

IN THE MATTER OF PAUL JOHN DAVIS and ELAINE McGLINCHEY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Mr J N Barnecutt
Mr S Howe

Date of Hearing: 19th July 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Margaret Eleanor Bromley of TLT Solicitors, One Redcliff Street, Bristol, BS1 6TP on 6th April 2006 that Paul John Davis of PD Associates, Suite 202, 2nd Floor, The Tea Factory, 82 Wood Street, Liverpool, L1 4DQ, solicitor, and Elaine McGlinchey of PD Associates, Suite 202, 2nd Floor, The Tea Factory, 82 Wood Street, Liverpool, L1 4DQ, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against Mr Davis alone were that he had been guilty of conduct unbecoming a solicitor in that he had:

- (1) failed to appoint a litigation friend in respect of their client Ms JM;
- (2) failed to comply with an Order of the Court dated 31st March 2004 in proceedings between Ms JM and ALN Ltd;
- (3) failed to comply with an Order of the Court dated 5th July 2004 in proceedings between Ms JM and ALN Ltd;

- (4) transferred money in respect of costs from client to office account in relation to Ms JM without giving her written notification knowing that she was incapable of giving instructions, in breach of the Solicitors Accounts Rules 1998.

The allegations against both Respondents were that they had been guilty of conduct unbecoming a solicitor in that they had:

- (5) delayed in progressing their clients' matters;
- (6) failed to keep their clients informed as to the position with their claims;
- (7) failed to advise their clients to seek independent advice following their claims being struck out in the matters of Mrs M, Mrs R, Mrs W and Mr B, and following their failure to serve the writ within the limitation period in the case of Mrs Bm and Mrs Bd;
- (8) failed to provide clients with adequate costs information in breach of Practice Rule 15 and the Solicitors Costs Information and Client Care Code;
- (9) failed to operate a complaints handling procedure in breach of Practice Rule 15 and the Solicitors Costs Information and Client Care Code;
- (10) failed to deal promptly with communications relating to the matters of clients or former clients;
- (11) failed to comply with directions of the Law Society made under Section 44(B) on 16th February 2005 in the case of Mrs M; 25th May 2005 and 28th October 2004 in the case of HSBC;
- (12) failed to respond promptly or substantively to correspondence from the Law Society;
- (13) by reason of the above matters, they failed to act in their clients' best interests and have compromised the good repute of the solicitors' profession, contrary to Practice Rule 1.

By a supplementary statement of 4th December 2006 the Applicant made further allegations against both of the Respondents that they had been guilty of conduct unbecoming a solicitor in that they had:

- (14) failed to comply in full on time with decisions of the Compliance Board Adjudication Panel dated 29th March 2006;
- (15) failed to comply on time with the decision of an Adjudicator dated 25th July 2006;
- (16) failed to comply on time with Court Orders relating to payment of costs including orders of Liverpool County Court in the matters of F -v- Liverpool City Council; Y -v- Liverpool City Council, and L -v- Liverpool City Council, an Order of Salford County Court in the matter of K -v- Bury Borough Council, and an Order of Sheffield County Court in the matter of LT -v- PDA.

- (17) failed to comply with the Orders of Birmingham County Court dated 23rd November 2005, 24th March 2006 and 5th May 2006 in the matter of W -v- Birmingham City Council;
- (18) [withdrawn];
- (19) failed to respond promptly or substantively to correspondence from the Law Society;

The further allegations against Mr Davis alone were that he had been guilty of conduct unbecoming a solicitor in that he:

- (20) failed to deal promptly with a request from a client's (WW's) new solicitors (Myer Lister Price) to transfer the file of papers;
- (21) in dealing with litigation on behalf of WW:
 - (i) he delayed unduly in progressing the matter;
 - (ii) he failed to keep her informed as to the progress of her claim;
 - (iii) he failed to inform her that the claim had been struck out and an order for costs made against her.
- (22) failed to respond to correspondence from Trowers & Hamlin, thereby prejudicing his client's position.
- (23) failed to act in the best interests of his client WW.

By a further supplementary statement of 27th February 2007 the Applicant made further allegations against both the Respondents that they had been guilty of conduct unbecoming a solicitor in that they had:

- (24) failed to comply with an Order of Liverpool County Court dated 21st September 2006 that they personally pay costs assessed at £11,536.86;
- (25) in actions against Gateshead Council, they failed to act in the best interest of their clients LG, MS, VS and LS, in breach of Practice Rule 1;
- (26) failed to comply with Orders of Gateshead County Court in proceedings between TW -v- Gateshead Council that they personally pay the costs;
- (27) in proceedings against Merthyr Tydfil County Borough Council failed to act in the best interest of their clients where orders for costs had been made against their clients, in breach of Practice Rule 1;
- (28) failed to respond promptly or substantively to correspondence from the Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th July 2007 when Margaret Eleanor Bromley appeared as the

Applicant and both Respondents were represented by George Marriot, solicitor and partner in the firm of Gorvins Solicitors, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL.

