No. 9567-2006

IN THE MATTER OF TIMOTHY PAUL SCHOOLS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr E Richards
Mr S Marquez

Date of Hearing: 29th March 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by George Marriott, solicitor advocate and partner in the firm of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 13th September 2006 that Timothy Paul Schools of Schools & Co LLP trading as Clear Law, 7th Floor, Paragon House, Seymour Grove, Old Trafford, Manchester, M16 0LN, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in that he:

1) Failed to act in the best interests of his clients contrary to Rule 1c of the Solicitors Practice Rules 1990;

2) Failed to advise clients of public funding for their housing disrepair cases contrary to Rule 15 of the Solicitors Practice Rules 1990;

3) Acted in breach of Rule 3 of the Solicitors Practice Rules 1990 and the Solicitors Introduction and Referral Code 1990;

4) Acted in breach of Rule 9 of the Solicitors Practice Rules 1990 by entering into arrangements for the introduction of clients with companies whose business was to make, support, or prosecute claims arising as a result of personal injury and which in the course of such business received contingency fees in respect of such claims;

5) Acted for clients in a situation where their interests conflicted with his own.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 29th March 2007 when George Marriott appeared as the Applicant and the Respondent was represented by David Morgan, solicitor and consultant to RadcliffesLeBrasseur, 5 Great College Street, Westminster London, SW1P 3SJ.

The evidence before the Tribunal included the oral evidence of the Respondent and of Mr Alan Fleming.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the Respondent Timothy Paul Schools of Schools & Co, LLP trading as Clear Law, 7th Floor, Paragon House, Seymour Grove, Old Trafford, Manchester, M16 0LN, solicitor, do pay a fine of £12,000, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.

The facts are set out in paragraphs 1 to 45 hereunder:

1. The Respondent, born in 1961, was admitted as a solicitor in 1999 and his name remained on the Roll of Solicitors.

2. At the material time the Respondent was a sole practitioner in the firm of Schools & Co solicitors. From July 2004 the Respondent had formed a limited liability partnership (LLP), Schools & Co LLP, with Mr C, as a successor practice to Schools & Co. The Respondent remained a member of the LLP which was now practising as Clear Law, but said that he was not an active or practising member.

3. The Law Society commenced an inspection of the books of account and other documents of Schools & Co LLP on 25th November 2004. A copy of the resulting Report dated 20th May 2005 was before the Tribunal. The Report set out the matters summarised at paragraphs 4 to … below.

4. At the initial interview the partners explained that Schools & Co had worked in the area of housing disrepair whereas Schools & Co LLP was mainly personal injury based.

5. The Law Society were concerned about that aspect of the Respondent"s practice which involved housing disrepair claims and its interaction with Conditional Fee Agreements (CFA), the Respondent"s duty to advise, the Solicitors Costs Information

and Client Care Code, the solicitor"s interests conflicting with his clients, the Solicitors Instruction and Referral Code 1990 and the role of claims assessors.

6. The investigation showed that the firm had approximately 3,500 matters involving housing disrepair of which 1,000 were completed, 500 were in the process of being litigated and there were 2,000 where court proceedings had not yet started.

7. The Respondent explained that with regard to the 2,000 claims not yet issued, the firm had written to each client and informed them that their retainer was no longer valid following a ruling in the case of Bowen -v- Bridgend County Borough Council [2004] EWHC 9010 (costs).

8. The Report set out details of the Respondent"s method of practice in relation to housing disrepair referrals.

Dramatis Personae

Fastrack Litigation Services Ltd (FLS)

9. A company of which the Respondent was a director from 24th August 2000, and which had an agreement with claims farmers (companies who targeted potential claimants and referred them to other companies and/or solicitors) and which was a subsidiary of LRG.

CMS Investigations Ltd (CMS)

10. A company of which the Respondent was a director from 6th November 2001 to 15th May 2003 and which was a claims farmer. The Respondent was a director to protect his investment in it.

First National Litigation Funding plc (FNFL)

11. A company providing loan facilities to cover the disbursements to be incurred whilst advancing a claimant"s case.

Fast Track Indemnity Ltd (FIL)

12. A company which acted as a cover holder providing after the event insurance (ATE) for claimants and which would pay the claimant"s liabilities for disbursements if the claim was unsuccessful and if the claim were successful would recoup interest on the loans from the claimant"s damages. The Respondent was a director from 26th January 2000. It was a subsidiary of LRG. It had a client account with the Respondent"s firm.

Legal Direct Solicitors Panel (LD)

13. A company of which the Respondent was a director from 1st May 2003 and which referred cases to solicitors.

Life Repair Sales Limited (LRSL)

14. A company operating in a similar fashion to FIL, of which the Respondent was a director from 31st January 2003.

Life Repair Group (LRG)

15. A company formerly called the Compensation Group and the holding company of FIL and FLS.

16. The Report noted that FLS had agreements with a number of claims farmers, one of which was CMS based in South Wales. The Respondent explained to the Investigation Officer that CMS had an agreement with a marketing organisation known as Cobra whereby Cobra would target areas of predominantly council run housing throughout the UK carrying out market research. If council house tenants felt that their accommodation was in a state of disrepair then with the consent of the tenant a referral would be made by Cobra to CMS for them to attend at the property so that video evidence could be taken to show the extent of the disrepair.

17. Claims farmers such as CMS would refer work to FLS. FLS would then carry out a "risk assessment" on each case to see if it was worth pursuing further. This risk assessment would be carried out in conjunction with FIL.

