No. 10271-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF KIM ALEXANDRA CHAMBERS, SIMON JEREMY HOLLIS, STEVEN JOHN MARSDEN, JOHN SIDDLE, STEPHEN MACLAREN WALKER,

(The Respondents)

Upon the application of Margaret Bromley
on behalf of the Solicitors Regulation Authority

Miss N. Lucking (in the chair)
Mrs K. Thompson
Mr. D. E. Marlow

Date of Hearing: 27th May 2010

FINDINGS & DECISION

Appearances

Ms Margaret Bromley of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ for the Applicant.

Mr Gareth Edwards of Crangle Edwards, solicitors, 15 Edge Lane, Stretford, Manchester M32 8HN for Ms Chambers, Mr Hollis and Mr Walker. Mr Lindsay Keith of Lindsay J Keith solicitors, 1 Bedlam Street, Hurstpierpoint, West Sussex, for Mr Marsden. Ms Chambers, Mr Hollis, Mr Marsden and Mr Walker were present at the hearing. Mr Siddle was not present and was not represented.

All of the allegations against the original Second Respondent were withdrawn, with the consent of the Tribunal, at the beginning of the hearing.

Allegations

The allegations made against the remaining Respondents, Kim Alexandra Chambers, Simon Jeremy Hollis, Steven John Marsden, John Siddle and Stephen Maclaren Walker, on behalf of the Solicitors Regulation Authority are that:

1. Contrary to Rule 1 of the Solicitors' Practice Rules 1990 ("SPR") and, in respect of

actions after 1st July 2007, contrary to the Solicitors' Code of Conduct 2007 ("the Code"), they have done things in the course of acting as solicitors which have compromised or impaired or were likely to compromise or impair:

(i) their independence or integrity; and/or

(ii) a person's freedom to instruct a solicitor of his or her own choice; and/or

(iii) their duty to act in the best interests of clients; and/or

(iv) their good repute and the good repute of the solicitors profession and/or they behaved in a way that was likely to diminish the trust the public places in them or their profession; and/or

(v) their proper standard of work: and/or they failed to provide a good standard of service to their clients.

2. They have acted and/or continued to act in circumstances where there was a conflict and/or a significant risk of conflict of interest between the interests of their clients and their own interests contrary to Rule 16D(2) of the SPR and Rule 3 of the Code.

3. They have accepted introductions and referrals of business from other persons in breach of and otherwise than in compliance with the Solicitors' Introduction and Referral Code 1990 ("the SIRC"), contrary to Rule 3 of the SPR 1990, and contrary to Rule 9.01 and 9.02 of the Code.

4. They have entered into a fee-sharing agreement contrary to Rule 7 of the SPR 1990; and Rule 8.02 of the Code.

5. Contrary to Rule 9 of the SPR, and Rule 9.01(4) of the Code, they entered into an arrangement for the introduction of clients and/or acted in association with New Century Claims, not being solicitors, whose business or any part of whose business was to make, support or prosecute claims arising from death or personal injury and who, in the course of such business, solicited or received contingency fees in respect of such claims.

6. They retained commission received from independent financial advisers IIA when they had not obtained the clients' informed consent to their retaining the commission in breach of Rule 10(1) of the SPR and, after July 2007, Rule 2.06 of the Code.

7. They failed to pay client money and/or controlled trust money without delay into a client account in breach of Rule 15(1) of the Solicitors Accounts Rules 1990 ("SAR").

8. In undertaking insurance mediation activities they failed to comply with the Solicitors' Financial Services (Conduct of Business) Rules 2001.

Factual Background

1. The Respondent Kim Alexandra Chambers (born September 1972) was admitted as a solicitor in November 1998 and her name remains on the Roll of Solicitors.

2. The Respondent Simon Jeremy Hollis (born July 1957) was admitted as a solicitor in October 1990 and his name remains on the Roll of Solicitors.

3. The Respondent Steven John Marsden (born October 1952) was admitted as a solicitor in December 1978 and his name remains on the Roll of Solicitors.

4. The Respondent John Siddle (born June 1950) was admitted as a solicitor in June 1989 and his name remains on the Roll of Solicitors.

5. The Respondent Stephen Maclaren Walker (born March 1969) was admitted as a solicitor in October 1999 and his name remains on the Roll of Solicitors.

6. At all material times prior to 1st April 2007 the Respondents practised in partnership as Livingstons, with Mr Marsden being the senior partner from 30th November 2001. Livingstons Solicitors Limited, formerly the unincorporated Livingstons, came into being on 1st April 2007 when the former partners became Directors of the new entity, except Mr Marsden who became a Consultant. At all material times the head office of the firm was 9 Benson Street, Elverson, Cumbria LA12 7AU. In addition there are branches at 75-77 Buccleuch Street, Barrow in Furness, Cumbria LA14 1QQ and 57-61 Market Street, Dalton, Cumbria LA15 8AW.

