

IN THE MATTER OF GLYN FRANK MADDOCKS, solicitor

(In the originating application allegations were made against David John Vaughan, Michael John Stock, Anthony Hugh Barton Candler, David Herbert Council Lloyd, Stephen Robert William Meredith, Adrian Myles Davies and Adrian Robin Beale but the allegations against them were withdrawn at the substantive hearing.)

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mrs J Martineau
Mr D E Marlow

Date of Hearing: 26th June 2007

**THE TRIBUNAL'S DECISION ON THE REGULATORY
SETTLEMENT AGREEMENT ENTERED INTO BETWEEN MR
MADDOCKS AND ALL OF THE RESPONDENTS AGAINST
WHOM ALLEGATIONS HAD BEEN WITHDRAWN OF THE
ONE PART AND THE LAW SOCIETY OF THE OTHER PART
DATED 26th JUNE 2007**

AND

**FINDINGS IN RESPECT OF ALLEGATIONS SUBSTANTIATED
AGAINST GLYN FRANK MADDOCKS**

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of the Law Society by Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke Solicitors, 8 Bedford Row, London WC1R 4BX on 21st July 2006 that David John Vaughan, Michael John Stock, Anthony Hugh Barton Candler, David Herbert Council Lloyd, Glyn Frank Maddocks, Stephen Robert William Meredith, Adrian Myles Davies and Adrian Robin Beale all of whom were solicitors of Gabb & Co of 32 Monk Street, Abergavenny, Monmouthshire, NP7 5NW, Old Bank House, Beaufort Street, Crickhowell, Powys might be required to answer the allegations contained in the statement which accompanied the application.

1. At the opening of the hearing before the Tribunal it was told that Timothy Dutton of Queen's Counsel represented the Law Society (the Solicitors Regulation Authority), Gregory Treverton-Jones of Queen's Counsel represented all of the Respondents save for Mr Maddocks, and Andrew Hopper of Queen's Counsel represented Mr Maddocks.
2. On 8th January 2007 the Tribunal had been invited to consider a number of preliminary issues on behalf of the Respondents together with the partners in another firm of solicitors and a sole practitioner.
3. On that occasion the Tribunal dismissed the application on the basis that the determination of preliminary issues could frequently add to the difficulties and could tend to increase the cost and time taken finally to dispose of proceedings.
4. The Tribunal had considered that there was a strong public interest in applications before the Tribunal being determined as speedily as justice would allow and further it was in the interests of the solicitors' profession, and also of individuals against whom allegations had been made, for an early decision to be reached.
5. The Tribunal was of the view that a strong reason for reaching a definitive decision in dealing with all the issues in each of the cases as early as possible was that if any party wished to challenge those decisions then he had the right to an appeal.
6. The Tribunal believed that the proposed preliminary issues were fact sensitive at least to a substantial degree, accepting that that degree altered from issue to issue. The Tribunal declined to order that the three cases be consolidated.
7. This matter had been listed for hearing on its own following the Tribunal's refusal to order consolidation.
8. The Tribunal had been invited to rule that the allegations against all of the Respondents, the partners of Gabb & Co, save for Mr Maddocks, should be struck out on the grounds that there was no evidence against them.
9. At the commencement of this hearing the Tribunal was informed that the Respondents and the Solicitors Regulation Authority (The Law Society's regulatory arm) had reached an agreement as to the way forward.
10. A written Regulatory Settlement Agreement had been signed by both sides on 26th June 2007 and had been placed before the Tribunal for its approval on the basis that should the Tribunal consent to the course of action suggested the substantive hearing

in respect of Mr Maddocks alone should be dealt with forthwith. The Regulatory Settlement Agreement took the following form:-

- (“1) The following partners of Gabb & Co of 32 Monk Street, Abergavenny and Old Bank House, Beaufort Street, Crickhowell (the Firm), being David John Vaughan, Michael John Stock (a former partner), Anthony Hugh Barton Candler, David Herbert Council Lloyd, Glyn Frank Maddocks, Stephen Robert William Meredith, Adrian Myles Davies and Adrian Robin Beale (the Partners) agree to the following outcome of the investigation into their professional conduct under reference TRI/1959-2005.

Background

- (2) On 19th July 2004 the Law Society commenced an inspection of the Firm. A report dated 4th January 2005 stated inter alia that:-
- (2.1) The Firm conducted coal health claims (for Vibration White Finger and/or Respiratory Disease) on behalf of miners or their relatives (“Coal Health Claims”) including under the Claims Handling Agreements set up by the Department of Trade and Industry (DTI) in 1998/1999 under the supervision of the High Court;
- (2.2) A substantial number and proportion of claims were referred to the Firm by Industrial Diseases Compensation Limited (IDC);
- (2.3) The Firm paid monies allegedly due from the clients to IDC from damages received from the DTI.

