

IN THE MATTER OF KEVIN EDWIN FRANCIS GREGORY,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Gibson (in the chair)  
Mr S N Jones  
Lady Bonham Carter

Date of Hearing: 9th May & 12th June 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Law Society by Andrew Miller, solicitor employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 31st August 2005 that an order be made that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit employ or remunerate in connection with the practice as a solicitor Kevin Edwin Francis Gregory of Myrdale Street, London E1, a person who was or had been employed or remunerated by a solicitor in connection with his practice but was not himself a solicitor.

The allegation was that the Respondent being a person who was employed or remunerated by a solicitor in connection with his practice, but not being himself a solicitor, had, in the opinion of the Law Society, occasioned or been a party to, with or without the connivance of the solicitor by whom he was or had been employed or remunerated, an act or default in relation to that solicitor's practice which involved conduct on his part of such a nature that in

the opinion of the Law Society it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice.

It was specifically alleged against the Respondent that he:-

- 1) falsely represented that he personally was a solicitor, a trainee solicitor or an “acting solicitor”;
- 2) endeavoured to claim costs for legal advice at a level which he knew or ought to have known was incapable of being justified;
- 3) permitted the charity ‘Legal-Action’, which was controlled by him, falsely to claim that they were “Solicitors & Advocates”;
- 4) falsely claimed that his charity ‘Legal-Action’ employed a solicitor;
- 5) falsely represented or allowed others to represent that organisations controlled by him were “registered with the Law Society” when they were not;
- 6) issued or permitted others to issue correspondence claiming that an entity controlled by him and named ‘Legal-Action Charity’ and/or ‘Legal Action for Charitable Help’ was a charity registered with the Charity Commission when it was not;
- 7) caused misleading statements to be made and misleading documents to be created in Court proceedings, and caused misleading statements to be made before the Master of the Rolls.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Andrew Miller appeared on behalf of the Law Society, the Applicant, and the Respondent was represented by Gregory Treverton-Jones of Queens Counsel instructed by Radcliffes LeBrasseur Solicitors of Westminster.

The first part of the Application was heard on 9th May 2006 and the second part was heard on 12th June 2006.

### **Preliminary matters**

1. The Applicant sought leave to adduce a new witness statement of Ms L and to call her to give oral evidence.
2. Objection was raised on behalf of the Respondent who opposed the Applicant’s last-minute application to call Ms L as a witness.
3. Of its own motion the Tribunal indicated that the most serious of allegations 1 to 7 was allegation 1 and should that allegation be substantiated the Tribunal would without doubt make the order sought. In the circumstances it indicated that it intended to deal first with allegation 1 and would address the other allegations only if allegation 1 was found not to have been substantiated.
4. The Tribunal would postpone making a ruling on the Applicant’s application for leave to adduce a new witness statement and call Ms L to give oral evidence until it had

reached a finding with regard to allegation 1. Both parties agreed to this course being adopted.

### **The hearing relating to allegation 1**

5. The evidence before the Tribunal included a chronology handed up by the Respondent, the documentary evidence on which the Applicant relied and the oral evidence of the Respondent who had filed a witness statement shortly before the hearing.

#### The Applicant's case

6. The Respondent, who was not a solicitor, had been connected with the solicitor's firm Mahoney Mea. The existence of that firm and its trading style had first been registered with the Law Society on 1st October 2001. The sole principal of that firm was Mr David Ellis Charity, a solicitor.
7. The Applicant relied upon the Respondent's association with Mahoney Mea in order to establish that the Respondent had been employed or remunerated by a solicitor and came within the jurisdiction of Section 43 of the Solicitors Act 1974.
8. Mahoney Mea was subject to an intervention by the Law Society on 4th July 2003.
9. At the material time the Respondent had studied law but had no formal legal qualification. He had not registered with the Law Society as a student or trainee solicitor.
10. It was the Applicant's case that David Ellis Charity, solicitor, had at the instigation of the Respondent set up the practice of Mahoney Mea solicitors of which Mr Charity was purportedly the sole principal.
11. The Respondent had had conduct of the matter of Ms JT against whom London Borough of Havering (Havering) sought an order evicting her from a hostel.
12. On 3rd January 2001 the letterhead of 'Legal-Action Charity' was utilised by the Respondent to write to Havering on behalf of Ms JT. That letterhead claimed falsely that an organisation of that name was "registered with the Law Society" and claimed the registered charity number 3984940.
13. On 8th January 2002 the Respondent, describing himself by the name "Edwin Gregory" made application to the High Court. He represented himself as being solicitor to Ms JT and procured an Order restraining Havering from evicting her by giving to the Court what was ostensibly a solicitor's undertaking.
14. Also on 8th January 2002 the Respondent caused a judicial review claim form to be lodged on behalf of Ms JT. He signed the statement of truth as "claimant's solicitor" under the name "Edwin Francis Gregory" and gave Mahoney Mea as the claimant's solicitor's firm. He also signed page 5 of the form as "claimant's solicitor".

