No. 9903-2008

IN THE MATTER OF RALPH EDWARD PULMAN and *[SECOND RESPONDENT]*, [*THIRD RESPONDENT*], solicitors
[*SECOND AND THIRD RESPONDENT NAMES REDACTED*]

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr R Nicholas
Mr D Gilbertson

Date of Hearing: 24th – 27th November 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 Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 18th February 2008 that Ralph Edward Pulman of Greenfield House, Heolgerrig, Merthyr Tydfil, C48 1RP and *[SECOND RESPONDENT]* and [*THIRD RESPONDENT*] of Hugh James, Martin Evans House, Avenue de Clichy, Merthyr Tydfil, Mid Glamorgan, CF47 8LD, solicitor, both represented by Reynolds Porter Chamberlain of Tower Bridge House, St Katherine's Way, London, E1W 1AA, 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 against the Respondents were that they were guilty of conduct unbefitting a solicitor in each of the following particulars namely:

Allegations against Mr Pulman

(i) contrary to Rule 1(c), (d) and (e) of the Solicitors Practice Rules 1990 ("SPR") he deliberately and improperly caused, permitted or acquiesced in conditional fee agreements and/or file copy letters and attendance notes to be falsely dated, in order to misrepresent the date(s) on which the client entered into Conditional Fee Agreements ("CFAs");

(ii) that he acted contrary to Rule 1(c), (d) and (e) of the SPR in that he deliberately and improperly certified the information required to be given to client(s) pursuant to Regulation 4 of the Conditional Fee Agreement Regulations 2000 had been given by him, when in fact it had been given by his assistant, Mr Powney;

(iii) contrary to Rule 1(d) of the SPR he facilitated, permitted or acquiesced in a bill of costs being drafted in such a way as to conceal information regarding the "backdating" of the CFAs and/or the falsely dated file copy letters and attendance notes from the third party and/or their solicitors.

It was contended that in all the circumstances. That the First Respondent's conduct was dishonest, alternatively reckless.

Allegations against *[SECOND RESPONDENT]*

(iv) that contrary to Rule 1(d) of the SPR he facilitated, permitted or acquiesced in a bill of costs being drafted in such a way as to conceal information regarding the backdating of the CFAs and/or the falsely dated file copy letters and attendance notes from the third party and/or their solicitors;

(v) that contrary to Rule 1(c) and Rule 13 of the SPR he failed to exercise adequate supervision;

(vi) he acted contrary to Section 41 of the Solicitors Act 1974 (as amended);

(vii) that he facilitated, permitted or acquiesced in the court being misled by his failure to disclose all relevant information in his witness statement dated 29th March 2004. In all the circumstances the Second Defendant was reckless [as amended with the consent of the Tribunal].

Allegations against *[THIRD RESPONDENT]*

(viii) that contrary to Rule 1(d) of the SPR he facilitated, permitted or acquiesced in a bill of costs being drafted in such a way as to conceal information regarding the backdating of the CFAs and/or the falsely dated file copy letters and attendance notes from the third party and/or their solicitors;

(ix) contrary to Rule 1(c) and Rule 13 of the SPR he failed to exercise adequate supervision.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 24th-27th November 2008 when Jonathan Goodwin, Solicitor Advocate, appeared as the Applicant, Mr Pulman did not appear and was not represented and *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* were represented by Mr Michael Pooles of Queen's Counsel with Mr Graham Reid of Counsel.

The evidence before the Tribunal included the admissions of Mr Pulman. Mr Powney gave oral evidence for the Applicant. *[THIRD RESPONDENT]* and *[SECOND RESPONDENT]*

gave oral evidence and Mr Farber, Mr Harvey and Mr Davies, Mr Williams and Mr Asbrey gave evidence for *[THIRD RESPONDENT]* and *[SECOND RESPONDENT]*.

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

The Tribunal Orders that the Respondent, Ralph Edward Pulman of Greenfield House, Heolgerrig, Merthyr Tydfil, CF48 1RP, 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 £5,000.

The Tribunal Orders that the Respondent, *[SECOND RESPONDENT]* of Hugh James, Martin Evans House, Avenue de Clichy, Merthyr Tydfil, Mid Glamorgan, CF47 8LD, solicitor, be suspended from practice as a solicitor for the period of 24 hours to commence at midday on the 27th day of November 2008.

Background information

1. Mr Pulman, born in 1965, was admitted as a solicitor in 1997. *[SECOND RESPONDENT]*, born in 1953, was admitted as a solicitor in 1980. *[THIRD RESPONDENT]*, born in 1953, was admitted as a solicitor in 1981. The names of all three Respondents remained on the Roll of Solicitors.

2. At all relevant times Mr Pulman was employed as an Associate Solicitor with Hugh James of Martin Evans House, Avenue de Clichy, Methyr Tydfil, Mid Glamorgan, CF47 8LD. *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* were partners in Hugh James.

3. The Forensic Investigation Unit of The Law Society carried out an inspection of Hugh James' books of account commencing on 8th June 2004 and produced a Report dated 30th March 2006 ("the Report").

4. The books of account were in compliance with the Solicitors Accounts Rules in all material respects as at June 2004.

5. The Report set out details of a substantial multi-party action which became known as PO & Others v B Waste Services Ltd ("B"). Hugh James acted for a group of 288 clients complaining of nuisance created by a landfill site operated by B.

6. The action settled following mediation in May 2003. Details of the settlement were set out in the Report and included payment of Hugh James' costs of approximately £2 million split between a generic bill and bills for the individual claimants' costs.

7. NN who acted for B in the litigation raised a number of queries and concerns in relation to the CFAs. The cost claims could not be settled by agreement between the parties and detailed assessment proceedings were commenced but subsequently discontinued by Hugh James and its claim for costs in the case was withdrawn.

8. Hugh James filed a self-report by letter dated 14th May 2004 to the Consumer Complaints Service relating to the misconduct of Mr Pulman and a clerk, Mr Colin

Powney, who was assisting Mr Pulman in relation to the litigation. The letter raised, inter alia, the following:

(i) that CFAs were sent out to clients in October 2002, but each contained a date earlier than October 2002, which was usually the date that the particular client's file had been opened;

(ii) the file copy of the covering letter sent to each client in October 2002 forwarding the CFA, had been altered to a date in April 2002;

(iii) a note of an attendance with the leading client, Mr PO, during October 2002 was backdated to April 2002, and;

(iv) note of attendances on clients by Mr Powney, to explain the CFA and obtain signatures, were prepared during late 2002 but backdated to 29th April 2002.

9. Mr Pulman resigned on 15th June 2004 shortly before an internal Disciplinary Hearing and Mr Powney received an internal disciplinary sanction.

10. By letter dated 4th June 2004 NN made a complaint to the Consumer Complaints Service raising a number of concerns to include the backdating of CFAs and that Hugh James sought to recover significant costs from B for work carried out in the period prior to the date on which a CFA had actually been entered into.

11. NN wrote a pre-action protocol letter dated 8th February 2005 to Hugh James in which they set out their client's concerns relating to the conduct of Hugh James in connection with the CFAs. Inter alia they commented that had B been aware that "lies had been told to the effect that CFAs had been entered into or that forgeries had been created, it would have known that the credibility of the claimants involved and Hugh James had been entirely destroyed. There would have been little prospect of claimants being prepared to attend a trial in such circumstances…. nor would Hugh James have been able to continue to act in such circumstances."

12. In view of the concerns relating to the CFAs identified in the Report and the complaint of NN, Hugh James contacted all of the clients in the matter to inform them that the firm could no longer act since a conflict of interest had arisen. Claimants were put in touch with another firm of solicitors.

13. Mr Pulman had day to day conduct of the PO v B matter assisted by Mr Powney. At the time of the group litigation order being made in October 2001 Mr Pulman had been qualified for approximately four years and ten months.

Facts outlined to the Tribunal in the papers before them

14. A summary of the allegations raised against Mr Pulman by Hugh James' internal disciplinary process was particularised in a "management case" document. The Investigation Officers particularised in the Report certain of the allegations raised in the "summary of allegations" to include:

1. Caused the falsification of client files in the group litigation in the following manner:

   a) the backdating to a date in April 2002 of the file copies of the first general letter explaining… CFAs… which were sent in October 2002 to all the non-publicly funded claimants…

   b) the backdating to April 2002 of an attendance note of a meeting with Mr PO which took place in or around October 2002…

   c) the backdating to a date in April 2002 of the file copies of the second general letter that was sent to all the non-publicly funded claimants reassuring them about the CFAs and cost deductions from damages, the letter having been sent after the meeting with PO which took place in October 2002…

   d) the backdating to a date in April 2002 of the file copies of the third general letter which was sent in or around October 2002 to some of the same group of claimants reminding them to contact the firm to sign the CFA…

   e) the backdating to April 2002 of the attendance notes of the meeting between Colin Powney and each of the claimants or their representatives in which they entered into the CFAs and Terms and Conditions of Business when the said meetings had taken place in or around October and November 2002…

   f) directing Colin Powney to prepare the said attendance notes of the individual client meetings to represent Ralph Pulman as having conducted the meeting rather than Colin Powney.

2. Falsely certifying the CFAs by signing them to say that Ralph Pulman had given the oral explanation under the CFA Regulations 2000, when in fact the said explanation had been given by Colin Powney.

3. Directed two employees… to participate in the said falsifying of the document as described above…

15. The Investigation Officer interviewed Mr Pulman on 4th August 2004. Mr Pulman had prepared a written statement dated 4th August 2004 which he produced to the Investigation Officer during the interview. A copy of the written statement and a copy of the Investigation Officer's interview notes were before the Tribunal.

16. Mr Pulman also provided comments to the SRA by letter dated 29th September 2006.

17. Mr Pulman dealt, inter alia, with three main areas:

   (i) That the CFAs were dated with the date the file was opened rather than the date on which they were actually signed by the client;

(ii) That file copies of letters and attendance notes showing the provision of oral advice required by Regulation 4 of the Regulations were dated April 2002 rather than sometime between October and December 2002 when the letters were sent out and attendances actually took place;

(iii) That each CFA contained a declaration signed by the First Respondent that the Regulation 4 advice had been given by a solicitor, whereas the advice in the majority of cases had been given by his assistant, Mr Powney.

18. In his written statement Mr Pulman asserted that he believed the correct date for the CFA was the date on which the file was opened, which in most cases would have been around the time the client first contacted the firm.

19. Mr Pulman said that he knew that by dating the CFAs in that way, there was a possibility that the Defendant would accept the date at face value and not ask for disclosure of covering letters.

20. Mr Pulman stated that he was so concerned about keeping the case going that he did not give proper attention to finalising the CFAs. He stated that he made a "dreadful decision" and wished that he had been stopped in his tracks. He stated "I realise now that I should not have acted in this manner". He said that he should have insisted that the partners made a decision as to how to proceed and he was stupid to panic. He further wrote:

> "I have never conducted myself in such a manner previously and realise that I fell short and to some extent was allowed to pursue a course of conduct that is well short of the standard to be expected of a practising solicitor".

21. Mr Pulman said in his written statement that as soon as the first letter enclosing the CFA was sent out to each client in October 2002 he arranged for the date of the file copy letter to be changed to April 2002.

22. He was contacted by the lead claimant (PO) about the CFA in October 2002 and backdated the file note to April 2002 to fit with the covering letter.

23. He believed that he backdated the file copies of a further two letters sent to the claimants in order to make them fit with the original backdated file copy letter.

24. During interview Mr Pulman referred to the change of name of the firm from Hugh James Ford Simey ("HJFS") to Hugh James on 1st May 2002 and the problem that whilst the letters to clients were on Hugh James notepaper, the CFAs enclosed were headed "Hugh James Ford Simey, Solicitors" and referred to "HJFS" within the document. In his written statement Mr Pulman said that he was concerned he would have to disclose the CFA at the mediation and explain the date on the CFA as being sometime earlier despite the letter going out to the client being marked October 2002. He stated that he was worried that B would realise that the CFA could not have been signed then because it referred to "HJFS".

25. The Investigation Officer's interview records recorded that Mr Pulman thought:

> "a clever way around that problem would be to change the date of the file copy of the letter to the clients to show April 2002 rather than the real date of October 2002".

26. Mr Pulman said in his mind he did not feel it was legitimate to change the date on the file copies of the letters to clients and he was foolishly misrepresenting the letter and that he knew it would be needed in the mediation. He stated "that was my big mistake".

27. In his written statement Mr Pulman indicated that:

    (i) He believed a solicitor was required to give the Regulation 4 advice.

    (ii) The CFA that he was instructed to use from the outset showed that the person signing the CFA to confirm the advice had been given was a solicitor.

    (iii) Because of the pressure of work it was not possible for him individually to see all 288 claimants and he therefore instructed Mr Powney to assist him. He instructed Mr Powney to give the advice and gave him a script in the form of a written attendance note.

    (iv) He signed the CFA to certify that the relevant advice had been given by him;

    (v) He also asked Mr Powney to prepare the attendance note confirming the advice had been given in his name and not Mr Powney's;

    (vi) Because of his fears concerning the firm's change of name he told Mr Powney to date the attendance note so that they would "fit with the other backdated correspondence."

28. During the interview with the Investigation Officer Mr Pulman accepted that, as regards the issue of a solicitor having given the oral advice, he was prepared with full knowledge to mislead on this point.

29. In his letter dated 29th September 2006 in response to the SRA Mr Pulman stated he wished to express his regret and apologised for his conduct in this matter. He stated:

> "I am ashamed of myself. Whilst I have expressed concerns as to the inappropriate responsibilities given to me and the lack of supervision experienced, I make no attempt to excuse myself for behaving in such an appalling manner… Whilst working as a solicitor I worked hard to provide first class service for my clients… I deeply regret my conduct and wish there was some way of undoing what has been done".

30. Mr Pulman provided statements during the course of the interview and in his written statement regarding the state of knowledge of the partners concerning the backdated documentation.

31. During the interview, Mr Pulman indicated that Mr Powney knew about three issues, that is to say the CFA dating, the copy file letters dating and the oral explanation by a

solicitor statement in the CFAs. Mr Pulman indicated he had instructed Mr Powney to alter the copy file letter dates and that Mr Powney did so. Mr Pulman explained that Mr Powney and a secretary worked out the date of instructions for the purposes of dating the CFAs and when asked if Mr Powney ever expressed any concerns or reservations, Mr Pulman replied "not really, he may have asked if I was sure, but I said just get on with it, do it."

32. The Report particularised the role of Mr Powney, who was a clerk and not a solicitor. Whilst Mr Powney was not interviewed during the course of the inspection, he provided a proof of evidence dated 29th April 2004 contained in the documentation disclosed by the firm. The proof of evidence was prepared pursuant to the costs proceedings in the Supreme Court Costs Office before Master O'Hare. Mr Powney also provided a further statement in response to a letter from The Law Society.

33. The Report referred to a statement of TG, a secretary working for Mr Powney. TG stated that:

(a) Mr Pulman told her that any work to do with the CFAs must be backdated to April 2002, which was when the CFAs were supposed to have been sent out;

(b) She was told by Mr Pulman to mail merge the letters to clients enclosing the CFAs which were to go out to the clients with the correct date of October 2002 while the file copies were merged to show a date in April 2002;

(c) She was told to date the attendance note with PO as 12th April 2002;

(d) She was told by Mr Pulman to type a letter to all claimants reassuring them about costs and to date the file copy letter as 12th April 2002.

(e) She was told by Mr Pulman to send out a reminder letter to clients and to date the file copy letters in the same way as the other two letters;

(f) Mr Powney conducted most of the oral interviews. Mr Powney's time was sometimes recorded as Mr Pulman's time and that this "happened on many occasions".

34. In his proof of evidence Mr Powney stated that:

(i) In October 2002 Mr Pulman gave TG instructions to send out the correctly dated letter enclosing the CFAs to the client but that she should change the file copies to show that they were sent out in April 2002;

(ii) After the first letter went out PO contacted the firm and a meeting was arranged as several clients had expressed concern about the contents of the letter and had contacted PO. Mr Pulman instructed Mr Powney to change the date of the attendance note of the meeting with PO so that it fitted in with the previous dating of the file copy letter to the client of April 2002.

(iii) Mr Powney was then instructed by Mr Pulman to send a second letter to clients confirming that there should not be a charge or any deduction from

their damages. As the majority of the clients also failed to contact the firm, a further (third) reminder letter was also sent. He was instructed by Mr Pulman to change the file copies of both of these letters to show that they were sent out in April 2002 and he did so.

35. Mr Powney confirmed that he saw every client apart from those he spoke to on the telephone and having obtained the client's signature he took the CFA back to Mr Pulman who had to sign the form because he was a solicitor. He was not happy with Mr Pulman signing as he, that is Mr Powney, had given the advice and it now looked as if Mr Pulman had given the Regulation 4 advice when he had not.

36. In his statement of 22nd September 2006 Mr Powney confirmed that he was instructed by Mr Pulman to synchronise the Regulation 4 advice clients' attendance notes with the letters to clients and that he saw the bulk of clients and all attendance notes were dated in accordance with Mr Pulman's instructions.

37. Mr Powney stated that Mr Pulman indicated that in the event the attendances were challenged by B, he (Mr Pulman) would give evidence that it was in accordance with the Regulations.

The role of Simon Cooper, costs draftsman and allegation (vi) against *[SECOND RESPONDENT]*

38. The Investigation Officer interviewed Mr Simon Cooper, costs draftsman, on 8th April 2005.

39. Mr Cooper said, inter alia:

(i) He liaised with Mr Pulman and Mr Powney in relation to the drafting of the bills. He had not liaised with any partner of Hugh James in completing the generic and individual bills, save for a telephone call received at the end of October or early November 2003 from *[SECOND RESPONDENT]* limited to discussing the time limit for completing the bill;

(ii) He had taken the date of the CFAs from the group register as filed on or around 31st January 2002;

(iii) That he had first become aware of the backdating of CFAs sometime between 21st and 27th January 2004. He telephoned Mr Pulman on 27th January 2004 following receipt of a letter from him enclosing NN's "Points of Dispute", such points included queries about the date of CFAs and Mr Pulman had then told him that some of the CFAs were backdated.

40. The Investigation Officer explained to Mr Cooper his concerns that certain documents had not been included in the generic bill to include:

(i) a general attendance note dated 12th April 2002 recording one hour attendance by Mr Powney with PO;

(ii) a general attendance note dated 1st July 2002;

(iii) a general attendance note dated 27th March 2002;

41. The generic bill included reference to internal meetings and work being done on draft documents in schedule 4 of the bill and Mr Cooper was asked why those items were included but the above mentioned documents were not. Mr Cooper explained that he had included items which "progressed the actions".

42. Mr Cooper was asked whether anyone had asked him to draft the bills in a way that excluded reference to documents or information that should have put NN on notice of dating problems with the CFAs to which he replied he had not been so asked and he would have taken no notice in any event and would have returned the file.

43. Reynolds Porter Chamberlain ("RPC"), acting on behalf of *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]*, replied to the SRA by letter dated 29th September 2006 and stated that they had now met with Mr Cooper and his account of events "materially conflicts with the interview notes". They explained why they considered The Law Society should not rely on the interview notes as an account of Mr Cooper's evidence and explained Mr Cooper's version of events. In summary RPC said that Mr Cooper concluded that the falsely dated file copy documents were absent from the six files he saw at the time the individual bills were prepared. They asserted that the partners did not have any direct knowledge of that issue.

44. Mr Cooper is a former solicitor who was Struck Off the Roll of Solicitors in 1972. In their letter filed on behalf of *[SECOND RESPONDENT]* dated 29th September 2006, RPC acknowledged that *[SECOND RESPONDENT]* had known since 1980 (later disclosed as a time when he was in articles) that Mr Cooper was a former solicitor who had been struck off the Roll and stated:

> "*[SECOND RESPONDENT]* has been aware since 1980 that Simon Cooper was a former solicitor who has been struck off the Roll. Simon Cooper has prepared bills of costs for the firm then and has done so from time to time ever since."

45. Mr Pulman in his witness statement dated 4th August 2005 confirmed that *[SECOND RESPONDENT]* suggested that they use Mr Cooper to prepare the bill.

