

IN THE MATTER OF MARK CROMPTON and PHILIP AVEYARD, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr R B Bamford (in the chair)  
Mr A Gaynor-Smith  
Mr M G Taylor CBE

Date of Hearing: 5th November 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 Stuart Roger Turner, solicitor, in the firm of Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston PR1 8QF on 19<sup>th</sup> March 2008 that Mark Crompton (the First Respondent), whose address was subsequently notified as 24 Park Road, Sheffield S6 5PD, solicitor, and Philip Aveyard (the Second Respondent), solicitor, of 18-20 Norfolk Road, Sheffield, S1 1SP 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.

### Allegations against both the First and Second Respondents

That the First and Second Respondents individually or both together had been guilty of misconduct in each, any or all of the following circumstances, namely:-

1. That they failed adequately to supervise and direct client matters and failed to exercise proper supervision over their admitted and unadmitted staff.

2. That they failed to comply with Rule 15 of the Solicitors Practice Rules and the Solicitors Costs Information and Client Care Code 1999.
3. That they failed to operate an adequate complaints handling procedure in breach of Rule 15 of the Solicitors Practice Rules and the Solicitors Cost and Client Care Code 1999.
4. That they separately or together acted contrary to Rule 1 of the Solicitors Practice Rules.

Allegations against the First Respondent alone

The First Respondent had been guilty of misconduct in each, any or all of the following circumstances, namely:-

5. That he misled a client into believing a case was continuing when it was not by writing to the client informing him that arrangements were being made to obtain copy GP records and instruct a medical expert to provide an opinion on the case on the same day that he had filed a Notice of Discontinuance at Court on the same case. For the avoidance of doubt this is an allegation of dishonesty.
6. That in addition to failing to advise the client of the filing of the Notice of Discontinuance he failed to inform and advise his client:-
  - (a) within a reasonable period or at all, of the offers of settlement put forward by a Defendant;
  - (b) that a medical expert had indicated that it was not possible to prepare a medical report;
  - (c) that a claim had been issued in the County Court and in doing so was done without the client's consent or without any advice about the client's potential costs liability;
  - (d) that a claim form had not been served on the opponent within the time period allowed by the Civil Procedure Rules;
  - (e) that an application had been made to the Court to seek an extension of time for service of the Particulars of Claim;

which together or in part compromised or impaired his independence or integrity, his duty to act in the best interests of his client, the good repute of himself or the Solicitors' Profession, and his proper standard of work in breach of Solicitors Practice Rules 1990, Rule 1(a), (c), (d) and (e).

7. That having filed a Notice of Discontinuance without either obtaining the client's permission or advising him that he had done so continued to act for the client in circumstances where it was inappropriate to do so.
  - (a) He continued to act where there was a conflict or potential conflict of interest between himself and his client.
  - (b) He failed to advise his client to seek independent legal advice.

- (c) He failed to deal promptly or substantively with correspondence from The Law Society.

Allegations against the Second Respondent alone

8. The Second Respondent had been guilty of misconduct in each, any or all of the following circumstances, namely:-
- (a) That contrary to Practice Rule 1 (a), (c) and (d) of the Solicitors Practice Rules 1990 (as amended) the Respondent falsely represented fees as disbursements on conveyancing transactions in the form of bank charges for telegraphic transfers.
- (b) That he abandoned his practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 5<sup>th</sup> November 2009 when Stuart Roger Turner appeared as the Applicant, Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT appeared on behalf of the First Respondent and George Marriott of Gorvins Solicitors, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL appeared on behalf of the Second Respondent.

The evidence before the Tribunal included the admissions of the First Respondent of allegations 1, 2, 3, 4 and allegation 5, save that he denied dishonesty in respect of that allegation, and he also admitted allegations 6 and 7. The Second Respondent denied allegations 1 - 4 and allegation 8.

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

The Tribunal Orders that the Respondent Mark Crompton of 24 Park Road, Sheffield, S6 5PD, solicitor, be SEVERELY REPRIMANDED and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,500.00 on a several basis.

The Tribunal Orders that the Respondent Philip Aveyard of 107 Station Road, Ossett, West Yorkshire, WF5 0AB, solicitor, be SEVERELY REPRIMANDED and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,500.00 on a several basis. This Order for costs not be enforced without the consent of the Tribunal.

**The Respondents' History**

The First Respondent, born in 1967, was admitted as a solicitor in 1991. The Second Respondent, born in 1951, was admitted as a solicitor in 1976. At the material times the Respondents practised in partnership under the style of Ashington Denton Solicitors at 18-20 Norfolk Road, Sheffield. The First Respondent left the partnership on 30<sup>th</sup> April 2005.

The Law Society intervened into the practice (following resolution made on 26<sup>th</sup> October 2007) by which time the Second Respondent was the sole principal.

**The facts relating to the allegations are set out in paragraphs 1 – 68 hereunder:-**

1. The Respondents' firm had been identified as the subject for investigation by The Law Society following the receipt of multiple complaints about the Respondents and their firm.
2. The Multiple Complaints Investigations Unit of The Law Society visited the firm on 3<sup>rd</sup> August 2005 and 20<sup>th</sup> February 2006. The Second Respondent was interviewed on 22<sup>nd</sup> February 2006 and the First Respondent was interviewed on 2<sup>nd</sup> March 2006.
3. The Report prepared by the Multiple Complaints Investigations Unit dated 6<sup>th</sup> September 2006 (for the Adjudication Panel) ("The Report") was before the Tribunal.
4. The Law Society's Practice Standards Unit had previously visited the firm in April and December 2003 and had prepared reports referring to persistent breaches of Practice Rule 15 (client care).

