

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PAUL MICHAEL HEWITT, solicitor (First Respondent)
and JOHN BRIAN EVANS, solicitor (Second Respondent)

Upon the application of Jonathan Goodwin
on behalf of the Solicitors Regulation Authority

Mr A H B Holmes (in the chair)
Mr P Housego
Mrs L McMahon-Hathway

Date of Hearing: 21st September 2010

FINDINGS & DECISION

Appearances

Jonathan Richard Goodwin, Solicitor Advocate, of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT appeared on behalf of the Applicant, the Solicitors Regulation Authority ("SRA").

The Second Respondent was present and in person. The First Respondent did not appear. The Application to the Tribunal, on behalf of the SRA, was made on 30 October 2009 with a Supplemental Statement dated 6 August 2010.

Allegations

The allegations against both Respondents were that they had:

1. Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (hereinafter referred to as the "1998 Rules") failed to ensure compliance with the Rules.
2. Contrary to Rule 7 of the 1998 Rules, failed to rectify breaches promptly upon discovery.

3. Withdrawn money from client account other than as permitted by Rule 22 of the 1998 Rules.
4. Failed to keep accounts properly written up in accordance with Rule 32 of the 1998 Rules.
5. Made improper use of a suspense ledger account, contrary to Rule 32(16) of the 1998 Rules.
6. Contrary to Rule 1 of the Solicitors Practice Rules 1990 ("SPR"), failed to notify their professional indemnity insurers of a claim.
7. Failed and/or had delayed in complying with an undertaking dated 30 May 2008.
8. Contrary to Rule 24 of the 1998 Rules failed to account to clients in respect of interest due.
9. Made an undisclosed profit in that they had charged clients £30 in respect of telegraphic transfer fees which had exceeded the actual cost to the firm per transaction and which had not been disclosed to the client(s), contrary to Rule 1 and/or Rule 15 of the SPR (pre 1 July 2007) and/or Rule 1 of the Solicitors Code of Conduct 2007 ("SCC") (post 1 July 2007).
10. Failed to comply with conditions attached to their practising certificates.
11. Failed to reply to correspondence from the SRA dated 19 January 2009 seeking their explanation, contrary to Rule 1 and/or Rule 20.03 of the SCC.
12. Failed to inform the SRA that they had been made bankrupt on 28 October 2008 contrary to Rule 1 and/or 20.03 and/or 20.04 of SCC.

Allegations against the First Respondent only

The allegations against the First Respondent only were that he had:

13. Acted when a conflict or potential conflict of interest had existed between himself and a client(s).
14. Failed to advise lender clients of material information.
15. Failed to act in the best interests of his lender clients contrary to Rule 1 of the SPR.
16. Purported to raise a charge for the retrieval and delivery up of files to clients, contrary to Rule 1 and/or Rule 2 of the SCC.
17. Failed to advise a client to seek independent legal advice, contrary to Rule 1 of the SPR and/or Rule 1 of the SCC.
18. Carried on practice as a solicitor without a practising certificate, contrary to Rule 1 and/or Rule 20.01 of the SCC.

19. Delayed in making application to join the Assigned Risks Pool ("ARP") for the period 1 October 2008 to 30 September 2009 contrary to Rule 1 of the SCC and/or Rule 10 of the Solicitors Indemnity Insurance Rules 2008.

Further allegations against the First Respondent only

The further allegations against the First Respondent were that he had:

20. Contrary to Rule 10.05 of the SCC, failed to comply with undertakings provided in a certificate of title dated 1 February 2008 relating to 1, The H----, Sheffield and/or a certificate of title dated 1 February 2008 (in the alternative dated 6 February 2008) relating to Flat 7 LH-----, Sheffield.
21. Contrary to Rule 1.02, 1.04, 1.05 and 1.06 of SCC failed to register his lender clients' charges in respect of 1 The H----- and/or Flat 7 LH-----.
22. Contrary to Rule 1(c), (d) and (e) of the SPR and/or Rule 1.04, 1.05 and 1.06 of SCC, failed and/or delayed in accounting to his client (Mr B) in respect of monies due to his client.
23. Contrary to Rule 19(2) Solicitors Accounts Rules 1998 ("SAR") transferred money from client account without first having rendered a bill or written information to his client (Mr B).
24. Failed to respond to his client's (Mr B) letters dated 9 June 2005, 9 May 2006 and 7 December 2006 contrary to Rule 1(c), (d) and (e) of the SPR.
25. Contrary to Rule 20.03 of SCC, failed to cooperate with the SRA.

