No. 9678-2007

IN THE MATTER OF DENIS WHALLEY AND *[SECOND RESPONDENT]*, solicitors
[NAME REDACTED]
- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mr J C Chesterton
Mr S Howe

Date of Hearing: 4th March 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by David Elwyn Barton, Solicitor of 5 Romney Place, Maidstone, Kent ME15 6LE on 26th February 2007 that Denis Whalley, Solicitor of, Liverpool, Merseyside, L23 and *[SECOND RESPONDENT]*, Solicitor, of, St. Helens, WA10, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations were:-

Against Denis Whalley (Mr Whalley) that he had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:-

(a) he retained in office account monies paid in respect of professional disbursements incurred but not yet paid, contrary to Rule 19(1)(b) of the Solicitors' Accounts Rules 1998. It is further alleged that he knew or deliberately chose not to ascertain whether such disbursements remained unpaid and was thereby dishonest. In the alternative he was grossly reckless

(b) he failed to remedy the breaches promptly upon discovery, contrary to Rule 7 of the said Rules

(c) he failed to keep his accounting records properly written up to show his dealings with office money relating to client matters, contrary to Rule 32(1) of the said Rules

(d) he made a statement to the Society in a letter from his solicitor dated 24 March 2004 which was materially false and misleading. It is further alleged that the Respondent was dishonest.

The allegations against *[SECOND RESPONDENT]* were:-

(a) she retained in office account monies paid in respect of professional disbursements incurred but not yet paid, contrary to Rule 19(1)(b) of the Solicitors' Accounts Rules 1998

(b) she failed to remedy the breaches promptly upon discovery, contrary to Rule 7 of the said Rules

(c) she failed to keep her accounting records properly written up to show her dealings with office money relating to client matters, contrary to Rule 32(1) of the said Rules

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th March 2008 when David Elwyn Barton appeared as the Applicant. Denis Whalley was represented by Iain Goldrein of Queens Counsel and *[SECOND RESPONDENT]* was represented by Stuart Turner, solicitor.

The evidence before the Tribunal included Mr Whalley's admissions save that he denied that he had been dishonest or grossly reckless in connection with allegation (a) and he denied allegation (d) that he made a statement that was materially false and misleading or that he had been dishonest. *[SECOND RESPONDENT]* admitted the allegations made against her on the basis of her strict liability in her capacity as a salaried partner of Mr Whalley. Mr Whalley gave oral evidence.

The Report of the Investigating Officer of The Law Society was not contested.

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

The Tribunal Orders that the Respondent, Denis Whalley of, Blundellsands, Liverpool, L23 (formerly of, Liverpool, Merseyside, L23), solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00 inclusive.

The Tribunal Orders that the Respondent *[SECOND RESPONDENT]* of St Helens, WA10 solicitor, be Reprimanded.

The facts are set out in paragraphs 1 - 35 hereunder:-

1. Mr Whalley, born in 1950, was admitted as a solicitor in 1980. *[SECOND RESPONDENT]*, born in 1974, was admitted as a solicitor in 2000. Their names remained on the Roll of solicitors. At all material times Mr Whalley and *[SECOND*

RESPONDENT] carried on practice in partnership under the style of Anderson Eden solicitors at Preston, Lancashire. Mr Whalley was the sole equity partner and *[SECOND RESPONDENT]* was his salaried partner. On 10th October 2006 Mr Whalley wrote to The Law Society stating that he wished to surrender his practising certificate with immediate effect and applied to be removed from the Roll. HBOS had instructed a Receiver. The firm had ceased to trade on 9th October 2006. The Law Society resolved to intervene into the Respondents' practice on 9th January 2007.

2. At the date of the hearing Mr Whalley was working "buying cases" for a law firm. That was a reputable firm in Liverpool. *[SECOND RESPONDENT]* continued to work for the firm that had taken over staff and client matters from Anderson Eden.