46. RPC asserted in their letter of 29th September that it was Coopers Costing Services that agreed to provide Hugh James with Cost Drafting Services and not Mr Cooper. They stated that Coopers Costing Services was a business owned by Mr Cooper's wife and Mr Cooper was self-employed and worked for Coopers Costing Services.

<u>Report of N S a costs draftsman instructed by his Investigation Officer</u>

47. Following the interview with Mr Cooper the Investigation Officer remained concerned about the contents and drafting of the bills of costs and instructed Mr NS, costs draftsman, to advise on the individual and generic bills of costs.

48. A copy of NS's Report commenting on the omission of certain documents on the bill and on Mr Cooper's state of knowledge was before the Tribunal. RPC commented on NS's Report in their letter of 29th September 2006.

State of knowledge and role of the Partners

49. By letter dated 24th March 2005 the Investigation Officer wrote to the senior partner of Hugh James raising a number of matters and questions for relevant partners of the firm including:

(i) the drafting and signing of the CFAs;

(ii) the provision of oral explanations to clients in relation to the CFAs;

(iii) the drafting and signing of the bills;

(iv) the pursuit and later discontinuance of the detailed assessment proceedings in relation to the bill.

50. The firm provided a response by letter dated 14th June 2005. The letter was the collective response of the partnership to the issues raised and where specific points had been raised of particular partners, their individual responses had been set out and "prepared as if they were witness statements and signed off by the partner concerned".

51. RPC raised comment as to the state of knowledge of the partners in their letter of 29th September 2006, the letter containing cross references to the firm's previous response of 14th June 2005

When *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* first knew that the date on the CFA was the date a file was opened at the firm

52. By memorandum dated 27th March 2002 Mr Pulman forwarded a draft covering letter and CFA to *[THIRD RESPONDENT]* asking him to give particular consideration to those documents and to make any amendment or additions he thought necessary.

53. There was on the file an attendance note of Mr Pulman for 1st July 2002 recording 1 hour 30 minutes of time for Mr Pulman and which stated:

> "Amending CFA document and letter before action under the supervision of [*THIRD RESPONDENT*]."

54. By letter dated 14th June 2005 *[THIRD RESPONDENT]* said that he could not recall any meeting with Mr Pulman on 1st July 2002 and stated:

> "Certainly I was not aware at this time that a conditional fee agreement had not yet been sent out.
>
> It may be the case that Ralph Pulman's reference to my "supervision" reflects my involvement in March 2002 when we discussed the Conditional Fee Agreement and later when I made notes on his draft covering letter."

55. Mr Pulman said in his written statement that *[SECOND RESPONDENT]* knew that CFAs would be dated with the date the client's file was opened by the firm, although indicated he did not recall discussing that with *[THIRD RESPONDENT]*. He said he remembered reporting his intention to date the CFAs in this manner to *[SECOND RESPONDENT]* who enquired if he was sure he could date them in that way to which Mr Pulman indicated that he saw no reason why not as he was satisfied that oral agreements had existed with the claimants from the outset.

56. Mr Pulman also indicated during interview that *[SECOND RESPONDENT]* would enquire from time to time what was happening regarding the CFAs. Mr Pulman stated:

> "I would have made it plain that they had not been completed - I remember him saying we had to get on with getting the CFAs in place."

57. In his written statement dated 4th August 2004 Mr Pulman said that he remembered the memorandum of 27th March 2002 and draft documents being returned to him but said he cannot recall whether *[THIRD RESPONDENT]* made any amendments.

58. Mr Pulman also said during interview he had been told by *[THIRD RESPONDENT]* to get on and get the CFAs signed up.

59. Mr Pulman also recalled a meeting in May 2003 when *[THIRD RESPONDENT]* was present with himself, Mr Powney, *[SECOND RESPONDENT]* and Counsel, when the issue of the notice of funding was discussed and he stated "We would almost certainly have discussed the date of the CFAs as well."

60. By letter dated 14th June 2005 *[SECOND RESPONDENT]* stated he had no recollection of a conversation with Mr Pulman about the agreement date of the CFAs. He said he had no note, he would not have been able to approve any such arrangement and if it had been mentioned he would have suggested that Mr Pulman take advice from a partner in the firm with expertise in CFAs.

61. In the same letter *[THIRD RESPONDENT]* acknowledged receiving Mr Pulman's memorandum and draft documents of 27th March 2002 and providing him with guidance.

62. In the letter from RPC dated 29th September 2006 it was said on behalf of *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* that they first became aware on 17th March 2004 during a conference with Counsel that the date of the agreement inserted on the front sheet of each CFA related to the start of the retainer between September 2001 and January 2002 and not the date the CFA was actually signed by the client.

63. *[SECOND RESPONDENT]* stated:

> "… this is my first recollection of the circumstances under which these documents were signed… no alarm bells rang, as a result of the matters discussed at the conference."

When *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* knew that the CFAs were entered into between October 2002 and January 2003, rather than April 2002 as shown on the file copy letters and attendance notes

64. The Report provided a chronology of events, to include the change of name of the firm from Hugh James Ford Simey to Hugh James on 1st May 2002. The copy letters which were written in October 2002, but backdated to April 2002 complied with the layout of Hugh James' headed paper and contained Hugh James' email addresses.

65. During interview Mr Pulman was asked if he had discussed the backdating of the file copy letters and attendance notes with anyone at the time of executing the CFAs in 2002 to which he said he discussed it with Mr Powney but not with any partner.

66. Mr Pulman explained that the Defendant's solicitors, NN, had written to him around February 2004 seeking an explanation of the dating of a particular CFA and the next day after receiving the letter he went to *[SECOND RESPONDENT]* and explained the backdating of the file copy letters.

67. In the letter from RPC dated 29th September 2006 it was said that *[SECOND RESPONDENT]* first became aware on 19th March 2004 i.e. two days after the conference with Counsel, that the CFAs were completed and signed in October 2002 rather than April 2002 as shown on the file copy letters and attendance notes on each file.

68. By letter dated 12th May 2005 RPC wrote to the Investigation Officer and attached a further file of correspondence and documents relating to the period August 2003 to February 2004.

69. A copy of this file had been retained by *[SECOND RESPONDENT]* but had not previously come to the attention of RPC or The Law Society. *[SECOND RESPONDENT]* retained a copy of the file before it was sent for storage being:

> "…. particularly keen to investigate the period during which the bills had been drafted as he was conscious that he had signed the generic bill. The new file was central to that period… so he considered it very carefully."

The letter stated that following discovery of the copy file *[SECOND RESPONDENT]* had a search made and the original file was located amongst files which had been believed to contain only documents disclosed by B.

70. The Report noted that upon examination by the Investigation Officer the file contained certain documents relevant to *[SECOND RESPONDENT]*'s statement that he did not know about the backdated CFAs until March 2004 together with his role in connection with correspondence with NN regarding the dating of the CFAs. The documents were particularised in the Report.

71. Further questions regarding these documents were put to *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* by letters dated 28th July 2006. RPC in their response dated 29th September 2006 dealt with the matters raised. It was said in the response

that *[SECOND RESPONDENT]* had no recollection of seeing a letter of 7th October 2003 from NN but in the light of an attendance note of Mr Powney of the same date recording that the letter was brought to *[SECOND RESPONDENT]*'s attention he accepted that he saw it. The letter from NN asked the firm to provide copies of the covering letters sending out the CFAs to clients as NN disputed the actual date on which the CFAs were executed.

72. *[SECOND RESPONDENT]* did not recall seeing a letter of 18th November 2003 which was chasing a response to the letter of 7th October 2003.

73. By letter dated 21st November 2003 a detailed letter was sent, with the named author, Mr Powney, responding to NN's letter of 7th October 2003 accepting that there were a number of backdated CFAs.

74. Mr Powney prepared an attendance note dated 21st November 2003 relating to his drafting of the letter of the same date in which he says:

> "Amending initial draft, thereafter checking final draft discussing it with GMM".

[SECOND RESPONDENT] said that if there was an attendance note that said Mr Powney discussed the letter with him then he was prepared to accept that he did discuss the letter with Mr Powney although he could not recall which letters were discussed and which were not.

75. By letter dated 11th December 2003 NN wrote to *[SECOND RESPONDENT]* and stated inter alia:

> "…we specifically draw your attention to paragraph 3 on pages 2 and 3 of the points of dispute which raises an issue as to the dates on which the CFAs were entered into. Leading Counsel has advised that this preliminary issue warrants a full explanation…"

76. *[SECOND RESPONDENT]* was away the day the letter arrived but the following Monday *[SECOND RESPONDENT]* attended a meeting with Mr Cooper, Mr Pulman and Mr Powney at which the points of dispute were discussed. It was said that the points of reply were prepared by Mr Cooper and Mr Powney and sent to NN on 2nd January 2004. *[SECOND RESPONDENT]* assumed that NN's queries about the CFAs were being actively pursued by his fee earners with the assistance of the cost draftsman and that the issues would have been addressed in the detailed assessment proceedings.

77. By letter dated 28th January 2004 NN again wrote to *[SECOND RESPONDENT]* raising issues as to the dating of the CFAs.

78. Mr Powney prepared an attendance note of a meeting that took place on 28th January 2004 with *[SECOND RESPONDENT]*.

[SECOND RESPONDENT] and *[THIRD RESPONDENT]* countersigning the CFAs

79. In the firm's response of 14th June 2005 it was said that *[SECOND RESPONDENT]* had countersigned approximately 25 and *[THIRD RESPONDENT]* 23 CFAs. *[SECOND RESPONDENT]* explained that CFAs were brought to him in boxes by Mr Powney who indicated that they needed a partner's signature. He said he viewed the partner's signature as no more than a technicality especially given they had been signed by Mr Pulman.

[SECOND RESPONDENT] and *[THIRD RESPONDENT]* signing the bill of costs

80. In the firm's response dated 14th June 2005 *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* both denied being aware of the backdated CFAs at the time of signing the bills. *[SECOND RESPONDENT]* signed both the generic and some individual bill of costs. The bills were sent to NN on 19th and 20th November 2003. *[SECOND RESPONDENT]* stated that in checking and considering the generic bill he was concentrating on the actual figures and the costings of the generic bill.

81. *[THIRD RESPONDENT]* stated that *[SECOND RESPONDENT]* asked him to help with the number of bills that he had on his desk and he signed eleven. He said:

> "I did not read them and I did not consider that I needed to do so… the whole exercise as far as my involvement was concerned took approximately the length of time that it took me to write my signature 11 times.

When *[SECOND RESPONDENT]* first knew that Regulation 4 Advice was given by a non-solicitor

82. The CFAs contained a signed statement that the oral explanation in respect of the CFA, the Regulation 4 advice, had been given by a solicitor. In fact the large majority of the explanations had been provided by Mr Powney.

83. In his statement of 4th August 2004 Mr Pulman stated that he believed that *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* were aware that Mr Powney had been instructed to give the necessary oral advice.

84. A number of the partners countersigned the CFAs. In the first response dated 14th June 2005 *[SECOND RESPONDENT]* stated that he first became aware that Mr Powney had provided the Regulation 4 advice to the clients and that the documentation indicated that Mr Pulman had done so when he attended a costs conference with Counsel in March 2002.

85. RPC in its letter of 29th September 2006 confirmed that that was a mistake and the correct date of the conference was 17th March 2004. *[SECOND RESPONDENT]* stated that at the conference it was concluded that the fact that Mr Powney had given the Regulation 4 advice rather than Mr Pulman was not regarded as a problem as a consequence of the decision in Sharratt v London Central Bus Ltd. He stated it was unnecessary for a solicitor to give the advice, Mr Powney was entitled to give the advice and the file should have recorded that he had done so.

86. In the letter of 14th June 2005 *[THIRD RESPONDENT]* stated that he was sure that he did not know at the time that Mr Powney was giving the Regulation 4 advice to new

claimants but that had he known he might well have considered it acceptable. RPC in their letter of 29th September 2006 clarified that *[THIRD RESPONDENT]'* comment in that regard referred to the acceptability of Mr Powney giving the oral explanation rather than the acceptability of the file recording that the advice had been given by Mr Pulman when it had in fact been given by Mr Powney.

Supervision

87. In his statement of 4th August 2004 Mr Pulman indicated that he did not feel he was sufficiently experienced to deal with the case on his own, specifically as he had no experience of public funding or CFAs. He said that at times he felt under enormous pressure due to his lack of experience.

88. During interview on 4th August 2004 Mr Pulman made a number of allegations relating to inadequate supervision and ineffective management by the partners in relation to the PO v B matter. These allegations were detailed in a document exhibited to the Report.

89. During interview Mr Pulman also made the following allegations:

(a) when the case reached a crucial stage of taking proofs of evidence from the claimants, it was inappropriate for the firm on the basis of a decision made by *[SECOND RESPONDENT]* to use undergraduates on summer vacations for that task. Mr Pulman said he felt this task needed skilled and experienced staff in order to obtain clear evidence regarding their claims;

(b) he had his own caseload on top of this case and was supervising another fee earner;

(c) he felt "let down that he did not get the right guidance, direction, supervision and support from the partners and it should have been clear to *[SECOND RESPONDENT]* that I was struggling with the CFAs."

(d) normally CFAs were approved by a panel of the firm's partners but the CFAs in relation to this case were not so approved. He did not know why that was so and hoped that someone on the panel would have said that they needed an experienced partner to deal with it.

90. Mr Pulman was asked by the Investigation Officer whether he had indicated to any partner of the firm that he was struggling and needed support to which he said "you do not say that sort of thing at Hugh James".

91. In the firm's response of 14th June 2005 they responded to the points raised by Mr Pulman. They indicated that Mr Pulman was properly supervised, was regularly in contact with the partners to discuss issues, *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* were available and Mr Pulman had access to and support and guidance from other partners as well as other forms of know how and support from other fee earners. They said that Mr Powney was well organised, hard working and well equipped to undertake the "leg work" necessary. Mr Powney had however no costs experience and Mr Pulman should not have looked to Mr Powney for advice on

costs. By the time the case had grown in magnitude when the new claimants arrived there was plenty of time for Mr Pulman to become familiar with actions of this sort under the supervision and guidance of *[SECOND RESPONDENT]*.

92. They also stated that by October 2002 when Mr Pulman falsified the dates on the file copy documents he had been qualified for five years and ten months. It was not obvious that Mr Pulman was not coping. He had ample opportunity to raise any issue with the partners and the firm had more experience than most in running these actions. *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* believed that Mr Pulman was aware that he could have asked for a rapid increase in resources and manpower if he had required it. The only inadequacies in the action were the decisions of Mr Pulman to create false copy file documents and then attempt to conceal what he had done. They stated:

> "No amount of reasonable supervision can prevent a rogue employee from falsifying documents in this manner."

93. In all the circumstances *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* did not consider that there were any inadequacies in supervision that led to the clients' interest being harmed or potentially harmed.

94. Mr Pulman had provided further comments regarding his allegation of lack of supervision by letter dated 29th September 2006. He said as follows:

(a) whilst he was regularly in contact with *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* it was always at his initiation. He did not recall anyone supervising his work;

(b) good supervision included regular set appointments to review key issues, there was no case plan and he was expected to run the case on his own;

(c) there were no others he could approach for advice as *[THIRD RESPONDENT]* and *[SECOND RESPONDENT]* were the firm's multi-party litigation specialists;

(d) he did not look to Mr Powney for costs advice;

(e) This case was not his only case. When he joined the firm in 1999 he was supposed to work in the commercial department. On the first day he joined the firm he was asked to take on the caseload of another solicitor who had decided to leave. That solicitor was not replaced and he was asked to supervise a newly qualified solicitor and later a trainee.

(f) Mr Pulman was given the PO v B case on his first day and was told it needed some action as there was a risk of the claim being struck out. He stated that it was clear *[SECOND RESPONDENT]* had little time to deal with the proper supervision of the file even then.

(g) he considered that he should not have been left to deal with the CFA element of the case as this was a new and developing area and should have been partner led.

(h) the solicitors acting for the Defendant were all very experienced lawyers;

(i) both he and Mr Powney worked hard;

(j) at times he dealt with queries by the media. He expressed concerns that he was not experienced or senior enough to respond to newspaper questions and do radio and television interviews to which he said *[SECOND RESPONDENT]* indicated he should not worry and *[SECOND RESPONDENT]* did not offer to assist;

(k) he conducted a number of meetings within the local community which were difficult and challenging due to the strength of feeling. *[SECOND RESPONDENT]* did not offer to assist. His experience of supervision at Hugh James was different from previous firms there being no formal supervision procedures in place other than to ask for help when required.

95. Mr Powney in his statement of 27th September 2006 provided comments in relation to supervision.

(i) he indicated that the files were under daily review by Mr Pulman, he saw *[SECOND RESPONDENT]* on a regular basis and if Mr Pulman was unavailable Mr Powney would go and see *[SECOND RESPONDENT]* who had an "open door" policy. This was in line with the informal culture at the office. Mr Powney regarded *[SECOND RESPONDENT]* as being the main partner with the overall responsibility for the case.

(ii) *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* had full workloads but both he and Mr Pulman had access to them if required. Mr Pulman as a senior associate with the firm was responsible for the conduct of the case.

(iii) he believed that they had sufficient resources/support to deal with the requirements of the case and on no occasion did Mr Pulman tell him that they needed additional help. Mr Powney did not consider that the students engaged by the firm did not have aptitude for the work they undertook.

96. RPC provided further representations in their letter dated 29th September 2006 setting out Hugh James' system of supervision and concluding that "clearly *[SECOND RESPONDENT]* in the [B] action played a greater role in Hugh James' system of supervision than [*THIRD RESPONDENT*]".

Witness statement of *[SECOND RESPONDENT]* (allegation (vii))

97. *[SECOND RESPONDENT]* prepared and signed a witness statement dated 29th March 2004 pursuant to a directions hearing which was part of the Detailed Assessment Proceedings before the Supreme Court Costs Office in relation to the bills of costs.

98. The statement concluded with a Statement of Truth. At paragraph 6 of the statement *[SECOND RESPONDENT]* stated that the date on the CFAs reflected the dates on which the individual files were opened at their offices. He said that this would have been within a very short time of the initial consultation with the individual claimant when they first instructed the firm to represent them. *[SECOND RESPONDENT]* did not refer to the issue of the falsely dated file copy letters and attendance notes which by the date he signed the witness statement on 29th March 2004 were within his knowledge.

99. *[SECOND RESPONDENT]* stated that following the conference with Counsel on 17th March 2004, they proposed to deal with a number of the concerns, such as the fact that all advice had been given by Mr Powney instead of Mr Pulman, by way of a detailed statement to be filed with the Court, explaining what had occurred so as to make sure that all parties were fully aware of the circumstances prior to the assessment process. *[SECOND RESPONDENT]* stated that the proposed statement discussed at the conference was overtaken by later events, because on 19th March 2004 he was told for the first time that there was falsely dated file copy documentation. He asserted that the 29th March 2004 statement was merely to maintain the position, whilst consideration was given to how Hugh James should deal with the Detailed Assessment Process now that they were aware of the problems with the falsely dated file copy documentation.

100. RPC in their letter of 29th September 2006 raised further comment and said:

(i) the statement was not setting out the entirety of the claimants' evidence on the execution of the CFAs;

(ii) *[SECOND RESPONDENT]*'s remarks in the statement dealt with the sequence of events when the CFAs were executed with a view to commenting on their validity. They believed his account of events to be accurate and complete "albeit a brief one";

(iii) The statement could and most probably would have been amplified as and when the claimants submitted their evidence in final form for a contested hearing;

(iv) The falsification of documents was not material to the account of events in the statement. They accepted that the falsification of documents would be relevant to the assessment proceedings in a wider sense but stated that this would depend on the motives of Mr Pulman which they said were unclear.

101. The firm's letter of 14th June 2005 provided explanation regarding the firm's subsequent decision to discontinue the costs claim and Detailed Assessment Proceedings. The firm wrote:

> "…If the Detailed Assessment were to continue then it was inevitable that the false dating of the file copy documentation would come out.

