

IN THE MATTER OF SAJIT MABOOB ABBAS and
ALAN DOUGLAS COCKBURN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss N Lucking (in the chair)
Mr D Green
Mr D E Marlow

Date of Hearing: 30th November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by George Marriott, solicitor and partner in the firm of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 13th October 2008 that Sajit Maboob Abbas and Alan Douglas Cockburn, solicitors of Megsons LLP, 7-9 Church Lane, Oldham, Lancashire, OL1 3AN 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 Sajit Maboob Abbas and Alan Douglas Cockburn were that they:

1. Rewarded introducers for referrals before it was permitted by the Solicitors Introduction and Referral Code 1990 ("SIRC").
2. Entered into an arrangement for the introduction of clients with a person who in the course of business solicits or receives a contingency fee, contrary to Solicitors Practice Rules 1990 ("SPR") Rule 9 up to 30th June 2007 and Rule 9.01(4) Solicitors Code of Conduct 2007 ("SCOC") from 1st July 2007;
3. Conducted matters where it was likely that their integrity and independence and ability to act in the best interests of their client would be compromised or impaired contrary to SPR 1(a) and (c) up to 30th June 2007 and contrary to Rule 1.01(2), (3) and (4) SCOC 2007 from 1st July 2007;

4. Acted in matters where there was a potential conflict of interests between the client and the solicitor;
5. Failed to draw potential introducers' attention to the provisions of the Solicitors' Publicity Code, contrary to s.2(2) SIRC up to 30th June 2007 and contrary to Rule 9.01(2) SCOC from 1st July 2007;
6. Failed to ensure that the introducer provided all relevant information and ensure that clients had been acquired in the proper manner, contrary to s.2(4) SIRC up to 30th June 2007 and contrary to Rule 9.02(c) and 9.02(e) SCOC from 1st July 2007;
7. Failed to provide clients with all relevant information concerning a referral contrary to s.2(3) SIRC up to 30th June 2007 and contrary to Rule 9.02(g) SCOC from 1st July 2007;
8. Failed to ensure that their agreement with an introducer was set out in writing and failed to keep records of reviews of referral agreement contrary to s.3A(4) SIRC up to 30th June 2007 and Rule 9.02(a) SCOC from 1st July 2007;
9. Failed to ensure that an introducer provided in writing to their customer notification of the referral arrangement, conveyancing services to be provided and charges, contrary to s.3A(8) SIRC up to 30th June 2007 and Rule 9.02(e) SCOC and 1st July 2007.

Further allegations were made against both Respondents by means of a supplementary statement pursuant to Rule 7(1) of the Solicitors (Disciplinary Proceedings) Rules 2007 by the Applicant on 4th June 2009. The allegations against Sajit Maboob Abbas and Alan Douglas Cockburn were that they:

10. Failed to comply with undertakings contrary to Rule 10.05 SCOC;
11. Failed to act with integrity, contrary to Rule 1.02 SCOC.
12. Behaved in a way which is likely to diminish public trust in the profession, contrary to Rule 1.06 SCOC.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 30th November 2009 when the Applicant appeared and both Respondents appeared and were represented by Jonathan Goodwin, solicitor advocate of 17e Telford Court, Dunkirk Lea, Chestergate, Chester, CH1 6LT.

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

The Tribunal Orders that the Respondent, Sajit Maboob Abbas of Megsons LLP, 7 - 9 Church Lane, Oldham, Lancashire, OL1 3AN, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,000.00, such costs to be joint and several.

The Tribunal further Orders that if the Respondent does not effect compliance with the undertakings dated 12th May 2008 and 1st July 2008 by 31st March 2010 then he will be suspended indefinitely from 1st April 2010. The Respondent is to supply evidence of such compliance to the Solicitors Regulation Authority.

The Tribunal Order that the Respondent, Alan Douglas Cockburn of Megsons LLP, 7 - 9 Church Lane, Oldham, Lancashire, OL1 3AN, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,000.00, such costs to be joint and several.

The Tribunal further Orders that if the Respondent does not effect compliance with the undertakings dated 12th May 2008 and 1st July 2008 by 31st March 2010 then he will be suspended indefinitely from 1st April 2010. The Respondent is to supply evidence of such compliance to the Solicitors Regulation Authority.

