

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BULBINDER SINGH BAGRI, SIRAJ KHALIL,
SARFRAZ KHALIL and NADEEM MALIK, solicitors

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

Mr A H Isaacs (in the chair)
Mr A Gaynor-Smith
Mr M Hallam

Date of Hearing: 13th April 2010

FINDINGS & DECISIONS

Appearances

Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant

Gary Christiansen, Solicitor of The Stables, Radford Lane, Lower Penn, Staffordshire WV3 8JT for Mr Bagri.

Ian Ryan, Solicitor of Finers Stephens Innocent, 179 Great Portland Street, London W1W 5LS on behalf of Mr Siraj Khalil, Mr Sarfraj Khalil and Mr Malik

Allegations

Allegations against Mr Bagri

- (a) He facilitated, permitted or acquiesced in the payment by BK Solicitors of a referral fee contrary to Section 2 (3) of the Solicitors Introduction & Referral Code 1990 (hereinafter referred to as "SIRC").
- (b) He failed to exercise adequate or appropriate supervision contrary to Rule 13 of the Solicitors Practice Rules 1990 (SPR).

Allegations against Mr Siraj Khalil, Mr Sarfraz Khalil and Mr Malik

- (c) They breached the terms of Rule 3 of the SPR, by accepting instructions and referrals of business from introducers in breach of the SIRC, both in its original and amended forms.
- (d) By virtue of the matters set out in the Report dated 12th June 2007 they acted contrary to Rule 1 (a), (c), (d) and (e) of the SPR, in that their conduct was compromised or impaired or was likely to compromise or impair their independence or integrity as solicitors, their duty act in the best interests of a client(s), their good repute or that of the Solicitors' profession.
- (e) They provided confidential information to a third party without the consent of a client(s) contrary to Rule 1 (c), (d) and (e) of the SPR and/or Rule 16 E (2) of the SPR.
- (f) Contrary to Rule 9 of the SPR, in respect of personal injury claims, they entered into an arrangement in association with persons (not being solicitors) whose business or a part of whose business was to make, support or prosecute (whether by action or otherwise) claims arising as a result of personal injury and who, in the course of such business, solicited or received contingency fees in respect of such claims.
- (g) That contrary to Rule 1 (a), (c), (d) and (e) of the SPR, they failed to give any or any adequate advice to clients as to the agreements clients had entered into with Accident and Injury Management Specialists (AIMS) and the merits of making payment pursuant to such agreement out of the clients' damages.
- (h) They withdrew money from client account otherwise than as permitted by Rule 22 of the Solicitors Accounts Rules 1998 (hereinafter referred to as the 1998 Rules).

Background

1. Mr Bagri (the First Respondent) was admitted as a solicitor in 1991. Mr Siraj Khalil (the Second Respondent) was admitted as a solicitor in 1999. Mr Sarfraz Khalil (the Third Respondent) was admitted as a solicitor in 2004. Mr Malik (the Fourth Respondent) was admitted as a solicitor in 2000.
2. At relevant times the Respondents in different capacities were involved in a practice carried on under the style of BK Solicitors from offices at Crown House, 28 George Street, Birmingham, West Midlands BL2 9RG.
3. The First Respondent was the sole principal of BK Solicitors from 2nd December 1996 to 28th May 2002 and subsequently a partner from 29th May 2002 until 27th February 2004.
4. The Second Respondent was an assistant solicitor with BK Solicitors between 15th November 1999 until 28th May 2002, and subsequently a partner from 29th May 2002 until 31st December 2007. He has been a Director of BK Solicitors Ltd from 1st January 2008.

5. The Third Respondent was a partner in BK Solicitors from 5th January 2004 until 31st December 2007, and subsequently a Director of BK Solicitors Ltd from 1st January 2008.
6. The Fourth Respondent was an assistant solicitor with BK Solicitors from 2nd September 2002 until 4th January 2004 and subsequently a partner from 5th January 2004 until 31st December 2007 with BK Solicitors, and a Director of BK Solicitors Ltd from 1st January 2008.
7. A Referral Arrangements Compliance Project (RACP) Report dated 12th June 2007 was prepared following an inspection of BK Solicitors which commenced on 29th May 2007.
8. The Report identified that the firm had referral arrangements with AIMS and RTA Management (RTA Mgt).
9. AIMS (formerly known as CAH), was a claims management business providing a claims service to victims of non-fault road traffic accidents, in particular taxi drivers. The Second Respondent informed the Investigation Officer that AIMS provided a comprehensive service including recovery of vehicles, hiring of replacement vehicles, claims management of non - personal injury type losses and attending the scene of the accident to provide assistance to the driver at unsocial hours.
10. AIMS obtained the client and then sent to the firm a pack, including a completed legal instruction form, a personal injury questionnaire, an authority to BK Solicitors to accept monies on the client's behalf and a consent for the release of medical records to BK Solicitors. AIMS arranged for the client to sign a Conditional Fee Agreement between the client and the firm. The legal instruction form included a declaration on the last page signed by the client which provided as follows:

“AIMS and any Solicitor whom AIMS appoint are authorised to act on my behalf with regard to the recovery of all losses and damage sustained by me as a result of the accident. AIMS and their Solicitor are authorised to settle all related matters as they deem fit. I authorise AIMS to pay any expenses incurred as a result of the accident, including credit hire and/or recovery & storage. These amounts shall be collected from the global settlement of my claim. AIMS are entitled to deduct 30% of the personal injury monies awarded to me irrespective of whom my claim is set against. I understand that should a shortfall of payments from third party arise due to any dispute that I should be responsible for settling the balance of monies AIMS have paid on my behalf.

I (client's name) of (client's address) authorise BK Solicitors to update and direct any correspondence in respect of my claim for damages against third party/insurers following an accident on (date) to AIMS of 14 The Slieve, Handsworth Wood, Birmingham B20 2NR. I also authorise AIMS to receive all settlement monies on my behalf which the named legal representative will obtain from any such Third party. Should I require any information in respect of the above claim I confirm I will only contact AIMS.”

11. The firm sent the client a client care letter which disclosed a referral fee and contained general client care information and costs information. The client care letter stated that the client should contact the firm “by telephone in emergencies only”, and that the solicitor would contact the client in the event of any problems or difficulties. It further stated “Also, as advised, you have given us permission to provide the referrer with updates on your case.”
12. As the case progressed the firm usually directed correspondence to and received instructions from AIMS, who took the client’s instructions on matters such as medical reports. The Second Respondent explained to the Investigation Officer that AIMS were not legally qualified and that if there was any difficulty in the progress of the case, the solicitor would meet the client face to face.
13. If the client had made a claim for vehicle damage this would usually be paid to him direct by the firm. Any other settlement proceeds were paid by the firm to AIMS, who then deducted any monies due to them for expenses such as recovery or hire cars. The Second Respondent said that some clients were charged a fee of 30% from their general damages by AIMS. He said he had known of cases where the client refused to pay the 30%. In such cases AIMS did not pursue it and received only the payment from the firm. The Report confirmed that the firm paid a fee of £350 plus VAT to AIMS for each case introduced until July 2006 when the fee increased to £500 plus VAT. The fee was taken from the firm’s profit costs and paid to AIMS at the conclusion of a successful case.
14. The Report noted that the firm had received a previous visit from the Practice Standards Unit on 29th and 30th March 2006. The Practice Standards Unit Officer on that occasion produced a report which provided advice in connection with the firm’s referral arrangements. He made it a required action that the firm “Review [their] referral arrangements and confirm that [they] have taken all necessary steps to ensure that the arrangements comply with the SIRC Section 3”. In addition he gave the firm the following advice:
 - (a) To consider whether the stipulation that clients should only contact AIMS constitutes an improper constraint.
 - (b) To consider whether this and the payment of 30% are in the client’s best interest and what services AIMS are providing for the fee charged.
 - (c) To obtain correspondence supplied by the introducer to the client.
 - (d) To remind introducers to provide details of the referral arrangements including the fee.
 - (e) To obtain copies of the introducers’ marketing materials.
 - (f) To conduct periodic reviews of the arrangements and ensure that the proportion of work has been assessed.
15. Following the 2007 RACP visit there was correspondence between the Investigation

Officer and the firm, which set out the steps the firm had taken to achieve compliance following the visit.

16. The Tribunal reviewed the following documents submitted by the Applicant.

Rule 5 Statement dated 15th April 2009 and exhibits.

17. The Tribunal reviewed the following documents submitted by the Respondents.

By the First Respondent:

Bundle of references

By the Second Respondent:

Statement dated 8th April 2010

Witnesses

18. The following persons gave oral evidence:

Ms Nicola Kirby, Senior Standards Adviser in the Practice Standards Unit of the SRA
Mr Siraj Khalil, the Second Respondent