15. On 11th January 2002 the Respondent under the name “Edwin Gregory” made a statement in the judicial review proceedings in which he described himself as “the acting solicitor having conduct of this matter”.
16. On 18th October 2002 the Respondent appeared as Ms JT’s representative at a hearing at Romford County Court. The Respondent claimed to be a “trainee solicitor” and on that basis applied to the Judge and obtained leave to be heard.
17. On 29th October 2002 Havering wrote to Mr Charity at Mahoney Mea expressing concern that the only point of contact they had had with Mahoney Mea appeared to be a trainee solicitor.
18. On 5th November 2002 the Respondent telephoned Stephen Doye, a solicitor employed by Havering. The Respondent claimed that the Law Society had assured him it was in order for him to claim to be an “acting solicitor” if he was “standing in the shoes” of the solicitor having conduct of a matter. In response to a specific question he confirmed he was indeed a trainee solicitor.
19. Mr Doye made further enquiries of Mahoney Mea by letter and he attended at the address 79 Carter Lane to inspect the list of partners, which the firm’s letterhead stated was available for inspection at that address. He found there to be no offices of Mahoney Mea at that address.
20. The expressions “acting solicitor” and “the solicitor acting” were indistinguishable - both conveyed the meaning “the solicitor instructed to act in the case by the client”. It was the Applicant’s submission that the Respondent acting as he did had done so deliberately and dishonestly and it was right that his future employment in the solicitors’ profession should be subject to control.
21. On 29th May 2003 the Respondent filed a witness statement under the name Kevin Edwin Gregory in Ms JT’s proceedings. He exhibited and identified as his own the earlier 11th January 2002 statement of “Edwin Gregory” in which he asserted “I am the acting solicitor having conduct of this matter”. He there confirmed that he was the individual who made the 8th January 2002 application to the High Court. He further confirmed that as from 30th November 2002 he arranged for post addressed to 79 Carter Lane, the address on the Mahoney Mea letterhead, to be returned to senders marked “no longer at this address - return to sender”. The Respondent claimed in his statement that Mahoney Mea had been “dissolved with effect from the end of November 2002”.

### **The Respondent’s case**

22. The Respondent agreed that the name Mahoney Mea reflected his mother’s and his grandmother’s maiden names. Those names had been used to establish a charity to assist persons with housing difficulties. Mr Charity, a solicitor, had encountered difficulties in a former practice in which he was a partner. He was no longer connected with that practice, although the practice continued to bear his name. Mr Charity said that he did not want to give his name to a solicitor’s firm because he did not want his name to be used in that way in the future. He had indicated that he liked the name “Mahoney Mea” and as the Law Society’s rules about the names of firms

had recently changed it would be acceptable to utilise that name for his firm. The Respondent had had no objection to that. The Respondent was the practice manager at Mahoney Mea Solicitors. He had been a signatory on office account but he had not been a signatory on client account. In fact the firm did not handle client money and client account had not been used. A small debit balance which appeared on client account was the result of an error made by the firm's bankers. The Respondent accepted that he had completed a number of forms on behalf of the firm but had done so in his position as practice manager. The Law Society had accepted the status of Mahoney Mea as a firm of solicitors and that was further evidenced by the fact that it had intervened into that firm.

23. The Respondent had completed a first and a master's degree and had studied at University of Westminster on a two year part-time course for the graduate diploma in Law. That was the equivalent of the common practice examination (CPE) course.
24. At first the Respondent had not been aware that Mr Charity had personal problems but later became aware that he had serious bouts of depression, personality changes and drinking problems.
25. Prior to Mahoney Mea Solicitors being set up the Respondent had experience through charitable work in dealing with housing problems and providing impecunious persons with legal facilities to which they would not otherwise have had access.
26. Mr Charity said that he would start the solicitors' practice and wished the Respondent to be the practice manager because of his charitable experience. He explained that the Respondent could train under him for at least a year during which time he would gain valuable experience before the Respondent decided to take the legal practice course.
27. Mr Charity asked the Respondent to assist him with the paperwork to enable the practice to begin. Of the one year training that Mr Charity would give to the Respondent he said six months would count towards the minimum 24 months vocational stage of the training requirement to become a solicitor after doing the "LPC". The Respondent was happy with that arrangement. That exact training arrangement had been confirmed on 5th May 2005 by the Law Society to a friend of the Respondent.
28. The Law Society's Form RF1 for 2002/2003 indicated that the Law Society had allocated a number to Mr Charity and also it had allocated a number to the Respondent. The Respondent believed that the number allocated to him was his training number and in effect was proof that he had been registered with the Law Society under Mr Charity who was registered as an "authorised trainer". That authorised trainer status was confirmed by a search made with "Solicitors On Line". Additionally Mr Charity had told the Respondent that he had registered the Respondent as his trainee.
29. It had not been until March of 2003 that the Respondent was advised in a telephone conversation with a representative of the Law Society, after the issue of Mr Charity's Practising Certificate had been delayed, that the number upon which the Respondent relied was not a training registration number but a practice manager number. The Respondent took no steps upon being told this as the firm had by then been dissolved and he no longer intended to become a solicitor.

