SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10801-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROBERT ANDREW SCHOFIELD First Respondent

MEGSONS LLP Second Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Mr J. P. Davies
Mr S. Hill

Date of Hearing: 18th September 2013

Appearances

Mr David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant

Mr Jeremy Barnett, Counsel of St Pauls Chambers instructed by Lewis Hymanson Small Solicitors LLP of Queen's Chambers, 5 John Dalton Street, Manchester M2 6ET for the First Respondent

Mr Michael Brunskill, Solicitor of Brunskill Solicitors, 3 Hardman Street, Spinningfields, Manchester M3 3HF for the Second Respondent

---

JUDGMENT

Allegations

1. The allegation against the First and Second Respondents was that:

1.1 they failed to comply with the terms of an undertaking promptly or at all, contrary to Rule 10.05 of the Solicitors' Code of Conduct 2007.

2. The allegations against the First Respondent only were that:

2.1 by his actions, he compromised or impaired or acted in a way which was likely to have compromised or impaired his independence or integrity, contrary to Rules 1.02 and 1.03 of the Solicitors' Code of Conduct 2007 ("the Code");

2.2 he behaved in a way that was likely to have diminished the trust the public placed in him as a solicitor or the legal profession, in breach of Rule 1.06 of the Code.

Documents

3. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the First and Second Respondents, which included:

Applicant

- Application dated 16 August 2011;
- Rule 5 Statement and exhibit "JCM/1" dated 16 August 2011;
- Rule 7 Statement and exhibit "JCM/2" dated 16 May 2012;
- Schedule of Costs dated 13 September 2013

First Respondent

- Response of the First Respondent dated 28 June 2012;
- Witness Statement of the First Respondent undated and unsigned;
- Character References

Second Respondent

- None

Factual Background

4. The First Respondent was admitted as a solicitor on 15 February 1988 and his name remained on the Roll of Solicitors. At all material times the First Respondent carried on practice as a consultant at the Second Respondent in Oldham, Lancashire until 29 November 2009 and then as a consultant at Stirling Law from the same address until 31 December 2010.

5. At all material times the Second Respondent carried on practice as Megsons LLP ("the firm") from addresses in Oldham and an address in Bradford. The Second Respondent had ceased to be a Recognised Body as at the date of the substantive hearing.

6. The First and Second Respondents represented Mr and Mrs B in property and commercial matters.

7. It was the Applicant's case that the First and Second Respondents had failed to comply with an unconditional undertaking given on 27 July 2009 in a letter to Simmonds Solicitors from the First Respondent. The undertaking was given in consideration of Simmonds' client lending Mr B the sum of £30,000 and that that sum would be repaid by him together with accrued interest on or before 31 December 2009. That had not happened and Simmonds made a complaint to the Legal Complaints Service as at 20 May 2010.

8. On 13 July 2010 Gordons LLP, on behalf of the Applicant, wrote to the Second Respondent regarding the breach of undertaking. By letter dated 13 July 2010 the Second Respondent wrote to Gordons and advised, inter alia, that no one other than partners of the practice were permitted to give undertakings on behalf of the firm.

9. On 15 July 2010 Gordons wrote to the First Respondent and raised the alleged breach of undertaking. By email dated 16 July 2010 the First Respondent informed Gordons that the undertaking had been given in accordance with the Second Respondent's undertaking policy; that he had obtained the consent of the Second Respondent to give the undertaking; that as part of the condition for giving the undertaking, the Second Respondent had taken security over properties owned by Mr B and that the First Respondent was unable to see he had any personal liability in relation to the matter.

10. The Second Respondent provided further responses to Gordons by two letters dated 20 July 2010 which stated, inter alia, that they denied the undertaking was given in accordance with the firm's policy and denied that the First Respondent had obtained consent for the undertaking from the Second Respondent.

11. The matter was considered by an Adjudicator of the Applicant on 12 May 2011 when a decision was made to refer the First and Second Respondents' conduct to the Tribunal.

12. Allegation 1.1 was admitted by the Second Respondent. Initially the First Respondent had denied the allegation but mid-way through the substantive hearing the First Respondent also admitted the allegation.

13. The First Respondent's brother Mr RJ Schofield ("Mr RJS") wrote to the Applicant on 13 January 2012 raising matters of concern with regard to the First Respondent's conduct. The First Respondent and Mr RJS jointly owned a plot of land at Grasscroft, Oldham.

14. The First Respondent was adjudged bankrupt on 16 June 2009. The First Respondent's Trustee in Bankruptcy (The Trustee") requested Mr RJS to attend at

Manchester County Court on 4 January 2012 with regard to the Grasscroft land as a consequence of which Mr RJS had become aware of a charge registered on the title to the land.

15. Mr RJS had obtained a copy of a Deed of Grant of Easement dated 25 July 2007 between him, the First Respondent and National Grid PLC. He had informed the Applicant that he had no recollection of having signed the Deed and he believed that the signature shown as being his was a forgery.

16. On 27 January 2012 Gordons LLP on behalf of the Applicant wrote to the First Respondent and requested his response to the allegation that he had added details of a third party witness, Mr MK to Mr RJS's allegedly forged signature after the event.

17. The First Respondent had replied by email dated 10 February 2012 indicating that he was seeking legal advice and requesting an extension of time within which to respond. Gordons wrote to the First Respondent again on 28 February 2012 in light of his failure to respond.

