No. 9951-2008

IN THE MATTER OF MALCOLM STEWART GRAHAM, *[RESPONDENT 2]* and WENDY KATHLEEN OSTELL, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr D Glass
Mrs N Chavda

Date of Hearing: 14th and 15th December 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 George Marriott, a partner in the firm of Gorvins Solicitors of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 31st March 2008 that Malcolm Stewart Graham of Gateshead, Tyne and Wear, *[Respondent 2]* and Wendy Kathleen Ostell of Gateshead, Tyne and Wear, solicitors, might be required to answer the allegations contained in the statement that accompanied the application together with those additional allegations in a supplementary statement dated 5th March 2009 and that such Orders might be made as the Tribunal should think fit.

The initial allegations against Malcolm Stewart Graham ("the First Respondent") were that he had:-

1. Carried on business without Law Society recognition contrary to Rule 2 of the Solicitors' Incorporated Practice Rules 1988 ("SIPR").

2. Misled the SRA during its investigations.

3. Failed to fully comply with Rule 34 of the Solicitors Accounts Rules 1998 ("SAR").

4. Failed to comply with SAR contrary to Rule 6 SAR.

5. Failed to remedy breaches of SAR promptly contrary to Rule 7 SAR.

6. Failed to have a Money Laundering Reporting Officer.

7. Ignored the Law Society's warnings relating to property fraud.

8. Acted in circumstances of conflict of interest.

9. Acted in circumstances where the purpose had been designed to disguise the ownership of property to avoid his client's liabilities.

10. Failed to comply with Notice given under Section 44B Solicitors Act 1974.

11. Failed to deliver an Accountant's Report contrary to Section 34 of the Solicitors Act 1974 and Rule 35 SAR.

12. Conducted his business when there had been no principal qualified to supervise contrary to Rule 13 of the Solicitors Practice Rules 1990 ("SPR.").

13. Registered training contracts when there had been no person qualified to supervise.

14. Carried on investment business without being registered by the Financial Services Authority.

15. Breached the Solicitors' Separate Business Code.

16. Failed to cooperate with and provide information reasonably requested by the SRA as his regulator.

17. Breached Rule 21 of the Solicitors' Code of Conduct 2007 ("SCC").

18. Failed to act in the best interests of his client.

19. Failed to comply with four undertakings.

20. Made misrepresentations to HMRC.

21. Breached the Introduction and Referral Code by failing to notify his client of the arrangement he had made.

22. Failed to comply with his duties as a professional discretionary trustee by blindly following the requests of his client and/or a third party.

23. Entered into an agreement to share fees with "Northern" contrary to SPR 7.

24. Misled clients concerning the nature of their retainer with him and had misrepresented to them that their case had been conducted by himself and his firm when in fact the work had been done by "Northern".

25. Agreed to manipulate the time spent on a case so as to equate his fees for the case with 10% of the anticipated value of the client's claim.

The further allegations against the First Respondent were that he had:-

26. Misrepresented purchase prices to mortgagee clients, contrary to Rules 1.02, 1.03, 1.05 and 10.01 SCC.

27. Misused a proportion of mortgage advances that had been intended for the sole purpose of the purchase of property and had remitted them to an offshore bank account, contrary to Rules 1.02, 1.03, 1.06 and 10.01 SCC.

28. Taken fees in respect of "SDLT Planning costs" which had not been properly incurred and in circumstances where there had been no evidence that any such work had been carried out, contrary to Rules 1.02, 1.03, 1.06 and 10.01 SCC.

29. Failed to comply with Rule 3 SCC.

30. Backdated client care letters, contrary to Rules 1.02, 1.03 and 1.06 SCC.

31. Ignored the 'Green Card' warning on property fraud.

32. Failed to register in excess of 1,000 property transactions, contrary to Rule 1 SPR (to 30th June 2007) and contrary to Rules 1.02, 1.03, 1.04, 1.05, 2.01 SCC (from 1st July 2007).

33. Failed to comply with undertakings given to mortgagee clients to register title and to provide good security to protect their mortgage advances, contrary to Rule 10.05 SCC.

34. Assisted a client in obtaining mortgage advances in circumstances in which he would not otherwise have obtained such funds.

35. Submitted a fabricated document, purported to be from HMRC, to the SRA.

The allegations against *[Respondent 2]* ("the Second Respondent") were that he had:-

1. Carried on business without Law Society recognition contrary to Rule 2 of the Solicitors' Incorporated Practice Rules 1988 ("SIPR").

2. Failed to fully comply with Rule 34 of the Solicitors Accounts Rules 1998 ("SAR").

3. Failed to comply with SAR contrary to Rule 6 SAR.

4. Failed to remedy breaches of SAR promptly contrary to Rule 7 SAR.

5. Failed to have a Money Laundering Reporting Officer.

6. Allegation withdrawn

7. Allegation withdrawn

8. Allegation withdrawn

9. Failed to comply with Notice given under Section 44B Solicitors Act 1974.

10. Allegation withdrawn

11. Carried on investment business without being registered with the Financial Services Authority.

The initial allegations against Wendy Kathleen Ostell ("the Third Respondent") were that she had:-

1. Carried on investment business without being registered with the Financial Services Authority.

2. Failed to comply with the Solicitors Accounts Rules 1998 ("SAR") contrary to Rule 6 SAR.

3. Failed to remedy breaches of SAR promptly contrary to Rule 7 SAR.

4. Acted in circumstances of conflict of interest.

5. Failed to act in the best interests of her client.

6. Failed to keep confidential the affairs of her client.

7. Ignored the Law Society's warnings relating to property fraud.

8. Misled an institutional lender.

9. Made misrepresentations to HMRC.

10. Failed to cooperate with and provide information reasonably required by the SRA as her regulator.

11. Failed to comply with Notice given under Section 44B Solicitors Act 1974.

The further allegations against the Third Respondent were that she had:-

12. Misrepresented purchase prices to mortgagee clients, contrary to Rules 1.02, 1.03, 1.05 and 10.01 SCC.

13. Misused a proportion of mortgage advances that had been intended for the sole purpose of the purchase of property and had remitted them to an offshore bank account, contrary to Rules 1.02, 1.03, 1.06 and 10.01 SCC.

14. Taken fees in respect of "SDLT Planning costs" which had not been properly incurred and in circumstances where there had been no evidence that any such work had been carried out, contrary to Rules 1.02, 1.03, 1.06 and 10.01 SCC.

15. Failed to comply with Rule 3 SCC.

16. Backdated client care letters, contrary to Rules 1.02, 1.03 and 1.06 SCC.

17. Ignored the 'Green Card' warning on property fraud.

18. Failed to register in excess of 1,000 property transactions, contrary to Rule 1 SPR (to 30th June 2007) and contrary to Rules 1.02, 1.03, 1.04, 1.05, 2.01 SCC (from 1st July 2007).

19. Failed to comply with undertakings given to mortgagee clients to register title and to provide good security to protect their mortgage advances, contrary to Rule 10.05 SCC.

20. Assisted a client in obtaining mortgage advances in circumstances in which he would not otherwise have obtained such funds.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 14th and 15th December 2009 when George Marriott appeared as the Applicant, the Second Respondent was in person and neither the First Respondent nor the Third Respondent appeared or was represented.

The evidence before the Tribunal included partial admissions by the Second and Third Respondents and testimonials in support of the Second Respondent.

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

The Tribunal Orders that the Respondent, Malcolm Stewart Graham of Whickham, Tyne & Wear, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £116,800.00.

The Tribunal Orders that the Respondent *[Respondent 2]*, solicitor, be Reprimanded and they further Order that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £500.00.

The Tribunal Orders that the Respondent, Wendy Kathleen Ostell of Whickham, Newcastle upon Tyne, solicitor, be Struck Off the Roll of Solicitors and they further Order that she do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

The facts are set out in paragraphs 1 – 267 hereunder:-

1. Malcolm Stewart Graham (the First Respondent) born in 1975, was admitted as a solicitor in 2001. His name remained on the Roll of Solicitors.

2. *[Respondent 2]* (the Second Respondent) born in 1972, was admitted as a solicitor in 2002. His name remained on the Roll of Solicitors.

3. Wendy Kathleen Ostell (the Third Respondent) born in 1977, was admitted as a solicitor in 2002. Her name remained on the Roll of Solicitors.

4. In May 2005, the SRA had begun an inspection of the books of account and other documents in the firm of Solicitors Financial Management (Newcastle) Limited ("SFMNL"). SFMNL had been registered with The Law Society as a recognised body for the provision of legal services. SFMNL, which had changed its name on 8th March 2006 to SFM Wealth Management Limited ("Wealth"), had been registered at Companies House as a company which undertook "legal activities".

5. The SRA had discovered that SFMNL had never provided legal services and that those had in fact been provided by a sister company which had shared the same premises, Solicitors Financial Management Limited ("SFML").

6. The First Respondent had told the SRA that SFMNL had carried out investment work in respect of the provision of financial services or financial advice and had maintained that it was not a law firm.

7. The First Respondent carried on practice as a solicitor and director of SFM Legal Services Limited, the successor practice of SFML. SFML had been incorporated on 28th July 2003. Although SFML had provided legal advice services from the date of incorporation it had not been a recognised body for the provision of legal services, and had therefore not been authorised to do so, due to the First Respondent's failure to make an application for such recognition. An application had been made by the First Respondent during the inspection and SFML had been registered with the SRA on 25th May 2005.

8. The Second Respondent had been registered with the SRA as a director of SFMNL from 5th January 2004 until 31st July 2005 and as a director of SFML from 25th May 2005 until 31st October 2005.

9. The Third Respondent had been recorded with the SRA as being an Assistant with SFML from 6th February 2006 to 31st May 2006 and as a director of SFM Legal Services Limited, since 1st June 2006.

<u>The First Inspection</u>

10. The SRA had begun an inspection of the books of account and other documents of SFMNL on 24th May 2005. The inspection had been widened to focus upon the firm of SFML, from which the First and Second Respondents had been in practice.

Bank Accounts

11. The SRA had requested that the First and Second Respondents provide details of the bank accounts that had been operated, both in relation to SFML and SFMNL. They had been unable to provide copies of all bank statements requested by the SRA.

12. The First Respondent had told the SRA that SFML had had four bank accounts; namely two client bank accounts and two office bank accounts. The First Respondent had told the SRA, on a number of occasions, that he had been unable to provide details of all of the accounts because information had been lost in a computer crash in or around January 2005.

13. SFMNL had operated two bank accounts, both in the name of the company. The First Respondent had told the SRA that those accounts had not held client money. This was not true. Statements relating to the account "Solicitors Financial Management (Newcastle) Limited Client Account No. 2" clearly showed SFMNL as holding client funds.

14. An examination of the statements revealed that the First Respondent had been operating the SFMNL account as the client account for his legal practice despite SFMNL being, as the First Respondent had acknowledged during an interview with the Interviewing Officer ("IO"), "an entirely separate entity" from the legal practice. For example, on 1st April 2005 the sum of £39,682.75 had been received into the account "Solicitors Financial Management (Newcastle) Limited Client Account No. 2" from Mincoffs Solicitors. The sum of £40,800 had been subsequently transferred back to Mincoffs on 29th April 2005. Those funds had been in respect of a loan from Mr D to Mr C in a conveyancing transaction.

15. The name of the account had been changed from "Solicitors Financial Management (Newcastle) Limited Client Account No. 2" to "Solicitors Financial Management Limited Client Account No. 2" in June 2005, shortly after SFML had become a recognised body and during the course of the FI Inspection. Only the account name had been changed; the balance of client monies within the account had not been transferred to a separate account in the name of SFML.

16. The SRA had subsequently obtained information, directly from the bank, regarding nine further bank accounts which had all been opened after 24th May 2005 when the inspection had commenced. Those nine deposit accounts, which had contained £289,711.48 as at 1st November 2005, had not been disclosed by either of the Respondents during the course of the investigation.

17. When asked to provide an explanation for his failure to inform the SRA of the new accounts that were opened after 24th May 2005, initially the First Respondent had failed to give any explanation other than stating that the accounts had been unavailable because of a computer crash. Subsequently, in submissions of 21st November 2006, the First Respondent had stated that the new accounts had not been concealed but had not in fact been asked for.

Breaches of Solicitors' Accounts Rules

18. The books of account of SFML had not been in compliance with the Solicitors' Accounts Rules 1998 ("SAR"). The Second Respondent had stated that the First Respondent had been responsible for accounting matters at the practice.

19. During an initial interview on 24th May 2005, the First Respondent had told the SRA that the accounts were up to date and that monthly reconciliations were being prepared. However, in respect of the account 'Client Account Number 1', which had a credit balance of £63,536.42 at 30th April 2005, no reconciliations between client liabilities and funds held had been available for the SRA to inspect during the course of the investigation.

20. During an interview with the SRA on 11th October 2005, the First Respondent had agreed that there had been no reconciliations since January 2005 and he had not been able to provide copies of cash book, client ledgers or monthly reconciliations that he had said that he had prepared. In a letter to the SRA dated 24th March 2006 the First Respondent had stated that he "did not carry out reconciliations for the period January 2005 - May 2005... [because] it was impossible due to the lack of information available." In his response to the SRA of 21st November 2006, the First Respondent had denied ever telling the SRA that Client Account No. 1 was up to date.

21. No individual client ledgers in respect of funds held in 'Client Account Number 1' had been available during the course of the investigation. The Respondents had been unable to provide a cash book for the account. The First Respondent had further admitted that he had not retained cheque book stubs. He also had told the IO that he had never maintained paper records.

22. The First Respondent had stated that he had operated client ledgers and reconciliations in a single computer spreadsheet prior to January 2005 but that the information had not been printed out or backed up and had been lost due to a computer crash during an office move, after which a new computerised accounts package had been introduced.

23. The First Respondent had told the SRA that he had not, since January 2005, carried out reconciliations for Client Account No. 1 because there had been insufficient information available. The SRA had asked the First Respondent why, when he had been asked whether the accounts were up to date, he had informed the SRA that they were. The First Respondent had replied that the accounts were up to date in respect of 'Client Account Number 2' and that he had not referred to the non-compliant 'Client Account Number 1' because he had considered that account to be "dormant". Moreover, the First Respondent had asserted that 'Client Account Number 1' had been dormant. However bank statements, obtained directly from the bank by the SRA, had shown that as at 24th May 2005, upon the commencement of the inspection, 'Client Account Number 1' had had a credit balance of £186,971.42. In the period to 4th July 2005 a further nine transactions had been recorded on the account before the account balance was reduced to £0. Subsequently, the First Respondent had told the SRA that he understood the term "dormant" to mean "no new instructions were going through the account and it was being run off to a nil balance".

24. In the absence of any records and in the light of the First Respondent's admission that the client files had contained insufficient information to be able to reconstruct client ledgers and reconciliations, the SRA had been unable to determine whether there had been sufficient cash available to meet SFML's total liabilities to clients as at 30th April 2005.

25. Although the First Respondent had told the SRA that the accountants "have already started re-constructing the old account", the firm's accountants had subsequently denied doing any such work or receiving any instruction to do so.

26. On 21st November 2006, the First Respondent had submitted that since December 2004 full reconciliations had been completed and that the firm was compliant with the SAR. However, no reconciliations had been seen by the SRA to substantiate the claim and to demonstrate compliance with the SAR.

Money Laundering Reporting Officer

27. The SRA had written to the First Respondent on 27th February 2006. Amongst other enquiries, the SRA had asked for confirmation of the steps that had been taken to satisfy the requirements of the Money Laundering Regulations 2003. The First Respondent had claimed that the Second Respondent had been the appointed Money Laundering Reporting Officer ("MLRO"). However, the Second Respondent had disputed that claim.

