No. 9942-2008

The Solicitors Regulation Authority successfully appealed against the decision of the Solicitors Disciplinary Tribunal to impose a financial penalty of £23,500 on Anthony Dennison. By Judgment of Lord Justice Toulson and Mr Justice Lloyd Jones dated 22 February 2011 following hearings on 9 and 22 February 2011, the High Court quashed the fine imposed by the Tribunal on 20 November 2009 as set out in the Tribunal's Findings and Decision dated 14 May 2010. The Court substituted an order that Anthony Dennison be struck off the Roll of Solicitors. Mr Dennison unsuccessfully appealed to the Court of Appeal (Lord Justices Maurice Kay, Hooper and Moore-Bick) on 14 March 2012 when his appeal was dismissed. Anthony Dennison is therefore struck off the Roll. Dennison v Solicitors Regulation Authority [2012] EWCA Civ 421

IN THE MATTER OF *[RESPONDENT 1]*, ANTHONY LAWRENCE CLARKE DENNISON, *[RESPONDENT 3]*, *[RESPONDENT 4]*, *[RESPONDENT 5]*, *[RESPONDENT 6]*, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss J Devonish (in the chair)
Mr D J Leverton
Mr S Howe

Dates of Hearing: 16th, 19th, 20th, 23rd, 24th, 25th, 26th, 27th, 30th & 31st March, 2nd & 3rd April, 20th, 21st, 24th, 27th, 28th, 29th, 30th & 31st July 3rd, 4th, 5th & 6th August, 9th, 10th, 11th, 16th & 20th November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of the Solicitors Regulation Authority (SRA) by Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate, 17E, Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 26th March 2008 that [RESPONDENT 1], [RESPONDENT 3], [RESPONDENT 4], [RESPONDENT 5] & [RESPONDENT 6] represented by Olswangs Solicitors of 90 High Holborn, London, WC1V 6XX and Anthony

Lawrence Clarke Dennison represented by Pinsent Masons Solicitors of 100 Barbirolli Square, Manchester, M2 3SS might be required to answer the allegations contained in the statement that accompanied the application and that such Orders should be made as the Tribunal considered appropriate.

On 19th March 2009 Richard Coleman of Counsel, instructed by the Applicant, Jonathan Goodwin, on behalf of the SRA, made an application to amend the initial statement submitted under Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007. After submissions from all parties, the Tribunal made a ruling detailing the amendments to be allowed. The hearing proceeded on the basis of the Rule 5 Statement as amended pursuant to the Tribunal's Order of 19th March 2009.

1. The allegations, as amended, were that [RESPONDENT 1], Anthony Lawrence Clarke Dennison, [RESPONDENT 3], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] (the Respondents) had been guilty of professional misconduct in the respects set out and numbered as paragraphs 3 to 7 below.

2. At the material times the Respondents had been equity partners in the firm of [NAME AND ADDRESS REDACTED], Manchester M3.

A. The "TAG" Scheme Allegations
[FIRM NAME REDACTED]'s role as vetters of claims for The Accident Group

3. [RESPONDENT 1], Mr Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had:

(a) facilitated, permitted or acquiesced in [FIRM NAME REDACTED] participation in a sham arrangement, intended to circumvent the prohibition against the payment of referral fees to introducers of business and/or fee sharing, pursuant to which money had been channelled from panel solicitors to Accident Investigations Limited ("AIL") and The Accident Group ("TAG");

(b) facilitated, permitted or acquiesced in [FIRM NAME REDACTED] concealing from panel solicitors the fact that part of the fee that panel solicitors had paid to [FIRM NAME REDACTED], ostensibly for [FIRM NAME REDACTED] to vet claims accepted under the TAG scheme, would be paid to AIL/TAG: this had been in circumstances where each of the Respondents in question had known or had suspected that, if the panel solicitors had known the true position, they would not, or might not, have been prepared to make the payment because of concerns that the monies transferred to AIL/TAG were, or might be, in substance unlawful referral fees and/or fee sharing;

(c) facilitated, permitted or acquiesced in the charging by [FIRM NAME REDACTED] of a disproportionately high amount for the purported vetting of claims under the TAG scheme;

(d) (against Mr Dennison only) facilitated, permitted or acquiesced in [FIRM NAME REDACTED] representing to panel solicitors that the criterion by which they had been vetting claims had been whether they had a (words

deleted) better than 50% chance of success, whereas the criterion had been materially lower;

(e) failed to ensure that the vetting staff at [FIRM NAME REDACTED] had been properly trained and supervised.

[FIRM NAME REDACTED]'s role as panel solicitors

4. [RESPONDENT 1], Mr Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had:

(a) facilitated, permitted or acquiesced in [FIRM NAME REDACTED]'s acting both for TAG and for clients under the TAG scheme:

(i) despite there being a conflict or a significant risk of a conflict between the interests of TAG and the interests of the clients;

(ii) despite not being able to act with the necessary independence by reason of [FIRM NAME REDACTED]'s client relationship with TAG and the conflict referred to in (i) above.

(b) facilitated, permitted or acquiesced in the payment by [FIRM NAME REDACTED] of a referral fee of £310 plus VAT to AIL for every case taken on by [FIRM NAME REDACTED] under the TAG scheme and in the charging of such referral fee to the client;

(c) failed to ensure that [FIRM NAME REDACTED] reimbursed the interest on the AIL referral fee paid by their clients under the TAG scheme (despite the decision of the Court of Appeal in Sharratt v London Central Bus Company & Ors [2004] EWCA Civ 575 that the referral fees should not have been charged to clients and The Law Society's guidance that panel solicitors should reimburse the interest); and

(d) (against Mr Dennison and [RESPONDENT 5] only) failed to ensure that [FIRM NAME REDACTED] had provided appropriate client care and costs information to TAG referred clients.

B. The "LRS Allegations"
Mr Dennison's undisclosed interest in Legal Report Services

5. Mr Dennison had facilitated, permitted or acquiesced in the provision by Legal Report Services ("LRS"), a company in which he had a one-third interest, of medical reports for clients for who [FIRM NAME REDACTED] had acted under the TAG scheme and thereby had created a conflict between:

(a) his financial interests in LRS; and

(b) his and [FIRM NAME REDACTED]'s duty to the client.

C. "The Countrywide Allegations"

Referral fees paid to Countrywide Property Lawyers Limited

6. [RESPONDENT 1], Mr Dennison, [RESPONDENT 3], [RESPONDENT 4] and [RESPONDENT 6] had facilitated, permitted or acquiesced in the payment by [FIRM NAME REDACTED] of a referral fee to Countrywide Property Lawyers Limited ("CPL") of 15% of the fees charged in respect of conveyancing work that CPL had referred to [FIRM NAME REDACTED]. The arrangement had constituted an unlawful fee sharing arrangement.

7. [RESPONDENT 1], Mr Dennison, [RESPONDENT 3], [RESPONDENT 4] and [RESPONDENT 6] had facilitated, permitted or acquiesced in [FIRM NAME REDACTED]'s failure:

   (a) to inform the clients referred to it by CPL that the firm had been paying a referral fee to CPL;

   (b) [allegation deleted]

   (c) [allegation deleted]

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Richard Coleman and Chloe Carpenter of Counsel appeared for the Applicant, Jonathan Goodwin, on behalf of the SRA. The Second Respondent (Mr Dennison) was represented by Simon Monty QC and Amanda Savage of Counsel instructed by Pinsent Masons Solicitors. The First Respondent ([RESPONDENT 1]) and the Third, Fourth, Fifth and Sixth Respondents (Messrs [RESPONDENT 3], [RESPONDENT 4], [RESPONDENT 5], and [RESPONDENT 6]) were represented by Jeremy Morgan QC and John Beggs QC instructed by Olswangs Solicitors.

The evidence before the Tribunal included some 29 lever-arch files of documents and oral evidence from some 20 witnesses, including the six Respondents.

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

The Tribunal Ordered that the respondent, [RESPONDENT 6] of [NAME AND ADDRESS REDACTED], Manchester M3., solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Ordered that the respondent, [RESPONDENT 4] [NAME AND ADDRESS REDACTED], Manchester M3., solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Ordered that the respondent, [RESPONDENT 5] of [NAME AND ADDRESS REDACTED], Manchester M3., solicitor, do pay a fine of £3,500.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Ordered that the respondent, [RESPONDENT 1] of [NAME AND ADDRESS REDACTED], Manchester M3., solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Ordered that the respondent, Anthony Lawrence Clarke Dennison of [NAME AND ADDRESS REDACTED], Manchester M3., solicitor, do pay a fine of £23,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs relating to allegation 5 (LRS) of the Rule 5 Statement, to be subject to a detailed assessment unless agreed between the parties.

The facts are set out in paragraphs 1 to 40 hereunder:-

1. The application arose following The Law Society's inspection of the books of account and other documents of [FIRM NAME REDACTED] under the Solicitors' Accounts Rules and the Solicitors' Practice Rules. A copy of The Law Society's Forensic Investigation Report dated 25th November 2004 that had reported the findings of the inspection was before the Tribunal.

2. [RESPONDENT 1] was admitted as a solicitor on 1st June 1977. His name remains on the Roll of Solicitors.

3. Mr Dennison was admitted as a solicitor on 1st March 1985. His name remains on the Roll of Solicitors.

4. [RESPONDENT 3] was admitted as a solicitor on 15th December 1977. His name remains on the Roll of Solicitors.

5. [RESPONDENT 4] was admitted as a solicitor on 15th October 1985. His name remains on the Roll of Solicitors.

6. [RESPONDENT 5] was admitted as a solicitor on 15th March 1984. His name remains on the Roll of Solicitors.

7. [RESPONDENT 6] was admitted as a solicitor on 1st September 1987. His name remains on the Roll of Solicitors.

[FIRM NAME REDACTED]

8. During the relevant period [FIRM NAME REDACTED] had some eight equity partners. [RESPONDENT 1] had been the firm's managing partner from 1998 to 2004. [RESPONDENT 5] had been responsible for claimant personal injury work. From May 2001, [RESPONDENT 1], Mr Dennison, [RESPONDENT 4] and [RESPONDENT 6] had been members of the firm's management board.

<u>TAG (The Accident Group)</u>

9. Prior to joining [FIRM NAME REDACTED], Mr Dennison had done work for Motor Law, which had operated a claims management scheme for people who might have claims for personal injuries they had sustained. On joining [FIRM NAME REDACTED], in about March 1998, Mr Dennison had introduced Motor Law to [FIRM NAME REDACTED]. [FIRM NAME REDACTED] had been appointed panel solicitors under Motor Law's claims management scheme.

10. In September 2000, TAG had acquired the Motor Law's business and the claims management business of Accident Advice Bureau Limited, which had also been established by the directors of Motor Law.

11. TAG had operated a claims management scheme involving the sourcing, funding and representation of claimants with personal injuries claims ("the TAG scheme"). In 2003, TAG had gone into insolvent liquidation.

The TAG scheme in outline

12. TAG had sought out members of the public who might wish to pursue claims for personal injuries and had co-ordinated the arrangements for the pursuit of such claims. Chief Master Hurst had made detailed findings concerning the TAG scheme in the Sharratt litigation.

13. Under the scheme TAG had identified potential claimants through advertising and direct approaches to members of the public and had obtained information concerning the potential claim.

14. TAG had signed up potential claimants to the following agreements:

    (a) a purported service agreement with TAG, which had provided, among other things that, subject to TAG's accepting the potential claimant's application, the potential claimant would have the benefit of an after-the-event insurance policy for his claim; and

    (b) a loan agreement between a bank and the potential claimant ("the Loan Agreement").

15. The premium for the after-the-event insurance had ranged between £840 and £997.50 and TAG (unbeknown to the potential claimant) would receive from the insurers an amount that ranged between £480 and £650. The apparent purpose of the Loan Agreement had been to cover the costs of the premium for the after-the-event insurance and other disbursements and costs. TAG had managed the loan account, over which the client had no control.

16. [FIRM NAME REDACTED] had acted as "vetters" of claims for TAG under the TAG scheme. Their role had been to identify the meritorious claims, which TAG would then refer to a firm of solicitors on TAG's approved panel. The panel solicitors would decide whether or not to take up the cases that TAG had referred to them. The panel solicitors had acted under a conditional fee agreement with no success fee.

17. Panel solicitors had been required by the rules of the TAG scheme to pay AIL, a subsidiary of TAG, a fee of £310 ("the AIL Referral Fee") plus VAT, purportedly for investigating the claims that the panel solicitors had decided to take up under the TAG scheme. That fee had been paid using money provided by the bank under the Loan Agreement. From Operating Manual (OM)2 onwards, it had been debited to the client's loan account without the client's knowledge or consent and prior to a retainer between the client and the panel solicitors coming into existence. Under OMI, it had been paid by the panel solicitor. The Court of Appeal in the Sharratt case had upheld

the decision of Chief Master Hurst that the AIL referral fee had been an unlawful referral fee in all cases under OMI to OM4, which the panel solicitors had paid AIL in breach of the Solicitors' Introduction and Referral Code 1990.

18. In the event that the client's claim had succeeded, the damages had been used to pay his solicitor's costs and the amount due under the Loan Agreement (i.e. the costs of the purported insurance premium of £840 to £997.50 and AIL's fee of £310 plus VAT) together with interest, and the balance, if any, had been paid to the claimant. However, TAG had guaranteed that clients would receive a minimum of £500 provided that the client's original damages exceeded £500.

19. In the event that the client's claim had failed, he would not be liable for his solicitor's costs. Further, the after-the-event insurance was meant to indemnify the client in respect of his liability for disbursements, the opposing party's costs and the amount due under the Loan Agreement and the premium itself.

20. [FIRM NAME REDACTED] had been involved in the TAG scheme in three respects:

    (i) as vetters of claims for TAG under the scheme: in this respect, TAG had been [FIRM NAME REDACTED]'s client;

    (ii) as advisers to TAG in connection with the TAG scheme; and

    (iii) as one of the firms of panel solicitors that had acted for claimants introduced by TAG.

21. In the year ended April 2003:

    (i) [FIRM NAME REDACTED] had received £5.8m in vetting fees and had made payments totalling £2.6m to AIL pursuant to the AIL Agreement;

    (ii) the fees from vetting had contributed net profits of over £2m, whilst fees from other work had contributed net profits of £294,000.

[FIRM NAME REDACTED]'s conduct as vetters of claims under the TAG scheme

22. The original terms on which [FIRM NAME REDACTED] had agreed to vet claims under the TAG scheme were contained in an agreement made in November 1999, when the scheme was set up. The terms on which [FIRM NAME REDACTED] had acted for TAG as vetters had been modified by a further agreement dated September 2000 and then by a further agreement dated 22nd March 2001 ("the Vetting Agreement").

23. By clause 3 of the Vetting Agreement, [FIRM NAME REDACTED] had agreed, in respect of each potential claim introduced under the TAG scheme, to assess whether the claim had more than a 50% prospect of success.

24. By clause 2.4 of the Vetting Agreement, TAG had agreed to use best endeavours to ensure that each of the panel firms entered into an agreement with [FIRM NAME

REDACTED] under which the panel firm would pay [FIRM NAME REDACTED] £45 for each case that the panel firm accepted under the TAG scheme.

25. By a further agreement dated 22nd March 2001 between [FIRM NAME REDACTED] and AIL ("the AIL Agreement"), AIL purportedly had agreed to undertake "initial investigatory services" to enable [FIRM NAME REDACTED] to vet the claims under the TAG scheme for a fee of £20 plus VAT for each vetted case that a panel firm agreed to take on.

26. AIL had transferred the fees received from [FIRM NAME REDACTED] under the AIL Agreement to TAG.

27. Of the £45 that panel solicitors had paid to [FIRM NAME REDACTED] for vetting each claim accepted under the TAG scheme, [FIRM NAME REDACTED] had paid £20 pursuant to the arrangements to AIL. [FIRM NAME REDACTED] had not informed the panel solicitors that it was passing on £20 of the £45 paid to [FIRM NAME REDACTED] by the panel solicitors under the Panel Agreements to AIL. The Panel Agreements had been silent about such payments.

28. Pursuant to the vetting arrangements, vetting had been conducted by a team of unqualified staff who had spent about three to four minutes on average on each case that they had vetted. By October 2001 [FIRM NAME REDACTED] had been vetting on average over 40,000 cases a month.

The payment of the AIL Referral Fee

29. In respect of each case that it accepted under the TAG scheme, [FIRM NAME REDACTED] had paid the AIL Referral Fee to AIL. The AIL Referral Fee had been charged to the client and debited from his loan account.

30. [RESPONDENT 1], Mr Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] accepted the findings of Chief Master Hurst and the decision of the Court of Appeal that the AIL referral fee was an unlawful referral fee and was not recoverable from the defendants in the litigation. They had admitted that, when acting as a panel firm, [FIRM NAME REDACTED] had paid the AIL referral fee to AIL in respect of each case that the firm took on. However, the admission only extended to the period covered by TAG's Operation Manuals 1 to 4 (until 19th November 2001). [FIRM NAME REDACTED] had sought to draw a distinction because, whereas under Operation Manuals 1 to 4 the fee was not payable by the client, under Operation Manual 5 it purportedly was.

31. The decision in Sharratt had the following financial consequences:

    (i) in the case of successful claims the defendant was not liable to pay the AIL Referral Fee; and

    (ii) in the case of unsuccessful claims, the insurers refused to pay the AIL Referral Fee.

32. The Law Society Standards and Compliance Board had issued guidance in August 2004 to the effect that panel solicitors should check the files of their TAG clients and reimburse the client (or former client) in respect of any fee paid to AIL from the client's loan account where the client had not otherwise been financially compensated for that payment.

33. The Law Society had issued further guidance in December 2004 in which it had advised that panel solicitors should return the interest on the AIL referral fee to clients. Since the AIL Referral Fee should not have been charged to clients, it followed that clients should not have been charged with interest on that fee under the Loan Agreements either. [FIRM NAME REDACTED] had failed to refund interest to the clients for whom they had acted as panel solicitors.

D. The LRS Allegations

34. By no later than March or April 1998, Mr Dennison had acquired a one-third share in Legal Report Services Limited (LRS), a company that Motor Law had used to supply medical reports for claimants under the Motor Law scheme.

35. By an agreement dated 16th April 1998 between [FIRM NAME REDACTED] and LRS, LRS had agreed to receive instructions from [FIRM NAME REDACTED] for the arrangement of medical examinations by general practitioners anywhere in England and Wales. The terms on which LRS had provided the medical reports had been amended by a further agreement dated 3rd November 1999.

36. By an agreement dated 1st November 2000 between [FIRM NAME REDACTED] and LRS, [FIRM NAME REDACTED] had agreed to instruct LRS to provide medical reports for all claims in which [FIRM NAME REDACTED] acted under the TAG scheme and LRS had agreed to provide such reports.

37. LRS had supplied medical reports for clients referred to [FIRM NAME REDACTED] under the Motor Law scheme and subsequently under the TAG scheme in accordance with those agreements.

38. Mr Dennison had been responsible for entering into those agreements on behalf of [FIRM NAME REDACTED]. He had failed to disclose his interest in LRS to his partners or to TAG. Mr Dennison had disclosed his interest in LRS to his former partners at a meeting on 9th July 2007 (some nine years on). By a letter dated 20th July 2007, Mr Dennison had informed The Law Society that he accepted that there had been conflict between his interest in LRS and his duty to TAG and to [FIRM NAME REDACTED].

The Countrywide Allegations

39. On 18th October 2001 [RESPONDENT 3], on behalf of [FIRM NAME REDACTED], had entered into an agreement with Countrywide Properties Lawyers Ltd (CPL) ("the CPL Referral Agreement") pursuant to which CPL had agreed to refer conveyancing matters to [FIRM NAME REDACTED] in exchange for 15% of

the fees that [FIRM NAME REDACTED] charged to customers in respect of the referred work.

40. During the period from 6th August 2001 to 31st December 2003, [FIRM NAME REDACTED] had paid CPL a total of £78,990.93 pursuant to the CPL Referral Agreement and had continued to pay CPL in accordance with that agreement in respect of conveyancing matters referred to it until the Solicitors Introduction and Referral Code was amended on 8th March 2004.

Application for the recusal of the Tribunal's original Chair

41 On the first day of the hearing (16th March 2009) Mr Colin Chesterton sat as Chair of the Tribunal. However, the Applicant in the substantive proceedings made an application that the Chair should recuse himself because of a concern about apparent bias. The application was supported by the First Respondent.

42. Following submissions from all parties, the Tribunal explained that in order to ensure that there was no perception of bias, the Chair had agreed to withdraw. The hearing was adjourned to 19th March to allow a new member of the Tribunal sufficient time to read into the papers.

The Opening Submissions of the Applicant

43. Once the new Chair had been introduced, the Tribunal explained that the hearing was starting afresh and that 19th March 2009 was to be treated as the first day, Mr Coleman commenced his opening submissions with an application to amend the Rule 5 Statement.

44. Having considered detailed submissions from all parties, the Tribunal determined which of the amendments it would allow and proceedings continued on the basis of the amended Statement.

45. Counsel referred the Tribunal to his written opening and outlined the three groups of allegations against the various Respondents; the TAG scheme allegations; the LRS allegations and the Countrywide allegations.

46. He explained that the first group of allegations concerned the Respondents' involvement, both as vetters and as a panel firm, in the claims management scheme run by The Accident Group (TAG). However, the TAG allegations were not brought against [RESPONDENT 3].

47. The second group, brought against Mr Dennison only, were closely related and concerned his undisclosed interest in LRS; a supplier of medical services to solicitors and clients under the TAG scheme.

48. The third group, brought against all the Respondents, except [RESPONDENT 5], related to the payment of unlawful referral fees to a company of licensed conveyancers; Countrywide Properties Lawyers Ltd (CPL).

The TAG Scheme Allegations – allegations 3(a), (b), (c), (d) & (e) and 4(a), (b), (c) & (d).

49. Counsel took the Tribunal through the allegations and the basis on which each of the Respondents was said to have known the relevant facts underlying the allegations of misconduct. He explained that certain amendments had been made to the allegations following disclosure from and witness statements by the Respondents.

50. Counsel explained that it was no longer asserted that any of the Respondents, other than Mr Dennison, had known that a significantly lower standard of review criteria was being applied when reviewing cases. Moreover, allegations of dishonesty, against the Respondents, in relation to the TAG matters had been made only in the sham and concealment allegations. It was also accepted by the SRA that only Mr Dennison and [RESPONDENT 5] had been aware of the issues relating to the provision of client care and costs information.

51. Dealing with the basis of knowledge of Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6] as regards the TAG scheme allegations, Counsel submitted that as members of the management board and as partners in the firm they must have informed themselves of the relevant matters. Counsel also noted that [RESPONDENT 1], as managing partner, had stated that he had been concerned with any compliance issues. Counsel submitted that they had been aware of the Vetting Agreement between [FIRM NAME REDACTED] and TAG and of the AIL agreement with [FIRM NAME REDACTED]. They would have been aware that the fees derived from the TAG scheme had made up a major component of the firm's revenue and profits during the relevant period. Moreover, the vetting work, done by [FIRM NAME REDACTED] in relation to the TAG scheme, had involved a large team of personnel and had been a prominent and visible part of the firm's day-to-day operations.

52. Counsel submitted that Mr Dennison's involvement and knowledge was the greatest of all the Respondents. He had introduced the work under the TAG scheme to [FIRM NAME REDACTED]. He had been the partner with responsibility for overseeing the vetting work conducted under the TAG scheme and had been closely involved with [FIRM NAME REDACTED]'s work under the scheme. Moreover, he had a close relationship with the TAG personnel and had advised TAG on certain aspects of the scheme.

53. Turning to [RESPONDENT 5], Counsel submitted that in addition to his general knowledge as a partner of the firm, as the partner with responsibility for the conduct of cases that [FIRM NAME REDACTED] had undertaken as panel solicitors under the TAG scheme, he must have informed himself of the details of the TAG scheme and of the work that [FIRM NAME REDACTED] had done under it.

54. Dealing with the first group of allegations, Counsel gave the Tribunal an overview of the TAG scheme and of [FIRM NAME REDACTED]'s involvement in it. He also went through the chronology and the relevant documentation. Finally, he outlined the SRA's case in relation to each allegation.

55. Counsel emphasised that the scheme dealt with small claims. Its basic structure was a fee agreement between the panel solicitor and the client that the client would not be liable for the solicitor's costs, if the claim failed. If the claim succeeded, the client would be liable to pay but it was expected that the costs would be recovered from the other side. There was an after the event (ATE) insurance policy under which the insurer insured the client's liability to pay his own disbursements, counsel's fees and the other side's costs should the claim fail. The price paid for that ATE policy was called a "premium". However, a substantial part of that "premium" had been received by TAG for "claims management services" the costs of which services had been found in the Sharratt litigation to be irrecoverable from the other side. A loan agreement, entered into by the client with a bank, initially financed the disbursements, including the price that the client paid for the ATE insurance i.e. the "premium" and the investigation fee of £310 paid to Accident Investigations Ltd (AIL) a sister company of TAG, in order to investigate the claim.

56. Counsel explained [FIRM NAME REDACTED]'s pivotal position in the scheme as vetters. In outline, TAG would sign up potential claimants in shopping malls, obtaining basic information. AIL would then contact the client and obtain some more information for which AIL received the £310 investigation fee. [FIRM NAME REDACTED] would then vet the claims so as to screen out the weak claims. [FIRM NAME REDACTED] would then refer the positively vetted claims to panel solicitors who would pay a vetting fee for all cases that they accepted.

57. Counsel referred to the precise standard against which [FIRM NAME REDACTED] had been vetting claims. Initially it had been - has the claim got a more than 50% prospects of success? However, as the scheme developed, the test had been said by [FIRM NAME REDACTED] to be – is this a claim which, in the reasonable opinion of a panel solicitor, might be thought to have a 50% or more prospect of success? Counsel took the Tribunal through the documentation that he submitted to be relevant to the development of the change of criteria.

58. Initially the vetting fee had been £35, but in March 2001, Counsel explained, it had been increased to £45, £20 of which had been paid by [FIRM NAME REDACTED] to AIL. Mr Dennison had claimed that the £20 had been for both investigative and administrative services supplied by AIL/TAG. The other Respondents had said that the £20 had been for administrative services. However, Counsel submitted that the £20 had been paid by [FIRM NAME REDACTED] to AIL pursuant to a "sham arrangement".

59. Referring to the document entitled "TAG Chronology," Counsel took the Tribunal through the documentation that, he submitted, had led up to the agreement of 22nd March 2001 between [FIRM NAME REDACTED] and AIL that, he submitted, had been a "sham". That agreement had involved [FIRM NAME REDACTED] agreeing to pay a fixed fee of £20 plus VAT "for AIL undertaking initial investigatory services in confirmed cases". However, Counsel submitted that AIL had already undertaken to panel solicitors to provide those same services for the sum of £310 – the investigation fee.

60. Counsel then referred the Tribunal to what he submitted was a key document that supported a case of "sham"; the confidential business plan prepared by Mr Dennison

for his partners in September 2000. The plan detailed the vetting operation including numbers of files to be vetted and numbers of staff needed. Counsel noted the words "As might be expected, TAG have already hinted that they would like to share in the revenue". He submitted that those words appeared to be a reference to fee-sharing.

61. Counsel referred the Tribunal to a note sent by Mr Dennison to all the equity partners on or about 14th March 2001. From the contents of paragraph three of the note, Counsel submitted that three points emerged. Firstly, that it looked like some sort of negotiation had been going on between [FIRM NAME REDACTED] and TAG as to how the vetting fee was to be divided up. Secondly, that there was a clear reference to "investigation fee" and thirdly that "everyone would be kept posted".

62. Referring to Mr Dennison's assertion that the agreement of 22nd March 2001 had contained a drafting error in that it should have said "investigation and administration", Counsel noted that if that was the case such an error had survived the drafts of the agreement of 2nd March and 5th March 2001, although loquacious descriptions relating to "locus in quo" and "locus reports" had been removed. Moreover, the term "investigation" had not only featured in the drafts of the agreement but also in the subsequent invoices that AIL had sent to [FIRM NAME REDACTED], referring to payments due not for "administration" but for "investigation" and in the firm's accounts for the years ending 2002/2003, in which the payments to AIL had clearly been labelled "investigation".

63. Turning to the concealment issue, Counsel referred to the wording of invoices sent by [FIRM NAME REDACTED] to panel solicitors that referred to the sum of £45 as "To our professional charges in connection with the following matters as agreed by you". However, he noted that there had been no explanation of the fact that only £25 had been for the vetting and that £20 had been remitted to AIL for further investigation and/or administrative services. Counsel also referred to a letter, sent by TAG to all panel firms in about April 2001, explaining the increase in the vetting fee to £45 as from 16th April 2001 and suggesting that the costs of posting files and the huge investment by [FIRM NAME REDACTED] had forced both the increase and the introduction of a direct debit payment system.

64. Returning to the Chronology, Counsel noted the introduction of claims allocation teams (CATs) in June 2001. These teams, according to the Respondents, had taken over the responsibility for picking up the files once they had been vetted by [FIRM NAME REDACTED] and for delivering them to panel firms at a cost of some £20 per accepted file.

65. Counsel referred to one of [FIRM NAME REDACTED]'s documents that tracked the growth of the TAG scheme from December 2000 through to May 2003, by reference to the number of vetters and to the number of referrals. In December 2000 there had been about 1,600 referrals a month with two vetters, by March 2001, 10,000 referrals a month growing to 15,000 by June 2001, 30,000 in July 2001 and 40,000 a month by May 2002. The number of vetters had increased from six to 19 with total vetting department staff at one point up to 37.

66. Counsel submitted that any administrative functions carried out by AIL could not have been commercially valued at £20 for each vetted case, resulting in payments, by

[FIRM NAME REDACTED] to AIL, of some £100,000 each month. Moreover, if such payments had been for administrative services, those payments should have been transparently billed. Counsel submitted that the agreement had been fundamentally un-commercial and that lacking a commercial rationale, its rationale had been to evade scrutiny as a "sham" for the payment of referral fees.