18. Assuming there was merit in a case, FIL would ensure that the client had signed a Consumer Credit Agreement with FNLF who would provide a loan facility to cover the likely disbursements incurred in pursuing the case.

19. If the client was successful, disbursements would be recovered from the unsuccessful defendant, and then the only deduction from the client"s damages would be interest accrued on the loan. Conversely, if the case was unsuccessful then the insurance policy taken out via FIL would discharge the client"s liability.

20. FLS had a number of panel solicitors and the Respondent"s firm was one. The Respondent stated there were approximately eight other panel solicitors.

21. The Report stated that the Respondent would be responsible for signing a client up to a CFA. (The Respondent in his witness statement stated that the referral agent had the client sign up to its own terms and conditions and as part of the process had the client sign a Conditional Fee Agreement, providing a verbal explanation in compliance with the CFA regulations. Once the client had been referred to a panel solicitor the solicitor would contact the client and repeat the advice to the client and subsequently sign the CFA.)

JC

22. The Report set out an example of a specific client matter relating to JC.

23. The client matter for JC contained a letter to her dated 16th December 2002 entitled „Conditional Fee Agreement explained".

24. The letter opined that Community Legal Service Funding (Legal Aid) together with legal expenses insurance and trade union funding had been explored but that it was felt that a CFA was appropriate to advance the client"s case.

25. The letter also discussed a contract of insurance and concluded that after the event insurance (ATE) was appropriate but that the Respondent could only advise an insurance policy taken out with FIL and underwritten by either Lloyds of London or NIG. A note of attendance with JC dated 16th December 2002 recorded that Legal Aid was no longer available for fast track personal injury cases. The Investigation Officer discussed this with the Respondent and he agreed that that form of wording was inappropriate for housing disrepair matters. (Legal Aid was then and still is available for housing disrepair matters.)

26. The CFA was signed by JC on 2nd December 2002. The Respondent also signed the agreement. The Report noted that the CFA was signed by JC before the oral explanation was given to her by the firm.

27. Although the agreement had a number of alternatives which were to be appropriately deleted, and which confirmed that the Respondent had an interest in recommending the particular insurance, or not, none of the deletions had been made. The agreement also stated that the Respondent was a member of LD.

28. In a client care letter sent to JC the Respondent set out that he had an interest in FIL, and interest in FLS, and that he was a director of the Compensation Group (now LRG). The letter was sent to JC after the CFA was signed. The Respondent asserted that this was the exception rather than the rule.

29. Between December 2002 and June 2003, a number of sums were paid out on behalf of JC totalling £2,161. Funding for those payments came from JC"s loan with FNLF which had an APR of 13.7%. JC was sent a statement in July 2004 which showed that with interest of £433.18 applied to the loan she owed FNFL £2,619.19.

FIL fees

30. The Investigation Officer noted that there were sums ranging between £25 and £364.37 totalling £17,131.88 being held in a client bank account headed „FIL Fees". The Respondent confirmed that these sums had been deducted from clients" damages at the conclusion of their housing disrepair case.

31. The Investigation Officer review a number of files on which FIL fees had been deducted from damages and noted that the agreements to which these charges related were between clients and either LRSL, FIL or LRG.

32. On looking at an agreement between a client and LRSL, an authority was signed by the client to pay LRSL £170 plus VAT for services provided by the Group in arranging insurance and managing the claim application. It emphasised that the sum was not recoverable from the client"s opponent and only became payable if the client"s claim was successful, i.e. it was to be deducted from the client"s damages.

33. Following an examination of the files the Investigation Officer raised a number of issues arising from the way the practice had conducted its housing disrepair matters and in particular:

    (i) Conflict of interest;

    (ii) Legal Aid funding;

    (iii) Practice Rule 9;

    (iv) Client liability to FNFL in discontinuance cases.

Conflict of interest

34. The Respondent asserted that disclosure was made by virtue of the CFA and the client care letter. He stated that he had been "quite specific" and that the practice "disclosed as much as … was genuinely necessary to disclose".

Legal Aid funding

35. When asked what the firm did about offering independent legal advice bearing in mind that they were not Legal Aid practitioners, the Respondent stated that when a case was received it was a fait accompli, it was like a trade union case, a client had already decided, and he followed up the agents to explain the CFA and to make the explanations to the client over the telephone and then the client care letter and CFA document were sent out. He also pointed out that Legal Aid would not be available for every client because of income criteria although it was believed that this would only affect about 5% of their matters. A review by the firm of 100 files showed that this was the case in respect of 24 of the matters. Following the decision in Bowen referred to above, the practice wrote to all clients in housing disrepair cases to advise that the percentage prospect of success had dropped in view of the Judgment and that therefore insurers were going to withdraw their indemnity. The letter sent out to the clients invited each individual to whom it was written to consider continuing their case with Legal Aid. The Respondent through his solicitors said that the action the practice took following the Bowen Judgment meant a loss of profit costs in the region £3million.

Practice Rule 9 (claims assessors)

36. The Investigation Officer asked whether the Respondent felt he had complied with the provisions of Practice Rule 9 with the deductions of certain sums from the clients" damages (paragraph 30 above).

37. The Respondent stated that when he considered the matter he felt the drafting of the document authorising the deduction had been poor. He said that in reality the fee was not dependent on success, the client would not have to pay for it, if the client lost the cause the insurer would pick up the cost with a result that the champerty issue was removed. He also stated that no payments had been made and the money was still in client account being an insurable cost.