Conveyancing Matters

28. The First and Second Respondents had both confirmed to the IO that they had not been aware of any circumstances in which the firm had failed to follow the guidance relating to mortgage fraud and money laundering in property transactions which had been issued by The Law Society.

Matters relating to "B"

29. SFML had acted for a group of companies, collectively referred to as B. Between 18th June 2004 and 20th September 2004, SFML had acted for B in 15 back-to-back property purchases and sales where, in each matter, B had purchased the property and had sold it on the same day, at a higher price, in circumstances where B had made no financial contribution, and where SFML had been unable to provide ledgers for any of the transactions and where completion statements had shown that the 15 transactions had achieved a total uplift of £199,500.00.

30. The SRA had examined one typical transaction in respect of the purchase and immediate sale of 18 B Street. R had purchased the property for £15,000, had sold it to B for £18,000, who had then sold it to G for £35,000. All transactions had taken place on 18th August 2004. B had provided no funds, but had received, from SFML, the profit proceeds totalling £16,022.74.

31. The client matter file had been incomplete. There had been no ledgers for the purchase or sale of the property. The matter file had not contained full costs details. There had been no client care details on the file.

32. On 11th October 2005 both the First and Second Respondents had stated that they had had no concerns relating to the transactions or to the amount of uplift that they had generated. The First Respondent had stated that "literally the money just came in the bottom and moved up the chain."

33. The Second Respondent later had told the SRA that he had had concerns with the transactions throughout his employment and that he had communicated these to the First Respondent on a number of occasions. The Second Respondent had stated, in his letter of resignation of 7th November 2005 to the First Respondent, that he had "grave concerns about the type of conveyancing work that the department is being asked to do, in particular the investment property work. You are aware of my particular concern in relation to the firms [sic] duty of care towards clients when purchasing on a 'back to back' basis especially in light of the ongoing Law Society investigation and the previous PPP fiasco".

Purchasers and Re-mortgages for "C"

34. The First and Second Respondents had represented C in at least nineteen property transactions which had included purchases, sales and re-mortgages. No ledgers or client matter listings had been available for matters commenced prior to the opening of 'Client Account Number 2' in December 2004 and the SRA had therefore been unable to ascertain the total number of transactions where SFML had acted for C.

35. In four transactions, C had purchased properties using funds advanced by private individuals and had re-mortgaged the properties within six weeks of purchase at an amount higher than the original purchase price.

36. For example, SFML had acted for C in the purchase and re-mortgage of 54 S Street. An Institutional Lender had instructed SFML to act in the re-mortgage of the property. The letter of instruction from the Institutional Lender had been received three weeks before completion. C had purchased the property on 1st April 2005 for £38,000, using an advance from a private individual. Upon completion SFML had paid C the balance in Client Account totalling £1,130.87.

37. On 8th April 2005, the Institutional Lender had written to SFML requesting a report on the status of the re-mortgage. SFML had responded on 14th April 2005 stating "we confirm that we are awaiting the purchase of the above properties in order that we can proceed with the re-mortgages". However, in fact C had completed his purchase two weeks beforehand. The re-mortgage had been completed on 29th April 2005, following the receipt of £45,000 from the Institutional Lender, from which £40,800 had been paid to D on the same day. The ledger showed that C had received £3,758.25 in respect of the transaction.

38. The SRA had asked the First and Second Respondents whether the material facts of the transaction should have been brought to the attention of the Institutional Lender, their mortgagee client. The terms of the Council of Mortgage Lenders' ("CML") Handbook had required them to do so (the Institutional Lender is a member of the CML). The Second Respondent had asserted that was not the case. The First Respondent had told the SRA that the matter had been entirely the responsibility of the Second Respondent and that the blame for any failure to raise the matter with the

Institutional Lender fell squarely at his door. The Second Respondent had said that the Institutional Lender was fully aware of the situation. Both Respondents had confirmed to the SRA that they had believed that they had acted in the best interests of the Institutional Lenders at all times.

Purchasers for H

39. The First Respondent had told the SRA that he had a "lack of understanding for conveyancing" and that all and any failings concerning conveyancing transactions had been the fault of the Second Respondent. The Second Respondent had stated that he had had no involvement in any of the property transactions for H. A former employee of the firm had stated that the First Respondent had given her instructions to follow in conveyancing matters carried out on behalf of H.

40. The SRA had examined five files relating to five properties purchased in the name of O (the First Respondent's girlfriend). Four of the purchases had been completed on 20th September 2004. The purchase price in respect of each of the properties had been £26,500. A further purchase had been completed on 3rd December 2004 for which the purchase price had been reported to be £25,000. In each case a deposit of £1,250.00 or £1,000.00 had been paid in advance.

41. The First Respondent had told the SRA that the properties had been purchased in the name of O, on behalf of H. The First Respondent had told the SRA that H had been referred to the firm by another client. The SRA had asked the First Respondent to supply copies of the documentation taken to confirm H's identity. The First Respondent had attached a photocopy of H's passport to his response. There had been no recent proof of address.

42. The First Respondent had described H as a property developer and "friend of the family" with "financial concerns and matrimonial concerns" that had precluded him from purchasing the properties in his own name. The First Respondent had said that H "basically didn't want [the properties] in his name".

43. The SRA had established from the Insolvency Service that H had been the subject of an Individual Voluntary Arrangement ("IVA"). When questioned about the nature of H's financial issues, the First Respondent had failed to mention that H had been the subject of an IVA. In correspondence, the First Respondent had confirmed that he had been aware of the existence of the IVA and had told the SRA that it had been completed. However, the IVA had still been on the register with the Insolvency Service.

44. The First Respondent had told the SRA that, upon instruction, H had originally asked whether the First Respondent would purchase the properties on his behalf. The First Respondent had declined to do so because "there was a potential for a conflict". The First Respondent had suggested that the properties be purchased in O's name instead. The First Respondent had not considered that would place him in a position of conflict.

45. The SRA had been unable to identify any funds provided by H, O or the First Respondent in respect of the purchases due to there being no cashbook or ledger

accounts available for 'Client Account Number 1' (the "dormant account"), which had operated at the time of the purchases. The client matter file was silent on the subject.

46. By letter to the vendor's solicitors of 21st September 2004, SFML had stated that the sum of £95,400.00 had been telegraphically transferred to them in respect of the four simultaneous property purchases. That payment was reflected in the corresponding bank statement provided to the SRA by HSBC Bank. However, the sum that ought to have been due to the vendors, who had already received deposits of £1,250.00 in respect of each of the four properties, had been £101,000.00. The amount actually paid had been therefore £5,600.00 less than had been agreed. The SRA had asked the First Respondent how H had funded the purchases and had been told it had been by a telegraphic transfer from H. Despite requests for documentary evidence, the First Respondent had failed to provide any such evidence.

47. The SRA had noted that some of the documents within the client matter files, including office copies and land transfer forms, had referred to B or B Ltd ("B").

48. The First Respondent had described the company B as a shelf company through which H had originally intended to purchase the properties but that the company had never been registered, had no shareholders or directors, and was "dormant". During the interview with the IOs at the conclusion of the first FI Investigation, the First Respondent had described B as having "never traded" and again as "dormant" - "a company that was going to be set up to purchase properties [but] it was never used there's nothing ever gone through there it's dormant ... nothing was ever done with it". In fact, B had been incorporated on 20th October 2004, had been registered to the First Respondent's business address and his girlfriend, O, had been the sole director.

49. By letter of 27th February 2006, the SRA had asked the First Respondent whether the five properties were still held by O in her name or whether they had been sold. In the event that they had been sold, the SRA had asked the First Respondent what had happened to the proceeds of sale. The First Respondent had replied in terms that two of the properties had been sold and the proceeds of sale had been returned to the client. The First Respondent had failed to respond in relation to the three remaining properties; either to confirm that they had remained in the name of O or whether they had been sold or had otherwise been transferred.

Purchase of property by the First Respondent

50. Property registration documents seen by the SRA had indicated that a property had been purchased on 27th September 2004 by the First Respondent "care of Solicitors Financial Management ... trading as [B]" for £45,000. The First Respondent had told the SRA that he had purchased the property with the view of refurbishing it but had not had the time to do so. The property had therefore been sold on 1st June 2005 for £50,000.00.

51. The client matter file relating to the purchase was the subject of a Notice under Section 44B of the Solicitors Act 1974 together with an undertaking by SFML (given by the Second Respondent) to deliver the file to the SRA. The file had not been delivered up to the SRA. The First Respondent had told the SRA that the file had been mislaid during the office move or alternatively had been retained by the Second

Respondent. The Second Respondent had denied retaining the file and had told the SRA that the file had been in the possession of the First Respondent in October 2005. The Second Respondent had admitted that he had not fulfilled the undertaking that he had given to deliver the file to the SRA.

52. The SRA had asked the First Respondent if there had been any relationship between his purchase of a property which had been registered in his name, trading as B, and the purchases of properties on behalf of client H which had been registered in another name, trading as B. The First Respondent had said that there had been no such link. He had told the SRA that one of his employees had completed the purchase documentation and that the only explanation for the proprietorship register being in the First Respondent's name, care of his firm and trading as B, had been a mistake. Upon questioning, the First Respondent had admitted that the Land Registry would have obtained the proprietorship details from the TR1 land transfer form that he had signed but he told the SRA that he would not have checked the details of the TR1 before he had signed it. It had been, he said, the fault of the fee earner.

53. The Second Respondent had told the SRA that he had had no involvement with the transaction, despite being head of the conveyancing department. The Second Respondent had stated that the employee who had assisted the First Respondent with the transaction had received instruction directly from the First Respondent.

Failure to deliver an accountant's report

54. The First and Second Respondents had told the SRA that SFML had begun holding clients' monies from December 2003. The First Respondent had later revealed that the Client Account had in fact been opened in August 2003. However, despite their obligations under Rule 35 SAR, SFML had not delivered an accountant's report for the period November 2004 to May 2005. Due to SFML not having been registered with the SRA as a recognised body, the SRA had been unaware of that position prior to the inspection of the Respondent's firm.

55. The First Respondent had admitted that he had been in breach of Rule 35 SAR but had told the SRA that he had been granted an extension for the filing of such a report which he had requested by letter of 16th September 2005. The First Respondent had provided a letter from the SRA of 23rd September 2005 to support his assertion that he had been granted a further six months to file the report but had since acknowledged that had not been a fair representation as the letter from the SRA had been merely an acknowledgement of his request for an extension, and had not been an acquiescence to that request. The First Respondent had then stated that he had been mistaken when he had told the SRA that he had been granted an extension to file an accountant's report.

Failure to register SFML as a recognised body for the provision of legal services

56. At the time of the investigation, SFML had not been registered as a recognised body for the provision of legal services. An application had previously been made in the name of SFMNL. The First Respondent then had submitted the necessary application form and SFML had been recognised as a suitable body with effect from 25th May 2005.

57. Upon being asked to comment on the assertion that he had acted in breach of PR4 and PR7(7) by failing to register SFML as a "recognised body", the First Respondent had replied in terms that he must have submitted an application for the registration of SFML but that the SRA must have mislaid it. The First Respondent had been unable to provide any evidence to demonstrate that a form had been completed or submitted.

58. The First Respondent had similarly disputed the SRA's assertion that, because SFML was not registered as a recognised body for the provision of legal services, he had acted in breach of Section 22 of the Solicitors Act 1974. The First Respondent had stated that he had been unaware that SFML had not been registered with the SRA because he had received correspondence from the SRA addressed to SFML. The First Respondent had also stated, and the Second Respondent had agreed with him, that he did not believe that he had breached the SPR because he had thought that he had "put everything in place to make [SFML] a regulated firm because I'd already done it once when I set [SFMNL] up in June 02. I'd have no reason not to make it compliant again".

Supervision

59. From July 2003 to April 2004 SFML could not have been registered as a recognised body for the provision of legal services in any event because it had not had a principal who had been qualified to supervise a practice (being a person who holds a practising certificate and had been admitted for at least three years, in accordance with Rule 3 of the SPR).

60. Upon applying to the SRA to have SFML registered as a body for the provision of legal services on 25th May 2005, the First Respondent had stated that P - a solicitor in another firm, who had more than three years post-qualification experience as at July 2003, and whom the First Respondent had admitted did no work for SFML - had been a director and shareholder in SFML. P had had no such involvement in SFML. P had confirmed to the SRA, both orally on 3rd November 2005 and by letter of 10th November 2005, that he had never been either a director or a shareholder in SFML.

61. The Second Respondent had confirmed to the SRA that it had been his understanding that P had been a director in SFML and that the directorship had come about because the First Respondent had not been suitably qualified to supervise an office. The Second Respondent had confirmed that P "played no part in the supervision of the office."

Registering training contracts when no suitably qualified person to supervise those training contracts

62. The First Respondent had not qualified to be a training principal until 1st November 2004. However two training contracts had started before that date. The Second Respondent had never qualified to be a training principal. Paperwork submitted by the First Respondent to the SRA had stated that P was a training principal. P, formerly a director of SFML, had resigned his position before the relevant form to take on a trainee had been submitted to the SRA. P had had no knowledge of any training contract save one.

Investment Business

63. There are regulatory requirements in the Solicitors' Financial Services (Scope) Rules 2001 ("Scope") and in the Solicitors' Financial Services (Conduct of Business) Rules 2001 ("CoB") relating to the conduct of investment business.

64. The First and Second Respondents had claimed to be unaware of Scope or CoB or of their requirements. Law Society guidance relating to the Scope and CoB rules had been circulated widely on The Law Society website and in articles in The Law Society Gazette as well as in an information pack which had been sent to the Senior Partners of all firms by The Law Society in October 2004.

65. The SRA had examined the firm's position in respect of financial services and investment business. SFML had engaged in insurance mediation activities with regard to its conveyancing work, in connection with the arrangement of various types of conveyancing policies including 'no search' indemnity policies in re-mortgage work and defective title policies. As such, the firm had been required to be registered on the Financial Services Authority ("FSA") register of Exempt Professional Firms. It had not been so registered in breach of Scope.

66. The First Respondent had admitted the breach, for which he had blamed the Second Respondent. The Second Respondent had admitted that the firm had made "mistakes ... in this area". The IO had told the First Respondent that the firm needed to apply to be added to the EPF register during a meeting on 24th May 2005. After a delay of one month, an application had been made on 24th June 2005. The firm had become registered from 5 July 2005. Over 100 policies had been arranged between 14th January 2005 and 5th July 2005, in breach of Rule 5(6) of Scope, as the Second Respondent had confirmed.

67. The SRA had noted that despite issues of compliance with Scope and CoB having been raised throughout the inspection, the First and Second Respondents had failed to ensure that the firm had been complying with the detail of the CoB rules. The First and Second Respondents had agreed that they had failed in their professional duty to keep themselves abreast of developments in rules and regulation.

Separate Business Code and Solicitors' Publicity Code

68. The First Respondent had agreed with the SRA that the name SFMNL had shared substantial elements in common with SFML, that SFMNL had used the word "solicitor" in its title despite not being a legal practice and that the two businesses had shared premises.

69. The signs at the offices of the two businesses had simply said "Solicitors' Financial Management" and had made no distinction between the firm which was a solicitors' practice and the IFA firm. They had shared a common reception area, a single receptionist, identical telephone and facsimile numbers and all telephone calls had been answered "Solicitors' Financial Management" without making any distinction between SFML and SFMNL.

70. The two businesses had shared similar letterheads and websites. The similarity of the websites for the two businesses had been discussed during a meeting with the SRA on 11th October 2005 at which it had been noted that C, an employee of SFML, had been recorded as being a point of contact on the website of SFMNL.

