No. 8911/2003

IN THE MATTER OF PAUL JOHN MASSEY, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr P Kempster (in the chair)
Mr J N Barnecutt
Mr Lady Maxwell-Hyslop

Date of Hearing: 23rd March 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made by George Marriott solicitor of Gorvins, 4 Davey Avenue, Knowlhill, Milton Keynes, MK5 8NL on 23rd October 2003 on behalf of The Law Society that an order be made by the Tribunal directing that as from the date to be specified in such order no solicitor shall, except in accordance with the permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Paul John Massey of Chandlers Ford, Eastleigh, Southampton, a person who is or was a clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegations were as follows:-

1. Whilst employed or engaged by a solicitor did acts which compromised or impaired or were likely to compromise or impair:-

(a) the solicitor's independence or integrity;

(b) a person's freedom to instruct a solicitor of his or her choice;

(c) the duty of the solicitor to act in the best interests of the client;

(d) the good repute of the solicitors' profession contrary to Rule 1 of the Solicitors Practice Rules 1990.

2. Shared fees with a solicitor contrary to Rule 7 of the Solicitors Practice Rules 1990.

3. Was a party to the arrangement for the introduction of clients to a solicitor's practice whose claims arose as a result of personal injury and who in the course of his business solicited or received contingency fees in respect of such claims contrary to Rule 9 of the Solicitors Practice Rules 1990.

4. Enforced a contingency agreement against a client of a solicitor's practice and thereby acted where his interest conflicted with the interests of the client and himself or the solicitor's practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott appeared as the Applicant and the Respondent did not appear and was not represented. The Respondent had directed an e-mail communication to the Tribunal on the day before the hearing which is set out under the heading "The Submissions of the Respondent". He also on the day before the hearing sent a fax to the Tribunal headed "Reply to the Statement of George Marriott dated 23rd October 2003". The Tribunal has taken this document into account in making its findings of fact, in deciding whether or not the allegations have been substantiated, and by way of admission and where appropriate mitigation.

The evidence before the Tribunal included the papers filed by the Applicant. The Tribunal noted that he had served Civil Evidence Notices upon the Respondent who had not filed any counternotice, and the Respondent's documents referred to in the previous paragraph.

The Tribunal noted that at paragraph 1.2 the Respondent stated "I did share fees with Mr Woolgar. This was admitted and rectified." The Tribunal has therefore accepted the Respondent's admission of allegation 2 above.

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

The Tribunal order that as from 23rd day of March 2004 no solicitor shall, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Paul John Massey of Chandlers Ford, Eastleigh, Southampton, a person who is or was a clerk to a solicitor and the Tribunal further order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed between the parties.

The evidence before the Tribunal

1. The Respondent, Mr Massey, was not a solicitor and was employed as a litigation manager by a firm practising under the style of Woolgars from 16 Brunswick Place, Southampton, SO15 2OQ. The person responsible for the supervision of the Respondent was Neil Woolgar, the sole principal of the firm of Woolgars.

2. From June 1996 to October 1997 Christopher Kenning (Mr Kenning) a solicitor was employed by Woolgars as an assistant solicitor. At the date of the Application he practised on his own account under the style of Kenning Solicitors from 3-5 Wood Street, Old Town, Swindon, Wiltshire, SN1 4AN. Mr Kenning made a complaint about the Respondent, Mr James Walker who was also employed or engaged by Woolgars and was not a solicitor, and Mr Neil Woolgar about matters which came to his attention during his employment at Woolgars.

3. It was the Applicant's case that the Respondent had joined Woolgars in late 1995. Previously he had been director and shareholder of a claims handling company called Compensation Direct Limited (Compensation Direct). Earlier in 1995 he worked for or was engaged by another firm of solicitors called Richard Predko (Predko). At the time he was a director of Compensation Direct. When the Respondent joined Woolgars he brought with him cases which he and Compensation Direct had managed. The operation of Compensation Direct was typical of a claims handling company. Compensation Direct dealt with cases on a contingency fee basis whereby if the clients' claims were successful, they would pay a percentage of their damages to Compensation Direct. The Respondent did not argue with this part of the Applicant's case. He said he had been approached to advise a person about his personal injury claim. At the time it was being handled by Predko. The Respondent felt that Predko was inexperienced in such work. He had a meeting with Predko and it was decided that the Respondent, trading as "Quantum Litigation" would handle the matter as a locum for Predko. Damages and full costs were recovered from the defendant for the privately funded plaintiff client. There was no cost to the client. That was the only matter of which the Respondent had conduct for Predko.