Client liability to FNLF in discontinuance cases

38. The Respondent was unable to give any answer to the question as to the liability of the clients to repay FNLF where their cases were discontinued. The Report noted that, using the example of JC, overall liability could be in the region of £5.2million (2,000 cases at £2,619 per case).

39. However the Respondent"s solicitors in their letter concerning JC stated that the bank was keen to get its money back, that the firm could not advise its former clients of what the current position was with regard to individual liabilities, the hope was that the client would not be ultimately called upon for repayment of loan monies to the bank but that that position could not be confirmed.

Respondent"s explanations

40. In his witness statement the Respondent said that he had been advised by the insurers that they were to negotiate with FNLF and that both institutions had made it clear that the Respondent could not advise his clients whilst they were still negotiating. The Respondent said he was led to believe that the bank would never chase the clients for the loan monies but he was prevented from disclosing this assurance to his clients consistent with the terms he had arranged in the insurance scheme when it was set up. The Respondent said that time had demonstrated that none of the firm"s clients had been asked to repay a loan to FNLF from their own resources.

41. Following a complaint by JC, the Law Society wrote to the Respondent on 10th December 2004. The Respondent"s then solicitors replied on 28th January 2005 and asserted among other things the way that JC"s case came about, denied that there was a breach of Practice Rule 3 and the Introduction and Referral Code, gave an explanation as to why the CFA with JC was unenforceable, gave a further explanation to assert that there was no conflict of interest, and denied again that there had been any breach of the Introduction and Referral Code. They said that the policy adopted by the firm with regard to the Respondent"s interests in FLS and FIL resulted from advice from the Respondent"s own legal advisors and from his discussions with the Ethics Department within the Law Society.

42. With regard to inadequate cost information (the issue of Legal Aid or CFA) the solicitors asserted that everything that needed to have been done was done.

43. Following the Report, the Law Society sent a letter to the Respondent dated 25th July 2005.

44. The same solicitors responded on behalf of the Respondent on 5th October 2005 and asserted as follows:

- a copy letter similar to that sent to JC was attached;
- the Respondent could not advise on alternative ATE insurance products because he was not an insurance broker;

- regret was shown concerning the assertion that Legal Aid was not available by the inaccurate reference to the case being personal injury;

- the money held in the FIL account was client money;

- the fee paid was not a referral fee as it was paid under a direct contractual arrangement between the company and the claimant and was entered into before the claim was referred to the Respondent"s firm. He further emphasised that he had no personal responsibility to ensure payment of the fee;

- further that he took advice on the issue of the monies from the Ethics Department which was favourable;

- he accepted that he had breached Principle 15.04 by failing to advise clients that he would gain an advantage if they followed his advice to fund claims using products from companies in which he had an interest.

45. By a further letter dated 20th January 2006 the Respondent"s solicitors stated that:

- giving advice on alternative ATE insurance products was not the same as organising a premium with one company;

- they emphasised that the document recording that advice had been given by CMS had already been provided to the Law Society;

- they emphasised that the Respondent had had no interest in the companies for some time;

- that he had been transparent with regard to his interests in other companies by the disclosure that he had made.

The submissions of the Applicant

46. The Applicant had served a Civil Evidence Act Notice in respect of the Investigation Officer"s statement which had not been challenged. The Applicant did not challenge the witness statement of Mr Andrew Kidd in support of the Respondent although Mr Kidd was not present.

47. The system operated by the Respondent appeared to be a derivative of The Accident Group scheme.

48. Cobra was an international company whose business was to sift out potential claims to be put against organisations. Claims were then referred to CMS which in the submission of the Applicant was a claims farmer. The Respondent had objected to that term although his former solicitors had used the term.

49. CMS would investigate the case a little further and if they thought it was worth proceeding with they did certain preparatory work almost inviting an individual to sign up to a provisional conditional fee agreement and ostensibly going through a

checklist of other forms of funding available. A fee was payable to CMS and the Tribunal was asked to note that in the case of JC this was £475.88. CMS was a limited company in business to make profit. The fee ultimately came out of monies loaned to JC for "disbursement funding". In the submission of the Applicant however the fee was not a disbursement.

50. The next company, FLS, had an agreement with CMS. FLS would do some work on the matter and there was evidence to show that FLS provided medico-legal reports or possibly video evidence. FLS also charged a fee which in the case of JC was £258.50 which was described as being for a risk assessment report.

51. The Tribunal was asked to note that the Respondent was a director and shareholder of both CMS and FLS.

52. The case was clearly geared towards a CFA going forward as shown by the involvement of the next company, FIL, of which the Respondent was a director and possibly a shareholder. FIL acted as a cover holder providing ATE. Alternative ways of funding would have been before the event insurance, Legal Services Commission (Legal Aid) or private funding. In all of the Respondent"s cases however, ATE insurance was the way forward and in JC"s case the fee was £834.75. The insurance cover was usually provided by a subsidiary of First National Bank. This was a valid insurance policy. The premium was paid by the client to FIL who would then pay some of the premium to the insurers and would retain some.

53. The clients would need to provide funds themselves or to borrow funds. Most of the clients were at the bottom end of the financial bracket of society and had no funds. Funds were therefore provided by a loan company, FNFL.

