No. 9312-2005

IN THE MATTER OF *[RESPONDENT 2- NAME REDACTED]* and
JEREMY MICHAEL WOLFF, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Miss J Devonish
Mr J Jackson

Date of Hearing: 26th, 27th, 28th & 30th March 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Jonathan Richard Goodwin, solicitor and partner in the firm of Jonathan Goodwin Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 5th August 2005 that RESPONDENT 2, solicitor of Merriman & White Solicitors, 14 Took's Court, London, EC4A 1LB and Jeremy Michael Wolff, solicitor of Sandhurst, Berkshire, GU47, might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 25th April 2006 the Applicant, Mr Goodwin, made a supplemental statement containing a further allegation.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jonathan Richard Goodwin appeared as the Applicant, Mr Jeremy Carter-Manning of Queens Counsel appeared on behalf of Mr Murphy together with Mr D Luxton of Counsel. Mr Wolff did not appear and was not represented.

A number of preliminary matters were raised at the opening of the hearing. The preliminary applications made on behalf of Mr Murphy are set out below. The Tribunal raised with Mr

Murphy's advocate whether it was really the case that Mr Murphy's denials of certain allegations were really in fact admissions subject to mitigation and explanation. The parties sought time to discuss this. It subsequently transpired that after discussion Mr Murphy's representatives and the Applicant reached an agreed position that was placed before the Tribunal for its approval. A document entitled 'Basis of Plea' was handed up. The Tribunal took into account the fact that the Applicant and Mr Murphy had reached an agreed position on the allegations. The Tribunal also took into account that that agreed position caused Mr Wolff no prejudice. The Tribunal agreed that the substantive matter might proceed upon the agreed position and the allegations set out below reflect that agreed position.

The allegations against the Respondents, RESPONDENT 2 and Jeremy Michael Wolff, were that they had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:

The allegations were:

Against both Respondents that they:

(i) Failed to keep accounts properly written up in accordance with Rule 32 of the Solicitors Accounts Rules 1998 ("the 1998 Rules").

(ii) That the Respondents transferred funds between unrelated clients contrary to Rule 30 of the 1998 Rules.

(iv) Withdrew money from client account in breach of Rule 22 of the 1998 Rules.

(v) Failed to rectify breaches of the Solicitors Accounts Rules promptly as required by Rule 7 of the 1998 Rules.

(vi) Utilised clients' funds for their own benefit and/or for the benefit of other clients.

Against Mr Wolff alone:

(iii) That he allowed an unadmitted employee (Mr Nicholas Preston) to withdraw funds from client account contrary to Rule 23(1) of the 1998 Rules.

For the avoidance of doubt the Applicant confirmed that he did not allege dishonesty in connection with the 1998 Rules breaches.

Against both Respondents that they:

(vii) Acted and/or continued to act in circumstances where their own interest conflicted with the interests of a client or clients by failing to inform clients of their financial interest in a claims management company, namely Claim Line and/or Legal Claim Line Ltd, which referred potential claimants to the Respondents' firm, contrary to Rule 1 of the Solicitors Practice Rules 1990 and/or Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1999 (8th edition).

(ix) Rewarded introducers of work, namely Claim Line and/or Legal Claim Line Ltd, by the payment of commission or otherwise, contrary to Rule 2(3) of the Solicitors Introduction and Referral Code 1990.

(x) [Withdrawn]

(xi) [Withdrawn]

(xii) Failed to satisfy a judgement of the Maidstone County Court dated 22nd September 2004 (in favour of Mr R H) contrary to Rule 1 of the Solicitors Practice Rules 1990 and/or Principle 21.14 of the Guide to the Professional Conduct of Solicitors 1999 (8th edition).

(xiii) Failed to satisfy a judgement of the Mayors & City of London County Court dated 30th July 2004 in favour of M & Co contrary to Rule 1 of the Solicitors Practice Rules 1990 and/or Principle 21.14 of the Guide to the Professional Conduct of Solicitors 1999 (8th edition).

(xiv) Failed to satisfy a default costs certificate dated 4th May 2004 in the sum of £1,839.16 contrary to Principle 21.14 and/or Rule 1 of the Solicitors Practice Rules 1990.

(xv) [Withdrawn]

(xvii) Failed to file a "cease to hold" Accountant's Report for the period 1st January 2003 to 10th August 2004 contrary to Section 34 of the Solicitors Act 1974 (as amended).

Against Mr Wolff alone:

(viii) That he sent and/or permitted to be sent misleading invoices on Merriman White notepaper to panel firms in respect of vetting services, said to have been performed by the Respondents' firm, whereas the vetting service was in fact carried out by Claims Direct, contrary to Rule 1 of the Solicitors Practice Rules 1990 and/or Principle 17.01 of the Guide to the Professional Conduct of Solicitors 1999 (8th edition). (For the avoidance of doubt this was an allegation of dishonesty against Mr Wolff alone.)

(xvi) That he failed to exercise adequate or appropriate supervision of employees and/or failed to ensure that Mr Preston exercised adequate or appropriate supervision of the firm's employees, such failure resulting in a number of misleading statements being made to the Court and/or third parties.

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

The Tribunal Orders that the Respondent, RESPONDENT 2 of Merriman White Solicitors, 14 Took's Court, London, EC4A 1LB, solicitor, do pay a fine of £25,000.

The Tribunal Orders that the Respondent Jeremy Michael Wolff of Sandhurst, Berkshire, GU47, solicitor, be struck off the Roll of Solicitors.