Undertaking

- (3) The Partners undertake that they will:-
- (3.1) Within 3 months of the date of this agreement, review all Coal Health Claims cases conducted under the Claims Handling Agreements by the Firm and identify all clients for whom the firm acted in respect thereof:
- (a) on whose behalf the Firm made payments to IDC (whether by payment through the Firm’s accounts or by passing on a payment such as by client cheque); or
- (b) who were reminded or advised by the Firm to make payments to IDC;
- (c) who to the Firm’s knowledge made payments to IDC when the Firm was acting for them and therefore in a position to advise them not to do so.
- (3.2) Within 6 months of the date of this agreement make all reasonable endeavours to trace and contact those clients or their estate including

identifying their last known or current address and writing to them in accordance with terms to be agreed between the parties at Annex A;

- (3.3) Within 7 months of the date of this agreement offer to reimburse to all traced clients or their estate the full amounts paid or deducted together with interest on those deductions from the date that they were made at the rate of 3% per annum;
- (3.4) Provide monthly updates as to progress to the Solicitors Regulation Authority (SRA) including a list of clients' names and addresses and amounts reimbursed and/or such other information or documentation that the SRA may from time to time require for a period of 12 months from the date of this agreement;
- (3.5) For the avoidance of doubt, where the client had paid a registration fee of £35 prior to the instruction of Gabb & Co all such payments fall outside the terms of this agreement and undertaking;
- (3.6) For the avoidance of doubt where a client of the Firm who entered into an agreement with IDC whose claim was settled under the CHAs makes a complaint and/or seeks repayment of any payments made to IDC the partners will reimburse that sum plus interest at 3% per annum.

Responsibility in professional conduct

- (4) The Partners admit that Mr Glyn Maddocks was primarily responsible for all matters arising from or related to miners' compensation cases and accept that proceedings in the Solicitors Disciplinary Tribunal (SDT) against Mr Maddocks will continue on the basis set out below.
- (5) The SRA and the Partners will invite the SDT to permit withdrawal of the allegations against all partners other than Mr Maddocks and there will be no application by the Partners for an order for costs against the SRA. The SRA and the Partners will confirm that the responsibility of the partners other than Mr Maddocks for the conduct alleged is much less than Mr Maddocks' and is substantially mitigated by the undertaking given above.
- (6) Mr Maddocks admits the allegations as amended by the draft opening note signed by the Partners. The SRA will invite the SDT to agree to amendment of paragraph 1 of the Rule 4 statement by removal of the allegation of conduct unbecoming solely on the basis that the SRA and the Partners agree that the concept of conduct unbecoming is becoming of doubtful relevance in SDT proceedings, it being a matter for the SDT to assess on the evidence the level of culpability of a respondent against whom allegations are proved or which he admits. Mr Maddocks will not object to the usual order for him to pay the SRA's costs or to an order that he pay one-third of the costs of the hearing of 8th January 2007, not to exceed £7,000.

- (7) The Partners agree that this Regulatory Settlement Agreement, the opening note and the transcript of the proceedings may be published by the Solicitors Regulation Authority and that it may also be disclosed to any person upon request.
 - (8) The Partners agree that they will not act in any way inconsistent with this agreement such as, for example, by denying the misconduct admitted by Mr Maddocks.
 - (9) The date of this agreement is 26th June 2007.”
11. In making its decision the Tribunal took into account the submissions made by Mr Dutton, supported by Mr Treverton-Jones QC and Mr Hopper QC, namely that:-
- (i) There had been extensive discussions between the SRA and its representatives and the representatives for the seven Respondents apart from Mr Maddocks, who was prepared to make admissions of Rule breaches which the SRA considered in all of the circumstances to be sufficient to satisfy the public interest and provide the Tribunal with sufficient powers of sanction.
 - (ii) The Respondents had also agreed to a scheme whereby all of the clients who had been affected by payments to IDC would be written to and offered reimbursement, with interest, of deductions from their damages.
 - (iii) The SRA was prepared to withdraw the allegations of breaches made against the Respondents other than Mr Maddocks. This was on the basis that they would comply with the scheme of restitution which had been agreed with the SRA, the SRA’s view being that the scheme and compliance with it sufficiently mitigated the allegations against those Respondents as to make it no longer in the public interest to prosecute them.
12. The SRA had not alleged dishonesty against any of the Respondents. In judging whether the Tribunal might be prepared to admit the withdrawal of the allegations against the Respondents other than Mr Maddocks and the admissions of Mr Maddocks in particular it was invited to take into account that:-
- (i) The harm caused to clients lies in the fact that sums were deducted from their damages for the benefit of IDC. The scheme agreed with the SRA would put the clients into a position where this harm was reversed and they would, if they wished, recover the payments.
 - (ii) The partner who had direct responsibility for the scheme was Mr Maddocks. The other partners were involved in these proceedings because they were partners in a firm which permitted the conduct to occur. They had recognised a responsibility to reimburse the clients for their loss.
 - (iii) Mr Maddocks accepted this responsibility by his admissions to five sets of Rule breach allegations.

- (iv) The combination of admissions by Mr Maddocks and a scheme of reimbursement meant that the persons most affected by the IDC deductions (miners, their families and estates) would be reimbursed. The Tribunal had appropriate penal powers available to it under Section 47 of the Solicitors Act 1974 as against Mr Maddocks.
- (v) Absent these admissions by Mr Maddocks and the scheme of restitution by all of the Respondents the Tribunal would face protracted, contested proceedings. The admissions, the Law Society considered, sufficiently reflected the gravity of Mr Maddocks's conduct.

The Tribunal's Decision

13. The Tribunal consented to the course of action proposed. It considered that the adoption of the Regulatory Settlement Agreement was in the best interests of the public as the clients of the firm would be entitled to compensation volunteered by the Respondents. The good reputation of the solicitors' profession would be protected by the airing of the allegations against Mr Maddocks, which he did not contest, and by the Tribunal expressing its views as to the gravamen of the allegations and its decision as to sanction and costs.