4. Mr Kenning's complaint concentrated on the interaction between Compensation Direct, the Respondent, Mr Walker and Neil Woolgar, and whether there were breaches of the rules of professional conduct. Following his complaint about those activities within Woolgars to the OSS on 16th January 1998 the matter was considered by an appeals committee on 7th October 1998, the investigation having focused on Mr Neil Woolgar. They decided to reprimand him severely. Reference in the report is also made to Mr Walker. Following a detailed analysis of Mr Walker's involvement, the adjudication panel decided to take no action against him. As a result of that, Mr Kenning referred the matter to the Legal Services Ombudsman who concluded that the OSS was justified in deciding to reprimand Mr Woolgar for the admitted fee-sharing with the Respondent but also found no evidence that the OSS had investigated properly the relationship between the Respondent and Compensation Direct. As a result, the OSS was asked by the Legal Services Ombudsman to consider the following matters:-

    1. The propriety of fee earners within a firm of solicitors working on cases on which they had initially worked as claims assessors;

    2. Whether the Respondent continued to have any financial interest in those cases because of the contingency agreements with Compensation Direct;

    3. Whether the agreements were enforced by the Respondent as a fee earner within Woolgars;

4. Whether the Respondent acted where there was a potential conflict between his interests and those of his client.

5. At first instance the OSS Adjudication panel on 13th June 2003 decided to make a Section 43 Order against the Respondent. He applied for a review of that decision which was allowed to the extent of referring the matter to the Tribunal for the Tribunal to decide whether a Section 43 Order should be made.

Fee sharing

6. Woolgars were billed by Quantum Litigation for the work the Respondent had carried out. Examples were before the Tribunal where costs of £1,575 recovered from the Legal Aid Board had been paid to the Respondent. It was acknowledged by Mr Woolgar (in a letter dated 3rd March 1998) that that might have been a breach of Practice Rule 7 and accordingly Mr Woolgar terminated the arrangement. The Respondent said he was not a bona fide employee. He shared fees with Mr Woolgar on advice from Mr Woolgar's accountant for tax reasons. The breach was subsequently rectified and the Respondent then became an employee.

Claims assessors/contingency fees

7. It was the Applicant's case that at the beginning of 1995 the Respondent was working for or was engaged by Predko. Whilst a letter dated 14th March 1995 suggested that the Respondent was still working for Predko, Predko's letter of 23rd March 1995 to the client Mr C said:-

> "Re: Quantum Litigation
>
> "I received a letter from the Respondent asking me to pay him whatever sums I receive from you and including the sum of £300.00 received for January, February and March making in all £900.00.
>
> Would you please be good enough to let me know if you agree and if so, please confirm in writing."

This made it plain that the Respondent was to receive all monies paid by the client. The Respondent used the Quantum Litigation letterhead as well as that of Predko (under reference RP/JM/C). The Respondent acted as claims assessor and was also engaged in some capacity by Predko to conduct the client's case.

8. It was the Applicant's case that an analysis of the file relating to CMN demonstrated that the file was passed from one firm of solicitors (BPE) to Woolgars pursuant to an obscure arrangement between BPE and Compensation Direct (in breach of Practice Rule 9) and that the Respondent was attempting to enforce contingency agreements. The Respondent said that CMN's case was legally aided and if CMN had been successful his costs would have been recovered from the other side and no deduction would have been made from his damages, save in relation to the statutory charge.

9. With regard to the matter of IEG, the file initially started off at BPE, but was transferred pursuant to an obscure agreement to Woolgars. The matter was initiated by the Respondent at Compensation Direct on a contingency basis. The file was referred by the Respondent to BPE giving details of Compensation Direct's percentage, and there was an arrangement between Compensation Direct and BPE for the introduction of clients. The Respondent said that IEG's financial circumstances changed during the course of her case. She obtained legal aid. She recovered damages from which no deduction was made.

10. The Respondent explained that he "kept his eye" on all his cases to ensure that private clients who later qualified for legal aid were switched to that method of funding. No deductions were made from damages recovered.

