SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10635-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[NAME REDACTED] First Respondent

[NAME REDACTED] Second Respondent

ROBERT SCOTT Third Respondent

Before:

Mr A. G. Gibson (in the chair)
Miss J. Devonish
Mr D. E. Marlow

Date of Hearing: 12th and 13th March 2013

Appearances

Richard Coleman QC of Fountain Court Chambers, Temple, London EC4Y 9DH instructed by Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London, EC4M 7RF for the Applicant.

Gregory Treverton-Jones QC of 39 Essex Street, London WC2R 3AT for the First Respondent, who was present

The Second Respondent was not present and was not represented, the application in respect of him having been disposed of earlier.

The Third Respondent was present and represented himself

JUDGMENT

Allegations

Rule 5 Statement dated 7 October 2010

1. The allegations against the First Respondent on behalf of the Solicitors Regulation Authority ("SRA") as amended with the consent of the Tribunal were that:

1.1 Withdrawn

1.2 He failed to exercise adequate or appropriate supervision of staff in breach of Rule 13 of Solicitors Practice Rules 1990 ("SPR 1990") and/or Rule 5.01 of the Solicitors Code of Conduct 2007 ("the Code").

2. The allegations against the Third Respondent Robert Scott were that it would be undesirable to him to be involved in a legal practice in one or more of the ways mentioned in S43(1)(A) of the Solicitors Act 1974 as amended by the Legal Services Act 2007 in that:

2.1 He made or caused to be made payments on client matters to a third party, Chartwell, for false after the event insurance policies;

2.2 In the event of a successful claim, the cost of the false after the event insurance policies was sought as a disbursement from third party insurers; and

2.3 Chartwell was a partnership composed of Robert Scott (the Third Respondent), RP (the Second Respondent's wife) and BT (the First Respondent's wife); and

2.4 The Third Respondent's conduct as set out above was dishonest.

Rule 7 Statement dated 6 August 2012

3. The additional allegations against the First Respondent, on behalf of the SRA were that:

3.1 Contrary to Rule 10(1) of the SPR 1990 and/or Rule 2.06 of the Code, he received and retained and/or obtained (directly or indirectly) the benefit of commission payments exceeding £20 which arose from work carried out on behalf of clients; and

3.2 Contrary to Rule 7(6) of the SPR 1990 and/or Rule 12.01(1) of the Code he practised between 2002 and 2008 in partnership with two unqualified individuals, namely the Second and Third Respondents.

4. The additional allegations against the Third Respondent, Robert Scott were that it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in S43(1)(A) of the Solicitors Act 1974 (as amended) in that:

4.1 He received and retained and/or obtained (directly or indirectly) the benefit of commission payments exceeding £20 which arose from work carried out on behalf of clients; and

4.2 Between 2002 and 2008, he acted as principal of a solicitors' practice, despite being unqualified and unauthorised to act as the principal of a solicitors' practice.

Documents

5. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 7 October 2010 with exhibit
- Rule 7 Statement dated 6 August 2012 with exhibit
- Outline of Applicant's opening by Richard Coleman QC dated 12 March 2013 with attachments
- Correspondence as listed in volume 4 of the trial bundle
- Statements as listed in volume 4 of the trial bundle
- Case law and legislation as listed in volume 5 of the trial bundle
- Additional correspondence included at the request of the First Respondent as listed in volume 5 of the trial bundle as supplemented at the hearing
- Judgment in Ojelade v The Law Society [2006] EWHC 2210 (Admin)
- Judgment in Gregory v The Law Society [2007] EWHC 1724 (Admin)
- Additional witness statements of Ms TC dated 13 July 2009 and Mr JF dated 27 May 2011
- Regulatory Settlement Agreement between the Applicant and the Second Respondent
- Statement of full order in Tribunal cases of Alberici numbers 10603/2010 and 10750/2011
- Applicant's schedule of costs dated 11 March 2013

First Respondent:

- Skeleton argument on behalf of the First Respondent by Mr Treverton-Jones QC dated 10 March 2013 with attachment
- First Respondent's response to Rule 7 Statement dated 11 September 2012 with attachments
- Letter from the Applicant dated 10 November 2010 to the First Respondent regarding Mr JF
- Letter from the First Respondent to the Tribunal dated 2 December 2010 with attachment.
- Bundle of witness summonses dated 6 June 2011 with attachments
- Letter from the First Respondent's GP dated 10 June 2011

- Report from Central and North West London Primary Care Counselling Service dated 16 January 2012
- Three testimonials including letter from First Respondent's father in law dated 28 February 2011
- Statement of the First Respondent in respect of costs dated 7 March 2013 with attachments

Second Respondent:

- Not applicable

Third Respondent:

- Statement of the Third Respondent dated 8 October 2012 in volume 4 of the trial bundle
- Statement of the Third Respondent in relation to costs dated 11 March 2013

Preliminary matters

6. At a directions hearing on 3 August 2012, amongst other matters, the Tribunal had given permission to withdraw allegation 1.1 in the Rule 5 Statement as against the First Respondent and one of the allegations against the Second Respondent. At a further hearing on 5 March 2013, the Tribunal was advised that the Applicant had reached an agreement with the Second Respondent set out in a Regulatory Settlement Agreement ("RSA") dated 21 February 2013 copies of which were provided to the Tribunal. In the RSA, the Second Respondent had admitted the remaining allegations against him, agreed to the imposition of an order under section 43 (1)(A) of the Solicitors Act 1974 (as amended) and had agreed to pay a proportion of the Applicant's costs of the proceedings. The Applicant applied to the Tribunal as required by the terms of the RSA to withdraw the proceedings against the Second Respondent on the basis that they would serve no further purpose as the Second Respondent had accepted terms which were in the same terms as could be imposed by the Tribunal by way of a section 43 order. There was no further sanction that the Tribunal could impose. The Tribunal granted permission to the Applicant to withdraw all allegations/the proceedings against the Second Respondent Tariq Mehmood.

7. In respect of the Rule 7 Statement, the Tribunal raised an issue about a statement that API Solicitors Ltd was established in 2002, Mr Coleman for the Applicant agreed that the statement was incorrect, the practice had commenced in that year and was then incorporated in 2006.

8. Mr Coleman advised the Tribunal that the First Respondent admitted allegation 1.2. The Third Respondent admitted allegation 4.1.

Factual background

(References in this judgment to the Second Respondent are by way of background only.)

9. The First Respondent was born in 1970 and admitted in 1997. His name remained on the Roll of Solicitors but he did not currently hold a practising certificate.

10. The First, Second and Third Respondents were involved from 2002 in an entity under the style API Solicitors. They each invested equally in the firm and received a one third share of the profits. The First Respondent set up a practice in 2002 which was incorporated in 2006 as API Solicitors Limited. The First Respondent held all the shares and was the sole director on incorporation. The term "the firm" is used in this judgment to refer to both entities.

11. The Second Respondent was the Marketing Manager of the firm and also responsible for managing other fee earners.

12. The Third Respondent was the Practice Manager and upon incorporation was the company secretary. He was also responsible for managing other fee earners.

13. There were two other businesses: RST Marketing ("RST") of which the partners were the Second Respondent, the Third Respondent and the First Respondent's wife BT; and Chartwell Investigations ("CW") which was established in 2003. The Third Respondent managed RST and CW.

14. Four doctors were regularly instructed by the firm to produce medical reports for clients and agreed to pay to CW £50 plus VAT per report which fee was distributed to the partners of CW. The firm did not inform or account to clients concerning the commissions. Romeo Consultants, an entity controlled by the First Respondent also received payments from doctors who were instructed by the firm to prepare medical expert reports on behalf of clients.

15. Prior to June 2004, the firm was a party to an arrangement with an insurance intermediaries ACPS by which it was able to issue certificates for after the event ("ATE") insurance cover to clients under a delegated authority from the insurer, I Ltd. In June 2004, I Ltd withdrew the delegated authority.

16. The firm specialised in personal injury claims conducted on a "no win no fee" basis. Most related to minor road traffic accidents or paving trips. The firm was generally instructed by clients to negotiate damages or to pursue proceedings if liability was in dispute. Many of the cases would be settled prior to the issue of proceedings.

17. When claims were settled, costs would be recovered for the injured party, including both the firm's profit costs as well as the disbursements incurred. These disbursements would generally include the cost of an ATE insurance premium. ATE insurance was always taken out to protect the client against liability for costs in the event that a claim was not successful.

18. The firm used a computer case management system which would prompt the fee earners to take certain steps in managing the claim, starting with a client care letter, a conditional fee agreement and a funding questionnaire which would be sent to the client, the referrer or in some cases the referrer's agent.

19. Examples of the client care letter showed that it recommended the client take out a policy with I Ltd. The letters suggested that the firm had no interest in the insurance company recommended.

20. The case management system generated the insurance policy automatically as part of the initial steps in the claim. The creation of a policy on screen would cause the insurance premium to be entered as a disbursement on the client ledger.

21. A deposit of 10% of the premium (£10 plus insurance premium tax ("IPT") making a total of £28.75 per policy) would be paid to CW whose name appeared as the funder on the funding screen of the case management system. The balance of the premium was deferred and was payable only in the event that the claim was successful and the premium was recovered from the defendant to the claim.

22. RST or CW produced bordereaux of the policy schedules which had been issued by the firm. The bordereaux were passed on to ACPS and then to I Ltd.

23. When cases had been successfully concluded and a cheque for costs had been received from the third party insurer, the case management system would generate standard letters of payment for the outstanding disbursements, including payment of the premium for the ATE insurance to CW. The balance of the underwriting element of the premium, around £78.44, was paid to I Ltd via RST or CW and ACPS. The balance of the premium was due to ACPS which permitted RST, later CW, to retain it in return for the firm agreeing to bear the cost of any claims made under any of the policies. The nature of that balance was disputed between the parties.

24. The policies apparently underwritten by I Ltd were only used for claims which were pre-proceedings. If proceedings had to be pursued, fee earners at the firm were required to apply for a policy with an insurer CC which involved completing an on-screen proposal, setting out full details of the claim and the prospects of success. Accordingly on pre-litigation matters there was no need to correspond with the ATE insurers to advise them on the merits of bringing an action or the prospects of success.

25. The firm also used CW as enquiry agents. As regular suppliers to the firm, payments to CW would be aggregated. The Third Respondent would prepare a schedule of the cases to which the aggregated payment related and attach this to cheques. Mr PB, a solicitor at the firm, as a signatory on the firm's account would countersign cheques prepared by the Third or Second Respondent.

26. On 9 July 2008, Mr JF purchased the firm from the First Respondent. He knew the Respondents, having previously worked with them at another firm SR. Following negotiations with all three Respondents, he agreed to purchase the shares in the business from the First Respondent. The Second and Third Respondents were to remain employees of the business after the takeover. At that point the Third Respondent was a team leader supervising two fee earners as well as being responsible for the firm's accounts and IT system.

27. JF changed the name of the firm to ISS. In the process of negotiating the purchase of the firm he had been told that there had been an error in issuing a number of ATE policies, related to I Ltd. JF understood that the issue was whether the firm had

delegated authority from I Ltd to issue the ATE policies. He was advised that any premiums where ATE policies had been issued in error were being reimbursed to the third-party insurers who had been asked to pay the cost of such policies as a result of successful claims.

28. Following his purchase of the firm, JF received letters from third-party insurers querying the ATE premiums on certain claims. This led him to repay the premium of £420 on approximately 20 cases. In or about October 2008, he was contacted by the police who told him that they were investigating an allegation of fraud linked to the firm. The allegations were that the firm had defrauded third-party insurers by using false ATE policies that is policies which were not underwritten by genuine insurance.

29. JF reported the situation to the Law Society.

30. On 12 November 2008, a Forensic Investigation Officer ("IO") of the Applicant began an investigation at the premises of ISS. As part of this investigation the IO obtain a statement from Mr GR of I Ltd. He confirmed that following correspondence with A Insurance Ltd querying the ATE policies issued on two claims where claimants were represented by the firm he conducted an audit at the firm on 28 February 2008. During this audit he met the Third and Second Respondents and asked for an explanation as to why insurance policies had been issued in the name of I Ltd which were not registered with the company.

31. The Second Respondent apologised to him for what he said was an error. He expressed a willingness to provide I Ltd with the premiums in cases where ATE policies had been issued in error. He subsequently supplied GR with a spreadsheet containing details of 1,962 cases in which the firm had issued ATE insurance policies none of which had been declared to I Ltd. JF obtained a further spreadsheet from the Third Respondent in May 2009 showing 832 cases out of the 1,962 cases in the spreadsheet produced by the Second Respondent where payments from third-party insurers were made to CW.

32. Amongst the cases listed on the latter spreadsheet were the cases of Mrs K for whom a policy was issued purportedly underwritten by I Ltd on 15 November 2005 and Mr P for whom a policy was issued on 7 February 2008. GR confirmed that I Ltd did not hold and did not issue ATE insurance policies in respect of Mrs K and Mr P and the insurance policies in their names were in a format that I Ltd had not used since June 2004.

