SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 9979-2008

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KARL PHILLIPS Respondent

Before:

Mr L. N. Gilford (in the chair)
Mr M. Fanning
Mr D. Gilbertson

Date of Hearing: 27th March 2012

Appearances

Robin Havard, solicitor of Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant.

The Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 He has acted in a way which was likely to compromise or impair his independence and/or his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990;

1.2 He has acted in a way which was likely to compromise or impair his duty to act in the best interests of the client contrary to Rule 1(c) of the Solicitors' Practice Rules 1990;

1.3 He has acted in a way which was likely to compromise or impair his own good repute and/or that of the solicitors' profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990;

1.4 In his capacity as a Solicitor-Trustee of a charity, he personally received payments which were not authorised by a court, the Charities Commission or the charity's own governing document;

1.5 He allowed payment of fees by a charity of which he was a Trustee to the firm of which he was a partner, Ellis & Fairbairn, when such fees were unauthorised either by a court, or the Charity Commission, and was in breach of terms of the charity's governing document;

1.6 He acted in a situation where there was a conflict of interest or a significant risk of a conflict of interest;

1.7 He has received personal payments from a client of the firm in which he was a partner, Ellis & Fairbairn, in respect of work undertaken by his firm, without the knowledge of the other partners in the firm;

1.8 He made, or permitted the, improper use of a client account for a series of payments to a third party in breach of Rule 15 of the Solicitors' Accounts Rules 1998;

1.9 He conducted himself in a manner which was not consistent with his duty to act with integrity and/or he behaved in such a way that was likely to diminish the trust the public placed in him or the legal profession contrary to Rules 1.04 and 1.06 of the Solicitors' Code of Conduct 2007;

1.10 He has acted in breach of the conditions attached to his Practising Certificate for the practising year 2008/2009;

1.11 He misled the SRA by stating that Mr PVK had been appointed a partner in the firm of Ellis & Fairbairn which was not true;

1.12 He has failed to co-operate with the SRA in the course of its investigation in breach of Rule 20.05 of the Solicitors' Code of Conduct 2007;

1.13 He has failed to maintain proper books of account in breach of Rule 32 of the Solicitors' Accounts Rules 1998;

1.14 He has failed to produce, on request, any records, papers, financial accounts and other documents necessary to enable preparation of a Report on Compliance with the Rules in breach of Rule 34 of the Solicitors' Accounts Rules 1998.

Documents

2. The Tribunal reviewed all of the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application dated 2 May 2008;
- Rule 5 Statement and exhibit bundle "MRH1" dated 2 May 2008
- First Forensic Investigation Report dated 18 May 2006
- Supplementary Rule 7 Statement and supplementary exhibit bundle dated 11 January 2010
- Second Forensic Investigation Report dated 8 June 2009
- Witness Statement of Ms Angela Robbins and exhibit bundle "A" dated 25 August 2008
- Medical Report of Dr Howard Sergeant dated 26 January 2012
- Bundle of authorities
- Schedule of Costs undated

Respondent:

- Response to the Rule 5 Statement dated 8 September 2009
- Letter from the Respondent dated 21 March 2012

Preliminary Matter

3. Mr Havard informed the Tribunal that he wished to very carefully consider the hearing proceeding in the absence of the Respondent, taking into account the history of the proceedings, the Respondent's medical condition and the Respondent's correspondence.

4. Mr Havard referred the Tribunal to the Respondent's medical history and the medical reports which had previously been produced. The Tribunal said that it did not require Mr Havard to go through the Respondent's medical history since it was aware of it and it was the latest Medical Report which was of relevance and which had been obtained at the direction of the Tribunal.

5. Mr Havard said that he had brought to the attention of a previous Tribunal at an earlier hearing on 13 May 2010, certain authorities in relation to proceeding in the absence of a Respondent. Mr Havard referred the Tribunal to the Authorities Bundle and the case of Brabazon-Drenning v United Kingdom Central Council For Nursing

Midwifery and Health Visiting CO/490/2000 in which the Judgment of Mr Justice Elias stated:

> "In my judgment, this hearing plainly should have been adjourned. Save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee which has the livelihood and reputation of a professional individual in the palm if its hands, to go on with a hearing when there is unchallenged medical evidence that the individual is simply not fit to withstand the rigors of the disciplinary process".

6. Mr Havard said that the previous Tribunal had agreed to an adjournment of this case and at that stage, there had been no medical reports from the Respondent's General Practitioner that the Respondent was not fit to attend but the position had subsequently changed.

7. Mr Havard referred the Tribunal to Regina v Jones [2001] EWCA Crim 168 and the Judgment of Rose LJ which stated in relation to the principles which should guide the English courts regarding trial of a defendant in his absence:

> "(4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> (5) ...(i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether this behaviour was deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings; (iii) the likely length of such an adjournment; (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation; ... (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; (vii) the risk of the jury reaching an improper conclusion about the absence of the defendant; (viii) the seriousness of the offence, which affects defendant, victim and public; (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
>
> (6) If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and in the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits".

8. Mr Havard then referred the Tribunal to the case of Tait v The Royal College of Veterinary Surgeons [2003] WL 1822941 wherein reference was made to the case of Regina v Jones:

> "In reviewing the decision which it made on 27 June 2002 to hear the case in Mr Tait's absence the Committee feels that, in the words of Lord Bingham, in the House of Lords case to which reference was made (R v Jones [2002] 2WLR 524, at page 530H) it did exercise the utmost care and caution in making its decision. Its reasons were given in writing at the time".

Mr Havard submitted that the Respondent's hearing should proceed in his absence, having regard to the "checklist" in Regina v Jones, namely:

- That an adjournment would be unlikely to achieve anything other than to prolong the proceedings;
- That the Respondent had replied very late in the day and had not specifically requested an adjournment;
- That the Respondent had referred to his General Practitioner, Dr De Sousa not having agreed the medical report of Dr Sergeant but he had not produced any documentation from Dr De Sousa to challenge the report;
- In relation to the Rule 5 Statement, the Respondent's Response had dealt with those allegations and some admissions had been made;
- In relation to the Supplementary Rule 7 Statement, the Respondent had not responded to that but the allegations related to breach of his practising certificate conditions and failure to co-operate with the Applicant. In relation to the former, this allegation was based on documentary evidence and it was appropriate for the Tribunal to consider that on the documents. In relation to the latter, this related to the Respondent's failure to provide documents to the second FIO and it was appropriate and safe for the Tribunal to deal with that allegation on the facts.

9. In relation to the most recent letter from the Respondent dated 21 March 2012, Mr Havard said that this had taken issue with his (Mr Havard's) conduct. Mr Havard said that in relation to his instruction of Dr Sergeant, it was correct that he had previously instructed Dr Sergeant on other matters but that he had also paid Dr De Sousa's fees for a medical report for the Respondent on a previous occasion.

10. Mr Havard said that the Respondent had questioned the independence of Dr Sergeant. Mr Havard informed the Tribunal that he had initially sought to instruct a Dr Roberts, having instructed him before in relation to another Respondent and on that occasion, Dr Roberts had certified that Respondent as not fit to attend a hearing. Mr Havard said that unfortunately, Dr Roberts no longer undertook work of this type and he had therefore made enquiries of colleagues who had recommended two other Psychiatrists, one of whom was Dr Sergeant who had been described as "fair".