N B

11. It was the Applicant's case that the Respondent acted in such a way as to preserve the payment of fees to Compensation Direct. NB had signed a contingency agreement with Compensation Direct. The Respondent brought the case to Woolgars. On Woolgars' letterhead the Respondent wrote the following letter to NB. It was not dated.

> "Dear N
>
> RE YOUR ACCIDENT 06.05.93
>
> I write to let you know that Compensation Direct will release you from your agreement with them on the basis that you repay to them any disbursements (medical reports, court fees etc), and that you pay their fees on the following basis:
>
> On the first £25,000 - 20% £5,000
> On the second £25,000 - 16% 4,000
> On the third £25,000 - 12% 3,000 £14,840
> On the fourth £25,000 - 8% 2,000
> On slice over £100,000 - 3% 840
>
> If you are willing to accept these figures, please sign this letter and return it to me. In the event that you are happy with this proposal, my firms charges to you under the terms of the conditional fee agreement will be as follows:
>
> On the first £25,000 - up to a maximum of 5% 1250
> On the second £25,000 - up to a maximum of 4% 1000
> On the third £25,000 - up to a maximum of 3% 750
> £4060
> On the fourth £25,000 - up to a maximum of 2% 500
> On slice over £100,000 - up to a maximum of 2% 560
>
> £18,900
> 3,307
> £22,207

> The effect of this of course is that you will be no worse off than you were under the original agreement with Compensation Direct, and indeed that you may be a little better off, if my hourly charges come to less than the percentage figures that I have quoted.
>
> Yours sincerely
>
> PJ Massey"

The Respondent typed out for NB a letter dated 2nd September 1996 in the following form:-

> "Dear Paul
>
> RE MY COMPENSATION CLAIM
>
> I refer to our discussion today. I understand that I have been offered the sum of £128,233.28 to settle my claim. This sum is in addition to the State Benefits I have received plus the interim payments. I have thought all weekend about this and have decided to accept it, and I accept your advice although I had come to this conclusion anyway.
>
> I understand that I have to pay your firms fees, and I agree these in the sum of £4775.98 including VAT. I also have to pay Compensation Direct in the sum of £17,500 including VAT, and you can pay them direct if necessary. I will be left therefore with the sum of £105,957.30. I am happy with this and agree to accept the offer on this basis.
>
> Yours sincerely
>
> N B"

This was prior to the issue of any proceedings. The file was originally transferred from BPE. Under the agreement between NB and Compensation Direct, NB was not liable to pay any solicitors' fees and none would be recoverable by BPE, even if they were successful.

12. The Respondent arranged for NB to attend Nat West Bank Bitterne on 25th September 1996. In response to enquiry made of NatWest Bank it wrote the following letter:-

> "Reference: Solicitors Disciplinary Tribunal: Woolgars/Compensation Direct Ltd/Paul Massey
> Sums deducted from NB's damages (apparently via NatWest Bank Bitterne Account No ------ (41? - Quantum Litigation?)
> Date approximately end September 1996
>
> We write with reference to your recent correspondence concerning the above and would apologise for the time taken to reply, but unfortunately in view of the historic date of the transactions, we have been unable to locate the mandate

and account opening forms and we also believe the cheques have been destroyed.

1. The account was opened in the name of Compensation Direct Ltd and NB at our Bitterne, Southampton branch on the 23rd September 1996 and was closed on the 27th September 1996.
2. The account number was -------- and sort code 602045.
3. The two signatories on the account were NB and Helen West for Compensation Direct.
4. The address given for our records was … Lodge Road, Southampton.
5. The opening entry was a cheque for £123,457.30 in respect of the compensation claim on the 24th September 2001 this cheque was sent direct at a charge of £11.50.
6. From our records I believe NB cashed £9000.00 on the 25th September 1996 and a cheque for £97207.30 was issued in his favour and this debited the account on the 26th September 1996.
7. According to our records Helen West then cashed a cheque for £17235.50 on Thursday 26th September 1996 being the remaining balance after deduction of the £11.50 direct cheque fee and £3 interest.
8. Our records show that the mandate stated both to sign.
9. Duplicate statements are enclosed showing the above transactions.

