

IN THE MATTER OF JOHN MCARDLE, GEOFFREY CARDWELL, PHILLIP  
GEOFFREY MITCHELL, JAMES PHILLIPS, ANDREW CHARLES RUSSELL  
and JULIE ISOBEL MATHIESON, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D Green (in the chair)  
Mr J P Davies  
Mr S Howe

Date of Hearing: 1st October 2009

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## **FINDINGS**

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 George Marriott, a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 19<sup>th</sup> November 2008 that John McArdle, Geoffrey Cardwell, Phillip Geoffrey Mitchell, James Phillips, Andrew Charles Russell and Julie Isobel Mathieson, solicitors of McArdles, 56 Duke Street, Darlington, County Durham DL3 7AN might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against each of the Respondents were that he/she:-

1. Failed to keep a record of agreements for the introduction of work, contrary to Section 2 (9) of the Solicitors Introduction and Referral Code ("SIRC").
2. Failed to carry out six month reviews of referral arrangements, contrary to Section 2 (10) SIRC.
3. Failed to obtain undertakings from introducers that they would comply with SIRC, contrary to Section 2A(2) SIRC.

4. Failed to provide clients with all relevant information regarding a referral agreement, contrary to Section 2A(3) SIRC.
5. Failed to ensure that introducers had provided clients with all information relevant and had acquired the client by the proper means, contrary to Section 2A(4) SIRC.
6. [Withdrawn]
7. Entered into an agreement with an introducer which allowed for a contingency fee, contrary to Rule 9 of the Solicitors Practice Rules 1990 (“SPR”).
8. Entered into an arrangement which prevented the firm from recommending more than one investment business, contrary to Rule 12 SPR.
9. [Withdrawn]
10. [Withdrawn]
11. Failed to inform the clients that as customers of a separate business they did not enjoy the statutory protection they had as clients of the firm, contrary to Rule 5(1) of the Solicitors Separate Business Code 1994.
12. [Withdrawn]

In respect of John McArdle, Geoffrey Cardwell, Phillip Geoffrey Mitchell, James Phillips and Andrew Charles Russell only:-

13. Rewarded introducers for the referral of clients before March 2004 contrary to Section 2(3) SIRC.

In respect of John McArdle only:-

14. [Withdrawn].

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 1<sup>st</sup> October 2009 when George Marriott appeared as the Applicant and the Respondents appeared and were represented by Mr Jonathan Goodwin of Jonathan Goodwin, Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT.

### **The Evidence before the Tribunal**

The evidence before the Tribunal included the Section 5 Statement of the Applicant dated 19<sup>th</sup> November 2008, together with accompanying bundle, the admissions of the Respondents and a bundle of documents relied upon by the Respondents consisting of references on behalf of all of the Respondents, copies of Tribunal findings in five previous comparable cases, copy correspondence between McArdles and the Law Society, an extract from a Law Society Gazette article “Challenges for the SRA 2009” dated 10<sup>th</sup> December 2008, Law Society Guidance dated 10<sup>th</sup> March 2004 and 21<sup>st</sup> December 2005 and a record of referrals from two organisations.

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

The Tribunal Orders that the Respondent John McArdle of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

The Tribunal Orders that the Respondent Geoffrey Cardwell of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

The Tribunal Orders that the Respondent Phillip Geoffrey Mitchell of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

The Tribunal Orders that the Respondent James Phillips of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

The Tribunal Orders that the Respondent Andrew Charles Russell of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

The Tribunal Orders that the Respondent Julie Isobel Mathieson of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £750, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

**The facts are set out in paragraphs 1 - 71 hereunder:-**

1. Mr McArdle was born in May 1953 and was admitted as a solicitor in December 1978. His name remains on the Roll. He was a partner in the firm until 30<sup>th</sup> September 2005, a consultant from 1<sup>st</sup> October 2005 to 30<sup>th</sup> September 2006, a partner from 1<sup>st</sup> October 2006 to 30<sup>th</sup> September 2007 and is now a consultant again.
2. Mr Cardwell was born in February 1948 and was admitted as a solicitor in January 1986. His name remains on the Roll. At all material times he was and remains a partner at McArdles.