Findings as to Fact and Law

Allegations (a) and (b) against the First Respondent

19. In a letter to the SRA dated 14th February 2008 the First Respondent denied knowledge with regard to payment of referral fees to AIMS, and indicated that the arrangement was set up by the Second Respondent who was responsible for introducing new work to the firm and that his only personal knowledge was that AIMS was an accident management company instructed to recover uninsured losses after road traffic accidents. The Applicant argued that while the First Respondent denied knowledge, the second Respondent did not become a partner in the practice until May 2002, with the arrangements for the referral payment starting in 2001. The First Respondent was therefore sole principal at the time when the arrangement was first put in place, and was subsequently a partner in the practice, and knew, or ought to have known, of the referral payments. The Second Respondent in oral evidence said that while the First Respondent was sole principal at the time the arrangements were put in place, this matter had been delegated to the Second Respondent. He would have discussed aspects of the matter with the First Respondent but could not recall how deep those conversations had gone. The Second Respondent's opinion was that the First Respondent should not be before the Tribunal as he had had very little to do with either AIMS or RTA Mgt. The Second Respondent had been given the task of finding new work.
20. The Applicant submitted that adequate and appropriate supervision of the Second Respondent by the First Respondent would have revealed the referral arrangements and payments. In his oral evidence the Second Respondent said that the First

Respondent had done a good job of supervising him.

21. It was submitted on behalf of the First Respondent that he had admitted the allegations from the start. The breach of the Code was an offence of its time. There had been cases before the Court of Appeal on what was and was not a referral fee, but it was not until the case of *Sharratt and London Central Bus Company* and other cases (The Accident Group test cases) [2004] EWCA B 575, that it was possible to say with certainty what was and was not a referral fee. The situation prior to that date had been grey. In relation to supervision the Second Respondent had been able and, by his own description, ambitious. There had been conversations between the First and Second Respondents and whilst the First Respondent did not allege that he had been misled, nothing had alerted him to any breach. The First Respondent accepted that he should have asked more questions. At the time the Second Respondent had been two years qualified.
22. The First Respondent admitted allegations (a) and (b), and the Tribunal found them to have been substantiated on the facts.

The Second Respondent

Allegations (c) (d) and (g)

23. The Second Respondent admitted allegation (c) on a limited basis. He denied allegations (d) and (g).
24. The Applicant relied on the Report, which he said had identified the firm's failure to comply with the SIRC, both pre and post March 2004. The Applicant also relied on the Second Respondent's comment that it seemed sensible to construe the payments post-March 2004 as referral fees. This added weight to the Applicant's submission that payments pre-March 2004 had also been referral fees. The Second Respondent argued that post-2004 there had been a great deal of furore about definitions and what constituted a referral fee and he had therefore picked the sensible option. Prior to 2004 he had called it an administration fee
25. In relation to the pre-March 2004 period the Applicant relied on the case of *Sharratt* and said that the present case was not dissimilar. The fee paid to the introducer for each case received was the same. If the fee had not been paid it was unlikely that the cases would have been received by the firm. The Applicant said that the Second Respondent had advanced the argument that the 30% paid to AIMS was for services. The Applicant submitted that that added weight to his assertion that the payment made by the firm to AIMS was a referral fee, as the 30% effectively covered any work done by AIMS. The Applicant said that Second Respondent had conceded to the Investigation Officer that clients might be less happy to pay the 30% if they knew that AIMS was also receiving a referral fee from the practice.
26. In relation to the period post March 2004, the Applicant relied on the Report and the concerns of the Investigating officer regarding the Second Respondent's general attitude and approach. The Report had stated that "the overall impression is that AIMS is the client, not the individual". The Report also stated that the relationship with AIMS was affecting the advice given by the firm, the firm was not giving advice

to clients on important issues such as medical reports and quantum and that the firm was not giving them advice on the appropriateness of the agreement with AIMS and the payment of 30%. The Applicant submitted that the relationship of solicitor/client was one in which a solicitor was bound to give advice to clients on the subject of the retainer, which would include the 30% deduction paid to the introducer.

27. The Applicant submitted that the firm's failure to communicate directly with the clients was a breach of the SIRC. The nature of the retainer between the solicitor and client ordinarily involved seeking instructions from the client as to the nature of their business and giving advice as to relevant and appropriate matters.
28. The SIRC obliged the solicitor to be satisfied that the introducer had provided the client with information concerning the referral before the referral took place, including any payment. If the Second Respondent was of the view as expressed in the Report that it was unlikely that the introducer had disclosed a referral fee, he should have satisfied himself on this. Further, the firm's professional judgement was constrained in that they were discouraged from taking instructions directly from the client.
29. The same points arose in relation to RTA Mgt, which was set up by an ex-employee of the firm. Initially, one of RTA Mgt's employees came to the firm under a fee sharing agreement. There was then a period where no work was sent and thereafter work was sent on a straightforward referral basis. There was no evidence that the referral arrangement was disclosed to clients prior to the referral being made and the Report recorded the Second Respondent as accepting that he was not satisfied that RTA Mgt were informing their clients about the fee.
30. The Applicant said that there was no evidence that the firm had considered whether steps should be taken to reduce the proportion of work received from AIMS contrary to the SIRC. According to the Report 26% of the firm's total income during the review period came from work received through AIMS.
31. The Second Respondent did not accept that AIMS were "the client".
32. The Second Respondent did not believe that the payments made pre-March 2004 were referral fees, indeed the difference between AIMS and other referral companies was that AIMS did a substantial amount of work for the firm. Other referral companies simply sent a file for a fee.
33. The Second Respondent accepted that he had not carried out the six-monthly reviews required by the SIRC ensuring compliance with the Code. He had, however, carried out such a review twelve-monthly. He did not accept that the proportion of the firm's income was 26% from AIMS as asserted by the Investigation Officer; rather the actual figure was under 20%. In any event the firm was not unduly reliant on instructions from AIMS.
34. Other than the six-monthly reviews, the Second Respondent denied allegation (c). AIMS had done a substantial amount of work for the firm, updating clients, obtaining locus and engineers' reports and witness statements. AIMS would go out in the middle of the night to the scene of an accident and obtain witness details and kept the