The Substantive Hearing in respect of Mr Maddocks

The allegations against Mr Maddocks were that he:-

- (1) Failed to comply with Rule 1 of the Solicitors Practice Rules (SPR) in that he acted in a manner which impaired his duty to act in the best interests of clients and his proper standard of work in that he failed to consider the terms of the agreement entered into between clients and IDC and the impact of the CHAs on the charges made by IDC for their services;
- (2) Failed to comply with Rule 1 of the SPR in that he acted in a manner which impaired his duty to act in the best interests of clients in that he failed to recognise that there was a conflict of interest between IDC and clients through his failure identified in allegation 1;
- (3) Failed to comply with Rule 1 of the SPR in that he acted in a manner which impaired his independence and his duty to act in the client's best interests in that he failed to recognise that there was a conflict of interest between his firm's interests and those of his clients by virtue of his firm's relationship with IDC;
- (4) Failed to comply with Rule 3 of the SPR and the Introduction and Referral Code in that he rewarded introducers otherwise than as permitted by the Code;
- (5) Failed to comply with Rule 9 of the SPR in that he had an association with IDC, part of whose business was to support personal injuries claims and who received a contingency fee.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 26th June 2007 when Timothy Dutton of Queen's Counsel appeared

on behalf of the Law Society and Mr Maddocks, the Respondent, was represented by Andrew Hopper of Queen's Counsel.

The evidence before the Tribunal included the admissions of Mr Maddocks.

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

The Tribunal Orders that the Respondent, Glyn Frank Maddocks of Gabb & Co, 32 Monk Street, Abergavenny, Monmouthshire, NP7 5NW, solicitor, do pay a fine of £15,000, such penalty to be forfeit to Her Majesty the Queen, 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 Investigation Accountant of the Law Society).

The facts are set out in paragraphs 14 to 54 hereunder:-

The Background Facts

14. In the early 1990s several plaintiffs brought claims for damages against British Coal as a result of injuries and illness sustained and suffered in the course or as a result of their employment. The claims were brought together as a group and lead cases were concluded successfully in 1997 and 1998 respectively for Vibration White Finger (VWF) and Chronic Obstructive Pulmonary Disease (COPD).
15. As to VWF, British Coal was adjudged to have had "guilty knowledge" on and after 1st January 1975. It was found that as at this date, given the knowledge and technology available to British Coal, it would have been expected to have become aware of the risks to its employees.
16. In 1998 British Coal and the National Coal Board were found to have been negligent at common law and in breach of the Mines and Quarries Act 1954 in relation to miners with lung disease. The 1954 Act placed a duty on mine managers to protect their workers against dust of such character that it was likely to be injurious if inhaled. Legislation to protect miners against dust of the particle size linked to pneumoconiosis was enacted during the 1970s as the Coal Mines Respiratory Dust Regulations (SI No 1975/1433) under the Health and Safety at Work etc Act of 1974. This was the first time that provision had been made to measure the respirable fraction of the dust that was known to cause pneumoconiosis.
17. The basic qualification for compensation was to have worked underground at any time after 4th June 1954 in a mine in England or Wales and to have suffered one of the qualifying illnesses. The scheme also applied to widows and families of miners who had died since the qualifying period start date of 1954.
18. The British Coal respiratory disease litigation represented the largest single piece of industrial disease legislation ever undertaken in the UK.
19. Following the judgments on liability, and on a number of subsidiary issues, it became necessary to establish a mechanism to deal with all the individual claims on their merits and to assess compensation within the guidelines that had been set. It was

essential that this be done through a form of agreement. The alternative of each claimant having to bring a court action was unacceptable to all, not least because the capacity of the court system for personal injury claims is in the region of 10,000 per year.

20. During the period January 1998 to September 1999 detailed discussions took place between representatives of the DTI and the Claimants' Solicitors Group. The Claims Handling Agreements (CHAs) were concluded on 22nd January 1999 for VWF and 24th September 1999 for COPD. Some 700 firms of solicitors acting for claimants signed the CHAs. They were necessarily complex as they specified how claims would be handled and reflected the judgements in the test cases. The schemes were non-statutory ex-gratia government schemes set up under prerogative powers. In evidence presented to the House of Commons Trade and Industry Select Committee by the Department of Trade and Industry (DTI) (14th Report of Session 2004/05) they were described as "contracts between the DTI and solicitors and accordingly, all changes to the CHAs are by mutual agreement".
21. In a judgment dated 1st May 2007, Mitting J concluded that the CHAs were non-contentious business agreements between the DTI and the Claimants' Solicitors Group. He also concluded that the court's supervision of the CHAs did not cause claims under the CHAs to be contentious business.
22. The detailed scheme of the VWF CHA mirrored English common law as far as it was possible and dealt with how liability was established and compensation paid. The agreement defined exactly how claims would be dealt with by claimants' solicitors, the DTI claims handlers, the medical assessors and others. It specified the medical assessment process and provided for compensation that a claimant would have expected to receive if he had pursued a claim at common law through the courts. The CHA gave claimants a fair entitlement tailored to reflect their individual disability. It was not a flat rate scheme and reflected other factors that were set out in various court judgments.
23. The occupational history of the claimant was used to determine if there was a valid claim for VWF. Once this was established in principle, the claimant was invited to undergo a medical assessment which would include a secondary assessment if assistance for care services had been claimed. Once the medical assessment protocol (MAP) had been completed the results would be provided to the claimant's solicitor and settlement reached using a model based on the time over which the claimant was exposed to vibrating machinery. The CHA for VWF identified three occupational groups for the purpose of determining the level of compensation payable: Group 1, where vibratory tools were generally recognised as a substantial part of the operation; Group 2, where use of tools was not necessarily a substantial part of the operation but may have been used; Group 3, where such tools should not have been used and evidence of use was required to support a claim for compensation.
24. The VWF scheme closed at the end of October 2002 and the COPD scheme at the end of March 2004.
25. In respect of both VWF and COPD approaching 770,000 claims have been registered.