The further allegation as against the Second Respondent was that he had:

26. Contrary to Rule 10.05 of the SCC, failed to comply with undertakings provided in certificates of title dated 1 February 2008 (in the alternative dated 6 February 2008) and/or failed to ensure compliance with those undertakings.

Preliminary Matter

The Applicant referred the Tribunal to letters to him from the First Respondent dated 7 and 20 September with their enclosures. The Tribunal noted that the First Respondent had been served with both the Rule 5 and the Rule 7 Statements, was aware of the hearing and had indicated that he would not be attending the substantive hearing. The Tribunal directed that the hearing should proceed in his absence on the basis that the First Respondent denied all the allegations.

The Applicant explained that the Second Respondent, who was present, admitted the 12 allegations against him and also admitted allegation 26 on the basis that he had been a partner in the firm when the undertakings had been provided.

Factual Background

1. The First Respondent, born in 1952, was admitted to the Roll of Solicitors on 16 May 1977. As at the date of the hearing, his name remained on the Roll.
2. The Second Respondent, born in 1955, was admitted to the Roll of Solicitors on 16 February 1987. His name remains on the Roll.
3. The Respondents had carried on practice in partnership under the style of Hewitt & Co from offices at 41 Townhead Street, Sheffield, S1 2EB.
4. The Second Respondent had been an equity partner until 31 January 2006 when he had become a salaried partner. It was understood that the Second Respondent had resigned from the partnership with effect from 30 September 2008. The Respondents had been adjudicated bankrupt on 28 October 2008.
5. On 26 November 2008 an Adjudication Panel had resolved to intervene into the practice of Hewitt & Co.
6. On 1 September 2008 an Investigation Officer had commenced an inspection of the books of account of Hewitt & Co. Details of the Investigation Officer's findings were contained in his Report dated 10 December 2008 ("the Report").
7. The Investigation Officer had ascertained that the firm's books of account had not been in compliance with the SAR.
8. The Investigation Officer had been unable to give an opinion as to whether the Respondents had held sufficient clients' monies to meet liabilities to clients. However, the Investigation Officer had been able to identify that a minimum cash shortage of £10,576.27 had existed as at the inspection date, caused as a consequence of client account payments allocated to a sundries account in the clients' ledger of ten cash payments to the First Respondent amounting to £2,975.60 and eight improper payments instigated by the First Respondent of £7,600.67, making a total of £10,576.27.
9. The First Respondent had contended that the cash payments had been made to reimburse him for business expenditure that he had incurred personally and that the payments had been office payments. However, the First Respondent had not produced documentary evidence to support that contention and the minimum cash shortage had not been replaced at the time of the Report.

Allegations 1-26

10. The Report particularised all the individual allegations.

Allegations 10 and 18

11. The Respondents' practising certificates for 2007/2008 had been subject to a condition of approved employment or partnership, and that they file half yearly Accountant's Reports.

