SOLICITORS DISCIPLINARY TRIBUNAL

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<tr><td><u>IN THE MATTER OF THE SOLICITORS ACT 1974</u></td><td align="right"><u>Case Nos. 11849-2018</u>
<u>and 11802-2018</u></td></tr>
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BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
EHSAN KABIR	First Respondent
[SECOND RESPONDENT]	Second Respondent

Before:

Mr R. Hegarty (in the chair)
Mr M. N. Millin
Mrs N. Chavda

Dates of Hearing:
6 to 15 March, 3 to 5, 10 to 11 and 18 June 2019

Appearances

Chloe Carpenter, counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH, Instructed by the Solicitors Regulation Authority of The Cube,199 Wharfside Street, Birmingham,B1 1RN, for the Applicant.

Tim Nesbitt QC, counsel, of Outer Temple Chambers, 222 Strand, London, WC2R 1BA, Instructed by Murdochs Solicitors of 45 High Street, Wanstead, London, E11 2AA, for the First Respondent.

The Second Respondent did not attend and was not represented between 6 and 15 March 2019. She attended and represented herself on 3 to 5 in person and on 10 to 11 and 18 June 2019 by telephone.

JUDGMENT

Allegations

1. The allegations against the First and Second Respondents, both of whom practised at No.1 Solicitors ("the Firm") at the relevant time, set out in the Rule 5 Statement dated 11 July 2018 were that:

In relation to the First Respondent only:

1.1 On an unknown date in 2014, thought to be between 1 January 2014 and 3 February 2014, the First Respondent entered into a shareholders agreement with the Second Respondent and on 3 February 2014 he and the Second Respondent signed special shareholders resolutions and passed amended articles of association for the Firm. The effect of these documents was that from 25 February 2014 when the Firm was authorised by the SRA until 10 August 2015 when the Second Respondent left the Firm, the Firm was not in reality run as one law firm but was simply an umbrella name for two separate businesses with separate A and B office accounts controlled by each of the Respondents for their side of the business, and the Second Respondent was paid by the First Respondent to be the COLP, COFA and director of the umbrella name. In so doing, the First Respondent breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

1.2 The First Respondent failed to notify the SRA of a material change at the Firm, namely the facts in allegation 1.1, in breach of Principles 2, 6 and 7.

1.3 The First Respondent failed to notify the SRA of a material change at the Firm, namely that he had become a director of the Firm on 24 June 2014, in breach of Principles 2, 6 and 7 and Rules 8.1(a) and 8.7 of the SRA Authorisation Rules 2011 ("the Authorisation Rules"). The First Respondent did not notify the SRA of this until his letter to the SRA dated 4 June 2015.

1.4 On or about 30 April 2015, the First Respondent directed the Second Respondent, who on the SRA's records was the sole director and COFA and COLP of the Firm, that on or before 1 June 2015 she was to cease carrying out her cases under the Firm but to practise as a freelance solicitor and to close office account A, and this was recorded in an undertaking from the Second Respondent dated 30 April 2015, contrary to Principles 2 and 6.

1.5 From 30 April 2015 to 10 August 2015, the First Respondent was aware that the Second Respondent was practising as a freelance solicitor and he allowed the files of MC, MS, EH and Mr and Mrs B to be transferred from the Firm to the Second Respondent as a freelance solicitor, yet he failed to report this to the SRA, inform the clients that the Second Respondent was acting outside an authorised entity and was therefore without the benefit of professional indemnity insurance, or take any other action to protect the interests of those clients, contrary to Principles 2, 4,5, 6,7 and 8.

1.6 The First Respondent became the sole director of the Firm on or about 12 May 2015 and:

a) Failed to inform the SRA of this material change, in breach of Principles 2, 6 and 7 and Rules 8.1(a) and 8.7 of the Authorisation Rules, until 10 August 2015; and

b) Did not make an application for COLP/COFA approval until 27 August 2015, contrary to Principles 2, 6 and 7 and Rules 8.1(a) and 18.1 of the Authorisation Rules; and

c) Misled the SRA into believing that the Second Respondent was still a director of the Firm at the time of his application for a waiver from Rule 12.2(b) of the SRA Practice Framework Rules 2011 ("the Practice Framework Rules"), in breach of Principles 2, 6 and 7.

1.7 The First Respondent was not qualified to supervise until 6 August 2015 when the First Respondent was granted a waiver under Rule 12.2(b) of the Practice Framework Rules. As a consequence of this it was alleged that between at least 12 May 2015, when the Second Respondent's directorship was terminated, and 6 August 2015 the First Respondent had breached Principles 2, 6 and 7 and Rule 12.1(b) of the Practice Framework Rules.

1.8 The First Respondent caused the Firm to enter into an employment contract with the Second Respondent on 1 June 2015 as an SRA Approved Manager of the Firm. The terms of this contract ceded control from the Second Respondent to the First Respondent despite the fact that, according to SRA records, the Second Respondent was the manager of the Firm at the time and the only solicitor at the Firm who was qualified to supervise. This agreement was incompatible with the Second Respondent's position at that time according to SRA records as a sole director and COLP/ COFA and the First Respondent's position at that time according to SRA records as an employee. By entering into this agreement, the First Respondent breached Principles 2 and 6.

1.9 The First Respondent gave misleading information to the SRA between 27 August 2015 and 4 May 2017, contrary to Principles 2, 6 and 7.

In relation to the Second Respondent only:

1.10 On an unknown date in 2014, thought to be between 1 January 2014 and 3 February 2014, the Second Respondent entered into a shareholders agreement with the First Respondent and on 3 February 2014 the Second Respondent and the First Respondent signed special shareholders resolutions and passed amended articles of association for the Firm. The effect of these documents was that from 25 February 2014 when the Firm was authorised by the SRA until 10 August 2015 when the Second Respondent left the Firm, the Firm was not in reality run as one law firm but was simply an umbrella name for two separate businesses with separate A and B office accounts controlled by each of the Respondents for their side of the business, and the Second Respondent was paid by the First Respondent to be the COLP, COFA and director of the umbrella name. In doing so, the Second Respondent breached Principles 2 and 6.

1.11 The Second Respondent failed to notify the SRA of a material change at the Firm, namely the facts set out in allegation 1.10, in breach of Principles 2, 6 and 7.

1.12 The Second Respondent failed to notify the SRA of a material change at the Firm, namely that the First Respondent became a director of the Firm on 24 June 2014, in breach of Principles 2, 6 and 7 and Rules 8.1, 8.5 and 8.7 of the Authorisation Rules. The SRA was not informed of this until the First Respondent's letter to the SRA dated 4 June 2015.

1.13 On or about 30 April 2015, despite being the sole recorded director of the Firm at the SRA and despite being the COLP and COFA of the Firm, the Second Respondent agreed with the First Respondent and gave an undertaking to the Firm that, on or before 1 June 2015, she would cease carrying out her cases under the Firm and would practise as a freelance solicitor and that she would close office account A, contrary to Principles 2 and 6, Rule 1.1 of the Practice Framework Rules and Rule 8.5 of the Authorisation Rules.

1.14 From 30 April 2015 to 31 December 2015, the Second Respondent practised as a freelance solicitor outside an authorised entity and without the benefit of professional indemnity insurance, contrary to Principles 2, 4, 5, 6 and 7, Rule 1.1 of the Practice Framework Rules and Rule 4.1 of the SRA Indemnity Insurance Rules 2013.

1.15 The Second Respondent attempted to mislead the SRA in relation to the allegation that she had been practising as a solicitor outside an authorised entity and in relation to her involvement with Sandbrook Solicitors, contrary to Principles 2, 6 and 7.

1.16 The Second Respondent entered into an employment contract with the Firm on 1 June 2015 as SRA Approved Manager of the Firm. The terms of this contract ceded control of the Firm from the Second Respondent to the First Respondent despite the fact that, according to SRA records, the Second Respondent was the sole director of the Firm at the time, the COLP and COFA and the only solicitor at the Firm qualified to supervise. This agreement was incompatible with her position at that time according to SRA records as sole director and COLP/COFA and the First Respondent's position at that time according to SRA records as an employee. By entering into this agreement, the Second Respondent breached Principles 2 and 6 and Rule 8.5 of the Authorisation Rules.

1.17 In her application for authorisation of Anderson and Kensington Solicitors on 25 September 2015, the Second Respondent failed to disclose material information to the SRA concerning the county court judgment made against her on 23 October 2014, in breach of Principles 2, 6 and 7.

2. Further, in respect of the First Respondent, dishonesty was alleged in relation to allegations 1.1, 1.2, 1.6(a), 1.6(c) and 1.9. Dishonesty was alleged as an aggravating feature of the First Respondent's misconduct but not as an essential ingredient in proving the allegations.

3. Further, in respect of the Second Respondent, dishonesty is alleged in relation to allegations 1.10, 1.11, 1.14 and 1.15. Dishonesty was alleged as an aggravating feature of the Second Respondent's misconduct but not as an essential ingredient in proving the allegations.

4. The allegations against the Second Respondent only set out in a Rule 5 Statement dated 20 March 2018 were that:

4.1 Between 1 January 2016 and 8 September 2017, she conducted reserved legal activities in circumstances where she was not authorised to do so and in breach of conditions which were on her practising certificate at the time. In doing so, she breached all or alternatively any of Principles 1, 2, 4, 5, 6 and 7 and Rules 1.1 and 4 of the Practice Framework Rules.

4.2 Between 1 January 2016 and 8 September 2017, she conducted reserved legal activities in circumstances where she did not have adequate professional indemnity insurance cover in place to do so. In doing so, she breached all or alternatively any of Principles 2, 4, 5, 6 and 7, Rule 4.1 of the SRA Indemnity Insurance Rules 2013 and Outcome 1.8 of the SRA Code of Conduct 2011 ("the Code").

4.3 Allowed, and was responsible for, the website "www.amcm.co.uk" to appear online to describe and promote Anderson & Moores Consultancy and Mediation Services Limited, providing misleading information by giving the impression that Anderson & Moores Consultancy and Mediation Services Limited was authorised and regulated by the Applicant when it was an unregulated company. In doing so, she breached all or alternatively any of Principles 2 and 6 and failed to achieve Outcomes 8.1, 8.4 and 8.5 of the Code.

4.4 Between 1 May 2017 and 30 June 2017, she provided false and/or misleading information to the Applicant in respect of the work she had been undertaking. In doing so, she breached all or alternatively any of Principles 2, 6 and 7.

5. Dishonesty was alleged against the Second Respondent in respect of allegations 4.1 to 4.4. However, proof of dishonesty was submitted not to be an essential ingredient for proof of the allegations.

6. Further allegations against the Second Respondent only were set out in a Rule 7 Statement dated 4 February 2019 and were that:

6.1 (i) Between approximately 9 September 2017 March 2018 and January 2019, the Second Respondent worked as a part-time paralegal at Maya Solicitors and (ii) between approximately 19 October 2018 and January 2019, the Second Respondent worked as a part-time paralegal at Masaud Solicitors, and thereby acted as a solicitor, despite not holding a practising certificate, and thereby breached any or all of Principles 1, 2, 4, 5, 6, and 7 and Rules 1.1 and 4 of the Practice Framework Rules and/or acted contrary to s 1 and 1A of the Solicitors Act 1974.

6.2 Between about November 2018 and January 2019, the Second Respondent acted as a solicitor for Ms PW despite (i) not holding a practising certificate and (ii) not working at an entity approved by the Applicant or any approved regulator, and thereby

breached any or all of Principles 1, 2, 4, 5, 6, and 7 and Rules 1.1 and 4.2 of the Practice Framework Rules and/or acted contrary to s 1 of the Solicitors Act 1974.

6.3 That between about November 2018 and January 2019, the Second Respondent made representations to Ms PW, Mr DW, the Court, and Newtons Solicitors Limited that were false and in breach of any or all of Principles 1, 2, 4, 5, 6 and 7, in that the Second Respondent represented that she was a practising solicitor, when in fact she did not hold a practising certificate.

6.4 That between about November 2018 and January 2019, the Second Respondent made representations to the Court and Newtons Solicitors Limited that were false and in breach of any of all of Principles 1, 2, 4, 5, 6 and 7, in that the Respondent represented that she was conducting the case acting as a solicitor at Masaud Solicitors, when in fact she had no authority from Ms PW or from Masaud Solicitors to conduct the case through Masaud Solicitors.

6.5 That between about November 2018 and January 2019, the Second Respondent made representations to Ms PW and Mr DW that were false and in breach of any or all of Principles 1, 2, 4, 5, 6, and 7, in that the Second Respondent represented that she was a solicitor working at the Anderson Company when in fact the Anderson Company was dissolved on 29 May 2018.

6.6 Further, dishonesty was alleged in relation to Allegations 6.1, 6.2, 6.3, 6.4 and 6.5. Dishonesty was alleged as an aggravating feature of the Second Respondent's misconduct, but it was submitted not to be an essential ingredient in proving the allegations.

Documents

7. The Tribunal considered all of the documents in the case which included:

Applicant

- Trial bundles comprising 13 bundles (1A, 1B and 2 to 12)
- Opening submissions bundle
- Authorities bundle
- Schedules of costs relating to both applications dated 7 June 2019
- Tables cross referencing allegedly inconsistencies in the First Respondent's accounts (x2)

First Respondent

- Skeleton argument dated 1 March 2018
- Additional documents exhibited to Mr II's statement (paginated 156 to 174)
- Bundle of Respondent's exhibits
- Written closing submissions dated 9 May 2019

Second Respondent

- Skeleton argument
- Various documents disclosed during her evidence on 3 to 5 June 2019 (paginated 1A/286A to 1A/286AW)
- Written closing submissions

Preliminary Matters

8. Special Measures for the Second Respondent

8.1 Ahead of the hearing the Tribunal had rejected an application from the Second Respondent dated 20.2.19 to give evidence by video link throughout the hearing. The application was made on the grounds of 'post-traumatic stress disorder, fragile mental health including high levels of anxiety, stress and depression due to the actions and misconduct of [the First Respondent]'. The Tribunal informed the Second Respondent of the medical evidence required to support such an application. No such sufficient evidence was forthcoming from the Second Respondent. The refusal noted that the Second Respondent agreed on 11 September 2018 that the hearing against both Respondents should be dealt with together and that the Second Respondent must have known that would mean a joint hearing. The Tribunal did not consider that there was any evidence that the usual arrangement for a Respondent to attend the Tribunal in person should be varied.

8.2 The Tribunal made the following orders for Special Measures to accommodate the concerns of the Second Respondent.

- A member of the Tribunal staff will meet the Second Respondent upon her arrival and take her to a meeting room on a different floor from the Applicant and First Respondent.

- Arrangements will be made for the two Respondents to sit in the Tribunal in such a way that will accommodate the Second Respondent's concerns about being close to the First Respondent. This will include arrangements as to where both Respondents sit when giving evidence.

- The Second Respondent can cross exam the First Respondent after he has been cross examined by the Advocate for the Applicant.

- The Tribunal will accommodate any reasonable requests for a break in the proceedings from any of the parties.

- The Tribunal will consider any further reasonable requests for special arrangements to be made by any of the parties either before or at the Hearing.

9. Application from the Applicant to proceed in the absence of the Second Respondent

9.1 The Second Respondent had stated in her application for special measures that she would not attend the hearing in the event that her application was refused. The Second Respondent duly did not attend on the first day of the hearing. Ms Carpenter,

for the Applicant, outlined the steps taken to serve the Second Respondent with the case documentation. She noted that the Second Respondent had responded to the allegations in her skeleton argument (having previously submitted Answers to both Rule 5 Statements, her skeleton dealt with the allegations in the Rule 7 Statement). Ms Carpenter submitted that the Second Respondent had voluntarily absented herself from the hearing. She submitted that the factors in R v Haywood [2001] EWCA Crim 168 and GMC v Adeogba [2016] EWCA Civ 162 all pointed towards proceeding in the Second Respondent's absence. She submitted than an adjournment would achieve nothing.

9.2 Mr Nesbitt, for the First Respondent, agreed that the Second Respondent had voluntarily absented herself. On the basis that she had submitted a skeleton argument, Mr Nesbitt submitted that the Second Respondent had assumed that the hearing would go ahead in her absence.

9.3 The Chairman noted that the Second Respondent had made reference to childcare preventing her attendance in an email of 5 March 2019, whilst this had not featured in her earlier application for special measures. Ms Carpenter submitted that the Second Respondent had presumably known about the childcare implications for some time. The Tribunal considered the possibility of severing the cases. Both the Applicant and the First Respondent's representatives expressed concerns about this. Ms Carpenter submitted that it may be unfair to the Second Respondent for a separate Division of the Tribunal to consider her case not having seen and heard evidence from the First Respondent whilst Mr Nesbitt stated that even if the cases were severed his defence required that evidence of the Second Respondent's alleged wrongdoing would be adduced in his case.

The Tribunal's Decision

9.4 The Tribunal reviewed the factors set out in Adeogba. The Tribunal noted that the Second Respondent had known at the Case Management Hearing stage that the substantive hearing would involve both Respondents and that would inevitably involve them being in the same room. She did not oppose the cases being joined. Raising this issue at this late stage, without compelling supporting medical evidence, undermined the force of her submissions. Similarly, any childcare implications were known at the Case Management Hearing and there had been several months for arrangements to be made.

9.5 The Tribunal had the benefit of the Second Respondent's written Answers and skeleton argument and as an experienced expert Tribunal were able to assess the case against her. The Tribunal considered that there was a strong public interest in an expeditious and efficient hearing of the applications and that two separate trials would be undesirable, not least because most of the witnesses would be required at both hearings given the extent of the overlap in the allegations. The Tribunal had already concluded that the purported medical evidence supplied by the Second Respondent was not sufficient to warrant the special measures sought of attendance throughout the hearing by video-link.

9.6 The Tribunal granted the application to proceed in the Second Respondent's absence. The hearing was then adjourned at 12.24 p.m. for the Second Respondent to be informed of the decision. The substantive hearing was adjourned until 10.00 a.m. the following day to allow the Second Respondent this additional time to attend.

10. Application from Applicant for disclosure

10.1 The Applicant had made an application for disclosure dated 1 March 2019. Two orders were sought:

- that both Respondents disclose the file held by Boote Edgar Eskerin Limited (a firm engaged by the Firm); and

- that the First Respondent disclose documents falling into six categories set out in the application. The Applicant alleged that the First Respondent had provided very little in the way of disclosure throughout the proceedings.

As to the first order sought, it was alleged by the Applicant that both Respondents had waived privilege in the communications with Mr PH (a solicitor at Boote Edgar Eskerin Limited from whom advice on the agreement between the Respondents and allegedly compliance with SRA rules was sought).

10.2 Turning to the second order sought, by the first day of the hearing Ms Carpenter confirmed that some disclosure sought from the First Respondent had been provided and that two of the six categories remained in issue. One of the outstanding two categories would be dealt with by the Applicant inviting the Tribunal to draw adverse inferences from the lack of material. The documents remaining in issue related to a copy of the file of Ms JC including all emails between Ms JC/her accountancy firm and the Respondents. Ms JC was a witness called by the First Respondent and the Applicant submitted that the Tribunal would require access to the material sought to assess the voracity of Ms Cooksey's evidence. The Applicant sought disclosure of those documents specifically referred to by Ms JC in her witness statement.

10.3 Ms Carpenter submitted that the Applicant was responding to statements from the Respondents rather than engaging in a fishing expedition. She submitted that the limited information provided by the First Respondent was in some cases impossible to understand in isolation. She submitted that having made positive statements the First Respondent should be required to produce the relevant evidence to support them rather than simply saying that adverse inferences could be drawn by the Tribunal. Ms Carpenter invited the Tribunal to direct that in the event disclosure was not ordered, the First Respondent should not be permitted to 'drip-feed' disclosure throughout the hearing having heard the Applicant's opening.

10.4 In reply Mr Nesbitt stated that the First Respondent had only instructed his current solicitor relatively recently and that a huge effort had been made to deal with disclosure. He stated that the First Respondent was not seeking to be obstructive. He noted the strong powers available to the Applicant to require the production of documents under s44B of the Solicitors Act 1974. He submitted, referring to the Solicitors' Handbook, that disclosure orders against Respondents were extremely rare in the Tribunal and that this principle should be departed from only where there was a

direct bearing on an issue in the case. He submitted that it would be wildly disproportionate for the First Respondent to produce the entire file and emails sought.

The Tribunal's Decision

10.5 The Tribunal refused the application and noted that it was for the First Respondent to put the case as he saw fit. Ms JC was a professional, and if warranted the Tribunal would draw appropriate inferences from any gaps in her supporting documentation. The Tribunal did not consider that an explanation had been provided as to why the requested documents were necessary for determination of issues in the case. The Tribunal accepted the general position as set out in the Solicitors' Handbook and did not consider that sufficiently compelling reasons had been provided to justify a departure from that approach.

11. Application from the Applicant to amend the Rule 7 Statement

11.1 The Applicant sought permission for amendments to be made to the Rule 7 Statement dated 19 February 2019. The amendments sought represented narrowing of the time period included to in various allegations. Ms Carpenter accordingly described the proposed amendments as being in the Second Respondent's favour. The Applicant sought permission to make the amendments in the light of more precise information having been obtained. Mr Nesbitt confirmed that the First Respondent had no objection. Permission for the amendments was granted by the Tribunal.

12. Application from the Applicant to adduce two second witness statements

12.1 The Applicant sought permission to adduce two witness statements (second statements from Ms PW and Mr MS). The former included details of one additional payment omitted from the first statement and the latter was submitted to respond to matters raised by the First Respondent in his witness statement. No objection was raised on behalf of the First Respondent. The Tribunal granted the application.

13. Case Management Hearing held at 2.12 pm on Friday 15 March (Day 8 of the hearing)

13.1 The Second Respondent sent an email at 14:42 on 13 March 2019 (day 6 of the hearing) to the representatives of the Applicant and First Respondent. As well as making various observations on the evidence given by the First Respondent which had been relayed to her by representatives of the Applicant, she repeated her request to give evidence via video-link or telephone so that she could give her version of events. She asked that her email be placed before the Tribunal. As the email was received whilst the First Respondent was giving evidence his representative was unable to take instructions from him on it. A copy was provided to the clerk to the Tribunal but the email was not placed before the Tribunal until the First Respondent had concluded his evidence and had an opportunity to give instructions to his representatives (on day 8). By this point it had been clear for some time that the case would not conclude in the allotted time and a case management hearing (with the Second Respondent attending by telephone) was held in the afternoon of day 8.

14. The Second Respondent's renewed application to give evidence by video-link

14.1 The Second Respondent stated that her application was prompted by the First Respondent having given evidence for around three days which she submitted changed things. She stated that she would make herself available, via video-link, for as long as was required and had the facilities available at home for the video-link to work. In response to a question from the Chairman she confirmed that she understood the distinction between making submissions and giving evidence remotely and that if she were to give evidence then the First Respondent's counsel (and the Applicant's counsel) may elect to cross examine her on any aspect of their cases. She stated that the difficulty she had had with childcare had been resolved. She summarised the basis of her application:

a) She submitted that she was eligible under the Tribunal's own guidance for such a special measure to be made on account of her mental impairment;

b) There were constraints on her ability to attend the Tribunal in London for multiple days as the sole carer of her three children;

c) Financially she was unable to travel to and stay in London;

d) She would like an opportunity to state her case, the First Respondent having given evidence for around three days.

e) There were more allegations against her than the First Respondent and she submitted that it would assist the Tribunal to hear from her directly;

f) Given the seriousness of the allegations, which include multiple allegations of dishonesty, a strike off decision would have career ending implications which would affect her dependents.

14.2 In reply, Ms Carpenter stated that the Applicant opposed the application in relation to giving evidence by video-link. She stated that the Second Respondent had had every opportunity to attend. She stated that no evidence of means had been presented and submitted that support with childcare such that a video-link would be viable having been arranged suggested that the Second Respondent would be able to attend the Tribunal in person. Ms Carpenter stated that whilst the Applicant considered that the Second Respondent should attend in person, there were fewer concerns about her making submissions (as opposed to giving evidence) via video-link. This was on the basis that there would be no need to cross examine or for the Tribunal to assess her demeanour to the same extent.

14.3 Mr Nesbitt submitted that the Second Respondent had had notice of the need to attend, and had been provided with updates on the hearing by the Applicant. He submitted that having ruled on the application at the outset of the hearing the Tribunal would need to be satisfied that something significant had changed. He submitted that it had not. He also submitted that if the application were granted it would create a situation where one Respondent had been tested through a gruelling cross examination whilst the other chose not to attend and avoided that. Mr Nesbitt submitted that the adjustments the Tribunal had previously outlined would support the

Second Respondent's attendance in person. Mr Nesbitt stated that the Applicant did not have the same strength of opposition to the Second Respondent making submissions only via video-link. He submitted that submissions did not need to be tested in the same way as evidence.

14.4 The Second Respondent stated that she was happy to provide financial evidence. She stated that finances and a lack of childcare prevented her attendance, but that she did wish to be present.

The Tribunal's Decision

14.5 The Tribunal refused permission for the Second Respondent to give evidence via video-link. The substance of the application had not changed since it was rejected both prior to the hearing and at the outset of the hearing and the prejudice to the First Respondent would be significant as the Second Respondent would inevitably give evidence on matters which had not been put to him. The Tribunal granted permission for the Second Respondent to make submissions only by video-link when the hearing reconvened. The Second Respondent was requested to confirm within 7 days whether she intended to attend the reconvened hearing in person. By an email dated 19 March 2019 the Second Respondent confirmed that she had decided that she "must attend the Tribunal to give my evidence". She stated that she had now been able to make arrangements for childcare and would be supported at the hearing in London by a solicitor friend.

Factual Background

15. The First Respondent was born in 1986 and was admitted to the Roll of Solicitors on 1 May 2013. The Second Respondent was born in 1981 and was admitted to the Roll of Solicitors on 15 November 2007. At the time of the allegations set out in the first Rule 5 Statement (which concerned both Respondents) the Respondents were working at the Firm in Oldham. On 5 December 2013 the Second Respondent submitted an application form for the Applicant to authorise the Firm. At the date of the incorporation of No.1 Solicitors Limited she was the sole director of the company and a 50% shareholder. The First Respondent was an employee of the company and a 50% shareholder. The Applicant authorised the Firm as a recognised body with effect from 1 March 2014 (and on the same date approved the Second Respondent as the designated COLP and COFA). At this date the First Respondent had less than one year of post-qualification experience and the Second Respondent had just over 6 years' post-qualification experience.

16. Records at Companies House show that the First Respondent was appointed a director of the Firm on 27 June 2014. On or around 10 August 2015 the Second Respondent ceased to work at the Firm. On 24 August 2015 the Second Respondent submitted a report to the Applicant raising concerns about the First Respondent's professional conduct. On 27 August 2015 the First Respondent submitted a report to the Applicant raising concerns about the Second Respondent's professional conduct. The Applicant commissioned a Forensic Investigations Officer, Ms Horton, to carry out an inspection of the Firm and investigate matters. Her inspection began on 2 November 2015. She produced an interim report on 1 February 2016 and a final report on 4 March 2016.

17. The second Rule 5 Statement, which concerned the Second Respondent only, arose following a call to the Applicant's Professional Ethics Helpline made by District Judge Iyer on 11 January 2017. He raised concern that the Second Respondent appeared to be working through a firm which was not authorised by the Applicant or any other legal services regulator. District Judge Iyer subsequently provided further information upon request from the Applicant and the Applicant commissioned a Forensic Investigations Officer, Ms Young, to investigate Anderson & Moores Consultancy & Mediation Services Limited. Ms Young started her investigation on 8 May 2017 and completed her report on 14 July 2017.

Witnesses

18. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

- Ms SB (via video-link), Receptionist at Lewis & Co Solicitors
- Ms AML,SRA Ethics Adviser
- Ms LH Forensic Investigation Officer
- Ms AK (via video link),Solicitor at Lewis & Co Solicitors
- Mr MS, Law Enforcement Liaison Manager at Companies House
- Ms SY, Forensic Investigation Officer
- Ms PW, former client of the Second Respondent
- Ms FK, the First Respondent's sister
- The First Respondent
- Ms JC (via video-link), Accountant retained by the Firm
- Mr II, File handler at the Firm
- The Second Respondent

The following Applicant witnesses (Mr FV, Mr NB, Ms FS, Ms MH and Mr MM) were not required by the parties to attend and the Tribunal was invited to, and did, read their statements.

Findings of Fact and Law

19. 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.

20. **Allegation 1.1: On an unknown date in 2014, thought to be between 1 January 2014 and 3 February 2014, the First Respondent entered into a shareholders agreement with the Second Respondent and on 3 February 2014 he and the Second Respondent signed special shareholders resolutions and passed amended articles of association for the Firm. The effect of these documents was**

that from 25 February 2014 when the Firm was authorised by the SRA until 10 August 2015 when the Second Respondent left the Firm, the Firm was not in reality run as one law firm but was simply an umbrella name for two separate businesses with separate A and B office accounts controlled by each of the Respondents for their side of the business, and the Second Respondent was paid by the First Respondent to be the COLP, COFA and director of the umbrella name. In so doing, the First Respondent breached Principles 2 and 6.

The Applicant's Case

20.1 The Applicant alleged that the Respondents ran the Firm not as one firm, but instead as an umbrella name for two separate businesses with separate A and B Office Accounts controlled by each of the Respondents for their respective sides of the business and that the First Respondent paid the Second Respondent to be the COLP, COFA, and director of the umbrella name.

20.2 On an unknown date in 2014, thought to be on about 3 February 2014, the Respondents entered into a shareholders agreement. The Applicant was only provided with an unsigned copy of the shareholders agreement. The Second Respondent was said to have consistently stated that:

(a) the shareholders agreement as provided to the Applicant was signed and implemented;

(b) she did not have a copy of the signed agreement; and

(c) the First Respondent failed to comply with it.

The First Respondent was said to have provided different accounts on different occasions, namely that:

(a) the shareholders agreement was signed;

(b) it was signed but invalid and not followed;

(c) it was not signed and never implemented;

(d) it was not executed or followed; and

(e) (most recently in his witness statement), an early draft shareholders agreement may have been signed but it was superseded by another version that was not signed and was never implemented.

20.3 The Applicant inferred that the shareholders agreement it had received was entered into by the Respondents and that this occurred on around 3 February 2014 on the basis that:

(a) The agreement put in place a restructuring of the shareholding into A and B shareholdings. Various other company documents were executed on 3 February 2014 which had the same effect and which were required by the

shareholders agreement to be executed. In particular, the terms of the shareholders agreement were consistent with the amended articles of association which were signed on 3 February 2014.