The Evidence before the Tribunal

The evidence before the Tribunal included the Rules 5 and 7 statements of the Applicant, together with accompanying bundles and the admissions to all the allegations by both Respondents.

The facts are set out in paragraphs 1-81 hereunder:

1. The First Respondent, Sajit Maboob Abbas, born in 1976 was admitted as a solicitor in 2000. His name remains on the Roll of Solicitors.
2. The Second Respondent, Alan Douglas Cockburn, born 1958, was admitted as a solicitor in 1983. His name remains on the Roll of Solicitors.
3. Megsons ("the firm") at the material time operated from three offices at 515 Middleton Road, Chadderton, Oldham, OL9 9SH; 4th Floor, Arndale House, Charles Street, Bradford, BD1 1EJ and 7-9 Church Lane, Oldham, OL1 3AN. The Chadderton office has since closed. The firm became an LLP on 1st April 2008. The First and Second Respondents were both partners in the firm. They were assisted by a salaried partner and eight fee-earners.
4. At the time of the July 2007 inspection, the firm had four referral agreements in place. Following a second monitoring visit the SRA prepared a Report dated 22nd November 2007. This was disclosed to the Respondents on 5th February 2008 along with a letter requesting explanations for the allegations contained in the Report.

Referral Scheme 1 - Jaffrey Claims Service (JCS")

5. JCS was based in Bradford and was a referrer of personal injury matters. A referral arrangement with the Respondents had been in place since 2002 whereby the Respondents paid £650 plus VAT per case referred from JCS. This arrangement pre-dated the March 2004 amendments to SIRC which permitted the payment of referral fees.

6. The Respondents submitted that the payments made to introducers were in respect of investigation fees, for work done by the introducer. However the SRA submitted that the amount of payment was directly dependent on the number of matters which were referred to the firm.
7. JCS was owned by the First Respondent's father, Mr Abbas, who was also employed by the Respondents to carry out a small amount of immigration work.
8. The SRA's Report documents the conduct of five claims arising from the same road traffic accident on 10th August 2005. A copy of the client care letters sent to one of the claimants disclosed the existence of a referral payment. The letter stated that although a fee was paid, no part of it was payable by the client. However the letter failed to expressly disclose the existence of a referral agreement between JCS and the Respondents. Furthermore, it did not disclose the amount of the referral fee or why it was paid, nor did it disclose the nature of the relationship between the introducer and the solicitor. A schedule attached to the client care letter showed the First Respondent as the person conducting the matter.
9. The invoices submitted by JCS to the Respondents in respect of two of the claimants for "Investigating Charges" dated 26th October 2005 were for £400 each. However the client ledger for these two claimants recorded no disbursements being incurred at this time. One ledger recorded a disbursement of £450 "Enquiry agent Mr Abbas" on 28th July 2006 and the other recorded a debit on the client side of the ledger for £400 on 27th July 2005 described as "Agent Fees Mr Abbas". Two further ledgers recorded debits on the client side of the ledger described as "Agents Fees Mr Abbas" on 27th July 2006.
10. Ledgers for all five claimants recorded debits of £250 to Mr Abbas either described as "Agent's fees Mr Abbas" or "Damage Deduction Mr Abbas". This sum was removed from the claimant's damages before the balance was forwarded to the claimant. The client care letter made no reference to the deduction from damages.
11. The SRA Report exhibited signed authorities which according to the Respondents authorised them to make these deductions. However only four authorities were attached whereas deductions were made from the damages of all five claimants. Further, all the authorities were signed by the same individual, HA, and only one of the authorities was dated, 16th July 2006.
12. The firm's agreement with JCS dated 25TH January 2007 stated:

"you (JCS) will recommend and refer your client to Megsons Solicitors for us to represent them in pursuing their claims arising from road traffic accidents. For such a referral we will pay your company a referral fee. The fee has been agreed at £650 plus VAT. This fee is only payable for cases which we accept from you and which succeed. If not accepted or if not successful no fee is payable by us to your company".

