law Society's submission that "conduct" before one becomes a member of the profession can be taken into account is misconceived in relation to discipline. As a matter of statute the right to discipline extends only over the period of time during which one has the status of an RFL. Anything prior to that time does not entitle the Court to exercise disciplinary powers.

162. There was a material difference between the exercise of powers in relation to the admission of a person to the status of solicitor/RFL and the exercise of disciplinary powers over that person once that status is achieved. By definition in relation to the former all matters are taken into account. In relation to the latter only those that arise since the acquisition of that status are of legal consequence.

163. With regard to the allegation that overclaims had been made on the LSC, Mr Cowley accepted in his evidence that Malik Adams had in fact done all the work that they contended that they had done. All the work was pre 1st October 1999. The Tribunal was invited to bear in mind that reductions in taxation/assessment were made for a number of reasons including, for example, delay.

164. If, as was accepted by the Law Society, the work had been done there could be no improper claim. The fact that the Cost Judge might have disallowed part of the claim for various reasons was not central.

165. R2 could not be responsible for work carried out on a date prior to his acquisition of the status of an RFL. There was no allegation of "causing" here.

166. The basis of the allegation of overclaim was Mr Cowley's report dated 2nd January 2001. Both Mr Hussain and Mr Weisgard said that that report is misconceived in that it omitted a number of matters which sound to the credit of the firm.

167. Whether the 10 cases was a representative or proper sample was a crucial matter to be decided. If it were not, and Mr Cowley accepted that the 10 cases were selected to "highlight" the Law Society's case, then the global position is relevant.

168. The accounting position between the firm and the LSC was that where there was an overpayment as a result of taxation that sum was recouped from any balance which might have been outstanding to the firm. That was the position that subsisted between the LSC and Counsel.

169. Allegations and the way the Applicant put its case made it plain that the burden of this aspect of the Applicant's case was that the overcharging alleged was "systematic". In the submission of R2, the LSC was financially exposed not in relation to individual cases but in relation to the overall position. The evidence was overwhelmingly in favour of R2 on this issue.

170. A further point made by R2 was that the complaints made by the LSC to the Law Society were to be seen as part and parcel of the litigation/dispute between the LSC and R2. Mr Cowley's report omitted material matters (such as a failure to give credit for £369,000) and was in that respect wrong.

171. With regard to the alleged lack of time and accounting records, R2 was of the view that he had no formal duty to keep the same. However, time records were kept. The firm did keep full accounting records. Great difficulty had been caused by the burglary which had taken place in November 1999.

172. Mr Cowley had accepted that there was no statutory or other duty imposed upon R2 to keep or produce time or accounting records by virtue of any provision of statute or document upon which the LSC relied. In those circumstances there could be no professional obligation to this end. As an accountant Mr Weisgard said he would expect there to be both time and accountancy records, that was not the same as holding that there was a duty to supply the same.

173. In any event Mr Hussain told the Tribunal that there were records of time exemplified in the Ashfaq and Dhillon files. He contended that there were no problems after the burglary and any problems as to missing time recording were a result of that burglary.

174. The Applicant asserted that the burglary was suspect and might have been arranged. That was shown not to be the case by the production of the Indictment and Conviction of Mr Wilson. This was one of wide-ranging and unjustified allegations made by R2's professional regulator. Computer records and files were stolen in the burglary

and that placed Malik Adams in difficulties in justifying certain aspects of its various bills. This was amply demonstrated by the specific comments of the Taxing Masters.

175. The Law Society had accepted that proper accounting records for the purposes of the Solicitors Accounts Rules had been maintained. Annual Accountant's Reports had been filed as required. In his evidence Mr Hussain said that he had never seen handwritten ledgers.

176. The principal point on which R2 placed reliance was that in the absence of a franchise contract between R2 and the LSC there was no duty to maintain an accounting procedure which would satisfy the LSC because either the LSC had the option of not making payments on account (they had the files which accompanied application for such payment) and additionally the files would be subject to detailed scrutiny on taxation or assessment in relation to which the LSC had a right to appear or be represented and also head a right to appeal if it considered the assessment of costs to be wrong.

