

IN THE MATTER OF PETER JAMES MCGOWAN, solicitor

(In the originating application allegations were made against Michael MacDonald, against whom proceedings were discontinued, Jeremy Christopher Rice, Neil Anthony Brown and Rodney Alan Shiers but the allegations against them were withdrawn at the substantive hearing)

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr W M Hartley (in the chair)  
M N Pearson  
Mrs C Pickering

Date of Hearing: 8<sup>th</sup> December 2009

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**THE TRIBUNAL'S DECISION ON THE REGULATORY  
SETTLEMENT AGREEMENT ENTERED INTO BETWEEN MR  
MCGOWAN, MR RICE, MR BROWN AND MR SHIERS AND THE  
SOLICITORS REGULATION AUTHORITY  
DATED 4<sup>th</sup> DECEMBER 2009**

**AND**

**FINDINGS IN RESPECT OF ALLEGATIONS AGAINST  
MR PETER JAMES MCGOWAN**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Peter Harland Cadman of Russell-Cooke solicitors, 8 Bedford Row, London WC1R 4BX on 23 May 2008 that Peter James McGowan, Mr Michael MacDonald, Mr Jeremy Christopher Rice, Mr Neil Anthony Brown and Mr Rodney Alan Shiers, all of Gray Court 99 Saltergate, Chesterfield, Derbyshire S40 1LD, solicitors, 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 Regulatory Settlement Agreement**

1. At the opening of the hearing before the Tribunal it was told that Peter Harland Cadman represented the SRA, and the Respondents (save Michael Macdonald) attended in person and represented themselves. The Applicant, with the leave of the Tribunal discontinued proceedings against Mr Michael Macdonald, who had passed away on 20 February 2009.
2. The Tribunal was invited to grant permission to the Applicant to withdraw the allegations against Jeremy Christopher Rice, Neil Anthony Brown and Rodney Alan Shiers on the basis that they and the SRA had reached an agreement as to the way forward.
3. A written regulatory settlement agreement which had been signed by Peter James McGowan, Jeremy Christopher Rice, Neil Anthony Brown and Rodney Alan Shiers on 4 December 2009 was 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 Peter James McGowan alone should be dealt with forthwith. The regulatory settlement agreement took the following form:-

“This Agreement is dated 4 December 2009 and is made between:-

- (a) The Solicitors Regulation Authority (“SRA”); and
- (b) Peter James McGowan (“PJM”), Jeremy Christopher Rice (“JCR”), Neil Anthony Brown (“NAB”) and Rodney Alan Shiers (“RAS”)

#### **Background**

1. BRM (“the firm”) is a firm of solicitors practising as a partnership.
2. PJM, JCR, NAB and RAS were partners in the firm throughout the relevant period.
3. The Second Respondent in the proceedings before the SDT, Michael MacDonald (“MM”) died on the 20<sup>th</sup> February 2009 and the SRA will apply for leave to withdraw proceedings against him before the SDT.
4. On 29 November 2005 there commenced an inspection of the firm’s books of account and other documents by the Forensic Investigation Unit (“FIU”) of the SRA.
5. A report prepared consequent upon the said inspection was issued on 4 April 2006 (the FIU Report).
6. On 28 March 2007 an Adjudication Panel of the SRA considered the FIU Report and representations made upon it. The Panel resolved that proceedings should be taken in the Solicitors Disciplinary Tribunal (“SDT”) against PJM, JCR, NAB, RAS and MM.

## **The FIU Report**

7. The Report related to the firm's conduct of claims for compensation against the Department of Trade and Industry ("DTI") for former miners or the families of deceased former miners under Claims Handling Agreements (CHA) supervised by the High Court ("the British Coal Litigation").

## **UDM/Vendside**

8. From 2003 the firm entered into an agreement with UDM/Vendside who had obtained clients which were referred to BRM. Features of this arrangement included the following:-
  - a. Payment of a fee (of £500 plus VAT for successful cases that went through the full medical assessment and £200 plus VAT where expedited settlements were achieved) to a company called Walker & Co.
  - b. With every such referral BRM would receive an agreement signed by the claimant, authorising a deduction from the damages achieved on settlement based on a sliding scale (up to a maximum of £500.00 plus VAT) depending on the amount of damages received. This will be referred to as the "UDM Agreement". The deduction was described in each UDM Agreement as "A fee in lieu of Union subscriptions".
  - c. It is agreed that in every such case the UDM Agreement pre-dated the client's retainer with BRM.
  - d. Prior to 20 June 2005, the firm acted upon the clients' authority by making payment of the deduction agreed between the clients and the UDM/Vendside from their damages. After that date, no such payments were made.
  - e. The firm handled approximately 4,600 cases in which the client had entered into the UDM Agreement. It made payments to the UDM/Vendside under the UDM Agreement in 316 of those cases but in every other case it paid all damages received to the clients in full.
  - f. The firm has provided the SRA with a schedule confirming the details of all such payments made under the UDM Agreement.
  - g. The total sum paid by the firm's clients to UDM/Vendside under the UDM agreement was £89,567.85.
9. It is agreed by the firm that the payments made under the UDM Agreement were fees to and for the benefit of the UDM but which were contingent upon the successful outcome of the claims.