The Tribunal further Orders:

(i). The costs awarded against Mr Murphy of the hearings on 20th & 21st June 2006 and 21st November 2006 shall be paid by Mr Murphy as provided in the Tribunal's Memoranda of Directions relating to such hearings (hereinafter called the interlocutory costs).

(ii) The costs of and incidental to the application and enquiry (to include the costs of the Law Society's Forensic Investigation Officer), such costs being additional to the interlocutory costs, shall be subject to a detailed assessment if not agreed and shall be borne as to two thirds by Mr Murphy and one third by Mr Wolff, subject to the proviso that if the Law Society and Mr Murphy reach a separate agreement concerning the quantum of costs payable by Mr Murphy then the Law Society shall not seek to recover from Mr Wolff a sum equal to more than one half of such agreed quantum.

The Preliminary Matters

Applications made by Mr Carter-Manning QC on behalf of Mr Murphy on 26th March

First application

1. Mr Carter-Manning QC for Mr Murphy asked whether it would be right to proceed now given Mr Wolff's complaint in an email about late service of Mr Murphy's material. This followed an opening by Mr Goodwin for the Law Society in which he referred to the issue of service of documents and whether Mr Murphy had complied with the rules. Mr Goodwin had said that Mr Wolff, who was not present, had received a disk containing all the material. Also on 19th March 2007 Mr Goodwin had copied to Mr Wolff eight lever-arch files produced by Mr Murphy including the Accounting Reports, and copies of his witness statements. Mr Goodwin had asked Mr Wolff whether he would be appearing. Mr Wolff had not been happy to have Mr Murphy's material so late, but had emailed Mr Goodwin to say that he could not attend the hearing because he would be working, and asked to be advised of the result of the hearing in due course.

2. With regard to the position of Mr Wolff concerning this material Mr Goodwin stated that the Law Society would not be relying on it, but if Mr Murphy was right in relation to it that would assist Mr Wolff; the remaining material, in relation for example to the Claim Line matters, was not new and was well known to Mr Wolff. Mr Goodwin concluded by saying that the Second Respondent had received all the material produced by the Applicant and by Mr Murphy. The email from Mr Wolff was handed up to the Tribunal.

3. Mr Carter-Manning pointed out that much of the material would be relevant to the allegations against Mr Wolff. Whilst he was not making an application to adjourn he questioned whether the position should be considered and perhaps a call made to Mr Wolff to ask whether he was content for the matter to proceed.

4. Mr Goodwin for the Law Society reiterated that the Law Society was not relying on Mr Murphy's material. No allegation of dishonesty was being made in relation to any of the allegations save allegation (viii). That allegation was not now being made against Mr Murphy but it had always been clear that it was being made against Mr Wolff as set out in the Rule 4 Statement.

The Tribunal's decision on the first application

5. The Tribunal, having retired to consider the observations of Mr Carter-Manning QC and Mr Goodwin, stated that it was entirely satisfied that it would be in order to proceed in the absence of Mr Wolff. Mr Wolff had received all the material before the Tribunal, had informed the Law Society that he was not proposing to attend the hearing, being unable to do so because he would be working and had asked to be advised of the result of the hearing. It was in the interests of justice that the hearing should continue in the absence of a respondent who had chosen not to attend and to prefer to attend to his current work than attend the Tribunal. This was particularly important bearing in mind that this matter had previously been fixed for hearing in June 2006, and then December 2006, and that this third and current date had been fixed as long ago as November 2006 when as a result of non compliance with earlier Directions the hearing date fixed for December 2006 could not be sustained.

Second application

6. Mr Carter-Manning QC referred to the original investigation into the Respondent's firm by the Law Society in 2002 and stated that this had been carried out without notice, and requests to know the reasons for the investigation had been rejected by the Law Society. He asserted that it must have been based on an informant and whilst he did not seek to know the identity of the informant Mr Murphy was entitled to know the nature of the information provided to the Law Society. The Law Society had a policy of not providing this information but he questioned the reason for such non-disclosure. He sought disclosure of the background to the initial investigation by the Law Society, and the nature of the information which resulted in that investigation. He would if successful be seeking further witness statements from the Law Society about the requested disclosure and the attitude of the investigators.

7. Mr Carter-Manning then referred to the following authorities which had been provided to him by Mr Goodwin in support of the Law Society's stance and sought to distinguish them from the position in this case. The cases were D v National Society for the Prevention of Cruelty to Children [1977] UKHL1 (2nd February 1977), [1978] AC 171, Parry-Jones v Law Society (CA 1967) and Buckley v Law Society (No 2) [1984] 1 WLR 5th Oct 1984).

8. Mr Goodwin for The Law Society said that the request for such background information had been first raised in these proceedings in 2006. Mr Murphy had had ample opportunity to make a formal application about this before now. The reasons for the inspection of the firm in 2002 were not relevant to the allegations before the Tribunal. The House of Lords had decided that it was important for the Law Society to maintain public interest immunity in relation to its investigative and regulatory role. If the broad nature of any relevant information prior to the investigation were to be disclosed that could lead to the identity of any informants being revealed. Mr

Goodwin had no knowledge of any such information. The observation was made that the firm's own auditors had qualified the accounts of the firm for three years and that alone could reasonably have triggered an investigation.

9. This formal application was misconceived but had also been made very late in the day and had not been referred to at previous interlocutory hearings. Mr Goodwin moreover referred to Rule 34 of the 1998 Solicitors Accounts Rules the note to which stated that reasons were never given for investigations.