The agreed facts in support of the allegations against Mr Maddocks

26. Mr Maddocks, born in 1950, was admitted as a solicitor in 1985 and his name remained on the Roll of Solicitors at the material times he was a partner at Gabb & Co of 32 Monk Street, Abergavenny, Monmouthshire, NP7 5NW.
27. Mr Maddocks was a partner in the firm of Gabb & Co and was responsible for the conduct of client matters relating to personal injury claims. He was the partner in overall charge of the miners' claims handled by the firm and he bore responsibility for the breaches that occurred.
28. An Investigation Officer of the Law Society (the IO) commenced an inspection of Gabb & Co on 19th July 2004. The IO's Report dated 4th January 2005 was before the Tribunal.
29. Between about 2000 and 2004 (and continuing during and after the time of inspection) Gabb & Co acted for numerous miners, ex-miners or their estates in claims arising out of industrially contracted COPD and VWF cases on behalf of miners.
30. The IO's Report dealt with the fact that Mr Maddocks was instrumental in arranging for his firm to "purchase" miners' claims from a claims intermediary and handling company known as IDC or Freeclaim IDC. The firm paid large sums for each case out of their office account to IDC, and made deductions from client damages to pay to IDC.
31. By the time of the IO's inspection the amounts paid by the firm out of client damages were substantial. The figure paid out of client damages to IDC (from funds paid into client account) to 31st December 2003 was c £223,000. The sum of £223,000 was made up of sliding scale amounts (depending on the size of the damages) or fixed sum amounts at particular times when IDC's contract with clients varied.
32. The firm paid sums entered into the firm's accounts as "IDC marketing fees" to IDC. These sums were paid by the firm on its own behalf out of office account as follows:-
- | | |
|------------------------------------|--------------------|
| 1st Jan 2000 to 31st December 2000 | £32,705.69 |
| 1st Jan 2001 to 31st December 2001 | £18,191.99 |
| 1st Jan 2002 to 31st December 2002 | £24,022.34 |
| 1st Jan 2004 to 31st June 2004 | <u>£17,959.78</u> |
| Total | <u>£111,265.95</u> |
33. In four and a half years £334,265.95 had been paid by the firm to IDC, of which £223,000 came out of client funds and £111,265.95 was paid by the firm.
34. These claims had been "purchased" from IDC. Mr Maddocks was causing the firm to pay referral fees for them.
35. IDC was a claims assessor based in the North of England. It identified and located people who had a potential claim. In its publicity material it referred to itself as a company of "medical, legal and welfare rights experts".

36. Gabb & Co received instructions to act in COPD and VWF claims, principally through IDC. The IO had been told that possibly 50% of claims handled by Gabb & Co had come from IDC but the firm increased its estimate to 70% in subsequent correspondence.
37. By the time the IO's inspection of Gabb & Co had been completed in 2004, the firm had billed and would in due course receive fees in excess of £1million from work that had been introduced by or referred from IDC. IDC's contribution to the firm's economic welfare had been considerable.
38. The payments to IDC were listed in the firm's accounts. Gabb & Co characterised the payments as for "marketing". The firm did not contract with IDC for marketing services. The payments were in reality referral payments. The fees were payable by reference to individual case introductions and referrals. IDC carried out marketing for its own purposes, to generate claims, which it introduced to Gabb & Co.
39. The process whereby a claimant became a client of Gabb & Co was as follows:-
 - (a) IDC advertised that they would be carrying out assessments at venues such as working men's clubs. IDC carried out an initial screening in relation to potential claimants.
 - (b) Potential claimants were asked to attend a subsequent interview, where they were seen by a solicitor employed by Gabb & Co.
 - (c) If it was considered that there was a genuine claim, the solicitor referred the potential claimant back to IDC.
 - (d) The client then entered into an agreement with IDC that provided for the deduction of fees for IDC from the client's damages.
40. Gabb & Co were described as IDC "Panel" solicitors. Clients were seen by Gabb & Co before the client signed the agreement with IDC.
41. The printed form of agreement used in the case of Mr A, a client case cited by way of example, represented that IDC:-
 - (a) would underwrite the legal costs of the claimant;
 - (b) would pay on behalf of the claimant all the costs of the claim to include legal fees and medical examination costs and other cost liabilities arising from the action as necessary, thereby providing a full indemnity to the claimant.
42. The agreement provided IDC with a series of rights and benefits, namely:-
 - (a) a "registration fee" of £35 inclusive of VAT;

- (b) a “settlement fee” of between £40 plus VAT and £5,000 plus VAT contingent on the recovery of “damages” in the “action” and on a sliding scale reflecting the quantum of the damages recovered;
 - (c) the right to withdraw at any stage by returning the registration fee;
 - (d) the right to information from the claimant’s solicitor;
 - (e) the right to forfeit the registration fee and receive an “immediate” indemnity against all “financial loss” in relation to the claim if the claimant had deliberately misled IDC, transferred to a new solicitor or discontinued the claim;
 - (f) the right to receive the settlement fee as a deduction by the claimant’s solicitor and in priority to the claimant receiving compensation.
43. The DTI, having recognised liability for COPD and VWF in miners, as successor to the National Coal Board, entered into CHAs which provided procedures that were to be followed in such miners’ claims and fixed the costs to which their solicitors were entitled.
44. By way of example, in respect of four of those matters, where agreements with IDC were signed between 16th November 1998 and 2nd February 1999, and which pre-dated the CHAs, the fees charged were based on the following scale:-
- (a) Initial registration fee of £35.
 - (b) On successful completion of the claim a sliding scale charge dependent upon the amount of compensation received as follows:-
- | Settlement to you
£ | Fee to us
£ |
|------------------------|----------------|
| 0 - 499 | 40 + VAT |
| 500 - 999 | 145 + VAT |
| 1000 - 1399 | 210 + VAT |
| 1400 - 1999 | 295 + VAT |
| 2000 - 2999 | 390 + VAT |
| 3000 - 4999 | 495 + VAT |
| 5000 - 6999 | 600 + VAT |
| 7000 & over | 750 + VAT |
45. By way of example, in respect of five matters which post-dated the CHAs, where agreements with IDC were signed between 28th September 1999 and 17th November 1999, the fees charged were based on the following scale:-
- (a) Initial registration fee of £35.
 - (b) Settlement fee in proportion to the damages recovered by the claimant pursuant to the claim as follows:-