3. Mr Mitchell was born in March 1961 and was admitted as a solicitor in February 1989. His name remains on the Roll. At all material times he was and remains a partner at McArdles.
4. Mr Phillips was born in July 1951 and was admitted as a solicitor in September 1980. His name remains on the Roll. At all material times he was and remains a partner at McArdles.
5. Mr Russell was born in September 1962 and was admitted as a solicitor in November 1993. His name remains on the Roll. At all material times he was and remains a partner at McArdles.
6. Ms Mathieson was born in August 1972 and was admitted as a solicitor in August 1996. Her name remains on the Roll. At all material times she was and remains a partner at McArdles.

### **Background**

7. McArdles (“the firm”) was established in 1978.
8. The firm’s main office is located at 56 Duke Street, Darlington, County Durham DL3 7AN. The firm also has three branch offices at 26 Frederick Street, Sunderland, Tyne & Wear SR1 1LT; 15 Norfolk Street, Sunderland, Tyne & Wear SR1 1EA and 44 Victoria Road, Hartlepool, Cleveland TS26 8DD.
9. All the Respondents were the partners in the firm at the material time. They were assisted by five solicitors, two trainees and three unadmitted members of staff.
10. The majority of the firm’s work came from personal injury work.
11. In February 2006 the Practice Standards Unit of the SRA visited the firm and produced a report highlighting areas where the firm needed to amend its procedures to ensure that they did not breach professional rules concerning SIRC.
12. The report raised concerns relating to the firm’s referral agreements with Nationwide Accident Services (“NAS”) and Injury Lawyers 4 U (“IL4U”). The Respondents were reminded of the importance of complying with the SIRC. In particular the report highlighted the importance of:-
  - disclosing all payments made to the introducers to the client;
  - obtaining undertakings from the introducers to ensure compliance with SIRC;
  - obtaining evidence to show that the solicitor is satisfied that SIRC is being complied with;
  - ensuring that the introducer provides the clients with all relevant information before referring the case to the firm;

- being confident that the clients were being acquired by the introducers in an appropriate manner; and
  - ensuring that the firm's professional independence was not affected by a referral arrangement.
13. The SRA made another visit at the firm on 29<sup>th</sup> May 2007 in order to consider if the referral arrangements entered into by the firm complied with the professional rules relating to referrals.
  14. As a result of the visit, a report was prepared dated 3rd July 2007. This report was disclosed to the Respondents on 26<sup>th</sup> October 2007 along with letters, requesting explanations for the issues highlighted in the report.
  15. At the time of the SRA's 2007 visit the firm had five referral arrangements where it received personal injury claims from introducers. In addition to this, the firm also referred work to two companies.

Referral Scheme 1: Nationwide Accident Services ("NAS").

16. NAS introduced personal injury work to the firm under an agreement dated 1<sup>st</sup> July 2006, signed by Ms Mathieson on behalf of the firm. However, according to the Respondents the arrangement had been in place since July 2005 and apart from a short period in September 2007 the arrangement had expired in June 2007.
17. Under the arrangement the firm paid a monthly fee of £9,400.00 to NAS. In return NAS referred twenty cases per month to the firm. This equated to £400.00 plus VAT per accepted case.
18. NAS would fax the details of a potential client to the firm. The fax included information relating to the date of the accident, the injuries sustained and the contact details for the client. The fee earner would then telephone the client to confirm the information.
19. According to Ms Mathieson the fee earner would disclose the existence of the referral between NAS and the firm during the initial telephone attendance. This information would also be disclosed, in writing, in the firm's client care letter. Approximately 30% - 40% of cases referred by NAS were rejected by the firm.
20. Section 2A(4) SIRC stated that "The solicitor must be satisfied that the introducer: a) has provided the client with all information relevant to the client...(and)...has not acquired the client as a consequence of marketing or publicity or other activity which if done by the solicitor would be in breach of any of the Solicitors' Practice Rules..."
21. The Respondents provided no evidence to show that they had satisfied themselves that the introducers had provided the clients with all information relevant to the referral arrangement.