7. On 26th June 2007 an inspection of the books of account and other records of Livingstons Solicitors Ltd was commenced by Miss Smith, an Investment Business Officer of the Solicitors Regulation Authority ("SRA"). Following correspondence between the SRA and the Respondents, the investigation recommenced on 29th October 2007, concluding on 31st October 2007.

Personal Injury Referrals

8. At some time between October 1999 and July 2000, the firm entered into referral agreements with New Century Claims.

9. New Century Claims ("NCC") is a trading name of RCCC Incorporated Limited, which was incorporated on 17th December 2003 and is registered with the Ministry of Justice under the compensation Act 2006. The sole Director is RH.

10. RH also traded as Centurion Investigations ("Centurion"). Invoices were sent from Centurion to the firm in respect of each matter referred to the firm by NCC. The address of Centurion was the same as NCC and a note on the bottom of the invoice stated "Please make cheque payable to RH". Later invoices refer to Centurion as a trading name for RCCC Ltd.

11. These personal injury claims were dealt with by the Fifth Respondent, John Siddle, with the assistance of a legal executive. The Respondents have stated that the claims referred originated from RH's contacts and that he does not make "cold calls".

12. In a letter of 27th July 2007, the Respondents estimated that a total of 151 NCC referrals had been undertaken between 2000 and 2007, amounting to some 25% of the total number of personal injury cases undertaken by the firm during that time.

However, the Respondents said that the proportion of fee income derived from the NCC files was significantly less than this, since they represented generally low-value cases, as compared to other more mixed value, personal injury claims with which the Respondents dealt.

13. Lakeland Claims Limited ("LCL") was incorporated on 2nd May 2007 and was registered with the Ministry of Justice to provide claims management services on 16th July 2007. LCL's registered office is that of Livingstons, and the Fifth Respondent's wife was at the time of the inspection a Director of LCL along with RH. The Fifth Respondent was the Company Secretary. Mr Walker, the Sixth Respondent, acted on the incorporation of LCL.

14. In Crangle Edwards' letter of 12 May 2008, the Respondents maintain that LCL was established following a suggestion from RH and that the Respondents (as Directors of Livingstons) declined a collective invitation to join the management of LCL. However, the Respondents had no objection to the involvement and investment of Mrs Siddle, with a view to both her and her husband, the Fifth Respondent, becoming further involved upon Mr Siddle's retirement.

15. The Respondents also confirmed in Crangle Edwards' letter that referrals from LCL accounted for approximately 1% of their work, and that as at May 2008 Mrs Siddle had resigned as a Director of LCL and *"divested herself of her share"*.

<u>NEW CENTURY CLAIMS: PRIOR TO MAY 2004</u>

<u>First Agreement with New Century Claims (NCC1)</u>

16. According to their letter of 27th July 2007, the Respondents entered into a referral arrangement for personal injury claims with NCC, in about October 1999. The subsequent letter from the Respondents' advisers Crangle Edwards estimates the starting date to have been July 2000.

17. The Respondents' letter of 17th September 2007 enclosed 2 lists of files referred by NCC, one of files dealt with by another employee and one of files dealt with by John Siddle. The earliest inception date was 17th August 2000. These list 46 cases with an inception date prior to March 2004. The Respondents' letter of 27th July 2007 referred to 55 cases referred by NCC in the period 2000 to 2003.

18. There was no evidence of a written agreement between the Respondents and NCC prior to May 2004. The client files reviewed relating to this period in each case refer to a sum of £300 being paid to Centurion seemingly immediately prior to entry into the retainer with the client. Some files included an invoice issued by Centurion in the sum of £300 *"to carry out investigations"* which also refers to the preparation of an *"accident report"*. The files reviewed also include letters of instruction to costs draftsmen which refer to an investigation by Centurion and preparation of accident reports. A letter on one client file to RH at NCC enclosing the initial cheque for £300 also makes reference to an accident report.

19. NCC in their letter of 24 May 2004 refer to discontinuing the current scheme, which involved deductions from a client's damages and replacing it with a new one.

20. There was no evidence on any of the files reviewed that any of the clients were informed of the £300 fee paid to RH/Centurion.

21. In 3 cases, where the file was costed at the end, the £300.00 fee appears to have been reclaimed as a disbursement, despite being incurred before the retainer came into being. In other cases the fee seems to have been paid out of the amount settled for the Respondents' costs, and the Respondents have reduced their bill accordingly.

<u>New Century Claims' Agreement with the client prior to May 2004 ("D1")</u>

22. In some cases the client had signed a declaration (D1) in the following terms:

"IN CONSIDERATION of New Century Claims agreeing to indemnity me against all my legal fees and medical expenses incurred to pursue my claim, I AGREE to let New Century Claims to deduct and keep 30% (excluding VAT) of all my damages and compensation...

I AUTHORISE New Century Claims

(1) To nominate a solicitor to act for me if any claim has a better than evens chance of success and

(2) To settle my claim on terms my solicitor deems reasonable.