177. With regard to the matters relating to Asian Media Services Ltd, Mr Cowley made no accusation that particular invoices were not satisfactory. With regard to these matters it was R2's submission that there had been an abuse of process. Unsustainable inferences had been made and the Tribunal was reminded that where an allegation was one that a Respondent had acted dishonestly, the criminal standard of proof was the requisite standard to be applied.

178. During the course of his cross-examination Mr Cowley was shown a number of Asian Media Services Ltd invoices and agreed that there was nothing wrong with them. Mr Cowley had been asked by the Applicant to support the assertion that certain of the invoices were dishonest.

179. Two invoices in question were the subject of taxation and were not held to be dishonest or improper by the Costs Judge Taxing Master. The LSC was a party to that taxation and had a right of appeal.

180. Accordingly the matter between the LSC and the firm of Malik Adams was the subject of res judicata. It was submitted that it was an abuse of process for the Applicant, which was acting upon the LSC's complaint, to raise those contentions against R2 in the disciplinary proceedings.

181. Both Mr Hussain and Mr Weisgard had been asked about the invoices, although both agreed that there were certain deficiencies in the documents, neither was prepared to accept that the documents were dishonest.

182. The Applicant's submissions were not supported by evidence. In any event the standard of proof to be applied did not support the burden which fell upon the Applicant's shoulders. With regard to the allegation that R2 had lied to Mr Cowley about his connection with Asian Media Services Ltd, R2 claimed that he had not done so. The Tribunal was invited to give due consideration to the inherent unlikelihood of such an event; the absence of any reference to the matter in the notes taken at the material time; the timing of Mr Cowley's report ; and again that an allegation involving dishonesty must be proved to the criminal standard.

183. It was inherently unlikely that R2 would have said that he had no involvement in Asian Media Services Ltd when he was well aware that the documents establishing such involvement were publicly available. There would have been no point in his attempting to mislead Mr Cowley.

184. Mr Cowley's evidence was unsatisfactory. He said that he had secured information from Companies House and had put those documents to R2 who became "cross". R2's demeanour did not find its way into the report. That cast a shadow over the accuracy of Mr Cowley's evidence. During the course of Mr Cowley's evidence it emerged that Mr Cowley's version of accounts was not referred to in the notes taken during the course of the interview. The disciplinary hearing took place years away from that interview.

185. The report is dated 2nd January 2001 and therefore three weeks had elapsed between this alleged conversation and the making of the report which covered a large number of areas.

186. Finally it is to be observed that the relevant standard of proof is effectively proof beyond reasonable doubt. There are a number of question marks upon the evidence in this issue.

187. R2 denied that he had in any way misled R1 or anyone else as to his professional standing: there was no reliable evidence of his having done so. R1 had not gone into the witness box to support his statement and there were plain contradictions in what was said by R1. The inferences suggested by the Applicant could not be sustained.

The Tribunal's Findings of Fact

188. The Tribunal accepts the evidence of R1 contained in his witness statement.

189. The Tribunal finds as a fact that R2 misled R1 as to his status indicating to R1 that he was a solicitor who had come off the Roll and he was seeking readmission. The Tribunal also finds that R2 gave the impression to R1, deliberately, that he could become a registered foreign lawyer whilst waiting for admission to the Roll.

190. The Tribunal finds that R2 was the prime mover in the practice. To all intents and purposes the practice was his and he required a solicitor to be a figurehead principal in order that he might undertake publicly funded work.

191. The Tribunal finds that R2 effectively controlled the civil side of the firm's practice. R1 undertook in the main criminal work.

192. The Tribunal finds that R2 was not engaged for the whole or the major part of his time studying and/or lecturing at the University of Manchester.

193. The Tribunal accepted Mr Cowley's evidence. The Tribunal finds that the shortcomings in the conduct of the files of legally aided clients were as alleged. The Tribunal also finds that R2 did lie to Mr Cowley about his connection with AMS.

194. The Tribunal finds as a fact that R2 was not supervised by R1.

The Tribunal's Findings with regard to the Allegations

195. The Tribunal indicated with reasons that it found the allegations (i) to (vii)(A) and (xii) proved and that it considered the matters sufficiently serious to warrant a penalty which might deprive the Respondents of their ability to practise. The Respondents were invited to make submissions by way of mitigation.