11. In relation to Dr Sergeant and his medical report, the Tribunal said that there was no need for Mr Havard to justify his instruction; Dr Sergeant was an independent expert, his report complied with the relevant rules and it had been the Tribunal itself which had directed such a report be obtained.

The Tribunal's Decision

12. The Tribunal confirmed that it had had the opportunity to consider all of the papers prior to commencement of the substantive hearing, including the Respondent's letter dated 21 March 2012 and the medical report of Dr Sergeant. It was aware that the proceedings had been adjourned a number of times in the past for a number of reasons and including issue of the Rule 5 Statement which had been delayed due to the Respondent's state of health. The Tribunal considered that it was in the interests of all concerned to conclude the proceedings, if appropriate.

13. The report of Dr Sergeant dated 26 January 2012 had been prepared at the behest of the Tribunal and there was no reason to doubt the veracity of the report or that Dr Sergeant was independent; his report included the usual expert's declaration. The Tribunal noted that the report stated that the Respondent was fit to attend the substantive hearing and that no medical evidence to the contrary had been produced by or on behalf of the Respondent.

14. The Respondent's letter dated 21 March 2012 was cogent, concise and well drafted and it was evident to the Tribunal that the Respondent understood the proceedings and he had stated that he did not intend to attend the substantive hearing. The Tribunal was alert to the possibility that the Respondent had voluntarily absented himself and there was a risk that he would do so again in future if the proceedings continued.

15. The Tribunal noted that the Respondent had filed a Response and that this had addressed the Rule 5 Statement and the Tribunal was satisfied that the Rule 7 Statement could be dealt with on the facts and on the documents.

16. Bearing in mind the authorities, the Tribunal was satisfied that it was safe and appropriate in all the circumstances for the substantive hearing to proceed in the absence of the Respondent.

Factual Background

17. The Respondent was born on 27 August 1955 and was admitted to the Roll of Solicitors on 1 May 1980. At the material time, the Respondent practised in partnership under the style of Ellis & Fairbairn Solicitors ("the firm") of 26 Old Brompton Road, London SW7 3DL. Between 1997 and 31 January 2004, the Respondent practised in partnership with Ms Angela Robbins ("Ms Robbins"). Between 1 February 2004 and 31 January 2005, the Respondent practised in partnership with Mr PM, then as a sole practitioner between 31 January 2005 and 28 February 2005 and thereafter in partnership with Mr F and Mrs M.

18. On 13 April 2005 and on various dates thereafter a Forensic Investigation Officer ("FIO") of the Applicant, attended the offices of the Respondent's firm in order to carry out an inspection. The FIO produced a Forensic Investigation ("FI") Report dated 18 May 2006.

Allegations 1.1 - 1.6

19. The Child of Achievement Awards ("COAA") charity was created in 1980. The COAA became a charity in 1988 and a Declaration of Trust was created and dated 30 June 1988; this contained details of the original trustees of which the Respondent was one. Changes occurred which meant that from the mid-1990's, the three remaining trustees were the founder trustee, Ms JF, Ms JF's mother and the Respondent.

20. In a Report ("the Report") prepared by the Charities Commission of an Inquiry into the Child of Achievement Awards Trust ("the Charity"), it stated that Charity Trustees may not receive any benefit from the position of trust, unless it was expressly authorised by the court, the Commission or in the charity's own governing document. The Commission detected that some payments made out of the charitable funds fell outside the scope of remuneration provisions contained in the Charity's Trust Deed. The Report detailed payments made to, or for the benefit of, the Respondent which related to unauthorised payments made to the Respondent in respect of private healthcare insurance.

21. The Report also detailed the Respondent's firm having been paid for work undertaken on behalf of the Charity. At the material time when such payments were made, the Respondent and Ms JF, who represented two of the three trustees of the Charity, were in a relationship.

Allegation 1.8

22. This allegation related to a client ledger and a file conducted by the Respondent in his capacity as a partner in Ellis & Fairbairn in which he acted on behalf of Ms JF in relation to various transactions relating to 45 Hyston Drive and a property in Florida which had been purchased in the name of Ms JF and the Respondent. The ledger also recorded the raising, and payment, of invoices in respect of work undertaken for the COAA charity and the client ledger account was also utilised to record the receipt of funds from the charity. There were a number of receipts of money into the client account for which, at the time of the inspection, the Respondent could not provide a full explanation.

Allegations 1.1, 1.3 and 1.7

23. Whilst staff within the Respondent's firm carried out work on behalf of the Libyan Embassy, the retainer from the point of view of payment was between the Libyan Embassy and the Respondent personally. There was no suggestion that the Respondent had made the arrangement clear to his partners or made any attempt to ensure that his partners derived their share of the financial benefit of the retainer paid to the Respondent by the Libyan Embassy in a situation where the Libyan Embassy was a client of the firm.

24. By letters dated 27 June 2006, a copy of the first FI Report was sent to the Respondent and also to Mr PM and Ms Robbins. By letter of 28 June 2006 Mr PM responded to the Law Society and Ms Robbins replied by two letters dated 9 July 2006. Having requested an extension of time in which to respond, the Respondent

provided his observations on the first FI Report and the letter of 28 June 2006, under cover of a letter from him dated 2 August 2006. The Respondent sent a further letter containing additional information under cover of his letter dated 18 August 2006.

25. The Law Society wrote to Ms Robbins and the Respondent on 21 September 2006 raising further enquiries. Ms Robbins replied by letter dated 28 September 2006. On 11 October 2006 the Respondent wrote to the Law Society and indicated that he was suffering from an illness and was undergoing treatment but he wrote again on 20 October 2006 and made further observations. By letter dated 7 November 2006, the Law Society requested further information from the Respondent and he replied by letter dated 1 December 2006.

26. By letters dated 9 January 2007, the Respondent, Ms Robbins and Mr PM were informed that the matter had been referred for formal adjudication. By a decision of 1 March 2007, the Adjudicator referred the conduct of the Respondent to the Tribunal and this was communicated to the Respondent, Ms Robbins and Mr PM by letters dated 6 and 7 March 2007.

Allegations 1.9 - 1.11

27. A decision dated 28 January 2009 granted the Respondent a practising certificate for the practice year 2008/2009 subject to conditions that:

> "1. He is not a sole principal or sole director of an incorporated or unincorporated legal practice:
>
> 1.2 he is not a principal, director or member of an incorporated or unincorporated legal practice where all the other principals, directors or members:
>
> 1.2.1 have less than three years:
>
> 1.2.1.1 post admission experience practising as a solicitor; or
>
> 1.2.1.2. post registration experience practising law as an REL or RFL in England and Wales, in a practice regulated by the Solicitors Regulation Authority; unless the arrangements have first been approved by the Solicitors' [sic] Regulation Authority;
>
> 1.2.2 are incorporated legal practices of which he is a sole director; and
>
> 1.3 to inform any other principal, director or member or prospective principal, director or member with Mr Phillips of this decision".