client and the firm up to date. Many clients did not speak English as a first language and AIMS acted as a translation service and kept the firm up to date. AIMS had provided value for money. In summary the fee charged to the firm was work done for the firm. The contingency fee was for work done for the client. None of the claims were under-settled, indeed AIMS often pressed the firm to seek higher damages.

35. It was submitted in relation to allegation (c) on behalf of the Second Respondent that his evidence had been consistent that AIMS had provided value for money and had carried out work on which the Second Respondent relied and which he trusted. In particular AIMS had had the necessary linguistic ability. The Second Respondent would abide by the Tribunal's decision as to whether or not the arrangement had constituted a referral fee but the Second Respondent had felt it important to make clear that this was not a case of a solicitor simply buying cases, doing no work and pushing the cases over to AIMS.
36. In relation to allegations (d) and (g), the Applicant submitted that the Second, Third and Fourth Respondents' independence and integrity and duty to act in the clients' best interests were compromised by the firm's conduct of AIMS cases, and in particular that:-
- (i) After the standard client care letter, typically there was no direct communication between the client and the Solicitor.
 - (ii) Clients were discouraged from contacting the Solicitor in the legal instruction form from AIMS and in paragraph 5 of the client care letter.
 - (iii) Instructions on medical reports were not taken directly from the client.
 - (iv) The advice on quantum and settlement of cases took place by discussion with AIMS rather than directly with the client.
 - (v) In the legal instruction form the client authorised AIMS and the Solicitor to settle the case on their behalf as they saw fit.
 - (vi) Payment by the firm of the damages was made to AIMS rather than to the client and there was no written confirmation to the client of the outcome or the amount recovered.
37. The Applicant further contended that the Respondents acted in breach of SPR 1 in failing to give advice to clients regarding the 30% payment or to challenge it with AIMS. He submitted that the Respondents failed to provide proper advice to clients on the agreement entered into with AIMS and that irrespective of whether the agreements were legally enforceable the Respondents should have advised the clients that the agreements were not in the client's best interests.
38. The Applicant said that the Report identified concerns regarding the Second Respondent's general attitude in relation to the firm's close working relationship with AIMS. The Report noted that during the initial meeting, on being asked about the provision whereby the client paid 30% of their damages, the Second Respondent said that he was "a bit careful about asking them questions about their charging structure".

The Report went on to say that the Second Respondent was reluctant to contact AIMS to ask them about the disclosure which AIMS made to clients about the referral arrangements. The Report stated that the Second Respondent refused to telephone AIMS during the visit and said that he would prefer to discuss it with them face to face when all the issues arising from the visit were known. The Officers were concerned that the Second Respondent's independence might be compromised in view of his general attitude and reluctance to confront AIMS.

39. The Applicant also relied on the oral evidence of Ms Kirby, who confirmed her report. Ms Kirby's evidence was that the Second Respondent refused to telephone AIMS when requested. The Second Respondent disputed this, saying firstly the firm had a written agreement with AIMS, whereby AIMS undertook to comply with the SIRC. Secondly the Respondent had been satisfied that AIMS was doing so. The Officers had pushed the point and the Respondent had made comments such as "I cannot be 100% sure". Since then he had obtained documentary evidence. Further the firm told clients themselves about the payment and the client care letter which had been used throughout disclosed this fact to the client.
40. The Second Respondent said there was no insistence by Ms Kirby that he telephone AIMS and it was therefore not correct to say he had refused. He had indicated that he would rather not telephone them until all the issues were known. The Second Respondent denied that he had been afraid that he would lose the work from the introducer and that was why he had not queried their charging arrangements. He said that he would be careful in any business relationship of putting such questions. The clients had received a good service from AIMS.
41. It was submitted on the Second Respondent's behalf that the benefit of any doubt in relation to this disputed evidence should be given to the Second Respondent, and submitted that Ms Kirby had not had total recall of the conversations which took place.
42. The Second Respondent denied that the Respondents' independence had been compromised. Each client had been advised independently using the Second Respondent's own legal judgement and he had not seen a single file where he had done something under the influence of the referrer. He had advised each client independently of the referrer.
43. Each client had received a client care letter and had signed a form to allow medical records to come to the firm. The Second Respondent had had no problem with AIMS acting as a conduit for information. No client had complained about this. AIMS were reliably communicating the Second Respondent's advice to the clients. The Second Respondent had direct communication with the clients if there was a more complex case or an issue which caused him concern.
44. The Second Respondent accepted that the legal instruction form from AIMS and paragraph 5 of the client care letter were unfortunate in terms of their wording. In practice any client who wanted to contact him did so, although he accepted that the wording clearly encouraged the client to contact AIMS. The legal instruction form had been drafted by AIMS. The client care letter reflected the fact that it was difficult for the solicitor to work on files if constantly interrupted by client telephone calls. They had not however refused to accept non-emergency calls from clients.