22. The terms and conditions which accompanied the referral agreement stated that “The provider reserves and has full control of all advertising and other marketing initiatives used to generate referrals.”
23. The Respondents provided no evidence to show that they had satisfied themselves that the introducer did not acquire the clients in a manner, which if done by a solicitor would breach SPR Rule 1, in accordance with Section 2A(4)(b) SIRC.
24. Section 2(10) SIRC stated that a firm should carry out a review of referral arrangements every six months to ensure that SIRC was being complied with, clients continued to receive impartial advice and that the income being generated by the arrangement did not mean that the firm was becoming too dependent on the referral arrangement.
25. When requested by the SRA to provide evidence that reviews of the referral arrangement with NAS had taken place, the Respondents were unable to do so.

Referral Scheme 2: Injury Lawyers 4U (“IL4U”)

26. IL4U referred personal injury claims to the firm under an agreement dated June 2003 signed by Mr Phillips on behalf of the firm. According to the Respondents the agreement ceased on 30<sup>th</sup> June 2007. Therefore all payments made by the Respondents before March 2004 were unlawful.
27. Under the arrangement the firm paid IL4U an annual payment of £15,000 plus VAT. In return, the firm were given panel membership and one slot/unit on IL4U’s rota. When potential clients phoned IL4U’s call centre their matter was referred to a solicitor based on the rota. Firms were able to buy as many slots/units on the rota as they wished thereby increasing the number of referrals they received.
28. When the firm was allocated a case by IL4U the client’s details were emailed to the firm including brief details of the accident, the injuries sustained and the claimant’s contact details. Ms Mathieson stated that the fee earner would telephone the client to confirm information emailed.
29. According to Ms Mathieson the fee earner would disclose the existence of the referral between IL4U and the firm during the initial telephone attendance. The existence of the referral was also disclosed, in writing, in the firm’s initial letter and client care letter. However, the client care letter only disclosed the fact that the firm paid money to IL4U; it did not disclose the amount of money paid by the firm to IL4U.
30. Before March 2004 there was a general prohibition on solicitors making payments to introducers as a reward for referrals. Section 2(3) SIRC stated that “Solicitors must not reward introducers by the payment of commission or otherwise.” From March 2004 the referral regime was relaxed, permitting payments in prescribed circumstances.
31. The purpose of Section 2A SIRC was to ensure that where a solicitor did make a payment to an introducer the client was made fully aware of all the circumstances of the referral. Section 2A(3) stated that a solicitor could only make a payment to a third

party introducer if he had provided the client with “all relevant information concerning the referral and, in particular, the amount of any payment”. The firm’s agreement with IL4U allowed for an annual payment of £15,000.00 plus VAT in exchange for panel membership and a slot/unit on IL4U’s rota. The client care letter shows that this payment was disclosed to the client.

32. The agreement with IL4U also contained a provision for a further payment in relation to the call centre. The agreement defined the “call centre” as the call centre operated by The Message Pad Limited.
33. Furthermore, Clause 5.4 of the agreement with IL4U stated that in return for the referral “The panel member shall pay to the call centre a fee in respect of each claim which is referred to the panel member by the call centre.” The level of the fee was set by the call centre and the directors of IL4U.
34. During the SRA’s visit to the firm in 2006, Mr Cardwell stated that the firm did not pay this call centre fee. However, in later correspondence the Respondents explained that as they were advising clients of the arrangement with IL4U and the fact that a payment was being made, they therefore did not see the need to refer to the separate payment to the call centre.
35. Section 2(10) SIRC stated that a firm should carry out a review of referral arrangements every six months to ensure that SIRC was being complied with, that clients were continuing to get impartial advice, and that the income being generated by the arrangement did not mean that the firm was becoming too financially dependent on the arrangement.
36. When requested by the SRA to provide evidence that reviews of the referral arrangement with IL4U had taken place, the Respondents were unable to do so.
37. The Respondents admitted that they had failed to carry out six month reviews of the referral arrangement, the reason given for this was that the number of referrals received was so small as to “negate any concerns that we may have as to over reliance (sic) upon that source of work”.
38. Section 2A(2) stated that solicitors may enter into referral arrangements which provide for a payment with introducers who undertook in the agreement to comply with SIRC.
39. The Respondents provided the SRA with an undertaking from IL4U, dated 30<sup>th</sup> May 2007, stating that they would comply with Rule 9 of the new Solicitors Code of Conduct. However, this undertaking is irrelevant as according to the Respondents the agreement with IL4U ended in June 2007, before that Code came into force. The Respondents were not able to provide the SRA with an undertaking from IL4U to comply with SIRC.
40. The Respondents admitted failing to obtain an undertaking from IL4U before 30<sup>th</sup> May 2007. They considered IL4U to be an organisation of integrity that was well aware of the rules and regulations as far as referrals were concerned.