67. Counsel also took the Tribunal through the five versions of the Operating Manual under which procedures panel solicitors had been required to conduct their cases from TAG. As well as being party to a contract with TAG, panel solicitors had also contracted with [FIRM NAME REDACTED] as vetting solicitors and AIL as investigators. Counsel also referred the Tribunal to the various versions of those contracts.

68. Counsel submitted that it was clear from an analysis of the Operating Manuals that clients had not been committed to pursuing their claims under the TAG scheme at the point where they had engaged a solicitor. Accordingly, there had been no proper fetter on the solicitor's duty to advise individual clients, in their best interests, as to whether the TAG scheme had been an appropriate way in which to bring their claims.

69. Counsel noted that in 2000 [FIRM NAME REDACTED] had started to reimburse the AIL fee to clients because, it seems that, Defendant insurers had been refusing to pay it as part of the recoverable costs. He submitted that such action pointed, at least on Mr Dennison's part, to a recognition, at an early stage, that the AIL investigation fee, incurred before a solicitor was instructed, had constituted not a recoverable disbursement but an unlawful referral fee.

70. Continuing the Chronology, Counsel reminded the Tribunal that in April 2000 Part 2 of the Access to Justice Act had been implemented. It had allowed premiums to be recoverable from the losing side in litigation. He also explained how, in order to comply with the Conditional Fee Agreement (CFA) Regulations, a TAG representative would contact the client to arrange a home visit to explain the CFA, as the agent of the panel solicitor.

71. Counsel referred to a meeting, in May 2000, with Mr Ross of TAG at which Mr Dennison had recorded that it had been agreed that the vetting criteria were to be relaxed to the extent that the test to be applied would be whether or not a panel solicitor might believe that a case had a better than 50% prospect of success, i.e. was it worth a panel solicitor seeing the case? However, Counsel stressed that the change in the vetting criteria had not been made clear to the panel solicitors at the time. In fact, the new criteria had not been referred to until included in the second operating manual, in force from October 2000 until February 2001. Only, if they had noted it among all the other provisions of the manual, Counsel submitted, would panel solicitors have become aware of the change.

72. Dealing with the challenges to the recovery of the full amount of the premium, Counsel referred the Tribunal to an agenda of a meeting with TAG in October 2000, attended by Mr Dennison, when CFAs and challenges to the premium had been discussed. By July 2001, following the case of Callery v Grey, in which [FIRM NAME REDACTED] had been involved, the position had become clear. However, Counsel submitted that even at that date inadequate advice, about the recoverability of the premium, was still being given to clients.

73. In relation to the TAG scheme allegations contained in paragraphs 3(a) and 3(b) Counsel submitted that Messrs [RESPONDENT 1], Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had consciously or recklessly fallen short of the standards of professional conduct expected of solicitors and had consciously or recklessly breached rules and principles. He submitted that in all the circumstances they had acted dishonestly or alternatively recklessly.

74. Counsel submitted that the £20 fee, paid by [FIRM NAME REDACTED] to AIL from each £45 vetting fee, had not been for investigation or for administration but in truth had been a referral fee. The AIL agreement had been a "sham" agreement intended to circumvent the rules against the payment of referral fees or of fee-sharing. Counsel referred the Tribunal to the "Further Voluntary Particulars of the allegation of sham contained in paragraph 3(a) of the Rule 5 statement provided in response to the application that there is no case to answer" dated 18th March 2009. He explained that they outlined the SRA's case on the "sham" allegation as it appeared from the evidence currently before the Tribunal.

75. Moreover, Counsel submitted that the Respondents had concealed from panel solicitors the fact that part of the £45 fee, paid by them to [FIRM NAME REDACTED] for vetting services, was being paid to AIL/TAG. He submitted that Messrs [RESPONDENT 1], Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] each had known or had suspected that if panel solicitors had known the true position they would not or might not have been prepared to make the payment because of concerns that the monies transferred to AIL/TAG had been or might have been, in substance, unlawful referral fees that contravened Practice Rule 3 and section 2(3) of the Solicitors' Introduction and Referral Code and/or Practice Rule 7 (fee sharing).

76. In relation to the TAG scheme allegations contained in paragraphs 3(c) and 3(e) Counsel submitted that Messrs [RESPONDENT 1], Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had acted recklessly and/or had committed professional misconduct.

77. Counsel submitted that members of staff who had carried out the vetting had not been provided with written instructions, had had very little training and their work had not been adequately checked. Counsel submitted that the fee charged by [FIRM NAME REDACTED] for the vetting, at £45 for each accepted case, had been disproportionately high given that the amount of time spent on each file had been very brief; some minutes. Moreover, the work had been done by inexperienced, unqualified, lowly paid staff and the represented criteria had not in fact been applied. A more basic objection was that the vetting work had not been properly supervised by a solicitor in circumstances where unqualified members of staff were being asked to do what was essentially solicitors' work. Hence, Counsel explained, why the allegation was being put against all the Respondents on the basis of recklessness.

78. In relation to the TAG scheme allegation contained in paragraph 3(d) Counsel submitted that Mr Dennison had acted recklessly. Although the Panel Agreements had stated that vetting was to be on the basis that it was considered that there was a

better than 50% chance of success, [FIRM NAME REDACTED] had applied a significantly lower standard.

79. In relation to the TAG scheme allegations in paragraphs 4(a), 4(b) and 4(d) Counsel submitted that Mr Dennison and [RESPONDENT 5] had acted recklessly. Moreover, they and Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6] had been guilty of conduct unbefitting of a solicitor in relation to 4(a), 4(b) and 4(c).

80. As to conflict of interest and lack of independence, Counsel submitted that TAG's interest had been to recruit as many claimants to the TAG scheme as it could.

81. However, by contrast, it had been in the interests of claimants, introduced under the TAG scheme, to receive clear and frank advice from panel solicitors as to whether it was in their interests to pursue their claim under the TAG scheme, rather than in some other way, or indeed at all.

82. Accordingly, Counsel submitted that there had been a conflict or a significant risk of conflict between TAG's interests and the interests of clients recruited under the TAG scheme. Moreover, there had also been a significant risk that [FIRM NAME REDACTED] could not act with the necessary independence by reason not only of the conflict of interest but also because of the client relationship between [FIRM NAME REDACTED] and TAG.

83. Dealing with the payment by [FIRM NAME REDACTED] of the AIL referral fee, Counsel noted that Messrs [RESPONDENT 1], Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had admitted the payment of referrals fees under Operating Manuals 1 – 4 but not under OM5 which had operated after 19th November 2001. After that date, the Respondents had claimed that the client had been liable for the payment of the "investigation fee" to AIL.

84. Counsel submitted that the payments made by [FIRM NAME REDACTED] to AIL during the period covered by OM5 had also been referral fees that had contravened Practice Rule 3 and section 2(3) of the Solicitors' Introduction and Referral Code. He referred to the comments of the Court of Appeal in the Sharratt case "the amount of the fee far outstripped any reasonable charge for the work done or purportedly done. The amount in commonsense must have included a referral element".

85. Turning to the issues of the provision of client care and costs information to clients, Counsel submitted that Mr Dennison and [RESPONDENT 5] had been reckless and had committed professional misconduct. Clients had not been informed of the following: the payment of an unlawful referral fee to AIL; that TAG had retained a substantial part of the purported insurance premium with the result that it would be unlikely to be recovered from the other side in the event of a successful claim and would therefore be deducted from their damages, and that TAG had been an on-going client of [FIRM NAME REDACTED]. Counsel submitted that it was the duty of a solicitor to advise clients clearly as to what their costs obligations were at the point in time when the retainer was contracted.

86. To enable the Tribunal to understand the developments in relation to the premium and the recoverability of the premium, Counsel took the Tribunal through the relevant case law from Callery v Gray [2002] UKHL onwards.

The LRS allegations – allegation 5

87. Turning to Mr Dennison's undisclosed interest in Legal Report Services (LRS) Counsel noted that Mr Dennison said in his witness statement that he had a one-third interest in LRS by March/April 1998. An agreement of 16th April 1998 between LRS and [FIRM NAME REDACTED] showed Mr Dennison, on behalf of [FIRM NAME REDACTED], entering into an agreement with a company in which he had a one-third shareholding that was undisclosed both to his partners and to clients who were being referred by [FIRM NAME REDACTED] to LRS.

88. Counsel also referred the Tribunal to an enquiry made in June 1999 to the Law Society's Ethics Department, on behalf of Mr Dennison, as to what to do about his interest in LRS – some 14 or 15 months after he had acquired that interest.

89. On 3rd November 1999 there was an agreement described as a "relationship agreement" between [FIRM NAME REDACTED]and LRS. The agreement had been signed by Mr Dennison, on behalf of [FIRM NAME REDACTED], and Counsel submitted that it constituted a further example of Mr Dennison negotiating, on behalf of his firm, with a company in which he had a one third interest without making any disclosure.

90. Counsel referred the Tribunal to the shareholders' agreement relating to LRS dated 15th February 2000. He explained that it showed that Mr Dennison's interest in the company was held on trust and that his interest was to be kept confidential.

91. On 17th July 2001, Counsel explained that there had been another shareholders' agreement involving LRS or Expedia, as it had become known. It had preserved the same sort of trust arrangement as the earlier agreement, with a similar confidentiality provision and an arrangement whereby Mr Dennison would not be sharing in fees generated by his firm.

92. Counsel submitted that the trust arrangement had been set up to conceal Mr Dennison's interest from his partners, clients and the SRA. A situation, Counsel submitted, of serious and dishonest conduct on the part of Mr Dennison.

93. Counsel submitted that in relation to allegation 5, Mr Dennison had committed professional misconduct in breach of Practice Rule 1 and Principles 15.04, 17.01 and 19.01 of the Code. Moreover, in relation to the LRS allegations, Counsel submitted that Mr Dennison had consciously or recklessly fallen short of the standards of professional conduct expected of solicitors and had consciously or recklessly breached the relevant rules and principles. Moreover, in all the circumstances his conduct had been dishonest or alternatively reckless.

The Countrywide Allegations – allegations 6 & 7

94. Counsel took the Tribunal through the relevant documents and detailed the development of the relationship between CPL and [FIRM NAME REDACTED].

95. Counsel submitted that although described as an "administrative fee", the fee paid to CPL had in truth been a reward paid by [FIRM NAME REDACTED] to CPL for introducing conveyancing work and therefore an unlawful referral fee.

96. He noted that the fees had not been proportionate to any administrative services provided by CPL. Moreover, that after the Solicitors' Introduction and Referral Code had been amended with effect from 8th March 2004, so as to allow referral fees subject to certain conditions, [FIRM NAME REDACTED] had proceeded on the basis that the payments to CPL were referral fees. Counsel said that [FIRM NAME REDACTED] had failed to inform clients referred by CPL of their right to instruct a solicitor of their choice.

97. Counsel submitted that Messrs [RESPONDENT 1], Dennison, [RESPONDENT 3], [RESPONDENT 4] and [RESPONDENT 6] had all been aware of the relevant matters. It could be inferred that [RESPONDENT 3] had been aware because he had been the partner responsible for bringing in and doing the work. [RESPONDENT 1] had said that he had become aware of the payments to CPL soon after the arrangement had been set up. [RESPONDENT 4], Mr Dennison and [RESPONDENT 6] had become aware of them no later than 18th November 2003 when [RESPONDENT 3] had provided them with a memorandum of that date.

98. Counsel submitted that in the circumstances Messrs [RESPONDENT 1], Dennison, [RESPONDENT 3], [RESPONDENT 4] and [RESPONDENT 6] had committed professional misconduct arising from Practice Rules 1 & 3 and section 2(3) of the Solicitors' Introduction & Referral Code.

The Opening Submissions on behalf of Mr Dennison

99. Mr Monty QC referred the Tribunal to Mr Dennison's detailed response to the allegations and to his own detailed opening. He expressed his concern that a somewhat misleading picture of the role of [FIRM NAME REDACTED] in the TAG scheme had been presented on behalf of the SRA. The picture of [FIRM NAME REDACTED] playing a substantial role in the collapse of TAG and being responsible for the poor record of claims reported by panel solicitors was wrong. Leading Counsel stressed that [FIRM NAME REDACTED] had no interest in passing poor cases as it had only been paid for confirmed cases i.e. cases taken on by panel solicitors after subjecting them to their own vetting.

100. As to the vetting criteria, Mr Monty submitted that both the vetting solicitor and the panel solicitor used the same criteria – greater than 50% prospects of success, but to different ends; the vetting solicitor to assess if a case met the threshold, the panel solicitor to determine if he wished to take the case. Leading Counsel stressed that while the threshold remained the same, the internal criteria used to assess when the threshold was met, would be subject to discussion and change within the vetting department.

101. Mr Monty referred to the introduction of the Claims Allocation Teams (CAT representatives) in June 2001 as part of removing the administrative burden from [FIRM NAME REDACTED]. However, while relieving the administrative burden, the CAT representatives, by the use of pressure tactics, unknown at the time to [FIRM NAME REDACTED], had caused a major issue in relation to the quality of the claims that were being passed on to panel firms.

102. Looking at the types of cases dealt with by the vetters, Leading Counsel noted that all were small claims personal injury cases; 25% road traffic cases, 45% slips and trips, 25% work-related accidents and 5% other. He illustrated the exercise of vetting with a couple of real cases and submitted that given the information provided, vetting as to better than 50% chance of success and quantum of at least £1,500, was and had been a relatively simple and quick exercise. On the basis of the figures before the Tribunal, Leading Counsel submitted that a vetter would have been well able to deal with 16 cases an hour leading to some 170 cases per day. He maintained that the work was paralegal work at best and actually performed at [FIRM NAME REDACTED] by people with a basic knowledge of the law who knew what they were looking for. [FIRM NAME REDACTED] had been the vetting solicitors with the responsibility of getting the vetting done properly but that had not meant, Leading Counsel submitted, that every file had had to be vetted by a solicitor.

103. Turning to the agreement to change the standard from better than 50% chance of success to whether a panel solicitor might think that it had a better than 50% chance of success, Leading Counsel maintained that there was no evidence as to whether panel solicitors had been informed or not. He reminded the Tribunal that the OM 1 -5 classifications had been introduced by the Chief Costs Judge in the Sharratt judgement and that, in practice, TAG had been responsible for notifying changes in the Operating Manual to the panel solicitors.

104. Looking at the difference between the two thresholds, Leading Counsel submitted that the only real effect of any change would have been to allow through more borderline cases to enable the panel solicitor to make a decision. He stressed that it had still been the responsibility of the panel solicitor to decide whether or not the case was a good one that he wished to take on. Dealing with the pilot scheme relating to 500 files, Mr Monty stressed that the threshold of better than 50% had not been at issue but the criteria i.e. an attempt to identify the individual issues in respect of each type of case that someone vetting would need to look at to decide if the case met the threshold.

105. Leading Counsel referred the Tribunal to the Vetting Agreement of March 2001 and to the definitions therein of "claims criteria", "TAG vetted claim", "fully vetted claim" and "accepted claim". He submitted that it was clear from those definitions that the only basis on which [FIRM NAME REDACTED] could pass claims to panel solicitors, was that the panel solicitors would consider that the claim met the "claims criteria" and the "claims criteria" involved "greater than 50% prospects of success". Leading Counsel submitted that the threshold had always been preserved.

106. In relation to the Fernandez report, Mr Monty asked the Tribunal to note the very forceful response from Mr Dennison which, Leading Counsel submitted, showed that he was maintaining the independence of his firm and of the vetting department from TAG.

107. Turning to the agreement between [FIRM NAME REDACTED] and AIL, Leading Counsel said that it had been deliberately separate from the Vetting Agreement. Moreover, the fact that AIL had transferred money to TAG, had not been evidence that the agreement had been a "sham".

108. Mr Monty explained to the Tribunal that the genesis of the £20 agreement with AIL had been fully set out and fully dealt with in Mr Dennison's statement, as well as in his response. He told the Tribunal that Mr Dennison would be giving evidence about the Business Plan of September 2000 and the fact that it had absolutely nothing to do with the agreement with AIL in March 2001.

109. Leading Counsel explained that the agreement that was reached in March 2001 had been that TAG would take on the administrative work from [FIRM NAME REDACTED], together with any additional investigative work, in return for £20 per confirmed case. He submitted that the evidence showed, and would show, that that had been exactly what had happened.

110. Mr Monty referred the Tribunal to the details in his skeleton argument as to the definition of a sham in law. He noted the simple definition in Street v Mountford, namely that a sham existed where parties said one thing and intended another. He also referred to the Snook case and to Lady Justice Arden's judgement in Stone v Hitch. Mr Monty noted the five key points in the latter judgement as to sham; the Court could consider external evidence; the test of intention was subjective; the fact that the document or the act was un-commercial or artificial did not mean that it was a sham; departure from the agreement did not mean that they had never intended it to be effective and binding and the intention must have been a common intention. Leading Counsel submitted that the question of sham was one of the substance and not of the form of the document, and of the intention of the parties and that one had to look at what the parties had actually done.

111. Indeed, Mr Monty submitted, that the wording of the agreement with AIL had been the wrong way around had it been a sham. If the parties had wished to hide that it was for "investigative fees," where investigation was already being done by AIL for £310, they should have used the words "administrative services".

112. Leading Counsel referred to a document, prepared in July 2003, by the administrator of the vetting department, showing that over a two and a half year period some 10%, of the 40% of cases rejected by the vetters, had been rejected because of a need for further investigation.

113. Mr Monty then considered the linkage between the allegations of sham and of concealment. He submitted that if the Tribunal found that there had been no sham, then it followed that there had been absolutely no reason for the panel solicitors to have been told about the arrangements that [FIRM NAME REDACTED] had made for the outsourcing with AIL. If there had been no sham then there could have been no concealment.

114. Leading Counsel submitted that at the current stage in the proceedings, there was no evidence of overcharging as what had been paid had been the agreed contractual amount.

115. Turning to the client care allegations, Leading Counsel referred the Tribunal to articles in the periodical, Litigation Funding, which he said, illustrated that in November 2000 there had been awareness of the vulnerability of premiums to the regulations on recoverability, but a belief that current premiums were reasonable. He submitted that [FIRM NAME REDACTED], and some 800 other panel firms, could not have told their clients that the AIL fee had been an unlawful referral fee until that had been determined by the Court of Appeal in May 2004. Nor could they have advised that TAG had retained a substantial part of the premium. In fact Mr Dennison had believed that the premium had been a genuine payment for insurance services.

116. Moreover, Leading Counsel submitted that it had been clear from the documents (to which he took the Tribunal) that clients had been warned that not all expenditure might be recovered. TAG claimants had been made aware, from the documents, that they were taking out a loan that was funding the premium and the disbursements and that the investigation costs had been a disbursement. Referring to Practice Rule 15, Mr Monty submitted that under the TAG scheme clients had had costs information fully explained to them and had been provided with the relevant information before being referred to a panel solicitor.

117. Turning to the conflict allegation, Leading Counsel explained that what in effect was being said was that [FIRM NAME REDACTED] had not been able to advise TAG claimants, because of a conflict of interest, and that they might have been better off pursuing their claims in a different way or under a different scheme. Mr Monty submitted that that had been an illusory conflict in that [FIRM NAME REDACTED] had complied with all the relevant regulations and there was no evidence before the Tribunal of better schemes or that for small personal injury claims the TAG scheme had not been suitable. It had been a scheme for dealing with small value claims under a one size fits all block insurance policy, allowing access to justice for some quarter of a million claimants who would not otherwise have been able to fund their claims.

118. Leading Counsel submitted that [FIRM NAME REDACTED]'s relationship with TAG as vetters had had no bearing on their relationship with TAG claimants when acting as panel solicitors, particularly in the absence of any evidence of wrongdoing. Further, that it was unfair to treat [FIRM NAME REDACTED] as a panel firm any differently from the way all other panel firms had been treated by the Law Society/SRA

119. Turning to the LRS allegation, Leading Counsel submitted that the Tribunal's finding would turn entirely on the evidence that Mr Dennison was to give and the view that the Tribunal formed about his state of mind and his belief at the relevant time. However, Mr Monty pointed out that there was no evidence before the Tribunal that Mr Dennison procured the use of LRS by TAG.

120. As to CPL, Leading Counsel explained that Mr Dennison had had no knowledge of anything related to CPL until he had received the memorandum on 18th November 2003. He reminded the Tribunal that November 2003 had been right in the middle of the SRA's investigation and Mr Dennison had never been asked any questions about CPL.

The Opening Submissions on behalf of Messrs [RESPONDENT 1], [RESPONDENT 3], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6]

121. Mr Morgan QC referred the Tribunal to his Opening Statement and his authorities bundle. He explained the development of [FIRM NAME REDACTED] and the respective roles of all the Respondents in the firm stressing that it had grown from a high street practice mentality, being an informal partnership, rather than one with defined rules.

122. Leading Counsel noted that it was common ground that TAG had been a scheme that had gone badly wrong because of internal failings at Board level. However, he reminded the Tribunal, that between 2000 and 2003 TAG had been a respected market leader with a package that had fitted well with the Government's new scheme for the funding of personal injuries work. He submitted that there had been no reason for Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] to be especially suspicious of their firm's association with a company that was spearheading the new way of funding litigation. Nor should the fact that it had been potentially profitable have caused extra doubts to arise in their minds.

123. Leading Counsel took the Tribunal through [FIRM NAME REDACTED]'s accounts for the two years ending April 2002 and 2003 to indicate that while vetting income had been significant, it had not been overwhelmingly important compared to the rest of the firm. He stressed that the firm had been profitable in any event, investing both in staff and facilities and had not been so dependent on vetting as to tempt the partners to act inappropriately in any way.

124. Turning to the question of knowledge, Leading Counsel noted that his clients facing TAG charges, (who he termed the TAG Olswangs' Respondents), had never, in the course of the SRA investigation, been asked about their knowledge of the matters in relation to which they were now said to have been dishonest and/or reckless. He submitted that in order to facilitate, permit or acquiesce, all the TAG Olswangs' Respondents would have had to have had knowledge of the underlying facts or have been reckless as to the underlying facts.

125. However, Leading Counsel noted that the TAG Olswangs' Respondents had been partners in different departments, removed from the TAG work, and therefore, he submitted, that there was a big question about their factual knowledge. The firm had been run along departmental lines, with operational matters staying within departments, or in the case of vetting within a sub-department. Leading Counsel submitted that had been a perfectly normal and proper arrangement for a firm in the complex legal world of today, moreover, that the partners could not have been expected to have detailed knowledge of the operational work of other departments.

126. Leading Counsel stressed that he was not arguing that the TAG Olswangs' Respondents had had no knowledge whatsoever of TAG and the TAG arrangements under the scheme, because clearly for its lifetime TAG had been a major provider of work and income for the firm. However, a general understanding from Mr Dennison of some of the arrangements that had been made, Leading Counsel submitted, was a

world away from the level of understanding necessary to create guilty knowledge in any of the matters in which they had been alleged to be dishonest, reckless or guilty of misconduct.

127. Turning to what knowledge would have constituted guilty knowledge, Leading Counsel submitted that, in relation to the sham charges, it was necessary to prove, to the higher standard, that the TAG Olswangs' Respondents had been party to a dishonest and express conspiracy. The alternative to the express conspiracy was that each of the TAG Olswangs' Respondents had read all the TAG agreements and manuals, in detail, at the time of the scheme, analysed the interaction between them and how they had related to the TAG practice within the firm and had concluded that they had the effect of breaching rules of professional conduct. Leading Counsel submitted that such an analysis was unrealistic. He went through the huge amount of material, considered in the various costs proceedings, that he submitted the TAG Olswangs' Respondents would have had to assimilate to appreciate what had been later determined by the Courts.

128. Leading Counsel explained that having considered the "Further Voluntary Particulars" and heard the SRA open its case and having considered the draft documentation, not seen by them until recently, the TAG Olswangs' Respondents recognised that the draft documentation was capable of giving the impression that the £20 had been part of a fee-sharing agreement between AIL and [FIRM NAME REDACTED] for an unlawful referral fee. However, far from a sham, Leading Counsel submitted that there was incontrovertible evidence that there had been a substantial change in the arrangements between TAG/AIL and [FIRM NAME REDACTED], in that [FIRM NAME REDACTED] had been relieved of the onerous obligation of getting vetted files to hundreds of different solicitors all over the country, of dealing with those files returned and re-sending those returned files to other panel solicitors. He submitted that there had been no sham but a payment for what had happened. Moreover, the TAG Olswangs' Respondents had had no reason to doubt the bona fides of the £20 fee. They had believed it to be a proper and lawful payment for the performance by AIL of burdensome administrative services.

129. Turning to the Business Plan, dated September 2000, that referred to TAG having hinted that they would like a share of the revenue, Leading Counsel explained that none of the TAG Olswangs' Respondents recalled seeing that particular document but, as it was almost nine years ago, they accepted that they probably did see it, but had no memory of it. Some recalled a discussion involving Lucas & Co but also recalled that the proposal had been rejected by all the partners. The agreements of March 2001 had happened some six months later. The TAG Olswangs' Respondents had not seen, at the material time, the documents or the drafts. They had not seen the faxed invoices relating to AIL's charges and had not noted the words, or any relevance in the words, "investigation fees" in the partnership accounts. The TAG Olwangs' partners had understood that the payments had been for administration, evidence of which, they had seen in the changes in the office.

130. Leading Counsel explained that the letter from RT, Solicitors had been received about 12 August 2003, after the collapse of TAG and after the start of the SRA investigation. [RESPONDENT 4] had considered the letter to be a claim for a refund of money, against the background of an allegation that the money had been paid in

breach of Law Society rules, and a suggestion of a confidentiality agreement and Leading Counsel submitted his response should be read in that light. Moreover, that response had said not that the arrangements had been approved by the Law Society but that they had been known by the Law Society.

131. Leading Counsel agreed with Mr Monty that allegations 3(a) and 3(b) stood or fell together in that, if the main agreement had not been a sham, then there was no question of a deliberate concealment. He noted that the invoices in respect of the vetting fees referred to "our professional charges.....". Mr Morgan stressed that the delivery of such a gross bill, not breaking the charge into detailed items, was not misleading but was a standard practice within the profession, even where part of the work was sub-contracted by the solicitor.

132. Turning to allegation 3(c) Leading Counsel explained that in calculating the vetting charge, files rejected by [FIRM NAME REDACTED] (40%) and files not accepted by panel solicitors (some 50% of the 60% passed by [FIRM NAME REDACTED]) had to be included, making a charge per file of some £13.50 on the basis of a £45 vetting fee per accepted file. Mr Morgan referred to the November 2000 issue of Litigation Funding (a publication by the Law Society designed to assist personal injury practitioners in assessing the market). In that issue there had been a comparison of vetting fees with a figure of £72.50 for Claims Direct and £50 for Accident Line Protect. Leading Counsel submitted that there was no evidence before the Tribunal that the vetting charge by [FIRM NAME REDACTED] had been disproportionately high.

133. In relation to allegation 3(e) Leading Counsel submitted that vetting could be and had properly been done by staff who had not been admitted. Leading Counsel explained that it was the norm for bulk, low-value, personal injury work to be carried out by un-admitted staff and that it had not been surprising that vetting in such cases had been carried out by non-admitted staff.

134. Turning to the conflict of interest allegation 4(a), Leading Counsel accepted that there had been a potential conflict in the light of the Court of Appeal cases because of the fact that TAG had been a referrer of work to [FIRM NAME REDACTED] and, with the massive benefit of hindsight, a declaration to the client would have been appropriate. However, the Law Society's view up to 2006, before the Court of Appeal had decided the Garrett case, and the almost universal view of the profession, had been that situations where solicitors had been dependant on claims management firms for a great deal of referrals, had not given rise to an interest that had to be declared to the client.

135. Dealing with allegation 4(c), the payment of interest, Leading Counsel explained that no obligation had arisen under OM1 because no interest had been paid. [FIRM NAME REDACTED] had accepted their obligation to repay interest under OMs 2 – 4 because the AIL investigation fee had been found to be an unlawful referral that the solicitor had a contractual obligation to pay. In those circumstances, clients should not have paid the referral fee or any interest on it. However, in OM5 the arrangement had been different in that the client had been under a contractual obligation to pay the AIL fee and the solicitor had no longer been under such an obligation.

136. Explaining [RESPONDENT 5]'s position in relation to allegation 4(d) Leading Counsel referred the Tribunal to the Law Society's draft model CFA and explained that the TAG documentation had been modelled on that draft. The client care letters had been standard letters drafted by TAG for all panel solicitors that [RESPONDENT 5] had routinely signed them. Moreover, dealing with the advice given in the TAG documents, Leading Counsel took the Tribunal through some of the issues in what was called "the costs war" and stressed that all solicitors, undertaking litigation at that time under the block premium type of CFA, had been giving clients similar information.

137. Turning to the CPL allegations 6 & 7, Leading Counsel explained that [RESPONDENT 3] had accepted that he was the equity partner responsible for the Conveyancing Department, although from November 2003, as a result of the Law Society's investigation, the matter had been discussed among all the Respondents.

138. Again, as with TAG, Leading Counsel noted that from a substantial panel of CPL solicitors, [FIRM NAME REDACTED], very much a minor player on that panel, had been the only panel firm to be charged with offences in relation to CPL.

139. Leading Counsel put forward a legal defence to the allegations based on the wording of the version of the Code applicable during the relevant period. He submitted that the Code had not prevented introductions and referrals between "lawyers" and that CPL, as a firm of licensed conveyancers, were in fact lawyers.

140. Mr Morgan also put forward an alternative factual answer to the allegations. He explained that [FIRM NAME REDACTED] had been invited, in January 2000, to join CPL's network panel which had involved a set administration fee of £50 for each completed matter. CPL had been related to a large estate agency organisation which, when it had too much work or had leasehold matters, had used one of its panel solicitors. CPL's administrative fees had been changed to a percentage basis following the launch of its interactive web-site. In February 2003, [RESPONDENT 3] had been involved in a meeting with CPL at which the issue of referrals from lawyers to lawyers had been discussed. Up to that point, [RESPONDENT 3] had not appreciated that there might have been any problem as he had considered that he had been paying for a service, but the issue of referrals had been topical because of the Law Society's consideration of a relaxation of the Code.