33. As part of the Applicant's investigation, the IO wrote to Mr MS of CV the accountants for the firm and CW. MS reported that the three equal partners of CW were the Third Respondent, Mrs RP, according to JF the wife of the Second Respondent and Mrs BT the wife of the First Respondent. In a subsequent email, MS confirmed that Premier Claims Service which was referred to in papers found by JF after purchasing the firm, was a partnership between the Third Respondent, the wife of the First Respondent and the Second Respondent.

34. The First, Second and Third Respondents were acquitted in criminal proceedings of fraud-related charges when the prosecution offered no evidence. In a letter dated 24 November 2011, the CPS informed solicitors acting for the Third Defendant:

> "I write in respect of the above-mentioned case, to advise you that the Crown has decided to offer no evidence against all defendants, on all counts they currently face, on each indictment. The Crown will request a listing of the case early next week, before His Honour Judge Higgins, for this purpose.
>
> This decision has been taken after a full evidential review of the case at a senior level.
>
> The case was brought by the City of London Police and the Crown Prosecution Service following an investigation initiated by a complaint emanating from within the insurance industry which discovered alleged wrongdoing by various professionals in the conduct of personal injury litigation which was considered to amount to the commission of the criminal offences alleged in the indictment. However, recent enquiries made with other insurers have revealed that the behaviour complained of was widely known within the industry and that those insurers did not regard themselves as victims of fraud…"

Witnesses

35. The First Respondent gave evidence and save as recorded below, it is set out under the appropriate allegation. The First Respondent confirmed the truth of his witness statement in these proceedings dated 5 June 2011. He came from an unprivileged background and had gone to university and law school supported by bank loans and working to raise money. He had tried for two years to find work and tried other occupations but was set on being a lawyer. Prior to setting up the firm he had worked as a solicitor elsewhere and for a firm SR, undertaking personal injury work involving before the event insurance claims. At SR he met the Third Respondent whose father was the senior partner. The Second Respondent and JF also worked there. In his statement he set out that the Third Respondent left SR in or about 2000 and that the Second Respondent continued to work there. There had been a pay review with which the Second Respondent told him, that like the First Respondent he was not happy. A discussion started which led to the First Respondent leaving SR to set up the firm. He had no knowledge about setting up a law firm. The Second Respondent had a lot of contacts with medical agencies and other entities. Each of the Respondents brought their own different experience. After initial discussions, they met weekly to prepare a business plan. The First Respondent had borrowed against his property and later on they had to take out several loans.

36. The Third Respondent gave evidence and save as recorded below, it is set out under the appropriate allegation. The Third Respondent stated that he had asked his father to give him an opportunity to work at SR and better himself. He had started working around 1997. It was quite a small office. The Third Respondent was the office junior. He was then promoted to junior fee earner working for JF. The firm grew. He was in a somewhat awkward position and was unqualified and therefore could not be a partner. He had been unsuccessful in the ILEX examinations and his earning potential was restricted. He left the firm in 2000 because of difficulties in his relationship with JF. His new firm undertook personal injury work and he was to be in charge, interviewing staff, training and ensuring that they adhered to the procedures laid down. At

interview, he discovered that his father had a financial interest in the firm but no involvement in the day-to-day running. After he had been there a year or so promises about salary had not been fulfilled and he had always kept in touch with the Second Respondent who was still at SR. (The Third Respondent had only overlapped with the First Respondent at SR for a couple of weeks.) The Third Respondent got in touch with the Second Respondent and suggested that they try to open a business on their own. The Second Respondent told him that they needed a lawyer to be in charge and they agreed it should not be JF. The Second Respondent said the First Respondent was an exceptional lawyer. They went ahead. The Second Respondent was in charge of marketing, accounts and RST. The Third Respondent was just asked to assist with the I Ltd policies and with RST. Under the insurance arrangement they could not make a claim on the ATE policy if a client's claim was lost. This was acceptable for run-of-the-mill personal injury claims where the prospects of success were high but they did have some cases which caused concern and which they wanted to push on to trial and so the First Respondent asked him to contact Mr CK of ACPS to see if other policies were available. In June 2004 they all met CK at the firm's offices, including the First Respondent. There were notes referring to the meeting to prove that he was there. CK referred them to another insurance scheme called BeWise. (The First Respondent disputed the facts around this meeting.) The Third Respondent testified that the First Respondent called a meeting of all the fee earners after the meeting with CK. The firm's policy was to be that if there was a straightforward rear end shunt they should stay with the existing I Ltd process but if the prospects of success were only around 50%, they should use BeWise.

Findings of Fact and Law

37. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(The submissions recorded below include those made orally at the hearing and those in the documents. Statements referred to were made in these proceedings unless otherwise described.)

Against the First Respondent

38. Allegation 1.2: He failed to exercise adequate or appropriate supervision of staff in breach of Rule 13 of Solicitors Practice Rules 1990("SPR 1990") and/or Rule 5.01 of the Solicitors Code of Conduct 2007 ("the Code").

38.1 Mr Coleman referred the Tribunal to Rule 13 of the SPR 1990 which stated:

> "(1) Solicitors shall ensure that every office where they or their firms practise is and can reasonably be seen to be properly supervised in accordance with the following minimum standards…"

Rule 5.01 of the Code stated:

> (1) If you are a Principal in a firm, a director of a recognised body which is a company, or a member of a recognised body which is an LLP, you must make arrangements for the effective management of the firm as a whole …"

It was submitted that if the First Respondent was entirely unaware of the fact that ATE policies that were not underwritten by any insurer were being issued by the firm and that CW, a firm which involved his Practice Manager and his wife, were not authorised to issue policies and/or were not passing premiums for insurance policies to an insurance broker; this represented a failure to exercise appropriate management control of the business and was in breach of the rules. The First Respondent admitted allegation 1.2 and accepted that as the only solicitor in the practice he should have known the details of the insurance arrangements, that the policies continued for four years and the defendant insurers paid for non-existent policies. Mr Coleman submitted that this was a serious allegation properly admitted.

38.2 The Tribunal considered the evidence including the oral evidence of the First and Third Respondents, the submissions for the Applicant and for the First Respondent and by the Third Respondent. It found allegation 1.2 proved on the evidence, indeed it had been admitted.

39. Allegation 3.1: Contrary to Rule 10(1) of the SPR 1990 and/or Rule 2.06 of the Code, he received and retained and/or obtained (directly or indirectly) the benefit of commission payments exceeding £20 which arose from work carried out on behalf of clients;

39.1 For the Applicant, Mr Coleman referred the Tribunal to the guidance on commissions; in respect of Rule 2.06 of the Code. It stated, omitting the paragraph numbers:

> "Subrule 2.06 reflects the legal position, preventing a solicitor making a secret profit arising from the solicitor/client relationship.
>
> A commission:
>
> (a) is a financial benefit you receive by reason of and in the course of the relationship of solicitor and client; and
>
> (b) arises in the context that you have put a third party and the client in touch with one another. (See the Law Society v Mark Hedley Adcock and Neil Kenneth Mocroft [2006] EWHC 3212 (Admin)."

Mr Coleman submitted that when CW was established in 2003 it appeared to have assumed the role previously occupied by RST as well as undertaking some case investigative work. In his statement, the Third Respondent made clear that CW was used as a vehicle for receiving commissions:

> "I understand that RST's commercial activities included administering the ATE certificates and receiving commissions for the referral of cases for medical agencies/experts".

The First Respondent also accepted that situation in his statement dated 5 June 2011 in relation to the ATE premiums and policies. While the cost of the premium was not mentioned, it was initially £375 rising to £420, in both cases with the additional tax element. Out of the policy costs, only the initial £10 and if the claim was successful a further £78.44 would go to the insurer. The lion's share remained with RST/CW. While the Applicant did not have a copy of the primary agreement, this was the way the First Respondent asserted that it worked and the Applicant accepted that. In his statement, GR of I Ltd summarised how this had come about:

> "In about June 2002 [CK of ACPS] contracted with two businesses associated with [the firm] namely [CW] and "RST", so that they had delegated authority to issue policies for ATE insurance offered to clients by [the firm]. I became aware of this arrangement because [I Ltd] was the insurer underwriting those policies.
>
> The deal between ACPS and CW and "RST" was that policies for road traffic accident claims would attract a premium of £375 plus 5% insurance premium tax and 10% commission payable on issue to ACPS.
>
> ACPS would receive the 10% deposit premium for each policy upfront from [CW]/"RST". Non-motor accidents attracted a premium of £495 plus 5% insurance premium tax and the 10% commission. As indicated above, the balance of the premiums would be paid at the conclusion of each case. On the RTA policies, [I Ltd] would receive a net premium of £88.44. The balance of the premium represented the brokerage commission payable to ACPS.
>
> The arrangement between ACPS and [CW]/RST lasted until June 2004. [I Ltd] received declarations and payment of commission for all the policies issued during this period… the declarations made by RST and [CW] between June 2002 and June 2004, numbering in total 114 policies. In that period [I Ltd] received £9,494.58 net premium from ACPS for those policies."

Mr Coleman submitted that this arrangement showed the reason why RST/CW was set up; there was an understanding by the Respondents that solicitors could not directly receive commissions from doctors or insurers without offering it to the client and making disclosure. In his statement to the police in interview under caution, the Second Respondent said:

> "The decision was taken to set up company alongside [the firm], specifically a marketing company which could function in the way required by [CK] and also to secure work for [the firm] from referral sources. In both cases, it existed to circumvent Law Society prohibitions on solicitors' firms receiving commissions and paying for work by way of referrals...
>
> We set up a business called [RST] which was a legal partnership not a limited company. This company was formed in September 2002 and was a partnership of myself, [the Third Respondent] and [BT]. A bank account was opened with NatWest and all three partners were signatories with the bank.

> Its primary role was to secure work on behalf of the firm and to pay ACPS and receive commissions from ACPS. At the time Law Society rules regarding referrals was [sic] that firms of solicitors could not pay for work introduced to them by accident management companies and such like referrers. I would be responsible for seeing referrers and agreeing with them a referral fee for work to come into [the firm].
>
> The other area of work carried out by the firm was to send a bordereau to [CK] at ACPS in relation to ATE insurance taken out by [the firm]. During the course of the month I would be sent details of all ATE policies taken and the idea was that this information would be collated onto a bordereau and then sent to [CK] with any payments due. Unfortunately with my commitment to the referrers and also running a caseload at [the firm] I was unable to find time to do this. In the circumstances I asked the Third Respondent to help me look after this part of the company's duties. He was a lot more knowledgeable with the working of spreadsheets etc so he took over this responsibility. [CW] was another partnership (my wife, [the Third Respondent] and [BT]) set up primarily for preparing locus reports, preparing statements, all aspects of investigating an RTA claims [sic]. After approximately 6 months it was agreed with [the Third Respondent] and [the First Respondent] that we would move the ACPS policy dealings to [CW], which would take over the responsibility of looking after the ATE Insurance with [CK]. Therefore [RST] stopped dealing with [CK] after this time. I continued to deal with referrers.
>
> …[CW] was formed in 2003 and was a partnership of [the Third Respondent, my wife and [BT]. [The Third Respondent] set up the company and registered the company for VAT. It took over the function to collate details of the ATE policies taken out by [the firm] and send those details to [CK] at ACPS on a bordereau."

39.3 Mr Coleman submitted that whilst CW was described by the Second Respondent as a company it was in fact a partnership. The commissions were distributed to the partners of RST and CW including the First Respondent's wife. Her payments were to be treated as if they were to the First Respondent; they went into a joint account and so technically speaking they went to him and he substantively benefited from them.

Commissions from insurance

39.4 Mr Coleman submitted that the payments retained by RST/CW were plainly in substance commissions for which the First Respondent had failed to account to his clients. His defence was they were payments for administrative work and made in return for intermediary companies (RST/CW) agreeing to fund claims made against the policy. There was no basis for seeking to characterise the payments as administrative fees as no work was carried out. Mr Coleman invited the Tribunal to find that in substance they were commissions for putting business the way of insurers or at least that they included a significant element of commission. The First Respondent's explanation in his witness statement acknowledged that RST would receive a commission payment:

> "the intermediary business was to collate the certificate numbers onto a bordereau and forward deposits and payments sent to it by [the firm], onto ACPS.
>
> …
>
> The insurance certificates would be underwritten by [I Ltd] but there was a hold harmless agreement in place that the risk would pass from [I Ltd] to ACPS to RST and in return RST would receive a commission payment."

The Third Respondent admitted that RST/CW received commissions. In respect of CW he stated that payments were made equally to him, the Second Respondent's wife and the First Respondent's wife and:

> "All three of us were totally aware of what payments were made to each other and what the payments represented."

In any event, even on the First Respondent's case that the payments were for administrative work, Mr Coleman submitted that his financial interest in the insurance arrangement should have been disclosed to clients.

39.5 Mr Coleman referred to the fact that in June 2004, I Ltd withdrew delegated authority from the firm and CW issued 1,962 un-authorised ATE certificates in respect of 832 of which, the defendant insurers admitted liability and in settling included an amount for the non-existent insurance. He referred the Tribunal to two examples of client files to illustrate what had happened, Mr P and Mrs K. He referred the Tribunal to a client care letter to Mr P dated 8 November 2007. It included:

> "To protect you from these further costs in case you lose your claim, from what I have been told by you so far, I believe that you should pay for your case by using a CFA, backed by an insurance policy that protects you from the risk of paying your own expenses and the other side's costs. I recommend a policy with [I Ltd]. The cost of this insurance is £420.00."