45. AIMS took instructions on the medical reports if the injuries were not complicated. The reports were fairly standard and were checked by the Second Respondent before going to the client. If any client was not happy the firm would meet with them. The firm would post the reports to the clients.
46. The advice on quantum and settlement again related to modest claims. AIMS and the firm wanted the maximum amounts for the client. There had been no complaints from any client regarding quantum.
47. AIMS would tell the firm that the client had agreed the medical report. The firm would send the report to the insurance company who would make an offer. The firm would then advise the client through AIMS whether or not they recommended acceptance or refusal of the offer. If the firm felt it was not a reasonable amount the Second Respondent would recommend a client meeting and issue court proceedings. There had been no case where AIMS had wanted to settle the matter and the firm had not done so; indeed the opposite was sometimes the case.
48. The firm never settled files without the client's instructions and despite the SRA searching through the firm's files there was no evidence to support that allegation.
49. There was no doubt at all that the clients were aware of the amount of damages. They were informed of the amount recovered by AIMS. No client complained and the firm had many repeat clients.
50. The Second Respondent said that he took many clients' instructions directly when he felt it was necessary. He now dealt directly with all clients but many of them still chose to go back to the referrer. He considered that he had been sufficiently aware of the terms of arrangement the clients had entered into with the introducer to form a view as to whether the client's best interests were being served.
51. The Second Respondent considered that having AIMS do the work they had done was more efficient, for example getting instructions on the medical report. Legal qualifications were not needed to do that. The Second Respondent had advised on quantum which he assessed based on a medical report. AIMS had taken instructions on the medical report. He had trusted AIMS to relay information properly in both directions. The Second Respondent pointed out that he had continued to send medical reports post-March 2004 for AIMS to take instruction. If the system had been inefficient and had been done to circumvent the pre-2004 rules, he would have changed the system.
52. Post-November 2009 the rules had been changed to make clear that solicitors should advise on agreements entered into with the introducer prior to instructing the solicitor. Although this had not been a requirement before that date, the Second Respondent had considered the agreement and had thought that the fee charged by AIMS to the client was reasonable. On previous regulatory visits no concerns had been expressed. The 2006 visit had told him to consider the arrangements, and he had done so.
53. It was submitted on behalf of the Second Respondent that the Second Respondent would accept any finding that he had breached the rules but at no time had his

independence or integrity been compromised nor had he failed to act in a client's best interests. He had given his evidence on oath. He had refuted that AIMS was a client, this had been an assertion by the Applicant but not the reality. Individual clients had not been compromised.

Allegation (e)

54. The Second Respondent denied allegation (e). The firm had a signed mandate from the client to disclose information and this was also highlighted in the client care letter. To the Second Respondent that constituted consent. There had not been a single complaint from clients. The Second Respondent regarded this as a very serious allegation which affected the core of his business. A finding for breach of confidentiality against a solicitor who still practised in the area would be extremely damaging and would carry inferences which did not reflect what had happened in this case. It would also affect the firm's professional indemnity insurance.
55. The Applicant in his Rule 5 Statement had said that the consent given on the legal instruction form was not "informed" consent. This was not a concept referred to within the rules. The Second Respondent had believed he was acting properly within the authority given to him by clients.

Allegation (f)

56. The Second Respondent admitted allegation (f). He had taken the view that AIMS were entitled to charge the fee. He had not realised that the relationship was based on contingency fees and apologised for the breach. He no longer had such an arrangement.

Allegation (h)

The Second Respondent denied allegation (h).