141. Following a further meeting with CPL in November, [RESPONDENT 3] had sent a memorandum to Messrs [RESPONDENT 1], Dennison, [RESPONDENT 4] and [RESPONDENT 6], who had, in the light of the Law Society's investigation, asked him to ensure that there had been no problems relating to CPL. [RESPONDENT 3]'s view of whether a fee had been a referral fee had been whether that fee had been reasonable for the provision of a service, if not it would have constituted a reward to the introducer. His view, at the time, had been that the fee paid had been reasonable for the service provided. In his memorandum to his partners, he had set out details of the value given by CPL.

Oral Evidence on behalf of the Applicant

142. Both Leading Counsel for the Respondents expressed their concern about the lack of detailed witness statements from witnesses being called to give evidence as former panel solicitors and witnesses being called to give evidence as former vetters at [FIRM NAME REDACTED]. They were concerned about the need to take further instructions in relation to supplementary questions of which they had had no notice. Mr Coleman explained that these witnesses had made a short statement confirming the correctness of answers given to a questionnaire used by investigating officers in face to face or telephone interviews. Copies of the questionnaires, both handwritten and typed, were before the Tribunal.

143. The Tribunal expressed its concern about the way in which the evidence of panel solicitors was being put before it. It noted that the handwritten answers were quite difficult to read and not satisfactory as witness statements. The Tribunal directed that if Mr Coleman wished to ask supplementary questions in chief, Leading Counsel for the Respondents should be given prior notice of those questions, as well as a brief outline of the responses.

144. Timothy Dixon, a former panel solicitor, gave evidence about his dealings with [FIRM NAME REDACTED] and his involvement with the TAG scheme. He confirmed that he had always seen vetting as a two stage process, with [FIRM NAME REDACTED] identifying viable claims on the basis of a greater than 50% test and his firm doing the secondary vetting to decide whether or not to take a case. He had not expected the vetting at [FIRM NAME REDACTED] to be done by a solicitor or a legal executive, but by people experienced in personal injuries work, properly supervised. Mr Dixon explained that he had left the panel in February 2001 for various reasons, one of which was that he had noted some deterioration in the quality of the leads. He had no problem with the vetting fee but had been concerned that the AIL investigation fee of £310 had seemed more like a referral fee.

145. In cross-examination, Mr Dixon explained that he had no independent recollection of the details of the telephone questionnaire in June 2004. However, he thought he had take on about 150 -160 cases and that he had probably accepted about one in every six or seven cases. He could not remember how his firm had dealt with the repayment of interest to clients but said that he had not been asked about that issue by the Law Society. Mr Dixon confirmed that he had used the TAG standard form client care letter and the standard letter relating to the CFA and had not advised clients about any risks in using the TAG scheme.

146. Rebecca Andrew, a former vetter with [FIRM NAME REDACTED], gave evidence about her role as a vetter with [FIRM NAME REDACTED]. She relied on her answers, given in 2004, to a questionnaire.

147. In cross-examination, Ms Andrews explained that she had an LLB and her LPC before starting work as a vetter and subsequently, she had qualified as a solicitor. She had had a general understanding of personal injuries law and, following some initial training, on the relevant criteria, from a team leader, she had undertaken the job of vetting for some five months in 2002. Apart from some files that had to be returned for further information, Ms Andrew explained that she considered that she had had sufficient information and time to do the job. From time to time there would be

random checks on her work. Ms Andrews recalled using more stringent guidelines for a very short period that had resulted in a greater number of rejected cases.

An application by the Respondents for the striking out of allegations 4(b), 4(c), 6&7

148. Leading Counsel referred the Tribunal to the separate bundle of documentation relating to the strike out application, including the three skeleton arguments from Counsel (Messrs Morgan, Monty and Coleman). He explained that his application, on behalf of the Olswangs Respondents, was based on the gross unfairness to those Respondents, of the SRA continuing to prosecute them in relation to particular charges.

149. Leading Counsel submitted that the unfairness against the Olswangs Respondents was systematic and therefore entirely exceptional. He said that deliberate decisions had been made as to how to deal, or not deal, with others for the alleged offences and that [FIRM NAME REDACTED] alone, from a very large number of other potential respondents, was being afforded different treatment. Leading Counsel explained that his application related to allegation 4(b) – the payment of the referral fee charge that was the AIL referral charge that every panel solicitor had been implicated in. Allegations 6 & 7 - the payment of a referral fee to CPL and the related client care matter, again which, he submitted, every solicitor on the CPL panel had been involved in. Finally, so much of the allegation under 4(c) which involved the repayment of interest, as related to the failure of [FIRM NAME REDACTED] to ensure the repayment of the interest on the AIL fee in cases conducted under OM5.

150. In relation to allegation 4(b), Leading Counsel referred to the Compliance Board announcement in July 2003 not to undertake a general investigation of panel solicitors who had been paying referral fees in breach of the rule. He submitted that the effect of that decision had been to create a general amnesty, for the future, for the particular breach of the rule for the solicitors, in some 800 firms, who had been on the TAG panel, except where a client complained. Mr Morgan noted that no other solicitor had been brought before the Tribunal on the charge of paying a referral fee as a TAG panel solicitor.

151. In those exceptional circumstances, Leading Counsel submitted that the bringing of the allegation under 4(b) against [FIRM NAME REDACTED] alone, among the TAG panel solicitors, was grossly unfair. It was discriminatory, unjust and oppressive and brought the system of the regulation of solicitors into disrepute.

152. In relation to CPL, Mr Morgan noted that no other solicitors had been brought before the Tribunal, although many other firms had had far more CPL referrals than [FIRM NAME REDACTED]. Indeed one of those firms had been told by the Law Society, following a compliance visit in February 2004, that nothing was to be gained by pursuing the matter. Moreover, there had been no loss to clients and no complaints.

153. In relation to the issue of the repayment of interest arising on the AIL referral fee paid under OM5, Leading Counsel referred the Tribunal to a recommendation to an adjudication panel dealing with (on 26th February 2009) some nine solicitors, in a similar position to [FIRM NAME REDACTED], where no findings of professional

misconduct had been made. He submitted that there was no difference in the evidential basis of the proceedings against [FIRM NAME REDACTED] to those as against any other firms.

154. Leading Counsel took the Tribunal through the relevant cases relating to the powers of the courts in cases of abuse. While there was no allegation of bad faith against the SRA, he submitted that there was an oppressive process. Leading Counsel explained that there might be adequate evidence in a case but it might still be unfair to proceed.

155. Dealing with the SRA's point that [FIRM NAME REDACTED] had been central to TAG as a scheme, Leading Counsel submitted that while [FIRM NAME REDACTED] had been central to the operation of the TAG scheme through their vetting function, the alleged offence under 4(b) would have been committed solely by panel solicitors in that capacity – by the solicitor acting for the client. As panel solicitors, Leading Counsel submitted, [FIRM NAME REDACTED] had been no more central to the scheme than any other firm. As to the fact that [FIRM NAME REDACTED] had been on both the TAG panel and the CPL panel, Leading Counsel noted that there were a number of other firms who had been on both panels and therefore [FIRM NAME REDACTED]'s position had not been unique.

156. Mr Monty made submissions on behalf of Mr Dennison. In addition to the points made by Mr Morgan, which he adopted, Mr Monty submitted that the public interest test required the SRA to treat all solicitors equally and fairly.

157. In relation to allegation 4(b) Leading Counsel submitted that the allegation related to the actual payment of the sum and that Mr Dennison's knowledge had been the same as any other solicitor involved in the paying of the AIL investigation fee. However, he said that the fact that Mr Dennison had been prosecuted, until some days before the commencement of the trial, on allegations of dishonesty arising from 4(b), a charge that the Law Society had accepted in July 2003, should not be the subject of regulatory investigation, and from 4(c) amounted to an abuse.

158. In opposing the application, Mr Coleman submitted that it was completely misconceived. He reminded the Tribunal that the test to be applied was whether the prosecution of the allegations was oppressive, grossly unfair and vexatious such that their pursuit amounted to an affront to the public conscience and he submitted that was not the case in the particular circumstances before the Tribunal.

159. Counsel identified the common ground between the parties, made some general submissions, went through each of the allegations, the subject of the application, and dealt with Article 1 of the First Protocol of the European Convention on Human Rights. Inter alia, he stressed the unique responsibility of the SRA for the enforcement of the professional standards of solicitors and maintained that the SRA considered the prosecution of the particular allegations against a firm, whose involvement in the TAG scheme had been very different to that of other firms, was in the public interest.

160. Moreover, Mr Coleman submitted that it was not enough to show inconsistency of approach but that it had to be inconsistency that had been so arbitrary and irrational

that it was an affront to the public conscience, properly characterised as grossly unfair.

161. Counsel submitted that were the Tribunal to uphold the "sham" allegation the consequences would be that [FIRM NAME REDACTED]'s entire involvement in the TAG scheme would be tainted by that dishonest arrangement at its centre. In addition, the firm had a unique understanding of the Scheme, in that Mr Dennison had helped to construct it and had advised on it.

162. In conclusion, Mr Coleman submitted that the pursuit of the allegations was not grossly oppressive, grossly unfair or an affront to the public conscience. Further, that whatever reservations the Tribunal had about any or all of the particular allegations that they were proper allegations and it did not, in the circumstances, have the discretion to strike them out. He invited the Tribunal to dismiss the application.

163. Inter alia, Mr Morgan reminded the Tribunal that the allegations had to be considered separately as against each of the Respondents.

164. Inter alia, Mr Monty reminded the Tribunal that the payment of the AIL investigation fee had been paid throughout the period of the TAG scheme and, as such, could not be said to be related to an alleged sham agreement in March 2001.

The Decision of the Tribunal

165. The Tribunal explained that it had given anxious consideration to the application. It had considerable sympathy for the Respondents in that it could be said that the way in which they had been singled out, in relation to certain allegations, had been unfortunate and perhaps unfair. However, having due regard to the law on the abuse of process and to the cases to which all three Counsel had helpfully referred, the Tribunal was not satisfied that the Respondents' application had reached the high threshold necessary for an abuse of the process application to succeed. The Tribunal reserved the question of the costs of the application to the end of the hearing.

Continuation of oral evidence on behalf of the Applicant

166. Andrew Sharpe, a solicitor whose firm was on the TAG panel, gave evidence on the basis of his statement that confirmed the typed answers to a questionnaire administered in 2004 by Ms Nicola Prue, a Senior Investigation Officer with the SRA.

167. In cross-examination, Mr Sharpe explained that he had a limited recollection of Ms Prue's visit but thought that the answers had been given in consultation with his colleagues. He said that his firm had opened some 288 TAG files but had probably rejected nine out of every ten cases offered by the TAG representatives. He told the Tribunal how his firm had tried to handle the work in accordance with the relevant Operating Manual but that he had left the scheme because most of the people referred to his firm had not appeared to have any real interest in bringing a claim.

168. Sarah Driscoll, a solicitor, who before she qualified, had worked as a vetter at [FIRM NAME REDACTED], gave evidence on the basis of her statement in which she had

confirmed that the answers to her questionnaire represented her position in relation to those various questions.

169. In cross-examination, Ms Driscoll explained that she had worked at [FIRM NAME REDACTED] for six months and that the vetting job had not been difficult, once she had got the hang of it. It had certainly been within her capabilities. Vetting had been very straightforward, taking about a minute to determine whether a case was a pass or not, or if further information had been needed. She had difficulty in remembering details of criteria, although she remembered being given some guidelines, or of supervision and checking of files. Ms Driscoll stressed that the word "cut" in her typed answers was wrong and should probably have said that the team leader went through some files with her.

170. Eric Fletcher, an Investigation Manager with the SRA, gave evidence about the investigation into [FIRM NAME REDACTED] and the resultant Forensic Investigation Report. He relied on his witness statement dated 5th February 2009 that exhibited questionnaires and responses from TAG panel solicitors and 20th February 2009 that explained that he had taken over the investigation of [FIRM NAME REDACTED] from Mr Cotter and had prepared the final report, dated 25th November 2004, summarising the findings of the investigation.

171. In cross-examination by Mr Monty, Mr Fletcher confirmed that he had taken over the investigation from Mr Cotter in November 2003. (The first inspection of [FIRM NAME REDACTED] had taken place on 25th July 2003.) However, at the time of the first interview, on 19th November 2003, Mr Fletcher had not been familiar with the detail of the relevant TAG scheme documentation. Without referring to his notes, he had no independent recollection of that interview. He agreed that unless it appeared in his interview notes, there had been no questioning of anyone by him about the role of the firm's Management Board.

172. With reference to the transcript, Mr Fletcher agreed that when he had begun to ask Mr Dennison questions about the AIL/[FIRM NAME REDACTED] agreement of 22nd March 2001, Mr Dennison had referred to both administration and investigation. Mr Dennison had also explained the administrative demands of TAG and [FIRM NAME REDACTED]'s difficulties and its administrative role, both before and after March 2001, and how it had changed. He agreed that Mr Dennison had also explained problems with the quality of the information supplied and his belief in the need for further information for which extra payment had been demanded. Mr Fletcher agreed that he had asked Mr Dennison whose idea had it been to introduce the CAT representatives and he had replied TAG.

173. Mr Fletcher agreed that the Forensic Investigation Report had contained the Law Society's position at the time in relation to the matters it had investigated. Moreover, in order to show what [FIRM NAME REDACTED] had said about the issues, it had been decided to attach all the transcripts of interviews to the Report. He agreed that Mr Dennison had told him that the CAT representatives had taken over the distribution and collection of files in the Summer of 2001 but said that there had been no reason why that matter ,or Mr Dennison's referral to further investigations, had not appeared in the body of the Report. Mr Fletcher agreed that it would have been necessary to read the transcripts to obtain such details

174. Turning to the questionnaires sent to the panel firms, Mr Fletcher explained how the sample of 18 out of 750 panel firms had been chosen. He did not know if it was a fair sample but had been the number that could be dealt with in the time available. He had not considered a reference in the questionnaire to the "[FIRM NAME REDACTED]scheme" as either biased or misleading. Mr Fletcher said that normally no supplementary questions had been asked and no questions as to how the panel firms had handled the TAG work as they had not been under investigation. Nor had he been investigating TAG. He himself had not asked supplementary questions but had just asked the question and had written down the answer given to him without seeking any further clarification. He explained that the last question, about what firms would have thought had they known that an element of the vetting fee had been paid to TAG, had been asked just to find out what people would have thought.

175. Mr Fletcher denied that he had been trying to make a case against [FIRM NAME REDACTED] by the use of the questionnaires. He insisted that they had been used only to establish an overview of what the panel firms had done, for which purpose no supplementary questions had been necessary. However, Mr Fletcher was unable to explain what one solicitor had meant by "a sound prima facie case" in a response to one of the questions about vetting criteria or why that panel solicitor had thought that files had been vetted by a solicitor at [FIRM NAME REDACTED], doing about three in an hour.

176. Mr Fletcher confirmed that the questionnaire for the ex-employees of [FIRM NAME REDACTED] had been sent to 23 people of whom seven had responded within the time allowed. He had not spoken to any ex-employees. He had not been aware that two of the seven might not have been vetters but a vetting administrator and a vetting accounts clerk.

177. In cross-examination by Mr Morgan, Mr Fletcher acknowledged that the contents of the Investigation Report had to be fair and balanced but he explained that the SRA was now providing more appendices and less content in the actual body of Reports. However, he explained that he had not seen the question about [FIRM NAME REDACTED] fee-sharing with TAG as a "loaded question" at the time and had not considered that, in fairness to [FIRM NAME REDACTED], a further question should have been asked reflecting their explanation of the £20 fee.

178. In response to a question as to why he had not asked any of the Olswangs Respondents about their knowledge of matters into which he had been enquiring, Mr Fletcher said that it had not been for him to decide who was to be proceeded against but that he had looked at the accounting information that had been given to all the partners. He explained that he had relied on the names on the management accounts as being the people who had had knowledge of the fund generated by the vetting scheme.

179. Nicola Prue, a Senior Investigation Officer with the SRA, gave evidence on the basis of her witness statement dated 2nd February 2009 that exhibited questionnaires and responses from TAG panel solicitors and former [FIRM NAME REDACTED] employees. Ms Prue explained how notes from meetings at [FIRM NAME REDACTED] had been produced. She also explained her involvement in the process

of interviewing panel solicitors and former employees of [FIRM NAME REDACTED].

180. In cross-examination by Mr Monty, Ms Prue said that she could not explain what had happened to her handwritten notes. She explained that when conducting interviews she would have been familiar with the main issues and themes of the investigation. Ms Prue confirmed that she had only asked the set questions and that one of those questions had been how many files the panel solicitor had "received" not how many they had "accepted". She agreed that neither of the two ex-employees of [FIRM NAME REDACTED] had known anything about vetting as they had not been vetters.

181. In cross-examination by Mr Morgan, Ms Prue said that she and the other investigators had put together the questionnaires believing that they had used the questions necessary to capture all of the facts. She confirmed that she had been aware that [FIRM NAME REDACTED] had sent the SRA a copy of the list of CPL panel solicitors early in February 2004.

182. In response to a question from the Tribunal, Ms Prue explained that she used the questionnaire as an aide memoire to ask the questions but did not give a copy of it to the panel solicitor or to the ex-employee.

183. Sean Hankin, a Senior Investigation Officer with the SRA, gave evidence on the basis of his witness statement dated 4th February 2009 that exhibited questionnaires and responses from TAG panel solicitors and former [FIRM NAME REDACTED] employees.

184. In cross-examination by Mr Monty, Mr Hankin explained that he had been involved in the investigation to a very limited extent and that he had basic background knowledge. He agreed that, at one of the panel firms, he had interviewed, not someone who had dealt with the TAG work as a fee earner, but the Accounts Manager who, as the person responsible for paying the vetting fees to [FIRM NAME REDACTED], had been put forward by the firm to answer the questions. Mr Hankin stressed that his remit had been to ask the standard questions only and he had not asked for explanations by way of supplementary questions. Mr Hankin agreed that, at the second firm, he had interviewed a partner who had not been doing TAG work and that the firm had been removed from the TAG panel for not paying [FIRM NAME REDACTED]'s vetting fees.

185. In cross-examination by Mr Morgan, Mr Hankin explained that although he had not read any of the relevant documents, he had obtained his background knowledge from discussions with colleagues and from publicity. His role had been not to question the responses but just to take them down so that they could be summarised for inclusion in the Report at a later stage.

186. Stephen Wallbank, a Senior Investigation Officer with the SRA, gave evidence on the basis of his witness statement dated 29th January 2009 that exhibited questionnaires and responses from five TAG panel solicitors.

187. In cross-examination by Mr Monty, Mr Wallbank explained that he would have familiarised himself with documents, relevant to the [FIRM NAME REDACTED]

investigation, before interviewing panel solicitors. Having been taken through both his handwritten notes and the resultant typed notes of the interviews annexed to the Forensic Investigation Report, Mr Wallbank agreed that his typed notes had been summaries rather than a record of the entirety of the answers that he had been given during the interviews. He acknowledged that the Report had said that a sample of panel solicitors had been interviewed, specifically in relation to how the [FIRM NAME REDACTED] vetting scheme operated, but had not stated that the responses given had been presented in a summary form. Mr Wallbank accepted that some items, that might appear relevant to [FIRM NAME REDACTED]'s interests, had been omitted from his summaries but he was not sure that the summaries had been misleading. He insisted that there had been no deliberate decision to omit complaints by panel firms about TAG.

188. In cross-examination by Mr Morgan, Mr Wallbank said that his memory of what had been said during the interviews was really dependant on his notes. He accepted that, unlike his colleagues, he had asked some additional questions, but that he had not probed any inconsistencies in responses. Mr Wallbank explained that what panel solicitors had said about [FIRM NAME REDACTED] might have been affected by the fact some of them had been involved in outstanding disputes had not crossed his mind. He agreed that possibly it might have been right to add, as one of the common themes relating to the vetting scheme, that panel solicitors had said that they had been under pressure from TAG to take files.

189. Barry Cotter, an Investigative Manager with the SRA, relied on his statement of 20th February 2009 and gave evidence about the commencement of the investigation into [FIRM NAME REDACTED] on 25th July 2003. It had been authorised on 23rd July 2003. He confirmed that a note, attributing remarks to both [RESPONDENT 1] and [RESPONDENT 4], relating to the purpose of the £20 payment back to TAG, had been made by Mr Simpson who had since died. Mr Cotter explained that he had no independent recollection of the interviews but that his notes would have reflected Mr Simpson's interpretation of what both [RESPONDENT 1] and [RESPONDENT 4] had answered.

190. In cross-examination by Mr Monty, Mr Cotter explained that he was unable to answer questions about intelligence, rationale or reasons for the instigation of the [FIRM NAME REDACTED] investigation. However, he said that he believed that a leak from the Law Society's Press Office might have led to the BBC knowing about the investigation.

191. Mr Cotter explained that in his opinion more robust vetting done by TAG, via [FIRM NAME REDACTED], could have identified frauds a lot earlier. He confirmed that he had not heard of TAG's Claims Allocation Teams but had been aware that some panel firms had been coming under huge pressure from TAG to take claims. Mr Cotter explained that he had not meant to imply that [FIRM NAME REDACTED] had been central to the collapse of TAG but that they had been central to the TAG scheme.

192. In cross-examination by Mr Morgan, Mr Cotter agreed that the reports and other information exhibited to his statement all post-dated the time when [FIRM NAME REDACTED] had been taking cases from TAG and he had not been seeking to

impute such knowledge of the internal workings of TAG to the [FIRM NAME REDACTED] partners.

193. Mr Cotter explained that questionnaires had been sent out to some 600 TAG firms. From analysis of the responses there had appeared to be almost no consideration by those firms of the payment of the interest charged by the funder on the client loan account in relation to the AIL payment. He agreed that as investigators they had treated OM5 as no different to OMs1 – 4, in relation to the repayment of interest. However, he acknowledged that the approach of the case-note to the Adjudicator had been different.

194. In re-examination, Mr Cotter said that the leak of information had not been authorised by the SRA. He explained that the lack of consistency, that he acknowledged, had been caused by a resource problem and that although the SRA was becoming more accountable, they still cannot officially tell a firm the reasons why it is being investigated.

Submissions by Mr Coleman

195. Before closing his case, subject to hearing two further witnesses in July 2009, Mr Coleman explained the position in relation to the documents before the Tribunal and the continuing process of voluntary disclosure. He reminded the Tribunal that in considering the imminent application of no case to answer, the Tribunal would be concerned with not only the oral witness testimony but also with the documents and what they evidenced. He referred the Tribunal to a disclosure correspondence bundle.

196. Mr Coleman said that it was important that the Tribunal was aware of the disclosure correspondence and what had arisen from it because, in opposing the application, he would be relying, in part, on the inferences to be drawn from the paucity of the minutes and other contemporary documents in existence to support the Respondents. Mr Coleman explained that disclosure had been sought of; any documents relating to the negotiation and agreement of the £20 fee paid to TAG and in particular those evidencing the purpose of the payment, the missing attachments to the Business Plan of September 2000 and copies of minutes of partnership meetings insofar as they related to TAG matters.

197. Mr Coleman told the Tribunal that no partnership minutes had been disclosed only two management board minutes; 12th January and 11th April 2003.

Application by Mr Monty, on behalf of Mr Dennison, of no case to answer in relation to allegations 3(a) – (e)

198. Mr Monty referred the Tribunal to the amended Rule 5 Statement, his written opening submissions and his written submissions relating to the application of no case to answer. He reminded the Tribunal of the test in R v Galbraith [1981] 1WLR at page 1089. Mr Monty submitted that the issue for the Tribunal, at the close of the Applicant's case, was whether there was sufficient evidence brought by the SRA, taken at its highest, that the Tribunal could convict upon.

199. Leading Counsel submitted that there had been an incompetent, biased and shambolic investigation which had failed to result, after some six years, in the evidence required to sustain and support the serious allegations brought against the Respondents. He submitted that the Tribunal could not and must not find that there had been a dishonest sham by inference. The SRA's case, he further submitted, was based entirely on inference.

200. Mr Monty took the Tribunal through his detailed criticisms of the evidence gathering process by way of questionnaires, sampling 18 out of some 750 panel solicitors. He submitted, inter alia, that the typed answers, annexed to the Investigation Report, had not been a complete summary of the answers and had been misleading. Leading Counsel reviewed the information in the questionnaires and the evidence given by Mr Dixon and Mr Sharpe.

201. Turning to Mr Cotter's evidence, Mr Monty submitted that his witness evidence had purported to give expert opinion evidence based on his experience as an investigator in relation to a scheme with whose documents he was not totally familiar.

202. Leading Counsel submitted that there was evidence that AIL had taken on an administrative and investigatory function after March 2001 inconsistent with a "sham" and there was no evidence of an intention to deceive. Even taken at its highest, the SRA's case raised no more than a question and fell way short of proving anything. Moreover, Mr Monty submitted that in the absence of evidence to support a "sham", there could not have been any concealment.

203. Mr Monty submitted that there was no evidence to support the allegation of overcharging or that the panel solicitors had not been aware of the threshold and of the change. Turning to training and supervision, Leading Counsel reviewed and summarised the evidence of Ms Andrew and Ms O'Driscoll. He submitted that vetting had appeared to be a straightforward job, requiring only on the job training and a basic knowledge of law, undertaken in a department with proper structure and supervision.

Application by Mr Morgan, on behalf of Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] & [RESPONDENT 6], (the Olswangs Respondents) of no case to answer in relation to allegations 3(a) – (e) & 4(b).

204. Mr Morgan explained that all the partners relied on the submissions made by Mr Monty but wished to raise further points, based on knowledge, in which there was a difference between [RESPONDENT 5], as Head of the P.I. Department, and the other partners. All the Olswangs Respondents denied that they had the requisite knowledge in respect of allegations 3 (a), (b) & (c) and all, except [RESPONDENT 5], in respect of 3 (e) and 4 (b). [RESPONDENT 5]'s case for 3 (e) & 4(b) was that he did not have requisite knowledge but he accepted that it was a matter for him to establish at the second stage.

205. Mr Morgan referred the Tribunal to his written submissions. Inter alia, he stressed that following the case of Galbraith, the Tribunal had a duty to stop allegations, if it was not satisfied, at the close of the Applicant's case, that properly directing itself on the law, it could not find allegations proved to the criminal standard. Leading Counsel

explained that it was critical that the Tribunal examined the evidence adduced by the SRA separately for each respondent to consider dishonesty, recklessness and any other basis for finding the charge established.

206. Mr Morgan made submissions relating to inferences and to the quality of the investigation by the OSS/SRA. He stressed that [RESPONDENT 5] had never been interviewed at all and that none of the Olswangs Respondents had ever been asked about their knowledge of TAG or the arrangements in relation to TAG, nor had the suggestion of dishonesty ever been put to them.

207. Turning to the disclosure correspondence submitted by Mr Coleman, Mr Morgan said that wide ranging requests for further documents had been made at a very late stage and that while the solicitors acting for the Respondents had some 30 boxes of documents, obtained from the solicitors acting in the insurance litigation, they had been unable, during the last couple of days, to comply with such a last minute request. No previous requests had been made for such specific disclosure and Mr Morgan submitted that it was completely wrong for adverse inferences to be drawn from the situation.

208. Mr Morgan addressed the Tribunal on dishonesty, knowledge and mental state generally in relation to all the allegations. Inter alia, he submitted that dishonesty was the most serious allegation that could be made against a professional person and required very cogent evidence to achieve the criminal standard of proof. Leading Counsel detailed the SRA's evidence in relation to each of the relevant allegations and asked the Tribunal to avoid the quantum leap that the SRA had made between Mr Dennison's possible knowledge and the knowledge of the other partners.

209. Dealing with allegation 4(b) the payment as a panel solicitor of a referral fee to AIL, Mr Morgan submitted that knowledge was absolutely critical. He reminded the Tribunal of the relevant litigation that determined that the AIL investigation fee of £310 had been a referral fee and submitted that there was no evidence that Messrs [RESPONDENT 1], [RESPONDENT 4] & [RESPONDENT 6], none of them partners in the relevant department, had ever reviewed the material necessary to reach that conclusion.

Submissions by Mr Coleman

210. Mr Coleman handed in some authorities, including extracts from Phipson on Evidence and documents; "No Case to Answer - SRA's Summary of Principles" and "Evidence of Live Panel Solicitor/Employee Witnesses" to the Tribunal. He relied on those documents and authorities together with his oral submissions.

211. Counsel addressed the Tribunal in detail on the following; relevant principles concerning evidence, the test for no case to answer, what had to be shown in general terms in order to establish a breach of the Solicitors' Practice Rules underlying the allegations the subject of the application, the relevance of the attack on the investigation and the preparation and presentation of the case and the evidence in support of each allegation.

212. Mr Coleman stressed that the Tribunal had to approach the application from a depersonalised perspective asking itself whether a reasonable Tribunal could reasonably convict on the evidence, considering the totality of the evidence in the round.

213. Although Counsel submitted that there was clearly a case to answer on dishonesty and recklessness, he reminded the Tribunal that the allegations did not fall away if dishonesty or recklessness were not proved. Mr Coleman explained that the Solicitors' Practice Rules had been made pursuant to section 31(1) of the Solicitors Act 1974, section 31(2) provided for complaints for breaches of the rules and pursuant to section 46(1) the Tribunal has jurisdiction to deal with complaints arising from breaches of the rules. He submitted that questions of knowledge, responsibility or moral culpability, whether it be dishonest, reckless, careless or blameworthy in some other way did not go to the question of breach.

214. While noting that the SRA relied mostly upon documentary evidence, Counsel reminded the Tribunal that for the purposes of the no case to answer application, it was not able to rely on the exculpatory statements of the Respondents on the basis that they were attempts to explain away documents.

215. Turning to the evidence to support the case on "sham," Mr Coleman referred in detail to the following; the agreement itself, the contemporary documents, the inherent un-commerciality of the agreement, the concealment from the panel solicitors and the Respondents' explanations. He submitted that they all combined to establish a case that needed to be answered.