28. By letter dated 18 May 2009, the Applicant wrote to the Respondent and indicated that it had come to its attention that the Respondent's fellow partner, Ms A had ceased to be a partner at the Respondent's firm on 17 April 2009 which suggested that, as from that date, the Respondent had been acting as a sole principal and thereby in

breach of the conditions attached to his practising certificate. The Respondent was requested to provide a satisfactory explanation within seven days of 18 May 2009. The Respondent did not reply. By letter of 27 May 2009, the Applicant wrote again to the Respondent and requested he respond by 4pm on 1 June 2009.

29. On 28 May 2009, a second FIO attended at the Respondent's office and asked him to clarify the position regarding his former partner, Ms A who had resigned on 17 April 2009, four days before the Second FIO had first attended on the Respondent at his office on 21 April 2009. The Respondent told the FIO that he had only received Ms A's resignation letter of 17 April 2009 after 21 April 2009. In the second FI Report dated 8 June 2009, the Respondent's account of this directly conflicted with a letter from Ms A dated 9 July 2009.

30. The Respondent by letter dated 29 May 2009 informed the Applicant that as from 1 June 2009, Mr PVK would be joining the firm as a partner. By letter dated 1 June 2009 the Applicant raised further queries in respect of the proposed partnership of Mr PVK and requested a reply within seven days of that letter. By letter dated 4 June 2009 the Respondent answered the questions raised by the Applicant and provided details of Mr PVK's experience. By letter dated 12 June 2009 the Respondent sent the Applicant a copy of his letter to Mr PVK of 28 May 2009 which confirmed his appointment as a salaried partner of the firm as from 1 June 2009 and indicated that they had already discussed the terms and conditions of his appointment.

31. By letter dated 30 June 2009 the Applicant wrote to the Respondent and enquired about a series of matters which included issues surrounding compliance with the condition attached to the Respondent's practising certificate.

32. By letter dated 15 July 2009 the Respondent stated that he understood that Mr PVK had already written to the Applicant and as a result, no substantive response had ever been received from the Respondent relating to "Practising Arrangements" as raised in the Applicant's letter of 30 June 2009.

33. By letter dated 30 June 2009, the Applicant wrote to the Respondent's former partner, Ms A and invited her to provide an explanation in relation to various aspects of the running of the practice and also to provide her account of the circumstances of her resignation as a partner of the firm. Ms A replied by letter dated 8 July 2009 from which it was clear that the Respondent had been made aware of Ms A's resignation on 17 April 2009.

34. By letter dated 30 June 2009, the Applicant wrote to Mr PVK and asked him questions in relation to his role within the Respondent's firm. Mr PVK replied by letters dated 10 July 2009 and 17 July 2009 and enclosed a draft Partnership Agreement. It was evident from that correspondence that at no stage had Mr PVK considered himself to be a partner in the Respondent's firm.

35. By letter dated 21 July 2009, the Applicant asked for further information from Mr PVK, in particular in relation to a letter from the Respondent to Mr PVK dated 28 May 2009 and whether Mr PVK was aware that the Respondent had amended the letterhead to show Mr PVK as a partner. Mr PVK replied by letter dated 27 July 2009; he had responded to the Respondent's letter dated 28 May 2009 and had indicated that

due diligence would have to be completed. He had not been aware as at 12 June 2009 that the Respondent had included him on the firm's letterhead, as shown by the letter dated 28 May 2009.

36. By letter dated 21 July 2009, the Applicant asked the Respondent for an explanation of the apparent contradiction between what he had said to the Applicant and the information supplied by Mr PVK as to his partnership status. There was no reply from the Respondent.

37. By letter dated 12 August 2009, the Applicant wrote again to the Respondent and indicated that the matter was being referred for formal adjudication and asked for any representations to be made on or before 19 August 2009. There was no reply from the Respondent.

38. It subsequently became known to the Applicant that on 10 August 2009, the Respondent had been adjudicated bankrupt. That bankruptcy had been annulled on 14 August 2009.

39. On 24 August 2009 the Applicant intervened into the Respondent's firm.

Allegations 1.9 and 1.12 - 1.14

40. Following authorisation for the investigation of the books of account and other documents of the firm, arrangements were made for the investigation to be commenced on 20 April 2009.

41. The second FI Report dated 8 June 2009 outlined the difficulties experienced by the second FIO in carrying out the investigation. This included an abortive trip to the Respondent's office on 20 April 2009.

42. The FIO returned to the Respondent's office on 21 April 2009 and met with the Respondent and carried out an initial interview. The Respondent endeavoured to outline difficulties he had experienced with his book keeper but it was evident that the Respondent had no idea of the financial status of the firm and he was not in a position to produce to the FIO any books of account or other documents for inspection. The interview was concluded on the basis that the Respondent would contact the FIO as soon as the up-to-date position was known with regard to the whereabouts of his book keeper.

43. Over four weeks elapsed before the Respondent made contact with the FIO on 22 May 2009, the FIO having left messages with the Respondent's secretary, on his office telephone and mobile telephone. The Respondent indicated that he had been forced to make alternative arrangements with regard to book keeping. The FIO arranged to visit the Respondent's offices on 27 May 2009. On the previous day the Respondent stated that his office had been the subject of a burglary when various financial items including petty cash, cheque books and paying in books had been taken.

44. The meeting was postponed until 28 May 2009 at which time the Respondent informed the FIO that a new book keeper had been appointed to attend the firm on

Wednesdays and Fridays of each week. The new book keeper was not present on 28 May 2009 and the Respondent was unable to provide the FIO with any books of account for investigation, nor could he offer any explanation for suggesting that the FIO attend on a day when he knew that the new book keeper would not be in attendance.

45. The FIO indicated that he would return to the Respondent's office on Monday, 1 June 2009 and requested the Respondent to keep him updated. The Respondent contacted the FIO late on 28 May 2009 and indicated that he had not been able to speak with his newly appointed book keeper, Mrs J, but he assured the FIO that he would contact Mrs J and the FIO on the following day, 29 May 2009. When the FIO had not heard from the Respondent he telephoned the office to be told that the Respondent had not been in the office that day, nor had Mrs J.

46. The FIO telephoned the office later on Friday, 29 May 2009 and was informed that both the Respondent and Mrs J had been in the office earlier that day, contrary to the information provided earlier. The FIO was told that the Respondent was involved on client matters on 1 June 2009 and was asked whether it would be possible for the Respondent to contact the FIO on 2 June 2009. The FIO said that the Respondent had to contact him on 1 June 2009.

47. On 29 May 2009, when the FIO had been told that the Respondent had/had not been in the office, the Respondent had faxed a letter to the FIO which enclosed a copy of the letter to Ms L of the Applicant which confirmed the appointment of Mr PVK as the new partner and Mrs J as the new book keeper as from 1 May 2009.

48. The FIO did not receive any telephone call from the Respondent on 1 June 2009. The FIO attended the Respondent's office on the morning of 2 June 2009 and was told that the Respondent would not be there until the afternoon. Despite receiving a message from the Respondent's office that the Respondent would contact the FIO, he failed to do so despite the FIO leaving various messages on the Respondent's mobile telephone and at the office. The last message left by the FIO on 2 June 2009 was that he would be attending the Respondent's office on Wednesday, 3 June 2009 to meet with the book keeper Mrs J. Later on 2 June 2009, the Respondent contacted the FIO to say that Mrs J would not be attending the firm's offices on 3 June 2009 but would be in attendance on 5 June 2009.

