No. 9848-2007

IN THE MATTER OF MARK IAN BRONZITE and *[RESPONDENT 2]*, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr R J C Potter
Mrs S Gordon

Date of Hearing: 28th and 29th September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made by George Marriott a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 5 December 2007 that Mark Ian Bronzite of Southampton, and *[Respondent 2]* of Southampton, solicitors, might be required to answer the allegations contained in the statement that accompanied the application together with the further allegations against Mark Ian Bronzite contained in the supplementary statement dated 3 June 2009 and that such orders should be made as the Tribunal should think right.

The initial allegations against Mark Ian Bronzite (the First Respondent) made by a Rule 4 Statement dated 5th December 2007 were that he had been guilty of conduct unbefitting a solicitor in that he had:-

1. Failed to disclose all of the necessary details relating to the referral of clients under an arrangement with AAH, contrary to section 2A(3) Solicitors' Introduction and Referral Code 1990 ("SIRC").

2. Provided inaccurate information to clients relating to the payment of referral fees, contrary to Rules 1(c), (d) and (e) Solicitors' Practice Rules 1990 ("SPR") and contrary to sections 1, 3 and 4 Solicitors' Costs Information and Client Care Code 1999 ("SCICC").

3. Allegation withdrawn.

4. Permitted a third party to write to clients and potential clients in the name of their Practice, contrary to section 1(1), 2(7) and 2(8) SIRC.

5. Allegation withdrawn.

6. Failed to carry out monthly reconciliations, contrary to Rule 32(7) Solicitors' Accounts Rules 1998 ("SAR").

7. Failed to keep accounting records properly written up, contrary to Rule 32(1) SAR.

8. Permitted unidentified payments to be made from client account, contrary to Rule 22(1) SAR.

9. Failed to rectify accounts breaches promptly, upon discovery, contrary to Rule 7 SAR.

10. Permitted the use of suspense accounts into which had been posted payments and receipts which had not been associated with known client transactions contrary to Rule 32(16) SAR.

11. Failed to follow Law Society guidance to make payments to clients and in so doing failed to act in the best interests of clients, contrary to Practice Rule 1(c).

12. Failed to provide adequate supervision of their Practice, whilst in partnership as joint principals, contrary to Rule 13 SPR.

13. Allegation withdrawn.

14. Allegation withdrawn.

15. Permitted conveyancing transactions to be completed when there had been insufficient funds available to do so and had thereby utilised other clients' monies to complete the transactions, contrary to Rule 22 SAR.

16. Failed to inform mortgage lender clients of a material change to the composition of the Firm upon the dissolution of the partnership, contrary to client instructions and contrary to Practice Rules 1(c) and 1(e).

17. Continued to act when a conflict of interest had arisen between two clients, contrary to Practice Rule 6(3)(a).

18. Failed to remedy client account shortfalls promptly, upon discovery, contrary to Rule 7 SAR.

19. Failed to provide adequate supervision of his Practice, whilst practising as sole principal of Windsor Bronzite, contrary to Practice Rule 13.

20. Allegation withdrawn.

21. Failed to honour undertakings given by members of staff when brought to his attention, contrary to Practice Rules 1(c), 1(d) and 1(e).

22. Allegation withdrawn.

The further allegations against the First Respondent contained in a Supplementary Rule 5 Statement dated 3rd June 2009 were that he had:-

23. Misused client monies, contrary to Rule 1 Solicitors' Practice Rules 1990 ("SPR") and Rule 1 Solicitors' Code of Conduct 2007 ("SCC").

24. Transferred monies from client account to office account without sending a bill or other notification of costs contrary to Rule 19(2) Solicitors' Accounts Rules 1998 ("SAR").

25. Preferred his interests over those of a client.

26. Failed to ensure compliance with SAR, contrary to Rule 6 SAR.

27. Failed to comply with Rule 14 SCC (allegation as amended).

Dishonest conduct was alleged in relation to allegations 23, 24 and 25.

The allegations against *[Respondent 2]* (the Second Respondent) were that she had been guilty of conduct unbefitting a solicitor in that she had:-

1. Failed to disclose all of the necessary details relating to the referral of clients under an arrangement with AAH, contrary to section 2A(3) Solicitors' Introduction and Referral Code 1990 ("SIRC").

2. Provided inaccurate information to clients relating to the payment of referral fees, contrary to Rules 1(c), (d) and (e) Solicitors' Practice Rules 1990 ("SPR") and contrary to sections 1, 3 and 4 Solicitors' Costs Information and Client Care code 1999 ("SCICC").

3. Treated as withdrawn.

4. Permitted a third party to write to clients and potential clients in the name of their Practice, contrary to 1(1), 2(7) and 2(8) SIRC.

5. Allegation withdrawn.

6. Failed to carry out monthly reconciliations, contrary to Rule 32(7) Solicitors' Accounts Rules 1998 ("SAR").

7. Failed to keep accounting records properly written up, contrary to Rule 32(1) SAR.

8. Allegation withdrawn.

9. Failed to rectify accounts breaches promptly, upon discovery, contrary to Rule 7 SAR.

10. Permitted the use of suspense accounts into which had been posted payments and receipts which had not been associated with known client transactions, contrary to Rule 32(16) SAR.