57. The Applicant argued that there was no written instruction from the client to the firm which would permit the Respondents to withdraw the client's damages from the client account and send the cheque to AIMS.
58. The Second Respondent said that he had taken the view that he had instructions in writing as required by Rule 22 as the matter was covered in the AIMS Legal Instruction Form. This had never been raised as a problem by the SRA during previous monitoring visits or by the auditors nor had there been any complaints by clients. The Second Respondent had been satisfied that clients understood the situation. With hindsight he could have gone further but he had felt that the authority authorised him to make the payment to AIMS. While he did not think he had breached the rule, he now paid damages directly to the client. The Second Respondent expressed concern that should this allegation be found substantiated it would have a profound effect upon the firm, employees and the clients and upon the firm's professional indemnity insurance.

Third and Fourth Respondents

59. The Third and Fourth Respondents denied the allegations.
60. The Applicant submitted in relation to allegations (c) to (g) that it had been conceded in the Second Respondent's witness statement that the Third and Fourth Respondents had been aware of the referral arrangements and that fees were paid. That concession and the previous Practice Standards Unit's visit meant that the Third and Fourth Respondents had knowledge of the matters which were the subject of the allegations, even though they were not directly involved in the cases. They should therefore have ensured that the referral arrangements were in compliance with the SIRC. The Third and Fourth Respondents would rely on the case of Akodo v Solicitors Regulation Authority [2009] EWHC 3588 (Admin). This, however, was not the same situation. The Applicant was not asserting strict liability but rather that the Third and Fourth Respondents were on notice and had knowledge and that there was therefore a responsibility and an obligation to ensure compliance with the rules.
61. The Second Respondent said that any shortcomings were his. He was the senior partner by default and he did not consider it fair that the Third and Fourth Respondents were before the Tribunal. The Third Respondent had known of the existence of AIMS as a claims management company and knew that the firm was paying them a fee but did not work on the files personally, or see any clients. One client care letter in the documentation referred to a road traffic accident and the Third Respondent but this was a secretarial mistake. The Fourth Respondent was a conveyancer who had been aware of the existence of the claims management companies but not any details of the agreements. The Second Respondent had dealt with the previous Practice Standards Unit visit in 2006 but would not have discussed the content of the advice with the Third and Fourth Respondents, merely the fact of the visit. The firm had had one visit per year from the SRA leading up to these matters, and another since. The Second Respondent had dealt with the visits and the correspondence.
62. It was submitted on behalf of the Third and Fourth Respondents that the allegations were pleaded on the basis that they had themselves committed breaches i.e. in a way which had to involve their active participation and involvement in the cases in order to be substantiated. It was submitted however that it would not be suggested in the case of a much larger firm that partners dealing in other areas of work should involve themselves in referral cases. There was no evidence of the involvement of the Third and Fourth Respondents in these matters and indeed the Second Respondent had said that he solely was involved. His partners were only aware in general terms. The Tribunal was asked to dismiss the case against the Third and Fourth Respondents as pleaded. The case had been presented today however by the Applicant on the slightly different basis that all partners had a duty to comply with the rules and that the Third and Fourth Respondents had abdicated that responsibility in compliance and were therefore as culpable as the Second Respondent. The Applicant had relied on Principle 3.06 of the Guide to the Professional Conduct of Solicitors but that did not relate to rules other than the Solicitors Accounts Rules. The Applicant's argument was legally incorrect. It was clear from the case of Akodu that strict liability only applied to the Solicitors Accounts Rules and this was consistent with Principle 3.06. It was

submitted that the case, both as pleaded and opened, could not be proved against the Third and Fourth Respondents.

The Tribunal's Decision – the Second Respondent

63. In relation to allegation (c) the Tribunal was satisfied that prior to March 2004 the payment by the firm to AIMS was a referral fee. The Tribunal was satisfied that the payments were substantially for the privilege of handling the case. The amount of work done for the firm was not of sufficient value to justify the level of fee.
64. It could be said that the Second Respondent was asking AIMS to do work he could do himself and indeed to some extent had to do in order to write to AIMS. In relation to the situation post-March 2004 the Second Respondent had admitted that he did not do the six-monthly reviews required by the amended SIRC and the Tribunal was satisfied that the SIRC had been breached. The Tribunal found on the facts that allegation (c) was substantiated against the Second Respondent.
65. In relation to allegations (d) and (g), the Second Respondent had admitted that in many cases there was no direct communication between the client and the solicitor. Having considered the documentation before it, the Tribunal was satisfied that clients had been discouraged from contacting the solicitor, which was a very unsatisfactory state of affairs. The Tribunal was also satisfied that instructions on medical reports were not taken directly from the client and the Tribunal was concerned that this work had been delegated to AIMS, whose staff were not legally qualified.
66. The Tribunal also found that the advice on quantum and settlement between the solicitor and AIMS, rather than directly with the clients, took out of the clients' hands an ability to form their own view. It was incumbent upon the solicitor to have direct contact with the client to take instructions on this matter. Many of the clients were vulnerable in that English was not their first language and it was a concern that the decisions were effectively being taken for them. The Tribunal had considered carefully the Second Respondent's oral evidence but considered that the above matters showed that the Second Respondent's duty to act in the client's best interests was compromised by the firm's conduct of AIMS cases and the Tribunal found allegations (d) and (g) substantiated on that basis. The Tribunal did not, however, consider that the Second Respondent's independence or integrity had been compromised. The Tribunal accepted the submission made on behalf of the Second Respondent that he had acted without conscious impropriety.
67. The Tribunal found allegation (e) not substantiated. The documentation before the Tribunal did amount to consent on behalf of the client to provide the client's confidential information to the third party. There was no evidence either way as to whether that consent was "informed". The allegation was not substantiated.
68. Allegation (f) had been admitted by the Second Respondent and the Tribunal found it substantiated on the facts.
69. In relation to allegation (h), the Tribunal did not consider that the apparently blanket authority by clients to pay an unspecified sum to a third party amounted to an instruction to the Second Respondent to pay the damages to AIMS upon which he