Allegations 1 to 4 (Both Respondents)

5. Complaints had been received by The Law Society from clients about fee earners in various departments of the firm, but the Tribunal's consideration was limited to those made about the claimant personal injury department and the head of that department, the First Respondent.
6. The Report was over forty pages in length and identified failures to inform the client of cost liabilities; allowing clients' cases to proceed without any insurance protection; discontinuing proceedings and incurring costs liabilities without notifying the client; losing a file; the dismissal of a client's case at Court; issuing proceedings without the authority of those who provided a client with indemnity; inactivity or acting without instructions; failure to ensure clients were advised properly with regard to costs and funding loans. The Respondents (and their salaried partner), did not know who was responsible for the supervision of each fee earner. The Tribunal was informed and noted that certain complaints had been dealt with "in house" by the SRA and were not to be included in the matters before it.
7. The Multiple Complaints Investigations Unit reviewed fourteen client matters. Client care letters could not be located on four of the files. On other files there was no evidence that clients had been kept adequately informed. There had been failures to reply to communications from clients.
8. A number of complaints investigated caused the investigator to be concerned about compliance with Practice Rule 15.
9. In client matters identified by the investigator there had been failures to deal with telephone calls and failures to reply to letters from clients.
10. In one matter there was no evidence that the client was kept informed about the payment of the defendant's costs or her liability for them.

11. In Mr M's matter the firm first wrote to the client on 11<sup>th</sup> December 2000. A "client care" letter was sent on 6<sup>th</sup> February 2002. There was no evidence that the First Respondent took any step to put a conditional fee agreement in place between those two dates.
12. In the matter of Mr AW it was noted that the firm had been instructed in July and a client care letter had been sent to him on 1<sup>st</sup> August 2002. At interview the First Respondent had accepted that Mr AW had not been informed about costs as the matter progressed and that the failure to provide a client care letter when the firm's retainer began had been an oversight. Mr AW had not been given a costs risks benefit analysis. No details of the likely overall costs had been given at any time and regular costs updates were not given. The August client care letter referred to discussions with Mr AW about the way his costs would be funded. There were no attendance notes on the file recording such discussions.
13. In the matter of Mr GA, there was no evidence that he had been provided with an estimate or forecast of the overall costs. There was no evidence that the firm had told the client at regular intervals how much the costs were. The First Respondent told the investigator that the firm did not carry out a formal written costs benefit assessment.
14. The issue of insurance had been flagged up at the outset of Mr PC's matter on 22<sup>nd</sup> May 2000. It was not mentioned again until just prior to the trial date of 27<sup>th</sup> April 2004. Mr PC was ordered to pay the defendant's costs but he had not been warned that this was a potential risk of his litigation. The conditional fee agreement which Mr PC signed stated that if he were to lose his case, he would not be liable for the defendant's costs. The file contained no evidence that Mr PC had been kept informed of ongoing costs.
15. The Law Society had received complaints about the firm's complaints handling procedure.
16. A client, Mrs N, had written to the firm on 9<sup>th</sup> October 2004. A memo dated 11<sup>th</sup> November 2004 indicated that the Second Respondent had passed her complaint to the First Respondent. No action had been taken.
17. Mr M completed a complaint resolution form on 28<sup>th</sup> January 2005. He wrote to the First Respondent on 14<sup>th</sup> February 2005 stating that he was waiting for confirmation that a certificate of satisfaction had been obtained in respect of the judgment for the defendant's costs and was waiting for a response as to how the other items on the resolution form would be resolved. On 28<sup>th</sup> February 2005 he wrote to the firm asking that all future contact be made in writing pointing out that he had not heard from the First Respondent for three weeks. An inadequate professional service complaint was conciliated on or about 20<sup>th</sup> July 2005.
18. Mrs FL completed a complaint resolution form on 28<sup>th</sup> April 2004 and sent it to the firm following receipt of a statement from First National Litigation Funding plc dated 8<sup>th</sup> April 2004 informing her that she owed over £2,000, including interest that had accrued on a loan she had taken out to fund after the event insurance. Mrs FL attended a meeting with the First Respondent on 7<sup>th</sup> May 2004 at which he referred

her to a copy of his letter of 24<sup>th</sup> July 2002 and the unfavourable advice given by the barrister. That advice had not been produced.

19. Mr AW completed a complaints resolution form on 17<sup>th</sup> September 2004. He complained to The Law Society on 26<sup>th</sup> October 2004 that he could not get any response from the Respondents. The firm had not recorded receipt of this complaint.
20. Mr GA had written to complain on 9<sup>th</sup> January 2004, that letter had not been dealt with. When Mr GA complained again on 12<sup>th</sup> December 2004 his letter was acknowledged on 21<sup>st</sup> December 2004. This was outside the two day time frame set out in the firm's complaint's policy. Mr GA was told that a response to the complaint would be given by 23<sup>rd</sup> December but there was no evidence that he received one.
21. The client, Mr PC, complained to the firm on 20<sup>th</sup> May 2004. This was acknowledged on 24<sup>th</sup> May 2004. A further letter was sent to him dated 28<sup>th</sup> July 2004. No substantive response to Mr PC's concerns was prepared despite further letters addressed to the firm from Mr PC and his new solicitors. At interview the Second Respondent expressed regret that a member of his staff had not contacted the client to conciliate the complaint.
22. The investigator had informed the Second Respondent at the interview on 3<sup>rd</sup> August 2005 that a common complaint was the firm's delay in handling complaints. The Second Respondent had explained the firm's complaints handling procedure, namely the client care letter referred to problems and named the person to contact, normally himself. He would send the client a copy of the complaints procedure and ask the fee earner with conduct of the case to deal with the complaint. The Second Respondent opened a complaints file and reviewed it once a month. He would become directly involved if the matter was not resolved by the fee earner. The fee earner would normally discuss the matter with him and write to the client. If the complaint was not resolved in this way, the Second Respondent would arrange a meeting with the client, the fee earner and himself. The Second Respondent would then take over the matter to ensure that it was resolved. When interviewed on 22<sup>nd</sup> February 2006 the First Respondent said he had come to recognise that the systems in place to prevent complaints or deal with them at an early stage was not good enough.
23. The firm's client, Ms J, made a complaint which had been dealt with separately from the Multiple Complaints Report. Miss J was injured in a road traffic accident in August 1999. She had contacted The Accident Group in February 2001 and completed a questionnaire. The firm wrote to her on 21<sup>st</sup> March acknowledging receipt of the questionnaire and confirming the fee earner dealing with the case, an unadmitted member of staff. The matter was taken over by a different unadmitted member of staff early in 2002. An orthopaedic surgeon examined the client on 22<sup>nd</sup> May 2002 and produced a medical report. During July 2002 the fee earner closed Ms J's file after being unable to contact her. The file was sent to The Accident Group on 26<sup>th</sup> July 2002.
24. On 8<sup>th</sup> September 2004 Ms J complained to The Law Society about the closure of her file. By letters dated 20<sup>th</sup> October 2005 the issue of supervision was put to both Respondents. The Second Respondent replied on 24<sup>th</sup> October 2005 stating that both unadmitted employees had ten years personal injury experience and the First