18. Messrs Lewis Hymanson Small replied on behalf of the First Respondent by letters dated 22 and 29 February 2012. The First Respondent's case was that the Deed had been signed by him and then passed to his mother for her to liaise with Mr RJS to obtain his signature. He stated that the Deed had then been returned to the First Respondent endorsed with a signature for Mr RJS but un-witnessed. The First Respondent was said to have contacted his mother who had confirmed that Mr MK was present in the office when the document had been signed.

19. On behalf of the First Respondent it had been admitted that "…our client therefore printed [Mr MK's] name on it as the witness".

20. The matter was considered by an Authorised Officer of the Applicant on 19 March 2012 when a decision was made to include these matters in the existing disciplinary proceedings against the First Respondent.

21. The First Respondent had admitted allegations 2.1 and 2.2.

Witnesses

22. The First Respondent gave evidence.

Findings of Fact and Law

23. 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.

24. **The allegation against the First and Second Respondents was that:**

Allegation 1.1 **they failed to comply with the terms of an undertaking promptly or at all, contrary to Rule 10.05 of the Solicitors' Code of Conduct 2007.**

The allegations against the First Respondent only were that:

Allegation 2.1 **by his actions, he compromised or impaired or acted in a way which was likely to have compromised or impaired his independence or integrity, contrary to Rules 1.02 and 1.03 of the Solicitors' Code of Conduct 2007 ("the Code");**

Allegation 2.2 **he behaved in a way that was likely to have diminished the trust the public placed in him as a solicitor or the legal profession, in breach of Rule 1.06 of the Code;**

Submissions on behalf of the Applicant

24.1 Mr Barton referred the Tribunal to the Rule 5 Statement upon which he relied. He said that there was one allegation [1.1] against both Respondents with regard to a breach of undertaking which initially had been denied by the Respondents up to the date of the substantive hearing.

24.2 Mr Barton said that on 27 July 2009 by letter to Simmonds Solicitors the First Respondent had provided an unconditional undertaking in the following terms:

> "In consideration of your client loaning to our client [MB] the sum of £30,000 on the terms agreed between our respective clients and set out in your e-mail of 22 July 2009 timed at 14.59 we unconditionally undertake to repay to you on behalf of your client the amount of the loan together with accrued interest on or before 31 December 2009. The loan and accrued interest may be repaid sooner but no earlier than 31st October 2009 on the basis that the loan will be made on or before 31 July 2009. My client account details are:...I await funds today".

24.3 Mr Barton said that there was no issue that the First Respondent had written the letter and signed it. The Applicant's case was that the First Respondent and the Second Respondent were bound by the undertaking and both should have resolved how it could be complied with.

24.4 Mr Barton told the Tribunal that the First Respondent was still practising. He [the First Respondent] maintained that he was not personally liable for provision of the undertaking. Mr Barton said that the Second Respondent had ceased being a Recognised Body on 31 May 2013. In relation to the latter Mr Barton said that he could only seek an order that the firm as a former Recognised Body not be re-recognised without leave of the Tribunal. Mr Barton confirmed that the Applicant's case was presented wholly on the documents.

24.5 Mr Barton told the Tribunal that the undertaking had since been complied with by payment having been made by the Second Respondent's insurers, Quinn, and that the insurers had since recovered their monies from the clients Mr and Mrs B. He said that Quinn had paid £47,754.70 which consisted of the original loan amount of £30,000 plus interest and costs. Mr Barton acknowledged that the undertaking had been complied with albeit out of time.

24.6 Mr Barton told the Tribunal that there was no dispute that an undertaking had been given per Rule 10.05 of the SCC 2007 and that its terms were not fulfilled. He said that the subsequent payment to fulfil the undertaking had not absolved the givers of the undertaking from their professional responsibilities.

24.7 Mr Barton referred to the terms of the undertaking per the letter from the First Respondent of 27 July 2009. He submitted that the "we" referred to were the First and Second Respondents. The First Respondent had given the undertaking in his capacity as a consultant for the firm/Second Respondent and in accordance with Rule 10.05 of the SCC 2007 Mr Barton said that responsibility attached to him also to fulfil the undertaking.

24.8 Rule 10.05 of the SCC 2007 stated:

> "(1) You must fulfil an undertaking which is given in circumstances where:
>
> (a) you give the undertaking in the course of practice;
>
> (b) you are a recognised body, a manager of a recognised body or a recognised sole practitioner, and any person within the firm gives the undertaking in the course of practice…".

24.9 Mr Barton said that it was the Applicant's case that the First Respondent had given the undertaking in the course of practice per Rule 10.05.

24.10 Mr Barton gave the example of a young solicitor within a firm who gives an undertaking and whether responsibility would attach to them if they were supervised or had been given the authority to do so. He submitted that that was a different scenario than the case before the Tribunal with regard to the First Respondent who had joined the Second Respondent as a senior solicitor and had brought the clients and the transaction with him.

24.11 Mr Barton said that the First Respondent had joined the firm as a self-employed consultant on 1 October 2008 and had left the firm on 29 November 2009. He had taken the clients Mr and Mrs B with him to his new firm Stirling Law. Mr Barton said that the First Respondent had not disavowed the undertaking but had continued to state that he was working with the clients to ensure that the undertaking was fulfilled. Mr Barton submitted that it was because of the First Respondent's seniority and his position in the firm that he had a professional responsibility to have worked with the firm to ensure fulfilment of the undertaking.

24.12 When the First Respondent had moved on he continued to have carriage of the matter and was still in communication with Ms Rosamund Simmonds of Simmonds Solicitors ("Simmonds") who were acting for the lender.