216. Moreover, Counsel submitted that although there was a sufficiency of evidence on the question of actual knowledge, in the event that the Tribunal was not satisfied of that in relation to the Olswangs respondents, he asked it to consider constructive knowledge; had the respondents been put on enquiry? He submitted that recklessness was relevant because in sitting back, taking the huge profits, not making the enquiry and ignoring the obvious signs, there was a case to answer.

217. Dealing with concealment, Counsel explained that he did not say that allegations 3(a) and 3(b) stood or fell together. Although he accepted that they were related, he asked the Tribunal to consider them separately.

218. As to disproportionate vetting fees, Counsel submitted that the allegation was linked to concealment as only £25 of the fee had been for vetting. Moreover, the work, which had taken only a few minutes per file, had not been done to the contractual standard, by untrained, unqualified people, who had not been supervised by a solicitor. Mr Coleman submitted that as an expert Tribunal, it could reach its own view as to an appropriate fee.

219. Allegation 3(d) was against Mr Dennison only, and Counsel submitted that the contractual standard had been relaxed unilaterally by him, without clearly communicating the change to the panel solicitors.

220. In relation to allegation 3(e), Mr Coleman took the Tribunal through the evidence and submitted that it showed inadequate training and supervision. Further, turning to the

knowledge of the individual Respondents, he submitted that it was clear that both Mr Dennison and [RESPONDENT 5] had known the position and that it was reasonable to infer that the other partners had taken notice of what had been a huge and dominant part of the firm. He reminded the Tribunal that [RESPONDENT 1] had been the managing partner, [RESPONDENT 4] had become involved in the accounts and [RESPONDENT 6] had been the director of [FIRM NAME REDACTED] Ltd.

221. Finally turning to allegation 4(b), Mr Coleman submitted that the Tribunal could safely infer that the information relevant to the AIL referral fee had been discussed between the partners in a matter of obvious financial importance to the firm.

222. In reply, Mr Monty reiterated the relevant tests in relation to both no case to answer and as to sham. He submitted that there had either been a sham involving all the partners or there had been no sham and no concealment by any of the partners. Turning to his criticism of the investigation, presentation and preparation of the case, Leading Counsel stressed that such criticism could not be ignored because it explained the nature and the paucity of the evidence, particularly in relation to vetting charges and supervision.

223. In reply, Mr Morgan stressed that in relation to the charges other than sham and concealment, there was no evidence before the Tribunal as to what the partners, other than Mr Dennison, had known about the operation of the vetting department. He said that the investigation had been flawed in that none of the documents, now referred to as incriminating, had been put to the Olswangs Respondents for their comments. Leading Counsel stressed that there was a big difference in relation to TAG between Mr Dennison and the other partners.

The Decision of the Tribunal

224. Having considered the detailed submissions made on behalf of all the parties, both oral and in writing and the evidence presented by the SRA, the Tribunal made the following observations and findings.

225. The allegations in question were not "strict liability" allegations, as were breaches of the Solicitors Accounts Rules. Accordingly, it was necessary to prove the requisite knowledge against each individual Respondent in respect of each allegation.

226 In considering the appropriate test for an application of no case to answer, the Tribunal had been referred to R v Galbraith [1981] in which Lord Lane CJ had established the principles upon which such applications were to be decided. Where the evidence was tenuous, either because of inherent weakness or vagueness or because it was inconsistent with other evidence, so that the prosecution evidence, taken at its highest, was such that no reasonable Tribunal could properly convict upon it, then the case was to be stopped. In borderline cases, the Tribunal would use its own discretion.

227. The criminal standard of proof was to be applied to the allegations before the Tribunal. Allegations 3(a) and (b) involved dishonesty. Allegations 3(c) 3(d) and 3(e) involved recklessness, and allegation 4(b) alleged recklessness against Mr Dennison and [RESPONDENT 5] and breach in relation to the remaining

Respondents. The Tribunal had to assess the sufficiency of the evidence and to determine what inferences could be drawn from the primary evidence. This was to be undertaken without reference to the Respondents' evidence.

228. The Tribunal had also been referred to Telnikoff v Matusevitch[1984] in which it was held that 'if a piece of evidence is equally consistent with malice and the absence of malice it cannot, as a matter of law, provide evidence for a finding of malice'.

Allegation 3(a)

229. The Applicant's evidence in support of allegation 3(a) against the Respondents was that Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6] had been both members of the Management Board and partners in the firm. In addition, [RESPONDENT 1] had concerned himself with compliance issues. The partners had been aware of the Vetting Agreement between TAG and [FIRM NAME REDACTED] made in November 1999, when the scheme had been set up, and as modified by the further agreements of September 2000 and March 2001. The partners had also been aware of the relevant terms of the Vetting Agreement. The paucity of minutes of partners' meetings had been of some concern to the Tribunal. The Tribunal would have expected to see relevant, contemporaneous documents referred to it, but none had been disclosed.

230. The Tribunal had noted the Applicant's documentary evidence. Firstly, the TAG memorandum dated 14th March 2001. A document accepted by the parties as having been written by Mr Dennison and sent by him to un-named recipients about a week before the alleged "sham" arrangement. The Tribunal was satisfied that the intended recipients had been the equity partners of [FIRM NAME REDACTED]. This was because the document had updated the recipients about the exclusivity agreement that had been in the process of being agreed with TAG, to commence in March or April 2001. It had referred to the expectation of some 125,000 cases to be undertaken, on site, over the next 5 years, to the contemplated increase in the vetting fee from £40 to £45 and to the reduction in the investigation fee from £20 to £15. The memorandum had stated that everyone would be kept 'posted'.

231. Secondly, the Agreement of 8 February 1999, between Accident Advice Bureau Ltd (AAB) and [FIRM NAME REDACTED]. This had been mindful of the Solicitors' Introduction and Referral Code 1990 because under that Agreement it had been incumbent upon the Solicitor not to accept any instructions in breach of the Code.

232. Thirdly, the Panel Solicitors' Vetting Agreement of 1 November 1999 had been between AAB, [FIRM NAME REDACTED] and Mr Dennison. It was unclear who had signed that Agreement on behalf of [FIRM NAME REDACTED] as the signature page had not been exhibited. However, it was clear that Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had had some involvement in the consideration of the document at an early stage of the scheme. The Tribunal would not expect any agreement to be signed by a solicitor without due consideration. Under that Vetting Agreement, AAB had agreed to pay [FIRM NAME REDACTED] £35 for reviewing each confirmed case. That had been at a time when a solicitor had undertaken the vetting process

233. Finally, the Business Plan, dated 20th September 2000, prepared by Mr Dennison and sent to un-named recipients, again appeared to have been presented to the equity partners. The information that it contained was such that the equity partners would have expected to be informed. The Business Plan had recorded the increasing amount of work and the change from using fee earners as vetters to the employing of paralegals. It had also recorded L & Co's withdrawal as vetters for TAG, leaving a debt of some £2.5m and that TAG would have liked [FIRM NAME REDACTED] to have assumed responsibility for £1.5m of that debt. The Tribunal considered that the equity partners would have been particularly concerned by such a proposal. The Tribunal particularly noted that Mr Dennison had written that 'TAG have already hinted that they would like to "share" in the revenue', but there was no evidence at all that the Respondents had acceded to the proposal or precisely what the proposal had been.

234. Turning to the oral evidence of Mr Eric Fletcher, the Tribunal noted that he had interviewed both [RESPONDENT 4] and Mr Dennison during the SRA investigation but that he had not asked any of the partners about the role of the Management Board.

235. On behalf of the Respondents, it was submitted that both prominent solicitors and Counsel had been retained by TAG to advise on the 2001 Vetting/AIL Agreements and that those advisors would not have drafted an Agreement either in breach of the rules or to create a "sham". Moreover, there was no evidence that Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] or [RESPONDENT 6] had either actual or constructive knowledge of the content of the agreements. They had been peripheral partners in relation to TAG. There had been nothing intrinsically wrong in TAG asking [FIRM NAME REDACTED] to pay AIL, rather than TAG making direct payment. Indeed the underwriters of the TAG Scheme would not have allowed TAG to undertake the vetting work themselves. There had been no need to inform panel solicitors of the outsourcing arrangements.

236. The Tribunal noted that the partners had not been asked about the "sham" allegation during the investigation. It was the view of the Tribunal that for the partners to have permitted or acquiesced, they would have had to have had relevant knowledge. The Tribunal considered that the structure of the firm, based on departmentalisation, was relevant to their knowledge. The Tribunal found that Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had only a general understanding of the firm's involvement with TAG. The Tribunal was not satisfied that there was any evidence of their involvement in a dishonest and express conspiracy. To have been so involved, they would have needed to have analysed the relevant documents in considerable detail. The Tribunal accepted that there had been a change in the TAG/AIL/[FIRM NAME REDACTED] relationship following the introduction of the CAT representatives. From the perspective of Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6], that change had been inconsistent with a "sham". Payments had been made for a service in that the CAT representatives had taken over the delivery of files. The Tribunal accepted that Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] could have related those payments to that change.

237. The Tribunal noted that Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had not seen the AIL Agreement of March 2001 or the relevant invoices. They had believed that the panel solicitors had been clients of the firm and so there had been no commercial inconsistency.

238. Dealing with the application of no case to answer in relation to allegation 3(a), the Tribunal found that the relevant Respondents, other than Mr. Dennison, all had individual and differing roles and responsibilities in the firm. They had no direct knowledge of the day to day running of the vetting department and, as partners, had been entitled to rely on what Mr. Dennison had told them. In the view of the Tribunal, there was no evidence of any intention to deceive on the part of Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6]. In the circumstances therefore, the allegation of dishonesty was to be struck out as against them. The allegation was however to proceed against those four Respondents on the basis of recklessness alone, as the Tribunal considered that there was a case to answer on that basis.

239. The Tribunal was also satisfied that Mr. Dennison had had a far greater knowledge of the TAG arrangements than that of the other Respondents. He had brought the work to [FIRM NAME REDACTED], had negotiated with TAG, had drafted various documents for TAG and had managed the vetting department in the firm. The Tribunal found that, in applying the Galbraith test, there was some cogent evidence against him. Accordingly, as against Mr Dennison, the allegation of dishonesty was to stand as the Tribunal found that there was a case to be answered.

Allegation 3(b)

240. The Applicant's evidence in support of allegation 3(b) against the Respondents was that the partners had been aware of the AIL agreement dated 22 March 2001 between [FIRM NAME REDACTED] and AIL. That agreement had related to AIL undertaking initial investigatory services so as to enable [FIRM NAME REDACTED] to vet the claims under the TAG scheme for £20, plus VAT, for each confirmed case. It was the Applicant's case that, contrary to what the AIL Agreement purported to provide, AIL had not, in fact, investigated claims for [FIRM NAME REDACTED] in its capacity as the vetter. All panel firms had been required to pay AIL £310, plus VAT, for each claim they had accepted, purportedly for investigating the claim. In those circumstances, the Applicant's case was that AIL had been paid twice for the same investigative work.

241. The Tribunal had noted the Applicant's documentary evidence. Firstly, the TAG letter to panel firms of 10th April 2001. That had indicated a review of cost areas and an increase in the vetting fee to £45, as from 16th April 2001, to cover the cost of posting files, the investment required by RC to fulfil its duties as vetter, and of credit control. Secondly, the draft AIL Agreement dated 5th March 2001. That had demonstrated that AIL had already been bound to undertake the task of 'investigating claims so [FIRM NAME REDACTED] can properly carry out vetting' for which a £310 fee would have been paid. That vetting work had been undertaken on behalf of the solicitor and not for the client. Thirdly, the Vetting Agreement and AIL "back to back" agreements of 22nd March 2001. Those had set out the change in the requirement for TAG to pay a fee to [FIRM NAME REDACTED] for vetting to a

situation whereby [FIRM NAME REDACTED] had collected the AIL fee from panel solicitors and had passed £20 to AIL. Fourthly, the analysis of files referred back to TAG/AIL, that had been undertaken by [RESPONDENT 1] and produced on 12th January 2004. It had revealed that between 4% and 10% of cases had had to be referred back to AIL for further investigation. Finally, the firm's Accounting Records had described an investigation fee income of £151,000. However, the AIL fee had been shown as an overhead.

242. Turning to the oral evidence of Timothy Dixon, the Tribunal noted that he had said that investigation work did not seem to exist and that the £45 had felt like a referral fee but had confirmed that he had had to apply his own vetting criteria in deciding whether to take on any file. He had inevitably adopted a stricter vetting test.

243. On behalf of the Respondents, it had been accepted that they had not disclosed their payments from the panel firms' vetting fees back to AIL/TAG. It was submitted that those payments had been in respect of administrative charges and not a fee sharing arrangement and, as such, there had been no requirement to disclose.

244. Dealing with the application of no case to answer in relation to allegation 3(b), the Tribunal had concluded that, in all the circumstances, the Applicant had failed to present credible evidence upon which the Tribunal could find the dishonesty allegation proved against Messrs. [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] or [RESPONDENT 6]. In the circumstances, the allegation of dishonesty was therefore to be struck out as against those Respondents. The allegation would proceed against them on the basis of recklessness alone. However, the Tribunal was satisfied that, given the circumstances of Mr Dennison's close involvement in the scheme, there was more cogent evidence against him. Accordingly, as against Mr. Dennison, the allegation of dishonesty was to stand. The Tribunal found that there was a case to be answered.

Allegation 3(c)

245. Turning to allegation 3(c), the Tribunal had noted that the Applicant's case was that the charge to the panel solicitors for the vetting, being undertaken by non- qualified staff, had been overcharging. This was because it had been charged as solicitors' work. It had been accepted that the work, undertaken in vetting a file, had taken between one and four minutes to perform. The Applicant had submitted that the charge of £45 per file had been too much. Moreover, that there had been no supervision by a solicitor or any adequate training of vetters.

246. The Tribunal had noted the evidence of Andrew Sharpe who had said that vetting was not cost effective work for a solicitor to undertake.

247. On behalf of the Respondents, it had been submitted that it was naive to expect solicitors to undertake this type of work, and that the way in which [FIRM NAME REDACTED], as the vetting firm, had discharged their duty to TAG, had been a matter for the firm alone.

248. Dealing with the application of no case to answer in relation to allegation 3(c), the Tribunal found that the agreement between TAG and [FIRM NAME REDACTED]

had been a commercial agreement for vetting to be undertaken at a fee agreed by both parties. No evidence had been called by the Applicant to show that the vetting fee had been too high. The only evidence had been that Claims Direct and the Law Society had both charged higher fees for a similar exercise. There had been no evidence before the Tribunal of complaints from panel solicitors about the level of the vetting fee. The Tribunal found no evidence to support the allegation of over-charging. In the circumstances, the Tribunal found that there was no case to answer in relation to allegation 3(c) and ordered it to be struck out as against all the Respondents.

Allegation 3(d)

249. Turning to allegation 3(d) as against Mr Dennison only, the Tribunal found that there was no credible evidence to support the allegation. The SRA had described the criteria as nebulous suggesting that panel solicitors would not know how to apply it, but had brought no evidence to support the contention that there had been any representation to panel solicitors as to the relevant criteria. The threshold had been initially "better than 50%", and later, "whether a panel solicitor might think it was better than 50%". It had been clear from the vetting agreement that panel solicitors should exercise their own independent judgment in each case before deciding whether or not to take on a case.

250. The Tribunal was satisfied that there was no evidence to support an allegation of recklessness or of any breach. In the circumstances, the Tribunal found that there was no case to answer in relation to allegation 3(d) and ordered it to be struck out as against Mr Dennison.

Allegation 3(e)

251. Turning to allegation 3(e), the Tribunal noted that the Applicant's case was that the vetting had been charged as solicitors' work to panel firms when in fact it had been being carried out by inadequately trained, unqualified and unsupervised staff. In relation to this allegation, the Applicant had relied, almost exclusively, upon oral evidence. The Tribunal had noted the one document to which it had been referred being the minutes of a meeting of the Vetting Department on 7th May 2002. That meeting had been held with the vetting staff. The minutes had recorded that the vetting staff had expressed discontent with their working conditions, including a lack of information about who the partners were, the content of the TAG Agreement, lack of access to medical and PI books and lack of vetting criteria and a training manual. A report of the meeting had been sent to the partners.

252. The Tribunal had noted the oral evidence of Timothy Dixon, who had expected a properly supervised person to undertake the vetting and had been surprised that the files had not been looked at by a solicitor or by a legal executive. In addition, in her oral evidence, Rebecca Andrew had said that she had had one hour of training from the team leader, who had himself been seeking a training contract. She had never met any of the partners and had been unaware as to who had been overseeing the vetting department. She had explained that the team leader had conducted random checks on files. Andrew Sharpe, a panel solicitor, had told the Tribunal that he had employed a newly qualified solicitor and a paralegal to undertake TAG work. He had refused

some 90% of cases sent to him, on his own vetting test. Sarah O Driscol had explained to the Tribunal that vetting had been her first legal job. She had recalled seeing [RESPONDENT 5] collecting files for the [FIRM NAME REDACTED] panel work. The vetting job had not been difficult. It had taken about one minute to assess a case and it had been boring. She had been given four sheets of guidance and had found that the supervision and management had been fine. The team leader had checked her files on a few occasions.

253. Dealing with the application of no case to answer in relation to allegation 3(e), the Tribunal accepted that the vetting procedure had been easily learnt by anyone with a law degree and/or CPL. The criteria adopted had been simple and straightforward. The work had been boring and repetitive and in reality only un-admitted staff could have been engaged to undertake it. There had been more experienced, un-admitted staff as supervisors. They had reported to Mr. Dennison, who, in turn, had been responsible for the whole vetting process. The Tribunal found no evidence at all to support the allegation of failure to properly train and supervise vetting staff as against the Respondents, Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6]. They had not had the relevant knowledge and as such had all been entitled to rely upon Mr. Dennison managing the vetting process properly. Whilst the management of the vetting department may not have been perfect, the evidence did not support, to any convincing degree, the allegation. In all the circumstances, the Tribunal found that there was no case to answer in relation to allegation 3(e) and ordered it to be struck out as against all the Respondents.

Allegation 4(b)

254. Turning to allegation 4(b), the £310 referral fee paid by [FIRM NAME REDACTED] to AIL for all cases taken on as a panel solicitor, the Tribunal noted that the Applicant's case was that the partners must have had knowledge of the AIL fee payment from their clients in the sum of £310. There had been evidence before the Tribunal that Mr Dennison had said that he had not been "on a frolic of his own". This was because he had explained the scheme to his partners at the equity partners' meetings. He had kept his partners updated on TAG related issues so they had been aware of the scheme in general terms. The Applicant had stressed that the panel solicitor had paid the £310 fee on the clients' behalf, before clients had authorised any disbursements. He submitted that had meant that the payment had been made to secure the work and was therefore a referral fee.

255. The Tribunal had also noted the submissions on behalf of the Respondents that the findings of the Court, that the £310 had been a referral fee, had followed a lengthy examination of many documents upon which the TAG scheme had been based. It had been submitted that there was no evidence to support an allegation that any of the Respondents, with the exception of Mr Dennison, had had sufficient, detailed knowledge of the TAG scheme to have concluded that the fee of £310, plus VAT, had been an unlawful referral fee.

256. Dealing with the application of no case to answer in relation to allegation 4(b), the Tribunal found that there was no credible evidence that Messrs. [RESPONDENT 1], [RESPONDENT 4], or [RESPONDENT 6] had had the requisite knowledge of the underlying facts or that they had considered them in any detail. The findings of the

courts in the Sharratt litigation, as to the referral fee, had followed a lengthy examination of the many documents upon which the TAG scheme had been based. The Tribunal was satisfied that there was no evidence to support a allegation that any of the Respondents, with the exception of Mr Dennison and [RESPONDENT 5], had sufficient, detailed knowledge of the TAG scheme to have concluded that the fee of £310, plus VAT, had been an unlawful referral fee. The Tribunal had also noted the differences between OM5 and the previous Operating Manuals. Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6] had been entitled to rely on what Mr. Dennison had told them and there was no cogent evidence of professional misconduct on their part. In the circumstances, the Tribunal found that there was no case to answer in relation to allegation 4(b) and ordered it to be struck out as against Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6]. However, the Tribunal was satisfied that there was sufficient evidence for the allegation to proceed as against Mr. Dennison and [RESPONDENT 5], who was the head of the firm's Personal Injuries department.

257. Finally, the Tribunal noted that, in its view, the quality of some of the witness statements, produced by the Applicant, was poor. Both the written and the oral evidence of some of the Applicant's witnesses were shown to be contradictory, inconsistent and badly presented. That evidence had been quite rightly criticised by the Respondents' Counsel and the Tribunal found it unimpressive. That evidence was unhelpful to the Applicant's case.

258. For the purposes of clarification, the Tribunal summarised its decisions as follows in relation to the allegations against Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6]. In allegations 3(a) and 3(b) the element of dishonesty was to be struck out. However, the element of recklessness was to be retained. Allegations 3(c) and 3(e) were to be struck out as against Messrs [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6]. Allegation 4(b) was to be struck out as against Messrs [RESPONDENT 1], [RESPONDENT 4], & [RESPONDENT 6]. However, the allegation was to be retained as against [RESPONDENT 5].

259. In relation to Mr Dennison, allegations 3(a) and (b) were to be retained in full, allegations 3(c), 3(d) and 3(e) were to be struck out and allegation 4(b) was to be retained.

260. As to costs, the Tribunal reserved the costs of the application of no case to answer to the conclusion of the hearing.

Application for leave to admit supplemental witness statements

261. At the resumed hearing on 20th July 2009, both Mr Morgan and Mr Monty apologised and sought the leave of the Tribunal to put in supplemental witness statements and additional voluntary disclosure in order to deal with the way that the SRA had developed its case on "sham" particularly in relation to the SRA's 'Voluntary Further and Better Particulars'.

262. While Mr Coleman did not oppose the application, because of its importance to the Respondents, in the light of the serious allegations against them, he explained the

difficulties for preparation, particularly as to cross-examination, caused by the lateness of service of both the supplemental witness statements and of the additional voluntary disclosure.

263. The Tribunal allowed the admission of the new evidence but stressed that a request could be made for further reading time if it should be considered necessary.

Oral evidence on behalf of Mr Dennison

264. Michelle Jane Holsey relied on her witness statement dated 16th February 2009 and gave evidence relating to vetting issues and the timing of the introduction of the CAT representatives and their work.

265. In cross-examination, she confirmed that files, positively vetted by [FIRM NAME REDACTED], had been sent by courier to TAG which had sent them on to the CAT representatives.

266. Ms Holsey explained the TAG Challenge as a bonus system was introduced either very late in 2001 or early in 2002 and agreed that the role of the CAT representative had been to persuade panel solicitors to take cases.

267. In re-examination Ms Holsey explained that photocopied vetting slips had led to concerns about vetting slips being removed or forged.

268. Michael James David Boxen relied on his witness statement dated 20th February 2009 and gave evidence relating to TAG's role in the administration of the vetting operation.

269. In cross-examination, Mr Boxen explained his relationship with both Mr Dennison and TAG. He said that the TAG Challenge had been to help and persuade TAG staff to be more productive and to clear some 30,000 files clogged up in the system. However, he explained that the system of CAT representatives had been introduced later than and had been quite separate to the TAG Challenge. Mr Boxen stressed that the CAT teams had been an extension of the removal of the vetting administration from [FIRM NAME REDACTED]. Its removal had been to achieve control and speed and the CAT team had been devised to give TAG more control in taking files and allocating files to solicitors. The aim of the CAT representatives had been to speed up the process of the files getting to the panel solicitors and to get decisions from them, on the day, as to the acceptance or rejection of individual files. Although their work had been subject to bonus payments, it had not been part of the CAT representatives' role to influence panel solicitors to take inappropriate files. However Mr Boxen explained that, unfortunately, some of the CAT representatives had been involved in improper practices.

270. Mr Boxen explained that the transfer of the vetting administration from [FIRM NAME REDACTED] had led to the increase of the TAG administrative department from some 20 to some 40 to 45 persons and had led to a quicker throughput of files.

271. In relation to clients' details obtained from shopping malls, Mr Bowen explained that the files would be referred to TAG's offices, logged onto data bases and systems and

allocated to an investigator for investigation, before being transferred to [FIRM NAME REDACTED] for vetting.

272. Mr Boxen explained TAG's use of the DX system and of tracked DX to get some of the files to the CAT representatives. He also explained the use of a 'back-end scheme' to send weaker files to solicitors.

273. Mr Boxen denied that TAG had ever attempted to persuade [FIRM NAME REDACTED] to relax the vetting criteria but said that TAG had put pressure on the firm to perform faster within unrealistic timescales. He stressed that TAG had been an extremely highly driven productivity business in which the output of its people had been paramount to its success.

274. In cross-examination by Mr Monty, Mr Boxen explained that Mr Dennison had been unhappy with the amount of pressure on and the amount of strain under which his department had been made to work.

Applications for disclosure and costs

275. On Tuesday 21st July, after a delayed start, Mr Morgan informed the Tribunal that on Sunday 19th July 2009 [RESPONDENT 1] had realised, on reading some notebooks, that they contained notes that he had made of relevant meetings, including an equity partners' meeting in September 2000, at which the Business Plan appeared to have been discussed. Mr Morgan stressed that the three notebooks did not contain minutes of equity partners' meetings and management board meetings, but [RESPONDENT 1]'s own notes made as and when he was at meetings. None of the other Respondents had seen the notes.

276. Mr Morgan accepted that all parties would need time to consider the implications of [RESPONDENT 1]'s notes. It might be that the other Olswangs TAG Respondents would wish to amend their witness statements. However, a short adjournment might be needed as the notes were in a form of shorthand and would need to be transcribed. Mr Morgan apologised to the Tribunal for the situation.

277. Mr Coleman referred to the disclosure correspondence and explained his concerns about the potential of yet further late disclosure to lead to a further adjournment of the hearing on a part-heard basis. Counsel noted that he had not yet seen all the material but that it would probably impact upon his cross-examination of all of the principal witnesses.

278. Taking into account the existing disclosure of redacted minutes, Counsel submitted that it was necessary for full un-redacted minutes of the [FIRM NAME REDACTED] partnership from November 1999 through until the collapse of the TAG scheme to be disclosed. Further, he submitted that if there were no minutes or no record in relevant minutes of the discussion of a new business venture bringing in hundreds of thousands of pounds revenue a month, it would be pertinent to see what had been recorded in the minutes by way of contrast and comparison. Accordingly, Mr Coleman asked the Tribunal to direct that all un-redacted minutes of the equity partners' and management board meetings, relating to the period from November 1999 until the end of May 2003, be disclosed together with notes, handwritten or

otherwise made by partners present at the meetings and un-redacted copies of [RESPONDENT 1]'s notebooks.

279. Mr Monty confirmed that Mr Dennison did not have any copies of any un-disclosed minutes but did not oppose Mr Coleman's application. However, like the other Respondents, Mr Dennison would also need to see any new disclosure before giving his evidence on TAG matters.

280. Mr Morgan confirmed that the Olswangs TAG Respondents did not oppose the application. However, he noted that there was a difference between minutes and notes, in that a minute was a document that was prepared and circulated to everybody as an undisputed record of what happened at a meeting, while somebody's individual notes might not be agreed by all the parties. In clarification, he explained that the role of the management board had been both to discuss minor matters and to have preliminary discussions on matters that had to go to a full equity partners' meeting.

The Decision of the Tribunal

281. Having considered the submissions of all the parties, the Tribunal directed that the Olswangs Respondents should make full disclosure of (i) all partnership minutes in un-redacted form from 1st November 1999 to 31st May 2003 (ii) un-redacted copies of [RESPONDENT 1]'s notebooks and (iii) un-redacted copies of all management board meetings, by the end of Wednesday 22nd July 2009.

283. The Tribunal directed that it would hear the evidence of Mr Gregory and of Mr Dennison (in relation to the LPS allegation only) during the rest of the day and thereafter there was to be an adjournment to Friday 24th July 2009 to give the parties time for disclosure and preparation.

Application for costs

284. Mr Coleman sought an order that the costs occasioned by the adjournment be paid either by [RESPONDENT 1] alone or by all of the partners.

285. Mr Monty confirmed that he also sought an order for costs.

286. Mr Morgan explained that [RESPONDENT 1] did not resist an order for costs against him. However, the other Respondents, he submitted, could not in any way be criticised for not having disclosed the personal notes of [RESPONDENT 1] that were not and never had been in their possession, custody or power.

The Decision of the Tribunal

287. The Tribunal had found it hard to understand that in preparing their case from the very beginning, the partners had not appreciated the relevance and importance of partnership minutes to the matters in question. The Tribunal would have expected to find minutes that had been circulated by e-mail retained in a proper minute book by the partnership.

288. Moreover, the Tribunal noted that there had as yet been no proper explanation for the sudden appearance of [RESPONDENT 1]'s notebooks. It was the view of the Tribunal that the notebooks were completely relevant and should have been disclosed at the commencement of the proceedings and certainly before the Tribunal had considered any application of no case to answer.

289. In relation to the applications for costs by Mr Coleman and Mr Monty, the Tribunal directed that [RESPONDENT 1] should meet the costs thrown away by the late disclosure of the notebooks, as it was his responsibility alone. Such costs were to be assessed, if not agreed.

290. The Tribunal noted that Counsel were now required to take additional instructions and that the timetable for the hearing, agreed only the day before, had been jeopardised in that it appeared that the matter would now go part-heard for a third time into the Autumn.

Further oral evidence on behalf of Mr Dennison

291. Richard Brian Gregory gave evidence relying upon his statement of 12th February 2009 dealing with; his senior role within TAG, his experience with the panel solicitors and CAT representatives, the relationship between [FIRM NAME REDACTED] and TAG and his dealings with Mr Dennison and the other [FIRM NAME REDACTED] partners.

292. In cross-examination by Mr Coleman, he confirmed that he had understood that [FIRM NAME REDACTED] had paid TAG a fee, from about mid-2001 onwards for posting files out, reviewing, chasing up confirmations and chasing up lost files.