While the Respondents had no interest in I Ltd and so the letter was literally true it was also grossly misleading because £300 of the premium would go to CW in which each of the three Respondents had an interest either directly or through their spouses. Mr Coleman made no criticism of the writer of the letter, a member of staff at the firm, because she did not know of the arrangements. He also referred the Tribunal to the insurance policy issued to Mr P, the effective date of which was 15 November 2007; three years after authority for the firm to issue such policies had been withdrawn. It stated "This insurance is underwritten by [I Ltd]" There was also an invoice from the firm in the name of Mr P payable by Z insurance dated 11th February 2008 which included under disbursements; "Insurance Premium fees £420". The firm's letter of 8 February 2008 to CW in respect of Mr P stated:

> "We confirm this matter has now been settled and attach our payment in settlement of the insurance premium totalling £420.00"

The same documentation was before the Tribunal in respect of Mrs K. The witness statement for the police investigation given by GR confirmed that policies were issued without I Ltd approval:

> "From June 2002 to June 2004 [CW] and [RST] were authorised to create after the event insurance policies in the name of [I Ltd] by ACPS. As part of this authorisation [RST] and [CW] were required to register the policies created with [I Ltd]. Between June 2002 and June 2004 [I Ltd] received 130 declared policies from [RST] and [CW]. The authorisation to [RST] and [CW] to create and issue after the event insurance policies in the name of [I Ltd] ceased in June 2004. [I Ltd] subsequently introduced an online system called "Bwise" which gave solicitors online access to make applications for after the event insurance on behalf of clients. On the 22 February 2008 I received a fax from [A] Insurance Limited querying the after the event insurance policies issued to a Mr [S] and a Ms [H] who were represented by [the firm]. I found that Mr [S] and Mr [H] did not hold after the event insurance policies with [I Ltd]. [KW] [I Ltd's] CEO and I exchanged a number of e-mail with [the Third Respondent] and [the Second Respondent] at [the firm] and arrangements were made to attend the offices of [the firm] to conduct an audit of files that [I Ltd] were considered on risk for and audit the files of Mr [S] and Ms [H] which I had been unable to find a record of an issued after the event insurance policy held with [I Ltd].On the 28 February 2008 I attended the offices of [the firm] with a colleague named Mr [D] to commence the audit. Following this audit it was still not apparent what had occurred on the files for Mr [S] and Ms [H]. Mr [D] and I held a meeting with [the Third Respondent] and [the Second Respondent] to discuss. [The First Respondent] was not present at the meeting and I was informed by [the Second Respondent] that [the First Respondent] was abroad. During the meeting I asked for an explanation of why insurance policies had been issued in the name of [I Ltd] and had not been registered with us. [The Second Respondent] stated that he was sorry and an error had occurred. [The Second Respondent] continued to state that the insurance certificates had been issued in error and relate to another insurance underwriter. I asked [the Second Respondent] who was the underwriter but [the Second Respondent] stated he was unwilling to confirm. [The Second Respondent] took me to a separate meeting room and stated that he had identified other policies issued incorrectly and not registered with [I Ltd]. I asked [the Second Respondent] how many, [the Second Respondent] stated that he didn't know but estimated 62 cases. [The Second Respondent] stated that he wanted to cooperate and do what he can to make this problem go away. He stated he was willing to pay the premiums over to [I Ltd] for the cases the firm had recovered and issued dodgy insurance certificates on. I again asked [the Second Respondent] to identify the number of cases involved, detailing in particular, total number of settled cases, total number of outstanding cases, premium amounts recovered, number of claims paid and confirmation from you that no further certificates are being issued. After leaving the firm's premises on the 28 February 2008 I received a call from [the Second Respondent] stating that he had started the process and had identified one hundred or so cases. On the 11 March 2008 I received a list of one thousand nine hundred and sixty two after the event insurance policies… from [the Second Respondent] that [the firm] or associated companies that

> have been issued in the name of [I Ltd] without the authorisation of [I Ltd]. I confirm that none of the after the event insurance policies on this list have been declared to [I Ltd] and as far as I am concerned have been issued fraudulently. On the 16 February 2009 I met with Mr Grehan from the Solicitors Regulation Authority. Mr Grehan presented me with two after the event insurance policies issued in the name of [I Ltd] for Mrs [K] issued on 15 November 2005 and Mr [P] issued on 7 February 2008. I confirm that [I Ltd] do not hold and did not issue after the event insurance policies in respect of Mrs [K] and Mr [P]. In addition I confirm that the insurance policies shown to me in respect of Mrs [K] and Mr [P] are in a template format that has been discontinued for issued by [I Ltd] since June 2004."

39.6 Mr Coleman submitted that the Applicant did not challenge the First Respondent's contention that he did not realise that the insurers had withdrawn their authority to issue ATE policies. The First Respondent said that the Third Respondent led him to believe that I Ltd policies could still be issued. The Third Respondent, who managed RST and CW and was responsible for accounting to the insurers for premiums, must have known the true position hence the Third Respondent's admission.

Receipt of benefit by the First Respondent

39.7 Mr Coleman pointed out that in his prepared statement for the police, the Second Respondent said:

> "[CK] explained that commissions were paid to the marketing company to not fall foul of the Law Society rules. I was not familiar with the rules he was referring to at that time but he said that all Solicitors he dealt with did it this way."

In her statement the First Respondent's wife said that he told her that he could not be part of the intermediary business (RST and then CW) and that she should be made a partner:

> "In or around September 2002, [the First Respondent] told me that an intermediary business was to be set up by [the Third Respondent] to assist in the running of the business of [the firm]. [The First Respondent] explained that he was not able to be part of that business and that it was proposed that I be made partner. He explained that a partnership between [the Third Respondent], [the Second Respondent] and me would be set up which was to be known as [RST]. [The First Respondent] told me that I would not have to have any involvement in the management of the business but would be a silent partner and would only have to sign accounts from time to time. I agreed to be a partner of RST. There is no partnership agreement.
>
> Later in 2003 a further intermediary business called [CW] was established and I became a partner in this business together with [the Third Respondent] and [RP] who is [the Second Respondent's] wife. [The First Respondent] explained that he was not able to be part of that business and that it was proposed that I be made a partner. [The First Respondent] told me that I was

> not required to have any involvement in the management of the business. I would be a silent partner and only have to sign accounts from time to time…
>
> I was entirely dormant with regard to the activities being undertaken by [CW] and its administration…"

Mr Coleman submitted that BT was solely there as a device to circumvent the rules. The Applicant did not accept that any solicitor with integrity would deal in this way. In respect of CW, BT's role was to represent her husband and it entirely reflected the true position so that any payment received as his representative was payment to him. In his only interview with the police, the First Respondent said in respect of her position in RST:

> "I'd just like to say, I had difficulty in explaining my understanding or [sic] lies behind what you were asking, [BT] was put on the marketing companies by [the Third Respondent] and she was there to represent me and paid in order to recognise my contribution eh and the fact that the firm enables the corporate businesses to exist as without and without any referrals they'd [sic] be no income from the Third Respondent really…"

Mr Coleman referred the Tribunal to later extracts from the same interview:

> "Police: And in that regard she was receiving monies which were in fact intended for you?
>
> First Respondent: … To recognise the contribution that [the firm] had..."

Mr Coleman emphasised that these were voluntary interviews under caution at which the First Respondent was accompanied by his solicitor and took breaks to receive advice. In her interview under caution with the police, BT was asked about what she received from RST, if she received wages. Among several references to representing her husband, she said:

> "Not that I'm aware of I think I was paid a profit share
>
> …
>
> Because that's the way [the Third Respondent] set it up, that's the way he paid me and I know my name was there to represent the First Respondent but I don't understand why"

BT also said that she believed the initials RST stood for the first names of the Third Respondent, the First Respondent and the Second Respondent in that order. She indicated that she did not know how much she had received by way of profit from the entity. (BT told the police that she and the First Respondent had a joint account at NW and she had an account in her sole name at FD.) The money was paid into the joint account. She stated that the money was hers; it was in her name because that was how it was paid to her. Mr Coleman submitted that other references to the account made it clear that the money was used by both the First Respondent and his wife and

some was used to pay the mortgage. In her interview, in respect of the money paid into the joint account, BT said

> "I think it was just to represent him and it was in my name. I don't know any more than that and we have a joint account because we share everything."

In answer to the question "…What other companies are you representing [the First Respondent] on?" she replied "Just RST, [CW] and Premier Claims"

39.8 In his own statement under caution, the First Respondent said in respect of his knowledge of the marketing companies and why and how they were formed:

> "First Respondent: No I'm not saying I didn't know nothing [sic] about the formation, I'm just saying that they were set up by [the Third Respondent], I mean I know why [CW] was formed and that was, I mean that was a triangle model set up by [the Third Respondent] to recognise his contribution to contacts that he had brought into [the firm], because at [a previous firm] he knew all the medical agencies, he knew all the doctors, so that was to reflect his contribution that's why he, that particular corporate vehicle received referral commissions and it also reflected a third of my share because my wife was obviously on it and it reflected [the Second Respondent's] share.
>
> Police: But if you had, you had nothing to do with it, how can you have a third of a share?
>
> First Respondent: Well I haven't taken a third of a share my wife did. Because that's what they told me, they told me I wasn't…"

39.9 Later in the interview he said in answer to why his wife was involved in CW:

> "She was a silent partner, she was there because I was told by [the Third Respondent] that under the separate business code obviously I couldn't be involved and he wanted to set up this business and he said that if he, if eh, he'd pay my wife a third of remuneration for you know referral commissions, it was [sic] triangle model set up by him so it also took into account obviously they were connected with referral commissions from [the firm]."

Mr Coleman submitted that the First Respondent had seemed to acknowledge in the police interviews that payments made to his wife represented his share of the commissions. He also acknowledged that he received a benefit from the monies paid to his wife and into the joint account. He referred to the ATE related payments as "administration fees" and stated that his wife was receiving them, agreeing that it was on his behalf and describing them as "That's part of household income". BT stated in her police interview:

> "I believe money from [CW] may have gone into it [the FD account]… Because as I mentioned before we used some of the money from the [FD] account to pay our mortgage off and I think sometimes we'd get a dividend from [CW] and I put that into [FD] and use that to pay our mortgage."

Commissions from doctors

39.10 In respect of commissions of £50 each plus VAT for medical reports from four doctors regularly instructed by the firm which was distributed to the partners of CW, Mr Coleman submitted that it was common ground between the parties that these payments were commissions as the First Respondent accepted in his witness statement and the Third Respondent stated in an email dated 3 July 2007, when he said in respect of CW:

> "It also receives kickbacks from agencies API have used"

This was also evidenced by the agreement with doctors, for example the agreement with Dr F recited under "Payment terms":

> "Your fee will be £350.00 and is subject to success and recovery. Upon payment of any amount in excess of £250, an invoice will be raised from [CW] for the sum of £50 plus VAT, to be paid within 30 days terms as stipulated in the invoice."

There was no evidence that CW was doing anything for the £50 payment, it was just a vehicle for receipt of commission. This was a high-volume no-win no fee practice which could have received hundreds or thousands of payments of £50 over the period of several years. The only issue was did it make a difference that the money was channelled through the First Respondent's wife, the only reason for which was to circumvent the professional rules as reflected in the evidence. Later on Romeo Consultants, an entity controlled by the First Respondent, received commissions from doctors. Mr Coleman referred the Tribunal to the First Respondent's interview with the police concerning the doctors' payments to Romeo. By then the First Respondent did not see the need to route payments through his wife. He thought that the fact he was no longer practising made a difference:

> "Before I disposed of my interest in [the firm] it was in connection with the sale, it was agreed that referral commissions would be paid to me for existing cases as part of the negotiations of the sale and due to the closing of [CW] it was agreed that the shares of the referral commissions would be paid to me, so [sic] I was no longer bound by the separate business code and I was not practising as a solicitor, as far as I'm concerned it was a legitimate payment and there's no proceeds of crime to validate these certificates, there's no breach of duty."

Regarding Romeo, Mr Coleman submitted that there was not even the fig leaf of technical payment through the First Respondent's wife. Romeo was directly controlled by the First Respondent and it was a bad point that he was entitled to receive commissions because he was no longer practising as a solicitor because he still had a practising certificate and the commissions related to instructions given by the firm prior to its sale when the First Respondent was actively practising. He told the police that Romeo received approximately £10,000.

39.11 Mr Coleman submitted that the payments which he had referred to were plainly within the definition of commissions in the case of Law Society v Mark Hedley

Adcock and Neil Kenneth Mocroft. The foundation of the rule about commissions was the solicitor's fiduciary duty not to make a secret profit. The First Respondent admitted that the firm did not obtain consent from or account to the clients for commissions. Even if technically his defence worked, it was submitted that he derived a direct benefit from the joint account and the payment of household expenditure including mortgage. The First Respondent asserted as a matter of law that a solicitor could arrange for his wife to receive commission if he could not properly receive it under the rules. Mr Coleman submitted as a matter of fact that the First Respondent received the commissions himself or benefited from them but in any event when a solicitor directed or caused commissions to be paid not to himself but to a third party he was in receipt of them under the rules or it made a mockery of the rules. Mr Coleman asked the Tribunal to make it clear that the relevant rules were wide enough to encompass that situation.