The Mitigation of R1

196. R1 was informed that Dr Malik had separated from his wife, the principal of Malik Solicitors and that as he did not hold a Practising Certificate he required a solicitor to work with until he had obtained one. R1 was led to believe that this would be imminent as R2 had voluntarily removed himself from the Roll.

197. The incentive to join R2 was the fact that a practice would effectively be up and running, as R2 had an existing client base and premises. The intention was that once R2 was admitted the Respondents could then enter into partnership.

198. R2 was caretaker at the firm. There was no partnership agreement. R2 provided the premises. R1 was not required to put up capital or to pay a purchase price for the practice.

199. Within six months after they started working together R2 informed R1 that he had failed to be admitted. R1 was disappointed, but he was prepared to continue working under the existing arrangements as they appeared to be working. R1 was reassured when R2 informed him that he had been advised by the Law Society to reapply the following year. R2 told R1 that the Law Society had advised him that whilst he was waiting to reapply for his Practising Certificate he could be registered as a Foreign Lawyer in order to enter into partnership.

200. Although R1 was the sole solicitor principal of the practice in fact he had limited control over anything but his own work. It was a longstanding practice of R2 and staff were accustomed to defer to R2's views and to look to him for instructions. The language barrier did not help; most discussions between the staff were in Punjabi with which R1 was not familiar. R1's actions as principal were mentioned by R2.

201. When R1 became concerned he did attempt to make enquiries of the Law Society. He was informed that this was privileged information.

202. R2's manner and approach in the office was domineering and overbearing and his working methods were chaotic.

203. R1 became concerned that work was being taken when the firm did not have the necessary expertise.

204. In 1998 R1 received an official warning from the Law Society that the accounts were not kept up to date and thereafter R1 carried out spot checks. R2engaged relatives and accountants known to him.

205. R1 could never get clear financial details.

206. On 1st October 1999 (on being registered as a Foreign Lawyer) R2 became a partner of the practice. Another was introduced by R2 in November 1999. R1 was already planning to leave so he did not make an issue of this decision.

207. R1 ceased to be a partner on 31st May 2000. He had put arrangements in place to ensure that there was a smooth exit: although the partnership was dissolved he agreed to continue to act as consultant for three months.

208. R1 terminated the relationship on 11th July 2000 as he did not receive his consultancy fees. Subsequently this became the subject of a County Court Judgment against R2.

209. R1 accepted that his own position was not one in which he could avoid criticism, but he himself had been misled by R2.

210. R1 regretted the situation which had arisen. He hoped that the Tribunal's decision would not prevent him from continuing to act as a freelance advocate.

The Mitigation of R2

211. R2 did not mislead R1.

212. R2 ran a multi-national legal practice in Manchester.

213. R2 had had a number of articles published and he was also a moderator and producer of a weekly current legal affairs television programme.

214. R2 was well aware of his responsibilities.

215. In or about September 1996 R2 became a full time student at the University of Manchester for a PhD and a part time lecturer in public law. He continued working with the firm on a part time basis, invoicing R1 for such work.

216. The accounting department of the firm was controlled by R1.

217. The client account was strictly controlled by R1 who was the only signatory on the mandate at the bank.

218. The Legal Aid Certificates were issued in favour of R1 or other solicitors within the firm.

219. R2 was admitted as an RFL in September 1999 and on 1st October 1999 he became a partner with R1 and became a signatory on the client account together with the other partners.

220. With regard to the LSC Malik Adams made a number of franchise applications which were rejected by the LSC and a number of appeals were lodged and a complaint was made to the OSS.

221. After the LSC inspector recommended that the firm be referred to the Law Society, no proper investigation had been carried out in relation to the allegations made by the LSC nor proper representation permitted.

222. The treatment of R1 had been more favourable than that of R2.

223. R1 had abrogated his responsibility for legally aided matters and R2 had spent a great deal of his own money borrowed through the bank to meet outstanding taxation fees and disbursements.