49. On 3 June 2009 the FIO wrote to the Respondent and stated that he would attend on 5 June 2009 in order to meet the new book keeper and the new partner, Mr PVK and to be provided with up-to-date books of account. On 5 June 2009 the FIO attended the Respondent's office at 10.30am and, whilst on the telephone, the Respondent asked the FIO whether he had received a faxed letter. The FIO said that he had not. The letter in question had requested another postponement of the meeting and stated that the book keeper, Mrs J, was not in attendance. The FIO confirmed that he was drawing the investigation to a close and would be reporting that he had not received an appropriate level of cooperation from the Respondent.

50. The Respondent indicated that he would write to the FIO the following week to provide an explanation but no such letter was received.

51. The Applicant wrote to the Respondent by letter dated 30 June 2009 and invited the Respondent to give an explanation with regard to, and requested in writing, the production of up-to-date books of account but no substantive response was ever received.

52. As a consequence of both the content of the second FI Report and the allegation that the Respondent had acted in breach of his practising certificate conditions, it was concluded that there were sufficient grounds for intervention into the firm and the decision to intervene was made on 20 August 2009.

Witnesses

53. The FIOs, Mr Cary Whitmarsh and Mr Monish Dhanda and Ms Angela Robbins.

54. Mr Whitmarsh and Mr Dhanda were sworn in to evidence and confirmed the truth of their respective FI Reports. Both FIOs said that the outline of events by Mr Havard on behalf of the Applicant was correct and they had nothing to add.

55. In response to a question from Mr Havard, Mr Dhanda confirmed that he had made a number of attempts to carry out his FI investigation. He said that no books of account had ever been produced by the Respondent and he had therefore been unable to carry out any investigation at all. Mr Dhanda confirmed that he had not met either of the book keepers of the firm.

56. In relation to the meeting on 5 June 2009, Mr Dhanda said that he had met Mr PVK. He said that he had seen a gentleman waiting outside of the Respondent's premises and he had spoken to him; it had been Mr PVK. He said that the only other contact he had had with Mr PVK had been when he asked Mr PVK and the Respondent to be present when he advised them that he was terminating the investigation.

57. Mr Dhanda acknowledged that Mr PVK had asked him the reason for his visit and he had told Mr PVK that he could not give the reason for the visit. Mr Dhanda told the Tribunal that Mr PVK had appeared shocked when he had learnt of the forensic investigation.

58. Ms Robbins was sworn in to evidence and confirmed the truth of her witness statement and that she had nothing to add or correct in relation to Mr Havard's outline. She confirmed that she had been a partner of the firm with the Respondent between 1997 and 2004.

59. In relation to the Respondent's Response to the Rule 5 Statement, Ms Robbins said that she had seen this and had had an opportunity to read it. She said that in relation to the Libyan Embassy and the Respondent's comments in his Response, he had not been truthful in so far as he had said that Ms Robbins had been aware of the arrangement; she said that the Respondent had not said anything to her about the payment arrangement between him and the Embassy.

60. Ms Robbins told the Tribunal that she had been aware of the retainer between the Libyan Embassy and the firm but that she had had no idea that the fees were paid direct to the Respondent. Ms Robbins said that she and the Respondent had had their

own roles within the firm; his had included collecting the rent and collecting the fees from the Libyan Embassy and she had trusted him to do so.

Findings as to Fact and Law

61. **Allegation 1.1: He has acted in a way which was likely to compromise or impair his independence and/or his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990;**

Allegation 1.2: He has acted in a way which was likely to compromise or impair his duty to act in the best interests of the client contrary to Rule 1(c) of the Solicitors' Practice Rules 1990;

Allegation 1.3: He has acted in a way which was likely to compromise or impair his own good repute and/or that of the solicitors' profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990;

Allegation 1.4: In his capacity as a Solicitor-Trustee of a charity, he personally received payments which were not authorised by a court, the Charities Commission or the charity's own governing document;

Allegation 1.5: He allowed payment of fees by a charity of which he was a Trustee to the firm of which he was a partner, Ellis & Fairbairn, when such fees were unauthorised either by a court, or the Charity Commission, and was in breach of terms of the charity's governing document;

Allegation 1.6: He acted in a situation where there was a conflict of interest or a significant risk of a conflict of interest;

Allegation 1.7: He has received personal payments from a client of the firm in which he was a partner, Ellis & Fairbairn, in respect of work undertaken by his firm, without the knowledge of the other partners in the firm;

Allegation 1.8: He made, or permitted the improper use of a client account for a series of payments to a third party in breach of Rule 15 of the Solicitors' Accounts Rules 1998;

Allegation 1.9: He conducted himself in a manner which was not consistent with his duty to act with integrity and/or he behaved in such a way that was likely to diminish the trust the public placed in him or the legal profession contrary to Rules 1.04 and 1.06 of the Solicitors' Code of Conduct 2007;

Allegation 1.10: He has acted in breach of the conditions attached to his Practising Certificate for the practising year 2008/2009;

Allegation 1.11: He misled the SRA by stating that Mr PVK had been appointed a partner in the firm of Ellis & Fairbairn which was not true;

Allegation1.12: He has failed to co-operate with the SRA in the course of its investigation in breach of Rule 20.05 of the Solicitors' Code of Conduct 2007;

Allegation 1.13: He has failed to maintain proper books of account in breach of Rule 32 of the Solicitors' Accounts Rules 1998;

Allegation 1.14: He has failed to produce, on request, any records, papers, financial accounts and other documents necessary to enable preparation of a Report on Compliance with the Rules in breach of Rule 34 of the Solicitors' Accounts Rules 1998.

Submissions on behalf of the Applicant

61.1 Mr Havard referred the Tribunal to the Rule 5 Statement and the Supplementary Rule 7 Statement upon which he relied. He confirmed that he had served upon the Respondent and his former Solicitors the requisite Civil Evidence Act Notices and that he had served them with the Witness Statement of Ms Robbins.

61.2 Mr Havard submitted that there were three areas of allegations:

Allegations 1.1 - 1.6

61.3 Mr Havard referred the Tribunal to allegations 1.1, 1.2 and 1.3 of the Rule 5 Statement and said that all three related to core duties. He said that the Respondent's Response denied that he had breached these. Mr Havard referred to allegation 1.4 which stated:

> "In his capacity as a Solicitor-Trustee of a charity, he personally received payments which were not authorised by a court, the Charities Commission, or the charity's own governing document".

61.4 Mr Havard said that this allegation appeared to have been partially admitted by the Respondent in his Response and that by his conduct pertaining to allegation 1.4, Mr Havard submitted that the Respondent had breached the core duties of integrity, acting in the clients' best interests and that he had compromised or impaired his own good repute and that of the profession (allegations 1.1, 1.2 and 1.3).

61.5 Mr Havard referred the Tribunal to the First FI Report which dealt with the COAA matter. In relation to the Declaration of Trust dated 30 June 1988 for the COAA Mr Havard said that this had been drafted by the Respondent's firm and that he had been a trustee of the Charity.