Settlement to you £	Fee to us £
0 - 499	40 + VAT
500 - 999	145 + VAT
1000 - 1499	210 + VAT
1500 - 2749	265 + VAT
2750 - 3999	465 + VAT
4000 - 5999	550 + VAT
6000 - 9999	750 + VAT
10000 - 19999	1000 + VAT
20000 - 29999	1500 + VAT
30000 - 49999	3000 + VAT
50000 plus	5000 + VAT

46. In respect of two matters, where agreements were signed on 11th July 2001 and 12th November 2001 the fees charged were:-

An administration fee of £100 made up as:-

- (a) £35 payable upon signing the agreement;
 - (b) £65 plus VAT, only at such time as the claimant receives compensation.
47. The case of Mr A, a miner who suffered from an industrial disease, was cited as an example.
48. The facts of his case were:-
- (i) On 14th September 1999 an initial screening took place between Mr A and representatives of IDC.
 - (ii) On 1st October 1999 IDC sent a letter to Mr A and invited him to an appointment on 20th October 1999.
 - (iii) On 20th October 1999 a meeting took place between Mr A and a solicitor employed by Gabb & Co.
 - (iv) On 20th October 1999 Gabb & Co sent a referral form to IDC.
 - (v) On 25th October 1999 Gabb & Co notified Aon IRISC that Gabb & Co were instructed to claim damages on behalf of Mr A.
 - (vi) On 2nd November 1999 Mr A signed an agreement with IDC.
 - (vii) On 18th October 2002 out of a total amount of damages of £2,072.09 the sum of £311.38 was paid by Gabb & Co from client account directly to IDC. The balance of damages was forwarded to Mr A.

49. The agreements entered into by clients with IDC were prejudicial to the individual clients' interests because they purported to provide benefits that were illusory, in that:-
- (a) an indemnity for "legal fees" was unnecessary because Gabb & Co did not intend to make any charge to the client and its costs would only be sought from the defendants. The individual's legal fees in successful cases would be paid by the DTI under the CHA;
 - (b) a purported indemnity for "costs liabilities" was unnecessary because there was no risk of an adverse costs order in CHA cases or in cases in which proceedings were not issued;
 - (c) IDC had an unrestricted "right to withdraw at any stage" and, although the agreement stated that the client in such circumstances would have "no obligation to pay any costs whatsoever incurred up to the date of the withdrawal", this could leave an individual client without representation at any time simply because IDC no longer wished to be involved in the matter and in any case where a costs liability were possible, without the purported cover for that.
50. The IDC agreements were uncertain because:-
- (a) The "claim" which IDC purported to support was unspecified, being "a claim for personal injury" with no specification of an accident date or a particular disease;
 - (b) It was unclear exactly what "costs liabilities" IDC were purporting to underwrite. The recital referred to "the legal costs of the claimant" whereas clause 2 referred to legal and medical fees and vague "other costs liabilities arising from the action as necessary providing a full indemnity to the claimant".
51. There was no justifiable reason for IDC to be paid a share of the client's damages, particularly at levels of up to £5,000 plus VAT. VAT would not be recoverable by the client.
52. The rewards for the firm from the IDC referred claims were significant. Between 1999 and 2004 and the firm received £1,107,307 in fees from these referred cases representing an average of 7.65% of the firm's fee income and 24.53% of the firm's income in the year 2004 (£578,613 out of £2,358,795). The payments to IDC hit their highest in the years 2003 to 2004. They had been paid every year since the end of 1999.
53. In a letter dated 19th July 2006 addressed to the Law Society, the firm stated, "we were fully aware that IDC was involved in an expensive marketing campaign ... we could see the consequences of it in the sheer volume of claims that IDC was generating and on the number of occasions that IDC invited the firm's representatives to attend meetings with potential clients...".

54. Gabb & Co was the retained solicitor in approximately 1,000 of the miners' claims (after 1999) and Mr Maddocks caused the firm to make the payments out of office account referred to above.