11. Allegation withdrawn.

12. Failed to provide adequate supervision of their Practice, whilst in partnership as joint principals, contrary to Rule 13 SPR.

The Application was heard at the Courtroom, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott appeared as the Applicant, the First Respondent was in person and present for the first day of the hearing and the Second Respondent who was also present, was represented by Derek Marshall of Counsel of 19 Carlton Crescent, Southampton.

The evidence before the Tribunal included admissions by both Respondents to some of the allegations, 3 statements of evidence from the First Respondent and a chronology prepared by Counsel on behalf of the Second Respondent.

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

The Tribunal ORDER that the First Respondent, MARK IAN BRONZITE of Chalbury, Dorset, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £84,000.00.

The Tribunal ORDER that the Second Respondent, *[RESPONDENT 2]* of Southampton, solicitor, be suspended from practice as a solicitor for the period of six months to commence on the 29th day of September 2009 and it further Orders that she do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

The facts are set out in paragraphs 1 - 70 hereunder:-

1. The First Respondent, born in 1965, was admitted as a solicitor in 1992. His name remained on the Roll. However, he was adjudicated bankrupt on 27 April 2009 whereupon his practising certificate was suspended.

2. The Second Respondent, born in 1972, was admitted in 2000. Her name remained on the Roll.

3. At material times the Respondents had carried on practice as partners in the firm of Windsor Bronzite ("WB") from 162 Millbrook Road East, Southampton, Hampshire SO15 1EB.

4. The Second Respondent had been on garden leave from 31 March 2006 until she left the firm on 30 April 2006, which had included the period in which the PSU visited as

mentioned in 6 below. The Second Respondent had been a partner in WB from 1 January 2003 until 30 April 2006.

5. The First Respondent had been sole principal of WB from 1 May 2006 and had practised as "WB Legal".

6. The Practice Standards Unit of the Law Society ("PSU") had carried out a monitoring visit at WB on 18-19 April 2006.

7. The PSU had compiled a report documenting their inspection. The report had noted that the Respondents appeared to have acted in breach of the Solicitors' Introduction and Referral Code 1990 ("SIRC") and in breach of the Solicitors' Accounts Rules ("SAR").

8. The Law Society had begun an inspection of the books of account and other documents at WB on 11 October 2006 which had culminated in a forensic investigation report of 28 June 2007. The report had identified a number of breaches of the SARs and had raised further matters of conduct.

9. On 6 February 2007 an Adjudicator had considered the PSU report and had referred the Respondents to the Tribunal. The matters raised by the FI report had been included in the proceedings by a decision of 21 August 2007.

10. At the outset of the hearing the Applicant requested the consent of the Tribunal to the withdrawal of allegations numbered 3, 5, 13, 14, 20 and 22 and the amendment of allegation 27 against the First Respondent and those numbered 5, 8 and 112 against the Second Respondent and the Tribunal agreed thereto.

11. The First Respondent admitted all the allegations, other than those agreed to be withdrawn. Of the remaining allegations all were admitted but in relation to allegation 23, 24 and 25, the First Respondent expressly denied that he had acted dishonestly. Dishonesty was not alleged in relation to any of the other allegations against him.

12. The allegations against the Second Respondent, other than those agreed to be withdrawn, were all admitted. None included any allegation of dishonesty on the part of the Second Respondent.

13. The allegations against the First Respondent numbered 1, 2, 4, 6, 7, 9, 10, 11 and 12 were also made against the Second Respondent and admitted by both Respondents. The Tribunal accordingly found those allegations proved. In summary the allegations concerned:

    (1) Breaches of the Solicitors Introduction and Referral Code 1990 (allegations 1 and 4 against both Respondents). The breaches related to referral arrangements for personal injury litigation which failed amongst other things to disclose fees variously described as client management fees, acceptance fees, legal services fees and investigation fees the existence of which was not disclosed to the client. The Respondents had also failed to ensure that the arrangements with referral agencies were properly documented and regularly

reviewed to ensure proper compliance with the Code. They had also allowed a third party to misuse the firm's letterhead.

(2) Provision of inaccurate information to clients (allegation 2 against both Respondents). This related to the failure to provide proper information regarding costs and referral fees in breach of the Solicitors Practice Rules 1990 and the Solicitors Costs Information and Client Care Code 1999.

(3) Breaches of the Solicitors Accounts Rules (allegations 6, 7, 8, 9 and 10 against both Respondents and 15, 18 and 26 against the First Respondent). There were numerous failures to comply with the accounts rules, absence of monthly bank reconciliations, accounting records not properly written up, failure to rectify breaches promptly, misuse of suspense accounts, misuse of client funds and delay in remedying shortfalls on client accounts. These failures were in the Tribunal's view serious and inexcusable and both Respondents had responsibility for them.

(4) Breaches of the Solicitors Practice Rules (allegations 11 and 12 against both Respondents and 16, 17, 19, 21 and 27 against the First Respondent. The breaches related to failure to act in the clients' best interests and lack of supervision, on the part of both Respondents and in relation to the First Respondent breaches of duty to mortgage lenders, conflicts of interest, inadequate supervision at a time when the First Respondent was a sole principal and failure to honour undertakings in conveyancing transactions.