I FURTHER AUTHORISE and instruct my Solicitors to discharge my account with New Century Claims as described in this agreement on settlement of my claim.

I CONFIRM that I wish New Century Claims to pursue this claim for me..."

"I ACCEPT that if for any reason I discontinue my claim other than with agreement with New Century Claims or I dis-instruct the Solicitor nominated by New Century Claims or fail to cooperate and provide all necessary information to enable the Solicitor to successfully pursue the Claim. That all Legal and Medical fees and all other Expenses incurred to pursue my claim including a cancellation fee to New Century Claim based on the Solicitors value of the Claim at the time of cancellation or dis-instruction, but not be less than £600 (excluding VAT) will be payable immediately on receipt of the invoice and no later than one month after discontinuance/cancellation of the Claim. I also understand that I have 14 days from the Date of Signing of this Agreement in which to cancel. This must be in writing and received within the time limit. ***Thereafter this Agreement shall be irrevocable****"*.

23. The D1 in another case was in the same terms except the final paragraph was omitted.

24. In all cases, the D1 contains a second section, agreeing to pay NCC 30% plus VAT of *"the loss of earnings/use element of the Claim"*, which has not been signed by any clients on the files reviewed for this period.

25. In 2 cases, the D1 appears to have been signed by the client prior to referral to Livingstons. The D1 in 3 cases is undated.

26. In one case, the D1 signed by the client is dated 30th October 2002. Centurion's invoice on this file is dated 2nd October 2002, and the client care letter is dated 7th October 2002.

27. On the files reviewed, none of the clients were given any advice in relation to the D1, either before or after signing it. In each case, upon an offer of settlement being made, Livingstons wrote to the client reminding him/her that he would be *"required to pay"* 30% of his damages to NCC. Subsequently, Livingstons paid 30% of the client's damages to NCC upon settlement and wrote to the client enclosing the balance of his damages and informing him that *"In accordance with your agreement with New Century Claims"*, a sum representing 30% of the client's damages has been deducted and sent direct to NCC.

28. Most cases reviewed involved a single payment in respect of general damages for the client. However, in one case the client also received a payment in respect of special damages, almost 30% of which was again remitted to NCC even though the Declaration dealing with the loss of earnings/use element of the claim was not signed by the client.

<u>Further deductions made from compensation</u>

29. Despite the terms of the Declaration signed by one client in which NCC agreed "to indemnify me against all my legal fees and medical and other expenses incurred to pursue my claim", a sum of £50 was deducted from his damages, when the Motor Insurers Bureau refused to pay the full amount charged in respect of a medical report from a Consultant Orthopaedic Surgeon. The £50 shortfall was deducted from his damages before the balance was sent to him and without obtaining his prior consent nor advising him of his right to an indemnity under his agreement with NCC.

<u>Cases referred to the Respondents prior to May 2004</u>

30. According to a letter from the Respondents' solicitor of 12 May 2008, 45 of the matters referred by NCC were opened before March 2004. The schedules of cases provided by the Respondents with their letter of 17th September 2007 list in total 46 cases taken on by Mr Siddle and the legal executive prior to March 2004, with a further two being accepted prior to the new agreement with NCC in May 2004.

31. 37 of the pre-March 2004 cases were successful, resulting in payments of £10,250 in fees to NCC and further payments to NCC totalling £16, 733.21 in respect of the clients' damages.

<u>NEW CENTURY CLAIMS: MAY 2004 - DECEMBER 2007</u>

<u>Second Agreement with New Century Claims ("NCC2")</u>

32. The Respondents continued to take on cases referred by NCC after May 2004, albeit that the terms upon which the referrals took place appear to have changed. Whilst there is no written agreement as such, the terms upon which referrals were made are set out in NCC's letter to the Fifth Respondent dated 24th May 2004. This states that:

"...I am discontinuing my scheme of indemnity for 30% of damages <u>this only affects new claims</u>...

I have for some time been aware that I would need to change my scheme owing to adverse publicity with regard to any deductions from compensation and have now agreed a new deal with one of my panel solicitors in which I would receive 50% of their costs in total with £350.00 of this being paid on receipt of the claim.

When the claim has settled I would require a copy of the breakdown of costs received and a payment of 50% of the total figure minus £350.00 already paid, hopefully you will recover this from the third party insurance company giving you an extra £350.00.

I hope this change is acceptable to you and that it will generate substantial extra business for us all..."

33. The Fifth Respondent, Mr Siddle, signed the letter on 18th June 2004 and annotated it with the words: *"...I am very happy to with this and look forward to our continued co-operation...".*

34. A selection of files from the period May 2004 to December 2007 was reviewed during the SRA's visit. Some files contained Centurion invoices referring to an *"accident report".* Two contain copies of Accident Reports prepared by Centurion/NCC. The reports are undated. The Centurion invoices charging for the work are dated prior to the date of the retainer.