(b) On 5 February 2014, Mr PH, of Bootes, wrote to the Second Respondent and confirmed that he had circulated last week "what we believe to be the final agreed versions of the shareholders agreement, new Articles and Board Written Resolutions and related paperwork" and also referred to the "intended completion meeting on 3 February with [the First Respondent]".

(c) The terms of the shareholders agreement were, largely, consistent with the way in which the Firm was actually run.

(d) Both Respondents had accepted that a shareholders agreement was signed (although the First Respondent later claimed that a signed version was superseded by a later draft).

20.4 The Applicant's case was that by the shareholders agreement and the amended articles of association:

(a) The shareholding of the Firm was re-designated into an A and B shareholding, with the Second Respondent holding the A shares (50%) and the First Respondent holding the B shares (50%) and separate A and B office accounts.

(b) It was agreed that the Second Respondent, as shareholder A, would have sole authority to run, control, and take all profits from the Criminal Law Department and sole control of Office Account A, and that all client matters introduced by the Second Respondent were to be her sole and absolute property.

(c) It was agreed that the First Respondent, as shareholder B, would have sole authority to run, control, and take all profits from the Personal Injury Law Department, sole control of Office Account B, and be the sole authority on any bank mandate for the Client Account, and that all client matters introduced by the First Respondent were to be his sole and absolute property.

(d) It was agreed that the First Respondent would pay the Second Respondent £20,000 per annum (pro-rata based on a 25 hour commitment per week) to be the manager and supervisor of the Firm.

20.5 The Applicant's case was that the effect of this was that, from the date of authorisation of the Firm, the name was simply used by the Respondents as an umbrella name for two separate legal practices, neither of which were authorised.

20.6 The First Respondent denied any wrongdoing and, as set out above, denied that the shareholders agreement was workable or followed. It was submitted on behalf of the Applicant that his evidence in this respect should not be accepted both because it had changed over time and, also, because it was alleged not to be supported by the contemporaneous documents. In his witness statement, the First Respondent suggested that it was the Second Respondent's decision to arrange matters in this way

and that he deferred to her as the more senior solicitor. This evidence was not accepted by the Applicant as it was said not to be borne out by the contemporaneous documents. For example:

(a) In an email which appeared to have been sent just after 23 December 2013, the First Respondent wrote to Mr PH (of Bootes), copying in the Second Respondent and provided detailed comments on the draft shareholders agreement that Mr PH had circulated. In particular, the First Respondent stated that the "cornerstone" of their instruction was to ensure that: (i) he and the Second Respondent were to have two separate income streams; (ii) they were each solely entitled to the funds in their respective accounts; (iii) they were each entitled to take their cases with them if they left; and (iv) he would not be restricted in any way from using the monies in Office Account B.

(b) On 12 January 2014, the First Respondent emailed Mr PH, copying in the Second Respondent, and provided comments on the second draft of the shareholders agreement that Mr PH had circulated. The First Respondent emphasised that the shareholders agreement was to make clear that all personal injury work was to be allocated to him and all crime work to be allocated to the Second Respondent.

Ms Carpenter submitted that the contemporaneous documentary evidence made it clear that the First Respondent was keen to implement an arrangement for the Firm whereby he and the Second Respondent would each have their own files and their own income streams and that his witness evidence to the contrary should be rejected.

20.7 The First Respondent had also claimed in his witness statement that employees were supervised by the Second Respondent. It was alleged that previously, in his interview on 24 February 2016, the First Respondent stated that the Second Respondent had control of compliance, and they both had "joint" control of the firm, and that she ran the interview process for recruiting employees and that he assisted her with that process. The Applicant submitted that none of this evidence was true.

20.8 The Applicant submitted that it was plain from the documentary evidence referred to above and the Respondents' own accounts of how matters were run, that the Firm was organised in a way that gave control of the Personal Injury Department to the First Respondent and control of the Criminal Law Department to the Second Respondent, and that kept the two income streams entirely separate. This was submitted to have had the effect of making No 1 Solicitors an umbrella term for two separate firms, both of which were unauthorised.

20.9 It was also submitted to be clear that the First Respondent agreed to pay the Second Respondent to be the COLP, COFA, and director of the umbrella name. Initially he agreed in the shareholders agreement to pay her £20,000 per annum to carry on this role. By an Employment Contract entered into on 1 June 2015, the payment terms were amended to provide that the Second Respondent would be paid £9,600 per annum to be COLP/COFA. After that date, it was submitted to be clear from the documents that both Respondents understood that the Second Respondent was an employee and that she was paid in that capacity.

20.10 Principle 2 requires that solicitors act with integrity. The Applicant relied on the test set out in the Court Appeal decision of SRA v Wingate & another [2018] EWCA Civ 366. In paragraph [96] Rupert Jackson LJ noted that "integrity" was a "more nebulous concept than honesty" and was more difficult to define. He continued at paragraphs [97] and [100]:

> "In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. … The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
>
> …
>
> Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."

20.11 Principle 6 requires that solicitors behave in a way that maintains the trust the public places in them and in the provision of legal services. Ms Carpenter referred the Tribunal to the observation of Rupert Jackson in Wingate, at paragraph [105] that principle 6 is aimed at "preserving the reputation of, and public confidence in, the legal profession" and, by way of example, that a careless solicitor might breach Principle 6 (if the careless conduct rises to the level of manifest incompetence).

20.12 The Applicant alleged that the conduct outlined above constituted a breach of Principles 2 and 6 on the basis that: (a) the Second Respondent was not authorised to run a criminal law sole practice; and (b) the First Respondent was not authorised to run a personal injury sole practice and, further, he was not qualified to supervise as he did not have three years' post qualification experience.

Dishonesty alleged in relation to allegation 1.1

20.13 The Applicant alleged dishonesty in relation to allegation 1.1. Ms Carpenter referred the Tribunal to the test for dishonesty set out in the Supreme Court decision of Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club) [2017] UKSC 67; [2018] AC 391 at para [74] (per Lord Hughes JSC):

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

20.14 With reference to this test, Ms Carpenter submitted that:

(a) The First Respondent (and the Second Respondent) knew that the Firm was being run as two practices, instead of one firm. The First Respondent (and the Second Respondent) set up the Firm to give their partnership a veneer of legitimacy. For the First Respondent, this was necessary because he was not qualified to supervise, was not an approved manager, or COFA or COLP, and therefore could not run his own practise.

(b) Applying the objective standards of the ordinary decent person, operating as two unauthorised firms failing to inform the Applicant of the true nature of the Firm was submitted to be dishonest.

The First Respondent's Case

20.15 Mr Nesbitt reminded the Tribunal that the applicable standard of proof that the Applicant had to discharge was the criminal standard – the Tribunal must be sure of the allegations and the component factual assertions beyond reasonable doubt. He submitted that on the way that the case was put, the SRA had to demonstrate in order to succeed in this allegation:

(a) That the agreement was entered into – in the sense of not just signed, but being treated as binding as between the parties and formed the basis upon which things were to be operated;

(b) That as a consequence of that – "the effect of it "– was that between 25 February 2014 and 10 August 2015, the Firm was in fact two businesses;

(c) That in entering into the agreement the Respondents acted in breach of the integrity principle and/or the trust and confidence principle;

20.16 He addressed each element in turn. Firstly, as to whether the shareholders agreement was effective and valid, the First Respondent's evidence was that he thought a version was signed, but that he and the Second Respondent agreed various aspects were not "workable" and it was not followed. It was acknowledged that the Second Respondent did not agree with this. By way of example of an instance where the agreement was said not to have been followed, Ms Nesbitt referred to the term in the shareholders agreement that provided for an annual payment to the Second Respondent of £20,000 for supervisory work in the personal injury department. He referred to subsequent agreements, first that the Second Respondent would receive £600 per month for this work and subsequently and that she would receive £9,600 per year. This, Mr Nesbitt submitted, was a striking example that the shareholders agreement was not considered to be a "live document" governing the operation of the Firm. Mr Nesbitt submitted that the balance of the available evidence suggested that that the First Respondent's account was correct and the shareholders agreement was not followed by the parties as the basis on which the Firm operated.

20.17 Secondly, as to whether the agreement had the effect that the Firm was not one law firm, it was noted by Mr Nesbitt that the Firm was as a legal fact a single legal entity with a legal personality. He asked the Tribunal to consider when a single legal entity

would in fact be two businesses and submitted that it could not be. Even if that were not accepted, he noted that this was one question on which the evidence of both Respondents entirely converged. They both gave evidence that the genuine intention was to set up and run a law firm that was intended by them to be a single business which was operated in a way which complied with SRA rules. Although it was acknowledged that they wished to keep their income streams entirely separate, and to run separate departments that they managed, neither understood that there was any barrier to them doing this, nor intended that the Firm should not be a law firm. There were many acts which as a matter of legal reality were undertaken by the company – entering into contracts for the rent of offices, incurring liabilities, employing people, paying VAT, dealing with HMRC, going on the record in court proceedings, which were submitted to be, as a matter of objective legal fact, "acts" of the business. There was also submitted to be very clear evidence of a collective and collegiate approach to the running of the departments, with the Second Respondent undertaking supervision of files for a long period of time.

20.18 Mrs LH (a Forensic Investigator) had acknowledged in evidence that she had never seen a situation in which files of one firm were supervised by the director of another firm. She also acknowledged that there was nothing in the SRA Rules that was prescriptive about the way profit streams should be divided or allocated, or departments separated, or the number of office accounts that should be set up, or in effect any of the matters that appeared to be relied upon by the Applicant in trying to characterise the set up as involving a breach of what is permitted. Whilst it was acknowledged that there may well be some unusual features to the way the Firm was set up, it was suggested that the evidence did not establish that the Firm was nothing more than "an umbrella" for what was in reality two separate businesses – and that it (the entity) plainly did much more than simply operate as an "umbrella".

20.19 Thirdly, as to whether the First Respondent had breached the integrity or public trust and confidence principles, Mr Nesbitt submitted that on the basis of the above the Tribunal did not need to get to this question, but he made some general submissions in the event that it did. In relation to Principle 2 he submitted that as a matter of practicality establishing a breach of this principle involved reaching a fairly high threshold, and that it was not the position that conduct which is a breach of one or other professional rule automatically warranted what he described as this exacerbated characterisation. He referred the Tribunal to the decision in Wingate in which the Court approved an earlier formulation, that integrity "connotes adherence to the ethical standards of one's profession". Applying that principle he submitted that it was plainly not every breach of rules of professional conduct, that deserved to be regarded in this way – it must be a failure having a particular ethical character; and that the threshold is a relatively high one was made plain by the Court of Appeal in Wingate warning that: "neither courts nor professional tribunals must set unrealistically high standards, … the duty of integrity does not require professional people to be paragons of virtue."

20.20 Regarding Principle 6, the duty to conduct oneself in a way that does not undermine public trust and confidence in the profession (and oneself as a solicitor), it was submitted that not every professional failure amounting to a breach of some rule of conduct involved a breach of this principle. It was submitted that the Tribunal should only a find a breach of it where it concluded that it was sure that a fair minded

member of the public would feel that his confidence in the profession was undermined in some way by the fact of the conduct in question. Mr Nesbitt again referred to the decision in Wingate – and the observation that "run of the mill professional negligence" should not be regarded as manifest incompetence giving rise to a breach of Principle 6. It was submitted that mere mistakes or misjudgements were ordinarily unlikely to reach the threshold for a breach of Principle 6.

Response to dishonesty allegation in relation to allegation 1.1

20.21 Mr Nesbitt did not take issue with Ms Carpenter's summary of the law and the test set out in Ivey. As set out above, the Tribunal were invited to conclude that it did not need to consider the issue of dishonesty on the basis that the Applicant was submitted not to have proved that the shareholders agreement was treated as effective and binding and/or that it had the effect alleged (that the Firm was just an umbrella).

20.22 It was submitted that given the burden and standard of proof that the Tribunal must apply, the case advanced by the Applicant had a very high threshold. In effect the way that the allegation was put, and the way the Applicant submitted that it met this threshold, was by saying that the evidence proved that the setting up of the Firm was in effect an entirely cynical subterfuge on the part of both Respondents. As set out above, Mr Nesbitt submitted that it would be impossible for the Tribunal properly to come to that conclusion to the standard of proof required. He said the state of mind and intention that the First Respondent described was not consistent with dishonesty.

The Tribunal's Decision

20.23 The Tribunal reviewed the unsigned version of the shareholders agreement contained within the hearing bundle carefully. It was a detailed document which had been prepared by an external solicitor on instruction by the Respondents. The wording of the version to which the Tribunal was referred was consistent with the amendment to the articles of association and, seemingly, the initial agreement between the Respondents. No evidence, beyond the First Respondent's oral evidence, was presented that this was not the final version of the agreement.

20.24 The Tribunal considered the terms of the shareholders agreement that had been provided. Shares were designated "A" or "B" shares and each Respondent held one class of shares. The Tribunal did not consider that this was unusual or improper in itself. The Tribunal was not aware of, nor was directed by the parties to, any Rule or Regulation which prohibited this.

20.25 The shareholders agreement provided that each Respondent "owned" the files within their respective department. In the First Respondent's case, the Personal Injury department. The shareholders agreement provided that on leaving the Firm, either Respondent could take their files with them. The Tribunal found this to be a somewhat unusual arrangement, but not one which of itself amounted to a compelling indication that the Firm was not genuinely one firm. No specific breach was alleged on the basis of this provision; it was relied on by the Applicant as one of a series of allegedly unusual features which together proved that the Firm was not run as one law firm.

20.26 The Tribunal noted that the agreement provided that the First Respondent should be the sole authority on the Firm's client account. The Tribunal did not consider that this restricted the Second Respondent's ability to discharge the COLP and COFA role across the two departments of the Firm. The Tribunal also noted that given the nature of the Second Respondent's work, predominantly criminal, she did not require a client account within her department.

20.27 The Tribunal accepted Ms Carpenter's submission that the clause in the shareholders agreement providing for compliance with the Applicant's rules was not in itself sufficient to remedy the position if the arrangement and reality were otherwise non-compliant. The Tribunal considered that the inclusion of the clause was consistent with the evidence presented that the intention of both Respondents was to set up a single law firm. They had paid for legal advice on the mechanics of setting up and running the company and had seemingly followed it. The correspondence with the solicitor who advised, Mr PH, did not reveal any instructions indicating a desire on the part of either Respondent for two separate firms to exist. The evidence of both Respondents was entirely consistent on this point.

20.28 Whilst it was very clear that there had been a serious breakdown in relations between the Respondents, the Tribunal did not consider there was sufficient evidence to conclude that the firm was not run as one law firm. The Tribunal was required to apply the criminal standard when assessing the allegations and the constituent facts on which they were based. There was a single legal entity, which amongst other things paid the Firm's staff. It was not unusual for staff to work in different departments. The Second Respondent worked across both departments. Whilst the First Respondent was required to log her into his system there was no evidence that he had ever declined to do so or that she was unable to supervise effectively as required by her COLP and COFA roles. The Tribunal considered that solicitors in partnership were entitled to decide how to share and administer their profits in any way which did not offend the Applicant's rules. The business plan did not provide for two separate businesses.

20.29 Accordingly, for the reasons summarised above, the Tribunal was not persuaded that it was made out to the requisite standard that the Firm was run as two separate businesses. All of the alleged breaches, including the allegation of dishonesty, were therefore not proved.

21. **Allegation 1.2: The First Respondent failed to notify the SRA of a material change at the Firm, namely the facts in allegation 1.1, in breach of Principles 2, 6 and 7.**

21.1 It was said not to be in dispute that neither Respondent notified the Applicant that the Firm was being run as two separate businesses. The Applicant's case was that it only became aware of the true structure of the Firm when the Forensic Investigation Officers ("FIOs") began to investigate the Firm from November 2015 onwards. The Applicant submitted that this constituted a material change at the Firm because instead of there being one authorised Firm, there were, in fact, two separate firms being run under one umbrella. In particular, this change was alleged to have had the effect that:

(a) The First Respondent was running an unauthorised sole practise in circumstances where he was not qualified to supervise;

(b) The Second Respondent was running an unauthorised sole criminal practice; and

(c) The Second Respondent was unable to fulfil her role as approved manager, COLP, and COFA in respect of the Personal Injury Department for the Firm.

The Applicant submitted that the First Respondent's failure to notify the Applicant of this material change constituted a breach of Principles 2, 6, and 7.

21.2 The alleged structuring and running the Firm as in reality two unauthorised business was submitted to be a "material change" because the shareholders agreement and the articles of association with A and B office accounts and A and B shareholdings were entered into on around 3 February 2014, after the Respondents had applied to the Applicant for authorisation of the Firm in December 2013. Upon changing the structure of the Firm in around February 2014, it was submitted that the Respondents were obliged to notify the Applicant of this material change.

Dishonesty alleged in relation to allegation 1.2

21.3 With reference to the Ivey test, set out above, it was submitted that:

(a) The First Respondent (and the Second Respondent) knew that they had entered into the shareholders agreement and the amended articles of association and knew that the Firm was being run as two practices, instead of one firm, and they knew that this was a material change at the Firm.

(b) Applying the objective standards of ordinary decent people, entering into the shareholders agreement and the amended articles of association and continuing operating as two unauthorised firms and failing to inform the Applicant of the true nature of the Firm was submitted to be dishonest.

The First Respondent's Case

21.4 Mr Nesbitt submitted that the Applicant had to establish: that the matters referred to in allegation 1.1 amounted to a material change that required notification; there was a failure to notify the Applicant of that material change; and that failure amounted to a breach of Principles 2, 6 and 7. He submitted that in practical terms the Tribunal's findings on allegation 1.1 would be determinative of this allegation. For the reasons outlined in relation to allegation 1.1, it was submitted that the evidence did not establish what the Applicant alleged, so that the "material change" relied upon did not arise.

21.5 Mr Nesbitt stated that if the Applicant were to succeed on its case in relation to allegation 1.1, and thereby establish that the way the Firm was set up and run involved the "material change" alleged, it was accepted that this was not notified to the Applicant. He submitted that in this event each Respondent should be considered separately given their distinct roles. He referred to evidence from both Respondents

that in the early life of the Firm almost all communications with the Applicant were undertaken by the Second Respondent. This was in part because she was initially the sole director, and approved manager, and also the COLP and the COFA. Mr Nesbitt submitted that the legal position as provided for in the Solicitors Handbook and the Authorisation Rules was explicitly that it was the manager (i.e. director) and COLP who had the duty to ensure compliance with these duties, and it was they who would be held accountable if these duties were not complied with. At the time when it was alleged there had been a failure to report, the First Respondent was neither a director (manager) nor COLP. His evidence was that he understood that anything that needed to be done in regulatory terms would be dealt with by the Second Respondent and that it did not occur to him that the matters referred to in this allegation amounted to material changes that needed to be notified to the Applicant. Consequently, although the First Respondent did not suggest that there was a failure by the Second Respondent in relation to this, if there was a failure it was submitted that it would have been principally her failure, and not his.

Response to dishonesty allegation in relation to allegation 1.2

21.6 For the reasons set out above, the primary submission was that there was no "material change" to report and that in any event the First Respondent understood that anything that needed to be done in regulatory terms would be dealt with by the Second Respondent. With reference to the test in Ivey, it was submitted that judging the issues on the evidence presented, even if the Tribunal were persuaded that some sort of material change arose, the evidence did not establish any conscious failure on the part of the First Respondent that would justify a finding of dishonesty.

The Tribunal's Decision

21.7 The Tribunal had found in relation to allegation 1.1 that the shareholders agreement and other evidence relied upon by the Applicant did not show to the requisite standard that the Firm was in effect run as two businesses. The alleged failure to report in allegation 1.2 was predicated entirely upon the alleged material change brought about by the shareholders agreement and other documents entered into in early 2014. Accordingly, for the same reasons set out in paragraphs [20.23] to [20.28] the Tribunal did not find that the shareholders agreement, or the other factors relied upon by the Applicant, amounted to or brought about any "material change" such that reporting to the Applicant was required. The alleged breaches, and the allegation of dishonesty, were found not proved.

22. **Allegation 1.3: The First Respondent failed to notify the SRA of a material change at the Firm, namely that he had become a director of the Firm on 24 June 2014, in breach of Principles 2, 6 and 7 and Rules 8.1(a) and 8.7 of the Authorisation Rules. The First Respondent did not notify the SRA of this until his letter to the SRA dated 4 June 2015.**

The Applicant's Case

22.1 The First Respondent was appointed as a director of the Firm on 24 June 2014. The appointment of director form was signed by him and the Second Respondent. The Applicant was not notified at this time that the First Respondent had been appointed a

director. It was alleged that the Applicant was then given incorrect information in the renewal form completed for the Firm in October 2014, which stated that the Second Respondent was the sole director and that the First Respondent was an employee.

22.2 The Applicant was informed of the First Respondent's appointment as a director on 4 June 2015 (nearly one year after the appointment) when he applied for a waiver from the Practice Framework Rules. In his application, the First Respondent stated: "At present, I am a Director for No 1 Solicitors …"

22.3 The Respondents were stated to have taken conflicting positions about the responsibility for the notification to the Applicant. The First Respondent denied that he was responsible for informing the Applicant and maintained that the Second Respondent informed him that she would do it. The First Respondent was said to have provided no documentary evidence in support of this and he had accepted that he did not check whether the Second Respondent had informed the Applicant. In contrast, the Second Respondent had stated that she asked the First Respondent to complete the forms and update the Applicant, and said that he told her he had done so. She also stated in a letter to the Applicant that she and the First Respondent completed the Firm's renewal form together and that the failure to identify the First Respondent as a director was an oversight.

22.4 The appointment of a new director was submitted to be a material change which ought to have been notified to the Applicant. It was submitted that both Respondents should have made the notification and checked that the notification had been made. In the First Respondent's case, because he himself had been newly appointed as a director. It was further submitted that by participating in the completion of the renewal forms in October 2014, he provided false information to the Applicant and/or failed to correct the position.

22.5 By failing to notify the Applicant of this material change the First Respondent was said to have breached the Authorisation Rules Rule 8.1(a), by failing (as a manager) to ensure that the Firm, its managers, and employees complied with their obligations. It was further submitted that he breached the Applicant's Authorisation Rules 8.7(c) and (d) by failing to notify the Applicant as soon as he became aware of a change to relevant information (i.e. on 24 June 2014) and by failing to notify the Applicant that the Firm had provided information to the Applicant that was or may have been false, misleading, incomplete or inaccurate, or had or may have changed in a material significant way. The First Respondent was said thereby to have breached Principles 2, 6, and 7.

<u>The First Respondent's Case</u>

22.6 It was accepted that the First Respondent became a director on or around 24 June 2014, and that the Applicant was not notified of this until June 2015.

22.7 The First Respondent's evidence was that he thought that the Second Respondent had said that she would do this. This was consistent with her role as COLP and COFA and approved manager, and the location of the reporting duties as described in the SRA Handbook. The Applicant's attention was drawn to this issue by later correspondence on 4 June 2015 from the First Respondent in which he referred to himself as a

director. It was submitted that the natural construction of those events was that he thought that the Applicant already knew that he was a director.

22.8 The Second Respondent's evidence on this issue was submitted not to diverge very much from the First Respondent's. She had recognised that it was her responsibility as COLP to inform the Applicant of this appointment. Mr Nesbitt submitted that this was one part of the case affected by the Second Respondent choosing not to participate until after the First Respondent had given his evidence. This meant her account was not put to him and accordingly, bearing in mind the standard of proof, Mr Nesbitt submitted that the Tribunal should assess the allegations on the basis that the First Respondent thought (and had been told) by the Second Respondent, who was the COLP and COFA, that the Applicant had been informed that he had become a director.

22.9 It was submitted that applying any sort of threshold to the test for breaches of Principles 2, 6 and 7 the only fair conclusion was that the facts did not represent a proper factual basis for a finding of a breach on the First Respondent's part.

22.10 In addition, on the basis of where the SRA Handbook suggested responsibility lied, and in the right of the rule in Akudo v SRA [2013] that there was no general principle of vicarious liability for the failings of partners, it was contended that the fair conclusion to reach was that it involved no personal breach of duty at all on the part of the First Respondent.

The Tribunal's Decision

22.11 The form confirming the First Respondent's appointment as a director was signed on 26 June 2014. This was before the date on which, according to all of the parties, the Second Respondent ceased to be a director. Therefore at the relevant time when it was alleged the notification to the Applicant should have been made, the First Respondent was not a sole practitioner.

22.12 The Tribunal reviewed the Authorisation Rules. The allegation was that the First Respondent had breached Rule 8.1(a) and 8.7 of these rules. The obligations of these sections were stated to fall on "an authorised body and its managers or the sole practitioner". Prior to his appointment as a director, the First Respondent was none of these. However, by virtue of becoming a director, in accordance with the SRA Handbook Glossary 2012, the rules did apply to the First Respondent from 26 June 2014. He acknowledged that he did not notify the Applicant.

22.13 There was a conflict of evidence between the Respondents on whether the Second Respondent had agreed she would (and later told the First Respondent that she had) notified the Applicant about the First Respondent becoming a director. The Tribunal noted that the Second Respondent had had the bulk of the contact with the Applicant on behalf of the Firm and had a broader compliance remit as the Firm's COLP and COFA. The Tribunal could not be sure to the requisite standard that the First Respondent's account was not possible, that he had not genuinely believed at the time that the Second Respondent would make, and had made, the notification. Accordingly, it did not find the alleged breaches proved to the requisite standard.

23. **Allegation 1.4: On or about 30 April 2015, the First Respondent directed the Second Respondent, who on the Applicant's records was the sole director and COFA and COLP of the Firm, that on or before 1 June 2015 she was to cease carrying out her cases under the Firm but to practise as a freelance solicitor and to close office account A, and this was recorded in an undertaking from the Second Respondent dated 30 April 2015, contrary to Principles 2 and 6.**

<u>The Applicant's Case</u>

23.1 On 30 April 2015, the Second Respondent gave an undertaking to the Firm pursuant to which she undertook:

(a) to provide "a full personal guarantee to indemnify [the Firm] in full and final … of any or all liabilities… arising from my conduct as a Solicitor and or [the Firm] prior to [30 April 2015]";

(b) to pay certain sums to the Firm in respect of outstanding liabilities on a wasted costs order;

(c) "I will cease all associations with [the Firm] in the capacity of a Fee-Earning capacity on or before 1st June 2015 unless requested otherwise of me by written consent by [the First Respondent], Director of [the Firm] on a specific client matter(s)";

(d) not to use the name of the Firm or its logo;

(e) to close the Crime Business Account with Santander on or before 1 June 2015 (i.e. Office Account A).

23.2 The undertaking was signed by the Second Respondent and witnessed by Ms AK, a solicitor at Lewis & Co Solicitors. Ms AK and Ms SB (a receptionist at Lewis & Co Solicitors) both stated in their witness statements that on 30 April 2015 both Respondents came to Lewis & Co Solicitors and paid Ms AK to witness six documents including the undertaking. Both stated that they had the impression that the Second Respondent had not read the documents before attending the firm and that the First Respondent was rushing her to sign them. On 1 May 2015, the Second Respondent transferred her shareholding in the Firm to the First Respondent.

23.3 The First Respondent stated to the Applicant that he wanted the Second Respondent to cease all fee-paying work with the Firm, he wanted this to be recorded in writing, and the Second Respondent agreed to sign the undertaking and to transfer her shares to him. He also stated that his motivation for this arrangement was that he was angry about a wasted costs order that had been made against the Firm on one of the Second Respondent's cases and that "[i]f the firm was going to pay off the wasted costs order I also wanted to try and have some security against [the Second Respondent] in respect of that liability". The Second Respondent denied that the undertaking was inconsistent with her role as manager at the Firm. She also stated that the undertaking did not give the First Respondent control of the Firm, but gave him control of the limited company (i.e. No 1 Solicitors Limited) for a period of time until she was able to buy back her shares.

23.4 It was submitted on the Applicant's behalf that on the First Respondent's own account, as supported by the evidence of Ms AK and Ms SB, the First Respondent directed the Second Respondent to enter into the undertaking. At this time, the Second Respondent was the COLP and COFA, the approved manager, and, according to the Applicant's records, the sole director of the Firm. It was submitted to be entirely inappropriate for the Second Respondent to give the undertaking, which the Applicant considered significantly undermined her ability to perform her roles as COLP, COFA, approved manager, and director. For these reasons, it was submitted that in directing the Second Respondent to give the undertaking, the First Respondent breached Principles 2 and 6.

The First Respondent's Case

23.5 It was submitted that in its case the Applicant made plain that the reference in the pleaded allegation to the Second Respondent practising "freelance" was to her undertaking work outside of the auspices of an authorised body, rather than any arrangements for employment she may have had with such a body. The assertion at the heart of this allegation was therefore submitted to be that the First Respondent gave a specific direction, recorded in an undertaking, that the Second Respondent should undertake work expressly outside of the auspices of an authorised body – and not (for example) that she could work on cases for another authorised body on some sort of self-employed basis.

23.6 In his witness statement the First Respondent explained that he did ask the Second Respondent to cease work on her files within the Firm because of concerns he had about the work she had taken on, and that it included matters she did not have the expertise to deal with. He thought that in making this request he was acting appropriately to safeguard the Firm. However, he stated that he never directed her to divert to undertaking work on an unauthorised basis. Any reference to her undertaking work on a "freelance" basis was understood by him to be a reference to her making arrangements with another firm under which she could undertake work for clients in an authorised way.

23.7 Mr Nesbitt referred the Tribunal to the wording of the undertaking and suggested that contrary to what was suggested in the allegation, the undertaking did not require or direct the Second Respondent to work in an unauthorised way – it just committed her to not undertaking work for clients on her own behalf within the Firm. It was submitted to be difficult to see how this could be construed as a direction that she should do work in an unauthorised way.

23.8 As with the previous allegation, it was submitted that the approach the Tribunal should adopt to the evidence given by the Second Respondent on this subject needed to take proper account of the way in which nothing that she asserted had been put by her to the First Respondent, so that where their cases diverged her case had not been tested. In any event, despite this, Mr Nesbitt noted that overall in relation to this period of time the Second Respondent appeared to continue to assert that she had some arrangement with Sandbrook Solicitors which allowed her to undertake work for clients in an authorised way. Ms Nesbitt stated that in the light of what Mr VI of Sandbrook Solicitors had said about that her claims were unlikely to be accepted by the Tribunal. He submitted that the important things that arose from this was that what

the Second Respondent asserted appeared to dovetail with what the First Respondent said she told him at the time – namely that she had some arrangement with Sandbrook Solicitors that allowed her to undertake work on a freelance but authorised basis. That account was submitted to be inconsistent with any finding that the First Respondent "directed" the Second Respondent that she should undertake work in an unauthorised way, and the Panel should on that basis find that this allegation against the First Respondent was not established by the evidence.