54. The Respondent"s firm was one of a number of solicitors" firms on the panel of which there were eight for housing disrepair cases. Papers would be forwarded to the firm and some checks were done by the Respondent on behalf of the potential client to ensure that the claim was worthwhile. Other checks were made before the CFA was signed by the firm. The Respondent had made the point that the CFA was signed by the client before the client came to the firm but that it was not binding until signed by the firm. The Respondent would telephone a potential client and, provided the arrangements were satisfactory, would sign the CFA. The Respondent thus had a ready-made client with a fair amount of the work on the case done and ready-made funding. The Applicant did not accept that the Respondent had been as thorough or as dispassionate as he said, nor that he had acted in the interest of his client. The Tribunal was referred to the Respondent"s response to the Investigation Officer. In the submission of the Applicant once a case arrived at the Respondent"s door it was as the Respondent had said a "fait accompli". A number of boxes had to be ticked in order to ensure that the agreement met the CFA requirements, but that was all. The Respondent accepted that he had dealt with this type of work in great volume.

55. The case of JC had come to a halt because of the Bowen judgement which did not directly affect the Respondent"s firm, which was not involved in the case, but did direct all the companies of which the Respondent was a member or director. Those companies had been looked at very carefully by the Supreme Court Costs Master, who had considered carefully whether Legal Aid had been fully and properly

explained to the clients, most of whom would have been likely to have been entitled to Legal Aid. The Bowen case had been lost on that point and also on the subsidiary point of non-compliance with CFA regulations. The case had also been lost because the clients had never agreed to pay the fees of FLS.

56. The Respondent had obtained an opinion from Mr Timothy King QC. The opinion was not available but the Tribunal was referred to the note of the Respondent"s conference with Counsel exhibited to the Respondent"s statement. The note stated:

> "TK also advised of his view that [sic] the issue regarding whether Legal Aid funding should have been taken out by such clients instead of legal aid. He does not think that Legal Aid would be made available anyway. If you read the Legal Aid regs you will see that it is a requirement of granting such aid that all other forms of funding have been explored and are not available. I think that if you are offering to act for a client under the terms of a CFA that the legal aid board would not grant such assistance."

The Tribunal would note however that Legal Aid was available for housing disrepair cases, for cases of merit and individuals within certain financial parameters.

57. The Respondent had notified his insurers and they had "pulled the plug", leading the Respondent to lose conduct of the cases and some £3million worth of potential fee income. Given that the Respondent claimed that there was a distinction between the way he operated and the Bowen case, given Leading Counsel"s opinion and given the amount of lost fees, the Respondent might have made more effort to distinguish his position from that of the Bowen cases. In the submission of the Applicant he had not done so because he knew that there was virtually no distinction. For a disbursement to be legitimate a court had to agree the objective nature of any agreement to pay it. There had been no agreement by JC or any other client to pay FLS, CMS or FIL"s fees. These were not disbursements as the work had been done by them before the Respondent"s retainer started and this was borne out by the fact that they were not referred to in the Respondent"s client care letter. The insurance policy and the loan had come into force before the client care letter despite the wording of the letter. The reference in the letter to the fact that any shortfall "may" be made up from damages recovered should have said "will" be so made up. There was nowhere else the shortfall could come from.

58. The client care letter referred to a cooling off period provided by the First National Bank. The letter said that if the client was not comfortable with the loan they could seek independent legal or financial advice. It was not clear why someone like JC would do this.

59. Following the Bowen case the Respondent had left his clients "high and dry" with liabilities to lenders. If the Respondent"s scheme had been so different from that in the Bowen case he should have been able to take steps to ensure that cover was continued.

60. Because the Costs Master had said that FLS fees were not recoverable, the Applicant submitted that the same applied to CMS and the cover holder. These were in fact not

disbursements but referral fees. The companies sent the cases to the Respondent"s firm. The companies wanted a profit. The profit was through the fees paid.

61. The money in JC"s client account was a staggering amount for her. The money would come straight into the Respondent"s client account and he would pay it to the companies. The Applicant was unsure what was meant by the surveyor"s or expert witness reports in the JC matter as the Applicant would have expected those to be embraced in either CMS or FMS.

62. This was the Respondent in an indirect and sophisticated way buying cases. There was no difference from a company saying "I have found a case and it will cost you to get it". The companies had done some work for the referral prior to the engagement of the Respondent by the client and that was a way of paying for cases. The cases the Respondent received came from companies of which he was a director and they received money from the Respondent"s clients via FIL thereby breaching the Introduction and Referral Code.

63. The Tribunal might question what was the public interest now that the Referral Code had changed and solicitors could pay for cases. There were however two rules under the new Code:

    (i) The introducer had to sign up to the Introduction and Referral Code including the provisions on cold calling;

    (ii) The client knew that there was a referral fee and the solicitor was up front.

    The Respondent"s system did not comply with the old Code where no fees could be payable or with the new Code where the solicitor had to be open with the client. This amounted to a breach of Rule 3 as set out in allegation 3.

64. Allegation 2 was demonstrated by the Respondent saying that the cases came as "a fait accompli". The Respondent had ignored Legal Aid (which he could not offer) and which for many of his clients would have been the most appropriate way to fund their cases in favour of CFAs which would have provided more income to the Respondent.

65. In relation to allegation 4 the Respondent had emphasised in his witness statement that the JC matter was not a personal injury case and that Practice Rule 9 did not apply to housing disrepair cases. The Respondent had however admitted running personal injury cases in exactly the same way, as set out in the letter from his then solicitors dated 28th January 2005. It was a clear breach of Rule 9 of the Solicitors Practice Rules. The Respondent received cases via claims assessors and collected contingency fees for them.