> If a court were to conclude that Ralph Pulman, by his creation of false documents, intended to mislead B then this could potentially lead not only to the tainting of the entire costs recovery but also put in peril the settlement.
>
> In consequence, we took the decision to protect our clients' interests by discontinuing the Detailed Assessment.
>
> This decision also meant that we were deprived of any chance of recovering our costs. This means Ralph Pulman's actions in falsely dating the documentation have cost us well in excess of £1,000,000 to date.
>
> But for the falsely dated file copy documentation, we would have proceeded with the Detailed Assessment and, we believe, recovered substantial costs. We also would have seen off B's allegations of dishonesty and conspiracy. Those allegations are based on an incomplete understanding of the circumstances behind implementing the conditional fee agreements and they could have been refuted if we had been able to provide a full account of the relevant events. However, we could not do so because it would have led to B finding out about the false file copy documentation. This, in turn, led to our discontinuing the Detailed Assessment in an abrupt and unexplained manner and that has unavoidably reinforced B's suspicions."

The Submissions of the Applicant

102. The Applicant in his Rule 5 Statement had alleged dishonesty against *[SECOND RESPONDENT]* in relation to allegation (vii). The Applicant sought leave of the Tribunal not to proceed with the allegation of dishonesty in the light of that which was contained in the composite witness statement served by the Respondents in October 2008. There was detailed reference in the composite witness statement to the knowledge of others and to the drafting of the statement by Counsel and in the light of the subjective test forming part of the test for dishonesty in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 the Applicant sought leave to amend allegation (vii). The Applicant however maintained that it had been right to raise the issue of dishonesty in the light of the matters which had been found during the investigation. This amendment was approved by his Tribunal.

103. In the submission of the Applicant the CFAs were "backdated". The Applicant had been criticised for the use of that word by those representing *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* but the word properly described what occurred and had in fact been used by the firm when reporting the matter. The Tribunal was referred to the firm's letter to The Law Society of 14th May 2004. Similarly the word was used by NN in their letter to The Law Society of 4th June 2004.

104. Detailed Assessment Proceedings had been commenced. In view of the issues being raised by the Defendant a directions hearing was fixed for 1st April 2004. In their letter of 4th June 2004 NN wrote:

> "Directions hearing 1 April 2004

> B alleged that Hugh James had backdated the CFAs and that a prima facie case of forgery within the meaning of the Forgery and Counterfeiting Act 1981 was made out. On that basis, B issued and served an application dated 18 March 2004 for various orders dealing with, among other things, disclosure of certain categories of documents and responses to our Requests for Information. Furthermore, B applied for an order that, given the seriousness of the allegation, the detailed assessment be moved from the Supreme Court Costs Office to the High Court.
>
> Hugh James' case
>
> A witness statement was served by *[SECOND RESPONDENT]* dated 29th March 2004 (in response to B's application and bundle of evidence) in which *[SECOND RESPONDENT]* admitted for the first time that the CFAs "were dated other than when they were signed" i.e. the CFAs were backdated. It should be noted that it was only after seeing the irrefutable nature of B's evidence that *[SECOND RESPONDENT]* made any concession about the dates on which the CFAs were actually sent out to the claimants for signature. Until that point the CFAs were being relied on as if they had been executed by the parties on the stated date."

105. The generic bill claimed in excess of £1,000,000 in respect of generic costs alone. The bill had been drafted by Mr Cooper. The accuracy of the generic bill had been certified by *[SECOND RESPONDENT]*. *[THIRD RESPONDENT]* had signed individual bills certifying their accuracy. NN made reference to one of the claimants in the group litigation, Mrs C, who had volunteered her correspondence from Hugh James which confirmed that her CFA and terms and conditions of business were only sent out to her under cover of Hugh James' letter dated 16th October 2002 and were not signed until December 2002. The assertions of forgery and fraud by B were perfectly clear and there could have been no doubt in the minds of the Respondents what was being said against them. It was in terms of preparation for the directions hearing referred to above that *[SECOND RESPONDENT]* prepared his witness statement of 29th March 2004. In his statement *[SECOND RESPONDENT]* wrote:

> "We accept that the Conditional Fees were dated other than when they were signed but we contend that the Conditional Fee Agreements are enforceable. This is a matter of legal argument rather than a factual dispute."

What was being advanced was that it was acceptable to backdate documents in the way which had been done because it gave retrospective effect to the agreements. A different view had been advanced in Hugh James' letter reporting the matter to The Law Society when they had made reference to the backdating of the CFAs and the file documents and described the same as representing prima facie serious misconduct on the part of Mr Pulman and Mr Powney. In the submission of the Applicant it was not acceptable to backdate documents. The backdating of a document was the creation of a document which was not what it purported to be i.e. an agreement executed on the backdate. In fact it was an agreement executed on a later date. There was never any intention for the CFAs to have retrospective effect.

106. The Tribunal was referred to the comment of *[SECOND RESPONDENT]* in Hugh James' letter to the Investigation Officer dated 14th June 2005 in which *[SECOND RESPONDENT]* said he would not have been able to approve any suggestion that the Conditional Fee Agreements be dated on the date when the client first contacted the firm. If it had been the intention that the CFAs should have always had retrospective effect, there would have been no reason for *[SECOND RESPONDENT]* not to agree with the approach being adopted by Mr Pulman. All Mr Pulman would have had to do when he sent out the CFAs in October 2002 would have been to write to the clients saying, "Please sign and date your CFA but it is intended to have retrospective effect for the avoidance of any doubt."

107. The Applicant's submissions regarding the backdating of CFAs were supported by the Court in the case of John Holmes v Alfred McAlpine Homes (Yorkshire) Ltd [2006] EWHC 110 (QB):

> "Mr Wilkinson submitted that the agreement was on its face, retrospective. That is incorrect. It was not retrospective: it was backdated, which is a very different thing. A properly drafted agreement would have borne the date on which it was executed, but would have expressly provided for its application to work done from the prior date agreed by the parties. The written agreement in this case was misleading."

108. The Applicant had accepted that in certain circumstances provided it was done properly and made expressly clear on the face of the documents there was scope for a retrospective CFA. This was not what had been done in the present case. It had further been said in the case of Holmes:

> "I would emphasise, however, that the backdating of documents as was done in this case is generally wrong. It is wrong to seek to give an agreement retrospective effect by backdating it. If it is agreed that a written agreement should apply to work done before it is entered into, it should be correctly dated with the date on which it is signed and expressed to have retrospective effect, i.e. to apply to work done before its date. Backdating is liable to mislead third parties, and is liable to lead to the suspicion that it was done in order to mislead third parties, including a court before which the agreement is to be placed. The dangers may be seen in the claimant's bill of costs. Part 2 lists "work incurred by Messrs Stewarts prior to the entering of a Conditional Fee Agreement". The costs draftsman seems to have taken the date of entering into the agreement as the date it bore, since Part 2 lists no work done between 15 July and 25 August 2000. Backdating is at best due to incompetence or lack of thought and at worst to dishonesty. It should not be done."

It was submitted with respect that there was no magic in the Learned Judge's words. The Court was stating what any solicitor should have appreciated was the position. Those representing *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* appeared to recognise the distinction between a backdated CFA and a retrospective CFA, albeit with a degree of understatement in their letter of 29th September 2006 when they wrote:

> "We agree in part with this although we accept that the CFA documentation should have made it clearer that the agreement was executed on one date and its effect was intended to operate back to an earlier one".

109. Whether a CFA could in fact have a retrospective effect was not the essential point. The essential point was that it was misleading to backdate the agreements as done by Mr Pulman. It was no answer to an allegation of misleading that in fact the result could have been achieved without misleading and that the documents could have been given retrospective effect had they been properly drafted. In this case that did not occur. Mr Pulman had accepted that it was wrong and dishonest to act as he did.

110. In relation to the signing of the bills of costs it had been accepted that the generic bill had been signed by *[SECOND RESPONDENT]* together with certain individual bills and that *[THIRD RESPONDENT]* had also signed a number of individual bills. It had been accepted in Hugh James' self-reporting letter that the bills were materially inaccurate in that they did not refer specifically to the backdating of the CFAs. In RPC's letter to The Law Society of 12th March 2007 they had written:

> "Our clients have said before, but we repeat, that there can be no doubt that the bills' narratives should have stated that these were retrospective CFAs, that they were signed in the period from October to December 2002 but with effect back to the start of the clients' retainers. Instead the generic bill narrative said:
>
> > "This bill is divided into four parts. The first part deals with work undertaken to the 26th April 1999 when the Civil Procedure Rules came into force. The second part deals with work undertaken to the 6th September 2001 on which date the last of the first batch of claimants entered into conditional fee agreements. The third part of the bill is between the 6th September 2001 to the 31st January 2002 when the remaining claimants entered into conditional fee agreements."
>
> Our clients accept that this wording was ambiguous and therefore mistaken."

To suggest that the wording was "ambiguous and mistaken" was to underestimate the reality of the position which was that the wording was inaccurate and misleading.

111. In fairness, in their letter of 14th June 2005 Hugh James had written:

> "We accept that some aspects of the implementation of the conditional fee agreements went wrong in this case. We acknowledge that:
>
> 1. The conditional fee agreements could and should have been implemented in April 2002 rather than October 2002;
>
> 2. The conditional fee agreement should have stated on its face that it had effect back to the start of the client retainer;
>
> 3. The conditional fee agreement should not have referred to Hugh James Ford Simey;

4. The interviews with the clients to discuss the conditional fee agreement should have been accurately documented;

5. A more consistent approach to dating the terms and conditions of business should have been adopted by the fee-earners;

6. There were some administrative errors in the naming of clients on the conditional fee agreements……..

Of much greater significance is Ralph Pulman's decision to create falsely dated file copies of correspondence and attendance notes during October and November 2002".

112. The Forensic Investigation Report referred to the file produced subsequently. While an explanation had been given as set out in the Report as to where the file was, the Investigation Officer noted that no explanation had been provided about how this key file came to be placed within storage boxes rather than kept with the files to be transferred to the Cardiff office and then disclosed to The Law Society with others to which it belonged. *[SECOND RESPONDENT]*'s position was that he became aware of the backdated CFAs in March 2004. The documents in the new file however demonstrated that he was or should have been alerted to the position on an earlier date.

113. Amongst the documents in the file was NN's letter of 7th October 2003 to Hugh James. NN wrote:

> "…..assuming the CFAs are valid (which is not accepted) it appears that the maximum sum claimable against our client is a success fee of 90% with the remaining 10% (paragraphs a and b of schedule 1) failing for the claimants' account. If you disagree with the above interpretation please let us know on what basis.
>
> In your letter dated 23 August 2001 reference is made to the fact that you were considering CFAs for those who were not eligible for public funding. There is an obvious inconsistency between the contents of the above letter and the fact that a number of CFAs are dated prior to August 2001. In this regard we also note, for example, that the CFA for J S (claimant 129) is dated 2009. In light of the above points we repeat the request in our letter of 20 June 2003 for copies of the covering letters sending out the CFAs to the claimants and all other correspondence evidencing the date on which they were executed by the respective parties. We should make it clear that in light of the above inconsistency, the actual dates on which the CFAs were executed are in issue and we will be asking the court to review all relevant attendance notes and correspondence."

114. The attendance note of Mr Powney dated 7th October 2003 showed *[SECOND RESPONDENT]* giving Mr Powney advice. The Applicant submitted that *[SECOND RESPONDENT]* was alerted to the concerns of the Defendant as to the validity of the CFAs prior to signing the generic bill on 19th October 2003.

115. Also contained in the new file was NN's letter of 18th November 2003 to Hugh James chasing a response to their letter of 7th November. Mr Powney replied by letter of 21st November 2003 to NN and stated:

> "We refer to our letter of 23 August 2001 and accept that a number of the CFAs are dated prior to August 2001. We do not accept that there is any inconsistency in our letter. We would remind you that the Court of Appeal have made it clear in a number of recent judgments that paying parties are not entitled to go on a "fishing expedition" unless they can provide conclusive evidence but (sic) the CFAs are unenforceable…"

The letter indicated that the CFAs had not been executed prior to the date of that letter yet as NN pointed out there were at least 46 CFAs which predate the letter of 23rd October 2001. The letter of 21st November 2001 was a detailed response to a complex letter and it was reasonable to suggest that Mr Powney, a clerk, would have sought a partner's advice and input prior to sending it out and this was supported by Mr Powney's attendance note (paragraph 74 above).

116. The Tribunal was referred to further documents supportive of the fact that *[SECOND RESPONDENT]* was involved in consideration of the bill and the points being raised by the Defendant in the letter of 7th October 2003. The Tribunal's attention was drawn to the timing of the service of the bills of costs in relation to the correspondence referred to above between NN and the firm.

117. These raised concerns as to why having been alerted to the points being raised by the Defendant concerning the CFAs as clearly expressed in the correspondence from NN, together with his involvement in the drafting of the letter of response, *[SECOND RESPONDENT]* did not make further enquiries prior to his signing the generic bill.

118. In the composite witness statement *[SECOND RESPONDENT]* had said:

> "As regards my role in checking the Bills. I can remember Colin Powney bringing the generic bill of costs to me for signature. This would have been on or about 19 November 2003. I can remember discussing with him whether it was accurate and during our first meeting Colin felt that there were a number of inaccuracies. I therefore asked him to check the generic bill, make any amendments that he felt necessary, and bring it back to me. In checking and considering the generic bill, I was concentrating on the actual figures within it. I was in fact checking the costings of the generic bill, i.e. the charging rates, the total sums involved, and so on. Some time after I signed the generic bill I recall Colin Powney bringing to me a number of client bills for signature.

To the extent that the above was *[SECOND RESPONDENT]*'s checking and enquiry it was inadequate. The Tribunal's attention was drawn to the certification on the end of the bill of costs:

> "I certify that this bill is both accurate and complete and that in relation to each and every item included in all parts of the bill the costs claimed herein do not exceed the costs which the Receiving Party is required to pay my firm".

119. The Tribunal was referred to the judgment of Master O'Hare at the directions hearing dealing with the bill for generic costs and in particular to the following passages:

> "The Defendants allege that, in most if not all cases, the dates given are false, that therefore the documents are forgeries, and that their use in claiming costs in these proceedings amounts to an attempt to defraud the Defendants……
>
> By his witness statement dated 29 March 2004 *[SECOND RESPONDENT]* submits that the CFAs are enforceable and valid in law. In view of the gravity of the allegations being made I think it appropriate that I should set out in full paragraphs 5 to 9 of that statement.
>
> > "5 It is agreed that all the claimants in the original O action had the benefit of public funding. It is also the case that the claimants in the second D actions did not have the benefit of public funding and, therefore, their claims proceeded by way of conditional fee agreements.
> >
> > 6. I would make clear now that the claimants accept that the dates which the CFAs bear are not the dates on which they were signed. The date on the CFAs reflect the dates on which the individual's file was opened at our offices and this would have been within a very short time of the initial consultation with the individual claimant when they first instructed this firm to represent them in action.
> >
> > 7. It is our case that the CFAs are enforceable and valid in law. The claimants had instructed us to represent them in the group action and there was an immediate oral retainer in place that confirmed that we would act for them, either under public funding, or if not, by way of a conditional fee agreement. This was evidenced in the letter that appears at tab 35, page 283 of Mr G's witness statement [a witness statement relied on by the Defendants]. Once it became clear that public funding was not available we entered into the conditional fee agreements with the claimants covering the whole period of their instructing us from their initial instructions to completion of the case as agreed at the outset.
> >
> > 8. Efforts were made to obtain after the event insurance but such insurance could not be obtained. This is reflected in the CFA.
> >
> > 9. The dates on the terms and conditions were inserted by each claimant. I believe these dates reflect the date on which each client signed the C FA and terms and conditions but there might be instances where a claimant has inserted a different date."

> The bill in this case slightly exceeds £1 million and I am told that the further bills covering the individual costs of each claimant amount to another £1 million…
>
> The six issues which have been identified are as follows:-
>
> (i) The validity of the CFAs: i.e. whether or not the retainers are rendered unenforceable by reason of backdating…

The Defendants say that an order for cross-examination of *[SECOND RESPONDENT]* and Colin Powney is appropriate in any case because the documents which will be before the court at the hearing will include evidence by them in the form of their signatures to the bills of costs (*[SECOND RESPONDENT]*) or the reply to points of dispute (Powney). Reliance was placed upon the well known dictum of Henry LJ in Bailey v IBC Vehicles Ltd [1998] 3 All ER 570:

> "RSC Order 62, rule 29(7)(c)(iii) requires the solicitor who brings proceedings for taxation to sign the bill of costs. In so signing he certifies that the contents of the bill are correct. That signature is no empty formality. … The signature of the bill of costs under the rules is effectively the certificate by an officer of the court that the receiving party's solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client under a contentious business agreement … and the other side of a presumption of trust afforded to the signature of an officer of the court must be that breach of that trust should be treated as a most serious disciplinary offence."

120. To their credit in reporting the matter to The Law Society, *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* had accepted that the bills were materially inaccurate.

121. The Tribunal was referred to the letter of 11th December 2003 from NN for the attention of *[SECOND RESPONDENT]* specifically raising the issue of the dates on which the CFAs were entered into and also the attendance note of 15th December 2003 indicating that *[SECOND RESPONDENT]* and Mr Pulman had joined the meeting which was taking place between Mr Powney and Mr Cooper. Mr Powney's attendance note stated:

> "GMM then brought up when he feels that we should have money from B and Simon believes that it will be sometime in February that they will have to pay the first instalment.
>
> We discussed the Conditional Fee Agreements and Simon said that there is a case which will assist us on those and he is not that concerned about the points that [NN] are making because even in the case that they are referring to about there being a genuine issue we have not been provided with any evidence at all to cooperate [sic] what they are saying. If the evidence that they have is inadmissible then obviously they will not be able to use this in Court. The worst that could possibly happen if we were to lose the CFAs is the fact that we would lose the susses [sic] fee claimed."

122. The Tribunal was taken to further documents all dated January 2004. The Applicant submitted that the sequence of documents from 7th October 2003 should be viewed against the background of the suggestion by *[SECOND RESPONDENT]* that he only became aware in March 2004 of the backdating of the CFAs, his concerns, having signed the generic bill, to explore the position and the circumstances in which the file from which the documents came had come to be placed with other files and then subsequently produced to The Law Society.

Supervision

123. The firm's clients were advised to seek new solicitors due to the conflict between the interests of the firm and the client's interests as the Defendant had indicated an intention to apply to the Court to set aside the mediation settlement. Consequently if there had been inadequacies in the supervision of the fee earners in relation to this matter, such had adversely affected the manner in which the case was conducted and caused or contributed to a situation where not only had there been breaches of Rule 13 of the Solicitors Practice Rules 1990, but also the best interest of the clients had been prejudiced.

124. There had been a failure on the part of *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* to supervise Mr Pulman adequately. At the time of the group litigation order made in October 2001 Mr Pulman had been qualified just under five years. The Tribunal was referred to Mr Pulman's comments in relation to supervision and in particular to his comments in his letter of 11th November 2008 in which he stated:

> "I have tried to assist the disciplinary process as best as I have been able. Whilst I make no attempt to excuse my conduct or lessen the penalty I should bear, I remain of the view that I was inadequately supervised. I believe that a proper structure and system of supervision would have prevented me from acting as I did. Regardless of however mature or capable I appeared to be, there can never by any substitute for supervision.
>
> Given the specific lack of supervision referred to in my evidence in this matter I believe it is clear that there were crucial occasions when I was abandoned. Supervision is a process that prevents mistakes and ensures that key aspects of a case are conducted properly for the benefit of the client. Supervision protects everyone serving the client. *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* believe they provided adequate supervision as I was able to go to them whenever I needed to. It is my submission that neither *[SECOND RESPONDENT]* or *[THIRD RESPONDENT]* had any proper regard to the process of supervision or how the process should be implemented in a litigation department. I further submit that those supervising *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]*, namely the incumbent managing and senior partners, had any proper regard to the process of supervision throughout the firm.
>
> *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* have stated that I was lazy and avoided responsibility. This is not a complaint that was ever

made to me directly during the period of my employment. Had I been supervised properly, this would surely have been obvious and a matter that required immediate intervention".

125. While the firm's comment in its response of 14th June 2005 about a "rogue employee" might be correct to some extent, adequate supervision could and would have revealed the problems with the files. In March/April 2002 *[THIRD RESPONDENT]* had told Mr Pulman to get on with the CFAs. A review of the files or of a sample of them during April to September 2002 would have shown that the CFAs had not been done. Guidance could have been given to Mr Pulman as to how to progress matters. If the files had been reviewed post October 2002 the existence of the purported April 2002 letters would have been picked up as they would not have been there at the earlier review and alarm bells would have rung. This was one example of how a system of reviews would have been well advised. The Applicant submitted that the partners should have been proactive in the supervision offered, not reactive.