30. It had been in November 2002 that the Respondent told Mr Charity that the firm of Mahoney Mea had to be dissolved because of Mr Charity's ill health following an accident he suffered the previous July. The Respondent could not run the firm without him and did not want to take responsibility for anything that Mr Charity might fail to do owing to his deteriorating health.
31. On 5th December 2001 Mr Charity wrote to the Respondent giving him express instructions and authority to act on Mr Charity's behalf.
32. On 8th January 2002, pursuant to this authority, the Respondent had to issue a judicial review claim to prevent Havering from evicting Ms JT, a young mother with a 7 year old boy, from a hostel. Ms JT had nowhere else to turn. The Respondent did not hand write the judicial review claim himself. He signed the form at the High Court once it had been pointed out to him by the Administrative Court staff that it had not been signed by Ms JT. The Respondent had signed it in a hurry as the Administrative Court office was about to shut and he did not cross out any of the options on the form or complete details of his position or status.
33. The claim was issued and subsequently faxed from the Administrative Court to Havering's Legal Department, as the Respondent had been told on the telephone by Ms O, a solicitor in Havering Legal Department, that once the claim had been received the eviction process would be stopped. The Respondent had despatched the fax to Havering at about 4.30 pm and afterwards left the Court to have a meal at a restaurant close to the Court.
34. The Respondent had taken steps towards judicial review as he had been told by the Administrative Court Office staff that there were no judges available until Friday the 11th January so he could not make an urgent application to a Crown Office Judge to stay the eviction.
35. The Respondent was contacted by telephone while he was eating at the restaurant close to the Royal Courts of Justice at 4.58 pm. He was told that despite the sending of his fax, steps were being taken to evict Ms JT. The Respondent immediately returned to the Court. Efforts were made to find a Judge and in due course the Honourable Mr Justice Andrew Smith issued a stay of the eviction order until 15th January 2002.
36. The Respondent had been advised by the Judge, after he had asked for leave to appear and had stated that he was training under Mr Charity who was not able to be present as he was on leave, that he had no objection to granting leave to the Respondent to apply for this emergency injunction. The Judge also stated that in his opinion it did not present a problem as the Respondent was "standing in the shoes of the principal". The Respondent explained that he did have written instructions from Mr Charity but he had not brought them to the Court, as what had occurred had been unexpected. In chambers the Judge stated that as far as he was concerned the Respondent was the "acting solicitor" and would have to be so for the injunction to be granted as he could not otherwise give the usual undertaking in relation to damages on Ms JT's behalf. The Judge asked if the Respondent could produce a statement within three days setting out all of the facts. The Respondent confirmed that he could. The Judge then granted the injunction to stop the eviction of Ms JT. When enquiry was later made of

the Honourable Mr Justice Andrew Smith he said that he had no notes that would assist the Respondent and did not have a recollection of the matter.

37. On 9th January 2002 the Respondent telephoned the Law Society's Professional Ethics Department and explained the predicament in which he had found himself. He would have to make a statement stating that he was the "acting solicitor" otherwise there would be a breach of the undertaking. The professional ethics adviser had said that if a High Court Judge said that he was the acting solicitor (i.e. acting in the shoes of the solicitor he was training under) for this injunction matter, then that was what he was. The Respondent felt comforted by that but he also left a message for Mr Charity, who was staying in Greece, for him to telephone about the matter. Mr Charity did not return the telephone call before 11th January 2002, the date by which the statement had to be submitted to the Court. He did speak to the Respondent after that date, and confirmed that the Respondent had been right to do as the High Court Judge had told him and he would have given the same advice as the Law Society's Professional Ethics Department. Mr Charity told the Respondent that he had done well in the situation, especially as the aim had been to prevent a young mother and her young son from being evicted.
38. The case then went, on paper, before Mr Justice Hooper who extended the injunction from 15th January 2002 until further order so that the claim could be heard without Ms JT being evicted by Havering in the meantime.
39. On 14th February 2002 the matter was dealt with at an oral hearing before Mr Justice Maurice Kay, who deemed that the claim had been issued in the County Court under section 204 of the Housing Act.
40. The Respondent was not responsible for any inaccuracy in the terms of the Order drawn up by the Court staff in respect of the hearing on 8th January 2002. The mis-description of his status contained therein, namely that he was a solicitor, was not of his making.
41. In signing the Claim Form the Respondent was acting in haste in a situation of urgency without consciously considering the form of words printed on the claim form. A reasonable interpretation of the Respondent's action was that he simply indicated that the claimant's solicitors were Mahoney Mea and that the Respondent was duly authorised to sign the form on that firm's behalf. There could have been no objection if he had simply completed the section of the claim form indicating his position as practice manager (as he had done in another matter). He simply did not do that, inadvertently, in his haste to deal with an urgent situation shortly before the Court office closed.
42. The Respondent had considered that the expression "acting solicitor" had a meaning similar to that used in the services as in "acting captain". He had considered that the phrase meant "standing in the shoes of the solicitor". It did not mean that the Respondent was a solicitor who had been retained by the client.
43. The Respondent accepted that he had represented himself to be a trainee solicitor and he accepted, in hindsight, that he ought not to have done so. He believed that to have been the position at the time, based on the representations made to him by Mr Charity. This belief was supported by the fact that the Respondent appeared to have been

allocated a number by the Law Society. The Respondent's trainee solicitor status was also confirmed to a friend of his by the Law Society on 5th May 2005, when the Law Society agreed that his time spent with Mr Charity would reduce the two year period of the vocational stage of training to eighteen months.

44. The Respondent did represent himself as "the acting solicitor" but had done so on the instructions of a High Court Judge, which action was recognised as appropriate by the Law Society's Professional Ethics Department on the telephone.
45. The Respondent, with the benefit of experience and hindsight, would not again conduct himself in the same way. At the material times he had conducted himself in a manner that he believed to be proper and had done so with no thought of personal gain, only with a view to preventing the eviction of Ms JT and her young son.

### **The Tribunal's Findings**

46. It was clear, and the Respondent himself accepted, that he had described himself as a "trainee solicitor", and as "a solicitor" or as an "acting solicitor" when he was none of these things. He had done so without any intention to deceive or gain advantage. He had done so upon advice, upon his understanding of the ruling of a High Court Judge or believing that a description of his status reflected the true position.

### **The Findings of the Tribunal with regard to allegation 1**

47. The Tribunal was very concerned that an unqualified person should at any time and for whatever reason describe himself as a trainee solicitor or as a solicitor when he was not. The seriousness of such action is underlined by the fact that to hold oneself out as a solicitor when one is not is a criminal offence.
48. The Tribunal has listened to the Respondent's explanations and submissions. It concludes that he acted perhaps unwisely and certainly recklessly in making the assertions that he did. The Tribunal accepts that the circumstances leading to his making these inaccurate statements were difficult and the Tribunal recognises that at the time he was badly supervised by his principal.
49. The Tribunal concludes that the Respondent had been reckless and unwise but in the light of the mitigating circumstances, the Tribunal finds that the Respondent's actions were not deliberately dishonest.
50. Although the Tribunal considers that allegation 1 has been made out there is no finding of dishonesty against the Respondent and in all the particular circumstances and on the facts of this allegation alone the Tribunal has concluded that it would be neither just nor proportionate to impose an order pursuant to Section 43 of the Solicitors Act 1974 upon the Respondent.
51. The Tribunal having reached that conclusion indicated that it would consider the balance of the allegations numbered 2 to 7.