224. R1 accepted that he was liable for the liabilities of the firm as a sole partner. This includes debts for photocopiers and witnesses engaged under Legal Aid Certificates; liability for tax and VAT; accounts and bookkeeping. R1 was in sole charge.

225. The delay in bringing the proceedings to their conclusion resulted in R2 being hospitalised for ill health. He had developed an acute problem of hypertension and as a result of this on occasions his memory was impaired particularly when subjected to situations of extreme stress.

226. R2 had suffered economically and had to have leave from various academic positions because of his ill health.

227. In 2001 R2 was awarded the Male Professional of the Year award for his contribution and innovation/research in public law and immigration.

228. He was awarded a TV award in 2002 for providing a legal helpline (in association with a television channel) to the most vulnerable sector of the community in the UK and overseas and promoting harmony towards a multi-cultural Britain.

229. The Tribunal was invited to give due weight to the written references submitted in R2's support.

The Tribunal's Decision and Reasons

230. The Tribunal gave consideration to the status of the evidence before the Tribunal. Mr Cowley gave evidence on behalf of the Applicant. Mr Hussein gave evidence on behalf of R2 and Mr Weisgard was put forward as an expert and independent witness. R1 as noted above had given a witness statement but before the commencement of the hearing indicated that he did not consider he was a compellable witness because he was a respondent to the Application and Counsel for the Applicant indicated that he would not seek to compel R1 to give evidence if he chose not to do so. The Tribunal however considered that his witness statement should be admitted in evidence and given such weight as might be appropriate recognising that it would not be tested by cross-examination either by the Applicant or R2. R2 had also made witness statements which the Tribunal was willing to accept in evidence on the same basis. Various other third party statements were made which the Applicant had indicated

were not accepted and which he required should be tested by such persons giving oral evidence. None did so and the Tribunal therefore decided that although such documents were admitted in evidence they could not be given any or any significant weight. Counsel for R2 also submitted that R1's witness statement should be given little weight because R1 had proposed to the Applicant (and the Applicant had considered but later rejected) a plea bargain by which R1 would accept allegation (vi) if the Applicant abandoned allegations (i) to (v) against him. The Tribunal noted that R1's witness statement had been made in April 2002 long before any question of a plea bargain had arisen and it was considered that there were no grounds whatever for thinking that it should treat the witness statement with particular caution. R1 did not resile in any respect from his witness statement.

231. The Tribunal noted that in a number of respects R1's witness statement contained acknowledgement of fault on his part which supported allegations made against him and the Tribunal considered that this coupled with his admission albeit at a late stage of allegation (vi) gave credibility to his witness statement. It was also consistent with other evidence before the Tribunal including the evidence of Mr Cowley.

232. By contrast R2's witness statement denied any wrongdoing on his part and mounted an attack on Mr Cowley's bona fides and that of the LSC. R2 also sought to shift the entire responsibility for any failings to R1.

233. In so far as R2's witness statement addressed the issues before the Tribunal (and it contained much material which in the Tribunal's view was beside the point and concerned R2's dispute with the LSC) the Tribunal did not find it a convincing document. In the Tribunal's view it skated over or did not address a number of issues relevant to the allegations made against R2. Where there was other evidence before the Tribunal which contradicted R2's evidence or explained his conduct this was in the Tribunal's view to be preferred.

234. Mr Cowley gave evidence for the Applicant. The Tribunal found that he was a careful, honest and entirely convincing witness and his evidence was unshaken by the attack mounted against him in R2's statement and in cross-examination by Counsel for R2.

235. Mr Hussein gave evidence for R2. He had joined R2's firm in 2003 and his evidence was primarily directed to seeking to establish that on balance, at the time the LSC imposed a vendor hold on the firm, the LSC owed the firm more than the firm owed the LSC. The Tribunal does not regard this as being more than of tangential relevance to the issues before the Tribunal. Mr Hussein was an honest and enthusiastic witness but his evidence did not in any material respect cast doubt on the specific claims made in Mr Cowley's report as to the cases where payments on account exceeded the amounts ultimately recovered on assessment of the relevant bill.