61.6 As a result of an inquiry by the Charities Commission in to the COAA, Mr Havard said that a Report had been prepared which stated:

> "5. 'Child of Achievement Awards' was created in 1980 by a partner in a public relations business ("the founder trustee"). In 1988 the charity was created to provide a charitable framework for the operation. At an awards ceremony held annually it recognised the special achievements of 150 children and therefore provided an inspiration to many more. It has also provided grants to improve the quality of life to those children at greatest disadvantage.

> 6. At the time of registration the charity had five trustees – the founder trustee and her then husband, her mother and two solicitors who were partners in the same firm. In the mid-1990s one of the solicitors resigned, as had the husband of the founder trustee. Thus, the three remaining trustees were the founder trustee, her mother and a solicitor trustee".

61.7 Mr Havard said that the three remaining trustees had been Ms JF, her mother and the Respondent. He said that in the course of routine monitoring, it had been identified that the trustees had received payments from the Charity, none of which had been authorised by the court, the Charities Commission or the Charity. Mr Havard referred the Tribunal to the provisions in the Declaration of Trust for payments to the trustees by way of a charging clause and remuneration. He said that there had to be a minimum of at least three trustees for payment to be made.

61.8 Mr Havard said that the Report of the Charities Commission had also identified benefits received by the three trustees:

> "The Commission also confirmed that all three trustees had received unauthorised benefits in the form of healthcare insurance paid for by the charity for the three years ending 31 March 2001. The total amount by which the trustees benefited was £12,672".

61.9 The Charity's accountant had written to the Charity by letter dated 2 March 2001 and had advised that the salary and healthcare benefits were unauthorised. Mr Havard acknowledged that these monies had subsequently been repaid by the Respondent and Ms JF but he submitted that the Respondent had improperly benefited from his position as a trustee.

61.10 Mr Havard said that the Respondent's firm had also received payment of fees, which the Report referred to:

> "18. The solicitor trustee's firm acted on behalf of the charity for many years without charge. However, during the inquiry his firm issued invoices and received £10,000 plus VAT for services supplied to the charity relating to work done in relation to the Commission's initial evaluation of its concerns and for some other unrelated work".

61.11 Mr Havard referred the Tribunal to the two invoices rendered by the Respondent's firm to the Charity, dated 14 May 2002 respectively. He said that neither of the invoices had detailed narrative and one of the invoices referred to "Partner engaged 29 hours @ £250 per hour" which amounted to profit costs of £7,250 for a four month period. Mr Havard said that no indication had been given of what work had been undertaken.

61.12 Mr Havard said that the Charity's governing document contained a provision that permitted solicitor trustee's to charge for professional services but that co-trustees had to make any decision. Mr Havard said that the Commission had found that the decision to allow payment had been made by the founder trustee (Ms JF, the Respondent's life partner), who had been in a position of conflict of interest and

should not have participated in the decision, and her mother. The Charity's governing document required that all decisions be made by a minimum of three trustees.

61.13 Mr Havard said that the Respondent had admitted that he had acted in a conflict situation (allegation 1.6), and Mr Havard submitted that this established that he had acted contrary to Rules 1(a), 1(c) and 1(d) of the Solicitors' Practice Rules 1990 ("SPR") and therefore in breach of allegations 1.1, 1.2 and 1.3. He said that the Respondent had also admitted/partially admitted allegations 1.4 and 1.5).

Allegation 1.8

61.14 Mr Havard referred the Tribunal to allegation 1.8 in relation to improper use of client account by the Respondent. He referred to the ledger in the name of "JF" and that this had been Ms JF, the Respondent's life partner. The ledger referred to "P/O 45 Hyston Drive Weybridge". Mr Havard said that the first FIO had discovered during his investigation at the firm that although the ledger referred to Hyston Drive, it also related to payments and receipts for a property in Florida purchased by Ms JF and the Respondent and payments of invoices in relation to the COAA.

61.15 Mr Havard referred the Tribunal to the first FI Report dated 18 May 2006. He said that the first FIO had indentified from the client ledger and file that on 1 November 2000, a sum of £6,329.56 had been paid as a deposit for the Florida property. On 29 March 2001 a further sum of £11,732.92 had been paid to complete the purchase of the Florida property. Mr Havard said that the client ledger recorded nine debits thereafter which totalled £13,332.71 between 26 June 2001 and 23 July 2002 in respect of mortgage payments on the Florida property.

61.16 Mr Havard said that the first FI Report referred to a conversation between the first FIO and the Respondent during the course of which the Respondent had said that due to problems with transferring mortgage payments via Ms JF's personal account, he had agreed to transfer the funds through his firm's client bank account.

61.17 Mr Havard submitted that this had been an improper use of the client account by the Respondent. He referred the Tribunal to the notes to Rule 15 of the Solicitors' Accounts Rules 1998 ("SAR"), note (ix) which referred to the case of Wood v Burdett (Case Number 8669/2002). In that case, Mr Havard said that the Tribunal had found that it was not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they were clients of the firm or not. Mr Havard said that the Respondent had accepted that this was right.

Allegations 1.1, 1.3 and 1.7

61.18 Mr Havard said that these allegations related to the Libyan Embassy matter.

61.19 He informed the Tribunal that at the time the Rule 5 Statement had been drafted, the Applicant had not had the Witness Statement of Ms Robbins. She had been a partner with the Respondent in the firm and had been informed that the Libyan Embassy was a client of the firm but she had not known that payment of fees by the Embassy for work undertaken by the firm, including by the Respondent and other fee earners, were paid direct to the Respondent.

61.20 Mr Havard said that by letter dated 18 August 2006, the Respondent had replied to the Regulatory Investigations case worker and had attached a document headed "Comments on Law Society Letter dated 27 June 2006". Mr Havard referred the Tribunal to paragraph 18 of that document which stated:

> "18. The Embassy has always been a client of the firm but under the Partnership Agreement I was entitled to receive the personal retainer".

61.21 Mr Havard then referred the Tribunal to a later letter dated 20 October 2006 from the Respondent to the Regulatory Investigations case worker which stated:

> "6. As previously stated, this was an oral agreement".

61.22 Mr Havard informed the Tribunal that this related to the "Partnership Agreement", which had not been documented and in relation to which Ms Robbins in her evidence had said that she had not known about the personal retainer. Mr Havard told the Tribunal that the Libyan Embassy matter had caused Ms Robbins substantial personal difficulties with the HM Revenue and Customs from her time as a partner of the Respondent at the firm and she had detailed in her Witness Statement the resulting financial losses she had suffered.

61.23 Mr Havard said that there was compelling evidence that the arrangement with the Libyan Embassy had only been known to the Embassy and the Respondent and that he had not disclosed the arrangement to Ms Robbins despite the fact that she had been a partner in the firm. Mr Havard referred the Tribunal to a letter from the Embassy to the Respondent at the firm's address dated 7 February 2002 which attached a cheque dated 25 January 2002 in the sum of £1400 and had been made out to the Respondent personally. Mr Havard said that when this had been queried by Ms Robbins, the Embassy had written again to the Respondent on 8 March 2002 and had said that "... cheque number 031298 in the sum of £1,400.00 was sent to you in error".