126. The Rules on supervision were not prescriptive. Supervision should be appropriate to the fee earner concerned, the area of work involved and be in full consideration as to whether the fee earner had the appropriate qualifications, skills and a manageable caseload. On any view this litigation was involved and complex and should have required the input and experience of more senior solicitors.

127. It was not necessary for each and every criticism raised by Mr Pulman to be proved for the Tribunal to find inadequate supervision in respect of this matter.

128. A basic supervisory step was the checking of incoming and outgoing post. In the response on behalf of the firm of 29th September 2006 RPC had said that all mail coming into the office was checked by partners and that another partner, not *[SECOND RESPONDENT]* or *[THIRD RESPONDENT]*, had that role in relation to Mr Pulman's incoming mail. By an email of 30th October 2006 however RPC had said that it had become apparent that Mr Pulman's incoming mail at the time was not checked by any partner. This was a matter of some concern given the assertion that a rogue employee could not be detected. If mail was checked an employee bent on deception might be intercepted. The Applicant was not saying that this would have happened in this case but it demonstrated the basic requirement as to the checking of post. There was no suggestion that Mr Pulman had intercepted mail and the checking of incoming and outgoing post might have alerted the partners to matters of concern. The suggestion that Mr Pulman was expected to contact *[THIRD RESPONDENT]* or *[SECOND RESPONDENT]* in the event of a difficulty overlooked the most basic supervisory requirement.

Allegation (vi)

129. Mr Pulman in his witness statement had confirmed that *[SECOND RESPONDENT]* had suggested that Mr Cooper be used to draw the bills.

130. *[SECOND RESPONDENT]* had asserted that the service was provided not by Mr Cooper but by a company owned by Mr Cooper's wife and that, Mr Cooper was self-employed. The words "employ and/or remunerate" were however to be widely interpreted. RPC had conceded on behalf of *[SECOND RESPONDENT]* in their

letter dated 29th September 2006 that *[SECOND RESPONDENT]* knew that Mr Cooper was a struck off solicitor. Mr Cooper and/or the company he worked for had been paid for the work undertaken for the firm in preparation of the bills. *[SECOND RESPONDENT]* had therefore remunerated Mr Cooper.

131. The fundamental purpose of Section 41 was to ensure that members of the public were protected from having their legal affairs conducted by a person employed or engaged in a solicitor's office who was himself a struck off or suspended solicitor and to preserve the good reputation of the profession as a whole.

132. To his credit *[SECOND RESPONDENT]* had acknowledged that he was aware that Mr Cooper was a struck off solicitor. In the submission of the Applicant *[SECOND RESPONDENT]* had facilitated, permitted or acquiesced in Mr Cooper being instructed to prepare the bills on behalf of the practice and in breach of s.41 of the Solicitors Act 1974 (as amended).

133. The Tribunal was referred to previous decisions of the Tribunal where the words "employer" and "remunerate" had been widely construed, in particular the case of Cunnew No 6134/1992, Coxall and Others No 8401/2001, Cook No 9624/2006 and Shah No 8447/2001.

134. The fact that the business was in the name of Mr Cooper's wife was not determinative of the issue of employment or remuneration as Mr Cooper's skills as the costs draftsman were being used, he was being kept busy and was recompensed for the work undertaken. There could be any number of reasons why the company was in the name of Mr Cooper's wife and the fact that he was a struck off solicitor might have been one. The Tribunal was referred to the composite witness statement of the Respondents in which *[SECOND RESPONDENT]* said that he knew that Mr Cooper was the main source of costs drafting expertise at the company and also said that the invoice issued by the company for the work done in drafting the bills in the case in question had been paid. The Tribunal was asked to note that the letter of 22nd May 2003 from the company acknowledging the instructions to prepare the generic bill of costs and the individual bills had been signed by Mr Cooper. In the light of the cases referred to above the Applicant asked the Tribunal to find the allegation substantiated.

[SECOND RESPONDENT]'s witness statement dated 29th March 2004

135. *[SECOND RESPONDENT]* had been aware at the time he signed the statement and certified it with a Statement of Truth that the CFAs had been backdated and that the letters and notes had been falsified. Even on *[SECOND RESPONDENT]*'s own acceptance of the case he had said he had become aware of the fact on 17th March 2004. The Applicant had however drawn attention to earlier correspondence and notes which suggested *[SECOND RESPONDENT]* might have been alerted on an earlier date.

136. *[SECOND RESPONDENT]*'s failure to deal with these matters in his statement was wrong and inappropriate.

137. It had been said on behalf of *[SECOND RESPONDENT]* that the witness statement was merely to maintain the position whilst consideration was given to how the firm

should deal with detailed assessment now that they were aware of the false documentation.

138. The Tribunal was referred to Hugh James' letter to the Investigation Officer dated 14th June 2005 in which it was said:

> "On 18 March 2004, *[SECOND RESPONDENT]* and Ralph Pulman met to review the action points that had been discussed at the conference. Later that afternoon, NN served an application notice and a statement from Mr G in support, as well as amended Points of Dispute. The gist of the application was that all of our costs should be disallowed on grounds that we …procured the making of false and misleading documents which purported to be conditional fee agreements... executed upon dates other than the dates upon which such agreements were in fact executed. This was the first time B had made allegations of dishonesty against Hugh James."

This was prior to *[SECOND RESPONDENT]*'s witness statement.

139. It was submitted that *[SECOND RESPONDENT]* facilitated, permitted or acquiesced in the Court being misled in that he failed to provide material and relevant information which was within his knowledge in his witness statement. The Tribunal was referred in detail to documents upon which the Applicant relied to support his submission.

140. *[SECOND RESPONDENT]* had conceded in the witness statement that:

> "I will begin by saying that I am in agreement that the issues are in relation to the common costs of the discontinuance, the question of the claimants' retainer with their solicitors, and the claim to the success fee…"

141. While *[SECOND RESPONDENT]* in his witness statement confirmed that the dates borne by the CFAs were not the dates on which they were signed, the fact of the falsely dated file copy letters and attendance notes were matters of relevance to the issues being determined and should have been disclosed by *[SECOND RESPONDENT]* in his statement. He had conceded he was aware by the date he prepared the statement of the fact of falsely dated file copy letters and attendance notes and made a conscious decision to omit reference to them within his statement. His omission amounted to reckless behaviour.

142. The Tribunal was referred to the letter of Hugh James of 14th June 2005 and to *[SECOND RESPONDENT]*'s statement that he began work on drafting his statement. There was no suggestion that the statement had been drafted, as was now known, by Mr Harvey (a partner in Hugh James) as evidenced by a number of documents to which the Tribunal was referred. Similarly, in RPC's letter of 29th September 2008 there was no reference of the fact that the statement had been prepared by someone other than *[SECOND RESPONDENT]*.

143. The lead up to the preparation of the witness statement needed to be considered in the light of the email of 24th March 2004 from Mr Harvey to *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* in which, although Counsel and Mr Harvey had

independently reached the view that backdating of the CFAs worked, concern was being expressed as to whether they could recover under the CFAs as a consequence.

144. Counsel had raised a query as to when the CFAs went out and on 29th March 2004 a reply was sent by Mr Asbrey (and his partner in Hugh James) to Mr Harvey:

> "Herewith the slight redraft of Gareth's witness statement see paragraph 1. In addition Ralph confirms all conditional fee agreements went out in October.
>
> Can you do the final amendments now? i.e. at your convenience."

Mr Harvey responded by email:

> "This is the "final" version of GMM's statement for him to sign today.
>
> We have dealt with sending out CFA in October 2002; oral explanation; meeting/conversation to sign; and partner signing. This deals with Friday's letter and we have ignored the wedding names bit as it is irrelevant once we concede backdating of CFAs."

145. Despite *[SECOND RESPONDENT]*'s acceptance in his statements that the dates on the CFAs were not the dates on which they were signed, a proposition was advanced that the CFAs remained enforceable and invalid in law. The issue of the false letters and notes of which *[SECOND RESPONDENT]* and indeed others were aware was in the submission of the Applicant of relevance to the retainer between Hugh James and their clients. The Tribunal was referred to the claimants' draft directions which stated that amongst other matters the following be determined as a preliminary issue "whether the retainers between the claimants and their solicitors are enforceable."

146. In their letter of 29th September 2008 however RPC had written:

> "We do not accept that the falsification of the file copy documents was material even to his limited account of events by *[SECOND RESPONDENT]*. He was describing "the mechanics of this arrangement" (at paragraph 10) for the signing of the CFAs. The file notes played no part in those mechanics as between the client and Hugh James. That was of course the issue at hand.
>
> This is not to argue that the file copies were irrelevant to the detailed assessment in a wider sense. However their relevancy depended entirely on the precise motivation for Mr Pulman's falsification of the documents. That was and remains unclear."

147. The Tribunal was also referred to the response of the Respondents to the Rule 5 statement of 18th June 2008 in which it was stated:

> "The difficulty for the claimants lay in the possibility that at some future stage in the detailed assessment the Costs Judge would ask to see (or would be provided with) the covering letters that had been sent with the conditional fee agreements. Hugh James only had versions of these letters with false dates to

> show to the Costs Judge. If they were produced to the Court then Hugh James would undoubtedly have had to explain to the Costs Judge that their dates were false but that the clients had nonetheless received correctly dated versions. Almost inevitably, that would have led to a further discussion between Hugh James and the Costs judge as to why the dates had been falsified. Hugh James would have argued that the actions of Mr Pulman in falsifying the dates were irrelevant to the enforceability of the conditional fee agreements but the Judge might well have taken the view that B had to be told of this. Once told, B could then be expected to exploit this information to the maximum extent. It was therefore the anticipation of this sequence of events that led, after careful deliberation, to Hugh James's decision to discontinue the detailed assessment."

148. The Tribunal was referred to the judgment of Master O'Hare in respect of the hearing of 1st April 2004 in which it was said:

> "I acknowledge that my jurisdiction to make penalty orders against solicitors in the circumstances of this case is limited to CPR 44.14, the wasted costs jurisdiction and its legal aid equivalent (Civil Legal Aid (General) Regulations 1989, reg.109). However I am not persuaded that this is enough to warrant a reference of any part of this detailed assessment to a High Court Judge. It seems to me that the proper course for the Defendants to adopt, if they wish to bring the fraud allegations to the attention of a High Court Judge, is to commence separate proceedings in the name of the claimants' solicitors. In my researches into case law since the hearing I have found two precedents for such proceedings: Re A Solicitor (1978) 122 Solicitors Journal 264 and Re A Solicitor [1983] CLY 3601. The latter case concerned a solicitor, Glanville Davies, who was struck off by an Order made by Vinelott J. The circumstances leading to that Order included a taxation in this office in which a bill of costs delivered by the solicitor had been heavily reduced. Several attendance notes produced in support of the bill were held by the Taxing Master to be fictitious."

The Defendants had requested that the matter be referred to a High Court Judge. The approach adopted by Master O'Hare and of the Defendants might have been very different had they been advised of the fact of the falsification of letters and attendance notes.

149. The judgment set out the disclosure sought by the Defendants and Master O'Hare said:

> "The correspondence and attendance notes relating to execution of the documents are relevant to the issues of backdating. They may tend to prove or disprove the improper conduct being alleged by the Defendants. In Hollins v Russell [2003] 1 WLR 2487 the Court of Appeal encouraged disclosure of CFAs but discouraged disclosure of attendance notes and other correspondence. Paragraph 220 of the judgment states:
>
> > "So far as matters of procedure are concerned, we consider that it should become normal practice for a CFA to be disclosed for the

> purpose of costs proceedings in which a success fee is claimed. If the CFA contains confidential information relating to other proceedings, it may be suitably redacted before disclosure take place. Attendance notes and other correspondence should not ordinarily be disclosed but the judge conducting the assessment may require the disclosure of material of this kind if a genuine issue is raised. A genuine issue is one in which there is a real chance that the CFA is unenforceable as a result of failure to satisfy the applicable conditions."

150. In the B case the view of the Defendants was that there was a genuine issue regarding the dating of the CFAs and the effect of that on the enforceability of costs. Master O'Hare had said:

> "At the hearing I sought to put pressure upon Mr Farber to accept that it is almost inevitable that the court will later put his clients to their election as to the documents now being sought. In doing so I had in mind paragraph 10.5 of the SCCO Guide which states as follows:
>
> > "The production of documents at a detailed assessment hearing may well cause substantial delay to that hearing… receiving parties should therefore consider in advance what voluntary disclosure to their opponents they are willing to make and, how such disclosure can be achieved before the detailed assessment hearing without substantially damaging any privilege they wish to retain. If necessary, directions can be made by consent. Directions can also be made providing split hearing dates or times so as to facilitate the orderly disposal of the points in dispute…
>
> I should also record that voluntary disclosure is frequently agreed in test cases in the SCCO (a list of which appears on the Court Service website) and that disclosure between the parties was agreed in R (Ahaelu) v Secretary of State for the Home Department….
>
> In all the circumstances I think it is appropriate for me to order the claimants to prepare and file (for my eyes only) a list of all the documents described in paragraph 19 above and at the same time to produce those documents for inspection solely by me in the first instance…
>
> I accept that, unless an amended bill and an amended Reply is subsequently filed *[SECOND RESPONDENT]* and Mr Powney will both have to attend for cross-examination. However, it is possible that those two gentlemen may part company with the claimants or the claimants' solicitors before the hearing, either because of the allegations now made against them or because of other reasons. Recent events have caused *[SECOND RESPONDENT]* to sign a witness statement substantially qualifying what is said in the bill of costs. It is reasonable to assume that Mr Powney also will be reconsidering his position. By making their application now, the Defendants are seeking to obtain the advantage of cross-examination whether or not the claimants wish to rely on the evidence of *[SECOND RESPONDENT]* and Mr Powney at the hearing."

151. The Tribunal was referred to the directions made by Master O'Hare. Shortly after the directions and the requirement to make disclosure to Master O'Hare, Hugh James withdrew the claim for costs.

Oral evidence of Mr Powney

152. Mr Powney gave evidence for the Applicant. He confirmed the truth of his witness statement dated 16th October 2008.

153. Mr Powney recalled receiving the letter of 7th October 2003 from NN. At the time it did not cause him concern as when the file was being costed by costs draftsmen the firm was being asked numerous questions by the Defendants and he had assumed that NN was on a "fishing expedition". Mr Powney had not felt able to answer the letter alone and would have gone to *[SECOND RESPONDENT]* as Mr Pulman was not there.

154. While he had been looking at all the points raised by the Defendants he would not have discussed them all in great detail with *[SECOND RESPONDENT]* as the latter did not understand much about CFAs. That was the reason the letter was forwarded to Mr Cooper who prepared an initial draft.

155. Mr Powney was referred to his attendance note of 21st November 2003. He said that the words "initial draft" would refer to the draft prepared by Mr Cooper but he had no greater recollection. He did not know if *[SECOND RESPONDENT]* had seen the final draft as the attendance note indicated that further amendments had been made.

156. On Mr Pulman's instructions Mr Powney had researched the dating of CFAs but at an earlier date prior to when the CFAs and terms and conditions had been forwarded to individual clients. He had not been asked to revise his research before the CFAs were sent out in October.

157. Mr Powney had done further research in January 2004 as shown by the attendance notes of 6th and 12th January 2004. His understanding from his research had been that retrospective CFAs were fine and could be dated when the client instructed the firm or when the file was opened.

158. Mr Powney did not have prior experience of civil work prior to being allocated to assist Mr Pulman. He had previously only worked in criminal law. He believed that the firm had information about CFAs on its intranet, which he would have read. Mr Harvey had also written a book on CFAs.

159. Mr Powney had been placed on gardening leave during the investigation by the firm and had then been taken to a disciplinary hearing where he had been given a final written warning by the firm. He believed this related to the backdating of letters and attendance notes.

160. The firm had then written a letter to the SRA about his conduct.

161. In relation to supervision *[SECOND RESPONDENT]* had started this case and so was involved from the beginning. Mr Pulman continued to work with *[SECOND RESPONDENT]* even though Mr Pulman was subsequently in charge of the case. Mr Powney reported to Mr Pulman on a daily basis. He could not say whether Mr Pulman was supervised by *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]*. Mr Powney was reporting to Mr Pulman and would occasionally see *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]*. There would be file notes of meetings but not of, for example, discussions in the corridor.

162. Very little work had been carried out on the individual files, work being mainly generic work. Once the CFAs were completed by the client they were kept in a plastic folder in Mr Powney's room with a copy on individual files. These were not printed off until October 2002. Mr Powney agreed that had someone looked at the file in April and September 2002 the file would have shown whether the CFAs had been dealt with or not. He could not recall when the CFAs were signed by the partners but believed that the vast majority was signed prior to the mediation.

163. CFAs were a new feature for everyone and *[SECOND RESPONDENT]* deferred to experts in the practice including at the time Mr Harvey. *[SECOND RESPONDENT]* had been principally looking at style rather than technicality when reviewing a response to NN as a result of the numerous features they raised to challenged the CFAs. CFAs had only come into existence shortly before Mr Powney joined Mr Pulman's team. There had been a large number of technical challenges by the Defendants' insurers.

164. Although this was Mr Powney's first involvement with civil litigation he found NN's attitude to be the most hostile he had ever been involved with even in criminal matters. A large number of queries made by NN were sent to Mr Cooper and they had been guided by him. In November an attendance note said *[SECOND RESPONDENT]* had referred the matter to Mr Harvey as well.

165. In relation to supervision *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* had an "open door" policy. If ever Mr Powney or Mr Pulman needed to speak to them they would always be readily available. There was a good friendly atmosphere in the firm and Mr Powney disagreed with Mr Pulman's assertion that he could not ask for help. Mr Powney had always asked for help and no-one had ever suggested that this would lower their view of him.

166. Mr Powney was referred to a number of attendance notes dated January and February 2002 indicating that Mr Powney had met with *[SECOND RESPONDENT]* to discuss the case. Mr Powney was not surprised at these and other similar entries. Mr Pulman had never said to Mr Powney that he thought the partners were providing inadequate resources or that he could not deal with the matter without more assistance. He did not think Mr Pulman had been overworked in the case, indeed he had quickly formed the impression that Mr Pulman was lazy. Mr Pulman had given Mr Powney the majority of the work that needed to be carried out on the file. He gave work on other matters to a trainee solicitor working with him. Mr Pulman was ambitious. On two occasions he was promoted. It was clear that he viewed the success of this case as his route to partnership. Mr Powney was referred to a memorandum to Mr Pulman of

11th February 2003 from a committee within the firm considering possible promotion for Mr Pulman in which it was said:

> "There is a feeling that you sometimes "pass the buck" with regard to work. Is this correct? Can you develop commercial litigation in Merthyr and, if so, to what extent?"

Mr Powney agreed with the view that Mr Pulman tended to "pass the buck".

167. In March 2004 Mr Powney had gone with Mr Pulman to see *[SECOND RESPONDENT]* to tell him that the letters and attendance notes had been backdated and placed in the files. The previous day an email had arrived from NN. They had obtained the file of one of the firm's clients whose husband had links with B. Mr Pulman had been out of the office and could not be contacted and *[SECOND RESPONDENT]* had not been in. *[THIRD RESPONDENT]* had been engaged. The following day Mr Pulman had arrived late but was fully aware of the communication from NN and Mr Powney had said that they had to go to see *[SECOND RESPONDENT]*. Mr Powney remembered clearly that Mr Pulman had said to *[SECOND RESPONDENT]* "Gareth, Colin has something to tell you." He had passed the buck to Mr Powney. Mr Pulman had said nothing further. *[SECOND RESPONDENT]* had been flabbergasted and Mr Powney had felt awful. Mr Pulman had panicked when he should have sent out the CFAs and terms and conditions to clients and for whatever reason he had not told *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* what he had done. Mr Powney had felt that Mr Pulman had let *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* down by his action and felt that he, himself, had also let them down.