24.13 Mr Barton submitted that it was not open to the First Respondent to argue that he had no responsibility for the undertaking which had initially appeared to be his position. In accordance with Rule 10.05 Mr Barton submitted that the First Respondent's responsibility was joint with the firm and that his responsibility had continued when he had moved to Stirling Law with the clients. When he had announced his departure, Mr Barton submitted that the First Respondent should have agreed with the Second Respondent how the undertaking would be dealt with but he had not done so.

24.14 Mr Barton submitted that it had been incumbent upon both Respondents to have fulfilled the undertaking. He said that by their failure to do so it had left the lenders with no recourse other than to pursue the firm's insurers which they had done to recover their monies.

24.15 Mr Barton referred the Tribunal to a File Note dated 27 July 2009 of a conversation between the First Respondent and Mr Alan Cockburn, a member of the Second Respondent [with Mr Abbas] which stated:

> "RAS [the First Respondent] discussion with AC [Mr Cockburn] re undertaking.
>
> Confirmed that we still held the security over the two properties and AC confirmed that the undertaking could be given".

24.16 Mr Barton told the Tribunal that the First Respondent's position in relation to the File Note was that it proved that the firm knew that the undertaking was given. On its face it showed that Mr Cockburn knew the undertaking was to be given and had agreed to it being given but Mr Barton submitted that that did not absolve the First Respondent of responsibility for fulfilment of the undertaking.

24.17 Mr Barton referred to a further File Note dated 31 March 2009 regarding Mr and Mrs B, from the First Respondent to another member of staff which stated:

> "Cassie
>
> Would you please prepare a 4th Charge on this property [P Barn, Bridgewater] in favour of Alan Cockburn and Satjit Abbas c/o 2 Greengate Street for £20,000.00 with a flat interest rate of 10%.
>
> Once prepared please check with me prior to sending it through to the client for signature and return…"

24.18 The security had been given in the names of the two members of the Second Respondent at the material time, not in the name of the firm. Mr Barton said that this had been the charge created for the loan of £20,000 which had been repaid. He told the Tribunal that the further loan of £30,000 appeared to have had no such protection. He submitted that the Mortgage Deed did not appear to provide security for that loan.

24.19 Mr Barton referred the Tribunal to an email from Ms Simmonds to the First Respondent dated 16 July 2009 which stated:

> "We act for clients who are to lend your client the sum of £20,000 subject to an unconditional undertaking to repay the sum of £20,000 plus interest at the rate of 2% per month until repayment which is to be effected by 31 December 2009 the minimum loan period to be three months…
>
> Can we please receive your undertaking and let us know when your client requires the funds and details of when it is intended that he should repay them. Perhaps you would telephone us so that we can discuss the arrangements and the documentation required"

24.20 Mr Barton said that the First Respondent's solicitor colleague Mr G Wilmott replied on his behalf whilst the First Respondent was on holiday by email dated 16 July 2009:

> "Dear Rosamund
>
> We have spoken to our client and are awaiting his instructions in relation to the proposed deductions as he was unaware of the broker fee for UK Finance. Please confirm that the interest will be rolled up and added to the loan.
>
> We understand that the loan was to be for £25,000 not £20,000. In light of the deductions (assuming they are agreed) the loan will need to be increased to £30,000. Please confirm that this is acceptable and confirm the amount of the proposed deductions".

24.21 By email dated 21 July 2009 Mr Barton said the First Respondent wrote to Simmonds Solicitors and stated:

> "Rosamund
>
> I attach a copy of the last e-mail sent to you by my colleague G Wilmott whilst I was on holiday dated 16 July 2009 and timed at 12:28.
>
> In terms of an undertaking I would propose the following…"

24.22 Mr Barton said that the email set out the terms of the undertaking given in the subsequent letter from the First Respondent dated 27 July 2009.

24.23 Mr Barton referred the Tribunal to subsequent correspondence which showed that the firm had received the sum of £26,740 from Simmonds in July 2009. Thereafter by letter dated 4 January 2010 Simmonds had written to the Second Respondent under the First Respondent's reference and stated:

> "…
>
> We refer to your undertaking to repay us on or before the 31 December 2009 the loan made to your client.

…

Would you please confirm the position by return"

24.24 The First Respondent replied by letter to Simmonds dated 7 January 2010 from his new firm Stirling Law:

"Dear Sirs

Following a recent restructure of the business of Megsons LLP, Stirling Law has been established as a niche commercial Practice and has acquired certain assets of Megsons LLP. Stirling Law Limited will operate out of Greengate Business Centre on a stand alone (sic) basis and is not a successor practice of Megsons LLP. Megsons LLP will continue to practice from its offices in Oldham and Bradford.

In response to your letter dated 4 January 2010 we are taking our client's instructions to redeem the facility and will revert back to you shortly".

24.25 Mr Barton said that there were no notes of discussions between the First and Second Respondents with regard to fulfilment of the undertaking upon the First Respondent's departure and it was not known whether the firm had had an undertakings register. The letter from Simmonds had clearly been passed to the First Respondent at Stirling Law by the Second Respondent yet he had not at that point stated at all that the undertaking was not his responsibility.

24.26 Mr Barton referred the Tribunal to subsequent correspondence between the First Respondent and Simmonds from January 2010 to February 2010 in which Simmonds had been chasing the First Respondent with regard to the undertaking and had threatened to take the matter further if it did not hear from the First Respondent by return of fax. Mr Barton said that the First Respondent had replied on 22 February 2010 and stated:

"Dear Sirs

Thank you for your fax dated 19 February 2010 a copy of which we have sent to our client for further instruction. We understand that our client is in the process of drawing down on a loan agreement and we anticipate being in a position to discharge the undertaking given to you by Megsons LLP within the next 7 days.