The evidence before the Tribunal included the admissions of the Respondents. They had complied with the decisions referred to in allegations 14 and 15, but out of time. In these circumstances they admitted to the allegations but not that their failures amounted to conduct unbecoming a solicitor.

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

The Tribunal Orders that the Respondent Paul John Davis of PD Associates, Suite 202, 2nd Floor, The Tea Factory, 82 Wood Street, Liverpool, L1 4DQ, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 19th day of July 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Law Society's investigation.

The Tribunal Orders that the Respondent Elaine McGlinchey of PD Associates, Suite 202, 2nd Floor, The Tea Factory, 82 Wood Street, Liverpool, L1 4DQ, solicitor, be suspended from practice for the period of two years to commence on the 19th day of July 2007 and it further Orders that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Law Society's investigation.

The facts are set out in paragraphs 1 to 133 hereunder:

1. The First Respondent, Mr Davis, born in 1955, was admitted as a solicitor in 1989. The Second Respondent, Ms McGlinchey, born in 1965, was admitted as a solicitor in 1998. The names of both Respondents remained on the Roll of Solicitors.
2. At all material times the Respondents practised in partnership under the style of PD Associates at 3 Kings Dock Street, Liverpool, L1 8JU. At the date of the hearing their address was Suite 202, 2nd Floor, The Tea Factory, 82 Wood Street, Liverpool and in September 2006 the Respondents' firm's name became Amber Legal. Conditions were imposed on the Practising Certificates of both Respondents, confirmed on appeal to the Master of the Rolls, that they be permitted to practise only in employment approved by the Law Society. At the date of the hearing, the Respondents were not practising. They were in the process of dealing with the affairs of their former practice, including gathering in costs that were due to them.

Failure to appoint a litigation friend; failure to comply with Court Orders; transferring money in respect of costs in breach of the Solicitors Accounts Rules 1998

3. Mr Davis acted for the claimant, Mrs JM, in a personal injury claim against ALN Ltd, who were represented by Kennedys.
4. On 2nd June 2003 a consultant psychiatrist provided a report in which he stated that Mrs JM was incapable of managing her affairs with particular reference to conducting her own litigation and indicating that "she was in need of a litigation friend".

5. At a court hearing on 17th October 2003 the Respondents' firm was ordered to make an application to appoint a litigation friend, but the Respondents failed to do so. Subsequent hearings were adjourned as a result.
6. At hearings on 21st January 2004 and 18th February 2004 the Respondents' firm was ordered to show cause why they should not personally pay the costs of and incidental to those adjourned hearings.
7. In December 2003 the defendants had made an interim payment of £10,000. Of that sum £7,500 had been used to discharge a bill of the Respondents and £2,500 remained on the file in the form of a cheque drawn by the Respondents but not despatched to Mrs JM. Kennedys made an application for the £10,000 to be repaid to the Court Funds Office.
8. On 31st March 2004 the Respondents were ordered to pay Kennedys' agreed costs of £2,200 and to pay £10,000 to the Court Funds Office and to pay to Kennedys interest on the £10,000 by 4pm on 14th April 2004.
9. The Respondents sent a letter to Kennedys dated 2nd April which purported to enclose a cheque in the sum of £2,200 and a copy of the letter to the Court Funds Office. The cheque was not enclosed. The money had not been paid to the Court. The Respondents did not reply to a letter from Kennedys about this and Kennedys made application to the Court. Kennedys wrote again on 11th May informing them that an application had been made and on 11th June 2004 Kennedys informed the Respondents that 5th July 2004 was the hearing date. The Respondents explained the failures were due to errors in the accounts department.
10. On 5th July the Court ordered the Respondents to pay the sum of £1,241.60 in respect of Kennedys' costs of the application. On 8th July Kennedys wrote to the Respondents pointing out they had still not received their cheque for £2,200 nor had they received payment of the costs of £1,241.60.
11. On 13th July Kennedys wrote acknowledging receipt of the cheque for £2,200 and pointing out interest was due. The sum of £1,241.60 had not been paid.
12. On 20th September 2004 and 6th October 2004 the Law Society wrote to Mr Davis asking for his comments but he did not reply.
13. There had been many complaints from several clients. Seven of these were exemplified in the Rule 4 statement and brief details of another seven clients' complaints were set out in the Applicant's documents. None of these matters were in dispute and the Tribunal sets out here details of the complaint by Mrs PM, HSBC and Mrs R which provided good examples of the conduct about which there had been such complaint.
14. In March 2001 Mrs PM tripped and fell on an uneven pavement. She suffered a fractured ankle and other injuries. The Respondent, PD Associates, were instructed by Mrs PM via The Accident Group to pursue a claim on her behalf for damages.