35. In accordance with NCC2, Livingstons paid the Centurion invoices (in the sum of £350.00) at the outset of the case, usually on the same date that the client care letter was sent out. At the time of the SRA's inspection some cases had concluded. Upon conclusion and recoupment of costs, the Respondents sent to NCC a sum equal to 50% of those costs less £350 already paid, in accordance with NCC2.

36. On the files reviewed the clients were not informed at any time of the existence of NCC2 or of any payments being made by the firm to New Century Claims.

<u>New Century Claims' Agreement with the client after May 2004 ("D2")</u>

37. NCC's Agreement with the client from approximately May 2004 was again contained in the form of a Declaration signed by the client ("D2").

38. D2 is in similar terms to D1, albeit some amendments made to reflect the differences between NCC1 and NCC2. The provision for payment of at least £600 upon a discontinued claim remains, as does the authority for NCC *"to pursue this claim for me".*

39. The exact date when NCC began using D2 is not clear; however, the changes made from D1 appear to correspond to NCC2, which came into use in May 2004.

40. The D2 signed by one client is dated 11th December 2006. The Centurion invoice to Livingstons refers to "To Carry out investigation" and is dated 13th December 2006.

On 20th December Livingstons wrote to NCC acknowledging receipt of the accident report form and paying the fee of £350. The client care letter according to the file review notes was dated 4th January 2007. Any work done by Centurion was done pre-retainer. The remaining three D2s are not dated and it is therefore unclear as to whether they were entered into before or after the retainer commenced.

41. There is no evidence on file to suggest that any advice was offered in relation to the D2 and it is not mentioned in any correspondence with the client.

The Respondents' Agreement with the client

Cases funded by CFA

42. On four of the post-May 2004 files, the client was asked to enter into a conditional Fee Agreement ("CFA") at the outset of the matter.

43. In one case, a CFA was entered into some six months subsequent to the retainer.

One example

44. A client care letter on file dated 17th April 2007 provides details of the Respondents' hourly rates. Mr H is asked to check whether he has any pre-existing legal insurance and, if not, to sign and return the enclosed CFA. The client care letter goes on to state that: *"The essence of a now win, no fee agreement is that we agree to work for nothing for you unless your claim is successful, in which case our costs will almost certainly be paid by the defendant's insurers. We shall pay for any disbursements incurred in pursuing your claim..."*.

45. The Respondents' letter of 23rd May 2007, acknowledging receipt of the CFA, advised Mr H that the Respondents have arranged an insurance policy because *"if the claim did not succeed you would still be potentially responsible for the costs of medical records or other outlays incurred by this firm on your behalf and if Court proceedings had to be issued, the cost of the opponent"*. The letter also stated that the Respondents have paid the insurance premium.

46. The CFA dated 23rd April 2007, stated that: *"If you win your claim, you pay our basic charges, our disbursements and a success fee. You are entitled to seek recovery from your opponent of part or all of our basic charges, our disbursements, a success fee and insurance premium...The success fee is set at 50% of basic charges, where the claim concludes at trial; or 25% where the claim concludes before a trial has commenced..."*.

47. A Certificate of Insurance was issued with Financial & Legal. The Respondents' letter to NatWest dated 23rd May 2007 shows the existence of a loan account in respect of this matter.

Non-CFA cases

48. In other, non-CFA funded cases, the client was given details of the Respondents' hourly rate at the start of the case. One client care letter makes no mention of legal

expenses insurance, nor any other method of funding. Some concluded non-CFA cases were settled on the basis of recoupment of costs from the other side. In one case the Respondents deducted £123 from the client's damages in respect of unrecovered disbursements.

NEW CENTURY CLAIMS: DECEMBER 2007 ONWARDS

Third Agreement with New Century Claims ("NCC3")

49. Under Clause 5 of NCC3, the Respondents agree to pay NCC for each claim that they accept:

69.1 £350.00 within seven days of confirmation of instructions from the client; and

69.2 (subject to clause 6) a further sum of £275.00 at the conclusion of the claim.

50. Clause 6 provides that where the value of the claim exceeds £5,000.00 the Respondents are to pay NCC a further £550.00 at the conclusion of the claim.

51. The phrase *"conclusion of the claim"* is not defined.

52. Under clause 7, the parties agree *"that they shall at all times seek to act in the best interests of their clients irrespective of the Parties' own interests"*.

53. Clause 8 states that: *"The Parties agree that they will comply with the provisions of Rule 7 (Publicity) and rule 9 (Referrals of Business) of the Solicitors' Code of Conduct 2007...or such rule or rules relating to referrals of business as may replace them. In particular:*

a. Every client will be told by both parties of the agreement between the Parties and of the amount that Livingstons pay for each referral from New Century Claims;

b. Only after the information referred to in "a" above has been provided in writing to the prospective client will Livingstons accept instructions from the client;

c. Prospective clients will be informed by both parties that they may instruct a firm of solicitors other than Livingstons if they wish."