I hope that this clarifies the position for you, however, if we can be of any further assistance please do not hesitate in contacting this office."

13. NB was told that he was to meet a Ms Bundy, a trainee solicitor with a firm who had previously represented NB, but he had never met her. NB believed he had met Miss Bundy on 25th September 1996 at the Bitterne branch of NatWest. Miss Bundy denied her attendance on that date. NB said that the Respondent told him he was going to meet Clare Bundy outside the bank and that a person calling herself Clare Bundy introduced herself to him on that day and also introduced herself to the management of the bank and signed a document at the bank in that name. The Tribunal was invited to infer that Ms Bundy was in fact Miss West who was an associate of the Respondent at Compensation Direct. The Tribunal was invited to draw that inference from the "customer authority" prepared by NatWest which took the following form:-

"Bitterne Branch 26/9/96

Account number -------- Sort code 602045

Compensation Direct Ltd - NB

Close Current a/c no.--------, when cheque for £97207.30 in favour of NB has been presented, taking the account to a nil balance.

[signed by Helen S West and NB]"

and the letter addressed by Compensation Direct, signed by Helen West, to Ms F dated 7th October 2000 which was as follows:-

"Dear Ms F

Re: Your Accident 20.09.00

Thank you for submitting an entry form via our website at www.CompensationDirect.com.

We would also like to sincerely apologise for the frustrating problems in our taking instructions on your behalf by telephone yesterday.

I understand you would like to receive information regarding our company and this I have enclosed for you. Please note that we operate on a No Cost Ever basis, which is very different from No Win No Fee in that the handling of your case will not cost you a single penny. All costs are met by the firm of expert personal injury solicitors dealing with your claim, and upon settling, any costs are recovered from the *other side, not from you*. This is just one very important difference between us and numerous other schemes of which you may be aware.

Unfortunately I do not have contact telephone number or e-mail for you. I understand that you might not wish to provide this until you know more about our company. I hope the enclosed information will be of interest to you. If you would like to know more please do e-mail me (Helen@CompensationDirect.com) or telephone on 0800 169 2139. We are here to answer your questions and you are welcome to speak with us as many times as you feel necessary until such time as you are ready to make the next step.

Again, if you would like to make contact, we would be happy to assist you further.

Yours sincerely

[signed Helen West]"

13. The Tribunal was also invited to draw the conclusion that the Respondent took steps to ensure that Compensation Direct were paid the fee due to them when he knew or ought to have known that the agreement between NB and Compensation Direct was unenforceable, being champertous and contrary to public policy.

14. The Respondent confirmed that he did bring the case of NB from Compensation Direct to Woolgars, as he did with many other cases. He had cleared that with The Law Society.

15. Compensation Direct had NB's case on a contingency fee basis as it was "pre-issue". The Respondent handled the case on the same basis at Woolgars.

16. The Respondent explained to NB that Compensation Direct would take a time apportioned share of the contingency fee which NB had originally bargained for, and

Woolgars would do likewise. NB would be no worse off - the only difference was that the fee would be split between Compensation Direct and Woolgars.

17. The Respondent said in his reply to the Applicant's statement that Woolgars did not agree to protect any Compensation Direct lien. The Respondent always made it clear to NB that it was his responsibility to pay Compensation Direct when the case was concluded.

18. The Respondent said he did not ensure that Compensation Direct was paid, nor did he engineer payment of their fee or undertake to protect any lien.

19. The Respondent did not arrange for NB to attend the Bank. When the damages cheque was received, the Respondent deducted Woolgars' fee, as agreed with the client, and gave NB a cheque for the balance. It appeared that NB simply paid Compensation Direct its share of the fee.

20. At the material time the Respondent was not a shareholder in Compensation Direct and he had ceased to be a director of it years before. He did not know who Mrs Bundy was. Miss West had worked for Compensation Direct in the past and the Respondent presumed she was still doing so. He did not know if she was a shareholder or a director.