3. At a time when Mr Whalley was practising on his own account he had been approached by Mr C a member of a firm of chartered accountants known to him. A Mr H who had been running a personal injury referral firm (commonly known as a "claims farmer") and Mr C were aware that multi disciplinary partnerships might well become possible and in anticipation of that had persuaded Mr Whalley to enter into a document entitled "Heads of Agreement" dated 28th November 2003 with a view to such a multi disciplinary partnership being set up. The Agreement had been between Mr H, Mr C, Mr Whalley and three other gentlemen Mr AH, Mr M, and Mr IC. The Agreement took the following form:-

> "Heads of Agreement dated 28th November 2003 BETWEEN H, C, Mr Whalley, AH, M and IC.
>
> **THIS AGREEMENT** is prepared:-
>
> 1. In order to agree apportionment of profits, proceeds of sale and any other income derived from businesses carried on jointly by the parties as are more particularly referred to in the Schedule hereto.
>
> (sic)
>
> 2. To record principle heads of agreement between the parties pending preparation and execution of such other formal documentation as may be advised by Counsel and/or revenue and/or tax advisers instructed by or on behalf of the parties.
>
> **IT IS ACKNOWLEDGED BY THE PARTIES THAT:-**
>
> 1. The Business Plan or "Vision" of the parties has been agreed and is in the form of "Schedule Number One" annexed hereto. As and until the said Plan/Vision is amended by proper agreement of the parties it will remain the plan to which the parties and each of them will adhere to and abide by. Further, it is agreed that no such alteration will be effective until reduced to writing and signed by all of the parties hereto, and,
>
> 2. Solicitors are not permitted to enter into Multi-Disciplinary Partnerships although The Law Society are committed to changing the regulations in this regard, and,

3. Rule 15 of The Solicitors' Code of Conduct disqualifies a solicitor from having any financial interest in the outcome of a client's matter other than costs, and,

4. With regard to para 2 above (ban on MDP's) the said Denis Whalley holds on Trust for the parties hereto all of the shares in the law firm practising under the style of Anderson Eden from premises at Garden Street, Winckley Square, Preston, and,

5. It is further acknowledged that the said DH holds on trust for himself and the parties 100% of the shares in BSG Ltd and also URS Ltd, and

6. In respect of Anderson Eden, BSG Ltd and URS Ltd (hereinafter referred to as "The Group") the said share holdings shall be held by the said Denis Whalley and the said DH on trust for the following:-

    a. as to DH 48%
    b. as to SC 20%
    c. as to Denis Whalley 17%
    d. as to AH 5%
    e. as to JM 5%
    f. as to IC 5%

    And it is specifically agreed that in relation to a sale of The Group (or any part thereof) that the above apportionments will be applied.

    Secondly, in respect of profits generated by The Group, the apportionment shall be:-

    a. As to DH 20%
    b. As to SC 20%
    c. As to Denis Whalley 20%
    d. As to JM 13.33%
    e. As to AH 13.33%
    f. As to IC 13.33%

    In respect of profits generated prior to commencement of employment by an individual, those profits will be apportioned on a pro rata basis between the remaining parties.

    Thirdly, in relation to profits generated by the (so called) "US Haemophilia Litigation", the apportionment will be as follows:-

    a. as to DH 25%
    b. as to SC 25%
    c. as to Denis Whalley 30%
    d. as to AH 6.67%
    e. as to JM 6.67%
    f. as to IC 6.66%

IN WITNESS HEREOF the parties have affixed their signatures on the date first before written.

[Signed] DH
SC
DENIS WHALLEY
AH
JM
IC"

4. The solicitors' firm of Anderson Eden had been formed in May 2002. It conducted only personal injury work. It had a staff of 44 including 6 assistant solicitors.

5. Mr Whalley had set up the firm following the approach to him by Mr C. Mr Whalley had not taken an active roll in the running of the practice. He had delegated those functions to other people who he had known and trusted, including Mr C. The firm had an accounts department that was run by a chartered accountant. Mr Whalley signed off the client account reconciliations on the basis that he was told that they were right. He did see monthly management accounts. In his evidence Mr Whalley said that he had welcomed the opportunity to receive a good income without having to undertake a great deal of work as at his age he had hoped to be able to take things easier than hitherto.

6. During the course of his oral evidence Mr Whalley accepted that he did not do very much in the practice. He had relied on qualified people that he had known for a long time to run the financing and accountancy functions. He had been aware of his liability for compliance with the Solicitors Accounts Rules in his capacity as a sole practitioner. Mr Whalley had signed cheques. The firm had a Human Resources department which recruited staff. Mr Whalley said that the firm was undertaking a great deal of work and he believed that the returns of several million pounds a year led to substantial profits. He said "I fell for it. I was greedy and stupid." He felt comfortable having experienced businessmen running the firm. Mr Whalley had made it clear to Mr C that at his age he did not want to work many hours every day. Initially he had had run some files but he did less towards the end of 2003. He enjoyed a marketing function. He had seen himself as part of a future multi disciplinary partnership. Mr Whalley said he had not taken steps to equip himself with sufficient knowledge of what was going on and he had come to realise that this had been a terrible blunder. He did not see at the time that he was a front man but had come to recognise that later. He had not considered that he was allowing unqualified people to provide legal services to members of the public as the firm had employed solicitors and paralegals. Mr C had dictated the levels of remuneration.