## **Walker & Co**

10. Prior to the firm receiving the claims they were sent by the UDM/Vendside to Walker & Co. Under direction of the UDM/Vendside, the firm agreed to pay a referral fee to

Walker & Co., whose sole director was Clare Nicola Walker (CNW). At all material times, CNW was, in addition, an employee of Vendside.

11. The firm notified all relevant clients of the financial arrangements by letter on or about 24 November 2004. In every case, this was after the commencement of the firm's retainer but before the referral fee was paid.
12. The firm paid monies to Walker & Co. from the firm's office bank account following receipt of profit costs. The firm's files showed no involvement of Walker & Co. in the claims process.
13. The firm made payments to Walker & Co. totalling £194,701.59 up to July 2005. Thereafter, a further £391,289.57 was paid into an escrow account.
14. Features of this arrangement show that the firm paid referral fees to Walker & Co (under the direction of the UDM/Vendside).
15. Payments made to Walker & Co. were shown on individual client ledgers as disbursements.

### **Sureclaim**

16. The report also shows both common law cases and CHA referrals from Sureclaim Ltd. In 5 out of approximately 500 common law cases there was included an old agreement that had been made between the client and Sureclaim to pay to Sureclaim a "service fee" at the rate of 23.5% of the total damages recovered.
17. In the 5 cases the deductions of the service fee amounted to a total of £8,833.30.
18. The firm sent each of the 5 clients a letter of apology, together with a full refund of their individual deductions.
19. The agreement between the firm and Sureclaim was superseded by an agreement dated 12 June 2003 whereby fees would be paid by the firm in respect of both investigation work and preparation of an oral checklist with regards to, inter alia, funding.
20. The report also shows that the firm entered into an agreement with Sureclaim to receive CHA claims. BRM received 577 CHA cases. Features of the agreement included:-
  - a. On acceptance of the claim, payment of an initial fee of £250 plus VAT to Sureclaim and on settlement of the claim a further £175 plus VAT to Sureclaim.
  - b. The total payments of £425 plus VAT were described as an "administrative fee ... to reflect their marketing costs, administrative support in ensuring your claim would be eligible for the Scheme and for the introduction of your claim to this firm".

21. The firm failed to provide information to the client before or at the outset of the retainer until 2005, which was after the commencement of the retainers. In no case was any client required to pay anything.
22. The firm paid Sureclaim £182,325 for the total claims referred.

### **Beresfords**

23. The firm received common law referrals from a firm of solicitors, Beresfords. The firm paid to Beresfords the following:-
  - a. £264.37 for a “case investigation fee” to include a fully complete and detailed questionnaire from the claimant and
  - b. £235 for a case referral fee.
24. The firm received £200 commission on each case from the ATE insurers which was used towards payment of the referral fee. The firm did not adequately explain to the clients that the commission, if paid, belonged to those clients.
25. The case investigation fee was funded by the client through a loan on which the client was required to pay interest which was not itself recoverable within the claim.

### **The Allegations**

26. The allegations against PJM, JCR, NAB and RAS are set out in Paragraph 1 of the SRA’s Rule 5 Statement, and are:-
  - 1.1 That they have acted and/or continue to act in circumstances of conflict and/or significant risk of conflict of interest between:-
    - (i) the interest of their clients and their own interests; and/or
    - (ii) the interests of their clients and the interests of the Union of Democratic Mineworkers (“UDM”)/Vendside Limited (“Vendside”)/Walker & Co. Claim Services) Limited (“Walker & Co”) [Contrary to Rule 1(a), (c), (d) and (e) of the Solicitors’ Practice Rules 1990 (“the SPR”)].
  - 1.2 That they have failed to act in the best interests of the clients in that they failed to give any or any adequate advice to clients on “agreements” the clients had purportedly entered into with UDM/Vendside [contrary to Rule 1(a), (c), (d) and (e) of the SPR].
  - 1.3 That contrary to Rule 3 of the SPR or otherwise they accepted instructions and referrals of business from other persons in breach of, and otherwise than in compliance with, the Solicitors Introduction & Referral Code 1990 (“the Referral Code”).

- 1.4 That they entered into arrangements with officers of the UDM/Vendside and Clare Walker of both UDM/Vendside and Walker & Co that were a sham and intended to disguise their breaches of Rule 3 of the SPR and/or were inherently improper or carried such dubious or improper features that they should have declined to enter into such arrangements [contrary to Rule 1(a) and (d) of the SPR].
- 1.5 That contrary to Rule 9 of the SPR they entered into arrangements for the introduction of clients or acted in association with persons (not being solicitors) whose business or any part of whose business was to make, support or prosecute (whether by action or otherwise) claims arising as a result of death or personal injury and who, in the course of such business, solicit or receive contingency fees in respect of such claims.
- 1.6 That contrary to Rule 15 of the SPR and the Solicitor's Cost Information and Client Care Code ("the Client Care Code"), they failed to give sufficient information to clients about costs and/or the funding of claims generally [contrary to Rule 1(a), (c), (d) and (e) of the SPR].
- 1.7 That contrary to Rule 7 of the SPR the Respondents shared their professional fees with a non-solicitor, namely Walker & Co.
- 1.8 That funds were withdrawn from client account in breach of the Solicitors Accounts Rules.