The FI Inspection and Report

14. On 11 October 2006 the Forensic Investigations Unit of the SRA ("FIU") had conducted an inspection of the books of account and other documents of WB. A report had been produced on 28 June 2007 which was before the Tribunal and accepted by the Tribunal as accurate. The Second Respondent had left the practice on 30 April 2006, five months prior to the inspection. A number of the breaches identified by the FI Officer pre-dated her departure from the firm and for which, as joint principal, the Second Respondent was responsible in conduct together with the First.

15. The firm's reporting accountants had previously reported client account shortfalls of £163,100.34 as at 31 December 2005 and £14,680.08 as at 30 April 2006. The attachment to the latter report had stated that "WB is in the process of rectifying these differences".

16. The Respondents had failed to rectify the shortfall. Notwithstanding the representation to the Law Society by the First Respondent that the shortage was being remedied and together with the First Respondent's knowledge that his firm's client account was in deficit, coupled with his obligation immediately to rectify the shortfall, the FIU inspection had revealed that the client account still had a shortfall as at 30 September 2006 of £45,942.06. It had been made up of 40 debit balances on the client matter listing.

17. In addition to the client account shortfall, the FIU inspection had noted the unjustified use of two suspense accounts and had raised concern at evidence, within the files examined, of failure always to follow client instructions.

18. The SRA had written to the First Respondent on 3 August 2007 and had raised a number of questions which had flowed from the investigation and the FI Report. The First Respondent had replied by letter of 21 August 2007 to which he had attached a list of the debit balances which had made up the £45,942.06 shortfall and which had been corrected in October 2006 at the time of the FI inspection.

Unjustified use of Suspense Ledger Accounts

19. The FI Report noted that suspense client ledger accounts are permitted by Rule 32(16) SAR 1998 only where a solicitor can justify their use. The rule envisages this may occur when an unidentified payment is received and time is needed to establish the nature of the payment or the identity of the client. During the period that the First and Second Respondents had been in partnership, the firm had maintained a general suspense account. Following the Second Respondent's departure, after which the First Respondent had been sole principal of WB, the firm had maintained both the general suspense account and a second account "suspense account September 2006".

20. The First Respondent had submitted that the firm made extensive use of suspense accounts because, upon his previous cashier leaving the practice, the assistant cashier had been found to have insufficient experience to deal with matters and, upon instruction of external auditors to provide assistance, "the assistant was advised by the auditors not to post anything which would put the accounts into a debit balance". The First Respondent had further submitted that the accounts assistant, whom he blamed for the suspense account entries, had left the firm in June 2006.

21. As at 30 September 2006 the suspense accounts had contained 24 unidentified client payments and/or transfers totalling £44,612.95, ranging from £2.00 to £10,090.00, and dated between 21 July 2005 to 21 September 2006 and 21 unidentified client receipts totalling £35,851.85, ranging from £0.34 to £7,500.00 and dated between 19 August 2005 to 13 September 2006.

22. During October 2006 the firm had made efforts to identify those payments and receipts. Monies identified had included:

    (i) office money paid into client account totalling £9,186.45 on account of which £6,246.34 had been transferred from client to office account on 1 April 2006;

    (ii) unallocated transfers from client account to office account totalling £10,092.00 and

    (iii) the payment of office expenses out of client account in the sum of £3,727.90 which had included the repayment of loans.

23. As at 31 October 2006, the suspense accounts had still contained 6 unidentified client payments and/or transfers totalling £2,763.66, ranging from £40.00 to £1,616.78 and dated between 21 July 2005 to 25 May 2006 and 12 unidentified client receipts

totalling £4,861.54, ranging from £0.34 to £2,515.00 and dated between 19 August 2005 to 4 August 2006.

24. The IO had asked the First Respondent to justify the use of the suspense accounts. The First Respondent had failed to do so and had stated that the accounts contained transactions which his firm had been unable to identify. On 13 October 2006 the First Respondent had stated in terms that the problem flowed from a lack of information submitted to his accounts department and dated back 6 months.

25. On 23 February 2007 the First Respondent had made further submissions and had written that the "suspense account was caused by a lack of information relating to the payment/transfers included in suspense". The paperwork relating to such payments was not given to the accounts department and therefore could not be posted to the relevant account". He had stated that the members of his staff who he had considered "responsible" for the lack of identity of the payments no longer worked at his practice. He had failed to justify their use other than to suggest they had been used as a catch-all for payments that had been made to or received on behalf of unspecified clients which his firm had not been able to identify.

Client Account Shortfall

26. The IO had calculated a minimum client account shortfall in the amount of £58,098.66 as at 31 May 2008.

27. The cause of the shortfall had been found to include thirteen debit balances totalling £22,376.44, which had included a debit balance of £4,263.50 in the matter of client "H".

28. The First Respondent had told the SRA that the shortfall had been the fault of unadmitted accounts staff.

Personal Injury Matter – Client "H"

29. H had instructed the firm through a third party referrer, Claims Solutions, in respect of the PI claim for injuries sustained at his workplace in January 2004. The firm had acted for H under a conditional fee agreement.

30. Insurers, representing H's employers, had admitted liability and after protracted negotiations as to quantum had paid H £4,263.50 in damages (which had been credited to the firm's client account on 15 February 2007) and the firm's costs amounting to £5,300.