12. The partnership at Hewitt & Co with the Second Respondent had been approved for the purposes of the condition. However the Second Respondent had ceased to be a partner with effect from 30 September 2008. Both Respondents had carried on practice in breach of the conditions attached to their practising certificates.
13. The Second Respondent conceded that he had carried on practice for the period 30 September 2008 to 14 October 2008 to assist in the orderly disposal of the files. The Second Respondent had not been permitted to continue as a sole principal from 1 October 2008 but had done so.
14. The First Respondent had been adjudged bankrupt on 28 October 2008 and his practising certificate suspended as a result. However, the First Respondent had continued practising as a solicitor and the sole principal of Hewitt & Co after the suspension of his practising certificate. Moreover, the First Respondent had practised in breach of conditions attached to his practising certificate between 1 and 28 October 2008 and from 28 October 2008, he had practised without a practising certificate until 26 November 2008, the date of the intervention.
15. With effect from 1 October 2008 the First Respondent had no longer been permitted to continue authorising transfers and/or payments from client account, but had done so in respect of a number of separate payments, to include two separate payments of £50,000 and £107,744 on 28 October 2008.
16. Both Respondents had written to the SRA by letter dated 1 October 2008 with the Second Respondent confirming that he had resigned as a partner with effect from 30 September 2008 and the First Respondent seeking approval to continue practising as a sole principal to afford him the opportunity to wind down his practice.
17. The Second Respondent had written a further letter dated 1 October 2008 confirming that in the light of the First Respondent's letter, if the First Respondent was allowed to continue to practise as a sole principal, he would remain as an employee to assist in the process.
18. On 7 October 2008 a caseworker at the SRA had telephoned the Second Respondent to confirm that due to the conditions on both his and the First Respondent's practising certificates, it was not possible for him to remain as a non-partner employee of the firm, and that continuing to practise in that way was a breach of the conditions attached to his practising certificate. A message had been left for the First Respondent to telephone the SRA as a matter of urgency.
19. On 8 October 2008 the caseworker had telephoned the First Respondent and had confirmed that due to the conditions on both his and the Second Respondent's practising certificates, it was not permissible for him to remain as a sole principal, with the Second Respondent as a non-partner employee of the firm and that continuing to practise in that way was in breach of his practising certificate conditions.
20. On 8 October 2008 the SRA had written to the First Respondent confirming the position. The First Respondent had been asked to confirm the arrangements he had made to cease practice as a sole principal of Hewitt & Co.

21. The First Respondent had failed to reply and it had been necessary for the SRA to write again on 15 October 2008.
22. On 16 October the First Respondent replied confirming that he had only received the letters of the 8 and 15 that day. He had confirmed that the practice was winding down with a view to closure at the end of that week and that the Second Respondent had continued working to ensure an orderly closure and hand over of files.
23. The First Respondent had particularised certain ongoing matters and had confirmed that all client deposit accounts had been closed and that only the client account had remained. The First Respondent had indicated that once unpresented cheques had been presented or alternative arrangements had been made for their clearance, the account would be closed. The balance held at that time had been £583,986.
24. On 17 October 2008 the SRA had written to the First Respondent seeking confirmation as to the exact date of closure. The First Respondent had been reminded that as a result of his practising certificate conditions he was no longer permitted to operate the client bank account.
25. It had also been mentioned in the letter that the caseworker had been aware that the ARP had received a poor copy of the proposal form via fax but that as a result the firm had not had indemnity insurance and/or run-off cover for when the practice closed.
26. The First Respondent's attention had been drawn to the requirement of Rule 10 of the Solicitors Indemnity Insurance Rules 2008 and confirmation had been requested as to whether or not he had provided the ARP with a further copy of the completed proposal form (the original one being illegible), together with confirmation as to when that had been done.
27. On 20 October 2008 the SRA had contacted the First Respondent by telephone in relation to concerns that had still been practising and in breach of his practising certificate conditions.

Allegation 11

28. By letter dated 19 January 2009 the SRA had written to the Respondents at their last known address enclosing a copy of the Forensic Investigation Report dated 10 December 2008 and seeking their explanation in respect of the matters particularised therein.
29. The Respondents had failed to reply and/or provide an explanation.

Allegation 12

30. On 30 October 2008 the SRA had been advised by the Official Receiver's office that the Respondents had been adjudged bankrupt on 28 October 2008.
31. On the same day the SRA had telephoned the First Respondent to advise that in view of his bankruptcy his practising certificate had been suspended.

32. On 31 October 2008 the SRA had attended at the Respondents' offices to ascertain what progress had been made to close the files.

Allegation 19

33. The First Respondent had delayed in making application to join the ARP for the period 1 October 2008 - 30 September 2009, such application not being received by the ARP until 25 November 2008.
34. The First Respondent had been under an obligation to make application to the ARP prior to 1 October 2008 in order to comply with Rule 10 of the Solicitors Indemnity Insurance Rules 2008.