In the circumstances we trust that this will be acceptable to your client…"

24.27 Mr Barton said that there was then no further communication until 12 April 2010 when Simmonds had written again to the First Respondent and stated:

> "…
>
> We refer to your letter to us dated 22 February 2010 in which you told us that you anticipated your client would repay the funds due to our client within seven days.
>
> We have not heard from you since and our client's instructions now are that unless they are repaid in full within the next fourteen days there will be no alternative but for them to instruct us to report the breach of undertaking to the Law Society…"

24.28 The First Respondent replied by letter dated 27 April 2010 which stated:

> "…
>
> We have spoken to our client and are assured that funds will be available within the next week or so to enable your client's facility to be discharged.
>
> We anticipate having more finite instructions in the next day or so and will revert back to you shortly".

24.29 Mr Barton told the Tribunal that Simmonds had then reported the matter to the Legal Complaints Service by letter dated 20 May 2010. He said that the First Respondent had still not disavowed any responsibility for the undertaking up to this point. He submitted that whilst the letter from Simmonds to the LCS referred to the Second Respondent, it was the Applicant's case that the undertaking was the joint responsibility of both Respondents per Rule 10.05.

24.30 Mr Barton referred to the conduct investigation undertaken by the Applicant. He said that Mrs A Gouldbourn, Practice Manager of the Second Respondent had emailed the First Respondent on 12 July 2010 and stated:

> "Hi Robert
>
> We have received a complaint from the SRA in respect of the above [the undertaking and clients Mr and Mrs B].
>
> This is a matter which I understand was dealt with by yourself whilst you were a consultant with Megsons LLP.
>
> In order for me to reply to the complaint will you please let me have the file which was dealt with on behalf of Megsons LLP".

24.31 Mr Barton said that he placed no reliance on the correspondence from Mrs Gouldbourn but that it showed the history of the matter. He said that the Applicant had outsourced its investigation to Gordons LLP ("Gordons") which had subsequently corresponded with Mrs Gouldbourn and the First Respondent. Mr Barton submitted that there was no evidence produced by either of any discussions having taken place with regard to fulfilment of the undertaking prior to the First Respondent's departure from the firm.

24.32 By letter dated 15 July 2010 Gordons wrote to the First Respondent and stated:

> "…
>
> Allegation
>
> It is alleged that you have failed to fulfil the undertaking dated 27 July 2009. Please let me have your response to the allegation.
>
> The rule in question is contained in the Solicitors' Code of Conduct 2007. It states…
>
> …
>
> When responding please ensure that you provide:
>
> 1. A full response to the allegation;
> 2. Copies of all relevant documents;
> 3. Copy of the client ledger;
> 4. Confirmation of any action taken to resolve the professional obligation dated 27 July 2009. Please include all relevant documents supporting these actions.
>
> If the matter is resolved please note that I shall still need to consider what regulatory action may be appropriate. Any steps taken to resolve the matter will be taken into account…"

24.33 Mr Barton said that it was the Applicant's case that the First Respondent had breached Rule 10.05 and that he had given the undertaking in the course of practice in his capacity as a consultant at the firm.

24.34 By letter dated 16 July 2010 the First Respondent had written to Mrs Gouldbourn:

> "…
>
> I attach copy papers relating to the above [the undertaking and Mr B].
>
> I received a letter from the SRA (Gordons LLP) and advised that all appropriate procedures were gone through at Megsons LLP prior to the undertaking being given. I specifically discussed the matter with Alan [Cockburn] prior to any undertaking being given and security was taken over two properties owned by MB and his wife P…"

24.35 Mr Barton referred the Tribunal to an email from the First Respondent to Mr Owen at Gordons dated 16 July 2009 which stated:

> "Dear Mr Owen
>
> …

> I can categorically advise that the undertaking was given in accordance with Megsons undertaking policy. I was a consultant with Megsons and specifically obtained consent from Alan Cockburn one of the two Partners in Megsons LLP to give the undertaking…as part of the condition of giving the undertaking Megsons LLP (Alan Cockburn and Sajit (sic) Abbas) took specific security over properties owned by MB.
>
> In the circumstances therefore I do not see that I have any liability in relation to this matter as it rests with Megsons LLP and not myself personally".

24.36 Mr Barton submitted that this response from the First Respondent contrasted with his previous position as put to Simmonds and this had been the first occasion upon which the First Respondent had sought to deny any professional responsibility. Mr Barton said that the response to Gordons from the First Respondent had been inadequate and Gordons had written again to the First Respondent on 19 July 2010 stating that "a full and substantive response" to their letter of 15 July 2010 was required.

24.37 Mr Barton said that the Fist Respondent had continued to correspond with Mrs Gouldbourn for the firm and she had emailed the First Respondent on 26 July 2010 and stated:

> "…
>
> Thank you for forwarding copies of exchange of emails in respect of the above which I received 26th July 2010…
>
> Will you please let me have the following, today if possible – the SRA rquire (sic) a reply by to-morrow (sic)…
>
> 1.There is a file note amongst the papers you have sent referring to a Charge in respect of P Barn…
>
> We have obtained Office copies and there are three other charges on this property. Will you please confirm the value of the undertaking made on behalf of the partners. Will you also confirm the value of the property and the value of the other Charges on the property (I assume you established this when you registered the charge in favour of the partners.
>
> 2. You refer to two Charges – will you please let me have details of the other property.
>
> 3. The SRA require sight of the financial ledger will you please let me have a copy of this"

24.38 Mr Barton said that this suggested that the First Respondent had taken the ledger with him and by email dated 26 July 2010 the First Respondent had replied and referred to item 3 as "Attached" which suggested that a copy of the ledger had been attached to his response.