15. On 17th August 2001 PD Associates sent to Mrs PM a retainer letter, a conditional fee agreement and a questionnaire. In the retainer letter the fee earner was identified as a named litigation executive and the hourly rate was specified as £150 plus VAT. In the conditional fee agreement the hourly rate for a litigation executive was put in at £120 plus VAT. No information was given as to the likely costs either of the whole matter or any stage of the matter. No information was given as to the amount of disbursements that would have to be incurred. From time to time the Respondents submitted Disbursement Funding Request forms to The Accident Group. In signing the form they confirmed that “the client understands that this disbursement will be added to their loan for the premium (and any other disbursements already incurred if applicable)”. The Respondents did not inform the client that any of the disbursements had been incurred.
16. On 7th September 2001 a legal expenses insurance policy was issued.
17. The Respondents wrote to the local authority, sought counsel’s advice and obtained a medical report.
18. Nearly two years after receiving instructions, on 11th July 2003 the Respondents wrote to Mrs PM with a copy of the medical report, the claim form and particulars of claim.
19. Proceedings were issued on 13th August 2003. The defendant served a defence on 25th September 2003. On 24th October 2003 the Respondents sent a copy of the defence to Mrs PM asking for her comments.
20. Mrs PM replied by letter dated 3rd November 2003 saying “I would, first of all, wish to complain at the service I am being provided with. I have noticed that unless I contact you, I do not hear of any developments in my case. This is causing me a great deal of unnecessary anxieties...”. Mrs PM concluded her letter by saying that she wished to be kept regularly informed and if this did not happen she would make complaint to the Law Society.
21. The Respondents did not reply to that letter and did not keep Mrs PM informed about the progress of her claim.
22. On 5th November 2003 the Court made an “Unless Order” requiring the claimant to file a completed allocation questionnaire by 19th November 2003. The Respondents did comply.
23. Thereafter the matter was transferred to Sheffield County Court. A directions order was made on 9th January 2004.
24. On 25th March 2004 the defendants indicated that they intended to apply to have the claim struck out as the claimant’s list of documents and witness statements had not been served.
25. On 26th March 2004 Mrs PM rang the Respondents asking someone to call her back as soon as possible. On 30th March a member of the Respondents’ staff returned her

call and informed her that Mrs McGlinchey was in the process of preparing a witness statement which would be sent to her shortly.

26. On 29th March 2004 the Court made an “Unless Order” with a deadline of 8th April 2004. The Respondents did not comply with that Order and on 13th April 2004, Mrs PM’s claim was struck out.
27. On 22nd April 2004 and 30th April 2004, Mrs PM rang the Respondents and asked for an update on her case. Those calls were not returned and Mrs PM was not informed that her claim had been struck out.
28. On 5th May 2004 the Court Order was amended to provide that Mrs PM should pay the defendant’s costs.
29. On 7th May 2004 the defendants wrote to the Respondents enclosing a costs schedule.
30. On 13th and 21st May, Mrs PM telephoned the Respondents. In those phone calls she made it clear that she was very upset about the way her case had been handled and asked that someone call her back. She was not told her claim had been struck out. She was told that someone would be coming to take a statement from her.
31. On 6th July 2004 Mrs PM wrote to the Respondents making a formal complaint. The Respondents did not reply. In August, Mrs PM instructed Watson Esam solicitors to contact the Respondents on her behalf.
32. Watson Esam telephoned on 3rd August on two occasions and sent a fax and a letter of authority form Mrs PM. They telephoned again on 4th August on three occasions. The Respondents did not reply to any of these communications.
33. On 10th August 2004, Mrs PM complained to the Law Society. She was still unaware that her claim had been struck out.
34. On 3rd September, the Law Society wrote to the Respondents informing them of the complaint and requesting a response within 14 days. The Respondents did not reply. The Law Society wrote again on 17th and 28th September 2004 informing the Respondents that the matter would be transferred to the Complaints and Redress Department of the Law Society.
35. The Law Society telephoned the Respondents on 21st and 26th October, leaving messages for Mr Davis to ring back. He did not do so. On 9th November the Law Society spoke to Mr Davis and agreed an extension of time for him to respond. He said he would call back before Friday (i.e. 12th November). Mr Davis did not respond by that date.
36. The Law Society rang and left messages for Mr Davis to call back on 30th November, 2nd, 7th and 9th December 2004. The Law Society wrote on 16th December 2004 requesting Mr Davis’ response to the complaint by 10th January. The Law Society rang and left messages for Mr Davis to call back on 22nd December, 4th January 2005 and 11th January 2005. Mr Davis did not respond and the Law Society wrote

again on 11th January 2005. The Law Society rang again on 19th January and left a message for Mr Davis to call back. He failed to do so.