31. Instead of being paid to H or retained within the client account for his benefit, H's damages had been transferred in their entirety to the office account in two tranches; one on 16 February 2007 in the amount of £2,526.25 and the other on 19 February 2007 in the amount of £1,737.25 in respect of invoices dated 1 February 2007 and 24 April 2007 respectively. In respect of the second transfer, no invoice had been raised until over two months after the transfer.

32. During a recorded interview with the SRA held on 4 April 2008, the First Respondent had told the SRA investigating officer (IO) that he had authorised the transfers of client monies into office account and that such authorisation would not have been made by any other employee.

33. The First Respondent had told the IO that £2,526.25 had been transferred in settlement of an interim invoice in respect of the firm's costs for the work that had been undertaken to date. There had been no evidence that the invoice had been delivered to H prior to the transfers, contrary to Rule 19(2) SAR.

34. In addition, the interim invoice of 1 February 2007 had been for a lesser amount than that which had been transferred. This had resulted in the office account being in credit in the sum of £415.02.

35. Two further invoices had been raised which had reduced the office credit; one on 22 February 2007 in the amount of £415.02 and the other on 24 April 2007 in the amount of £1,737.25. The bill upon the client matter file in the sum of £1,737.25 did not contain a client address. Confusingly, the client matter file contained a properly addressed bill of 24 April 2007 but in a different amount to that which had been transferred. The SRA had seen no evidence to suggest that either of those invoices (or any other invoice) had been delivered to H.

36. The First Respondent had agreed with the IO that it had been improper to transfer those funds and had agreed that there was "absolutely" a problem with the firm improperly holding client's money in office account. Notwithstanding the First Respondent's agreement that this had been improper, it had been his working practice within the firm to transfer money from client to office account for costs on personal injury matters.

37. At the time of the inspection the firm had significant cash flow difficulties. In 2007 the agreed overdraft facility on the Firm's office account had been either £95,000 or £100,000 (the First Respondent could not recall which).

38. By November 2007 all of H's damages and all of the monies received from the Defendant's insurers had been transferred and absorbed by the firm. In short, whereas H should have received £4,263.50 by way of damages and the firm £5,300 in respect of costs, H had received zero and the firm had received £9,563.50.

39. On 12 November 2007 the opening balance of the office bank account had been around £93,600 overdrawn. Despite this, on 12 November 2007, the First Respondent had paid wages from the office account and had made payments to himself in the amount of £11,500 and £2,000. The closing balance of the office bank account on 12 November 2007 had been over £125,000 overdrawn; well in excess of the overdraft facility.

40. The First Respondent's wife had traded as Abacus Costing ("Abacus") and had provided services as a law costs draftsman for which the First Respondent had paid a standard fee of £250 per case. The First Respondent's wife had not been a qualified costs draftsman or legally qualified but had "experience of preparing schedules" gained "as a clerk" and had invoiced the firm in respect of H on 1 March 2007 but

rather than being treated as an office expense, Abacus had been paid directly from client account on 19 October 2007. For reasons that the First Respondent had told the IO that he could not understand, Abacus had been paid twice in respect of H.

41. The First Respondent had repeatedly told the IO that H had already received part payment of his damages in the amount of £2,000 and that H had been awaiting payment of the balance of his damages. The First Respondent had stated that H "had a part payment and the cheque in respect of that payment had been cashed". The First Respondent had stressed that the part payment had been paid "to the client".

42. The First Respondent had stated that he had carriage of the matter "to sort out the damages i.e. the balance of the money due".

43. The First Respondent had written to H on 31 March 2008 in terms that he had reviewed the client matter file and that payment of £2,263.50 would be made within the next 14 days. The First Respondent had stated that this sum constituted "the remainder of your damages, after the deduction of the £2,000 you have already received".

44. The part payment had been recorded on the office side of the ledger on 12 November 2007 where it had been described as being in respect of a cheque dated 14 February 2007 which had been paid from the office account.

45. The SRA had discovered that the part payment had never been made to H.

46. The First Respondent had told the IO that he had been investigating the position, because H had denied ever having been paid the £2,000 part payment. The First Respondent had gone on to say that checks were being made with the bank to make sure that the client had received the money as he could think of no reason why H would not have received the payment.

47. The SRA had obtained a copy of the cleared cheque from the bank. The cheque had been written out to H in the amount of £2,000 in February 2007 but on 8 November 2007, having retained the cheque for 9 months without sending it to H, the First Respondent had struck out H's name and had substituted his own name as payee before paying it into his own personal bank account.

48. During questioning by the IO, the First Respondent had stated that he "didn't intentionally" amend the cheque, that "it wasn't intentional to change it" and had suggested that he did not remember altering the cheque himself. The First Respondent had later stated that he had amended the cheque because he "didn't want to waste paper", I can't think of any other reason". The First Respondent had agreed with the IO that his actions had constituted the misuse of his client's money.

49. The First Respondent continued to assert that the alteration of the cheque had been an honest mistake and the result of human error.

50. H's damages were eventually paid on 17 April 2008 some two weeks after the interview with the IO, that payment did not include interest.

Rectification of Shortages Caused by Use of Unjustified Suspense Accounts

51. The Rule 4(2) Statement of 5 December 2007 had included detail of the widespread use of unjustified suspense accounts at the firm.