293. In cross-examination by Mr Morgan, Mr Gregory accepted that [RESPONDENT 4] had been briefly involved in chasing up fees from panel solicitors round about late 2002. He explained that his contacts with the other partners, apart from Mr Dennison, had just involved general conversation.

294. Anthony Lawrence Clarke Dennison gave evidence relying on his three witness statements.

295. In cross-examination by Mr Coleman, Mr Dennison explained what he believed had been his knowledge from 1999 to 2003 of his professional obligations. He stressed that at the time he had believed that provided any profit he made was less than £20, he had not been under any obligation to financially account to his client for or to tell his client about that profit. Mr Dennison confirmed that he had not disclosed his interest in LRS to the personal injury clients of [FIRM NAME REDACTED]. He had not considered that [FIRM NAME REDACTED]'s agreement with LRS had not been in either the clients' or the firm's best interests because payments under it had only become due if and when the other side's liability insurer had paid the fee.

296. Mr Dennison confirmed that from October 2000 certain panel solicitors, who had required medical reports, had to refer clients to LRS. He had held a one third shareholding in LRS and had entered into contracts with LRS, on behalf of [FIRM NAME REDACTED], for the referral of TAG clients to LRS. During the period from

1999 to 2003, Mr Dennison agreed that he had drawn dividends of some £680,000 from LRS. He accepted that had been during a period when TAG had been a client of [FIRM NAME REDACTED]. He had not disclosed his interest in LRS to TAG.

297. Mr Dennison explained that when he had referred to the conflict of interest as being "nominal" he had meant only nominal in relation to TAG not nominal in relation to his firm's clients, in that TAG had had a relationship with LRS that pre-dated his joining [FIRM NAME REDACTED].

298. Mr Dennison insisted that he had acquired his interest in LRS, not at 15th February 2000, the date of the first document mentioning the Trust, but in March or April 1998, by way of a verbal agreement. He explained that his shares had been held on trust because one of the other LRS shareholders had not wanted solicitors, who instructed the company, to know that another solicitor was involved in that company.

299. In relation to the correspondence between Halliwell Landau and the Law Society in June 1999, Mr Dennison said that some ten years after the event he could not remember if he had seen the relevant correspondence at the time. Initially, he had assumed that he had, however, following conversations with Mr Glaskie, he did not think that Mr Glaskie had been formally instructed in the matter and there was no record on the file of the correspondence having been sent to him.

300. Mr Dennison agreed that he had been aware that he had owed his partners an obligation of good faith. However, he explained that he had believed that because he had acquired his LRS shareholding before he had joined [FIRM NAME REDACTED] and that it had been a personal rather than a partnership asset, he had not needed to disclose it. He accepted that, on average, he had been receiving gross monthly payments of some £12,000 that he had not disclosed to his partners.

301. Following a ruling from the Tribunal that all the Respondents were required to answers questions about proceedings subject to a mediation confidentiality agreement, Mr Dennison confirmed that he had not admitted the allegations against him but that some £400,000 was to be paid to the former partners of [FIRM NAME REDACTED].

Further oral evidence on behalf of the Applicant

302. David Robin Hawley, a former TAG panel solicitor gave evidence on the basis of his witness statement. In cross-examination by Mr Monty, Mr Hawley explained that he no longer had any recollection of the interview by Ms Prue that had led to his answers to the questionnaire. During that interview, he believed that Ms Prue had told him that an element of the vetting fee had been paid to TAG. Mr Hawley had been concerned about that because it had suggested that [FIRM NAME REDACTED] had not been doing their job properly. It had not been suggested to him that the payment might have been for services. In cross-examination by Mr Morgan, Mr Hawley said that he had probably used the TAG standard client care letter. However, he did not know if his firm had repaid interest as recommended by the Law Society.

303. Mr Coleman's cross-examination of Mr Dennison continued. Mr Dennison stressed that he had never been involved in financial or corporate decisions of TAG. He

confirmed that he had known from September 2004 that the Law Society had considered the payments of £20 to AIL by [FIRM NAME REDACTED] a "sham".

304. Mr Dennison explained that prior to TAG taking over conduct of the administration, panel solicitors would have been sending thousands of faxes to [FIRM NAME REDACTED] with details of which cases they had accepted. There had been two notifications; acceptance on a preliminary basis and subsequently, confirmation when they had received instructions from the client. However, sometimes panel solicitors would not provide any or all of the relevant information and would have to be chased up as it had been [FIRM NAME REDACTED]'s responsibility to get that information and supply it to TAG. He also explained the electronic billing process, the use of CSV files and the need to reconcile information quickly in relation to thousands and thousands of cases, both with all the panel solicitors and with TAG. Mr Dennison stressed that the vetting fee, paid by the panel solicitors, covered all that administrative work as well as the vetting.

305. Mr Coleman took Mr Dennison through [RESPONDENT 1]'s notebooks, minutes of meetings and relevant agreements and documents, exploring the growth of the vetting department and its impact upon the finances of [FIRM NAME REDACTED]. Mr Dennison explained that "TAG" had been used as a generic term when referring to aspects of the scheme.

306. Mr Dennison agreed that under OM1 panel solicitors had paid the AIL investigation fee and that [RESPONDENT 5] and [RESPONDENT 1] would have been aware that [FIRM NAME REDACTED] had also paid those disbursements. He said that he might have mentioned it to the other partners when he presented the TAG scheme because of the cash-flow implications but that the firm had not done a great many TAG cases under OM1. Mr Dennison agreed that he would have discussed the "costs war" and the Sharratt cases with those of his partners who had been interested, but probably not in any great detail. Likewise, he thought that his partners had probably been aware of his involvement in advising TAG on the contractual framework of the scheme and on the various OMs. Mr Dennison explained that at equity partners' meetings, while all the partners had discussed their work, those discussions had been more about turnover, fee-earners achieving targets and numbers of cases, rather than about the details of the actual work of each department.

307. Mr Dennison insisted that the vetting department had been properly structured and supervised by him at all times. He agreed that vetting had been required by TAG for the underwriters. However, he stressed the importance to the success of the scheme of the panel solicitors' vested interest in not taking on hopeless cases.

308. Mr Dennison insisted that TAG staff had never vetted claims. However, he explained that TAG personnel had come to the vetting department, over one weekend, to deal with the further information cases, when there had been a huge backlog of work.

309. Responding to questions about the September 2000 Business Plan, Mr Dennison explained that [FIRM NAME REDACTED] had become the sole vetters for TAG in September 2000, which had led to an enormous growth in the numbers of files for vetting. The partners had agreed that vetting should be separated out in the accounts, so that profitability could be shown separately to the firm's core business. He had

prepared the Business Plan for discussion, by the partners, of the projected growth and the necessary expansion in terms of staff and premises.

310. Mr Dennison agreed that TAG had wanted a share of the vetting fee and that its proposals for [FIRM NAME REDACTED]'s assumption and payment of a debt of some £1.5 million had been improper. He stressed that he had told TAG that such a proposal was improper and that neither he nor his partners would ever agree to such an arrangement. However, he had been asked to put it to his partners and he had done so. Mr Dennison insisted that he and his partners had absolutely rejected TAG's proposal and that [RESPONDENT 1]'s notebooks supported what he said. He denied that [FIRM NAME REDACTED] had succumbed to pressure from TAG and also denied that there had ever been any discussion of a joint venture with TAG.

311. Mr Dennison insisted that TAG's idea of the transfer of the huge logistical process of administration had not occurred at the time of the Business Plan in September 2000, but probably a few weeks before the March 2001 agreement. He stressed that the Business Plan had had nothing to do with the March 2001 agreement with AIL. Mr Dennison agreed that there had been no documented evidence of what AIL would do for the £20 for each confirmed case but insisted that there was his evidence and his partners' evidence and all the evidence of what had actually happened on the ground once AIL/TAG had taken over the administration.

312. His memorandum of 14th March 2001, Mr Dennison explained, had been to update everyone, including the equity partners. TAG had wanted £20 for each confirmed case to do the investigation and administration services and he had thought that £45 had been a more appropriate figure to enable [FIRM NAME REDACTED] to preserve its margin of £15 i.e. net profit per confirmed case paid after costs and overheads. That had been because Mr Dennison had considered that the balance of the remaining administration, plus the costs and overheads, would have been in the region of £10.

313. Mr Dennison denied that "investigation fee", referred to in his memorandum, had been a label, agreed by the partners, to disguise improper payments.

314. Mr Dennison explained that D C had been a friend of his, whom [FIRM NAME REDACTED] had helped to set up a claims management company called Claimsure which had referred clients to [FIRM NAME REDACTED].

315. Asked about the March 2001 AIL contract, Mr Dennison explained that he had used the AIL & Panel Firms Agreement as a precedent. He confirmed that he had been fully aware that the purpose of that agreement; the investigation by AIL of the claim. Mr Dennison insisted that the agreement of 22nd March 2001 had been for further investigation services and for administrative services. He denied absolutely that it had been a device "to dress up TAG's share of the vetting fee".

316. Mr Dennison explained that he had been extremely busy at the time, had drafted the agreement very quickly and while trying to avoid overlap between the £20 fee and the £310 fee, had overlooked the need to say administrative as well as investigative services. He accepted that the agreement had been badly drafted but denied that it had been a "sham".

317. Mr Dennison insisted that TAG had wanted to be paid for the 4% of files sent back by [FIRM NAME REDACTED] to AIL for further information. At the same time, the administration had become an absolute nightmare for [FIRM NAME REDACTED], particularly because of TAG's constant complaints about the speed of [FIRM NAME REDACTED]'s vetting and delivery. He insisted that further investigation and administration had been a global discussion with TAG.

318. Mr Dennison explained that while he had been saying some 4% of claims had not been investigated adequately, AIL had maintained that they had been doing the investigations correctly, providing sufficient information and that [FIRM NAME REDACTED] had been "being picky" by asking for additional investigation.

319. Mr Dennison insisted that getting rid of the administration, for £20 for each confirmed file, had been value for money. He accepted that TAG had wanted and had gained control but stressed that there had been no way that TAG would have taken over a huge part of [FIRM NAME REDACTED]'s administration for nothing.

320. Mr Dennison accepted that he had been aware that substantial payments to TAG would have been involved but he had not believed in the reliability of TAG's projections as to numbers. He said that the firm had looked at the situation, not on a global basis, but on a case by case basis, essentially as paying administration of £10 per case and had not contemplated TAG really getting as big as it eventually got. However, [FIRM NAME REDACTED] had still retained significant administration, given the growth in the vetting operation. The important aspect had been, Mr Dennison stressed, that the most stressful part of the administration had been subcontracted and [FIRM NAME REDACTED] had no longer been subject to attacks from TAG about delay. That, in his view, had been a huge burden lifted and worth every penny.

321. When being taken by Mr Coleman through minutes and [RESPONDENT 1]'s notes, Mr Dennison explained that once the management board had been established, he had done minutes and action plans but before that the firm had not kept formal minutes of partners' meetings. He insisted that there had been discussions with Mr Spain about the costs and expenses involved in the administration of vetting. Taken to [RESPONDENT 1]'s notes, Mr Dennison said that he could not remember anything being said about "tightening up the contract" but he accepted that the notes said that he had been asked to do it, but obviously he had not done so and could not remember the meeting or why he had not.

322. As to the recording of the payments in the firm's accounts, Mr Dennison explained that under "Legal & Professional" had been appropriate as the firm had been outsourcing an administration service which had certainly been a cost of sale but said that he was not an accounts expert. He stressed that both in the accounts and on invoices the use of "investigation" without "administration" had been an initial error that had been perpetuated throughout.

323. Dealing with the Fernando report and its references to "TAG's share of the vetting fee", Mr Dennison insisted that there was no share of the fee and that the report had been full of nonsense, had been complete rubbish and had made him extremely angry.

324. Although the CAT representatives had not become operational until June 2001, Mr Dennison insisted that the delivery process had changed straightaway. He explained that taking files to and from [FIRM NAME REDACTED] to TAG had never been a problem, the huge administrative job had been delivering the files to and getting the information from the panel solicitors.

325. Mr Dennison explained that the situation resulting in [RESPONDENT 1]'s note of 16th July 2001 at 1.30pm had arisen because after the March 2001 agreement [FIRM NAME REDACTED]'s IT system could not match up the information from TAG about confirmed cases with its own record as to which panel solicitor had a particular file, causing problems with invoicing and the need to amend the IT system. There had been further problems caused by TAG putting files on risk and therefore requiring [FIRM NAME REDACTED] to send an invoice before clients had instructed panel solicitors.

326. Mr Dennison denied that there had been any un-commercial circularity to the vetting arrangements with TAG and the further investigation and administrative arrangements with AIL. He said that [FIRM NAME REDACTED] had been responsible for the vetting, including the tracking and delivery of files and had sub-contracted the latter to AIL. He had believed that it had made commercial, economic and emotional sense at the time and he still believed that. Mr Dennison explained that TAG had been putting him and his vetting department staff under a lot of pressure and stress by their constant complaining and it had been a relief that they could not be blamed any more. He said that he had been shocked when the Law Society had put it to him that the agreement had been a sham. He knew what had happened at the time and he knew that he had done nothing dishonest.

327. Mr Dennison explained the firm's donations to the NSPCC and denied that they had been the price to be paid for continuing to do the vetting work.

328. Mr Dennison said that the agreement with AIL had been in the disclosure bundle in the Sharratt litigation.

329. While he believed that the panel solicitors had not appreciated the extent of the administration involved, Mr Dennison said that, legally, he would not have had a problem in giving them the details of the outsourcing arrangements. Although, from a commercial point of view, he would not have wanted to provide all the details of what he had considered and still considered to be a perfectly legitimate arrangement. He explained that he had not provided details to G & Co because he had been angry with what he had seen as a cynical attempt to avoid the payment of monies due to [FIRM NAME REDACTED].

330. Mr Dennison denied that [FIRM NAME REDACTED]'s invoices to panel solicitors deliberately obscured what the payments had been for or who had actually been getting the money.

331. In response to questions relating to the allegation of paying a referral fee to AIL of some £310, Mr Dennison said that at the time he had not regarded £310 as an excessive fee for investigation. Moreover, he stressed that he had always considered it to have been a client expense. However, he had been concerned and had expressed

his concern to TAG, not that it had been a referral fee, but that the fact that the work had been done prior to the solicitor's retainer raised the issue of the indemnity principle.

332. Mr Dennison stressed that in the "costs war" the initial argument about the £310 fee had been in relation to its amount not that it had been a referral fee, which had only been raised in mid to late 2002. He had become aware of the issue then and he thought that [RESPONDENT 5] would also have become aware about the same time.

333. Under OM5, Mr Dennison maintained, the fee of £310 had been a client expense that the client had agreed to, before instructing a solicitor and had been nothing to do with the solicitor's retainer. He noted that Master Hurst had accepted that it had been "completely different". Mr Dennison also referred to the four stages of the vetting process and argued that there had been a difference in TAG "accepting" a claim for vetting purposes, after which the investigation had been done, and "accepting" it for insurance purposes.

334. Mr Dennison maintained that the TAG scheme had been fundamentally different from the Claims Direct scheme and that OM5 had never been considered by a court. Moreover, it had not been until May 2004 that the Court of Appeal had finally decided that the AIL fee, of some £310, had been a referral fee. In those circumstances, when Leading Counsel had still been arguing that it was not a referral fee, Mr Dennison considered that he had not been acting unreasonably in assuming, as a panel solicitor, that up to the collapse of TAG that it could well have been recoverable.

335. Mr Dennison accepted that he had agreed, only recently, to repay interest. However, he said that on average a sum of £58 was involved, in respect of some 4,200 cases, most of which had been conducted under OM5 which had involved a difference in the repayment of interest because they had been repaying what they had not considered as a referral fee. Mr Dennison stressed that, unlike many other firms, [FIRM NAME REDACTED] had repaid the sum of £310 to all clients, even under OM5 cases. He also raised issues both of proportionality, the solicitor/client differential and the failure of the Law Society to treat [FIRM NAME REDACTED] in the same way as it treated other firms of panel solicitors in relation to the repayment of interest.

336. In relation to questions about conflict of interest and client care, Mr Dennison explained that solicitors now rarely met clients in personal injury cases. He insisted that he had never said that he put TAG before clients and that [FIRM NAME REDACTED] had not been part of the TAG scheme, but the vetting department had been part of the TAG scheme. Mr Dennison accepted that his firm had owed duties to TAG clients to give them clear and frank advice about pursuing claims under the scheme. He denied that [FIRM NAME REDACTED] had been too close to TAG to enable it to properly represent clients as a panel firm and insisted that the firm had checked whether clients had other methods of funding. As to alternative ATE insurance, Mr Dennison said that he had known the market very well at that time and that TAG had been cheaper than Claims Direct and Accident Line Protect, the only other two schemes with policy holder's protection. He noted that block rating had been an accepted policy and that under TAG if clients had lost they would not have been charged anything.

337. As to putting something in a client care letter about paying unlawful referral fees, Mr Dennison insisted that there had been relevant differences between the TAG and the Claims Direct schemes and he, like all other TAG panel solicitors, had not appreciated, from the outset of the scheme, that the AIL fees of some £310 had potentially been referral fees.

338. Before Mr Dennison began the fourth day of his evidence, the Tribunal asked the parties to provide packs of documents to enable the Tribunal to see which documents TAG clients would have seen and signed over the various stages of the scheme. A pack of the relevant documents was provided.

339. Continuing his cross-examination, Mr Coleman took Mr Dennison through the TAG client care letters and the CFA documents in respect of each of the OMs (Operating Manuals). Mr Dennison confirmed that under none of the OMs had [FIRM NAME REDACTED] informed TAG clients that they had been the vetting solicitors or that Mr Dennison had helped TAG with the preparation of any of the OMs or contractual documents. Although he agreed that [FIRM NAME REDACTED] had not told TAG clients that the sum of £310 paid to AIL had been a referral fee, he stressed that like all other panel firms, [FIRM NAME REDACTED] had not, at the material time, considered it to be a referral fee.

340. Mr Dennison insisted that TAG clients would have been fully aware, from the documents and from verbal explanations, about the cost of the policy and about the use of loan funding, including interest. He explained that they had signed a consumer credit agreement with a right to cancel, had received insurance policies that clearly set out the premium, also a service agreement with a declaration that they had signed showing what the premium was and a client care letter referring to the loan.

341. In response to questions about protecting the best interests of their clients by considering other ATE insurance policies, Mr Dennison insisted that all other avenues of funding, including BTE policies, had been checked with the client and, being fully aware of the ATE insurance market at that time, he had believed then, and he still believed, that the TAG scheme had been the best on the market for the recovery of small personal injury claims, following the removal of legal aid funding. Mr Dennison vehemently denied failing to subject the TAG contractual documents to critical analysis on behalf of [FIRM NAME REDACTED]'s 7,000 TAG clients.

342 In response to questions about the lack of any regard to the personal circumstances of the individual client, Mr Dennison repeated that the individual funding position had always been checked but that, in the main, the TAG scheme had been designed for and had been dealing with low value claims. Moreover, he stressed that in dealing with clients by telephone, fee-earners would ensure that clients understood what was happening in relation to their individual claim.

343. Dealing with the CPL allegations, Mr Dennison confirmed his reliance on his admissions as set out in the document produced for the Tribunal. He explained that he had no direct recollection of the relevant management board meetings but his belief was that the Law Society investigators had raised the issue of referral fees and [RESPONDENT 3] had been asked to check the position and report back to the

partners. Mr Dennison explained that he had known nothing of the CPL arrangements until he read the memorandum of 18th November. However, he stressed that he had been more than happy to rely on [RESPONDENT 3]'s explanation and opinion as he regarded him as a highly experienced and honourable person.

344. In response to a question from the Tribunal, Mr Coleman explained that his questions about a company called Claimsure related not to any of the individual allegations but to the credibility of all the Respondents and their knowledge of the TAG scheme.

345 Mr Dennison explained that [FIRM NAME REDACTED] had lent money to the owner of Claimsure and had explored the possibility of taking a shareholding in the company because of its loan. That shareholding would have been held anonymously because of [FIRM NAME REDACTED] being involved in a competitor claims management company. As it was, the plan had come to nothing and [FIRM NAME REDACTED] had lost money. He agreed that LRS, in which he had had an undisclosed interest, had also been involved.

346. In cross-examination by Mr Beggs, Mr Dennison agreed that although he had tried his best, any analysis he had made, when giving his evidence, about the meaning of [RESPONDENT 1]'s notes could well have been slightly wrong as it had been contingent on his memory of events that had taken place many years ago.

347. Mr Dennison repeated and stressed that the agreement with AIL had not been a "sham" in any shape or form and had provided value to [FIRM NAME REDACTED] in the form of financial, operational and emotional benefit.

348. Mr Dennison confirmed that he had trusted [RESPONDENT 3] to deal with CPL in the same way as his partners had trusted him in relation to TAG. He had kept his partners up to date in general terms with TAG and on specific issues, when necessary, and appropriate. He did not recall explaining the TAG scheme in detail to Messrs [RESPONDENT 6], [RESPONDENT 3] or [RESPONDENT 4]. However, he considered that [RESPONDENT 1] and [RESPONDENT 5] would have had more knowledge on some issues.

349. Mr Morgan referred the Tribunal to three documents, placed before them on 30th July 2009, relating to admissions made by the Olswangs Respondents. He explained that the first document related to the repayment of interest and brought [FIRM NAME REDACTED]'s position on the repayment of interest completely in line with the latest adjudication decisions by the Law Society on the matter.

350. The second document, Mr Morgan explained, was an admission by [RESPONDENT 3] in relation to the CPL charges in which he accepted that, with the benefit of hindsight, the fees had been, in part, referral fees and as such they should not have been paid. However, [RESPONDENT 3] denied that he had ever perceived that at any relevant time. In effect, he admitted a breach of Practice Rule 3. Mr Morgan informed the Tribunal that as a result of his admissions, the SRA had agreed that [RESPONDENT 3] did not have to give evidence as to his state of mind and the SRA would not pursue the case against him further than his admissions. This was also the case as regards [RESPONDENT 1].

351. The third document, Mr Morgan explained, was an admission by Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6] in relation to the true nature of the CPL fee and to their different states of knowledge. Messrs [RESPONDENT 4] and [RESPONDENT 6] explained that on the basis of their level of knowledge, they had not and could not have perceived the regulatory breach. [RESPONDENT 1] accepted that he had been aware that a fee had been paid earlier than the November 2003 memorandum, that he had made enquiries but that he had not seen at the time, and should have seen, that the payments had been in part referral fees. Therefore he also admitted a breach of Practice Rule 3.

352. Mr Coleman explained that in the light of the admissions made, the SRA was not pursuing any further CPL matters as against Messrs [RESPONDENT 3] and [RESPONDENT 1]. However, there was an admission as to a breach of Practice Rule 3 and it would be for the Tribunal to consider whether their conduct had also amounted to a breach of Practice Rule 1. As to Messrs Dennison, [RESPONDENT 4] and [RESPONDENT 6], there were outstanding issues as to culpability.

353. Mr Dennison's cross-examination by Mr Beggs continued. As to [RESPONDENT 5]'s knowledge, Mr Dennison explained that [RESPONDENT 5] would have been aware of the outline and generality of the TAG scheme but he had not conducted TAG cases or costs recovery work. Mr Dennison explained that because of [RESPONDENT 1]'s interest in academic law, he had been interested in and had discussed the "costs wars" with him. However, although [RESPONDENT 1] had known how the TAG scheme had worked in general terms, he had not seen agreements. Mr Dennison explained that [RESPONDENT 4] and [RESPONDENT 6] had just had very general knowledge.

354. As to the improper suggestion by TAG of fee-sharing, Mr Dennison stressed that all his partners had dismissed it immediately. Indeed Mr Dennison explained that referral fees had been something that [RESPONDENT 1] had always found abhorrent and would never have allowed.

355. Mr Dennison agreed that a series of departmental meetings with [RESPONDENT 1] would have fed into the equity partners meetings but that the focus of partners looking at other departments would have been on the cash side of things. Although all of his partners had been aware of the transfer of some of the administration to TAG, Mr Dennison said that they had not seen the agreement with AIL and would not have distinguished AIL and TAG.

356. Turning to the litigation between LRS, Mr Dennison and his former partners, Mr Dennison agreed that provision had been made for any clients affected by the non-disclosure.

357 In re-examination by Mr Monty, Mr Dennison confirmed that he had been involved in the disclosure of documents for the TAG litigation; some 30 – 40 lever arch files and that the agreement of 22nd March 2001 had been listed as part of that disclosure. Moreover, although he had not been aware of the proposals for the repayment of interest to TAG clients, he both agreed with and adopted those proposals.

358. Dealing with block-rated insurance policies, where the many pay for the few, Mr Dennison agreed that there was no such thing as a certain case because, for example, even in rear-end shunts there were defences and clients needed protection against adverse costs orders.

359. In response to questions from the Tribunal and in further re-examination, Mr Dennison clarified the costs in relation to [FIRM NAME REDACTED]'s margin of £15.

360. Mr Morgan addressed the Tribunal further in relation to disclosure. He noted the Tribunal's view that [RESPONDENT 1]'s notebooks should have been disclosed at the commencement of the proceedings. However, he reminded the Tribunal that there had been no general duty of disclosure in the proceedings and that the Tribunal's order for disclosure had been in relation to material on which the parties had intended to rely. The Respondents had dealt with requests for disclosure from them on a voluntary basis and available minutes had been disclosed. Leading Counsel stressed that there was a significant difference between minutes of and private notes of meetings. He submitted that there was an element of unfairness in the process of cross-examining a witness on an omission from a note that they had not seen.

361. Mr Morgan explained that some of the material recently disclosed by [RESPONDENT 1] had been in the possession of his solicitors and the Tribunal was able to infer that if a piece of material was in the possession of [RESPONDENT 1]'s solicitors and had not been disclosed that had been in accordance with legal advice. Mr Morgan told the Tribunal that the obligation to disclose [RESPONDENT 1]'s handwritten notes had arisen not from any ongoing obligation to disclose but because they showed that something that had been said in [RESPONDENT 1]'s witness statement, relating to the September Business Plan, had been incorrect. He stressed that none of the other Respondents had seen any of [RESPONDENT 1]'s notes.

362. [RESPONDENT 1] relied on his statements of 26th February 2009, two of 12th March 2009, 17th July 2009 and 22nd July 2009, subject to some corrections following his examination of his notebooks.

363. In cross-examination by Mr Coleman, [RESPONDENT 1] stressed that he had not believed the AIL agreement of March 2001 to be a sham at the time and, having heard the evidence and gone through the documents, he knew that it was not a sham. [RESPONDENT 1] dealt with the finances of the firm, pointing out that for the year ending April 2003 some 1.5 million pounds of vetting income had been written off.

364. [RESPONDENT 1] confirmed that he was fully aware of his professional obligations but stressed that now solicitors often had to manage rather than just avoid conflicts of interest.

365. Explaining his role in [FIRM NAME REDACTED], [RESPONDENT 1] said that it had been an unusual practice, more like running six businesses in that the partners had effectively been responsible for their own business units. Although he had had no executive power, he had tried to bring coherence to the disparate profit centres.

366. Questioned about his note "TAG did some in-house", [RESPONDENT 1] insisted that he had seen TAG people using the boardroom and that they had been dealing with further inquiries and not with vetting.

367. Dealing with his notes, [RESPONDENT 1] explained that he had never thought that they would ever form part of the case. He said that he had made his legal advisors aware of the existence of his first short-hand note book in March 2009 but it had not been considered relevant as the search had been for "minutes" not for personal handwritten notes. [RESPONDENT 1] insisted that he had come across the second short-hand notebook and a counsel's notebook on the Friday before the resumed hearing in July. He explained how they had related to the signing of his statement on Friday 17th July 2009. When he had read the notes on the Saturday night, he had realised their relevance and had contacted his solicitors on the Sunday. In response to a long series of questions and challenges, [RESPONDENT 1] insisted that he had not suppressed the notes, had never intended to suppress his notes and had not remembered their contents until he had read them on the Saturday night. Until that time he had not remembered that he had used the blue book predominantly for notes of partners' meetings. [RESPONDENT 1] said that he still could not remember the "Business Plan," although he now accepted, because of his note, that it must have been at the meeting on 20th September 2000. However, he noted that it did not look like the usual [FIRM NAME REDACTED] document.

368. [RESPONDENT 1] explained the development and the role of the Management Board and the purpose and format of the finance meetings. In response to detailed questions from Mr Coleman, he explained what he now believed his notes to have meant, stressing the difficulties in recalling matters at a distance of some eight or nine years. While he remembered the audacity of the debt proposal, he had no recollection of the word "share" which was not in his notes. [RESPONDENT 1] stressed however that had it been mentioned, it would have been dismissed out of hand.

369. [RESPONDENT 1] rejected absolutely and repeatedly the suggestion that the AIL agreement had been the price for the TAG work. He maintained that [FIRM NAME REDACTED] had walked away from contracts where clients had demanded creativity in terms of creating income streams and it would have done the same with TAG had such a suggestion been made. He insisted that neither Mr Dennison nor any of his former partners would have entered into an improper arrangement.

370 [RESPONDENT 1] insisted that although he accepted that there had been no written record of the meeting, at some time in early February 2001 (between 1st and 14th) there had been an ad hoc partners' meeting at which Mr Dennison had explained the administrative services to be sub-contracted to AIL for the £20 fee. [RESPONDENT 1] said that he remembered saying, before the details had been explained to him, that it had smacked of fee-sharing. Once it had been clear that TAG were to take over the administration, the partners had looked at the proposals both from a commercial and from a regulatory point of view and had been satisfied that TAG had provided a proper and genuine offer to take over the administrative burden. Although he could not now remember the details of Mr Dennison's presentation, [RESPONDENT 1] thought that Mr Dennison had shown that the costs of the administration had been good value.