could properly rely. He should have clarified with the client directly what AIMS' charges were. Safeguarding clients' money was a primary obligation for solicitors. The phrase used in the Legal Instruction Form was not sufficient written authority, especially as it was given right at the beginning of the matter. Consent had to be given freely and with understanding to the solicitor. The Tribunal was satisfied that the Second Respondent had breached the rule, although considered that this had been an inadvertent breach.

Third and Fourth Respondents

70. The Tribunal found allegations (c) to (g) not substantiated against the Third and Fourth Respondents. There was no evidence before the Tribunal that they were personally culpable. There was one reference to the Third Respondent on one letter but it had been explained to the Tribunal and the Tribunal accepted that this was a secretarial error. Partners were entitled to rely on other partners' assurances. The Tribunal did not consider that the Third and Fourth Respondents had been shutting their eyes to these matters. While they had some knowledge, it was reasonable to rely on the partner who was directly involved and had most knowledge. The Tribunal accepted the submission on behalf of the Third and Fourth Respondents that allegations (c) to (g) were not matters of strict liability.
71. Allegation (h) was a breach of the Accounts Rules which had been found substantiated against the Second Respondent. The Accounts Rules were matters of strict liability for all partners in a firm and this allegation was therefore substantiated also against the Third and fourth Respondents.

Mitigation

The First Respondent

72. The Tribunal was invited to consider the references put forward in support of the First Respondent from people who knew that he took his responsibilities seriously.
73. The Tribunal was asked to note that the matters before it were not in the nature of the TAG or Claims Direct schemes. This was a much more modest matter.
74. The allegations arose not out of an audit of the First Respondent's current firm but of another firm in which he was no longer involved. It might be thought that making the allegations against the First Respondent had been something of an afterthought by the SRA. The First Respondent had however made early admissions. The costs incurred and the length of time the matter had taken to come before the Tribunal were not due to the First Respondent and the Tribunal was asked to take that into account.
75. The Tribunal was asked to consider the Tribunal case of John McArdle and Others No. 10144 of 2008 which referred to recent decisions on the historic breaches of the SIRC.
76. If the Tribunal was minded to impose a financial penalty, the Tribunal was invited to make this modest but it was submitted that there was a strong argument for a reprimand. The First Respondent had responded promptly, properly and openly.

The Third and Fourth Respondents

77. The Tribunal was invited to make no order in respect of the Third and Fourth Respondents in respect of allegation (h) or costs. It was submitted that if allegation (h) had been the only matter alleged against the Third and Fourth Respondents it would not have come before the Tribunal. The case had been hanging over their heads for a considerable period of time. The Tribunal was invited to impose at most a reprimand.

The Second Respondent

78. The Second Respondent accepted the Tribunal's findings and anticipated that the Tribunal would wish to impose a financial penalty.
79. The Second Respondent was a good solicitor with no disciplinary history. This was an old case. The Inspection had been in 2007 and some matters pre-dated 2004. It had been hanging over the Second Respondent for a considerable time, causing stress, worry, loss and damage to his reputation. He took it very seriously and was a compelling and truthful witness.
80. During the time the Second Respondent had been waiting to appear before the Tribunal no conditions had been imposed on his practising certificate so it could be presumed that the SRA did not think he was a danger to the public.
81. The firm was a community resource, serving the ethnic community in Birmingham. All three partners did pro bono work and were well known and well respected.
82. The firm had changed its practices since the inspection and was now fully compliant.
83. The firm, which employed seven other staff, had had no adverse claims on its professional indemnity insurance during fourteen years in practice.
84. The Tribunal was asked to deal as leniently as possible with the Second Respondent, bearing in mind the age of the matter and the other costs he had to bear in relation to this matter. The Tribunal was asked to impose a proportionate financial penalty.