24.39 Mr Barton said that Gordons had continued to pursue the First Respondent for a substantive response and reminded him of his obligations under Rule 20.05 of the SCC 2007 to deal promptly with correspondence from the Applicant.

24.40 The Second Respondent through Mrs Gouldbourn had continued to correspond with the First Respondent and asked if he still represented his client Mr B. He had replied by email dated 19 August 2010 that "You can send correspondence to me and I will liaise with him [Mr B]".

24.41 Mr Barton submitted that it was apparent that the First and Second Respondents were still working together on how to resolve the situation with regard to the unfulfilled undertaking and that the First Respondent was still communicating with his client with regard to the undertaking.

21.42 Mr Barton said that the First Respondent had still not answered the questions from Gordons and was being pursued by them and by the Second Respondent. By letter dated 15 September 2010 the Applicant wrote to the First Respondent which gave notice under Section 44B of the Solicitors Act 1974 (as amended) for the First Respondent to produce within 7 days all original files of papers and accounts ledgers regarding his clients Mr and/or Mrs B and relating to the grant of the legal charge over P Barn and another property. Mr Barton said that it was disappointing that a Section 44B Notice had had to be served upon the First Respondent and he submitted that it went to the credit of the First Respondent.

21.43 The First Respondent had continued to correspond with the Second Respondent, the latter chasing resolution of the matter. Mr Barton said that by email dated 19 October 2010 Mr Cockburn had written to the First Respondent and stated:

> "Robert
>
> You will aware that [Mrs Gouldbourn] has retired. I have seen the replies from MB [Mr B] (sic) am I in order to contact him direct or do you now act for him?
>
> If you are acting is he likely to be able to resolve this matter by making payment before we all end up before the SDT?"

24.44 Mr Barton said that the email contained a handwritten annotation by the First Respondent, which stated:

> "Alan
>
> Hoping to get the money this week.
>
> Will be in touch.
>
> R".

24.45 Mr Barton referred the Tribunal to a further email from the First Respondent to Mr Owen of Gordons which stated:

> "Mr Owen
>
> …
> There has been no intention whatsoever on my part to withhold any information relating to the above and my file of papers is open for inspection at any time.
>
> I copied and sent to Megsons LLP all documents on my file relating to Simmonds Solicitors…if a full copy of my file is required I am more than happy to provide it.
>
> I do not have direct access to accounting information from Megsons LLP although I may be able to obtain copy documents from the file itself.
>
> Please confirm what you would like me to do as I do not want to fall foul of any SRA allegations given that I do feel that I have co-operated fully…"

24.46 Mr Barton said that by email dated 9 December 2010 Mr Owen of Gordons was still requesting full disclosure from the First Respondent and it was not until 22 December 2010 that the First Respondent replied and stated that he enclosed his original file of papers.

24.47 Mr Barton told the Tribunal that Mr Owen subsequently prepared his case note which was sent to both Respondents on 14 March 2011. He said that the First Respondent wrote to the Applicant by email dated 28 March 2011 that he disagreed with the conclusions reached by Mr Owen "in that I have maintained all along that the undertaking was given by Megsons LLP and there was no intention for any personal undertaking to be given by myself…" and "…In summary the fact that the letter was written in a particular style in my view does not necessarily infer that personal liability is incurred…".

24.48 Mr Barton submitted that this had been the first communication of any substance from the First Respondent and the first time that the First Respondent had answered questions put to him. Mr Barton said that whilst the First Respondent might not have been personally liable that was not the issue; the issue was one of professional conduct.

24.49 In relation to the Rule 7 Statement dated 16 May 2012 and the additional allegations against the First Respondent Mr Barton confirmed that these had been admitted by the First Respondent. He referred the Tribunal to the Rule 7 Statement which related to breaches of Rule 1 of the SCC 2007 by the First Respondent.

24.50 Mr Barton said that the First Respondent had admitted adding to the Deed of Grant of Easement the name of the witness to the document albeit he had not been present when the document had been witnessed. The Applicant did not rely upon the assertions of fact made by the First Respondent's brother and Mr Barton

acknowledged that there were obvious tensions between the First Respondent and his brother.

24.51 Mr Barton referred the Tribunal to a letter dated 27 January 2012 from Mr Owen at Gordons on behalf of the Applicant to the First Respondent, which stated:

> "…
>
> Allegation
>
> It is alleged that you added details of 'M Kerr' as a witness to your brother's signature on the Deed of Grant of Easement dated 25 July 2007 and in doing so you compromised your integrity and your own good repute and that of the solicitors' profession".

24.52 Mr Barton submitted that in so doing the First Respondent's conduct had been wholly improper. The First Respondent had admitted allegations 2.1 and 2.2.

Application on behalf of the First Respondent of no case to answer

24.53 Mr Barnett informed the Tribunal that he wished to submit that there was no case to answer by the First Respondent. He submitted that had the Second Respondent accepted at the outset that the undertaking was binding upon it that would have been an end to the matter whilst it had only made that admission as at the date of the substantive hearing.