### **The Agreement**

27. The parties agree and acknowledge that in particular MM and PJM were primarily responsible for the matters leading to the allegations referred to in paragraph 26 above. MM had primary responsibility for regulatory compliance and primary responsibility for all other aspects of Coal Health Claims rested with PJM.
28. Proceedings will proceed against PJM at the SDT on the basis that he will admit allegations at 1.1, 1.2, 1.3, 1.5 and 1.6 as set out above.
29. The SRA will seek from the SDT permission to withdraw allegations 1.7 and 1.8.
30. The SRA will seek from the SDT permission to amend allegation 1.4 as follows:
 

"That the firm entered into an agreement with UDM/Walker & Co that had such inherently improper features that the firm should have declined to enter into such an arrangement".
31. PJM will admit this amended allegation and the SRA will withdraw paragraphs 11.4(a), (c) and (d) from the Rule 5 statement. Paragraph 11.4(f) will be amended to read:
 

"The purchase of cases by payment of referral fees".

32. PJM will fully admit allegations 1.1, 1.2, 1.3, 1.4 (in its amended form) 1.5 and 1.6 as set out above. JCR, NAB and RAS will also fully admit the same allegations for the purpose of this Agreement.
33. The SRA will seek leave of the SDT to withdraw proceedings against JCR, NAB and RAS. Should the SDT grant such leave, the SRA will impose reprimands on JCR, RAS and NAB upon them undertaking with PJM by entering into this Agreement as follows:-
  - a. That they have already reviewed all claims under the British Coal Litigation conducted by BRM and have identified all clients for whom the firm acted in respect thereof.
  - b. That they have identified 316 such clients in respect of which payments were made from damages to the UDM/Vendside under the UDM Agreement.
  - c. That they have already made reimbursements to some clients and full details of those clients will be provided to the SRA by 18 December 2009.
  - d. That forthwith they shall make all reasonable endeavours to trace and contact each of the remaining clients or their estates (which, for the avoidance of doubt will mean writing to their last known or current address on the firm's database) in respect of which payments were made from damages and shall write to them in accordance with the Agreed Letter attached to this Agreement at Schedule A by 23 December 2009.
  - e. By 31 March 2010 reimburse all said clients or their estates who have responded to the Agreed Letter with the full amounts paid or deducted under the UDM Agreement together with interest on those deductions from the date that they were made at the rate of 3% per annum.
  - f. By 7 April 2010 provide to the SRA a list of clients' names and addresses, confirmation of the dates of any responses from them, the amounts reimbursed and the dates of reimbursement/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.
  - g. If at any stage during the course of this agreement or thereafter a client makes contact with the firm requesting payment those clients will be reimbursed with the full amount paid or deducted under the UDM Agreement together with interest on those deductions from the date that they were made at the rate of 3%.
34. It is acknowledged by the SRA that the giving and performing of these undertakings represents substantial mitigation for all parties.
35. PJM, JCR, NAB and RAS are jointly and severally liable for the reasonable costs of the SRA in this matter to include the costs of FIU. Furthermore PJM will submit to an Order for costs to be made by SDT either in an agreed sum or failing agreement to be subject to a Detailed Assessment by the Court.

- 36.1 If the undertaking at paragraph 33 above is not complied with within the time limits stated or if PJM, JCR, NAB and RAS act in any way inconsistently with this Agreement the application to SDT will be renewed and PJM, JCR, NAB and RAS agree that it is not open to them to challenge the validity of the renewed proceedings on any basis connected with the withdrawal of the present application.
- 36.2 Any renewed proceedings will be in accordance with the amended admitted allegations contained within this document.
- 36.3 For the avoidance of doubt the SRA reserve the right to initiate further allegations of a breach of undertaking.
- 37. This Agreement may be published by SRA and disclosed to any person upon request.

.....  
David Middleton  
Director of Legal  
SRA

Signed

.....  
Peter James McGowan

Signed

.....  
Jeremy Christopher Rice

Signed

.....  
Rodney Alan Shiers

Signed

.....  
Neil Anthony Brown

**SCHEDULE A**

**British Coal Respiratory Disease Scheme**

You will recall that we acted on your behalf in making a successful claim for compensation in the above Scheme. Based on an earlier document signed by you with UDM/Vendside, we deducted a sum of money from your damages which was paid to UDM/Vendside.

Issues have now arisen as to whether that deduction was proper or not. We have, therefore decided that, if our clients wish, this sum will now in fact be forwarded to you from our own funds. This means that you would receive the amount of money that was deducted plus interest at 3%.

If you wish us to make this further payment to you, please indicate as marked at the bottom of this letter and return it in the enclosed stamped addressed envelope by the 31 March 2010. Should you not respond to this letter by that date we may assume that you have no concerns about the payment to UDM/Vendside.

Yours sincerely

**BRM**

I would like BRM to make the further payment to me.