371. [RESPONDENT 1] stressed that the key measurement had been the unit cost of a service and its multiplication by volume had been irrelevant. It had been vital to cap their costs. Mr Dennison had told the partners that larger volumes of vetting were expected from TAG and that [FIRM NAME REDACTED] had not been coping and had been experiencing huge problems with the existing intakes. [RESPONDENT 1] had been satisfied that the proposed arrangement had been regulatory compliant and had made commercial sense in that, on a case by case basis, they had secured their profit margin and projections had been just that, projections for future work. He believed it to have been a wise decision as he feared that the vetting operation would have collapsed had [FIRM NAME REDACTED] tried to deal with such a huge increase in administration. [RESPONDENT 1] explained that they had started with a unit price of some £40 for the whole job, some £25 of which had formed the "front office" costs with an appropriate margin (vetters and their administration) with the balance covering the administrative costs that they had wanted to sub-contract. What he termed the "back-office" costs would have been the costs of distributing the files, many of which had been recycled many times, including distribution costs, staff and premises.

372. [RESPONDENT 1] agreed that the payments to the NSPCC, put bluntly, could have been considered as part of the costs of doing the TAG work but they had in fact been a charitable donation by the firm at the request of a major supplier. He explained that such charitable donations, in those circumstances, had not been unusual.

373. [RESPONDENT 1] insisted that "JV" in his notes had referred to a joint vetting venture, not with TAG but with another firm of solicitors.

374. Although he had not seen the agreements of September 2000 and 22nd March 2001 at the time, [RESPONDENT 1] said that he had now reviewed them and considered them to have been appallingly drafted. They had not been seen or reviewed by all the partners at the time because the partners had been responsible for their own parts of the business and they had regarded each other as both business colleagues and friends and had had the utmost trust in each other. Moreover, he insisted that had they been looking to create a sham, he considered that the documentation had been the worst possible for that purpose and that no-one looking to deceive would have produced such documents. [RESPONDENT 1] insisted that there had never been a sham and that he had not kept his head in the sand deliberately or otherwise. He stressed the value to him of his professional reputation and that the idea that he had been seduced by money was nonsense.

375. In response to questions about conflict of interest and client care, [RESPONDENT 1] disagreed that [FIRM NAME REDACTED] had been central to the operation of the TAG scheme. He saw their role as part of a filtration process and stressed that had the panel solicitors dealt with cases properly, there would not have been the losses sustained by the insurers. Moreover, as to conflict, he said that had, and has, to be managed by the solicitor. [RESPONDENT 1] explained that the whole basis of ATE insurance worked on the basis that the solicitor had to evaluate the scheme, be it TAG or the Law Society's scheme, and to adopt it if it looked reasonable. Panel members had to recommend the insurance policy that went with the particular scheme and declare their interest in it. He insisted that block policies provided the best access to justice because they averaged down the price of the premium. [RESPONDENT 1]

did not accept that [FIRM NAME REDACTED]'s relationship with TAG had affected its duties to clients; such conflicts as there had been had been managed by transparency.

376. As to the repayment of interest, [RESPONDENT 1] said that the Respondents had accepted the position for repayment in the terms of the Law Society's proposals. He accepted that that decision should have been made earlier and apologised to the Tribunal for the delay. However, [RESPONDENT 1] explained that appropriate and valid concerns had exercised the Respondents.

377. In response to questions about Claimsure, [RESPONDENT 1] explained that initially the company was to have been capitalised by way of venture capital, however, when that had not been successful, the partners had made personal, undocumented, short-term loans in tranches to DC, the founder of the company. The eventual sum had been some £375,000. There had been discussions about [FIRM NAME REDACTED] converting some of the loans into a shareholding in Claimsure. [RESPONDENT 1] explained that any holding would have had to be by way of a nominee because of commercial sensibility for [FIRM NAME REDACTED]. However, he stressed that it had never happened. The loans had not been declared to clients because, [RESPONDENT 1] explained, at that time they had been perceived as loans to the founder of the company and not as an interest in the company.

378. In cross-examination by Mr Monty, [RESPONDENT 1] confirmed various matters including that there had been no "sham" and that none of his former partners, including Mr Dennison, would ever have entered into a sham arrangement. He stressed that he had been there and he knew what had taken place.

379. [RESPONDENT 1] explained that his notes of meetings had been his own personal notes and not a transcript of all that had been said. He confirmed that he had very little independent recollection of meetings that had taken place some seven or eight years ago and his notes were sometimes ambivalent and certainly did not tell him who had said something. [RESPONDENT 1] confirmed that everything that the former partners had been able to find in the form of minutes had been disclosed. He insisted that there had never been an occasion when matters discussed had deliberately not been minuted or noted down.

380. In re-examination by Mr Morgan, [RESPONDENT 1] clarified various matters and explained that he could not recall whether when his statement of 26th February 2009 had been drafted ,the management board was an issue or not. Its development had been an evolving process and he had not perceived it to be relevant to the allegations. Although [RESPONDENT 1] said that he could not remember the detail of the investigators' interviews well, he did recall that they had had difficulty in understanding the filtration process and the fact that [FIRM NAME REDACTED] would not be paid for all of its vetting work; only for accepted cases.

381. In relation to [RESPONDENT 4] and [RESPONDENT 6], [RESPONDENT 1] explained that they would not have been aware of the operational details of Claimsure or TAG, nor of ATE schemes in general. He said that [RESPONDENT 5] was not a legal technician and not familiar with ATE insurance as an area of law.

382. In response to a question from the Tribunal, [RESPONDENT 1] explained that Mr Dennison had said that the front office function had required £25 and he had understood that the balance had been required for administration. He had been aware that Mr Dennison had been liaising with Mr Spain and Mr Rogers on costings.

383. Mr Dennison was recalled for further cross-examination by Mr Coleman in relation to the documents disclosed to the Court in the Sharratt litigation. Mr Dennison confirmed that, although listed at item 104 in error as an agreement between [FIRM NAME REDACTED] and Accident Advice Bureau Ltd, the AIL £20 agreement had been before the Court and available for examination by all the parties.

384. Before [RESPONDENT 5] gave his evidence, Mr Coleman addressed the Tribunal on disclosure and privilege to clarify the position of the SRA so as to ensure that there would be no misunderstandings at closing submissions. Mr Coleman explained that in the case before the Tribunal the issue of disclosure was relevant to the credibility of the Respondents. He went through the disclosure history and stressed that he was concerned not with the general duty of disclosure but with the Respondents' duty not to mislead either the SRA or the Tribunal as to the documents in the possession of the Respondents. Mr Coleman said that if the Respondents wished to rely on legal advice, as part of their response, that advice would have to be disclosed.

385. [RESPONDENT 5] relied on his statements of 27th February, 12th March, 17th July and 22nd July 2009, subject to minor corrections.

386. In response to cross-examination by Mr Coleman, [RESPONDENT 5] denied that the agreement of 22nd March 2001 with AIL had been a sham. He said that he did not think that the SRA should have looked at one document in isolation without considering all the surrounding circumstances. Moreover, he was very resentful that the first time he was being asked about matters was in 2009, rather than during the investigation of 2003, when he might have had a better recall of relevant matters.

387. [RESPONDENT 5] confirmed that he had been fully aware of his professional obligations during the period 1999 – 2003.

388. [RESPONDENT 5] explained that now he had seen the notebooks, he recalled that [RESPONDENT 1] had made notes during meetings, but he had not remembered those notes before seeing the notebooks again.

389. While he agreed that he had allocated TAG files to fee-earners, [RESPONDENT 5] explained that supervision in his department had been delegated to either very hands-on associates or salaried partners and he had not personally supervised or worked on any TAG files. However, [RESPONDENT 5] said that he had had sufficient understanding of the TAG scheme to determine that it had been the most appropriate way for [FIRM NAME REDACTED]'s clients to pursue their claims, subject to the usual checking for other methods of funding. Although he had not appreciated it at the time, [RESPONDENT 5] said that, with hindsight, there might have been a conflict of interest in [FIRM NAME REDACTED] acting as both vetting and panel solicitors and he apologised to the Tribunal for having been in that situation.

390. Turning to the TAG documentation and client care letters, [RESPONDENT 5] explained that he had not considered them lacking in any way and although he had not subjected all the material to a detailed critical analysis, from conversations with Mr Dennison he would have been satisfied that it had been a good scheme and that the documentation had been correct and appropriate.

391. [RESPONDENT 5] agreed that the projections of TAG work, discussed at the meeting of 18th March 2001, had been significant but at the time he would not have known how accurate they would be because he had been aware that forecasts did not always translate into huge business. Despite [RESPONDENT 1]'s note, [RESPONDENT 5] explained that he still could not remember receiving and reading the Business Plan. However, he insisted that there had never been any discussion about fee-sharing with TAG. He did not accept that any "sham" had been either contemplated or entered into. [RESPONDENT 5] insisted that the partners had had absolute faith in Mr Dennison and had been quite happy for him to continue dealing with TAG. He said that he had known that a huge change was to take place in that part of the administration was to be taken from [FIRM NAME REDACTED]'s shoulders and insisted that the £20 cost would have been a topic of discussion because the firm had not been coping well with the administration and that it had made financial sense. [RESPONDENT 5] said that he did not know what analysis, in relation to the administration, had taken place but he did know that it had been a genuine subcontract arrangement.

392. Although he agreed that the firm had been heavily reliant on TAG, he explained that the firm had always been looking to expand its sources and he denied that because of its reliance, [FIRM NAME REDACTED] had gone along with an improper proposal.

393. [RESPONDENT 5] explained that he had not entrusted [RESPONDENT 1] to take notes at meetings but that [RESPONDENT 1] had often taken notes of his own accord. He stressed that there had been no connection between the discussions in September 2000 and the contract in March 2001.

394. Having been taken through the relevant accounts and invoices, [RESPONDENT 5] agreed that there had been some mis-description but repeated that the agreement with TAG had never been a front for fee-sharing but a payment for the subcontracting of very substantial administration. [FIRM NAME REDACTED] had kept the legal work and sub-contracted the non-legal work which, in retrospect, he believed that they should have done from the beginning in 1999. [RESPONDENT 5] had seen no problem with a five year contract in that it gave protection and security and if the projected figures had not been achieved, there would have been no payment for work not done. He considered that it had been in his firm's interest to sub-contract the administration because they could not have coped with a hugely increased distribution task and it had been in TAG's interest to have control of that process.

395 As to the repayment of interest, [RESPONDENT 5] explained that there had been a partnership discussion and at the time they had decided to deal with the matter on the basis of the solicitor/client differential. However, with the benefit of hindsight, he apologised to the Tribunal for his delay in agreeing to pay interest.

396. [RESPONDENT 5] confirmed that he had loaned one seventh of the total personal loan made by the equity partners to DC in anticipation of a shareholding and referrals. With the benefit of hindsight, he believed that he should have disclosed the loan to clients referred to the firm from Claimsure. However at the time, he had thought such disclosure necessary only if and when the firm had a shareholding in the Company.

397. In cross-examination by Mr Monty, inter alia, [RESPONDENT 5] confirmed that although he had been taken at length by Mr Coleman through agenda, typed minutes and notes, he did not have any recollection of particular meetings. He had a vague recollection of some discussion about L & Co's files and also recollected Mr Dennison explaining that TAG would be taking over the administrative burden, but as far as he could recall, there had been no link between the two matters. [RESPONDENT 5] agreed that when entering into the £20 agreement in March 2001, Mr Dennison had acted with the full authority of all the partners and that the administrative burden had changed almost overnight.

398. In re-examination by Mr Morgan, [RESPONDENT 5] explained that he had no memory of noticing the mis-description relating to investigation in the accounts and that it was possible that he had just looked at the headline figures.

399. [RESPONDENT 4] relied on his statements of 26th February 2009, 12th March 2009, 17th July 2009 and 22nd July 2009, subject to minor amendments as explained to the Tribunal.

400. In cross-examination by Mr Coleman, [RESPONDENT 4] responded to each of the allegations. Inter alia, he confirmed his understanding of his professional obligations during the period from 1999 – 2003. As to [RESPONDENT 1]'s notes, he explained that he had been aware of them at the time but had forgotten about them during the following years.

401. [RESPONDENT 4] did not accept that in all probability he had in fact seen the Business Plan of September 2000. He could not recall the meeting of 20th September 2000 but did not say that he had not been there. From the way he read [RESPONDENT 1]'s notes, he believed that the Plan had not been circulated but that probably Mr Dennison had had it at the meeting and had spoken to it. Moreover, the whole world had not changed as a result of it. New premises on the 5th Floor had not been used until May 2001. Again [RESPONDENT 4] remembered mention of buying files but it had never been an issue. However, he insisted that he did not recall TAG asking for fee-sharing.

402. [RESPONDENT 4] explained that, with hindsight, he felt that [FIRM NAME REDACTED] had let Mr Dennison down by not insisting that he be given more support with what had been an enormous task for one person. However, he did not believe that there had ever been a "sham" and insisted that the agreement with AIL had been for administrative services and not a facade for improper fee-sharing. [RESPONDENT 4] was sure that the partners had discussed the terms of the outsourcing before the AIL agreement and he had been aware that both Brian Rogers and Gerard Spain had been liaising with Mr Dennison. Having been told that it had been appropriate financially, he had been prepared to accept the figures and had had every reason to believe that all was being done properly. [RESPONDENT 4]

explained that he had never focused or picked up on the word "investigation" as he had always understood it to be for administration. He strongly denied colluding to advance an untrue explanation.

403. Dealing with his jotting in his diary relating to "vetting, cribbing their document", [RESPONDENT 4] insisted that knowledge had certainly not alerted him to a risk that the agreement had not been a genuine commercial contract but that Mr Dennison should have drafted it properly and he had assumed that it was to have been tightened up.

404. Dealing with his recorded response to a question put to him in an initial interview on 25th July 2003, [RESPONDENT 4] explained that he had been very concerned by that note because he could not have been speaking at the same time as [RESPONDENT 1], no copy of the note had been sent to the partners for confirmation of its accuracy, the maker of the note, who had also asked the questions, could not be cross-examined and the whole text of the note did not appear to have been transcribed properly.

405. In relation to conflict, [RESPONDENT 4] apologised to the Tribunal, but explained that he had not addressed his mind to conflict at the relevant time. He had viewed all the parties as having the same interest in wanting the scheme to work to provide people with the opportunity to fund their claims. As to the repayment of interest, there had been a discussion and knowing nothing about solicitor/client differentials, he explained that he had been unable to contribute but had agreed with the decision made. He now accepted that had not been the right way forward.

406. [RESPONDENT 4] explained that he had known nothing of the CPL payments until November 2003 and even then, had not appreciated that they were referral fees. As to Claimsure, [RESPONDENT 4] felt the partners had got sucked in and the loan, which had been advanced in tranches, had been debited from the capital accounts of the seven equity partners. He had believed it to be a loan to DC to help support his business and that it was to have been repaid. At the time, he had not thought of it as giving [FIRM NAME REDACTED] a financial interest in Claimsure.

407. In cross-examination by Mr Monty, inter alia [RESPONDENT 4] explained that he did not believe that Mr Dennison would ever have succumbed to pressure from TAG. Although he had not done a forensic analysis of the £20 payment to AIL, [RESPONDENT 4] said that he had been comfortable by the way it had been presented and the people who had been involved; Messrs Leon, Dennison, Rogers and Gerard. As to the repayment of interest, [RESPONDENT 4] confirmed that [FIRM NAME REDACTED], like all the other panel firms, had never held the sums of interest in their accounts.

408. In re-examination by Mr Morgan, [RESPONDENT 4] clarified his doodling, explaining that he could not remember writing the words but that he knew that he could not have written them on 7th June as he had not been in Manchester on that day.

409. [RESPONDENT 6] gave evidence relying on his three statements of 26th February 2009, 12th March 2009 and 20th July 2009, subject to minor amendments as explained to the Tribunal.

410. In cross-examination by Mr Coleman, [RESPONDENT 6] responded to each of the allegations. Inter alia, he confirmed his understanding of his professional obligations during the period from 1999 – 2003. As to [RESPONDENT 1]'s notes, he explained that he had been aware that [RESPONDENT 1] had made his own notes at the time, in that he had seen him scribbling in his notebook, but he had regarded them as private notes and not partnership property and that they had never been a point of reference in subsequent meetings and he had not had them in his mind as of value to the process either one way or the other. Although he had been annoyed at the lateness of their appearance, [RESPONDENT 6] maintained that [RESPONDENT 1] would never have acted in bad faith by suppressing anything that should be before the Tribunal.

411. [RESPONDENT 6] insisted that he had had no doubts and that the AIL £20 agreement had not been a "sham" in any way. There had been a pre-existing position in that [FIRM NAME REDACTED] had been doing the vetting and money had been paid to TAG/AIL for them to do the administration; a sub-contracting with value to [FIRM NAME REDACTED]. [RESPONDENT 6] explained that "investigation" had just kept being misused in the documents, in invoices and in the accounts.

412. [RESPONDENT 6] explained that he did not remember the Business Plan of September 2000 being in front of or considered by him in a meeting. He believed that what had happened had been that Mr Dennison had told the meeting about the plan – talked to the plan, rather than taking the partners through the plan and taking over any files had never been considered in any meaningful way.

413. However, [RESPONDENT 6] said before the agreement of March 2001 and quite unconnected with the Business Plan of September 2000, that he recalled a partners' meeting in which Mr Dennison had explained the proposed change in the administration and the savings in costs. He insisted that he would have been satisfied that the change had been analysed sufficiently for the partners to have been comfortable with the financial arrangement.

414. Subcontracting to a third party could well have involved further problems for [FIRM NAME REDACTED], [RESPONDENT 6] said, and therefore he had considered that there had been two options; for [FIRM NAME REDACTED] to continue with the administrative burden or to enter into arrangements with TAG, who had been keen to have some control over that part of the administrative process.

415. Challenged as to inconsistencies in his statements, [RESPONDENT 6] explained that the process had been extremely difficult, particularly given the terms of the initial allegations. Questioned as to the meaning and implications of various parts of [RESPONDENT 1]'s notes, inter alia, [RESPONDENT 6] explained that "[FIRM NAME REDACTED] Ltd" had involved a discussion to set up a company to carry on the vetting function. Vetting had been looked upon as a process involving non-core work. [RESPONDENT 6] said that he believed now that the more the words "investigation fees" had been used incorrectly, the less it had been noticed, in that it had just become a label for what everyone knew were administrative services.

416. Dealing with conflict of interest, [RESPONDENT 6] acknowledged the existence of conflict as raising a question as to whether it could be managed. As to the repayment

of interest, he expressed his regret that [FIRM NAME REDACTED] had not been able to deal with that issue more quickly.

417. Dealing with the CPL allegations, [RESPONDENT 6] clarified the use of the firm's source register but explained that compliance had been dealt with by the individual departments. He denied having any knowledge from any source, before the November memorandum from [RESPONDENT 3], of the payments to CPL. [RESPONDENT 6] explained that he would have viewed that memorandum as [RESPONDENT 3] explaining to [RESPONDENT 1] what was being done and why it was okay.

418. [RESPONDENT 6] explained his position as to his loan to DC but stressed that while he had had no detailed knowledge of the Claimsure scheme, others in the firm had understood those types of schemes. He had believed that the loan would either be short-term or move on to another basis.

419. In cross-examination by Mr Monty, inter alia, [RESPONDENT 6] clarified the details of the legal proceedings involving the former [FIRM NAME REDACTED] partners and LRS. Dealing with the Business Plan, he insisted that he would have remembered had there been a discussion or a suggestion of anything inappropriate. He stressed that Mr Dennison had a very strong personality and would not have allowed himself to succumb to any improper pressure. [RESPONDENT 6] said that he remembered Mr Dennison explaining the transaction involving the £20 payments for administrative services and that transaction had sounded genuine. Mr Dennison had had the authority of all the partners to enter into the March 2001 contracts for vetting and for the outsourcing of administration.

420. In re-examination by Mr Morgan, inter alia, [RESPONDENT 6] explained that the suggestion to take on another firm's files had never made any sense and had not got beyond first base. However, he had viewed five year vetting and administration contracts as a good thing for the firm. As to the issue of conflict, [RESPONDENT 6] explained that he had been in the commercial department and would have considered the question of TAG conflict a matter for the personal injuries people.

421. In response to a question from the Tribunal, [RESPONDENT 6] clarified that when he said that he did not believe that he had read the Business Plan line by line, that was because he thought that it might well have been distributed by Mr Dennison at a meeting when he would have spoken to them about and from the document. He stressed that he was surmising on the basis of [RESPONDENT 1]'s notes and other documents.

422. Gerard John Spain gave evidence relying on his statements of 25th February and 9th November 2009, subject to some clarifications and corrections, as detailed to the Tribunal. Inter alia, he explained that following the collapse of TAG, outstanding vetting fees had been provided for in the accounts as a bad debt provision, but they had not been actually written off through the accounts until the April 2009 year end. Out of the write off of £1.2 million, some £568,046 had been a cost payable to AIL; an accrued expense that would not have to be paid. Mr Spain also referred to documents aiming to show the over-all profitability of the whole TAG plus vetting operation, concluding that there had been a cumulative loss of some £246,000.

423. Mr Spain was referred to a document headed "Vetting Department Budget for the year ending 28th February 2002". He explained that although he could not now specifically recall preparing the document, it had been prepared on 5th March 2001 and would only have been prepared because of the prospect of a new agreement with AIL. Mr Spain said that the vetting operation had been struggling seriously and the exercise had been undertaken, at that stage, to look at whether the vetting operation would have been viable when paying out £20 per case to AIL to deal with the administration. He explained that [FIRM NAME REDACTED] had been good at the vetting but the paper shifting exercise and the logistics of the allocation of files had been a horrific exercise. Mr Spain insisted that the only way [FIRM NAME REDACTED] could have continued to do the vetting was by sub-contracting the administration to AIL. [FIRM NAME REDACTED]'s key concern had been still being profitable if they paid £20 out of the £45 to AIL to deal with the administration.

424. In cross- examination by Mr Coleman, Mr Spain confirmed that his role in [FIRM NAME REDACTED] had been, inter alia, to deal with budget forecasting, general cash-flow and monthly management accounts. He explained that he had also provided financial projections to Mr Dennison, based on information assumptions given to him by Mr Dennison.

425. As to the purpose of the £20 payments, Mr Spain said that he had been aware that an element of the work [FIRM NAME REDACTED] had been doing was to be sub-contracted to AIL although he had not known the details. Although he insisted that there had been an element of negotiation, realistically the commercial decision had been to sub-contract to TAG in order to keep the vetting side of the work. Mr Spain said that although he did not know when the CAT representatives had started, he did know that from April 2001 the work had been done by someone other than [FIRM NAME REDACTED], because the work-loads had reduced from that date in that the allocation of the files to panel solicitors had disappeared almost overnight; the huge paper-shifting exercise had disappeared.

426. Mr Spain said that his document of 5th March 2001 had been produced for Mr Dennison to justify being able to provide the vetting operation for the remaining £25 per case. He explained that there had been no exercise to see if it might be cost-effective for [FIRM NAME REDACTED] to keep the increased administration because they had not had the space or the management capability to deal with it. Mr Spain stressed that the whole exercise that he had undertaken with Mr Dennison in early 2001, had not been to justify the £20 payment but to ascertain if [FIRM NAME REDACTED] could afford to vet files at £25 per each accepted case and to determine if that had been a viable business proposition for the firm.

427. As to the use of the term "investigation fees", Mr Spain explained that he, rather than the partners, had decided how the management accounts were to be laid out and what to call the various expense types. It had been called "investigation fees" simply because it had been a service provided by Accident Investigations Ltd. Although initially put under "Legal & Professional Costs" the fees had subsequently been treated as a variable cost, rather than as a fixed cost, within the overheads section of the accounts. Mr Spain stressed that the partners had not been involved in the preparation of the accounts but had been purely interested in the overall profit and

loss. It had only been in January 2004, when the accounts for 2002 had been finalised, that it had been decided to use a more correct definition of the service than his definition of "investigation fees".

428. On being taken through the figures for postages; budgeted and actual, Mr Spain explained that during the relevant period the firm had been tied into a fixed price contract with the DX that had maintained costs at a certain level even if use reduced. Moreover, vetting department overheads had not decreased because of the need to employ more vetting staff because of the increased numbers of files to vet.

429. As to the donations to the NSPCC, Mr Spain explained that they had been classed as a variable amount as they had been based on the number of accepted cases and therefore had not been a fixed overhead. However, for tax purposes, the donations had been classed as personal payments by the partners.

430. On being taken through the monthly figures for the profitability of the vetting department, Mr Spain agreed that profitability had been significantly reduced from paying out £20 per case, but explained that, behind the figures, the issue had been a commercial one, in that generating profit margins of 60% to 70% had not been sustainable and without out-sourcing the administration, [FIRM NAME REDACTED] would have lost the contract. Accordingly, a decision had been made to keep the vetting side of the operation, generating a profit of some 20% to 30%, rather than losing the whole contract by trying to retain the 60% to 70% profit margin. Mr Spain insisted that he knew that given the projection of increased volumes, the vetting department would not have coped with the administration. In relation to the administration before the projected increases, it had not been operating efficiently or to deadlines and any realistic commercial entity would have pulled out had the situation continued. Logistically that level of administration had been too far away from [FIRM NAME REDACTED]'s core business.

431. In cross-examination by Mr Monty, Mr Spain explained that his interview with the investigators from the Law Society had been very intimidating in that he had felt pressured to give answers before he had been able to check sources of information.

432. Dealing with the document that he had produced on 5th March 2001, Mr Spain explained that Mr Dennison had supplied the basic assumptions on which he had based the projections and that it was highly likely that, at some stage, there had been another version with a figure other than £20 but that each version of his document would have been over-written with a newer, more accurate version.

433 In re-examination by Mr Morgan, Mr Spain insisted that even he, who had not been involved in the detailed operation of the vetting department, had become aware that after March 2001, the problems of paper shifting and allocation of files had gone away. In early 2001 the vetting operation had not been running efficiently, after the sub-contracting of the administration, the department had been able to concentrate on the vetting work.

434. Brian Rogers relied on his witness statement and gave evidence relating to his role as operations director at [FIRM NAME REDACTED] which, he explained, had involved managing HR, facilities and IT systems and assisting with the implementation of

general internal procedures and strategies. He detailed the DX rolling contract with the firm and how it had been calculated over a 12 month period.

435. In cross-examination by Mr Coleman, Mr Rogers explained that he had been aware that assumptions as to DX usage had been changing in about early March 2001, when he had been asked by Mr Dennison to do some costings. He said that in terms of the DX, March/April 2001 had been a period of gradual change; a transitional period.

436. On being taken by Mr Coleman through his operational reports from May 2000, Mr Rogers explained that the absence of a mention of a problem in his reports did not mean that there had not been a problem. He confirmed that he had known about the £20 fee for administrative services but had not seen, nor had expected to see the contract. Although he had never been given precise details of the services to be sub-contracted, in general terms he had known that it had involved all the posting in and out of TAG files and the associated data inputting.

437. In cross-examination by Mr Monty, Mr Rogers said that he had worked closely with Mr Dennison and that during his period at [FIRM NAME REDACTED], he had believed that Mr Dennison had known what he was doing and had been a person to be trusted. Mr Rogers stressed that he had had no reason to doubt the integrity or honesty of any of the [FIRM NAME REDACTED] partners. In his view, the firm had been trying to do the best that it could for its clients and for its staff and had wanted to become a quality driven corporate firm.

438. Mr Rogers confirmed that he had known of Mr Dennison's proposed administrative changes before his memorandum of 6th March 2001 and that after the contract had been signed there had been a period of change. Mr Rogers explained that his view of changes would have been over-arching rather than detailed.

439. In re-examination by Mr Morgan, Mr Rogers explained that TAG staff working in the office had been working on administration only, as they had not been qualified to undertake vetting.

440. Michael Molloy, a solicitor who had conducted TAG cases at [FIRM NAME REDACTED], relied on his statement of 16th July 2009. In cross-examination, he explained that he had had no involvement in the vetting department and had not been aware of TAG/AIL's provision of administrative services. If he had had a TAG-related query, he might have sought Mr Dennison's help by way of a memorandum and he remembered Mr Dennison holding meetings, in the claimant department, when there had been a number of TAG issues to discuss, for example relating to costs.

441. Anthony Jack Leon, a financial consultant, relied on his statement giving evidence of his role at [FIRM NAME REDACTED].

442. In cross-examination, inter alia, Mr Leon stressed that his role had been to monitor the firm's financial performance and to provide a financial overview for the partners and that he had not been involved in the preparation of the monthly management accounts or in any other matters. Although he had attended meetings, he had no independent recollection now of those meetings and he did not remember receiving minutes of meetings and had never seen any of the TAG related contracts. Mr Leon agreed that

he would have remembered more in 2003 but said that he had never been asked to attend an interview by the Law Society. As for the payments in the accounts to AIL, Mr Leon said that he believed that all he would have been told was that they were being made under an agreement and that would have been sufficient because his concern had been with the figures, not with the purposes of payments in or out.

443. In response to a question from the Tribunal, Mr Leon said that he did not remember vetting being discussed regularly at meetings and that, in his view, the atmosphere amongst the partners had been normal.

Closing submissions on behalf of the Applicant

444 Mr Coleman referred the Tribunal, in detail, to his written closing submissions, authorities and chronologies. He addressed the Tribunal on the standard of proof, the Tribunal's approach to the findings of fact, credibility and the individual allegations.

445. Mr Coleman explained that he would concentrate on the "sham" allegation, as it raised the most questions of evidence. He would also deal with the main points raised by the Respondents.

446. Mr Coleman said that the SRA accepted that the Tribunal should apply the criminal standard of proof to the allegations. However, he explained that the SRA reserved the right to argue before a higher court that the standard of proof before the Tribunal was in fact the civil standard, with due regard to the fact that the more serious the allegation the more cogent the evidence needed to support it. Mr Coleman invited the Tribunal to say, in circumstances where it found an allegation not to have been proved, whether or not it would have upheld the allegation applying the civil standard.