66. Those contingency fees were the money held in the Respondent"s client account as set out in the Report, which stated:

    "26. On reviewing the practice accounting records, Mr H noted that there were sums ranging from £25 to £364.37 and totalling £17,131.88 at 19th November

2004 being held in the client bank account in relation to "FIL Fees". Further enquiries revealed that these sums had been deducted from certain clients" damages at the conclusion of their housing disrepair case.

27. Mr H reviewed a number of client matter files on which "FIL Fees" had been deducted from clients" damages. The agreements to which these charges related seemed to be mainly between the client and either Life Repair Sales Ltd, FIL or the Compensation Group. It was noted that the Respondent was also a director of Life Repair Sales Ltd from 31st January 2003."

Life Repair Sales operated in a similar fashion to FIL, of which the Respondent was also a director. Compensation Group was the Life Repair Group following a change of name and was also the holding company of FLS and FIL. The companies instrumental in bringing cases to the Respondent were therefore due to receive fees payable on the successful conclusion of the case. It was also a matter of concern that to facilitate payment this company even had a client account with the firm.

67. In relation to allegation 5 there had to be a conflict of interest. It was not possible for the Respondent to act in the best possible interests of his clients when the cases were referred by companies in which he was a shareholder and director and were covered by insurance from the cover holder where he was also a director. Even though the Respondent notified his clients it was submitted that there was such a conflict between himself in his position as a director of FIL, FLS, LRG, LD, CMS and LRSL and his clients that the only way to comply with the Rule would be to ensure that each client obtained independent legal advice. The Respondent had produced no evidence to confirm that they did. The Respondent could not give impartial advice.

68. Allegation 1 related partly to the conflicting situation between the referrers and the clients, but also to the fact that had the Respondent not taken on these cases as a fait accompli the clients would not have ended up in difficulties when funding was withdrawn. The Respondent had written to the clients after the Bowen case advising them to see a Legal Aid practitioner. This begged the question why he had not given this advice in the first place. While the Respondent had doubtless tried to resolve the position he should not have got his clients into this situation. He had left them exposed and potentially exposed to costs.

69. JC"s loan had been dipped into by the Respondent to pay a number of fees until she ended up owing the bank the sum of £2,619.19.

70. The Applicant submitted that the allegations were substantiated. It was for the Applicant to prove this beyond reasonable doubt. The Applicant did not allege dishonesty against the Respondent.

The oral evidence of the Respondent

71. The Respondent confirmed that his witness statement signed on 28th March 2007 was true and accurate to the best of his knowledge and belief.

72. Cobra was a worldwide direct sales organisation specialising in door-to-door sales and marketing. They would come across council owned houses in disrepair and would pass details to CMS as a lead. The Respondent had paid nothing to Cobra.

73. The Respondent"s former solicitors had described CMS as claims farmers but this was an unfortunate term. In housing disrepair cases CMS investigated Cobra"s lead by sending an agent to the property to carry out a full survey and assess whether there could be a valid claim against the landlord council. As part of the visit they collated a number of documents and pieces of information and would confirm with the client that the client was happy with the investigation and the potential for a claim.

74. The fee paid to CMS was paid with the client"s agreement for the video and was facilitated through the loan from First National Bank. The fees were automatically necessary to validate the claim. In no way would the Respondent consider them to be referral fees. They were payments for disbursements actually incurred for evidence of disrepair.

75. CMS had a panel of eight firms dealing with housing disrepair and 31 dealing with personal injury. Cases were sent to panel firms on a rotational basis.

76. The Respondent had been a director and for a short period a shareholder of CMS and had received director"s remuneration for 12 to 15 months in the early stages. He had resigned because the company was based in South Wales and he did not have as much control as he wished and felt he was unable to obtain information to carry out his director"s duties.

77. When the client started dealing with CMS and the survey and video were arranged, the Respondent"s firm had not been instructed. When CMS had validated the claim they would send the client to FIL to assess the insurance risk. They would then pass the client to FLS who operated the panel of law firms. The client would have signed an agreement with CMS and also the CFA and loan agreement. The CFA would have been a general panel agreement not naming the firm of solicitors.

78. JC had signed the CFA on 2nd December 2002 and the Respondent"s firm had signed it subsequently. When JC signed the CFA she had been advised of the funding options available by the agent appointed by CMS. CMS would refer to a specific document which included a question "Has Legal Aid been explained to client?". JC confirmed by signing that she had read that advice. Her signed document was exhibited to the Respondent"s witness statement.

79. Subsequently the firm would take steps to contact the client directly by telephone and would provide a verbal explanation themselves including the funding options which included Legal Aid. The client would be told that if he or she chose the CFA option the firm would be happy to sign and post the CFA on that day.

80. Contrary to the assertion by the Applicant the firm did not only ATE but also BTE work and made about the same amount of money from each.

81. Clients would have and did agree to take out a loan with First National Bank to pay all the disbursements, for example a surveyor"s report, the fees due for ATE and all

other fees incurred throughout the lifetime of the case. The agreement between the bank and the client had been signed prior to the firm receiving the client. The Respondent clarified that there was an independent surveyor"s report down the line. CMS had prepared video evidence. The clients would have entered into specific agreements with CMS for their services.

82. FIL had assessed whether the case fulfilled the criteria for insurance purposes. The fee to FIL was within the premium. The Respondent did not receive anything from the premium.

83. The terms of the CFA and the client care letter included provision for agreement for disbursements.

84. The insurers were a syndicate from Lloyds.

85. Interest on the loan would be paid by the client if the case was successful. If it was not the insurance company policy would relate to everything including outstanding interest. The client would apply for insurance at the same time as applying for the loan prior to the case being allocated to panel firms but subject to a panel firm accepting the client under the terms of the CFA.