52. During a previous FI inspection of the firm, culminating in the FI report of 28 June 2007, the First Respondent had told the IO that the use of such suspense accounts had been "temporary". Despite that, a further suspense account had been opened after that inspection which had contained unallocated transfers made from client to office account from 1 November 2006 in the sum of £169,155.65. That sum had represented a client account shortage in the same amount.

53. The shortfall had arisen and had been allowed to ensue over the course of 7 months from 1 November 2007 before the First Respondent had made any effort to rectify it, which he had attempted to do prior to the Second SRA investigation. The First Respondent had introduced capital in respect of £110,000 of this shortage in June and July 2007.

54. To complete his rectification of the remainder of the shortage, the First Respondent had then "borrowed" £59,155.65 from 4 client ledgers.

55. Of the "loans" taken from client account, £33,480.87 had been taken from the client ledger of R.

Various Matters – Client R

56. R had been a longstanding client who had initially instructed the firm in the sale of a property at 64 C Avenue (which transaction did not complete) and then in a number of matters including those emanating from difficulties that had arisen in the relationship with his second wife. R had been vulnerable and down on his luck and for various reasons by 2002 had been, at aged 63, homeless and living in his car.

57. R's first wife, with whom R had jointly owned a property at C Avenue ("the Property"), had died in May 2000. R had instructed the firm in the sale of the property. Financial movements relating to the transaction had been maintained on the existing ledger which had been set up for the C Avenue transaction.

58. After some delay and difficulty, during which time R had made mortgage repayments in respect of the Property, a buyer had been found and contracts exchanged. The deposit had been received into the firm's client account on 8 May 2002 and the balance of proceeds credited to the client account when the transaction had completed on 30 May 2002. After the redemption of the mortgage and the payments of costs and commissions to agents, the client account balance had stood at £79,099.42.

59. R's first wife had a son to whom a payment of £44,792.50 had been made on 10 September 2002 in respect of her share of the proceeds of sale.

60. R's share of the proceeds of sale had remained in client account. The firm had continued to represent him and from 2003 to 2007 costs and disbursements had been

incurred following which, after payment of a bill of costs in July 2007, the monies held for him had reduced to £33,480.87.

61. On 31 July 2007 the whole of the remaining credit balance being held on behalf of R in relation to the surplus of sale proceeds had been transferred from the client side of R's ledger account to a suspense ledger in office account in the name of the firm.

62. The transfer had been described on the ledger as "loan made to WB" and had been made along with loans from other clients to contribute towards the rectification of a large client account cash shortage. The First Respondent had told the IO that he was responsible for the authorisation of transfers.

63. The loan "from R" was not documented in any agreement. However, the First Respondent had provided the IO with a letter of 4 January 2005 as "documentary evidence" of the "loan" a copy of which had not been on the original client matter files reviewed by the SRA.

64. During a recorded interview with the SRA held on 14 November 2007, the First Respondent had told the IO that when he had taken the money from R he had relied upon the specific letter of 4 January 2005 in which R had written "I would be grateful if you could hold the monies on your account as I am not sure when I will return to the UK at present. I give you my permission to use the monies as you see fit but in any case I need to ensure that my wife does not get her hands on it".

65. The First Respondent had told the IO that he had interpreted this as money that he (i.e. the First Respondent) could utilise in whatever way he required and that such an arrangement was "fine" if R came back and wanted his money back. The First Respondent had further told the IO that he "would not take money from anyone lightly at all" but had agreed that he had not insisted that R obtain independent legal advice prior to the loan being made.

66. The SRA had obtained all of R's client matter files after serving notice under Section 44B Solicitors Act 1974 dated 20 November 2008 on 27 November 2008. An examination of those files had revealed that the last contact with R prior to the First Respondent taking the loan from R's monies, had been in October 2005.

Company Registration Issues

67. Mr W had joined the First Respondent as a partner of the firm on 30 April 2007. The firm had converted to a limited liability partnership ("LLP") on 25 June 2007 with Mr W and the First Respondent becoming members in the LLP. Mr W had left the firm and ceased being a member of the LLP on 13 August 2007.

68. The SRA had written to the First Respondent on 18 December 2007 asking for his explanation of the period following Mr W's resignation during which SRA records had suggested that he (the First Respondent) had been the sole member of the LLP, in breach of Rule 14.05(2)(a) SCC.

69. The First Respondent had responded by letter of 3 January 2008 in which he had stated that Mr W "ceased to be a member of the LLP on 14 September 2007 and a

new member was appointed at the same time to ensure that we complied". With his letter, the First Respondent had enclosed "the relevant paperwork in support" of his assertion. However, the paperwork revealed that the First Respondent had been the sole member of the LLP from 13 August 2007 until 1 October 2007.

70. A new member had not been appointed at the same time as Mr W ceasing to be a member of the LLP. Mr W's membership of the LLP had terminated on 13 August 2007. The new member, WB Legal Training Limited ("the Company"), had become a member of the LLP more than 6 weeks later on 1 October 2007. The Company had not been incorporated until 25 September 2007; more than a week after the First Respondent had submitted notification of Mr W's termination of membership of the LLP to Companies House, within which he had cited the date of termination of Mr W's membership as being 13 August 2007.

The Submissions of the Applicant

71. The Applicant explained that as against the First Respondent he would be concentrating on the allegations in the supplementary statement, in particular allegations 23, 24 and 25 involving dishonesty. The First Respondent admitted the allegations in the supplementary statement, including allegation 27 as amended, but denied any dishonesty. All the allegations in the Rule 4 statement as against the First Respondent were either admitted or had been withdrawn. Those initial allegations had not involved dishonesty.