61.24 Mr Havard submitted that allegation 1.7 had clearly been made out by the Respondent having received personal payments from a client (the Embassy) for work undertaken by the firm without the knowledge of the other partners in the firm. As a result, Mr Havard said that the Respondent's conduct had shown a serious lack of integrity and had brought both him and the profession in to disrepute.

<u>Allegations 1.9, 1.10 and 1.11</u>

61.25 Mr Havard said that in the course of correspondence with the Applicant regarding the breach by the Respondent of his practising certificate conditions, he had misled the Applicant as to the correct position regarding the status of Mr PVK who the Respondent had held out to be a partner in the firm, when Mr PVK had never been a partner in the firm.

61.26 Mr Havard referred the Tribunal to the conditions imposed on the Respondent's practising certificate for the practice year 2008/2009 which stated:

"1. he is not a sole principal or sole director of an incorporated or unincorporated legal practice:

1.2 he is not a principal, director or member of an incorporated or unincorporated legal practice where all the other principals, directors or members:

1.2.1 have less than 3 years:

1.2.1.1 post admission experience practising as a solicitor; or

1.2.1.2 post registration experience practising law as an REL or RFL in England and Wales, in a practice regulated by the Solicitors' Regulation Authority; unless the arrangements have first been approved by the Solicitors Regulation Authority;

1.2.2 are incorporated legal practices of which he is sole director; and

1.3 to inform any other principal, director or member or prospective principal, director or member with Mr Phillips of this decision".

61.27 Mr Havard informed the Tribunal that Ms A had been a partner at the firm with the Respondent but that in May 2009, it had come to the Applicant's notice that Ms A had ceased to be a partner at the firm as from 17 April 2009. Mr Havard said that this had suggested therefore that as from that date, the Respondent had been in breach of his practising certificate conditions. He had been asked by the Applicant to provide an explanation by letter dated 18 May 2009 but had failed to reply to that and the Applicant had written again to the Respondent on 27 May 2009.

61.28 Mr Havard said that following this, the second FIO had attended at the Respondent's firm on 28 May 2009. He had already attended on 21 April 2009, four days after Ms A had resigned but the Respondent had not mentioned Ms A's departure at that time. Mr Havard said that the second FIO had asked the Respondent in May why he had not mentioned that Ms A was no longer a partner at the firm and the Respondent had said that he had not known by 21 April 2009 that Ms A had left as he had not by then received her letter of resignation.

61.29 Mr Havard said that this had to be untrue. He referred the Tribunal to the second FI Report in this regard and to Ms A's letter to the Applicant dated 8 July 2009, which stated:

"2. I submitted my letter of resignation to Mr Phillips on the 17th of April 2009. Mr Phillips acknowledged receipt of my letter of resignation and email on the 17th of April 2009. Therefore, I do not know why he did not disclose this matter to the Investigating Officer on the 21st of April 2009.

3. On the 17th of April 2009 Mr Phillips was absent from the office. I left a hard copy of my letter of resignation on Mr Phillips' desk and forwarded an electronic copy to his personal email address. I also informed the receptionist,

> Ms W, of my resignation. Subsequently later that day, Mr Phillips contacted me on my personal mobile phone to discuss my letter of resignation...".

61.30 Mr Havard said that this directly conflicted with the Respondent's version of events and submitted the Respondent had misled the second FIO as to the true position regarding his knowledge of Ms A's resignation on 17 April 2009.

61.31 In relation to the purported appointment of Mr PVK as a partner, Mr Havard referred the Tribunal to a letter from the Respondent to the Applicant dated 29 May 2009 which stated:

> "… Obviously I am aware of the restrictions based on my Certificate. To this end I am pleased to confirm to you than (sic) from 1st June 2009 VK (Mr PVK), who has been qualified for more than 25 years, joins this firm as a partner".

61.32 Mr Havard said that by this date, Ms A having resigned on 17 April 2009, the Respondent had been in breach of the conditions on his practising certificate for approximately 6 weeks.

61.33 Mr Havard said that the Applicant had replied to the Respondent on 1 June 2009 requesting further information in relation to Mr PVK. The Respondent had replied by letter dated 4 June 2009 and Mr Havard referred the Tribunal to the Respondent's hand written annotation on the letter showing "V Kelly" and another partner's name having been deleted. Mr Havard said that the Respondent had answered the Applicant's questions including "Yes" that Mr PVK would be a signatory to the client account.

61.34 Mr Havard informed the Tribunal that the Respondent had written again to the Applicant by letter dated 12 June 2009 which stated:

> "Further to my previous letter, I enclose herewith our copy of the letter of appointment for Mr K as a partner to this Firm".

61.35 Mr Havard said that the Respondent had also written to Mr PVK by letter dated 28 May 2009 which stated:

> "This letter is to confirm formally your appointment as a salaried partner of this Firm as from the 1st June 2009".

61.36 The Tribunal noted that the letter confirming Mr PVK as a partner and dated 28 May 2009 already recited Mr PVK's details on the letterhead as a partner.

61.37 Mr Havard said that the Applicant had subsequently written to Mr PVK on 30 June 2009 and had sought clarification of the information provided by the Respondent as to Mr PVK's partner status. The Applicant also sent Mr PVK a copy of the second FI Report. Mr Havard said that Mr PVK acknowledged the Applicant's letter by a reply dated 10 July 2009 and sent a substantive reply to the Applicant by letter dated 17 July 2009, which stated:

> "… When Mr Phillips initially discussed with me the prospect of partnership he intimated that his accounting year ran from 1st June until 31st May. After making enquiries of his accountant I understood that this was not correct.
>
> 6. It would appear that the firm has continued to function. Since the resignation of SA (Ms A)…
>
> I appreciate the need to investigate this matter and am of the opinion that Mr Phillips has due to his enthusiasm "jumped the gun" with regard to the partnership claiming (sic) had been entered into as from 1st June.
>
> The position is that although Mr Phillips has been keen for me to join him as a salaried partner and the terms had been discussed in outline the details of such have not been agreed. The terms of such have not been implemented and I do not think could be implemented at the present time".

61.38 Mr Havard said that Mr PVK's responses to questions from the Applicant were in direct conflict with the Respondents replies to the Applicant in relation to Mr PVK joining him as a partner. For example, Mr Havard said that Mr PVK had stated that he was not a signatory to the office or client account of the firm as yet.

61.39 Mr Havard submitted that Mr PVK had never been a partner in the firm despite all that had been said by the Respondent to the Applicant and that the Respondent had misled the Applicant. Mr Havard said that in its totality, the Respondent had acted without integrity and his conduct had been such as to have brought both him and the profession into disrepute. Mr Havard said that the conditions attached to the Respondent's practising certificate had been to afford protection to the public in relation to operation of the firm. In addition, Mr Havard said that there was no indication that the Applicant had ever approved Mr PVK's employment to satisfy the conditions. In response to a question from the Tribunal, Mr Havard said that Mr PVK would have had to be a partner, director or member to have satisfied the conditions and that his being a consultant would not have been sufficient.