37. On 27th January 2005, the Law Society wrote to Mr Davis by way of a Statutory Notice. On 16th February 2005 the Law Society made a Direction under Section 44(b) for the Respondents to produce their file of papers relating to this complaint.
38. The Respondents did not deliver the file to the Law Society and in May 2005, Hill Dickinson solicitors were appointed as the Society's agents to collect the file.
39. On 5th May 2005, Hill Dickinson wrote to the Respondents making an appointment to call and collect the file on Wednesday 11th May. Mr Davis indicated that he would deliver the file on that date, but failed to do so.
40. On 13th May, Hill Dickinson wrote making an appointment to collect the file on 18th May. A representative of that firm attended at 10 a.m. but was unable to collect the file.
41. On 23rd May, Hill Dickinson wrote again to the Respondent making a further appointment for Friday 27th May.
42. A representative of Hill Dickinson attended the offices on 27th May. An envelope was handed to him and it was confirmed that the contents represented all the documents and accounts information regarding the file. The letter from the Respondents to Hill Dickinson confirmed that the claim had been struck out and that they were unable to locate the rest of the file, but would reconstruct the file from the computer.
43. Copies of the documents printed from the firm's computer system were subsequently supplied on about 3rd June 2005.
44. The full file was subsequently located.
45. On 15th July 2005 the Law Society wrote to the Respondents setting out details of the complaint in full and requesting their response by 25th July 2005. The Respondents failed to respond to that letter.

Complaint by HSBC - Failure to register a charge over 40 B Avenue

46. In November 2001 the Respondents took over conduct the matters of a second advance to be made by HSBC.
47. The Respondents lodged an application for registration of the purchase and charge at HM Land Registry. On 15th August 2003 the Land Registry raised requisitions. The Respondents did not reply and on 7th October 2003 the Land Registry notified the Respondents that the application for registration had been cancelled.
48. The Respondents wrote to the Land Registry dealing with the requisitions on 13th April 2004. The Land Registry replied on 17th May 2004 informing the Respondents that a new application for registration would have to be made.

49. On 26th May 2004 HSBC wrote to the Respondents asking what the current situation was. The Respondents did not reply. HSBC wrote again on 30th June. The Respondents did not reply. On 4th August HSBC wrote again to the Respondents indicating that in the absence of a response within seven days a formal complaint would be made to the Law Society.
50. No reply was received to that letter and on 18th August 2004 HSBC complained to the Law Society.
51. The Law Society telephoned the Respondents on 15th, 16th, 21st (on two occasions) and 22nd September, leaving messages for Mr Davis to call back. None of those messages was returned.
52. On 22nd September the Law Society wrote to the Respondents setting out details of the complaint and requesting a response by 6th October. No reply was received.
53. The Law Society telephoned again on 13th and 15th October and again left messages for Mr Davis to call back. He failed to do so.
54. On 15th October 2004 the Law Society wrote again to the Respondents who did not reply.
55. The Law Society telephoned again on 25th and 27th October, leaving messages for Mr Davis to call back. The messages were not returned.
56. On 28th October, the Law Society wrote to the Respondents notifying them that a decision had been made under Section 44(b) requiring production of their file. The Respondents failed to deliver their file to the Law Society and on 5th January 2005 Hill Dickinson solicitors were instructed by the Law Society as their agents to collect the Respondents' file.
57. Hill Dickinson collected the file on 17th January 2005 and delivered it to the Law Society.
58. On 27th May 2005 the Law Society notified the Respondents that documents would be passed to HSBC to enable it to register its mortgage.
59. On 13th July 2005 the Law Society wrote to the Respondents reminding them of the complaint by HSBC and dealing with their failure to respond to the Society. No reply was received.

Complaint by Mrs R

60. On 16th April 2002, CMS Investigations Limited had a meeting with Mrs R at which she completed a Housing Disrepair Questionnaire.
61. On 17th April 2002, Mrs R signed a conditional fee agreement with PD Associates. Paragraph H of the conditional fee agreement dealt with a loan taken out to pay a premium of £834.75 for legal expenses insurance policy. This provided that in the

event of Mrs R losing her case she would not be called upon to pay the loan taken out for her policy. A legal expenses insurance policy was taken out with Fastrack Indemnity Limited with effect from 3rd May 2002.

62. On 16th August 2002, PD Associates wrote to Mrs R confirming their instructions and saying, "if you do not win your case, you will not have to pay anything towards the cost of the case because we will claim off the policy on your behalf". The letter went on to say that the only circumstances in which Mrs R could be liable for costs would be if she failed to cooperate with her legal team. No information was given about the likely costs of the case other than hourly rates. No information was given about disbursements that would be incurred.
63. PD Associates obtained a surveyor's report on Mrs R's property and on 8th October 2002 sent a letter of claim to Bolton Metropolitan Borough Council.
64. PD Associates wrote to the Court on 28th November enclosing forms for the issue of proceedings. Proceedings were issued on 13th December 2002.
65. On 11th February 2003 the Court, of its own motion, imposed a stay on the proceedings until 13th May 2003 to enable the parties to negotiate.
66. On 9th June 2003 the claim was allocated to the Fast Track and directions were made. It was also ordered that the trial would take place between 15th September 2003 and 19th September 2003.
67. PD Associates agreed with Bolton MBC that the time for complying with the directions would be extended for 14 days, namely until 16th July 2003.
68. On 9th August 2003 the Court made an "Unless Order" requiring the listing questionnaire to be filed by 18th August 2003. The Respondents complied on 18th August.
69. On 23rd August the Court ordered that the trial would take place on Monday 15th September at 10 a.m.
70. On 12th September Bolton MBC wrote to PD Associates pointing out that they had not served the claimant's list of documents and witness statements.
71. On 15th September PD Associates wrote to the Court and to Bolton MBC indicating that they would be requesting an adjournment of the hearing, which was listed to take place that day.
72. On 15th September the Court ordered that the claimant's case be struck out and that the claimant's solicitors should pay Bolton MBC's costs in person unless they made an application to vary that Order by 29th September. The costs were assessed at £1,611.25.
73. Leave to appeal was refused and the Judge's note of reasons for refusing permission to appeal recorded "C's application to adjourn - reason - sols at fault in not preparing case for trial...".