168. In his response to The Law Society of 27th September 2006 Mr Powney had written:

> "the back-dating of the letters enclosing the CFAs was, therefore, undertaken without reference to me and the assumption made in question 2(a) i.e., that I backdated the file copies of the letters sent out in October 002 is incorrect."

Mr Powney said in evidence that Mr Pulman had emailed his secretary with the information he wanted to be sent out to clients but Mr Powney had been unaware of the instruction.

169. Mr Powney had further written:

> Further, I struggled to understand why Ralph wanted to backdate letters at a time when we considered CFAs could quite properly be dated to reflect the date when instructions were received."

That remained Mr Powney's position.

170. Generally speaking correspondence between solicitors and their clients was not seen by the other side. The clients already knew that the letters had been sent out in October 2002. The distortion of the file by Mr Pulman meant that only members of the practice would be misled as the file would give the impression that the letter enclosing the CFA was sent out in April 2002 as were the attendance notes. This

would give the impression that Mr Pulman had done what he was told to do at the time he was told to do it.

171. Mr Powney had not been aware that Mr Pulman had told Mr Powney's secretary that changing the dates was "for file audit purposes".

172. Mr Powney had regarded Mr Pulman as experienced, competent and on the verge of partnership. Mr Pulman had never said that he could not see the partners when he needed to or that the partners needed to give more help. Whenever assistance was needed it was given including both work experience students and other members of staff. There was informal but constant supervision by the partners.

173. The litigation in question was bulky but not technically difficult. B's aggression had been because they had no defence. In Mr Powney's view they were trying to bully the firm.

174. Mr Powney had attended the mediation. *[SECOND RESPONDENT]* had wanted the best possible outcome for the clients regardless of what happened to the firm's costs and said that costs should not get in the way of a settlement whereas Mr Powney thought Mr Pulman wanted the entire claim "wrapped up" at the mediation. Mr Pulman knew what was in the file whereas *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* could not know that the file had misleading documents in it.

175. Mr Pulman checked certain things done by Mr Powney including letters to the Court or the other side but not everything. Mr Pulman had gone on holiday before the end of the crucial deadline and had left Mr Powney to deal with everything. If there were problems Mr Powney would go to *[SECOND RESPONDENT]* or *[THIRD RESPONDENT]*.

176. Mr Pulman had told Mr Powney to put on certain documents that work had been done by him and in fact it had been done by Mr Powney. Mr Pulman said that this was because Mr Powney had done the work on his behalf.

177. In relation to the bill, Mr Powney confirmed Mr Pulman had made an important change to the narrative as drafted by Mr Cooper by changing the reference to claimants signing the CFAs to a reference to claimants entering into the CFAs.

178. At the time of Mr Pulman's actions in 2002 Mr Powney had not been aware of any personal problems of Mr Pulman at that time. He had given no sign of being unable to cope with pressure. No-one in the office saw more of him on a day to day basis than Mr Powney.

179. The practice did audit files from time to time. Some ten or eleven out of the 280 cases were legally aided and subject to the usual Legal Aid Board audit. Notice of such audits was given.

<u>Oral evidence of Mr Farber</u>

180. Mr Martin Farber of Counsel gave evidence on behalf of the Respondents. Mr Farber confirmed the truth of his part of the composite witness statement. Mr Farber said he was a commercial chancery practitioner with an ever-increasing costs practice.

181. Mr Farber explained the distinction between backdated CFAs and retrospective CFAs. The retrospective CFA would govern previous work. It would say it was retrospective and the date on which it was signed. This was now the usual practice. A backdated CFA in contrast was expressed to be made on an earlier date. At the time in question solicitors were struggling with CFAs. Many road traffic accident cases would settle after a few letters and clients would not return the CFA. Solicitors were grappling with how to get cover. In other cases clients would return the CFAs undated and Mr Farber was receiving telephone calls from solicitors about that problem. People were trying to find a way to do things.

182. A case at the time had said CFAs should not be rushed into while solicitors were doing their assessment. Solicitors had to advise on alternative forms of cover, for example household insurance cover, and the client would have to find out the position. There was uncertainty at the time.

183. Mr Farber accepted the basic premise that backdating would be now discouraged. In a case such as the B case the logistics of getting the CFAs signed might mean there was a large time lapse. Where everyone was in agreement common intention could have a retrospective effect. The CFA itself had to be in writing but the oral agreement was the common intention. The day the clients signed the CFA gave completion to the formalities.

184. Mr Farber said that he did not recall any mention being made of the dating of the Conditional Fee Agreements at any conference prior to the one on 17th March 2004. Mr Farber was referred to Mr Pulman's attendance note of 12th January 2004 of a telephone call from Mr Farber to discuss the current position regarding costs. Mr Farber said he tended to ring solicitors at the beginning of the legal term to see what was going on although he did not specifically recall Mr Pulman mentioning costs.

185. Mr Farber did recall a telephone conversation with Mr Cooper referred to in Mr Powney's attendance note of 27th January 2004.

186. Mr Farber recalled that this was a long conversation and he could remember only the gist of what was discussed. He remembered that he had no papers at the time and that they had discussed the case of Hollins v Russell regarding retrospective CFAs. Towards the end, Mr Cooper had mentioned backdating and Mr Farber had said that this was something which should not be done but the important thing was the common intention. The later attendance note of 28th January 2004 dealt with the same point. In the first attendance Mr Farber had expressed to Mr Cooper that one of the problems with the retrospective CFA might be the success fee. His recollection had been that the Chief Costs Judge had commented to this effect in a case so it was likely that Mr Farber had said this to the costs draftsman. He would have said that retrospective CFAs were a concept that the law would accept but would have said that backdating was not the way. In relation to the attendance note of 2nd February 2004 Mr Farber did not think he would have put the matter higher than that 'getting the success fee might be difficult.'

187. At the time of the telephone conference between Mr Farber and Mr Pulman on 4th February 2004 while Mr Farber could not recall what was in his mind he had been dealing with the question put to him over the telephone by Mr Pulman asking if it was possible to have retrospective CFAs.

188. Mr Pulman had written:

> "Martin took the view that as a matter of contract law, it was not uncommon to backdate a written agreement to the time when oral representations had been made. This was a matter that needed to be looked at more carefully but of itself was unlikely to invalidate the CFA agreements.

At that stage Mr Farber had not known how long had elapsed. It was only at the conference on 17th March that Mr Farber had really understood what they were dealing with and he had asked for a witness statement to get the facts. The witness statement had arrived but not in the detail he wanted.

189. Mr Farber could not recall what he had discussed with Mr Pulman in the telephone conference of 10th February 2004 but Mr Pulman's handwritten notes of that suggested that they had been talking it all through again.

190. Mr Farber said that as regards to the judgment in Hollins v Russell referred to by Master O' Hare (paragraph – above) correspondence and attendance notes were not determinative of validity. What was determinative was normal contractual principles. There could be common intention at the time of the agreement that it have retrospective effect. Common intention was the key. Mr Farber had seen no issue in this case regarding the concept of retrospective CFAs. Where as in this case there was a common intention it could be argued that backdated CFAs were sufficient.

191. Backdating was not a material breach of the regulations and there was no prejudice to clients. Possible prejudice to a paying party was not relevant to the validity. The fact a document did not have the right date did not mean it did not have effect. It would be necessary for that to show a breach of the indemnity principle. At the very least, the CFA would be valid from the date signed. If the Court had been against them they would have sought at least the base rate for that period. All these factors would have gone through Mr Farber's mind and he would have discussed them during the telephone conferences. He now knew however that there had been anxiety on the part of the solicitor who would have been hoping to hear that everything was alright.

192. Asked about the effect of signing CFAs after mediation Mr Farber said it was difficult to conceive of circumstances where after doing the job a solicitor would change the terms of his retainer as it would not be possible to define success in that case.

193. Mr Farber said that privileged material was a problem in costs disputes as the privilege was that of the clients and it could not just be waived by their representatives. Mr Farber accepted that, where there was an issue between the parties as to the dating of documents, correspondence and attendance notes would be

relevant in that they would give details of the actual date. He did not accept however that they should have been disclosed at directions.

194. The ordinary litigation procedure in this country was adversarial and that applied to costs hearings as well. There was no obligation to help the other side. Disclosure was not normally given in costs proceedings. The procedure was to produce documentation to the Costs Judge who could then put those producing it to an election either to disclose it to the other side or to prove it some other way. This stage had not been reached at the directions hearing in question. To suggest that at a directions hearing it was necessary to put in evidence to further the other side's argument was extreme and totally wrong. The same would apply to any proceedings, for example a summary judgment application.

195. At the conference on 17th March 2004 Mr Farber thought that the problem was that the firm could not identify the particular partners who had signed the CFAs. He had a faint recollection of being told that the CFAs had been put into the partners' rooms and they had signed them.

196. When the false dating of the attendance notes came out Mr Farber had felt that the argument as to common intention still remained sound. The Court had to decide whether the CFA as a contractual document was valid despite its date. The letter and attendance notes were not part of the contractual documents and did not affect the legal issue. Mr Farber could see however that the length of time would not make it any easier.

197. The substantive litigation had a degree of hostility which had surprised Mr Farber even at the mediation. He thought that if the claimants were successful in the first instance NN would take the matter to the Court of Appeal on all points including the backdating of the CFAs.

198. Mr Farber's recollection was that he only understood the extent of the backdating of the CFAs at the conference in March. If he had been told earlier he had not taken it on board. At the time they were on the cutting edge and might make new law in that the Court might make a decision that backdated CFAs could be valid back to the date of common intention.

199. These matters were established principles in different areas of law. CFAs were just contracts which were then subjected to various regulations. All Mr Farber had been doing had been applying established law to costs cases. This was a matter of contractual principle. Mr Farber was constantly involved in cases where law was being made.

200. Mr Farber was referred to the attendance note of 31st March 2004 which said:

> "MAH, grade A, speaking to Counsel. He has agreed that we are going to play it quietly and as short as possible because the longer he spends on the feet the more likely we are exposed to saying something we don't want to say."

This was the day before the directions hearing. Mr Farber said it went to the issue of misleading the Court. He had been able to see that the other side was making a big

case and was concerned not to rise to the bait or say anything to suggest that everything was alright with the dates. The other side had instructed Queen's Counsel. They presented a case which made the claimants' side sound dreadful. He had resisted the other side's application for mass disclosure.

201. Mr Farber had told Master O'Hare that the legal issue before him was whether the documents were valid despite the date and that in common law nothing prevented a retrospective contract. Mr Farber's recollection was that Master O'Hare agreed and indeed he recollected Master O'Hare saying he had previously upheld a retrospective CFA as valid.

202. Mr Farber was planning a major witness statement when all would be put to the Judge. The information could not be volunteered at a directions hearing as it would be a breach of privilege.

203. The issue of client confidentiality was always in Mr Farber's mind although he did not recall specific conversations on this. At the time of the directions hearing the clients had not been approached so it would have been wrong to disclose these matters. Further, approaching the clients would have been difficult as the firm was aware that there was a "mole". The issue of confidentiality would have been addressed by the time of the proper witness statement. The order for disclosure to Master O'Hare alone did not require a waiver of privilege.

204. At the directions hearing the Court had not been deciding the substantive issue. Master O'Hare could have sent the matter to the High Court after receiving the full witness statements. Mr Farber would have argued that the dates on the documents did not have any impact on the essential issue Master O'Hare had to decide namely the validity. Mr Farber had thought that *[SECOND RESPONDENT]*'s witness statement was satisfactory for the Directions hearing. He would not have acted if he thought the witness statement misled the Court. Mr Farber firmly refuted the suggestion that Master O'Hare had been misled.

205. Mr Farber had not made the application for interim payment nor been involved in its withdrawal. In large cases however interim payments were made in advance of the substantive hearing and that would have been the Court process at the early stages. After the directions hearing, having heard the way the case was put, Mr Farber had had little doubt that there had to be a serious investigation into what Mr Pulman had done. Mr Harvey knew Mr Pulman well and felt it was not appropriate for him to be involved. The other side had pitched the case high and made all sorts of allegations although Mr Farber had thought that most of the discrepancies could be explained. It was clear to Mr Farber that the wrong dating of the attendance notes was of immense embarrassment to Hugh James. To pursue a claim where that would come out would be difficult although he still felt the legal argument was sound. It was however sometimes necessary to look at the wider picture as well as the legal point.

206. Mr Farber said that the certificate a solicitor signed on a bill of costs certifying accuracy carried some importance and this had been dealt with in various authorities. In the case of IBC v Bailey the Court of Appeal said that the certificate was a very important statement. Mr Farber said that the citation of Henry L J in Bailey was the standard argument Counsel would apply when attacking on this point, but in Hollins v

Russell, a CFA case, Bailey had been distinguished and it had been said that Bailey applied to ordinary cases where there was just a challenge to amounts on a bill whereas Hollins applied to CFA cases. In Mr Farber's view the certificate related to amounts and hourly rates. It was difficult for a solicitor to certify any bill and say that there was no breach of the indemnity principle. Counsel spent hours and days looking at bills of costs and finding technical points of challenge. To look at a certificate and say that the solicitor was in effect guaranteeing everything in a bill was putting it too high. Mr Farber had seen countless regulatory failures and CFAs had gone under an indemnity basis but no-one had criticised a solicitor for signing the bill.

Oral evidence of Mr Harvey

207. Mr Harvey confirmed the truth of his contribution to the composite witness statement.

208. The letter of 14th May 2004 from Hugh James to The Law Society reporting what had occurred had been drafted by those advising the firm and its contents were true. The firm had reported the falsifying of attendance notes and letters as serious misconduct on the part of two employees, not the backdating of the CFAs. The reference in the letter to the CFAs was by way of context.

209. Mr Harvey would consider now that "retrospective" was a technical term for wanting the CFA to take effect on an earlier date than the date on which it was signed. Backdating was the colloquialism then of doing this. Mr Harvey was and had been clear that what had been reported to The Law Society was the change of dates on the letters and attendance notes. Backdating letters and attendance notes could mislead. Misleading however depended on the context and in respect of the CFAs there was a solicitor and own client agreement and a context within which that document was signed.

210. Clients had been told from the beginning that their claim would be either legally aided or done under a CFA. Clients knew what they were signing. Signing the CFA enacted what had been agreed to be done.

211. CFAs would not necessarily be shown to the other side or even to the Judge.

212. By later judicial authority the Senior Costs Judge had said that retrospective CFAs might not be able to recover a success fee before the date of signature. Mr Harvey was not aware that there had been any judicial authority on this point at the relevant time.

213. Mr Harvey would have preferred the CFA to set out clearly what had been done. This had been a bungled attempt by two individuals to affect a retrospective CFA. It had not been done appropriately but the clients had not been misled.

214. There had been a great deal of aggression from the other side and allegations of fraud and dishonesty.

215. Mr Harvey did not know why the CFAs in this case had not been considered by a Panel of Partners. The manual referring to such a Panel was directed at personal

injury cases which this was not. Further there were already two partners involved in this case. The procedure for approval by a Partner's Panel was related to whether or not the case was one the firm wished to take on. It was not an assessment of the CFAs.

216. *[THIRD RESPONDENT]* and Mr Harvey had told Mr Pulman to get on with the CFAs. Mr Pulman had discussed the matter with at least two partners. It would be unlikely that a file review would have followed so soon after guidance from partners. Mr Pulman was a senior solicitor who had been through an advancement process. He was not in-experienced but a senior associate. If the files had been reviewed in July or August Mr Pulman would have said that the matter was being attended to.

217. A senior solicitor of the Supreme Court had deliberately falsified documents. Worst of all, fantastic work had been done by him and others to win the case but what he had done might have put clients' success at risk.

218. Reviews were carried out on fee earners' files at the time.

219. Mr Harvey's biggest involvement had been in 2004 for the detailed assessment process.

220. As stated in the composite witness statement Mr Pulman met with Mr Harvey on 11th March 2004 to discuss the CFAs. At this point Mr Harvey believed that he knew the CFAs were backdated/retrospective but did not know about the falsification of the letters, etc.

221. Mr Harvey could not stress too much to the Tribunal the dawning horror in this case. Mr Harvey had initially thought that they were dealing with typical CFA challenges and fiercely contested litigation.

222. On 24th March 2004 Mr Harvey had sent an email to Mr Pulman stating:

> "In advance of a discussion Colin and I will have later can you help me?
>
> Do you know how many April/October letters and attendance notes there are? I note for instance that the woman turncoat has correctly dated letter."

By now Mr Harvey knew of the falsely dated papers on the file and was fact finding. He needed the full context. The additional questions in that email appeared to correspond with the letter from NN. NN had identified the particular claimant whose papers they said they had seen. At that stage NN did not know of the falsification of the attendance note of the meeting with PO or the extent of the falsified letters.

223. Mr Harvey did not know where the file containing documents including his email of 24th March 2004 to *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* had been. The partners had all made available their files and email folders. Mr Asbrey, who was an expert in costs, and Mr Harvey as an expert in CFAs, had been brought into the matter.

224. Mr Harvey agreed with Mr Farber that whether or not CFAs could be retrospective was a new point. CFAs were continuing to evolve, indeed new points were currently still being taken. Regulation 5 at that time required CFAs to be in writing and signed.

225. Mr Harvey's comment in his email of 24th March that "We all think this is salvageable but it will be hairy" was a very prescient description. Mr Harvey had thought that they were dealing with a challenge to the CFAs and his view had been that the Court would look at the CFAs in the full context of the agreement with the client. His view was that this was an issue to be decided by the Court. He thought that there was an argument for the Court to say that while things had not been done in the right way, the CFA would be found enforceable. "Salvageable" indicated that Mr Harvey thought the best result would be that the Court would allow the CFA from the date the client signed it.

226. Mr Harvey was still confused about Mr Pulman's motives which had appeared to have been an attempt to stop *[THIRD RESPONDENT]* and *[SECOND RESPONDENT]* seeing that he had not dealt with the CFAs. Mr Pulman and Mr Powney had tainted their attempt to create retrospective CFAs by what they had done to the file.

227. Mr Harvey had drafted *[SECOND RESPONDENT]*'s statement as he was by then conducting the matter with Mr Asbrey. He had drafted it on the clear understanding that Counsel would then look at it.

228. His comment to *[SECOND RESPONDENT]* in the 24th March email that "there is a professional obligation that goes with signature" referred to certifying the accuracy of the bill in the sense of, for example, whether hourly rates reflected what had been contracted with the client. There had been limitless challenges by paying parties to CFAs in recent years and it would be difficult to penalise a solicitor for the failure of the CFA on a technical breach. If the regulations had been breached Mr Harvey would not regard having signed the bill as a matter of professional misconduct, unlike, for example, stating false hourly rates or claiming to have done work which had not been done. The reference to "signature" in the email did not imply any reluctance on *[SECOND RESPONDENT]*'s part.

229. The comment in the email that "Colin still needs some convincing" was a reference to Mr Asbrey who was a Defendant lawyer with a more conservative approach but who would defer to Mr Harvey on CFAs.

230. At that time the firm required CFAs to be signed by a partner. This was not required by the regulations but was required by the firm.

231. In the email Mr Harvey had referred to the wrongly dated file copies of letters and attendance notes as "unfortunate to say the least". Mr Harvey had regarded it as horrendous. Mr Pulman had destroyed his career.

232. While still considering the CFAs to be enforceable the firm had been able to see that with NN's aggression what had been done could lead to problems for the clients. They had taken advice. If NN saw that a solicitor had falsified a document they would raise questions of the honesty of the solicitor and of the clients in the main action. The firm had put the clients' needs uppermost. There was a significant risk to

the clients. At the very least their money could have been frozen during the satellite litigation. The firm had done the honourable and correct thing and it should not count as a black mark against them that they had not proceeded with their costs' claim.

233. The situation had been awful at the time. There had been a need to get the whole picture. Mr Harvey had not even known about the falsification of the date of attendance note with PO until after the directions hearing.

234. Finding the PO note had been one of the changes after the directions hearing which made the situation look blacker. Mr Pulman had methodically worked through and falsified the documents. The partners now had time and breathing space after the directions hearing but before the preliminary hearing to take advice and consider the situation.

235. *[SECOND RESPONDENT]*'s statement had been to buy time and to assist the Judge in the directions. Mr Harvey had not seen the whole picture prior to the directions hearing which he had seen merely in the context of the CFA challenge. The decision to terminate the costs claim was done solely to protect the clients.