41. Section 2A(4) SIRC stated that “The Solicitor must be satisfied that the introducer: a) had provided the client with all information relevant to the client...”
42. The Respondents provided the SRA with no evidence to show they had satisfied themselves that the introducers had provided the clients with all information relevant.

Referral Scheme 3: Rapid Assist (“RA”)

43. According to information provided to the SRA during their visit, RA had been referring personal injury matters to the firm since 1992. In later submissions the Respondents stated that since 1992 the firm had received referrals from RA, or RA’s predecessor, Automotive and Broking Assistance Limited (“ABA”). RA took over from ABA completely in September 2004. According to the Respondents, RA ceased trading in June 2007 and the firm had not received a referral from it since.
44. Section 2(9) SIRC stated that each firm should keep a record of referral agreements which they enter into. Furthermore, Section 2(10) stated that each agreement should be subject to a review, every six months, to ensure that SIRC was being complied with, by both the solicitor and introducer, and to ensure that introduced clients were receiving impartial advice.
45. The Respondents were unable to provide the SRA with a copy of the written agreement between the firm and RA. Furthermore, the Respondents were unable to provide the SRA with evidence that six month reviews of the agreements had taken place.
46. Before March 2004, Section 2(3) SIRC meant that it was prohibited for a solicitor to make payment to an introducer as a reward for referring a client to the solicitor.
47. In a response on behalf of the Respondents it was admitted that as early as February 1999 the firm made payments to ABA and RA. Furthermore it was admitted that “Part of these payments related to an administrative fee”. These payments continued until September 2003 in the case of ABA and January 2004 in the case of RA.
48. After March 2004, Section 2A(3) permitted the payments to third party introducers, but only where the client had been provided with all relevant information concerning the referral.
49. The client care letter, provided to clients referred from RA, stated that the firm had an arrangement with RA whereby RA referred matters to the firm. However, it did not mention that in return for that referral the firm paid RA monthly payments. Furthermore, the letter failed to disclose the fact that RA’s sole shareholder was Mr McArdle, a partner of the firm, and RA’s sole director is Mr McArdle’s wife.
50. Section 2A(2) SIRC stated that solicitors may enter into referral arrangements which provide for a payment to introducers who undertake in the agreement to comply with SIRC.
51. When requested, the Respondents were unable to provide the SRA with evidence that they had obtained an undertaking from RA to comply with SIRC.

52. The Respondents admitted that the arrangement with RA was “fairly informal”. They admitted that they did not seek a written agreement or an undertaking with RA to comply with SIRC, nor did they carry out six month reviews of referrals. They also admitted to failing to disclose to clients the fact that RA was being paid to refer matters to the firm. However, they claimed that despite these breaches, no harm was caused to any clients and that since RA was no longer trading, the information was historical.

Referral Scheme 4: BCP Legal Services (“BCP”)

53. Section 2(9) SIRC stated that each firm should keep a record of referral agreements which they enter into. Furthermore, Section 2(10) stated that each agreement should be subject to a review, every six months, to ensure that SIRC was being complied with, by both the solicitor and introducer, and to ensure that introduced clients were receiving impartial advice.
54. The Respondents did not provide the SRA with a copy of the written agreement between the firm and BCP. Furthermore, the Respondents did not provide the SRA with evidence that six month reviews of the agreements had taken place.
55. Section 2A(3) SIRC stated that a solicitor could make a payment to a third party introducer in return for a referral only in circumstances where the solicitor had provided the client with all relevant information.
56. The SRA report stated that seven matters had been passed to the firm by BCP in the twelve months following May 2006 and that no referral payment had been paid to BCP.
57. However, a letter to BCP from the firm dated 20<sup>th</sup> February 2007 stated that the client’s potential claim could not proceed pending a judgment on the principles in the case being ruled on by the House of Lords. Once the House of Lords had reached its decision the firm would be able to consider the validity of the claim and “therefore also whether the agreed referral fee of £250.00 plus VAT will be forthcoming”.
58. Section 2A(2) stated that solicitors may enter into a referral arrangement which provides for a payment with an introducer who undertakes in the agreement to comply with SIRC.
59. The Respondents did not provide the SRA with evidence that they had obtained an undertaking from BCP to comply with SIRC.