New Century Claims' Agreement with the client from December 2007 onwards

54. In a letter of May 2008 the Respondents' solicitors stated that NCC no longer employed the "Declaration" signed by clients. They did not specify when NCC ceased to use it.

LAKELAND CLAIMS LIMITED: JULY 2007 – DECEMBER 2007

First Agreement with Lakeland Claims Limited ("LCL1")

55. The Respondents' initial Agreement with LCL ("LCL1") is recorded in the letter from LCL to the Respondents dated 30th July 2007. This sets out the basis for referral payments along the same lines as NCC2, whereby £350.00 is paid to the referrer at the outset of the matter, with a further sum (equivalent to half the settled costs minus £350) to follow upon settlement.

56. The letter LCL2 has been signed by the Fifth Respondent to confirm his agreement and dated 3rd August 2007.

<u>Lakeland Claims Limited's Agreement with the client from July 2007 ("LCD1")</u>

57. LCL's Agreement with the client from July to December 2007 was contained in the form of a Declaration ("LCD1"). This is in the same terms as the D2 Agreements with NCC.

58. Three of the four files reviewed by the SRA contained a signed LCD1. In each case, the second section of the form, stating that there will be no deductions from compensation and no fees to pay, was also signed by for LCL.

<u>Cases referred by Lakeland Claims Limited</u>

59. The SRA reviewed four cases referred by LCL between June and December 2007. All were in early stages of progress and none were concluded or settled.

<u>First example case</u>

60. Ms S was involved in an accident on 4th June 2007 and the matter was referred to the Respondents by LCL. On 7th August 2007 the Respondents wrote to Ms S referring to a meeting on 6th August and referring to a report received from LCL. The letter also contained details of the Respondents' hourly rates and confirmed that, since the client had confirmed that she did not have legal expenses insurance, Mr Siddle would operate on a "no win, no fee basis" whereby the client would have nothing to pay if the claim was unsuccessful, and would receive 100% of her compensation if it was successful. The client care letter also refers to the arrangement of insurance to cover disbursements and opponents' costs. The letter did not disclose the referral fee to LCL.

61. The client ledger showed a payment of £350 to LCL on 10th August 2007.

<u>Second Example Case</u>

62. On 11th September 2007 the client signed a LCD1 and the form was signed by LCL. On 21st September 2007 the Respondents wrote to Ms H stating that *"This firm pays a referral fee to Lakeland Claims Limited for each new claim received. The referral fee equates to 50% of the costs recovered at the end of the claim so I cannot confirm at this stage the exact figure of the referral fee. I have made an interim payment to Lakeland Claims and will pay them the balance once our costs have been paid at the end of the case. The referral fee is paid by this firm and not by you."* The client was not told the amount of the interim payment already made to LCL.

63. The letter included details of hourly rates and a fee estimate and enclosed a copy CFA. The client was asked to check for any legal expenses insurance before signing the CFA.

LAKELAND CLAIMS LIMITED: DECEMBER 2007 ONWARDS

Second Agreement with Lakeland Claims Limited ("LCL2")

64. On 18th December 2007 the Respondents entered into a new agreement with LCL. The new agreement (LCL2) is in identical terms to NCC3.

Lakeland Claims Limited's Agreement with the client from December 2007 onwards

65. In their letter of 12th May 2008 the Respondent's solicitors confirmed that as at May 2008 the Declaration was no longer used.

GENERAL

66. A copy of an unsigned letter from RCCC Incorporated Limited dated 30th October 2007 stated that:

"...I can confirm that both New Century Claims and Lakeland Claims comply with the claims management referral code as laid out in the claims management regulations.

I am also in receipt of The Solicitors introduction and referral code...and can confirm that both New Century Claims and Lakeland Claims Ltd will fully comply with these rules."

67. In their letter of 27th July 2007, the Respondents explained that Mr Siddle and the legal executive reviewed NCC work and personal injury work in general at least once a month. The Respondents' solicitors stated that lists of referrals from NCC and LCL were kept and were reviewed internally every fortnight.

COMMISSION ARRANGEMENTS

68. The firm had arrangements with an independent financial adviser, Independent Investments Associates Limited ("IIA"), whereby the Respondents made direct referrals of clients to IIA as well as using IIA as an authorised third party in some trust matters where necessary.

69. The Respondents explained in their letter of 27th July 2007 that: "In cases where commission is payable following references to IFAs, our policy is to share the commission with the IFA." A list of commissions received by the Respondents for the years 2004-2007 (up to the date of inspection) show a total of £82,965.86. Commissions were also received by Respondents in relation to trust matters where the only Trustees were one or more of the Respondents.

Non-trust matters

70. The Respondents explained that, prior to payment of commission, IIA obtained the

client's signature on a standard form entitled "Acknowledgement of Commission Arrangements" ("the Acknowledgement") which was passed to the Respondents and kept on their file. The wording on the Acknowledgement is as follows:

"Following your recent investment with The Way we will be paid commission directly by the product provider. It is our internal practice to pay a proportion of the amount we receive to the Introducing party and we would be grateful if you could sign and return the enclosed copy of this letter to acknowledge this arrangement.