13. All of the client ledgers contained a credit dated 1st August 2007 for a cancelled cheque for £250. This occurred between the SRA's visits to the firm in July 2007 and September 2007.
14. Although JCS's agreement with the Respondents allowed for a fee of £650 per case in the matter exemplified in the SRA's Report the invoices submitted were only in the sum of £400 and "agents fees" recorded on the client ledgers were for £400 or £450. However when these sums were added to the £250 "agency fees" or "damage deductors" then the total received by JCS would have been £650 or £700. This is despite the client care letters informing the clients that no part of the fee to the introducer would be paid by them.
15. The Respondents provided no evidence to show that they had drawn the attention of JCS to the Solicitors Publicity Code contrary to s.2(2) SIRC.
16. The Respondents provided no evidence to show that the introducers had provided the clients with all relevant information regarding the referral nor how the introducer acquired the clients in the first instance, contrary to s.2(4) SIRC.
17. In August 2007 the Respondents entered into a new agreement with JCS. However, like the previous arrangement the new agreement also contained the condition that the referral fee would only be payable where a case was accepted by the firm and was successful.
18. The Respondents also drafted a new client care letter for its personal injury matters. The new client care letter stated that referral companies would be paid £650 plus VAT for each matter being referred to the Respondents. However, the letter still failed to disclose certain required information to the client namely:
 - the existence of a referral agreement which included a financial arrangement; and
 - the solicitor's requirement to maintain his independence and integrity, and the confidential nature of the relationship between the solicitor and client.

Referral Scheme 2 - Motorwise Legal Services ("MSL")

19. MSL is based in Bradford and is a referrer of personal injury matters. A referral arrangement with the Respondents had been in place since 1st February 2007 whereby the Respondents agreed to pay £650 plus VAT per case referred from MSL.
20. The Respondents' agreement with MSL, dated 1st February 2007 stated:

"you (MSL) will recommend and refer your client to Megsons Solicitors for us to represent them in pursuing their claims arising from road traffic accidents. For such a referral we will pay your company a referral fee. The fee has been agreed at £650 plus VAT. This fee is only payable for cases which we accept from you and which succeed. If not accepted or if not successful no fee is payable by us to your company."

21. The Respondents new agreement with MSL dated 3rd August 2007 also contained the condition that the referral fee would only be payable where the case was accepted by the Respondents and was successful.
22. The agreement with MSL mentioned that both the firm and MSL were bound by SIRC, but did not mention that MSL were also bound by the Publicity Code. The Respondents provided the SRA with no evidence to show that they had drawn the attention of MSL to the Solicitors' Publicity Code.
23. The Respondents did not produce any evidence to show that they had investigated if or how the introducers informed the client about the introduction and any fees payable as a result, or made any enquiries as to how they acquired the client, and were satisfied that they have been acquired by the proper means.

Referral Scheme 3: Free Accident Helpline Limited ("FAH")

24. FAH is based in Oldham and was a referrer of personal injury matters. A referral arrangement with the Respondent had been in place since May 2007 whereby the Respondents agreed to pay £500 plus VAT per case referred from FAH. However by September 2007 the Respondents were no longer receiving instructions from FAH.
25. The Respondents' agreement with FAH dated 7th May 2007 stated:

"you (FAH) will recommend and refer your client to Megsons Solicitors for us to represent them in pursuing their claims arising from road traffic accidents. For such a referral we will pay your company a referral fee. The fee has been agreed at £500 plus VAT. This fee is only payable for cases which we accept from you and which succeed. If not accepted or if not successful no fee is payable by us to your company."

26. The Respondent's agreement with FAH mentioned that both the Respondents and FAH were bound by SIRC; however, the Respondents did not provide any evidence to the SRA to show that they had drawn the attention of FAH to the Solicitors Publicity Code.

Referral Scheme 4: AK Estate Agents

27. AK Estate Agents is based in Chadderton, close by the Respondents' Chadderton office. A referral arrangement had been in place since 2004/2005 under which AK would refer clients to the Respondents. No money was paid at the time of the referral. However, the Respondents' recovered £250 plus VAT or 10% of the final fee (whichever was greater), from AK without the knowledge of the client.
28. The Respondents had no written agreement with AK Estate Agents. The Respondents' explanation was that they were unaware that SIRC applied to those circumstances.
29. The SRA's Report exemplified a number of transactions conducted by the Second Respondent referred by AK. The SRA submitted that all matters referred by AK followed a similar pattern. The client care letter and enclosure dealt with the

Respondents' charges but nowhere was the client advised that the Respondent would receive £250 plus VAT from AK Estate Agents on the successful completion of the clients' matter.