72. Turning to the allegations as against the Second Respondent, the Applicant explained that all the allegations had been admitted by the Second Respondent except allegations 5, 8 and 11 which the Applicant had withdrawn. He confirmed that there were no allegations involving dishonesty against the Second Respondent.

73. The Applicant took the Tribunal through the allegations and the facts in support. He confirmed that the burden of proof was such that the Tribunal had to be satisfied so that it was sure; the higher test, and he referred the Tribunal to the Twinsectra case relating to dishonesty.

74. Having reminded the Tribunal of the facts relating to the personal injury matter of client H, the Applicant submitted that no invoices had ever been delivered to the client. He further submitted that bills had been created in an attempt to justify earlier unlawful transfers amounting to a sweep-up of client monies from client account by reducing the over-transfer to office account to nil. The Applicant asked the Tribunal to note that the bills dated 22 February 2007 and 24 April 2007 were equal in amount to the transfers made on 23 January 2007 and 19 February 2007. By November 2007 all of H's damages had been used for the benefit of the firm. Further, by making payments to himself, the First Respondent had preferred his own interests over those of his client. The Applicant submitted that when, on 8 November 2007, the First Respondent amended the cheque for £2,000 written out in February 2007, for his client H, into his own name and paid it into his own personal bank account, the First Respondent knew that he was going to get the benefit of that money and that his client H was not.

75. Turning to the issue of the use of unjustified suspense accounts, the Applicant submitted that notwithstanding the warnings that the First Respondent had previously received from the SRA during the 2007 FI inspection and notwithstanding his duty to ensure compliance with the Solicitors' Accounts Rules and his responsibility as principal, the First Respondent had blamed unadmitted members of staff for the use of suspense accounts.

76. The Applicant referred the Tribunal to the facts involving the client Mr R. He submitted that not only was there was no evidence of bills delivered or work done but that the authenticity of a letter dated 4 January 2005, provided by the First Respondent to the IO as "documentary evidence" of the "loan", might be called into question for the following reasons. The letter (i) was typed, whereas all letters from R were handwritten; (ii) was not addressed, whereas all letters from R were addressed to the firm; (iii) had the salutation "Dear Paul", whereas letters from R were addressed "Dear Mr Windsor" or "Dear Mr Bronzite"; (iv) did not contain the basic grammatical and vocabulary errors which pepper all letters from R; (v) was signed off "kindest regards" whereas all letters from R were noted "yours respectfully"; (vi) was signed as "Girvan", whereas all letters from R were signed with his initials and surname; (vii) bore a signature which did not resemble the neat signature on all letters from R; and (viii) had not been upon the original matter file reviewed and had not been seen by the SRA until it had been provided by the First Respondent in support of his answer to written questioning by the IO about the transfer of R's money from client account.

77. Moreover, the Applicant submitted that a prudent and honest solicitor would not have sought to interpret the phrase "I give you permission to use the monies as you see fit" as allowing him to utilise the money for his own purposes or that such an arrangement was "fine" if R came back and wanted his money back. Moreover, the Applicant further submitted that not only did the First Respondent fail to insist upon R obtaining independent legal advice on the issue of the loan but he also failed to inform R that he had any intention of borrowing from his funds at all. He submitted that in the circumstances the "loan" had constituted a dishonest misuse of client monies and that the First Respondent had failed to demonstrate that all of the monies "borrowed" had been reimbursed or that any interest had been paid to R in respect of the loan.

Oral Evidence in Support of the Applicant

78. Mr Barry Cotter, an Investigation Manager with the SRA, gave evidence as to the details and veracity of the forensic investigation report of 20 November 2008. In particular, he dealt with the investigation into the firm's dealings with the client H including the amendment of the cheque for £2,000 written out in February 2007, the use of suspense accounts which had involved the use by the firm of clients' monies and the investigation into the firm's dealings with the client Mr R.

79. Carol Bedford, a fellow of the Institute of Legal Executives and a former employee of WB, gave evidence relating to the firm's client Mr R relying on her witness statement dated 15 September 2009. She explained how in July 2007 she had heard the First Respondent instruct the accounts team to transfer money from Mr R's ledger to the office account. The First Respondent had said to her that Mr R was most probably dead. Subsequently, Ms Bedford explained that the First Respondent had told her to

obtain a retrospective loan agreement from Mr R which had led to her telephoning the Law Society and making enquiries.

80. In cross-examination by the First Respondent, inter alia, Ms Bedford insisted that she had never seen a letter on Mr R's file dated 4 January 2005. She stressed that, when she joined the firm, the conveyancing department had been in total disarray with no procedures and lots of complaints from clients.

Oral Evidence from the First Respondent

81. The First Respondent gave the Tribunal details of his professional history and relied on and referred to his 3 statements of evidence dated 28 August 2009, 21 September 2009 and 22 September 2009. He explained that things started to go wrong for him in 2006 and that he had retired in January 2009 for the sake of his family and of his health. He accepted that he should have recognised earlier that he had needed help but was appearing before the Tribunal to protect his reputation and to stress that he had had no intention to be dishonest.