7. *[SECOND RESPONDENT]* did not have any management functions. She did not have access to the accounts. It was *[SECOND RESPONDENT]*'s position that she had been a fee earner who had been rewarded by being given the title "salaried partner". *[SECOND RESPONDENT]* had no stake in the equity of the firm but would earn bonuses if fee targets were met.

8. On 7th September 2006 Investigation Officers of The Law Society (The IOs) began an inspection of the books of account of Anderson Eden. The IOs produced a report dated 12th October 2006 that was before the Tribunal. On 10th October 2006 an IO received an email stating that in the light of the IO's findings the Anderson Eden

partnership was to be dissolved. Client files were to be taken over by another firm which was also taking over the existing fee earning and support staff. *[SECOND RESPONDENT]* went to that firm and continued to be employed by it. The IOs met with Mr O, the firm's finance manager. Mr Whalley explained that he had been introduced to Mr O by advisers from HBOS, the major provider of funding to Anderson Eden. HBOS had not been happy with the way the practice was being run. The IOs established that on 28th September 2006 HBOS was owed £6,601,239.68 by the firm.

9. A list of liabilities to clients as at 7th September 2006 was produced to the IOs. The items on the list, after adjustment, were in agreement with the balances shown in the client ledger but did not include additional liabilities to clients of at least £534,273.01 leading to a minimum cash shortage of that amount.

10. The minimum cash shortage of £534,273.01 arose entirely from unpaid professional disbursements which had been recovered in successful personal injury cases but not retained in client bank account or paid to the medical agency engaged by the firm, EW.

11. On 7th September 2006 Mr O mentioned that the firm was in a contractual dispute with EW. In a significant percentage of personal injury cases undertaken by the firm, EW was instructed by the firm to engage a medical expert to report on the extent of injuries suffered by the client. The firm's letters of instruction to EW confirmed that the firm would be responsible for EW's reasonable fees and that payment was not dependent on the outcome of the client's claim.

12. Mr O said there were no instances where the firm had recovered disbursements and had retained them. The firm had paid EW seven or eight round sum payments of £50,000.

13. The firm had received advice from solicitors that medical agency fees were not disbursements. They regarded EW as a trade creditor. Because of the firm's system of book keeping on office account it was not possible to determine the extent of any liability to EW. Mr O thought that EW might have been overpaid by the firm. Mr O believed that all monies recovered had been paid to EW, but a review of client files would be required to verify this. Mr Whalley had written to The Law Society's Professional Ethics Department on 19th July 2006 requesting clarification of this point, saying:-

> "...we have taken independent accountancy and legal advice and we are informed that medical agency fees do not fall within the definition of a "professional disbursement", following the recent decision in the case of Woollard v Fowler. We would be grateful if you could confirm...the advice regarding is [sic] correct."

14. On 14th September 2006 Mr O informed an IO that the firm had sought further advice about the status of sums due to EW and had learned that they were professional disbursements. Mr O expressed his concern about the firm's liability to pay EW in respect of unsuccessful cases, although there would be client account shortages only where cases had been settled and sums recovered on behalf of EW but not paid over to them or retained in client bank account.

15. On 28th September 2006 Mr O provided details of a discovery he had made of a significant number of office account cheques which had been made out to EW but had not been signed or sent out. Their total face value was £143,481.13. The cheques had been dated in 2003 and 2004.

16. It appeared that the cheques had been written for EW when a case had been settled. These funds were retained in office bank account. They should have been held in client account and represented client account shortages for periods approaching 356 days.

17. At the material time Mr C ran the firm's finance and accounting function. When Mr C left he was replaced by Mr M.

18. Mr H had written an email to Mr Whalley dated 18th July 2005 in which he said:-

> "Incidentally why are you paying [EW] back on claims that Paula says have settled at the rate of only £50,000 per two weeks when clearly this money should be in your client account to pay the whole amount? Isn't this illegal and in breech [sic] of Law Society rules?"