### **Preliminary issue**

52. The Applicant sought leave to introduce a new witness statement and to call Ms L to give oral evidence. Documents relating to the evidence of Ms L had been served upon the Respondent and the Applicant contended he was not taken by surprise. The Respondent himself had filed his witness statement only a short time before the hearing. It would be Ms L's evidence that she had not entered into a contract with Mahoney Mea. That question would not require a great deal of cross-examination.
53. It was said on behalf of the Respondent that his advocate had been taken by surprise by the late service of a witness statement and more so by the indication that Ms L was to be called to give oral evidence. Counsel for the Respondent asserted he had not had an opportunity to prepare his cross-examination. The Respondent had not sought disclosure of further documents from the Law Society and in the light of this new evidence he might well need to do so. Had the Respondent known of the approach to be taken by the Law Society steps would have been taken to call oral evidence on behalf of the Respondent. In the submission of the Respondent, if justice were to be granted to both sides the remainder of the case should be adjourned to allow Ms L to give evidence on another day and also to allow the Respondent to make appropriate preparation.
54. The Tribunal agreed that an adjournment should be granted in the light of the Respondent's submissions. The Tribunal rejected a suggestion that the other allegations, upon which Ms L's evidence had no bearing, should be dealt with at this stage. The Tribunal concluded that it would be just and appropriate to adjourn the remainder of the case to another date.
55. After consultation with the parties and the members of the Tribunal it was agreed that the remainder of the case would be adjourned for hearing until 10 a.m. on Monday 12th June 2006.

### **The Resumed Hearing on 12th June 2006**

The Tribunal was requested to consider a Preliminary Matter, namely Mr Gregory's submission that he had not been a party to an act or default in connection with Mr Charity's practice at Mahoney Mea between 1st October 2001 and 4th July 2003, the period during which the facts supporting allegations 3, 4, 5, 6 and 7 occurred, and that no jurisdiction in respect of these matters had been conferred upon the Tribunal by Section 43 of the Solicitors Act 1974 (as amended).

56. It was submitted that jurisdiction under Section 43 of the Solicitors Act 1974 (as amended) is conferred only where a non-solicitor has been employed or remunerated by a solicitor in connection with his practice and has (in the opinion of the Law Society) occasioned or been a party to an act or default in connection with that solicitor's practice. The only solicitor who had employed or remunerated the Respondent was Mr David Charity while the sole principal of Messrs Mahoney Mea. Mahoney Mea appeared to have existed as a solicitor's practice between 1st October 2001 and 4th July 2003, when the Law Society intervened in the practice. In fact the firm had already been dissolved or abandoned in or about November 2002.

57. The Law Society had to establish that the Respondent had occasioned or been a party to an act or default in connection with Mr Charity's practice at Mahoney Mea between 1st October 2001 and, at the latest, 4th July 2003 which rendered it undesirable for Mr Gregory to be employed in a solicitor's practice.
58. The conduct complained of by the Law Society in allegations 3, 4, 5, 6 and 7 could not amount to "an act or default in connection with Mr Charity's practice at Mahoney Mea" so as to trigger the S. 43 jurisdiction. In connection with the relevant allegations the Respondent's position was as follows:-

Allegation 3 - anything done by Legal-Action, which was an independent organisation, could have had no reference to Mahoney Mea and all of the documentary evidence submitted by the Applicant post-dated the demise of Mahoney Mea;

Allegation 4 - related to a claim made to the Master of the Rolls when Mr Gregory was representing Mr Charity on 30th April 2004. The practice of Mahoney Mea could not have existed beyond the intervention by the Law Society on 4th July 2003;

Allegation 5 - the majority of the documentary evidence relied upon by the Applicant either pre-dated or post-dated the life of the Mahoney Mea practice. The five items created during the time of Mahoney Mea, revealed no act or default it was submitted, in breach of the statutory provision;

Allegation 6 - the existence or status of Legal-Action's registration with the Charity Commissioners had nothing to do with Mahoney Mea Solicitors;

Allegation 7 - this simply repeated allegations made earlier in the Rule 4 statement, and the same points were made.

59. It was wholly inadequate to state that the Respondent's behaviour "stems from and relates back" to the Respondent's involvement in Mahoney Mea, Solicitors.
60. Some of the conduct alleged against the Respondent pre-dated the creation of Mahoney Mea, Solicitors, and some post-dated the demise of the practice. At the hearing the Respondent provided the Tribunal with a note listing the documents and events relating to allegations 3, 4, 5, 6 and 7 demonstrating that they post-dated or pre-dated the existence of Mr Charity's firm of Mahoney Mea. Those events or documents that did fall within the period of the existence of Mr Charity's practice did not demonstrate any act or default in connection with Mahoney Mea, Solicitors. For example a letter dated 7th April 2003 contained in the Applicant's bundle in support of allegation 5 expressly stated that Mahoney Mea, Solicitors had been dissolved. It was impossible in these circumstances to see how such conduct could conceivably be said to be in connection with Mr Charity's practice, and the Applicant's statement did not answer this fundamental objection to allegations 3 to 7 inclusive.