Submissions for and evidence of the First Respondent

39.12 For the First Respondent, Mr Treverton-Jones submitted that while commissions had been pejoratively described by the Third Respondent as "kickbacks", it was an absolutely standard practice for medical agencies to pay commission to solicitors for putting work their way. The police had struggled to understand how personal injury law and practice operated. It had been completely unnecessary for the Second and Third Respondents to set up an elaborate structure to pay to third parties instead of the firm; it was perfectly in order for a solicitor to retain commission provided he/she obtained the client's permission. Most solicitors had a clause in their client care letter covering it. The First Respondent did not have sufficient experience and CK told the Second Respondent that this was the way to do it. In respect of the ATE commissions, it was not accepted that the sums paid were commissions; there was an issue that the money was for administrative services or broker's commission as the First Respondent believed it to be. Mr Coleman and the Third Respondent alleged that these were referral fees paid to introducers of work but no allegation had been made about that and the First Respondent believed he could pay marketing fees to introducers. Regarding the payments from doctors, they paid RST/CW, which regularly paid BT. Whether they paid BT enough to reflect one third was debatable. Mr Treverton-Jones submitted that there was no breach of Rule 2.06 or Rule 10 because that envisaged the receipt of money into the firm directly. If the Tribunal was with him on that point, the allegation was disproved if not it was made out. As to the amount of £10,000 paid into Romeo, it constituted part payment of the purchase price for the company by JF.

39.13 In evidence the First Respondent stated that he was aware of the obligation of a solicitor on receipt of commission to receive informed consent to retain it or to pay it to the client but he understood that this only applied to money which came to the firm; he also understood that the 2006 Rules said that he could keep it if the client said that it was acceptable but he only needed to ask clients for permission if the firm was retaining it and not someone else.

39.14 The First Respondent stated that he found out in 2008 during the police investigation that the Second and Third Respondents signed a confidentiality agreement with CK of ACPS when they went off together to see CK without him in 2002. He did not know why or on what basis. He understood that CK advised the Second and Third

Respondents to set up a separate business to circumvent Law Society rules about commissions in respect of ATE insurance. The Second and Third Respondents told him that CK said that he could not be involved under the Law Society separate business code rules but his wife could be if she wanted to, as a silent partner. He asked her to do that. He knew the business was to be called RST but he did not ask about the initials; it came out in the police interviews and he could not believe that he did not see it. He had never seen any letterheads that indicated what the initials stood for. He understood that RST was making money from ATE administration payments and that the money flowing to RST was because they recouped the premium for the policy certificate or that it was brokerage commission in return for which they were underwriting the policy and undertaking administration. He had not seen any underwriting documents in 2002. The reason for the discrepancy between the number of policies purportedly pursued and those upon which the defendant insurers paid out, was that a lot of cases were unsuccessful and closed. In respect of the fees paid by the doctors to RST/CW, the First Respondent did not accept that these were referral commissions; his understanding was that they were introduction fees. They were paid for the introduction of the doctor to the firm because they were an established business contact from when the Third Respondent worked at RS. The First Respondent agreed in cross examination by the Third Respondent that he the First Respondent had some involvement in creating the relationships with particular doctors. As to CW, it was set up initially to undertake plans and photographs and to take statements but he understood that it took over the role of RST in relation to the ATE premiums and policies; he did not know why RST closed but eventually it just did. There was no evidence that the delegated certificate scheme had closed; the firm received no correspondence from either ACPS or I Ltd.

39.15 The First Respondent believed that his wife started to receive money from RST in 2002; he thought she was making gross by way of salary £1,360 per month and after-tax £1,000 per month. He did not know how her salary was made up. He accepted that the payments must come from the doctors' payments and the insurance payments. He denied that her role as what he described as "a dormant partner" was to receive his share of those payments from RST/CW. As to what he had said under caution in the police interview that CW reflected a third of his share, the First Respondent drew attention to the fact that he had also said in answer "Not my share, my wife's share that she received." He also said of that interview that he had been advised that it would be non-documentary and that he might be recalled to comment on documents and at the interview he was then asked to comment on documents. His wife had got it all wrong in the police interview in respect of where the money was paid; in May 2002 it went into her sole bank account. She had not changed her police statement because the police had authority to obtain bank accounts (which would show the true situation). He had ordered bank statements on 6 March 2013 but they had not arrived. The bank would produce statements for a maximum of seven years. In respect of why she was paid a salary when she did nothing, the First Respondent took the view that dormant partners were paid a salary and had no need to put capital in. He had looked this up on Wikipedia and that was what it said. He did not regard it as unusual. He relied on the fact that Rule 2.6 did not talk about benefit but about money going to the firm. In respect of what he had said to the police about the money representing part of household income, the First Respondent testified that he got that wrong as well, his wife spent it on child related matters; it was incorrect that some of it went for the mortgage. His wife had had a severance payment and had sold shares which went into

the joint account to pay off the mortgage so she had got that wrong as well. When his wife had said to the police that they shared everything she must be referring to the joint account because her money was hers and his was hers. He assumed CK's advice was correct. He did not consult the Law Society because one could not contact them on every point; one had to satisfy oneself. If he had believed he was circumventing the rules he would not have allowed his wife to become a partner. She was already a silent partner in a family company in which she did not get involved and she made her own decisions. Their conversation about her joining had been very brief; he did not discuss business matters with her. There had been the possibility that she might get involved in the work but she was occupied with their child and this did not occur.

39.16 In respect of Romeo, in July 2008 when he sold the business to JF the latter was supposed to pay him a lump sum but at the eleventh hour could not raise the money and so he agreed to pay referral commissions to the First Respondent. He did not know whether the payments related to instructions to doctors from before or after the sale took place. He had his practising certificate until October 2008. Romeo was not a company and he was the only person with an interest in it. The name was not meant to disguise his ownership but related to his affection for cars of that name. The First Respondent assumed that JF would get permission from clients for the doctors to make payments to Romeo. He understood that this had not been done correctly; relying on a letter from the Applicant dated 2 November 2010 saying that a letter of advice was to be issued to JF. He understood JF had told clients but had not obtained permission in writing. The Third Respondent testified that JF agreed to pay the First Respondent for the company in a lump sum or by equal monthly instalments. The First Respondent also wanted his medical insurance commissions and it was agreed that the First and Second Respondents would set up a company to receive two thirds of the medical commissions and the First Respondent would set up a company to receive one third for cases prior to the sale because those were his. The police then became involved and everything changed.

39.17 In respect of the client care letter sent to Mr P, the First Respondent testified that he had drafted the template stating that the firm had no interest in the insurance company and recommending the scheme to the client; he did not think it necessary to disclose anything to the clients because the firm was not receiving the payments.

39.18 The First Respondent agreed that it could be correct that the premiums paid for the false insurance policies amounted to around £335,000 as set out in JF's witness statement. In his own statement, the First Respondent had said that in around April/May 2008 he was legally advised to stop issuing the ACPS policies, to replace the certificates on live cases, around 500 or one third of the cases, not to make any further claims from the third-party insurers on the ATE certificates and to return any monies received by the firm from the third-party insurers for the ATE premiums. The firm wrote to the third-party insurers advising that the firm believed the ACPS certificates might be invalid and returned payments for the certificates to the third-party insurers which were received. The firm had not taken steps to return monies in the region of £335,000 relating to 2004-2008 because they had received legally privileged advice to pay the earlier money but had been advised that to pay the other money back could lead to a further money-laundering charge. His wife had been legally advised not to pay money back.

Decision of the Tribunal in respect of allegation 3.1

39.19 The Tribunal considered the evidence including the oral evidence of the First and Third Respondents, the submissions for the Applicant and for the First Respondent and by the Third Respondent. The Tribunal found that the payments made by RST/CW to the First Respondent's wife as a partner in those entities constituted commission payments exceeding £20 from work carried out on behalf of clients by the firm. The First Respondent received and retained the benefit of those payments indirectly via his wife. The fact that he received the payments indirectly from RST/CW did not save him from breaching the rules. The Tribunal found this to be the case regardless of which bank accounts the monies had been paid into. His wife had told the police that they shared everything and he had said that what was hers was hers and what was his was hers. He had used a deliberate device to avoid the rules. This finding applied both to the element of the ATE insurance payments over and above the premiums that constituted commission and to the commission payments made by doctors. The Tribunal rejected the First Respondent's assertion that the ATE related payments were for administrative work or were broker's commissions. The Tribunal accepted the evidence of the Third Respondent when he said in his statement dated 8 October 2012 in respect of what he described as "commissions":

> "RST was set up to receive such payments, either from medical agencies or insurance providers. RST stood for Rob, Sanjay and Tariq. Payments were made equally to myself, Tariq and Sanjay's wife.
>
> Another company was also set up [CW]… After about 12 months, Tariq asked if he could close RST and transfer all commissions to CW. From then on, RST closed and CW continued to carry out locus, plans and photographs and also receive commission payments from the medical agencies and ATE providers, such as ACPS. Payments were made equally to myself, Tariq's wife and Sanjay's wife. All 3 of us were totally aware of what payments were made to each other and what the payments represented."

39.20 Accordingly the Tribunal found that allegation 3.1 was proved to the required standard in respect of the payments that the First Respondent received from RST/CW.

39.21 In respect of the payments from doctors made by ISS to Romeo, an entity wholly owned by the First Respondent after the First Respondent sold the firm to JF, the situation was less clear as the payments were tied into the sale price of the firm/company. In respect of these payments the Tribunal did not find allegation 3.1 proved to the required standard.

40. **Allegation 3.2 Contrary to Rule 7(6) of the SPR 1990 and/or Rule 12.01(1) of the Code he practised between 2002 and 2008 in partnership with two unqualified individuals, namely the Second and Third Respondents.**

40.1 For the Applicant Mr Coleman relied on Rule 7 (6) of the SPR which stated that:

> "(a) a solicitor shall not enter into partnership with any person other than a solicitor, a registered foreign lawyers or a recognised body."

Rule 12.01(1) of the Code set out how a solicitor might practise and it did not include in partnership with an unadmitted person. The permitted business structures were tightly defined. Partnership was not defined in the professional rules and so section 1 of the Partnership Act 1890 was relied on. It stated:

> "1. Definition of partnership
>
> (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit."

It was submitted that all the factors of the definition applied equally to the First and Third Respondents; all of them were carrying on business in common with a view of profit. Section 2 set out the rules for determining partnership and included in a non-exhaustive list at section 2(3):

> "The receipt by a person of a share in the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business;…"

No mention was made in the Partnership Act of sharing losses. Mr Coleman referred the Tribunal to an email from Third Respondent to a lawyer in another firm which described the business arrangements. It was dated 3 July 2007 and included:

> "API Solicitors was originally a Sole Practitioner's Firm Set up by [the First Respondent] Principle [sic] Solicitor, [the Third Respondent] Office Manager and [the Second Respondent] Marketing Manager. We all equally invested money to start up the business and our agreement was to split all wages/bonuses equally 1/3 each. This has been the case and still continues to be the case.
>
> API has now changed to API Limited, with [the First Respondent] as the director and myself as the company secretary. Myself and [the Second Respondent] have formed another limited company RT Consultants (UK) Limited. We are no longer employees of API but are the sole directors of RT. [The First Respondent], myself and [the Second Respondent] receive equal salaries and dividends. [The First Respondent] is paid a wage via API and myself and [the Second Respondent] are paid via RT. RT simply invoices API for marketing/IT costs on a monthly basis to cover the wages for myself and [the Second Respondent] and also invoices API at the end of a financial year for approximately 2/3rds of the net profit left in API…"

A note of a meeting held on 4 September 2007 with MA of the accountants recorded that the First Respondent provided background to the firm as follows:

> "[The firm] was a client of [LB] and is now a client of [MS] following [LB's] departure. The company was set up in late 2006 and was the result of a transfer of business from a partnership into the company. While [the First Respondent] owned all the shares in the company, he emphasised that he regarded [the Second Respondent] and [the Third Respondent] as being

> partners in the business as well. These two individuals had previously been self employed but "may now be employees". The First Respondent was uncertain about their legal status.
>
> In [the First Respondent's] view a [sic] relationship was not working…"

Mr Coleman submitted that the note was prepared by the accountant and he would have appreciated the importance of accurately recording for the file what he had been told. The reference to "the legal status" of the Second and Third Respondents referred to the period after the incorporation of the firm. It was submitted that all this was clear evidence of the existence of a partnership. The Tribunal was also referred to an email sent by an audit manager of the firm's accountants on 2 July 2008 to the Third Respondent, headed "Directors Loan Payments":

> "[MS] asked me to contact you with regards the payments in and out of the company to clear the directors [sic] loan balance and dividend payments.
>
> With regards the dividend of £228,000 you have already paid in £76,000 each to clear this. This is now going to be paid out to each of you as a bonus through the PAYE scheme and this should give you a net payment each of approximately £44,800 which from speaking to [the First Respondent] is being paid out today.
>
> With regards the overdrawn directors loan account balance at 31 October 2007, you each need to pay £88,000 in to the company to clear this. This, I believe, is then also going to be paid out as a bonus and when put through the PAYE scheme this will give a net payment due to each of you approximately £51,900…"

It was submitted that this email gave the impression of three people with an equal stake in the business and seen in the context of the proceeds being split, was further indication of the equal stake they held. Mr Coleman submitted that the emphasis in this case was not only that there was profit-sharing but equal profit-sharing. While partnership did not require equal profit-sharing, it would be a powerful pointer to the existence of a partnership.