Undertakings

30. The Second Respondent acted for Mr M, a relative of the First Respondent in relation to a number of conveyancing matters, in both a personal injury capacity and through Mr M's company A M Projects.
31. During the course of his dealings with Mr M the Second Respondent gave a number of undertakings on behalf of his client; two of the undertakings were in relation to a matter where the Respondents were acting for A M Projects and one was given where the Respondents were not acting in the underlying legal transaction. The undertakings were given to two parties; both of whom complained to the SRA at around the same time when the undertakings were not complied with. The SRA conducted simultaneous investigations.

Undertakings 1 and 2

32. The Second Respondent represented A M Projects in the purchase of land at St Georges Street, Millom, Cumbria ("the Property").
33. As part of the agreement the Firm (the Second Respondent) wrote to the DS, the solicitors representing the seller, B D Property Services, in a letter dated 12th May 2008 and stated

"We undertake that following completion to place second charges on our client's two apartments as agreed and to supply evidence of the same within 30 days of completion of this matter."

34. Completion took place a few days later.
35. On 2nd July 2008 the 2nd Respondent wrote to DS and stated

"We are instructed that our clients have now agreed that the charges are no longer required as our client is selling the site to a buyer introduced by your client. Please take instructions."
36. DS wrote to the Firm on 9th July and with reference to the letter of 2nd July informed them that no such agreement between their clients had been made. DS stated that it was their belief that no buyer had been found. They stated that an "unequivocal undertaking" had been provided and that failing confirmation by return that the undertaking would be complied with the SRA would be informed of the breach. A deadline of 14th July 2008 was given to comply with the undertaking.
37. On 23rd July 2008 DS complained to the SRA that the Respondents had breached an undertaking.
38. The SRA wrote to the Second Respondent on 20th August and asked for his full response to the allegations made by DS that he had breached an undertaking. The

letter also requested copies of any documents relied upon in his response. A reminder letter was sent on 10th September 2008.

39. The Second Respondent contacted the SRA on 12th September 2008 and explained that the office to which the correspondence had been sent was shut and then due to issues with the redirecting service some post had been lost, including the original copy of the SRA's letter of 20th August; now that he had a copy he hoped to reply within 7 days.

40. On 18th September 2008 the Second Respondent emailed the SRA and stated that

“Immediately after the undertaking was given we were advised by our client that he had agreed alternate terms with the Seller which did not require the undertaking to be complied with.”

The Second Respondent stated that if DS still required the undertaking to be complied with then they would do so.

41. In a telephone conversation on 23rd September 2008, between the SRA and the fee earner at DS, it was made clear that the undertaking still required compliance, “...the quicker the better”. The fee earner also stated that a further undertaking had been given in relation to payment of a significant sum of money due on Christmas Eve.

42. Later that day the SRA also spoke to the Second Respondent who explained that his client was very close to one of the directors of BM Services and suggested that some conflicting instructions had been given to DS. However, he agreed to arrange compliance with the undertaking.

43. On 3rd October 2008 the SRA emailed the 2nd Respondent and requesting an update as to steps he had taken to comply with the undertaking. A reminder was sent on 14th October, also by email and a further reminder on 23rd October 2008.

44. On 30th October the Second Respondent wrote to the SRA and informed them that his client was out of the country and had therefore been unable to sign the legal charges. He stated that he would advise the SRA when the charges were signed.

45. On 7th November 2008 the SRA requested an update as to whether the charges had been signed by the client.

46. On the same day the SRA also wrote to the First Respondent and requested his explanations for the alleged breach of undertaking. A reminder letter was sent on 19th December 2008.

47. The Second Respondent emailed the SRA on 17th November and advised them that his client had signed the charges and they were now seeking permission from the existing chargeholders that further charges could be registered on the relevant properties.

48. On 13th January 2009 a Section 44B notice was sent requesting all documents held by the Firm in relation to the purchase of the Property.