### **The Submissions of the Applicant**

61. The Applicant did not accept that there could be a simple assumption that Mahoney Mea solicitors came to an end at the date of the Law Society's intervention into the practice. That firm had had a predecessor, Mahoney Mea Legal advisers or Legal-

Action Charity and it had a successor, Legal-Action Charity. The firm had been a de facto continuing entity which at one stage had assumed the mantle of a solicitor's firm. It had been the Respondent's own evidence that the Mahoney Mea bank account had at all times been controlled under his sole signature. He had created a scheme at a law firm which had continued. What went before the involvement of Mr Charity was relevant and the Respondent's behaviour did fall within Section 43.

### **The Tribunal's Decision**

62. The Tribunal did not accept that the previous and successor practices to that of Mahoney Mea solicitors were solicitors practices. Both on the facts of this particular case and the law that proposition could not be sustained. The Tribunal accepted the submissions made by the Respondent that any conduct of his at the times when he was not employed or remunerated by Mahoney Mea solicitors could not be conduct in respect of which the Tribunal had power to consider and make an order pursuant to Section 43 of the Solicitors Act 1974 (as amended).
63. The Tribunal in these circumstances proceeded to consider the one remaining allegation, namely allegation 2, that the Respondent endeavoured to claim costs for legal advice at a level which he knew or ought to have known was incapable of being justified.
64. The Respondent denied this allegation.

### **The evidence before the Tribunal**

65. Ms Michelle Lowe and the Respondent gave oral evidence as did the Respondent's father, Mr Frank Gregory.

### **The Applicant's Case**

66. On 4th December 2000 the Respondent wrote, under the style of Mahoney Mea Legal Advisers to the employers of the Respondent's then girlfriend, ML, making representations that they were treating her unfairly and in breach of ACAS guidelines. On 14th December he faxed the employers, sending a 'Mahoney Mea Legal Advisers' fax cover sheet which described the Respondent as "Principal" of that firm. Eventually ML obtained severance terms from her employers, having instructed solicitors to finalise the termination agreement.
67. In early 2001 the relationship between the Respondent and ML was coming to an end although the Respondent apparently wished it to continue. On 29th May 2001 the Respondent wrote to ML on 'ILAC Legal Advisers' letterhead claiming that on 26th February 2001 she had been sent an invoice for "contractual monies" she owed to 'Mahoney Mea'. At the foot of the letterhead ILAC's full name was given as 'ILAC Independent Legal Advice Charity' and the charity registration number was given as 108716 (the number of RILAC). The letterhead falsely claimed that 'ILAC Legal Advisers' was "Registered with the Law Society" and referred also to the following names: "Solicitor D.E. Charity: Associates: H.S. Simons K.E.F. Gregory".
68. With the 29th May 2001 letter was enclosed a copy of a purported invoice from 'Mahoney Mea Legal Advisers' to ML claiming she had agreed to pay £3,600, being

a “10% standard contingent fee (a success fee)”. The invoice bore the date 26th February 2001 but had not previously been received by ML. It purported to be a document submitted on or about that date to ML with a view to obtaining payment from her for services, but as such it was not a credible document. ML’s behaviour was described in the narrative as being emotional and dependent upon the Respondent. The relationship between the Respondent and ML was repeatedly referred to in suggestive terms. It was submitted that such language would not be found in a genuine invoice drawn up for the purposes of extracting payment from the addressee. The letterhead included the Respondent’s name as an Associate and stated ‘Mahoney Mea Legal Advisers’ is “Affiliated to RILAC Charity No 108716”. The objects of RILAC were strictly charitable.

69. On 1st October 2001 the Respondent and Mr Charity executed a purported assignment of the “debt” owed by ML from ‘Mahoney Mea Legal Advisers’ to Mahoney Mea Solicitors. The Respondent signed for the assignor and Mr Charity for the assignee.
70. The assignment falsely claimed that the assignor was “registered with the Law Society”. It stated that Mahoney Mea had paid to the assignor the sum of £3,600. The assignment gave no reason why a firm purportedly controlled by Mr Charity should pay to the Respondent the full amount of the claimed debt in exchange for the mere right to seek that debt’s recovery.
71. The case against the Respondent was that the assignment was a sham, designed to bolster a claim for charges for advice by ensuring it was brought in the name of a solicitor’s firm. It was submitted that one of the purposes of that sham agreement was to mislead the Court.
72. On 31st December 2001 Mahoney Mea solicitors issued a claim for £3,600 in the Romford County Court. The statement of truth on the claim form was signed by the Respondent as “Claimant’s Representative”.
73. ML defended the claim on the grounds that no debt was due from her; no bill had been delivered pursuant to Section 69 of the Solicitors Act 1974, and the Respondent had never acted for her on a fee-paying basis at all. In later correspondence ML’s solicitors raised the additional point that an oral conditional fee agreement was in breach of the Conditional Fee Agreement Regulations and hence unenforceable.
74. The Respondent had prepared two letters on ML’s behalf and appeared also to have put forward the name of Howard Simons (who according to Law Society records was an associate or employee of Romford Independent Legal Advice) as a signatory to certify that ML had been advised on her employer’s settlement terms. It was the Applicant’s case the claim for £3,600 was excessive and unjustified.
75. The Respondent continued to pursue the claim against ML and on 16th July 2002 the Respondent made a statement in which he described himself as “a trainee solicitor with Mahoney Mea Solicitors ...”.
76. In his statement the Respondent claimed that Mahoney Mea Legal Advisers had been established in 1996 to deal with “non-reserved activities” including employment matters. It claimed that it was an established practice of ‘Legal Advisers’ that, where an employer agreed to settle, a local firm of solicitors would be asked to “sign off the

compromise agreement". The statement referred to "Legal Advisers" as if they were separate from the Respondent, misleadingly described ILAC as "a new firm of debt collectors" and falsely claimed that the Law Society had advised the Respondent to enter into the purported assignment.