The Submissions of the Applicant

55. The Law Society agreed that activity of the sort complained of was taking place on a large scale and by early to mid 2000 the system by which the firm was making payments to IDC had been well established. Mr Maddocks was responsible throughout for the retainers by the clients of the firm who were miners with COPD or VWF claims.
56. The payments by the firm to IDC were made through the office account at the instigation of Mr Maddocks.
57. IDC work referred to the firm was a significant part of the firm's fee income.
58. The payments to IDC were made out of client account from damages awarded to individual clients who retained the firm.
59. IDC's contribution to the firm's welfare was considerable.
60. Rule 1 breaches occurred where a solicitor's conduct impaired or was likely to impair any of the overarching duties set out in (a) to (f) of that Rule. In this case Mr Maddocks admitted that his conduct impaired his duty to act in the clients' best interests for three reasons. First because he failed to consider the impact of the CHAs on the charges made by IDC for their services. Secondly, he failed to recognise that there was a conflict of interest between IDC and individual clients. Thirdly, because he failed to recognise a conflict between the firm's and his individual clients' interests which arose as a result of the firm's relationship with IDC.
61. By mid 2000 the system was well established. Mr Maddocks did not provide hundreds of clients with the advice required as a result of the agreement with IDC. No advice at all appeared to have been given to any client about the merits or demerits of the IDC agreement, and the financial commitments made under it. Under the CHAs there was no risk of an adverse costs order and all successful claimant were to have their costs paid by the DTI. Mr Maddocks should also have advised clients against accepting the obligations of the IDC agreement because it restricted the clients' freedom to instruct a solicitor of his or her own choice. Mr Maddocks should not have permitted the arrangements to continue with IDC without advising his clients of them, and certainly he should not have made deductions from clients' damages without ensuring that his clients were given advice about the arrangements.
62. There was a coincidence of the business interests of Gabb & Co and the business interests of IDC in particular because Gabb & Co had an interest in IDC's continuing to attract claims and refer them to Gabb & Co and to receive payment on the basis of the fees and deductions referred to above. Mr Maddocks did not recognise this at the time, although he had come to do so as his admissions recognised, and he accepted that he permitted his professional judgment to become impaired. It was not alleged that Mr Maddocks was dishonest in this regard. Had Mr Maddocks given the correct

advice to his clients then there was a risk that the introducer could have decided not to send more cases to the firm. Mr Maddocks exercised flawed professional judgement in his approach to his clients and to the firm's dealings with IDC.

63. Breaches of Rule 3 of the Solicitors Practice Rules and of the requirements of the Solicitors' Information and Referral Code were admitted. IDC was a significant source of referrals to Gabb & Co and the firm and IDC were rewarded by the making of unlawful referral payments. The scale of those payments judged against the volume of referrals was significant. The actual amount of fee income which derived from IDC for the year 2004 (24.5%) had not been calculated until the IO's inspection took place. These introduction and referral fees were unlawful at the time and would remain unlawful under the Code as revised in March 2004.
64. The arrangements which Mr Maddocks made with IDC breached Rule 9 of the Solicitors Practice Rules. This was an arrangement between the firm as a whole and IDC, for which Mr Maddocks was the responsible partner. He created an association with IDC. In the course of its business IDC solicited and received contingency fees (i.e. fees contingent on the outcome of the case) in respect of each of these miners' claims.
65. Mr Maddocks had characterised the payments made to IDC as payments for "marketing" or "clerking services", and this was how they were described in the partnership accounts. Mr Maddocks had come to accept and recognise that such payments were simply referral fees.
66. In bringing the allegations against Mr Maddocks the Law Society recognised that:-
 - (i) Neither Mr Maddocks nor any of the other partners in the firm had appeared before the Tribunal before;
 - (ii) Mr Maddocks and his partners cooperated fully with the Law Society's inquiry;
 - (iii) The Law Society did not allege, and never had alleged, that Mr Maddocks had been dishonest;
 - (iv) Both the firm of Gabb & Co and Mr Maddocks had agreed a scheme of restitution. Whilst this had enabled the Law Society to consider that the public interest was no longer served by the disciplinary proceedings continuing against all of the partners, it was also a mitigating feature of the admitted breaches by Mr Maddocks that he had agreed to take part in a scheme of restitution. The financial harm caused by Mr Maddocks's actions would be remedied if clients were to take up the offer of compensation;
 - (v) It was no part of the Law Society's case that individual clients' cases were under-settled or harmed in any other way;
 - (vi) The Law Society's inquiry had been expensive. Mr Maddocks had agreed to pay the Law Society's costs of the inquiry and of the disciplinary proceedings, including one third of the costs of the interim hearing on 7th January 2007.

The Mitigation of Mr Maddocks

67. In the new marketplace created when negligence was established and CHAs put in place various intermediaries had a role to play. The mining trade unions took a leading role, provided services and took income. Many claimants were no longer union members and the practice of some unions who provided their support was to require those re-joining to pay all the missing years' contributions. This was not always the most attractive course for retired miners. A number of commercial organisations had been formed, or developed their business models to provide comparable services. They too made a charge for their services. Many were formed by former miners, mining officials or mining union representatives, who had enormous experience and industry knowledge to offer.
68. IDC was in this case the relevant intermediary. They advertised and used other methods to identify miners and families able to make a claim and when so identified assisted and supported them to make such a claim. The claimant paid a fee, either in advance or when the claim was successfully concluded, which (1) funded an insurance premium or purchased an indemnity from the intermediary in respect of any adverse costs; (2) covered any disbursements, for instance medical reports and medical notes required to assist in the prosecution of the claim and (3) paid for the support services provided by the intermediary. IDC was and continued to be a wholly reputable company which at the date of the hearing was regulated by the Financial Services Authority and registered under the Compensation Act.
69. There was no automatic fixed link between IDC, Gabb & Co, miners and claims under the CHAs. IDC assisted and continued to assist non-miners; they assisted and continued to assist miners outside the terms of the CHAs in respect of VWF and COPD; workers in the British coal industry and other industrial employers who had been exposed to the same risks; they assisted miners and non-miners in respect of claims that did not fall within the CHAs. Gabb & Co acted for miners who had not been introduced by IDC, for non-miners who were introduced by IDC and in common law (non-CHA) claims for miners and non-miners.
70. Before and after the CHAs for VWF and COPD were in place the intermediaries played a pivotal role in encouraging large numbers of former miners and, in the case of deceased workers, their families, to make claims for compensation that they were entitled to receive. The intermediaries frequently played an important role in assisting solicitors with the issues that arose, for instance in establishing the type of tools used, the location and type of job the claimant undertook, and in obtaining witness evidence from the claimant's former colleagues.
71. Following the inception of CHAs the Law Society argued that the indemnity from and the assistance of intermediaries was not necessary or appropriate. However, the position was far from simple. Given that there was no advertising undertaken by the government in respect of the CHAs and given the number of potential claims, justice (including access to justice) required that appropriate, widespread and detailed publicity was generated to ensure that persons with valid claims came forward. Firms of solicitors were not, particularly in the early stages, able to undertake such national advertising on the scale required. Intermediaries played a vital role in ensuring that