The Tribunal's Decision

23.9 The undertaking signed by the Second Respondent on 30 April 2015 did not use the word "freelance". The wording of the undertaking required the Second Respondent to "cease all associations with [the Firm] in the capacity of a Fee-Earning capacity (sic)" unless the First Respondent provided written consent to the contrary in specific cases. Whilst the Tribunal accepted that the First Respondent may have been the instigator of the undertaking and may have applied pressure to the Second Respondent to sign it, she had done so as an experienced solicitor and nothing on the face of the undertaking indicated any direction or awareness that she would thereafter practice in an unauthorised way.

23.10 The Tribunal accepted that the First Respondent had asked the Second Respondent to cease all work through the Firm, and this had been provided for in the undertaking. The First Respondent's evidence was that his intention was the Second Respondent should not work on the Firm's files in the light of a wasted costs order which had been received and other issues he perceived with her performance The Tribunal found his evidence on this issue to be plausible. The Tribunal was not satisfied that the First Respondent had directed the Second Respondent to practice as a freelance solicitor or in any unauthorised way. The Tribunal did not consider that it was plausible that when receiving such an undertaking from an experienced solicitor the First Respondent was on notice that she may thereafter practise in an unauthorised way. The Tribunal considered that on this question, the First Respondent's evidence, that he considered that she would be working thereafter in some consultant role with another law firm, was the most natural and likely explanation of his genuine belief. It also accorded to an extent with the Second Respondent's evidence. In any event, the Tribunal could not be sure to the requisite standard that this was not the case and that the First Respondent had as alleged directed the Second Respondent to work on any improper freelance basis.

23.11 The Tribunal was similarly not satisfied that evidence had been presented demonstrating why the undertaking was inevitably inconsistent with the Second Respondent continuing to be engaged to discharge the role of COLP and COFA. Accordingly, the Tribunal found that the allegation was not proved to the requisite standard.

24. **Allegation 1.5: From 30 April 2015 to 10 August 2015, the First Respondent was aware that the Second Respondent was practising as a freelance solicitor and he allowed the files of MC, MS, EH and Mr and Mrs B to be transferred from the Firm to the Second Respondent as a freelance solicitor, yet he failed to report this to the SRA, inform the clients that the Second Respondent was acting outside an authorised entity and was therefore without the benefit of professional**

indemnity insurance, or take any other action to protect the interests of those clients, contrary to Principles 2, 4, 5, 6, 7 and 8.

The Applicant's Case

24.1 As described in the previous allegation, between 30 April and 1 June 2015, it was alleged that the Second Respondent's role within the Firm changed significantly. On 30 April 2015, she entered into an undertaking pursuant to which she undertook not to carry on cases under the name of the Firm; on 1 May 2015, she transferred her shares in the Firm to the First Respondent; on 12 May 2015 the TM01 was executed removing her as a director (although it was said not to be clear whether she was aware of this); and on 1 June 2015, the Second Respondent entered into an employment contract pursuant to which she would be an employee of the Firm as the "SRA Approved Manager".

24.2 It was the Applicant's position that, thereafter, the Second Respondent operated as an unauthorised freelance solicitor, and that the First Respondent knew she was doing so. In support of this contention, Ms Carpenter directed the Tribunal to three client examples:

Clients Ms S and Ms H

24.3 On 5 June 2015, client care letters were sent to clients Mr S and Ms H on the Firm's headed notepaper, stating that the Second Respondent had been instructed on their respective matters. On the same day, Mr S and Mrs H executed authorities for file transfer from the Firm to "my new legal representative,". On 8 June 2015, the Second Respondent sent an email in respect of the matters of Mr S and Ms H and signed off that email "Freelance Senior Solicitor and Advocate".

Client Mr C

24.4 On 16 June 2015, a client, Mr C, executed an authority for file transfer from the Firm to "my new legal representative,". On 1 July 2015, the Second Respondent emailed the First Respondent in respect of Mr C and the email described her as 'Freelance Senior Solicitor and Advocate' and gave her home address. She attached to her email the authority for file transfer from the Firm to "my new legal representative,".

Client Mr and Mrs B

24.5 The First Respondent's file note records that, on 14 July 2015, he took a telephone call from Ms YJ at the Manchester County Court regarding the matter of Mr and Mrs B and that he then spoke with the Second Respondent, who informed him that "she has been acting as Freelance as Lauren Moores" and assured him that "she is no longer acting as [the Firm]".

Other Correspondence

24.6 On 22 June 2015, the Second Respondent emailed the First Respondent to make arrangements for her working days. She requested that her calls and mail be forwarded to her at her Hotmail address and referred to "our restructuring of the

business". The footnote to the email described her as "Freelance Senior Solicitor and Advocate" and then, after the disclaimer, stated that she "is also Director and Manager (incl. COLP and COFA) at [the Firm]". In a letter to the Applicant dated 24 August 2015 (sent on 27 August 2015) in which he reported the Second Respondent to the Applicant, the First Respondent stated that the Second Respondent had continued to represent herself "as No 1 Solicitors or Lauren Moores Freelance" and cited a number of cases by way of example.

24.7 The First Respondent accepted in his witness statement that he was aware of the authorities of file transfer but maintained that these persons were never clients of the Firm. He also accepted that he was aware that the Second Respondent seemed to be acting as a solicitor in the period after the undertaking. He stated that he confronted her about this and she informed him that she was doing so as consultant for Sandbrook Solicitors; he then spoke to Sandbrook Solicitors after she left the Firm and they stated that she did not work for them. At this point, he reported the Second Respondent to the Applicant. He denied that he authorised the Second Respondent to work on a freelance basis or that he was aware at the time that she was doing so. The Applicant did not accept this evidence – it was submitted to be inconsistent with the authorities of file transfers (which he had seen) and his own file note of the discussion on 14 July 2015.

24.8 Between 30 April 2015 and 10 August 2015, it was submitted that the First Respondent was aware that the Second Respondent was practising as a freelance solicitor and without the benefit of professional indemnity insurance and yet he failed to report this to the Applicant or take any other steps to protect the interests of the clients transferred to the Second Respondent in this respect. The Applicant did not accept that the First Respondent understood the Second Respondent to be acting as a consultant for Sandbrook Solicitors – this was submitted to be inconsistent with the authorities of file transfer, which he had seen; and with his own file note of 14 July 2015.

24.9 It was submitted that the First Respondent would have been well aware that the Firm's professional indemnity insurance applied only to clients of the Firm and that those clients transferred to the Second Respondent in her freelance capacity would not have the benefit of that insurance. Again, despite this, it was alleged that the First Respondent took no steps to inform the Second Respondent's clients that she was acting without the benefit of professional indemnity insurance or to report her (until 27 August 2015).For these reasons, it was submitted that the First Respondent breached Principles 2, 4, 5, 6, 7, and 8.

<u>The First Respondent's Case</u>

24.10 The First Respondent acknowledged that he did not take the steps highlighted by the Applicant. The core component of the allegation that would need to be established in order for the Applicant to prove this allegation against the First Respondent was accordingly that he knew that the Second Respondent was practising as an unauthorised freelance solicitor over the relevant time.

24.11 The First Respondent's evidence on this was that he did not understand that when the Second Respondent used the word "freelance" she was referring to practising in an

unauthorised capacity. He understood that word to be used by her as a reference to her "freelance" terms of engagement as a consultant. He understood, and she had told him at the time, that she had entered into such arrangements with Sandbrook Solicitors. Mr Nesbitt submitted that it was telling for the purposes of assessing this evidence that it accorded with what the Second Respondent appeared to have told the Tribunal about this subject – she appeared to maintain that she had entered into such an arrangement. He further submitted that even if the Tribunal had reason to doubt the honesty of the Second Respondent in relation to this issue, based on the account from Mr VI, this was not something that would have been apparent to the First Respondent at the time.

24.12 Given that, and applying the burden and standard of proof as the Tribunal must, it was submitted that it should approach this allegation on the basis that it had not been proved that the First Respondent's state of mind about this was not as he has asserted it to be. The proper conclusion was submitted to be that his "knowledge" of any unlawful acts on the part of the Second Respondent was not made out, and for that reason the pleaded allegation against him was not established.

The Tribunal's Decision

24.13 The Tribunal had found, in relation to the previous allegation, that it had not been proved that the First Respondent was aware that the Second Respondent would practise in an unauthorised "freelance" manner after the undertaking was signed on 30 April 2015. The Tribunal had found the First Respondent's evidence that he considered that the Second Respondent would be working thereafter in some consultant role with another law firm to be persuasive and noted that it accorded to an extent with the Second Respondent's evidence.

24.14 The First Respondent's evidence was that having received a call from Mancheste Crown Court on 14 July 2015 he had spoken with the Second Respondent who told him that she was acting in a freelance capacity for Sandbrook Solicitors on the relevant file. The Tribunal noted that the First Respondent had acknowledged in his evidence seeing executed authorities for file transfers to the Second Respondent which mentioned her personally and not any authorised law firm. The Tribunal did not accept that this in itself necessarily demonstrated knowledge that she was acting in an unauthorised manner.

24.15 The First Respondent had reported the Second Respondent to the Applicant on 24 August 2015 (after she had reported him). He had made reference in his report to the Second Respondent practising in an unauthorised manner. His case was that he became aware that the Second Respondent was not authorised to act through Sandbrook Solicitors when he made enquiries with them in later August 2015 (after her employment at the Firm had terminated and after the period with which allegation 1.5 was concerned).

24.16 The First Respondent had acknowledged not taking the steps that the Applicant had set out in the allegation as being required. The Tribunal considered the evidential picture about the First Respondent's knowledge of the nature of the "freelance" work undertaken by the Second Respondent to be confused. The accounts of both Respondents coincided to an extent, and the Tribunal treated the evidence of Mr VI

with some circumspection. The Tribunal could not be sure, to the requisite standard of proof, on the evidence presented, that the First Respondent had been aware that the Second Respondent was completing the relevant legal work in an unauthorised manner without the benefit of professional indemnity insurance. The Tribunal could not discount as a possibility that the First Respondent had at the time considered that the Second Respondent was conducting the legal files about which he had knowledge through an authorised firm. Accordingly, the allegation was not proved.

25. **Allegation1.6: The First Respondent became the sole director of the Firm on or about 12 May 2015 and:**

 a) **Failed to inform the SRA of this material change, in breach of Principles 2, 6 and 7 and Rules 8.1(a) and 8.7 of the Authorisation Rules, until 10 August 2015; and**

 b) **Did not make an application for COLP/COFA approval until 27 August 2015, contrary to Principles 2, 6 and 7 and Rules 8.1(a) and 18.1 of the Authorisation Rules; and**

 c) **Misled the SRA into believing that the Second Respondent was still a director of the Firm at the time of his application for a waiver from Rule 12.2(b) of the Practice Framework Rules in breach of Principles 2, 6 and 7.**

<u>The Applicant's Case</u>

25.1 The Applicant's case was that the First Respondent had alleged three different dates as to when he became sole director of the Firm: specifically, whether it was on 12 May 2015 or on 6 August 2015 or on 10 August 2015. The Applicant contended that:

 (a) The First Respondent became sole director on 12 May 2015 because that was what the contemporaneous documents showed; and

 (b) The First Respondent's shifting case on this point was wholly unreliable.

25.2 Ms Carpenter referred the Tribunal to the following documents:

 (a) Form TM01, dated 12 May 2015, pursuant to which the Second Respondent's position as a director of the Firm was terminated. This form was not filed at Companies House until 6 August 2015 when it was filed electronically.

 (b) On 4 June 2015, the First Respondent applied to the Applicant for a waiver from Rule 12.2(b) of Practice Framework Rules (i.e. a waiver from the requirement to have three years' PQE to be qualified to supervise). He included in that application a reference purportedly given by the Second Respondent (which the Second Respondent denied writing). In his waiver application, and discussions with the Applicant about it in July 2015 (recorded in an attendance note), the First Respondent stated that the Second Respondent was still a director.

(c) On 3 August 2015, the Applicant's Ethics Adviser drafted a report recommending that the First Respondent be granted a waiver. The Ethics Adviser sent the draft report to the First Respondent by email on 3 August 2015 and asked if he had any comments on it. The draft report stated several times that the Second Respondent was a director of the Firm; the First Respondent responded, on 5 August 2015, stating that he did not have any comments (i.e. he failed to correct the allegedly false statements that the Second Respondent was a director).

(d) On 6 August 2015, the First Respondent was granted the waiver. On the same day, the Ethics Adviser informed him of the decision by telephone.

(e) On 6 August 2015, the TM01 form (dated 12 May 2015) was filed electronically at Companies House which recorded that the Second Respondent was removed as a director, as of 12 May 2015. Mr MS, a Law Enforcement Liaison Manager at Companies House, explained in his evidence that the email address connected to the TM01 form filed electronically on 6 August 2015 was: <ehsan.kabir@1solicitors.co.uk>. It was the Applicant's case that the First Respondent filed the TM01 with Companies House electronically on 6 August 2015 after he was informed over the telephone by the Ethics Adviser that he had been granted the waiver.

(f) The Applicant understood, based on evidence from Mr MS, that the TM01 form would have appeared on the Companies House website almost immediately after registration on the registrar's database at 17:42:52 on 6 August 2015.

(g) On 19 August 2015, Companies House wrote back to the First Respondent stating that the form TM01 had been incorrectly completed.

25.3 The First Respondent's position as to when the Second Respondent was removed as a director was alleged to have shifted significantly over the course of the Applicant's investigations.

(a) In all documents between 24 August 2015 and September 2016, his position was that she had ceased being a director on 12 May 2015. In his report to the Applicant dated 24 August 2015 (sent on 27 August 2015), he accused the Second Respondent of professional misconduct for continuing to carry out cases on behalf of the Firm after ceasing to be a director on 12 May 2015.

(b) On 21 July 2016 the Applicant sent a letter to the First Respondent which included the allegation that he had misled the Applicant during his application for a waiver between June and August 2015 in that he had told Ethics that the Second Respondent was still a director when in fact she had ceased being a director in May 2015. Since receiving that letter, the Respondent was alleged to have altered his case and contended that the Second Respondent ceased being a director in August 2015 (variously dated by him as "August 2015", 6 August 2015 and 10 August 2015) and that he had been "confused" for the previous 13 months.

25.4 His current position (which was not accepted by the Applicant) as set out in his witness statement was summarised by Ms Carpenter as:

(a) The TM01 was completed in May 2015, and signed by the Second Respondent, but that they then agreed she would stay on as a director and so he did not file it with Companies House and that as far as he was aware at the time, she remained a director until August 2015.

(b) Shortly after 10 August 2015, he received a form from Companies House enclosing a copy of a TM01 that needed extra details. He said that he had not filed it. He said that shortly after this he looked at the Companies House website and saw that they had recorded the Second Respondent as ceasing to be a director from 12 May 2015; at that time, he formed the assumption that she must have filed the TM01 form in May 2015 without telling him. Therefore, he started to believe that the Second Respondent had (without his knowledge) ceased to be a director in May 2015 and so that is what he told the Applicant.

(c) However, on a subsequent but unstated date he looked again at the Companies House website and realised the TM01 had not been filed until 6 August 2015 and therefore he formed the view that, as he had originally thought, the correct analysis was that she had stayed as a director until August 2015.

25.5 The Second Respondent's evidence on the TM01 was that she had not signed the TM01 or filed it. She stated that her signature was forged by the First Respondent and maintained that she was removed as a director without her knowledge and only found out about this fact on 24 August 2015.

25.6 The Applicant submitted that given the inconsistent accounts given by the First Respondent, the conflicts between his evidence and that of the Second Respondent, and the alleged dishonesty of both of them on multiple matters, in order to determine when the Second Respondent ceased to be a director of the Firm, the Tribunal could only rely on the contemporaneous documents. These were submitted to show that she ceased to be a director on 12 May 2015:

(a) The TM01 form provided that the Second Respondent was removed as a director on 12 May 2015 and this is the date recorded by Companies House for her removal as a director (albeit that this was only registered with Companies House on 6 August 2015).

(b) The Second Respondent's removal as a director by the First Respondent on 12 May 2015 was also submitted to be consistent with:

(i) the undertaking dated 30 April 2015; and

(ii) the sale of the Second Respondent's shares to the First Respondent's on 1 May 2015; and

(iii) the employment contract (executed on 1 June 2015); and

(iv) emails and text messages sent between the Respondents after 12 May 2015;

all of which were submitted to show that between 30 April and June 2015 and thereafter, the Second Respondent was no longer being treated by the First Respondent as a director of the Firm and was instead treated as an employee.

25.7 The Applicant further submitted that the First (and not the Second) Respondent must have filed the TM01 form at Companies House electronically on 6 August 2015. In this regard, the Applicant relied on:

(a) The evidence of Mr MS that TM01 was filed on 6 August 2015 electronically from an email address in the First Respondent's name at the Firm, ehsan.kabir@1solicitors.co.uk.

(b) On 19 August 2015, Companies House wrote to the First Respondent at the Firm to inform him that the TM01 form had been filed incorrectly. It was submitted that it was to be inferred that Companies House did so because the First Respondent had filed the TM01 form.

(c) The Second Respondent would have no reason to file a backdated TM01 on 6 August 2015. On the First Respondent's own case he did not dismiss her from the Firm until 10 August 2015. It was submitted that the only person who knew something had changed on 6 August 2015 (the grant of the waiver) was the First Respondent.

(d) On 10 August 2015, the First (not Second) Respondent wrote to the Firm's insurers to inform them that the Second Respondent had ceased to be a director "on 6 August 2016". This was submitted to support the fact that he filed the TM01 on 6 August 2015.

(e) What was submitted to be the implausibility of the First Respondent's evidence on this point. It was said to be inferred that the true position was that: the First Respondent filed the TM01 form electronically on 6 August 2015 and that he was well aware at all times that: (a) it was filed on 6 August 2015, and (b) it provided for a date of termination of 12 May 2015.

25.8 As to allegation 1.6(a), the Applicant submitted:

(a) The First Respondent did not dispute that he failed to inform the Applicant of the Second Respondent's resignation as a director until 10 August 2015.

(b) It was submitted that the First Respondent failed to notify the Applicant that the Second Respondent had ceased to be a director of the Firm as at the date she was removed, i.e. 12 May 2015.

(c) Accordingly, in the period between 12 May 2015 and 10 August 2015, it was submitted that the First Respondent was in breach of Principles 2, 6, and Authorisation Rules 2011 8.7 and 18.1.

25.9 As to allegation 1.6(b), the Applicant submitted:

(a) The First Respondent did not dispute that he did not apply to the Applicant's Authorisation Department for COLP and COFA approval until 27 August 2015.

(b) The First Respondent failed to make his application for COLP and COFA until 27 August 2015, in circumstances where: the Second Respondent (the approved COLP and COFA) had given an undertaking not to run any cases under the Firm's name on 30 April 2015, transferred her shares on 1 May 2015, been removed as a director on 12 May 2015, and been involved with the Firm only as an employee from 1 June 2015.

(c) Accordingly, in failing to apply for COLP and COFA approval until 27 August 2015, it was submitted that the First Respondent breached Principles 2, 6, and 7 and Authorisation Rules 8.1(a) and 18.1.

25.10 As to allegation 1.6(c), the Applicant submitted:

(a) The First Respondent did not dispute that he stated that the Second Respondent was a director in his waiver application (i.e. in June 2015), that he confirmed this fact to the Applicant's Ethics Adviser; and that he did not correct the Applicant's report which recorded the Second Respondent as a director. It was noted that the First Respondent signed a declaration of truth when he submitted his waiver application.

(b) Accordingly, given that the Second Respondent was alleged to have been removed on 12 May 2015, it was submitted that the First Respondent misled the Applicant into believing the Second Respondent was still a director as in June 2015 and, in doing so, acted contrary to Principles 2, 6, and 7.

Dishonesty alleged in relation to 1.6(a) and 1.6(c)

25.11 With reference to the test laid down in Ivey (above), it was submitted that:

(a) The First Respondent knew that the Second Respondent had been removed as a director on 12 May 2015 and that the Applicant had not been informed of this fact. Despite that, he repeatedly informed the Applicant that the Second Respondent was still a director after 12 May 2015 during his waiver application. It was submitted that the First Respondent failed to report the Second Respondent's removal because he knew that the Applicant would not continue to authorise the Firm in these circumstances. He was submitted to have had many opportunities to notify the Applicant but only chose to do so after he had received his waiver authorising him as qualified to supervise (Ms Carpenter submitted that it was notable that the TM01 form was filed electronically on the same day as the First Respondent had received the waiver decision).

(b) Applying the objective standards of ordinary decent people, the failure to inform the Applicant that the Second Respondent had been removed as a

director and the repeated assertions by the First Respondent that she remained a director after 12 May 2015 were submitted to be dishonest.

The First Respondent's Case

25.12 Mr Nesbitt submitted that at the core of each element of this allegation was (a) the question of when in fact the Second Respondent ceased to be a director, and (b) the First Respondent's state of mind at the time in relation to the matters alleged. It was submitted that in the light of all the evidence that the Tribunal had heard, applying as it must the standard of proof, the contention advanced by the Applicant that the Second Respondent ceased to be a director of the Firm on 12 May 2015 was unsustainable and fell at this first hurdle.

25.13 It was acknowledged on the First Respondent's behalf that that had been a lot of confusion about the filing of documents, and exactly what happened when in relation the cessation of the Second Respondent's directorship, however the evidence of both Respondents was that they each believed at the time that she remained a director until August 2015. The only basis for suggesting otherwise was submitted to be the date that Companies House appears to have recorded as the date when the Second Respondent ceased to be a director, but that the evidence from Companies House established that the notification was not in fact provided until August 2015. The Tribunal heard submissions from the parties in the course of the hearing about what the legal position was in relation to when a director ceased to be a director, and it submitted to be clear that it was not a question to be determined by reference to documents lodged with Companies House, but of when acts that gave rise to termination – essentially either dismissal or resignation – took place.

25.14 For all the caution that the First Respondent had submitted it was appropriate for the Tribunal to apply to anything that the Second Respondent said, in relation to this subject their evidence converged. There was submitted to be no proper evidential basis upon which the Tribunal could find that the Second Respondent ceased to be a director of the Firm on 12 May 2015, and in those circumstances each of allegations 6 (a) to (c) were submitted not to be made out.

Response to dishonesty allegation in relation to 1.6(a) and 1.6(c)

25.15 The Respondent denied the specific allegation of dishonesty on the same basis that the breaches of the Principles and other obligations was denied. The submission that there was no proper evidential basis upon which the Tribunal could find that the Second Respondent ceased to be a director of the Firm on 12 May 2015 was repeated along with the submission that consequently the allegations of dishonesty based on that date must inevitably fail.

The Tribunal's Decision

25.16 The Tribunal noted that the TM01 form recording the removal of the Second Respondent as a director was not filed at Companies House until 6 August 2015. The Tribunal also noted that that was the date (unbeknownst to the Second Respondent at

the time) that the First Respondent had received the waiver from the Applicant which would allow him to supervise within the Firm. The Tribunal could not identify any plausible motive that the Second Respondent could have had for lodging notification of her resignation as a director with effect from 12 May 2015 with Companies House on 6 August 2015, a date on which from her perspective nothing happened to prompt such an act. The Second Respondent's evidence was that she did not resign her directorship at any stage and did not sign the TM01 form. The Tribunal did not find that it was proved to the requisite standard that the Second Respondent had resigned her directorship nor (inevitably, in the light of that finding) that she had filed the TM01 form on 6 August 2015.

25.17 In contrast, the First Respondent did have an obvious motive for removing the Second Respondent as a director, and more specifically, for recording and formalising such a change on 6 August 2015. This was the date on which he received notice that his waiver application entitling him to supervise had been accepted by the Applicant. His reliance on the Second Respondent for such essential regulatory tasks was thus ended. The Tribunal found the First Respondent's account of his various inconsistent statements about the termination of the Second Respondent's directorship to be confused and unpersuasive.

25.18 However, all limbs of the allegation were predicated on the First Respondent becoming the sole director of the Firm on or about 12 May 2015. The primary basis on which this was maintained by the Applicant was that this was the date mentioned in the TM01 form. The Tribunal accepted the submissions made on behalf of the parties that the key date for when a directorship ceased was the date of the relevant resignation or termination taking effect rather than the notification to Companies House. It was clear that Companies House was informed, on 6 August 2015, that the Second Respondent had ceased to be a director on 12 May 2015. The Tribunal did not accept that this dated form in itself established that a valid resignation or a termination had in fact taken effect on that date. It was evidence of an intention on the part at least one of the Respondents, most likely the First Respondent, to record details of a termination, but not, beyond reasonable doubt, that a valid termination had been effected on the date contained within the form.

25.19 As stated above, the Tribunal did not find it proved that the Second Respondent had resigned her directorship. Applying the requisite standard of proof, and whilst noting the various factors submitted by Ms Carpenter to be consistent with the Applicant's case that the Second Respondent ceased to be a director on 12 May 2015, the Tribunal could not be sure that the Second Respondent had ceased to be a director on that date. The corollary of this was that it therefore could not be said to the requisite standard of proof that the First Respondent was the sole director from this date. Accordingly, the allegations, including that of dishonesty, based on failures associated with being the sole director were not proved.

26. **Allegation 1.7: The First Respondent was not qualified to supervise until 6 August 2015 when he was granted a waiver under Rule 12.2(b) of the Practice Framework Rules. As a consequence of this it was alleged that between at least 12 May 2015, when the Second Respondent's directorship was terminated, and**

6 August 2015, the First Respondent had breached Principles 2, 6 and 7 and Rule 12.1(b) of the Practice Framework Rules.

The Applicant's Case

26.1 The effect of the Second Respondent's alleged removal as a director on 12 May 2015 was submitted to be that it placed the First Respondent, the sole director of the Firm, in breach of Rule 12.1 of the Practice Framework Rules, which requires that at least one of the lawyer managers of a recognised body be qualified to supervise. It was alleged that from 12 May 2015, the First Respondent was the only lawyer manager of the Firm. He was not qualified to supervise until he was granted a waiver under Rule 12.2(b) on 6 August 2015.

26.2 The First Respondent's position was summarised as being that the Second Respondent continued to perform the role of COLP and COFA and remained an approved manager until August 2015, pursuant to her employment contract. That was submitted to be no answer to the allegation against him. Once the Second Respondent ceased to be a director (i.e. on the Applicant's case from 12 May 2015), she was no longer a qualified lawyer manager and, as such, she could no longer fulfil the position required under Rule 12.1(b) of the Practice Framework Rules. A lawyer manger must be: a manager of an LLP, a director of a company, a partner in a partnership, or in relation to any other body, a member of its governing body. From 12 May 2015, the Second Respondent was alleged to have held none of these roles.

26.3 In the premises, between 12 May 2015 and 6 August 2015, the First Respondent was said to have breached Principles 2, 6, and 7 and Rule 12.1(b) of the Practice Framework Rules.

The First Respondent's Case

26.4 As with the previous allegation, this allegation was submitted to rest entirely upon the assertion that the Second Respondent ceased to be a director on 12 May 2015. If having heard the evidence the Tribunal concluded that she was a director until August 2015 (or even that there was a possibility that she was), the allegation was submitted to fail.

26.5 The submissions made in relation to allegations 1.6 (a) to(c) above were repeated: there was submitted to be no proper evidential basis upon which the Tribunal could conclude that the Second Respondent ceased to be a director on 12 May 2015. Given that, it was submitted that this allegation must fail.

The Tribunal's Decision

26.6 The reasons for the Tribunal's conclusion that it had not been proved to the requisite standard that the Second Respondent ceased to be a director on 12 May 2015 were set out in paragraphs [25.16] to [25.19] above in relation to allegation 1.6. It followed from this finding that the alleged breaches set out in allegation 1.7 which were similarly predicated on this termination date had also not been proved to the required standard. The Tribunal could not be sure that the Second Respondent's directorship had terminated on 12 May 2015 as alleged.

27. **Allegation 1.8: The First Respondent caused the Firm to enter into an employment contract with the Second Respondent on 1 June 2015 as an SRA Approved Manager of the Firm. The terms of this contract ceded control from the Second Respondent to the First Respondent despite the fact that, according to SRA records, the Second Respondent was the manager of the Firm at the time and the only solicitor at the Firm who was qualified to supervise. This agreement was incompatible with the Second Respondent's position at that time according to SRA records as a sole director and COLP/ COFA and the First Respondent's position at that time according to SRA records as an employee. By entering into this agreement, the First Respondent breached Principles 2 and 6**.

The Applicant's Case

27.1 On 1 June 2015, the Second Respondent and the Firm entered into an employment contract pursuant to which she would be employed as the "SRA Approved Manager". In this capacity, she was to perform the role of COLP, COFA, and manager of the Firm. Pursuant to the employment contract, the Second Respondent was entitled to an annual gross salary of £9,000 for a minimum of 15 hours each week, required to work at the business premises of the Firm, entitled to 20 days' holiday per annum, and required to give 12 weeks' written notice if she wished to terminate her employment. The Applicant's case was that from June 2015, the Second Respondent was treated as an employee and paid wages in this respect.

27.2 Both Respondents accepted that the Firm entered into the employment contract with the Second Respondent and that she was to be paid to perform the role of COLP, COFA, and manager. In his evidence the First Respondent denied that he was aware that there was anything wrong with this arrangement. The Second Respondent denied that this arrangement was incompatible with her role at the Firm or that it ceded control to the First Respondent.

27.3 It was submitted that the effect of the employment contract was to cede control from the Second to the First Respondent on the basis that the Second Respondent became an employee of the Firm. This was submitted to be inappropriate in circumstances where:

(a) The Second Respondent was, according to the Applicant's records, the approved manager and only director of the Firm;

(b) The Second Respondent was the only solicitor at the Firm who was qualified to supervise (the First Respondent did not obtain his waiver until 6 August 2015).

(c) The Second Respondent was the COLP and COFA for the Firm (the First Respondent did not apply to be the COLP and COFA until 27 August 2015).

27.4 By causing the Firm to enter into the employment contract, it was submitted that the First Respondent breached Principles 2 and 6.

The First Respondent's Case

27.5 It was suggested on the First Respondent's behalf that the allegation relied on the assertion that at the time of the entry into the employment contract the Second Respondent was the sole director, and the First Respondent was merely an employee – so that such an agreement was incompatible with their respective positions. The evidence of both Respondents on the question of when the First Respondent became a director, and when the Second Respondent ceased to be a director, was that the First Respondent became a director and ceased to be "just" an employee in June 2014, and the Second Respondent ceased to be a director in August 2015.

27.6 Given that, it was suggested that this allegation proceeded on two premises that were shown on the evidence to be false – at the time the contract said to be inappropriate was signed the Second Respondent was not the sole director, and the First Respondent was not just an employee: the First Respondent's case was that there were two directors and the Second Respondent was a co-director. It was suggested that accordingly the allegation as advanced must fail.