Referral Scheme 5: [www.accidentlink.com](http://www.accidentlink.com) (“Accidentlink”)

60. The firm was also attached to [www.accidentlink.com](http://www.accidentlink.com). This is an online directory where members of the public can find a solicitor based on location who can advise them on their personal injury claim.
61. Panel members pay a one-off fee of £95.00 and then pay a monthly subscription fee of £8.00 to list an office on the website directory. The website stated that the fees paid

by panel members would be put towards advertising campaigns to promote Accident Link services.

62. SPR Rule 9 stated that “A solicitor shall not, in respect of any claim or claims arising as a result of death or personal injury, either enter into an arrangement for the introduction of clients with or act in associations with any person ...whose business is to make, support or prosecute...claims...and who in the course of that business solicits or receives a contingency fee in respect of such a claim.”
63. In addition to a one-off payment and the monthly advertisement contributions, Accidentlink were also entitled to a case fee: “A case fee will be payable for each successful case generated by the Accidentlink service. This fee is payable on settlement of the case and no fee is payable if the case fails for whatever reason.” The firm’s agreement with Accidentlink, signed by Ms Mathieson on behalf of the firm, showed that the case fee on a successful case was £150.00 and would be due on settlement.
64. The Respondents stated that no work had ever come to the firm through Accidentlink and that there was no system in place which would give effect to the agreement, as potential clients did not have to register on the website. They stated that there was no definition of “successful case”. However, the Respondents admitted that they had failed to properly consider the agreement when it was entered into.

MCM Wealth Management Limited (“MCM”)

65. MCM are independent Financial Advisers. MCM’s sale director was Mr McArdle and the shareholders include all of the Respondents and their wives except Mr Mathieson.
66. SPR 12(1) stated that “...solicitors shall not in conjunction with investment business...have any arrangements with other persons under which the solicitor could be constrained to recommend to clients or effect for them (or refrain from doing so) transactions in some investments, but not other, with some persons but not others; or to introduce or refer clients to other persons with whom the solicitors deal to some persons but not others”.
67. Under an agreement dated 5<sup>th</sup> November 2003, signed by McArdle, and revised on 1<sup>st</sup> July 2006, clients of the firm who received damages and require financial advice are referred to MCM. Under the referral agreement clause 5.1 restricted the firm to only handing MCM’s marketing brochure to its clients. MCM had an agreement with Professional Wealth Management (PWM), under which MCM is an appointed representative of PWM. Furthermore clause 2.2 of the agreement between MCM and PWM stated that MCM shall advise clients about entering into investment agreements with PWM and sell investments issued by PWM or a connected person. Clause 2.3 stated that MCM could not act as an appointed representative for any other company who offer the same services as PWM.
68. In their letter to the SRA the Respondents admitted that the agreement could be construed as affecting the firm’s independence and ability to act in the client’s best interest. However, they maintained that they had their client’s interests at heart

whenever they recommended MCM. They pointed out that the client had no obligation to follow the firm's recommendation and that no pressure was put on them to do so.

69. Section 5(1) of the Solicitors Separate Business Code 1994 ("SSBC") stated that a "solicitor who has a separate business providing investment services must ensure that...the separate business is conducted from accommodation which is physically divided and clearly differentiated from that of any practice of the solicitor...(and)...all clients referred by...the solicitor to the separate business are informed of the solicitors interest in the business and that, as customers of the separate business, they do not enjoy the statutory protections attaching to the clients of a solicitor" (This information must be given in a personal interview or telephone call and confirmed in writing.)
70. The letter sent to clients explaining MCM does not provide full details of the interest enjoyed by the Respondents and their wives in respect of profit to MCM and dividends paid to shareholders.
71. Furthermore, the letter did not explain to the client that when they became clients of MCM the statutory protection they enjoyed as client of the firm ceased.