21. It was the Applicant's assertion that, although the Respondent had resigned from Compensation Direct, he was a controlling force behind the scenes. The evidence to support that assertion was contained in the following file note:-

> "InterOffice Memo
>
> To: CHRIS KENNING, SS
>
> From: PAUL MASSEY
>
> Date: June 18, 1996
>
> Subject: Whilst I'm on Holiday
>
> I enclose a list of those cases which need attention, either because nothing has been done for a long time, or because limitation or set down/guillotine dates are coming up.
>
> Please liase with each other about these. If you have any doubts or questions, speak to James Walker on 01227/458489, who is totally familiar with the corporate structures involved and the internal machinations of Quantum Litigation /Compensation Direct.
>
> Please bear in mind that I am no longer a director or shareholder in Compensation Direct or anything to do with that firm as far as the outside world is concerned. James Walker is in charge, and the directors are Terry Hook and Rani Rao - my accountants Alliot Wingham have all necessary details, but there is no circumstance under which you will need this. Refer all CD matters to James.

> Some of the cases on the attached lists have already been dealt with. Some may have new limitation dates or set down dates - eg if a previously unissued case is now issed [sic] or if a County Court case has been transferred to the High Court. Please make appropriate notes on these sheets or a separate sheet as I will want to update my database when I get back.
>
> Any matters described as "BPE" should be dealt with by James.
>
> CC: JAMES WALKER"

2. The fact that the Respondent was a guarantor of the rent of Compensation Direct as provided in a Deed of Covenant made between Compensation Direct Ltd (the Subtenant), the Respondent, The Secretary of State for Health (the Landlord), the Southampton & South West Hampshire Health Authority, and the Wessex Regional Health Authority. An underlease was before the Tribunal. It referred to a lease dated 28th March 1991.

3. The Respondent's brother-in-law, Ian Smart, remained an officer of the Company.

4. The Respondent ensured that a percentage of NB's damages was paid to Compensation Direct or to their order.

22. The Respondent said that the file note confirmed that he was not a shareholder or director of Compensation Direct. The reference to "the outside world" simply referred to the fact that he would still, on occasion, be contacted by Compensation Direct for advice. There were various matters involved in the closing down of the business, including financial and logistical, and, because of his extensive past involvement with Compensation Direct, he was bound to be more familiar with the company than anyone else. He might, for example, have known tax and accounts details, client details etc which he carried around in his head, and which only he knew, so might have received a call now and then asking who the accountants were, or when the last payment of corporation tax was made, for example.

23. When Compensation Direct took up the premises at the hospital unit, it was a new company and the landlords required that the Respondent guaranteed the rent payments personally.

24. It was true that the Respondent's brother-in-law was a director of the company, but this was only ever in name only and if he was still a director of the company it was only through an oversight that he had not been removed. He was certainly not actively involved in the running of the company at the material time, although he had been several years earlier - even then only to a very limited extent. He was not a lawyer but a management consultant. He would give advice on internal procedures and so on.

25. The Respondent did not ensure that Compensation Direct was paid. If Compensation Direct was, that was a civil matter between NB and Compensation Direct. NB sued for that and was paid £20,000 on a without prejudice basis by Woolgar's insurers. So

even if NB did pay Compensation Direct, and it could be proved, and even if that payment should not have been made, he had been paid back. He had suffered no loss.

The Submissions of the Applicant

26. Contingency fees are defined by Rule 18 (2)(c) of the Solicitors Practice Rules 1990 as "any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise howsoever) payable only in the event of success in the prosecution or defence of any action, suit or other contentious proceedings". In other words it was a sum usually expressed to be a percentage of a claim and only becomes payable if the claim is successful.

27. Contingency fees are unenforceable and unlawful in respect of contentious business conducted by solicitors pursuant to Section 87 of the Solicitors Act 1974. Contentious business means for the purposes of this case once the proceedings have been issued. In other words, prior to the issue of the proceedings, contingency fees are permissible. However once proceedings are issued any contingency fee is void ab initio.

28. Solicitors are not permitted, pursuant to Practice Rule 9, to enter into any arrangement for the introduction of clients with a claims assessor who is charging a contingency fee.

29. The first substantive response to correspondence addressed to him by the OSS was an undated letter from the Respondent received by the OSS on 29th July 2002. In that letter the Respondent admitted that he had made arrangements with clients to deal with their cases on a contingency basis, that no client ever complained and that the complaint was made by Mr Kenning who was a disgruntled ex-employee. In a subsequent submission, also undated, the Respondent agreed that he ran Compensation Direct, admitted that he shared professional fees but denied that he entered into an arrangement with claims assessors and further denied that he continued to enforce contingency fees for Compensation Direct.