27.7 However, if the Tribunal was not so persuaded, Mr Nesbitt submitted that there was no principle at all that directors could not enter into contracts of employment. On the contrary, he suggested that directors of companies frequently are also employees who have (for example) their remuneration and other terms on which they are engaged dealt in an employment contract.

27.8 In addition, whilst it was recognised that the practical effect of the agreement was that the First Respondent became the dominant "partner" and director, and the Second Respondent the subordinate one, there was submitted to be no rule in law (at least as far as the First Respondent's representatives were aware) against directors of companies entering into contractual arrangements which make one director subordinate to a more senior director. Parties were said to be free to contract as they wish. In those circumstances it was submitted that nothing improper arose from this in terms of the law of companies or directors. As far as the Second Respondent's roles as COLP and COFA were concerned – again as far as the First Respondent and his representatives were aware – there was submitted to be nothing legally improper in a COLP and COFA being an employee and/or a director who is subordinate to other directors.

27.9 If that was wrong, then this was not something the First Respondent appreciated at the time. He thought that the steps that he took at this time were, in the round, sensible and appropriate steps for him to take to safeguard the Firm. Overall, it was submitted that whilst the signing of the employment contract might look unusual, given that (contrary to the premise on which the allegation was put) the First Respondent was a director and not just an employee, the agreement did not give effect to anything legally improper. Finally, on that basis, given the threshold of fault which it was submitted properly attached to Principles 2 and 6, the proper finding was submitted to be that no breach of those principles was made out.

The Tribunal's Decision

27.10 Whilst the Applicant's records did not reflect the fact, at the time of the employment contract, 1 June 2015, the First Respondent was a director of the Firm. His failure to

update the Applicant about this was the subject of allegation 1.3 (and correspondingly allegation 1.12 in respect of the Second Respondent's failure to do so). The Tribunal did not consider that this failure of notification aggravated the conduct alleged which was concerned with the substance of the relationship between the Respondents and the extent to which this was compatible with the Second Respondent's regulatory obligations.

27.11 The essence of the allegation was that the employment contract "ceded control" from the Second to the First Respondent. The First Respondent's evidence was that he did not consider there was anything improper in the employment relationship. The Tribunal accepted that entering into the employment contract, at the First Respondent's behest, was consistent with him becoming the dominant partner in the Firm. By this stage, the tables had turned as the initially junior partner had become the dominant figure. To this extent, the Tribunal found that the employment contract did cede some control from the Second to the First Respondent in terms of their relationship. However, the Tribunal did not conclude that an employment contract was inevitably incompatible with the roles discharged by the Second Respondent (approved manager, COLP and COFA).

27.12 The Second Respondent's evidence was that she did not consider she was improperly ceding control, or that the employment contract undermined her ability to undertake her regulatory obligations as COLP, COFA and approved manager. The Tribunal was not persuaded that employment contract in itself was sufficient to undermine the Second Respondent's ability to perform these roles within the Firm. Under the employment contract she was paid specifically to carry them out. Both Respondents had given evidence that she continued to fulfil these roles and the Tribunal did not consider that compelling evidence that this was inadequate or inaccurate had been presented.

27.13 The Tribunal accepted the submission that many employees fulfil the roles of COLP, COFA and approved manager. The Tribunal did not consider that the employment relationship itself was improper, nor that the inaccurate record held by the Applicant incorrectly showing the Second Respond as the sole director made it such. On this basis, the Tribunal did not find that the alleged breaches of the Principles had been proved to the requisite standard.

28. **Allegation 1.9: The First Respondent gave misleading information to the SRA between 27 August 2015 and 4 May 2017, contrary to Principles 2, 6 and 7.**

The Applicant's Case

28.1 Throughout the Applicant's investigation into the First Respondent's conduct, he was alleged to have given contradictory information on key matters.

28.2 Concerning the shareholders agreement: the First Respondent's had informed the Applicant that:

(a) the shareholders agreement was signed (at the initial interview on 2 November 2015 and the interview on 24 February 2016).

(b) the shareholders agreement was never signed and not followed (his response to the Applicant's letter of 18 October 2016).

(c) the shareholders agreement was not executed or followed (his Answer to the Rule 5 Statement).

(d) a version of a shareholders agreement was signed but it was superseded by an unsigned version (his witness statement).

28.3 It was submitted to be plain that there was a right answer to this question – the shareholders agreement was, or was not, signed and was or was not followed. It was submitted that the First Respondent had shifted position depending on what he perceived to be in his best interests. In his recent witness statement, he was said to have concluded by trying to present a version of events that captured all his previous responses but which was submitted to be inherently unlikely, namely that he and the Second Respondent signed a shareholders agreement, which has been lost, but this was then superseded by a version included in the hearing bundle which was never signed and was not followed.

28.4 Concerning the date on which the Second Respondent ceased to be a director:

(a) As set out at paragraphs [25.3] and [25.4] above, it was alleged that the First Respondent repeatedly informed the Applicant that the Second Respondent ceased to be a director on 12 May 2015, but then changed his case and contended that she ceased to be a director on a date variously described as "August 2015", "6 August 2015" or "10 August 2015".

(b) As set out at paragraph [25.6] above, it was the Applicant's position that the Second Respondent ceased to be a director on 12 May 2015, pursuant to the date on the TM01 Form. If this were accepted by the Tribunal, it was submitted that it would become clear that on each of the many occasions that the First Respondent informed the Applicant that the Second Respondent remained a director after 12 May 2015 or ceased to be a director on a date in August 2015 (i.e. throughout his waiver application in June to August 2015, and in his responses to the Applicant during the investigation and in these proceedings from October 2016 onwards), he provided incorrect information to the Applicant. It was not accepted by the Applicant that the First Respondent made a mistake – this position having been repeated by him many times, including in his waiver application, which was signed with a statement of truth and which was provided only a few weeks after 12 May 2015.

(c) If, in the alternative, the Tribunal found that the Second Respondent ceased to be a director in August 2015, then it was submitted that it followed that each time the First Respondent informed the Applicant that the Second Respondent had ceased to be a director on 12 May 2015, he provided incorrect information to the Applicant. As above, it was not accepted that he had made a mistake. The information was repeatedly provided to the Applicant both in writing and in interviews. His explanation in his evidence about being confused by looking at the information on Companies House was submitted to be contrived and implausible. That was said to be particularly so in circumstances where there

was alleged to be clear evidence that the First Respondent, himself, filed the TM01 form on 6 August 2015. In any event, since the First Respondent on his own case himself removed the Second Respondent as a director there was submitted to have been no need for him to look at Companies House to check the date on which he did so; he would have been well aware when he did so.

28.5 Given the answers on the above points provided by the First Respondent, which Ms Carpenter submitted were contradictory, she submitted that it followed that one of his answers must have been untrue. The Applicant submitted that the Tribunal ought to infer that the First Respondent had no interest in giving full and truthful answers to the Applicant or the Tribunal and that his answers had been driven by what he perceived to be his own self-interest in seeking to deny misconduct. For these reasons, it was submitted that the First Respondent had breached Principles 2, 6, and 7.

Dishonesty alleged in relation to allegation 1.9

28.6 With reference to the test laid down in Ivey (above), it was submitted that:

(a) The First Respondent had repeatedly given contradictory answers to the Applicant and, in doing so, must have given incorrect answers. It was submitted that the First Respondent knew that he was giving untruthful answers.

(b) Applying the objective standards of ordinary decent people, the provision of untruthful information to the Applicant was submitted to be dishonest.

The First Respondent's Case

28.7 Mr Nesbitt stated that following the Applicant's opening of the case it was understood that only two of the matters referred to in Rule 5 Statement were now advanced as involving the provision of contradictory information, namely information relating to:

(a) the information that the First Respondent had provided about when the Second Respondent ceased to be a director of the Firm, and

(b) about the shareholders' agreement (in relation to which the issue that was advanced was understood to be that he had given contradictory accounts of whether it was ever signed or treated as effective).

28.8 The First Respondent explained in evidence what he believed he said about these matters at different times, and why he said what he said. With regards to the shareholders agreement, it was suggested that from the interview notes it appeared that very early on in his conversations with the Applicant's investigators about this subject he was raising doubts (at the very least) about the status of the agreement. Overall it was submitted that the evidence about its status and when and where it was signed (or whether a final version was signed at all) was confused and uncertain. The Respondents disagreed to a significant extent about this, but it was submitted that their disagreement did not constitute any basis for saying either that the First Respondent had been wrong about anything he had said about the status of the agreement, or that he had contradicted himself. It was not accepted that the evidence

established that the First Respondent gave materially different versions of events on this subject – applying the burden and standard of proof as the Tribunal must, the evidence of the record of interview on this subject was submitted to be too uncertain and vague to form a proper evidential basis for that conclusion.

28.9 Even if the First Respondent were found to have given an account that had differed at different times, the provision of different information about something which did appear confused was submitted not to be a proper basis for saying that information that has been given is "untrue", or to give rise to the formal breaches of duty (of Principles 2 and 6) alleged. Applying the burden and standard of proof properly it was submitted that the Tribunal should unhesitatingly find that the breaches of duty were not established.

28.10 The submission in relation to what the First Respondent said in relation to the question of when the Second Respondent ceased to be a director was similar. It was acknowledged that – unlike it was suggested in relation to the shareholder agreement –the First Respondent had at different times said things on this subject which did directly contradict each other. The First Respondent explained that his state of mind about this question had changed at different times: whilst he had thought that the Second Respondent had been a director in the period through May, June and July, after he obtained the waiver and asked her to leave he found that the Companies House record recorded her as having stopped being a director on 12 May 2015 – as it would appear it would have done on any examination of the register in late August. Although this was not what he had earlier understood he thereafter took the date from this. Any discussions that he had at (for example) at interview about this subject would have been ones in which he was proceeding on this basis, in a context in which he did not (then) appreciate the significance that this might have. Then, following his retention of solicitors to deal with the Applicant's "EWW letter" the issue was (he said) looked at more closely, with amongst other steps the First Respondent taking steps to explore with Companies House what had happened in relation to this. His evidence was that that revealed that in fact the information that the Second Respondent had ceased to be a director had been lodged with Companies House in August. This led the First Respondent to say thereafter (and it was submitted apparently accurately) that the Second Respondent did not cease to be a director until August.

28.11 In terms of the lodging of the TMO1 form, it was recognised that the Second Respondent made the serious allegation against the First Respondent that he forged her signature on the document and that he must have lodged it on 6 August 2015. The First Respondent denied forging the signature, and that it was he who lodged the document, and said the Second Respondent signed it and that someone else must have lodged it. It was submitted to be striking in relation to this subject that when the original of the document was found (and the First Respondent's account of this was corroborated by Mr II's evidence), the First Respondent was anxious that the Applicant should have it subjected to handwriting analysis. Whilst the expert analysis undertaken was inconclusive, the Tribunal was invited to conclude that the First Respondent was scarcely likely to have wanted the form to be the subject of expert analysis if it were true that he had forged the signature on it. On the subject of who lodged the document, the evidence from Companies House established that anyone with the log in details of the Firm could have lodged it, and Mr Nesbitt noted that

even on the Second Respondent's own evidence it sounded as if she had those log-in details.

28.12 It was acknowledged that the evidence on this was in some respects confused and not conclusive either way, it was suggested that the weight of evidence, and especially the weight of credibility, pointed to the First Respondent's account of these events being the one that is more likely to be accurate. Mr Nesbitt submitted that even if the Tribunal were not to accept that that was the position, in reality it could only decide this issue against the First Respondent if it were sure that he were wrong – as opposed to that the evidence was confused and the Tribunal could not be sure one way or the other. Whilst it was acknowledged that the First Respondent had not helped himself in relation to this subject, ultimately the conclusion that the Tribunal were invited to reach, and which was submitted to be appropriate, was that the serious breaches of duty (and especially of principle 2) were, on the proper application of the standard of proof, not made out.

Response to allegation of Dishonesty in relation to Allegation 1.9

28.13 The points summarised in the preceding paragraph were also the basis of the resistance to the allegation of dishonesty. The Tribunal could only find the allegation proved if it was sure that the First Respondent's account of events was wrong and that he had consciously misled the Applicant, rather than being mistaken due to the events being confusing in themselves. The First Respondent gave evidence about how and why what he had thought and believed about this subject had changed over time. It was suggested that his description of the changes in his mind on this subject seemed genuine and true. It was submitted that this was not an issue about which the Tribunal could properly conclude that what the First Respondent said about his state of mind in relation to this was certainly untrue. Accordingly, it was submitted that the allegation of dishonesty was not made out to the appropriate standard of proof.

The Tribunal's Decision

28.14 The Tribunal heard evidence from the Respondent over several days. As noted above in relation to other allegations, there were areas where his evidence was accepted and where the account he gave was considered to be plausible. However, the overall impression formed by the Tribunal was that he was not an impressive or generally credible witness. His evidence often appeared to seek to anticipate allegations and questions and to be evasive rather than to be an attempt to provide clear answers.

28.15 As Mr Nesbitt had stated, the case was put during the hearing on the basis of allegedly misleading statements about when the Second Respondent ceased to be a director and about the shareholders agreement.

28.16 With regards to the directorship point: in July and early August of 2015, the First Respondent had informed the Applicant, in the context of his waiver application, that the Second Respondent was still a director of the Firm. He had also written to the Firm's insurer on 10 August 2015 and informed them that the Second Respondent had "stepped down" as a director of the Firm as of 6 August 2015. The documents then displayed a significant change in the letter sent by the First Respondent to the Applicant on 24 August 2015 (this was the letter reporting the Second Respondent to

the Applicant). In this detailed, and evidently considered, letter, the First Respondent stated that the Second Respondent's position as a director was terminated on 12 May 2015. The First Respondent sent further detailed letters to the Applicant. A letter dated 26 February 2016 referred to the Second Respondent having ceased to be a director on 13 May 2015. A letter dated 13 May 2016 referred to the Second Respondent ceasing to be a director on an unspecified date and then continuing with her other roles at the Firm prior to the termination of her employment in August 2015. A different account was provided in a letter dated 18 October 2016, sent on the First Respondent's behalf following the receipt of an "EWW" letter from the Applicant. This letter stated that the Second Respondent's directorship was "terminated" in August 2015 (and not on 12 May 2015). This account of the termination followed the allegation in the EWW letter that the First Respondent had lied in his waiver application.

28.17 The Tribunal found the First Respondent's explanation of how he came to give these contradictory answers to the Applicant to be deeply implausible. The Tribunal's assessment of his vague and hesitant evidence was that it was self-serving and designed to reconcile as far as possible wholly contradictory statements he had made on the same issue. As noted above in paragraph [25.16], the Tribunal did not accept that the Second Respondent had resigned her position as a director or that it had been proved that she ceased to be a director on 12 May 2015. The First Respondent had provided flatly contradictory accounts of when her directorship terminated. His explanation turned on the suggestion that the Second Respondent, or someone else, must have filed the backdated TM01 form with Companies House on 6 August 2015. The Tribunal considered it highly implausible that the Second Respondent would have done so, there being no discernible motive for her to do so, and 6 August 2015 being significant only to the First Respondent who had received his waiver from the Applicant on that date. There was no evidence to suggest that the Second Respondent had lodged the TM01 with Companies House. The Applicant did not allege it and the Second Respondent denied it. The Tribunal found it equally implausible that any other third party would have done so – particularly as Companies House had written to the First Respondent personally on 19 August 2015 to inform him that the TM01 form had been filed incorrectly. In his subsequent letter to Companies House dated 21 September 2015 the First Respondent referred to duplicated termination of directorship documents being submitted online and via paper giving the explanation of "being unaware of the online filing sufficing to termination (sic)".

28.18 The Tribunal accepted the submission of Ms Carpenter that this correspondence strongly supported the contention that the First Respondent had filed the TM01 form on 6 August 2015. The Tribunal considered the fact that the First Respondent had written to the Firm's insurers on 10 August 2015, very shortly after the electronic TM01 form was lodged with Companies House, to state that the Second Respondent had ceased to be a director on 6 August 2015 further supported this contention. The Tribunal accepted that the only person who knew something had changed on 6 August 2015 (the grant of the waiver) 2015 was the First Respondent. The Tribunal found beyond reasonable doubt that the First Respondent had filed the TM01 form, finding any other explanation to be thoroughly improbable.

28.19 The Tribunal did not find, nor consider it necessary to find, that the First Respondent had forged the Second Respondent's signature on the TM01 form as she had alleged. Accordingly, the Tribunal approached the alleged breaches on the basis that the First

Respondent had filed the TM01 form and therefore knew that it provided, on its face even if this was not necessarily legally effective, for a termination date of 12 May 2015. It necessarily followed in the light of that act and that knowledge that by providing flatly contradictory accounts to the Applicant the First Respondent had provided at least some misleading information. The Tribunal accepted the Applicant's contention that the First Respondent's answers on this issue were driven by what he perceived as his interest at different times and rejected his explanation for the reasons summarised above.

28.20 With regards to the shareholders agreement: the Tribunal again considered that the First Respondent's account seemed confused. Mr Nesbitt submitted that this was understandable and the continuing confusion explained his various statements on whether or not the agreement was signed and/or followed. The First Respondent had stated in interviews with the Applicant's FIOs, on 2 November 2015 and 9 November 2015, that the shareholders agreement had been signed, that obligations followed from it and that the Second Respondent had breached elements of it. When it was put to him in a further interview, on 24 February 2016, that the terms of the agreement were improper the First Respondent stated that it was invalid, not binding and never followed. This account was repeated in a detailed and formal response dated 10 October 2016 to the Applicant's EWW letter (the EWW letter had alleged that the agreement was improper). In his Answer to these proceedings the First Respondent stated that he could not recall if the final version of the agreement was signed, but that it was not entered into. In his signed witness statement the First Respondent stated that the shareholders agreement was unworkable and not followed and that whilst an early draft may have been signed, it was superseded by a later version which was not signed.

28.21 The Tribunal accepted the submission of Ms Carpenter on this issue: there was plainly a correct answer to the question of whether the agreement had been signed and had been followed. The Tribunal considered that the First Respondent's account changed when potential pitfalls of a particular position became clear. For example: (i) when it was first put to him that the agreement was improper, his previous assertion that the Second Respondent had breached the signed agreement was superseded by an assertion that the agreement was invalid, not binding and never followed; (ii) when the EWW letter alleged that the agreement improperly ceded control to him, he further stated, in a formal reply sent on his behalf, that the agreement was not signed. As noted above, the Tribunal considered that the First Respondent's oral evidence lacked credibility. The statements made on the shareholders agreement were not refinements of peripheral issues on which memory might understandably fade. Whether the agreement was or was not signed and followed were very basic questions about which the Tribunal did not accept that the First Respondent could be genuinely confused. They were fundamental questions about the business he entered into as an inexperienced solicitor. The fact that the First Respondent's account varied in accordance with his immediate self-interest further undermined the credibility of his account. The Tribunal dismissed as highly implausible the explanation that he was confused about such simple and fundamental questions and in the light of the contradictory statements made in his different accounts the Tribunal found beyond reasonable doubt that the First Respondent had provided misleading information to the Applicant.

28.22 The Tribunal then turned to consider the alleged breaches of the Principles. By reference to the test in Wingate, the Tribunal found beyond reasonable doubt that misleading the Applicant involved a failure to adhere to the ethical standards of the profession. The trust placed by members of the public in the First Respondent and the provision of legal services would inevitably be undermined by such conduct and it necessarily and obviously involved a failure to comply with the regulator in an open, timely and co-operative manner. Accordingly, the Tribunal found that the First Respondent had breached Principles 2, 6, and 7.

The Tribunal's Decision on Dishonesty in relation to Allegation 1.9

28.23 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- firstly the Tribunal established the actual state of the First Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether his conduct would be thought to have been honest or dishonest by the standards of ordinary decent people.

28.24 The Tribunal had found that the First Respondent had provided misleading information to the Applicant on two distinct issues. In reaching that finding the Tribunal had rejected the First Respondent's version of events, that he was confused and/or piecing together events from documents such that any shortcomings in the information he had provided were errors rather than being deliberately misleading. The Tribunal had found the First Respondent to lack credibility and to have given information and evidence according to his perceived interests. He had made flatly contradictory statements and the Tribunal had found that he must have known that some of which were untrue. He had accordingly knowingly misled the Applicant. The Tribunal found that ordinary decent people would consider such conduct, deployed in his own interest, to be dishonest.

29. **Allegation 1.10: On an unknown date in 2014, thought to be between 1 January 2014 and 3 February 2014, the Second Respondent entered into a shareholders agreement with the First Respondent and on 3 February 2014 the Second Respondent and the First Respondent signed special shareholders resolutions and passed amended articles of association for the Firm. The effect of these documents was that from 25 February 2014 when the Firm was authorised by the SRA until 10 August 2015 when the Second Respondent left the Firm, the Firm was not in reality run as one law firm but was simply an umbrella name for two separate businesses with separate A and B office accounts controlled by each of the Respondents for their side of the business, and the Second Respondent was paid by the First Respondent to be the COLP, COFA and director of the umbrella name. In doing so, the Second Respondent breached Principles 2 and 6**.

The Applicant's Case

29.1 The Applicant's case against the Second Respondent relied upon and repeated the alleged facts and evidence set out in paragraphs [20.2] to [20.5] above (in relation to allegation 1.1 against the First Respondent).

29.2 Ms Carpenter summarised the Second Respondent's position as denial of running the Firm as two firms, but acceptance that the Respondents had separate income streams. The Applicant did not accept this position and submitted that it contradicted previous statements she had made to the Applicant, for example:

(a) In a chronology provided to the Applicant during the investigation, the Second Respondent stated that she and the First Respondent agreed that: he would run the Personal Injury Department and be an employee of the Firm; they would have separate income streams, separate bank accounts, and a general office account; and they would pay wages for their own employees.

(b) In her interview with the FIOs on 2 December 2015:

(i) The Second Respondent accepted that the Firm was, in reality, run as an umbrella firm for two different firms with separate staff and separate systems. She stated that they each had separate files and "it's like two firms in one", and she accepted that it was "a weird set up".

(ii) The Second Respondent stated that she was on the mandate for all accounts and that the First Respondent gave her access to his files, logging her in whenever she requested it. She accepted that she was not able to access the First Respondent's accounts without him logging her in and that she would not be able to fulfil her COLP role if he refused to log her in (although she claimed that this never happened).

(c) In an email to the Applicant on 18 November 2015, the Second Respondent stated that when she left the Firm she took her "own files", she did not take any of the First Respondent's files, and she did not even have access to files in the Personal Injury Department. The Second Respondent's files (provided electronically) were reviewed by the FIO and it appeared that, consistent with the Second Respondent's statement, they were not maintained on the Firm's case management system.

(d) In a letter to the Applicant dated 21 September 2016, the Second Respondent denied that she ran the interview process for staff and stated that the First Respondent did not allow her to attend interviews (said to be in direct contrast to his own position).

29.3 Ms Carpenter repeated her submissions, made in respect of allegation 1.1 above, to the effect that the documentary evidence and the evidence of the Respondents made it clear that No.1 Solicitors was an umbrella term for two separate (unauthorised) firms. She also repeated her submission that the evidence showed that the First Respondent paid the Second Respondent as an employee to be COLP, COFA and director of the umbrella name. For the reasons summarised in paragraphs [20.10] to [20.12] above, Ms Carpenter submitted that the Second Respondent's conduct had breached

Principles 2 and 6. The Second Respondent was not authorised to run a criminal law sole practice and doing so as alleged amounted to a breach of both Principles.

Dishonesty alleged in relation to Allegation 1.10

29.4 With reference to the test laid down in Ivey, the submissions made in allegation 1.1 above were repeated:

(a) The Respondents both knew that the Firm was being run as two practices, instead of one firm. They set up No 1 Solicitors to give their partnership a veneer of legitimacy. For the Second Respondent, this enabled her to obtain income from the First Respondent for being COLP and COFA of the umbrella name and for, purportedly, supervising his practise.

(b) Applying the objective standards of the ordinary decent person, operating as two unauthorised firms and the failure to inform the SRA of the true nature of the Firm was submitted to be dishonest.

The Second Respondent's Case

29.5 On this allegation the Second Respondent adopted and echoed many of the submissions made on behalf of the First Respondent. Her evidence was that her intention was always to run the Firm as one single law firm and that it was run in accordance with the business plan which had been submitted to the Applicant with the application for authorisation. She occupied the role of approved manager, COLP and COFA and her intention, and the practice as far as she was concerned, was that the Firm was compliant with the Applicant's rules and guidance.

29.6 The Second Respondent stressed that the Firm was set up as one legal entity, a limited company and that significant legal and financial advice had been obtained from an experienced solicitor on the arrangements put in place at the Firm (including the shareholders agreement). The Respondents made it very clear what their respective roles would be both to the solicitor who drafted the agreement and in the business plan submitted to the Applicant. She described the First Respondent insisting that the shareholders agreement be put in place to protect him commercially and stated that he took the lead on its creation. She also described the Firm as having two separate profit streams but submitted this was simply a commercial decision and not indicative of two firms existing. She stated that the agreement also provided for her to have full control of and access to the Firm's banking facilities and that she was a signatory on each account.

Allegation of Dishonesty in relation to Allegation 1.10

29.7 The allegation of dishonesty was denied on the same basis: that the Firm was always intended to be, and was, run as one law Firm. Whilst accepting that the arrangement may be unusual, given the intent and practice of the way the Firm was run, the Second Respondent submitted that her account was consistent with the evidence presented and contemporaneous documentation and that accordingly applying the test in Ivey and the appropriate standard of proof her actions had not been dishonest.

The Tribunal's Decision

29.8 The Tribunal's findings in relation to the First Respondent under allegation 1.1, in paragraphs [20.22] to [20.27] above applied equally to the Second Respondent. The two allegations mirrored one another. Having found that the allegation against the First Respondent that the Firm was in reality two unregulated businesses not to be proved, it necessarily followed that the same allegation levelled against the Second Respondent must fail for the same reasons. The alleged breaches and the alleged dishonesty were found not proved to the requisite standard.

30. **Allegation 1.11: The Second Respondent failed to notify the SRA of a material change at the Firm, namely the facts set out in allegation 1.10, in breach of Principles 2, 6 and 7**.

The Applicant's Case

30.1 Again, the Applicant relied on the background facts and evidence set out in relation to the First Respondent (specifically allegation 1.2). Ms Carpenter stated that it was not disputed by the Second Respondent that she had not notified the Applicant that the Firm was being run as two separate businesses. For the reasons summarised in paragraphs [21.1] to [21.2] above in relation to the First Respondent, which Ms Carpenter repeated in relation to the Second Respondent, it was submitted that this alleged failure to notify the Applicant in circumstances where they were required to do so amounted to a breach of Principles 2, 6 and 7.

Dishonesty alleged in relation to Allegation 1.11

30.2 Dishonesty was alleged on the same basis as set out in paragraph [21.3] above in relation to the First Respondent. In short, it was alleged that both Respondents knew that they had entered into the shareholders agreement and the amended articles of association and knew the Firm was being run as two practices, instead of one firm, and that this was a reportable "material change" at the Firm. Applying the objective standards of the ordinary decent person, entering into the shareholders agreement and the amended articles of association and continuing operating as two unauthorised firms and the failure to inform the SRA of the true nature of the Firm was submitted to be dishonest.

The Second Respondent's Case

30.3 The thrust of the Second Respondent's submissions mirrored that of the First Respondent: there being no "material change" at the Firm, there was nothing to report to the Applicant. The Second Respondent's evidence was that it continued to operate as one firm throughout and that she remained as approved manager, COLP and COFA. She denied that the shareholders agreement, amended articles of association and special shareholders resolutions had the effect alleged by the Applicant and maintained that the Firm was run as one single law firm in accordance with the business plan. She described carrying out effective supervision across the Firm and denied that her use of the word "umbrella" in the interview with the FIO had the meaning later ascribed to it by the Applicant.

Response to the allegation of Dishonesty in relation to Allegation 1.11

30.4 For the reasons summarised above, there being no reportable "material change", it was denied that there was any dishonesty in her conduct. The Second Respondent stated that she had made admissions to various allegations where hindsight revealed this was warranted but she submitted that her evidence on the question of how the Firm was run as one entity was consistent with the contemporaneous documentation.

The Tribunal's Decision

30.5 The Tribunal's findings in relation to the First Respondent under allegation 1.2 applied equally to the Second Respondent. The two allegations mirrored one another. The Tribunal had found that the shareholders agreement and other evidence relied upon by the Applicant did not show to the requisite standard that the Firm was in effect run as two businesses and so it had not been established that there was a "material change" which needed to be reported to the Applicant as alleged. The allegation failed against the Second Respondent for the same reasons as set out in relation to the First Respondent in paragraph [21.6]. The alleged breaches, and the alleged dishonesty, were found not proved to the requisite standard.

31. **Allegation 1.12: The Second Respondent failed to notify the Applicant of a material change at the Firm, namely that the First Respondent became a director of the Firm on 24 June 2014, in breach of Principles 2, 6 and 7 and Rules 8.1, 8.5 and 8.7 of the Authorisation Rules. The SRA was not informed of this until the First Respondent's letter to the SRA dated 4 June 2015.**

The Applicant's Case

31.1 This allegation mirrored allegation 1.3 against the First Respondent and the alleged facts and evidence summarised above in paragraphs [22.1] to [22.4] were repeated. It was submitted that both Respondents should have notified the Applicant when the First Respondent became a director, this being a material change. As also set out in those paragraphs it was alleged that both Respondents provided false information to the Applicant when completing the Firm's renewal forms in October 2014 (and/or failed to correct the position).

31.2 By failing to notify the Applicant of this material change it was submitted that:

(a) The Second Respondent breached the Authorisation Rules Rule 8.1(a), by failing (as a manager) to ensure that the Firm, its managers, and employees complied with their obligations.

(b) The Second Respondent, as the COLP for the Firm, breached the Authorisation Rules Rule 8.5(c) by failing to ensure compliance with the Firm's statutory obligations.

(c) The Second Respondent breached the Authorisation Rules 8.7(c) and (d), by failing to notify the Applicant as soon as she became aware of a change to relevant information (i.e. on 24 June 2014) and by failing to notify the Applicant that the Firm had provided information to the Applicant that was or

may have been false, misleading, incomplete or inaccurate, or had or may have changed in a material significant way.

(d) The Second Respondent breached Principles 2, 6, and 7.

The Second Respondent's Case

31.3 The allegation was denied. The Second Respondent submitted that the evidence showed that when she became aware of a relevant reportable matter, she updated the Applicant accordingly. She stated that she did this when the First Respondent told her that he wanted her to leave the Firm (in August 2015). She stated that she had updated the Applicant immediately.