the right claimants came forward and were encouraged to make claims. The intermediaries had the trust of the miners and former miners who were often reluctant to make direct contact with solicitors.

72. The distrust and cynicism in the mining communities directed to the government, which had litigated its denial of liability, extended to the nature and effect of the CHAs themselves and the compensation package provided by them. Even after the CHAs were signed and their content circulated and understood many miners were perfectly happy to sign agreements with intermediaries; they would not have made a claim had those intermediaries not encouraged them to do so; they trusted them, and wanted the continued support.
73. The CHAs were unique. In general the scheme had worked well, but until it had been in operation for some time there was no certainty that this would be so.
74. The Law Society had tended to portray the CHAs as instant and complete solutions, and that the whole profession should somehow have instantly known this to be so. It contended it was necessary only to show that an individual was a miner and he had a qualifying disease. In fact 40% of COPD claims failed. Claims for loss of earnings for COPD fell outside the scheme. The VWF agreement provided a mechanism for the resolution of such claims but it was complex and somewhat uncertain.
75. The claims intermediaries provided assistance and expertise that was unavailable within most firms of solicitors.
76. The Law Society had helpfully conceded at the investigation stage of this matter that it had been government policy to promote these kinds of arrangements with intermediaries to improve access to justice and the government, hostile to the solicitors' profession's monopolies, was interested in other organisations entering the personal injury claims market.
77. Although it was government policy that miners should be fairly compensated, it did not advertise for claims or about the existence of a remedy. The existence of commercial entities in this field had apparently been accepted to be unexceptionable, as was the principle that they were entitled to be paid for their services.
78. From the point of view of claimants the scheme had been a huge success. The degree of disaffection amongst claimants had been tiny. There had been 770,000 claims. There had been approximately 1,000 complaints to the Law Society (less than 0.13%) on the basis of figures available at the date of the hearing. About a quarter of the complaints were unmeritorious or had been withdrawn, about 400 had been conciliated and about 350 remained unresolved.
79. The handling of miners' claims had been portrayed in the media as a serious professional failure. The reality was that there was no scandal. Miners and their families were overwhelmingly content. The "scandal" had been pursued by Members of Parliament, an unsuccessful attempt had been made to pursue miners' group litigation against, inter alia, five firms of solicitors (not including Gabb & Co) and the Law Society had extended indefinitely the time within which miners' complaints of

poor service could be made. The Law Society also promoted its own advertising campaign to drum up complaints, although there had been only a low level response.

80. The clear conclusion to be drawn was that all the claimants in the scheme, save a tiny and insignificant minority, were very contented with the service they received from both solicitors and intermediaries. Gabb & Co had carried out its own client satisfaction survey, the results of which had been placed before the Tribunal. It indicated that its miners' claim clients had a high level of satisfaction.
81. Another factor for the rise and success of intermediaries was that for all practical purposes Legal Aid for personal injury litigation had been abolished and replaced with a combination of conditional fee agreements and after the event insurance. Claims management companies proliferated and, it could be said, dominated the personal injury claim market.
82. Claims management companies were structured around (amongst other things) payments by solicitors for services, which could be panel membership or training and/or for initial vetting and preparatory work and/or as a contribution to advertising costs and/or a variety of other concepts. Payments to introducers became the norm.
83. The Law Society had full knowledge of this and did not object. In October 2003 the then Law Society Chief Executive said:-

“... the ban [on introduction or referral fees] in its current form is essentially unenforceable, and it is honoured more in the breach than in the observance. The wording is too vague and too broad, making it difficult to interpret - and difficult, therefore, to enforce. Practitioners have interpreted it in a variety of ways. For example, some solicitors are making payments to introducers under the guise of “marketing fees” in respect of various types of referral schemes, either in disregard of the Code or believing that their arrangements comply with the Code.”
84. The Chief Executive went on to comment that the Office of Fair Trading wanted the ban abolished, and that the Director General of Fair Trading had made it clear that the then current ban was anti-competitive (and by necessary implication unlawful).
85. It was submitted that the subsequent relaxation of the ban of referral fees in 2004 was in recognition that the pre-2004 version of the Code was either unlawful or probably so. Gabb & Co could not formally have taken on the Law Society, an opponent with unlimited resources, on this issue. An application to the Tribunal to consolidate this case with others of a similar nature had been refused. This argument would have to wait until a firm with sufficient resources was able to afford to argue it. Mr Maddocks had abandoned that challenge, not because he had no faith in it but because he could not afford to litigate it.
86. Prior to July 2003 the position of the Law Society was consistent. It was that payments which were a direct reward for the introduction of clients were a breach of the Introduction and Referral Code, but payments to introducers for genuine services, if reasonable in amount, were not.