30. With regard to NB's case, the Respondent asserted that there was no evidence that Compensation Direct was paid and denied that he was involved in attempting to secure their payment. In his reply to the Applicant's statement the Respondent had admitted sharing fees.

31. The Respondent had been served with Civil Evidence Act Notices some time before the hearing and he had not served any counternotice. He thereby was deemed to have accepted the truth of witness statements produced by the Applicant.

32. The Applicant accepted that the burden of proof was upon The Law Society and submitted that the evidence before the Tribunal discharged that burden to the requisite standard.

33. The Tribunal was invited to find all of the allegations to have been substantiated and it was right in the circumstances that an order be made pursuant to Section 43 of the Solicitors Act 1974 controlling the Respondent's future employment within the solicitors' profession.

34. The Respondent's references to attempts to "settle" this matter were misconceived. The matter has been brought before a professional disciplinary Tribunal the first duty of which is to protect the interests of the public and whose second duty is to protect the good reputation of the solicitors' profession. The Respondent is not involved in civil litigation which is capable of compromise.

The Submissions of the Respondent

35. The Respondent's undated letter addressed to the Tribunal received on the day before the hearing:-

> "Dear Sir/Madam
>
> The Law Society vs Paul Massey - No: 8911/2003
>
> I write with reference to the above matter, due for hearing tomorrow.
>
> Unfortunately, I am unable to attend the hearing, due to childcare difficulties, but ask that the Tribunal take into account the matters referred to in my Reply. I appreciate that this document is served late, but trust that, in the interests of justice, it will be taken into account, and ask that this be done pursuant to Rule 31 (b).
>
> I have been trying to settle this matter with the Applicant for some time, but without success, and will produce all relevant correspondence in due course, when the Tribunal comes to consider the matter of costs.
>
> This matter relates to events that took place 8 or more years ago, and my memory of some events will necessarily be hazy. I note also that I have received no notice from the Applicant that he intends to call any witnesses, and I have not been provide with any statements that such witnesses may have made.
>
> In the circumstances, and in the interests of keeping costs to a minimum, I believe that the Tribunal will be sufficiently apprised of all relevant matters by reference to the documentation only, and I am happy for it to consider the matter on that basis.
>
> My position, as you will see, is that this whole matter has been whipped up in a frenzy of bitterness and recrimination by a disgruntled and slighted former employee (Christopher Kenning) of the firm of solicitors for whom I used to work. He has a massive axe to grind and his pursuance of this vendetta (for that it what it is) needs to be seen in that context. No client has ever complained. There is no prejudice to the reputation of the profession.
>
> I have served the profession faithfully for over twenty years. I am no longer employed in it, but do not wish that option to be taken away from me, at all, and particularly in the face of spurious, unsupported and spiteful accusations

by a solicitor who has had to incur no risk, financial or otherwise, in pursuing me.

Thank you for taking the time to read by submissions. No discourtesy is intended in my non-attendance.

Yours faithfully
P J MASSEY F.INST.L.EX"

36. In his reply to the statement of George Marriott the Respondent said:-

"1.1 All allegations are denied. In particular I would comment as follows:-

a. I have never done, or failed to do, anything that would or could compromise the integrity of any solicitor;

b. It is well established that a client has this freedom only after legal proceedings are commenced - there have been numerous cases over the past several years involving insurers that employ panel solicitors to pursue personal injury claims for clients - I submit that Compensation Direct was at all times in exactly the same position as those insurers;

c. All solicitors with whom I have worked acted at all times in the best interests of the clients that engaged them. In particular, they engaged my services as an expert PI practitioner when they themselves usually had little or no experience in this kind of case. By so doing, they ensured that the client was properly represented;

d. The reputation of the profession has not been affected - this is evidenced by the fact that no client has ever complained about my behaviour, that of the solicitors for whom I have worked, or the fees they have paid. Indeed, I have many testimonials from satisfied clients for whom I have recovered very substantial damages over the years.