The Tribunal's decision on the second application

10. The Tribunal noted that the this application was to seek disclosure by the Law Society of the broad nature of the information, if any, provided to the Law Society that caused it to conduct the original investigation without prior notice.

11. The Law Society's investigation into the Respondents' firm began in April 2002 and resulted in a report dated 17th June 2003 which in due course was followed by the Rule 4 Statement dated 5th August 2005. The Tribunal takes the view that the disclosure now very belatedly sought by Mr Murphy of the broad nature of the information, if any, that was followed by the investigation five years ago was not appropriate to be granted. In reaching this conclusion the Tribunal had regard, inter alia, to the following factors:

    1. The Solicitors Accounts Rules 1998 in a note to Rule 34(4) state that reasons are never given for a visit by the Monitoring and Investigation Unit so as:

        (a) to safeguard the Society's sources of information; and

        (b) not to alert a defaulting principal or employee to conceal or compound his or her misappropriations.

        It was moreover noted that some visits were made at random.

    2. There is a public interest in the need to protect the Law Society's sources of information so as to enable it to function effectively as regulator and thereby protect the public.

    3. The Tribunal acknowledges that the application is not for disclosure of the identity of a possible informant nor for the production of any document, if such exists, but merely for the broad nature of any information provided. The Tribunal however considers that in so far as what is requested for disclosure is ascertainable and not too vague to be complied with, nevertheless such disclosure might be capable of indicating the identity or source of any information, and that would be undesirable.

    4. The broad nature of any information which gave rise to the Rule 4 allegations in August 2005 is not in any event what is before this Tribunal. What the Respondents have to deal with in this case are the Rule 4 allegations themselves, which may or may not result from any such information as is sought. The respondents' ability to defend the allegations, and in particular

conduct cross-examination of the Law Society's witnesses, will not be constrained by the absence of the information sought, if such exists.

Third application

12. Mr Carter-Manning QC , whilst stating that he was not anxious to take technical points, referred to the background to this case involving the usual practice of an originating application made with the benefit of a report by Mr Calvert. The Law Society proposed to call Mr Cotter who was involved in the investigation and the production of the report which dealt in large measure with accounts deficiencies and shortfalls. However there was no witness statement from Mr Cotter. Regulation 18(f) of the Solicitors Disciplinary Proceedings Rules 1994 provided that if any party wished to call someone who had not deposed he must notify the Clerk and/or provide a proof. The absence of a proof from Mr Cotter could be cured by a one line statement, confirming the report was his. However Mr Murphy's evidence included a report saying that the accounts do not actually show a shortfall. So Mr Carter-Manning's submission was that the whole point of delaying the hearing was to enable Mr Cotter to give evidence and speak as an expert on the issue of whether there was a shortfall. Either Mr Goodwin did not know what Mr Cotter would say (in which case the defence was prejudiced without a witness statement); or if he did know, it would help the defence to know in advance. It was a matter of fundamental importance that witness statements be produced as provided in Rule 18 so that respondents knew the case they had to deal with.

13. Mr Carter-Manning said that a similar point was made in relation to the absence of a witness statement from Mr Preston, another witness being called by the Law Society.

14. Mr Goodwin for the Law Society said that the point about Mr Preston was not valid.

15. Mr Preston was attending under compulsion, had declined to give a witness statement, and so one could not be provided.

16. With regard to the complaint that there was no witness statement from Mr Cotter it was well known by all parties that the Report of 17th June 2003 attached to the Rule 4 Statement and signed by Mr Calvert as head of department as was the usual practice, was in fact Mr Cotter's report. Mr Cotter had conducted the investigation between 2002 and 2003 which preceded it. It was quite clear that Mr Cotter was being called to speak to his report.

The Tribunal's decision on the third application

17. This was an application complaining of the lack of witness statements from Mr Cotter and Mr Preston being provided by the Law Society. In relation to Mr Cotter it was clear, and confirmed by Mr Goodwin, that the Investigation Officer's report dated 17th June 2003 signed by Mr Calvert, Head of Forensic Investigation, which report was exhibited to the Rule 4 Statement was in fact Mr Cotter's report, compiled with the assistance of Mr Simpson who had since died.

18. The Tribunal did not consider that Mr Murphy is in any way at a disadvantage from the absence of a separate witness statement from Mr Cotter. Moreover Mr Cotter was to be called and Mr Murphy will be able to hear his evidence and cross-examine him.

19. With regard to the complaint of lack of a witness statement from Mr Preston this was also a misconceived complaint since Mr Murphy knew that this former employee of his was unwilling to supply a witness statement and was being compelled to attend. The absence of a witness statement is therefore to be expected but no particular disadvantage to Mr Murphy flowed from it and Mr Preston would be available for cross-examination.

The Substantive Hearing

The evidence before the Tribunal

20. Mr Murphy admitted allegations (i), (ii), (iv), (v), (vi), (vii), (ix), (xii), (xiii), (xiv) and (xvii). The basis of his admissions is set out under the heading 'The Submissions of Mr Murphy'.