71. Whilst maintaining that his clients had not been "run of the mill", had been "switched on people who've done a lot of research before they come to us" and would therefore not have been confused between the two similar websites, the First Respondent had admitted that lay clients of SFML "may be confused between [SFMNL] if they didn't read the front of the website saying who regulates us and [SFML]."

72. The First Respondent had admitted that clients of SFML who had been referred to SFMNL for financial services work had not been informed in writing that he had been a director and shareholder in SFMNL.

Resignation of the Second Respondent

73. The Second Respondent had resigned as a director of SFML on 7th November 2005. The First Respondent had written to the SRA on 18th November 2005, enclosing correspondence which had flowed from the resignation and subsequent employment advice that the Second Respondent had sought. Within the correspondence that the First Respondent had sent had been a letter from the First Respondent to the Second Respondent of 18th August 2005 which had revealed that Mr B had also been a director in SFML.

74. Mr B was an Independent Financial Advisor and not a solicitor. The SRA had raised the issue with the First Respondent who had told the SRA that Mr B had been a Director of "the IFA firm" (SFMNL) and had not been a director of SFML, despite being referred to as such in the letter of 18th August.

75. In February 2006 the FI Report had been sent to the First and Second Respondents, together with letters inviting their comments and requiring them to give further information. The Second Respondent had replied by letter of 11th March 2006 and the First Respondent by letter of 24th March 2006.

76. A draft report had been prepared to be placed before the Adjudication Panel, in response to which the Second Respondent had made representations by letter of 19th November 2006 and the First Respondent by letter of 21st November 2006. The First Respondent had acknowledged that he had committed "clear ... breaches of the Professional Conduct Rules", for which he expressed an apology and stated that he had "tried to comply as quickly as possible to rectify any problems".

77. The First Respondent had incorporated a new company, SFM Legal Services Limited ("SFMLSL"), which had been registered with the SRA, as a recognised body, from 1st April 2006 and had become the successor practice to SFML from 1st June 2006. In his response to the SRA of 21st November 2006, the First Respondent had stated that there were no continuing breaches of the rules because, he had submitted, SFML was "now a non-existent company."

78. SFML had ceased to trade on 31st May 2006. As at the date of the second FI investigation in February 2007, it had ceased to hold any client funds. As at 26th July 2007, SFML remained on the companies register as an active company, although the Registrar had given notice of a proposal to strike SFML from the register because of a failure, by its directors, to file accounts from 31st March 2004 or an annual return from 28th July 2005. Accordingly, SFML continued to exist.

The Second Forensic Investigation

79. SFMLSL had been the successor practice to SFML, retaining the same staff and practising from the same business premises as SFML. SFMLSL had also operated a branch office in Sunderland.

80. The SRA had commenced a second FI inspection of SFMLSL on 20th February 2007. A final interview, which was digitally recorded, had been held on 7th August 2007. A report had been produced, dated 10th October 2007.

81. During the course of the investigation into SFMLSL, further matters relating to SFML had arisen and been investigated. Allegations flowing from those additional SFML matters had been raised in relation to the First Respondent only.

82. SFMLSL operated as a limited company registered in England and Wales. The First Respondent and the Third Respondent had been registered with the SRA as Principals in SFMLSL and both had been noted as "partners" on the list of staff in the firm provided to the SRA on 20th February 2007 and both had been noted as being "directors" on Form IPR1 which had been submitted to the SRA on the application for initial recognition of the company as a provider of legal services.

83. The Third Respondent had written to clients on 6th December 2006 in which she had referred to SFMLSL having "a Financial Services Department, who deal with Pensions and Investments", despite SFMLSL not having been registered by the FSA.

Books of Account

84. When the inspection had commenced on 20th February 2007, the most recent client account reconciliation had been dated 30th November 2006. During the inspection they had been brought up to date.

85. SFML had ceased to trade on 31st May 2006. SFMLSL had commenced trading the next day and had inherited a debit balance in the client account which had arisen more than six months earlier. The shortfall had arisen at SFML on 21st December 2005, on which date the shortage had been £36,024.12 as the result of a mistaken overpayment in a telegraphic transfer. The shortage had grown to £36,750.00 on 6th January 2006 when funds had been transferred to the office account of SFML in respect of costs and disbursements.

86. The First Respondent had said that the shortfall had been discovered on 20th January 2006. The shortage had not been rectified promptly, upon discovery, nor had it been rectified when SFML had ceased to trade and SFMLSL "took on the work from Solicitors Financial Management [Limited] ... [and] a debit balance". The debit

balance had been remedied on 28th July 2006 by way of a transfer from the office account of SFMLSL to the client account of SFMLSL.

87. The remedy had come six months after discovery and seven months after the debit balance had arisen. The First Respondent had told the IO that the reason for the delay had been that he "couldn't afford to put the money into the business" although on 21st November 2006 he had written in a letter to the SRA that he had spent "thousands of pounds re-branding [SFMNL]" during that period. The transfer to office account in respect of profit costs, which had served to increase the shortage on 6th January 2006, had not been reversed.

Separate Businesses

88. At the time of the second inspection there had been four limited companies with names beginning 'SFM' registered at Alexander House. A further SFM company (SFM Mortgages Limited) had been dissolved during the inspection.

SFM Wealth Management Limited ("Wealth")

89. Wealth had been incorporated on 7th February 2002. The company had originally provided legal services and had been registered with The Law Society as a recognised body for the provision of such services under its old name of SFMNL. Wealth was now an IFA firm and was regulated by the Financial Services Authority ("FSA").

90. The First Respondent had been a director of Wealth from incorporation until he had resigned on 30th March 2007. The First Respondent's girlfriend, O, had been appointed in his stead on 31st March 2007 but had resigned immediately as she was not an IFA. The First Respondent had owned 75% of the shareholding in the company at incorporation.

SFM Mortgages Limited ("Mortgages")

91. Mortgages had been incorporated on 2nd January 2007 and dissolved in June 2007. The company had been registered with the FSA. The First Respondent had been the sold director of Mortgages and had stated that the company had "never traded".

SFM Mortgage Services Limited ("Services")

92. Services had been incorporated on 11th January 2007. The First Respondent had been a director from incorporation until his resignation on 30th March 2007, during the second SRA inspection. O had been appointed and had resigned from the board on 31st March 2007.

SFM Bonds Limited ("Bonds")

93. Bonds had been incorporated on 20th April 2007. The First Respondent had been a director of the company, together with Mr S (formerly of Northern Financial Management Limited).

94. The First Respondent had told the SRA that clients of SFMLSL who had substantial funds on deposit would be referred to Bonds to execute a tax mitigation scheme. Bonds would purchase an investment bond and the policy would be assigned to the client for the value of their savings for a period of 12 months, during which time the First Respondent had said that they would benefit from the bank interest whilst at the same time reducing their tax liability.

95. The SRA had considered that the scheme, as described by the First Respondent, had been a tax avoidance scheme which might have been disregarded for tax purposes by the application of the formula in Furniss v Dawson but the First Respondent had been unwilling to discuss the technical nature of the bonds sold to the clients of SFMLSL.

Personal Financial Solutions LLP ("PFS")

96. PFS had been incorporated in November 2006. The First Respondent had been a founding designated member from 11th January 2006 until his resignation on 30th March 2007. The First Respondent's brother had co-founded the partnership and had remained a designated member. The First Respondent's girlfriend, O, had become a designated member on 6th April 2007 and remained in that position. The firm had undertaken insolvency work, but its notepaper had not indicated that it had been registered with any regulator for such services.

97. PFS was not registered with the SRA for the provision of legal services. However, the First Respondent was described as a solicitor within the PFS promotional material.

PFS Refinance Limited ("Refinance")

98. Refinance had been incorporated on 10th May 2006 and had been an appointed representative of Wealth from 16th May 2006 to 31st March 2007.

99. The First Respondent had been a director from 10th May 2006 until 21st May 2007 and had been listed on the FSA register as an individual with controlled functions at the company. The FSA register had stated that Refinance traded as PFS, although the First Respondent had later told the IO that PFS "isn't a trading entity" and had been a "cost centre" for Recovery and Refinance.

100. The SRA had discovered that the website address stated as being that of Refinance on the FSA register had directed users immediately to the website of PFS.

PFS Recovery Limited ("Recovery")

101. Recovery had been incorporated on 7th June 2006, and on the same date the First Respondent had become a Director. Despite the First Respondent's suggestion to the SRA that he had resigned from Recovery in March 2007, he had remained a director of the company. The company had been authorised to provide insolvency services through a named insolvency practitioner.

102. The SRA had requested that the First Respondent provide the SRA with copies of the letterheads of Recovery and Refinance, but the First Respondent had failed to do so.

MDS Accountancy Services Limited ("MDS")

103. MDS had been incorporated on 28th May 2004 and had been run by the First Respondent's father. The First Respondent had not been a director or shareholder of the company and had told the SRA that he had no interests in MDS. The company had been registered with the Association of Chartered Certified Accountants.

104. MDS promotional literature had shown the First Respondent, alongside his father and his brother, as one of the company's "key staff" and was advertised as the "solicitor and tax specialist" within MDS.

105. The First Respondent's position within MDS was confirmed in further materials produced for clients by MDS. The company listed "Inheritance Tax Planning & Trusts" amongst its services. The promotional material in relation to those instruments stated that "As a specialist firm utilising the services of an in house solicitor we are in the unique position not only to offer advice on such matters as inheritance tax planning and asset protection trusts but also to draft the legal documentation to support the planning process."

106. MDS had not been authorised by the SRA for the provision of legal services. However, the First Respondent had provided legal services through MDS as its "in house solicitor". He had not done so by referral to his legal services company. The MDS website stated that "It is no longer necessary to see an accountant and a solicitor to tie up all the loose ends, as this can now be provided by a single firm. All the advice, planning and specialist knowledge is in a single location. You can be sure that you will only be paying one fee for the complete service and that there will be no duplication of solicitors and accountants costs."

107. Despite warnings from the SRA, the First Respondent had continued to offer legal services through MDS in November 2007.

Northern Financial Management Limited ("Northern")

108. During the first FI inspection, the First Respondent had told the SRA that Wealth took over Northern in January 2005. At that time Northern had told clients, by letter of 23rd December 2004, that Northern was "merging" and would operate under the name and from the offices of SFML. From there and under the SFML banner, Northern had informed clients that they would offer legal, as well as financial, services to clients including "wills, family trusts etc."

109. In May 2007 the Legal Complaints Service had received a complaint from Watson Burton Solicitors on behalf of former clients of SFML, Mr and Mrs W. The complaint had included allegations that flowed from the relationship between Northern and SFML, which had been regarded as a "close business relationship" which had been "cemented when the companies merged to form [SFMNL]"

110. The LCS had raised the matter in a letter to the First Respondent of 11th July 2007 which the First Respondent had replied to by letter of 14th July 2007. The First Respondent had denied that Northern and SFML merged, adding that "SFML was a law firm regulated by The Law Society and [Northern] was an IFA firm regulated by

the Financial Services Authority. It is not possible for such firms to merge due to there being different regulators". The First Respondent had added that he "under[stood] that Northern ceased to trade in or around January 2005". In his response the First Respondent had denied that Northern and SFML had practised from the same address, although the SRA had noted that Northern's registered office was the same as that of SFML.

Retirement Asset Management Limited ("Retirement")

111. During the first FI investigation, the SRA had observed signage indicating that Retirement had operated from the same offices as SFML and the First Respondent's other companies. In May 2005 the First Respondent had told the SRA that Retirement was a company which had been operated by Mr S (formerly of Northern) but which had ceased to trade. The signage, he had explained, was displayed in order to comply with the Companies Act. Retirement had since gone into liquidation.

Bosbury Limited ("B")

112. B had been incorporated on 20th October 2004. The company's registered office was also at Alexander House. B had been established for property transactions carried out for client H, and although the First Respondent described the company as "dormant", the SRA disputed that assertion. The First Respondent's girlfriend, O, was the sole director.

Publicity Material and Separate Business Code

113. Breaches of the Solicitors Separate Business Code had been noted and raised by the SRA during the first FI investigation and report. The First Respondent had been made aware that the similarity between the letterheads, websites and signage on and around the office premises, the common telephone number and receptionist for the law firm and for a separate business could cause confusion amongst clients and members of the public. The First Report had stated that the First Respondent was in beach of the Code.

114. Despite that awareness, all of the First Respondent's businesses, together with MDS, had taken on a similar letterhead, logo and website. They had continued to be in use. Until the introduction of the SCC on 1st July 2007, solicitors had been forbidden from having separate businesses which shared "substantial elements" in common with a solicitors practice. Mortgages and Bonds had been established prior to the introduction of the SCC, in breach of the Separate Business Code and of the Publicity Code.

115. As well as sharing substantial elements of their names, SFMLSL, Wealth and Services shared common office premises, common secretarial resources and a common telephone number. The telephone number was answered "SFM" and did not distinguish between the law firm and the separate businesses. Staff resources had been shared between the law firm and the separate businesses. Publicity materials had failed to distinguish between the law firm and the separate businesses. In addition, the First Respondent had featured on the published lists of staff on the websites of Wealth and Services. As a consequence, clients and members of the public were

likely to be misled or confused as to the identity of the entity with which they were dealing, in breach of SCC Rule 21.

116. 'SFM' had been the abbreviation originally attributed to SFML, the standard terms and conditions of which referred to "SFM" throughout. The Respondents had come to refer to each of the First Respondent's businesses as 'SFM', leading to confusion between the legal services company and the separate businesses. The confusion was illustrated within the press cuttings which featured on the website of SFMLSL. The firm was incorrectly named in the majority of the cuttings and was most frequently referred to as "SFM" but also as "SFM Legal Services and Wealth Management". The firm was also misdescribed as "wealth management firm SFM" in another.

117. The First Respondent had told the SRA that he had not considered the similarities between the letterhead to be a breach of the Solicitors' Publicity Code.

118. The SRA had noted that there was some duplication of services offered by the legal services company and the separate businesses, including in relation to Asset Protection Trusts. The website of Wealth contained information, in the form of a brochure, which could be downloaded by clients about Asset Protection Trusts which were promoted to clients who might be at risk of incurring costs in respect of the provision of care services. The preparation of such trusts was a legal service which might only be conducted by a firm authorised and regulated by the SRA in respect of the provision of legal services. Wealth was not so authorised. Instead, it was authorised and regulated by the FSA in the provision of financial services.

Asset Protection Trusts ("APTs")

119. SFMLSL had promoted a scheme to clients which had suggested that by entering into an APT they would be able to avoid the need to pay fees in respect of long term care. The APT scheme had also been promoted by Wealth, despite Wealth not being authorised or regulated by the SRA for the provision of legal services. Wealth continued to promote a Wealth-branded APT scheme.

120. The First Respondent had written to one client, Ms S, that an APT "will be a successful method of protecting your assets provided that long term care is not required within six months of creating the trust." The SRA had discussed APTs with the First Respondent on 7th August 2007. The First Respondent had admitted that he had not obtained counsel's opinion or any other advice in relation to APTs.

121. The First Respondent had told the SRA that he had been able to advise clients with certainty that an APT would successfully protect their assets because he had received written confirmation from local authorities, which would otherwise have been able to reverse a disposition of property where care had been required within six months of that disposition, that they "accept [they] can't means test the property". The First Respondent had asked whether the SRA would "want to see the copy letters from the local authority?" On 24th August 2007 the SRA had accepted the First Respondent's oral offer and had asked him to provide the details of the cases in which he had stated that the local authority had challenged the APT and where he had successfully defended any such challenge. Despite the formal request, the First Respondent had not provided details of any such cases, nor letters from any local authorities.