82. In relation to the firm's client H, he accepted that he had authorised the transfers on the basis of what had been placed in front of him, but that he had not had conduct of the file. Turning to the cheque for £2,000, the First Respondent stressed that he had not intended to be dishonest, that he had been very unwell and that his state of mind had not been "all there." He realised he should have got back to Accounts but he had had no access to cheque books in the Christchurch office.

83. The First Respondent gave evidence relating to the firm's client Mr R. He stressed that he had had no personal conduct of his files and that he had asked Ms Bedford to review Mr R's files. He had relied on people to do their jobs properly and it had been Miss Bedford who had told him that there had been money sitting on Mr R's client account that the firm could use. Ms Bedford had told him that she had taken advice from the Law Society and he had relied on that advice, the information provided by staff members and Mr R's letter on the file.

84. As to the suspense accounts, he had told the head of his accounts team to stop using them and had sacked him when he had continued to do so.

85. In cross-examination by Mr Marshall, the First Respondent explained that he blamed lots of people and himself for employing them. He did not blame the Second Respondent but once she became a partner she had not been so hard working. The First Respondent confirmed that he had noted the Second Respondent's witness statement of 3 September 2009 and that it had made him angry as her comments were infantile, rambling, incoherent and disorganised. He denied that he had been bullying, rude or dismissive. He agreed that the Second Respondent had had to litigate against him to enforce their contractual obligations but explained that he had not been able to pay because a former partner, who had indemnified him, had failed to pay.

86. In cross-examination by the Applicant, the First Respondent confirmed that he understood how solicitors' accounts work whereas the person he had recruited to take charge of those accounts had known nothing although at interview he had said he was experienced. The First Respondent said that he might have had sufficient personal

monies to repay the shortfall but had accepted it when people told him that he could use clients' monies. He confirmed that he had authorised the transfer of his client Mr R's money to office account. He agreed that he had been aware of the rules but that he had not been in control because of his problems; he had abdicated his position. The First Respondent said that he did not know why the letter from Mr R, dated January 2005, had not been on the file and that he could not explain the discrepancies in it but perhaps the letter had been forged. He insisted that Ms Bedford had shown him the letter. He denied dishonesty. The First Respondent agreed that 4 years' simple interest on £33,000 at 5% would be approximately £6,600 and that only £35,599 had been repaid by the firm to Mr R.

87. The First Respondent explained that when he had amended the cheque made payable to H, he had just regarded it as a redundant office account cheque. It was among the masses of papers all over his desk and he had believed that he, as sole principal of the firm, could properly amend it and make it payable to himself. He confirmed that he would have done exactly the same thing had the cheque been for £20,000. He had believed that client H had had his money.

The Applicant's Closing Submissions

88. Referring to allegations 23, 24 and 25 as against the First Respondent, the Applicant explained that whilst dishonesty was not an essential ingredient of any one of those three allegations, the case was put against the First Respondent on the basis that he had been dishonest with regard to allegations 23, 24 and 26. The Applicant noted that three discrete areas of concern had been discovered during the course of the second forensic investigation. He reminded the Tribunal of the facts relating to the firm's client H who had had no idea what was happening to his damages. There had been no evidence of any bills being delivered to the client and monies had been transferred from client to office account even before bills had appeared on the files. The Applicant referred to the firm's significant cash flow difficulties and submitted that that had constituted the motive for many of the First Respondent's actions.

89. Secondly, the Applicant reminded the Tribunal of the facts relating to the firm's client R. He submitted that the evidence given by Ms Bedford had been clear and honest. Moreover, he submitted that the words "use the money as you see fit" had not been an agreement to lend those monies to a solicitor. The First Respondent's assertion that he had relied on advice from others was, the Applicant submitted, not credible. The Applicant submitted that the First Respondent had realised that he was acting dishonestly when using R's money for the benefit of his firm.

90. The Tribunal did not have the benefit of any oral final submissions from the First Respondent because the First Respondent did not attend on the second day of the hearing. A fax sent late on 28 September 2009 by the First Respondent was received by the Tribunal at about 10.50 am on 29 September 2009. In that fax the First Respondent explained that he was unable to attend the Second Day of the hearing because he had found the first day very stressful. He was mentally exhausted and not up to the journey but stressed that although he had made mistakes he did not consider himself to have been dishonest.

The Decision of the Tribunal relating to the Allegations of Dishonesty as against the First Respondent

91. In relation to the use of monies held for R, the Tribunal fully accepted the evidence of Ms Bedford whom the Tribunal found to be a credible and honest witness. While unable to conclude on the evidence before it that the letter of 4 January 2005 had been forged, the Tribunal did not accept that the First Respondent had believed that that letter had provided him with the authority to lend Mr R's money to himself. The Tribunal noted that the First Respondent had been responsible for the authorisation of transfers and that on 31 July 2007 the whole of the remaining credit balance, being held on behalf of R, had been transferred from the client side of R's ledger to a suspense ledger in office account, in the name of the firm. Only some six months earlier the SRA had warned the First Respondent against the use of suspense accounts.

92. In relation to H, the Tribunal found on the evidence that H did not receive part payment of £2,000 out of drawings recovered for him of £4,263.50 and that an addition to costs recovered of £5,300, the First Respondent had appropriated the whole of the damages recovered for H for his own benefit by failing to deliver payment to H of £2,000 which 9 months later he appropriated to himself by altering the name on a cheque drawn in favour of H of the payee. He further absorbed the balance due of £2,263.50 by transferring this sum as costs (without delivering a proper bill) and notwithstanding that the firm had already recovered costs from the insurers.