.....  
Name

.....  
Date”

The Submissions of the Applicant on the Regulatory Settlement Agreement

- 4. The Applicant confirmed the Authority had taken the view that Mr McGowan’s responsibility was different from the other Respondents. Mr McGowan and Mr MacDonald had been directly involved in the work which had led to the allegations but Mr Rice, Mr Brown and Mr Shiers had not been involved in this work. However they had benefitted from the fees generated. Their involvement was significantly different from the involvement of Mr McGowan and Mr MacDonald but the case did involve serious misconduct where clients’ interests had been compromised. The Regulatory Settlement Agreement incorporated a repayment scheme which was structured and the Authority considered this was very strong mitigation on the part of the Respondents who had entered into it.

The Submissions of the Respondents on the Regulatory Settlement Agreement

- 5. Mr McGowan on behalf of all the Respondents confirmed they were prepared to admit the allegations as amended in the Regulatory Settlement Agreement and that they agreed the terms of that agreement.

### The Tribunal's Decision

6. The Tribunal 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 reimbursement of amounts paid under the agreements as volunteered by the Respondents. The good reputation of the solicitors' profession would be protected by the airing of the allegations against Mr McGowan, 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. Accordingly the Tribunal consented to the course of action proposed.

### **The Substantive Hearing in respect of Mr Peter James McGowan**

The allegations against Mr McGowan were that he:-

- (1) Acted and/or continued to act in circumstances of conflict and/or significant risk of conflict of interest between:-
  - (i) the interest of his clients and his own interests; and/or
  - (ii) the interests of his clients and the interests of the Union of Democratic Mineworkers ("UDM")/Vendside Limited ("Vendside")/Walker & Co (Claim Services) Limited ("Walker & Co") contrary to Rule 1(a), (c), (d) and (e) of the Solicitors' Practice Rules 1990 ("the SPR").
- (2) Failed to act in the best interest of the clients in that he failed to give any or any adequate advice to clients on "agreements" the clients had purportedly entered into with UDM/Vendside contrary to Rule 1(a), (c), (d) and (e) of the SPR.
- (3) Contrary to Rule 3 of the SPR or otherwise he accepted instructions and referrals of business from other persons in breach of, and otherwise than in compliance with, the Solicitors Introduction & Referral Code 1990 ("the Referral Code").
- (4) That the firm entered into an agreement with UDM/Walker & Co that had such inherently improper features that the firm should have declined to enter into such an arrangement.
- (5) Contrary to Rule 9 of the SPR he entered into arrangements for the introduction of clients or acted in association with persons (not being solicitors) whose business or any part of whose business was to make, support or prosecute (whether by action or otherwise) claims arising as a result of death or personal injury and who, in the course of such business, solicit or receive contingency fees in respect of such claims.
- (6) Contrary to Rule 15 of the SPR and the Solicitor's Cost Information and Client Care Code ("the Client Care Code"), he failed to give sufficient information to clients about costs and/or the funding of claims generally contrary to Rule 1(a),(c), (d) and (e) of the SPR.
- (7) [Withdrawn]

(8) [Withdrawn]

The application was heard at the Courtroom, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 8 December 2009 when Mr Peter Harland Cadman appeared as the Applicant and the Respondent appeared in person.

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

**At the conclusion of the hearing the Tribunal made the following order:-**

The Tribunal Orders that the Respondent, Peter James McGowan of 99 Saltergate, Chesterfield, Derbyshire S40 1LD, a solicitor, do pay a fine of £6,000.00, 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 fixed in the sum of £27,000.00 to be paid in accordance with paragraph 35 of the Regulatory Settlement Agreement between the parties dated 4 December 2009.

**The facts are set out in paragraphs 1-26 hereunder:-**

1. The Respondent, Peter James McGowan, born in 1957, was admitted on 15 February 1983. His name remained on the Roll of Solicitors.
2. At all material times the Respondent practised in partnership under the style of BRM Solicitors at Gray Court, 99 Saltergate, Chesterfield, Derbyshire S40 1LD.
3. An inspection of the books of accounts of the Respondent's firm was commenced on 29 November 2005 and a copy of the resulting report dated 4 April 2006 was before the Tribunal.
4. The British Coal Corporation was found liable in two separate High Court group actions (case number 906177 and the "Vibration White Finger" litigation). The Department of Trade and Industry ("DTI"), as successor to the business of the British Coal Corporation, accepted liability for the following medical conditions suffered by those employed in the mining industry:
  - a) Vibration White Finger ("VWF"); and
  - b) Respiratory Diseases (Chronic Obstructive Pulmonary Disease, Chronic Bronchitis, etc) ("RD").
5. Following admissions of liability and under the supervision of the High Court, Claims Handling Agreements ("CHAs") relating to VWF and RD were concluded on 22 January 1999 and 24 September 1999 respectively. The CHAs constituted a Court approved scheme which provided the framework for the conduct of all claims.
6. Under the CHAs there were time limits for bringing claims. Claims in respect of VWF were to be brought by 31 March 2003 and claims in respect of RD by 31 March 2004. The schemes were therefore now closed.