49. On 20th January 2009 the SRA received further correspondence from DS stating that they had not received confirmation that the second charges had been registered. In addition to this DS made a further, formal, complaint that the Firm had breached a further undertaking in relation to the sale of the Property.
50. It appears that at the time of negotiations for the purchase of the Property it was agreed that payment of some of the completion monies would be deferred until 24th December 2008. DS provided the SRA with a copy of a letter signed by the 2nd Respondent, dated 12th May 2009, which stated "...we have now received irrevocable instructions and security to enable us to given an unqualified undertaking in respect of £125,000 of the outstanding balance on completion of £125,000. In consideration of your client completing the sale and leaving the sum £250,000 outstanding therefore undertake to pay to you on or before 24th December 2008 the sum of £125,000". This undertaking was accepted by DS.
51. DS wrote to the Firm on 20th January 2009 requesting an update in relation to the registration of the legal charges and also an explanation as to why the undertaking to pay £125,000 had been breached.
52. On 27th January 2009 the Second Respondent contacted the SRA and informed them that the charges had been submitted for registration.
53. The Second Respondent was advised that his compliance with the Section 44B notice was still required by 13th February. On 12th February 2009 the 2nd Respondent wrote to the SRA requesting confirmation that only relevant correspondence needed to be disclosed to the SRA. However, the Tribunal will note that the wording of the Section 44B notice is clear and requires the disclosure of

"all documents in their possession (including ledger sheets) in connection with the purchase by AM Projects ..."
54. On 17th February the SRA received a letter from the Second Respondent purporting to enclose two matter files. However, on closer inspection, the papers only relate to another undertaking given by the Firm.
55. On 23rd February the SRA wrote to the Second Respondent requesting his explanation for the Firm's failure to comply with the undertaking of 12th May 2009 to pay £125,000 to DS on or before 24th December 2008. A reminder letter was sent on 17th March 2009.
56. DS wrote to the SRA on 23rd March and stated that they had been advised by the Respondents that their client had obtained funds which he would have by 12th March and would forward to them shortly after. However, no monies were received by DS. They explained that the Respondents' failures had left their client disappointed and in a detrimental position, furthermore they would be seeking interest on the amount due under the undertaking.

57. On 19th March the SRA received a letter from the First Respondent which stated that they had sought Counsel's advice and that advice had been that they had not provided a solicitor's undertaking.

Undertaking 3

58. On 1st July 2008 the Second Respondent wrote to KC Solicitors and gave an undertaking in the following terms:
- “I act for (Mr M). We (the Firm) undertake upon receipt from you or your client (KS), of the sum of £120,000 to repay the same together with an additional £25,000 on or before 12th July 2008”. £120,000 was received to the Respondents' client account and credited to the ledger of Mr M, to whom it was paid out to on the same day.
59. On 14th July 2008 the Second Respondent emailed KC and explained that as 12th July was a Saturday there had been some confusion. However, the Second Respondent understood that £145,000 had been “put in the system” and would be sent out either that day, or tomorrow. However, by 15th July no money had been received in satisfaction of the undertaking.
60. The Second Respondent explained that Mr M had been let down by his bridging source and was in the process of finding alternative sources of funding. As another option the Second Respondent stated that
- “... as my firm gave the undertaking I am now looking to raise funds to meet it.”
61. KS expressed his unhappiness with the situation but agreed to extend the deadline for the undertaking until 18th July 2008 on the condition that extra interest at £260.00 per day and legal fees, plus VAT, incurred in chasing the undertaking were also satisfied. These conditions were agreed by the Second Respondent.
62. On 18th July the Second Respondent confirmed that he intended to send £147,558.75 to KC that day, explaining that the funds were coming from two different sources; this sum consisted of the original £125,000.00 plus interest of £25,000.00, legal fees of £850.00 plus VAT and six days additional interest at £260.00 per day. KC confirmed his firm's banking details. However, no funds were received.
63. On 21st July the Second Respondent wrote further and stated that monies were received by him on Friday, but that these had to be returned. However, a bridging loan for £202,000 was on its way to him. In accordance with their agreement a further £260.00 was to be added to the due sum.
64. On 22nd July 2008 KC informed the Second Respondent that his client (KS) had lost his patience and wanted the matter reported to the Law Society. The Second Respondent replied and stated “*Monies on way*”. However, no monies were paid and therefore the next day KC wrote to the SRA reporting the breach of the undertaking.