Respondent supervised this work. He did not explain the firm's supervisory procedures. The First Respondent replied on 4<sup>th</sup> December 2005 saying that he was unaware of the unadmitted staff's qualifications but both had several years experience in personal injury work. Ms J's file had been closed as a "failed case" as liability had been denied and no further instructions had been received from the client.

25. When The Law Society inspected Ms J's file it revealed no evidence of supervision or checking of the file by a supervisor.
26. A "client care" letter dated 21<sup>st</sup> March 2001 had been sent to Ms J which stated that her responsibility for the firm's fees was contained in an enclosed "terms and conditions" and made reference to a policy that provided Ms J with insurance cover for legal expenses, the nature of which was explained.
27. The "terms and conditions" did not appear on the file. In the letter under the subheading "Basic Calculation of Fees" Ms J was informed "...It is not possible to give a realistic estimate of the overall costs at this stage as we do not yet know what the Third Party's and/or his/her of their insurers' attitude will be to your claim. When we are in a position to give meaningful information in this regard we will do so". According to the file no costs updates had been sent to Ms J.
28. Miss J said that her letters of complaint to the firm went unanswered, the fee earner had not fully investigated her complaint and the First Respondent did not ensure such investigation in accordance with the firm's written complaints procedure.
29. The firm's client care letter referred to in paragraph 26 above did not set out who was responsible for the supervision of the unadmitted fee earner or whom she should contact in the case of complaint.
30. Ms J had written letters of complaint to the firm dated 23<sup>rd</sup>, 25<sup>th</sup> and 26<sup>th</sup> May 2004 and 12<sup>th</sup> July 2004. The firm's first written response to Ms J was dated 19<sup>th</sup> October 2004 when the Second Respondent wrote to her, following notification from The Law Society that a complaint had been received. The Second Respondent had accepted that the complaint had not been adequately handled and offered Miss J £200 compensation, which she refused.

Allegation 5 - 7 (The First Respondent)

31. A client of the firm, Mr RAM, on 30<sup>th</sup> June 2005 wrote a letter of complaint to The Law Society about the services provided by the First Respondent relating to his clinical negligence claim.
32. Prior to the referral of Mr RAM to the firm the defendant NHS Trust had made a without prejudice offer of £500 in settlement of Mr RAM's claim. Upon receipt of instructions the First Respondent wrote to Mr RAM on 21<sup>st</sup> September 2000. The Trust's without prejudice offer was rejected by letter of 3<sup>rd</sup> January 2001 following which the Trust instructed its own solicitors.
33. On 27<sup>th</sup> March 2001 a "Part 36 Offer" of £1000 and costs was made on the basis that it would be open for twenty one days. The First Respondent notified Mr RAM of the

offer on 14<sup>th</sup> May 2001, when the offer was no longer open; he did not explain the basis of the offer.

34. Mr RAM had been asked to arrange an appointment to discuss the claim with the First Respondent. The file did not record that a meeting had taken place. By letter of 13<sup>th</sup> June 2001 the Trust's solicitors pointed out that the Part 36 Offer had lapsed and they would advise their client to close its file. The First Respondent replied on 25<sup>th</sup> June rejecting the offer and suggesting that it would be appropriate to obtain a medical report. On the same day the First Respondent wrote to Mr RAM, "...In accordance with your instructions, I have rejected the hospital's offer of £1,000."
35. On 30<sup>th</sup> August 2001 the Trust's solicitors made a new offer of £1,500.00. The file did not record that Mr RAM was informed.
36. A "client care" letter dated 11<sup>th</sup> December 2001 had been sent to Mr RAM. The First Respondent accepted that there had been a delay but offered no explanation. In a second letter of 11<sup>th</sup> December 2001 the First Respondent requested Mr RAM to sign and return the conditional fee agreement.
37. By letter of 11<sup>th</sup> December 2001, the First Respondent wrote to the Trust's solicitors confirming that a medical report had been sought. The new offer was not formally rejected. The Trust's solicitors replied on 18<sup>th</sup> December 2001, telephoned and wrote further letters of 6<sup>th</sup> and 20<sup>th</sup> February, internal emails of 12<sup>th</sup> March, 9<sup>th</sup> April and 1<sup>st</sup> May 2002 were made. The First Respondent responded to the Trust's solicitors over six months later.
38. The First Respondent issued proceedings on behalf of Mr RAM on 19<sup>th</sup> March 2003. Mr RAM was not informed that the claim had been issued or that proceedings had been commenced so that his claim would not become time barred. The First Respondent served the proceedings by letter dated 18<sup>th</sup> July 2003, understood to be one day before the expiry date for service.
39. The Trust then instructed new solicitors who wrote on 19<sup>th</sup> August 2003 disputing good service. It appeared from the file that the First Respondent had not advised Mr RAM of this. On 1<sup>st</sup> August 2003 the First Respondent made an application to the Court to extend the time for service of the particulars of claim and was granted an extension to 25<sup>th</sup> August 2003. Mr RAM had not been informed that there was still a live dispute as to whether the life of the claim form had expired before it had been served.
40. The file revealed that on 11<sup>th</sup> September 2003 a call was made from the firm to the Trust's solicitors informing them that the case was not proceeding. The Trust's solicitors had been unable to contact the First Respondent by telephone and wrote on 14<sup>th</sup> October 2003 suggesting that the Trust should be entitled to its costs.
41. The file recorded no substantive progress in the matter until 6<sup>th</sup> May 2004 when the First Respondent sent a number of letters, including a letter to the Court enclosing notice of discontinuance and the notice was sent to the Trust's solicitors. On the same date the First Respondent wrote to Mr RAM requesting him to sign an authority to enable copies of his GP records to be obtained.