Allegations 20, 21 and 26

35. By letter dated 7 January 2009 Goldsmith Williams Solicitors had made a complaint to the SRA concerning the conduct of Hewitt & Co regarding their failure to comply with undertakings and to register their clients' charges at HM Land Registry.
36. The Respondents had been instructed by BRCM Ltd in connection with the purchase of 1 The H----, Sheffield and Flat 7 HH-----, Sheffield. The Respondents had also been instructed by the lender, Capital Home Loans Ltd in connection with both properties.
37. The First Respondent had signed certificates of title in respect of 1 The H----- on 1 February 2008 and in respect of Flat 7 HH----- on 1 February 2008 (although the document indicated it may have been dated 6 February 2008).
38. The certificates of title had read:
- "We, the conveyancers named above give the certificate of title set out in the annex to Rule 3 of the Solicitors Code of Conduct 2007 as if the same were set out in full, subject to limitations contained in it."
39. The annex to Rule 3 was the undertaking provided by the Respondents and upon which the lender client had been entitled to rely.
40. It had included an undertaking that the Respondents would complete the mortgage and arranged to deliver to the Land Registry the documents necessary to register the mortgage in the lender client's favour and to effect any other registrations necessary to protect the lender client's interests as mortgagees.
41. Both transactions had completed on 6 February 2008.
42. The legal charges in favour of Capital Home Loans Ltd had remained unregistered as at the date of the complaint. Goldsmith Williams Solicitors had been instructed by Capital Home Loans Ltd to remedy the Respondents' failure.
43. The First and Second Respondents had failed to comply with the undertakings contained in the certificates of title.

44. The First Respondent had failed to act in his lender client's best interests in failing to register his lender client's charges at HMLR.

Allegations 22, 23, 24 and 25

45. By letter dated 17 January 2007 Mr B had made a complaint regarding the conduct of the Respondent's firm.
46. The First Respondent had been instructed to act on behalf of Mr B in respect of an employment dispute relating to constructive dismissal from his family firm. There had also been a subsequent issue over payment for his shares.
47. In April 2002 Mr B had been successful in the proceedings in relation to the constructive dismissal claim and the judge had ordered a valuation of his shares which had been settled in December 2002.
48. Mr B had been awarded the costs of the proceedings with the other side making a payment in respect of his shares in 2003.
49. Mr B had indicated that the firm had requested that it retained £100,000 from the monies received to cover the fees due to his barrister, the accountant who had undertaken the valuation of the shares on his behalf and also in respect of Hewitt & Co's costs.
50. Mr B had indicated that he had agreed to that given that he had expected a prompt agreement with the other side as regards the costs position.
51. Mr B had indicated that the total outstanding had been £130,000.
52. Mr B had written to the First Respondent on 9 June 2005, 9 May 2006 and 7 December 2006 expressing his dissatisfaction with the service and requesting that the monies exceeding £130,000 be paid to him.
53. By letter dated 12 June 2007 the SRA had written to the First Respondent seeking his explanation. The First Respondent had failed to reply and it had been necessary for the SRA to write again on 5 July 2007.
54. There had been earlier correspondence between the Legal Complaints Service ("LCS") and the First Respondent to include his letter dated 8 March 2007 and enclosures.
55. On 25 July 2008 the SRA had written to the First Respondent enclosing a s.44B Order in respect of the disclosure of his files. A reminder had been sent on 29 August 2008.
56. The matter had been considered by an Adjudicator on 17 September 2008 who had found that the service provided by Hewitt & Co had been inadequate. The Respondents had been directed to pay compensation to Mr B and to refund costs.
57. The First Respondent replied on 29 October 2008 confirming that he had requested a cheque for £2,135.34 to be forwarded to Mr B in respect of the closing balance of the

client account for Mr B but that he was not in a position to make any further payments because he had ceased practice as a solicitor and had proceeded to bankruptcy.