122. The SRA had examined an APT that SFMLSL had established for their client, Mrs S. From the matter file it appeared that Mrs S's daughter, Mrs McC, had loaned funds to Mrs S for repairs and maintenance to her property and that SFMLSL had acted for both Mrs S and Mrs McC in respect of a loan agreement setting out the terms of the loan and in registering a charge to secure the loan.

123. The matter file had not contained a client care letter to Mrs McC, nor evidence that Mrs McC had been advised that she might wish to take independent legal advice in respect of the loan agreement. The matter file had not contained correspondence from an independent solicitor on behalf of Mrs McC. All of the correspondence from SFMLSL to Mrs S had been addressed to her care of Mrs McC and the firm had written to Mrs McC, reference "Your mum's asset protection trust", despite there having been no evidence on the file to suggest that Mrs S had not been capable of managing her own affairs, no evidence to suggest that Mrs McC had held a power of attorney for Mrs S, and no evidence that Mrs S had agreed to SFMLSL discussing the matter with Mrs McC.

124. The file had not contained a copy of the executed APT but had contained a copy of a deed that had not been executed. The deed had appointed Wealth as the "Investment Adviser", although there had been no evidence in the file to show that Mrs S had given instructions to appoint Wealth in such a capacity, nor that Mrs S had been notified of the First Respondent's interest in Wealth.

125. Although the APT was silent on the Trustees appointed in respect of Mrs S's APT, the SRA had been informed that the First and Third Respondents would be the Trustees in each APT set up by the SFMLSL. The APT in Mrs S's file had afforded the Trustees wide powers of investment and stated that "in carrying out their investment powers and duties [the Trustees] only need to take the degree of care which a prudent businessman with spare capital (which he could afford to lose without significantly affecting his lifestyle) of an amount equal to the value of the Trust Fund would take if investing on his own behalf" but there had been no evidence to suggest that any enquiry had been made of Mrs S to determine whether or not she could have afforded to suffer losses of an amount equal to the value of the Trust Fund without it significantly affecting her lifestyle.

126. The First Respondent had told the SRA that the "Protector" had been responsible for appointing and terminating the appointment of the Trustee as a safeguard. The matter file had not contained any documents setting out the powers, rights or obligations of the Protector in respect of Mrs S's APT. No enquiry appeared to have been made as to the value of Mrs S's property or assets in order to determine her inheritance tax position. Mrs S had been in receipt of Council Tax means tested benefit. It had appeared that a local authority could consider the APT as no more than intentional deprivation with the result that Mrs S would have been required to make a contribution to her long term care in any event. The First Respondent had not disputed that but had stated that it would have been for his firm to advise on the best way forward in the event that had happened.

Tax Mitigation Schemes

Stamp Duty Land Tax Mitigation Scheme

127. SFMLSL had operated two Stamp Duty Land Tax ("SDLT") mitigation schemes; a "Freehold-Leasehold" scheme and a "Husband and Wife" scheme.

128. Under the Freehold-Leasehold scheme, SFMLSL would have created a lease prior to the exchange of contracts on the sale of the freehold of the property together with an agreement stating that the purchaser would determine the lease upon the completion of the purchase of the freehold. The value ascribed to the lease had the effect of reducing the purchase price for the freehold and thereby reducing the level of SDLT, in many cases to nil. Typically, the Inland Revenue had not been informed of the creation and determination of the lease and only the reduced purchase price had been declared on form SDLT1.

129. The SRA had stated that the scheme had been dependent for its success upon a non disclosure to the Inland Revenue because if the lease and determination and the freehold purchase had been declared to the 'Revenue as a linked transaction there would have been no savings for clients. During an interview on 7th August 2007, the First Respondent had been unable to explain how the scheme had worked and had relied upon statutory changes as evidence that the scheme must have been legitimate.

130. During a discussion with the SRA on 7th August 2007, the SRA had requested that the First Respondent provide details of how the Freehold-Leasehold SDLT Mitigation Scheme worked, together with the relevant legislation. The First Respondent had not provided those details.

131. Under the "Husband and Wife" scheme, the full purchase price had been split between spouses where typically one had completed on 85-90% of the contract and the other spouse had completed on the remaining 10-15% of the contract. The First Respondent had told the SRA that SDLT had been calculated upon the latter, smaller, completion because that part of the transaction would be deemed to have been the "specific performance" of the contract.

132. The SRA had stated that the Husband-Wife scheme had also been dependent for its success upon a non disclosure to the Inland Revenue. The First Respondent had failed to provide details of how the scheme had been executed to the SRA.

C House

133. The Third Respondent had acted for Mr and Mrs S in the purchase of C House from Mr G, who had been separately represented. The matter had been referred to SFMLSL by ACC (a tax consultancy). ACC had maintained an involvement in the transaction as it had progressed and the Third Respondent had shared information with ACC without there being an authority for such on the file.

134. The SRA had inspected the transaction file. No proof of identity had been retained on the file in respect of either Mr or Mrs S. No details of employment, self-employed status nor confirmation of the origin of funds to be used for the transaction had been retained.

135. The purchase price of £5,700,000 had been financed by way of payments from the client in the sum of £1,000,000 on 25th August 2006 and of £2,244,280 on 6th September 2006 together with a mortgage advance of £2,499,471 from an Institutional Lender. Their written instructions to "SFM Limited" (sic) on 23rd August 2006 had been that the firm should act on behalf of the bank in accordance with the CML Handbook.

136. Mr S had written to the vendor on 24th August 2006 in which letter he had referred to a lease, said to have been created upon that date. The client matter file had contained a document dated 25th August 2006 in which Mr O'T had consented to short notice under the lease dated 24th August 2006. Mr S had signed the consent although he had had no legal interest in the property at the time.

137. As well as the lease, Mr S's letter had made reference to a loan to the vendor and to the purchase of the freehold. Mr S had agreed to advance £800,000 to the vendor for the period from 25th August 2006 to 7th September 2006, in respect of which the vendor had provided an unconditional guarantee but for which Mr S had agreed to forfeit the loan if he had failed to terminate the lease.

138. Contracts had been exchanged on 25th August 2006. The Agreement for sale had stated that the purchase price was £400,000. Special conditions referred to the property being sold subject to the lease between the vendor and Mr O'T. The First Respondent had been unable to provide a copy of the lease which did not appear in the client matter file. A further special condition had referred to Mr and Mrs S being required to pay the sum of £50,000 plus VAT to S Estate Agents, although neither the file nor the ledger provided evidence that the payment had ever been made.

139. The Certificate of Title i.e. the report to the mortgagee client, signed by the Third Respondent on 30th August 2006, had stated that the purchase price stated in the transfer was £5,700,000. The price actually stated on the transfer had been £400,000. That had also been the purchase price disclosed to the Inland Revenue.

<u>The N House</u>

140. The Third Respondent had acted for Mr and Mrs W in respect of their purchase of The N House. The SRA had inspected the matter file during the investigation. The firm had not retained a signed client care letter or evidence of money laundering checks.

141. The Third Respondent had written to Mr and Mrs W on 6th September 2006 and had made reference to "tax planning" work being undertaken for them by "us" (SFMLSL), being the 'Stamp Duty Mitigation Scheme'. The letter had stated that the firm had been instructed, on a conditional fee basis, the firm's professional fees in relation to the tax planning element being at a cost of 2% of the purchase price upon completion "on a no win no fee basis, and will be refunded in the event that the scheme fails". The First Respondent had described the fee arrangement as a "non contentious business agreement" in correspondence with the SRA but despite requests had not provided a copy of any such agreement with Mr and Mrs W.

142. The vendors had been separately represented and their representatives had written to SFMLSL on 7th September 2006 in terms that a sale price of £1,130,000 had been agreed. The purchase by Mr and Mrs W was to be partially funded by a mortgage. Halifax plc had also instructed SFMLSL in connection with the purchase in accordance with the CML Handbook. The purchase price had been £1,130,000.

143. The Third Respondent had signed the Certificate of Title on 3rd October 2006 upon which the intended date for completion had been noted as being 6th October 2006 and the "Price stated in Transfer" had been noted as being £1,130,000.

144. On 4th October 2006 SFMLSL had written to Mr and Mrs W enclosing documents for their signature, including the Stamp Duty Land Tax Declaration. The file had not contained a signed copy of the completed SDLT Declaration but had contained a blank copy. Further, the file had not contained any written records to demonstrate that Mr and Mrs W had been advised of the consequences of the failure of the Stamp Duty Mitigation Scheme, namely that they would have been required to pay the stamp duty liability in full together with interest and any penalty charges. The First and Third Respondents had failed to provide any evidence, subsequent to the inspection, to show that Mr and Mrs W had been so advised.

145. On 6th October 2006, contracts had been exchanged but no deposit had been paid. Completion had been scheduled for 13th October 2006. The Sale Agreement, which had been retained on the file, had stated the purchase price of £1,130,000 and had noted that the balance due on completion was £1,017,000. Only Mr W and not Mrs W had been a party to the Agreement.

146. On 13th October 2006, SFMLSL had confirmed exchange and completion, in which it had been stated that a single payment of £1,300,000 had been made by electronic transfer. The SRA had noted that these funds had included the mortgage advance, secured in the names of Mr and Mrs W, together with the sale of a property jointly owned by Mr and Mrs W, despite Mrs W not having been a party to the Agreement.

147. The file had only contained a copy of the TR1 signed and sealed by the vendor, stating that the property had been transferred with "full title guarantee" but with a continuation sheet listing a number of provisions, those provisions amounting to the SDLT Mitigation Scheme.

148. Those provisions had purported to split the consideration for the property in a ratio of 9:1 such that the vendors had received a deposit of £1,017,000 from Mr W and the remaining £113,000 from Mr and Mrs W on a contemporaneous "sub-sale" from Mr W to Mr and Mrs W.

149. The purchase price later declared to HMRC by SFMLSL had been the purported "sub-sale" of the property for £113,000, at which amount no stamp duty had been paid. The total tax paid in respect of the transaction had amounted to £100.00.

150. The First Respondent had been unable to explain to the IO or "get [his] head around" how the scheme had worked, despite having received prior written notification from the IO that she had wished to discuss the particular client matter. The SRA had written to the First Respondent on 24th August 2007 specifically requiring his

explanation of how the scheme had worked. The First Respondent had failed to respond to the request.

151. SFMLSL had raised a bill of costs to Mr and Mrs W in the sum of £28,624.75 of which £22,600 had related to "Stamp Duty Scheme". The fee charged in respect of the "Stamp Duty Scheme" had amounted to 2% of the £1,130,000 purchase price, being the percentage on a "no win no fee basis" that had been set out in the client care letter.

59 P Avenue

152. The First Respondent had been instructed by Mr BB and Ms M in the purchase of 59 P Avenue and a "freehold leasehold" SDLT Mitigation Scheme. The file, inspected by the SRA, had contained client care documentation and costs information in respect of the conveyance but there had been no such details in respect of the tax planning element of the instruction. There had been no bills or correspondence relating to bills within the file. There had been no completion statement in the file. The purchase price of £460,000 would normally have attracted stamp duty but there had been no evidence of any payment of stamp duty.

153. The scheme had called for the creation of a lease between AHSD Nominees Limited and the vendors ("the lease"), prior to the sale of the freehold of the property. The freehold would then have been purchased for 10% of the full purchase price, the remainder to have been paid in respect of the determination of the lease. The freehold in the transaction had been purchased for £46,000 and the consideration in respect of the determination of the lease had been £416,000.

154. The SRA had inspected the matter file in respect of the transaction which had been produced by the First Respondent pursuant to a Notice under Section 44B of the Solicitors Act 1974 dated 2nd August 2007. The file had not contained a copy of the lease, the "Nomineeship Agreement" referred to in correspondence, any record of the transfer of the freehold or any details of how the purchase had been funded.

155. BKS Solicitors ("BKS") had acted for the vendors who had expressed concerns about the scheme throughout the transaction. The First Respondent, in his letter to BKS of 6th November 2006, had stated that he had founded the scheme, that it (the scheme) did not fall under the disclosure rules of the Finance Act 2004 and that full disclosure of the consideration for the various elements making up the transaction was made on the Stamp Duty Land Tax Return.

156. BKS had been concerned that the scheme could have been challenged on the weaknesses noted in the counsel's opinion of the scheme that SFMLSL had provided to BKS, namely "whether or not the planning to avoid tax is pre-determined and therefore capable of being set aside" and "whether or not the transaction is a sham".

157. BKS had noted that as the whole purpose of the scheme had been to avoid the payment of any stamp duty tax and the transaction had been a sham in that it had been entered into purely to avoid the payment of tax, the scheme had been exposed to the weaknesses noted in counsel's opinion. BKS had said that they were "not convinced that we should advise our clients to enter into this transaction". The First Respondent

had written to BKS on 21st November 2006 that he (the writer) "has operated this scheme for over three years and there has been no failure of the scheme to date" and that regardless of BKS's suggestion to the contrary, based upon counsel's opinion, "our [SFMLSL's] experience of operating the scheme successfully demonstrates that our opinion is correct." The First Respondent had repeated that "full disclosure is made on the SDLT [form]".

158. BKS had sought an indemnity from SFMLSL which the First Respondent had provided by letter of 24th November 2006 in which he had stated that he was a "Member of the Institute of Taxation", that there was no act of fraud or dishonesty in the execution of the scheme and that the scheme was supported by counsel's opinion. The First Respondent had later confirmed his claim to being a member of the Chartered Institute of Taxation to the IO and had added that he had been a member since 1999. The First Respondent was not a member of that organisation.

Breach of Undertakings

159. The First Respondent had given five undertakings on 27th November 2006 relating to the filing of documents. Those undertakings had amounted to the disclosure of all of the elements making up the transaction to the Inland Revenue, which the First Respondent had undertaken to make within 14 days of the date of completion. That had included an undertaking to submit an SDLT Form in respect of the determination of the lease over the property in the sum of £416,000.00.

160. Completion had taken place upon 28th November 2006 but the First Respondent had failed to comply with four of the five undertakings that he had given. BKS had complained to the Legal Complaints Service and the SRA had raised the matter with the First Respondent by letter of 4th May 2007, following which SDLT1 forms had been belatedly submitted to the Inland Revenue.

Misstatement of transaction value

161. The First Respondent had failed to comply with his undertaking to file form SDLT1 "in connection with the determination of the lease ... to reflect the consideration paid for the determination of £416,000" and had stated that the consideration paid was £1.

162. The First Respondent had been aware that the consideration paid for the determination of the lease had been £416,000 and had repeatedly assured BKS, both orally and in writing, that the consideration of £416,000 for the determination of the lease would be disclosed to the Inland Revenue on the SDLT form. The First Respondent had known, prior to submitting form SDLT1, that the consideration paid had been £416,000 both from his knowledge of the transaction and also from the letter from the SRA of 4th May 2007 regarding his failure to honour the undertakings. The SRA's letter had quoted the undertaking, including the consideration price, and both the First and Third Respondents had since stated that letter had prompted the filing of the form to the 'Revenue'.

163. The First Respondent had been unable to explain why he had failed to disclose the full amount paid for the determination of the lease on the SDLT form when questioned by the SRA and had been unable to explain how the scheme, which he had claimed to

have designed, had been able to avoid stamp duty because he could not "remember the technical answers to why the determination avoids the stamp duty".

164. The SRA had written to the First Respondent on 24th August 2007 requiring his explanation for the misstatement of the consideration paid for the determination. The First Respondent had failed to provide an explanation, nor had he provided confirmation that he had declared the full amount paid for the determination of the lease, in satisfaction of his undertaking to BKS.