42. On 13<sup>th</sup> September 2004 Mr RAM sent a letter to the First Respondent complaining about the poor service he had received. He referred to a meeting on 31<sup>st</sup> March when his complaints had been aired and he had received an apology. There was no record on the file of this meeting.
43. The file contained letters of 18<sup>th</sup> January, 2<sup>nd</sup> and 16<sup>th</sup> March 2005 received from Stuart House Medico Legal Group confirming that Mr RAM had been examined by their medical expert on 22<sup>nd</sup> December 2004 and that upon receipt of the GP records the medico legal report could be finalised.
44. The Second Respondent had reviewed the file and on 6<sup>th</sup> April had addressed a memorandum to the First Respondent asking for his explanation by return. The First Respondent did not provide a reply. The Second Respondent wrote again on 15<sup>th</sup> April 2005 outlining the problems encountered on the file and referring to the First Respondent's failure fully to advise the client. The First Respondent did not respond.
45. There was on the file an attendance note of 18<sup>th</sup> May 2005 which recorded that the First Respondent's other partner, Miss M, met the client at his home when she outlined the position to Mr RAM and advised him of the options available to him including that of seeking independent legal advice.
46. On 25<sup>th</sup> April 2006 The Law Society wrote to the First Respondent informing him that it was investigating his professional conduct in connection with Mr RAM's complaint and requiring a reply by 9<sup>th</sup> May 2006. The First Respondent did not reply. A chasing letter was set to him on 12<sup>th</sup> May 2006 to which there was no reply. The Law Society sent a further letter on 7<sup>th</sup> June to the First Respondent which enclosed a copy of an Adjudicator's Decision of 6<sup>th</sup> June. The First Respondent did reply, but in ensuing correspondence the First Respondent accepted that he had not advised Mr RAM that his case had been discontinued; that he should have advised Mr RAM to obtain independent legal advice and that he had failed to respond to Mr RAM's letter of complaint.
47. An investigation officer of the SRA (the IO) had visited the firm and had produced a report dated 26<sup>th</sup> February 2007 which was before the Tribunal.
48. The IO reviewed the firm's standard client care letters relating to conveyancing matters which stated that disbursements would be incurred to include a bank fee for a telegraphic transfer of funds. The firm's bank charged £15 for each telegraphic transfer. The firm charged the client £30 plus VAT. The firm's charges of this nature totalled £6,780.00 when the actual cost to the firm was £3,390.00. The Second Respondent had accepted the client had been misled where a charge of £30 plus VAT had been shown as a disbursement in the client care letter accepting that it should properly have been described as a fee and subsequently had taken steps to refund the clients.

#### Allegation 8 (The Second Respondent)

49. On 2<sup>nd</sup> October 2007, the Legal Complaints Service (LCS) received a telephone call from Mrs C, an employee of the Second Respondent, who stated that she had been

informed by another colleague at the firm that the Second Respondent as of 1<sup>st</sup> October 2007 had closed the firm and she expressed concern that no proper arrangements had been made to close the practice correctly.

50. On 2<sup>nd</sup> October 2007 a caseworker attempted to telephone the Second Respondent at the firm. A recorded message stated that the firm's offices were closed but that they were open from 9am to 5pm Monday to Friday. It was not possible to leave a message on the same date. The caseworker sent a letter by fax and post to the firm's office asking the Second Respondent to make contact as a matter of urgency.
51. A senior IO visited the firm's office on 3<sup>rd</sup> October 2007. It was closed. No notice had been placed on the door to inform clients or the public of the closure. A "For Sale" sign was on the premises.
52. On 4<sup>th</sup> October The Law Society heard from a barrister's office that it had encountered difficulties in contacting the firm.
53. When on 5<sup>th</sup> October 2007 the caseworker telephoned the firm the telephone rang but there was no reply and no recorded message.
54. On 8<sup>th</sup> October a gentleman who was acting as co-executor with a partner of the firm in his late father's estate notified the LCS that he could not gain access to the firm.
55. On 12<sup>th</sup> October the local law society confirmed that there had been a number of complaints from members of the public and solicitors who had been unable to contact the Second Respondent. Clients of the firm had expressed concern to the LCS about wills and deeds held by the firm.
56. On 15<sup>th</sup> October 2007 the Senior IO again visited the firm where there was no activity and the doors remained closed.
57. On 15<sup>th</sup> October 2007 the Second Respondent telephoned the caseworker. He said he had been absent from the office as he had been in hospital. He stated that he intended to wind-down the practice and had arranged for existing client matters to be transferred to a firm of solicitors in Leeds and he was in negotiations with another firm about the transfer of wills and deeds. He had contacted the SRA's Professional Ethics and Guidance Department but had been unable to obtain advice about winding down the practice. He said he would be at the practice to deal with client matters when told of the many complaints.
58. On 16<sup>th</sup> October the caseworker received a telephone call from the president of the local law society which had received calls from the firm's clients with ongoing matters and those who had deposited wills or deeds with the firm, as well as calls from solicitors firms none of whom could make contact with the firm.
59. Also on 16<sup>th</sup> October 2007 the caseworker received a call from a client of the Second Respondent who advised that she had been unable to contact him. Her uncle had passed away. His will was held by the firm. When the caseworker telephoned the Second Respondent on the following day there was no answer. An attempt to send a fax proved unsuccessful. Letters were sent to him by DX and recorded delivery.