65. KC wrote to the First Respondent on 30th July and explained that a further £350 plus VAT was now due in respect of legal fees incurred in the matter.
66. On 31st July 2008 the First Respondent extended the terms of the undertaking given by the Second Respondent so that it included the repayment of £125,000.00 and £25,000.00, plus interest at £260 per day from 13th July 2008, plus KC Solicitors reasonable costs, at that time £1,200.00 plus VAT. The First Respondent informed KC that an offer of £300,000.00, thought to be raised by way of a remortgage, was expected that day; secured as a second charge, with 56 day priority against Mr M's property valued at £2 million. He attached a copy of the valuation report and office copies of title.
67. An update was requested by KC from the First Respondent on 5th August and from the Second Respondent on 15th August. The Second Respondent replied on 18th August with news of more delays caused by the lender's solicitors requiring new searches on the property.
68. On 20th August the SRA wrote to the Second Respondent and requested an explanation in relation to the alleged breach of undertaking. They requested copies of all relevant documents supporting their explanation and a copy of the ledger. A reminder letter was sent on 10th September 2008. The Second Respondent's explanation for the failure to respond was that post had again been misdirected.
69. KC contacted the Second Respondent further on 1st September 2008 requesting an update on the matter. The Second Respondent stated that all the information was with the other solicitors (the lender's solicitors) and completion was due that week. However, the completion date was then changed to the following week with the qualification that that was as certain as he could be. However, he did assure KC that the mortgage would produce enough money to repay KS.
70. On 16th September 2008 KC again contacted the Second Respondent requesting an update on the matter in relation to completion. On 17th September AC wrote to the Second Respondent and explained that the funds were over two months overdue and suggested that two months was sufficient time to deal with a remortgage of Mr M's property. He requested some definite information:
 - (i) "Please confirm you (sic) client has an offer (even though it's your firm's liability to pay).
 - (ii) The date you are now proposing to work towards.
 - (iii) The precise reasons for the delay and how this will be dealt with.
 - (iv) Confirmation that you and your partner will pay if the funds are not through within the next few days."
71. The Second Respondent explained that he had been dealing with the lenders solicitors since early August, but the issue of valuation report had only been raised two days earlier. Nonetheless a final confirmation offer letter was expected that day and this was forwarded.

72. KC informed the Second Respondent that he had his client's instructions to bring High Court proceedings to recover the monies, plus interest and costs and stated that it was the Firm's liability to pay not Mr M's.
73. The Second Respondent replied to the SRA's letter of 20th August 2008 on 18th September and explained that Mr M was a relative of the First Respondent. He accepted that the Firm had failed to comply with the undertaking given and expected the monies to be repaid within 5 days. The SRA requested a further update regarding compliance.
74. Between 22nd September and 7th October further requests for updates were sent by KC.
75. On 27th October the Second Respondent emailed KC and stated that both clients had been in contact and £170,000 had been sent directly to KS; however, he was awaiting confirmation of this. In fact no monies were sent.
76. On 6th November the Second Respondent explained that funds were now due as a loan from Mr H, not a remortgage as had previously been intimated. However, by 12th November no payments had been made.
77. The First Respondent, as the other principal in the Firm, was also requested to provide explanations to the SRA for the Firm's failure to comply with the undertaking.
78. On 13th November the Second Respondent emailed KC and attached a copy of a bank draft for £170,000.00, which had been paid into KC's account that morning. The Respondents also informed the SRA that a payment of £170,000.00 had been made to KC's client'; and as a result the undertaking had been complied with.
79. However, the bank draft was a suspected counterfeit. Therefore a CHAPS payment was ordered. However, no monies were paid.
80. On 24th November 2008 the Second Respondent informed KC that his client had secured a payment of £14,000.00 to be paid the next day. This was increased to £170,000.00.
81. The undertaking had not been honoured.