236. *[SECOND RESPONDENT]*'s statement sought to advance the validity of the CFAs. It was submitted to the Judge that the backdated CFAs might work. Mr Harvey had anticipated that there would be a disclosure order. He wanted to take the sting out of NN's allegations of fraud and the firm conceded that the CFAs had been backdated.

237. The letters etc were privileged documents which would need the consent of all the claimants. It was not possible to get the consent in the space of a week so they could not be disclosed at the directions hearing. Privilege had very much been in Mr Harvey's mind. Within CFAs privileged documents were not handed out.

238. Mr Harvey separated in his mind the legitimate attempt to make the CFAs work from the beginning with the stupidity of changing documents to make that work.

239. Mr Harvey had never seen such aggression as in this case. NN would have litigated any technical challenge on the basis that there was some intention to mislead. In this particular case they had "got lucky" not in relation to the CFAs but in relation to the documents surrounding them.

240. The Court had been told when the CFAs were entered into at the directions hearing. The Judge could have detached the fact that the solicitor had altered the file to persuade his seniors that he had done something from the enforceability of the CFAs. Because the documents were privileged they would not be disclosed without a Court order.

241. Although the partners had been aware of the falsified documents before the directions hearing they had not immediately suspended Mr Pulman and Mr Powney. They still had a duty to clients and suspension at that point would not have helped the clients. Mr Harvey denied that they had been retained in order to assist in the firm's claim for costs.

<u>Oral evidence of Mr Davies</u>

242. Mr Davies, a partner in Hugh James, confirmed the truth of his contribution to the composite witness statement.

243. Mr Davies had become involved in the matter when he received a telephone call on 19th February from Mr Pulman. Before the call no-one had spoken to Mr Davies about potential problems in the case. He was the head of the costs department and was used to dealing with issues regarding costs.

244. Mr Davies had written in his attendance note of the telephone call:

> "The only area of concern on the face of it is the date on the CFA is not the date that client would have signed it."

That concern could have been Mr Davies's or Mr Pulman's. Mr Davies was trying to understand as quickly as he could the facts and issues but was struggling to understand because of the way it was being communicated to him on the telephone.

245. Mr Davies had referred in his attendance note to £10,000 worth of generic costs being recoverable. He did not recall asking Mr Pulman why. He did not discuss the matter with *[SECOND RESPONDENT]* or anyone. His attendance notes set out how the matter was left. He could not recall whether Mr Pulman had mentioned who was supervising him. He knew of Mr Pulman because he had seen him give a talk on this case at a conference. The call from Mr Pulman was in the nature of calls he received from fee earners. There was huge uncertainty at the time regarding CFAs and fee earners struggled. Mr Davies had more experience in dealing with costs than Mr Pulman. There was a manual within the firm on CFAs but Mr Davies did not recall if at the time it made reference to retrospective CFAs.

Oral evidence of *[SECOND RESPONDENT]*

246. *[SECOND RESPONDENT]* confirmed the truth of his contribution to the composite witness statement.

247. *[SECOND RESPONDENT]* had been placed in a horrendous position from 19th March onwards. From that day he had entered the waking nightmare which was continuing. He had done the best he could. He had taken advice and passed on the file when he should have done. He believed he had acted properly before and since and did not accept responsibility for what had occurred.

248. On 19th March Mr Pulman and Mr Powney had come to his room. Mr Pulman had said that Mr Powney had something to tell him. Mr Powney had said that the individual files were not accurate. *[SECOND RESPONDENT]* had had the file in front of him as he was preparing a statement as agreed with Counsel at the conference on 17th March. Mr Powney had told him then that the attendance notes said April but the meetings had occurred in October. Letters sent in October were dated April on the file. *[SECOND RESPONDENT]* had asked why this had been done but neither Mr Pulman nor Mr Powney had given an explanation. After they left he heard a heated argument outside the room between them.

249. Mr Pulman had since said that he did this because the firm's name had changed and it had to appear on the file so the work had been done before the name changed. This was the only explanation he ever gave and *[SECOND RESPONDENT]* still did not understand why Mr Pulman had done what he did.

250. *[THIRD RESPONDENT]* and *[SECOND RESPONDENT]* had joined the conference on 17th March 2004 late. Mr Pulman had said that when clients first came in they had been told that the firm would deal with the matter on a CFA. Documents had been drawn up in April. Mr Pulman said that he thought it was proper to date the documents on the date the agreement had been reached. He had made no mention of the file documents. Counsel had concluded that it was arguable to say that the CFA was entered into on the date when the client first came in. It was agreed that *[SECOND RESPONDENT]* should prepare a statement so that both the Defendants and the Court were aware of the circumstances. At this time *[SECOND RESPONDENT]* had still believed that the CFAs were signed in April.

251. Mr Pulman had joined the firm in 1999 with experience in commercial litigation. The intention was that he would build up the commercial litigation practice in the Merthyr office. He had spare capacity. *[SECOND RESPONDENT]* had been dealing with the case, the pleadings had been closed, there had been disclosure and expert evidence and the Defendants had indicated that they wanted to settle. At that time there were eleven claimants and the matter was drawing to a conclusion. Additional claimants came in 2001.

252. *[SECOND RESPONDENT]* had not been involved in the CFAs as he did not deal with CFA work. He had not read the firm's manual on CFAs as it was not relevant to his work. He had known that Mr Pulman was being advised by partners whose knowledge was better than *[SECOND RESPONDENT]*'s and knew that if Mr Pulman followed that advice he would be alright. He had help. The Panel of partners to review CFA cases was for personal injury cases. This matter was originally being run on a legally aided basis. *[SECOND RESPONDENT]* had attended the Legal Services Commission with Mr Pulman to discuss the matter and they had been told to look at CFAs for new claimants.

253. *[SECOND RESPONDENT]* did not accept the concern expressed by Mr Pulman in his statement of 4th August 2004 that a defendant might realise that the CFA could not have been signed in October 2002 because it bore the wording "HJFS". *[SECOND RESPONDENT]* believed this to be an excuse. Although HJFS had ceased to exist in May 2002 it would only have suggested that Mr Pulman was using an old document and nothing would have arisen from that.

254. *[SECOND RESPONDENT]* denied Mr Pulman's assertion in his August 2004 statement that he had told *[SECOND RESPONDENT]* of his intention to date the CFAs from the time the clients had instructed them. *[SECOND RESPONDENT]* said there had been no such discussion.

255. In the letter of 14th June 2005 from Hugh James to The Law Society *[SECOND RESPONDENT]* had indicated that he would not have been able to approve any such arrangements and would have suggested he take advice from Mr Harvey. This was

because *[SECOND RESPONDENT]* had no practical experience of CFAs. *[SECOND RESPONDENT]* had never heard of a retrospective CFA at the time Mr Pulman had said such discussion had taken place. *[SECOND RESPONDENT]* knew that Mr Pulman had had advice from Mr Harvey, *[THIRD RESPONDENT]*, Mr Davies and SW.

256. *[SECOND RESPONDENT]* had been the person who decided the case should proceed on CFAs knowing that the Defendants wanted to settle the matter. There had never been any intention at the beginning that the CFAs would be retrospective. The first *[SECOND RESPONDENT]* had heard about it was at the 17th March conference. He did not consider that the backdating of CFAs was misleading. Mr Pulman had been making them take effect from the date of first contact. It should however have been made clear on its face when it was signed and from when it took effect.

257. *[SECOND RESPONDENT]* believed that in some circumstances backdated documents were acceptable when they reflected an agreement and the intention of the parties. It would not be acceptable for example to give the wrong date of signature on a witness statement. The advice *[SECOND RESPONDENT]* had received at the conference on 17th March was that the documents had an arguable case of being upheld in Court. Mr Pulman had said at the conference that his intention had been to put in place the agreement from when the clients first came into the office.

258. *[SECOND RESPONDENT]* had signed the bill. He had not been reluctant to sign the witness statement. On 19th March however he had found out about the falsified letters. Subsequently he had found out about the falsified attendance notes. He had had concerns about signing after that.

259. In his letter to The Law Society of 29th September 2006 Mr Pulman had said that he had advised *[SECOND RESPONDENT]* of his conduct immediately following receipt of the letter from NN. That letter however had been dated 18th March 2004 and it was on receipt of the letter that *[SECOND RESPONDENT]* had been told about the false letters and attendance notes. He had therefore been alerted to one set of circumstances on 17th March and another on 19th March. *[SECOND RESPONDENT]* had not realised from early NN letters that this situation existed.

260. When Mr Pulman had told him of the situation on 19th March *[SECOND RESPONDENT]* had been horrified. That day he had instructed Mr Farber and had asked Mr Asbrey to take the case from Mr Pulman and to speak to Mr Farber. Arrangements were made to move the files to the Cardiff office. *[SECOND RESPONDENT]*'s main concern centred around the fact that he had certified the generic bill. He asked his secretary to photocopy the correspondence before and after the bill. He did not however retain an original file, just had copies made. The files went to Cardiff, were then sent to the firm's solicitors and then to The Law Society. When RPC asked *[SECOND RESPONDENT]* for comments on various letters, *[SECOND RESPONDENT]* realised that RPC had not seen the file he had copied and he sent the copy to them. They sent it on to The Law Society. It was ironic that it was *[SECOND RESPONDENT]* who had pointed this out to The Law Society.

261. *[SECOND RESPONDENT]* accepted that he had seen NN's letter of 7th October 2003 (paragraph 113). He did not remember seeing each individual letter but was fully

prepared to accept Mr Powney's attendance note stating that he had discussed the letter with *[SECOND RESPONDENT]*. *[SECOND RESPONDENT]* was aware at the time that there was acrimonious correspondence from NN on the question of costs. At that time *[SECOND RESPONDENT]* would have had no qualms regarding the CFAs themselves. He believed partners had been involved in them. Mr Pulman was a senior solicitor and *[SECOND RESPONDENT]* was also aware that Hugh James had sent copies of the CFAs to NN, although *[SECOND RESPONDENT]* was not certain that this was a specific obligation. This was exactly the sort of letter *[SECOND RESPONDENT]* would have expected from NN on this topic. Every case he litigated was against NN and their style was to take a very aggressive stance on costs as they were entitled to. They would raise every possible issue.

262. *[SECOND RESPONDENT]* commented on a number of issues raised in the letter including NN not accepting the validity of the CFAs but said this was not in the context of the dating of the letters. *[SECOND RESPONDENT]* would have known that there was little chance of resolving these issues in correspondence. It was necessary to get the bill drawn up and proceed to an assessment and this would have been his main advice to Mr Powney. Mr Powney kept accurate attendance notes and on that basis *[SECOND RESPONDENT]* felt the note of the advice he had given to Mr Powney would be accurate, namely that he had asked him to seek the views of Mr Harvey and the costs draftsman. If Mr Powney had told *[SECOND RESPONDENT]* about the backdated CFAs, Mr Powney would have put that in the attendance note.

263. With hindsight *[SECOND RESPONDENT]* wished he had taken different action in relation to the letter from NN but he had had absolute faith in Mr Pulman and Mr Powney. He had thought that if anything was amiss they would have told him.

264. While *[SECOND RESPONDENT]* did not remember individual letters, if Mr Powney or Mr Pulman brought a letter to him they would make an attendance note. He accepted that he saw the final letter which went on 21st November 2003 as stated in Mr Powney's attendance note of that date. He presumed that Mr Powney told him that the letter was drafted by Mr Cooper. *[SECOND RESPONDENT]* would have seen nothing untoward in the letter at the time. He was aware of all the litigation surrounding CFAs and Defendants' attempts to get documents. *[SECOND RESPONDENT]* had not been just looking at one paragraph but at all three pages in their entirety. To him it had seemed a reasonable letter to send and he had no recollection of any concerns at the time.

265. *[SECOND RESPONDENT]* did not think he had been in contact with Mr Cooper about this file. He thought that the letter of 19th November 2003 from Mr Cooper to Mr Powney was referring to the method of dealing with the number of cases as NN had wanted 252 individual bills drawn up.

266. *[SECOND RESPONDENT]* had spent a long time going over the bill with Mr Powney. They had checked the hourly rates and the mathematics. *[SECOND RESPONDENT]* had known that the bill would be subject to intense challenge. The degree of care he had taken in going through the bill was shown by the note he made on the bill that one of the disbursements had not actually been paid. *[SECOND RESPONDENT]* assured the Tribunal that when he signed the bill he knew there would be all sorts of challenges but he had no knowledge of the method in which the

CFAs had been signed and had no concerns about this at the time. If he had known at that time that the CFAs had been backdated he would not have signed the bill but would have taken advice as to whether CFAs could be backdated and how it should be done.

267. *[SECOND RESPONDENT]* had had a very good knowledge of the case and had gone through the bill himself carefully. It was also right however to rely on the executive running the case.

268. At the conference in March 2004, the intention had been to put in a statement correcting any misunderstanding the CFAs might have created. At that time they had become aware that the CFAs were meant to be retrospective and felt it was important that the Court and the Defendants were made aware of that. When *[SECOND RESPONDENT]* had found out what had happened he had felt terrible about the bill. He felt his signature on the bill would be subject to intense scrutiny. He had not signed it lightly and when he signed it he had thought it was a proper bill to sign. It should have said more and the statement to be put before the Court would have set out the position regarding the signing of CFAs.

269. Although the letter from NN on 11th December 2003 was marked for *[SECOND RESPONDENT]*'s attention, he was away from the office at the time. Mr Pulman dealt with this and replied.

270. *[SECOND RESPONDENT]* did not recall the meeting of 15th December 2003 which he and Mr Powney had joined. He did not think he had been there at the time of the discussion of CFAs, although the note did not make clear what was discussed or when. Mr Pulman's attendance note of the meeting reflected what took place when *[SECOND RESPONDENT]* arrived half way through. *[SECOND RESPONDENT]* had not been told of any problem with the signing of the CFAs. While the Tribunal was focused on that issue NN had challenged every possible issue so that would not have been more in *[SECOND RESPONDENT]*'s mind than any other matter.

271. *[SECOND RESPONDENT]* was referred to the Defendant's points of dispute including reference to the date on which the Conditional Fee Agreements were entered into. *[SECOND RESPONDENT]* said the points had been discussed in broad terms. There were 26 pages of dispute and he would have discussed who would deal with these rather than the individual issues. He was alerted to all sorts of issues but was not told of problems with the CFAs. Points of dispute were what he would have expected from the taxation process with NN.

272. *[SECOND RESPONDENT]* recalled receiving the letter from NN of 18th March 2004 and reading the witness statement enclosed. The letter was brought to him by Mr Pulman and Mr Powney when they told him they had falsified the documents. The letter and the enclosed statement had precipitated their visit to *[SECOND RESPONDENT]*. Mr Pulman had been wrong when he said that the visit had been in February.

273. At the time of Mr Harvey's email of 24th March 2004 *[SECOND RESPONDENT]* had passed the file on to the Cardiff office and the matter was being discussed by the partners' non-stop. The more they thought about it the more horrendous it became.

274. *[SECOND RESPONDENT]* had signed the generic bill and the intention was to put a statement in to be signed by *[SECOND RESPONDENT]*. The statement was drafted for him and approved by Counsel and two other partners. The apology of Mr Harvey to *[SECOND RESPONDENT]* in his email was because the file had become "toxic" not because *[SECOND RESPONDENT]* had thought there was anything wrong with the statement.

275. *[SECOND RESPONDENT]* had been horrified at the falsification of the letters and notes but did not think this should be referred to in the statement as it had been drafted by Mr Harvey and Mr Asbrey. They would not have asked him to sign a misleading statement and *[SECOND RESPONDENT]* had no doubt that they felt it was appropriate for him to sign. He was also aware that Mr Farber of Counsel, an expert in these matters, had been involved and had amended the statement. *[THIRD RESPONDENT]* had also seen nothing wrong with it. *[SECOND RESPONDENT]* had relied heavily on those facts. He was not evading his responsibility as a solicitor. The statement was for a directions hearing. The firm was not arguing for the validity of the CFAs at this hearing. *[SECOND RESPONDENT]* knew that if the Court ordered disclosure it would be firstly with the Costs Judge. If he had put a reference to the letters and attendance notes in the statement this would have been disclosed to the other side straight away. They would have tried to involve the claimants and put aside the mediation. *[SECOND RESPONDENT]* could then stand accused before the Tribunal of breaching client confidentiality. The correspondence and attendance notes were not relevant to the directions hearing. They were relevant to the validity of the CFAs but that was not being discussed at the directions hearing but further down the line. The advice from Mr Farber and noted in the attendance note was that the statement was in order. *[SECOND RESPONDENT]* had both relied on what others said and had applied his own knowledge as a solicitor.

276. In relation to the discontinuance of the application for costs, the firm had tried to make clients' interests paramount and ahead of those of Hugh James. This was now being used as a stick with which to beat the firm. The position had been one of horror from 19th March 2004. The directions hearing had been only days away and time was needed to consider the matter. It had been an absolute nightmare and *[SECOND RESPONDENT]* had been doing his best. Mr Pulman had been a solicitor whom *[SECOND RESPONDENT]* knew personally, liked and expected to become a partner.

277. On being told what had happened the first thing *[SECOND RESPONDENT]* had done was instruct Counsel and the second thing was to pass the case to the Cardiff office. Hugh James had not wanted to give up their costs but to their credit they had done so. NN would otherwise have tried to set aside the mediation and 232 clients of limited means from a small community would have been caught in the middle of the litigation. *[SECOND RESPONDENT]* said that at the time his life was taken over with concern about this case.

278. What had happened had been the biggest regret of his professional life.

279. In relation to supervision *[SECOND RESPONDENT]* had done much more than supervise. He had worked the case with Mr Pulman. *[SECOND RESPONDENT]* had read every pleading and gone through everything with Mr Pulman. He attended all

the meetings with estate agents, chemists and experts. He had done a lot of work with the claimants and designed a diary for them. He did the questionnaires and witness statements with Mr Pulman and told him how to calculate damages. He attended two meetings with NN and conferences with Counsel and spent three days at the mediation with Mr Pulman. *[SECOND RESPONDENT]*'s involvement in the case had been in depth. He lived in the area around which this case was based and was very interested in it. *[SECOND RESPONDENT]* had been pleased with the result of the damages for the claims and the future payments through a trust fund for the affected community. This would not have been achieved if Mr Pulman had been out of his depth. *[SECOND RESPONDENT]* still worked with very senior solicitors and would like to think he gave them the same help and support as he had given Mr Pulman.

280. *[SECOND RESPONDENT]* reviewed and looked at the generic files on an ongoing basis. He had taken the view that the individual files on which work was done by Mr Powney were supervised by Mr Pulman. Legal Aid audits were also done on the files. *[SECOND RESPONDENT]* had been confident that funding would have been put in place. Mr Pulman was a senior solicitor in whom *[SECOND RESPONDENT]* had had the utmost trust and who was likely to become a partner. He had had two advancements. He was likeable and impressive. The 'laziness' aspect had only been made known to *[SECOND RESPONDENT]* subsequently.

281. The firm had an LSC franchise. A number of proceedings were necessary to obtain a franchise and the firm's system covered all the files, not just legal aid files, although *[SECOND RESPONDENT]* could not recall precisely what system was being used in 2002. If however a senior associate who was expecting to become a partner decided to falsify documents, no system could prevent such a person from being dishonest. Systems were to help solicitors and prevent cases from going stale. Systems and supervision would not pick up such conduct. If the files had been seen in March, April or May Mr Pulman would have said he was getting on with the matter. In June or July he would have been told to get on with the matter. He would then just have changed the date of his backdating.

282. Mr Pulman worked closely with *[SECOND RESPONDENT]* and gave the impression that he was thoroughly enjoying the litigation. He never said he was under pressure although there would have been opportunities. This had not been mentioned until afterwards.

283. *[SECOND RESPONDENT]* had worked with Mr Pulman only on this matter and could not recall who his supervisor was. *[SECOND RESPONDENT]* had been in the claimant department and Mr Pulman in the commercial litigation department with another partner in charge.

284. Over time he had taken the view that he was not telling Mr Pulman what to do but discussing more as equals and over time he gave more weight to Mr Pulman's views. The dynamics of the relationship changed. He discussed every step with him. *[SECOND RESPONDENT]* did not accept that he was reactive but proactive.