60. On 18<sup>th</sup> October 2007 a guaranteed next day delivery letter was addressed to the Second Respondent pointing out that the powers of intervention had become exercisable. He was asked to respond by 4pm on Monday 22<sup>nd</sup> October. The letter was not signed for: it had not been collected.
61. Thereafter further complaints were reported by the local law society.
62. On 23<sup>rd</sup> October 2007 a company that provided funding for personal injury matters told the SRA that current files had been transferred to other solicitors so that the firm was obliged to pay a penalty charge to it of about £500,000. Attempts to contact the Second Respondent were unsuccessful. [2002] UKHL 12.
63. On 26<sup>th</sup> October 2007 the Adjudication Panel resolved to intervene into the Second Respondent's Practice.

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

64. The First Respondent had admitted all of the allegations against him save that he denied that he had been dishonest in respect of allegation 5. The Applicant relied in this connection upon what had taken place in connection with the firm's client Mr RAM. Throughout the First Respondent's conduct of this matter the professional services provided by him had been inadequate but in addition the client had not been kept informed of all that was happening and in particular events that might well have proved prejudicial to the client had been kept from him. The First Respondent had deliberately failed to notify Mr RAM of problems that had arisen in connection with his case and that did amount to dishonesty. It was accepted that the Tribunal would in deciding whether or not the First Respondent had been dishonest apply the combined test in *Twinsectra v Yardley*.
65. The Second Respondent had denied all of the allegations against him. The Applicant relied upon the facts in support of those allegations and invited the Tribunal in all of the circumstances to find the allegations against the Second Respondent proved.

#### **The Submissions on behalf of the First Respondent**

66. The Tribunal was invited to give credit to the First Respondent for making early admissions. The First Respondent apologised to the Tribunal, the solicitors' profession and the clients who had been affected. The disciplinary proceedings had had a considerable impact on the Respondent, a solicitor who valued his integrity and reputation. Having the matter hanging over his head had caused him considerable anxiety. The First Respondent had practised as a solicitor for a substantial period of time without problem.
67. Mr RAM's matter was not representative of the way in which the First Respondent conducted himself and in connection with that matter he had no intention of misleading the client. The letters which the First Respondent had written had been written some 5½ years earlier and he no longer had a clear recollection of the events. He accepted that his conduct in respect of the handling of Mr RAM's case was below that which could properly have been expected.

68. Where there had been complaints by clients of inadequate professional services the First Respondent had made personal payments to them.
69. The Tribunal was invited to take into account statements and written references that had been placed before it. They spoke highly of the First Respondent's competence, probity and integrity.
70. The First Respondent's main concern was that allegation 5 had been put as a matter involving dishonesty. The Tribunal's decision in respect of this particular allegation would have a significant impact on the First Respondent and his future.
71. It was accepted that the Tribunal would apply the test in the case of *Twinsectra v Yardley* when considering the question of dishonesty. It was submitted that neither limb of the two part test could be satisfied to the required high standard. The Respondent did not act dishonestly when he wrote the letters that he did in Mr RAM's matter. It was suggested in particular that letters having been sent on the same day to the Court enclosing notice of discontinuance and to the client asking him for an authority to enable his GP records to be obtained that explanations might be made that did not include dishonesty. The First Respondent had always accepted his failings in this matter and his failure to keep his client advised on the up to date position. It represented a great leap to try to establish that the First Respondent had been guilty of dishonesty. Copies of the letters which had been written were transparently retained on the file. What had taken place was transparently recorded and the First Respondent had made no attempt at concealment. That in itself was an indication that he had formulated no intention to mislead Mr RAM, although what had happened on its face was odd. There were a number of possible explanations. The worst interpretation was that the First Respondent had sought to mislead but there was in fact no evidence to support that contention. It was entirely possible that the letters had been dictated on different days or even at different times on the same day. Signing and sending them could have been an oversight, a mistake or an error. No doubt the First Respondent wished to protect his client's position. It might have been the First Respondent's intention to discontinue the court proceedings with a view to issuing fresh proceedings as it was open to him to do so with leave. It was clear that the First Respondent had intended to obtain a medical report in order to be in a position properly to quantify the client's claim and then disclose his error to the client in order to offer the client compensation. It was accepted that these possible explanations amounted to speculation but they could explain what had happened. These possible explanations created an element of doubt so that the allegation of dishonesty should not be found to be substantiated.
72. The First Respondent accepted that Mr RAM had been caused anxiety and he deeply regretted that. Mr RAM had however not suffered any financial loss as the firm's insurers had paid him £2,500.00 in respect of his personal injury claim and in addition he had been paid £1,000.00 as compensation for the inadequate professional service he had suffered.
73. On behalf of the First Respondent his representative went on to explain that the working culture within the firm, personal and professional pressures and a heavy drinking culture made things very difficult. The Tribunal was invited to take the view

that it could not be sure that the First Respondent set out to mislead Mr RAM and therefore acted dishonestly. He had never formulated any intention to mislead.