21. The Tribunal heard the oral evidence of Barry Cotter and Nicholas Alan Preston.

22. Mr Wolff addressed an email communication to Mr Goodwin on 26th March 2007. It took the following form:

> "Dear Mr Goodwin - I refer to your email. The disc I received from Mr Murphy I received last week, and I assume is his very late response to the letter I wrote to him before Christmas 2006 asking for him to serve upon me the documentation that you advised me then, he was due to serve upon me.
>
> As to my alleged failures regarding the Vetting Fees - I left Mr Preston to finalise those, and the first time I saw them was when Mr Cotter and Mr Simpson brought them to my attention. Mr Cotter told me of the error made and that error and all appropriate Credit Note documentation was remedied issued and despatched within 24 hours - a point I made to Mr Simpson, who confirmed he was happy with the remedial action taken.
>
> As to alleged dishonesty in relation to the Vetting Invoices I had no knowledge at all in that regard, as to the failings relating to the Vetting Invoices, which failings were corrected within 24 hours of being brought to my attention.
>
> I cannot attend the hearing for I risk losing my home, car and job - a risk I cannot afford to take. Please advise me as to the result of the hearing."

(This document is hereinafter referred to as "Mr Wolff's email".)

The facts as put by the Applicant and agreed by Mr Murphy

23. Mr Murphy, born in 1948, was admitted as a solicitor in 1971. His name remained on the Roll of Solicitors.

24. Mr Wolff, born in 1953, was admitted as a solicitor in 1977. His name remained on the Roll of Solicitors.

25. At all material times the Mr Murphy and Mr Wolff carried on practice in partnership under the style of Merriman White ("the firm") from offices at 61 Fleet Street, London, EC4Y 1JU, 3 Kings Bench Walk, Inner Temple, London EC4Y 7DJ and 12 The Mount, Guildford, Surrey, GU2 5HN. Mr Wolff practised from the Guildford office and Mr Murphy practised from the London offices.

26. On 9th August 2004 the firm as it was ceased to practise. On 10th August 2004 a new firm practising under the same name and from the same address was established. Mr Murphy practised as a consultant with the now re-formed firm of Merriman White. Mr Wolff was no longer connected with the firm.

27. Upon due notice an Investigation Officer of the Law Society ("the IO") carried out an inspection of the Respondents' books of account, commencing on 17th April 2002. The IO produced a Report which was before the Tribunal.

28. The IO's Report disclosed a number of concerns and breaches of the 1998 Rules.

29. Mr Wolff allowed an unadmitted employee, Mr Preston, to withdraw funds from client bank account, contrary to the 1998 Rules.

30. The Respondents failed to ensure that the various books of account maintained by the firm complied with the 1998 Rules. In particular, the inspection revealed substantial unexplained reconciliation differences and/or debit balances on client bank account and unallocated transfers which resulted in a minimum cash shortage of £210,779.26 as at 31st March 2002 on the face of the books.

31. By 23rd December 2002 the shortage had been partly rectified leaving a minimum shortage of £76,199.36. The Respondents instructed their reporting accountant, Chantrey Vellacott, to investigate the reasons for the remaining shortage.

32. The Law Society addressed a letter to each of the Respondents enclosing a copy of the IO's Report, and seeking their explanation. Both Respondents replied giving some detail.

33. Mr Preston wrote a letter dated 22nd August 2003 about his role as signatory on client account.

34. A further Law Society inspection was carried out on 4th August 2004. The IO produced a Report dated 6th August 2004 which was before the Tribunal. The firm's then accountant met with the IO and explained what steps had been taken to address the shortcomings in the firm's accounting records highlighted in the IO's 17th June 2003 Report.

35. In the opinion of the IO it was not possible to place reliance on the veracity of the balances shown on the client ledger account at any time since 31st December 2000. As such it was not possible to express an opinion as to whether or not the funds held in the firm's client bank account were sufficient to meet the firm's liabilities at the time of this second inspection.

36. On 2nd September 2004 the Law Society wrote to the Respondents enclosing a copy of the second IO Report and seeking their explanation. Mr Murphy replied on 23rd September 2004. Mr Wolff did not respond.

37. The IO's Report of 17th June 2003 raised concern about the operation of the firm's personal injury department which was located at Guildford and run by Mr Wolff assisted by Mr Preston, an unadmitted clerk. In 2000 the department dealt with approximately 2,500 personal injury files, of which approximately 80% were referred to the firm by a claims management company, Claim Line plc.

38. The Respondents each owned a 19.6% shareholding in both Claim Line and Legal Claim Line Ltd and were directors of both companies. In or about January 2002 their shares in Claim Line were exchanged for a substantial shareholding in the separate claims management organisation, Claims Direct, which was believed to have gone into liquidation in June 2003.

39. A lay client who had been injured in a road traffic accident would approach an accident management company, one of which was Claim Line. Claim Line would refer potential claimants to the Respondents' firm. The Respondents failed to inform clients so referred either in their "client care" letter or in any other correspondence or at all of the Respondents' own personal interests in Claim Line.

40. The Respondents did not inform their clients that the Respondents had an interest in recommending the "After the Event" (ATE) insurance policy taken out in connection with the clients' claims when of the total premium paid of £876.75 only £363 was actually paid to the insurance underwriters, the balance being paid to Legal Claim Line. In his letter of 22nd August 2003 to The Law Society Mr Wolff stated, "I do not believe that there was any need for us to disclose to our clients our personal interests in Claim Line or Legal Claim Ltd". Mr Wolff denied that the ATE policy was sold to the firm's clients, indicating that the firm's policy was not to charge its clients any costs or disbursements for acting on personal injury matters, as they relied on their ability to recover those items from the defendant's insurers. Mr Wolff did not accept that there was ever a conflict of interest in acting in the cases of clients introduced by Claim Line. A fee of approximately £293.75 had been paid to Claim Line. Mr Wolff had denied that the fee paid to Claim Line was a reward for the introduction of business to the firm. He asserted that the amount represented very good value for money and he made reference to the decision of Bradley -v- Wolverhampton City Council in which he suggested that the District Judge had analysed the invoice and ordered payment. Mr Wolff further asserted that the invoice was reflective of the fact that general work had been carried out. He did concede that the firm would not pay the fee in full in the event that it was not recovered from the third party insurers. He denied that the firm would not pay the fee in full in the event

that it was not recovered from the third party insurers. He denied that the firm was contractually obliged to pay the fee.