To be paid Livingstons Solicitors - £1,425"

71. Commission sums received by the Respondents were then paid direct into the firm's office account.

72. The Respondents stated their believe that IIA obtaining the client's signature to the Acknowledgement was sufficient to fulfil their obligations under SPR Rule 10, stating that *"I am...confused as to why money which would otherwise be retained in full by IIA suddenly becomes client money just by dint of IIA remitting part of it to us."* The Respondents did, however, accept that the guidance to Rule 2.06 of the Code required "informed consent" and suggested that in future IIA would write to clients setting out the position in the Code and seeking consent to the Respondents' retaining the commission. In the event that consent is refused, IIA proposes to retain the whole of the commission and remit no part of it to the Respondents. The Respondents maintained that their previous procedures satisfied both the SPR Rule 10 and the accompanying guidance but acknowledged that it did not satisfy the new guidance which referred to the need for informed consent.

73. In the letter of 12th May 2008, the Respondents concede that the commission received was in fact client money under both the old and new rules, and that they had misunderstood the position previously. They stated their intention to discuss the matter fully with the client in future, setting out the position in respect of the rule, with the consent then being documented by IIA through use of the amended Acknowledgement previously submitted to the SRA.

<u>Trust matters</u>

74. During the SRA's inspection, the Third Respondent, Mr Hollis, explained that commissions received in relation to trust matters were dealt with in the same way as other commissions.

75. An Acknowledgement, in respect of the Q Trust, follows exactly the same wording as that used in non-trust matters. The letter is addressed to *"Trustees of EQ deceased"*. The sole trustee in this case was Mr Marsden, the Fourth Respondent. The Acknowledgement, consenting to the Respondents' retention of the commission, is signed by the Fourth Respondent.

76. Commission monies in relation to trust matters were also paid direct into the firm's office account.

77. In 5 cases, the Fourth Respondent was the sole trustee. In two other cases, the Fourth

and Fifth Respondents together were the trustees.

78. The amounts of commission retained ranged from £75 to £1,368 and the total payments received amounted to £4,267.59.

79. The Respondents credited all trust accounts with the commission *"mistakenly"* retained, along with interest at 3%.

INSURANCE MEDIATION ACTIVITIES

The Solicitors' Financial Services (Conduct of Business) Rules 2001 ("COBR") and Solicitors' Financial Services (Scope) Rules 2001 ("the Scope Rules")

80. The firm was not regulated by the FSA (as permitted by Rule 1 COBR).

The Respondents' compliance with the Scope Rules and COBR

81. It was noted that at the date of the investigation in June/October 2007 the firm was engaging in insurance mediation activities.

82. Only the firm's conveyancing client care letter contained the information required by Rule 3(3) COBR. The firm's letter of 27th July 2007 explained that the firm had not appreciated that arrangement of policies in respect of probate work or ATE policies amounted to conducting insurance mediation activities and had therefore not complied with COBR, but stated that the firm was *"taking steps to ensure that we comply with the rules in the future..."*.

83. The Tribunal reviewed all of the documents which included the Rule 5 Statement dated 2nd June 2009, together with accompanying bundle, a bundle of documents submitted by Mr Edwards on behalf of his client Respondents which included a compliance audit report by Vanessa Shenton, testimonials on behalf of the Respondents and a letter dated 19th May 2010 from Mr Siddle with enclosures which included a testimonial on his behalf. A number of previous findings of the Tribunal in the cases of Morgan and Others (No. 9443/2006), Chamberlain and Others (No. 10021/2008), McArdle and Others (No. 10144/2008), Pearce and Others (Nos. 10051/2008, 10136/2008) and Tottman (No. 10207/2009) were also provided by the Respondents.

Findings as to Fact and Law

Allegation 1

84. This allegation related to the payment of referral fees and the commission arrangements. In the Applicant's submission the Agreements D1, D2 and LCD1 were contrary to the clients' interests and the Respondents ought to have so advised their clients. The Respondents were not absolved of the duty to advise their clients even if the Agreements had been signed before they came to see them. The arrangements with the solicitor facilitated NCC entering into arrangements with the clients. These matters could easily have been dealt with by way of a conditional fee agreement. In addition there was no justification for a further charge equivalent of 30% of the

client's damages in respect of NCC's introductory services. In relation to D1 in particular, the fee charged by NCC to the client increased disproportionately the cost to the client of the successful claim without regard to its complexity. In addition it was the Applicant's submission that from 2004 until 2007 the Respondent's retained commission received from IIA in respect of client referrals without first obtaining the informed consent of the client and without having regard to whether or not the retention of the commission was in the client's best interests. The Respondents also during that period retained commission in respect of client trusts, for which they were the sole trustees in breach of the SAR and contrary to the common law position that a solicitor trustee cannot benefit from his trust.

85. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

<u>Allegation 2</u>

86. This allegation related to conflict of interest and in the Applicant's submission the Respondents' arrangements with NCC and LCL created a coincidence in the business interests of the Respondents and the business interests of NCC and LCL. This coincident interest of the Respondents and NCC and LCL conflicted with the interests of the Respondents' clients referred by NCC and LCL in that NCC and LCL stood to gain financially from the "agreements" contained in the D1, D2 and LCD1 between NCC, LCL and the clients, which agreements were either unenforceable or conferred little or no benefit to the clients.

87. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

<u>Allegation 3</u>

88. This allegation related to the payment of referral fees prior to March 2004 when they were prohibited, and from March 2004 onwards, when they were allowed under certain conditions. In the Applicant's submission this breached Section 2(3) of the Solicitors Introduction and Referral Code ("SIRC") in March 2004, which provided that "solicitors must not reward introducers by the payment of commission or otherwise". When the SIRC was amended in March 2004 it provided that a solicitor could make payment to a third party in relation to the introduction of clients only where "immediately upon receiving the referral and before accepting instructions to act the solicitor provides the client with all relevant information concerning the referral and, in particular, the amount of the referral." In the Applicant's submission the Respondents had breached the SIRC in both time periods as was illustrated by the facts. In addition, there were ongoing breaches of the SIRC from 1990/2000 onwards.

89. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

<u>Allegation 4</u>

90. This allegation related to the entering into of a fee sharing arrangement with a non-lawyer. In the Applicant's submission the Respondents' professional judgement in

relation to the advice given to their clients was constrained by the terms of the agreements between the Respondents and NCC/LCL and the close business relationships with them. In addition, the extent of the fee sharing which amounted to 50% of the firm's costs with a minimum amount of £350 was wholly disproportionate to the service provided by NCC/LCL. The fee sharing agreements with NCC and LCL therefore operated contrary to the provisions of Rule 7 of the SPR and following the introduction of the Code Rule 8.02 of the Code.

91. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 5

92. This allegation related to the arrangements entered into with NCC and LCL in respect of death or personal injury. In Rule 9 of the SPR there was a prohibition on a solicitor from entering into an arrangement for the introduction of clients with a person whose business was to make, support or prosecute claims arising as a result of death or personal injury, and who in the course of such business solicits or receives contingency fees. A similar prohibition was re-enacted in Rule 9.01(4) of the Code. In the Applicant's submission both NCC and LCL were such companies and all of the cases referred to the Respondents with one possible exception were personal injury claims. The agreements with NCC and LCL were clearly arrangements for the introduction of clients and the Respondents had acted in association with both of those companies.

93. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 6

94. This allegation related to accounting to clients for commission received of more than £20 unless the client had consented to its retention. In the Applicant's submission the Respondents had however accepted commission payments from IIA in respect of client referrals. They had not disclosed to the clients in writing the amount of the commission to be retained by them, but instead relied on IIA to do so. From 2004 until July 2007 they had also failed to make it clear to the client that they were under an obligation to account to the client for any commission received, and that such commission belonged to the client unless the client gave consent to the Respondents to retain it.

95. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 7

96. This allegation related to the solicitor's duty to pay client money and controlled trust money into a client account without delay. In the Applicant's submission the retention of commission without proper consent in respect of client non-trust matters and the retention of commission in respect of client trust matters meant that there had been a breach of rule 15(1) of the SAR. In all cases examined from 2004 to 2007, the

monies were not paid into client account without delay. In relation to the controlled trust monies, some were not paid into client account until at least some four years later.

97. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 8

98. This concerned the regulated activity of advising on and arranging property and indemnity insurance policies and conducting insurance mediation. In the Applicant's submission insurance is arranged in respect of probate and personal injury matters amounted to insurance mediation activities which the Respondents were not entitled to carry out without complying with the relevant rules. There was clear evidence that the Respondents had not complied with such rules.

99. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Mitigation

100. On behalf of his clients, Mr Edwards said that they had all co-operated from the outset of the matter and had intimated that admissions would be made. In this regard they should be given full credit. However, whilst all were responsible they were not necessarily culpable. To his clients' credits they had all maintained solidarity with Mr Marsden and Mr Siddle throughout, and did not seek to shift the blame to either of those Respondents. However, in his submission the culpability did rest with Messrs Marsden and Siddle, and the work the subject of the reports had been carried out in their departments. This had been made very clear from the outset. In addition, there was a report before the Tribunal from a Vanessa Shelton, who was an expert in compliance. This report further underscored the commitment of the Respondents to rectify any outstanding matters. Whilst the question of referral fees was an emotive subject, and Miss Shelton's report did raise some important concerns regarding the activities of the SRA in this respect, the Respondents wished to make it clear that it made no difference to their stand, but was something that was raised in mitigation. In addition, Mr Edwards wished to tell the Tribunal that the extent of the practicalities of day to day working life could sometimes conflict with the strict regulatory requirements when a solicitor's practice was departmentalised and specialised. This meant that more experienced partners were often not working from the same premises, and it was often difficult for the younger partners to challenge the older ones. In Mr Edwards' submission the responsibility/culpability divide was absolutely essential in this case.