74. On 7th October 2003 Mrs R called PD Associates and left a message asking for someone to call her back. The message taken recorded, "client called and said that she has called a few times...".
75. On 20th October Bolton MBC wrote to PD Associates requesting payment of the costs within seven days.
76. On 27th October Mrs R called PD Associates again and said she would call back in the morning. She left a message that if she couldn't get through to either "you or Paul, she would take it to the Ombudsman".
77. On 3rd November Bolton MBC called PD Associates pointing out they had still not received payment of costs.
78. On 10th November Mrs R called the Respondents again and asked someone to call her back.
79. Bolton MBC rang again on 6th February 2004 and on the same date sent a fax message enclosing a copy of the Order endorsed by their Counsel. The fax made it clear that enforcement proceedings would be commenced if payment was not received by 10th February.
80. On 5th May 2004, Bolton MBC applied to the Court to issue the warrant of execution against Mrs R, although it was PD Associates who had been ordered to pay the costs. This warrant was subsequently withdrawn.
81. On 14th June 2004 Russell & Russell wrote to PD Associates requesting Mrs R's file of papers. They wrote again on 22nd July and on 12th August. Russell & Russell received no reply and on 12th August reported the matter to the Law Society.
82. On 13th August PD Associates wrote to Russell & Russell requesting copies of the letters and promising a response within seven days. Those were provided on 16th August but the Respondents did not reply within seven days.
83. On 25th August in an internal memo Ms McGlinchey asked a member of staff to find the file as a matter of urgency and wrote to Russell & Russell saying they were attempting to locate the file.
84. On 1st November 2004 Russell & Russell wrote again to the Law Society making a formal complaint on behalf of Mrs R.
85. On 11th January 2005 Mrs R rang PD Associates as she had received a letter from First National Bank.
86. In internal memos of 17th and 20th January 2005, Ms McGlinchey again asked a member of staff to find the file as a matter of urgency.
87. On 1st February 2005 Mrs R rang and left a message for David to call.

88. On 25th February 2005 the Law Society wrote to the Respondents requesting by 4th March the release of Mrs R's file or an explanation as to why they were exercising a lien. No reply was received.
89. On 29th February 2005 Mrs R complained to the Law Society.
90. On 25th May 2005 the Law Society wrote to the Respondents informing them of the complaint from Russell & Russell that they had failed to release Mrs R's file, and on 13th July 2005 the Law Society wrote to the Respondents setting out details of Mrs R's complaint. No reply was received to either letter.
91. The ledger card recorded the disbursements paid by the Respondents. These totalled £1,099.75. Mrs R was given no information about these disbursements even though the claim form completed by the Respondents included the following statement: "I confirm that the client understands that this disbursement will be added to their loan account with First National Litigation Funding plc".
92. Because the Respondents had not replied to the Law Society's letters on many occasions, on 10th and 11th February 2003 a caseworker from the Practice Standards Unit visited the Respondents' firm on a monitoring visit. A report was prepared which identified a number of areas where action was required and a number of areas where action was recommended.
93. A copy of the report was sent to the First Respondent on 10th March 2003. No reply was received to that letter and the Law Society wrote to Mr Davis again on 9th April 2003 requesting an early response.
94. No reply was received and the Law Society wrote to Mr Davis again 23rd May chasing for a response and on 12th June 2003 requesting a response within 14 days.
95. No reply was received and the matter was referred to the Regulation Unit, who wrote to Mr Davis on 31st October 2003 requesting a response within 14 days.
96. No reply was received and the Law Society wrote again on 16th December 2003. On this occasion the Law Society also wrote separately to Ms McGlinchey.
97. No reply was received and the Law Society wrote again to both Respondents on 12th May 2004.
98. On 13th May 2004 Ms McGlinchey contacted the Law Society and said she hadn't received the previous letters. Copies of the letters were sent to Ms McGlinchey on 14th May with a request that she respond within 14 days.
99. On 28th May a caseworker phoned Ms McGlinchey who asked for an extension of time until Tuesday (i.e. 1st June).
100. No response was received and on 4th June 2004 the Law Society wrote to both Respondents advising that the matter was being referred for formal adjudication and enclosing a copy of the report.