Costs

85. The Applicant sought his costs. He submitted that the costs had not been significantly increased by the inclusion of the allegations which the Tribunal had not found substantiated or by the inclusion of the Third and Fourth Respondents. It had been entirely appropriate for the SRA to bring the matter before the Tribunal, including the allegations which had not been proved, and for the Tribunal to have the opportunity for the matters to be explored. Such an approach was in the public interest, and in the interests of maintaining the proper standards of the profession. The Tribunal would be aware of the principles set out in the case of Baxendale-Walker and The Law Society [2007] EWCA CIV 233. While that case dealt with an adverse costs order against the SRA, the Applicant submitted that it would also be an adverse costs order if the Tribunal were to reduce the costs payable to the SRA. Most of the time at the

hearing had been taken up with the Second Respondent and his evidence and the costs had been properly incurred.

86. Agreement had been reached between the parties on a sum of £15,000, subject to the submissions on behalf of the Respondents in the light of the Tribunal's findings.
87. It was submitted on behalf of the First Respondent that most of the events before the Tribunal post-dated the First Respondent's involvement in the firm. It was submitted that it would be right for less than a quarter of the costs to be payable by the First Respondent and that a joint and several Order would be inappropriate in respect of the First Respondent.
88. On behalf of the Second, Third and Fourth Respondents it was submitted that the SRA should not receive all its costs. An adverse costs order meant an order against the SRA, not simply a reduction in costs payable to the SRA. Out of eighteen allegations, eleven had not been substantiated. Of the seven substantiated, two had been on a qualified basis. The Third and Fourth Respondents had been equally involved in the proceedings and had had to answer the case against them. It had been suggested to the Applicant prior to the hearing that the SRA should not bring the case against the Third and Fourth Respondents. It was accepted that the First Respondent had had a lesser part. It was also accepted that a joint and several order for costs against the Second, Third and Fourth Respondents would be appropriate.

Sanction and Reasons

The First Respondent

89. The Tribunal had read the references in support of the First Respondent, and noted that other than the matters before the Tribunal he had practised without blemish. He had had no active involvement in the failures, this was rather an issue of supervision. The Tribunal was satisfied that there was no need in the public interest for any further sanction against the First Respondent and the Tribunal therefore made no order save for a costs order.

The Third and Fourth Respondents

90. In relation to the Third and Fourth Respondents the only allegation substantiated against them had been a breach of the Accounts Rules for which they were liable as a matter of strict liability. The appropriate penalty was a reprimand.

The Second Respondent

91. In relation to the Second Respondent there was no allegation of dishonesty, this was rather a case of error. The Second Respondent had accepted that he was the partner responsible for these matters and it was right that the Tribunal impose a financial penalty in respect of the allegations which had been substantiated. The appropriate penalty was a fine of £7,500.
92. In relation to costs the Tribunal did not accept the Applicant's submission that a reduction in the SRA's costs amounted to an adverse costs order. The Tribunal

considered that it was appropriate to make some reduction as a number of the allegations had not been substantiated and the Tribunal would make a costs order in favour of the SRA in the sum of £12,500. The Tribunal considered that the culpability of the First, Third and Fourth Respondents for the allegations found proved against them was at a very low level. The Tribunal apportioned costs between the Respondents to reflect their different levels of culpability.

93. Having regard to the Second Respondent's acceptance of his own responsibility (if so found by the Tribunal) to the exclusion of that of the other Respondents, the length of time since the alleged offences were committed and the Second Respondent's confirmation that the practice was now in compliance with the Rules, the Tribunal questions whether the accusation of professional misconduct against the First, Third and Fourth Respondents was a proportionate response to their alleged failures or was in the public interest.

94. The Tribunal made the following Orders:

The Tribunal Ordered that the Respondent BULBINDER SINGH BAGRI of BSB Solicitors, St James Chambers, 70 Hill Top, West Bromwich, B70 0PU, solicitor, do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

The Tribunal Ordered that the Respondent, SIRAJ KHALIL of B K Solicitors, Crown House, 28 George Street, Birmingham, B12 9RG, 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 a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

The Tribunal Ordered that the Respondent SARFRAZ KHALIL of B K Solicitors, Crown House, 28 George Street, Birmingham, B12 9RG, solicitor, be Reprimanded and it further Ordered that he be jointly and severally liable with the Respondent Nadeem Malik to pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00.

The Tribunal Ordered that the Respondent NADEEM MALIK of B K Solicitors, Crown House, 28 George Street, Birmingham, B12 9RG, solicitor, be Reprimanded and it further Ordered that he be jointly and severally liable with the Respondent Sarfraz Khalil to pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00.

Dated this 11th day of June 2010

On behalf of the Tribunal

A H Isaacs
Chairman