Employment Benefit Trusts ("EBTs")

165. Mr L and Mr S of LMC ("LMC") had been referred to SFMLSL by Mr B, their accountant, as they had sought to mitigate their tax liability. An undated file note had recorded that the First Respondent would pay a referral fee of £100,000 to Mr B. There had been no evidence that LMC had been notified of this referral arrangement.

166. The First Respondent had written to Mr L on 27th July 2006 together with a proposal entitled "SFM Legal Services Limited: the use of employee benefit trusts as a reward scheme", the establishment of such a scheme would "allow you [Mr L] to mitigate both the corporation tax on your company and your personal tax liability on your earnings". The proposal had stated that the scheme had been the subject of "rigorous analysis" which, the First Respondent had later told the SRA, had amounted to his own examination of the legislation.

167. EBTs were set up by employers for the benefit of employees, former employees, spouses and dependants and might be funded by contribution by the employer or by borrowings from the employer or from payments by third parties. Contributions into the EBT were allowable against the employer's taxable profit. There might also be tax advantages and reliefs for shareholders although the EBT must have been for most or all of the employees for this to take effect.

168. A file note recorded that Mr L had been the sole shareholder of LMC and that the EBT had been to reward Mr L and Mr S. The client matter file had no evidence to suggest that any employees of the company, other than Mr L and Mr S, had received any benefit from the EBT.

169. The First Respondent's terms of business had been that SFMLSL's fee was to be calculated as a percentage of the contributions paid in to an EBT. The firm had taken £384,225 in costs.

170. Three discretionary trusts had been formed. Funds had been received into the client account of SFMLSL on 16th August 2006 in the sum of £1,500,000 from a personal bank account of Mr L and £1,650,000 from a joint bank account of Mr S and his wife. No monies had been received from LMC. The First Respondent had been unable to explain why this had been the situation as he had not understood how the transaction was to have been treated in the LMC accounts but said that his being unaware of this had given him no cause for concern. There had been no evidence on the file to demonstrate or suggest that disclosure had been made to the tax authorities of the payments, as had been required given that those from both Mr L and Mr S had exceeded £500,000.

171. The First and Third Respondents had been together Trustees and Settlors of one of the three EBTs set up for LMC, "SFM 1562 Settlement", from which an unsecured loan in the sum of £1,550,000 had been made to Mr S. Although a beneficial loan which would ordinarily have been treated as a taxable benefit for Mr S within LMC, and therefore falling within the responsibilities of tax mitigation that had caused the accountant to refer Mr L and Mr S to SFMLSL in the first place, the First Respondent had told the SRA that any enquiries as to whether the loan would have been treated as a taxable benefit would have been a matter for the accountant and not for him. There had been no evidence on the file to demonstrate that the accountant had made any disclosure regarding the loan.

172. Two further unsecured loans had been made from the same EBT.

173. On or around 30th January 2007, Mr S had called the First Respondent and had requested a transfer of £25,000 from the EBT. The First Respondent had agreed to this and the sum had been transferred from the SFM 1562 Settlement. No documents reflecting the transaction had been found on the client matter file.

174. The SRA had put it to the First Respondent that the EBT set up for LMC had been simply a vehicle whereby LMC, Mr L and Mr S had avoided tax liabilities but from which other employees had derived no benefit. The First Respondent had refused to cooperate with the SRA's enquiries in this regard. The SRA had also put it to the First Respondent that the EBT scheme bore hallmarks requiring disclosure to HMRC but the First Respondent had stated that any such disclosure had been dealt with by LMC's accountants. The First Respondent had not sought evidence from the accountants of any such disclosure being made.

175. The client matter file had contained two letters from the First Respondent to banks, following requests for the confirmation of assets held by Mr S. The First Respondent had provided confirmation that LMC had advanced funds to Mr S in the sum of £3.2m in his capacity as "tax advisor" to Mr S, despite only having received £1.65m into his firm's client account. The First Respondent had told the SRA that he had relied upon a figure for total earnings that he had received from LMC's accountants, although the client matter file had no evidence of the receipt of such information.

Capital Gains Tax ("CGT") Mitigation Scheme

176. The CGT Mitigation scheme had involved investment properties being settled upon a trust with values up to the individual settlor's nil band for chargeable lifetime transfers. The beneficiaries of the trust were to be the persons expecting to benefit from any capital gain as well as the tenant of the investment property so that upon disposal of the property, Principal Private Residence relief of 100% of the gain would be claimed based upon the tenant's residency, thereby extinguishing the tax liability.

177. The CGT scheme had been described as "a bespoke trust vehicle which has had tax clearance from HM Revenue & Customs" in a letter to Mrs B, who had instructed SFMLSL to mitigate any CGT liability on the disposal of investment properties. The First Respondent had provided copies of correspondence with HMRC, upon which the statement was based, to the SRA. The purported "clearance" had amounted to a letter which had stated that there had been "no guarantee ... that a client who executes this

scheme will not have to pay tax"; a statement which had itself been based upon the "circumstances described" in the First Respondent's letter to the Revenue of 5th June 2006 in which he had stated that any such property would be "used as the client's main residence" which, in the case of investment properties, they would not have been.

178. The client file in relation to Mrs B's matter, which had been examined by the SRA, had contained an undated Deed of Settlement stamped 30th November 2006 in which Mrs B and her son, Mr JB, had been named as settlors. The beneficiaries had been Mrs B and "their (sic) children and remoter issue". Mrs B had purchased a property which had been gifted into the settlement. A Supplementary Declaration of Trust had been entered into, upon which the tenant of the property, Mrs M, had been named as a beneficiary, in order to take advantage of the tenant's residency to claim 100% CGT relief.

179. There had been no evidence on the file to demonstrate that Mrs M had been aware that she had been a beneficiary. The First Respondent had told the SRA that he had considered it his client's duty to inform the tenant. The First Respondent had told the SRA that no efforts had been made to determine whether Mrs M had been claiming the 100% relief elsewhere, in which case, the whole scheme would have fallen down. The First Respondent had told the SRA that he had considered it his client's duty to enquire of the tenant.

180. The First Respondent had carried out similar Capital Gains Tax transactions for 16 clients.

Conveyancing Transactions

181. In February 2007 the First and Third Respondents had each indicated that they had been aware of Law Society guidelines in respect of property fraud and that neither had been aware of any instances in which SFMLSL had failed to follow the guidance. On 7th August 2007 both the First and Third Respondents had reconfirmed that they had been familiar with the guidelines.

182. On 7th August 2007 both the First and Third Respondents had confirmed that they had been aware of the content of the CML handbook. The First and Third Respondents also had confirmed that they had been aware of the requirements of SPR 6.2 and of the provisions of SPR 6.3 in respect of a solicitor acting for both lender and borrower.

183. The First Respondent had denied that the breaches of SPR 6.2 and SPR 6.3 and the failure to abide by the terms of the CML Handbook which had been identified as occurring in SFML during the first FI Report had been occurring at SFMLSL, adding that comparisons could not be drawn between SFML and SFMLSL because "the breaches in [SFML] ... are an entirely separate issue because it's an entirely separate limited company". However SFMLSL was the successor practice to SFML.

184. Whilst admitting that the SRA had identified breaches of the rules at SFMLSL and that there had been a large number of such breaches at SFML, the First Respondent had stated that the "two" breaches identified at SFMLSL could not be compared to the "lot of" breaches at SFML because they had been "a fraction of what's been raised for

the old firm so I think to imply that the breaches are carrying on is very much unwelcomed."

P C P LLP ("PCP")

185. PCP had offered investment properties to investors and in the ordinary course of business would arrange to buy properties from a third party and on the same day (a "back to back" transaction) sell them on to an investor at a higher price. PCP usually had made no financial contribution to the purchase of such properties; the purchase funds coming from the investor to whom the properties had been sold on.

186. SFMLSL had been instructed by PCP in 677 property transactions, 313 of which had proceeded to completion, with the remainder being "abortive". The First and Third Respondents had acted for both PCP and the investor purchasing the property in 147 of the 313 completions.

187. The difference between the initial purchase and the onward sale price, less any costs, had been forwarded to PCP. In respect of the 313 completed matters, SFMLSL had forwarded total net sale proceeds of £1,297,937.39 to PCP.

188. The SRA had examined one transaction in particular, being in respect of 4 B Court. The Third Respondent had represented PCP in the purchase of the Property from Ms P on 18th August 2006 for £55,000. At the same time, the Third Respondent had acted for PCP in the contemporaneous sale of the property to Mr L for £64,950.

189. It had been unclear from the matter file which fee earner at SFMLSL had acted for Mr L in his purchase, or for the Institutional Lender who had provided funds to Mr L.

190. The SRA had identified a number of deficiencies in the manner in which the transaction had been conducted by the Third Respondent and by SFMLSL. The file had not contained:-

(i) any instructions from the Institutional Lender;

(ii) a copy of the relevant Certificate of Title;

(iii) the written approval of PCP, Mr L or the Institutional Lender confirming that SFMLSL could act in the sale of the property by PCP and the purchase by Mr L.

(iv) evidence that the Institutional Lender had been notified that PCP had not been the registered proprietor for six months or more; or

(v) evidence that the Institutional Lender had been notified that the property was being sold to Mr L at an uplift of £9,950.00.

191. The First Respondent had agreed that the written approvals of PCP, Mr L and the Institutional Lender and evidence of the notifications to the Institutional Lender about the proprietorship and uplift should have been held on the matter file.

192. On 7th August 2007 the First and Third Respondents had told the IO that they would normally have sought written confirmation from the vendor, purchaser and the Institutional Lender that they agreed to SFMLSL acting in the sale and purchase of a property, in accordance with SPR 6.2. The First and Third Respondents had agreed to provide evidence of the written consent of the parties in the sale and purchase of the property but had failed to do so.

193. On the same date, the First Respondent had denied that SFMLSL had failed to follow the Institutional Lender's instructions in so far that they had failed to notify the mortgagee, in accordance with the CML Handbook, that PCP had not been the registered proprietor for six months or more and that the property had been the subject of an uplift of £9,950. The First Respondent had said that the firm would "normally" report such a transaction to the lender and had told the SRA that he would provide evidence than an appropriate report had been made to the Institutional Lender and that they had agreed that the purchase could proceed on the basis outlined to them. The First Respondent had failed to provide such evidence.

Complaint by W & B Solicitors ("WBS")

194. WBS had been instructed by Mr and Mrs W, former clients of SFML, in respect of a claim for professional negligence in which SFML and Northern had been named defendants. WBS had become concerned about the relationship between SFML and Northern and had raised this and other matters in a complaint to the LCS on 1st May 2007.

195. On or around 14th November 2003, Mr S at Northern had spoken to the First Respondent about Mr and Mrs W who had been contemplating legal action against a firm of accountants who had, as they saw it, mis-sold them pensions which had failed to provide the annuities that their original pensions had provided. In an email of 14th November 2003, Mr S had advised the First Respondent of a calculated shortfall of £690,406 in Mr and Mrs W's combined pensions.

196. The email from Mr S to the First Respondent had detailed a proposed contingency agreement, to be entered into between SFML and Mr and Mrs W, but for the work to be done in pursuit of the claim to be carried out by an unadmitted member of Northern staff: "We are to help [Mr and Mrs W] to bring about a claim for non-compliant advice and we have agreed with them a fee of 10% of any settlement on a no win no fee basis. We need to record this in a signed agreement between all parties. We would like the agreement to be with Solicitors Financial Management. CN will do all of the work and correspondence, to be signed off by M Graham. A second agreement to cover the situation whereby SFM will retain 10% of the 10% fee when we win!"

197. The First Respondent had begun drafting a contingency agreement but had become aware, during his preparation, that all such agreements for the payment of contingency fees were illegal and unenforceable. The First Respondent had understood the commercial consequences of Mr and Mrs W discovering that such an agreement was unenforceable. In an email to Mr S and Mr N at NFML the First Respondent had expressed concern that Mr and Mrs W might later discover that the agreement was unenforceable and could tell SFML to "stick the agreement", meaning

that they would not have to pay any fees in respect of their claim. Recognising this commercial danger, the First Respondent had suggested that his hourly charging rate could be manipulated in order to obtain 10% of the circa £600,000 claim without the need for an illegal and unenforceable contingency agreement by getting Mr and Mrs W to agree to "an hourly charging rate which coincidentally will eventually come to £60K upon completion of the case".

198. In spite of his knowledge that it was illegal and would be unenforceable the First Respondent had drafted the contingency agreement ("the Agreement"), which had been headed "Conditional Fee Agreement" and which had been printed on the letterhead of SFML and sent to Mr and Mrs W by Northern under cover of a letter from Mr S of 25th November 2003.

199. Mr and Mrs W had signed the Agreement, which was dated 26th November 2003. In it, Mr and Mrs W had agreed that if successful in their claim against LSC&P and/or others regarding the advice they had received in relation to their pension fund transfers they would pay a contingency fee to SFML. If they did not, there would be no fee to pay as the contingency fee set out on the first page of the agreement revealed ("If you win your claim, you pay a success fee... This is 10% of your Settlement"). The contingency fee was set out again in Schedule 1 ("The success fee is set at 10% of the settlement").

200. The work had been conducted, as the preliminary email of 14th November 2003 had suggested, by Northern. Contemporaneous documents showed that the First Respondent had printed correspondence and documents, prepared by Mr N of Nothern onto the letterhead of SFML and had signed the letters as his own which was consistent with Mr N having referred to SFML as "fronting the complaint on our behalf". WBS had informed the LCS that the First Respondent had:-

    (i) Failed to meet with Mr and Mrs W;

    (ii) Failed to speak to Mr and Mrs W by telephone at any point, other than upon one occasion when Mr W had telephoned the First Respondent;

    (iii) Failed to provide any analysis on the merits of Mr and Mrs W's claim;

    (iv) Failed to provide any retainer letter setting out the terms of engagement;

    (v) Failed to provide any advice as to alternative sources of funding of Mr and Mrs W's claim; and

    (vi) Failed to keep Mr and Mrs W fully informed of the steps being taken to run their claim.

201. The LCS had written to the First Respondent on 11th July 2007 requiring his explanation of the complaint by WBS to which the First Respondent had replied on 14th July 2007. The First Respondent had stated that he had been retained by Mr and Mrs W on a fixed fee basis in which his fees, in the sum of £60,000 inclusive of VAT, would have become payable upon Mr and Mrs W receiving compensation flowing from their claim.

202. The First Respondent had failed to provide a response to the LCS's questions concerning the funding of the matter or its suitability.

203. The First Respondent had exhibited what he described as a "client care letter" (being the terms and conditions of SFML) which had purported to set out the fixed fee arrangement at Schedule 1. The agreement was signed by the First Respondent "For and on behalf of SFM" but was dated 27th November 2003, the day after the contingency agreement which Mr and Mrs W had signed. Mr and Mrs W had not signed the terms and conditions exhibited by the First Respondent. Further, Mr and Mrs W had instructed WBS that the First Respondent had not provided any retainer letter, such as that exhibited by him, setting out the terms of engagement.

204. The First Respondent had failed to provide a response to the LCS's questions concerning the allegation that work had been carried out by Mr N of NFML.

Failure to provide information

205. The SRA had written to the First Respondent on 19th July 2007 requesting details in respect of all SDLT Mitigation Schemes operated by SFMLSL, including those in which SFMLSL had provided conveyancing services to clients who had been advised in financial matters by ACC or BB. The First Respondent had failed to provide this information to the SRA.

206. Further information had been requested during the meeting of 7th August 2007, which the First Respondent had agreed to provide to the SRA. The SRA had made a repeat request for that information by letter of 21st August 2007.