24.54 Mr Barnett said that the original allegation by Mr Owen as put to the First Respondent had been that he was personally liable for the undertaking which the First Respondent had always denied vehemently. He referred to Mr Owen's email to the First Respondent dated 19 July 2010 which stated:

> "…
>
> Rule 10.05 Undertakings
>
> (1) You must fulfil an undertaking which is given in circumstances where:
>
> (a) you give the undertaking in the course of practice;
>
> This would appear to indicate that you do have personal liability for the undertaking…"

24.56 Mr Barnett submitted that it had been Gordons which had misstated the position and that they appeared to have accepted the Second Respondent's contention that the undertaking had been unauthorised but that was not right. He referred the Tribunal to the extract from the firm's Undertakings Policy which stated:

> "5.1 Undertakings
>
> 5.1.1 General

> An undertaking from a solicitor, or with the solicitor's apparent authority binds the solicitor absolutely. One from the firm or on behalf of the firm similarly binds the firm. Only partners may give undertakings in our firm. In routine conveyancing undertakings to banks to hold deeds to their order, or to discharge registered charges on completion, (routine conveyancing undertakings). The partners may in certain cases delegate authority to give undertakings…"

24.57 Mr Barnett submitted that it was clear that Mr Cockburn had had the power to delegate the giving of undertakings on behalf of the firm and this had not been known by Gordons.

24.58 Mr Barnett submitted that the case had been brought on the basis of the undertaking having been given personally by the First Respondent although he acknowledged that the Rule 5 Statement had not been pleaded on that basis.

24.59 In response to the application of no case to answer Mr Barton said that the case had not been brought against the First Respondent on the basis of personal liability.

24.60 Mr Barnett submitted that in law the Second Respondent was responsible for compliance with the undertaking and not the First Respondent. He submitted that the Applicant should have obtained a proof of evidence from Mr Cockburn and reminded the Tribunal that Mr Cockburn had previously appeared before the Tribunal for breach of undertaking.

24.61 Mr Barnett submitted that the First Respondent could have taken no further steps to have ensured that the Second Respondent fulfilled the undertaking. The Second Respondent had maintained until the substantive hearing that the undertaking had been unauthorised which was not the case.

24.62 Mr Barnett submitted that:

24.62.1 the First Respondent had not been the person with sole conduct of the matter as emails had been sent by another solicitor who had negotiated the terms of the undertaking [Mr G Wilmott];

24.62.2 it was not a personal liability;

24.62.3 the security for the loans was in the names of the partners, not the firm which supported that Mr Cockburn ensured their interests were protected;

24.62.4 the File Note of 27 July 2009 evidenced that Mr Cockburn authorised the First Respondent to give the undertaking yet Mr Cockburn had not been called as a witness;

24.62.5 it was clear that the Second Respondent had authorised the undertaking yet it had maintained to date that it had not done so. It had now admitted allegation 1.1;

24.62.6 the First Respondent had not professionally disavowed but maintained that he did not have personal liability for the undertaking.

24.63 Mr Barnett submitted that the Applicant had not produced sufficient evidence on the face of it to satisfy that there was a case to answer. In addition, he questioned what further steps the First Respondent could have taken when he had left the firm to have ensured that the Second Respondent fulfilled the undertaking and that there was no evidence to support that the First Respondent was under a professional obligation to have done any more than he did.

24.64 Mr Brunskill on behalf of the Second Respondent stated that the Second Respondent had admitted the breach of undertaking. It was the Second Respondent's position that the First Respondent had given the undertaking in the course of practice per Rule 10.05 of the SCC 2007 and it had also been his professional responsibility to comply. He submitted that it was nonsense to suggest that the First Respondent was not also responsible; it had been his file and his client which he had taken with him to Stirling Law and he had done nothing to ensure compliance with the undertaking.

24.65 Mr Barton said that allegation 1.1 was not about the steps which the First Respondent should or should not have taken. The allegation was that he [and the Second Respondent] had failed to comply with the terms of the undertaking given on 27 July 2009. He said that it did not matter what Mr Owen of Gordons had thought but what had been pleaded in the Rule 5 Statement.

24.66 Mr Barton reminded the Tribunal that the case had been certified as showing a case to answer and for the application to succeed the Tribunal had to be sure that there was nothing in the application which proved the First Respondent was not responsible and he submitted that the Tribunal had not yet reached that stage.

24.67 Mr Barton submitted that there was comfortably a case to answer and that this was the wrong application at the wrong time.

The Tribunal's Decision

24.68 The Tribunal had listened carefully to the parties' respective submissions with regard to the First Respondent's application of no case to answer.

24.69 The Tribunal was not satisfied that there was no case to answer and it refused the First Respondent's application.

24.70 The Tribunal noted that the case had been certified at the outset by a solicitor member of the Tribunal as having shown a case to answer and Mr Barton had properly put the case for the Applicant that there had been an undertaking given which had not been fulfilled and it was submitted that both the First and Second Respondents were professionally responsible for fulfilment of the undertaking and the failure to have ensured such fulfilment. The First Respondent was a senior solicitor and had been prima facie responsible for ensuring that the undertaking given on behalf of his client was fulfilled.

24.71 The Tribunal was not satisfied that this was an appropriate juncture at which to make the application and it found that Mr Barnett appeared to have put forward the First Respondent's defence case as opposed to no case to answer. It was for the First Respondent to defend the case against him, the Second Respondent having now admitted the allegation.