41. Mr Preston concurred with Mr Wolff's assertion that the work undertaken by Claim Line was of value and justified.

42. Claimants referred to the firm by Claim Line took out an ATE policy costing £876.75. In certain cases only a proportion of the cost of the premium was recovered from the defendant's insurers. Mr Wolff explained that it was not foreseen that a full recovery of the insurance premium might not be made, but when less than full recovery was made, the firm funded any shortfall to ensure that the firm's clients received their damages in full.

43. The IO found that in approximately 10 cases, clients had suffered a deduction from their damages where there had been a shortfall in recovery of the ATE insurance premium and that the clients might not have been properly been warned that there might be delays or problems in connection with the recovery of the premium. It was Mr Wolff's position that he had not been aware of the shortfalls on those matters until they were drawn to his attention by the IO and that the relevant clients had since been reimbursed the amount in full. He went on to say, "no other client has suffered any deduction of any nature whatsoever concerning any shortfall in recovery of the insurance premium".

44. Claim Line was sold to Claims Direct in or about January 2002. Thereafter, the firm of Merriman White did not act for Claims Direct, having ceased to take work from Claims Direct in or about January 1997. In the period March to May 2002, 567 invoices totalling £112,397.46 were sent to various firms of solicitors on Merriman White's letterhead in respect of "vetting services" carried out under the Claims Direct scheme. An example, dated 27th March 2002, was headed 'Vetting fee invoice'. The invoice was for £145 plus VAT. The narrative of the invoice was, "To our professional charges in fully vetting and considering this case's suitability to be included within the scheme, taking into account our criteria as to whether or not the claim was first and foremost likely to be worth more than £1,500 and secondly whether or not there was more than a 51% chance of success".

45. During the course of the IO's inspection he put it to Mr Wolff and Mr Preston that the invoices were a fiction and had been created for the purpose of facilitating recovery from third party insurers when there would not be a recovery (or a risk of non-recovery) in the event that the same had been issued by Claims Direct. In addition and/or in the alternative it was put to Mr Wolff that the invoices amounted to a device to avoid the application of the Solicitors Introduction and Referral Code 1990, in that payments were made by the panel solicitor to another solicitor in respect of vetting fees, rather than to an introducer of work which would have represented a breach of the Code. During interview with Mr Preston on 14th May 2002 the IO asked him whether Merriman White was actually carrying out the vetting service, Mr Preston acknowledged that the firm was not and that the vetting work was in fact carried out, in house, at Claims Direct.

46. When it was suggested by the IO to Mr Preston that it was a device to get round some technical requirements, he agreed and also agreed that it was a fiction because Merriman White were not doing the work.

47. In correspondence Mr Wolff had denied that the invoices were issued in order to circumvent the requirements of the Solicitors Introduction and Referral Code.

48. Mr Preston had provided a detailed written explanation as to the procedure he utilised for the issue of the vetting invoices on 22nd August 2003 when he indicated his view that Mr Wolff was aware that Mr Merriman White letterhead was being used. Mr Preston used a stamp to number the invoices. Some 12 to 15 invoices were produced each day using the "mail merge" programme on a computer.

49. In his oral evidence Mr Preston confirmed that no work had been undertaken by the Respondents' firm and that Mr Wolff had been fully aware of the position and that Mr Wolff had been aware that the invoices were drawn on Merriman White letterhead. He might not have been aware of the precise wording. Mr Preston said he had generated the invoices upon instruction from Mr Wolff. Mr Preston confirmed that he had not undertaken any vetting work and he had maintained a low level of interest in the matter. He had had no knowledge of the individual cases concerned.

50. Mr Preston told the Tribunal that he did not enjoy a high level of supervision by Mr Wolff. The staff in the personal injury department of the firm were supervised equally by Mr Preston and Mr Wolff. Daily meetings were held at which work or the law were not discussed, but wholly unrelated matters were. Costs generation and the financial position were discussed.

51. On 22nd September 2004 Judgement was entered against the Respondents in favour of Mr RH in the sum of £11,880.12 in Maidstone County Court. The Respondents had failed to satisfy the Judgement.

52. On 30th July 2004 Judgement was entered against the Respondents in favour of M & Co in the sum of £7,867.67 in the Mayors & City of London County Court. Further, on 4th May 2004 the Respondents were ordered by the Mayors & City of London County Court to pay costs in the sum of £1,839.16 within 14 days from the date of the order. The Respondents failed to pay those costs.

53. By letter to the Law Society dated 9th October 2005 Mr Wolff asserted that he left Merriman White in August 2005 and that all financial matters were left in the control of Mr Murphy who had been solely responsible for the financial control of Merriman White and its accounts department for a number of years.

54. By letter to the Law Society dated 23rd November 2005, Mr Murphy set out reasons why he was unable to file the "cease to hold" Accountant's Report. Despite being granted an extension of time for filing the Report, the Respondents had not done so.