58. The SRA had obtained seven boxes of files relating to the matter. Following a consideration of same these the SRA had written to the First Respondent on 13 May 2009 seeking his explanation.
59. The First Respondent had failed to reply and it had been necessary for the SRA to write again on 2 June 2009. The First Respondent replied on 4 June 2009 indicating that in so far as he was aware matters had been dealt with and that all practice papers and files had been provided to the solicitors appointed by the SRA. He had confirmed that he had ceased practising as a solicitor with effect from 1 November 2008 and had been adjudged bankrupt on 28 October 2008.
60. By letter dated 12 July 2009 the First Respondent had written to the SRA and had made reference to his earlier letters dated 14 February 2008 and 26 March 2008.
61. By letter dated 21 July 2009 the SRA had written to the First Respondent seeking to clarify the position regarding the earlier matters.
62. On 29 July 2009 the First Respondent had replied and had provided a copy of the letter dated 4 June 2009 referred to above. The letter of 4 June 2009 had not constituted a substantive reply, it had merely provided information regarding his situation and the files.
63. By letter dated 27 August 2009 the SRA had written to the First Respondent seeking to clarify the position regarding the complaint and requesting that further correspondence on the matter be directed to the caseworker, Mr JH.
64. On 24 September 2009 the SRA had written to the First Respondent in respect of matters concerning Mr B and requesting his formal explanation in respect of the allegations particularised therein.
65. The First Respondent had failed to reply or to provide an explanation and it had been necessary for the SRA to write again by letter dated 13 October 2009.
66. The First Respondent had failed to respond or to provide an explanation.
67. The ledgers identified that on 22 December 2003 the sum of £65,000 had been received from Irwin Mitchell but it had not been until 16 March 2007, approximately three years and three months later, that Mr B had been paid the sum of £32,600.16 from the balance in the client account. The First Respondent had delayed in accounting to Mr B for the sum of £32,600 from 22 December 2003 until 16 March 2007.
68. The First Respondent had also failed and/or delayed in accounting to Mr B for costs paid by him to Hewitt & Co in the sum of £15,825 on account. Mr B had paid the following sums of money to Hewitt & Co:
 - (i) £1,175 paid out of Mr B's bank account on 15 January 1998 after being paid into the client account on 13 January 1998;

- (ii) £2,500 paid out of Mr B's bank account on 23 February 2000 after being paid into the client account on 21 February 2000;
 - (iii) £400 paid out of Mr B's bank account on 26 July 2001 after being paid into client account on 24 July 2001;
 - (iv) £11,750 paid out of Mr B's bank account on 27 May 2002 after being paid into the client account on 23 May 2002.
69. The First Respondent's breakdown of costs had taken no account of the £15,825 paid on account or that it had been refunded following recovery of costs from Irwin Mitchell's clients.
70. The First Respondent had also failed to account to Mr B for the sum of £4,879.19 debited from client account on 10 January 2006.
71. The First Respondent had delayed in accounting to Mr B for the net balance of £2,135.54 remaining on client account which had subsequently been paid on or around 29 October 2008.
72. The First Respondent had failed to provide Mr B with any invoices in respect of work undertaken or with written intimations of costs between 1997 and December 2002 when the litigation had concluded.
73. There had been four invoices on the firm's file of papers dated 15 January 2003, 23 January 2003, 8 May 2003 and 22 December 2003. There had been no evidence to suggest that those invoices had ever been delivered to Mr B as there had been no covering letters or attendance notes in relation to same.
74. Notwithstanding the First Respondent's failure to deliver bills or written intimation of costs, the following transfers had been made from client to office bank account:
- (i) 02 December 1997 £1,175.00
 - (ii) 23 December 1997 £1,175.00
 - (iii) 13 January 1998 £1,750.00
 - (iv) 23 May 2002 £11,750.00
 - (v) 17 October 2002 £883.24
 - (vi) 15 January 2003 £12,188.49
 - (vii) 23 January 2003 £27,612.50
 - (viii) 05 January 2004 £29,375.00
75. The First Respondent had failed to reply to Mr B's letters of complaint dated 9 June 2005, 9 May 2006 and 7 December 2006.
76. Mr B had been expressing dissatisfaction that the First Respondent had not accounted to him or returned his telephone calls which had ultimately resulted in his complaint.
77. On 17 December 2009 an Adjudicator had resolved to refer the First Respondent's conduct to the Solicitors Disciplinary Tribunal.