The Submissions of the Applicant

82. Both Respondents admitted all of the allegations.
83. The Applicant submitted that the matters referred to the Respondents under the arrangement with JCS and Mr Abbas (senior) involved a contingency fee, and that the Respondents were in breach of Rule 9 SPR by paying an introducer a referral fee only on the successful conclusion of a matter. The Applicant further submitted that the Respondents were in breach of SPR Rule 1(a) and (c) based upon:

- (i) the close relationship between the introducer, Mr Abbas and the First Respondent;
- (ii) JCS only being entitled to payment of a referral fee in successful matters;
- (iii) the introducer working for the Respondents in another capacity;
- (iv) the Respondents' failing to disclose the relationship between themselves and the introducer;
- (v) the Respondents deducting from clients' damages payments made to the introducer.

The effect of the arrangement was that matters were conducted in situations which gave rise to potential conflict between the interests of the clients and the interests of the introducer and the Respondents.

84. The Applicant also submitted that the Respondents were in breach of Rules 9.01(4) of the SCC by entering into an agreement with JCS which contained a provision that JCS would only receive their referral payment if the matter was successful. The Respondents failed to show any evidence that they had carried out any investigation into how JCS acquired clients for referral and that they were satisfied that the clients had been acquired in a proper manner.
85. Further the stipulation in the agreement whereby MSL or FAH received their fee from the firm only if the matter was accepted and was successful, constituted a contingency fee. Any payments made to MSL or FAH by the Respondents on the successful conclusion of a matter were therefore unlawful.
86. The SRA also submitted that the SIRC applied to the referral arrangement with AK Estate Agents by virtue of s.3A SIRC. Under s.3A the Respondents were obliged to have a written agreement with AK Estate Agents which would include amongst other things notification of the amount of money the introducer would pay the Respondents for carrying out the client's transaction. As a result of their actions the Respondents had failed to ensure that the introducer disclosed the amount that would be paid to the Respondents as a result of conducting the customer's transaction which was a breach of Rule 1(c) SPR and Rule 1.01 SCOC.
87. The Applicant told the Tribunal that the first undertaking had now been complied with, albeit very late. As a result of the breaches of undertakings the Respondents had failed to act with integrity and had behaved in a way likely to diminish public confidence in the profession. The matters before the Tribunal were concerned with the undertaking from a professional conduct perspective and whilst the Respondents had maintained an argument in contract that there were no undertakings, these arguments were irrelevant to the issues before the Tribunal. The terms of the undertakings were clear and the Respondents knew that. By breaching the terms of their undertaking the Respondents had failed to act with integrity and behaved in a way likely to diminish public confidence in the profession.

The Submissions of the Respondents

88. It was accepted by the Applicant that dishonesty was not an issue in this case. Whilst there were three allegations of failing to comply with an undertaking, allegations 11 and 12 were based on the same facts and could have been pleaded as one allegation, this, in the Respondent's submission, went to the issue of penalty.
89. The criminal charges brought against the Second Respondent had now been dismissed and he therefore appeared before the Tribunal as a man of good character.
90. Both Respondents offered their unreserved apologies to the Tribunal and to the profession. The appearance before the Tribunal today had had a tremendous effect upon hard working solicitors and the appearance itself may be viewed as punishment enough. The Respondents did not seek to avoid their responsibilities and had made proper admissions. Despite the fact that Counsel's advice had been received on the enforceability of the third undertaking, both Respondents now accepted their professional duties in regard to it.
91. The Tribunal was referred to the Respondents very full response to the interim report of the Practice Standards Adviser in a letter dated 21st September 2007 which was expanded upon and enhanced in their letter to the SRA dated 14th March 2008. Both letters demonstrated that the Respondents took all matters raised very seriously and had taken steps to become compliant with the Rules.
92. There had been considerable confusion in the profession concerning the payment of referral fees. It had always been the Respondents' intention to comply with the rules and where they had not done so, this was because of errors and not conscious impropriety. At all times they had only ever acted in the best interests of clients. In the JCS case it was submitted that the close relationship did not affect their integrity or independence and there had been no adverse effect on client. The Tribunal was referred to five previous cases which had been before it in previous years and the penalties imposed on these occasions. It was submitted that in similar cases modest fines had been imposed in relation to the difficulties surrounding the payment of referral fees. The cases cited were 10021/2008-Chamberlain and Ors; 9836/2007 Knowlson; 9891/2008-Hill; 9212/2005-Mendelson and 9249/2005-Lindsay.
93. With regard to the breaches of undertakings the Tribunal was invited to find that the Respondents were doing their best to keep the relative parties informed as to the first undertaking and that this had now been complied with, albeit late. The first and second undertakings arose from the same transaction and the third undertaking the same client. The Second Respondent had acted with a degree of naivety due to the fact that he had trusted the client as he was a relative of the First Respondent and he had relied upon his assurances. The Tribunal was invited to conclude that there had been no deliberate intention to evade the responsibilities of the undertakings. The Respondents were not currently in a position to comply with the second and third undertakings but had taken steps to protect the position by registering a charge against the original property and exchange of contracts for the sale of that property was now imminent. In the Respondent's estimation there would be £300,000 surplus from this sale to deal with the outstanding undertakings; whilst a shortfall would therefore arise