74. There had been many examples of lack of organisation and muddle within the Respondents' Practice. It was submitted that Mr RAM's case was yet another example of this.
75. The Tribunal was in particular invited to take due note of the evidence that the firm, its partners and those connected with the firm did at the material time have a culture of excessive drinking. The First Respondent had found it difficult to concede that this had been the case and doing so had caused him considerable embarrassment. The Respondents had ended up drinking every day and in particular had drunk at lunch time. Over time the drinking had become heavier and had had an inevitable adverse effect upon their work. Both partners had made important decisions whilst intoxicated and with hindsight it was recognised that this was the main reason for the failure of the firm.
76. Happily both Respondents had got out of the drinking culture. In particular the First Respondent's attitude to drinking had completely changed.
77. When the First Respondent had joined the firm he was a recently qualified solicitor who looked up to the Second Respondent. He had found the Second Respondent to be a forceful personality who tended to dominate him.
78. The First Respondent held the genuine belief that both he and the Second Respondent had suffered depression and had been unwell at the material time. As well as work pressures they had suffered pressure from their bankers and the loss of other partners to another firm. That had proved to be a complete disaster. There had been a frequent turnover of staff. The firm had lost defendant litigation work when insurers had wanted to instruct larger firms. The firm had become considerably smaller than it had been. The First Respondent had been concerned when the firm moved into older accommodation in order to save costs. The roof had blown off and had cost some £12,000 to be repaired. At the time he had considered that the practice was "jinxed" which indicated his thought processes at that time. There had been a change of focus in 1999 to 2000 from insurer defence litigation work to personal injury claim work. Personal injury work had at that time been subject to a great deal of change not only with regard to referral by claims management companies and the changes in funding but also substantial changes to the civil procedure regime. Firm's specialising in personal injury work had had to adapt. These general changes had come about just at the time when the firm was moving from defence work to claimant work.
79. Problems such as those before the Tribunal arise in the most well regulated firms. Errors can and do occur and such errors are not the result of a conscious or deliberate act.
80. The Tribunal was invited to take into account that the overwhelming majority of cases had been dealt with by the Respondents properly and satisfactorily. The cases in which complaint had arisen represented only a small proportion of the overall workload. The First Respondent had at the material time had a large caseload. That had led to difficulties and potential complaints. Because of the high turnover of staff

and the need for supervision of new staff the First Respondent had found himself with even less time to handle his own large caseload.

81. The First Respondent had separated from his wife and had suffered severe financial difficulties.
82. Matters had come to a head in April 2005 when the First Respondent had returned from holiday and the Second Respondent had asked him to leave. The First Respondent had felt rejected. He received no money at a time when he had a considerable personal indebtedness. He had had to borrow money from his parents in order to meet a substantial tax liability. He had also secured loans from banks and had been pressured by his creditors. The First Respondent wished to avoid bankruptcy because of the stigma involved and the automatic suspension of his practising certificate.
83. The First Respondent had a deeply held desire to continue to practise within the solicitors' profession. He had a great deal to offer both to clients and to the profession. He was still a young man aged only 42.
84. It was hoped that the Tribunal would take the view that the matters before them were of a historical nature, many had taken place five or as many as ten years ago. The First Respondent accepted that the Tribunal should impose a sanction on him but one of the most serious kind was not necessary.
85. The First Respondent continued to hold a practising certificate which had been made subject to the condition that he work only in approved employment or partnership. That was an indication of the SRA's view that there was no real concern about his integrity. The First Respondent's employment had been approved in compliance with such condition. He had been working at another firm of solicitors where he had behaved impeccably.

#### **The Tribunal's ruling on the question of dishonesty**

86. The Tribunal accepted that the conflicting letters written on the same date in the case of Mr RAM required explanation. The Tribunal accepted that dishonesty was not the only explanation for such an event. The Tribunal took into account that there was no concealment of the letters and the file was transparent as to what had happened. The Tribunal accepted that there might well have been alternative explanations such as those advanced on the First Respondent's behalf for what on the face of it was a very odd state of affairs.
87. The Tribunal had given careful consideration to the two part test in the case of *Twinsectra v Yardley* and considered that in the light of the circumstances and the alternative explanations that had been advanced reasonable and honest people would not find that the Respondent had been dishonest. The Tribunal recognised that the standard of proof required for a finding of dishonesty was very high and it found that there was much doubt that the reason why the First Respondent wrote the letters that he did was dishonesty and the First Respondent was entitled to the benefit of that doubt. The Tribunal could not be sure that reasonable and honest people would consider that the Respondent's behaviour was dishonest.

### **The Submissions of the Second Respondent**

88. The Second Respondent denied allegation 8. The First Respondent had admitted the joint allegations but the Tribunal had to be satisfied to the required standard that the Second Respondent was also guilty of those matters. It was his case that what he did at the time did not amount to a breach. The Tribunal was invited to take into account the medical evidence offered on his behalf. The Second Respondent was a broken man. Ashington Denton was one of the oldest established firms in Sheffield. The First Respondent had conducted personal injury cases. The First Respondent had been an equity partner with the Second Respondent but the First Respondent had been entitled to a smaller share. The Second Respondent had ejected the First Respondent from the partnership in April 2005. Up until then the Second Respondent had done nothing amounting to a breach of professional misconduct.
89. The Second Respondent had given explanations as to how he dealt with supervision. He had undertaken over and beyond what he had been obliged to do. He accepted that he had a duty to supervise staff. In those letters the Second Respondent had demonstrated the difficulties encountered by a partner who has another partner not pulling his weight or generating complaints. The explanations that the Second Respondent had provided to his professional regulator had in fact provided full and proper answers to the disputed allegations made against the Respondents jointly.
90. With regard to the matter of N, the complaint had been conciliated. The Second Respondent had kept the matter under constant review. There was nothing in that case that put any professional misconduct at the Second Respondent's door.
91. With regard to the matter of Mr M, full details had been provided of how the firm handled the complaint.
92. The Second Respondent had been entitled to rely on his equity partner fulfilling his professional obligations. The Second Respondent had explained his position, what had happened and how he had taken steps over and beyond his duties. It was the Second Respondent's case that he had been a victim of the First Respondent's behaviour. The Second Respondent had given detailed explanations of his own input where complaints had arisen and he had demonstrated that he had acted responsibly.
93. The Tribunal was reminded of the Tribunal's rulings in a number of cases where partners had been joint Respondents and one had been guilty of professional misconduct. It had been found that partners were not responsible in conduct for the actions or inactivity of another partner. The Second Respondent could have done no more than try to deal with the complaints which had arisen because of his partner's failures and to eject that partner from the partnership. The Second Respondent had no culpability for what had occurred.
94. Dishonesty had not been alleged in connection with allegation 8 even though it was suggested that the Second Respondent had "falsely" represented fees as disbursements. The Second Respondent had agreed that the way in which telegraphic transfer charges were described was incorrect and that it could be said that because the sum paid to the Bank was less than that described as a telegraphic transfer fee to