77. On 6th August 2002 the Respondent prepared a schedule of costs for the Court in which he claimed to be a trainee solicitor. With the exception of Counsel, the Schedule attributed no time spent on this matter to any person other than the Respondent.
78. On 15th November 2002 Judgment was given in favour of ML and Mahoney Mea were ordered to pay her costs of £3,290. The costs had not been paid.

### **ML's Oral Evidence**

79. ML said she had been concerned about the security of her employment with the company. She had been having difficulties with the company because she had objected to the way one of the directors had treated other members of staff.
80. She had been at home owing to illness when a member of the company had telephoned her to say she had been dismissed for gross misconduct.
81. ML and the Respondent had known each other, although not well, in childhood and in 1999 they entered a boyfriend/girlfriend relationship.
82. In December of 2000 ML had discussed with the Respondent the difficulties she was having with her employer (SKA Ltd). When she received the telephone call informing her of her dismissal she telephoned the Respondent who said he would go to help her.
83. ML said she had already drafted a letter and that the Respondent had said he would send it on his letterhead having changed it to incorporate appropriate "jargon". That resulted in the letter that was sent on 4th December 2000.
84. The Respondent had been very enthusiastic about the law and had a good deal of knowledge that ML did not share. ML began to become concerned as she wanted to stay employed in the city and she did not want to fall out with a member of the company who was influential in the city. She telephoned her employer and arranged to meet him for breakfast. He asked her how much she wanted, saying that £30,000 was the maximum payment which did not attract taxation. ML agreed that figure saying that she wanted a formal Compromise Agreement. The Managing Director of SKA Ltd arranged for the contract to be written up and sent by fax to the Respondent's home address.
85. There had never been any suggestion that ML retained the Respondent for a fee. She agreed she had discussed the matter with the Respondent's father who said that she should give the Respondent some of her tax free settlement for helping her. ML told the Respondent's father that she did not agree with this.
86. After ML received her settlement money her relationship with the Respondent began to come to an end.

87. ML decided to go to Italy to study for an “MBA”. She had been in France when her parents telephoned to say that a recorded delivery letter had arrived for her. They opened the letter and found that it was a summons from the County Court. ML had telephoned Romford County Court about this and then instructed a solicitor to act on her behalf. The costs which she incurred in defending the proceedings were larger than the debt claimed. She defended the action because she wanted “to clear her name”.
88. The matter was to have gone to trial but owing to a technicality the claim was dismissed and costs were awarded against Mahoney Mea Solicitors. ML had not received payment of any of her costs.
89. A letter addressed by the Respondent to SKA Ltd on 11th December had also been drafted by ML and edited by the Respondent.
90. ML said she had never seen the terms of business letter which the Respondent said he had prepared. That document had not been produced when they went to court.

### **The Respondent’s Case**

#### The Respondent’s oral evidence

91. The background to this matter stemmed from the setting up of Mahoney Mea Legal Advisers around September 1996 to deal with non-reserved activities. They dealt mainly with parking appeals tribunal cases and unfair dismissal cases up to industrial tribunals. Solicitors from other firms were brought in, for instance if an employer agreed to settle. The Legal Advisers arranged with a local firm of solicitors to “sign off” the compromise agreement.
92. ML had asked Legal Advisers for help on or around 14th November 2000 with regard to her employer company SKA Ltd (the Company) whom she strongly believed were about to dismiss her. She had been employed for almost one year and five other employees had left for no apparent reason and she had been told by one of them that that happened to all employees of the Company before they had served a full year of employment, and gained employment rights.
93. By enquiry the Respondent ascertained that the Company was substantial.
94. On 30th November 2000 the Company did send a letter terminating ML’s contract for ‘gross misconduct’ based on an allegation that she sent an email from a company computer.
95. The Legal Advisers recognised the urgency of the situation and entered into an oral contract for a contingency fee agreement with ML. Ten percent of any sum recovered from the Company would be due from the client if it did not pay Legal Advisers reasonable fees.
96. The Respondent had prepared a document for ML setting out his terms of business. ML did not sign it, saying that the Respondent should trust her. He was persuaded not to insist on ML signing the document.

97. By letters of 4th and 11th December 2001 Legal Advisers pointed out to the Company that it had acted illegally. On 12th December the Company's solicitors, Manches, replied stating that the Company wished to settle the matter for approximately £36,000.
98. On 13th December 2001 ML told the Respondent that if he could find a way to avoid payment of £8,000 in tax on the £30,000 exact figure, she would be happy to forget about the earlier agreement and pay one half, £4,000, to the Respondent.
99. On 14th December 2001 Legal Advisers wrote to Manches to amend the 'compromise agreement' by the insertion of important clauses to include an agreement that the company would provide ML with a reference. Legal Advisers also asked for their fees, and directed that the compromise agreement be sent to solicitors, who would be able to "sign it off" at a reasonable fee so that Legal Advisers did not trespass upon an activity reserved to solicitors.
100. The Company did not agree to pay ML's advisers' costs as she had already agreed that she would pay. It was reasonably deduced that ML in giving that undertaking to the employer had taken the matter of costs on herself and automatically re-opened the contract to pay 10% of the final award to Legal Advisers. On the date of the employer's solicitors' letter confirming this the Respondent received a telephone call from ML's mother who said:-
- "Michelle had decided to pay you herself so she can sign the agreement quickly. You've got nothing to worry about as I have explained to your father, as she and all of us (her family) really appreciate the excellent job you have done."
101. On 30th December 2001, while the Respondent and ML were sitting together in a car, ML said to him she did not care about the money and if he married her she would give him half of what she received. The Respondent said he would think about marriage but would prefer to stick to the original agreement and talk further after the employment matter had been settled. The Respondent did not learn whether ML had received the settlement money. An invoice was sent to her but there was no response.
102. On 1st October 2001 after taking advice from the Law Society, Mahoney Mea Legal Advisers assigned the invoiced debt of £3,600 to Mahoney Mea Solicitors as the Legal Advisers firm was to be dissolved. Mr Charity had drafted the assignment document. It made reference to the payment of £3,600 for the assignment of the debt. That was not correct. There was no monetary consideration for the assignment.
103. On 31st December 2001, again after contacting the Law Society, Mahoney Mea Solicitors issued a summons to recover £3,600 against ML. The Court ruled that the claim should not proceed. A fresh claim was not made.
104. It was accepted that Mahoney Mea had not paid ML's costs but she would have been able to recover them from the Solicitors Indemnity Fund.