7. The CHAs stipulated that all claims must be made through a firm of solicitors that had been appointed to the Panel by the DTI (an exception was made for the UDM which was permitted to prosecute claims under its own separate CHA).
8. The DTI appointed Aon IRISC (“IRISC”) to administer the schemes under their supervision. The CHAs covered:
  - a) Medical evidence was required to support a claim without charge to claimants.
  - b) The way in which a claim would be processed.
  - c) The amount of damages to be paid on a successful claim.
  - d) The cost payable to the solicitors for prosecuting the claim.
9. The CHAs dealt with payment of solicitors’ costs as follows:
  - a) As regards RD claims, the solicitor would receive costs based on the type of RD claim and further costs dependent upon other factors such as if it was a posthumous claim, and probate was required, or if there was an additional claim for special damages. No costs were payable to the claimant’s solicitor if a claim was unsuccessful.
  - b) Paragraph 14 to Schedule 17 of the RD CHA stated the following:
 

“14. The DTI anticipates that these agreed fees will represent the total sums payable to a claimant’s representative in relation to a claim. The DTI will not be liable for any additional fees or disbursements, howsoever they might arise, which have been paid to the claimant’s representative”.
  - c) As regards VWF claims, the solicitor would receive costs at a particular level depending on the category of VWF claim.
10. In all RD and VWF claims the claimant was never at risk of a costs order being made against him/her. Further, the CHAs ensured that solicitors’ costs for successful claims were met by the DTI.
11. As regards RD actions, pursuant to paragraph 3.2 of the High Court Order in action number [960177 (Queen’s Bench Division)] dated 1<sup>st</sup> October 1998, claimants shall be deemed:
 

“(a) to be a plaintiff on the writ herein the date of commencement of that plaintiff’s action being the date of notice of the claim and interest on general damages shall run from such date; (b) to have served proceedings upon the defendant on the day on which the Register is reviewed (as provided for at paragraph 3.2 above) subsequent to the entry of that plaintiff’s details upon the Register”.
12. With regard to the High Court Order relating to VWF actions, the High Court Order (Newcastle Upon Tyne District Registry Division) dated 25 August 1994 stated:

“2.1.1 “British Coal Vibration White Finger Litigation” (“WFL”) shall be the name given to the procedural arrangements for the disposal of the plaintiffs’ actions more particularly defined by the directions prescribed by this Order and any subsequent Order(s) ...

#### 4. Parties

4.1.1 Those plaintiffs listed at Schedule 2 hereto are those plaintiffs whose actions are the subject of WFL at the date of this Order.

4.1.2 Any plaintiff whose action is the subject of the Practice Note shall join the WFL upon:- (a) complying with the terms of the Practice Note, and; (b) notifying the Steering Committee of intention to join the SG, or; (c) by Order of the Court.”

13. The Respondent received instructions to act in RD and VWF claims principally through referrals of claims by UDM/Vendside, Sureclaim/Miners in general or from Beresfords Solicitors LLP.
14. The Respondent’s firm received approximately 4,600 valid miners’ compensation claims from UDM and/or a related company, Vendside. The shareholders of Vendside were Mr N Greatrex and Mr M L Stevens both of whom were union officials (respectively the President/General Secretary and the Vice-President) and held the shares as nominees for the UDM Nottingham section. Although the UDM are subject to their own CHA and could have handled the claims themselves they referred claimants to firms of solicitors including the Respondent. The Respondent made payments totalling £120,339.85 to UDM from clients’ damages where settlements had been agreed and paid by IRISC.
15. Separately, the Respondent was retained by the UDM to act on its behalf with regard to issues arising from the British Coal litigation. Between 16 July 2004 and 31 August 2005 the firm raised 8 fee notes totalling £107,717.72 (net of VAT) in respect of work carried out on the Union’s behalf. The Union was billed separately in representing the Union’s interest in negotiations in the High Court.
16. As the Respondent was aware, clients referred by the UDM/Vendside had already signed a document purporting to be an agreement with the UDM or Vendside (it is unclear which) before being referred to the Respondent. The UDM/Vendside “agreements” were contrary to the clients’ interests (and the Respondent ought to have so advised clients) because they:-
  - a) were on UDM notepaper and carried its address;
  - b) stated that the claimant agreed that “if my Claim is successful I will pay to Vendside Ltd, who administer these Claims, a fee, to cover the cost of pursuing this Claim on my behalf, within the following guidelines”;
  - c) provided for payment on a sliding scale depending upon the amount of damages received, expressed as “Settlement Amount”, £50 plus VAT was payable on a settlement of less than £500 and the fee increased by £50 for

every £500 received, up to a maximum fee of £500 plus VAT on a settlement of £4,500.01 or more;

- d) stated that “Cheques should be made payable to Vendside Ltd and will be required at settlement of the Claim”;
- e) disclosed no contractual obligation by the UDM to the Claimant nor any service provided by the UDM to the Claimant;
- f) disclosed no contractual obligation by Vendside Limited to the Claimant nor any service provided by Vendside Limited to the Claimant save that it included vague reference to Vendside being the company “who administer these claims”;
- g) were signed only the Claimant and not by either UDM or Vendside;

As a result of the above, the purported “agreement” was therefore at most a unilateral statement of intent by the client and not a binding contract. However, even if the “agreement” was a binding contract the Respondent’s conduct (in failing to advise as to the “agreement”) was not in the clients’ best interests.