Documentary Evidence before the Tribunal

78. Inter alia, the Tribunal reviewed the Rule 5 and Rule 7 Statements and the documentary exhibits attached to those Statements together with correspondence from the First Respondent and a witness statement, with exhibits, from Mr B.

The Submissions of the Applicant

79. The Applicant took the Tribunal through the 26 allegations and the evidence in support of those allegations particularly from the extremely detailed Forensic Investigation Report. He explained that although there was no allegation of dishonesty, the allegations, particularly those involving breaches of the Solicitors' Accounts Rules, were extremely serious in that the conduct of the Respondents had resulted in the misuse of clients' money. The following were among some of the matters referred to in detail by the Applicant.
80. In relation to allegation 1, the Investigation Officer had noted a minimum cash shortage of £10,576.27 on the firm's client bank account as at 1st September 2008 and a cash shortage of £75,515.03 as at 31st July 2008. Other SAR breaches included the improper transfers of client funds to office account without bills or notification of costs to clients and various unexplained transactions in respect of clients; HP Ltd, Mr PDP and Mr LAK.
81. In relation to allegation 5, misuse of the sundries account, between 25 April 2005 and 21 August 2008, a sum totalling £32,097.66, made up of 142 separate amounts, was incorrectly credited to a sundries account with debits totalling £31,948.86 made over a similar period.
82. In relation to allegation 8, the Investigation Officer had identified five client ledger accounts where the relevant retainers had appeared to have been completed but a total of £2,858 in interest had not been accounted to those clients.
83. In relation to allegation 9, there had been an undisclosed profit of some £24,000 per annum because of the firm's practice of billing telegraphic transfers as disbursements charged at twice the cost of the service to the firm.
84. In relation to allegation 13, conflicts of interest had arisen as a result of, inter alia, loans to clients without the benefit of independent legal advice.
85. The Applicant submitted that it had been a matter of concern that the Respondents had failed to advise the SRA of their pending bankruptcies or of the adjudication made on 28 October 2008.

The Tribunal's Findings as to Fact and Law

86. Having considered all the evidence, in particular the Forensic Investigation Report, the exhibits to both statements, the letter of 7 September 2010 from the First Respondent and the helpful submissions of the Applicant, the Tribunal found all the allegations proved to the higher standard as against the First Respondent. The

Tribunal noted that in the absence of the First Respondent it had carefully considered his explanations provided both during and after the forensic investigation.

87. As against the Second Respondent, the Tribunal found allegations 1 to 12 and 26 both admitted by the Second Respondent and proved to the higher standard.

Application for Costs

88. The Applicant sought an order for costs and handed a detailed statement of costs to the Tribunal. He explained that the total was £67, 888.87 of which £24,373.15 were the costs of the forensic investigation.

89. The Applicant referred the Tribunal to the representations made by the First Respondent to the effect that he had been made bankrupt on 28 October 2008 and that he had not to his knowledge been discharged. In addition in his letter of 7 September 2010 the First Respondent had stated as follows:

".....I have had no regular employment and am currently self-employed. I have no assets and no regular form of income."

90. Given the difference in the allegations between the Respondents, the Applicant noted that the Tribunal might wish to consider some apportionment of the costs as between the Respondents. The Applicant also referred the Tribunal to the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin).