447. Mr Coleman referred the Tribunal to a key passage from Lord Brown in Campbell v Hamlet PC at paragraph 24 "A sufficient number of strong probabilities (or even mere probabilities), can, in aggregate, amply support a finding of proof beyond reasonable doubt." He submitted that there were numerous considerations, certainly when taken together, and some, even when taken in isolation, that led to the conclusion that the AIL agreement had been a sham. Mr Coleman reminded the Tribunal that it had to make findings of fact based on all the evidence before it, not just the witness evidence, but more importantly the documentary evidence and referred to the various propositions from a chapter of Lord Bingham's book "Business of Judging".

448. Mr Coleman submitted that the allegations against the Respondents could not be resolved by general impressions of the integrity of the witnesses but rather by considering the extent to which what they had said fitted in with the documents and the other incontrovertible evidence and considering whether what they had said, in the light of that context, was reasonably capable of belief.

449. Mr Coleman referred the Tribunal to his four points relating to credibility in his written closing submissions. Firstly, he submitted that the Respondents' evidence, on the main disputed issues of fact, was incapable of belief having regard to the incontrovertible facts and particularly to the documents and other inherent probabilities. Secondly, that the Respondents' evidence had not been given with the straightforward candour to be expected of solicitors facing unfounded allegations.

Thirdly, that there had been a number of occasions on which the general credibility of each of the Respondents had been undermined. Fourthly, that the Respondents' evidence had been inconsistent with the documents or otherwise inherently improbable.

450. Mr Coleman detailed what he considered to be some of the fantastic aspects of the case as set out in his written submissions. He submitted that the Respondents' factual case in respect of the AIL agreement was incapable of belief, having regard to the documents before the Tribunal and should be rejected. Mr Coleman also referred to the principal findings of fact that he invited the Tribunal to make and to the evidence to support those findings. He submitted that the Respondents' motive had been that the "sham" had been the price that they had needed to pay to retain the burgeoning source of work from TAG.

451. Mr Coleman submitted that the Respondents had intended to deceive in setting up a guise under which the improper payments could be made so that, if they were ever to be questioned, there would be an apparent commercial pretext. He referred the Tribunal to the evidence, organised under nine heads, in his written submissions; the strictly confidential business plan, the AIL agreement, the use of investigation fees as a false label to describe payments to AIL, the absence of documents to support the Respondents' case as to why the payments were made to AIL, the absence of a commercial approach to the agreement (comprising some six points) the documents suggestive of fee-sharing, the lack of any commercial justification for the convoluted structure of the two agreements of 22nd March 2001, the suppression of the fact that the payments were made to AIL and the absence of a clear and consistent explanation as to the services provided under the AIL agreement.

452. In response to a point made by Mr Monty in his closing submissions, Mr Coleman submitted that the purpose of Mr Spain's budget of 5th March 2001 had been to see if [FIRM NAME REDACTED] could live off the £25 which had been entirely consistent with a fee-sharing arrangement.

453. Mr Coleman referred the Tribunal to the section of his closing submissions dealing with the Applicant's response to the particular points raised by the Respondents in relation to the "sham" findings. He submitted that the documents suggested that there had been no link between the agreement and the introduction of the CAT representatives and he went through the documents that he submitted were in conflict, as detailed in his written submissions. Mr Coleman submitted that the CAT representatives had been introduced so that TAG could persuade solicitors to take up cases and that there was no documentary evidence to support the case that other administrative services had been provided, prior to their introduction in the summer of 2001. Moreover, he submitted that the charitable deductions to the NSPCC had followed on from the savings to [FIRM NAME REDACTED] when the CAT representatives had taken over the delivery of the files.

454 Mr Coleman referred the Tribunal to the paragraphs in his closing submissions dealing with the evidence of Mr Spain, Mr Rogers, Mr Boxen and Mr Gregory. He submitted that their evidence or understanding, however genuine, did not fit with the documents and that the Respondents' case, that the payments had been for

administrative services, had been an after the fact rationalisation of improper payments.

455. Mr Coleman then went on to deal with some of the Respondents' submissions in relation to "sham". He submitted that each of the Respondents had clearly known, on the evidence, that in September 2000, TAG had proposed that the vetting fee be improperly shared and therefore they had each facilitated [FIRM NAME REDACTED]'s involvement in the "sham" arrangement.

456. Mr Coleman also responded to the Olswangs Respondents' submissions relating to disclosure, the conduct of the investigation and delay. Mr Coleman gave a brief history of the disclosure issues to the Tribunal, but stressed that in relation to the critical period, the documents were before the Tribunal.

457. Mr Coleman explained that the investigation had related to the firm's involvement in the TAG scheme, that the allegation of "sham" had appeared in the forensic report and that all the partners had been given the opportunity to respond. He then detailed briefly, with reference to his written submissions, the case in relation to the other allegations. Inter alia, Mr Coleman asked the Tribunal to consider whether the invoice from [FIRM NAME REDACTED] to the panel solicitors had complied with their duty of good faith or had it been one of the ways of facilitating the concealment of the "sham" agreement?

458. In relation to conflict of interest, Mr Coleman submitted that there had been both a pure conflict; between the duties owed by the firm to TAG and the duties owed by the firm to the TAG client and professional embarrassment; where a solicitor cannot give independent advice because of a connection with someone who had an opposing interest to the transaction in question.

459. In relation to the Respondents' defences to both the conflict and client care allegations, Mr Coleman submitted that [FIRM NAME REDACTED] had not been as other panel firms but had been unique because of their dual position as both vetters and panel firm and that moreover such a position had also been relevant to the referral fees allegation against Mr Dennison and [RESPONDENT 5]. As to the interest allegation, Mr Coleman submitted that the Law Society's guidance had been clear and that there was no excuse for [FIRM NAME REDACTED]'s excessive delay in agreeing to repayment.

460. Mr Coleman addressed various submissions raised in the written closing submissions of the Respondents, inter alia, he said that the distinction between the premium being "retained by TAG" and being "paid by the insurers to TAG" was immaterial.

461. Mr Coleman addressed the Tribunal on the LRS allegation against Mr Dennison only, stressing that it had involved gross wrong-doing and that Mr Dennison had been behaving dishonestly.

462 Finally as to the CPL allegations, Mr Dennison submitted that all the Respondents, not just [RESPONDENT 3] and [RESPONDENT 1], should accept responsibility for the payment of referral fees in that the evidence pointed to their actual knowledge.

Closing submissions on behalf of Mr Dennison

463. Before referring the Tribunal, in detail, to his written closing submissions, Mr Monty asked the Tribunal to make a ruling on the standard of proof. Leading Counsel submitted that it would be unacceptable for the Tribunal to accede to the SRA's request and make findings both on the basis of the criminal and of the civil standard. He submitted that that was not how the case had been opened, responded to, considered, prepared or argued.

464. The Tribunal determined that it was un-necessary to make a ruling because it was satisfied that the case had been opened on the basis of the criminal standard, all the evidence had been heard and the criminal standard was the only basis on which the Tribunal was dealing with the matter.

465. Mr Monty submitted that unlike the approach of Occam, the SRA had started its case from an assumption of "sham" and had looked for evidence of inconsistencies to support it. He submitted further that it was not for Mr Dennison, or for any of the Respondents, to prove their non-involvement or to prove their honesty or to prove an absence of recklessness, but for the SRA, by way of the evidence, to prove its case to the criminal standard.

466. Dealing firstly with the LRS allegation, Mr Monty confirmed that Mr Dennison admitted the conflict both between his interests in LRS and his duties to his clients; TAG and the [FIRM NAME REDACTED] TAG clients. However, Mr Dennison asked the Tribunal to find that his mistake had been an honest one. Leading Counsel referred the Tribunal to the relevant parts of Mr Dennison's original response and to the circumstances of the Halliwell's letter. Mr Monty submitted that Mr Dennison had made a mistake in believing that Practice Rule 10 had applied to his situation and that he did not need to account, both in the sense of repay and of disclosure, payments of less than £20.

467. Mr Monty referred the Tribunal to the fact that Mr Dennison had acquired his interest in LRS, before he joined [FIRM NAME REDACTED], at a time when that interest had been virtually worthless. Leading Counsel submitted that, although the SRA had said that Mr Dennison had been in conflict with his partners, he had not been charged with such a conflict. Moreover, Mr Dennison had accepted that he should have told them, as a result of which, the claim that was brought against him by his former partners had been settled on commercial terms. Leading Counsel submitted that in respect of LRS, Mr Dennison had not been dishonest, although he accepted that from a professional point of view that both his partners and his clients ought to have been told of his interest.

468. Turning to the allegation of "sham", Mr Monty submitted that the SRA appeared to view the matter as a conspiracy between all the Respondents. However, Leading Counsel submitted that the absolute key to the case was that a genuine service had been provided and that there had been a genuine change in the previous arrangements that had started in March 2001 and had worked its way through in increasing levels to the summer of 2001. There had been a change in the amount of paper and faxes being dealt with, in the collation of material, in the DX and in the introduction of the CAT

representatives. A change in that administrative tasks for which, under the vetting contract, [FIRM NAME REDACTED] was responsible, had been subcontracted to AIL.

469. Mr Monty submitted that the evidence before the Tribunal was that the administration had, for some months before March 2001, been increasingly unmanageable. For that reason, Leading Counsel submitted, there was evidence of a sound commercial basis, from [FIRM NAME REDACTED]'s point of view, for the sub-contracting of some of the administration, in that it had eliminated the aggravation and transferred to the company that had been complaining about the inefficiencies, that part of the vetting contract that had been causing [FIRM NAME REDACTED] problems. From TAG's point of view, it had given them control of the delivery of files, speed and efficiency.

470. Leading Counsel submitted that what had taken place had been in the real world of business where that sort of contract was all about margin. It had been all about contract retention and that had been why it had made sense, from a business and commercial point of view, to [FIRM NAME REDACTED].

471. As to the AIL contract, Leading Counsel submitted that its wording had been a clumsy but genuine attempt to link the work to be done by AIL to the vetting obligations of [FIRM NAME REDACTED].

472. Mr Monty referred the Tribunal to a list of "quantum leaps" that he submitted the SRA had made, from surmise and conjecture to submission, in their closing; the tying up of the March 2001 agreement to what happened in September 2000, saying that the March 2001 agreement had made no sense because it referred to "initial investigation services", the reliance on the Fernando report, the lack of commercial justification for the structure that had been agreed in March 2001, the G& Co dispute, the Sharratt disclosure, the consistency of the versions of events given by the Respondents and the charitable payments to the NSPCC.

473. Mr Monty insisted that there was no evidence of any link between the discussions in September 2000 and the signing of the AIL agreement. He invited the Tribunal to read the interview of November 2003 in full.

474. As to the AIL agreement, Mr Monty submitted that it was necessary in addition to consider the wording of the agreement "to facilitate [FIRM NAME REDACTED]'s vetting" and Mr Dennison's admitted error of not using the words "investigation and administration". Further, he submitted that there had been no need to define the services since both parties had known what was being done, and [FIRM NAME REDACTED] had needed no more careful analysis than that done by Mr Spain, to ensure that the firm preserved its margin for the vetting. He continued that [FIRM NAME REDACTED] had needed the contract as a matter of commercial and business sense and if they had retained the administration, the contract would have collapsed. Mr Monty submitted that had not been a motive for "sham", but a sensible business decision, just like taking on an exclusive contract for five years.

475. Turning to the SRA's reliance on the Fernando report, another document disclosed by Mr Dennison, Mr Monty referred to Mr Dennison's evidence about that report and

submitted that given its content and Mr Dennison's anger, it was not surprising that he had not picked up on the use of "our share of the vetting fee".

476. In relation to the G & Co dispute, Mr Monty submitted that there had been no onus on Mr Dennison, when dealing with what had been a dispute about fees, to say anything about [FIRM NAME REDACTED]'s commercial, contractual arrangements involving information about its margins.

477. Mr Monty submitted that the AIL agreement, although mis-described, had been disclosed in the bundles before the Court in the Sharratt litigation and moreover that Mr Dennison had, in the Tribunal proceedings, fully disclosed all the documents that he had in his possession.

478. As to the consistency of the versions of events given by the various Respondents, Mr Monty noted that events had taken place some eight years ago and some of the Respondents had not been involved in the vetting operation in any way or had only a limited amount of knowledge. In those circumstances, he submitted that it was not surprising that there had not been one clear, consistent recollection from all the Respondents.

479. Dealing shortly with the charitable payments to the NSPCC, Mr Monty noted that they had started in November 2001 and therefore, he submitted, had not been linked to the agreement of March 2001.

480. Mr Monty referred the Tribunal to the evidence of the witnesses, other than the Respondents, noting that Messrs Boxen, Gregory, Spain, Rogers and Leon had all been very clear about the changes after March 2001. Leading Counsel referred the Tribunal to the specific details of their evidence as noted in his written closing.

481. Referring to the unlawful referral fee of £310 allegation, Mr Monty submitted that it was not sustainable because there had been no final finding that the AIL investigation fee had been an unlawful referral fee until the Sharratt litigation had concluded in the Court of Appeal in May 2004. In those circumstances, Leading Counsel submitted, it could not have been a breach of a solicitor's obligations to a client, not to inform that client that the payment to AIL had been unlawful. Moreover, the decision at first instance had only been two weeks before the collapse of TAG. In addition, Mr Monty explained that TAG had not in fact retained any part of the premium but that monies had been paid to TAG by the insurers as part of the commercial agreement between TAG and the insurers. Leading Counsel referred the Tribunal to the details of the costs war as set out in his opening submissions.

Closing Submissions by Mr Morgan QC and Mr Beggs QC on behalf of the "Olswangs Respondents"

482. Mr Morgan referred the Tribunal to the written closing submissions on behalf of the Olwangs Respondents and explained that his oral submissions were in response to the closing submissions of the SRA.

483. Dealing with credibility, Mr Morgan reminded the Tribunal of the presumption, albeit rebuttable, that, as solicitors, his clients had been honest witnesses. He also reminded

the Tribunal of the background and ethos of [FIRM NAME REDACTED]; a busy, departmental firm with a culture of action lists rather than of detailed minutes.

484. As to TAG, Leading Counsel reminded the Tribunal that TAG had not been, at the relevant time, the villain of the piece that it later became. It had appeared to be a large, reputable organisation that had picked up the baton which the Government had thrown down with the "Access to Justice" reforms and had been providing that access to justice for clients. It had been advised by DLA and had a reputable legal director and reputable accountants. Mr Morgan submitted that in its closing the SRA had made no attempt to capture the atmosphere within [FIRM NAME REDACTED] or to relate to the realities of practice.

485. Mr Morgan submitted, inter alia, that the SRA's closing submissions had explored key events with the huge benefit of the filter of hindsight, having made no attempt to capture the atmosphere within the firm or the realities of practice. In addition, he submitted that in closing the SRA had ignored the problems of memory, especially after so long a time. Leading Counsel noted that his clients had not seen the relevant documents at the relevant time. He handed to the Tribunal, for its assistance, the Judicial Studies Board guidelines on directions to the jury in cases where there had been a delay in proceedings, which, he submitted, as with the judicial comments of Lord Bingham, encapsulated a common sense approach.

486. Mr Morgan referred to the final interview of September 2003 and submitted that the "sham" allegation had been put by the investigators only to Mr Dennison. Moreover, none of the other Respondents had ever been interviewed about the sham allegation or about the vetting scheme. Mr Morgan also dealt with the evidence relating to the role of the management board, submitting that it had in no way undermined the credibility of the Respondents. He also referred the Tribunal to his written closing on disclosure and dealt with the challenge to the Respondents' credibility on the issue of disclosure. Mr Morgan asked the Tribunal to accept [RESPONDENT 1]'s explanation as to the disclosure of his notebooks and submitted that he should not suffer any damage to his credibility as a result of the fact that he had discovered his handwritten, personal notes late.

487. Mr Morgan submitted that the only relevance of the Olwangs Respondents view of Mr Dennison's character would have been at the time of the agreement of March 2001. Moreover, he noted that there had been numerous references to Claimsure in the firm's minutes and he submitted that none of their actions, relating to Claimsure, had affected the credibility of the Olswangs Respondents. Leading Counsel also dealt with the attacks upon the credibility of the individual Respondents and the other witness evidence in support of the Respondents' case.

488. Mr Morgan addressed the Tribunal on the nine points relating to "sham" raised in the SRA's written closing submissions, reviewing the relevant evidence. Inter alia, he noted that it appeared to have been accepted that none of the Olswangs Respondents had seen the AIL agreement of 22nd March 2001, or its drafts, during the relevant period. The evidence from Mr Spain had been that the use of the label "investigation fees" in the management accounts had been his decision alone. In relation to that, Mr Morgan submitted, that the label had gained nothing from repetition, in that, once it had been attached, it had been used and understood by everyone as administration.

Moreover, he submitted that the partners, like Mr Leon, had been concerned with the substance of the figures rather than with descriptions.

489. Finally, Mr Morgan made various points detailing why his clients had not been reckless; they had rejected the L& Co proposal at the September 2000 meeting, they had relied on Mr Dennison's presentation of the change, there had been a clear departmental structure and responsibility within the firm, supported by professional managers, none of them had been involved in the vetting department or had had direct business contact with TAG, they had not prepared or seen the underlying contractual documentation, there had been a pre-existing arrangement and a change on the ground had taken place, they had not seen the AIL invoices and they had not seen the Fernando report.

500. Mr Coleman made some brief points of correction and clarification

The Decision of the Tribunal

501. The Tribunal noted that the case against the Respondents had started in March of 2009 and had only concluded in November of 2009, following two lengthy adjournments, occasioned because of lack of time to continue, and an additional two day adjournment in July 2009, caused by the late discovery of [RESPONDENT 1]'s notebooks. The original time estimates had proved disastrously optimistic and the Tribunal had to consider a vast amount of documentation and many witnesses over a very lengthy period of time.

502. It was necessary, before dealing with each of the remaining allegations, to put into perspective the way in which the case had developed.

503. The original investigation by the SRA had started in July 2003 and the report, compiled as a result of that investigation, had become the basis of the allegations against the Respondents. It appeared to the Tribunal, from the evidence given, that various aspects of the investigation had been unsatisfactory. The investigation had appeared to concentrate mainly on Mr. Dennison. No in-depth interviews had been conducted with the other Respondents or with key members of [FIRM NAME REDACTED] staff and two former equity partners of the firm had not been brought before the Tribunal. In the view of the Tribunal, a better understanding of the operation of the firm and specifically of the TAG scheme, by the investigators, would have proved helpful. The interview records had not been shown to the Respondents until exhibited to the Forensic Investigation Report. The hand written notes from interviews had been typed up and amendments had been made but those scripts had not always been checked by the originator. Additionally, the evidence put forward by the SRA staff, who had interviewed potential witnesses, had been extremely poor and unhelpful. Those interviews had taken the form of questionnaires. In the view of the Tribunal, the exhibiting of short questions with short, or one word, answers, to a one paragraph statement was not acceptable. Moreover, there had been an inconsistent use of follow up questions. The impression created had been that the SRA staff had not really understood the whole background to the case. All of those matters had indicated that there had not been a thorough enough approach to the forensic investigation.

504. Referring to the Tribunal's decision of 15th June 2009, it was noted that it was extremely unusual for a submission of no case to answer to succeed before a Tribunal. However, at the close of the Applicant's case, the Tribunal had had no alternative but to decide, as it had done, because the circumstances of the case had been squarely within the Galbraith test. This decision had been taken, of course, before any evidence had been called by the Respondents.

506. The Respondents and Mr. Spain and Mr. Rogers had all given evidence and had been submitted to very lengthy, persistent and detailed questioning about matters that had taken place some eight or nine years ago and particularly, on occasions, about documents which they had not seen before. Part of the difficulty in the case, both for the Respondents and for the Tribunal, was that to cross examine a witness minutely on whether they had seen a particular document, at a particular meeting, or whether they could recall exactly each conversation that might have taken place, in a situation where a witness was unable to recall exactly what had been said, was not helpful to the Tribunal. The view that the Tribunal had of the Respondents' evidence was that their evidence had in fact remained consistent throughout the lengthy process, subject to their review of new evidence, resulting from some extremely late discovery.

507. The Tribunal noted that there had been an inordinate delay in bringing the case before it. No credible explanation had been given by the SRA as to why the case had not been pursued expeditiously. Indeed, there was evidence that at least one member of the SRA staff had given it a low priority and had appeared to be in no hurry to bring the case to the Tribunal. That sort of attitude was to be deprecated where serious allegations of dishonesty and recklessness had been made which had been hanging over the heads of the Respondents for some five years.

508. In addition, the Respondents had complained that the SRA had singled out [FIRM NAME REDACTED] from the 800 or so panel solicitors of TAG and that they had been targeted, unfairly and differently, to other panel firms. In July 2003 the Law Society had published their Guidance to the Profession, following the decision of Master Hurst in Sharratt that the AIL fee of £310.00 had been a referral fee. The Law Society had indicated that it might not undertake a general investigation into firms who had been members of schemes. Although it had been a statement of intent, it had not been a general amnesty. It appeared that the reason why [FIRM NAME REDACTED] had been investigated and allegations had been brought, had been that the view of the SRA had been that [FIRM NAME REDACTED] had been "at the heart" of TAG. The Underwriters for the insurance of the TAG Scheme had insisted on an independent vetter. [FIRM NAME REDACTED] had taken on the role. Criticism of the vetting, carried out by [FIRM NAME REDACTED], had already been dealt with in the no case to answer application. Indeed, subsequent evidence which had emerged during the course of the Respondents' case, had only confirmed the earlier findings made by the Tribunal.

509. The Applicant's case against the Respondents in relation to sham and concealment, as would be expected, was mainly, if not wholly, based upon inferences to be drawn from the various documents produced to the Tribunal during the case and by endeavouring to point out mistakes in the Respondents' written statements and oral evidence, which the SRA said indicated guilt.

510. There had been a considerable amount of discussion, in the course of the case, on the question of documentation. Before the case had started, there had been an Order, made by the Tribunal against the SRA, for production of documents. During the course of the hearing, the Tribunal had made a Production Order against the Respondents. Many different documents, in addition to the large number of prepared bundles of documents, had been handed in during the various hearings, on an almost daily basis, in addition to the [RESPONDENT 1] notebooks. It appeared to the Tribunal that many disclosure matters could have been dealt with before the substantive hearing commenced.

511. [FIRM NAME REDACTED] had been a firm set up on a collegiate basis. The various departments had operated as independent units dealing with their own specialist work. The arrangement was typical of most medium sized firms. In the view of the Tribunal, busy partners, running their own practices in a firm of that size, could not have been expected to know, in detail, what had been happening in another department. The whole essence of partnership was one of trust in that one has to be able to trust one's partners, both as to the work they do and to bring to the attention of all other partners any matters which might cause them concern. It was also to be borne in mind that [FIRM NAME REDACTED] had been built up by a series of individual partners and small practices getting together to practice as a larger concern. Partners had been, as was usual, concerned to service their own clients to the best of their ability and inevitably would have been protective of their own clients.

512. The Management Board had been set up following a suggestion by Mr. Leon and had acted as a preliminary discussion forum. In the early part of the hearing much had been made of the executive standing, or otherwise, of the Management Board. The Tribunal was content that the Board, although not an executive decision maker, had often discussed and filtered important matters before they had been forwarded to the equity Partners for decisions. That description, as attested by the evidence, had appeared to be accepted by all parties.

513. Finally, the Tribunal had also had very helpful written and oral submissions from all six Counsel in the case and had considered the case law referred to during the hearing. In deciding the allegations, the Tribunal had adopted the criminal standard of proof which had been agreed by the Applicant and the Respondents at the outset of the case as the correct test.

514. The Tribunal considered each of the remaining allegations in turn. However, before doing so, the Tribunal acknowledged the tremendous amount of work which had gone into the presentation of the case by Mr. Coleman and Ms. Carpenter, Mr. Morgan QC and Mr. Beggs QC, Mr. Monty QC and Ms. Savage.

Allegation 3(a) – Sham

515. That was the sham arrangement allegation to which a great deal of attention had been given during the course of the hearing. It was a very important allegation in that it was alleged that the Respondents, other than Mr. Dennison, had been reckless, and that Mr. Dennison had been dishonest. The SRA relied on a number of documents and inferences to establish their case. The starting point was the Business Plan dated 20th September 2000 and prepared by Mr. Dennison. The evidence given had shown

that there was no certainty that the actual document had been before the partners when a discussion had taken place about its content. In the view of the Tribunal, that was perhaps not surprising as the meeting in question had taken place some nine years before. The crucial part of the document was paragraph five, headed "The Cost". The first line of that paragraph stated: "As might be expected TAG have already hinted that they would like to "share" in the revenue". The "Sharing", as set out, had related to a suggestion, by TAG, that [FIRM NAME REDACTED] should take over responsibility for a sum of £1.5m (a debt owed to TAG by L & Co) and that in return TAG would warrant that [FIRM NAME REDACTED] would be able to bill some £350,000 per month.

516. Mr. Dennison's evidence was that TAG had previously suggested to him [FIRM NAME REDACTED] taking over responsibility for the debt and that he had told TAG, in effect, that there was no way that [FIRM NAME REDACTED] would ever agree to such a suggestion. However, at their insistence, Mr Dennison had agreed to put the suggestion to his partners. [RESPONDENT 1]'s evidence was that this had been a ridiculous suggestion and that it had been "kicked into touch". All the Respondents gave evidence that the suggestion had been turned down and the fact was that nothing further had happened about the suggestion and no further reference had been made to it. The SRA maintained that there had been however a clear link between the Business Plan of 2000 and the AIL Agreement of 22nd March 2001.

517. The agreement of 22nd March 2001 had been drafted by Mr. Dennison and was a badly drafted document in that it did not set out what actually had been agreed between [FIRM NAME REDACTED] and AIL. [RESPONDENT 1], in particular, was scathing about the Agreement, which he had not seen until much later. Mr. Dennison stated that he had "cribbed" the agreement from a previous agreement which he had tried to alter to fit the circumstances. The wording used of "initial investigatory services" had not in fact described the services that TAG had been supplying to [FIRM NAME REDACTED]. Such initial investigatory services had already been supplied by AIL to enable [FIRM NAME REDACTED] to undertake their vetting.

518. The Respondents' case was that because of the huge volume of files they had needed to process on a daily basis, the demands of TAG for a quicker turnaround and the pressure from time to time to relax the vetting criteria (for which there was evidence and equal evidence that such pressure had been largely resisted), plus an enormous amount of administration associated with the process, there had been an enormous burden on [FIRM NAME REDACTED] and in particular on the vetting department. The scale of the problem, which was referred to both in the Respondents' and in their witnesses' evidence, was usefully summarised in paragraph 30 of Mr. Monty's closing submission. That demonstrated what had to be done to service the vetting, and to be relieved of such a burden had been, as Mr. Dennison said, "manna from heaven". Equally, it was clear that TAG, which had been a driven money making organisation, had wanted greater control of the whole process and had believed that it would have been in a better position than [FIRM NAME REDACTED] to pursue Panel solicitors to accept vetted files. There had therefore been a common interest for both TAG and [FIRM NAME REDACTED] in making a change to the previously agreed arrangement.

519. It was clear from the evidence that a substantial change had taken place and that the administrative burden had been largely removed. The Tribunal was of the view that such a change could not and did not happen overnight and that there had been a transition period of some two months. It was true that there was little other documentation to support the Respondents' contention, but what had actually happened was what was important.

520. Having considered the evidence and having regard to what had happened, the Tribunal did not consider that the evidence had demonstrated that there was a clear link between the 2000 Business Plan and the AIL agreement of 22nd March 2001.

521. The AIL Agreement was, on the face of it, wrong and had given rise to suspicions that it had not been what it had purported to be. The description of the "investigatory services" had been wrong and misleading. What was apparent was that administrative services had been removed from [FIRM NAME REDACTED] by TAG/AIL, who had demanded a payment for taking over that work.

522. The SRA had pointed out the absence of a commercial approach to the Agreement. Having listened to the evidence and the submissions made, it was clear to the Tribunal that the administrative burden had been such that there had been a risk that [FIRM NAME REDACTED] might have lost the entire vetting contract, if the situation had continued. It was satisfied that a payment had had to be made to AIL/TAG for taking over the work and a commercial deal had been agreed. Mr. Spain had provided projections for Mr. Dennison to demonstrate whether, if [FIRM NAME REDACTED] were to receive £25, as a vetting fee, that would have been sufficient to maintain a reasonable margin. Their main concern had been to keep a highly profitable flow of work from TAG – even if that had meant, on a cumulative basis, that a larger amount of money would, inevitably, have been paid to TAG/AIL. The huge volumes had dictated the large figures involved. The commerciality for [FIRM NAME REDACTED] had been to keep the contract, even if that had meant less profit.

523. The use of the words "investigation fees" in the firm's accounting records had also been criticised. Mr. Spain, who had not attended partners' meetings and who had not been privy to the workings of the vetting department, told the tribunal that it was he who had decided to use the word "investigation fees" to describe, in his accounting records, the payment to TAG/AIL. His mis-description had not been picked up by the Respondents, however it was clear that they had known what the payments had been for and, as busy partners, largely concerned with their own practices, the "bottom line" of the accounts had probably been their main focus. The Tribunal observed that in an ideal world, of course, the incorrect description should have been corrected. The TAG/AIL payment had to, and did, appear in the accounts, but the decision as to its description and where it had featured seemed to have been left to Mr. Spain.

524. The Tribunal noted that the SRA also said that the Fernando report of November 2001 had been suggestive of fee sharing. That report had been commissioned by TAG with no reference to [FIRM NAME REDACTED] and the report, when seen by Mr. Dennison, according to his evidence, had caused him great anger. In his view the report had been simply wrong and he had discussed it with TAG and thereafter it had appeared not to have been pursued by TAG. There was, of course, in that report,

reference to "TAG's share of the vetting fee". The Tribunal considered that quite what that phrase had related to was not clear from the report.

525. Criticism was also made by the SRA of inconsistent explanations given by the Respondents in their evidence. Reference to the Respondents' evidence has already been made and, in the view of the Tribunal, the great passage of time that had elapsed made it likely that some inconsistencies in memories were inevitable. What was important was that, in the main, the Respondents' evidence was consistent.