17. The UDM/Vendside “agreements” were contrary to the clients’ interests (and the Respondent ought to have so advised clients) because:-
  - a) They provided no actual benefit to the client, in that in the majority of cases claims could be brought without cost to the client through the CHAs and there was no material role for UDM/Vendside to play save as introducer.
  - b) Clients should have been advised that they were able to pursue claims without entering into any such agreement. The Respondent was precluded from providing such independent advice because such advice would be contrary to his own personal interests.
  - c) The Respondent failed to provide the clients with any or adequate legal advice as to the funding of claims generally and the agreement with UDM/Vendside in particular.
  - d) There was no justifiable reason for UDM/Vendside to be paid an amount on a sliding scale dependent on the amount of damages received.
  - e) Contrary to their duty to their clients the Respondent failed to advise clients as to their freedom to instruct a solicitor of their choice independent of any arrangement with UDM or to advise in the clients’ best interest in relation to the means by which the clients’ claims might be brought without payment to UDM. The Respondent should have advised his clients accordingly.
18. A review of files gave no evidence of any involvement whatsoever of UDM/Vendside in the conduct of the claims apart from the initial “agreement” and a very basic health/employment questionnaire.

19. There was a conflict of interest in the Respondent acting for the UDM and other clients referred to the Respondent by the UDM. The Respondent was precluded from providing independent advice to those clients because of the inherent conflict of interest between the interest of UDM/Vendside and the interest of the other clients.
20. Walker & Co was incorporated on 9 January 2002 and the Sole Director was Clare Nicola Walker. At all material times Clare Walker was also an employee of the UDM and/or Vendside having formerly been employed by AON IRISC. The firm paid money from office bank account, following the receipt of profit costs from the DTI, to Walker & Co. The files showed no involvement in the claim process of Walker & Co.
21. The Respondent made payments to Walker & Co, totalling £194,701.59 up to July 2005. Thereafter monies were held in escrow in the sum of £391,289.57. There was no evidence that Walker & Co provided any marketing/administration/investigative services or any genuine services. In the absence of any genuine services provided by Walker & Co, this amounted to improper sharing of fees with a non-solicitor in breach of SPR 7. This arrangement involved:
  - a) [withdrawn]
  - b) The unexplained involvement of both Vendside and Walker & Co in that deductions from client's damages were still payable to Vendside but other fees were payable by the Respondents to Walker & Co;
  - c) [withdrawn]
  - d) [withdrawn]
  - e) The absence of any contractual obligation upon Walker & Co or Vendside to provide any specific marketing vetting or administrative services.
  - f) The purchase of cases by payment of referral fees.
22. These features rendered the arrangement improper or so dubious that the Respondent should not have entered into it. Payments were made to Walker & Co and shown on individual client matters as disbursements. These payments were incorrectly so described as they could not constitute a disbursement for the particular client matter. Books of accounts were therefore not properly and accurately written up. The payments made were in breach of Solicitors Accounts Rules.
23. The Respondents also received work or claims from Sureclaim Limited/Miners & General Workers Compensation Recovery Unit. The referred work included common law claims and scheme claims. Prior to the referral of the claim to the firm the clients would have signed a contingency fee with Sureclaim/Miners & General Workers Compensation Recovery Unit that typically provided for a "service fee" to be paid at the rate of 23.5% (including VAT) of the total damages recovered. During the course of the inspection the Respondent refunded to five particular clients the sum of £8,833.30 being the Sureclaim contingency fees plus interest.

24. The Respondent entered into an agreement with Sureclaim (Mr Nulty) for the firm to receive 577 claims. The agreement was as follows:
- a) On acceptance of the claim an initial fee of £250 plus VAT will be paid by the firm to Sureclaim.
  - b) On settlement of the claim a further fee of £175 plus VAT.
25. During the inspection the Respondent indicated that all Sureclaim clients had been notified in writing of the arrangements between the firms. However, in a letter dated 22 March 2006 the Respondent conceded that notification to clients was “overlooked” in November 2004 and no letter was sent until July 2005. The payment of £425 plus VAT was incorrectly described as an administrative fee rather than a referral fee.
26. The firm was approached by Beresfords Solicitors LLP and joined that firm’s panel. Some of the cases referred originated from UDM/Vendside who agreed for them to be passed on to firms on the Beresfords’ panel. Cases were funded by way of a loan to the client from First National Bank and then there was a payment of the referral fee and a case investigation fee to Beresfords from that client loan. Interest accrued on the loan and the loan was eventually paid off following receipt of the firm’s costs from the defendant. The Tribunal was provided with examples of relevant cases.