The Submissions of the Applicant

55. All solicitor principals in a firm and all partners were responsible for compliance with the Solicitors Account Rules and it followed that all were liable for any breaches of those Rules.

56. The Applicant recognised that Mr Wolff was the partner in charge of the personal injury department of the Respondent's firm.

57. The allegations against the Respondents arose in connection with the personal injury part of the practice arose because of the Respondents close proximity to Claimline, Mr Wolff and Mr Murphy were both directors of that company and partners in the firm of solicitors to which Claimline referred clients. It was Mr Murphy's case that Mr Wolff had responsibility for such matters but in the submission of the Applicant Mr Murphy should have taken far greater interest in what was going on than he did. Mr Murphy did take a financial interest. He could not absolve himself from responsibility. Mr Murphy had thought that the personal injury work referred would replace other work which had been removed from the firm. Mr Murphy was involved in particular as the senior partner and because he was closely related with the introducer. A large proportion of ATE insurance payments were paid to companies in which Mr Murphy had an interest. That in itself was a matter involving professional conduct concerns.

58. The alleged breaches of the 1998 Rules were serious but the Applicant did not put those breaches as matters of dishonesty or conscious impropriety. To maintain proper books of account and a full, complete and accurate record of the handling of clients' moneys was part of the solicitor's important duty to exercise a proper stewardship over clients' money held by them. Compliance with the 1998 Rules was necessary to ensure that those clients were properly protected.

59. Mr Preston had been nominated as a signatory on the firm's client account. Correspondence indicated that Mr Wolff had instigated this and Mr Murphy did not know. Even if Mr Murphy had not known, he had a responsibility as a partner within the practice. The Applicant accepted that corrective action had been taken and Mr Preston was removed as a signatory on the client bank account.

60. It had been claimed that there had not in reality been any inappropriate handling of clients' money. It had been suggested that the books did not show the true position. However a solicitor's books of account should on their very face show the true and accurate position.

61. With regard to the reference of work by Claimline the concern in particular was that the clients had not been given clear and transparent explanations of the Respondents' involvement in the company making the referral. Such disclosure would not have been difficult and could, for example, have been contained in a standard client care letter issued by the firm when first instructed.

62. With regard to the payment of referral fees, solicitors were prohibited from rewarding introducers by way of commission or otherwise. It had not been demonstrated that payments made to the introducer company were proper payments for work undertaken

by that company and there could be no doubt that the payments made by the Respondents amounted to an introduction or referral fee and was contrary to the relevant code in force at the material time. That breach was, of course, aggravated by the fact that the Respondents themselves had a financial interest in the referring companies.

63. There had been occasions when deductions had been made from the damages to which the clients were entitled.

64. The firm of Merriman White had issued invoices in respect of work undertaken in connection with "vetting" a prospective client's case. The firm had not undertaken any such work and those invoices were fraudulent. Allegation (viii) related to the production of these invoices and the Applicant did put that allegation as one involving dishonesty and/or conscious impropriety on the part of Mr Wolff. The appropriate test to be relied upon by the Tribunal when considering whether or not Mr Wolff's actions had been dishonest was the "combined test" in the case of Twinsectra v Yardley and Others [2002] UKHL 12. The Applicant accepted that the Tribunal had to be satisfied to a high standard.

65. Both Respondents had admitted allegations (xii), (xiii) and (xiv), namely that they had failed to satisfy financial orders of the court explaining that they had not been in a financial position so to do.

66. Mr Murphy had accepted that initially the accounts might have appeared to show a use of clients' money for the purposes of other unconnected clients. The FIO, of course, could only rely on the firm's books as presented to him. It was noteworthy that the Respondents' own reporting accountants had reported bookkeeping deficiencies and client account shortages in annual accountants' reports produced by them. Even if it were to be said that the books did not show the true position, that was a serious matter as it meant that no reliance could be placed upon the firm's books. In such circumstances it was impossible to ensure that no money belonging to the Respondents had been mixed with clients' funds, and it was not possible to ascertain that the Respondents held sufficient moneys to meet their liabilities to clients.

67. With regard to the conflict of interest that arose in the case of the clients introduced by the claim management companies, there was a clear danger that the interests of those clients so introduced would become secondary to the interests of the introducer and that was where a conflict of interest arose. The Respondents having an interest in the claim management company had an interest in ensuring that such claim management company was a profitable concern and that might well have conflicted with their duty to act at all times in the best interest of their lay client who had been introduced by that company.

68. Solicitors are required to be honest and transparently so with their clients. Unless the individual clients were told of the Respondent's interest in the claim management companies it could not be said that a transparent and full disclosure had been given to those clients.

69. It was further noteworthy that 80% of the personal injury claim work had been introduced by Claimline. It had not been made clear whether Claimline introduced

business to other firms of solicitors. It was accepted that during the course of the hearing an assurance was given that there was a panel of solicitors to whom work was introduced.

70. It was clearly established that where a payment was made by a solicitor to an introducer of work that represented a payment over and above any work undertaken by the introducer then that amounted to a referral fee. The code that was in force at the material time made such a payment improper and the seriousness of that breach was aggravated by the fact that the Respondents had a financial interest in the referring companies.

71. With regard to after the event insurance arranged for individual clients, full recovery of that premium generally had not been achieved. There had been a number of occasions where the clients concerned had not been sent the full amount of the damages due to them.