19. Mr Whalley told the IO that that email was "from H, he's a nutcase. I didn't take any notice of what he said." The IO pointed out that Mr Whalley must have been on notice of potential problems in relation to client account. In his oral evidence Mr Whalley confirmed that the email did not cause him any concern about shortages on client account.

20. The IOs concluded that the firm had not and were not prepared to take steps to ascertain whether or not there was a client account shortage in respect of unpaid disbursements. The IOs made their own calculations.

21. The IOs performed two exercises to calculate the minimum shortage using all available information. They set out in their report the mechanics of these exercises together with a numerical summary.

22. In the first exercise the IOs obtained a list of all matters where EW had been engaged by the firm to provide a medical report. Any client name appearing on this list and also on the firm's list of open matters as at 7th September 2006 was removed. Cases where a name appeared on the EW list but there was no exact name match, were removed.

23. The firm's IT department was able to produce a list of all cases where EW had been engaged but which had not proved successful. All of these matters were also removed from the list.

24. A list of all matters which had been concluded with costs and disbursements successfully recovered remained. A deduction was then made for all payments which EW had received from the firm. There was a balance of £542,490.75 representing professional disbursements that had been recovered by the firm on behalf of EW but not paid to them or retained in client bank account.

25. In the second exercise, the IOs discovered that the firm maintained a purchase ledger account for EW which was printed off and detailed transactions from 20th January 2005 to 1st August 2006 when the balance was £483,970.22. A further purchase ledger account entitled "B/[EW]" ran from 1st July 2006 to 12th September 2006 and had a balance of £3,702.94 at 7th September 2006.

26. From discussions with the firm's cashier and after reviewing a sample of client ledgers it was apparent that EW invoices were entered onto the purchase ledger when the case was settled. The £50,000 round sum payments, with other payments to EW, were also posted to the purchase ledger.

27. The postings in respect of EW on individual client ledgers showed that when the EW invoice was posted, the ledger narrative included the term "T090". The firm's IT department was able to produce a listing of all the T090 matters where EW's charges had been recovered by the firm. It was apparent from this list that there were cases which were settled prior to 20 January 2005 (the date of the first purchase ledger transaction) indicating that the purchase ledger balance was understated. The total of all of these matters was calculated as being £75,449.42.

28. A further adjustment was made for payments made direct by the firm's funders to EW which had not been included on the purchase ledger reports. These payments totalled £28,849.57.

29. This exercise produced a balance of £534,273.01 representing professional disbursements that had been recovered by the firm on behalf of EW but not paid to them or retained in client bank account.

30. EW claimed on 23rd June 2006 it was owed £634,613.63 in respect of invoices which it had raised on completion of the medical reports which were over eighteen months old at that date.

31. The IOs adopted the lowest figure of £534,273.01 as the cash shortage but, given the potential for this figure to be greater and the problems with the firm's accounting records, it had been described as a "minimum" cash shortage.

32. At an earlier IO's inspection of Anderson Eden's books of account which began on 11th August 2003 the IO tried to determine the relationship between Mr Whalley and BSG Ltd. Mr Whalley's solicitor had written a letter to The Law Society dated 24th March 2004 in which he said:-

> "I am instructed that Anderson Eden has no interest in BSG Ltd, URS Ltd or any other associated companies, other than the business relationship that exists between them. You will, therefore, appreciate that my clients are only in a position to provide you with information given to them by BSG".

The Heads of Agreement set out above at paragraph 3 predated this letter.

33. It was Mr Whalley's contention that the contents of his solicitor's letter were accurate and that he never intended to mislead The Law Society. Mr Whalley had not received a penny in income from BSG Ltd and that the Heads of Agreement referred to something that would happen in the future when multi disciplinary partnerships would

be authorised and the business could be sold. Mr Whalley agreed that he would have a benefit at some future date when things were regularised. In his oral evidence Mr Whalley said that BSG Ltd was in liquidation at the date when the letter was written, and it was right that at the date of the letter he had no interest. Hence the use of the present tense. In his oral evidence Mr Whalley added that he knew BSG Ltd was Mr H's company. He did not know how long he had it. He knew that Mr H operated a call centre in Blackpool. It was advertised in the Yellow Pages. The purpose of it was to generate leads for personal injury cases which Mr H then sold on to law firms. Mr H had experienced trouble with solicitors to whom he sold cases and he had considered that instead of selling cases to solicitors he should become closer to that side of the business.