207. The First Respondent had replied by letter of 24th August 2007 in which he had refused to provide the information to the Regulator. The SRA had written to the First Respondent on 30th August 2007 setting out the statutory authority under which the SRA had requested information relating to SFMLSL and to PFS and other separate businesses; namely to ensure compliance with the Solicitors' Practice Rules 1990, the Solicitors' Separate Business Code 1994 and, from 1st July 2007, the Solicitors' Code of Conduct 2007.

208. The First Respondent had provided some, but not all, of the requested information on 5th September 2007. The first FI Report contained a list of requested information that remained outstanding.

209. The SRA had written to the First and Third Respondents on 13th December 2007 enclosing the second FI Report and had asked for their response. The First Respondent had replied by letter dated 2nd January 2008, with exhibits. The response had been incomplete. Further time had been asked for, and the First Respondent had challenged the authority of the SRA with regard to a great deal of the information that they had sought.

210. The SRA had written to the First Respondent and had granted him further time within which to respond substantively to the FI Report. A letter in similar terms had been sent to the Third Respondent.

211. Further letters had been sent to the First and Third Respondents on 29th January 2008 requiring their full response to the original matters raised and an explanation relating to £1,000,000 held in client account which had been revealed by a bank reconciliation sent to the SRA by the First Respondent on 2nd January 2008. Those responses and explanations had been required within 14 days.

212. The SRA had sent Section 44B Notices to both the First and the Third Respondents with those letters which had required them to provide documents and files which had previously been requested but which had not been provided to the SRA. The Notice had required that the files be provided by 12th February 2008.

213. No response had been received from either the First or the Third Respondents and neither the First nor the Third Respondents had complied with the Section 44B Notice.

Third FI Inspection and Report

214. The SRA had commenced an inspection of SFMLSL on 8th April 2008. The Third Respondent had resigned from the firm on 31st December 2007 and the First Respondent had told the SRA that he was in the process of running SFMLSL down.

215. The First Respondent had told the SRA that his decision to close the firm had been prompted by problems with the conveyancing department, which had failed to register in excess of 1000 property transactions and by the case of Mr B. The Third Respondent had told the SRA that she was mainly responsible for the conveyancing department.

Property Transactions involving Mr B

216. In October 2007 SFMLSL had acted for Mr B in the purchase of two London hotels, ("YHH") and ("ECH"). The hotels had been purchased for a combined price in excess of £11m. YHH for a purchase price of £6,050,000 and ECH for a purchase price of £5,100,000.

217. The vendors of the hotels had been a Mr M, Mr A and their company The Y Hotel Limited. The vendors had been represented by Myers Ebner and Deaner Solicitors ("MEDS").

Instruction of SFMLSL and client identification procedures

218. Mr B had been a financial advisor and managing director of a mortgage broker, Mortgage 10 Limited ("Mortgage 10"), which the SRA had found appeared within various files connected to the YHH and ECH purchases.

219. Mr B had been referred to SFMLSL by an accountant in London as he had wanted to use a SDLT Mitigation Scheme to reduce his tax liability on the purchase. The First Respondent had marketed his practice as specialists in such tax savings. The First Respondent had told the SRA that he had met Mr B for the first time on the day of completion. The First Respondent has since claimed to have known nothing of nor to have played any part in the transaction.

220. A client care letter was dated 10th August 2007. The letter had estimated the costs to be charged as being £50,000 plus VAT for "legal costs" together with £617,180 plus VAT for "SDLT Planning costs" and had required Mr B to sign and return the letter as confirmation of the retainer, together with documents for client identification purposes.

221. There was no evidence that Mr B had signed and returned the letter and the client identification documents requested were not faxed to SFMLSL until 12th October 2007 when they were received from Mortgage 10, marked for the attention of the First Respondent.

222. Client care letters dated 10th August 2007 had also been produced for the two intermediary companies that Mr B had set up offshore and which were used in the transaction. Those companies, which had been established in the British Virgin Islands, were Sungold Group SA ("Sungold") for the purchase of YHH and Nova Assets Limited ("Nova") for the purchase of ECH.

223. Sungold and Nova had each been formed on 1st November 2007; nearly three months after the date of the client care letters and 17 days after the purchases had completed.

224. The corporate structure and beneficial ownership of Sungold and Nova had been identical. The director appointed to both companies had been International Business Directors Limited. The share capital in each had been $50,000 USD, held in the name of Global Fiduciaries Limited, as trustees for the Sungold Trust, based in the West Indies.

225. The First Respondent had told the SRA that Sungold and Nova had been set up by another of Mr B's business advisors. No checks as to the beneficial ownership of Sungold and Nova had been carried out. The Third Respondent had told the SRA that she had not known who the beneficial owner of Sungold and Nova had been. The First Respondent had agreed that no verification of the beneficial ownership of the companies had been carried out.

Purchase of the freeholds

226. The hotel purchase transactions had been structured as follows:-

(i) Sungold and Nova had purchased the freeholds of the hotels;

(ii) the freeholds were contemporaneously split into 78 separate leasehold titles: one leasehold title for each of the rooms within the hotels.

(iii) each leasehold title had been sold to Mr B in a back-to-back transaction;

(iv) Mr B had obtained 78 individual mortgages to fund the leasehold purchases then had pooled those monies and had used them to purchase the freeholds;

(v) the true purchase prices of the 78 leaseholds had been misrepresented to the mortgagees, rooms being described as "self contained studio flats within an apart-hotel", so that neither Mr B nor the BVI companies had contributed any

funds at all and the whole transaction had been financed entirely by mortgage advances;

(vi) after the payment of SFMLSL's fees, the surplus of funds from the mortgage advances had been remitted to Mr B.

227. The Third Respondent had told the SRA that Mr B had carried out similar transactions before but that she had not fully understood the nature of the transaction herself. The Third Respondent had told the SRA that she had adopted a format of lease that Mr B had previously used and told the SRA that her only real input had been to check the title.

228. A letter that the Third Respondent had written to the vendors' solicitors four days prior to completion had referred to companies other than Sungold and Nova, including a company called AHSD Limited. AHSD Limited had been a company jointly owned by the First and Third Respondents and generally used by SFMLSL in Tax Mitigation Schemes. Those referrals indicated that the Third Respondent had not been aware of the identity of the intermediary companies at that stage and that it had been SFMLSL's intention to complete the purchase of the hotels through the company jointly owned by the First and Third Respondents.

Purchase of the leasehold interests

229. Mr B had obtained mortgages from the following lenders, which are listed alongside their maximum permissible loan to value figure in brackets, expressed as a percentage.

- Mortgage Express (85)
- UCB Home loans (85)
- Wave Lending (90)
- Standard Life (80)
- Northern Rock (90)
- Bank of Ireland (85)
- Clydesdale Bank (80)

230. In each instance Mr B had obtained the maximum advance possible based upon the loan to value criteria set by each lender. For those loans which had been obtained from Mortgage Express, for example, the purchase price of each of the leaseholds had been overstated by 15% in order to obtain the maximum permissible loan to value of 85% and to give the mortgagee the impression that Mr B had contributed 15% of the purchase monies when he had in fact contributed nothing.

231. Further, by arranging the mortgages through his company, Mortgage 10, Mr B had also received commission and/or brokerage fees for the arrangement of the mortgages.

Purchase of 'Flat 22' (YHH)

232. Mr B had purchased the above leasehold from Sungold using funds obtained from Wave Lending Limited ("Wave"), in a mortgage deal negotiated through Mortgage 10 as mortgage intermediary. Wave had instructed SFMLSL to represent their interests in the transaction in accordance with the CML Lenders' Handbook.

233. Wave's mortgage offer had been for £243,000 against the stated purchase price of £270,000, being 90% loan to value. The maximum 90% loan to value figure had been a condition of the mortgage offer and had been listed as a restriction within the offer.

234. The mortgage had been offered on a buy-to-let basis for a 99 year lease and the mortgage conditions placed restrictions upon the nature of the tenancy, including a condition that the property could not be used as other than a private dwelling house. It was also apparent from the mortgage offer that Wave had required confirmation from SFMLSL that the appropriate authority had been obtained "for the change of use from aparthotel". Wave had not been made aware that the property was to be used other than as a private dwelling.

235. No funds, other than those provided by Wave, had been received into the client bank account or noted on the client ledger in respect of the purchase. Book entries had appeared to indicate that bridging finance had been provided.

236. Although the individual client ledgers for each transaction had suggested and given the impression that bridging finance had been provided in respect of each mortgage, Mr B's client ledger listed all of the transactions and revealed that the only receipts were from the mortgagee clients.

237. Wave had not been advised that the leasehold interest against which they were lending had been purchased from a company in which Mr B had an interest.

238. The Third Respondent had signed the Certificate of Title on 4th October 2007. The representation made to the mortgagee by SFMLSL, on the Certificate of Title, was that upon completion the mortgagee would receive a valid charge over a new leasehold interest carved from the individual freehold titles and that those charges would be registered at HM Land Registry. In essence, the Third Respondent had confirmed to Wave that the mortgage offer, completion and post-completion formalities had and would be dealt with in accordance with the CML Lenders' Handbook, that Money Laundering requirements of the CML Handbook had been followed and that all conditions of the Mortgage Offer had been or would be satisfied.

239. The file had contained a 125 year lease, as opposed to the 99 year lease noted in the mortgage offer – between Sungold as landlord, Mr B as tenant and Paddington Lettings Ltd, in which company Mr B was a director, as the management company. The lease had originally been dated 15th November 2007 but had been crossed through and redated 15th October 2007. Sungold had not been incorporated until 1st November 2007, 16 days later.

Purchase of 'Flat 1' (ECH)

240. Mr B had also obtained mortgage funds from Wave in respect of his purchase of the leasehold of 'Flat 1' ECH. In this purchase, Mr B had obtained a mortgage advance of £265,000, being the maximum 90% loan to value against a purported purchase price of £295,000.

241. The client ledger account in this leasehold purchase was typical of those seen by the SRA in Mr B's matters. The only entry on the ledger involving an actual receipt or payment of funds was the receipt of £265,000, being the funds received from Wave. The other two transactions on the ledger were internal transfers; the first of the deposit, received from another ledger, and the second of the transfer of the whole £295,000 to the principal ledger account in respect of the purchase of the freeholds.

Financial transactions

242. In total, SFMLSL had received £16,799,124.16 from mortgagee clients in respect of the 78 mortgage advances. The client account ledger recorded that those funds had been received between 11th October and 12th October 2007.

243. Of those funds, obtained from the mortgagees a total of £11,135,278.19 had been remitted to the vendors of the hotels on 15th October 2007. The payment had been made in two separate transfers; one of £9,464,986.46 and another of £1,670,291.73. The amounts transferred did not accord with the figures of £6,050,000 and £5,100,000 recorded on the transfer documents for YHH and ECH, respectively.

244. Of the balance of funds that had been advanced to purchase the leasehold that was left following the purchase of the freehold, SFMLSL had sent a total of £4,934,734.38 to Mr B as follows:-

- £300,000 on 23rd October 2007
- £200,000 on 31st October 2007
- £4,295,787.98 on 1st November 2007
- £66,900 on 2nd November 2007
- £72,046.40 on 7th November 2007

245. The transfer of nearly £4.3m on 1st November had been remitted to a newly opened Swiss bank account in the name of Mr B.

246. The First Respondent had told the SRA that he had considered that those funds had represented the profits made on the transaction by Sungold and Nova. However, Mr B was said to be one of a class of beneficiaries of one of those companies and neither the First nor the Third Respondents had been able to explain why the monies had been transferred to Mr B personally, rather than to the BVI companies.

247. There had been no instructions from Sungold or Nova on the file to remit the funds to Mr B. The First Respondent had subsequently provided documents which he claimed to have been the authority to make the transfers. However, the authorities were from Mr B and had originated from Mortgage 10 rather than from Sungold or Nova.

Mortgages from the Bank of Ireland

248. The First and Third Respondents had received £1,944,056.66 into their client account on 5th December 2007 from Blue Moon Financial ("Blue Moon").

249. There was no evidence that checks had been carried out as to the origins of the funds. The Third Respondent had told the SRA that she had had "no idea" who Blue Moon were. The First Respondent had told the SRA that he had believed that Blue Moon was an offshore company controlled by Mr B.

250. The First Respondent had since told the SRA that he had not considered it necessary to carry out any money laundering checks because the sum received had been lower than the amount that SFMLSL had remitted to Mr B on 1st November.

251. On 6th December, the monies received from Blue Moon had been used to redeem the 9 mortgage advances that had been received from the Bank of Ireland ("BOI") in the sum of £1,957,551.15.

SFMLSL's fees

252. On 19th October 2007, £783,944.50 had been transferred to office bank account in respect of the firm's fees. The First Respondent had told the SRA that the Third Respondent had been responsible for negotiating the fee and that it would have been "2% of the purchase price for doing the legal work and the SDLT planning". The fee transferred on 19th October had been in excess of 7% of the monies transferred to the vendors.

253. The fee had been reduced to a final figure of £644,416.59 when three sums of money had been refunded between 31st October and 9th January 2008 as disbursements had to be paid and there had been insufficient funds in client bank account to cover the required amounts.

254. The firm's completion statement and bill of costs had wrongly stated that SFMLSL had received mortgage advances in the sum of £19,575,795 when the actual amount received from mortgagees was in the lesser sum of £16,799,124.16. The completion statement had stated that "bridging required to complete all properties" of £2,776,670 had been required. This sum had represented the sum of the deposits that the mortgagee clients believed that Mr B had contributed, but which he did not in fact pay, to Sungold and Nova.

255. SFMLSL's bill of costs was addressed to PLL rather than to Sungold or Nova. An analysis of the ledger card prepared by the SRA showed that SFMLSL had retained a total of £644,416.59 in legal costs. That figure did not concur with the invoice prepared by SFMLSL, signed by the First Respondent.

SDLT Mitigation Scheme

256. The vast majority of SFMLSL fee had been with respect to SDLT planning. The Third Respondent had told the SRA that, absent SDLT planning, the fee would never have been so high. Notwithstanding this, the SRA had found no evidence on the client matter files that the First and Third Respondents had conducted any SDLT planning work.

Failure to follow instructions – Council of Mortgage Lenders' Handbook

257. The First and Third Respondents had failed to report to their lender clients the following material facts, in breach of their instructions:-

(i) that the mortgage advances had not been used for the sole purpose for which they had been advanced;

(ii) that the freehold buildings had been run as a hotel both before and after the transaction;

(iii) that the purchase price had not been the same as set out in their instructions;

(iv) that no funds had been received from the ultimate purchaser towards the purchase price;

(v) that the vendors (Sungold and Nova) had owned the property for less than six months;

(vi) that monies obtained from mortgagees had been sent to the mortgagor's overseas bank account.

(vii) that there had been a conflict of interests and that SFMLSL had been acting for both Mr B and the vendors, Sungold and Nova (or to obtain written consent from all parties to the transaction, contrary to Rule 3.18(1)SCC).

The completion meeting

258. The First Respondent had told the SRA that he had provided no advice to Mr B and that all the work on the matter had been completed by the Third Respondent. The First Respondent had previously told the IO that he had discussed the transaction, and specifically the use of offshore companies within it, with Mr B at the completion meeting.

Failure to carry out post-completion formalities

259. The First and Third Respondents had failed to register any element of the transaction at the Land Registry upon completion, including the registration of Sungold and Nova's purchases of YHH and ECH and the creation of any leasehold interests from the freeholds.

260. Having failed to carve any leasehold titles from the freehold, no charges had been (or could be) registered against the new leasehold properties by the First and Third Respondents to protect their mortgagee clients' interests.