31.4 The Second Respondent accepted that she should have updated the Applicant when the First Respondent became a director in June 2014. She stated that as COLP she had instructed and delegated the First Respondent to inform the Applicant of his directorship. Her evidence was that he had told her in June 2014 that he had done this. The Second Respondent submitted that there was absolutely no reason for her not to notify the Applicant of this change, but that as COLP she had delegated the task to the First Respondent as she submitted she was entitled to do.

31.5 She also stated that no other solicitor has access to an individual's "mySRA" profile and that it was incumbent on him to update his profile appropriately. During her evidence the Second Respondent referred the Tribunal to correspondence which she stated showed she had made efforts to update the Applicant and that this had not been possible when she tried. She stated that subsequently, having delegated the task, through oversight she forgot about the task. Accordingly, the alleged breaches were denied.

The Tribunal's Decision

31.6 As COLP, COFA, and a director, the Second Respondent unambiguously fell within the scope of the rules 8.1, 8.5 and 8.7 of the Authorisation Rules.

31.7 This allegation mirrored allegation 1.3 made against the First Respondent. On this issue, however, the Tribunal considered that the different roles and status of the Respondents was significant. The Second Respondent was the Firm's COLP, COFA and the only solicitor authorised to supervise. The First Respondent became a director on 24 June 2014. Given the Second Respondent's role as the person ultimately responsible for compliance issues at the Firm, the Tribunal did not consider that it was permissible or acceptable for her to seek to delegate this responsibility. Irrespective of the duty also applying to the First Respondent, the Tribunal considered that the rules required that she nevertheless make the notification herself as the Firm's COLP. Rules 8.1(a), 8.5 and 8.7 of the Authorisation Rules applied to the Second Respondent, they required that a material change such as a new director being appointed be reported to the Applicant and the Second Respondent acknowledged that she did not herself make that notification. The Tribunal did not consider she was entitled to delegate that obligation. Accordingly, the Tribunal found that it was proved beyond reasonable doubt that the Second Respondent had breached Rules 8.1(a), 8.5 and 8.7 of the Authorisation Rules. Principle 7 required that she

should comply with her legal and regulatory obligations. Having failed to comply with the Authorisation Rules the Tribunal considered that this conclusively demonstrated a failure to comply with her regulatory obligations and it thus found beyond reasonable doubt that she had breached Principle 7.

31.8 As noted in the Tribunal's findings on allegation 1.3, there was a conflict of evidence in that both Respondents told the Tribunal that they recalled that the other had agreed to make the notification to the Applicant. The Tribunal did not consider that it had any evidential basis to make a finding of fact on this question. It could not be sure that the Second Respondent had not delegated the task to the First Respondent and considered that he would make the notification. In those circumstances, the Tribunal did not find that the breaches of Principle 2 (act with integrity) and 6 (maintain public trust in you and the provision of legal services) were proved to the requisite standard. The Tribunal accepted the submission made by Mr Nesbitt that not every mistake or breach of other rules of professional conduct will amount to a breach of these principles. The Tribunal considered that the comments in Wingate, that "neither courts nor professional tribunals should set unrealistically high standards … the duty of integrity does not require professional people to be paragons of virtue" were applicable to delegating an obligation to make a notification to the Applicant of someone becoming a director. The Tribunal could not be satisfied to the requisite standard that this account put forward by the Second Respondent was false. If it was a true account then the Tribunal did not consider her conduct, delegating an obligation she should have fulfilled herself, reached the threshold required to breach Principle 2 or 6.

32. **Allegation 1.13: On or about 30 April 2015, despite being the sole recorded director of the Firm at the SRA and despite being the COLP and COFA of the Firm, the Second Respondent agreed with the First Respondent and gave an undertaking to the Firm that, on or before 1 June 2015, she would cease carrying out her cases under the Firm and would practise as a freelance solicitor and that she would close office account A, contrary to Principles 2 and 6, Rule 1.1 of the Practice Framework Rules and Rule 8.5 of the Authorisation Rules.**

The Applicant's Case

32.1 This allegation mirrored allegation 1.4 against the First Respondent and the alleged facts and evidence summarised above in paragraphs [23.1] to [23.4] were repeated.

32.2 As set out in those paragraphs, it was submitted that on his own account, and as supported by the evidence of Ms AK and Ms SB, the First Respondent directed the Second Respondent to sign an undertaking which gave him control of the Firm. The Applicant's case was that this was inconsistent with the Second Respondent's role at the time as COLP, COFA, the approved manager and, according to the Applicant's records, the sole director of the Firm. By entering into the undertaking in the terms summarised above, it was submitted that the Second Respondent had breached Principles 2 and 6.

<u>The Second Respondent's Case</u>

32.3 The allegation was denied. The Second Respondent denied that the undertaking she signed meant that she was unable to carry out her role as COLP and COFA effectively. She stated that she remained the approved manager of the Firm as well as being an employee and a director. In her evidence she described continuing supervision over the Personal Injury Department and carrying out other management and oversight tasks consistent with her COLP and COFA roles after the undertaking took effect.

32.4 The Second Respondent's case was that the undertaking she signed was drafted by the First Respondent and it was at his insistence that she signed it. She gave evidence that it was the First Respondent who directed her to work in a "freelance" basis. She said that given financial pressures on the Firm and financial and other pressures in her personal life at the time, she felt compelled to agree that she would cease fee-earning work for the Firm. She said she agreed to distance herself financially from the Firm.

32.5 Her case mirrored the First Respondent's to the extent that she denied there was anything improper about the "freelance" arrangements or that this implied practising in an unauthorised way.

<u>The Tribunal's Decision</u>

32.6 The Tribunal considered that if the Second Respondent had agreed to work on a "freelance" basis and had done so in a properly regulated manner, such as a consultant engaged by and working through an authorised firm, this would not have been likely to present any regulatory issues. Accordingly, the Tribunal did not consider that the Applicant had demonstrated why the agreement not to carry out fee earning work through the Firm was inevitably inappropriate. The evidence of the Respondents differed on what they understood and intended by "freelance", however both described an expectation that the Second Respondent would complete fee-earning work after the undertaking in a compliant manner.

32.7 The Tribunal was not persuaded that the undertaking in itself was sufficient to undermine the Second Respondent's ability to perform her COLP and COFA roles within the Firm. Following the undertaking she was paid specifically to carry them out. Both Respondents had given evidence that she continued to fulfil this role. The Tribunal did not consider that there was any compelling evidence that the undertaking was in some way inconsistent with the Second Respondent's role as COLP and COFA.

32.8 On the above basis, the Tribunal did not find that the alleged breaches of the Principles, Practice Framework Rules or Authorisation Rules had been proved to the requisite standard.

33. **Allegation 1.14: From 30 April 2015 to 31 December 2015, the Second Respondent practised as a freelance solicitor outside an authorised entity and without the benefit of professional indemnity insurance, contrary to Principles 2, 4, 5, 6 and 7, Rule 1.1 of the Practice Framework Rules and Rule 4.1 of the SRA Indemnity Insurance Rules 2013.**

The Applicant's Case

33.1 This allegation overlapped substantially with allegation 1.5 against the First Respondent and the alleged facts and evidence summarised above in paragraphs [24.2] to [24.6] were repeated.

33.2 Ms Carpenter set out further information expanding on the allegations relating to Client Mr C summarised in paragraph [24.4] above:

a) On 27 July 2015, an application to court was issued in the matter of Mr C. The Second Respondent completed the application and in the section entitled "Name of firm", she wrote "freelance solicitor" and gave her home address, personal email and mobile number.

b) On 17 September 2015, the Second Respondent emailed the Court in the matter of Mr C and described herself as: "Freelance Senior Solicitor and Advocate".

33.3 Ms Carpenter also directed the Tribunal to a further client of the Firm, Mr M, by way of further example. On 1 June 2015, the Second Respondent wrote to Ms CB (the person representing the opponent of her client Mr M). She stated (emphasis added by the Applicant):

> "… I understand you contacted our offices where my business partner, [the First Respondent], informed you that I was not acting in this matter. I apologise for any confusion caused. [The First Respondent] specialises in personal injury and heads the personal injury department. I deal with all other cases including the family cases. This matter had not been entered on the office systems due to it being a new matter, consequently [the First Respondent] did not know about it. **In addition I am currently restructuring my law firm and undertaking a lot of my cases on a freelance basis. This case will be conducted on a freelance basis. This does not affect you, it simply means that I will conduct this matter.**
> …please call me on [mobile number]…
> Lauren Moores LLB BA Hons Senior Solicitor/ Director No. 1 Solicitors…"

It was thus submitted that the Second Respondent made it clear to Ms CB that she would be conducting that matter on a freelance basis and not as a solicitor of the Firm.

33.4 On 4 June 2015, Ms CB made a report to the Applicant in respect of the above. On 19 June 2015, a Supervisor employed by the Applicant contacted the Second Respondent to discuss Ms CB's report. The Supervisor's file note records that the Second Respondent stated: the First Respondent did not have access to her case management system which is why he could not locate the relevant case file; the First Respondent told Ms CB that the Second Respondent "did not have conduct of her

matter" but not that the Second Respondent did not work there; and the issue had been resolved because they had restructured the Firm and now had a shared case management system. The Applicant's Supervisor was satisfied that the issue had been resolved. It was submitted to be plain from the above that the Second Respondent did not provide a truthful explanation to the Supervisor and that the truthful explanation was that she had been acting freelance on this and all other cases from 1 June 2015 onwards.

33.5 Ms Carpenter further expanded on the case presented under allegation 1.5 with matters relevant solely to the Second Respondent. On 28 September 2015, the Second Respondent applied for authorisation of her sole practice trading as Anderson and Kensington and to be the COLP and COFA. In her response to questions from the Applicant, the Second Respondent stated (emphasis added by Ms Carpenter):

> "**In May 2015 I transferred all my client cases to myself as a freelance solicitor**. [The Firm] currently handles only personal injury work. There is a shareholders agreement which specified the separate departments and income streams. There are no contractual restrictions with regards to clients due to the departments and clients being separate at all time"

33.6 The Second Respondent's explanation as to the capacity in which she was conducting cases in the period from April 2015 to December 2015 was submitted to have often been unclear. In her Answer, she stated that it was agreed that she be "a freelance/consultant advocate of the firm" and to "distance myself from the firm financially": Her central position was summarised by Ms Carpenter as being that: (a) her files belonged to her and she continued to act on some of them even after she entered into the undertaking on 30 April 2015; (b) while she stated she was acting on a freelance basis she was an employee of the Firm and/or an employee or consultant of Sandbrook Solicitors and, as such, she was conducting the cases in one or both of those capacities; and (c) she was covered by the professional indemnity insurance of either the Firm or Sandbrook Solicitors. She had previously claimed that she contacted professional ethics to confirm that these arrangements were acceptable but had provided no documents in support of this statement and it was not accepted by the Applicant.

33.7 On 16 December 2015, Mr VI (of Sandbrook Solicitors) wrote to the SRA and stated that:

(a) The Second Respondent had never been a consultant or employee at Sandbrook Solicitors;

(b) The Second Respondent's clients were not clients of Sandbrook Solicitors;

(c) No clients were transferred to Sandbrook Solicitors;

(d) Mr VI did not supervise the Second Respondent because she was an experienced solicitor and a director; and

(e) Mr VI referred clients to the Second Respondent.

33.8 On 4 January 2016, Mr VI contacted the FIO by telephone and stated that the Second Respondent had not been a consultant or an employee of his firm but that clients would be referred to her in a similar way to when counsel were instructed. Mr VI stated that the Second Respondent's clients were not clients of Sandbrook Solicitors. Mr VI stated he understood that the Second Respondent was a director of the Firm. Ms Carpenter stated that the Tribunal would be aware that Mr VI had been struck off the Roll but she submitted that his denial that the Second Respondent was carrying out cases as a consultant at Sandbrook Solicitors was consistent with the contemporaneous documents. The Second Respondent had produced an email dated 15 May 2015 in which she proposed to Mr VI that she enter into a retainer for 5 hours per week but Ms Carpenter stated that the Second Respondent had provided no response to this email and had not disclosed a single document which suggested she was carrying out any cases as a consultant of Sandbrook Solicitors.

33.9 It was submitted that the documentary evidence referred to above clearly established that between 30 April 2015 and 31 December 2015, the Second Respondent acted as an unauthorised freelance solicitor. Mr Carpenter made the following submissions:

(a) The Second Respondent performed legal services work for the clients Mr C, Mr S, Mrs H, Mr and Mrs B and Mr M; and had admitted doing so.

(b) The Second Respondent did not represent these clients in her capacity as a solicitor of the Firm. Mr C, Mr S, and Ms H all signed authorities of file transfer to the Second Respondent in a personal capacity. Thereafter, the Second Respondent corresponded with them, and represented them, as a "freelance" solicitor.

(c) The Second Respondent did not represent these clients as a consultant solicitor of Sandbrook Solicitors. Neither the authorities of file transfer nor the court documents relating to these matters referred to Sandbrook Solicitors. There was said to be no evidence that the Second Respondent was a consultant at Sandbrook Solicitors or that she was working for these clients (or any clients) through Sandbrook Solicitors.

(d) The Second Respondent's use of the word "freelance" was not merely a "semantic" issue, as she has suggested. It was a true reflection of the manner in which she was working. Further, the Applicant did not accept that the Second Respondent believed at the time that this was merely semantic issue – she had previously been rebuked for acting as an unauthorised freelance solicitor. She was submitted to be well-aware that it was impermissible to act in this capacity.

33.10 It was also submitted that during this period, from April 2015 to 31 December 2015, the Second Respondent acted without professional indemnity insurance:

(a) The Second Respondent's clients were not clients of the Firm or Sandbrook Solicitors and, accordingly, her work for these clients was not covered by the professional indemnity insurance held by either firm.

(b) The Second Respondent's suggestion that she was covered by the Firm's professional indemnity insurance because she was still an employee there until 10 August 2015 and for three months thereafter on the basis of the prescribed notice period under the employment contract was not accepted. The Firm's insurers had made it clear to the Applicant, as was submitted to be obvious, that she would only be covered by the Firm's insurance in respect of work performed for the Firm. It was submitted that the Second Respondent must have known that this would be the case.

(c) The Second Respondent's suggestion that she was covered by Sandbrook Solicitors' professional indemnity insurer because she was a consultant or employee was also not accepted by the Applicant. There was said to be no evidence that the Second Respondent was a consultant or employee at Sandbrook Solicitors. Even if she had been a consultant or employee, it was submitted that she must have understood that she would only be covered by Sandbrook Solicitors' insurance for work undertaken in that capacity.

(d) It was submitted that at its heart, the Second Respondent's position appeared to be that if she were employed by a law firm, or a consultant to it, she was covered by their professional indemnity insurance, whether or not she performed legal services in her capacity as an employee or consultant of that firm. That was submitted to be plainly incorrect and the Applicant denied that the Second Respondent believed this to be the case.

33.11 Ms Carpenter informed the Tribunal that the Second Respondent had previously received a rebuke from the Applicant for practising in breach of Rule 1 of the Practice Framework Rules and Rule 4.1 of the SRA Indemnity Insurance Rules between June 2013 and 25 February 2014 on the basis that she had practised as a freelance solicitor and/or through an unauthorised firm, Moores United Solicitors and had practised without professional indemnity insurance. It was submitted that as such, it was to be inferred that the Second Respondent knew that: (a) she was not entitled to practise as a freelance solicitor; and (b) she was not entitled to practise through an unauthorised firm.

33.12 Accordingly it was submitted that the Second Respondent breached Principles 2, 4, 5, 6 and 7, Rule 1.1 of the Practice Framework Rules, and Rule 4.1 of the SRA Indemnity Insurance Rules 2013.

Dishonesty alleged in relation to Allegation 1.14

33.13 By reference to the test laid down in Ivey (above), it was submitted that:

(a) The Second Respondent knew that she was not authorised to practise as a freelance solicitor and, also, that as a freelance solicitor she did not have professional indemnity insurance. In particular, the Applicant relied on the fact that the Second Respondent had previously received a rebuke for similar conduct.

(b) Applying the objective standards of the ordinary decent person, the Second Respondent's conduct was submitted to be dishonest.

The Second Respondent's Case

33.14 The allegation was denied. In her Answer the Second Respondent stated that even after she had signed the undertaking and stopped carrying out work in the name of the Firm, she remained covered by its indemnity insurance. She stated that she had checked this with the insurer and was told that as an employee manager (which she remained for the relevant period) she would be covered. She stated that she was told that she would be covered by the Firm's professional indemnity insurance until her notice period had expired. The Second Respondent referred the Tribunal to an email from the Firm's insurer (from September 2014) which she submitted confirmed that she was so covered. The letter stated "To confirm, the current policy in place will cover you for all legal advice you have given – as a solicitor – over the last six years." Her submission was that as an employed solicitor, and director, this continued to apply during the period with which the allegation was concerned. She also stated that the First Respondent was well aware of this and agreed that she was covered under the Firm's insurance whilst still an employee.

33.15 The Second Respondent also invited the Tribunal to treat the correspondence from Mr VI with extreme caution. He had been struck off by the Tribunal and in the Second Respondent's submission he misled the Applicant whilst himself under investigation. She stated that she had sought to obtain the insurance policy from Sandbrooks Solicitors but due to the lack of cooperation from Mr VI she had been unable to get it. Her evidence was that at the outset of her work with Sandbrook Solicitors (January 2014) she had been advised that she was covered under their professional indemnity insurance. The Second Respondent referred the Tribunal to correspondence between her and Mr VI which she submitted demonstrated that she worked on cases as an advocate representative of Sandbrook Solicitors and was accordingly covered by their professional indemnity insurance.

33.16 The Second Respondent also denied practising outside an authorised entity, on essentially the same basis. Her case was that her authorisation to act had been derived from either the Firm or Sandbrook Solicitors. She submitted that even after 1 June 2015 she remained a solicitor employed by the Firm, the manager approved by the Applicant and a director. Accordingly she submitted that she satisfied the conditions to practice set out in Rule 1.1(c) of the Framework Rules. She also stated that she considered that she was also entitled to practice as a freelance solicitor under Rule 1.1(e) of the Framework Rules on the basis that she was employed by the Firm as the manager, COLP and COFA and had the First Respondent's express permission to act freelance. She stated that the First Respondent had drafted the terms of the undertaking and this demonstrated his clear direction and agreement that she should act in a freelance capacity.

33.17 As noted above, the Second Respondent's case was that when she was working for Sandbrook Solicitors, she did so under a consultancy agreement. She referred the Tribunal to correspondence to her from Sandbrooks Solicitors which referred to "My clients" and "Our clients" to support her contention that the relevant clients were not hers personally. She submitted that she was accordingly authorised for the work she did via Sandbrooks Solicitors.

33.18 In response to the points made on the Applicant's behalf about her previous rebuke, the Second Respondent submitted that this was for a specific one-off issue with no direct relevance to the allegations before the Tribunal.

Response to the allegation of Dishonesty in relation to Allegation 1.14

33.19 The Second Respondent relied on the arrangements she said she had with the Firm and Sandbrooks solicitors under which stated that she genuinely believed that she was authorised to practice as she did and that she had the benefit of professional indemnity insurance. Accordingly, her conduct could not fairly be described as dishonest.

The Tribunal's Decision

33.20 The Second Respondent's evidence, that she had maintained consistently since her first contact with the Applicant on these issues in August 2015, was that with agreement of the First Respondent she was entitled to act as what she described as a "freelance" solicitor for clients whilst remaining employed by the Firm. She stated that she was covered by the Firm's professional indemnity insurance. She described acting in this way as acting "via" the Firm "as an agent". This agreement was not accepted by the First Respondent. She also gave evidence that when undertaking work via Sandbrooks Solicitors she did so under a consultancy agreement and was covered by their professional indemnity insurance. The correspondence from that firm to which the Tribunal was referred in which the writer referred to "our" clients provided some limited degree of corroboration on this point. As noted in the findings for allegation 1.5, the Tribunal treated the evidence of Mr VI, who denied that the Second Respondent was so covered, or worked under a consultancy agreement, with some caution on account of his being struck off.

33.21 The Tribunal found the Second Respondent to be a credible witness generally. She provided immediate, open, credible, cogent and clear answers to questions. Whilst she was emotionally upset at some points in her oral evidence, she was not evasive and gave thoughtful answers and was willing to make concessions and admit mistakes.

33.22 In the light of the evidence presented on whether the Second Respondent had practised without the benefit of professional indemnity insurance, the Tribunal could not be sure to the requisite standard that she was not so covered by one or both the Firm or Sandbrooks Solicitors. The Tribunal could not discount the possibility that the agreement she had described with the insurers of each firm had been reached.

33.23 As to practising outside an authorised entity, the Tribunal could not discount the possibility, which both Respondents claimed to have understood to be the case, that by "freelance" solicitor the Second Respondent meant a consultant engaged via an authorised practice. Whilst this was somewhat difficult to reconcile with the authority of file transfer forms which clients of the Firm had signed and which named the Second Respondent personally, the Tribunal did not consider that it could fairly dismiss the possibility that what she intended, and what she understood to happen in practice, was that she would personally represent these clients as an agent of and via Sandbrook Solicitors or the Firm. Correspondence from Sandbrook Solicitors referring to "our client" had been presented in support of this contention. The

documentation was at best confusing, unusual and ill-advised. However, applying the appropriate standard of proof, the Tribunal did not conclude, on the evidence available, that it could be sure beyond reasonable doubt that the Second Respondent had completed the relevant legal work in an unauthorised manner or without the benefit of professional indemnity insurance. Accordingly, all elements of the allegation, including dishonesty, were not proved.

34. **Allegation 1.15: The Second Respondent attempted to mislead the SRA in relation to the allegation that she had been practising as a solicitor outside an authorised entity and in relation to her involvement with Sandbrook Solicitors, contrary to Principles 2, 6 and 7.**

The Applicant's Case

34.1 The Applicant's case, as set out in the previous allegation, was that the Second Respondent had informed the Applicant that she had been a consultant solicitor at Sandbrook Solicitors, that the clients she had taken from the Firm had become clients of Sandbrook Solicitors, and that those clients were covered by Sandbrook Solicitors' professional indemnity insurance. This was alleged to have happened during an interview on 2 December 2015. For the reasons set out in the previous allegation, it was denied by the Applicant that the Second Respondent transferred her clients to Sandbrook Solicitors or that she was covered by its professional indemnity insurance. It was submitted that the Second Respondent had adduced no documentary evidence to support her assertions. It was submitted that to the contrary, the documentary evidence indicated that she was acting for these clients in her capacity as a freelance solicitor.

34.2 It was submitted therefore that the Second Respondent attempted to mislead the Applicant in relation to the allegation that she had been practising as a solicitor outside an authorised entity and in relation to her involvement with Sandbrook Solicitors and in doing so acted contrary to Principles 2, 6, and 7.

Dishonesty alleged in relation to Allegation 1.15

34.3 With reference to the test laid down in Ivey, it was submitted that:

(a) The Second Respondent attempted to mislead the Applicant and intended to do so because she was well aware that she was not entitled to practise as a freelance solicitor and, also, that as a freelance solicitor she did not have professional indemnity insurance (having previously been rebuked in these respects).

(b) Applying the objective standards of an ordinary decent person, the Second Respondent's conduct in this regard was submitted to be dishonest.

The Second Respondent's Case

34.4 The allegation was denied. The Second Respondent submitted that she had been consistent and truthful in her account to the Applicant. As noted above, she had referred the Tribunal to correspondence from Sandbrooks Solicitors which referred to

"our" client and "my" client. She stated that when she had been asked by the Applicant's investigators about describing herself as an in-house solicitor she had provided copies of cases and did not attempt to hide anything or to mislead. She also maintained that she had been open about the work she conducted on a freelance basis by virtue of her status as an employee of the Firm.

Response to the allegation of Dishonesty in relation to Allegation 1.15

34.5 The allegation of dishonesty was resisted on the same basis as the rest of the allegation: the Second Respondent's evidence was that she genuinely believed she was entitled to practise in the way she did and what she told the Applicant's investigators was entirely consistent with her practise and belief. The general points the Second Respondent had made about the standard of proof were repeated. She submitted that given her genuine belief at the time, which she submitted was corroborated by the contemporaneous documents and what she told the investigators, her conduct would not be regarded as dishonest by ordinary decent people.

The Tribunal's Decision

34.6 Mr VI had stated in a letter dated 16 December 2015, to which the Tribunal was referred, that the Second Respondent had never been a consultant of Sandbrook Solicitors and that her clients were not clients of that firm. The Tribunal noted that no witness statement had been provided from Mr VI and that he had not been called to give evidence and the Second Respondent had been unable to challenge his version of events. As noted above, the Tribunal approached his evidence with some caution on the basis he had been struck off.

34.7 As with the previous allegation, the Tribunal considered that the paperwork to which it was referred was confusing, unusual and ill-advised from the Second Respondent's perspective. She did not make any consultancy arrangement she had with Sandbrook Solicitors sufficiently clear. However, applying the appropriate standard of proof, the Tribunal did not conclude, on the evidence available, that it could be sure beyond reasonable doubt that the Second Respondent had not acted for the relevant clients through Sandbrook Solicitors as was her evidence. Similarly, and for the reasons noted in respect of the previous allegation, it could not be sure that she had not acted in a similar capacity for clients of the Firm. Accordingly, the Tribunal found that the allegation that the Second Respondent had misled the Applicant about those matters was not proved to the requisite standard of proof.

35. **Allegation 1.16: The Second Respondent entered into an employment contract with the Firm on 1 June 2015 as Applicant Approved Manager of the Firm. The terms of this contract ceded control of the Firm from the Second Respondent to the First Respondent despite the fact that, according to Applicant records, the Second Respondent was the sole director of the Firm at the time, the COLP and COFA and the only solicitor at the Firm qualified to supervise. This agreement was incompatible with her position at that time according to Applicant records as sole director and COLP/COFA and the First Respondent's position at that time according to records as an employee. By entering into this agreement, the Second Respondent breached Principles 2 and 6 and Rule 8.5 of the Authorisation Rules.**

The Applicant's Case

35.1 This allegation mirrored allegation 1.8 against the First Respondent and the alleged facts and evidence summarised above in paragraphs [27.1] to [27.2] were repeated.

35.2 As set out in those paragraphs, the Applicant's case was that the Second Respondent entered into an employment contract with the Firm on 1 June 2015, to perform the role of COLP, COFA and manager of the Firm and that from that date she was treated as an employee and paid wags in that respect.

35.3 The Applicant submitted that the employment contract was entirely inappropriate for the reasons summarised in paragraph [27.3] above and that by entering into the employment contract the Second Respondent breached Principles 2 and 6 and Rule 8.5 of the Authorisation Rules.

The Second Respondent's Case

35.4 The Second Respondent described being pressured by circumstances, and the First Respondent, into accepting the arrangement under which she entered into the employment contract from 1 June 2015. Her account of the pressures giving rise to entering into the employment contract was at odds with the First Respondent's, but she shared his view that they were not aware that the arrangement offended any regulatory rule or principle.

35.5 The Second Respondent stated that the employment contract merely regularised what was already in reality the position from the establishment of the Firm. From the outset she had (or should have) been paid by the First Respondent to undertake the role of approved manager, COLP and COFA and to manage the office. She said that she was in fact pleased to have the employment contract as she considered it may bolster her position with the First Respondent on the subject of being paid for her services.

35.6 Her evidence was that neither at the time of the events, nor by the date of the hearing, did she consider that being an employee paid to do the duties of COLP and COFA duties was incompatible with the proper discharge of them.

35.7 The key change was that she sold her shares to the First Respondent and so was no longer an equity partner in the Firm, although her case was that she remained a director until she left the Firm in August 2015. She stated that she was well aware that she was the only approved manager at the Firm on 1 June 2015 and that it was obvious that she could not pass responsibility for the COLP and COFA duties and responsibilities to him as he was not qualified to discharge them at that point. The employment contract she entered into specifically provided for her to continue to discharge these duties and she submitted that she retained sufficient control of the Firm to do so. She described the employment contract as being a legal document and submitted it was not improper in any way.

The Tribunal's Decision

35.8 This allegation mirrored 1.8 made against the First Respondent. In paragraphs [27.10] to [27.13] above the Tribunal's reasons for finding the allegations against the First Respondent not proved were set out. In essence, the Tribunal found that an employment contract was not inevitably incompatible with the regulatory roles performed by the Second Respondent and that there was no compelling evidence of the ceding of control undermining her ability to do so in practice. The Tribunal accepted the evidence of the Second Respondent that she was able to carry out these roles. Accordingly, and for the reasons summarised in relation to the First Respondent, the Tribunal did not find that the allegation had been proved or that the Principles had been breached as alleged.

36. **Allegation 1.17: In her application for authorisation of Anderson and Kensington Solicitors on 25 September 2015, the Second Respondent failed to disclose material information to the SRA concerning the county court judgment made against her on 23 October 2014, in breach of Principles 2, 6 and 7.**

The Applicant's Case

36.1 On 23 October 2014, a County Court judgment was issued against the Second Respondent in sum of £729.75. On 28 September 2015, following the breakdown of her relationship with the First Respondent and her departure from the Firm, the Second Respondent applied for authorisation of a sole practice trading as Anderson and Kensington and to be the manager, owner, COLP, and COFA. Within the application the Second Respondent ticked "No" to the following question: "Has the candidate ever … had a County Court Judgment (CCJ) issued against them?" The Second Respondent also ticked a box confirming that she had disclosed all material information and acknowledging that a failure to disclose material information would be treated as prima facie evidence of dishonest behaviour and also confirmed that the information she had provided in the form was correct and complete to the best of her knowledge and belief.

36.2 It was submitted by the Applicant that the Second Respondent had provided no evidence that the judgment had been set aside. The Applicant did not accept this on the basis that it was clear that a County Court judgment was issued against her and that, as a consequence, her response to the question posed in Form FA2 was incorrect. It was submitted that as a solicitor, the Second Respondent would have understood that a County Court judgment had been issued against her and that this remained the case even if she ultimately satisfied the debt owed.

36.3 For these reasons, it was submitted that the Second Respondent had breached Principles 2, 6, and 7.

The Second Respondent's Case

36.4 The allegation was denied. The Second Respondent's position was that the judgment was made in error when in fact the debt had been settled and satisfied. She also stated that the judgment was never "issued" as it was never entered on the register. She referred the Tribunal to the certificate of satisfaction.

36.5 The Second Respondent also stated that with hindsight she regretted not disclosing the judgment in the interests of complete transparency, but maintained that she did not believe that she was required to disclose it. She stated that she answered the question on the form honestly as at the date she completed the form no county court judgment had been "issued" in that it had not been entered in the register of judgments.