34. Mr Whalley explained that the model put to him had been simple. Lawyers were qualified and trained to litigate but they had few skills in the area of finance, marketing, computers and business systems. With proper business support in place lawyers could be left to do the job that they were good at. Mr Whalley believed that all was well as the suggestion for the way in which his firm might be run had come from Mr C and the firm had full backing and support from funders, Allied Irish Bank and HBOS.

35. Mr Whalley had believed that there had been nothing wrong. He had not considered that the income generated by fees could not service the funders' loans or meet the sums which he had taken out of the practice. The practice had paid for his expensive car and had paid for expensive holidays abroad. It was Mr Whalley's position that *[SECOND RESPONDENT]* had been appointed a salaried partner in recognition of her loyalty and hard work. She had never invested money in the firm. She did not own any of the equity in the firm. She had never been involved in the financial affairs of the firm. He said she was entirely blameless for the position in which the firm found itself.

The Submissions of the Applicant on the Dishonesty aspects

36. The Applicant relied on the facts. It was a matter for the Tribunal to decide whether Mr Whalley had been dishonest or grossly reckless or whether he had made a false and misleading statement to The Law Society.

37. By failing to pay professional disbursements, when such monies were not retained in client account, there had not been a call on office account to meet these disbursements and the money thereby retained in office account was used to defray general office expenses and, indeed, the personal expenses of the Respondent.

38. The Respondent was fixed with knowledge of what was going on by Mr H's email. It was not open to a solicitor to decide to do nothing when a problem had clearly been drawn to his attention. In fact to decide to do nothing in such circumstances was itself dishonest and at the very least was grossly reckless.

39. As a direct result of Mr Whalley failing to do anything the firm continued to receive monies due to EW and the cash shortage was steadily increasing.

40. The lifestyle enjoyed by Mr Whalley which he himself had set out in his statement including the enjoyment of a BMW 7 motor car, the payment of a deposit for a chalet

in France and the purchase of an identical property for Mr M and his wife, continental holidays and two trips on the Cunard ship, Queen Mary II, including fourteen days cruising in Hawaii, Mr M's excellent salary, cash bonuses paid to him and the Mercedes car which Mr Whalley provided to him were all paid for by money owing to EW. At the time of The Law Society's intervention into the practice there was insufficient money in client account to meet the firm's liabilities to clients.

41. With regard to the letter addressed by Mr Whalley's solicitor to The Law Society, Mr Whalley was clear that the letter was written with his authority and he approved it. A comparison of what was said in the letter with the Heads of Agreement of November 2003 were in opposition. The firm of Anderson Eden could not be distinguished from Mr Whalley who was the sole principal. Mr Whalley had entered into Heads of Agreement with Mr H of BSG Limited and had allowed his practice to be run by those with whom he had entered into agreement with a view to a future multi disciplinary partnership to be run with the intention of making a profit or to be sold with a view to making a profit. Mr Whalley's statement that he had no connection with BSG Ltd was simply not true and he had failed to meet the obligation that there was on the part of a solicitor to be open and transparent.

42. The Applicant put the case against *[SECOND RESPONDENT]* on the basis that she was held out as a principal in the firm and in her capacity as a salaried partner she was liable for breaches of the Solicitors Accounts Rules. The case against her was put solely on that basis.

The Submissions of Mr Whalley in connection with the Dishonesty/Gross Recklessness allegation

43. Mr Whalley had been seduced into believing that he could be the sole principal of a solicitors' firm with the assistance of people whom he believed more capable than he on the financial and accounting side. He had relied on people whose background he knew and who had professional qualifications. He had relied on others who had a business vision as was set out in the Heads of Agreement. He believed that he was venturing into a brave new world where multi disciplinary partnerships would be allowed. He believed that he and many fee earners could deal with a large volume of personal injury work on a "production line". BSG Ltd would bring in the business and Mr C would run the business. Mr Whalley had genuinely believed that at his age he could sit back and not undertake large volumes of fee earning work himself.

44. Mr Whalley had not been dishonest. In coming to a judgment about his character the Tribunal would not find that Mr Whalley had been grossly reckless. The Tribunal was invited to take the view that only a very strong man would have been able to resist taking the opportunity that had been offered to him. Mr Whalley was at worst inadequate but he could not be said to have been grossly reckless. He had formulated no mental intention to do anything improper.