the client the firm had made a "secret profit". The IO had noted that as soon as this was drawn to the Second Respondent's attention he had said that he would put things right and reimburse the clients. There was however no evidence that the Second Respondent had personally represented telegraphic transfer fees as disbursements. There was no evidence that he had signed the bills concerned. In order for the allegation to be substantiated the Tribunal would have to be satisfied that the Second Respondent knew that a bill contained a false representation when he signed it. At worst there might have been a lack of supervision. The Second Respondent had indicated that his accounts clerk had raised the matter with a new person who had joined from a national firm and the new person had confirmed that the way in which the telegraphic transfer fee had been dealt with was satisfactory. At the outset the client was notified of the actual fees that he would have to pay and what the client paid was precisely what he expected to pay. At the highest it was accepted that the charge for making a telegraphic transfer should have been in the fees column of the bill and not the disbursement column. It was the Second Respondent's submission that he did not falsely represent the fees as disbursements. That matter should not have come before the Tribunal.

95. After speaking with the IO the Second Respondent had refunded monies to the clients with expedition. There had been no allegation of financial impropriety on the part of the Second Respondent. When the matter had been considered by the Master of the Rolls he had said "not the kind of secret profit that carries much opprobrium?"
96. With regard to the allegation that the Second Respondent had abandoned his practice, it was accepted that there was "an overlay of alcohol". The Second Respondent was now a broken man. He hoped he would be able to return to the solicitors' profession in due course.
97. The Tribunal was invited to take the view that abandonment amounted to a conscious act. The Tribunal was invited to conclude that there had been no such conscious act on the part of the Second Respondent. The Tribunal was invited to take into account the report of the consultant psychiatrist and the fact that the Second Respondent had been admitted as an inpatient because of his vulnerability to stress. The Second Respondent had spent 7 – 14 days as an inpatient. At the time the firm did have a skeleton staff. The office was closed to the public as there was no one available to meet supervisory requirements. Most of the firm's files had been transferred to other solicitors but there remained a small "rump" of money in client account.
98. The Second Respondent had hoped that another firm would take over what remained of the practice, consisting mainly of probate files. A firm could not be found that was prepared to accept the risk of becoming a successor practice.
99. The Tribunal was invited to give due weight to the medical evidence which pointed to the seriousness of the Second Respondent's state of mental health and the reason why he was admitted to hospital as an emergency case. The Second Respondent had been in touch with the SRA and accepted that the intervention was a necessary step because he had not been able to pass over the balance of his files. He had not, however, abandoned his practice as a deliberate act.

### **The Tribunal's Findings**

100. The Tribunal found all of the allegations against the First Respondent to have been substantiated indeed they were not contested. The Tribunal has already set out above that the allegation of dishonesty made against the First Respondent was not found to be substantiated.
101. With regard to the allegations made against the Second Respondent the Tribunal found allegations 1,2,3 and 4 to have been substantiated on the basis that all partners in a firm share liability for the proper handling of casework and supervision.
102. With regard to allegation 8 (a) the Tribunal found that the telegraphic transfer fee was wrongly described as a disbursement when it was in fact a fee payable to the firm. The Tribunal noted that the sums of money involved were small. They noted also that the Second Respondent, upon having it pointed out to him that his treatment of this fee was incorrect, quickly made refunds to the clients; notwithstanding that the clients had not been misled as to the amount of the overall cost that they would be expected to meet at the end of their conveyancing transactions. Accordingly, the Tribunal found this allegation not to have been substantiated.
103. With regard to allegation 8 (b) the Tribunal considers that abandonment of a practice does require an element of intention. The mischief here was that the Second Respondent was a sole practitioner who had not made arrangements for proper cover should he be absent from the firm in an emergency. However a failure to make proper arrangements was not alleged and in view of the lack of deliberacy or intention the Tribunal found that the Respondent had not abandoned his practice and allegation 8 (b) was found not to have been substantiated.

### **The submissions in mitigation on behalf of the First Respondent**

104. The First Respondent was grateful and relieved that the Tribunal had not made a finding of dishonesty against him. He accepted that the allegations substantiated against him were serious but in a different category.
105. The Tribunal was invited to take into account the climate in which the First Respondent practised at the material time all of which had been recited in connection with the submissions made on the absence of dishonesty.
106. The Tribunal was invited to give due weight to the fact that the firm changed considerably in 1999 to 2000. The nature of work undertaken had changed and the First Respondent had shouldered a substantial workload. In correspondence the First Respondent had explained the reasons why he had taken a long time to reply to letters addressed to him. He had endured a very long working day at the time when his father was terminally ill.
107. The Tribunal was invited to give due weight to the letter supplied by the First Respondent's current employers which confirmed that no complaints had been received in respect of the First Respondent's work and, indeed, his work was exemplary. The Tribunal was invited to take the view that the matters leading to the

allegations before the Tribunal had been out of character and there were a number of matters which explained the First Respondent's failures.