101. Mr Davis rang the Law Society on 8th June and apologised for his failure to reply. He said he would respond both to the PSU visit report and EWW by Monday. He requested an extension of time until Friday next (i.e. 25th June) to respond to the issue of failure to reply to the Law Society.

102. On 21st June Mr Davis sent a response to the PSU monitoring visit report.

Failure to comply with decision of the Compliance Board dated 29th March 2006

103. On 29th March 2006 the Compliance Board Adjudication Panel of the Law Society considered papers relating to a complaint by Mrs B.

104. The panel made the following formal directions “That Mr Davis and Ms McGlinchey:

Pay off in full any outstanding loan that Mrs B had with First National Litigation Funding and provide evidence that this has been done within 28 days to the Law Society.

In relation to the two adverse costs orders payable by Mrs B dated 13th August 2003 and 15th January 2004, that those costs should be paid in full by Mr Davis and Ms McGlinchey to the Neath & Port Talbot County Council.

Pay compensation of £2,000 to Mrs B within 14 days of the date of this decision.”

105. The Respondents were notified separately of the decision by letters dated 4th April 2006. They paid the compensation awarded.

106. On 3rd May 2006 the Law Society wrote separately to the Respondents requesting evidence by return that they had complied with the outstanding directions. The Respondents failed to provide that evidence and the Law Society wrote again on 23rd May pointing out that they were currently in breach of the directions and again requesting evidence by return of their compliance.

107. The Respondents did not reply and the Law Society wrote again on 13th June 2006 indicating that the matter would be taken further.

108. On 29th March 2006 directions were made by the Adjudication Panel of the Law Society in respect of five other matters.

109. On 22nd March 2006 the Law Society received a complaint from the Bar Council that the name of PD Associates had been placed on the Withdrawal of Credit Scheme list as a result of substantial fees being owed to Counsel and which remained unpaid.

110. The Law Society wrote separate letters to Mr Davis and Ms McGlinchey on 22nd March 2006 asking for their detailed response to the complaint within 14 days of the date of that letter and on 6th April asking for a reply in eight days.

111. In a letter to the Law Society dated 29th March 2006, Messrs Gorvins representing the Respondents submitted that all of the cases were incurred on a conditional fee

basis and no fees were due. The Law Society responded on 20th April making it clear that no reply had been received to the letters of 22nd March and 6th April.

112. On 6th June 2006 the Law Society wrote separately to the Respondents enclosing a case note prepared for adjudication.

113. The matter was considered by the Adjudicator on 25th July 2006 and on 31st July 2006 the Law Society wrote separately to the Respondents informing them of the Adjudicator's decision, which was:

“to expect Paul John Davis and Elaine McGlinchey within 56 days of their receipt of notification of my decision, to discharge in full a total sum of £18,642.99 owed to a number of barristers, the details of which are set out in a schedule annexed to a Withdrawal of Credit Scheme direction dated 13th February 2006 and provided they do so, they should be severely reprimanded in respect of their misconduct.

For the avoidance of doubt, if Paul John Davis and Elaine McGlinchey fail to settle all outstanding fees within 56 days of their receipt of notification of my decision, then I direct that their conduct shall be referred to the Solicitors Disciplinary Tribunal for determination and without delay.”

114. The letter of 31st July 2006 informed the Respondents that they had a right of appeal within 14 days of the date of that letter, i.e. by 14th August 2006.

115. On 15th August 2006 the Law Society wrote again to the Respondents pointing out that no appeal had been received within the time limit and making it clear that they were now expected to comply with the decision of the Adjudicator, within the time specified.

116. On 28th September 2006 the Law Society wrote again to the Respondents informing them that the Society had been informed by the Bar Council that not all of the outstanding fees had been settled and therefore the matter was being referred to the Intervention and Disciplinary Unit for referral to the Tribunal. The Bar Council confirmed in a letter to the Law Society of 29th September that fees were still outstanding.

117. On 29th September 2006 Ms McGlinchey contacted the caseworker by telephone saying that they had sent a letter of appeal dated 22nd September 2006. That letter had not been received by the Law Society. In any event it was well outside the time limit for appealing.

118. On 2nd October 2006 the Law Society informed Ms McGlinchey that they would not be processing any appeal in this matter. On 18th October 2006 the Bar Council wrote to the Law Society indicating that a number of further complaints had been received since the direction to withdraw credit had been made. On 23rd October the Bar Council wrote to clarify that all the payments except one made by the Respondents in the last three weeks did not relate to fees that were the subject of the direction to withdraw credit.