40.2 Mr Coleman also submitted that monies channelled through BT from RST and CW were taken into account when dividing the profits of the business. He referred to the Tribunal to a document entitled "Notes of meeting in connection with API Solicitors Ltd on 8 October 2007" prepared by MS of the firm's accountants CV, which had been found by JF among the firm's papers. It was exhibited to his statement. MS began:

> I met with [the Third Respondent], [the Second Respondent] and [the First Respondent] on the 8 October 2007 to discuss various matters in connection with the various companies businesses and API Solicitors and to agree on what actions needed to be undertaken in the coming months."

Under the heading [CW] the note said:

> "We then went on briefly to discuss [CW] and again [the Third Respondent] confirmed that he would forward to us the information in connection with the year to 31 March 2007. It is important that we again make a start on these accounts so that the 2006/2007 tax returns can be completed.
>
> We then went on to discuss planning and weighing dividends against bonuses. I explained that for a small rate company it was still more tax efficient to pay dividends but, of course, the complication with [the firm] was the fact the dividends could only be paid to [the First Respondent] as he is the 100% shareholder."

40.3 Mr Coleman submitted that while it did not emerge very clearly from the document, it could be seen that CW was treated as part of the wider practice. He referred to another document entitled "API SOLICITORS "GROUP" 2005/06 profit allocations" the document had columns for Premier, RST and CW. Mr Coleman concentrated on the latter two. The document recorded as the "Accounts profit" for API of £649,526, £205,758 for RST and £83,214 for CW. The adjusted profit for API was £618,996, for RST £205,744 and for CW £82,949. This case covered several financial years 2003/2008 and this chart gave an indication of the amount of money involved for just a single accounting period. Although the chart did not record it, it was common ground that the profit of the firm was divided three ways between the Respondents. The Third Respondent said that he was not a partner but the agreement was that bonus equalled one third of profits. The Applicant also relied on the fact that no employment contract had been produced as testimony to their employee status and no explanation of their employment terms apart from terms that pointed to partnership i.e. the three-way split and the admission of the partnership allegation by the Second Respondent.

40.4 It was also submitted that there was evidence that Second and Third Respondents had authority to negotiate with doctors which was probative of their equal status within the business. The First Respondent informed the police during his interview that either the Second or Third Respondents would have negotiated a service level agreement with doctors on his behalf. Also the Second and Third Respondents initiated and put in place the insurance arrangements with I Ltd. In his statement in these proceedings, the First Respondent said:

> "Around August 2002, [the Third Respondent] and [the Second Respondent] met with [CK] of [ACPS]. [The Third Respondent] and [Second Respondent] were about to leave the office early and I asked them where they were going. I was told by [the Third Respondent] that they were seeing a broker about insurance but I did not get the chance to speak to them further as they were in a rush to leave. I found it somewhat strange that I was not invited to attend as I was the Principal of [the firm] and had attended all the meetings concerning the setting up of [the firm].
>
> I have since come to understand, but was not aware at the time, that [CK] was known to [the Third Respondent], [the Second Respondent] and Mr [JF] from their time working at [SR] in Watford and that [CK] was [the Third Respondent's] Godfather and also a business acquaintance of his father. [CK] was a broker and provided [SR] with ATE insurance policies. He was not known to me."

In his witness statement, the First Respondent went on to describe the arrangements which were agreed at the meeting as described to him by the other Respondents. It was submitted that the Second and Third Respondents considered it their place to go without consulting the First Respondent and agree important insurance arrangements which was a clear pointer to their status as partners and not consistent with employee status. Mr Coleman submitted that the fact that running the insurance side of the business was then left to the Third Respondent could be probative that the First and Third Respondents were in partnership as it pointed to the existence of carrying on a business in common for profit.

40.5 Mr Coleman addressed several aspects of Mr Treverton-Jones' skeleton in respect of the partnership allegation as follows:

- Mr Treverton-Jones' apparent suggestion in his skeleton argument that the admitted allegation of failure to supervise by the First Respondent was premised on the three Respondents not being partners, was unfounded. The two allegations were not incompatible. The First Respondent, if the principal had the obligation to supervise and manage the firm and there were a number of fee earners and administrative staff to supervise in addition to the other Respondents.

- As to Mr Treverton-Jones' reference to the First Respondent taking advice from the Law Society when he set up practice in 2002 to the effect that while the Second and Third Respondents could not be partners, he could take advantage of the Rule 7 exception and share profits with them and that he had done this in good faith in the belief that his practice was regulatory compliant and Mr Treverton-Jones's reference to Rule 7(1)(A), Mr Coleman submitted that the fee sharing arrangements went well beyond anything contemplated by Rule 7 and 7(1)(A) which in turn reinforced the prohibition against partnership. Rule 7 provided that:

  > "A solicitor shall not share or agree to share his or her professional fees with any person except:
  >
  > (c) the solicitor's bona fide employee, which provision shall not permit under the cloak of employment a partnership prohibited by paragraph (6) of this rule."

  Rule 7(1)(A) permitted a solicitor to share his or her professional fees with a third-party provided that various conditions were fulfilled including that:

  > "(c) the operation of the agreement does not result in a partnership prohibited by paragraph (6) of this rule."

- In respect of Mr Treverton-Jones' submission that one of the best-known features of a partnership was that of the joint and several liability of the partners and that partners shared in the losses of firm and that there was no way that the Second or Third Respondents would ever have agreed to, or been

prevailed upon to share the losses of the firm, Mr Coleman submitted that sharing losses was not essential to partnership and not referred to in section 2 of the Partnership Act. He referred to the case of Todd and others v Adams and another [2002] EWCA Civ 509, where Lord Justice Mance had stated:

> "Generally, partners share in any losses, but this too is not "essential to the legal notion of partnership""

Mr Coleman submitted that this was just a factor to be considered in the round and it would not be sufficient to swing the balance. In any event there was no documentary evidence that the Respondents had not agreed to share losses.

- Mr Coleman submitted that Mr Treverton-Jones's suggestion that the partnership issue was put beyond doubt by the incorporation of the firm in 2006 because partnerships and companies were mutually exclusive concepts, did not address the period between 2002 and 2006 before the incorporation of firm and the incorporation of the business in 2006 was not inconsistent with partnership; the corporate entity was just a vehicle through which the partnership was conducted.

40.6 Also on the issue of partnership, an issue had been raised by Mr Treverton-Jones in respect of a letter dated 25 January 2013 to Mr Steel of the Applicant' solicitors from Ms TC who had provided a witness statement under the Criminal Justice Act dated 13 July 2009 during the police investigation which was before the Tribunal. Her subsequent letter was not in the trial bundle but was attached to the skeleton argument. The letter included:

> "You advised me that in my statement of the above date, that you had interpreted references to [the Second Respondent] and [the Third Respondent as partners to mean that they were equal partners in the firm.
>
> I have revisited my statement to see if I can clarify where I may have given this impression. The only section where a reference may have given rise to your interpretation is I believe where I was trying to outline the different job roles. I would like to clarify that my intention was not to portray them as legal partners in a law firm. I was well aware that [the First Respondent] was the Principal Solicitor and that neither [the Second Respondent] or [the Third Respondent] were legally qualified. I have made reference to [the First Respondent] as the Principal Solicitor in other sections of my statement…"

Mr Coleman submitted that Ms TC did not address the question of whether the Respondents were partners as a matter of law either in her witness statement or in the letter. She was not qualified to express an opinion on the subject and she appeared to assume understandably but mistakenly that the relationship of partners could not arise because the Second and Third Respondents were not legally qualified. It was submitted that the letter was not material to the question before the Tribunal. As to its alleged suppression, Mr Coleman also submitted that "suppression" connoted deliberate failure by the prosecution to disclose relevant material and this was not a "relevant" document. The First Respondent had the letter since February 2013 and it

was not raised at the last case management hearing. The key paragraph was that referring to legal qualification.

40.7 Mr Coleman invited the Tribunal to find allegation 3.2 proved based on section 1 of the Partnership Act. He submitted that this was not a technical breach but was serious in the context of what went wrong. On the First Respondent's own case through his lack of supervision or oversight 1,962 certificates of insurance were issued without the insurer's instructions and £300,000 to £400,000 of other insurers' money was made to secure a substantial profit for the partnership. The partnership issue was interwoven with the other allegations against the First Respondent

Submissions for and evidence of the First Respondent

40.8 For the First Respondent, Mr Treverton-Jones submitted that any profit-sharing arrangement could come within the definition of partnership unless it was looked at sensibly for the words "in common" to mean something other than an employer/employee arrangement. He referred to section 2 of the Partnership Act:

> "In determining whether a partnership does or does not exist, regard shall be had to the following rules:
>
> …
>
> (2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
>
> (3) The receipt by a person of a share in the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business;
>
> (a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of the business does not of itself make him a partner in the business or liable as such;
>
> (b) A contract for the remuneration of a servant or agent of a person engaged in the business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;"

Section 9 provided:

> "Liability of partners
>
> Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of

> administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts."

Having regard to the wording of the Partnership Act, Mr Treverton-Jones submitted that it was plain that the First Respondent did not intend to practise in partnership because the other two Respondents were not legally qualified; he did not deliberately break the rules in this respect. If he had been acting in partnership, he would have made different arrangements or a series of arrangements regarding the liabilities incurred. The Third Respondent's evidence completely accorded with the First Respondent's case. The Second and Third Respondents lent money to the First Respondent and he also borrowed from the bank. If it had been a conventional partnership all three would have gone to the bank and would be committed if anything went wrong. The First Respondent also gave personal guarantees but there was no suggestion that the other two did. There were no indemnities regarding who would pay what in the event of non-payment or non-repayment. As to the evidence of what was happening in the round, plainly the First Respondent was in charge and Ms TC's letter evidenced this. Whether the Tribunal regarded the letter as important or not was beside the point, Mr Treverton-Jones submitted that it should have been disclosed and the Tribunal should say so. The most important sentence was:

> "I believe I used the term "partner" to differentiate the role of [the Second Respondent and [the Third Respondent] from other employees and reflect their positions at management level."

It was the First Respondent's firm and while the Second and Third Respondents were very senior within the business and the Tribunal might think that far too much responsibility and autonomy was given to them, that did not make them partners. The solicitor RB knew what was happening on the ground; he had previously worked for other personal injury firms, and in his statement dated 22 July 2010 given before the Applicant alleged partnership, he accurately summed up what was going on:

> "The First Respondent] had overall supervision of the work of the firm. A lot of my work was non-RTA work dealing with employers' liability and public liability claims so I used to go mainly to [the First Respondent] for supervision. Friday was generally our day for formal supervision. [The First Respondent] would send me an email containing a list of the files he wanted to discuss and we would go through them and he would put review notes in the "history" screen of each file.
>
> In terms of the management of the firm, I believe that [the First Respondent] generally had the final word, [the Third Respondent], [the Second Respondent], and [the First Respondent] had management meetings together and usually [the First Respondent] would pass on the decisions to the staff. My impression was that he kept a fairly tight rein on the firm, at least until shortly before he left."

40.9 This was a situation where there was a sole practitioner solicitor with two very senior lieutenants entitled to profit share. Then in 2006 the business was incorporated. The Applicant said that the company was being used as a vehicle for partnership but

Mr Treverton-Jones submitted that the company was an entirely different legal entity. Neither the Second nor the Third Respondents were directors or shareholders; they had no ownership or control of the company. How could it be said that they were using the company as a vehicle if they had no legal interest in it or control of it? Furthermore when the firm was sold, all the money from the sale of the sole practice went to the First Respondent. Mr Treverton-Jones submitted that the truth was fairly clear; the First Respondent had been in his early 30s and took up with other people who were more experienced and worldly wise in this area of law and practice. He tried to obey the rules but gave those people too much autonomy. His evidence regarding the visit by the Second and Third Respondents to CK, without inviting him was true. In asserting that there was not a partnership, the First Respondent was not seeking to evade his responsibilities. There was a serious failure of supervision and he accepted that unfortunately that failure ultimately led to a debacle where hundreds of thousands of pounds was taken and not passed on because the insurance policies to which the money related did not exist. The Tribunal would need to decide if this was a result of dishonesty by the Third Respondent.