236. Mr Weisgard was tendered as an expert and independent witness. He admitted however that he had not in the time available considered the documentation annexed to Mr Cowley's witness statements and he had no evidence to give in relation to the specific issues before the Tribunal. He acknowledged that he had included information which R2 thought would be of assistance in R2's case against the LSC and had not considered evidence which might be supportive of a contrary view. The Tribunal did not consider his evidence, though honestly given, was of assistance.

The Tribunal made the following findings as to the specific allegations:-

Allegation (i)

237. The Tribunal accepts the evidence of Mr Cowley supported by documentation before the Tribunal that there was a breach of Regulation 72 in that no reports were made in numerous case that complied with the requirements of the Regulation. This was not denied by R1. R2 denied this allegation but said if there was fault R1 was wholly responsible. There was no evidence of any kind that reports were made. Sending a file in connection with an application for a POA cannot be regarded as such a report even if in fact no work was carried out subsequent to the submission of the request for a payment on account. It is unarguable that R1 as a solicitor was responsible for this breach and the Tribunal finds this allegation established against him.

238. Counsel for R2 submitted that R2 could not be liable for causing a breach by R1 as at the relevant time he as not a solicitor and only later became a Registered Foreign Lawyer. The Tribunal rejects this argument. Although there was evidence that R2 devoted time to academic study, there was substantial and convincing evidence that, as claimed by R1, R2 was in effect the person in day to day overall control of the civil law practice of the firm and so in charge of immigration matters in respect of which claims were made for public funding. The Tribunal accepts R1's evidence that for practical purposes R2 was his senior partner. The Tribunal accepts R1's evidence in preference to R2's. R2's reference was on many letters and instructions to Counsel. Assistant solicitors and unqualified staff though employed by R1 looked to R2 for supervision. The evidence of Mr Weisgard supported rather than weakened this conclusion. As a practical matter R2 did in the Tribunal's view cause R1 to breach his obligations. In the Tribunal's view, as a matter of law, R2 cannot avoid responsibility for the breach simply because at the relevant time he was attempting but had not then succeeded in qualifying as a solicitor or becoming registered as an RFL. The Tribunal accordingly finds the allegation also proved against R2.

Allegation (ii)

239. The Tribunal accepts Mr Cowley's evidence and the documentary evidence in the 10 cases (13 instances) that payments on account were claimed which in the event exceeded the amounts ultimately awarded on assessment. This did not occur on isolated occasions and the schedules before the Tribunal, which were not in this respect challenged by Mr Hussein's or Mr Weisgard's evidence, showed numerous such claims which might be characterized as systematic. When coupled with the long delay in having the final bill assessed, the Tribunal has no doubt that the 10 cases represented instances of overclaim. The Tribunal finds the allegation proved against both R1, under whose authority the claims were submitted, and R2, who caused such claims to be submitted.

Allegation (iii)

240. There was no documentary evidence before the Tribunal that at the relevant time there was any reliable and accurate time recording system in operation. The Tribunal accepts Mr Cowley's evidence of what he found and was told when he carried out his investigatory audit. The assertion by R2 that there was such a system was not supported by contemporaneous documentation nor the evidence of anyone who was present at the time. The burglary of computer and electrical equipment in 1999 for which a Mr Wilson was convicted does not in the Tribunal's view provide an adequate explanation for the lack of primary time recording information on files. The Tribunal notes that Mr Wilson was not convicted of theft of the files - inherently unlikely - and Mr Hussein in his evidence said that the cellar room containing files was in a state of chaos some 3½ years after the date of the burglary. The Tribunal considers that there is no convincing evidence of a time recording system at the date of his audit in respect of the period covered by his audit. The Tribunal considers both Respondents have failed in their responsibility in this respect and the Tribunal finds this allegation established against R1 and R2. The Tribunal rejects the submissions of Counsel for R2 that there is no obligation imposed under the LSC/CAB Regulations and that in consequence no professional obligation to maintain such a system. The Tribunal had previously made clear that where public funds are being obtained a solicitor is in a particular position of trust. The professional obligation to be able properly to account for time spent on the basis of which claims are made on public funds fell on R1, and in the particular circumstances of this case, on R2.