they would do their utmost to ensure that the rest of the monies were paid. They therefore hoped for a resolution of the matter in the very near future.

94. The Respondents had no other assets sufficient to pay off the bulk of the outstanding monies. Both of the Respondents had an intense desire to remain in the profession and the Tribunal was urged to afford them that opportunity. They recognised that they had breached the undertakings and come before the Tribunal with humility. The Second Respondent specialised in personal injury, rather than conveyancing and this may have been a factor.
95. The Tribunal was urged to take a proportionate approach in this case and view the matters other than the breaches of undertaking as breaches of technical rules. Neither of the Respondents were a risk to the public and it would be disproportionate to strike them off in these circumstances.
96. Costs had been agreed in the sum of £21,000 on a joint and several basis.

The Findings of the Tribunal and its Reasons

97. The allegations were proven indeed they had not been contested.
98. The Tribunal viewed the breach of undertaking, and in particular that undertakings two and three had still not been complied with, as a very serious matter going to public trust in the profession. At the time that the third undertaking was given, they had already been in breach of one undertaking and so should have known that it was extremely risky to give a further undertaking. This had demonstrated an extreme degree of naivety.
99. With regard to allegations 1-9 in respect of each of the Respondents, these related to four referral agreements. The Tribunal accepted that the Respondents procedures are now all compliant in this regard. The Tribunal would therefore impose a fine of £2,500 on each Respondent in respect of these allegations.
100. In relation to allegations 10-12, these involved the breach of three separate undertakings. A solicitor's undertaking is something which the public and the profession must be able to rely upon completely. Whilst one of the undertakings had now been complied with, albeit very belatedly and in circumstances where there seemed to have been no reason not to have complied with it promptly, the other two were still outstanding. This was a most serious matter and wholly unacceptable to the profession. Such conduct is damaging to the public's trust and confidence in the profession and would not be tolerated. Each day that the undertakings remained outstanding was a continuing breach and this could not be permitted in relation to the breaches of undertaking by the Tribunal whose function is to protect both the public and the reputation of the profession (*Bolton v The Law Society [1994] 2 All ER 486*). A fine of £5,000 would be imposed on each of the Respondents and a further condition that if the Respondents did not effect compliance with the undertakings by 31st March 2010 then they would be suspended indefinitely from 1st April 2010.
101. Costs would be Ordered in the agreed of £21,000, such costs be joint and several.

102. The Tribunal Ordered that the Respondent, Sajit Maboob Abbas of Megsons LLP, 7 - 9 Church Lane, Oldham, Lancashire, OL1 3AN, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,000.00, such costs to be joint and several.
103. The Tribunal further Ordered that if the Respondent does not effect compliance with the undertakings dated 12th May 2008 and 1st July 2008 by 31st March 2010 then he will be suspended indefinitely from 1st April 2010. The Respondent was to supply evidence of such compliance to the Solicitors Regulation Authority.
104. The Tribunal Order that the Respondent, Alan Douglas Cockburn of Megsons LLP, 7-9 Church Lane, Oldham, Lancashire, OL1 3AN, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,000.00, such costs to be joint and several.
105. The Tribunal further Ordered that if the Respondent does not effect compliance with the undertakings dated 12th May 2008 and 1st July 2008 by 31st March 2010 then he will be suspended indefinitely from 1st April 2010. The Respondent was to supply evidence of such compliance to the Solicitors Regulation Authority.

Dated this 9th day of July 2010

On behalf of the Tribunal

Miss N Lucking
Chairman