1.2 I did share fees with Mr Woolgar. This was admitted and rectified - see paragraph 10 of Mr Marriott's statement.

1.3 There was never any agreement to introduce clients to Mr Woolgar. For this reason, no agreement has ever been produced When I joined Mr Woolgar's practice, I simply took with me the cases I was already handling for Compensation Direct. Before I did so, I checked this with The Law Society Ethics Department and Mrs Nancikievill of that office indicated to me that she could see no problem with this. I make this point more to answer the allegation, but also to demonstrate a more general point that I was always careful to ensure that my actions were proper;

1.4 I never enforced any agreement as alleged. Additionally, I would add that the clients that had agreed to pay Compensation Direct were bound by that agreement as far as I was concerned, and if I advised them that this agreement ought to be honoured , I was acting in the client's best interests. Finally, any

advice to do so did not and cannot have amounted to any conflict of interest with my position as a solicitor's clerk."

37. The Respondent also said that Compensation Direct funded all disbursements for its clients. In practice that meant that the Respondent paid for medical reports and so on out of his own pocket and he would not get that money back until disbursements were recovered from the defendant at the end of the case. He went on to say:-

> "No interest was charged, unlike Claims Direct and TAG. (Given that a solicitor has a duty to give clients best advice, I wonder how solicitors were able to consider it best advice to let a client borrow money at high rates of interest from Claims Direct and TAG to fund their claims, when they knew, or ought to have known, that the insurance premium, and probably the whole of the medical report fee was not going to be recoverable from the other side at the end of the case.)
>
> The reason the company was successful in its endeavours is that clients were pleased to have an alternative to the solicitor method of charging which was, of course, "Pay me money now. When that runs out, I will ask you for more. This will carry on until either you run out of money, or we recover damages from the other side".
>
> Taking a share of the clients damages caused outrage amongst local solicitors of course. That is, until a couple of years later when "conditional" fees were brought in. Then it was quite alright.
>
> There is no conflict of interest in taking a percentage of the client's damages. If there was, it would not, presumably, be permitted by the Law Society's own rules for cases settled pre-issue. Many solicitors did this, including Tony Girling, former Law Society president. I have seen a costs video from a lecture, where he reminds solicitors that it is perfectly proper under the rules, to take a percentage of the damages for cases settled before proceedings are issued.
>
> As to the argument for contingency fees versus hourly rates, why is there less of a conflict with the latter method than the former? It is rather like asking a builder to build one a conservatory. If you pay the builder by the hour, the conservatory takes rather longer to build than if you pay him by the job. Hourly rates incur the risk that the solicitor will be in no hurry to conclude the case. The longer the case takes, the more complications arise, the more he gets paid. Equally, I accept that the risk with contingency (and conditional) fees is that cases will be under-settled too quickly, just so that the lawyer can get his fee as quickly and risk-free as possible. But the point is that each system has its advantages and disadvantages."

38. The Respondent concluded his reply to the statement of George Marriott as follows:-

"A. **Fee-Sharing** (Rule 7) This has already been dealt with;

B. **Agreement to Introduce Clients** (Rule 9) - I took clients with me from Compensation Direct to Woolgars. This was cleared by the Law Society. There was no agreement to introduce clients, and for this reason there is not, and never has been, any evidence that there was such agreement;

C. **Impugning the good repute of the profession** (Rule1). Given that no client has ever complained about me, Woolgars or Compensation Direct, either as to the manner in which any of those parties dealt with cases, or the fees they charged, my submission is that the reputation of the profession is the same as it would have been had I or Compensation Direct never have existed.

Indeed, given that I have spent twenty odd years of my life dedicated to recovering substantial damages for thousands of clients (with many testimonials and thanks on the way), my submission is that the reputation of the profession has been substantially enhanced by my involvement in it.

As to NB, I have spoken to him on several occasions. He would never have made any complaint, but for the fact that his instructions were solicited by Mr Kenning, who was waiting for NB one day when he (NB) returned home from work. Mr Kenning promised him riches (the recovery of his alleged fee to Compensation Direct) and, because NB is essentially a greedy individual, he took him up on it.

After the accident NB suffered, the subject of these proceedings, he had another accident. *He came back to me to deal with that case for him*. During that case Neil Woolgar went to see NB and indicated that he was not comfortable acting for him on the second accident whilst there was a complaint outstanding regarding the first. He asked NB if he was sure that he wanted Woolgars to deal with the second accident claim. He was. As a result of both accidents, NB recovered well over £200,000.