Submissions on behalf of the First Respondent

24.72 Mr Barnett informed the Tribunal that having taken further instructions from the First Respondent the First Respondent wished to admit allegation 1.1 on the basis that his [the First Respondent] understanding of the case against him was better having heard the Applicant's case put by Mr Barton and the Tribunal's decision with regard to his application of no case to answer.

24.73 Mr Barnett referred the Tribunal to the First Respondent's witness statement and his oral evidence in which he had confirmed that he had joined the Second Respondent as a self-employed consultant following his inability to renew his professional indemnity insurance and the closure of his firm, Chartbridge Solicitors which had gone into administration on 28 July 2008. He had subsequently joined the Second Respondent.

24.74 The First Respondent had declared himself bankrupt on 16 June 2009 which had automatically discharged 12 months later. The First Respondent had self-reported to the Applicant. He had known Mr Cockburn for a number of years although not Mr Abbas. Thereafter the First Respondent had left the Second Respondent in December 2009 when it had been decided that the non-personal injury side of the practice should be set up separately to form a new practice called Stirling Law Limited in which the First Respondent was also a self-employed consultant.

24.75 Mr Barnett said that the First Respondent had subsequently left Stirling Law in December 2010 and joined Hilton Legal where he continued to work. He was still self-employed and paid the sole principal a set fee of £350 per month plus 20% of his global profit costs. Due to the First Respondent's sight problems which he had had since birth Mr Barnett said that the First Respondent's wife assisted him at work full time.

24.76 In his evidence the First Respondent stated that he had been confident that the undertaking would be dealt with within the time period. Mr B had been a significant commercial client for whom he had acted. It was the First Respondent's case that Mr Cockburn had agreed to the financing arrangements because Mr B was such a significant client for the firm and the fees would have been considerable. There had been charges against two properties owned by Mr and Mrs B as security for the loans as requested by Mr Cockburn.

24.77 Mr Barnett said that the First Respondent had only discovered the day before the substantive hearing as stated by him in evidence that Mr Cockburn had previously appeared before the Tribunal for breach of undertaking.

24.78 The First Respondent did not accept that he had been personally liable for the undertaking but he had subsequently accepted that he was responsible from a regulatory perspective and in hindsight that he could have done more to have ensured

fulfilment of the undertaking. He regretted that he had not done so although he felt that he could not have done more to have made the Second Respondent comply with the undertaking.

24.79 Mr Barnett said that the First Respondent had kept in contact with his clients Mr and Mrs B in the hope that they would repay the monies in accordance with the undertaking. The First Respondent had made his file available to Gordons as requested and he denied that he had not complied with his regulator, which was not alleged. He stated that as far as he was aware he had answered all relevant questions asked of him.

24.80 The First Respondent had told the Tribunal that he no longer dealt with undertakings save for standard undertakings involving Requisitions on Title for one transaction at a time.

24.81 In relation to allegations 2.1 and 2.2 these had been admitted at an early stage. In his evidence the First Respondent had told the Tribunal that he had realised when he had received the executed Deed of Grant of Easement that the name of the witness was not on the document and he had written it on. Mr Barnett said that the First Respondent realised that he should not have done so. He said that his brother had subsequently contacted the police and reported the First Respondent to the Applicant but the police had not taken matters further. The First Respondent had had an award of inadequate professional service made against him as a result of his brother's complaint.

24.82 Mr Barnett said that the First Respondent apologised to the Tribunal and in his evidence had stated that all he had ever wanted to be was a solicitor. He had acknowledged the seriousness of the breach of undertaking and assured the Tribunal that it would not be repeated.

24.83 The First Respondent had referred to the Mortgage dated 9 June 2009 and that he had understood that the Charge related to both properties of Mr and Mrs B. He told the Tribunal that the "Indebtedness Clause" had included all monies and not only the £20,000 but any further monies loaned which included the £30,000.

24.84 Mr Barnett acknowledged that the First Respondent in evidence had accepted that there had been no discussion with Mr Cockburn of the undertaking when he had left the firm but that he had not been able to involve himself in matters due to his bankruptcy. He had sought to do what he could to ensure that his clients repaid the loans to discharge the undertaking. He had recalled that Mr Cockburn appeared content to await repayment by Mr and Mrs B.

24.85 In his evidence the First Respondent had acknowledged that it might have been better in hindsight to have released the Second Respondent from the undertaking and have transferred it to Stirling Law but that Simmonds would have had to consent to that.

24.86 Mr Barnett said that the First Respondent accepted that he had had a professional responsibility to have ensured that the terms of the undertaking were fulfilled and that was admitted.

24.87 With regard to sanction Mr Barnett addressed the Tribunal taking into account the Guidance Note on Sanctions.

24.88 Mr Barnett submitted that in relation to seriousness, prime responsibility for the breach of undertaking rested upon Mr Cockburn and not the First Respondent. He said that the loans had been discharged and the monies recovered by the firm's insurers.

24.89 With regard to the First Respondent's motivation Mr Barnett said that that had been to do a good job for the clients and no alarm bells had rung with regard to the giving of the undertaking. The firm's undertaking policy had allowed the delegation of giving undertakings and there had been no breach of trust as the First Respondent had discussed the giving of the undertaking with Mr Cockburn.

24.90 Mr Barnett submitted that there had been no aggravating features, no dishonesty and no criminal proceedings.

24.91 Mr Barnett told the Tribunal that the First Respondent had previously had an unblemished career in the legal profession and he had genuine insight having accepted his responsibility and regulatory obligations.