87. The Law Society was to give more specific guidance in July 2003 as a result of a challenge to an element of the “TAG” scheme by paying parties (unsuccessful defendants) to the recoverability inter partes of preliminary investigation fees paid by solicitors to a TAG sister company. That challenge resulted in a judgment of the Senior Costs Judge, Chief Master Peter Hurst, on 15th May 2003 to the effect that as only part of the investigation fee was justifiable in terms of the work done, the balance had to be interpreted to be referral fee and was thus unlawful.
88. In the light of that judgment the Law Society was obliged to give more specific guidance and did so in the Gazette of 17th July 2003. This guidance recognised that the law had been clarified and that, as a matter of sensible inference, it would be difficult to criticise solicitors in respect of their professional conduct for believing that they had previously been compliant.
89. The reality was that solicitors, particularly in the personal injury sector, were left to work out for themselves how to interpret the rules in a changing environment, with little or no guidance from their professional body. It was notable that the Law Society set up its own approved claims management service in competition with other claims management companies operating in the same way and required payments from solicitors to whom it introduced clients.
90. In relation to the CHAs the situation was even more uncertain as that scheme was unique. No guidance had been given to the profession about this. It had been the Law Society’s position that Rule 9 applied to the CHAs because they were contentious business, however the judgment of Mitting J in the case of AB and Others -v- British Coal Corporation (DTI) and Thyssen (GB) Ltd, Hollybank Engineering Ltd, Cementation Mines Ltd QBD 1st May 2003 was inconsistent with that.
91. The Tribunal had recognised that uncertainty and its impact on the profession (Lindsay 9249-2005 paragraph 100; Mendelson 9212-2005 paragraph 119). Writing jointly in the Gazette on 21st April 2006 the then President and Chief Executive of the Law Society noted:-

“There are lessons to be learned from the way this complex scheme has evolved. For example, clarity and consistency of advice for solicitors on how to administer the scheme has been lacking.”

Personal Mitigation of Mr Maddocks

92. The Respondent and the other partners in Gabb & Co, a long-established firm the partners of which collectively had completed 272 years of professional practice without substantial complaint, were decent, honest people and were solicitors of the traditional kind who always put the interests of their clients first and did their best to get things right. Mr Maddocks had, of course, made admissions but he was overwhelmingly trying to get things right.
93. Mr Maddocks accepted that the case put against him at the hearing had been put very fairly. Mr Maddocks and his partners had behaved wholly responsibly and had cooperated fully throughout the Law Society’s investigation. The proceedings had been utterly traumatic for Mr Maddocks and his partners.

94. Mr Maddocks was, as the Tribunal would be, aware of the barrage of publicity surrounding what had become known as “miners’ cases”. It was not right that the opprobrium heaped on solicitors who had handled miners’ cases in a way that attracted very great criticism should influence the way in which Mr Maddocks was viewed. It was noteworthy that Mr Maddocks held an unconditional Practising Certificate and the Adjudicator of the Law Society had decided that no regulatory controls were necessary.
95. The fact was that the miner clients for whom Gabb & Co acted were entirely happy with the service they received and the outcome, as was evidenced by a survey conducted by Gabb & Co. The Law Society had not asked any of Gabb & Co’s miner clients as to their level of satisfaction.
96. The Tribunal was reminded that Gabb & Co made no deduction from the compensation achieved for the miner clients for its own purposes. The payments made related only to the payments which the clients themselves had agreed to pay to IDC, the intermediary.
97. Mr Maddocks had tried to get things right but had come to recognise that he did not get things wholly right.

The Findings of the Tribunal

98. The Tribunal found the allegations against Mr Maddocks to have been substantiated; they were not contested. The Tribunal noted that dishonesty was not alleged against the Respondent and that the Law Society itself recognised that Mr Maddocks and his partners had cooperated fully with the Law Society’s enquiry. It has also taken into account Mr Maddocks’ good character, noting the fact that he had been recognised as a leading solicitor in the area in which he practised, that it was not suggested that the individual miners’ cases had been settled at an undervalue or had not been dealt with properly in any way and that Mr Maddocks and his partners had agreed a scheme whereby the firm’s miner clients could be repaid by the firm money deducted from the clients’ damages and paid to IDC. The Tribunal also noted that Mr Maddocks had agreed to pay the Law Society’s costs including one-third of the costs of the interim hearing on 7th January 2007.
99. The Tribunal recognised that Mr Maddocks was a decent man trying to do the best for his clients and that he had been doing so at a time when there was less than absolute clarity about the payment of introduction and referral fees by solicitors to introducers of work. It would, however, be right to mark Mr Maddocks’s failings with a substantial fine that would demonstrate to the public that such failings on the part of a member of the solicitors’ profession were unacceptable to his professional disciplinary body and to the solicitors’ profession as a whole. In the light of all of the detailed circumstances placed before the Tribunal, and because the Tribunal had found that Mr Maddocks is a decent man looking after the best interest of his clients, and where he was not deliberately and flagrantly in breach but rather had honestly misdirected himself, the Tribunal had to take no step in recognition of its first duty to protect the public. The Tribunal imposed a fine of £15,000 upon Mr Maddocks made up of the maximum fine of £5,000 in respect of each of allegations 1 and 2 and £2,500

in respect of each of allegations 3 and 4. The Tribunal also ordered Mr Maddocks to pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment unless agreed between the parties (to include the cost of the Investigation Accountant of the Law Society). The Tribunal noted that the parties themselves had already agreed that the costs payable in respect of the interim hearing on 7th January 2007 had been agreed between the parties at £7,000.

DATED this 2nd day of October 2007
on behalf of the Tribunal

A H B Holmes
Chairman