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

72. The Applicant had reviewed the matter and requested the permission of the Tribunal to withdraw allegations 6, 9, 10 and 12 against all of the Respondents and 14 against Mr McArdle alone. The Tribunal agreed to this course of action and the allegations were withdrawn.
73. The Applicant indicated to the Tribunal that all of the remaining allegations against each of the Respondents were admitted.

#### **The Submissions of the Respondents**

74. The Respondents wished to apologise to the Tribunal and to the profession more generally. This had been the worst day of their professional lives and the impact of appearing before the Tribunal had had a large impact on people who were decent and honest solicitors. Each had an exemplary and unblemished record to date and references had been supplied to speak to their professional competence.
75. Mr Goodwin on behalf of the Respondents submitted that proper admissions had been made and not one issue before the Tribunal arose from any client complaint. He wished to stress that the partners had always, without exception, put the best interests of the clients first. In addition there was no evidence that any client had suffered as a result of any of the matters the subject of the allegations.
76. The Respondents had always wanted to comply with any professional standards that might be applicable to them. Any non compliance was due to error and not to any conscious impropriety.
77. The Respondents specialised in personal injury work. Whilst two of their number, Mr McArdle and Mr Phillips did no personal injury work it was at least arguable whether

the allegations applied to them but they had accepted them and stood by their partners today. In Mr Goodwin's respectful submission these Respondents should be given appropriate credit for taking that course.

78. The Tribunal was directed to the Respondents' full response to the first monitoring visit of 14<sup>th</sup> and 15<sup>th</sup> February 2006. In the Respondents' respectful submission the response and compliance with suggestions from the PSU demonstrated the Respondents serious attitude towards the contents of the report.
79. In relation to the July 2007 Report, Mr Goodwin submitted on behalf of the Respondents that the Investigation Officer must have been satisfied in all other respects. Guidance had been issued by the Law Society entitled "disclosure of funding, fee sharing and referral arrangements" on 10<sup>th</sup> March 2004. At the end of paragraph 20 of that guidance appeared the following:-
- "When investigating complaints the Society will consider the substance of any relationship rather than the mere form".
80. It was submitted on behalf of the Respondents that this was relevant to certain of the allegations before the Tribunal. For instance, whilst it had been admitted in relation to Accidentlink that a contingency fee arose, the reality was that no work had ever come from that arrangement and there had been no actual payment.
81. Mr Goodwin repeated that the primary concern of the partnership had been the interests of clients and the independence and integrity of the partners. The initial attack on their integrity had caused considerable distress but the Applicant no longer continued with these allegations.
82. In relation to the breaches of the SIRC there had been confusion in the profession before the March 2004 amendments had been made. The Tribunal had had cause to consider these types of cases before and in particular five cases were identified which were comparable to the case before them today. In the case of Chamberlain, Foxall and Wilkinson, before the Tribunal on 12<sup>th</sup> February 2009, allegations 1 - 6 involving breaches of the SIRC were identical but in Mr Goodwin's submission the facts were more serious than in that case with fees totalling some £450,000 having been paid by the Respondents to the introducer. The Tribunal in that case took a proportionate view and whilst they were concerned that the firm had breached the Code, they bore in mind that the partners' dealings had not caused any reputational damage to the Solicitors' profession. Mr Goodwin submitted that the same could be said in this case. In the case of Chamberlain a reprimand had been imposed.
83. The case of Knowlson was before the Tribunal on 22<sup>nd</sup> April 2008 and again significant sums had been involved in the region of £70,000.00. In that case the Tribunal also recognised "that the question of introductions and referrals were something of a "minefield" at the material time. It had often been said that the regulations were honoured more in the breach than in the observance and the situation was less than clear to many solicitors undertaking personal injury work who had to give a great deal of thought to their position when legal aid funding for personal injury claims ceased to be available". Again an Order for a reprimand was made.