### **The Oral Evidence of Mr Frank Gregory**

105. Mr Frank Gregory said that ML had visited his house. She had been very distressed and said she had learned that five people previously had lost their jobs with the Company as the first anniversary of their employment had approached. Mr Frank Gregory said that he told ML that if the Respondent got nothing for her she had lost nothing, but if he was successful she could pay him commission. He pointed out to her that she would never get a similar good job without a reference. He said that in December ML's mother had telephoned him saying that she would be happy to pay the fees herself. Mr Gregory said that he considered that 10% was a standard level of commission in connection both with this sort of matter and in other fields.

### **The Submissions of the Respondent**

106. It was necessary for the Tribunal to look at what happened while the Respondent was at Mahoney Mea Solicitors, starting on 1st October 2001. That was the only basis upon which the Law Society could succeed in its allegation, namely that the Respondent was pursuing litigation against ML in the absence of an honest belief that she was liable to pay the sum claimed. If he honestly believed that such monies were due to him and could be claimed by Mahoney Mea then there would be no need to invoke the provisions of Section 43. That was why the Law Society had pleaded that the Respondent's actions were dishonest.
107. The Law Society had to establish that the Respondent had acted dishonestly to the criminal standard of proof. The evidence adduced by the Applicant was not capable of meeting the burden of proof that fell upon it.
108. It was necessary for the Tribunal to decide whether or not the Respondent had been honest. He had given evidence and plainly was an honest man.
109. The matters relating to the allegation had happened nearly six years before the hearing. Memories had faded and it would be difficult to determine with any degree of certainty precisely what had happened.
110. The Tribunal would bear in mind that Mr Gregory and ML had had a relationship which had gone badly wrong and there remained a legacy of bitterness.
111. It had been hoped that emotion could be excluded from the evidence but the Tribunal would have noted that ML had on two or three occasions referred to the Respondent's "philandering". She had described him as "slimy" and had made reference to the possibility of his seeking to exploit the vulnerable. That latter reference was grotesquely unfair. ML's evidence was clearly motivated by a sense of spite and bitterness. She missed no opportunity to make gratuitous derogatory remarks about the Respondent.
112. Not only had the events happened a long time ago but the Tribunal had been asked to consider what had been said between two lovers in December 2000 and it was asked to do that with a background of inadequate documents or documents said to have been produced at the time which no-one appeared to have seen.



113. The County Court Claim was never litigated on its merits.
114. The Respondent had been entirely consistent in his evidence. His father said that he had spoken to ML about the matter and that his understanding was that she would pay the Respondent's fee only if her claim was successful.
115. Both the Respondent and his father said that ML's mother had telephoned each of them expressing satisfaction at the handling of the matter by the Respondent.
116. In a letter from Manches, the solicitors retained by ML's employer, addressed to the Respondent it was clear that ML had already agreed that she would pay Legal Advisers' costs.
117. The reality was that the Law Society had failed to prove that the Respondent "invented" the contract or agreement that existed between him and ML.
118. It was perhaps a subsidiary point that the Law Society claimed that the Respondent inflated his claim for costs to £3,600 despite stating that he expected 10% of the settlement monies when ML only received some £30,000. It appeared that not only was she paid £30,000 settlement money but she also received two months' salary and her actual payment was likely to have been in the region of £36,000. The point was not one of great importance, however it was important to note that the agreement had been that the Respondent would be paid by result and not the volume of work which he undertook.
119. The Tribunal was invited to conclude that the very serious allegation made against the Respondent had not been substantiated to the required high standard. An order made pursuant to Section 43 of the Solicitors Act 1974 was not justified.
120. The Tribunal had at the opening of the first hearing indicated that allegation 1 was the most serious of those made against the Respondent. The Respondent agreed. That allegation had been disposed of in the Respondent's favour.
121. The Tribunal was invited to dismiss the last remaining allegation, allegation 2, and permit the Respondent to follow his chosen career as barrister.

### **The Tribunal's Findings**

122. The Tribunal would not take into account the effect of a Section 43 order made in respect of the Respondent upon his expectation that he would in due course be called to the Bar. The issue before the Tribunal had to be determined on the evidence presented to it, and in so doing the Tribunal would disregard the effect any such Section 43 Order may have on the Respondent's future career.
123. The Tribunal noted the way in which allegation 2 had been framed, in particular that the Respondent had claimed costs at a level which was incapable of being justified.
124. The Tribunal was faced with conflicting oral evidence of Ms ML and the Respondent. The Tribunal found the Respondent's father who gave oral evidence had no direct knowledge of any agreement reached between the Respondent and Ms ML.