40.10 Mr Treverton-Jones submitted that the idea of partnership did not occur to the Applicant initially. The investigation started in 2009. The First Respondent's conduct was referred to the Tribunal on 16 April 2010. The Rule 5 statement was dated 7 October 2010 and there was no hint of the suggestion that there was a partnership in that document. The criminal prosecution collapsed in 2012 and the Applicant realised it could not succeed on allegation 1.1 against the First Respondent in respect of payments to CW for false ATE policies and so withdrew that allegation. The first suggestion that there was a partnership was made in mid-2012 because the Applicant wrongly thought that failure of supervision only was not enough to cover the degree of misconduct alleged. No police officer or regulator put this point to the First Respondent during the two years and four months after his conduct was referred to the Tribunal. Mr Treverton-Jones submitted that the partnership allegation was ill founded in law and fact and unnecessary. Allegation 1.2 (which was admitted) provided ample sentencing powers for the Tribunal.

40.11 As to the details of the partnership allegation in the Rule 7 Statement Mr Treverton-Jones submitted as follows:

- The Applicant referred to a note of the meeting between the First Respondent and MA of the firm's accountants held on 4 September 2007 and that the First Respondent described the Respondents as partners but the note also said:

  "These two individuals had previously been self-employed but may now be employees."

- The Applicant also referred to an email of 3 July 2007 to another firm of solicitors in which the Third Respondent explained the nature of the arrangement between Respondents as being one of partnership. Mr Treverton-Jones submitted that was not the case; the Third Respondent stated inter-alia:

  > "API has now changed to API limited, with [the First Respondent] as the director myself as the company secretary. Myself and [the Second

> Respondent] have formed another limited company… We are no longer employees of API but the sole directors of [RST].

- It was also alleged that it was consistent with the Second and Third Respondents being partners that they had authority to negotiate terms with the doctors instructed by the firm without the involvement of the First Respondent. The First Respondent explained to the police that the other Respondents had authority to negotiate but such an arrangement was consistent with an employer/employee relationship as were the answers given to the police by the First Respondent.

- The Rule 7 Statement also referred to the First Respondent describing the Second Respondent's role in the firm in the following terms:

> "He wasn't just a member of staff I mean [the Second Respondent] helped me set up the business… he set up the business with me, he was taking an equal share of the remuneration, he was signing off his cheques I mean this, he was not just an employee of the firm he, he was my right-hand man."

The Rule 7 Statement did not include the words at the beginning of the answer "I entrusted him with a lot of duties" which Mr Treverton-Jones submitted was clearly the language of an employer/employee relationship particularly when taken with the comment "he was not just an employee".

40.12 Mr Treverton-Jones referred the Tribunal to the witness statement made under the Criminal Justice Act by Ms TC. She held an administrative post at the firm. In her statement she referred to the Second and Third Respondents as "partners". Her letter dated 25 January 2013 attached to his skeleton argument amended and explained what she had said. In addition to what was quoted by Mr Coleman above, Ms TC also said:

> "My statement was made some time ago and I was under a lot of stress when I made my statement. I recall that I had to work through the night with my solicitor and barrister to prepare it.
>
> I believe I used the term "partner" to differentiate the role of [the Second Respondent] and [the Third Respondent] from other employees and reflect their positions at management level.
>
> Therefore I wish to confirm that my intention was not to convey that [the First Respondent, [the Second Respondent] and [the Third Respondent] were legal partners in a law firm and that this was not the status portrayed to staff or clients during my time with the firm. I also confirm that as the case is now closed I have no wish to be further involved in this matter…"

Mr Treverton-Jones submitted that it was strange that this letter which was written in January 2013 had at no stage been disclosed to the First Respondent's representatives or to the Tribunal. At the case management hearing on 5 March 2013, it was made clear that the First Respondent did not wish Ms TC to attend for cross-examination.

Somewhat incredibly, the Tribunal might feel, the Applicant had not disclosed her letter, although it must have been in its possession for many weeks. Mr Treverton-Jones submitted it was highly material to the case made against the First Respondent and expected that the Tribunal would seek a full explanation from the Applicant's representatives as to why if as the First Respondent understood to be the case it was duly received, the document was suppressed. Basic principles of fairness required the prompt disclosure by a prosecutor of such documents. Mr Treverton-Jones rejected Mr Coleman's explanation in his outline of the Applicant's opening and considered it astonishing. It was a coincidence that the First Respondent knew that the letter had been sent. Mr Treverton-Jones invited the Tribunal to say that what had happened had been entirely wrong.

40.13 In evidence, the First Respondent testified that the three Respondents founded the firm together. From 2002 onwards all three Respondents understood that the Second and Third Respondent had no liability for losses and had no ownership but could share equally in profits. They had received profits at SR as well. There was no document showing that they were or were not responsible for losses. He could not remember if he had told the Law Society that there was to be a three way split of the profits when he sought its advice.

40.14 The First Respondent testified that he was the principal solicitor whose role was to ensure the firm ran properly and that it was compliant with the rules and law. He was a long serving member of the Law Society's Personal Injury Panel and had been on the Direct Line panel. He was the money laundering officer. His role evolved as the firm did. He did a lot of fee earning, mainly dealing with serious and catastrophic injury cases. He vetted cases offered to the firm by claims management companies; He carried out a regular and vigorous audit of files every few months. He did not have a lot of contacts in the industry; the other Respondents did. The First Respondent understood the role of the other two Respondents at the firm to be senior but his role as principal was more senior. The Second Respondent's initial role was as a fee earner but later it became similar to that he had undertaken at SR. He introduced claims management companies to the firm. The Third Respondent undertook office management and was responsible for IT and was also a fee earner. At SR he had a lot of experience in human resource matters and running the office. The Second and Third Respondents were senior in terms of experience and the contacts they brought to the firm.

40.15 The First Respondent could not remember if the Second and Third Respondents had contracts of employment; it was a long time ago. They were all engaged on a PAYE basis for several years from 2002 and for the first few years no-one took a profit share or possibly only a small profit. From 2004 to 2006 he was the sole trader and took profit by way of bonus, then from 2006 onwards by way of dividend; the other Respondents could not do that because they were not shareholders. They took profit from the other businesses. He could be wrong about all this. He confirmed that it was agreed that each would take 33% of the firm's profits and he thought that this was acceptable under Rule 7. The First Respondent did not think that the Second and Third Respondents had actually received a one third share of the profit from the firm; they might have, but it appeared from the emails they also took a share from the other businesses.

40.16 As to funding the firm, the First Respondent testified that the Second and Third Respondents both made loans to him personally for the business. The Second Respondent made an unsecured loan of £40,000. It was not subject to the payment of interest and to be paid back as soon as possible. The First Respondent could not remember whether or not there was a written loan agreement. It was repaid in 2004 or 2005. The Third Respondent similarly lent £100,000. The First Respondent did not recall if he had told the Law Society about the loans when seeking advice. The First Respondent testified that he had taken several very significant loans for which he was liable as a sole proprietor to expand the business of the firm. He had guaranteed several smaller loans to the firm totalling between £5,000 and £7,000. He had never seen the document provided by JF headed up "API Solicitors Group" before seeing it in the documents attached to the Rule 5 Statement. As to the 4 September meeting note, stating that "The company was set up in late 2006 and was the result of a transfer of business from a partnership into the company.", MS had just taken over work for the firm and he had the facts wrong. The First Respondent also disputed the accuracy of the figures on the document relating to API Group Profits which JF had produced from the firm's papers; the firm had never made a profit of £649,526. He could not say whether it was correct or not that his wife had received £21,916 from RST and £27,649 from CW while the Second and Third Respondents were recorded as receiving £91,914 each from RST and around £27,650 from CW. As to the business referred to as "Premier" he did not think it ever made profits; it was in the name of the Second and Third Respondent and his, the First Respondent's wife and she represented his interests but according to the document it made a loss. The First Respondent submitted in respect of the credibility of this document that JF had been struck off in the middle of the previous year for dishonesty and the firm ISS had later been intervened into. It had been agreed at a case management hearing that it was not necessary for witnesses to be called but the First Respondent would have wanted to cross-examine JF about the assertions made in his statement regarding this document.

40.17 The First Respondent did not consider that the Second and Third Respondents had exceeded their authority when they went to see CK without telling him beforehand. Similar things had happened at SR. The Third Respondent testified that the First Respondent had not accompanied them because he said he did not know CK and left it to the other two Respondents but that he did know of the purpose of the meeting. He could not have seen them leaving early because the meeting took place before the Second and Third Respondents were working at the office. This version of events was disputed by the First Respondent in his statement. He considered that while all the elements of the definition of a partnership applied to the relationship of the First, Second and Third Respondents, it was not a partnership.

Decision of the Tribunal regarding allegation 3.2

40.18 The Tribunal considered the evidence including the oral evidence of the First and Third Respondents, the submissions for the Applicant and for the First Respondent and by the Third Respondent. Particularly, the Tribunal considered the definition of partnership in the Partnership Act 1890 and all the other evidence about the nature of the relationship between the three Respondents. The Second Respondent had admitted that the business of the firm was conducted as a partnership in his RSA but the Tribunal did not regard that as conclusive. An issue had been raised about alleged suppression of a letter dated 25 January 2013 from Ms TC to Bevan Brittan. The

Tribunal found no evidence of a deliberate decision not to put this letter into the trial bundle and therefore of its suppression by the prosecution did not weigh in the Tribunal's discussions. The Tribunal did not attach a great deal of weight to the document relating to API Group Profits; its provenance was unclear. The Tribunal was satisfied that the loans from the Second and Third Respondents to set up the business were made to the First Respondent personally and he also borrowed from the bank. The loans from the Second and Third Respondents had been repaid. When the First Respondent sold the practice, all the proceeds of sale were payable to him. No evidence had been brought that the Second and Third Respondents were obliged to share in the firm's losses. The Tribunal was satisfied from the evidence including that of the Third Respondent that he had reported to the First Respondent when he was in trouble, that the First Respondent had the final word in the firm. The Tribunal found that a profit-sharing arrangement existed but taken together with all the other evidence the Tribunal was not satisfied to the required standard that a partnership existed between the First, Second and Third Respondents. Accordingly allegation 3.2 was not found proved.

41. Allegations against the Third Respondent

Allegation 2.1: He made or caused to be made payments on client matters to a third party, CW, for false after the event insurance policies;

Allegation 2.2: In the event of a successful claim, the cost of the false after the event insurance policies was sought as a disbursement from third party insurers;

Allegation 2.3: CW was a partnership composed of Robert Scott (the Third Respondent) RP (the Second Respondent's wife) and BT (the First Respondent's wife);

The findings in respect of these allegations are recorded together as they were interrelated and arose out of the same facts.

(Dishonesty was alleged in respect of allegations 2.1, 2.2 and 2.3 by way of allegation 2.4. The findings in respect of allegation 2.4 are reported separately below.)

41.1 For the Applicant, Mr Coleman submitted that the Third Respondent had not advanced a positive case; he answered "no comment" to all questions put to him during his police interview. The key points supporting the allegations were: he was the manager of RST and CW and dealt with all accounting matters. CW received payments from defendant insurers in 862 cases without accounting to I Ltd; this was evidenced by the exemplified cases of Mrs K and Mr P where the Tribunal had seen both bogus policy documents and evidence that CW received payment from insurers. It was submitted that the Third Respondent must have appreciated that CW was not accounting to the insurers (I Ltd or ACPS their agents) and that authority to issue the policies had been withdrawn. If the Third Respondent had acted honestly and in good faith he would have tried to account to I Ltd and that would have flushed out that the authority had been withdrawn. The evidence that authority had been withdrawn was the witness statement of GR which explained that the alarm had been raised when A Insurance Ltd checked that I Ltd were on risk in particular cases. The Tribunal was referred to the evidence of the First Respondent regarding the Third Respondent's role. In his witness statement in these proceedings, the First Respondent said:

> "Once [the firm] sent the IP Tax and Deposit and registered the policy with [CW], it was the responsibility of [CW] and in particular [the Third Respondent] as the managing partner to register the policy with ACPS and [I Ltd]. No communications were ever received by [the firm] from RST, [CW], ACPS or [I Ltd] to confirm that the policies were registered. I do not know whether ACPS received confirmation from [I Ltd] that the policies were on registered [sic], or likewise whether RST/ [CW] were notified by either [I Ltd] or ACPS.
>
> [The firm] never retained the money for the insurance premium received from the third party insurer and it was always paid to RST or [CW]."