86. If a client decided to apply for Legal Aid the insurance policy and loan would not be initiated as they needed to be confirmed by the firm"s authorisation. The CFA came into being when the firm signed it, in the case of JC on 16th December. The firm had given clients the option of Legal Aid from the beginning plus advice had been given earlier by the CMS agent. The firm did not have a Legal Aid franchise.

87. "Fait accompli" referred to if the firm were to take on a case at all, i.e. as packaged or not at all if a client went elsewhere.

88. If the firm rejected the case the loan had not been incurred and CMS would have had to write off the costs of e.g. the video.

89. The Respondent had been a director and shareholder in all the companies referred to except Cobra, the insurers and the bank.

90. The Respondent disputed that the fees were referral fees. They were proper fees agreed by the clients. The firm was acting on a process everyone had agreed. The Respondent"s firm had never paid anything to the companies except disbursements.

91. Once the firm had formalised the terms with the client the firm notified the insurers and the bank and there was then an automatic process whereby First National Bank released payment to the firm"s client account. The firm was then obligated to discharge the pre-agreed fees and First National Bank deposited an amount which precisely met those fees.

92. The Respondent had had a lot to lose in reaching his decision to pull out from the cases. He had a very large interest in retaining the clients but had no choice as he had to protect the clients" interests as a priority. Panel firms were under an obligation to

report to the scheme"s insurers and the firm had entered an agreement with the insurers on behalf of the clients to notify the insurers of risks.

93. The firm had argued very strongly that it had complied with the regulations and provided advice to clients but the insurers took a strategic decision which the firm could not influence.

94. The firm had been left high and dry and had to notify clients that they were no longer acting from that day forward. The firm had written to advise clients to go to a Legal Aid practitioner. The loss to the firm had been significant.

95. The client care letter had referred to a cooling-off period pursuant to the Consumer Credit Act 1974 which gave the client the opportunity to seek legal advice.

96. The FIL fees referred to in the investigation Report were fees agreed by the clients within the CMS documentation. It was the client"s client account, not FIL"s client account. These were fees received in respect of a number of individual client accounts to be allocated in respect of FIL fees. Normally they would have been paid out but FIL had gone into administration and had not fulfilled its obligations.

97. The whole scheme had been supported by First National Bank and the syndicate who also supported The Accident Group. They withdrew from the sector, which had an impact on the companies.

98. The Respondent had not been involved in the present practice so did not know the present position regarding the money but believed it had been distributed to clients.

99. Due to the Respondent"s involvement with the companies he had been involved in designing the scheme. He had gone to extreme lengths to ensure that the conditions in the insurance policy were far wider than those in The Accident Group or Claims Direct which were not attracting positive publicity. The Respondent had to protect his clients" interests as best he could. He had gone to great lengths with others including Mr Fleming to ensure that there was a robust policy to protect the clients.

100. When the insurers decided to withdraw cover the Respondent had been sure that the clients would not have to pay but he could only express this verbally to the Investigation Officer, he could not verify it in writing. Having withdrawn from the sector altogether the bank and the insurers had suffered huge losses in The Accident Group and Claims Direct schemes and were negotiating between themselves who should take on the various losses. After the Bowen case and after the demise of The Accident Group they decided that within those negotiations they would also negotiate losses arising from the withdrawal of indemnity following the Bowen judgement. First National Bank had advised the Respondent that they would not sue the clients in any event as this would damage their reputation, but they and the insurers insisted that the Respondent should not disclose that to the clients as it could prejudice the negotiations.

101. The Respondent had fought furiously with the insurers when they pulled out and it had been in his interest to do so. The lead syndicate had gone into runoff and they

appointed Abbey Legal Protection who followed the instruction to withdraw indemnity protection. No negotiation was possible.

102. In black and white terms the clients were liable for the outstanding loan as they had entered into a loan agreement, but the Respondent knew that the loan was insured and that ultimately the global negotiations would reach a settlement and knew that the clients would not be financially worse off as a result.

103. Following the inspection the negotiations had been finalised and not one of the clients of any of the panel firms had had to pay a penny back.

104. The Respondent had been aware when setting up the scheme that a number of other insurance policies existed which paid lip service to the kind of indemnity required under such schemes but would not pay out because side agreements meant no claim would ever be made. These were not proper insurance policies at all. In the Respondent"s scheme he made sure that each and every level of indemnity would pay out in the event of an adverse finding and that proved to be the case. The Respondent had been mindful of the fact that they were swimming in "murky waters" because of the adverse publicity surrounding the industry at that time and he had been determined to show that the scheme was operating to an ethical standard with correct procedures.

105. They had submitted themselves to a full audit annually which had been submitted to the scheme"s insurers and funders to ensure that they were comfortable. This was significantly different from the other schemes around.

106. The attendance note of the conference with Mr Timothy King QC was a correct summary of the advice given. Mr King"s view had been that the Bowen case was not "a nail in the coffin" because if the Respondent could show evidence that advice had been given on the other options then the agreements would stand. Mr King also said that if a CFA was offered, Legal Aid would not be granted as clients had to have explored every other funding option.

107. In relation to the allegation of conflict of interest the Respondent had gone to more than reasonable lengths to make the position clear to clients. He had spoken to Mrs L of the Law Society Ethics Department and had also taken advice from Fox Brookes Marshall Solicitors. The advice the Respondent had received was that the business interests with the companies did not conflict with his duties as a solicitor. The Respondent felt particularly aggrieved to be before the Tribunal as he felt he had done as much as reasonably possible. He had made clear to the clients that he had an interest in the companies and that if they objected they could go to another firm.