125. Ms ML gave clear and unequivocal evidence. She had not deviated in any way from a written statement she had made as long ago as April 2002 or the defence files in the County Court proceedings in January 2002.
126. The Tribunal was alert to the fact that Ms ML and the Respondent had for a time been in an emotional relationship and that that relationship had broken down.
127. Nevertheless the Tribunal found Ms ML to be a truthful and straightforward witness. The Tribunal found no evidence that she was driven by spite as had been suggested on the Respondent's behalf. The Tribunal preferred the evidence of ML to that of the Respondent.
128. Having heard oral evidence from ML and the Respondent and having considered the other evidence before it the Tribunal was satisfied and found that the arrangement between the Respondent ML was an informal one. The Respondent rarely, if ever, charged a fee and indeed emphasis was placed on his provision of advice on a charitable basis. There was no credible evidence before the Tribunal that there was any contemporaneous agreement (either oral or written) for ML to be charged for the assistance provided by the Respondent. Some play was made of the fact that the issue had never been fully aired by the Bow County Court. But the Tribunal had before it an order of that Court dated 15th November 2002, when the claimant and defendant (ML) were both represented by Counsel. That order struck out the claim for costs brought by Mahoney Mea and awarded costs to ML. The matter was not apparently pursued further. That taken with the weight of other evidence led the Tribunal to conclude that the Respondent had asserted that there was an oral agreement between him and Ms ML relating to the payment of charges to him when no such agreement ever existed.
129. It followed from that finding that a claim that he was entitled to 10% of Ms ML's settlement monies did amount to a level of costs which he knew or ought to have known was incapable of being justified.
130. Although the Tribunal found allegation 1 not to disclose dishonesty on the part of the Respondent and concluded at that time that it would be neither just nor proportionate to impose an order pursuant to Section 43 of the Solicitors Act 1974 upon him in relation to that allegation alone, the Respondent's behaviour which led to the making out of allegation 1 coupled with the Respondent's behaviour established in connection with allegation 2 taken together did disclose conduct on the part of the Respondent which rendered it appropriate both for the protection of the public and for the protection of the good reputation of the solicitors' profession to make an order regulating his future employment within the solicitors' profession.
131. In so finding and in making the Section 43 Order the Tribunal did take into account all that the Respondent explained about his background in his written statement, and further took into account his admirable interest, which perhaps amounted to a passion, for affording protection to vulnerable members of society. The Tribunal also took into account the fact that the Respondent was a young man who had not had experience of work within either branch of the legal profession and whose knowledge at the material time of the strict rules and regulations by which members of that profession were bound was not unsurprisingly somewhat scant. The Tribunal accepts that the Respondent was further ill-served by a solicitor principal who did not exercise

proper supervision over him, had taken no steps to ensure that a formal training contract was in place and who appeared to have left the Respondent to his own devices which was clearly inappropriate for someone of his level of legal education and experience.

132. The impression gained by the Tribunal was that the Respondent had a tendency to rush headlong into situations with which he was not properly equipped to deal. He perhaps assumed a level of knowledge that he did not have. This was exemplified by his assertion when giving evidence that the failure by Mahoney Mea Solicitors to pay Ms ML's costs in the County Court case would be met by a payment from the Solicitors Indemnity Fund, a statement which was a statement of fact on his part that was entirely wrong. No doubt proper and full training in the law would serve to enable the Respondent to recognise lacunae in his knowledge.
133. The Tribunal wishes to point out that having made its decision to make an order in respect of Mr Gregory pursuant to Section 43 of the Solicitors Act 1974 it had not made a finding of dishonesty against him, rather it was their view that his determination to succeed and, perhaps, in the case of Ms ML, distress over a broken relationship, clouded his judgement and that with training and experience in the future it was hoped that the Respondent would not replicate his foolish behaviour.
134. The Applicant sought the costs of and incidental to the application and enquiry, recognising at the same time that the Tribunal had found only two of seven allegations to have been substantiated. The Applicant told the Tribunal that in his assessment more than half of the work he had undertaken had been directed at allegations 1 and 2.
135. On behalf of the Respondent it was recognised that allegation 1 had been proved but the Tribunal had decided not to make an order and recognised that in a sense the Applicant had succeeded. It was pointed out that allegations 3 to 7 had been dismissed without evidence being heard.
136. The case had run into two days where one should have been sufficient. The second day was necessary because the Law Society late in the day called Ms ML to give oral evidence.
137. The Tribunal was invited to bear in mind the impact of the Tribunal hearing and its decision on the Respondent's future.
138. The Tribunal was invited to exercise mercy and order that each side should bear its own costs.
139. The Tribunal recognised that the Applicant had succeeded in two of the allegations made against the Respondent. The first allegation was considered to be the most serious of all of the allegations. Whilst normally the Tribunal would give consideration as to whether or not the Law Society as regulator had properly brought matters to the attention of the Tribunal when considering its order for costs, in this case the Tribunal had found that the conduct of which the Law Society complained in allegations 3 to 7 had not occurred at a time while the Respondent was employed or remunerated in connection with the practice of a solicitor. It had dismissed those allegations on the basis that Section 43 of the Solicitors Act 1974 did not confer jurisdiction on the Tribunal to make any findings on those particular allegations and it

could be argued that the Law Society should not have pursued those allegations. In all of the circumstances the Tribunal concluded that it would be fair, just and proportionate to order the Respondent to pay one third of the costs incurred by the Law Society in its application and enquiry and that such costs should be subject to a detailed assessment unless agreement was reached between the parties.

140. The order made by the Tribunal was as follows:-

The Tribunal Orders that as from the 16th day of June 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such 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, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Kevin Edwin Francis Gregory of Myrdale Street, London, E1 a person who is or was a clerk to a solicitor and the Tribunal further Orders that he do pay one third of the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

Dated this 17th day of July 2006  
On behalf of the Tribunal

A G Gibson  
Chairman