### **The Submissions of the Applicant**

27. This was a case where there had been serious misconduct resulting in clients’ interests being compromised and in adverse publicity. The Applicant stressed that this case was not on the same level as the case of James Rhodes Beresford and Douglas Harold Smith v The Solicitors Regulation Authority and The Law Society [2009] EWHC 3155 (Admin). The Tribunal were asked to consider the decision of the Administrative Court in that case. The Applicant referred the Tribunal to the case of Anthony Warren Wagner, Michael Benjamin Lopian and Carin Bradley [9668 - 2007] and also to the case of Glyn Frank Maddocks [9536 - 2006]. The Applicant accepted that the cases were not binding on the Tribunal but they were persuasive and in particular, the case of Glyn Frank Maddocks also concerned a regulatory settlement agreement which allowed the Authority to monitor the situation. The Applicant confirmed that clients would be aware of the Regulatory Settlement Agreement when they received letters from the firm and a copy of the agreement would also be on the Solicitors Regulation Authority website.
28. The Applicant requested an order for his costs which had been agreed with the Respondents in the sum of £27,000.

### **The Submissions of Mr Peter James McGowan**

29. Mr McGowan referred to his undated witness statement which was before the Tribunal. He confirmed the allegations were admitted and apologised for the errors he had made. These procedures had been ongoing for 4 years and it had been very difficult for him to come to terms with the criticism. Indeed, today was the worse day of his life having to appear before the Tribunal. There was no allegation of

unbefitting conduct or dishonesty and Mr McGowan confirmed he had never appeared before the Tribunal previously.

30. The British Coal Scheme was a complex scheme which had been negotiated with the British Coal Board by larger firms. The Union of Democratic Mineworkers (UDM) were not invited to participate in the British Coal Scheme and a parallel agreement was negotiated for them. Initially they acted directly for clients but then passed them to solicitors.
31. Mr McGowan's firm had become involved after being approached by UDM who had a large number of claims to deal with in the run-up to March 2004 when the scheme ended. They were mostly posthumous claims and they did not have the expertise to deal with the probate aspects and therefore the Respondent's firm had taken cases from them. Mr McGowan indicated they had not acted for any client under the UDM agreement.
32. In relation to allegations 1 and 2, Mr McGowan indicated he had found it difficult to grapple with these. He had been instructed to act for group litigation clients in late March 2004 and could not understand how a conflict had arisen. By the time every claim had been registered, he was not acting for UDM or Vendside and when Counsel was instructed, he confirmed Mr McGowan had acted on behalf of all group claimants under the UDM CHA in relation to generic issues. He did not act for BRM's clients as they had registered their claims under the main CHA and therefore their interests were represented by the claimant's group. Mr McGowan confirmed BRM had refused to act for UDM/Vendside concerning issues around their fees and on 8 July 2005 he had written to Mr Michael Turner himself who had replied that there would be no professional embarrassment in the firm and its Counsel representing UDM. Mr McGowan submitted Mr Turner did not see this as a conflict of interest situation and the terms of the agreement were clearly explained to clients in writing. Letters sent to clients were given in accordance with guidance from Counsel. Mr McGowan confirmed he had refused to act for UDM/Vendside concerning disputes between them and their own clients and he had taken the view that the UDM agreement was not part of BRM's retainer with clients and therefore a conflict had not arisen. The Tribunal were asked to take into account letters that had been sent to clients and the information within them which clearly indicated that BRM received their fees from the DTI and that any advice given to the client was limited to work being done under the British Coal Scheme. Mr McGowan submitted that this factor in particular distinguished his position from that of the case of Anthony Warren Wagner and Michael Benjamin Lopian who had not sent this information out to clients.
33. The Tribunal were referred to a written advice from Brian Griffiths (Counsel) dated 14 June 2004 which confirmed the UDM agreement appeared to be a normal trade union agreement and was lawful.
34. Mr McGowan had written to the professional ethics department at The Law Society on 22 March 2007 seeking guidance on the position but received no response from them. The Tribunal were referred to a copy of his letter.
35. Mr McGowan had thought that union deductions had been a long established practice allowing unions to support members in their litigation. The DTI and government

ministers had confirmed union deductions were acceptable and the lead solicitors firms in such litigation had also confirmed such deductions were lawful. The prevailing opinion at that time was that payments made under the UDM agreement were acceptable and Timothy Dutton QC had stated that clients' interests should be protected by ensuring no deductions were made and paid to a third party and that clients were able to take independent advice if necessary. The Tribunal were referred to a letter dated 8 July 2005 which was immediately sent out to clients advising them of the position 3 days after Mr Dutton's advice was given. This was proof that the firm had acted immediately. Mr McGowan submitted these actions showed that there was no intention to breach the rules and furthermore, UDM had confirmed in writing to BRM there was no individual contract between the firm and UDM/Vendside and that BRM had no duty to deliver any fee to UDM.