The Tribunal's Decision

36.6 The Tribunal accepted the clear documentary evidence that the County Court judgment was issued against the Second Respondent. The Tribunal also accepted the Second Respondent's evidence that the debt was satisfied and that she did not disclose the information as she did not consider the judgment had been entered on the register. The Tribunal did not consider that in the light of the Second Respondent's explanation of the events giving rise to the judgment and her completion of Form FA2 that her oversight reached the threshold such that the alleged breaches of the Principles had been proved beyond reasonable doubt.

37. **Allegation 4.1: Between 1 January 2016 and 8 September 2017, the Second Respondent conducted reserved legal activities in circumstances where she was not authorised to do so and in breach of conditions which were on her practising certificate at the time. In doing so, she breached all or alternatively any of Principles 1, 2, 4, 5, 6 and 7 and Rules 1.1 and 4 of the Practice Framework Rules.**

The Applicant's Case

37.1 This allegation (and the subsequent four allegations) concerned the Second Respondent's conduct from 1 January 2016, after she left the Firm, in respect of the company, Anderson & Moores Consultancy and Mediation Services Limited ("Anderson & Moores"). At no time was Anderson & Moores authorised by the Applicant or any other approved regulator. Ms Carpenter set out some background information relevant to this (and the subsequent four) allegations which are set out here and not repeated to minimise repetition. It was the Applicant's case that the Second Respondent conducted reserved legal activities while working at Anderson & Moores despite the fact that she was not permitted to do so since Anderson & Moores was not an authorised firm.

37.2 On 2 September 2016, the Second Respondent's application for authorisation of her sole practice trading as Anderson & Kensington was refused by the Applicant's Adjudicator. On 15 October 2016, the Second Respondent applied for a practising certificate for the practice year 2016/2017. On 27 April 2017, she was granted a practising certificate subject to three conditions:

(a) She may not own or manage a recognised sole practice or be a manager or owner of an authorised body.

(b) She may act as a solicitor only as an employee, which employment has first been approved in writing by the Applicant.

(c) She shall immediately inform any actual and prospective employer of these conditions and the reason for their implementation.

37.3 Turning to the specifics of allegation 4.1, the Applicant's case related to the Second Respondent's work, while at Anderson & Moores, for three clients, Ms HK, Mr V, and WL. In short, the Applicant alleged that:

(a) Between 1 January 2016 and 8 September 2017, the Second Respondent conducted reserved legal activities when not authorised to do so because, in breach of the Practice Framework Rules, she conducted those activities outside an authorised entity (cases of HK, Mr V and WL).

(b) In addition, between 27 April 2017 and 8 September 2017, the Second Respondent conducted reserved legal activities in breach of conditions on her practising certificate (in the matter of Mr V).

<u>*Client: Ms HK*</u>

37.4 Between about August 2016 and January 2017, the Second Respondent acted for her client, Ms HK, on a personal injury road traffic accident matter. The Second Respondent's involvement raised the concerns of District Judge Iyer. By order dated 2 December 2016 District Judge Iyer ordered that:

> "9. Anderson & Moores Consultancy and Mediation Services shall, within 14 days of receipt of this order, write to the court … explaining their role in this case, whether they have the right to conduct litigation on behalf of the Claimant, if so, how …
>
> 10. If Anderson & Moores Consultancy and Mediation Services fail to comply with this order, the court will consider reporting them to the Solicitors Regulation Authority …"

37.5 On 19 December 2016 the Second Respondent wrote to the Court. The letter was signed: "*[REDACTED]* [/] Senior in house Solicitor [/] Anderson & Moores Consultancy and Mediation services". She stated:

(1) "Anderson & Moores Consultancy and Mediation Services are not a law firm. We are a consultancy and mediation company. … *[REDACTED]* is a qualified senior solicitor and has relevant rights of audience to advocate at court on behalf of clients if instructed by the company in cases that litigate. *[REDACTED]* is the company's in house senior solicitor and has a valid practising certificate."

(2) Ms HK was advised that: "if she wanted to pursue this matter via the courts she would need to obtain legal representation by a law firm, instruct the company's in house solicitor or act as a litigation in person. She chose to proceed as litigant in person."

(3) Judgment in default was issued against Ms HK and then "the file was passed to *[REDACTED]*". The Second Respondent then obtained Ms HK's instructions in relation to consenting to default judgment being set aside and corresponded with the other side about this.

(4) "In recent weeks we have worked alongside MIT Solicitors in Bolton who are a law firm and have access to the portal. The client now wishes for MIT Solicitors to be on court record for this matter."

37.6 On 11 January 2017, District Judge Iyer made the following order:

(a) The court is not satisfied that Anderson & Moores is permitted to conduct litigation, notwithstanding *[REDACTED]* is a qualified solicitor.

(b) The court officer shall remove Anderson & Moores from the court record as acting for the Claimant.

(c) The Claimant must within 21 days of receipt of this order: (a) cause a notice of acting to be filed with the court and served on the Defendant on behalf of a firm of solicitors; or (b) inform the court and the Defendant that she proposes to conduct this litigation as a litigant in person.

37.7 On the same day, District Judge Iyer telephoned the Applicant's Professional Ethics line and expressed his concerns that the Second Respondent appeared to be working through a firm which was not authorised by the Applicant or another legal services regulator. He subsequently wrote to the Applicant and provided further information about his concerns: (a) that Anderson & Moores was providing legal services under the guise of mediation; (b) that their work was seriously below standard; (c) that they had been acting on multiple other occasions; and (d) relating to their interaction with clients.

37.8 It was submitted that the Second Respondent's denial that she knew about or sent the claim form or notice and assertion that litigated cases were dealt with by another law firm was not credible because it was not consistent with the contemporaneous documents.

Client: Mr V

37.9 Between about January 2016 and June 2017 the Second Respondent acted for Mr V on a guarantor debt matter. The Applicant's case was that Mr V's evidence and the documents on the file showed that the Second Respondent undertook a number of tasks for Mr V which included:

(a) Preparing a Defence and Counterclaim. The counterclaim included a claim for: "Professional legal fees from Anderson & Moores Consultancy and Mediation Services" of £1,100.00 and £440.00. Mr V explained that the Second Respondent drafted this document, he signed it, and she then filed it at the Court on 8 November 2016. The Second Respondent also confirmed to the FIO that she had drafted the defence and counterclaim with Mr V and that she filed it with the Court.

(b) Anderson & Moores invoiced Mr V for work undertaken in May to October 2016 and November 2016 covering: reviewing the claim; drafting the defence and counterclaim with exhibits; drafting mediation proposals, correspondence, and advice, reviewing loan agreements, taking client instructions, drafting full and final settlement proposals and counter proposals, budgeting, and obtaining information.

(c) HM Courts & Tribunal Service wrote to Mr V and the Second Respondent responded to the Court on 9 December 2016 and confirmed that "we" submitted the fee remission form in respect of the counterclaim. The signature block described her as "Senior in house Solicitor [at] Anderson & Moores…"

(d) On 2 February 2017, the Second Respondent made an application to the Court on behalf of Mr V. The Application Notice stated:

(i) In response to the question "What is your name or, if you are a legal representative, the name of your firm?"*: "[REDACTED] in house solicitor at Anderson & Moore Consultancy and Medication Services".*

(ii) In response to the question "If you are a legal representative whom do you represent?": *"[Mr V] – defendant".*

(iii) In the box for additional information at part 10, the Second Respondent set out the issue concerning the strike out of the counterclaim and stated: *"[t]he solicitor dealing with this matter, [REDACTED], was on annual leave …"*; certain correspondence from the Court was only received *"by the solicitor"* on a specified date; the direction questioned had been filed and they had sent all documentation via post today. The statement of truth to this box was signed by the Second Respondent, who also: marked herself as *"Applicant's legal representative"*; stated that the name of the applicant's legal representative's firm was: "Anderson & Moores consultancy and mediation services"; and stated that the position or office held was: *"In house senior solicitor".*

37.10 On 9 May 2017 the FIO asked the Second Respondent whether she had represented Mr V in Court. She responded that there had been no appearances in Court by Mr V. The FIO asked whether the Second Respondent had any correspondence with the Court or issued proceedings. The Second Respondent responded that she had only received what Mr V sent to Court and she had not had anything from the Court. The Applicant's position was that this statement was false. On 24 May 2017 (approximately two weeks after her interviews with the FIO, and also after her practising conditions had been imposed on 27 April 2017), Mr V's evidence was that the Second Respondent represented him at a hearing on his matter at Oldham County Court.

37.11 During the Second Respondent's interview with the FIO on 20 June 2017:

(a) In response to the suggestion that these were not mediation services, the Second Respondent stated that 99% of the cases were mediated, for the 1% that did not, she would be instructed by a "fellow Director or a Manager, to

proceed as the in-house Advocate for that client" and she stated she was entitled to do so because she held a valid practising certificate.

(b) She admitted that, in May 2017, she had attended Oldham Civil Court with Mr V, and that this was after the conditions were imposed on her practising certificate. She stated she had explained clearly to the Court that she was there as "an In-house Solicitor Advocate from Anderson & Moores". She then said that the matter had settled and it should never have been listed and that she had told the Court she was attending as "an employee of Anderson & Moores".

37.12 Mr V's evidence was that: he understood that Anderson & Moores was a firm of solicitors; from what the Second Respondent had told him and from the documents he had seen he understood that she was a solicitor; and the Second Respondent's correspondence with him stated "Senior in house Solicitor". Mr V also noted that the Second Respondent never told him that Anderson & Moore was not a firm of solicitors and she never told him that she had conditions on her practising certificate.

Client: WL

37.13 Between about May 2016 and January 2017, it was alleged that the Second Respondent acted for her WL in various matters including possession proceedings. It was submitted that the documents demonstrated the work she conducted. Ms Carpenter referred the Tribunal to various examples upon which the Applicant relied, including the following by way of example:

(a) She issued an application dated 5 May 2016 which she signed and in which the Claimant's representative was described as: "Anderson & Moores Consultancy and mediation Services – in house senior solicitor – Lauren Anderson".

(b) On 23 May 2016, Anderson & Moores sent a letter, on behalf of her client to the other party, stating "we now intend to issue this case against you at County Court" and that failure to mediate would result in them incurring costs. The letter was signed by the Second Respondent, who was described as "In House Senior Solicitor".

(c) The Second Respondent appeared for WL at Burnley County Court in the on 12 July 2016. Her file note of the same date stated at the top: "Advocate: *[REDACTED]*" and referred to the Second Respondent making "submissions" on the Defendant's evidence, the legal position under the Housing Act 1996, the deposit/repairs, and costs. The Court Order recorded that the Court heard from "the solicitor for the Claimant". The order was sent to Anderson & Moores.

(d) On 13 September 2016, Anderson & Moores sent a further letter which stated: "This case has been passed to our legal department", WL are prepared to mediate, if you fail to contact them to mediate, "we" will serve an eviction notice; eviction proceedings will incur costs. The letter was signed by the Second Respondent, who was described as "In House Senior Solicitor".

(e) On 13 September 2016, Anderson & Moores sent a letter, on behalf of WL, to opposing solicitors, which set out a counter settlement proposal and the client's legal position under the lease in dispute. The letter was signed: |*[REDACTED]* "Senior in house Solicitor" at Anderson & Moores.

(f) On 14 September 2016, Anderson & Moores sent a letter to a tenant on behalf of WL, referring to past attempts to mediate and stating that if no response were received court proceedings would be issued. The letter was signed: *[REDACTED]*, Anderson & Moores.

(g) Anderson & Moores provided WL with invoices for work undertaken on various matters for work including:

i. preparation for and attendance at hearing;

ii. negotiating, drafting, sending, and signing agreement;

iii. "Attendance at court/advocacy and discussions with defendant/attendance note";

iv. no charge for "drafting witness statement for [LDL] and reviewing all statements, amending statements and bundles for court";

v. preparing witness statements and files for court and a possession hearing on 28/10/2016;

vi. court attendance for a possession claim on 02/11/2016.

37.14 The Second Respondent's position was summarised as accepting that she attended two possession hearings when not authorised to do so. However, she stated that she believed at the time she was acting appropriately under Rule 1.1(e) of the Practice Framework Rules on the basis that she had a retainer with the company and was a self-employed consultant employee of WL. This argument was not accepted by the Applicant on the following basis:

(a) She was aware that Anderson & Moores was not an authorised firm.

(b) Rule 1.1(e) permits a person to practise as a solicitor "as an employee of another person, business or organisation, provided that you undertake work only for your employer, or as permitted by Rule 4 (in-house practice)." It was submitted that this would entitle the Second Respondent to act for Anderson & Moores, but it would not entitle her to work for clients of that company, such as Ms HK, Mr V, and WL.

(c) There was said to be no evidence that the Second Respondent was acting for WL as a "self-employed consultant employee" as the Second Respondent had suggested. It was submitted that to the contrary it was clear that the Second Respondent was working for Anderson & Moores and she repeatedly corresponded with WL's opponents in this capacity.

37.15 Further, the Applicant did not accept the Second Respondent's position that her misconduct was somehow "caused" by Mr AA or First Respondent. It was submitted that it was her decision to set up Anderson & Moores and to perform the work set out above for these clients.

Dishonesty alleged in respect of Allegation 4.1

37.16 With reference to the test laid down in Ivey, it was submitted that the Second Respondent knew she was conducting reserved legal activities when not authorised to do so, in breach of conditions on her practising certificate. It was submitted that she had previously been rebuked for acting as a freelance solicitor and was thus aware that she was required to act through an authorised firm. It was further submitted that she continued to conduct reserved legal activities after she had been interviewed by the FIO officer and been put on notice of the Applicant's concerns. Applying the objective standards or ordinary decent people, it was submitted that her conduct was dishonest.

The Second Respondent's Case

37.17 In her Answer the Second Respondent admitted conducting reserved legal activities whilst not authorised to do so. She admitted the alleged breaches save for breach of Principle 2 (integrity) and dishonesty. In her Answer she maintained that her misconduct was caused by the deception of a third party, an employee who was said to be influenced by the First Respondent.

37.18 The Second Respondent's denial that she had breached Principle 2 was based on:

(a) Maintaining that she had spoken with the ethics department at the Applicant and been told that she could act as an in-house solicitor for Anderson & Moores.

(b) Her genuine belief that she was covered under the Practice Framework Rules 1.1(e) and Rule 4.

(c) The majority of work at Anderson & Moores was not legal reserved activities but mediation.

(d) If there were any legal reserved activities in relation to personal injury matters she set up agreements with law firms to handle this.

(e) The allegation arose as a direct cause of the First Respondent's misconduct. She alleged that he had sent a "spy" who worked with her and put her at risk and caused regulatory trouble.

(f) She herself informed the FIO that she had conducted litigation on certain matters because she genuinely believed at that time she was allowed to be an in house solicitor.

(g) She had a current practising certificate.

(h) She did not seek to mislead anyone regarding being an in house solicitor, advertising herself as an in house solicitors on letterheads and emails.

(i) A letter was sent to the Applicant seeking approval of my employment.

(j) At that time, personally, she was experiencing various extremely challenging personal circumstances.

Response to allegation of dishonesty

37.19 The Second Respondent denied dishonesty on the basis summarised above in paragraph 37.18. She denied that ordinary decent people would regard her conduct as such in the light of her belief at the time.

The Tribunal's Decision

37.20 Allegation 1.1 was admitted with regards to the alleged breaches of Principles 1, 4, 5, 6 and 7 and Rules 1.1 and 4 of the Practice Framework Rules. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.

37.21 The Second Respondent had admitted practising in an unauthorised manner which was inevitably a very serious failing for a solicitor. However, the Tribunal noted that she had done so in a transparent manner which was consistent with her claim to have genuinely (but mistakenly) believed she was entitled to practice in the way she did. The Tribunal was cognisant of her previous reprimand for practising in an unauthorised manner. However, having considered her generally to be a credible witness, the Tribunal could not be sure, to the requisite standard, that her stated belief had not been genuine. The Tribunal considered the lack of familiarity with the regulations governing entitlement to practise to be thoroughly unsatisfactory, but did not find that it had been proved beyond reasonable doubt that the account of her belief that she was entitled to act under Rule 1.1 (e) and Rule 4 of the Framework Rules was not genuine. Whilst her conduct had been thoroughly unsatisfactory, reflected in the serious admitted breaches which had been found proved, the Tribunal did not consider this failing amounted to a failure to adhere to the ethical standards of the profession such that the test in Wingate for conduct lacking integrity was satisfied. Similarly, the Tribunal did not consider that her conduct would be considered dishonest by ordinary, decent people taking into account her belief about being entitled to practise as she did. It would be regarded as deeply unsatisfactory and likely to undermine public trust in the profession, but not dishonest. Accordingly, the Tribunal did not find the allegation that the Second Respondent had breached Principle 2 or acted dishonestly to be proved.

38. **Allegation 4.2: Between 1 January 2016 and 8 September 2017, the Second Respondent conducted reserved legal activities in circumstances where she did not have adequate professional indemnity insurance cover in place to do so. In doing so, she breached all or alternatively any of Principles 2, 4, 5, 6 and 7, Rule 4.1 of the SRA Indemnity Insurance Rules 2013 and Outcome 1.8 of the Code**.

The Applicant's Case

38.1 Throughout the period in which the Second Respondent was acting for Ms HK, Mr V, and WL (as summarised above under allegation 4.1), she did not have professional indemnity insurance covering the provision of reserved legal activities or any solicitor activities. Anderson & Moores had a professional indemnity insurance policy covering the period 1 April 2017 to 31 March 2018. The policy described Anderson & Moores' business as "Business Consultancy" and provided that certain occupations and business activities were not covered, including: "barristers, lawyers, legal advisors …" Thus, the Applicant's case was that it did not cover the Second Respondent's work, for Anderson & Moores, as a lawyer or legal advisor.

38.2 By conducting reserved legal activities without professional indemnity insurance in place between 1 January 2016 and 8 September 2017, the Applicant submitted that the Second Respondent breached: Principles 2 (integrity), 4 (best interests of client), 5 (proper standard of service to client), 6 (maintain public trust), and 7 (comply with legal and regulatory obligations); SRA Indemnity Insurance Rules 2013, Rule 4.1 (maintaining insurance); and Outcome 1.8 of the Code (maintain professional indemnity insurance).

Dishonesty alleged in respect of allegation 4.2

38.3 With reference to the Ivey test, dishonesty was alleged on the basis that the Second Respondent was conducting reserved legal activities and knew that she did not have professional indemnity insurance covering this work. Again, the Applicant submitted that the previous rebuke for acting as a freelance solicitor without insurance demonstrated that the Second Respondent was well aware of the requirement. It was submitted that an ordinary decent person would regard such conduct as dishonest.

The Second Respondent's Case

38.4 The Second Respondent accepted that in what she described as "the few times I acted as a solicitor" she did not have the requisite professional indemnity insurance. On this basis she admitted the alleged breaches of Principles 4, 5, 6 and 7; Rule 4.1 of the SRA Indemnity Insurance Rules 2013 and Outcome 1.8 of the Code.

38.5 The Second Respondent denied that she had acted without integrity in breach of Principle 2. This was on the basis that:

(a) She obtained insurance for her mediation company.

(b) She believed the policy purchased was sufficient for the company.

(c) In providing reserved legal activities she accepted that she did not have the requisite insurance but this was caused by being unaware of the exclusions from the policy.

(d) Her case was that this oversight was accidental and she accepted that she should have been more astute to this.

Response to allegation of Dishonesty in respect of Allegation 4.2

38.6 The Second Respondent denied that her conduct would be regarded as dishonest by ordinary decent people for the reasons set out in paragraph [38.5]. Having arranged adequate insurance for her company she submitted that failing to appreciate the relevant exemption applicable to the policy would not be regarded as dishonest.

The Tribunal's Decision

38.7 Allegation 4.2 was admitted with regards to the alleged breaches of Principles 4, 5, 6 and 7; Rule 4.1 of the SRA Indemnity Insurance Rules 2013 and Outcome 1.8 of the Code. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.

38.8 The Second Respondent had admitted failing to maintain professional indemnity insurance when undertaking reserved legal activities for clients. Again, this was inevitably a very serious failing for a solicitor which posed significant financial risks to clients and potentially to the profession. However, as with allegation 4.1, having heard her evidence about the insurance that she did procure, and found her to be a credible witness who made numerous concessions throughout her evidence, the Tribunal did not find that it had been proved to the requisite standard of proof that she had knowingly carried out the legal work without appropriate insurance. Again, as with the previous allegation, and without minimising the seriousness of the conduct admitted and found proved, the Tribunal did not consider this failing amounted to a failure to adhere to the ethical standards of the profession such that the test in Wingate for conduct lacking integrity was satisfied. Similarly, the Tribunal did not consider that her conduct would be considered dishonest by ordinary, decent people taking into account the evidence of the policy she had arranged and the fact she may have genuinely believed that she this was sufficient (the Tribunal approached the question of dishonesty and the Ivey test on this basis having found that it was not proved that she knew the insurance was inadequate). Again, the admitted conduct would be regarded as deeply unsatisfactory and likely to undermine public trust in the profession, but not dishonest. Accordingly, the Tribunal did not find the allegations that the Second Respondent had breached Principle 2 or acted dishonestly to be proved.

39. **Allegation 4.3: The Second Respondent allowed, and was responsible for, the website "www.amcm.co.uk" to appear online to describe and promote Anderson & Moores Consultancy and Mediation Services Limited, providing misleading information by giving the impression that Anderson & Moores was authorised and regulated by the Applicant when it was an unregulated company. In doing so, she breached all or alternatively any of Principles 2 and 6 and failed to achieve Outcomes 8.1, 8.4 and 8.5 of the Code**.

The Applicant's Case

39.1 As at 20 June 2017 and 13 July 2017, the website of "www.amcm.co.uk" stated:

(a) *"At Anderson & Moores ... we have an industry leading specialist grade A senior solicitor with over 15 years experience ... 297 Cases Won in Court,*

4302 Settled With Mediation, 3100 Use Us More Than Once, 5189 Mediation Cases ... Everyone we represent ... receives the best legal representation".

(b) Anderson and Moores was described as "*Affordable Justice for All*" and the query was posed: "*Where will great legal advice take you?*".

(c) Areas of expertise listed included: *"Family Mediation"; "Business Mediation"; "Business Law"; "Employment Disputes"; "Personal and Family Law Solicitors"; "Divorce Law Solicitors";* and *"Wills & Probate Solicitors".*

(d) *"PAY NOTHING UNLESS WE WIN ON ALL PERSONAL INJURY CLAIMS".*

(e) Under frequently asked questions: *"EVERY ATTORNEY SHOULD GIVE FREE CONSULTATIONS".*

(f) The website included photographs of three individuals who were stated to be: *[REDACTED]* (Managing Director), AA (PI Specialist), and WD (Head of Marketing).

39.2 On 20 June 2017, the FIO raised the website with the Second Respondent and the misleading publicity being provided thereon. The Second Respondent stated that Mr WD had been constructing the webpage and that, while this was the most up-to-date one and it was live, it was still being amended. She acknowledged that the information was not correct and stated she would speak to Mr WD. In the her report of 14 July 2017 the FIO noted that the website remained accessible to the public despite the Second Respondent's assurance that she would have Mr WD take it down.

39.3 The Second Respondent had stated that she had requested that Mr WD design and host a website for Anderson & Moores; she did not request, agree or authorise the content reviewed by the FIO or authorise the website to go live; she was unaware of its content and the fact that it was live; and once the SRA alerted her to the fact that its content might be misleading, she asked Mr WD (who was the sole administrator) to take it down. She had accepted ultimate responsibility for the website.

39.4 The Applicant submitted that the website was plainly misleading in circumstances where: Anderson & Moores was not authorised by the SRA (or any other legal services regulator); and the website clearly gave the impression that Anderson & Moores was so authorised, it gave legal advice, and persons who worked there were lawyers. The Second Respondent's evidence was not accepted. In particular:

(a) Her assertions that she did not request, agree or authorise the content of the website were submitted to be implausible. The Second Respondent engaged Mr WD. It was to be inferred that any information contained on that website was provided to him by her.

(b) Similarly, her assertion that she did not have access to the website of her own company, of which she was the sole director and shareholder, was submitted to be implausible in circumstances where the website was available to the general public and accessed by the FIO.

39.5 As the person who allowed, and was responsible for the website, it was submitted that the Second Respondent breached Principles 2 and 6and outcomes 8.1 (accurate publicity), 8.4 (appropriate information about the regulatory position), and 8.5 (requirement for law firms to state they are regulated by the Applicant) of the Code.

Dishonesty alleged in relation to Allegation 4.3

39.6 With reference to the Ivey test, it was submitted that the Second Respondent plainly knew that Anderson and Moores was not an authorised firm. It was submitted that she must have been aware of the content of the website given that she engaged Mr WD to prepare and thus knew that it was incorrect. Applying the objective standards of decent ordinary people the Second Respondent's conduct was said to be dishonest.

The Second Respondent's Case

39.7 Allegation 4.3 was admitted with regards to the alleged breaches of Principle 6 and Outcomes 8.1, 8.4 and 8.5 of the Code.

39.8 The Second Respondent had admitted responsibility for a website which could have been accessed by a member of the public which gave misleading information about the firm, its work and its regulatory status. She denied that she had acted without integrity in breach of Principle 2. This was on the basis that:

(a) She instructed Mr WD to design the website and he purchased the domain name and was the sole administrator.

(b) The content she sent to him was not in any way misleading.

(c) She stated that she was never informed that the website was finished and did not provide consent or authority for the website to be made live.

(d) She stated that she did not have access to the website, any administration rights or the knowledge to make a website live.

(e) Her case was that she genuinely believed that the website was still being worked on and that there was simply a landing page for the public explaining the site was under construction and would be coming soon.

(f) She accepted that ultimately she was accountable for the site and when informed she ensured it was closed down as soon as possible.

39.9 The Second Respondent noted in her oral evidence that the text on the website made reference to US law and contained sections in Latin. She surmised that Mr WD had generated 'place-holding' content to supplement that she had provided when designing the website.

Response to allegation of dishonesty in respect of allegation 4.3

39.10 The Second Respondent denied that her conduct would be regarded as dishonest by ordinary decent people for the reasons set out in paragraph [39.8] and [39.9]. Being ultimately responsible for inadvertent potential public access to a website whilst it was under construction and contained clearly unauthorised text (relating to US law and passages in Latin) would not be regarded as dishonest by ordinary decent people.

The Tribunal's Decision

39.11 Allegation 4.3 was admitted with regards to the alleged breaches of Principle 6 and Outcomes 8.1, 8.4 and 8.5 of the Code. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.

39.12 The Second Respondent had admitted responsibility for the misleading website. The Tribunal noted that the text on the website contained American terms not used in English law and sections purportedly in Latin. The Second Respondent's evidence was that the website address had not been included on the firm's stationery or email signatures. No evidence to the contrary was presented. The Tribunal did not consider that it was likely on the evidence presented that the website contents to which it was referred were a final version intended for publication. Given that a member of the public could have accessed the website, the Tribunal considered that the public's trust in the Second Respondent and the provision of legal services may have been undermined. However, the failure to ensure that the contractor she had engaged had not permitted premature public access did not amount to a failure to adhere to the ethical standards of the profession such that the test in Wingate for conduct lacking integrity was satisfied. Similarly, the Tribunal did not consider that her conduct would be considered dishonest by ordinary, decent people taking into account the evidence that the website contained elements clearly not intended for publication which suggested it was not a final and approved version. Having found that it was not proved that the Second Respondent had knowingly allowed misleading information to be provided on the website, the Tribunal again concluded that her conduct was not dishonest according to the test in Ivey. Accordingly, the Tribunal did not find the allegations that the Second Respondent had breached Principle 2 or acted dishonestly to be proved.

40. **Allegation 4.4: Between 1 May 2017 and 30 June 2017, the Second Respondent provided false and/or misleading information to the Applicant in respect of the work she had been undertaking. In doing so, she breached all or alternatively any of Principles 2, 6 and 7.**

The Applicant's Case

40.1 The FIO took notes of her initial interviews with the Second Respondent on 8 and 9 May 2017 which recorded:

(a) She asked the Second Respondent whether Anderson & Moores maintained a breaches' register. The answer was "No". Ms SY recorded the Second Respondent's rely as follows: "Doesn't provide services as a solicitor mainly

mediation work. Not any relevance for it with the work we do. None relevant – if it litigates we use another legal team".

(b) She asked the Second Respondent about the court work done for WL. Ms SY asked "Have you managed any work through the courts?" and the Second Respondent replied: "No, its all consultation work, no". Ms SY also recorded that the Second Respondent then said that she had attended two hearings as that she went "as an advocate on behalf of [WL]".

(c) She asked the Second Respondent whether she had any correspondence with the courts or other solicitors regarding her access to the portal as a mediation provider and the Second Respondent responded "no".

(d) She asked the Second Respondent whether she or Anderson & Moores had been recorded as the legal representatives on any court documents. The Second Respondent: "No I don't think so" and said she would check regarding WL.

(e) The Second Respondent provided further information regarding WL, stating that she had attended Burnley County Court and made submissions on behalf of WL and that she was on a retainer with WL. Ms SY asked for a copy of the retainer and the Second Respondent said she had some emails which she would provide. The FI Report noted that as at its date (14 July 2017) the Second Respondent had been asked twice to provide the retainer and no documents had been provided; this remained the position at the date of the hearing.

(f) The Second Respondent provided information on Mr V. She stated there had been no court appearances. Ms SY asked whether she had had any correspondence with the Court on the issued proceedings and the Second Respondent stated that she had only received what Mr V sent to Court but she had not received anything from the Court and had not attended Court.

40.2 It was the Applicant's case however that as at this date, 8-9 May 2017:

(a) For the client Ms HK, the Second Respondent had already engaged in the matters set out at paragraphs [37.4] to [37.5] above, which included correspondence with the Court and representations to the Court that she was Ms HK's solicitor.

(b) For the client Mr V, the Second Respondent had already prepared the Defence and Counterclaim and had and filed the Application Notice, which also stated that she was Mr V's solicitor (as per paragraphs [37.9] above).

(c) For the client WL, the Second Respondent had represented WL in two Court hearings and had also written extensive correspondence as a solicitor. It was submitted to be clear from the correspondence and the documents that she was not acting on a retainer for WL but was, instead, acting through Anderson & Moores.

40.3 The Second Respondent denied this allegation. She had stated that she was transparent and volunteered information about conducting legal reserved activities as she believed that she was entitled to do so under Rule 1.1(e) of the Practice Framework Rules (as set out under allegation 4.1). She also noted that at the time of the interviews she was experiencing a difficult pregnancy and taking prescribed strong painkillers and that this would explain any points where she was not one hundred per cent clear. The Applicant submitted that the responses given by the Second Respondent were plainly incorrect, and that this was shown by the documents. By giving false information to the Applicant, it was submitted that the Second Respondent had breached Principles 2, 6, and 7.