261. In December 2007, a solicitor instructed by Wave to obtain a freezing order against Mr B, had lodged a bundle of documents with the court within which were a number of Land Registry searches. No leasehold interests had been registered or were pending with the Land Registry at either YHH or ECH and the original vendors had remained the registered freeholders of YHH and ECH.

262. The leases have since been registered with the Land Registry with a revised transaction date of 1st November 2007, corresponding with the creation date of Sungold and Nova, rather than with the date of the actual transaction.

263. The First Respondent had told the SRA that SFMLSL had failed to carry out the registration in excess of 1,000 property transactions. The First Respondent blamed the Third Respondent and SFMLSL's conveyancing department for those failures. The Third Respondent had told the SRA that she had known nothing of the unregistered transactions.

Action by mortgagee clients

264. On 10th December 2007 a representative of Wave had attended YHH and ECH. Upon finding that the hotels had not been converted into flats, Wave had been concerned that they had no valid security for the sums advanced. Moreover, that the valuations might have been artificially inflated and that the transaction bore the hallmarks of mortgage fraud.

265. Wave had been granted a Freezing Injunction against Mr B up to a value of £5m. The total amount advanced by Wave in respect of 20 separate mortgages had been £4,963,450.

Further Matter – Fabricated Letter

266. During the second FI investigation into SFMLSL, the SRA had examined the "Capital Gains Tax Mitigation Scheme", the purpose of which had been to mitigate any capital gains tax liability on the disposal of investment properties.

267. Exhibited to the Rule 5 Statement and before the Tribunal was a letter supplied to the SRA by the First Respondent, purported to be from HM Revenue & Customs ("HMRC") and purporting to give 'clearance' to the SFMLSL CGT Mitigation Scheme. HMRC have since stated that the letter was not a genuine letter from HMRC.

The Submissions of the Applicant

268. The Applicant sought the Tribunal's permission to withdraw allegations 6, 7, 8 and 10 as against the Second Respondent including the allegation of dishonesty. The Applicant confirmed that he was instructed to accept the Second Respondent's

submissions on the basis of the Second Respondent's statement dated 24th August 2009 and the Second Respondent's letter of 6th December 2009.

269. The Tribunal agreed to the withdrawal of allegation 6, 7, 8 and 10 as against the Second Respondent only and noted his detailed admissions.

270. The Applicant confirmed that he had received no further correspondence from the First Respondent after he had disinstructed his solicitors. In fact a letter was faxed to the Clerk to the Tribunal from the First Respondent on the first day of the hearing. That letter had been placed before the Tribunal and the other parties at the hearing.

271. In respect of the Third Respondent, the Applicant referred the Tribunal to her handwritten statement of 25th August 2009 and to her undated statement made in proceedings issued by Wave Lending Limited that she had attached to her handwritten statement.

272. The Applicant confirmed that all appropriate Civil Evidence Act Notices had been served but that his witnesses were present and would be called to give evidence on particular issues. The Applicant explained that he intended to concentrate his submissions upon the various allegations involving dishonesty by the First and Third Respondents. The allegations facing the Respondents were allegations involving their professional conduct and while dishonesty was not an essential ingredient of any of the allegations, the SRA alleged dishonesty as against the First Respondent with reference to allegations 2, 7, 8, 9, 20, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34 and 35.

273. As against the Third Respondent, dishonesty was alleged with reference to allegations 4, 7, 8, 9, 12, 13, 14, 15, 16, 17, 19 and 20.

274. The Applicant referred to the three comprehensive forensic investigation reports prepared following inspections commencing on 24th May 2005, 20th February 2007 and 8th April 2008, all of which were before the Tribunal together with their relevant exhibits. He also handed to the Tribunal a table setting out all the Graham/Alexander House companies with details of name changes, directors, registered office, supply of legal services, SRA registration, date and number of incorporation, shareholding and FSA registration.

275. The Applicant took the Tribunal through the individual allegations relating to dishonesty and the facts in support of those allegations.

Evidence on behalf of the Applicant

276. Ms Hogg, an Investigating Officer with the SRA and an author of the first and second forensic investigation reports, gave evidence as to the truth of the contents of those reports. She confirmed that her interviews had been digitally recorded and that both the First and Second Respondents had been provided with transcript copies which they had not disputed. Ms Hogg explained how the First Respondent had been aware of her concerns about client accounts especially because of his failure to provide any corresponding client ledger sheets and that he had failed to provide her with full details of all bank accounts containing client monies.

277. Ms Hogg gave evidence about the use of the account of SFMNL to carry out legal transactions on behalf of clients, including the receipt of funds in respect of "search fees". She also gave evidence about breaches of the SAR including the First Respondent's assertion that Client Account No. 1 had been a "dormant" account. Ms Hogg explained that she had been unable to accept that explanation as a dormant account would be one with a nil or static balance whereas she had discovered that the particular client account had not only been non compliant but also active.

278. Ms Hogg explained that when dealing with the failure to deliver an accountant's report, she had asked to see the letter in which the First Respondent had claimed that the SRA had granted an extension of time. When she saw the letter of 23rd September 2005, she had noted that it merely acknowledged the request for an extension.

Further Submissions of the Applicant

279. Turning to the issue of supervision, the Applicant submitted that when applying to the SRA to have SFML registered as a body for the provision of legal services on 25th May 2005, the First Respondent had misleadingly stated that P, a solicitor in another firm, who had more than three years post qualification experience, had been a director and shareholder in SFML. The First Respondent had sought to mislead the SRA in this way because he had been aware that until April 2004 he had not been a person qualified to supervise a practice despite having run and controlled SFML himself.

280. The Applicant submitted that the First Respondent had further sought to mislead the SRA when, during a meeting on 11th October 2005, he had told the IO that P owned 25% of the shares in SFML. Whereas, Companies House records had revealed that P was not and never had been a shareholder or a director in SFML. However, the First Respondent had continued to assert that P owned 25% of the shares in SFML and had said that a shareholder's agreement and P himself would verify that P had been a shareholder. When the Agreement was produced by the First Respondent, it was noted that it applied not to SFML but to Solicitors Financial Centre (Newcastle) Limited. The Applicant submitted that without the involvement of P, the First Respondent would have been unable to register SFML with the SRA when it started trading in July 2003 and that the First Respondent had been aware of that hence his wrongful inclusion of P. Moreover, although SFML had ceased to trade on 31st May 2006, it had continued to exist and it had been misleading of the First Respondent to suggest that it did not exist.

281. Turning to the books of account, the Applicant noted that in his representations to the SRA relating to the first forensic investigation inspection of SFMNL and SFML, the First Respondent had stated in his letter of 24th March 2006 that "from December 2004 I am not aware of any breaches of the accounts' rules on the files". However, given that the First Respondent had admitted to becoming aware of the client account shortfall on 20th January 2006, some three months prior to his representation that the firm was compliant with the SAR and given that the shortfall had not been corrected for a further four months after his representation, the Applicant submitted that the First Respondent had misled the SRA.

282. In relation to SFM Mortgage Services Limited ("Services") the Applicant explained that the First Respondent had told the IO that "Services" had been trading during the period that he had been a director and that it had been set up as an appointed representative of "Wealth". However, that had not reflected the true position in that FSA records had revealed that "Services" had been neither an appointed representative nor had it been directly regulated by the FSA between 1st April 2007 and 16th August 2007. Therefore, the Applicant submitted, the "Services" letterhead, a copy of which had been provided to the IO by the First Respondent and which had stated that the company was "authorised and regulated by the Financial Services Authority" had been incorrect and misleading because at the relevant time the company had not been so authorised.

283. Turning to Northern Financial Management Limited ("Northern"), the Applicant submitted that the information given to the Legal Complaints Service had not reflected that provided by the First Respondent to the SRA. On 25th May 2005 the First Respondent had told the SRA that "Northern" had been taken over by SFMNL and that Mr S of Northern had transferred to SFMNL on a self employed basis; a position which appeared to mirror that set out by "Northern" in letters to its clients. For example, "Northern" had written to Mr and Mrs W on 23rd December 2004 and had stated that the company was "merging" with SFMNL. Having given conflicting responses on the relationship between "Northern", SFMNL and SFML, the Applicant submitted that it was axiomatic that either the First Respondent had misled the SRA during the forensic investigation inspection or he had misled the LCS in his response of 14th July 2007.

284. Having dealt with the facts and submissions relating to the second allegation against the First Respondent, the Applicant addressed the Tribunal on the burden and the higher standard of proof referring to the requirements of the Twinsectra test.

285. Turning to allegation 7, as against both the First and Third Respondents, the Applicant outlined the facts relating to the matters involving a group of companies collectively referred to as B for whom SFML had acted in 15 back to back property purchases and sales. The Applicant submitted that the First Respondent had ignored the property fraud warning card in that properties were being sold at a substantial profit for which no explanation had been provided; B had provided no funds; the purchases and sales had all taken place on the same day and the files had been incomplete with no client care letters.

286. The Applicant outlined the facts of further matters relating to a client C for which SFML had acted in at least 19 property transactions. An example had been the purchase and remortgage of 54 S Street in which SFML had acted for C. Having outlined the facts, the Applicant submitted that the transaction had borne the hallmarks of the transactions warned against on The Law Society's warning cards. This had been because C had not been the registered proprietor of the property for at least six months prior to the remortgage and the property had been purchased for £38,000, had been funded by a third party and the mortgage advance of £45,000 that had been received within the same calendar month. C had made no financial contribution to either of the transactions though he had received payments, totalling £4,889.12 upon completion of the transactions. The Applicant further submitted that to have acted for both the lender and the borrower had amounted to acting in

circumstances where there had been a clear conflict of interest between both clients in a situation where the First Respondent had preferred the interests of C over the interests of his lender client. Moreover, the First Respondent had failed to comply with SPR 6.

287. Turning to the property transactions for the client H, the Applicant submitted that the First Respondent had been fully aware that his client had been the subject of an Individual Voluntary Arrangement during the period of the several transactions. Moreover, he submitted that by suggesting that the properties be purchased in the name of his girlfriend, O, the First Respondent had placed himself in a position of conflict. Moreover, that the scheme had been designed to enable H to avoid his liabilities to his creditors in his IVA.

288. The Applicant then explained the matters relating to "PCP" in which PCP had offered investment properties to investors and would arrange to buy properties from a third party and on the same day sell them on to the investor, at a higher price. SFMLSL had been instructed by PCP in 677 property transactions, 313 of which had proceeded to completion. The First and Third Respondents had acted for both PCP and the investor purchasing the property in 147 of the 313 completions. The First Respondent had had a direct relationship with PCP as a major client.

289. The Applicant referred to the factual details of the purchase of C House as an example of dishonesty on the part of the Third Respondent. He submitted that in signing the Certificate of Title on 30th August 2006 stating that the purchase price stated in the transfer had been £5,700,000, the Third Respondent had misrepresented the situation to the Institutional Lender; her mortgagee client. In fact the price actually stated on the transfer had been £400,000 which had also been the purchase price disclosed to the Inland Revenue (although the Applicant explained to the Tribunal that the paperwork submitted to the Inland Revenue was not available).

290. The Applicant also referred the Tribunal to the factual details relating to Mr and Mrs W's purchase of The N House, again involving "tax planning" work.

291. The Applicant referred to the statements of the Third Respondent that were before the Tribunal and noted that she had admitted all the allegations but had denied any dishonesty.

292. Turning to the conflict allegations, against both the First and Third Respondents, the Applicant noted that in the transactions for client C, the firm had also acted for Institutional Lenders. He submitted that in those cases there had been a clear conflict of interest in which the First Respondent had preferred the interests of his client C over those of his Institutional Lender clients. The Applicant submitted that the First Respondent had again placed himself in a position of conflict in the purchases for his client H.

293. Having taken the Tribunal through the facts in the matter of the Asset Protection Trusts ("APTs") the Applicant submitted that the First and Third Respondents had ignored a conflict of interest situation between their clients Mrs S and Mrs McC.

294. In the matter of the client "PCP", again the Applicant submitted that in 147 transactions in which SFMLSL had been instructed by both "PCP" and the investor purchasing the property, there had been conflicts resulting in the suppression of information to investors in order to maintain the flow of instructions to the firm from "PCP".

295. Turning to allegation 20 against the First Respondent and allegation 9 against the Third Respondent; misrepresentations to HMRC in relation to transaction values, again the Applicant took the Tribunal through the relevant facts, when the First Respondent had been instructed by Mr BB and Mrs M in the purchase of 59 P Avenue. The Applicant submitted that prior to submitting form SDLT 1, the First Respondent had knowledge of the actual transaction value of £416,000 when he quoted the value at £1 upon the SDLT1 form submitted to the Revenue. Further, the Applicant submitted that the First Respondent had made a conscious and deliberate misstatement of the transaction value to the Revenue. The Applicant drew the Tribunal's attention to the letter of 21st November 2006, from the First Respondent to BKS Solicitors, in which he had stated that full disclosure was given on the SDLT.

296. Dealing with allegations 23 and 24 against the First Respondent, the Applicant referred to the facts of the complaint by Watson Burton Solicitors re Mr and Mrs W, former clients of SFML. He submitted that the documents exhibited a clear dishonest intention by the First Respondent.

Further evidence on behalf of the Applicant

297. Miss Taylor, an Investigation Officer with the SRA, gave evidence as to the truth of the contents of the third forensic investigation report dated 16th July 2008. Although the report had been drafted by an Investigation Manager, Mr Duerden, Miss Taylor explained that she had accompanied him and was in a position to confirm the truth of the report.

298. The further allegations against both the First and Third Respondents contained in the supplementary statement related to one transaction that had been examined in detail in the third forensic investigation report. Miss Taylor confirmed that when she and Mr Duerden commenced their inspection on 8th April 2008 only the First Respondent remained at the firm. Miss Taylor explained the facts of the transactions in which the firm had acted on behalf of Mr B and two British Virgin Islands (BVI) companies. She noted that the client care letter to Mr B had been sent by the Third Respondent although there was no evidence that Mr B had signed and returned the letter. However, client care letters to Sungold and Nova had been dated some three months before the formation of those companies. Moreover, the two companies had been formed some 17 days after completion of the transactions in which the companies had appeared to have been involved. Miss Taylor explained that she had visited the hotels in question and confirmed that they were still run as hotels with members of the public able to book rooms on a time basis.

Further Submissions of the Applicant

299. The Applicant submitted that both the First Respondent and the Third Respondent, who was an experienced conveyancing practitioner, fully understood the nature of the

transactions and appreciated that they fell within the category of transactions warned of in The Law Society's mortgage fraud warning card. As an alternative, even if the Third Respondent had not understood the nature of the transaction, the Applicant submitted that the Third Respondent had permitted her client Mr B to dictate the course of the transactions and had permitted the use of SFMLSL purely as a conduit to collect mortgage advances from unwitting mortgagees.

300. The Applicant noted that in relation to the purchase of YHH, book entries appeared to indicate that bridging finance had been provided. The Applicant submitted that the entries in support of such a proposition had been false and that the firm's mortgagee clients had been deceived into believing that purchase funds had been provided from another source and they had not been contributing 100% of the purchase funds. The Applicant referred the Tribunal to the relevant ledger which indicated that the only receipts were from the mortgagee clients. He submitted that by transferring monies from the receipts from mortgagees in one ledger and describing them as credits in respect of bridging finance on other ledgers, the First and Third Respondents had been complicit in Mr B's deceit of mortgage lenders and in so doing they had both acted dishonestly. Moreover, by signing the Certificate of Title, the Third Respondent had confirmed to her client, Wave, the mortgagee, that the mortgage offer, completion and post completion formalities had and would be dealt with in accordance with the CML Lenders Handbook, that money laundering requirements of the CML Handbook had been followed and that all conditions of the mortgage offer had been or would be satisfied when, the Applicant submitted, she knew that they had not and would not be and when, according to her, she did not understand the nature of the overall transaction. In so doing, the Applicant submitted, she had behaved dishonestly.