36. The Tribunal were asked to bear in mind that all this should be balanced against ensuring all the clients' claims were registered before the cut-off date and out of 5,000 cases, the firm had only received 12 complaints. No clients had been lost as a result of the manner in which the firm had behaved and as soon as the firm became aware of the position, the omission was rectified. Indeed the Authority had accepted the firm was and continued to be a well run practice.
37. The Tribunal were reminded that under the Regulatory Settlement Agreement full refunds were offered to all clients plus commercial interest on the monies paid and this showed that the firm had taken positive steps to rectify any omissions.
38. In relation to allegation 3, the priority at the time was to register claims before 31 March 2004 and as the firm had only started doing the work in November 2003, they only had 5 months to ensure all claims were registered. The firm had taken on extra staff, worked late nights, weekends and managed to register every claim successfully. There were other firms of solicitors who had had to seek permission to register claims late but BRM had not been in that position.
39. The Tribunal were also reminded that shortly before March 2004, the 1990 Solicitors Introduction and Referral Code was abolished and the firm had complied with the new code. The Tribunal were asked to bear in mind that clients were indifferent to the position, there had been no risk of adverse costs to clients and the firm did not lose a single client as a result of the breaches. This was simply a question of timing but clients had not been prejudiced.
40. Regarding allegation 4, Mr McGowan accepted this reluctantly but again submitted this was a question of timing. If he had carried out the steps that were ultimately carried out from the outset, there would have been no breach.
41. Regarding allegation 4, the Tribunal were referred to Mr McGowan's witness statement which set out in detail why he believed the British Coal schemes were non contentious and that there was widespread dispute and misunderstanding of this issue at the time. Concerning Sureclaim, there were 5 cases out of 577 where the firm had negligently paid a contingency fee to Sureclaim. As soon as they discovered their error, the position was corrected and clients were paid back with interest from the firm's own account. Ultimately Sureclaim had accepted the situation and reimbursed the firm in full. However the fact that this only happened on 5 cases showed that it

was not a deliberate course of dealing but just an error. The payments had been made by a trainee and Mr McGowan apologised for failing to adequately supervise that trainee.

42. Regarding allegation 6, client care letters had been sent to all clients which set out in plain and comprehensive English the position. The Legal Complaints Service had been satisfied that the firm had provided adequate costs information although the Authority had taken a different view. Mr McGowan confirmed that at the time the letter had been sent, he was of the view that it was a good letter and was subsequently mortified that the Regulator did not agree. He now understood that this was due to the absence of advice on the Vendside agreement. The prejudice to clients was limited to 316 cases where a fee had been paid.
43. Mr McGowan stated that appearing before the Tribunal was the most traumatic occasion of his career. Indeed his colleague, Mr MacDonald had died with this hanging over him and Mr McGowan had no doubt that the stress of this action had assisted Mr McDonald's demise.
44. Mr McGowan had 27 unblemished years of practice and as a result of these proceedings had resigned from the Motor Accident Solicitors Society and could no longer be a president of his local law society. He was prominent within the local community and his reputation had now been tarnished. He had naively previously assumed that all the solicitors appearing before the Tribunal were dishonest but now realised that this was not the case because he himself was part of a well run firm who had innocently got things wrong. The Authority had inspected the firm in December 2007 and no problems had been found at that time.
45. There had been no deliberate flouting of the regulations, clients had been very happy and all the breaches had been fully addressed and rectified as soon as possible. The firm had cooperated fully with the Authority and appreciated the pressure that the Authority was under politically with regard to miners' claims.
46. Mr McGowan confirmed the Authority's costs of £27,000 had been agreed. Mr McGowan felt he was not a bad man or a concern to the profession. He continued to represent mining communities and asked the Tribunal to let him leave with the acknowledgement that he did try to act properly. He submitted that there was significant mitigation for the Tribunal to consider a reprimand and apologised for not doing things differently. He had learnt a salutary lesson.

### **The Tribunal's Findings**

47. The Tribunal had listened carefully to the submissions of both parties and had considered all the documentary evidence provided. The Tribunal found the allegations to have been substantiated, indeed they were admitted by Mr McGowan.
48. The Tribunal found this case was different from the other miners' compensation cases which had been referred to the Tribunal, some of which had involved dishonesty that was in no way present in this particular case.

49. The allegations had been admitted and indeed, some clients had already been reimbursed with an agreement that all remaining clients who could be identified would be written to forthwith and reimbursed by 31 March 2010. This was an important aspect of the case.
50. Further, the Tribunal were impressed by Mr McGowan's frankness and sincerity and were also impressed that as soon as there appeared to be a problem, this firm of solicitors tried to put it right.
51. Mr McGowan was a decent man trying to do the best for his clients and he had been doing so at a time when there was little clear guidance about the payment of fees by solicitors. There had not been any complaints from clients and where there had been any losses, these were to be reimbursed.
52. However, there were breaches which had led to the reputation of the profession being brought into disrepute and indeed, Mr McGowan had accepted his failings and had apologised for them. In light of all the circumstances, the Tribunal considered the appropriate sanction was to fine Mr McGowan £6,000. The Tribunal also made an order for the Applicant's costs, which had been agreed in the sum of £27,000 to be paid in accordance with the Regulatory Settlement Agreement reached between the parties dated 4 December 2009.
53. The Tribunal Ordered that the Respondent, Peter James McGowan of 99 Saltergate, Chesterfield, Derbyshire S40 1LD, a solicitor, do pay a fine of £6,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £27,000.00 to be paid in accordance with paragraph 35 of the Regulatory Settlement Agreement between the parties dated 4 December 2009.

Dated this 1<sup>st</sup> day of April 2010  
On behalf of the Tribunal

Mr W M Hartley  
Chairman