Dishonesty alleged in relation to Allegation 4.4

40.4 With reference to the test in Ivey, it was submitted that the Second Respondent knew the kinds of work she was conducting for her clients. In particular, she knew she was conducting court work but it was alleged that she deliberately sought to downplay that work and, in some instances, to deny it. Applying the objective standards of ordinary decent people it was submitted that this conduct was dishonest.

The Second Respondent's Case

40.5 The Second Respondent denied the allegation in its entirely. This was on the basis that in her dealings with the Applicant she made admissions and volunteered information based on her genuine (but with hindsight admittedly incorrect) belief that she could act as she did as an in-house solicitor under Rule 1.1(e) of the Framework Rules. She also stated that she provided the Applicant with full access to all premises including her office, her home address, files, documents, email and one-drive accounts. She also stated that she was suffering personal trauma at that time which caused her to make mistakes.

Response to allegation of Dishonesty in relation to Allegation 4.4

40.6 The Second Respondent denied that she had acted dishonestly on the grounds summarised in the previous paragraph.

The Tribunal's Decision

40.7 The Tribunal accepted that the FIO's notes contained information which was not accurate. For example, that when litigation was required an authorised law firm was used for this work. However, the Second Respondent had provided disclosure and information to the Applicant from which the nature of the legal work she had undertaken was clear. The Tribunal also accepted the Second Respondent's evidence that she openly explained the (mistaken) basis on which she considered at the time she was permitted to undertake the legal work she completed. The Second Respondent had subsequently accepted that she had been wrong in her earlier belief – and had made admissions accordingly. As noted above, the Tribunal had found the Second Respondent to be a credible witness generally who was willing to acknowledge what amounted to serious mistakes. The Tribunal accepted that the Second Respondent had been subject to significant personal pressures at the relevant time.

40.8 Viewing the interactions of the Second Respondent with the Applicant in their totality the Tribunal was not satisfied that it had been proved beyond reasonable doubt that she had provided false and/or misleading information.

41. **Allegation 6.1: (i) Between approximately March 2018 and January 2019, the Second Respondent worked as a part-time paralegal at Maya Solicitors and (ii) between approximately 19 October 2018 and January 2019, the Second Respondent worked as a part-time paralegal at Masaud Solicitors, and thereby acted as a solicitor, despite not holding a practising certificate, and thereby breached any or all of Principles 1, 2, 4, 5, 6, and 7 and Rules 1.1 and 4 of the Practice Framework Rules and/or acted contrary to s 1 and 1A of the Solicitors Act 1974.**

The Applicant's Case

41.1 On 8 September 2017, the Applicant intervened into the Second Respondent's practice as a result of her conduct while working at Anderson & Moores. Her practising certificate was suspended on that date. It was the Applicant's case, not disputed by the Second Respondent, that between March 2018 and January 2019, she worked as a paralegal for Maya Solicitors. Mrs MH, the Principal Solicitor at Maya Solicitors, provided evidence as to this work as a paralegal.

41.2 On 13 August 2018, the Applicant received an undated letter from the Second Respondent which stated:

> *"I write to inform you that finally I have been offered employment at Maya Solicitors in Oldham. They have offered me a position as a paralegal in their family law department.*
>
> *I have been offered this position for a probationary period of 6 months under close supervision from the Principal / Head of the family department. The position will be reviewed at the 6 month point.*
>
> *I am under close daily supervision by both solicitors.*
>
> *I write to notify you, keep you updated and also to seek your approval. Please confirm that you have no objections."*

It was submitted that this letter was misleading as the Second Respondent had not only been offered employment as a paralegal – she had been acting as a paralegal for more than five months.

41.3 The Applicant responded stating that section 1A of the Solicitors Act 1974 has the effect that being on the Roll of Solicitors she was held in law to be practising as a solicitor if employed in private practice in connection with the provision of legal services, even if she was not held out as a solicitor. It was made clear that being on the Roll, if she wished to work in a law firm as a paralegal, she would need to apply for a practising certificate. A message was left on the Second Respondent's mobile number explaining that an email responding to her letter had been sent. The Second

Respondent did not apply for a practising certificate (although during the hearing she stated that she had applied for one).

41.4 It was the Applicant's case, also not disputed by the Second Respondent, that between October 2018 and January 2019 she worked as a paralegal for Masaud Solicitors. Mr MM, solicitor at Masaud Solicitors, provided evidence of this work as a paralegal. The Second Respondent invoiced Masaud Solicitors for "Paralegal services" on various dates.

41.5 The Applicant submitted that, by acting as a solicitor, without holding a practising certificate, the Second Respondent breached:

(a) any or all of Principles 1, 2, 4, 5, 6, and 7;

(b) Rules 1.1 and 4 of the Practice Framework Rules, on the basis that she was not practising in an authorised way and she did not have the benefit of professional indemnity insurance;

(c) Section 1 of the Solicitors Act 1974, which provides that a solicitor is qualified to act as a solicitor only if, inter alia, he or she holds a valid practising certificate and s1A which states a solicitor who works at an authorised firm is deemed to be acting as a solicitor.

Dishonesty alleged in relation to Allegation 6.1

41.6 With reference again to the test in Ivey, it was alleged that conduct described above was dishonest on the basis that:

(a) The Second Respondent knew she was working as a paralegal and it was submitted that she knew she was required to hold a practising certificate in order to do so. In support of this contention it was noted that she did not notify the Applicant about her paralegal work at Maya solicitors until more than five months after she started the position. It was contended that even then her notification was misleading as she stated that she had been offered a job and not that she had been carrying one out for five months. She did not notify the Applicant about her paralegal work at Masaud solicitors.

(b) She was aware from 13 August 2018 (if not earlier) that she could only act as a paralegal if she held a practising certificate (this being the date an email and voicemail were sent). It was not accepted by the Applicant that these were not received, and it was noted that the Second Respondent had subsequently written to the Applicant from the email address to which the response had been sent.

(c) Despite the above, the Second Respondent still did not apply for a practising certificate and continued to work as a paralegal.

Applying the objective standards of the ordinary decent person, it was submitted that this conduct would be regarded as dishonest.

The Second Respondent's Case

41.7 The key underlying fact was admitted as the Second Respondent acknowledged that she did not have a practising certificate at the relevant time. However, she stated that she was working as a paralegal rather than a solicitor and was not aware that she required a practising certificate. She stated that she was not aware of s1A of the Solicitors Act 1974 (although she acknowledged its effect).

41.8 She also denied ever receiving the email or voice mail referred to by the Applicant. During her evidence she suggested that she may not have updated the mobile telephone details on the "mySRA" website which would account for the message not reaching her. On the basis that she had beached this rule inadvertently she accepted the alleged breach of the Practice Framework Rules and the Solicitors Act but denied the alleged breached of the Principles.

Response to allegation of Dishonesty in relation to Allegation 6.1

41.9 Dishonesty was also denied on the basis that the breach was inadvertent and she was not aware of the requirement. On that basis she denied that ordinary decent people would regard her conduct as dishonest.

The Tribunal's Decision

41.10 In respect of both parts of the allegation, 6.1(ii) and 6.1(ii), the breaches of Rule 1.1 and Rule 4 of the Practice Framework Rule and sections 1 and 1A of the Solicitors Act 1974 were admitted. The Tribunal found that the admissions were properly made and that the allegations were proved beyond reasonable doubt.

41.11 The Second Respondent had admitted a failure to comply with an important regulatory requirement relating to entitlement to practise. The Tribunal accepted the Second Respondent's evidence that she had not been aware of the requirement, but considered that any solicitor should be. The Tribunal did not conclude that it had been proved on the available evidence that the Second Respondent had been made aware of the requirement through the email and voicemail message from the Applicant. The turmoil in her private life to which the Second Respondent referred, her evidence that at the time the voicemail message was left the Applicant had an out of date number for her, and the fact that the Tribunal had assessed her as a generally credible witness who was willing to make concessions where appropriate, meant that the Tribunal could not discount the explanation offered by the Second Respondent so that it was sure she had acted knowingly as alleged.

41.12 However, it is self-evidently important for a solicitor to comply with all relevant regulatory requirements and obligations with the regards to entitlement to practice. Whilst the Second Respondent's ignorance of the relevant sections of the Solicitors Act which meant a practising certificate was required when working as a paralegal was accepted as genuine, it was not acceptable. The Practice Framework Rules and the Solicitors Act 1974 are the cornerstone of the regulatory regime and an admission of a failure to comply raised wider issues of professional misconduct. The Tribunal found beyond reasonable doubt that the failure amounted to a clear failure to uphold the rule of law in breach of Principle 1 involving as it did an acknowledged breach of

s1 and s1A of the Solicitors Act. Such a failure to uphold the law and basic regulatory requirements must inevitably undermine public trust in the Second Respondent and the provision of legal services and the Tribunal found beyond reasonable doubt that the failure accordingly amounted to a breach of Principle 6. By the same token, the Tribunal found beyond reasonable doubt that the Second Respondent had clearly failed to comply with her legal and regulatory obligations in breach of Principle 7. These three breaches were found proved in respect of allegation 6.1(i) and (ii) and both periods of paralegal working.

41.13 The Tribunal could not be sure that the Second Respondent had received the notification from the Applicant of the requirement to obtain a practising certificate whilst acting as a paralegal. It had accepted her evidence that she was not otherwise aware of the requirement. On that basis, whilst a serious and concerning professional failing and level of ignorance about the regulatory landscape, the Tribunal could not be sure to the requisite standard that the failing had been knowing and/or that it amounted to a failure to adhere to the ethical standards of the profession such that conduct lacking integrity was proved. For the same reason, applying the test in Ivey, and having not found it proved that the Second Respondent knew about the requirement but had breached the requirements inadvertently, the Tribunal did not consider that the failings found proved and set above would be considered dishonest by ordinary decent people.

42. **Allegation 6.2: Between about November 2018 and January 2019, the Second Respondent acted as a solicitor for Ms PW despite (i) not holding a practising certificate and (ii) not working at an entity approved by the Applicant or any approved regulator, and thereby breached any or all of Principles 1, 2, 4, 5, 6, and 7 and Rules 1.1 and 4.2 of the Practice Framework Rules and/or acted contrary to s 1 of the Solicitors Act 1974.**

The Applicant's Case

42.1 Allegations 6.2 to 6.5 all concerned the Second Respondent's conduct in respect of her client, Mrs PW. The factual background according to the Applicant is summarised under this one allegation to minimise repetition.

42.2 The Applicant's case was that the Second Respondent acted for Mrs PW as an unauthorised solicitor between about November 2018 and January 2019. Mrs PW gave evidence about the Second Respondent's work for her. Ms Carpenter submitted that this evidence was also corroborated, where relevant, by that of Mr MM. Mrs PW stated that in about September 2018, she and her husband, Mr DW, decided to divorce. Accordingly, she required legal representation and she instructed the Second Respondent and understood that she was a solicitor. Around November 2018, Mr DW instructed solicitors, Newtons Solicitors Limited, to represent him. Mrs PW stated that the Second Respondent continued to act for her and to work on the draft financial agreement and that the Second Respondent sent her further drafts by email on 12 and 13 November 2018. One of these drafts was on Anderson & Moores headed notepaper and it provided for the Second Respondent's signature, describing her as "Senior solicitor".

42.3 An application for divorce dated 12 November 2018 was filed with the Court on behalf of Mrs PW on 3 December 2018 and subsequently issued by the Court. The application stated:

(a) In response to the query: "Do you have a solicitor acting for you?": the box "Yes" was checked.

(b) The solicitor's name was stated to be: "*[REDACTED]*" with solicitor's reference number "LAPW02".

(c) The solicitor's firm was stated to be "Masaud Solicitors".

(d) The solicitor's address was stated to be the Second Respondent's, as was the phone number and email address.

(e) On the box beneath the signature under the heading "Name of solicitor's firm (if applicable)", it stated: "Masaud Solicitors".

Mrs PW stated that the Second Respondent drafted her application for divorce and that she (Mrs PW) did not see it before it was filed with the Court. As to the content of the application, Mrs PW stated in her evidence:

> *"I never understood that Masaud Solicitors were acting for me or that [the Second Respondent] was acting for me as an employee of Masaud Solicitors. ... it was always my understanding that [the Second Respondent] was acting for me as a freelance solicitor. I do not know why [the Second Respondent] entered the name of Masaud Solicitors as my firm of solicitors."*

Further, the Applicant's case was that Mr MM stated that Masaud Solicitors did not consent to the Second Respondent using its details in the application and he was not aware that she had done so at the time.

42.4 On 17 December 2018, the Second Respondent emailed Mrs PW a new financial consent order which *[REDACTED]* had drafted. The signature to the email referred to "*[REDACTED]* [/] Anderson & Moores [/] Consultancy and Mediation Services" and gave the address for Anderson & Moores. The draft financial consent order again provided for the Second Respondent to sign the document and described her as: "Senior solicitor – *[REDACTED]*".

42.5 On 15 January 2019, Ms JF (the solicitor for Mr DW) emailed the Second Respondent and it was submitted she understood that the Second Respondent was acting as Mrs PW's solicitor (and not as a mediator) as indicated by her email to her own client of the same date where she referred to clarifying matters with Mrs PW's "solicitors". On 15 January 2019, Newtons Solicitors Limited made a report to the Applicant concerning the Second Respondent. Mrs PW stated that around this date, she was informed by Mr DW that:

(a) His solicitors, Newtons Solicitors, had been in touch with him to say that the financial consent order drafted by the Second Respondent was not correct and that accordingly he would not be able to sign it.

(b) Newtons Solicitors had checked online and discovered that the Second Respondent was uncertificated and was not practising through a firm.

42.6 On 18 January 2019, Mr MM received correspondence from the Family Court at Liverpool relating to the divorce petition which stated that his firm (Masaud Solicitors) and the Second Respondent were acting for Mrs PW. He stated that his firm was not acting for Mrs PW and had never been instructed by Mrs PW. He stated that he spoke with the Second Respondent that day and asked for an explanation. The Second Respondent had explained that she believed Mrs PW would become a client and that she had arranged an appointment for her with the firm. Mr MM stated that he asked the Second Respondent to come in to discuss the matter but she did not attend.

42.7 On 22 January 2019, during a telephone call, Mr DW informed Mrs PW that the Second Respondent had entered the name of Masaud Solicitors on her divorce petition and that she was not a practising solicitor. Mrs PW stated that she was "shocked" to discover these matters. On the same day Mr DW emailed the Second Respondent and Mrs PW forwarding the email from Newtons Solicitors about the Second Respondent being uncertificated. He noted that £400 had already been paid to the Second Respondent and that if she were unable to act, that money would need to be refunded. The Second Respondent emailed Mr DW (only) in reply and stated:

> *"I am fully aware of this and spoke at length with [Mr MM] yesterday.*
>
> *I have a mediation company which deals with financial consent orders, which we had arranged to meet and discuss tomorrow. I am a qualified solicitor but do not have a current practising certificate and I no longer own my own firm hence the fact that I used Masaud Solicitors to deal with the divorce. I often refer cases to law firms to litigate if required.*
>
> *I do consultancy for a number of law firms including Masaud Solicitors.*
>
> *[Mr MM] told me yesterday that although he was initially happy to take this case he did not have capacity to deal with it moving forward and he had written to the court to advise them of this.*
>
> *It was my intention to speak to you and [Mrs PW] tomorrow at our meeting regarding […] proceeding with the divorce as a litigant in person once the financial and children matters had been resolved and the agreement had been signed, as it is not contested.*
>
> *I have been paid to mediate this matter, to draft the agreements and consent order, make amendments and assist with submission of the divorce petition.*
>
> *Please advise if the meeting is still going ahead tomorrow.*
>
> *Kind regards*
>
> *[REDACTED] Anderson & Moores Consultancy and Mediation Services"*

42.8 The Second Respondent's position was summarised by Ms Carpenter as follows:

(a) She was not employed by Masaud Solicitors but she worked there as a self-employed paralegal. She intended that Mrs PW would become a client of Masaud Solicitors, although this did not occur.

(b) The Second Respondent assisted Mrs PW with the mediation agreement and made it clear to her that moving forward she would not be acting in the divorce matter.

(c) At all times, she acted as a mediator and not as a solicitor, and she made it clear to Mrs PW that she was a mediator "on a number of occasions". The sum of £400 was paid to her for work carried out as a mediator and for drafting the consent order and making amendments.

Previously the Second Respondent stated to the Applicant that she informed Mrs PW that she did "consultancy for Maya Solicitors but the agreement which she required (financial consent agreement) could be done through my mediation company" and that she was "NOT a solicitor and only a mediator". She had not conducted reserved legal activities and she had referred the divorce to Masaud Solicitors, who had decided not to deal with it. The Second Respondent's position was not accepted by the Applicant.

42.9 It was submitted on behalf of the Applicant that the Second Respondent's suggestion that she was acting as a mediator only was not credible. The Applicant's case was that there was no documentary evidence to suggest that Mrs PW required a mediator or that the parties engaged in any mediation. Mrs PW denied that she engaged the Second Respondent as a mediator that they participated in any mediation. It was submitted that to the contrary, the documents indicated that the Second Respondent was acting for Mrs PW as a solicitor. The tasks undertaken by the Second Respondent – preparing a petition for divorce, filing the petition with the Court, and drafting a financial consent agreement – were submitted not to be mediation tasks. A mediator was described as being neutral between the parties. The Second Respondent was submitted not to be neutral between Mrs PW and Mr DW; she was representing Mrs PW and Newton Solicitors were representing Mr DW.

42.10 The Second Respondent's suggestion that she informed Mrs PW (and/or that Mrs PW knew) that she was not a solicitor and was only acting as a mediator was not accepted. The Applicant's case was that Mrs PW clearly believed that the Second Respondent was her solicitor – and that this belief was reasonable in circumstances where: (a) their first meeting was at a solicitors' firm; (b) the Second Respondent informed Mrs PW that she worked for solicitors' firms and went to Court; (c) the Second Respondent expressly represented herself to Mrs PW as a "Senior Solicitor" in email correspondence and in the draft financial consent order. This belief would be strengthened by the Second Respondent representing herself to the Court and Newtons Solicitors Limited, in the divorce petition, as Mrs PW's solicitor.

42.11 Throughout this period, the Second Respondent did not hold a practising certificate (which she acknowledged). By acting as a solicitor without a practising certificate, it was submitted that she breached section 1 of the Solicitors Act 1974.In respect of her

work for Ms PW, the Second Respondent was not working at an entity approved by the Applicant or any approved regulator. She was said to be acting as an unauthorised sole trader or freelance solicitor or via Anderson & Moores (an unauthorised entity). By acting as a solicitor in this way and without the benefit of professional indemnity insurance for work undertaken as a solicitor, it was submitted that she breached Rules 1.1 and 4.2 of the Practice Framework Rules. It was further submitted that, by reason of the above, she had breached Principles 1, 2, 4, 5, 6 and 7.

The Second Respondent's Case

42.12 This allegation was denied. The Second Respondent's case was that she handled Ms PW's matter via her mediation company. As a mediator she stated that she did not require a practising certificate. She stated that initially Ms PW asked her to deal only with the financial agreement and months later she asked her to also proceed with a divorce. The Second Respondent drafted and amended a financial agreement via Anderson & Moores and submitted that there was no regulatory issue with this.

42.13 The Second Respondent stated that in November 2018 she also assisted Ms PW in completing the D8 (divorce application) form with her at a meeting they had had at a gym. She stated that Ms PW was with her when completing the relevant section of the form. The Second Respondent's evidence was that Ms PW had full knowledge of, and consented to, the solicitors being used for this matter. She stated that she advised Ms PW that she could not handle the divorce and asked whether she wanted to use Maya Solicitors or Masaud Solicitors. The Second Respondent stated that Ms PW found Maya solicitors' fees were too high and so she had asked Ms PW to attend Masaud solicitors' office to deal with her divorce.

42.14 The Second Respondent stated that an appointment was made and cancelled by Ms PW and rearranged for 23 January 2019. The Second Respondent submitted again that she did not require a practising certificate, as she was not acting as a solicitor. The divorce petition said to have been was submitted via an approved entity, Masaud Solicitors, and the Second Respondent stated that Mr MM of that firm was aware of the case and the appointment booked with Ms PW. The Second Respondent stated as this divorce was not contested Ms PW did not even require a solicitor. The agreement drafted was fully agreed by both parties and the parties had agreed to meet and sign on 23 January 2019. The Second Respondent submitted that drafting an agreement and completing a D8 form was not conducting legal reserved activities in any event.

42.15 With regards to the various emails and signatures to which the Tribunal had been referred, the Second Respondent denied that she had mislead anyone into thinking she was acting as a solicitor. Of the forty emails relied on by the Applicant, she stated that on only two had she been described (erroneously) as "solicitor". The Second Respondent's evidence was that the email signature containing that description was twice included at the end an email because on those occasions she had sent the email from her daughter's mobile phone which contained out of date email settings from when she had previously acted as a solicitor. Regarding the inclusion of the Masaud solicitors' details on the Court paperwork, the Second Respondent's position was that Mr MM was aware of the work and she anticipated that Ms PW would be taken on as a client of the firm (although this did not happen).

The Tribunal's Decision

42.16 The Tribunal accepted that the Second Respondent did not hold a practising certificate and was not acting through an authorised entity when carrying out work as Anderson and Moores. The Tribunal noted that the divorce application made to the Court, on 12 November 2018, was made after her company Anderson and Moores had been dissolved. At the time with which allegations 6.2 to 6.5 were concerned, she continued to trade under the style Anderson and Moores.

42.17 The Tribunal noted that Ms PW's clear impression was that the Second Respondent was acting for her as her solicitor, and whilst the Second Respondent did not indicate her wish to do so in the proper way in advance of the hearing she was not able to test Ms PW's account through cross-examination during the hearing. The Tribunal noted that Ms PW's evidence was that she had not seen the application for divorce before it was filed with the Court, and that it had been drafted by the Second Respondent. However, the Tribunal noted that the application had seemingly been signed by Ms PW. The Tribunal considered the evidence of the impression formed by Ms PW to be persuasive but not compelling.

42.18 The Tribunal accepted that the solicitor at Newtons Solicitors had also formed the view that the Second Respondent was acting as a solicitor. Again, whilst persuasive this did not establish beyond reasonable doubt that she was so acting.

42.19 The Tribunal noted that the divorce application form (D8) identified the Second Respondent as the solicitor acting. It also included Masaud Solicitors as the firm acting, something which Mr MM of that firm had denied was the case. The Second Respondent's account was that Mr MM was aware of the work and that he was initially content for Ms PW to be taken on as a client and she had expected this to happen. The Second Respondent's case was that the divorce application was completed by Ms PW, with her (the Second Respondent's) assistance, and that she was clear that she could not handle the divorce aspect of Ms PW's matter and that this would require a solicitor (i.e. could not be her).

42.20 The Tribunal approached both the alleged breaches, and the underlying assertions of fact on which they rested, by applying the criminal standard of proof, as it was obliged to. Having assessed the Second Respondent as a credible witness generally, and without compelling documentary or witness evidence to the contrary, the Tribunal did not consider that it could discount as a reasonable possibility her explanation that she had undertaken only mediation tasks under the style of Anderson and Moores and had understood that the later divorce part of the work would be undertaken under the auspices of an authorised entity (Masaud solicitors) and that she had told Ms PW this. That being the case, the Tribunal did not consider that it had been proved beyond reasonable doubt that the Second Respondent had acted as a solicitor as alleged or acted through an unauthorised entity. Accordingly, the alleged breaches were not proved.

43. **Allegation 6.3: That between about November 2018 and January 2019, the Second Respondent made representations to Ms PW, Mr DW, the Court, and Newtons Solicitors Limited that were false and in breach of any or all of**

Principles 1, 2, 4, 5, 6 and 7, in that the Second Respondent represented that she was a practising solicitor, when in fact she did not hold a practising certificate.

The Applicant's Case

43.1 The Applicant's case was that between about November 2018 and January 2019, the Second Respondent made representations to Mrs PW, Mr DW, the Court, and Newtons Solicitors Limited that she was a practising solicitor. By way of example, it was submitted that:

(a) She made this representation to Mrs PW in discussions, in an email dated 21 January 2019and in the draft financial consent agreements she drafted and provided to Mrs PW.

(b) She made this representation to the Court in the divorce petition filed with the Court on 3 December 2018.

(c) She made this representation to Newton Solicitors Limited: in the divorce petition filed with the Court (which was provided to Newtons Solicitors Limited), in the draft financial consent agreement which was provided to Newtons Solicitors Limited and by implication in correspondence.

(d) She made this representation to Mr DW: via her representations to Mrs PW (on the basis that she knew Mrs PW was liaising with Mr DW), by implication in her correspondence with Mr DW, and in the draft financial consent agreement which was provided to him.

43.2 In holding herself out as a solicitor, and acting as a solicitor, it was submitted that the Second Respondent represented that she was a solicitor who was qualified to practise and, accordingly, who held a practising certificate. These representations were submitted to be false because she did not hold a practising certificate. On that basis it was submitted that the Second respondent had breached any or all of Principles 1, 2, 4, 5, 6, and 7.

The Second Respondent's Case

43.3 The Second Respondent denied this allegation on the basis she stated she did not act as a solicitor, as summarised above in paragraphs [42.12] to [42.15].

43.4 In her skeleton argument and oral evidence she expanded further. Her evidence was that she made it "crystal clear" to Ms PW that she was not a practising solicitor and told her that she was a sole trader and mediator at Anderson & Moores. The Second Respondent's case was that Ms PW was introduced to her by Ms PW's sister who told her at the time that the Second Respondent was a mediator. The Second Respondent stated that she never told Ms PW, Newtons Solicitors or the Court that she was a solicitor and she stated that she had never made any such statements to Newtons Solicitors or the Court.

43.5 The Second Respondent stated that on 26 December 2018 her mobile telephone had broken. As a result she had to use her daughter's phone and she accessed her email account via a downloaded application on her daughter's phone. She stated that when she logged in to send emails she had forgotten that the signature settings had not been changed from when she had acted as an in-house solicitor at Anderson & Moores previously. As noted under the previous allegation, she accepted that "on one or two occasions" therefore when emails were sent from this phone the email settings said "solicitor". The Second Respondent stated that Ms PW would be able to confirm that her phone had broken and she was using a different device because she had mentioned this to her, and given her a new number to use. The Second Respondent submitted that this was an IT error and an oversight caused by her use of a different device, and was entirely unintentional.

43.6 The Second Respondent also stated that she had authority from both Ms PW and Masaud Solicitors for Ms PW to become a client of that firm. Her case was this had only not happened as Ms PW had cancelled an appointment and could not rearrange it for some time. The Second Respondent stated that Mr MM had told her to put her own details on the documentation as Ms PW was a client recommended by the Second Respondent. She stated that Mr MM had asked her to work on the matter of Ms PW's divorce as a paralegal.

43.7 In respect of Anderson & Moores the Second Respondent stated that she voluntarily dissolved the company in May 2018. Since then she had acted as a sole trader. She submitted that she had not held herself out as an in-house solicitor for Anderson & Moores since the issues leading to the intervention in September 2017. She stated that she told Ms PW that she was a mediator and that she did paralegal work at both Maya and Masaud Solicitors. The fact that she stated she had told Ms PW that she would need to refer the matter to a solicitor showed, in the Second Respondent's submission, that she had made it clear she was not acting as a solicitor.

<u>The Tribunal's Decision</u>

43.8 Under the previous allegation, the Tribunal had found that it had not been proved that the Second Respondent had acted as a solicitor for Ms PW between about November 2018 and January 2019. The Tribunal's reasons are set out above in paragraphs [42.17] to [42.20].

43.9 This allegation 6.3 was predicated on the Second Respondent having represented that she was a practising solicitor. Having found that it was not proved that she had so acted, following a review of evidence which included the representations that the Second Respondent had made to Mrs PW, Mr DW, the Court, and Newtons Solicitors, the Tribunal again did not consider that this further related allegation had been proved to the requisite standard. For the reasons set out above in paragraphs [42.17] to [42.20], and because the Tribunal did not consider that the tasks undertaken or representations made by the Second Respondent about them were in themselves necessarily determinative of the question of whether she was acting as a solicitor, the Tribunal did not find that it had been proved that she had falsely represented that she was a practising solicitor.

44. **Allegation 6.4: That between about November 2018 and January 2019, the Second Respondent made representations to the Court and Newtons Solicitors Limited that were false and in breach of any of all of Principles 1, 2, 4, 5, 6 and 7, in that the Respondent represented that she was conducting the case acting as a solicitor at Masaud Solicitors, when in fact she had no authority from Ms PW or from Masaud Solicitors to conduct the case through Masaud Solicitors.**

The Applicant's Case

44.1 As set out above, the Applicant's case was that between about November 2018 and January 2019, the Second Respondent represented to the Court and Newtons Solicitors Limited, in the divorce petition filed on Mrs PW's behalf, that she was conducting Mrs PW's case as a solicitor at Masaud Solicitors.

44.2 This was submitted to be false. The Second Respondent was said to have had no authority from Masaud Solicitors to conduct this case and Mrs PW had not instructed Masaud Solicitors to do so (see paragraph [42.3] above). The Second Respondent had accepted that she was not conducting the case as a solicitor of Masaud Solicitors (see paragraph [42.15] above). On this basis, the Applicant submitted that she had breached any or all of 1, 2, 4, 5, 6, and 7 of the Principles.

The Second Respondent's Case

44.3 The allegation was denied. The Second Respondent had denied that she acted as a solicitor for Ms PW at any stage, as set out under the previous two allegations. As also set out above in paragraphs [42.15] and [43.6] her case was that she had authority from Mr MM of Masaud Solicitors for Ms PW to become a client of that firm for the contested element of the divorce related work. She further stated that she had authority from Mr MM to conduct work via Masaud Solicitors as a paralegal. Her evidence was that she was clear about this to Ms PW. Accordingly the alleged breaches of the Principles were denied.

The Tribunal's Decision

44.4 As set out above in relation to the previous two allegations, the Tribunal did not consider that it had been proved that the Second Respondent had acted as a solicitor or made representations to that effect. This allegation was more specific in that it related to representing that she acted as a solicitor with authority from Masaud Solicitors.

44.5 Having found that it had not been proved that the Second Respondent had represented that she had acted as a solicitor for Ms PW generally, it followed that it was not proved that she had represented that she was acting in that capacity for Masaud Solicitors specifically.