The Tribunal's findings on the issue of Dishonesty/Gross Recklessness

45. The Tribunal found that in connection with allegations (a) and (d) made against Mr Whalley he had been dishonest. The Tribunal, following the recent appeal in the case of Bryant & Bench had applied the test for dishonesty in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal found that in his capacity when

sole principal and in his capacity as a sole equity partner he was the person in fact solely responsible for compliance with the Solicitors Accounts Rules and Mr Whalley either knew or deliberately chose not to take steps to ascertain that disbursements due to EW remained unpaid despite a clear written warning given to him in Mr H's email and, in enjoying a lavish lifestyle funded by the firm at a time when professional disbursements were not being paid as they fell due, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence and heard his explanation of what occurred the Tribunal was satisfied so that it was sure that the Respondent neither knew nor cared how disbursements were being dealt with in his firm, did not have an honest belief that the firm was paying professional disbursements when cases were settled or concluded or was holding the relevant monies in client account and therefore Mr Whalley knew that what he was doing was dishonest by those same standards. The Tribunal had concluded that Mr Whalley in his attitude, that was similar to that of Mr Bultitude, (a solicitor previously before the Tribunal against whom a finding of dishonesty was upheld on appeal) neither knew nor cared whether disbursements were being met and whether he was entitled to the large sums of money that he was drawing from the firm. It was the Tribunal's view that he was not entitled to draw such money from office account at a time when the office account balance was artificially inflated by the non payment of professional disbursements. The Tribunal has also taken into account Mr Whalley's explanation that whenever money was needed, for instance to pay staff salaries or make payment to him, monies were simply drawn under the terms of the HBOS lending arrangements without regard to the fee income generated by the firm.

46. Further the Tribunal found that the statement made on Mr Whalley's behalf by his solicitor that Anderson Eden "has no interest in BSG Ltd, URS Ltd or any other associated companies other than the business relationship that exists between them" was false and misleading. Mr Whalley had entered into the Heads of Agreement dated 28th November 2003 and even if, as he suggested in his oral evidence, BSG Ltd was in liquidation at the date when the statement was made, the Respondent's conduct in not being frank and transparent in his dealings with The Law Society in not giving full details of the Heads of Agreement and the then current circumstances was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he had no interest in BSG Ltd and, indeed, the present tense was deliberately used to disguise the true state of affairs. The Tribunal concluded that Mr Whalley knew that what he said was dishonest by those same standards.

Indication by the Tribunal as to its approach to *[SECOND RESPONDENT]*'s case

47. At this juncture the Tribunal indicated that it would find the allegations against *[SECOND RESPONDENT]* to be substantiated on the basis that she had admitted them namely in her capacity as salaried partner having strict liability under the Solicitors Accounts Rules but without her having any knowledge of the financial situation nor being granted access to the firm's books or accounts. The Tribunal was minded to impose a reprimand upon her and not make any order for costs against her.

Application for Costs

48. The Applicant sought the costs of and incidental to the application and enquiry. He did feel that some part of the costs should be borne by *[SECOND RESPONDENT]* but would discuss the question of costs further with Mr Whalley and his representative. After such discussion the Applicant confirmed that it had been agreed that Mr Whalley would bear the Applicant's inclusive costs of £15,000.

The Mitigation of Mr Whalley

49. Mr Whalley had been deeply ashamed of all that had gone on. The failure of his solicitors' firm in the circumstances was a terrible and shameful event. He was truly sorry.

50. The Respondent had lost his house and was in rented accommodation together with his wife. The Tribunal was invited to take into account the statements of Mr W and Mr O and the report prepared by Kroll of 27th June 2006 prepared on the instructions of HBOS

51. Anderson Eden had struggled financially for some time and cashflow had never reached its budget projections, however by the end of Summer 2006, shortly before The Law Society's investigation began, the firm had seen massive improvements in performance. It was paying its way and making a profit. At the same time client care was improving. Under the control of Mr O the performance of the business had improved.

52. Mr Whalley had during his professional career been a fairly successful litigator. He had not received business or financial training and relied on the expertise of others. Mr C and his firm had acted for several large law firms and Anderson Eden had been one of the first UK law firms to contract with HBOS for the provision by them of disbursement funding. The firm had been granted one of the largest facilities. This contrasted with the Respondent's own application to increase his overdraft in his formal small firm from £25,000 to £30,000. He had not been successful.

53. The firm had been an embryonic MDP but Mr Whalley had been the sole holder of equity in the firm and the demise of Anderson Eden had no effect on any of the others interested in the MDP.