285. *[SECOND RESPONDENT]* had not seen Mr Pulman's incoming post. The office had been split in to six blocks and the post checking system was done by a partner in each

block. Mr Pulman had been in a different division and block from *[SECOND RESPONDENT]*. *[SECOND RESPONDENT]* had believed that partners in Mr Pulman's block were checking his post but it had subsequently transpired that they were not. Post should have been checked. *[SECOND RESPONDENT]* or *[THIRD RESPONDENT]* did check the post in their block. Checking post however would not stop a senior solicitor from behaving dishonestly if he wanted to do so.

286. *[SECOND RESPONDENT]* had not been aware that a number of clients were being seen in October 2002. There were a number of group actions with many clients coming in and there had been nothing to raise his suspicions about the number of clients coming into the office.

287. The reference in the firm's letter to The Law Society of 14th June 2005 to *[SECOND RESPONDENT]* beginning work on drafting his statement on 19th March 2004 referred to the statement Mr Farber had advised him to do at the conference on 17th March dealing with the retrospective nature of the CFAs, i.e. before Mr Powney and Mr Pulman had come to see him. The statement subsequently drafted by Mr Harvey was a different statement made after the discovery of the falsified letters and notes.

288. It was right, as stated in RPC's letter of 29th September to The Law Society, that when *[SECOND RESPONDENT]* was preparing his statement of 29th March the analysis of the events was much less advanced than subsequently. At the time *[SECOND RESPONDENT]* had had one or two individual files as samples. When all the files had been gone through the method that had been used and the other attendance notes that had been backdated to fit in had been seen. The matter just got worse and worse. *[SECOND RESPONDENT]* had known when he signed his statement of 29th March that there were falsified letters and attendance notes but there had been a dawning realisation in understanding how Mr Pulman had planned it. It was difficult to express the horrendous feelings in the office at this time.

289. In relation to Mr Cooper, *[SECOND RESPONDENT]* accepted that he had known that he was a struck off solicitor. In the late 1970s *[SECOND RESPONDENT]* had moved to the Merthyr Tydfil office as an articled clerk and had been told by another articled clerk that Mr Cooper was a struck off solicitor. This had been told to *[SECOND RESPONDENT]* 30 years ago and he had never checked it. Mr Cooper had been used extensively by the firm. He did not know whether the firm had sought any permission. *[SECOND RESPONDENT]* confirmed that it was Mr Cooper's costs expertise which was used although the firm had employed the company. He did not remember instructing that Mr Cooper be used in this matter as costs draftsman but accepted that he would have advised this.

290. This case had over 100 lever arch files in respect of the generic case and over 252 individual files. It was not a case in which one could just ask for a file to review. There were 90 timed attendances between 2000 and 2003 with *[SECOND RESPONDENT]*, *[THIRD RESPONDENT]* and Mr Pulman plus numerous other discussions. A very significant amount of time had been spent discussing the matter with Mr Pulman and indeed one of NN's main points of dispute was that too much partner time had been spent with Mr Pulman.

291. When *[SECOND RESPONDENT]* asked for the file after the 14th March conference, the file had looked perfectly in order and it appeared that the CFAs had been signed in April with the letters following in the correct order. Mr Pulman had created the file to look as if it was in perfect order.

292. NN had insisted on individual particulars of claim in all 252 cases instead of the sample required by the Court. That would dramatically increase costs. The attendance note of 23rd September 2002 dealt specifically with that issue. *[SECOND RESPONDENT]* was certain that if Mr Pulman had wanted to discuss the CFAs he would have put this in his attendance note. It was perhaps deliberate that he was not referring the partners to CFAs at that time. Mr Pulman by this stage was on the verge of a partnership and *[SECOND RESPONDENT]* would have assumed that the CFAs had been done.

293. *[SECOND RESPONDENT]* did not know when the Conditional Fee Agreements were signed by the partners as there was no place for a date but it had to be after 21st October 2002. *[SECOND RESPONDENT]* had not queried why he was signing them then. They had all been signed by the claimant and Mr Pulman and the signature by a partner was just a requirement by Hugh James.

294. The dividing line in *[SECOND RESPONDENT]*'s mind was the meeting of 19th March 2004 when he was told about the falsified file documents. Thereafter *[SECOND RESPONDENT]* thought he had done all the right things. He had passed on the file, taken advice and protected the claimants by withdrawing the claim. Before 19th March *[SECOND RESPONDENT]* felt he had given Mr Pulman massive support. *[SECOND RESPONDENT]* was very distressed that he was in this position but he thought he had acted properly throughout.

Oral evidence of *[THIRD RESPONDENT]*

295. *[THIRD RESPONDENT]* confirmed the truth of his contribution to the composite witness statement.

296. *[THIRD RESPONDENT]* was the head of the firm's claimant division based in the Merthyr Tydfil office. Initially he had not had much involvement in the B matter. Mr Pulman had brought one or two matters to him then more. Mr Pulman had attended the meeting which *[THIRD RESPONDENT]* had arranged with a legal expenses insurer on another matter at Mr Pulman's request. During the meeting Mr Pulman had presented information on his case. That had been the extent of *[THIRD RESPONDENT]*' involvement, namely the funding arrangements. In March 2002 *[THIRD RESPONDENT]* had told Mr Pulman to get on with the CFAs. *[THIRD RESPONDENT]* said he would have expected any senior solicitor he had told to do this to carry it out. While *[THIRD RESPONDENT]* had not checked the file it would almost certainly have come up in conversation.

297. In a group action of that size there would not be a single "signing". There was a large number of claimants and at any one time it would have been possible to look at a file and for it to appear innocuous. The time would have come however when there should have been CFAs on all files. *[THIRD RESPONDENT]* had first become aware

that Mr Pulman had not done the CFAs at the right time during the March conference with Mr Farber.

298. *[THIRD RESPONDENT]* accepted that the generic and individual bills were materially inaccurate. *[THIRD RESPONDENT]* had signed a number of individual bills. He had been asked to do it by *[SECOND RESPONDENT]*, a senior partner and the best litigator he had ever met. He had simply signed the bills but would have taken a different approach if he had been asked by a less senior member of staff. To ask *[THIRD RESPONDENT]* to gainsay and check his partner was nonsense. He had not treated the signing like an empty formality. A senior person with in depth knowledge had asked him to sign the bills and *[THIRD RESPONDENT]* was entitled to rely on this. *[THIRD RESPONDENT]* had been happy to help. *[SECOND RESPONDENT]* was a conscientious and decent man and if he asked *[THIRD RESPONDENT]* again, *[THIRD RESPONDENT]* would do the same.

299. In the Bailey case the Court had been faced with satellite litigation which elevated the signing of bills. *[THIRD RESPONDENT]* who sat a Deputy District Judge had never known this to come up in the many taxations he had done.

300. It was permissible to backdate CFAs if the position was clear, otherwise not. In this case the clients and the solicitors knew the position but the document was not ideal as it did not make the position clear. In the case of Holmes the backdated CFA was upheld although *[THIRD RESPONDENT]* accepted that the Court drew a distinction between retrospective and backdated.

301. *[THIRD RESPONDENT]* had not been involved in the litigation in this case but had been involved at the time of the mediation as he was a trained mediator. He was aware that *[SECOND RESPONDENT]* was supervising the matter and had seen no need to check the files.

302. *[THIRD RESPONDENT]* had not known that the partner responsible for checking Mr Pulman's post in Mr Pulman's section was not doing so.

303. The case would not have been checked by the CFA checking panel within the firm as the purpose of the panel was to check whether individual solicitors were being over enthusiastic about taking on a case. This particular case had been started by a partner.

304. *[THIRD RESPONDENT]* did not accept that the firm's systems had not been followed. The systems were designed to help progress matters. This had been a case of a rogue solicitor who had been dishonest.

305. *[THIRD RESPONDENT]* had no reason to doubt the accuracy of Mr Pulman's attendance note of 23rd September 2002 which referred to Mr Pulman, *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* discussing the current position "as regards costs". *[THIRD RESPONDENT]* could not assist beyond the note however as this was some six years ago. They had been concerned that NN would be running up costs.

306. Mr Harvey's email of 24th March 2004 reflected the concerns of the firm at that time. Concerns about costs were fairly low down on the list of priorities, the main concern being the clients.

307. There had been nothing wrong with not discontinuing the claim for costs before 1st April. *[THIRD RESPONDENT]* had seen nothing wrong in *[SECOND RESPONDENT]*'s statement and in omitting reference to the letters and notes. The statement had been for a directions hearing.

308. Privilege in the documents was not the firm's to give away. If at some stage it would be helpful to put the documents in then the firm would have spoken to the clients. Privilege was not waived lightly.

309. The main lesson *[THIRD RESPONDENT]* learned from this case was to be careful whom the firm employed.

310. *[THIRD RESPONDENT]* had been at the top of a different structure of supervision from Mr Pulman. *[SECOND RESPONDENT]* had been the direct supervisor in the B case not *[THIRD RESPONDENT]*.

Oral evidence of Mr Asbrey

311. Mr Asbrey, formerly a partner at Hugh James, confirmed the truth of his contribution to the composite witness statement. He had retired from the firm but continued to sit as a Deputy District Judge.

312. Mr Asbrey had first become aware of what had happened when *[SECOND RESPONDENT]* had telephoned him on 19th March 2004. *[SECOND RESPONDENT]* must have referred to the CFAs being backdated as Mr Asbrey had then spoken to Mr Harvey who was more expert in CFAs. Mr Asbrey had directed the file to Mr Harvey.

313. Mr Asbrey's reference in the composite witness statement to shock at the falsification referred to the letters and attendance notes. He had not initially realised the scale of what had occurred. The main issue initially had been looking at the CFAs. It was only in mid April 2004 for example that he had realised that there was a falsely dated file note recording a conversation between Mr Pulman and PO.

314. Mr Asbrey had had doubts about the enforceability about the backdated CFAs but had deferred to Mr Harvey who was the expert.

Oral evidence of Mr Williams

315. Mr Williams had been the senior partner of Hugh James since 1st May 2005. He confirmed the truth of his contribution to the composite witness statement.

316. Mr Williams had participated in the drafting of the firm's letter to The Law Society of 14th June 2005 with the assistance of others. Mr Williams, who was based in the Cardiff office, had become aware of what had happened a short time after 19th March 2004. Mr Williams would have been aware that Mr Harvey had drafted *[SECOND*

RESPONDENT]'s statement and did not recall why the letter of 14th June did not refer to this.

317. The major issue at the time was the falsification of the attendance notes and letters and the consequences for the firm and its clients. The concerns about costs were far outweighed by the concerns that clients should be properly looked after. Mr Williams had been involved in the decision to withdraw the claim. This could not have been done before the directions hearing on 1st April. The matter had come to light on 19th March leaving a very short time. Clients had to be protected.

318. A former senior partner of the firm who was now a consultant had responsibility for risk management and supervision which evolved constantly. There had been no changes in supervision as a direct result of this case.

319. *[SECOND RESPONDENT]* was a brilliant litigation solicitor and had been Mr Williams' partner for 25 years. The whole nature of *[SECOND RESPONDENT]*'s work was to lead and to mentor his team. A number of the people he had mentored had become very successful partners. At the time of this case there had been three individuals on the verge of becoming partners, including Mr Pulman, and *[SECOND RESPONDENT]* had worked with them, consulted them and guided them. The other two had become successful partners. Mr Williams acted in the same way.

320. Mr Williams did not accept that a review of the files between April and October would have shown that there were no CFAs and he referred the Tribunal to the previous evidence on this point. The deceit might still have been perpetrated but falsified to a different date.

321. Mr Cooper was well known in costs circles. Mr Williams had not known that he was a struck off solicitor. He suspected that steps had not been taken to check Mr Cooper's status between 1976 and 2000.

The Submissions of Mr Pulman

322. Mr Pulman's submissions were contained in his letter of 11th November 2008 which is summarised below.

323. Mr Pulman admitted the allegations and the facts.

324. Mr Pulman apologised for his conduct, bitterly regretted his actions and wished there was some way of making restitution. He understood that he had disgraced the profession and he would willingly accepted the outcome of the disciplinary process which he had tried to assist as best he could.

325. Without attempting to excuse his conduct or lessen any penalty, Mr Pulman submitted that he was inadequately supervised and that a proper system of supervision would have prevented him from acting as he did. He believed there were crucial occasions when he was abandoned. He submitted that neither *[SECOND RESPONDENT]* nor *[THIRD RESPONDENT]* had proper regard to the process of supervision within a litigation department and those supervising *[SECOND RESPONDENT]* and *[THIRD*

RESPONDENT] had no proper regard to the process of supervision throughout the firm.

326. Mr Pulman said that no complaint was ever made to him during his employment with the firm that he was lazy and avoided responsibility.

327. He submitted that his experience in relation to the lack of proper supervision was not isolated.

328. Mr Pulman had not worked as a solicitor for four and a half years. He outlined his family circumstances and his current work situation. He asked the Tribunal to consider the impact of the proceedings on his family.

The Submissions on behalf of *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]*

329. The Tribunal could be satisfied that the witnesses it had heard were honest. *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* entirely accepted the evidence of Mr Powney. The Tribunal was invited to similarly to accept the evidence of the senior, experienced and distinguished solicitors who had given evidence for the Respondents and of the Respondents themselves.

330. Mr Pooles referred to the maxim "wise after the event does not mean foolish before it". When asked what they would now have done differently the evidence of *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* had, essentially, been nothing. Mr Pulman had been a dishonest man in whom his partners and colleagues had placed trust which was misplaced. Mr Pulman had chosen not to appear and his complaints could not stand against the evidence of Mr Powney.

331. The Tribunal had been referred to the comment made in the promotion process referring to Mr Pulman's tendency to "pass the buck". The evidence of Mr Powney had demonstrated how well that fitted Mr Pulman and had given a graphic picture of Mr Pulman and Mr Powney going to *[SECOND RESPONDENT]* when Mr Pulman had told Mr Powney to tell *[SECOND RESPONDENT]* what had happened.

332. This was relevant to the bitter and untested complaints by Mr Pulman. This was a last effort on his part at "passing the buck" which the Tribunal was invited to disregard.

333. *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* were patently honest men. The practice put clients' interests first, second and last. As early as the mediation process *[SECOND RESPONDENT]* had wanted a settlement with B which left out the costs so there would be no hint of conflict between the firm and the clients. This was the touchstone of *[SECOND RESPONDENT]*'s honesty and proprietary. Mr Pulman on the other hand had been keen on an "all in" figure knowing as he did that there was a risk of skeletons emerging from the cupboard. He wanted the matter disposed of so that no-one would look at the files and he would become a partner.

334. The Tribunal would see from` the proceedings that it had been difficult for there two Respondents to understand the particular complaints made against them. Even at this late stage new items had been included in cross-examination. This was not the way to

deal with solicitors of such seniority. An example was the abandonment of the dishonesty allegation against *[SECOND RESPONDENT]*. Such an allegation should never have been made. The attendance notes removed by the Investigation Officer had shown that Mr Harvey was the main author of the statement and that it had been approved by Mr Farber. The attendance notes had been in the regulator's possession for over three years. Such an allegation had been a matter of great concern for a man of *[SECOND RESPONDENT]*'s seniority, honesty and conscience.

Allegation (iv)

335. In dealing with matters of professional conduct the words "facilitated, permitted or acquiesced" all demonstrated a positive degree of knowledge being required. Mr Pooles referred to the dictionary definition of these words and submitted that "facilitated" was no more than a synonym for acquiescing and all these words presupposed knowledge.

336. It had not been suggested, or if it was so suggested the Tribunal was invited to dismiss it, that *[SECOND RESPONDENT]* had been aware of the dishonest attendance notes and letters at the time he signed the bill. Further, given what the file showed at the time, it was difficult to see how he could have discovered the backdating of the CFAs.

337. The Applicant had sought to place weight upon the significance of the signature on the bill. None of the witnesses had sought to play that down. The Tribunal was commended however to the analysis set out in the Judgment of Master O'Hare. Whilst it was certainly the case in the earlier decision Henry LJ emphasised the significance of the signature on the bill. In Hollands v Russell Brooke LJ distinguished the earlier decision from the case involving a CFA. This was barely surprising. There would be significant consequences for the disciplinary process if every solicitor who signed a bill in relation to which an element of a CFA was challenged had committed a disciplinary offence. There was a case taking place at present where liability insurers had challenged every Accident Line CFA. This was the form of CFA which had been recommended by The Law Society at the time. The wording recommended by The Law Society was being challenged.

338. What Henry LJ had been addressing was what *[SECOND RESPONDENT]* had said i.e. had they satisfied themselves that they were not charging the paying party more than they were entitled to charge their client including putting the right fee earners in the right categories, putting in the right rates for them, doing the sums correctly and identifying correctly the work from which to recover costs. If it was suggested that where any Defendant persuaded a Costs Judge that an element of a bill certified by a solicitor was erroneously charged there was an element of professional misconduct there would be no point in having detailed assessments and a certifying solicitor could be sent straight to the Tribunal.

339. While it was not sought to play down the importance of the CFAs in Hugh James' recovery of costs, Mr Pooles submitted that the Applicant was being remarkably wise after the event in saying that *[SECOND RESPONDENT]* should have satisfied himself that each and every part was correct and recoverable. The solicitor's principle responsibility was to conduct an appropriate case for his clients, giving his client's best interests his foremost most consideration. If the CFA was not enforceable it was

the solicitor who stood to lose. Checking that the CFAs had been done would have been only in the interests of the firm not the client.

340. The Tribunal was strongly urged that this was not an offence of absolute liability. There was no factual basis discernable upon which it could properly be said that there was a foundation for allegation (iv).

Allegation (v)

341. As stated above, reviewing the CFAs was nothing to do with the best interests of the client as the client would not be affected if the CFA was unenforceable. On the merits of the matter however the allegation was without foundation. Mr Pulman's complaints could not survive the evidence of Mr Powney who had done the "leg work". Mr Powney had said that in the period leading up to the deadline, Mr Pulman had gone on holiday. This encapsulated the gap between Mr Pulman's expressions of pressure and the reality. Mr Powney had further said that they had had sufficient resources.

342. The Applicant had put the case at a high level in opening saying that there had been no supervision by *[SECOND RESPONDENT]* at all. *[SECOND RESPONDENT]* had had understandably trenchant views saying that there had been no absence of supervision as supervision defined too remotely his direct involvement with Mr Pulman in the clients' interests. No-one had suggested, save for the issue relating to the CFAs, that the claim had not been advanced entirely properly. The outcome for the clients had been very good.

343. B had been aggressively represented throughout as shown by the fact that NN was continuing to monitor these proceedings some five years later. This indicated the extent to which B was seeking to clawback what must have been an annoying and expensive outcome for that business.

344. There appeared to be two components to the Applicant's allegation, one of which only emerged fully in cross-examination, namely the failure to conduct file reviews. The Tribunal was asked to accept *[SECOND RESPONDENT]*'s evidence that file reviews in the interests of clients were unnecessary as he was looking at the files all the time. The only criticism made of him was that he failed to detect that the CFAs had not been put in place as Mr Pulman had been instructed to do. That would have been solely in the interests of Hugh James. It played no part in ensuring that the file was properly conducted for the clients. If the Tribunal considered that failure to conduct file reviews between April and October 2002 was in some way a matter for criticism, to allege that this amounted to a breach of 1 Rule (c) and Rule 13 of the Solicitors Practice Rules was a startling submission to make. Under the Rules at the time it was permissible to conduct the practice without file reviews as long as principals had a proper perception of what was going on with any file at any given time. There had never been any diktat from The Law Society in the past that absence of formal file reviews was a breach of professional conduct.

345. Historically the bulk of the work in this case had been done under legal aid so all the files were subject to legal aid audit and procedures. There was therefore no absence of audit as such.

346. The Applicant had also suggested a failure to see the incoming and outgoing post, although the latter was not put in cross-examination.

347. In relation to outgoing post, the absurdity of the suggestion was shown by the fact that such post if improper would not go into the out-tray but into the solicitor's pocket and then the post-box. Outgoing post was not mentioned by The Law Society in the Rules.