301. The Applicant referred the Tribunal to the facts of the leasehold purchase by Mr B of "Flat 1" in the ECH and the client ledger account which were typical of Mr B's matters re the ECH. The only entry on the ledger involving an actual receipt was the £265,000 from Wave (the mortgagee client). The two other transactions on the ledger had been internal transfers. The Applicant submitted that the internal transfer of monies equal to that which were stated to have been received from Mr B in each transaction and their respected listings on the ledger accounts had been a deception intended to give the appearance of a deposit having been paid by Mr B when he had not in fact provided any funds in respect of any of the leasehold purchases.

302. The Applicant submitted that the First Respondent's continued assertions that SFMLSL had received deposits from Mr B in each of the leasehold purchases had not been supported by the evidence. The First Respondent had said that the deposit moneys had been loaned to Mr B by Sungold and Nova which had been represented by the other office of SFMLSL which, the First Respondent had contended, had explained why it had appeared from the client ledger that the deposit had been no more than an internal transfer. The Applicant submitted that no such moneys had been introduced by Mr B from any other source and that Sungold and Nova had not existed at the time that the First Respondent had claimed that they had loaned monies to Mr B.

303. The Applicant further submitted that in either knowing that no moneys had been received from Mr B or by not checking and deliberately not asking questions of Mr B at any point during the transaction, including upon the day of completion of the hotel

purchases, both the First and the Third Respondents had been complicit in an apparent mortgage fraud in which Mr B had obtained funds from lenders in circumstances in which they would otherwise not have remitted mortgage advances and had used them in order to purchase the freeholds of the hotels.

304. Although the First Respondent had claimed that all and any misconduct in relation to the transaction had been that on the part of the Third Respondent only, and that he had had no knowledge of a mortgage fraud, the Applicant submitted that the First Respondent had been aware at the completion meeting, that he alone had attended, that no funds other than those introduced by the mortgagees had been contributed to the transaction.

305. The Applicant submitted that it would have been inconceivable that the First Respondent had not recognised the fraud when he had "reconstructed" the files upon the Third Respondent's resignation from SFMLSL or at any point during the subsequent investigations. It would have been plain from Mr B's client ledger that he had provided no funds for the transaction. The Applicant further submitted that a prudent and honest solicitor, upon notification and recognition of the fraud, would have made efforts to report it to his mortgagee clients. The First Respondent had made no such efforts.

306. The Applicant noted that while figures of £6,050,000 and £5,100,000 had been recorded on the transfer documents for YHH and ECH respectively, of the funds obtained from the mortgagees a total of £11,135,278.19 had been remitted to the vendors of the hotels on 15th October 2007. That payment had been made in two separate transfers; one of £9,464,986.46 and another of £1,670,291.73. While the First Respondent had told the SRA that he had only met Mr B on 15th October 2007 and "had a good chat with him for a couple of hours while the guys were finishing off and requesting monies in to do the completions", that could not have been correct because the moneys had actually been in SFMLSL's client account by that date. Moreover, he submitted that when the First and Third Respondents had instructed "the guys" to request moneys in from SFMLSL's mortgagee clients to do the completions on the leasehold matters, the leaseholds had not in fact existed and Mr B had not yet bought the freeholds.

307. The Applicant referred to the sum of £1,944,056.66 that the First and Third Respondents had received into their client account on 5th December 2007 from Blue Moon Financial (Blue Moon). He submitted that both Respondents had obfuscated in their duty to carry out money laundering checks. The Applicant reminded the Tribunal that the moneys from Blue Moon had been used to redeem the nine mortgage advances that had been received from the Bank of Ireland. He explained that it had since become apparent that those mortgages had been redeemed after Mr B had learned that a Bank of Ireland representative was to make a visit to inspect the leasehold properties against which they had advanced monies and would have discovered them still to be operating as hotels.

308. Turning to SFMLSL's fees, the Applicant submitted that both Respondents had been responsible for negotiating the fees which had been, at £783,944.50, in excess of 7% of the moneys transferred to the vendors, although subsequently reduced to a final figure of £644,416.59.

309. The Applicant submitted that, although the First Respondent had said that the vast majority of the SFMLSL fee had been with respect to SDLT planning, there had been no evidence on the client matter files that either the First or the Third Respondent had conducted any SDLT planning work. While the First Respondent had suggested that the establishment of the BVI companies constituted SDLT planning work, the Applicant noted that the First Respondent had previously told the IO that Mr B or his accountant had established the BVI companies and that to do so had not in fact been tax efficient.

310. The Applicant reminded the Tribunal that no leasehold titles had been carved from the freehold titles until the interest and involvement of the SRA in the matter. He submitted that SFMLSL had acted purely as a conduit through which the mortgage moneys that had been advanced for individual leasehold purchases had been pooled and then used to purchase the freehold titles of the hotels. Accordingly, the First and Third Respondents had therefore retained the sum of £585,666.59 (the total of £644,416.59 less the legal costs of £50,000 plus VAT (£58,750.00)), in circumstances in which no work had been done to substantiate such costs and the fees therefore had not been properly incurred.

311. Turning to the failures of the First and Third Respondents to report material facts to their lender clients in breach of their instructions, the Applicant submitted that the First Respondent must have known, even while assisting Mr B on the day of completion, that the transaction was fraudulent. The Applicant referred to the First Respondent's confirmation, during previous investigations, that he had been aware of The Law Society's warning card in respect of property fraud. The Applicant submitted that the First Respondent's knowledge of conveyancing procedures, coupled with his suspicion of the unusual nature of the transaction, had been sufficient to place a prudent and honest solicitor on notice that the transaction bore the hallmarks of mortgage fraud. Moreover, he further submitted that by failing to investigate whether Mr B had made any contribution to the completion funds prior to the release of the mortgage moneys received from the mortgagee clients of his firm, or by choosing to ignore the fact that Mr B had made no contribution, the First Respondent had been dishonest.

312. In relation to the firm's failure to carry out post completion formalities, the Applicant submitted that, as joint principal in SFMLSL, the First Respondent also had a duty, in addition to that of the Third Respondent, to ensure that the properties had been registered in accordance with clients' instructions and in accordance with the undertakings given on behalf of SFMLSL in the ordinary course of property transactions.

313. Turning to the subsequent action by the mortgagee clients, the First Respondent had claimed that the possible inflation of the valuations was of no concern either to his firm or to the SRA. However, in May 2008 the First Respondent had accepted that SFMLSL had breached The Law Society's green card warning on mortgage fraud but he claimed to have been acting honestly. The Third Respondent had told the SRA that she had not understood the transaction but that she had not believed there to have been any element of mortgage fraud because Mr B had carried out a similar transaction in the past.

314. Finally, the Applicant recalled Ms Hogg and also called David James from HM Revenue and Customs to give evidence in relation to allegation 35 as against the First Respondent.

Further evidence on behalf of the Applicant

315. Ms Hogg explained that during the course of the investigation at the firm she had seen a letter to a client, Mrs B, in which the fee earner had stated "We have a bespoke trust vehicle which has had tax clearance from HM Revenue and Customs". She asked the First Respondent for a copy of that tax clearance and was given a copy of a letter dated 5th June 2006 from the First Respondent to HM Revenue and Customs and a copy of their reply dated 8th June 2006. Both copy letters were before the Tribunal.

316. David James, an Investigator and Inspector of Taxes with HM Revenue and Customs, gave evidence about an investigation that he had carried out at the request of the SRA into the provenance of the reply dated 8th June 2006. He confirmed that the SRA had sent a copy of a letter of 8th June 2006 to HM Revenue and Customs and referred to his reply to the SRA dated 2nd October 2009. Mr James explained that the copy letter, produced by the First Respondent and dated 8th June 2006, had not actually been sent from HMRC. The author of the letter was purported to be Jean Courtney, who had now left the HMRC. However, Ms Courtney had made a statement, an extract from which Mr James had included in his letter to the SRA dated 2nd October 2009. Ms Courtney had concluded that somebody had copied the top and bottom of her genuine letter dated 28th November 2006, changing the date and putting their own words in the middle. In her statement to HMRC, to which a Statement of Truth was attached, Ms Courtney had said that she was certain that the letter dated 8th June 2006 was not written by her because:-

> "8. It soon became apparent to me that I had not written the letter dated 08 June 2006, a copy of which is attached. I concluded that somebody,... had copied the top and bottom of my genuine letter dated 28th November 2006, changing the date and putting their own words in the middle. I am certain the letter dated 08 June 2006 was not written by me because:-
>
> 8.1 At that date Malcolm Graham and his company were unknown to me. They were first brought to my attention on 24th October 2006. No files existed for them in June 2006.
>
> 8.2 I always keep copies of letters I write in our paper and electronic files. There was no copy of the 08 June 2006 letter in any of AAG's files.
>
> 8.3 The heading on the 08 June 2006 letter is Anti Avoidance Group (Disclosure & Risk). In June 2006 the name of our team was Anti Avoidance Group (Intelligence). I cannot recall exactly when the name was changed but note that the first letter I sent to Malcolm Graham dated 2nd November 2006 I used the letter heading with "Intelligence" on it. I have sample checked files for

other cases I dealt with and in June 2006 I was using the heading "Intelligence" and not "(Disclosure & Risk)".

8.4 It is not my style to use the date format 08. As can be seen from any other letter I have written I use a single figure format without putting a 0 in front.

8.5 The same applies to the first sentence of the letter where the format 05 June 2006 is used.

8.6 The letter implies that I received a letter dated 05 June 2006 from Malcolm Graham. I received no such letter. I had no records for Malcolm Graham in June 2006.

8.7 It is not my style to use the sloppy spacing between paragraphs as used in the letter.

8.8 Most importantly as an experienced HMRC officer with, at that time, nearly 40 years in the Department I would never have written such a letter which effectively gives clearance for an avoidance scheme for Capital Gains Tax. And the letter is contradictory referring in the second paragraph to "the scheme you have disclosed" and in the third paragraph to "consider whether or not such a scheme falls within the disclosure rules". When a scheme is disclosed to HMRC we do not say whether or not it works. We simply give the scheme a unique 8 digit reference number which users of the scheme are obliged to enter on their tax returns. When the tax returns are filed and users identified appropriate enquiries are made."

317. In response to a question from the Tribunal, Mr James confirmed that in relation to tax avoidance schemes, as a policy, HMRC would never provide a letter of clearance but might provide a disclosure number. However, he explained that the one page letter dated 5th June 2006 from the First Respondent to HMRC did not in fact constitute a disclosure of any scheme. Disclosures and applications for clearance would normally involve bundles of detailed documents.

Final Submissions of the Applicant relating to the First and Third Respondents

318. The Applicant confirmed that he was only proceeding against the First and Third Respondents in relation to the allegations involving dishonesty. That was allegations 2, 7, 8, 9, 20, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34 and 35 as against the First Respondent and allegations 4, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18 and 20 as against the Third Respondent.

The Decision of the Tribunal as to the liability of the First and Third Respondents

319. Having considered all of the evidence placed before it, both oral and written, together with the submissions of the Applicant, the Tribunal was satisfied, so that it was sure that all the allegations involving dishonesty had been substantiated as against the First Respondent to the higher standard of proof. In addition, all the allegations involving

dishonesty brought against the Third Respondent had also been substantiated as against her to the higher standard of proof, with the exception of allegation 9. In respect of allegation 9 the Tribunal was not satisfied that it had been proved to the appropriate standard, that the Third Respondent had made misrepresentations to HMRC; in that the relevant declarations were not before the Tribunal.

320. In relation to all the allegations that the Tribunal found proved, it was satisfied that the conduct of both the First and of the Third Respondents had been dishonest by the standards of reasonable and honest people and that they had both realised that by those standards their conduct had been dishonest.

321. The Applicant made an application to the Tribunal that the balance of the allegations against the First and Third Respondents, those not involving dishonesty, be allowed to lie on the file. The Tribunal ordered that the balance of the allegations were to lie on the file and not be proceeded with without the approval of the Tribunal or of a higher court.

The allegations against the Second Respondent

322. The Applicant took the Tribunal through the details of the allegations remaining against the Second Respondent. He confirmed that he was instructed to accept the Second Respondent's admissions and that the Second Respondent was viewed as a minor player in the matter.

323. The Tribunal noted that there was no mitigation from the First Respondent. However, the Third Respondent's two statements contained mitigation which the Tribunal had noted. The Tribunal having noted the Second Respondent's detailed admissions invited him to address them in mitigation.

324. The Second Respondent referred the Tribunal to his witness statement of 24th August 2009 and his letter of 6th December 2009. He told the Tribunal that he regretted not instructing an independent accountant to inspect the firm's accounts before he had agreed to become a partner. He stressed that he had always complied with identification requirements. He had believed that Mr P had been the money laundering reporting officer. There had been a money laundering manual and on at least one occasion he had made a report. The Second Respondent confirmed that he saw himself as a victim of the First Respondent and explained that the First Respondent had been a friend at University. The Second Respondent referred to his detailed letter dated 14th December 2009, handed to the Tribunal on 15th December 2009, explaining his background and the details leading to the proceedings. He also handed references to the Tribunal and a letter from his consultant nephrologist clarifying matters relating to his medical condition.

Costs

325. The Applicant referred to the schedule of costs served upon the three Respondents. He sought a reduction of £2,220.00 to reflect the shorter hearing and also sought to include travel of £75.00 that he had omitted. The revised inclusive figure was £137,300.00. The Applicant accepted that the Second Respondent had been a minor player and that he had provided full details of his means in a further letter dated 14th

December 2009. The Applicant sought not a joint and several order but contributions to a fixed order or detailed assessment with orders for interim payments.

326. The Applicant explained to the Tribunal that there was no evidence before it that either the First or Third Respondent was without sufficient means. Although the First Respondent appeared to have declared himself bankrupt on 14th October 2009, his lifestyle did not suggest an impecunious state. It was understood that he had an interest in the property at Whickham Lodge Rise while currently living in and paying a large monthly rental for a luxurious property.

327. The Applicant explained the position relating to the compensation fund. Some £355,000 had already been paid out and further claims arising from the work of the firm were pending. In addition some 161 complaints had been made to the Legal Complaints Service.

The Decision of the Tribunal as to penalty and costs

328. Having found both the First Respondent and the Third Respondent to have been dishonest solicitors, the Tribunal was satisfied that both should be struck off the Roll. The allegations, as proved against them, had been extremely serious involving huge losses to clients and considerable damage to the reputation of the profession.

329. However, the Second Respondent had been found liable, as a partner, in respect of a very short period of time. The allegations against him had constituted only a relatively small percentage of the overall investigation. The Tribunal had also noted that the Second Respondent had made early admissions, had cooperated fully and promptly throughout the investigation and had fully participated in the proceedings. The Tribunal was satisfied that in his case the appropriate sanction was a Reprimand with an order of a contribution to costs in the sum of £500.00.

330. Having considered the revised costs schedule in detail, the Tribunal was satisfied that costs should be fixed in the sum of £137,300 with the Third Respondent making a contribution of £20,000 and the First Respondent paying the balance of £116,800 reflecting his key role in all the matters. It was clear to the Tribunal that an enormous amount of work had been undertaken to produce detailed but concise statements of what had taken place in complex circumstances. The Tribunal had been greatly assisted by the Applicant's detailed summaries and submissions. The Tribunal had also been impressed by the clarity and detail of the evidence given by the Investigating Officers.

Dated this 17th day of March 2010
On behalf of the Tribunal

A H B Holmes
Chairman