44.6 The Tribunal noted the written evidence from Mr MM that his firm had not been instructed by Ms PW and that he first found out about the matter when the notice was received from the Court. Having found the Second Respondent to be a credible and truthful witness generally who was prepared to make concessions, as noted above, the Tribunal could not be sure that her account of her dealings with Mr MM was not

genuine and accurate. Accordingly, the Tribunal could not be sure, to the requisite standard, that there had not been an understanding or intention that Ms PW would become a client of the firm. The Second Respondent's case was that Mr MM had told her to include the firm's details on the divorce application on the basis that Ms PW was to be introduced as a client. Whilst noting this was at odds with the statement provided by Mr MM, on the evidence presented the Tribunal did not consider that it had been proved to the requisite standard that the Second Respondent had falsely represented her authority from Masaud Solicitors. Coupled with the finding it had not been proved she had acted as a solicitor or represented that she had, this inevitably meant that the Tribunal found this allegation not proved.

45. **Allegation 6.5: That between about November 2018 and January 2019, the Second Respondent made representations to Ms PW and Mr DW that were false and in breach of any or all of Principles 1, 2, 4, 5, 6, and 7, in that the Second Respondent represented that she was a solicitor working at the Anderson Company when in fact the Anderson Company was dissolved on 29 May 2018.**

The Applicant's Case

45.1 Between about November 2018 and January 2019, it was alleged that the Second Respondent made representations to Mrs PW and Mr DW that she was a solicitor working at the company, Anderson & Moores:

(a) She made this representation to Mrs PW: (a) in an email dated 21 January 2019, which described her as an "In House Senior Solicitor" at "Anderson & Moores Consultancy and Mediation Services"; (b) in a draft financial consent agreement on Anderson & Moore headed notepaper; (c) in all emails sent from her Anderson & Moores email address.

(b) She made this representation to Mr DW: (a) in an email dated 22 January 2019, sent from her Anderson & Moores email address, in which she stated "I have a mediation company which deals with financial consent orders" and signed-off as "*[REDACTED]*" at "Anderson & Moores[;] Consultancy and Mediation Services"; and (b) in a draft financial consent agreement on Anderson & Moore headed notepaper, which was, it was submitted by inference provided to him.

45.2 These representations were submitted to be false. Anderson & Moores had been dissolved in May 2018, as was acknowledged by *[REDACTED]*. By reason of the above, it was submitted that the Second Respondent breached any or all of 1, 2, 4, 5, 6, and 7 of the Principles.

The Second Respondent's Case

45.3 This allegation was denied. The Second Respondent acknowledged that she had dissolved the company Anderson & Moores in May 2018. Her case was that she had not held herself out as an in-house solicitor for Anderson & Moores since the intervention in September 2017. She denied that she represented that she was a solicitor as alleged and stated that she was clear that she was acting as a mediator

under the style Anderson & Moores and that she had been clear that she undertook paralegal work at two firms of solicitors.

The Tribunal's Decision

45.4 The Tribunal had found in relation to previous allegations that it had not been proved that the Second Respondent had represented that she was acting as a solicitor to Ms PW and Mr DW (or to the Court or Newtons Solicitors). The Tribunal accepted the Second Respondent's account that she was trading as a mediator under the style Anderson & Moores and that this did not imply that there was a limited company trading under that name. Accordingly, the Tribunal found that it was not proved that she had made false representations about working as a solicitor at Anderson & Moores after the company was dissolved.

46. **Dishonesty was alleged in relation to Allegations 6.2, 6.3, 6.4 and 6.5. Dishonesty was alleged as an aggravating feature of the Second Respondent's misconduct, but it was submitted not to be an essential ingredient in proving the allegations.**

The Applicant's Case

46.1 In support of the allegation of dishonesty, and with reference to the test laid down in Ivey, it was submitted as to the Second Respondent's state of mind that:

(a) She knew that she did not have a current practising certificate.

(b) She knew that she was not employed to act as a solicitor by any authorised entity.

(c) She knew, because it was submitted to be obvious and in any event due to the disciplinary proceedings already issued against her in the two Rule 5 statements referred to above in respect of her conduct as a freelance solicitor, that that she was not permitted to practise as a solicitor outside of an authorised entity and/or without professional indemnity insurance and/or without a practising certificate.

(d) She knew that she was not acting for Mrs PW in her capacity as a paralegal at Masaud Solicitors or Maya Solicitors, or as an employee of Anderson & Moores (which was not, in any event, authorised, as the Second Respondent knew).

(e) She must have known that the work she was undertaking for Ms PW was not mediation services, but was instead legal services, and she must have known that she was not entitled to carry out this work in circumstances where: (i) she did not hold a practising certificate; and (ii) she was not working through an authorised entity; and (iii) she did not have professional indemnity insurance for this kind of work.

(f) She made representations which were obviously false and known to her to be false.

Applying the objective standards of ordinary decent person, it was submitted that the Second Respondent's conduct would accordingly be considered dishonest.

The Second Respondent's Case

46.2 The allegations of dishonesty were denied. The Second Respondent's denial was founded on the factors summarised under the individual allegations 6.2 to 6.5. Essentially, that she had not practised as a solicitor at the relevant time and had not represented that she was doing so. She submitted that no practising certificate was required to work as a mediator trading as Anderson & Moores and that no dishonesty could arise from the fact she did not have one. She also stated that she had made admissions about working as a paralegal at Masaud and Maya Solicitors on the basis she had not appreciated that a practising certificate was required to work as a paralegal. She submitted these admissions supported her contention that there was no dishonesty involved.

The Tribunal's Decision

46.3 The Tribunal had found all elements of allegations 6.2 to 6.5 not proved. Having failed to prove that the Second Respondent's conduct had breached the various Principles and the Framework Rules as alleged in allegations 6.2 to 6.5, the Tribunal inevitably found that the Applicant had failed to prove that she had done so dishonestly. The Tribunal could not be sure that the Second Respondent had acted as a solicitor for Ms PW as alleged or had made representations to that effect. Accordingly the Tribunal did not consider that it had been proved beyond reasonable doubt that her conduct would be regarded as dishonest by ordinary, decent people.

Previous Disciplinary Matters

47. There were no previous Tribunal findings relating to either Respondent.

Mitigation

48. The First Respondent

48.1 Mr Nesbitt reminded the Tribunal that the sanction it applied was discretionary, even with a finding of dishonesty and that no matter, including personal mitigation, was excluded from consideration. He noted that the First Respondent had been acquitted of all of the matters which gave rise to the investigation but had seemingly been undone by his dealings with the Applicant. He submitted that this may have been due to initial surprise and bewilderment at the accusations he was facing (about which he was ultimately vindicated).

48.2 Mr Nesbitt invited the Tribunal to take into account the First Respondent's relative youth and inexperience. It was submitted that he found himself in a position when the business he established with the Second Respondent was breaking down and the Applicant was investigating that with hindsight he was unable to deal with. This contributed to his poor decision making at the time. It was a time of intense pressure.

48.3 At the time Mr Nesbitt advanced mitigation he did not have the benefit of the Tribunal's detailed reasons, but he submitted that the dishonesty found in misleading the Applicant had no discernible motive, he described it as a stupid moment of madness, at least initially.

48.4 The First Respondent's family context was something the Tribunal was invited to take into account. His upbringing had been tinged with genuine tragedy and as a young adult the First Respondent had borne a lot of responsibility as a result which was submitted to be to his credit. It was submitted that irrespective of any sanction, the findings themselves would be a devastating blow to the First Respondent, who had worked extremely hard for and took pride in being a solicitor, and to his family.

48.5 Mr Nesbitt invited the Tribunal to view the conduct found proved to be essentially a moment of madness without any personal motivation from someone too immature to cope with the very considerable pressures to which he was subject at the time. He submitted that there was scope for a compassionate finding short of strike off which combined other sanctions and involved supervision. He also submitted that there would be an inevitable impact on others if the First Respondent were struck off.

49. <u>The Second Respondent</u>

49.1 The Second Respondent said that she was sorry for the breaches and mistakes she had made, those she had admitted and those additional matters found proved by the Tribunal. She stated that at all times she had been trying to do her best. She submitted that she had always provided a good service for clients. She stated that she had been particularly vulnerable at the time, for personal reasons which she elaborated on at the hearing but which are not set out in full here, but of which the Tribunal took full account. In short, she said that with hindsight she wished she had ended an abusive relationship earlier and also dealt with the First Respondent differently.

49.2 By reference to the Sanctions Guidance comments on culpability, she invited the Tribunal to consider that her misconduct had not been planned and was not intentional. She submitted that to some extent some of it was beyond her control and resulted from what she described as the dishonesty of a third party. She acknowledged that she had misunderstood Rule 4 of the Practice Framework Rules but submitted that she had never deliberately breached a position of trust. She also stated that she had never misled anyone.

49.3 As to harm, the next category covered in the Sanctions Guidance, the Second Respondent submitted that there had been no loss caused or harm to the public. She acknowledged that she had received a rebuke from the Applicant previously and stated that this was during what she described as a horrible time in the abusive relationship.

49.4 The Second Respondent stated that she had made prompt admissions where these had been warranted. She accepted that at the relevant times she had not thought as clearly as she should. She stated that she was no longer in the problematic relationship, and was not susceptible to outside influences or prone to make similar mistakes again. She submitted that the findings did not justify a strike off. She suggested that if the Tribunal considered that some element of public protection was required that

conditions could adequately manage such risk. She accepted that the findings made required a punishment, and invited the Tribunal to consider a reprimand, fine and/or conditions.

Sanction

50. The Tribunal referred to its Guidance Note on Sanctions (6th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondents' culpability and the harm caused, together with any aggravating or mitigating factors.

51. <u>The First Respondent</u>

51.1 The Tribunal had found allegation 1.9 proved (that the First Respondent had dishonestly misled the SRA). In assessing culpability, the Tribunal found that the motivation for the First Respondent's conduct was to avoid the allegation (initially about the Firm being a sham) proceeding further. The Tribunal accepted the submission made on behalf of the Applicant that he had been driven by what he perceived to be his self-interest in seeking to deny misconduct at the particular time. The Tribunal accepted Mr Nesbitt's submission that the misconduct was initially spontaneous, but found that it had extended over time as his account had evolved. The misconduct did not involve any client matters, and so to that extent did not involve the breach of a position of trust. However, there is an expectation on every solicitor that their relationship with the regulator will be open and based on good faith and trust and the Tribunal had found this trust had not been maintained. The Tribunal had found that he had deliberately misled his regulator. The First Respondent had had direct control of his statements and had clear and direct personal responsibility for the misconduct found proved. The Tribunal recognised that the First Respondent was relatively inexperienced at the time of the misconduct, having fewer than three years' post-qualification experience but considered that he must have been aware his actions were unacceptable. The Tribunal assessed the First Respondent's culpability as high.

51.2 The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that the First Respondent had deliberately misled the Applicant. The Tribunal considered that any such misconduct must inevitably cause harm to the reputation of the profession and risked causing or increasing mistrust on the part of the public. Dishonesty conduct undermining the reputation of the profession in this way would always cause potentially significant harm.

51.3 The misconduct found to be proved was aggravated by the fact that the allegations included dishonest conduct and the fact that the First Respondent knew, or ought to have known, that such conduct was potentially harmful to the reputation of the legal profession. The conduct was repeated inasmuch as the contradictory statements had been repeated and had been found to be deliberately self-serving. The Tribunal considered that the Applicant's investigation was likely to have been extended by the First Respondent's conduct which would have an effect on others.

51.4 The Tribunal was conscious of the personal circumstances relating to his family that the First Respondent had outlined. These were taken into account as mitigating factors, and the character references supplied were carefully read and considered. The

Tribunal noted that the First Respondent had no prior disciplinary findings against him.

51.5 Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

The seriousness of the conduct meant that a fine would be an inadequate sanction and restrictions or suspension would fail to adequately deal with the reputational harm caused to the profession.

51.6 The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll. The Tribunal considered the nature, scope and extent of the dishonesty and whether it was momentary, of benefit or had an adverse effect on others. The nature of the dishonesty was that the First Respondent had misled the regulator, and the extent was that at least one of the formal responses provided had been inaccurate. The misconduct was not momentary, as the contradictory statements had been repeated. There had been no financial benefit to the First Respondent, but it had the intention of relieving pressure on him and so was intended to achieve this benefit. There had been an adverse effect on the Applicant in terms of time and resources as a result of the investigation being complicated and extended by the contradictory answers.

51.7 The Tribunal had been invited to consider that exceptional circumstances existed such that the First Respondent should not be struck off. The Tribunal noted that following SRA v James et al [2018] EWHC 3058 (Admin) the exceptional circumstances must relate in some way to the dishonesty. The First Respondent had not raised any health issues himself said to exist at the time of the misconduct. Whilst the Tribunal recognised the force of the personal circumstances and impact of the caring responsibilities he described, this was quite removed from and extraneous to the dishonest conduct. The Tribunal also noted the judicial comment in SRA v Rahman [2012] EWHC 1037 (admin) in which Holman J said that a young and inexperienced solicitor was under the same obligation of honesty as every other member of the profession. The First Respondent's relative inexperience and youth did not amount to exceptional circumstances. The Tribunal was not persuaded that any exceptional circumstances satisfying the requirements of Sharma and James had existed. Accordingly, the Tribunal determined that the findings against the First Respondent including dishonesty required that the appropriate sanction was strike off from the Roll.

52. The Second Respondent

52.1 The Tribunal had found that the Second Respondent had breached the Practice Framework Rules by conducting reserved legal activities when not authorised to do so, acted as a paralegal without a practising certificate whilst remaining on the Roll,

allowed a website which misleadingly suggested Anderson & Moores was regulated by the Applicant to be publicly accessible and failed to update the Applicant about a material change at the Firm. In assessing culpability, the Tribunal considered that the Second Respondent's motivation was that she was naïve and negligent as to her circumstances and compliance with various rules regulating practice. She was motivated to work and to provide a service to clients; she had not planned to act in breach of the relevant professional regulations and restrictions. The Tribunal did not find that she had acted in breach of a position of trust. The available evidence suggested she sought to provide a good service to her clients. The Second Respondent did have direct control of the circumstances giving rise to the breach, and the Tribunal noted that admissions had been made where she acknowledged this. The Second Respondent was a reasonably experienced solicitor at the time which increased her culpability. The Tribunal did not consider that she had deliberately misled the regulator. Viewed in its totality, the Tribunal considered the Second Respondent's culpability to be moderate.

52.2 The Tribunal then turned to assess the harm caused by the misconduct. The failure to maintain adequate professional indemnity insurance was a serious failing with the potential for significant harm to clients. The Tribunal noted that there was no suggestion that this harm had materialised, but the Second Respondent had allowed this significant risk to arise. By practising when not authorised to do so the Second Respondent had inevitably caused some significant harm to the profession. Public trust in the profession and its reputation is undermined if professional regulation is circumvented. Whilst the Tribunal accepted that this was not intentional, it nevertheless caused potentially serious harm.

52.3 The misconduct found proved was aggravated by the fact it was repeated. Whilst the Second Respondent was very open about the way in which she was practising, rather than seeking to conceal it, the Tribunal considered that as a qualified solicitor she should have known the relevant practice rules and restrictions and this lack of familiarity with basic and foundational requirement for practice was a further aggravating factor. The Tribunal had found that the Second Respondent had breached Principle 6 which meant that some undermining of public trust had been found. The Tribunal also considered that those who considered that the Second Respondent had been acting as a solicitor when she maintained she was not would have had their confidence in the profession undermined to some extent even though the Tribunal had found the allegation as pleaded not proved.

52.4 When considering mitigating factors, the Tribunal noted the Second Respondent's account of the very difficult personal circumstances and their effect. The Second Respondent had described herself as vulnerable and to be suffering from the effects of traumatic experiences without providing compelling supporting medical evidence. The Tribunal accepted that the Second Respondent showed genuine regret and insight about her misconduct. She had made admissions to the vast majority of the allegations found proved, although the Tribunal noted that these were not made immediately. The Second Respondent had had no previous Tribunal findings against her, although the Tribunal noted the rebuke imposed by the Applicant for not dissimilar failings relating to unauthorised practice and inadequate professional indemnity insurance.

52.5 The Tribunal considered the misconduct found proved to be too serious for no order or a reprimand. There were several instances of misconduct found proved and they included breaches of fundamental rules governing the authorised ways in which solicitors may practice. The Tribunal had found that public trust had been undermined by the Second Respondent's conduct which was a further reason why a reprimand would be an inadequate sanction. The Tribunal considered imposing a fine but again did not consider this an adequate or appropriate sanction bearing in mind the nature of the misconduct. The Second Respondent had displayed at best a cavalier approach to professional regulation and a fine would not restrict her practice and provide the protection to the public and the reputation of the profession which was what the Tribunal considered was required. The Tribunal considered that strike off would not be an appropriate outcome. There had been no finding of dishonesty or lack of integrity and the Tribunal had found the breaches, significant as they were, to be inadvertent. The Tribunal considered that the harm to the public and the reputation of the profession was not such that strike off was required or appropriate.

52.6 The Second Respondent had shown genuine insight into her misconduct. By reference to its Sanctions Guidance, the Tribunal considered that a 12 month suspension, such period of suspension to be suspended for a period of two years, coupled with an order imposing restrictions on practice, would provide adequate protection against the risk of harm to the public and would maintain the reputation of the profession. The Tribunal considered that public confidence demanded no lesser sanction. The Tribunal was satisfied that the two year period of suspended suspension was adequate and appropriate if combined with an order restricting the Second Respondent's practice from areas of higher risk. In the light of the misconduct found proved, the Tribunal considered that the Second Respondent should be prevented from practising in roles where there was a risk of similar issues arising which meant that she should be prevented from undertaking roles where she had primary responsibility for compliance issues. The Tribunal also considered that any employment as a solicitor should be approved by the Applicant. The Tribunal considered that provided the restrictions were observed for the two year period of the suspended suspension, the suspension should lapse. The Tribunal considered making additional conditions but found that those set out in the Order below addressed the identified risks and were clear, unambiguous and adequate. The Tribunal considered the restrictions should have indefinite effect (subject to a successful application in due course to vary or rescind) to ensure the protection of the public and the reputation of the profession is maintained.

Costs

53. The Applicant sought costs against both Respondents. Two schedules of costs had been prepared, both dated 7 June 2019. The first, relating to the proceedings arising out of the Rule 5 statement dated 11 July 2018 and which concerned both Respondents (case number 11849/2018), was in the sum of £111,221.74. The second, arising out of the Rule 5 Statement dated 20 March 2018 and the Rule 7 Statement dated 4 February 2019 (case number 11802/2018) concerned only the Second Respondent and was in the sum of £48,981.58. Ms Carpenter stated that prior to the hearing the costs incurred had been recorded to the respective case number, and at hearing they had been allocated two thirds to case number 11849/2018 and one third

to case number 11802/2018 (with the exception of two days which had been allocated 50/50 between the cases).

54 Case number 11849/2018 (concerning both Respondents)

54.1 The Applicant sought 65% of its costs (£72,500). This figure was proposed in recognition that several allegations had not been proved and that it was in any event rare to recover costs in their entirety. This proportion was sought on the basis that serious matters had been found proved. In the First Respondent's case this involved allegations of dishonesty and lack of integrity. Four allegations had been proved against the Second Respondent. Ms Carpenter also submitted that all allegations were properly brought, each Respondent had reported the other and raised serious allegations which the Applicant was obliged to investigate. She also submitted that the Respondents had both invited suspicion through their conduct and brought the proceedings on themselves.

54.2 Ms Carpenter made submissions relating to the First Respondent's conduct in the proceedings:

- he had resiled from a case he had put forward for over a year and advanced a contradictory one;
- he refused to allow his investigatory interview to be recorded and made a late challenge to the accuracy of the notes made by the FIO;
- he had failed to provide documents to support his version of events;
- it had been accepted in closing that his conduct invited suspicion.

54.3 Ms Carpenter made submissions relating to the Second Respondent's conduct in the proceedings:

- she had invited suspicion through the unusual documents used by the Firm and her failure to notify the Applicant of a material change;
- the documents she generated whilst practising in an unauthorised freelance capacity were submitted to be "odd" especially in the light of her previous rebuke;
- she had increased costs through the way she only engaged in the proceedings from part-way through. Most of day one and half of day 8 were attributable to this.

54.4 Ms Carpenter stated that apportionment between the Respondents was a matter for the Tribunal but submitted that the Applicant considered the First Respondent should pay a higher proportion. This was on the basis that the proved allegations were more serious, his evidence had been found not honest which was a very serious finding, his counsel spent a very significant amount of time cross examining witnesses which had extended the hearing, and more time had been spent on the matters found proved against him than those found proved against the Second Respondent.

55. Case number 11802/2018 (concerning the Second Respondent only)

55.1 The Applicant sought 80% of its costs (£39,185.26). This was proposed on the basis that it is rare to recover all of the costs claimed and whilst 31 breaches were proved, several were not including the allegations of dishonesty and lack of integrity. The allegations found proved included repeated breaches of the Authorisation Rules, all allegations were properly brought and it was submitted that the Second Respondent's explanations of some matters stretched credulity and invited the allegations. It was also submitted that the time spent on the matters not proved was minimal, and that the hearing had been extended by the Second Respondent failing to engage until late in the day and part way through the hearing.

55.2 On the subject of means, the Applicant had drawn the Second Respondent's attention to the need to file evidence of means if this was to be relied upon but no supporting evidence had been provided. The Applicant submitted that accordingly no reduction on this basis should be made and that in any event, the Applicant took a pragmatic approach to repayment which reflected evidenced means.

56. Response on behalf of the First Respondent (in relation to case 11849/2018 only)

56.1 Mr Nesbitt made submissions on the overall level of costs, the appropriate reduction to reflect the Applicant's lack of success and apportionment between the Respondents. On the overall level of costs claimed, he proposed that the 86 hours of supervision of the FIOs should be reduced by 40% (by £2,700). He estimated that the manner of the Second Respondent's engagement with the proceedings had added around £6,000 in counsel's costs claimed and £2,000 in solicitor's costs. He also invited the Tribunal to carefully assess the costs claimed for counsel and noted that the costs claimed excluding the final hearing exceeded £20,000. He submitted that a figure of around £8,000 would be more appropriate, which would have provided for two reviews of 20 hours each following the submission of Answers. He noted that 10 hours had been claimed for drafting (after the point at which the Rule 5 had already been drafted). It was accepted that some additional drafting would be required but a further 10 hours was queried. It was also submitted that the case did not warrant the attendance of two counsel for the Applicant, who had a combined refresher rate of £3,900 per day, and that a third reduction on this figure would be appropriate. It was accepted that the Applicant must choose who to instruct but it was submitted that a reduction of £14,000 on the costs claimed for counsel during the hearing would be appropriate. These proposed reductions combined would reduce the Applicant's costs to around £75,000.

56.2 Turning to a reduction to reflect the Applicant's relative lack of success, Mr Nesbitt referred the Tribunal to the case of Broomhead v SRA [2014] EWHC 2772 (Admin). The case was said to be authority for the proposition that whilst a successful respondent was unlikely to recover his own costs, it did not follow that the unsuccessful applicant should nevertheless automatically recover its own costs. The First Respondent had been successful on eight of the nine allegations brought against him. It was submitted that accordingly a reduction of 50% on the costs claimed was appropriate – which would equate to £37,500 to be apportioned between the Respondents.

56.3 As to the apportionment between the Respondents, on the basis that both had contributed to the time taken on the proved allegations to some extent, it was proposed that a 50/50 split would be a fair and reasonable approach, meaning that each would be liable for £18,750. It was submitted that a 60/40 apportionment against the First Respondent would be the "worst reasonable" outcome for him.

57. Response on behalf of the Second Respondent (in relation to case 11849/2018 only)

57.1 The Second Respondent agreed with the submissions made by Mr Nesbitt about duplication on the case. She echoed his submission that there should be reductions to the costs claimed to reflect the supervision. She also submitted that the costs claimed for counsel were disproportionate and that two counsel were not required. She submitted that a 90% apportionment to the First Respondent would be appropriate on the basis that the majority of the hearing related to the allegations made against him. She submitted that his conduct also increased the FIOs' costs and led directly to the costs of disbursements (such as expert handwriting analysis and Companies House costs). She agreed with the submissions made by Ms Carpenter that the cross-examination on behalf of the First Respondent had unnecessarily extended the hearing. She also submitted that the First Respondent's dishonesty and lies had directly increased the costs incurred. She offered to pay 10% of whatever the Tribunal considered a fair overall costs figure.

58. Response on behalf of the Second Respondent (in relation to case 11802/2018 only)

58.1 Again the Second Respondent offered to pay 10% of the amount claimed. She submitted that on the basis of the numerous admissions she had made, the hearing could have been avoided. She further submitted that the majority of the time in the hearing had been spent on issues relating to the joint proceedings rather than those relating just to her.

59. Overarching submission by the Second Respondent relating to both cases

59.1 The Second Respondent stated that following the Tribunal's decision she had sought to agree a costs amount with the Applicant and a monthly repayment amount. She stated that she did not have the means to pay a significant costs award in one sum, having no savings, property or other assets. She stated that since February 2019 she had been working to a debt management plan under which her various creditors were offered £1 per month. She stated that in addition to receiving some benefit income her earnings were between £800 and £1,000 per month.

60. Reply on behalf of the Applicant

60.1 Ms Carpenter stated that the supervision costs were generated during the investigation stage and included writing detailed letters to both Respondents setting out the allegations. She stated that the solicitors' costs claimed were for entirely separate later activity relating to the issuing of the proceedings. She also submitted that this was a document heavy case with many allegations and that in that context the costs were proportionate. With regards to pre-hearing counsel costs, Ms Carpenter stated that junior counsel had been engaged for certain costs in order to keep costs down. The use of a second more junior counsel had reduced the fees charged by her as the

more experienced counsel. She submitted this was a complex case, with combined proceedings and significant developments late in the process, such as the necessity for a Rule 7 Statement, such that it was not practicable for one person to complete all necessary tasks. She stated that the Applicant's solicitor did not charge for his attendance at the additional hearing days in June. She submitted that Broomhead was not authority for a Respondent to pay nothing towards the Applicant's costs if it had been unsuccessful. In that case the solicitor's contribution was reduced from 100% (which the Tribunal had awarded) to 80% which was said to reflect the degree to which the proceedings had been brought on themselves by the solicitor in question.

The Tribunal's Decision

61. The Tribunal assessed the costs of the hearing. The Tribunal considered that both sets of proceedings were properly brought and maintained, but that some reduction to reflect the matters found not proved was appropriate. The Tribunal accepted the submission that both Respondents had to a considerable extent invited the proceedings and hearing on themselves through their initial conduct and through their conduct of the proceedings.

61.1 *Joint proceedings (Case number 11849/2018)*

61.1.1 The Tribunal accepted that the supervision costs claimed £6,450 (based on 86 hours) were excessive. A reduction of £1,000 was applied to this figure. The Tribunal similarly accepted that the overall costs claimed for counsel were disproportionate. The Tribunal recognised and accepted the potential saving of the use of junior counsel in addition to trial counsel given the document heavy nature of the case, but did not consider that the presence of both throughout the entire final hearing was necessary or a cost which the Respondents should bear. A reduction of £3,000 was applied to the figure claimed. Including the VAT element this amounted to a £4,800 reduction on the amount claimed which equated to £106,421.74. The Tribunal considered this to be a reasonable global costs figure. A significant number of the allegations brought had been found not proved. Serious findings, in particular against the First Respondent, had been made, but the Applicant had failed to prove the majority of the allegations brought. The Tribunal considered that in all the circumstances of the case a reduction of the costs payable by the Respondents to 50% of those assessed as reasonable was appropriate. This equated to £53,210.87.

61.1.2 Ms Carpenter invited the Tribunal to allocate two thirds of the costs awarded to the First Respondent. Ms Nesbitt submitted that a 50/50 allocation would be fair whereas the Second Respondent considered that she should pay 10% of the costs. The allegations found proved against the First Respondent were the more serious and the Tribunal accepted the submission that the bulk of the time spent on these proceedings at the hearing had related to the First Respondent. The Tribunal considered that it would be equitable and appropriate to apportion the costs with two thirds payable by the First Respondent and one third by the Second Respondent. This equated to £35,473.91 and £17,736.96 respectively. In all of the circumstances the Tribunal Ordered that the First Respondent do pay the costs of and incidental

to the application assessed in the sum of £35,473.91 and that the Second Respondent do pay the costs of and incidental to the application assessed in the sum of £17,736.96.

61.2 *Proceedings relating to the Second Respondent only (Case number 11802/2018)*

61.2.1 A greater proportion of the allegations brought were proved, but the Second Respondent had made several admissions. The Tribunal had found proved allegations not admitted by the Second Respondent. The Tribunal recognised that the Second Respondent had increased the Applicant's costs through bringing the proceedings on herself and the manner of her engagement. In all the circumstances, to reflect the numerous admissions made and the fact that the more serious allegations, of dishonesty and a lack of integrity had not been proved, without which it was likely a hearing could have been avoided, the Tribunal considered that a reduction of 50% on the costs claimed was appropriate. Accordingly, the Tribunal Ordered that the Second Respondent do pay the costs of and incidental to the application assessed in the sum of £24,490.79. Combined with the costs awarded in relation to the joint proceedings, this equated to a total amount payable in respect of costs by the Second Respondent of £42,227.75.

Statement of Full Order

62. The First Respondent

1. The Tribunal ORDERED that the First Respondent, EHSAN KABIR, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,473.91.

63. The Second Respondent

1. The Tribunal ORDERED that the Second Respondent, solicitor, be suspended from practice as a solicitor for a period of 12 months to commence on 18 June 2019, that period of suspension to be suspended for 2 years from the same date subject to compliance by the Second Respondent throughout that period with the terms of the Restriction Order imposing conditions on practice set out in sub-paragraph 2 below.

2. The Second Respondent shall be subject to conditions on practice imposed by the Tribunal for an indefinite period to commence on 18 June 2019 as follows:

2.1 The Second Respondent may not:

2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised body;

2.1.2 Practise as a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other recognised body;

2.1.3 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

2.2. Work as a solicitor other than in employment approved by the Solicitors Regulation Authority.

3.1 If the Second Respondent is found to have breached any of the conditions set out in paragraph 2 above, activation by the Tribunal of the period of suspension of 12 months will follow in addition to any sanction imposed for the breach of condition(s).

3.2 If the period of 2 years under restriction is successfully completed, the suspended suspension from practice of 12 months years will cease to have effect.

4 The Second Respondent may apply to the Tribunal to vary the conditions set out at paragraph 2 above after three years from 18 June 2019.

5. The Tribunal further Ordered that the Second Respondent do pay the costs of and incidental to this application and enquiry summarily assessed and fixed in the sum of £42,227.75.

Dated this 5th day of August 2019
On behalf of the Tribunal

R. Hegarty
Chairman