348. In relation to incoming post there was a system. The operative provision in the Rules at the time invited solicitors simply to take account of the arrangements in assessing whether there was compliance with the requirement for supervision. The new Rule 13 did not include that. There had never been a mandatory requirement that all mail be seen. Requirements were that arrangements be "appropriate" and "reasonable". *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* had believed that they were. As soon as they had become aware that the relevant partner was not in fact checking the mail they had corrected the position. It was not professional misconduct for them to be unaware given that a proper system had been set up.

Allegation (vi)

349. *[SECOND RESPONDENT]* had in no way sought to conceal the position regarding Mr Cooper. It would be submitted that a clear point of law provided a defence but this in no way detracted from *[SECOND RESPONDENT]*'s honesty throughout.

Allegation (vii)

350. This was a startling allegation and the Tribunal was invited to accept the succinct and comprehensive evidence of Mr Farber on this point. While it was entirely correct that a solicitor must not mislead a Court, subject to that a solicitor was there to maintain a client's best interests. Mr Farber's analogy with the summary judgment application was a good one. There was no foundation to this allegation.

351. This had been a directions hearing at which B wished to have access to material to which they were not materially entitled although they wanted it. Generally in a contested disclosure application a defendant had a good reason not to disclose a document. If a document was helpful to a defendant then it would be disclosed. The fact that a document might be of interest to the other side did not prevent a solicitor from resisting disclosure. In the present case this was compounded by the fact that there was no process for disclosure in a contested detailed assessment.

352. Documents passing between solicitor and client were the subject of legal and professional privilege and not discloseable. Where however there were documents which might be material to the recovery of costs, the paying party was entitled to apply to the Court not for disclosure but for an order that the Court inspect the documents itself under the Pamplin procedure (Pamplin v Express Newspapers Ltd [1985]. Even at that stage, in respect of documents with legal professional privilege, the Court would not order disclosure but would put the paying party to election to disclose or prove extrinsically.

353. This was the procedure which Master O'Hare put in place and the Tribunal was referred to his Judgment. It was submitted that the Court had not been departing from Pamplin. The Courts could not by dint of case law remove legal professional privilege and the order of the Court would be for an election procedure. In this case there never was nor could be an absolute obligation. All that could ever have happened, as Mr Farber had made clear, would be for Hugh James and their clients to be put to their election.

354. This was re-emphasised in South Coast Shipping Co Ltd asset Co Ltd v Havant Borough Council [2002] 3 ALL ER 779.

355. In the context of those authorities to assert that *[SECOND RESPONDENT]* had misled the Court by failing to disclose unilaterally the documents with which Mr Pulman had dishonestly tampered flew in the face of the whole procedure, not only in respect of the costs regime but in respect of disclosure generally. There was no legal or factual basis for the assertion that the Court had been misled, indeed if the documents had been handed over unilaterally the firm would have been in breach of client privilege.

356. The Applicant had apparently made the point that failure to abandon their claim for costs between the discovery of Mr Pulman's conduct and the hearing before Master O'Hare was of concern. The witnesses had said however the decision to withdraw the costs' claim was entirely predicated upon the interests of the clients. This reinforced the honourable way in which they had dealt throughout. The notion that there was some element of professional impropriety in discovering a situation six working days before a directions hearing and not immediately abandoning any claim for costs was startling and was not one made by the original investigator nor in the Rule 5 statement nor in the further information recently provided by the Applicant.

357. The witness statement had been the subject of careful consideration, not only by *[SECOND RESPONDENT]* but also by experienced Counsel and the partner in the practice who had written a book on CFAs. To formulate this allegation, especially on the basis of dishonesty, had been highly unfortunate.

358. The Applicant had suggested to the Tribunal that there had been no intention that there should be retrospective CFAs. The evidence was however that as the clients came into the firm they were told that where there was no legal aid available the work would be covered by CFAs. No-one had suggested that it was a matter of criticism that clients were not asked to sign the CFAs straightaway. There were therefore only two conclusions. Either it was not the intention of Hugh James to seek to be paid up to the time the CFAs were executed, which had not been suggested, or the CFAs would have effect in respect of the totality of the retainer which was everybody's expectation.

359. There had been criticisms in the Holmes decision in respect of backdated CFAs but even in that case the CFA was enforced. What the Court had addressed was the risk of misunderstanding. As soon as *[SECOND RESPONDENT]* was aware of such a risk he immediately took steps to create a statement to tell the paying party that the date of execution on the CFAs and on the letters were different. Had the CFAs been delivered with accurate notifications to clients that would have been clear.

360. In the case of Holmes where the case had been "fudged" more comprehensively by the actual solicitor, impropriety had not been alleged even by the paying party which was of significance.

Allegation (vi)

361. The Applicant had contended that s.41 had to be interpreted broadly. The Tribunal was referred to Bennion on Statutory Interpretation (5th Edition) part XVII sections 271 and 279. It was submitted where the consequences of a breach were draconian as in the case of s.41 then any ambiguity on construction should not be allowed to operate against the individual i.e. the statute should be construed narrowly unless a contrary intention was clear.

362. A wide interpretation of Section 41 would suggest a breach if a solicitor employed a struck off solicitor to renew double glazing or as a chauffeur for his practice. This could not be the intention of the statute which had rather been to prevent a solicitor engaging a struck off solicitor to provide services which could otherwise be provided by a solicitor or a solicitor's clerk. That was consistent with the approach taken by the Tribunal in the past.

363. In the present case the circumstances could not be more different from the cases of Cunnew , Covall, Shah, and Cook referred to by the Applicant. The Tribunal had had uncontested evidence from *[SECOND RESPONDENT]* that he first came across Mr Cooper when he was an articled clerk. The Tribunal had heard evidence from Mr Williams that Mr Cooper was used by practices across South Wales for 30 years. He had not been employed as a solicitor or a solicitor's clerk nor employed in Hugh James' office. There had been no risk to clients that he would be held out as a solicitor or clerk or would be conducting their affairs. He had been doing the usual work of a costs draftsman, work which was not subject to any mandatory regulation at all.

364. The intention of s.41 was not to cast the net so wide that it extended beyond protecting the public from those who might be held out as solicitors or clerks. In the present case there had been no suggestion of that risk.

365. Further the Applicant would have to satisfy the Tribunal not only of the broad interpretation of s. 41 so as to encompass Mr Cooper's work but he would also have to satisfy the Tribunal of the broadest interpretation of "remunerated". The company had been owned by Mr Cooper's wife. It was for the Applicant to satisfy the Tribunal so that they were sure that Mr Cooper was in fact remunerated.

366. If the Tribunal found against *[SECOND RESPONDENT]* on this matter then it was impossible to think of a case where the breach was more technical and it was submitted that the shortest possible suspension would properly meet the breach. The Applicant had not criticised *[SECOND RESPONDENT]* for not checking whether authority had been granted which was not surprising as Mr Cooper had been used by the firm over the totality of *[SECOND RESPONDENT]*'s professional lifetime.

367. In relation to *[THIRD RESPONDENT]*, Mr Pooles relied on the submissions that he had made in respect of *[SECOND RESPONDENT]*. in respect of supervision *[THIRD RESPONDENT]* had been one stage further removed. It was difficult to see what could be said against *[THIRD RESPONDENT]* beyond the complaint that he was in an office where incoming mail to Mr Pulman had not been inspected by another partner expected to peruse it.

368. *[THIRD RESPONDENT]* had been criticised for the way he signed the bills but this was without foundation. It was not the case that if a solicitor was satisfied that work had been done by a colleague who was well able to do the job he had to repeat the work himself knowing, as *[THIRD RESPONDENT]* must have done, that he could not know a fraction of what *[SECOND RESPONDENT]* knew about the cases.

369. *[THIRD RESPONDENT]* took personal responsibility vicariously for the checking of the bills and had been happy to do that. There was no reason why he should not have acted in that way.

Submissions of the Applicant on points of law

370. The Applicant referred the Tribunal to the case of Butler (In the matter of a Solicitor's Clerk Co/1848/87). In relation to s. 43 Solicitors Act 1974 the then Lord Chief Justice Lord Lane had said:

> "The first question to decide is whether the words do necessarily imply a master-servant relationship.
>
> In my judgment they do not. The material words are "a person who is or was a clerk to a solicitor." Those words appear to me to be neutral. They may include a person who is in the strict relationship of master and servant. They may equally apply to a person who is an independent contractor. In my judgment, if it is shown that a person has acted as a clerk, and has performed functions which are the functions, truly speaking, of a clerk to a solicitor or the functions of a solicitor himself, the mere fact that he is not a servant of the solicitor does not prevent him from coming within the words of the section.
>
> If there is any ambiguity in the words, and I do not think there is, one is entitled to look to the ordinary canons of construction. The first canon which Mr O'Brien has invited us to consider is the canon with regard to penal provisions, namely that penal provisions have to be construed strictly in favour of the person who is likely to suffer the penalty.
>
> I do not consider this to be a penal provision within that particular rule. This is not a provision which is designed to penalise people who act in the way in which the respondent acted in this case. It is provision designed to protect the public from being advised or represented in legal matters by persons who should not be in the position of advising or representing them in those matters."

Lord Lane's comments were applicable to s.41 in the same way.

371. Lord Lane further said:

> "The other canon of construction is the canon that one is, in cases of doubt, entitled to look to see what was the mischief which the Act sought to remedy. In other words what it was, broadly speaking, the Act was intended to do. The words of Lord Reid in the well known case of Black-Clawson Ltd v Papierwerke A.G. (1975) A.C. 591 at page 614 are in point. They read as follows:
>
> > "It has always been said to be important to consider the "mischief" which the Act was apparently intended to remedy. The word "mischief" is traditional. I would expand it in this way. In addition to reading the Act you look at the facts presumed to be known to Parliament when the Bill which became the Act in question was before it, and you consider whether there is disclosed some unsatisfactory state of affairs which Parliament can properly be supposed to have intended to remedy by the Act. There is a presumption which can be stated in various ways. One is that in the absence of any clear indication to the contrary Parliament can be presumed not to have altered the common law further than was necessary to remedy the "mischief". Of course it may and quite often does go further. But the principle is that if the enactment is ambiguous, that meaning which relates the scope of the Act to the mischief should be taken rather than a different or wider meaning which the contemporary situation did not call for.""
>
> The situation here which Parliament was endeavouring to meet was the danger that a solicitor or those whom he employs as clerks might be unsuitable to carry out very important functions which, for example, exist under the PACE Act as has already been indicated. The object was, quite plainly, to give the Tribunal the power to ensure that someone who was unsuited to carry out those functions should be prevented from carrying them out. The way it is sought to give jurisdiction to the Tribunal was by saying that anyone who acted in the capacity of a clerk when he should not have done so could, by order of the Tribunal, be prevented from acting in that way in the future. It seems to me to make no difference, when one takes that into consideration, whether the person is acting strictly as a servant of a solicitor or is acting in the capacity of an independent contractor employed ad hoc by the solicitor.
>
> The use of the word "employed" in the penultimate line of subsection (1)(a) does not seem to me to be a relevant consideration. It is not part of the words which we are construing and it does not seem to me to cast any further light upon the meaning of the words "was a clerk to a solicitor".
>
> The remaining point argued by Mr O'Brien in his attractive address before us was the one on which the Tribunal themselves seem to have based their conclusion. That was there was not a sufficient frequency of operation, a sufficient frequency of action by the respondent when engaged by Mr Middle week to constitute him a clerk to a solicitor.

> Here again it seems to me, given the fact that there is no necessity for a master-servant relationship to exist, it can make no difference to the jurisdictional aspect of this power how often or how infrequently the person in question acts in a capacity as clerk to a solicitor. If he has acted at all, then the jurisdiction to make the order exists."

372. S41 was amended to be a serious provision being the only one within the Act for which a mandatory penalty existed. The Tribunal was asked to take account of the judgment in Butler when considering this allegation.

Submissions as to Costs

373. The Applicant sought an Order for costs against Mr Pulman but referred the Tribunal to the fact that Mr Pulman had admitted the allegations at an early stage. Mr Pooles on behalf of *[SECOND RESPONDENT]* sought no order as to costs. The Applicant referred the Tribunal to the case of Baxendale-Walker but indicated that in the circumstances he did not agree with Mr Pooles submission that as between *[SECOND RESPONDENT]* and the Applicant there should be no order for costs.

The Findings of the Tribunal

Mr Pulman
Allegations (i) – (iii)

374. The First Respondent had admitted the allegations against him The Tribunal however having heard the evidence of *[SECOND RESPONDENT]* and *[THIRD RESPONDENT]* and their witnesses accepted Mr Pulman's admissions in relation to allegations (i) and (iii) only in so far as they related to the file copy letters and attendance notes and not in relation to the CFAs. The CFAs had been backdated. With the benefit of hindsight and having heard the evidence, they had not been falsely dated. Clients had been aware of the position. The Tribunal accepted Mr Pulman's admission in respect of allegation (ii).

375. Taking into account both the subjective and objective tests set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 the Tribunal was satisfied that Mr Pulman's actions had been dishonest. While Mr Pulman in his submissions had complained of a lack of supervision he accepted that he had disgraced the profession. This was also the view of the Tribunal and it was right that he be struck off the Roll of Solicitors. In relation to costs, while the Tribunal considered Mr Pulman's actions to have been the fundamental cause of the proceedings being brought before the Tribunal, the Tribunal took due note of his comments in relation to his work and financial position and, bearing in mind the case of Merrick v The Law Society [200] EWHC 2997 (Admin), would order him to pay a contribution of £5,000 towards the costs of the Applicant.

[SECOND RESPONDENT]

Allegation (iv)

376. While the Applicant had submitted that *[SECOND RESPONDENT]* knew from an earlier date of Mr Pulman's misconduct the Tribunal found as a fact, having had the benefit of the oral evidence, that *[SECOND RESPONDENT]* did not know what had occurred in relation to the letters and attendance notes until 19th March 2004. The bills had been signed in October or November 2003. *[SECOND RESPONDENT]*'s evidence in that regard had been supported by that of Mr Powney who was close to Mr Pulman. *[SECOND RESPONDENT]* had been deceived and duped by Mr Pulman. *[SECOND RESPONDENT]* had impressed the Tribunal as an honest solicitor attempting to act in his clients' best interest. The Tribunal accepted his evidence and found allegation (iv) not to have been substantiated.

Allegation (v)

377. This allegation was not substantiated. The Tribunal had been impressed by *[SECOND RESPONDENT]*'s argument that he exercised a great deal of supervision in this matter and noted the number of attendance notes showing his involvement and although Mr Pulman had asserted that there had been a lack of supervision, his evidence could not be tested in cross examination. Mr Powney had not observed any sign that Mr Pulman was not coping or lacked sufficient help and supervision, indeed Mr Powney had described a supportive atmosphere within the firm. The Tribunal considered however that a lack of documentation demonstrating a structured supervision process, for example there were no documents created by *[SECOND RESPONDENT]* himself demonstrating pro active supervisory systems. That lack of documentation, demonstrating supervision, led the Tribunal to conclude that it was proper that the allegation had been brought. The Tribunal was however fully satisfied that *[SECOND RESPONDENT]* had been closely involved in the case and had supervised it adequately. The Tribunal noted the highly successful outcome of the case from the point of view of the clients.

Allegation (vi)

378. The Tribunal had considered carefully the submissions made in respect of allegation (vi). *[SECOND RESPONDENT]* had never denied that he was aware that Mr Cooper was a struck off solicitor and had explained to the Tribunal that this something that had been aware of all of his professional life. *[SECOND RESPONDENT]* had never sought to suggest that he had checked the position. It appeared probable that permission had never been sought from The Law Society. Legal submissions had been made on *[SECOND RESPONDENT]*'s behalf and by the Applicant. The Tribunal accepted in this regard the submissions of the Applicant. It was right that s.41 be interpreted widely to ensure the protection of the public. That wide interpretation did, in the view of the Tribunal, include the work of a costs draftsman. This was work for which a solicitor was responsible even though it was common practice for such work to be done externally. Mr Cooper had been remunerated albeit through his wife's company. The Tribunal in reaching this conclusion had regard to the Judgment of Lord Lane in the case of Butler. The Tribunal was satisfied that allegation (vi) was substantiated.

Allegation (vii)

379. In relation to allegation (vii) the allegation of dishonesty had been withdrawn only at the commencement of the hearing. The Tribunal could understand why the allegation had been so framed. Having heard the evidence however, the allegation even its amended form was not substantiated. *[SECOND RESPONDENT]* had taken advice from Counsel and from partners who were expert in these matters. There had been an issue of legal professional privilege and a shortage of time between discovering what Mr Pulman had done in relation to the letters and attendance notes and the directions hearing. The Tribunal had also heard persuasive submissions regarding the purpose of the directions and, the process which might eventually lead to the clients being put to an election in respect of disclosure. The Tribunal had also had the benefit of the evidence of Mr Farber who had been the Counsel advising the firm at the time. The Tribunal accepted that *[SECOND RESPONDENT]* had both acted on advice and in the interests of his clients. The statement had been prepared for a specific, early stage, in the costs process and the court had not been misled.

380. Only one allegation had been substantiated against *[SECOND RESPONDENT]* namely that relating to s.41. The Tribunal had heard the submissions of Mr Pooles in relation to this allegation and was satisfied that the breach of Section 41 had been substantiated at the very lowest end of the scale. These were also particularly unusual circumstances in that *[SECOND RESPONDENT]* had not questioned a situation which had been in place since his time as an Articled Clerk in the firm many years previously. In the circumstances the Tribunal considered it right to impose a very lenient penalty bearing in mind the mandatory penalty imposed by the statute itself. The Tribunal ordered that *[SECOND RESPONDENT]* be suspended from practice as solicitor for a period of twenty four hours. Having heard the submissions on costs the Tribunal agreed that it was appropriate to make no order for costs as between the Applicant and *[SECOND RESPONDENT]*

[THIRD RESPONDENT]

Allegation (viii)

381. The Tribunal found allegation (viii) not substantiated. In view of the comment *[THIRD RESPONDENT]* had made when asked whether he had taken time to check the bills and in view of the judicial comment in Bailey – v IBC Vehicles Ltd [1998] 3 A11 ER 570 (see paragraph 119 above) that the signing of such a bill was not a mere formality, the Tribunal considered that it was correct for the allegation to have been brought. The Tribunal had however had the benefit of *[THIRD RESPONDENT]*' oral evidence and found him to be a credible witness. He had explained that he had been asked to sign the bills by a partner with whom he had worked for many years and trusted completely and who was closely involved in the case. In the view of the Tribunal this was acceptable. *[THIRD RESPONDENT]* had distinguished that situation from the steps he would have taken had the bills been brought to him by someone more junior within the firm.

Allegation (ix)

382. In relation to allegation (ix) the Tribunal had heard evidence of the supervision arrangements within the firm at the time and had seen documents setting out those arrangements. The Tribunal was satisfied that there was no obligation on *[THIRD*

RESPONDENT] to exercise supervision in this case. *[SECOND RESPONDENT]* had been the supervising partner for this matter. Others were responsible for supervising Mr Pulman in his work in other divisions. The allegation was widely drawn and the Tribunal considered that that had been appropriate because, as referred to above there was no evidence of supervision in the form of reviews or other documents. A formal record of the supervision actually provided might have avoided the allegation being made even if it would not have prevented the fraud. Unfortunately there did not appear to have been at the time a sensible method of evidencing the supervision which had taken place. No allegation had been made against the rest of the partnership who would also bear responsibility if there had been any structural failure. In terms of specific supervision in this case, given *[THIRD RESPONDENT]* lack of direct responsibility for supervision, the allegation could not be substantiated against him.

383. The Tribunal Ordered that the Respondent, Ralph Edward Pulman of Greenfield House, Heolgerrig, Merthyr Tydfil, CF48 1RP, solicitor, be Struck Off the Roll of Solicitors and it further ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £5,000.

384. The Tribunal Ordered that the Respondent, *[SECOND RESPONDENT]* of Hugh James, Martin Evan's House, Avenue de Clichy, Merthyr Tydfil, Mid Glamorgan, CF47 8LD, solicitor, be suspended from practice as a solicitor for the period of 24 hours to commence at midday on the 27th day of November 2008.

Dated this 19th day of May 2009
On behalf of the Tribunal

R B Bamford
Chairman