24.92 Mr Barnett submitted that a fine would be an appropriate sanction, taking into account that Mr Cockburn had previously been fined by the Tribunal for breach of undertakings. He said that the sanction needed to be proportionate and take into account the First Respondent's ability to pay. Mr Barnett submitted that suspension would be too draconian and if that was imposed, it would effectively be a strike off for the First Respondent.

24.93 Mr Barnett submitted with regard to allegations 2.1 and 2.2 that there had been no harm caused and asked that the Tribunal take into account the sanction guidance and his submissions as for allegation 1.1.

<u>Submissions on behalf of the Second Respondent</u>

24.94 Mr Brunskill said that the Second Respondent admitted allegation 1.1 in relation to the firm's breach of Rule 10.05 of the SCC 2007 in that the undertaking had been binding upon the firm and upon the individual which had given the undertaking namely the First Respondent "…in the course of practice". He acknowledged that it was a valid undertaking and the Second Respondent was obliged to ensure that it was complied with.

24.95 Mr Brunskill said that the breach was admitted by the Second Respondent on that basis. He said that Mr Abbas who was present was the only surviving member of the firm/Second Respondent and he had been totally unaware that the undertaking had been given at all. He said that the Applicant could not prove that Mr Abbas had ever been made aware of the existence of the undertaking.

24.96 Mr Brunskill said that Mr Abbas had been based in the firm's Bradford office and it had been Mr Cockburn who had been based in the head office in Oldham and had had discussions with the First Respondent regarding the undertaking.

24.97 Mr Brunskill confirmed that the Second Respondent had ceased being a Recognised Body in May 2013. He said that Mr Abbas was the sole principal of the successor practice of Megsons PI Limited. Mr Brunskill submitted that Mr Abbas was not a party to the proceedings and as such any sanction or order or costs would be against the Second Respondent and not the successor practice.

24.98 Mr Brunskill submitted that the Tribunal could not impose a penalty on Mr Abbas personally but that it could order that there be no re-recognition of the Second Respondent in the future without the leave of the Tribunal.

24.99 Mr Brunskill confirmed that the Second Respondent had significant debts albeit Megsons PI Limited had acquired its work in progress and was contributing towards discharge of its debts,

The Tribunal's Findings

24.100 The Tribunal found allegation 1.1 proved on the facts and on the documents with regard to both the First and Second Respondents. It noted that both of the Respondents had admitted the allegation albeit very late in the day. It also found allegations 2.1 and 2.2 proved against the First Respondent which had been admitted by him at an early stage.

Previous Disciplinary Matters

25. None

Mitigation

26. Mitigation on behalf of the First and Second Respondents was presented by their respective advocates in their respective submissions.

Sanction

27. The Tribunal had regard to its Guidance Note on Sanctions.

28. The Tribunal had found all three allegations proved against the First Respondent. It noted that two of the allegations had been admitted by him at an early stage but that allegation 1.1 had not been admitted until mid-way through the substantive hearing.

29. As a senior solicitor of long professional standing the Tribunal considered that the First Respondent was culpable jointly with the Second Respondent in relation to allegation 1.1 and the failure to comply with the terms of the undertaking given. It was satisfied that this was a professional obligation. Such non-compliance reflected badly on the profession and harmed the public interest.

30. In relation to allegations 2.1 and 2.2 the First Respondent had inserted the name of the witness on a legal document after it had been executed and witnessed and he knew that that was wrong. He had acknowledged that his actions had been foolish and his conduct had resulted, in part, in these proceedings. The Tribunal was satisfied that in so conducting himself the First Respondent had compromised his integrity and

independence and had behaved in a way likely to have diminished the trust the public placed in him or the legal profession.

31. The Tribunal had regard to all of the sanctions available to it and decided that a fine was the appropriate sanction in all the circumstances of the case. It imposed a fine upon the First Respondent in the sum of £6,000.

32. In relation to the Second Respondent the Tribunal had found allegation 1.1 proved. It was limited in its ability to impose a sanction upon the Second Respondent since its recognised body status had already ceased in May 2013. The Tribunal therefore imposed the only sanction available to it namely that the Second Respondent may not re-apply for recognised body status without leave of the Tribunal.

Costs

33. Mr Barton referred the Tribunal to the schedule of costs which totalled £17,148.05. He told the Tribunal that the costs included those of Field Fisher Waterhouse which had originally had conduct of the matter.

34. Mr Barton said that costs had been agreed with the First and Second Respondents on a 65/35 division respectively.

35. Mr Barnett confirmed that the First Respondent had agreed to pay 65% of the total costs, the costs figure having been agreed.

36. Mr Brunskill confirmed that the Second Respondent had agreed to pay 35% of the total costs.

37. The Tribunal noted that costs had been agreed in the total sum of £17,148.05 as to 65% to be paid by the First Respondent and 35% to be paid by the Second Respondent and made an order in those terms.

Statement of Full Order

38. The Tribunal Ordered that the First Respondent, ROBERT ANDREW SCHOFIELD, solicitor, do pay a fine of £6,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £11,146.23, being 65% of the total costs amounting to £17,148.05.

39. The Tribunal Ordered that the Second Respondent, Megsons LLP, former Recognised Body, may not re-apply to be a Recognised Body without leave of the Tribunal and it further Ordered that they do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £6,001.82 being 35% of the total costs amounting to £17,148.05.

Dated this 3rd day of October 2013
On behalf of the Tribunal

Mr J N Barnecutt
Chairman