41.2 Later in his statement the First Respondent said:

> "[The firm] began to use the BeWise [sic] policy in or around August 2004 but following an internal audit of files it was discovered that fee earners were not taking out the ATE insurance policies for clients as they were forgetting to go onto a separate website to apply for the certificates. Clients were therefore been left with no ATE insurance cover. Within a few months of using the BeWise policies [the firm] therefore reverted back to using the automated ACPS self certification system. [The firm] had received no correspondence that the [I Ltd]/ACPS scheme had ceased. I had no reason to believe that the scheme was not in existence and I was led to believe by [the Third Respondent] that the firm could revert back."

and

> "I had at times prior to March 2008 (when it was first alleged that policies were not in place or that the certificates issued had not been put on risk) believed that the ATE insurance certificates were valid and that insurance had been affected with [I Ltd]. [The firm] paid over all monies received by it from third party insurers in respect of [I Ltd] ATE premiums to [CW] who was responsible for placing the policies on risk and paying the broker ACPS…"

41.3 Mr Coleman submitted that the Third Respondent was running or managing CW which was receiving money from defendant insurers when they settled; CW was responsible to account to I Ltd or via ACPS so the Third Respondent must have appreciated in 2004 that I Ltd was not being accounted to and the money was not being passed on but it was not until 2008 after 862 cases had been settled and 500 policies had been raised that the practice came to an end and then only because A Insurance Ltd had raised queries. Mr Coleman submitted that on the evidence, the Tribunal could safely and properly uphold the allegation and that both aspects of the test for dishonesty in the case of Twinsectra Ltd v Yardley 2002 UKHL 12 were satisfied:

> "Before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

41.4 The Third Respondent testified that he had not known that I Ltd's authority was withdrawn in 2004. He did not accept that 1,962 policies had been issued falsely or not on behalf of I Ltd. Possibly the insurers had said this on the basis that the deposits had not been paid. He accepted that from 2004 on this had not happened. He agreed he was responsible for administering the policies but every fee earner in the office issued them. From 2002 to 2004 there were occasions when the deposits would sit in the RST account for six months or so and then he prepared and sent a bordereau by email to CK once every six months and sent a bulk payment. The system was very slack. Failure to pay would not lead to the policy lapsing because the system was so lackadaisical. He asserted that no one from I Ltd was checking. He agreed however that I Ltd might not have been aware of his existence. (However it was set out in GR's statement and pointed out by Mr Coleman that "The arrangement between ACPS and CW/RST lasted until June 2004. [I Ltd] received declarations and payment of commission for all the policies issued during this period.")

41.5 The Third Respondent referred the Tribunal to something said by his solicitor during the course of his interview with the police:

> "And one example of how things have changed was that in the meeting on the 2nd of December, you were saying at that stage what you suspected was that some certificates had been written purporting to be from [I Ltd], but [I Ltd] had said that it hadn't issued the certificates and therefore all the certificates were forgeries and you were saying to me in the corridor just now that actually that's not what you now suspect it's something entirely different."

The Third Respondent felt that it was very unusual that GR's statement was not given until a year after A Insurance Ltd's enquiry. He denied that he stopped remitting the deposits because the authorisation had been withdrawn. He denied that he had stopped notifying CK because of a desire to keep the benefit of the premiums for himself and others in the firm. The Third Respondent confirmed that he had distributed the 10% to the partners in RST/CW which should have been paid across by way of deposit. They were self-insuring and the First Respondent said that they would never pay out on these policies. The Third Respondent confirmed that he was aware that while the deposits were not being paid the firm issued I Ltd policies and that during that period the defendant insurers in 832 successful cases paid the firm for policies an amount totalling around £335,000. He was aware at the time that none of that money had been accounted for to I Ltd. He had no time to process the payments and told the First and Second Respondents so (see under allegation 2.4 below.).

41.6 The Tribunal considered all the evidence including the oral evidence, the submissions for the Applicant and for the First Respondent and the submissions of the Third Respondent. The Tribunal did not consider it necessary to determine whether I Ltd did notify the cessation of the delegated certificate scheme successfully to the firm. The important point was that the Third Respondent was well aware that he had ceased to register the issue of certificates with CK. The Tribunal found proved on the evidence that the Third Respondent had made or caused to be made payments on client matters to a third party CW for false ATE insurance policies. It was his function to ensure that the insurance arrangements and payments in respect of them operated properly and he failed to do so (allegation 2.1). The Tribunal also found proved on the evidence that in

the event of a successful claim, the cost of the false ATE insurance policies was sought as a disbursement from third-party insurers (allegation 2.2). It was not disputed that CW was a partnership composed of the Third Respondent, the Second Respondent's wife and First Respondent's wife and the Tribunal found this to be proved on the evidence (allegation 2.3). However the Tribunal considered allegation 2.3 to be an allegation of facts supporting allegations 2.1 and 2.2 rather than a free standing allegation. Accordingly the Tribunal found allegations 2.1, 2.2 and 2.3 proved on the evidence.

42. Allegation 2.4: The Third Respondent's conduct as set out above was dishonest.

(See above for the submissions for the Applicant.)

42.1 In evidence, the Third Respondent stated that from around 2005 he was very much concerned with the running of the firm and CW which was primarily set up as an agency to go out to accident locations to prepare a locus report, photographs, sketch plans and witness statements and court forms for other firms. All payments to CW were processed by way of a deposit payment scheme which was meant to be passed by CW to I Ltd. At that time the Third Respondent had family health issues and with his workload everything was getting on top of him. His main area of concern was to make sure that the firm's accounts were in order and that fee earners sent out a cheque when they were meant to. He had no time to go back and see to the CW paperwork. At the start of 2006, he realised that payments had not gone to CW from the firm for completed cases. He had not even paid I Ltd the deposit. The monies were just sitting in CW's accounts. The Third Respondent spoke to the Second Respondent about it and he said they should speak to the First Respondent and agree the best procedure. The Third Respondent had spoken to the First Respondent and explained his situation and that he had not processed any payments with the result that the cash was in the CW accounts. The First Respondent said that he should get in touch with CK and everything would be fine and not to worry too much about it. The Third Respondent contacted CK's wife towards the end of 2006 and found out that he had had a heart attack. CK was his only point of contact with ACPS; he did not know anyone else. He relayed the problem to the other Respondents who said "let's leave it as it is" and when CK gets back to work they could get in touch with him and that was the last that the Respondents had dealt with it. Then in February 2008, the Third Respondent was contacted by I Ltd and asked about a couple of policies in respect of which they were saying they were not on risk. In May 2008, the FSA became involved and the Respondents took legal advice which included that they should not send money back as it might have been classed as money-laundering. The Third Respondent testified that he then went on two weeks holiday and while he was away he was contacted by the First Respondent asking for all the passwords for the firm's systems, email and the firm's website. He later found out during civil proceedings that the website has been changed and that his name was now at the top and reference to the First Respondent's name was changed to say that he only undertook PI cases. The Third Respondent had learned from the server company that the First Respondent had arranged for the changes by email. He did not accept that the I Ltd policies were false; he had never been told not to use them. They all discussed what was for the best and his view was that they should run down the practice and shut up shop. Some weeks before that he had received a telephone call from JF and while the Third Respondent did not wish to work with him again, it was agreed that he was the only likely candidate to buy the

practice from the First Respondent. The Third Respondent denied dishonesty; he did not feel that non-payment to I Ltd was dishonest; it was an error which he fully reported to his superiors and in respect of which he had acted accordingly. The Third Respondent cross examined the First Respondent about the extent of the Third Respondent's responsibility for the accounts including VAT and PAYE within the firm, weekly reconciliations, ensuring client files were in balance and auditing files for his own team of fee earners by way of showing that he had been trusted by the First Respondent who stated that most of this work had been done in conjunction with others or by the firm's accountants.

42.2 The Tribunal considered all the evidence including the oral evidence, the submissions for the Applicant and for the First Respondent and the submissions of the Third Respondent. The Tribunal accepted the oral evidence of the Third Respondent that at a certain point in 2004 owing to pressure of work and family difficulties, the Third Respondent ceased to register policy certificates issued with CK. He continued to gather in the money and paid it to CW. The Third Respondent made no effort to contact I Ltd direct, having always dealt through CK. In his statement in these proceedings, the First Respondent said:

> "I do recall speaking to [the Third Respondent around 2007], as it came to my attention that we were making overpayments on some files to [CW] (namely we were paying the full amount of the premium at the end of the case not having deducted the deposit and IP tax that had been paid at the outset). [The Third Respondent] explained to me that the ACPS policy had now become fully deferred (similar to the Bewise scheme) but on occasions the system did not calculate the correct final payment due and that file handlers or accounts would need to check the ledger screen. Around January 2007, [the Third Respondent] sent an email to all fee earners explaining to them that as the firm used to make an upfront payment in respect of the deposit and IP tax on ACPS policies the fee earners should check the position in respect of each case they were working on to check whether a deposit had been paid as this would need to be deducted from the premium payable at the conclusion of the matter. I believe that e-mail was prompted by the discussion between the Third Respondent and myself… I did not ask [the Third Respondent] how the policies were being registered and I accept in hindsight that I should have, as I trusted he was carrying out his duties."

Later in his statement the First Respondent said:

> "Around April 2008, eventually the Third Respondent advised myself and [the Second Respondent] that he had lost contact with [CK] and that the certificates had not been registered by CK with ACPS or [I Ltd] since late 2005. He advised that he thought [CK] had a long-term illness and had tried to call him on his mobile and Bewise without success. I can recall him saying that he had even left a message with his wife …(which is how I later came to know that [the Third Respondent] also had a personal/family relationship with CK) Due to this relationship, the Third Respondent believed as he put it "sort things out when he got hold of him".

The Third Respondent testified that he informed the First and Second Respondents about his omissions because he did not know what to do. The Tribunal accepted his evidence on that point. The Tribunal found that the most important voice in determining what happened next was that of the First Respondent who was the person controlling the firm. When it became apparent that CK was ill and absent from work, the First Respondent instructed the Third Respondent to do nothing until CK recovered and returned to work at ACPS. The Tribunal applied the test in the case of Twinsectra. The Third Respondent knew that CW was receiving money to which it was not entitled and that in the event of a successful claim the defendant insurers were paying for policies which had not been registered with the insurer. The Tribunal considered that in acting in that way, the Third Respondent's conduct was dishonest by the standards of reasonable and honest people and that the objective test in Twinsectra was satisfied. However the Third Respondent went to the First Respondent because he did not know what to do and passed the problem to the First Respondent who advised a course of inactivity for the present. The Third Respondent followed those instructions. The Tribunal did not find proved to the required standard that the conduct of the Third Respondent had been knowingly dishonest and the subjective test in Twinsectra was not satisfied. Accordingly the Tribunal did not find that there had been dishonesty in respect of allegations 2.1 and 2.2. Allegation 2.3 related to facts which were not disputed and the Tribunal did not find that there was evidence of dishonesty against the Third Respondent in respect of CW. Allegation 2.4 was found not proved

43. **Allegation 4.1: He received and retained and/or obtained (directly or indirectly) the benefit of commission payments exceeding £20 which arose from work carried out on behalf of clients;**

43.1 For the Applicant, Mr Coleman referred to the Third Respondent's statement where he said:

> "I accept this breach.
>
> When the business was set up, all 3 of us went to Bradford to be trained on the system used by Eclipse Legal Systems and also to meet [S], a medical agency. Me or [the Second Respondent] spoke to RJ the owner of [S] about commissions but [the First Respondent] spoke to him on his own and he confirmed that [S] would reimburse £75 for every successful payment made for a client's medical report.
>
> I was unaware of commission payments until this point as I had never heard of them or received them in my previous 2 jobs. I presumed he knew whether this was acceptable or not and as he wanted to proceed with, [sic] I did not question these payments. [The First Respondent] was in charge of all client letters and their content and also all legal aspects of the firm. Indeed he said it was very common in this industry.
>
> I was never aware that client permission was needed for such commissions.
>
> I confirm that I did receive these commission payments from RST and CW…"

43.2 The Third Respondent admitted allegation 4.1 in respect of both the payments related to ATE insurance and the payments from doctors. In evidence, the Third Respondent stated when the firm was set up, he already knew CK of ACPS. The Third Respondent cross examined the First Respondent about the meeting with CK which the First Respondent said he had not been invited to attend. The First Respondent accepted that he might have got the date wrong in his statement and that the meeting did not take place in August 2002. The Third Respondent put it to him although the First Respondent said that he had only been given an outline of what happened at the meeting while the Third Respondent maintained that full disclosure about the meeting had been given at their next weekly meeting. The Third Respondent stated that the confidentiality agreement had only been signed with CK because the latter was on "garden leave" and so not supposed to be starting a business. CK was classed as an insurance broker in terms of his work with SR. As a result of their meeting they agreed to set up RST mainly to enable the Second Respondent to pay for referrals as it was not possible to pay for cases at the time and it was necessary to deal via a marketing company. After a while, the Third Respondent agreed the move to CW because of the abolition of the referral code. There was no need for a marketing company and he did not want a lot of marketing companies at one time. In his statement, the Third Respondent said:

> "Commission payments were widespread in the industry and still are. I did receive these payments but I was never aware that the client had to be informed. [The First Respondent] was in charge of this area and he never asked me to amend the client care letter."

43.3 In cross examination by Mr Coleman, the Third Respondent confirmed that if doctors were asked why they were paid, it would be because the firm sent them work. Once they had been paid for the reports then they send money to RST/CW. He had not received any training from the First Respondent about the firm's duties to the client or about secret profits. When JF arrived he asked the Third Respondent about Rule 7 and told him to amend the client care letter because JF wanted all commissions to go to the firm and not to marketing companies and told the Third Respondent that he wanted to get it right. The Third Respondent then amended all the letters. He agreed that the gist of his evidence was that having met CK (about payments, for the first time) in May or June 2002, RST was set up mainly for the firm to pay for referrals because they could not do this directly. The Third Respondent testified that he had been told this by the Second Respondent. He understood that it was industry practice; the First Respondent said that it was fine and so they did it. RST did not do a great deal really in terms of conducting business.

43.4 The Tribunal considered all the evidence including the oral evidence, the submissions for the Applicant and for the First Respondent and the submissions of the Third Respondent. For the reasons set out in respect of allegation 3.1 above in respect of the First Respondent, the Tribunal found that the Third Respondent received and retained and/or obtained (directly or indirectly) the benefit of commission payments exceeding £20 which arose from work carried out on behalf clients and found allegation 4.1 proved indeed it was admitted.