54. Mr Whalley had not been undertaking fee earning in the closing months of the firm and had hardly been involved in the management. His functions had been few and far between.

55. Mr M had been a close personal friend of Mr Whalley who had trusted him totally and implicitly.

56. When HBOS expressed itself dissatisfied with the running of the business Mr Whalley had been entirely co-operative.

57. Anderson Eden had been trading through its problems. The substantial debt owed to EW had never been in dispute and it had been a matter high on the agenda for resolution after September 2006. Mr Whalley had previously been unaware of the situation. He had not taken any notice of Mr H's email.

58. Mr Whalley had had no idea why cheques should be written out and not signed. Mr O had handed the cheques to the IOs upon Mr Whalley's instructions.

59. Mr Whalley considered the suggested "accountancy benefits" said to be derived by writing out a cheque but not signing it amounted to a ludicrous process. The debt remained owing and the creditor would still press for payment. The cheque would never be presented or cleared through the bank.

60. The Respondent had left school at the age of 16 without passing any public examinations. He had anticipated working as a docker in Liverpool but while waiting for employment in the docks had undertaken other work and his employer had sent him on a business course where he studied law and had proved a successful student. That had persuaded him to follow a career in law. He had passed The Law Society's Part I and Part II qualifying examinations and had served his articles at a reputable Liverpool firm.

61. The Respondent successfully practised as a solicitor. He was a married man. He had two successful grown up children. The Respondent had a record of service to the community and was thought of highly by those who knew him both as a competent solicitor and as an honest and upright member of the community who was prepared to engage in charitable works.

62. The financial difficulties which had beset Mr Whalley had led to a deterioration in his relationship with his wife. They had lost their home and their furniture and belongings had been sold or given away. Clothes and personal belongings such as books were stored in the garages of friends.

63. On the same day that Mr Whalley lost his family home he was adjudicated bankrupt. He had continued to co-operate with his trustee in bankruptcy. Mr Whalley had not been in receipt of income or state benefit. His wife continued to be employed by the firm which had taken over clients and files from Anderson Eden from which she received a modest monthly income. They had otherwise survived on family gifts.

64. The Respondent had been unhappy without gainful employment. He regretted what he had put his wife and children through. He had messed up and had taken his medicine. He had come to terms with losing his profession, his business, his home, his reputation, his marriage and everything else. The proceedings had caused him great anxiety.

The Sanctions and Reasons of the Tribunal

65. Mr Whalley had allowed himself to be used as a puppet of others. He had agreed to set up a solicitors' firm where it had to be said the tail was wagging the dog. That represented a total abdication of his responsibilities as a solicitor. The Tribunal has for the reasons set out above found that Mr Whalley had in respect of two of the allegations substantiated against him acted dishonestly. In order to protect the public and to protect the good reputation of the solicitors' profession and the confidence which members of the public were entitled to have in members of that profession, and taking into account the written testimonials put in support of Mr Whalley, the Tribunal considered it both appropriate and proportionate to order that Mr Whalley be struck off the Roll of solicitors. The Tribunal noted that Mr Whalley had agreed to

bear the Applicant's costs and had agreed the figure with the Applicant. The Tribunal therefore ordered Mr Whalley to pay the Applicant's costs fixed in the agreed sum.

66. With regard to *[SECOND RESPONDENT]*, she had accepted the status of a salaried partner. She had no management or financial responsibilities and did not have access to the books of the firm of Anderson Eden. The Tribunal accepted that the reality was that she was a salaried partner in name only and played no part in the running of the firm. She herself accepted that she was a salaried partner and was held out as such and there was no doubt that under the provisions of the Solicitors Accounts Rules a salaried partner is strictly liable for breaches of those Rules. The allegations against *[SECOND RESPONDENT]* were found to be substantiated on that basis. The Tribunal is aware that in her capacity as a salaried partner *[SECOND RESPONDENT]* might well be facing claims and difficulties. The Tribunal is entirely satisfied that *[SECOND RESPONDENT]*, whilst strictly liable, had no culpability for the events upon which the allegations were founded. In all of the circumstances the Tribunal considered it appropriate and proportionate to order *[SECOND RESPONDENT]* be reprimanded. The Tribunal considered it neither appropriate nor proportionate to order that she bear any part of the Applicant's costs.

Dated this 15th day of August 2008
On behalf of the Tribunal

A G Gibson
Chairman