<u>Allegations 1.9, 1.12 - 1.14</u>

61.40 Mr Havard said that the second FI investigation had been arranged to commence on 20 April 2009. Mr Havard said that the second FI Report reflected the frustration by the Respondent of the second FI investigation and the hurdles which the second FIO had encountered at the very outset of his investigation which had included an abortive trip to the Respondent's offices on 20 April 2009.

61.41 Mr Havard said that at each step, there had been prevarication by the Respondent and delaying tactics which had prevented the second FIO from concluding his investigation of the firm's financial compliance, including whether client monies were safe. Mr Havard said that when the second FIO had met the Respondent on 21 April 2009, it had become apparent that whilst the Respondent endeavoured to outline difficulties he had experienced with his book keeper, he had had no idea of the financial status of the firm, nor had he been in a position to produce to the second FIO any books of account or other documents for inspection.

61.42 Mr Havard said that four weeks elapsed before the Respondent made contact again, with the FIO on 22 May 2009, the FIO having been forced to leave messages with the Respondent's secretary, on his office telephone and mobile telephone. The Respondent had informed the FIO that he had been forced to make alternative arrangements with regard to bookkeeping and the FIO had arranged to visit the Respondent's offices again on 27 May 2009. Mr Havard informed the Tribunal that on the previous day, the Respondent had stated that his office had been burgled and various items had been taken, including petty cash, cheque books and paying in books.

61.43. Mr Havard said that as a result of that, the Respondent's meeting with the FIO had been postponed until 28 May 2009. He said that the Respondent had informed the FIO that a new book keeper had been appointed but the new book keeper had not been present on 28 May 2009 and despite some five weeks having elapsed, Mr Havard said that the Respondent had been unable to provide the FIO with any books of account for investigation nor offer any sensible explanation for having suggested that the FIO attend the office on a day when the Respondent must have known that the book keeper would not be in attendance.

61.44. Mr Havard said that the FIO arranged to return to the Respondent's office on 1 June 2009 and asked the Respondent to keep him updated. Subsequently, the FIO had been informed that the Respondent would be involved on client matters on 1 June 2009 and had been asked whether it would be possible for the Respondent to contact him on 2 June 2009. The FIO requested that the Respondent contact him on 1 June 2009.

61.45 Mr Havard informed the Tribunal that the FIO had not received any telephone call from the Respondent on 1 June 2009. He said that the FIO had attended the Respondent's office on the morning of 2 June 2009 and had been told that the Respondent would not be there until the afternoon. The FIO had requested that the Respondent contact him but he had failed to do so. Mr Havard said that the FIO's last message for the Respondent had informed him that he would be attending the Respondent's office on 3 June 2009 to meet with the book keeper, Mrs J. Later on 2 June 2009, the Respondent had contacted the FIO to say that Mrs J would not be at the firm on 3 June 2009 but would be in attendance on 5 June 2009.

61.46 Mr Havard said that on 5 June 2009, the FIO had attended the Respondent's office and, whilst on the telephone, the Respondent had asked the FIO whether he had received a faxed letter which the FIO said he had not. Mr Havard referred the Tribunal to the faxed letter from the Respondent to the FIO dated 4 June 2009 and submitted that this had been further prevarication on the part of the Respondent in an effort to postpone the meeting of 5 June 2009, including that the book keeper would again not be in attendance.

61.47 Mr Havard said that it had been at that point that the FIO confirmed that he was drawing the investigation to a close and that he would be reporting that he had not received an appropriate level of cooperation from the Respondent.

61.48 Mr Havard informed the Tribunal that despite the Respondent having indicated that he would write to the FIO following the meeting on 5 June 2009, no such letter had been received.

61.49 Mr Havard said that as a consequence of both the content of the second FI Report dated 8 June 2009 and the allegation that the Respondent had acted in breach of his practising certificate conditions, it had been concluded that there were sufficient grounds for intervention into the firm and Mr Havard referred the Tribunal to the Intervention Decision of 20 August 2009.

61.50 Mr Havard submitted that, having regard to the chronology of events and the entirety of the issues in the case, there had been a complete lack of cooperation by the Respondent with his regulator. The Respondent had ignored efforts to comply, he had misled the Applicant and in all the circumstances, he had brought the profession into disrepute. Mr Havard submitted that by his actions, the Respondent had placed client funds at risk and had resulted in the intervention into his firm and throughout, that the Respondent had acted as a person lacking in integrity.

61.51 In response to a question from the Tribunal regarding the Respondent's health, Mr Havard said that he had only become aware that the Respondent was in poor health after the decision had been made by the Applicant to refer his conduct to the Tribunal. Mr Havard said that as a result, the decision had been taken to postpone the proceedings until the Respondent's health had improved. He said that the Applicant had subsequently discovered that the Respondent had resumed work and so the proceedings had continued.

Submissions on behalf of the Respondent

61.52 None other than the Respondent's Response dated 8 September 2009 and his letter to the Tribunal dated 21 March 2012. The Respondent had admitted or partially admitted with mitigation allegations 1.4, 1.5, 1.6 and 1.8.

The Tribunal's Findings

61.53 The Tribunal applied its usual standard of proof namely beyond reasonable doubt.

61.54 The Tribunal found all of the allegations proved on the facts and on the documents. It noted that there had been admissions/partial admissions with mitigation in relation to allegations 1.4, 1.5, 1.6 and 1.8.

<u>Allegations 1.1 - 1.6</u>

61.55 The Tribunal was satisfied that the Respondent, in his position as a solicitor trustee of the COAA, had personally received payments which had not been authorised by a court, the Charities Commission or the Charity's own governing document and it accepted the content of the Charities Commission Report to which it had been referred. The Tribunal was also satisfied that the Respondent had allowed payment of fees by the Charity to his firm when such fees had not been properly authorised and in breach of the Charity's governing document.

61.56 In relation to the conflict of interest, the Tribunal accepted that there had been a conflict between the interests of the Respondent as solicitor and trustee of the Charity and that as a solicitor, he should have been aware of the conflict or the significant risk

of conflict. The Tribunal considered that his role as a solicitor set the bar even higher in those circumstances.

61.57 The Tribunal was satisfied so that it was sure that the Respondent had, by his actions, lacked integrity, not acted in his client's best interests and had compromised or impaired his own good repute and that of the profession.

Allegations 1.1, 1.3 and 1.7

61.58 The Tribunal was satisfied that the Respondent had received personal payments from a client of the firm, namely the Libyan Embassy, in respect of work undertaken by the firm but without the knowledge of the other partners in the firm. The Tribunal had had careful regard to the Witness Statement of Ms Robbins, the Respondent's former partner ,the truth of which was confirmed on oath and which the Tribunal found to be credible. It was satisfied that the Respondent had not divulged his personal arrangement with the Embassy to Ms Robbins or made clear to any of the partners what the arrangement was nor had he ensured that they received their share of the financial benefit of the retainer, which would have amounted to a substantial sum.

61.59 The Tribunal accepted that the Respondent had received payments from the Embassy on a regular basis for a number of years and did not accept as credible the letter from the Embassy dated 8 March 2002 which suggested that the cheque made payable to the Respondent for £1400 dated 25 January 2002 had been sent to him in error. The Tribunal noted that as a result of the Respondent's failure to disclose his financial arrangement with the Embassy, Ms Robbins had suffered financially and also had received tax assessments for tax on income which she had never received.