526. The Tribunal had considered carefully this serious allegation. In its view, a good deal of the evidence could have been said to fall within the Telnikoff v Matusevitch case which held that if a piece of evidence was equally consistent with malice and with the absence of malice, it could not, as a matter of law, provide evidence of a finding of malice.

527. There was, inevitably, suspicion about the arrangement between TAG/AIL and [FIRM NAME REDACTED], but in the view of the Tribunal, the explanations given by the Respondents were largely credible. In the circumstances of the allegation, the Tribunal could not find that [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] or [RESPONDENT 6] had facilitated, permitted or acquiesced in a sham arrangement or that they had been reckless in their behaviour. The criminal standard of proof was not met neither was the test of recklessness as stated in R v G & Another HL [2003].

528. As far as Mr. Dennison was concerned, he had been fully in charge of the TAG vetting work. He had had a far greater knowledge of the workings of TAG and of the scheme. He had worked on TAG matters on a daily basis and had been fully informed. His other partners had not had his knowledge or experience. The Tribunal had to determine the question had he been dishonest? In spite of suspicion raised by the evidence, the Tribunal was unable to say that the test of dishonesty had been satisfied and indeed it considered that it would be difficult to establish, on the evidence before it, even the first part of the Twinsectra test in the particular circumstances. The Tribunal was however satisfied that the criminal standard of proof was not met. The Tribunal found no proof of any sham arrangement for either fee-sharing with or for the paying of referral fees to TAG. Allegation 3(a) therefore failed.

Allegation 3(b) – Concealment of the Sham

529. The same Respondents were accused of facilitating, permitting or acquiescing in [FIRM NAME REDACTED] concealing from panel solicitors the fact that part of the fee that panel solicitors had paid to [FIRM NAME REDACTED] would be paid to AIL/TAG.

530. The findings made in relation to allegation 3(a) that there was no proof of any sham arrangement for either fee-sharing or for the paying of referral fees, obviously affected allegation 3(b). The Tribunal was satisfied that [FIRM NAME REDACTED] had been entitled to outsource administrative work from their practice and in so doing had not been obliged to notify the panel solicitors of their arrangement. The allegation therefore failed.

Allegation 4(a) – Conflict of Interest

531. [RESPONDENT 1], Mr. Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] were alleged to have facilitated, permitted or acquiesced in [FIRM NAME REDACTED] acting for TAG and for clients under the TAG scheme;

(i) despite there being a conflict or a significant risk of conflict between the interests of TAG and the interests of the clients; and

(ii) despite not being able to act with the necessary independence by reason of [FIRM NAME REDACTED]'s client relationship with TAG as the conflict referred to in (i) above.

Mr. Dennison and [RESPONDENT 5] were charged with being reckless and the other Respondents with breaches of Rule 1 and Principle 15.01 of the Solicitors Practice Rules 1990, as amended.

532. Dealing with [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6], it appeared to the Tribunal that they were included in the allegation solely because they had been members of the Management Board. The Tribunal was satisfied that they had had no direct knowledge of Mr. Dennison or [RESPONDENT 5]'s management of the Claimant and Vetting Department, and that there was no evidence that any matters of conflict had been referred to them or that they should have known of such conflict in another department. [RESPONDENT 3] had not been so charged and it did seem to the Tribunal that in the particular circumstances, it would be wrong to find the allegation proved against Messrs [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6], as the Tribunal was not satisfied that they had had the requisite knowledge.

533. TAG had been a client of [FIRM NAME REDACTED] and the Tribunal considered that Mr. Dennison should have been more aware of conflict and potential conflict in circumstances in which [FIRM NAME REDACTED] had also acted for clients as a Panel Solicitor. In particular, Mr. Dennison had known that TAG were in fact being paid a commission in respect of the insurance taken out by the client and that AIL's investigation of the claim was often poor and not good value for money. The Tribunal considered that clients should have been told about the insurance commission and that TAG was also a client.

534. [RESPONDENT 5], the Head of the Claimant Department (which had included Vetting) had allocated the TAG files (selected by [FIRM NAME REDACTED]) to members of staff, had dealt with complaints and had signed client care letters. The Tribunal was satisfied that [RESPONDENT 5]'s knowledge of TAG had been greater than that of the other partners of [FIRM NAME REDACTED]. The question of paperwork sufficiency had been left to Mr. Dennison. However, the Tribunal considered that [RESPONDENT 5] should have appreciated that there had been a potential conflict. He had not appreciated it at the time, however he had admitted that, with hindsight, he saw that there had been a potential conflict situation. In the circumstances, the Tribunal found that he was in breach of Rule 1 and Principle 15.01 but that he had not been in any way reckless.

535. In the circumstances, the Tribunal found that the [RESPONDENT 1], [RESPONDENT 4] and [RESPONDENT 6] had not facilitated, permitted or acquiesced in [FIRM NAME REDACTED] acting for both TAG and for clients under the TAG scheme where there had been a conflict or a significant risk of conflict and where they could not have acted with the necessary independence. The Tribunal found that the breach of Rule 1 and Principle 15.01 was not made out.

536. Mr. Dennison's position was that of an experienced and capable solicitor and with his knowledge of the TAG scheme, the Tribunal was satisfied that he should have recognised a conflict situation. Unfortunately he had not.

537. As far as Mr. Dennison was concerned, the Tribunal found that he had breached Principle 15.01 and Rule 1. He clearly had the requisite knowledge and should have realised the problems of a position in which he was acting both for TAG and as a Panel Solicitor. The Tribunal was satisfied however that there was no evidence of recklessness and accordingly found that part of the allegation not proved, in that Mr Dennison had not closed his eyes to the situation irrespective of the consequences. That part of the allegation failed. The Tribunal noted that because of the consequences of the Access to Justice Act 1999 and of the use of CFA's, solicitors now have to consider frequently the issue of conflict or of potential conflict.

Allegation 4(b) – Referral Fees

538. Mr. Dennison and [RESPONDENT 5] were alleged to have facilitated, permitted or acquiesced in the payment by [FIRM NAME REDACTED] of a referral fee to AIL of £310 plus VAT for every case taken on by [FIRM NAME REDACTED] under the TAG scheme and in the charging of such referral fee to the client. Such conduct was said to have been in breach of the Rules 1 & 3 of the Solicitors' Practice Rules and the Solicitors' Introduction and Referral Code section 2(3) and Principle 12.09. In addition, it was alleged that both Mr. Dennison and [RESPONDENT 5] had acted recklessly.

539. Mr. Dennison and [RESPONDENT 5] had admitted that the sum of £310 had been a referral fee under OMs 1-4 as held by Master Hurst in the Sharratt litigation in 2003. Subsequently, in 2004, the following reasons had been given by the Court of Appeal in the Sharratt appeal to support its conclusion that AIL fees had been referral fees under OM1-4;

a. that the fee had been compulsory for any solicitor wishing to be sent cases by TAG,

b. that the amount of the fee had been standard in all cases,

c. that the fee had far outstripped any reasonable charge for the work done or purported to be done and

d. that the fee had been payable to a sister company of the introducer.

Having considered the OM5 documentation, the Tribunal found that the AIL fee remained, on a proper construction of the documents, a referral fee.

540. However, it was denied by both Mr Dennison and [RESPONDENT 5] that they had known that the AIL investigation fee, of some £310, had been a referral fee, before the conclusion of the Sharratt litigation.

541. Previously, following the Tribunal's determination of the application of no case to answer, the Tribunal had held that it had to be shown that the Respondents had sufficient detailed knowledge of the TAG scheme to have concluded that the AIL fee of some £310 had been an unlawful referral fee. Having heard and considered all the evidence, the Tribunal had to consider the knowledge of the respective Respondents.

542. Previously, the Tribunal, when determining the no case to answer application, had described [RESPONDENT 5]'s role. On behalf of [RESPONDENT 5], Mr. Morgan had submitted that the question of whether the AIL fee had been a referral fee could only have been answered after a lengthy examination such as that conducted by the Senior Costs Judge in the Sharratt litigation.

543. [RESPONDENT 5], in evidence, had accepted that he had been aware that [FIRM NAME REDACTED] had been bearing the AIL fee where it had proved irrecoverable except from the client. He had explained that he had not known that it had been a referral fee until May 2003 and therefore had been in the same position as the other Respondents against who the allegation had been struck out in June 2009. [RESPONDENT 5] had not supervised the vetting of TAG files.

544. The Tribunal accepted that [RESPONDENT 5] did consider some non-technical TAG issues and that he had been the supervising partner of some TAG files that had contributed to a substantial part of the revenue of the department that he had headed. However, the Tribunal did not find that [RESPONDENT 5] had been in any way reckless. It was satisfied that he had neither known of a risk nor deliberately closed his mind to a risk. Accordingly, the Tribunal found [RESPONDENT 5] in breach of Solicitors' Practice Rule 3 but not in breach of Solicitors' Practice Rule 1.

545. With regard to Mr. Dennison, the Tribunal was in no doubt but that he had a greater and more in-depth knowledge of the TAG scheme. However, the Tribunal was satisfied that Mr. Dennison could not have known that the £310 AIL payment had been a referral payment until after the decision in the Sharratt case.

546. The Tribunal was satisfied that [FIRM NAME REDACTED] had been very closely associated with TAG and had, through Mr. Dennison, considerable knowledge of TAG and its scheme. It accepted that [FIRM NAME REDACTED] was in a quite different position to all other panel solicitors and found that it had been in the public interest for an enquiry to have been made following the collapse of TAG in 2003.

547. The Tribunal found the allegation proved as against Mr. Dennison as a breach of Solicitors' Practice Rule 3 but found no breach of Solicitors' Practice Rule 1. The Tribunal was not satisfied that Mr Dennison had been reckless in relation to allegation 4(b).

Allegation 4(c) – Interest

548. The allegation as against [RESPONDENT 1], Mr. Dennison, [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] was that each had failed to reimburse the interest on the AIL referral fee paid by their clients under the TAG scheme, despite the decision in the Sharratt litigation in 2004 that referral fees should not have been charged to clients and the Law Society's guidance that panel solicitors should reimburse the interest incurred by those clients on their loan accounts in respect of referral fees.

549. All the Respondents had made written admissions in relation to the allegation.

550. The Tribunal noted that the decision of Master Hurst in the Sharratt litigation, that the AIL fee had been an unlawful referral fee, had as a consequence meant that it should never have been deducted from the client's loan account under the TAG Scheme.

551. Messrs. [RESPONDENT 1], [RESPONDENT 4], [RESPONDENT 5] and [RESPONDENT 6] had admitted that, in relation to cases conducted under OMs 2-4, they had not followed Law Society's Guidance, issued in August 2004, under which Panel Solicitors had been asked to take steps to regularise their clients' position by checking the files of all their TAG cases and reimbursing clients.

552. The Tribunal was told that was now in hand and the relevant steps were being taken by the Respondents. The Tribunal found allegation 4(c) proved as a failure to follow the Law Society's guidance in a timely manner. It was satisfied that such a failure had reflected upon the good reputation of the profession and in the view of the Tribunal was a breach of Rule 1 Solicitors Practice Rules.

Allegation 4(d) – Client Care

553. The Tribunal found that both [RESPONDENT 5] and Mr Dennison had not ensured that clients had been provided with the information that TAG had received a commission on the insurance policy paid by the client and that TAG had been an existing client of [FIRM NAME REDACTED]. The Tribunal considered that both of those were matters which a client would have needed to be aware of before making an informed decision to instruct [FIRM NAME REDACTED].

554. The Tribunal was satisfied that Mr Dennison had substantial knowledge of TAG, and [RESPONDENT 5], although not having such detailed knowledge, had been Head of the Department with the duties as previously referred too. In those circumstances, the Tribunal found that both Respondents had been in breach of Rules 1 and 15 of the Solicitors' Practice Rules. The Tribunal did not find that either Mr Dennison or [RESPONDENT 5] had been reckless in relation to the allegation.

Allegation 5 - LRS

555. The allegation, against Mr. Dennison alone, was that he had facilitated, permitted or acquiesced in the provision by LRS, a company in which he had a one third interest, of medical reports for clients for whom [FIRM NAME REDACTED] had acted under the TAG scheme, and had thereby created a conflict between his financial interest in LRS and his, and [FIRM NAME REDACTED]'s, duty to the client.

556. The Tribunal noted that the history of Mr. Dennison's interest in LRS was set out in his statement and in the written submissions. After considering all of the evidence in relation to the allegation, the Tribunal concluded that Mr. Dennison had deliberately kept his interest in LRS secret and that he had completely failed to notify clients that he, and through him [FIRM NAME REDACTED], had had an interest in the company which provided their medical reports, and that he had deliberately deceived his Partners and kept hidden his interest as he had not wanted them to share in the money that he had been making from LRS. The Tribunal found that to have been a gross breach of trust between partners and a complete failure to notify clients as was required.

557. Mr. Dennison had drawn a very considerable amount of money in dividends and salary from LRS and had eventually sold his interest for a substantial amount of money.

558. When his Partners had found out about LRS, they had been understandably angry and proceedings had been taken against Mr. Dennison in settlement of which he had had to pay to his former partners a considerable sum of money.

559. It was said, on Mr. Dennison's behalf, that he had misunderstood Rule 10 of the Solicitors' Practice Rules and that he had even consulted his brother-in-law, a solicitor, about it. His brother-in-law had arranged for a member of his firm to write to the Ethics Department of the Law Society about the matter. Subsequently, Mr. Dennison had self reported, after his partners had become aware of the situation.

560. It was the view of the Tribunal that it would have been obvious to any solicitor that Rule 10 had not applied to the situation. Moreover, it noted that Mr. Dennison's view had been inconsistent with what the Law Society had stated. Mr. Dennison had known, and had admitted, that he had a fiduciary duty to his clients. He also, in the view of the Tribunal, must have known that he had breached his duty of trust to his Partners.

561. Because of the seriousness of the allegation, Mr Dennison's failure to disclose his interest to clients and indeed to his Partners, his considerable attempts to keep his interest in LRS secret and to keep all the profit and share value for himself, the Tribunal concluded that Mr. Dennison had been dishonest. The Tribunal found that he had acted dishonestly by the ordinary standards of reasonable and honest people and he had been aware that, by those standards, he had been acting dishonestly. The Tribunal found allegation 5 proved accordingly.

Allegations 6 and 7(a) - CPL

562. Allegation 6 was that [RESPONDENT 1], Mr. Dennison, [RESPONDENT 3], [RESPONDENT 4] and [RESPONDENT 6] had facilitated, permitted or acquiesced in the payment by [FIRM NAME REDACTED] of a referral fee to Countrywide Property Lawyers Ltd (CPL) of 15% of the fees charged in respect of conveyancing work that CPL had referred to [FIRM NAME REDACTED]. The Applicant had submitted that the arrangement had constituted an unlawful fee sharing arrangement.

563. Allegation 7 was that [RESPONDENT 1], Mr. Dennison, [RESPONDENT 3], [RESPONDENT 4] and [RESPONDENT 6] had facilitated, permitted or acquiesced in [FIRM NAME REDACTED]'s failure to inform the clients referred to it by CPL that the firm had been paying a referral fee to CPL.

564. Admissions had been made by. [RESPONDENT 3] in July 2009. With the benefit of hindsight, [RESPONDENT 3] admitted that the fees payable to CPL had been, in part, referral fees and that [FIRM NAME REDACTED] ought to have informed their clients about them. However, [RESPONDENT 3] denied that he had perceived the matters he admitted, at the material time.

565. [RESPONDENT 1] also made admissions that with the benefit of hindsight the fees payable to CPL had been, in part, referral fees. He accepted that he had been aware that a fee was being paid to CPL from not long after payments had begun to be made. [RESPONDENT 1] had been aware that such payments had sometimes been described as marketing fees. He accepted that when he had become aware of the payments, he had considered whether they might have been referral fees. [RESPONDENT 1] had made enquiry of [RESPONDENT 3] on a number of occasions and, in the light of the explanations given by [RESPONDENT 3], he had accepted that the payments were not referral fees.

566. The Tribunal noted that on 30th July 2009 Mr. Coleman had dealt with the basis upon which the SRA would not be pursuing the CPL allegations further against Messrs [RESPONDENT 3] and [RESPONDENT 1]. He had explained that although there had been no agreed facts as such, the SRA did not consider it to be in the public interest to pursue any outstanding matters in respect of [RESPONDENT 3] and [RESPONDENT 1] in respect of the CPL allegations. The admissions made by Messrs [RESPONDENT 1] and [RESPONDENT 3] were of a breach of Solicitors' Practice Rule 3. The Applicant had invited the Tribunal to consider whether, on that basis, there had also been a breach of Solicitors' Practice Rule 1.

567. The Tribunal was not satisfied that Messrs [RESPONDENT 3] and [RESPONDENT 1] were also in breach of Solicitors' Practice Rule 1. It found that their breach of Section 2(3) of the Introduction and Referral Code constituted a breach of Solicitors' Practice Rule 3. The Tribunal did not consider that breach so serious as to bring the profession into disrepute and so necessitate a finding of a breach of Rule 1 of the Solicitors' Practice Rules.

568. Messrs [RESPONDENT 4], [RESPONDENT 6] and Dennison also admitted that, with the benefit of hindsight, the fees payable to CPL had been, in part, referral fees. However, they denied that they had perceived that at any material time. They had explained that they had known nothing at all about payments of a fee until about November 2003 when they had been copied in on a memorandum from [RESPONDENT 3] to [RESPONDENT 1].

569. In making their admissions Messrs. [RESPONDENT 4], [RESPONDENT 6] and Dennison were not accepting that they had been in breach of either Solicitors' Practice Rules 1 or 3.

570. The Tribunal noted that [FIRM NAME REDACTED] had started making payments to CPL in January 2001 and had continued to make them until 8th March 2004, when the Introduction and Referral Code had been amended. Total payments had been at least £80,000. The payments had been variously described in [FIRM NAME REDACTED]'s internal documents and those documents passing between the firm and CPL. Having reviewed the relevant documents, including. [RESPONDENT 3]'s memorandum of 18th November 2003, the Tribunal was satisfied that Messrs [RESPONDENT 4], [RESPONDENT 6] and Dennison had not had sufficient knowledge of the payments of fees to CPL to place them in breach of Regulation 3 of the Solicitors' Practice Rules. The Tribunal was satisfied that they had been aware, from the memorandum of 18th November 2003, that the arrangements were being looked at, in detail, by both. [RESPONDENT 3] and [RESPONDENT 1]. In the circumstances the Tribunal was satisfied that they had not been under any duty to make further investigations of their own.

571. The Tribunal, in those circumstances was satisfied that Mr Dennison, [RESPONDENT 4] and [RESPONDENT 6] had not facilitated, permitted or acquiesced in the payment of a referral fee to CPL or in the failure to inform clients. As to [RESPONDENT 1] and [RESPONDENT 3], the Tribunal found that allegations 6 and 7(a) were proved against them both as a breach of Solicitors' Practice Rule 3.

Further submissions in mitigation on behalf of Mr Dennison

572. Mr Monty submitted that, although the Tribunal had found Mr Dennsion to have been dishonest in relation to the LRS allegation, given the circumstances of the matter and Mr Dennison's own personal circumstances, striking off or suspension would not be appropriate penalties. Mr Monty reminded the Tribunal that there had been no mis-appropriation of clients' monies or serious breaches of the Solicitors' Accounts Rules. Moreover, Mr Dennison's former partners had settled proceedings against him on a commercial basis and there had been no evidence that any of the clients, referred to LRS, had not obtained proper and appropriate medical reports. Mr Monty referred the Tribunal in detail to Bolton v The Law Society [1994] 2 AER 486. In relation to costs, Mr Monty explained that he was not instructed to oppose an order for costs in relation to the LRS allegation.

The Decision of the Tribunal in relation to penalty arising from the LRS allegation

573. The Tribunal noted that the circumstances of the LRS matter had been very unusual, not to say unique, and had not related solely to a regulatory matter. However, the probity of Mr Dennison and therefore the reputation of the Profession had been involved and the Tribunal considered that the matter was very serious.

574. However, having regard to the length of time that had passed since the matter complained of, taking into account the payment that Mr Dennison had already made to his former partners and the fact that it was the clear view of the Tribunal that no member of the public would be at risk if Mr Dennison remained in practice, the Tribunal determined that the appropriate penalty, in the particular circumstances, would be a substantial fine. The Tribunal did not consider it to be appropriate or necessary for Mr Dennison to be struck off the Roll or suspended for any period.

Further submissions on behalf of Mr Dennison in relation to penalty and costs

575. Mr Monty referred the Tribunal to its Findings in respect of the allegations. When determining penalty, he asked the Tribunal to take into account the fact that the offences, such as they had been, had taken place a long time ago and had been unique to the TAG scheme. Leading Counsel submitted that many solicitors, during the period of the implementation of the Access to Justice Act and the introduction of CFAs and their use in claims schemes such as TAG, had in effect been attempting to hit a moving target in a changing landscape.

576. As to costs, Mr Monty referred the Tribunal to s.47(2) of the Solicitors Act 1974 (as amended) to the relevant rules and to Baxendale Walker and the authorities referred to in those proceedings. He also referred the Tribunal to the case of Gorlov in which the disciplinary proceedings had been said to have been a shambles from start to finish. Leading Counsel noted that the Law Society's/SRA's responsibility in deciding whether to bring disciplinary proceedings was far greater than that of a litigant in ordinary litigation. Mr Monty submitted that the Tribunal depended upon the SRA bringing properly justified complaints of professional misconduct to its attention.

577. While not suggesting that the proceedings against [FIRM NAME REDACTED] had been at the Gorlov end of the scale, Mr Monty submitted that neither had they been average regulatory proceedings. He reminded the Tribunal that it had made criticisms both of the investigation stage and of the presentation of the evidence. Moreover, that the Respondents had had to deal, albeit successfully, with some extremely serious allegations. Finally, he reminded the Tribunal of its jurisdiction in relation to costs orders in the particular circumstances and sought an order for 75% of Mr Dennison's costs. Mr Monty also handed to the Tribunal a letter, dated 6th February 2009, and written to the SRA without prejudice, save as to costs, inviting the SRA to withdraw some of the allegations. Leading Counsel submitted that the letter now had a bearing on orders as to costs.

Submissions on behalf of the Olswangs Respondents in relation to penalty and costs

578. Mr Morgan made submissions in relation to the particular breaches that had been established, the individual Respondents and the costs. He also handed to the Tribunal details of the financial situation of each of the Respondents.

579. Inter alia, in relation to the individual TAG charges, Leading Counsel reminded the Tribunal that unlike some other panel solicitors, [FIRM NAME REDACTED] had been reimbursing clients for the principal sum of some £310 since 2000 and therefore none of their clients had suffered any loss of principal. Mr Morgan also referred the Tribunal to the table, exhibited by Mr Spain, showing [FIRM NAME REDACTED]'s overall profit and loss situation resulting from its involvement with TAG. Leading Counsel submitted that even allowing for variations in assumptions the table clearly showed that the former [FIRM NAME REDACTED] partners had not made substantial financial gains from the TAG work.

580. Mr Morgan also detailed the personal consequences for his clients of the delay in that they had had serious proceedings hanging over them for some six years, together with, since the delivery of the Rule 5 Statement, a blanket allegation of dishonesty. Leading Counsel explained that both the allegations and the delay had had very serious effects on the Respondents, on their families and on their businesses.

581. In relation to the CPL charges, Mr Morgan explained the factual background to the allegations, including, inter alia, the substantial benefits of CPL's web-site enabling clients to view the progress of their transactions and the fact that [FIRM NAME REDACTED]'s clients had paid nothing towards CPL. He also noted that [FIRM NAME REDACTED] appeared to have been charged in relation to CPL simply because of the TAG matters, and that other firms, known to the Law Society to have been making greater use of CPL, had not been the subject of proceedings. Leading Counsel questioned whether in fact it had been in the public interest to pursue the CPL allegations against [FIRM NAME REDACTED], including, as they had initially, an allegation of dishonesty against [RESPONDENT 3].

582. In relation to the individual Respondents, Mr Morgan gave the Tribunal details of their professional histories and their financial positions and referred the Tribunal to their many notable references. He also addressed the Tribunal on possible penalties.

583. Leading Counsel endorsed Mr Monty's submissions as to the Tribunal's jurisdiction on costs and referred to the authorities bundle prepared by the SRA. Mr Morgan drew the Tribunal's attention in particular to Rule 18.1 of the 2007 Solicitors' Disciplinary Proceedings Rules. He submitted that Rule 18.1 focused on the avoidance of un-necessary costs thus bringing in a costs regime designed to avoid wasteful proceedings before the Tribunal and reflecting not only the need to avoid un-necessary costs but also the fact that the time of the Tribunal was a valuable resource, the wasting of which also contributed to delay.

584. Mr Morgan submitted that had the SRA focused on the essential charges and issues the proceedings would not have taken anything like as long as they had taken. Consequently, Leading Counsel invited the Tribunal to take a broad view and award 75% of the costs to the Respondents. He reminded the Tribunal that two orders for costs had already been made; one in favour of the Respondents in the February 2009 disclosure hearing and the other against [RESPONDENT 1].

Submissions on costs in reply on behalf of the Applicant

585. Mr Coleman accepted that Mr Dennison should be ordered to pay the costs relating to the LRS allegation. He also invited the Tribunal to award the SRA the costs of the allegations that went beyond the determination of the no case to answer application on the basis that those allegations had been properly brought. Counsel accepted that the Tribunal might wish to award the Respondents the costs of the allegations that had been struck out which he submitted probably amounted to some 20% to 30% of the total costs. Mr Coleman also invited the Tribunal to award the costs of the CPL allegations to the SRA.

586. Mr Coleman also addressed the Tribunal, in detail, about both costs' principles and the SRA's conduct of the case. Inter alia, Counsel reminded the Tribunal of the Court of Appeal's approach in Baxendale Walker. He submitted that although the allegation

had not been proved, there had been grounds for suspicion in relation to the allegation of "sham", which Counsel submitted had to be and had been properly tested before the Tribunal.

587. In seeking to respond to the criticisms of both the Respondents and of the Tribunal, Mr Coleman explained that the Law Society/SRA had done its best, through its staff, to get to the bottom of a very confusing and complex set of facts. Counsel detailed those facts, the history and course of the investigation, the Rule 5 Statement and the course of the proceedings before the Tribunal.

588. Mr Coleman explained, in detail, the reasoning behind the allegations of dishonesty and recklessness and the subsequent amendments to the Rule 5 Statement, in particular at paragraph 22. He insisted that at all times the SRA had kept all the allegations against all the Respondents under review and had amended them as appropriate in the light of further information. Mr Coleman submitted that the way that the allegations had been originally pleaded had not materially affected the costs of the proceedings.

589. Dealing with the length and conduct of the case, Mr Coleman took the Tribunal through the activities that had taken place in each of the six weeks of the hearing and also stressed the difficulties of and the time involved in the cross-examination of witnesses in a case involving "sham". Counsel also referred the Tribunal to the conduct of the proceedings by the Respondents in relation both to disclosure and to their responses to the allegations.

590. In conclusion, Mr Coleman submitted that the CPL allegations had been properly brought as had all the other allegations. He sought all the CPL and LRS costs and some 50% to 60% of the TAG costs. However, if the Tribunal was not minded to follow his invitation on the TAG costs, he accepted that they might consider a lower percentage or possibly no order at all.

The Tribunal's decision as to penalties

591. Having considered the submissions of both Leading Counsel and all the evidence as to mitigation, the Tribunal determined what it considered to be appropriate penalties. As to [RESPONDENT 1], in relation to allegation 4 (c) dealing with interest, the Tribunal imposed a fine of £1,000. In relation to allegations 6 and 7, the CPL allegations, the Tribunal imposed no financial penalty being satisfied that the findings were sufficient. As to [RESPONDENT 3], in relation to allegations 6 and 7, again the Tribunal imposed no financial penalty being satisfied that the findings were sufficient.

592. As to both [RESPONDENT 4] and [RESPONDENT 6], in relation to allegation 4(c) dealing with interest, the Tribunal imposed a fine of £1,000 each. As to [RESPONDENT 5], in relation to allegation 4(a) dealing with conflict, the Tribunal imposed a fine of £1,000; in relation to allegation 4(b) dealing with the AIL referral fee, the Tribunal imposed a fine of £500: in relation to allegation 4(c) dealing with interest, the Tribunal imposed a fine of £1,000 and in relation to allegation 4(d) dealing with client care, the Tribunal imposed a fine of £1,000. The total fine payable by [RESPONDENT 5] was £3,500.

593. As to Mr Dennison, in relation to allegation 5, dealing with LRS, the Tribunal imposed a fine of £20,000: in relation to allegation 4(a) dealing with conflict, the Tribunal imposed a fine of £1,000: in relation to allegation 4(b) dealing with the AIL referral fee, the Tribunal imposed a fine of £500: in relation to allegation 4(c) dealing with interest, the Tribunal imposed a fine of £1,000 and in relation to allegation 4(d) dealing with client care, the Tribunal imposed a fine of £1,000. The total fine payable by Mr Dennison was £23, 500.

The Tribunal's decision as to costs

594. In dealing with what it considered to be the very difficult costs aspect of the proceedings, the Tribunal had regard to the decisions both in the Divisional Court and in the Court of Appeal in the matter of Baxendale Walker[2006]EWHC 725 (Admin) and (CA) [2008]1 WLR 426. The Tribunal also took into account the result of the no case to answer application, the number of allegations found proved and those not found proved, the conduct of the initial investigation, the great delay in bringing the case to the Tribunal and the Tribunal's findings of fact and law. All those matters the Tribunal determined to be relevant considerations when considering the costs of the proceedings.

595. In all the circumstances the Tribunal concluded that the appropriate and correct order was no Order as to costs, save that Mr Dennison was to pay the costs relating to the LRS allegation and subject to the two previous Orders in the proceedings.

Dated on the 14th day of May 2010
On behalf of the Tribunal

Miss J. Devonish
(In the Chair)