108. The Respondent had initially thought that Principle 15.04 referred to conveyancing matters but he had accepted his solicitors" advice that that was incorrect and had a broader perspective today. His real defence however was that there was not a conflict.

109. The clients had been given advice. The CFA said they could seek independent advice. The Respondent had taken all the steps he should have been expected to carry

out. He did not agree that he should have ensured that the clients got independent legal advice.

110. The letter from the Law Society Ethics Department was no longer available. Mrs L had misunderstood the position as stated in the Respondent"s exhibited letter of 13th March 2000 to Fox Brookes Marshall. The Respondent had had number of telephone calls with Mrs L and had spoken to her again after her letter. She had been confused, thinking that Fastrack were receiving a benefit on a successful action, but this was not the case. After the Respondent had explained the situation she had said there was no conflict and he should disclose the position.

111. The Respondent had a 40% share in the controlling company and had received some director"s fees.

112. The Respondent believed he had taken advice and was acting appropriately. He accepted with hindsight that it would have been prudent to write again to the Law Society.

113. The firm"s procedure was as set out in Mr Kidd"s witness statement.

114. The Respondent accepted that the client care letter did not specifically detail the three payments to JC. The CFA would normally provide a general authority to pay the disbursements throughout the action. At the time the Respondent believed that the payments were disbursements. They were also protected under the insurance policy as disbursements so come what may the client was protected. The disbursements were part of the package.

115. The Respondent accepted that a referral fee could be paid by either a solicitor or a client.

116. The Respondent accepted that he had run personal injury cases.

117. If a claim was unsuccessful, fees were paid by the insurance policy. They were not contingent on a case being successful, which would be the basis of a breach of Practice Rule 9. If a case was successful the fees would be paid from damages as referred to in the CMS document exhibited to the Respondent"s statement.

118. The Respondent clarified that if a claim was successful the fees were recoverable from the other side except for the interest on the loan.

119. The monies received by the various companies were not affected by which firm was instructed, be it the Respondent"s firm or another firm.

120. None of the advice received by the Respondent indicated to him that his business activities gave rise to a conflict of interest.

121. The bulk of the insurance premium had been paid across to the Lloyds syndicate. FIL received about 25-30% as cover holder. CMS would have made payments to Cobra but the Respondent did not know at what level.

122. The Respondent would have challenged the Bowen judgement saying that the CMS and FLS fees were not disbursements if there had been an opportunity.

Oral evidence of Mr Alan Fleming

123. Mr Fleming confirmed that his statement dated 29th March 2007 was true and correct to the best of his knowledge and belief.

124. Mr Fleming had been involved in putting together the arrangements with the Respondent and the insurers together with colleagues at work and an underwriter friend.

125. Mr Fleming thought that what had been arranged was the best product there was at the time. They had tried to arrange total protection for the client. The insurers had found it difficult to understand that the clients never paid as this was unusual at the time.

126. Cover had been provided initially 100% by Lloyds and then subsequently 75% by Lloyds and 25% by NIG.

127. The bank was nothing to do with the insurance although it was for the bank"s benefit as well as the clients as it ensured the bank recovered the loan.

128. The Accident Group had failed in May 2003 which caused ripples in the insurance and finance industry. This was one of the factors which had led to the lead syndicate going into runoff. At the same time the senior underwriter responsible at NIG was in the process of retiring. The Bowen judgement was at the same time, and the bank decided to withdraw funding. Because of the bad publicity and the doubts after the judgement, no-one else would come in.

129. As the syndicate was in runoff, cover did not exist and no new policies could be offered. The existing insurance remained in force until Abbey on behalf of Lloyds gave notice for it to end. The insurance would pick up disbursements up to that date but any new ones would be down to the client, so the solicitor could not proceed with the case as it would leave the client exposed. Mr Fleming had tried without success to find other insurers.

130. The Respondent had not left the clients high and dry, rather by ceasing the actions he protected the client"s position. Past liabilities would be covered by insurance.

131. The Respondent would not have been a party to the negotiations going on in Lloyds. The bank and the insurer had liability and wanted to do a deal without incurring further costs.

132. Mr Fleming would have been very surprised if the insurers had tried to avoid their obligations. Lloyds would not have wanted the bad publicity.

133. The Respondent had been Mr Fleming"s client as director of FIL. Mr Fleming had wanted to ensure he had the best insurance product on the market. There had been an audit of the cover.

134. Mr Fleming had not discussed the matter with the Respondent after the Bowen judgement and before he wrote to his clients. By that time the lead syndicate had disappeared and Lloyds had given the remit to Abbey Legal Protection who were telling the solicitors what to do.

135. Mr Fleming"s firm had also taken a commission from the payment made through FIL and the rest had gone to the insurers.

136. The bank"s loan was picked up by the insurers.

137. Mr Fleming referred to his letter of 30th June 2003 to FNLS and clarified that he was not trying to ensure that the group of companies obtained an extra £100 but rather that the £100 client management fee would be covered by insurance. The fee was payable by the client but would be paid by the insurers if the case failed. If the £100 at any time came out of the bank loan it was insured. Mr Fleming was providing a facility whereby because of the insurance the group would still obtain the bonus of £100 if the case failed.