Mitigation

91. The Second Respondent referred the Tribunal to the previous appearance of both Respondents before the Tribunal for similar matters on 24 April 2008. He explained that following those proceedings he had tried to make the necessary changes but because of his subordinate position in the firm (from 31st January 2006 he had been a salaried partner) he had been unable to carry those changes through.
92. The Second Respondent detailed the history of his relationship with the First Respondent. He accepted that he had allowed the First Respondent, whom he had considered to be a much better solicitor than him as well as an extremely hard worker, to run the firm's accounts to his exclusion. He explained that he had been unaware of the existence of a suspense account and that all transfers in and out of that account had been undertaken by and for the benefit of the First Respondent.
93. The Second Respondent said that he had been unable to see a way out of the partnership in which he had invested substantial sums. However, when the First Respondent had failed to renew the firm's indemnity insurance, he had resigned from the partnership with effect from 30 September 2008 staying on only to get the firm's clients into a safe place with other firms.
94. The Second Respondent gave the Tribunal details of his financial position including his previous contributions to a pension arranged by the First Respondent that now appeared to be worthless to him, and his current employment as a salesman. He asked

the Tribunal to make a fixed costs order so that he could offer to pay it by way of instalments and said that he felt that he still had a contribution to make in the future as an employed solicitor.

Previous Disciplinary Sanctions before the Tribunal

95. The Respondents had previously appeared before the Tribunal on 26 April 2008 when they had both been ordered to pay fines £2,500 and costs of £24,000.

Sanctions and Reasons

96. Dealing first with the Second Respondent, the Tribunal considered that he had allowed himself to be dominated by a charismatic partner, who appeared to have run their firm as his personal fiefdom. While the Tribunal did not doubt the integrity of the Second Respondent, it did doubt his ability to be an effective partner given the heavy duties of partnership, particularly the onerous obligations on partners in respect of clients' monies.
97. The Tribunal noted that the complaints detailed in the allegations had not related to matters dealt with by the Second Respondent. Accordingly, the Tribunal did not consider that he should be prevented from practising as a solicitor in the future although it advised the SRA that such practice should be undertaken subject to appropriate conditions of supervision.
98. In all the circumstances, the Tribunal considered that the appropriate penalty in relation to the Second Respondent was a fine of £5,000 and it so Ordered.
99. Turning to the First Respondent, while he had not faced an allegation of dishonesty, the Tribunal considered that the 26 allegations, all found as proved against the First Respondent, had amounted to extremely serious misconduct for which the appropriate penalty was that the First Respondent be struck off the Roll of Solicitors and it so Ordered.
100. In reaching its decision the Tribunal had been mindful of the cases of Bolton v The Law Society [1994] 1 WRL 512 and Weston v The Law Society CA [1998]. In both of those cases the Tribunal's point that the SAR existed to afford the public maximum protection against the improper and unauthorised use of their money and that because of the importance attached to affording that protection and assuring the public that such protection was afforded an onerous obligation was placed on solicitors to ensure that those rules were observed, had been endorsed.

Decision as to costs

101. The Tribunal was satisfied that all the allegations had been properly brought and commended the comprehensive and detailed forensic investigation report of Mr Carruthers. In addition it had been greatly assisted by Mr Goodwin's preparation and presentation of a complex case involving 26 detailed allegations. Having considered the costs schedule the Tribunal was satisfied that the amount claimed was reasonable and fixed the costs in the sum of £67,888.

102. The Tribunal had considered the relevant cases and the information as to the means of the Respondents presented to it. Dealing firstly with the Second Respondent, the Tribunal was satisfied that while as a partner he had been liable for breaches of the SAR his culpability had been far less than that of the First Respondent. In apportioning the costs the Tribunal Ordered that the Second Respondent should pay a contribution of £5,000.
103. Turning to the First Respondent, the Tribunal noted that it had no detailed information as to his means other than his assertion in correspondence that he was impecunious. In these circumstances the Tribunal was satisfied that he should be liable for the balance of the costs in the sum of £62,888 and it so Ordered.
104. In making the costs orders the Tribunal noted the policy of the SRA to pursue costs only if such were recoverable and to negotiate payment by instalments if appropriate.

The Order of the Tribunal

105. The Tribunal Ordered that the Respondent, Paul Michael Hewitt of Globe Works, Penistone Road, Sheffield, S6 3BA, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £62,888.
106. The Tribunal Ordered that the Respondent, John Brian Evans of 42 Crescent Road, Sheffield, S7 1HN, solicitor, do pay a fine of £5,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £5,000.

DATED this 20th day of November 2010
on behalf of the Tribunal

A H B Holmes
Chairman