119. The allegations listed a number of failures on the part of the Respondents to comply with orders of the court. An example was where the Respondents acted for the complainant SF in an action against Liverpool City Council.
120. On 12th March 2002 in those proceedings, PD Associates were ordered to pay the costs of Liverpool City Council of that day and of the adjournment, following detailed assessment if not agreed.
121. A bill of costs was served on PD Associates and they did not raise any points of dispute. On 25th February 2003 Liverpool City Council obtained a default costs certificate in the sum of £1,309.11. That amount was payable within 14 days.
122. Liverpool City Council issued a warrant of execution but the bailiffs were unable to levy execution. On 5th August 2003 Mr Davis had assured the bailiffs that a cheque would be with them by Friday. That did not happen.
123. The bailiffs reported that there was nothing of value at the Respondents' property. Liverpool City Council therefore issued a statutory demand and this was served on Mr Davis and Ms McGlinchey on 21st April 2004.
124. The debt of £1,309.11 was subsequently paid.
125. On 2nd March 2006 Merthyr Tydfil Council wrote to the Law Society making a complaint about the Respondents. The Respondents had acted for a number of tenants of that local authority in housing disrepair claims. The actions had been struck out on 26th November 2004 and the Council had been awarded the costs of all the actions which had been issued. The Council enclosed a schedule with their letter listing all the cases. Fifty-three cases had been struck out.
126. Bills of costs had been prepared and served on the Respondents but the Respondents did not deal with the bills. On 16th November 2005 the Council obtained a default costs certificate for £12,024.61 in one case and a certificate in another case on 28th November 2005. The Council had contacted the After the Event Insurers direct and had been told they would be happy to deal with the costs issues but first had to have the cases referred to them by PDA Solicitors.
127. On 27th April 2006 the Law Society wrote separately to Mr Davis and Ms McGlinchey raising the complaint from Merthyr Tydfil CBC and requesting a response by 12th May 2006. The Respondents did not reply. On 12th May the Law Society wrote again requesting a response within eight days.
128. On 9th June 2006 Merthyr Tydfil CBC wrote to the Law Society informing them that they had received cheques totalling £26,173.70 out of a total of £46,136.86.
129. On 28th June 2006 Mr Davis wrote to the Law Society. He stated that all the relevant files were with the insurers. He suggested that the Respondents' ability to deal with these cases had been hampered for reasons beyond their control.

130. On 17th July 2006 the Law Society wrote again to Mr Davis raising a number of questions about supervision arrangements at their office.
131. On 31st July Merthyr Tydfil CBC wrote again to the Law Society and enclosed a further spreadsheet showing the amounts of costs recovered (£28,353.78) and those still outstanding (£17,783.08).
132. On 3rd August the Law Society wrote to the Respondents again chasing for a reply to the letter of 17th July. The Respondents did not reply and the Law Society wrote again on 16th August. The Respondents failed to reply and the Law Society wrote again on 30th October summarising the points that were still outstanding. The Respondents did not reply and the Law Society wrote again on 14th November and 23rd November 2006.
133. There was a wealth of occasions when the Respondents did not reply to letters or other communication from the Law Society and others, promptly, substantively, or at all.

The Submissions of the Applicant

134. The Respondents had admitted the allegations which covered a wide range and included many complaints. There were many clients who had complained. There had been failures to deal with the Law Society and others promptly or at all, failures to comply with important Rules of practice, failures to make payments as or when they fell due or in accordance with directions, and, even worse, in accordance with Orders made by the Court. The facts spoke for themselves. The Respondents had let down their clients and their profession.

The Submissions of the Respondents

135. The Respondents had admitted all of the allegations, save that allegations 14 and 15 did not amount to conduct unbefitting a solicitor.
136. The Tribunal was invited to give the Respondents credit for their admissions made at an early stage. Despite the very unfortunate picture which had been painted by the Applicant's application, both Respondents had come to London to appear before the Tribunal.
137. The Respondents were good and capable solicitors as was evidenced by the written testimonials submitted on their behalf. The Respondents had in January 2001 helped out their regulatory body by taking over the firm of P Devine Ltd which was about to be subject to an intervention. Hitherto, and in the vast majority of cases since, the Respondents had provided an excellent service to their clients and had had conduct of substantial litigation.
138. In 2001 the Respondents, like many other solicitors, accepted referrals of work from the introducers of claims including TAG. That arrangement had had the support of the Law Society and the spectacular demise of TAG was common knowledge. As well as TAG a number of other similar companies referred work to the Respondents. The Respondents' firm had grown. At its height the Respondents had employed some

38 members of staff. They had dealt with personal injury and housing disrepair cases and had taken on the work supplied by the referrers. The Bridgend case had sounded the death knell of TAG and others in its definition of what amounted to a referral fee and because of the way local authorities had approached housing disrepair cases, solicitors' costs in acting for claimants were not met. In all cases the Respondents had been solicitors for the claimant.