44. Allegation 4.2: Between 2002 and 2008, he acted as principal of a solicitors' practice, despite being unqualified and unauthorised to act as the principal of a solicitors' practice.

44.1 For the Applicant, Mr Coleman submitted that Third Respondent denied the existence of partnership on similar grounds to those relied on by the First Respondent. He adopted the contradictory stance that he did not profit share but was entitled to one third of the profits. He acknowledged that staff referred to the three Respondents as partners. The Third Respondent assumed that for the Applicant to establish a partnership it was necessary that all the individuals did the same thing, that is all wore legal hats. The Applicant accepted that all the Respondents had different roles. The First Respondent as a qualified solicitor undertook some aspects while the Third Respondent was very strong on IT and dealt with insurers. It was the Applicant's case that all carried on business in common with a view of profit and what the Third Respondent said did not cut across the Applicant's case; he just disputed the conclusions to be drawn. In his statement in these proceedings Third Respondent said:

> "I do not accept this breach.
>
> Money was invested by all 3 of us. We only had a loan agreement in place. I was never and would never have been liable for any losses the firm made. I did not profit share. I did however have a contract of employment that entitled me to a bonus representing one third of the firm's profits.
>
> Whilst staff referred to us as partners, they were aware that [the First Respondent] was the principle [sic] and indeed the only director when it was changed to a limited company. As I said, [the First Respondent] was totally in charge of legal aspects. [PB], the senior solicitor in the office was fully aware of the legal position of all 3 of us and he was fully aware that all legal issues within the firm were the sole responsibility of [the First Respondent]. I was mainly in charge of the accounts and ensuring client account was in balance.
>
> Weekly meetings took place to discuss cases and decide on tactics to progress cases and some serious injury matters. All 3 of us discussed files and the end decision was made by [the First Respondent]. We also checked letters and I was instructed to amend accordingly or create new ones or create a system to speed up processes.
>
> Whilst I processed all accounts and prepared account reports, these were all signed by [the First Respondent] on a weekly basis. He also signed the bank reconciliation, all client transfers, all office balance reports, he was a signatory on the client account, and he checked all court proceedings and authorised them."

44.2 In evidence, the Third Respondent testified that when the firm was set up he agreed to remortgage his house and invest £100,000 in the business. The Second Respondent in fact invested £50,000 rather than £40,000 as the First Respondent said. The First Respondent had come up with the name Accident and PI, hence API. In cross-examination by Mr Treverton-Jones, the Third Respondent confirmed that he and the Second Respondent made loans to the First Respondent which had been repaid

monthly from the first month that they worked at the firm. He was told that he could not be in partnership with solicitors and agreed that he was an employee within the structure in which the First Respondent was the sole principal. He was aware that the First Respondent borrowed money. The First Respondent made no attempt to involve him in documentation related to the borrowing and the risk was the First Respondent's alone. He also confirmed that when the business was sold the price of £330,000 had to be paid to the First Respondent and that the Third Respondent and the Second Respondent had no interest in it. The Third Respondent clarified regarding the document concerning API Group Profits, that he had seen something similar before and it looked as if it came from the accountant. He did not remember regularly receiving a copy. He did not carry out the bookkeeping for RST. The First Respondent did it and there was an accountant. At the end of the year, the profits of all the businesses were added and the accountant worked it all out. He advised that that was the most tax efficient way to do it. The accountant would not be aware that payments were not being made to the insurer.

44.3 The Tribunal considered the evidence including the oral evidence of the First and Third Respondents, the submissions for the Applicant and for the First Respondent and by the Third Respondent. For the reasons set out under allegation 3.2 above against the First Respondent, the Tribunal did not find allegation 4.2 proved against the Third Respondent.

Previous Disciplinary Matters

45. None against the First Respondent

46. None against the Third Respondent

Mitigation

<u>First Respondent</u>

47. For the First Respondent, Mr Treverton-Jones drew the attention of the Tribunal to the background of the First Respondent and his struggles to make it in the legal profession. He was evidently good at his job but possibly should not have run a firm at the material time. He was a good family man with children who did not set out to break the rules and Mr Treverton-Jones asked the Tribunal to find as a fact that that was the case. He was young and inexperienced and put himself in the hands of others who wittingly or unwittingly led him astray. He contacted the Law Society for guidance on the structure of the firm and did his best to run a compliant business. The failings of the First Respondent were twofold; he gave too much responsibility and autonomy to the Second and Third Respondents and he dealt with commissions in a way that was unnecessary as he could have sought the informed consent of clients. Instead he set up a system for commission income to be channelled to third parties, which he believed did not infringe the rules but which the Tribunal had found was a breach. Mr Treverton-Jones referred the Tribunal to the subsequent history of the sale of the firm, the police investigation and litigation. Ultimately in order to extricate himself the First Respondent had to pay costs of £289,000 by way of a second charge over his home. For the better part of five years his life had been dominated by these issues. He sold his practice but did not get much of the money. He had made

catastrophic decisions and could not find any work in the profession while he was being prosecuted by the police and the Applicant. He admitted the failure of supervision from the outset. Mr Treverton-Jones also referred the Tribunal to letters from the First Respondent's GP dated 10 June 2011 and from a Primary Care Counselling Service dated 16 January 2012. The GP's letter stated that he was suffering from clinical depression. Mr Treverton-Jones provided information about the First Respondent's financial circumstances including the value of his jointly owned property; he had no income and was dependent on his wife's earnings for which the prospects were not good. He had no savings. He had placed a statement before the Tribunal with financial information. His tax return for 2011/2012 showed that he had earned no income. The costs of the First Respondent's representation at this hearing were being funded by family. Mr Treverton-Jones asked the Tribunal to permit the First Respondent to take up his legal career again at some time in the future; he had no means to pay a fine and the area of law in which he practised, personal injury was presently shedding labour. The First Respondent apologised to the Tribunal for what had occurred.

Third Respondent

48. The Third Respondent informed the Tribunal that he was married with two small children and lived in house jointly owned with his wife. Following discussions in July 2008 he was asked to sign an indemnity in the amount of £75,000 to protect the First Respondent to ensure that JF paid the First Respondent under the share purchase agreement. He believed that the Second Respondent had also signed such an agreement. JF decided to stop paying the First Respondent and JF suspended the Third Respondent indefinitely from the firm in November 2008 and sacked him. The Third Respondent had been sued by the First Respondent in 2008 on the indemnity along with the Second Respondent and JF. A few months later an insurance company obtained a freezing order in the High Court in an action demanding repayment of monies it had paid to the firm. The case has been settled but JF had sued the Third Respondent resulting in another freezing order. He had been dragged into the dispute between the First Respondent and JF. As a result of those proceedings he had a liability of £249,000. So far as he was concerned all the insurers who had been victims of the nondisclosure in respect of the insurance certificates had been repaid. The costs of the insurance company's action had not been finalised. The Third Respondent had asked his father to buy half of his house by way of a declaration of trust. For 18 months he had not been paid by JF and had no job. His employment tribunal actions against JF and other litigation had all been rolled up into one settlement in order to stop wasting money which he did not have. He had walked away with nothing. It had been a very distressing time. He now worked at a children's play centre and earned around £20,000 gross. He enjoyed the job and at the outset of these proceedings gave the Applicant his word he would never work in a law firm again; this was an offer he was still prepared to make. He had suffered five years of financial and emotional turmoil and provided a statement about his current financial position.

Sanction

First Respondent

49. The Tribunal had regard to its own Guidance Note on Sanctions and to the mitigation which had been made for the First Respondent. In assessing the seriousness of his misconduct, the Tribunal bore in mind that his admitted failure to supervise had led to a catastrophe at the firm. In terms of culpability he was a sole practitioner who when he became aware of the situation had turned a blind eye to the fact that the firm was invoicing and taking for insurance policies which did not exist. He had been very happy to receive his share of the commission monies. In terms of the harm caused, the insurance industry had paid out a considerable amount of money in respect of the 832 cases in respect of which claims were made against defendant insurers. The conduct had occurred over a period of time. The Tribunal had not found him to be a convincing witness and he showed a complete lack of insight in respect of his conduct in respect of taking commissions; he had been party to setting up entities designed to circumvent the rules. In terms of mitigating factors, the First Respondent had no experience of managing a business or a practice and the losses had been made good but only because the aggrieved parties had taken proceedings. He had admitted his failure to supervise from the outset. The Tribunal bore in mind that he was young and inexperienced when he set up the firm and had paid a heavy price for his mistakes. The Tribunal considered that the First Respondent's misconduct had been serious but not sufficiently serious to merit the ultimate sanction of striking off. The Tribunal determined that a period of suspension was appropriate to mark the seriousness of the misconduct but it took into account that he had not worked for a period of five years and ordered that he be suspended for one year.

Third Respondent

50. In respect of section 43 of the Solicitors Act 1974 as amended the Tribunal bore in mind Mr Justice Ouseley's statement in the case of Ojelade v The Law Society [2006] EWHC 2210 (Admin): "the starting point is that a section 43 order is not a punishment". The Tribunal agreed with Mr Coleman's submissions that the Third Respondent had been a party to serious breaches of the rules by a solicitor, the First Respondent, and acted in breach of the duties he owed clients as a fiduciary under the general law. The Tribunal was particularly concerned that defendant insurers paid substantial amounts of money, running into hundreds of thousands of pounds, in respect of non-existent ATE insurance. The Tribunal considered that for the protection of the public and the good reputation of the profession it was appropriate for a section 43 Order to be made against the Third Respondent.

Costs

51. Mr Coleman applied for costs in the amount of £80,587.88 after the deduction of £12,000 which the Second Respondent had agreed to pay under the RSA. Mr Coleman submitted that this was a complex case especially in terms of the documents with 1,000 pages of evidence which the Applicant's solicitors had sifted out from 5,000 pages of police evidence. There had been a distinct lack of primary documentation and it had not been easy to piece the case together. He submitted in respect of the Third Respondent that it had been proper to bring the case to the Tribunal notwithstanding his offer of settlement (see below). He also reminded the Tribunal that it had found that by the standards of ordinary and reasonable people that the Third Respondent's actions had been dishonest but they had not been so according to his own notions at the time. A huge amount of money had gone missing and

Mr Coleman asked that the Tribunal not make any reduction in costs awarded to the Applicant in respect of the Applicant not having succeeded in its allegation of dishonesty. It was a matter for the Tribunal whether or not the order for costs should be enforceable. He also asked the Tribunal to make a similar order to that made by another division of the Tribunal in the case of Alberici Case numbers 10603/2010 and 10750/2011 that is an order for interim payment to be made where costs were not to be enforced save by an application to the Court for a Charging Order in respect of the interim costs, without permission of the Tribunal.

52. For the First Respondent, Mr Treverton-Jones referred the Tribunal to the information provided in respect of his difficult financial situation.

53. The Third Respondent informed the Tribunal that on 13 February 2013 he had made an offer to Bevan Brittan that if he admitted the allegations in respect of commission and working in partnership and the Applicant withdrew the allegation of dishonesty, he would pay a similar amount in costs to that which the Second Respondent had agreed to pay under RSA. He had tried to save the costs of the hearing. The Applicant had refused his offer because it required an admission of dishonesty. He also asked the Tribunal to bear in mind his financial circumstances in making any order for costs.

54. The Tribunal summarily assessed the total costs of the case at £39,000 including those already agreed to be paid by the Second Respondent. It considered that the amount claimed was somewhat disproportionate even allowing for the volume of papers and the nature of the case. The Applicant had not proved its case in its entirety against either the First or the Third Respondent and had withdrawn one allegation against the First Respondent and the Tribunal took this into account in arriving at its determination. The Tribunal also bore in mind that the First Respondent was the controlling solicitor at the firm and that his culpability was therefore somewhat greater than that of the Third Respondent and felt that this should be reflected in the costs ordered. The Tribunal ordered that the First Respondent pay costs fixed in the sum of £15,000 but took into account his financial circumstances and ordered that costs not be enforced without leave of the Tribunal. In respect of the Third Respondent, he had provided the Tribunal with information about the equity in his property which was still considerable and the Tribunal determined that an order should be made against him in the sum of £12,000. The Tribunal did not consider it appropriate to make an order in the same terms as in the case of Alberici in respect of a charging order application as sought for the Applicant.

Statement of Full Orders.

55. First Respondent:

The Tribunal Ordered that the Respondent [NAME REDACTED], solicitor, be suspended from practice as a solicitor for the period of one year to commence on 13 March 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000 such costs not be enforced without leave of the Tribunal.

56. Third Respondent

The Tribunal Ordered that as 13th March 2013, except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Robert Scott

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Robert Scott

(iii) no recognised body shall employ or remunerate the said Robert Scott

(iv) no manager or employee of a recognised body shall employ or remunerate the said Robert Scott in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Robert Scott to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Robert Scott to have an interest in the body;

And the Tribunal further Orders that the said Robert Scott do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00.

Dated this 7th day of May 2013
on behalf of the Tribunal

A.G. Gibson
Chairman