101. In Mr Edwards' further submission, reprimands would be a fair and proper way to dispose of this matter. Indeed, this had been the recommendation of the caseworker but this recommendation had not been followed, and he had been overruled. This was a well-run, friendly and professional practice and the Respondents had exhibited shame and personal regret over what had happened. In summary, Mr Edwards asked the Tribunal to take into account the timely admissions by his clients as to responsibility but not culpability, the fact that the breaches were technical and the

distinction between honest attempts at compliance and no attempt whatsoever. There had been no abuse of trust and no claims made against the partners, and they had always displayed a high degree of integrity and professional standards; and had all taken responsibility, and apologised for what had happened. In conclusion, whilst Mr Edwards was aware that the previous findings of the Tribunal in similar cases were not binding, he asked the Tribunal to review those findings and look at the penalties that had been imposed in those cases. The firm had Lexel and IP accreditation, and the testimonials produced spoke for themselves.

102. Mr Keith, for Mr Marsden, accepted and adopted all Mr Edwards had had to say. Mr Marsden was the senior partner at the material time, and in Mr Keith's submission he had done his best and got it wrong. He had taken immediate steps to comply and had initiated the Vanessa Shelton compliance audit. It was important to note that he did consider matters and made mistakes. In his submission the old rules on retention of commission said nothing of "informed consent", and this was introduced in 2007 in non-mandatory guidance. The whole area was a minefield, and it was little wonder that there was to be a complete redraft on it. Mr Marsden's concern was for his colleagues; there should be no blame on the juniors, and he took it on his own shoulders. Livingstons was highly regarded in the area by clients and testimonials had been produced on behalf of the firm. In summary, Mr Marsden was a decent, honest solicitor who had suffered enough during the time this matter had taken to reach the Tribunal.

Costs Application

103. The Applicant requested fixed costs in the full amount claimed of £22,143.31. The matters had all been proved and admitted, and the case had been properly brought. The Applicant had heard what the Respondents had to say about the caseworker's recommendation, but this was the Adjudicator's decision and she urged the Tribunal to make the fixed costs order in full.

104. In the Respondents' submission they were well aware of their liabilities as to costs, but had the caseworker's recommendation been followed, matters would not have gone so far and the costs in the matter seemed excessive. A detailed assessment would be required if the costs remained at this level.

Previous Disciplinary Sanctions before the Tribunal

105. None

Sanction and Reasons

106. The allegations had all been admitted by the Respondents. With regard to the referral fee arrangements, these originated prior to May 2004 at a time when referral fees were prohibited. Although the rules then changed, the referral fee arrangements made did not comply with the rules. With regard to the commission arrangements, the Respondents should have known the rules, and the same applied to the insurance mediation activities in which they were involved. However, the Tribunal had taken note of the fact that the Respondents had all co-operated, and that they had made timely admissions and had taken steps to address all the regulatory deficiencies which

resulted in these proceedings. The Tribunal therefore felt that the appropriate sanction was that each of the remaining Respondents should be reprimanded.

Decision as to Costs

107. The Tribunal regarded the costs claimed as excessive, taking into account the fact that the Respondents had co-operated throughout, and would therefore reduce the costs awarded to £11,000 on a joint and several basis.

108. The Tribunal Ordered that the Respondent KIM ALEXANDRA CHAMBERS of Livingstons Solicitors Limited, 9 Benson Street, Ulverston, Cumbria, LA2 7AU, solicitor, be REPRIMANDED and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00, such costs to be joint and several.

109. The Tribunal Ordered that the Respondent SIMON JEREMY HOLLIS of Livingstons Solicitors Limited, 57-61 Market Street, Dalton-in-Furness, Cumbria, LA15 8AW, solicitor, be REPRIMANDED and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00, such costs to be joint and several.

110. The Tribunal Ordered that the Respondent STEVEN JOHN MARSDEN of Livingstons Solicitors Limited, 9 Benson Street, Ulverston, Cumbria, LA2 7AU, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00, such costs to be joint and several.

111. The Tribunal Ordered that the Respondent JOHN SIDDLE of Livingstons Solicitors Limited, 75-77 Buccleuch Street, Barrow-in-Furness, Cumbria, LA14 1QQ, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00, such costs to be joint and several.

112. The Tribunal Ordered that the Respondent STEPHEN MACLAREN WALKER of Livingstons Solicitors Limited, 9 Benson Street, Ulverston, Cumbria, LA2 7AU, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00, such costs to be joint and several.

Dated this 27th day of July 2010
On behalf of the Tribunal

Miss N Lucking
Chairman