139. When TAG and other such organisations ceased to exist the funding of claimants' cases came to an end as did housing disrepair cases. Legal Aid, of course, had ceased to be available to clients pursuing these types of cases.
140. When this situation arose, two large firms in the Liverpool area had laid off staff and one had closed a suburban office. The staff employed by the Respondents had become very concerned and began to leave the practice whenever a more secure job could be found. The number of staff dwindled and the firm found itself unable to recruit replacements. Despite the difficulties in funding and the difficulties in maintaining an adequate level of staffing the client caseload remained in place. By May of 2006 only the Respondents and one part-timer together with a number of locums remained at the firm. The firm had conducted some 5,000 housing disrepair cases and 2,000 personal injury cases. They did their best but the Respondents could not properly handle that level of professional business.
141. The vast majority of clients were given an excellent service and the complaints before the Tribunal represented only a small proportion of the cases handled by the Respondents. The problems which the Respondents had were not limited to their particular firm. The Law Society had placed conditions on the Respondents' Practising Certificate limiting their ability to practise save in an agreed partnership or in approved employment. The Law Society initially agreed to approve the Respondents being in partnership together. That changed in 2006 when the Law Society hardened its view and limited the Respondents' ability to practise in approved employment only. If the Respondents had accepted such a condition on their respective Practising Certificates they would have had to close down their practice with all the horrors that that would have involved. In December 2006 the Master of the Rolls upheld the Law Society's decision and ruled that the firm should close. The Respondents did close the firm in March of 2007. At the time of the hearing they were still sorting out matters relating to the firm, including the collection of costs due to the firm. The Master of the Rolls had indicated that he realised the adverse effect upon the Respondents of his decision and he expressed hope that they would be able to continue as solicitors in one way or another in the future. It was hoped that the Tribunal would feel able to impose a sanction that would enable the Respondents to continue to practise as solicitors.
142. A number of IPS awards had been made against the Respondents and all of the clients entitled to such awards had been paid and paid on time.
143. The Respondents had paid for the loan that each client had taken out to finance his or her claim through the introduction organisations. The Respondents had experienced a lack of cooperation from those involved in such matters and it had taken some time to establish the precise position with regard to each individual client.

144. With regard to the non-payment of Counsel's fees, the lists of outstanding fees provided had not been accurate as the lists did not indicate where the fees claimed related to conditional fee agreements entered into by the barristers concerned. A lot of work was involved in establishing which fees related to conditional fee agreements with a Counsel, and when that was established the Respondents paid the small number of fees that were outstanding and payable. The Respondents accepted the directions made by the Adjudicator but their non-payment within the specified time could not amount to conduct unbecoming a solicitor because at the material time there was a lack of certainty as to which of the fees claimed were actually payable. The Respondents had done the best they could in the circumstances bearing in mind their lack of staff. The Court Orders which formed the subject matter of allegations were mainly in respect of costs payable to other solicitors. There had not been a non-payment of damages due to clients. In all save one of the cases before the Tribunal the Orders had by the date of the hearing been complied with, although it was accepted that compliance had been late. The Respondents indicated that they would give an undertaking to pay the one remaining sum of approximately £11,500 to Liverpool City Council.
145. The Respondents' books of account had been inspected by the Law Society on two occasions, most recently in 2005. No disciplinary action had been taken following those inspections.
146. The Respondents' prospects for the future were bleak. At their respective ages and in their location the supply of solicitors exceeded demand. They would find themselves with nothing to do when they completed the tidying up of their former firm. They had not sought employment within the profession pending the outcome of the disciplinary proceedings.
147. The Tribunal was invited to take particularly into account that all of the Respondents' debts had been honoured. The Respondents apologised to the Tribunal and assured the Tribunal that what had happened in the past would not happen again. The reality had been that the Respondents had been swamped and had not dealt with all client business as quickly as they should have done.

The Findings of the Tribunal

148. The Tribunal found all of the allegations to have been substantiated, indeed they were admitted by the Respondents save the question of conduct unbecoming a solicitor in allegations 14 and 15. The Tribunal accepted that the Respondents had not deliberately failed to make payment on time. The Respondents had made payment and had been out of time in making such payment owing to the force of circumstances and not to any deliberate delay or inaction on their part. The Tribunal therefore found that although the Respondents had overall been guilty of conduct unbecoming a solicitor, they had not been guilty of conduct unbecoming a solicitor in relation to these two allegations.

The Tribunal's Decision and its Reasons

149. The Tribunal gave close consideration to the explanations offered by the Respondents. The Tribunal recognises that the Respondents found themselves in a very difficult

position. The Tribunal also accepts that the Respondents' failures did not reflect any deliberate behaviour on their part. However, there had been a catalogue of complaints made against the Respondents and on a number of occasions clients who had been badly served by the Respondents, were caused a great deal of anxiety and inconvenience when they could not get answers to enquiries and, indeed, they had been given, on occasions, inaccurate information. The Respondents' failures and the dissatisfaction of clients must have led to serious damage to the good reputation of the Respondents' firm and inevitably that led to damage to the good reputation of the solicitors' profession as a whole.

150. The Tribunal considered it both appropriate and proportionate, in order to demonstrate that such failures on the part of solicitors could not be tolerated by the solicitors' profession, that they be suspended from practice for the period of two years. The Tribunal therefore made such orders and further ordered the Respondents to pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment if not agreed between the parties. For the avoidance of doubt, the Applicant's costs were to be borne by the Respondents on a joint and several basis.

DATED this 12th day of October 2007
on behalf of the Tribunal

S N Jones
Chairman