84. Mr Goodwin also referred to the case of Hill before the Tribunal on 24<sup>th</sup> July 2008 where there was an allegation of dishonesty in addition to breaches of the SIRC. In that case due to exceptional circumstances and mitigation a reprimand was imposed on the Respondent but the findings reflected at paragraph 46 that the Tribunal “was fully aware of the difficult background and the climate in which claim introducers came into being and the payment of referral fees began”.
85. In the case of Mendelson before the Tribunal on 24<sup>th</sup> January 2006 the allegations included breaches of Accounts Rules in addition to breaches of the SIRC. In that case “while the Tribunal had to look at the case before it as an individual case, it was right in doing so the Tribunal considered the context of the schemes in operation in respect of accident claims in 2000 and 2001. While the Rule had been clear that referral fees were forbidden, what was not clear was what amounted to a referral fee. That was evident from the Law Society’s own practice notes and from the extensive case law.” The Tribunal imposed modest fines on the Respondent in respect of the breaches of the SIRC.
86. Similarly, in the case of Lindsay before the Tribunal on 10<sup>th</sup> November 2005 there were Accounts Rules’ breaches. In that case the Tribunal found that “the Respondent himself recognised that he had paid what amounted to referral fees to companies and organisations referring work to his firm. Whilst the payments were not on the face of them described as referral fees, the Respondent had accepted there was at least an element of commission being paid. The Respondent had been concerned about this matter and had sought the advice of the Law Society’s Professional Ethics Department. The Tribunal accepted the Respondent’s explanation of the need for solicitors specialising in personal injury work to obtain a flow of such work when legal aid funding for these cases ceased to be available”. They went on to take into account “the changing view of the Law Society with regard to the payment of referral fees. The Tribunal accepts the Respondent’s view that such practice is not uncommon within the solicitors’ profession and the arrangements which he followed were far from unique.”
87. Mr Goodwin submitted that these five cases demonstrated the Tribunal’s previous approach and recognition of the difficulties involved in referral work, particularly as regards the period in question.

#### Allegation 1

88. Section 2 (9) SIRC states that “Each firm should keep a record of agreements for the introduction of work”. Mr Goodwin submitted that whilst the SIRC only talked about a “record of agreements” the allegation was put in terms of lack of written agreements. The allegation therefore assumed more than was contained within the SIRC. In the 2005 guidance note from the Rules and Ethics Committee of the Law Society it particularly states at question 1 “The SIRC does not specifically require referral agreements under Section 2A (i.e. those involving referral fees) to be in writing”. There was therefore scope for confusion on this point. Although the Respondents had admitted this allegation they had not been in complete disregard of the Rules. They had got it wrong and therefore in Mr Goodwin’s submission any breach was at the lower end of the scale.

Allegation 2

89. The Respondents submitted that the principal aim of Section 2 (10) of the SIRC was to prevent a firm becoming wholly reliant on referral work. In regard to IL4U whilst the Respondents did not carry out the recommended six monthly reviews, the number of referrals received from IL4U were so small as to negate any concerns that they may have had over reliance upon that source of work. In the case of BCP, this work had solely been with a former partner who had been at the firm during November 2006 and December 2006, so there had been no necessity for a six month review and Mr Goodwin submitted that it was harsh to include this element of the allegation, more particularly so since the former partner had not been called upon by the SRA. Mr Goodwin submitted that any penalty imposed by the Tribunal should take this into account.

Allegation 3

90. This allegation was accepted and the Respondents wished to apologise unreservedly to the Tribunal. Referrals were no longer received from any of the four agencies and so the Tribunal could be entirely satisfied that there would be no future breaches in relation to those matters.

Allegation 4

91. In regard to this allegation this was accepted but since larger payments had been disclosed, it was submitted on behalf of the Respondents that there was no reason why information concerning the smaller payments should have been withheld from the clients.

Allegation 5

92. This allegation was admitted. The firm had taken the view that the introducers had provided clients with all relevant information and had acquired the client by the proper means. However the partners now accepted that enquiries should have been made. Mr Goodwin stressed that no harm had been caused to any clients as a result of the firm's failings in this regard.

Allegation 7

93. Allegation 7 concerned Accidentlink and whilst it was accepted that such an agreement had been entered into no work had ever been received. The firm had been unaware that a contingency fee would potentially become payable and asked the Tribunal to consider this matter as de minimis.