93. The First Respondent had told the Tribunal that he was aware of the requirements of the Solicitors' Accounts Rules so that the Tribunal found that in relation to the firm's client H, the First Respondent had been fully aware that his authorisations of transfers to office account of monies received as H's damages had been both in breach of the Rules and deliberate. The Tribunal rejected the claim that the First Respondent's alteration of a cheque payable to H for £2,000 had been an honest mistake. It was a knowing breach of the Rules. The First Respondent knew of the importance of maintaining the absolute integrity of the client account and could not have had (and in the Tribunal's view did not have) an honest belief that monies could be transferred for his own benefit without a flagrant breach of the Rules.

94. Having considered all of the evidence before it, both oral and written, and all the submissions, the Tribunal was satisfied that allegations 23, 24 and 25 in the supplementary statement had been proved beyond any reasonable doubt that the First Respondent had according to the tests laid down in Twinsectra been dishonest in his actions relating to those three allegations. The Tribunal was satisfied, so that it was sure, both that the First Respondent's conduct had been dishonest by the standards of reasonable and honest people and that he himself had realised, at the relevant time, that by those standards his conduct was dishonest.

95. The Tribunal also found allegation 26 proved and allegation 27, as amended, both admitted and proved.

Further Submissions by the Applicant relating to the Original Statement and Initial Allegations

96. The Applicant confirmed that as against the First Respondent all the original allegations had either been admitted or withdrawn except for allegation 11 which was denied by the First Respondent. Allegation 11 involved the failure by the First Respondent to pay interest to clients under the Accident Group Scheme in accordance with guidance by the Law Society. In the light of the finding of dishonesty the Tribunal made no finding on this allegation.

97. Turning to the allegations as against the Second Respondent, the Applicant explained that all allegations had either been admitted by the Second Respondent or withdrawn. It was accepted that the major share of culpability rested on the First Respondent. The Applicant took the Tribunal through the remaining allegations and the relevant facts.

98. As to costs, the Applicant referred to his schedule and the financial positions of the two Respondents and asked for a fixed order for costs with appropriate contributions.

Submissions on behalf of the Second Respondent

99. Mr Marshall of Counsel made submissions on behalf of the Second Respondent. He referred to the Chronology that was before the Tribunal indicating the Second Respondent's limited involvement in the various matters. Mr Marshall submitted that the Second Respondent had been simply overwhelmed by the work situation that she had been faced with. He gave the Tribunal details of her professional history and of the personal injury work that she had undertaken in the firm. Mr Marshall stressed that even as a salaried partner from January 2003, the Second Respondent had still been treated by the partners as the office junior. After the retirement of Mr Windsor, the First Respondent had needed another partner to avoid being a sole practitioner. Counsel referred the Tribunal to the partnership document which he submitted clearly indicated that the First Respondent had retained complete control of the firm. He explained that the Second Respondent had no conveyancing experience and in practice had had nothing to do with the conveyancing department. Any attempts made by the Second Respondent to introduce systems into the office had been blocked by the First Respondent.

100. In January 2006 the Second Respondent had realised that she could not continue in partnership with the First Respondent and had told him that she wanted to resign. This was because she had become aware that the firm's procedures were chaotic and that the First Respondent was unwilling to implement any of her suggested improvements. Subsequently, the First Respondent had failed to meet his obligations under their deed of retirement and the Second Respondent had been forced to take proceedings against him. Counsel explained the current employment and financial position of the Second Respondent. He stressed that she had the upmost respect for the Tribunal and that it had been very important for her to attend the hearing to show her honesty and professional integrity. The Second Respondent accepted that she had made a very serious mistake in accepting partnership in WB.

The Decision of the Tribunal as to Penalty and Costs

101. Having found the First Respondent to have been dishonest in his dealings with clients' monies and having found all the other outstanding allegations against him to be proved, the Tribunal was satisfied that he was unfit to practise as a solicitor and that it was appropriate both in the interests of the public and of the profession that he be struck off the Roll of Solicitors. The Second Respondent, while responsible as a partner for both accounts rules and other breaches, had not been dishonest in any way. Moreover, in relation to the allegations not involving dishonesty, the Tribunal was satisfied that the Second Respondent was far less culpable than the First Respondent. However, the defaults found proved against the Respondents were serious and, could not be ignored. The Second Respondent though the junior partner could not escape the responsibilities flowing from that status. The Tribunal decided that taking into account the mitigation put forward on behalf of the Second Respondent a period of suspension for six months was appropriate and proportionate.

102. The Tribunal, having considered the costs schedule, fixed the costs in the sum of £91,500 and ordered the First Respondent to pay a contribution of £84,000 and the Second Respondent a contribution of £7,500. It was considered just that the First Respondent should be wholly responsible for the SRA's costs of investigation. The Tribunal had limited information provided by the parties as to their finances and was aware of the policy of the SRA to pursue costs only if such were recoverable and to negotiate payment by instalments if appropriate.

Signed on this 8th day of April 2010
On behalf of the Tribunal

A H Isaacs
Chairman