Allegation (iv)

241. No evidence was before the Tribunal of any accounting records for the relevant period in respect of publicly funded matters payment for which were dealt with through the firm's office account. The Tribunal is unable to accept that the audit of the firm's client account - which dealt with relatively trivial sums - and the unqualified accountants' reports submitted to the Law Society provide an answer to the allegation in the absence of any documents of the kind described by Mr Weisgard, cash books, ledgers etc. None was in evidence and none were produced to Mr Cowley.

242. The Tribunal finds the allegation proved beyond doubt and considers both Respondents were in the circumstances of this case responsible.

Allegation (v)

243. There was a lack of any contemporary evidence supporting the bills said to have been submitted by AMS (or AMS Limited). The Tribunal accepts Mr Cowley's evidence as to the manner in which the firm charged for translation services. Two invoices clearly suggest that they were created long after the work to which they related was said to be done and the Tribunal finds they could not have been put forward for payment by the LSC honestly. These documents were produced after R1 had left the firm. The Tribunal finds that a solicitor who makes a claim on public funds for which he can provide no evidence that the work was duly performed is not justified in making such a claim. Claims were made by R1 and by R2 after he was registered as a

Registered Foreign Lawyer and the allegation is found proved against both R1 and R2.

Allegation (vi) (against R1 only)

244. This was admitted by R1.

Allegation (vii)(A) (against R2 alone)

245. The Tribunal accepts Mr Cowley's evidence that R2 denied he had any involvement with AMS. R2 may have expected that his denial would be accepted and this may explain why he became angry when Mr Cowley showed him evidence from the Companies Registry that he was the sole shareholder and a director. If he had not denied the involvement with AMS it is unlikely he would have become angry when asked about the Companies Registry information. Mr Cowley's evidence was wholly convincing. R2 did not offer any contrary evidence beyond suggesting in his witness statement (as to which he was not cross-examined) that there had been a misunderstanding. R2 in his witness statement said "There is clearly a dispute between Mr Cowley and Malik Adams' staff and further [I deny] that I would lie to Mr Cowley about any involvement in Asia Media Services (AMS) when I know as a lawyer that there is clear documentation at Companies House." The Tribunal's acceptance of Mr Cowley's evidence leads inevitably to the conclusion that R2 deliberately lied to him about his involvement with AMS. Consequently R2's behaviour in this respect was not honest.

Allegation (xii)

246. The Tribunal accepted R1's evidence that he was misled by R2 into believing that R2 was a solicitor without a current Practising Certificate which he would shortly obtain. Later R2 said he was seeking to qualify as a solicitor or become an RFL. In the unusual circumstances of this case, R2 was effectively a principal of the firm albeit unqualified, and the Tribunal considers he must bear responsibility accordingly. There was no evidence that R1 exercised any supervisory role over R2 nor does it appear likely that R2 would have permitted him to do so.

247. The Tribunal has no doubt that R2 took advantage of R1 and that this allegation is established against R2.

Conclusion

248. The Tribunal finds all the allegations the subject of this hearing found proved. Where it was alleged that R2 had behaved dishonestly, the Tribunal finds the evidence wholly convincing that R2 behaved with conscious impropriety and he could not as an honest and competent solicitor (a standard which applied to him) have sought to justify his actions. He made no acknowledgement of any or any material fault on his part and in doing so the Tribunal concludes that he either was deliberately dishonest or that he set for himself a standard of honest behaviour which no honest solicitor of

integrity would have set. The Tribunal finds the allegations of dishonesty proved beyond reasonable doubt.

249. The Tribunal made no finding of dishonesty against R1. It considers he was naïve and his failure to recognise at the time that he was in no position to supervise R2 was seriously culpable. His recognition, albeit belatedly, that this was the case however told in his favour.

250. At the conclusion of the hearing the Tribunal made an order against R1 of suspension for a period of six months commencing 1st October 2004 and an order against R2 that he be struck off the Register of Foreign Lawyers and made orders for costs.

Dated this 23rd day of September 2004
On behalf of the Tribunal

A H Isaacs
Chairman