61.60 The Tribunal found that by the Respondent's conduct with regard to the Libyan Embassy matter, he had acted in a way which had compromised his integrity and his own good repute and that of the profession.

Allegation 1.8

61.61 The Tribunal was satisfied on the evidence of the client ledger produced by the Applicant and the first FI Report that the Respondent had improperly used the client bank account of the firm to make payments to third parties in breach of Rule 15 of the SAR. The Tribunal had regard to the case of Wood v Burdett which found that a solicitor cannot properly operate a banking facility for third parties, whether clients or not.

Allegations 1.9, 1.10 and 1.11

61.62 The Tribunal was satisfied that the Respondent had breached the conditions on his practising certificate and had subsequently sought to mislead the Applicant about the same. The Tribunal did not accept as credible that the Respondent had not been aware of Ms A's resignation until after the second FIO's visit on 21 April 2009. The Tribunal was satisfied that the Respondent had been aware of Ms A having resigned as at 17 April 2009 and that he had, as a result of her resignation and having taken no positive action concerning that, breached the conditions imposed on his practising certificate.

61.63 In relation to Mr PVK, the Tribunal accepted that at no time had he been or had he considered himself to have been a partner in the firm and that he had made it clear in his letter dated 17 July 2009 that whilst terms had been discussed, they had not been agreed or implemented. The Tribunal was satisfied that this had directly contradicted what the Respondent had told the Applicant and in that, he had misled the Applicant.

61.64 As a result of the Respondent's conduct, in misleading the Applicant, the Tribunal was satisfied and found that he had conducted himself in a manner which was not consistent with his duty to act with integrity and he had behaved in a way likely to have diminished the trust the public placed in him or the profession.

Allegations 1.9, 1.12, 1.13 and 1.14

61.65 The Tribunal was satisfied that the Respondent had failed to cooperate with the Applicant in the course of its investigation. The Tribunal found that the second FIO had done all he could to conduct his investigation and to meet with the Respondent on various dates but that the Respondent had prevaricated and given reasons to avoid such meetings, reasons which had ultimately not been credible.

61.66 The Tribunal was satisfied that the Respondent had had no idea of the financial status of the firm and that he did not at any time during or after the second FI investigation, produce to the Applicant his books of account or other documents for inspection. The Tribunal noted that this was despite promises to do so and a promise to write to the FIO with explanations after the final meeting on 5 June 2009.

61.67 The Tribunal found that the Respondent had exhibited a complete lack of regard for his regulator, had failed to comply with his professional obligations with regard to his regulator or to properly maintain proper books of account. The resulting failure to provide those books of account had prevented the Applicant from investigating the financial status of the Respondent's firm and therefore from establishing that client monies were properly protected in accordance with the Rules.

Previous Disciplinary Matters

62. None

Mitigation

63. None other than the Respondent's Response dated 8 September 2009 and the Respondent's letter to the Tribunal dated 21 March 2012.

Sanction

64. The Tribunal had found all fourteen of the allegations against the Respondent proved.

65. The Tribunal was concerned that the cumulative effect of the allegations was very serious. The allegations included breaches of the core duties, which underpinned the professional obligations and responsibilities of solicitors by virtue of the SPR, the Solicitors' Code of Conduct 2007 ("SCC") and the SAR.

66. The Tribunal found the core duties breaches proved such that the Respondent had not acted with integrity, he had not acted in the best interests of the client, he had compromised his own good repute and that of the profession and he had behaved in such a way as to have diminished the trust the public placed in him or the profession. The Tribunal noted that the Respondent's conduct had continued over a protracted period of time and that even after conditions had been imposed on his practising certificate, this had still not tempered the Respondent's conduct.

67. The SPR/SCC and the SAR existed to ensure that solicitors behaved with integrity, essential to their role as the client's trusted adviser and characterising all their professional dealings with the court, other lawyers and the public. When matters of concern were brought to the attention of the Applicant as the regulator, it was essential that solicitors responded in an open, prompt and cooperative manner so that the Applicant could ensure that the public was protected and the reputation of the profession maintained.

68. The Tribunal had to ensure that whatever sanction was imposed, whilst it had to be reasonable and proportionate, it also protected the public, protected the reputation of the profession and maintained the public's confidence in the profession. The Tribunal could find no redeeming features of the Respondent's conduct, which had been deliberate and had misled not only his regulator but also his fellow partners. The Tribunal found it very difficult to identify any means by which the Respondent could rehabilitate himself. As a result, and having considered all available sanctions, the Tribunal in the circumstances of this case ordered that the Respondent be struck off the Roll of Solicitors.

Costs

69. Mr Havard informed the Tribunal that he had written to the Respondent on Friday 23 March 2012 regarding costs and had informed him that if the allegations were found proved he would apply for a costs order against the Respondent. Mr Havard said that he had informed the Respondent that it was in his interests to provide both Mr Havard and the Tribunal with details of his financial circumstances.

70. Mr Havard referred the Tribunal to the Respondent's letter dated 21 March 2012 which he said gave some information about the Respondent's financial situation but had not provided any supporting documentation and Mr Havard had received no response from the Respondent in relation to his Schedule of Costs. He acknowledged that it appeared that the Respondent was in financial difficulties.

71. Mr Havard informed the Tribunal that a substantial amount of work had been undertaken in the proceedings due to the number of adjournments and the period for which the proceedings had been ongoing. He acknowledged that costs claimed for his attendance at the substantive hearing required amendment as the hearing had originally been listed for two days.

72. Mr Havard invited the Tribunal to assess the costs summarily and to allow the Applicant to liaise with the Respondent in relation to enforcement of any costs order. Mr Havard confirmed that the Applicant would take a realistic approach but he

requested that the Tribunal leave the question of payment of costs to be resolved between the Applicant and the Respondent.

73. In response to a question from the Tribunal in relation to authorities on costs and the cases of D'Souza v The Law Society [2009] EWHC 2193 (Admin) and Merrick v The Law Society [2007] EWHC 2997 (Admin), Mr Havard said that one case related to the level of costs and that in relation to enforcement, if the Tribunal made an order "not be enforced without leave", it meant that the costs incurred had to be borne by the remainder of a compliant profession and that could not be right. Mr Havard said that it was very rare for Respondents to be brought back before the Tribunal on such an order.

74. The Tribunal was satisfied that the proceedings had been properly brought and noted that as a result of the length of the proceedings, significant costs had been incurred. The Tribunal had had regard to the Respondent's letter dated 21 March 2012 and noted that no additional financial information had been provided by the Respondent. The Tribunal had also noted that although the first bankruptcy order against the Respondent had been annulled, there appeared to have been a second bankruptcy order made in October 2010 which had been discharged on 4 October 2011 as evidenced by an extract from the Individual Insolvency Register.

75. The Tribunal summarily assessed the costs and ordered that the Respondent pay costs in the sum of £32,000 inclusive of VAT and disbursements.

Statement of Full Order

76. The Tribunal Ordered that the Respondent, Karl Phillips, Solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £32,000.00 inclusive of VAT and disbursements.

Dated this 17th day of April 2012
On behalf of the Tribunal

Mr L. Gilford
Chairman