This entire case has been cooked up by Mr Kenning, an incompetent lawyer and disgruntled ex-employee, who could not stomach being supervised by a Legal Executive.

When he was sacked, he stole a database of clients, and then went around soliciting, or attempting to solicit their instructions, and a complaint is currently pending against him for that. Most of the paperwork generated by Mr Kenning is emotive, disordered and repetitive. As a result, a massive amount of work has been done by me, and Mr Woolgar. I cannot begin to calculate how much time this case has cost me over the past 8 years.

This case has been over-prosecuted.

I invite the Tribunal to conclude that there is no evidence of any wrong-doing, to refuse Mr Marriott's application, and to allow me the option of working in the profession that I have loved and to which I have dedicated my life, for over 20 years."

The Tribunal's Findings of Fact

38. The Tribunal does find that the Respondent shared fees with Neil Woolgar, a solicitor, as was admitted by him.

39. The Tribunal finds that the Respondent worked as a fee earner within a firm of solicitors when he had conduct of cases in which he initially had an interest as a claims assessor through Compensation Direct and/or Quantum Legal. The Tribunal finds that the Respondent was a bona fide employee of Woolgars.

40. The Tribunal finds that the Respondent was engaged by Predko in the case of the client Mr C. The Respondent was to receive all monies paid by Mr C. The Respondent wrote on the letterhead both of Quantum Litigation and Predko demonstrating that he was acting as a claims assessor and was engaged in the position of a solicitor having conduct of the client's case.

41. In the matter of CMN there was before the Tribunal no explanation as to why his case should have been passed from the solicitors BPE to Woolgars other than that offered by the Applicant, namely that there was an obscure arrangement between BPE and Compensation Direct.

42. In the matter of the client IEG the file initially was handled by solicitors BPE but again was transferred to Woolgars. The matter had been initiated by the Respondent at Compensation Direct on a contingency basis. The file was referred by the Respondent to BPE giving details of Compensation Direct's percentage.

43. The Tribunal finds that in the case of NB the Respondent did act to preserve the payment of fees to Compensation Direct. The Tribunal finds this as a fact on the basis of the letter written by Woolgars to NB and the letter which the Respondent drafted for NB to sign.

44. The Respondent did act to preserve the payment of fees to Compensation Direct as was evidenced by the events which took place in connection with Mr NB's personal injury case.

45. The Tribunal does find that the person introduced to Mr NB as Ms Bundy was in fact Miss West, an associate of the Respondent and Compensation Direct. The former solicitors were a firm at Cheltenham and there was no realistic reason why a trainee solicitor from that firm would have been present to meet NB at a bank in Bitterne. It was clear from the documentary evidence that Miss West was an associate of the Respondent at Compensation Direct.

46. The Tribunal finds that the Respondent did take steps to ensure that Compensation Direct was paid a fee when the agreement between NB and Compensation Direct was unenforceable. The Tribunal does find that, despite the Respondent's formal resignation as a director of Compensation Direct he remained a controlling force behind the scenes. The evidence in support of that view was the file note dated 18th June 1996 in which the Respondent used the expression "I am no longer a director or shareholder or Compensation Direct or anything to do with that firm as far as the outside world is concerned", he stood as guarantor for the payment of rent by

Compensation Direct, his brother-in-law remained an officer of the company and the Respondent had ensured that a percentage of NB's damages had been paid to Compensation Direct or to their order.

The Tribunal's Decision

47. Having made its findings of fact the Tribunal concluded that allegations 1, 2, 3 and 4 were substantiated. The Tribunal applied the highest standard of proof and found that the allegations had been proved. The Tribunal wishes to make it clear that it does consider that the Respondent enforced a contingency agreement against a client taking this to mean that he arranged for the agreement to be complied with but not that the client was subjected to any coercion.

48. In all of the circumstances the Tribunal considered it right that a solicitor's clerk who behaved in this way, even though it was some time ago, should not be permitted to be employed by a solicitor in connection with his or her practice without the prior approval of The Law Society. It was entirely appropriate that the Respondent's future employment within the solicitors' profession should be subject to that form of control. The Tribunal made the order sought and further ordered that the Respondent should pay the Applicant's, such costs to be subject to a detailed assessment if not agreed between the parties.

Dated this 24th day of May 2004
on behalf of the Tribunal

P Kempster
Chairman