72. The vetting fee invoices which had been drawn were fraudulent. The invoices were drawn on the Respondent's firm's letterhead and were stated to be in respect of work undertaken by the firm. The firm undertook no such work. The invoices were misleading on their face and in fact related to work carried out by Claims Direct. To produce invoices in this way was both improper and inappropriate. It was The Law Society's case that Mr Wolff, who had been responsible for the production of those invoices, although they had physically been produced by Mr Preston, had acted dishonestly as those invoices were untrue and did not reflect the true position. The production of these false invoices met the combined test for dishonesty in Twinsectra v Yardley and Others [2002] UKHL 12 in so far as Mr Wolff was concerned. Mr Wolff had indicated in correspondence that he had not been intimately aware of the full details of the scheme but he was one of two partners in the firm and had direct responsibility for the personal injury department and had direct responsibility for the supervision of Mr Preston. He could not absolve himself from knowledge of what went on nor liability.

The Submissions of Mr Murphy

73. With regard to the allegations relating to breaches of the 1998 Rules, there had been no dishonesty on the part of Mr Murphy or any active attempt to allow accountancy errors to occur. The books of account had been reconstituted by professional accountants to the best of their ability. This had been at considerable expense to Merriman White with the input of substantial office staff time. Following the reconstitution of the books it had been established that there was no actual shortfall of funds on client account. (The Applicant made it clear that this was not accepted by the Law Society.)

74. With regard to allegations (vii) and (ix), which were admitted by Mr Murphy which related to the introduction of work by Claimline and/or Legal Claimline Ltd although Mr Murphy had not considered that any conflict of interest had arisen, upon advice he had come to accept that a conflict of interest and the payment of referral fees had occurred in the situation that existed with Claimline and/or Legal Claimline. At the material time he had not appreciated that that was the position.

75. All solicitors dealings with Claimline and/or Legal Claimline (as opposed to Mr Murphy's interest as director and shareholder) were carried out by Mr Wolff and Mr Wolff's staff.

76. Mr Murphy had no knowledge nor even any inkling of the misleading invoices referred to in allegation (viii) made against Mr Wolff alone.

77. Mr Murphy accepted his duty to comply with orders made by the court. He had been prevented from complying with those orders by his own unfortunate financial situation.

78. Mr Murphy accepted that the Respondents were required to file a "cease to hold" Accountant's Report and that it had not been filed in time. The reconstitution of the firm's books by accountants had taken some time to complete and the accountants instructed in that connection were awaiting formal paperwork (to include clear to cheques) from the firm's bankers when those documents were to hand a cease to hold certificate would be filed.

79. Mr Murphy had been admitted as a solicitor in 1971. He was fully aware of the importance of The Law Society's function as regulator.

80. The matters relating to the allegations represented very sad years for Mr Murphy who had enjoyed a long and unblemished career in a well established niche firm.

81. Mr Murphy had been put to great expense both in terms of time and money in defending the disciplinary proceedings. He had been aware of the proceedings being brought against him as long ago as 2002 and the matter had been hanging over his head.

82. Mr Murphy accepted that he was the author of some of his misfortune.

83. The Respondents' firm Merriman White had been in the Temple since the 19th century. It had been a two-partner firm with offices in London and Guildford. Mr Murphy had practised in London and Mr Wolff had practised in Guildford.

84. Mr Wolff had conducted a successful National Health Service litigation practice for a number of years. He had been confronted with an almost overnight decision by the National Health Service to withdraw work from Merriman White and other solicitors customarily engaged by it and re-adjust the Panel of Solicitors used by them.

85. Things had gone wrong when attempts were made to replace the National Health Service work with the Claimline exercise.

86. Mr Murphy had been involved, but Mr Wolff was the person with practical knowledge and dealt with personal injury matters. That part of the firm had been run by Mr Wolff and Mr Preston.

87. Efforts had been made to make sure that the Claimline system did not breach any professional requirements or Rules. Counsel's advice had been sought. It could not

be said that Mr Murphy had plunged into an unknown area without giving the matter full consideration and taking extensive and proper advice.

88. Mr Murphy admitted the Claimline allegations on the basis of his strict liability as a partner.

89. Mr Murphy had had absolutely no knowledge of the misleading invoices nor that there had been any breach of the regulations taking place in the Guildford office.

90. Over a period of time Mr Murphy had had to face and deal with allegations that his actions had been dishonest. Although the allegation of dishonesty had been made against Mr Wolff in connection with allegation (viii) the solicitors instructed by The Law Society had indicated in their Report that Mr Murphy had acted dishonestly and there had been an allegation at one stage that Mr Murphy might have assisted with money laundering.

91. Mr Murphy had accepted liability but invited the Tribunal considered that his culpability was at a low level because he had made every attempt to ensure compliance with the regulations. It was Mr Murphy's central submission that he believed that Claimline and the matters relating to it were fully in order.

92. The five years prior to the hearing were the saddest of Mr Murphy's professional career. He had built up a successful and proper enterprise. The Law Society had run a similar enterprise at the time and in due course Claimline had been sold to Claims Direct with anticipation of the success of that organisation.

93. What had happened had been the opposite of that expectation. Claims Direct had become a public company and there could be no doubt that due diligence had been carried out so that any problem could be identified and dealt with prior to flotation.

94. It transpired that Claims Direct was a disaster. The sale of Claimline was in consideration of shares in Claims Direct. When Claims Direct failed Mr Murphy lost the value of those shares.

95. Claimline had substantially been financed by Mr Murphy from 2000 onwards. The Tribunal was invited to consider details of the expenditure he had incurred placed before them.