108. The First Respondent had taken steps to improve complaints handling and to get matters back on track. He had made a personal payment to an aggrieved client.
109. The environment in which the First Respondent was practising at the time of the hearing was encouraging and supportive. He was no longer drinking heavily and the Tribunal could be assured that he would not again be guilty of any similar breaches. It had transpired that his ejection from the partnership by the Second Respondent had been beneficial. He not only had his working environment improved but he felt that his health had been saved.
110. The matters complained of were of an historical nature. It had taken 17 months from the resolution on the part of the SRA to refer the First Respondent to the Tribunal to proceedings in the Tribunal being commenced. The First Respondent had been caused considerable anxiety and worry in particular in the light of the allegation that he had been dishonest.
111. The First Respondent was a decent and honest solicitor who accepts that he had made mistakes. He had done his best to put matters right. He recognised that the Tribunal must order a sanction but the Tribunal could be assured that he had learned his lesson.
112. There were still financial matters from the Respondents' partnership to be dealt with. The First Respondent recognised that there was a need to protect the public and maintain the good reputation of the solicitors' profession. It was hoped nevertheless that the Tribunal could take a lenient stand on the basis that the First Respondent posed no threat to the public. There had been no financial irregularity and he had recognised his failings. He had already suffered to a considerable extent and in addition to bearing a sanction he would also have to bear the costs sought by the Applicant.
113. The First Respondent was a young man with his professional career ahead of him and it was hoped that the Tribunal would give him one final chance.

**The submissions in mitigation on behalf of the Second Respondent**

114. The Second Respondent accepted the Tribunal's decision. He was gratified that two of the allegations had not been substantiated. He recognised that responsibility as a partner fell also on his shoulders. He noted the Tribunal's view that there could be degrees of culpability.
115. The Second Respondent's actions had been documented and already placed before the Tribunal. He had written a number of explanatory letters to the SRA. He recognised that he was the more senior of the two Respondents but the cases which led to complaint and the allegations before the Tribunal had arisen in the First Respondent's department. Most of the work undertaken by the Respondents' firm had not generated any complaint. What had happened was regrettable but both Respondents had acted responsibly in ensuring that inadequate professional service awards had been honoured.

116. It was recognised that the failures would lead to the good reputation of the solicitors' profession being tarnished but it could also be said that the reputation had been polished by the fact that they had honoured their professional regulator's directions.
117. The Second Respondent was 57 years of age and the Tribunal had been made aware of the difficulties he had suffered with his health. He had recognised that his practice could not continue prior to his emergency admission to hospital having already taken steps to wind down the practice and almost all of the live cases had been taken over by other solicitors. There remained a few files with problems that had not been transferred and some money remained in client account. The Tribunal was invited to give the Second Respondent credit for the fact that he had tried to manage an orderly winding down of his practice thereby ensuring that the clients' interests were protected. No client had suffered any loss of any sort. Clients had received every last penny of money due to them. He had tried fully to achieve an orderly closing down of his practice but he had been thwarted by the deterioration in his mental health.
118. The Second Respondent had recognised that intervention was inevitable in all of the circumstances and this had led to the automatic suspension of his practising certificate. The Second Respondent had co-operated with and worked well with the intervention agents. He had applied to work on cases at another firm and The Law Society had agreed to issue him with a practising certificate subject to the condition that he work only in employment. He had worked as an assistant solicitor but his employer had terminated the arrangement. There had been a personality clash. The firm had taken over a number of his firm's files and it was his belief that they had got rid of him when they had secured the work.
119. In December 2007 the Second Respondent had been adjudicated bankrupt and had been granted an automatic discharge after a year. He was a broken man. He had been supported by his wife, a teacher. He relied on her for his wellbeing and his future prospects. He had three children, two at university and one still at home. The Second Respondent's mental health continued not to be good but he had seen some improvement. He had been in receipt of state incapacity benefit since January 2009. That would be reviewed some time in 2010.
120. The Second Respondent was a proud man. He had accepted help from his family but hoped that he might be able to work within the solicitors' profession when his mental health improved.
121. The Second Respondent had been affected by the delay in bringing the proceedings to the Tribunal. The fact that matters had been hanging over his head had put considerable stress upon him. The Tribunal would be aware of the staleness of the matters placed before them.
122. It was hoped that the Tribunal would consider the imposition of a sanction that would not deprive the Second Respondent of his ability to practise again. When the Second Respondent regained his mental health, the regulator could exercise substantial powers to curtail the way in which he practises in the future. He believed that he had something to offer the profession and the public by acting again as a solicitor. It was hoped that the Tribunal would consider that it could properly fulfil its duties to protect

the public and the good reputation of the solicitors' profession by the imposition of a reprimand on the Second Respondent.

#### Costs

123. The Applicant sought the costs of and incidental to the application and enquiry. He had submitted a written schedule of costs. He sought the sum of £43,779.95. It was said on behalf of the First Respondent that the Tribunal would have to decide upon the amount of work claimed and where the costs should fall. The Tribunal was aware of the First Respondent's financial situation as well as that of the Second Respondent. In the circumstances it would be inappropriate to make a joint and several order. It was felt that the costs sought were rather high. Submissions were made on behalf of the Second Respondent supporting those made on behalf of the First Respondent. The Tribunal was reminded of the decision of the Administrative Court in the case of D'Souza and it was invited to take into account exceptional circumstances in the case of the Second Respondent who was unemployed, had recently been discharged from bankruptcy and was living on incapacity benefit.

#### The Tribunal's Sanction

124. The Tribunal considered that the case against each of the Respondents had been properly brought. The Tribunal noted with regret the delay in issuing the proceedings in the Tribunal. The Tribunal recognised that such a delay added to the anxiety caused by disciplinary proceedings to members of the profession. The Tribunal concluded in the light of the mitigation offered and bearing in mind the delay that it would be both proportionate and appropriate to order that the Second Respondent be severely reprimanded. He was further ordered to pay the costs of and incidental to the application and enquiry fixed in the sum of £16,500.00 on a several basis. The Tribunal went on to order that its order for costs was not to be enforced without the consent of the Tribunal first obtained.
125. The Tribunal considered that it was both appropriate and proportionate to order that the First Respondent also be severely reprimanded and it further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £16,500.00 on a several basis.
126. The Tribunal wishes to make it plain that should either of the Respondents have similar allegations substantiated against them in the future the Tribunal would not be likely to take such a lenient stand.

Original dated 12<sup>th</sup> day of February 2010

Amended this 6<sup>th</sup> day of April 2011

On behalf of the Tribunal



R B Bamford  
Chairman