Submissions on behalf of the Respondent

138. Apologies were made to the Tribunal for the late filing of the Respondent"s statement and the statements in support and exhibits. The Tribunal was referred to those statements.

139. The Respondent"s principal motivation had been to get the best deal possible for his clients. There was no time when he had failed to act in their best interests. He had not left them "high and dry".

140. The Tribunal was asked to accept the Respondent"s evidence corroborated by Mr Fleming. The Respondent had done what he could to resurrect the scheme but the circumstances had been beyond his control. The collapse of The Accident Group and the Bowen judgement persuaded the insurers to withdraw from the market.

141. In relation to allegation 2 evidence had been given that clients were advised by CMS of alternative sources of funding. The firm had also given that advice as confirmed by Mr Kidd in his statement.

142. In relation to allegation 3 the Respondent had disclosed his interest in the companies. There was no evidence of referral fees. It made no difference whether it was the Respondent"s firm or another panel firm.

143. In relation to allegation 4 no evidence had been put forward relating to personal injury matters In any event the Respondent had said in evidence that these were not contingency fees. The fees were payable whether or not the case proceeded.

144. In relation to allegation 5 no such actual or potential conflict could be identified. It made no difference whether the Respondent acted for the clients or another panel firm did so.

145. After the Tribunal"s findings in relation to liability the following submissions were made in mitigation.

146. The Respondent had not appeared previously before the Tribunal.

147. The Respondent had made a genuine attempt to set up something right. He had sought advice from the Law Society Ethics Department and from Fox Brookes Marshall

148. The Respondent"s principal motivation had been to improve the insurance cover for his clients and this had been corroborated by Mr Fleming.

149. At the end the Respondent had taken steps to see what he could do as evidenced by his conference with Mr King QC, his negotiations with the bank and the insurers and by his advice to clients to go to Legal Aid practitioners.

150. In relation to the Introduction and Referral Code, it was clear from the fax from Fox Brookes Marshall that the Respondent had sought advice. The Respondent had genuinely but mistakenly believed that he was complying with the code.

151. Similarly in relation to conflict the Respondent had taken advice and had believed that there was no conflict. Indeed it was not entirely clear that there had been an actual conflict. JC had not lost anything and no client had suffered.

152. The Respondent had suffered. He had lost seven companies and 2,000 potential cases and would be liable for some costs.

153. The Respondent was no longer practising.

The Findings of the Tribunal

154. The Tribunal considered carefully the submissions and oral evidence and the documentation.

155. In relation to allegation 2, the Respondent"s evidence that the firm had advised clients on the various funding options including Legal Aid had been corroborated by the statement of Mr Kidd, a solicitor and former employee. Allegation 2 was therefore not substantiated.

156. In relation to allegation 4, the Respondent"s evidence that the fees to the companies were payable either from the client"s damages if the case was successful or were covered by insurance if the case was unsuccessful was corroborated by the evidence of Mr Fleming and in particular his letter relating to the insurance cover for £100 client management fee. The Tribunal was satisfied that this allegation was therefore not substantiated.

157. The Tribunal noted in relation to both allegations 2 and 4 that the Respondent"s evidence had been filed very late. Had it been filed earlier, the Applicant would have had an opportunity to take a view on those allegations.

158. The Tribunal was satisfied that allegations 1, 3 and 5 were substantiated. In relation to allegations 1 and 5, the Respondent was not sufficiently independent to act in the best interests of his clients. He gained financially from the fees paid to companies of which he was a director. Clients should have been given advice as to whether or not they were actually contractually bound to pay the fees. Had the Respondent not taken on these "fait accompli" cases clients would not have been left in difficulties when the funding had been withdrawn. Although the Respondent had given evidence which was accepted that the client had ultimately not had to pay anything, the letter the Respondent had sent to the clients had not been reassuring and they would have felt very concerned after the withdrawal of the insurers. The Tribunal was satisfied that both allegations 1 and 5 were substantiated.

159. The Tribunal was also satisfied that allegation 3 was substantiated. The system operated by the Respondent was similar to The Accident Group scheme but the companies were owned by the Respondent. The fact that payments went through so many different bodies did not alter the fact that these were referral fees paid for every case under the scheme.

160. No dishonesty had been alleged against the Respondent and none was found. Nevertheless, the Respondent"s conduct had not been of the standard expected of solicitors. Clients had to be confident that their interests were paramount and were not in conflict with their solicitor"s own interests. The Tribunal would impose a financial penalty on the Respondent at a level which showed the Tribunal"s serious concern about this matter. The Tribunal would impose a maximum fine of £5,000 in respect of allegation 5, £4,000 of respect of allegation 1 and £3,000 in respect of allegation 3 together with payment of the Applicant"s agreed costs.

161. The Tribunal noted that the Respondent had conditions on his Practising Certificate set out in the Decision of the Adjudicator dated 8th March 2007 including a condition that the Respondent should not accept new instructions for the practice save with the agreement of his co-member of Schools and Company LLP (Clear Law). The Tribunal recommended to the Law Society that the conditions set out in paragraphs 2 of the Decision be continued for so long as the Law Society considered it appropriate.

162. The Tribunal ordered that the Respondent Timothy Paul Schools of Schools & Co, LLP trading as Clear Law, 7th Floor, Paragon House, Seymour Grove, Old Trafford, Manchester, M16 0LN, solicitor, do pay a fine of £12,000, such penalty to be forfeit to Her Majesty the Queen, and they further Ordered that he pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.

DATED this 5th day of July 2007
On behalf of the Tribunal

W M Hartley
Chairman