Allegation 8

94. This allegation was admitted and related to MCM. The firm had always considered the interests of the clients to be paramount and had always acted in the clients' best interests. Whilst a recommendation may have been made to clients no pressure had been applied and clients could have gone elsewhere. Clients were only referred to

MCM where it was in their best interests. In any event MCM and PWM had been regulated by the FSA.

#### Allegation 11

95. The Respondents accepted they were in breach of Rule 5(1). However they wished to emphasise that they did disclose that the partners of McArdles had a controlling interest in MCM and that it was authorised and regulated by the FSA. There had been no attempt to conceal the matter from clients and their dealings had been transparent although it was accepted that they could have gone further. In regard to this allegation the attention of the Tribunal was drawn to the reference from Dr RM in which he said:-

“A few years ago John introduced me to a firm of financial advisers, run by Mr SD. John made me aware at the outset that there was a commercial link between the two firms - it was all open and above board, and I accepted this. I have been perfectly satisfied with the advice and investments I have made through this firm”.

#### Allegation 13

96. The Respondents submitted that the climate prior to the amendment of the Code should be taken into account in regard to this allegation. IL4U was a highly regarded business run in an entirely proper fashion. On reflection there had been an element of a referral fee in payments made to them. With regard to RA there had been a more informal approach in this case and the Respondents wished to apologise for their actions in this regard. They wish to rely upon the findings of the Tribunal in the case of Lindsay and invited the Tribunal to take the same view here. The SRA had submitted no evidence that clients were affected in any way.

#### Mitigation on behalf of the Respondents

97. All the Respondents had an unblemished record with their regulator to date and this was a very sad day for them. Credit should be given to them for standing together in this matter. They had always put the interests of the clients first in all respects and applied standards of absolute independence and integrity throughout their work.
98. When these matters had been brought to their attention they had approached them promptly, openly and with integrity and had taken immediate actions where appropriate. Procedural defects had been corrected and apologies had been made.
99. Mr Goodwin submitted that it had not been necessary for the SRA to bring these proceedings which could have been dealt with internally. A firm such as McArdles was out of place in the Tribunal and the proceedings had had a very great impact on the Respondents. The firm of McArdles had been long established providing a high quality service with client care as its first responsibility. It should be borne in mind that there had been no client complaints. In addition whilst not taking an Article 6 point there had been a delay in bringing the proceedings before the Tribunal today.

100. References had been supplied which demonstrated the high regard in which the Respondents were held by the community and the valuable contribution they made to both the profession and the public.

### **The Tribunal's Findings and its Reasons**

101. The Tribunal found all of the allegations to have been proved, indeed they had not been contested. The Tribunal had considered everything that had been said by both the Applicant and the Respondents' representative in relation to the allegations. The Tribunal had particularly taken into account the former cases before it that had been brought to its attention. However, it was noted that following a previous PSU visit in February 2006 assurances had been given about compliance upon which appropriate actions had not been taken until the RACP visit in 2007. The Tribunal viewed this as an aggravating factor which meant that a reprimand was not appropriate in these circumstances and a modest fine would be the appropriate penalty in this case. However, in regard to Ms Mathieson she had not been included in the 13<sup>th</sup> allegation. It was therefore appropriate that she be fined less than the other five Respondents.
102. The Tribunal Ordered that the Respondent John McArdle of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, 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 £20,000 on a joint and several basis.
103. The Tribunal Ordered that the Respondent Geoffrey Cardwell of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.
104. The Tribunal Ordered that the Respondent Phillip Geoffrey Mitchell of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, 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 £20,000 on a joint and several basis.
105. The Tribunal Ordered that the Respondent James Phillips of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, 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 £20,000 on a joint and several basis.
106. The Tribunal Ordered that the Respondent Andrew Charles Russell of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £1,000, 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 £20,000 on a joint and several basis.
107. The Tribunal Ordered that the Respondent Julie Isobel Mathieson of McArdles, 56 Duke Street, Darlington, County Durham, DL3 7AN, solicitor, do pay a fine of £750,

such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 on a joint and several basis.

Dated this 19<sup>th</sup> day of December 2009  
On behalf of the Tribunal

D Green  
Chairman