96. No evidence was provided as to whether Mr Wolff sold his shares before Claims Direct went under. Mr Murphy however had suffered hugely from what occurred and that was an important part of the overall picture.

97. The Law Society had begun its investigation without notice. That had a serious effect on the staff at the firm. Merriman White had employed a group of competent and satisfactory fee earners. Concerns about The Law Society's involvement meant that a number of them left the firm which had made things even more difficult and created further pressure on Mr Murphy. Despite the loss of the NHS work and the loss of staff the Respondents had worked hard to hold the firm together but they had been placed under extreme pressure. The firm had also lost its prestigious offices in the Temple.

98. The old firm of Merriman White had ceased to exist but had been re-formed. Mr Murphy was not a partner in the re-formed firm but was a consultant.

99. It could not be said that Mr Murphy had simply walked away from his responsibilities. Mr Wolff in contrast had simply walked out of Merriman White. Mr Murphy was a victim of his former partner's behaviour. The Tribunal was invited to take into account the contrast between the behaviour of Mr Murphy and Mr Wolff.

100. The Tribunal was invited to take into account Mr Murphy's mitigating circumstances including the dire financial situation in which he found himself leading to his being adjudicated bankrupt. It was hoped that the Tribunal might consider the imposition of a sanction that would not interfere with Mr Murphy's ability to continue as a consultant with the re-formed firm Merriman & White.

The Tribunal's Findings on the allegations

101. Of the 17 original allegations in the Rule 4 Statement of 5th August 2005 the Tribunal had consented to the withdrawal of allegations (x) and (xi) against both Respondents, and to the withdrawal of allegations (iii), (viii) and (xv) against Mr Murphy. Allegation (xvi) was made against Mr Wolff alone.

102. There therefore remained as against Mr Murphy 11 allegations. All of these were admitted in the "Basis of Plea" on behalf of Mr Murphy submitted on day 3 of the hearing, in advance of full oral mitigation, such basis stating that it had been seen, and save where indicated, accepted by the Applicant. The Tribunal had found each of these allegations proved, namely, using the original Rule 4 Statement numbering, allegations (i), (ii), (iv), (v), (vi), (vii), (ix), (xii), (xiii), (xiv), (xvii). No dishonesty was alleged or found against Mr Murphy in relation to any of these allegations.

103. There remained against Mr Wolff 14 allegations, of which three (allegations (iii), (viii) and (xvi)) were made against him alone. The Tribunal had found each of these allegations proved, namely, using the original Rule 4 Statement numbering, allegations (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (xi), (xiii), (xiv), (xvi) and (xvii). The Tribunal had also found proved the allegation of dishonesty against Mr Wolff in relation to allegation (viii).

104. The Tribunal, in advance of the speech in mitigation by Mr Carter-Manning QC on behalf of Mr Murphy, gave an indication that they did not have in mind the sanction of striking Mr Murphy from the Roll.

The Tribunal's decision and its reasons

105. In the case of Mr Wolff, the Tribunal found all allegations to have been substantiated. These allegations were serious and in relation to allegation (viii) the Tribunal found the allegation of dishonesty proved. It involved a finding of a blatantly dishonest course of conduct in the production of fraudulent invoices. The Tribunal found Mr Preston to be an honest witness who described the process by which the fraudulent invoices came to be issued, and the approval of Mr Wolff for the system employed. This was corroborated also by an email from Mr Wolff dated 7th February 2002 to

Claims Direct which confirmed that the firm would produce the fraudulent invoices for a charge of £2.50 per invoice. In reaching its conclusion that Mr Wolff acted dishonestly and with conscious impropriety the Tribunal applied the two-part test in Twinsectra v Yardley and Others [2002] UKHL 12. In the words of Lord Hutton,

> "there is a purely objective standard whereby a person acts dishonestly if his conduct is dishonest by the ordinary standards of reasonable and honest people, then if he does not realise this … there is a standard which combines an objective test and a subjective test and which requires before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

The Tribunal was in no doubt that the production of fraudulent invoices was dishonest by the ordinary standards of reasonable and honest people and similarly the Tribunal was in no doubt that Mr. Woolf knew that by those standards, his conduct in producing fraudulent invoices was dishonest. The Tribunal was satisfied that the appropriate sanction in the case of Mr Wolff was that he be struck off the Roll.

106. Mr Murphy was senior partner of the Respondents' two partner firm and he had admitted serious allegations concerning the accounting deficiencies of the firm and the conduct of the firm's Guildford office, in relation to a claims management business, conflicts of interest and the payment of referral fees.

107. The Tribunal noted carefully the mitigation put forward on his behalf but Mr Murphy did carry and failed to discharge major responsibility for the firm's compliance with its regulatory obligations.

108. Mindful of its duty to protect the public and ensure that the good reputation of the solicitors' profession is maintained the Tribunal concluded that it was both appropriate and proportionate to impose upon Mr Murphy a fine of £25,000.

109. The Tribunal recommend to The Law Society that Mr Murphy should in future be permitted to practise as a solicitor only in employment which has first been approved by the Law Society.

110. The Tribunal expressed its expectation that the long overdue "cease to hold" Accountant's Report for the period 1st January 2003 to 10th August 2004, which was the subject of allegation (xvii), should be filed with The Law Society without further delay as, of course, the Respondents remained in continuing and further breach of that obligation until such filing has been achieved.

DATED this 1st day of June 2007
on behalf of the Tribunal

A G Ground
Chairman

Typed by:
Clerk:
Date typed:
Date Amended: