No. 10113-2008

IN THE MATTER OF LEON RAYMOND HERON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr J R C Clitheroe
Mr G Fisher

Date of Hearing: 17th April 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by George Marriott, Solicitor Advocate and Partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 16th October 2008 that Leon Raymond Heron 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:-

1. He acted for two clients in a transaction where there was a conflict of interest.

2. He failed to act in the best interests of a client, contrary to Rule 1(c) Solicitors Practice Rules 1990 ("SPR").

3. He failed to conduct work to the proper standard contrary to Rule 1(e) SPR

The further allegations contained in the statement dated 13th March 2009 were that the Respondent:-

4. Behaved in a way likely to diminish the trust people place in the profession contrary to Rule 1.06 Solicitors Code of Conduct 2007.

5. Failed to act in his clients' best interests contrary to Rule 1.04 Solicitors Code of Conduct 2007.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 17th April 2009 when George Marriott appeared as the Applicant. The Respondent did not attend and was not represented.

The evidence before the Tribunal included the Rule 5 Statement, accompanying documentary evidence and limited correspondence received from the Respondent.

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

The Tribunal Orders that the Respondent, Leon Raymond Heron of Heron Solicitors, 35 Wilmslow Road, Cheadle, Cheshire, SK8 1DR, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

The facts are set out in paragraphs 1 - 37 hereunder:-

1. The Respondent, born in 1942, was admitted as a solicitor in 1972. His name remains on the Roll of Solicitors.

2. The Respondent was the sole principal of Heron Solicitors ("the Firm"). The firm specialised in residential and commercial conveyancing, landlord and tenant issues, as well as wills and probate.

3. Between January 2006 and May 2006 the Respondent was retained by SL and YW in relation to the purchase of 17 CD, Wavertree, Liverpool, L15 6WA ("the Property"). The purchase was to be made with the benefit of a mortgage obtained from an institutional lender.

4. Contracts were exchanged in the transaction on 17th February 2006 and the purchase was completed on 26th May 2006. Registration was completed on 25th July 2006 with the property being held by YW and SL as joint tenants.

5. On 7th November 2006 YW complained to the Legal Complaints Service ("LCS"). The basis of the complaint was that the Respondent had failed to act in her best interests by failing to register the property solely in her name. This complaint was made having had an unsatisfactory response from the complaint to the Firm.

<u>The Transaction</u>

6. On 10th January 2006 the Respondent wrote to SL enclosing a written quotation in relation to the purchase of the Property. The file creation printout listed SL as the only client in the matter and listed SL's home address as the only address on file. The printout also acknowledged that SL was an existing client of the Respondent and lived about 1 ½ miles away from the Respondent's office.

7. On the same day a letter was sent to the Respondent from the seller's solicitors which stated the purchase price for the transaction £151,950.00. The letter also confirmed that a £500.00 reservation deposit had already been paid, and that as an incentive the seller would be gifting 5% of the deposit, £7598.00. The £500.00 deposit had been paid by SL. The letter referred to YW being the buyer.

8. On 13th January 2006 a client care letter was sent to SL & YW. The letter was addressed to both SL and YW, but was sent to SL's home address. Amongst other things the letter requested that the clients provided some ID, in order to comply with Law Society money laundering regulations. However, despite this request there were no copies of client ID on file from either client.

9. Confirmation of the instructions was signed on 13th January 2006. This document was sent to the clients with SL's name and home address details already completed by the Respondent.

10. On the file was a note dated 27th January 2006 of a conversation between the Respondent and SL which appeared to have taken place over the telephone. The file note stated:-

> "Re Title at the Property believes that as soon as transaction completed in joint names it can be put in 1 name whilst at L. Registry."

There was no letter on file confirming the advice given during the telephone call, or clarification of the instructions given.

11. With the deadline for exchange of contracts approaching the Respondent wrote to YW and SL on 1st February 2006 requesting the monies for the deposit. Since the seller was providing 5% of the deposit (£7,598.00) and a reservation fee of £500.00 had already been paid, the outstanding amount due was £7,098.00. This was provided on 3rd February 2006 by cheque from YW's personal account. The credit slip recorded that the payment was received from YW only.

12. The institutional lender wrote to the Respondent on 13th February 2006 confirming that a mortgage offer of £104,000.00, plus fees and insurance charges, had been made to YW and SL.

13. Contracts were exchanged on 17th February 2006 recording YW as the purchaser. SL and YW signed the lease which would govern their use of the property and this was returned to the seller's solicitor on 28th February 2006. The Respondent failed to indicate in the lease whether YW and SL were to hold the property as joint tenants or tenants in common. His option was to delete one or the other, but neither was deleted.

14. There was no further documentation on the file until 6th April 2006 when the Respondent was informed that the seller had changed solicitors. The letter stated that there was a considerable amount of unanswered post from the previous solicitors.

15. On 18th April 2006 YW wrote to the Respondent. The letter referred to a conversation which YW had with the Respondent's secretary (for which there is no file note) and requested confirmation of her position regarding the "Deed of Trust"

which SL had previously made enquiries about. There was no record on file of SL making enquiries regarding a Deed of Trust.

16. The letter continued, explaining that SL's involvement in the transaction was to enable YW to obtain a mortgage and that SL would not be financially responsible for repayments. YW expressed concern that whilst she would be making mortgage repayments SL may decide that he wanted to sell the property and would be entitled to half the proceeds.

17. YW also requested an explanation as to her position if the house was held in joint names and SL died intestate. She also requested clarification as to how the Deed of Trust might assist her position and how SL could be removed from the title of the property and the mortgage without YW experiencing any negative repercussions relating to the mortgage repayments.

18. The letter concluded with YW providing the Respondent with her personal mobile phone number and her direct dial at work.

19. The Respondent did not reply to this letter.

20. On 12th May the Respondent received a letter from the seller's solicitor informing them that the property was completed and a file note recorded the up coming completion date as 26th May.

21. On 16th May 2006 the institutional lender confirmed the sum of £105,000.00 was to be paid into the nominated account which had been provided by the Respondent.

22. On the same day the Respondent wrote to YW and SL enclosing a draft Declaration of Trust. The Respondent requested that this was signed in the presence of a witness and returned undated. The letter also enclosed a mortgage deed and a Land Transaction Return form to be completed and signed by both clients. The Trust's effect, if executed, was that YW and SL would hold the property and the proceeds of any sale for YW only.

23. The letter also included a copy of the Firm's professional charges for conduct of the matter as well as a completion statement, highlighting the monies due to complete of £34,118.76.

24. A credit slip dated 19th May 2006 showed the payment of the completion monies to the Firm. The full amount due was paid by way of cheque from YW's personal account and the slip recorded payment from YW only.

25. On 22nd May the Respondent sent an Inland Revenue form toYW and SL to complete. He also requested the return of the mortgage deed which had been previously sent to them. No enquiries were made as to the status of the Declaration of Trust which had been sent to the clients at the same time. At no time in the file did the Respondent query the whereabouts or status of the Declaration of Trust.

26. On 25th May £105,000.00 was received from the Institutional Lender.

27. On 26th May £143,963.63 was paid to the seller's solicitor on completion of the transaction. On the same day the Respondent wrote to YW and SL confirming completion of the purchase and informing them that following stamping and registration the title deeds would be forwarded to the mortgagor. Effectively the Respondent considered his instructions completed.

28. Stamp Duty was paid on 30th May 2006. The Land Registry registration fee was requisitioned by the Respondent on 9th June 2006 and the First Registration Form (FR1) was sent by the Respondent together with the fee of £150.00 and was received by the Land Registry on 13th June 2006. The form FR1 is the document which governs the type of legal title YW and SL would hold the property under. Under Section 11 the Respondent had three choices upon which he would need to take his clients' instructions namely whether they were to hold as joint tenants (the option he chose), whether they were to hold as tenants in common, or whether they were holding the property for example as trustees of an estate. There was no note on the file to the effect that the Respondent had discussed which option to complete and it is inconceivable that the option he chose would be the instructions from YW in view of her earlier stated concerns. Registration was completed on 25th July 2006.

29. The Respondent contacted the SRA on 3rd December 2008 requesting assistance from the SRA with regards to the storage of his old client matter files. He informed them that he had closed his practice due to economic reasons and for the same reason was unable to maintain payments to the storage facility where he archived his files.

30. The SRA replied and informed him that it was his responsibility to retain his old client matters and the only circumstances in which the SRA could take charge of a solicitor's files would be by way of an intervention. The SRA also informed the Respondent that if his practice was intervened into he would be liable for the associated costs.

31. The Respondent wrote further to the SRA questioning an intervention. He further stated that he had resigned from the Law Society on 26th September 2008 and had not applied to renew his practising certificate. He therefore felt that he owed no obligations to the SRA or the Law Society. This submission was repeated on a number of occasions.

32. The SRA submitted that the Respondent's position in this regard was misconceived and incorrect.

33. The SRA asked the Respondent about his intention for the preservation of clients' files. He replied stating:-

> "I require your directions and confirmation that you will take over responsibility for such storage. In the event that this is not the case I regret that I shall have no alternative but to inform the storage company of my inability to continue to make payment and leave the matter in their hands as to whether or not they destroy the content"

The Respondent also sought confirmation that his name had been removed from the Roll.

34. The Respondent provided the SRA with the details of the company where his files were stored.

35. On 15th January 2009 the SRA received a complaint from the storage company explaining that the Respondent had failed to provide payment for the use of storage facilities since September 2008. In total the Respondent was in arrears to the sum of £639.20.

36. The SRA contacted the storage company to ensure that no files were destroyed.

37. On 26th January the Respondent stated that he had no liability to the Law Society as he had satisfied all requirements to his former clients.

The Submissions of the Applicant

Conflict of Interest

38. A solicitor should not act in a situation where a conflict of interest (or a significant risk of a conflict of interest) arose between two or more clients. Where a solicitor was acting for two or more clients in the same matter and a conflict or significant risk of conflict arises, then the solicitor should cease acting for all clients.

39. The Applicant submitted that where a solicitor was acting for two clients in the same transaction, and it became apparent during the transaction that their instructions differed, or there were facts of it which should have caused him concern, then he was on notice of a conflict of interest or potential conflict of interest and should have ceased to act in the transaction for both clients, unless his instructions from both clients confirmed that there was no conflict.

40. The salient points in this transaction were as follows:-

The file was opened only in the name of SL.

The letter from the seller stated that YW had paid the reservation fee.

The Respondent knew the property was nonetheless a joint purchase between SL and YW.

The Respondent was on enquiry as to a transfer at the Land Registry to one of his clients.

The deposit of £7,098.00 was paid from funds belonging to YW.

The mortgage was in joint names.

YW wrote to the Respondent on 18th April 2006 seeking advice as to her position.

The completion monies totalling £34,118.76 were paid from funds belonging to YW.

The Respondent did not reply to YW's letter of 18th April 2006, but sent, without any advice, a Deed of Trust for execution by SL and YW.

The Respondent completed the transaction without the Declaration of Trust being executed.

The Respondent failed to specify in the lease how his clients were to hold the property.

The Respondent told the Land Registry to register his clients as joint tenants. The effect of which would be that if one died the property would automatically pass to the survivor irrespective of any testamentary provisions or intestacy.

Best Interest

41. As a result of the way the Respondent executed the transaction he failed to act in the best interests of his client YW in that he:-

Failed to give advice to YW concerning apportioning the share she held to reflect the contributions she made.

Failed to respond to YW's letter of query of 18th April 2008.

Failed to ensure that YW's instructions were taken concerning the Declaration of Trust even though he knew the role of SL in the transaction.

Failed to explain properly or at all the various options open to YW concerning her investment.

Charging £125.00 + VAT for a Declaration of Trust without an explanation of its effect and without querying with YW why it was not executed.

Failed to specify in the lease how the property was to be held.

Registered both his clients as joint tenants.

Investigation and Explanations

42. Following completion of the transaction and registration YW complained to the Respondent. She wished to know whether the deposit and completion monies which she had paid out of her personal account had been secured satisfactorily in her name. She drew attention to the fact that the issues raised in her letter of 18th April had never been responded to. There was also an issue regarding title deeds and postage, which was resolved at the time of adjudication by the LCS.

43. The complaint made reference to a letter sent by the Respondent to YW, on 21st August 2006, shortly after completion of the matter. The letter stated that throughout the transaction the Respondent had had the interests of YW and SL at heart.

> "We consider that we have conducted this transaction throughout in a proper and reasonable manner and forwarding (sic) appropriate information as and when required"

44. The letter continued:-

> "Our understanding from both of you (YW & SL) in respect of this transaction was that… (SL)… was assisting you in the purchase of the property by virtue of utilising his status to facilitate the granting of a mortgage to enable you to purchase the property".

45. The letter also stated that the Respondent had been advised that the Declaration of Trust was not being dealt with at the time of completion. However, the Respondent did not state who or how he was advised of this information and there is no record of this information on the transaction file.

46. The Respondent replied to YW's complaint on 1st November 2006. The letter confirmed that the deposit on the property had been secured on the basis that the property was held jointly between YW and SL. The letter enclosed copies of the lease signed by YW and SL and the Land Registry title which referred to both clients. The letter also explained that in order to remove SL from the title and mortgage YW must apply to Northern Rock for consent and then obtain SL's consent. The Respondent suggested that it would cost £250.00 to deal with this. The Respondent did state that the Deed of Trust could still be used if Northern Rock refused to grant consent but again this would require SL's consent.

47. YW then complained to the LCS that the Respondent had failed to act in her best interest in protecting her investment in the Property. She wrote further to the LCS providing information as to the financial input that she and SL had in relation to the purchase of the Property, as well as the continuing responsibility under the mortgage. YW also confirmed that due to her occupation she did not have the opportunity to visit the Respondent's offices.

48. On 9th January 2007 the LCS wrote again to the Respondent setting out the precise nature of the complaint. The Respondent was asked to provide letters and attendance notes containing the instructions he received from the clients with regards the Declaration of Trust and also the advice provided to YW regarding protecting her interest.

49. The Respondent was also asked about the advice he gave YW before completion in view of the declaration not being returned, signed, and the general advice given regarding YW being the sole investor in a property where someone else could accrue rights.

50. The Respondent wrote to the LCS on 15th January 2007. An email was attached to the letter from SL, which the letter stated it would be relying upon in response to the LCS.

51. The email was dated 8th November 2006 and was from SL. The email made reference to the complaint made by YW against the Respondent, although it is not known how SL obtained this information. The email stated that all matters were conducted

properly and professionally and YW was fully aware of the significance and implications of the formalities. SL stated that both he and YW attended the offices of the Respondent and that YW had the opportunity to ask questions then.

52. SL stated that they had a joint mortgage and requested a joint purchase. It also stated that both YW and SL contributed to the property and should be considered as joint owners; however, the email did not go into detail as to the exact contributions by each party. SL contended that YW's assertion that the property should be registered in her own name was wrong and moreover she knew that it was wrong. It further stated that the complaint against the firm was motivated by YW's malice towards SL. SL finally stated that if the property was sold he would require his share of the equity.

53. The SRA submit that at the time of the transaction the Respondent was aware of SL's contribution to the purchase, in that he was being used solely to assist in obtaining a mortgage for YW. Furthermore the SRA submit that the Respondent was aware that only YW would be responsible for mortgage repayments.

54. The Respondent provided a response to the LCS's letter on 24th January 2007. It stated that SL was an existing client of the Firm and he had provided SL with a quote on the purchase of a property. He stated that he learnt a short time after that it was to be a joint purchase in the names of SL and YW.

55. The Respondent stated that he was unable to provide the LCS with attendance notes as SL was in the habit of calling into the office without an appointment and talking to the Respondent's secretary. He stated that YW never attended the offices. This statement is in direct contradiction to SL's email of 8th November 2006.

56. The Respondent stated that the Declaration of Trust was retained by the clients as it appeared SL refused to sign it. However, YW and SL were intent on completing the transaction in accordance with their contractual liability.

57. The Respondent admitted that no reply was sent to YW's letter of 18th April. He stated that he was on leave at that time and on his return the letter was not brought to his attention.

58. On 30th March the LCS requested further information from the Respondent namely letters and attendance notes as evidence of the Respondent's assertion that he accepted instructions from both SL and YW as well as evidence of the advice that they were given. These were never provided.

59. With regards the Declaration of Trust the LCS requested copies of the advice given regarding the declaration as well as details as to who provided instructions to draft the declaration. The LCS also wanted to know who provided the Respondent with the information that YW and SL were not dealing with the declaration at the time of completion. Again this information was never provided by the Respondent.

60. The SRA submitted that the Respondent had failed to properly record instructions and had failed to confirm instructions with SL and YW. The conveyancing file had no record of instructions provided by the clients, very few attendance notes and no letters to the clients confirming instructions or advice.

61. On 20th April the Respondent wrote to the LCS stating that he considered that he had answered the queries raised by YW. He stated that he considered he was stuck in a family separation matter which had no relevance to his conduct during the transaction. He enclosed chronology of the matter which he said he would be relying upon.

62. According to the timeline of events, SL obtained a quotation from the Respondent on 10th January 2006, however, it was not until February 2006 that the couple decided to purchase the flat together.

63. On the topic of the Deed of Trust, the timeline stated that SL suggested the Deed of Trust as a "generous gesture". YW wrote to Herons asking about the Deed of Trust, its meaning and effect and that despite not having received a reply from the Respondent decided that they would proceed without it. SL's financial contribution to the purchase of the property came from allowing YW to live with him without charging her housekeeping. The estimated value of this contribution was £6,000.00.

64. According to the synopsis the Respondent acted with professionalism and correctness throughout the transaction.

65. The SRA submitted that this timeline must have been created by SL. The final paragraph referred to explaining procedures to "both of us" as well as the Respondent having "acted within our instructions". Despite stating that the Respondent acted with instructions and advised both clients, no evidence of the instructions given by the clients or the advice given by the Respondent was provided in the letter.

66. The LCS informed the Respondent that the matter was being referred to the SRA. In reply he commented that he did not propose to comment further on that matter as he had a "jaundiced view about the bias of such Service".

67. The SRA wrote to the Respondent on 20th November 2007 setting out the allegations against him and inviting his comments.

68. The Respondent replied on 26th November stating his surprise that the matter was still ongoing. He stated that he was caught between two parties, one of whom would maintain that he had acted properly throughout the transaction. The Respondent stated that despite disagreeing with the adjudicator's findings he paid the compensation to YW as well as the investigation costs. In conclusion he requested confirmation that the investigation would be terminated.

69. The SRA wrote further to the Respondent and informed him that the matter had been referred to them by the LCS and as such they had an obligation to investigate it.

70. The Respondent replied to the SRA and reiterated his view that he had not failed to apply the correct conduct rules during the transaction. Furthermore he reiterated that SL would give evidence if required that would back up his position. The Respondent stated that he could not see how he could give any more information.

71. The SRA wrote to the Respondent on 5th February 2008 explaining the different roles of the SRA and LCS. The letter pointed out that the Respondent relied heavily on the evidence of SL. However, since one of the allegations related to a conflict of interest

and favouring SL's interests over YW's the SRA caseworker was unsure how persuasive SL's evidence would be.

72. The Respondent replied to the SRA again confirming that he had nothing further to add to comments already made. He denied acting in a conflict of interest.

73. On 2nd April the SRA forwarded a copy of the caseworker's report to go before the Adjudicator and invited the Respondent's comments.

74. The Respondent commented on 9th April 2008. He stated that the issue of the Declaration of Trust was raised by SL alone. It was drafted and then it was decided by SL and YW that it was unnecessary. The Respondent stated that SL and YW frequently attended his offices. This was despite previously stating that YW had never attended the offices.

75. On 2nd May the Respondent was notified that his conduct had been referred to the Solicitors' Disciplinary Tribunal.

76. On 26th January the Respondent stated that he had no liability to the Law Society as he had satisfied all requirements to his former clients.

77. The SRA submitted that the Respondent's statement was again misconceived. The SRA submitted that the Respondent had failed to arrange confidential storage of his clients' files in line with his continuing duty of confidentiality and in the best interests of his clients.

78. On 2nd February 2009 the SRA resolved to intervene into the Respondent's practice on the grounds that it had been abandoned.

79. On the same day the Respondent made further representations to the SRA. He refuted any suggestion that he had abandoned his practice and stated that he had taken all appropriate steps necessary regarding the closure of his practice. He stated that he wrote to his clients advising them of the closure of the practice and invited them to collect their files and any monies held on their behalf.

80. The SRA submitted that the Respondent had abandoned his practice by failing to make all appropriate steps for its closure. The Respondent stated that his practice closed on 26th September 2008. However, he did not contact the SRA regarding the storage of his files until 3rd December 2008 by which time he was already overdue with his monthly payments to the storage company. The SRA submitted that the Respondent failed to consider the stored files when deciding to close his practice.

81. The SRA also submitted that the Respondent had failed to act with integrity and had behaved in a manner likely to diminish public confidence in the profession. The Respondent closed the practice on 26th September 2008. However, he continued to utilise storage facilities for client files, incurring outstanding costs which he had failed to pay.

The Submissions on behalf of the Respondent

82. The Respondent indicated to the Tribunal that he would not be attending the hearing and blamed his partner as being responsible. He confirmed that he was content for the hearing to proceed in his absence. Post was no longer being sent to the Respondent because of the difficulties that were being encountered but the Applicant had sent correspondence by email which the Respondent confirmed he was content to receive.

83. The Respondent denied the allegations and maintained that he had acted in the best interests of his clients. He explained that due to financial difficulties he was unable to attend in person or make professional representations. He had not appealed against the intervention as he had no intention of practising as a solicitor.

The Findings of the Tribunal

84. Of the allegations the Tribunal found all but the fourth allegation proved. The Tribunal was not satisfied that the Respondent, by his conduct, had behaved in a way that was likely to diminish the trust which people placed in the profession.

85. The Tribunal was satisfied that the Respondent had received notice of the hearing and had confirmed that he would not be attending. Whilst not approving of service by email, ordinarily without reference to the Tribunal, in this case the Respondent had confirmed receipt of the papers.

86. The supplementary statement dated 13th March 2009 related to the abandonment of the Respondent's practice and by doing so he would have allowed the files to be 'scattered to the wind' had the SRA not intervened. The Tribunal was concerned that whilst the Respondent had indicated in correspondence that the files were in storage, the Applicant clarified that the rent on that storage was not being paid which would have resulted in the files being destroyed.

87. The Tribunal were of the view that the SRA had behaved badly in failing to check the position of the clients. The Tribunal recognised that there had been a breach of duty on the part of the Respondent but disputed whether it amounted to professional misconduct or that it would result in diminishing the trust people placed in the profession. If for example the Respondent had been adjudged bankrupt, the Respondent would not have been before the Tribunal on the issue of the storage of files. Had the Respondent not told the SRA about the problems he was having with files, they would not have known there was an issue.

88. The allegations concerned mortgage matters where there was a conflict of interest. The conflict matters should have been obvious to the Respondent but he turned a blind eye to the issues. The Respondent should have ceased acting as soon it became clear there were conflicting instructions. He took no steps to confirm from the clients that an issue did not arise. The manner in which the transactions were executed meant that he failed to act in the best interests of the clients.

Previous Findings

"An application was duly made on behalf of the Office for the Supervision of Solicitors by Peter Harland Cadman solicitor of 2 Putney Hill, Putney, London, SW15 on 24th March 1997.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he had:-

(a) contrary to Rule 1 of the Solicitors Practice Rules 1990 and Principle 15.01 accepted instructions, or continued to accept instructions to act as solicitor for clients where there was a significant risk of conflict of interest.

(b) failed to disclose material information to clients.

(c) been in breach of his duty to inform his building society client of all relevant information.

(d) improperly acted as solicitor for client, mortgagor and mortgagee in the same transaction.

(e) behaved in a manner that was unbefitting a solicitor of the Supreme Court.

The facts are set out in paragraphs 1 to 10 hereunder:-

1. The Respondent, born in 1942, was admitted as a solicitor in 1972. At the material times he practised in partnership under the style of Philip Conn & Co solicitors at Lincoln House, 1 Brasenose Street, Manchester.

2. Following due notice the Investigation Accountant of the Law Society carried out an inspection of the Respondent's firm's books of account. A copy of the Investigation Accountant's report dated 9th November 1995 was before the Tribunal. The Respondent had retired from that practice on 31st December 1994 upon terms agreed and recorded in a formal deed of retirement. At the time of the hearing the Respondent was practising in another partnership. At 30th September1995 the books of the firm were in compliance with the Solicitors Accountants Rules in all material respects. A list of liabilities to clients as at 30th September 1995 had been produced for inspection and the items were in agreement with the balances shown on the clients' ledger and an equivalent amount was held in client bank and building society accounts at that date after allowances for uncleared items.

3. The Investigation Accountant went on to report other matters relating to conveyancing transactions of which the Respondent had conduct. There were four such matters causing concern, the details of which were as follows:-

Property at 70 G Road, Cheadle

4. In this transaction the initial vendor of the property was represented by another firm of solicitors. The Respondent acted for Mr AJ who paid to the initial vendor the sum of £141,000. Mr AJ, by way of sub sale, sold the property to Mr and Mrs AF (for whom the Respondent also acted) at the price of £172,500. Mr and Mrs AF purchased the property with the benefit of a mortgage advance from Skipton Building Society the net advance being £155,250. The Respondent acted also for Skipton Building Society. The Investigation Accountant suggested that no deposit had been paid by Mr and Mrs AF in connection with their purchase. The Respondent said that a deposit of £14,100 was to be paid by Mr and Mrs AF and he believed that that sum was received by Philip Conn & Co and had been paid. The Investigation Accountant in evidence said that the name on the ledger account to which £14,100 had been credited was not the name of any of the clients involved in the transaction. One bill of costs had been raised to Mr and Mrs AF. No bill appeared on the file for costs payable by Mr AJ. The costs and disbursements had been £2,589.50, the balance of purchase monies had been £126,900 and payment had been made to or on behalf of the vendor Mr AJ of £25,760.50. The transaction was in the nature of what had come to be known as a "back to back" transaction. Skipton Building Society had not been notified of the nature of the transaction or the difference in the original sale and sub sale purchase prices.

Property at 18 G Gardens

5. The initial vendor had been represented by another firm of solicitors. The Respondent represented Mr KJ who bought the property from the initial vendor at a price of £80,000 and sold it by way of sub sale to Mr NZ, for whom the Respondent also acted, at the price of £130,000. Mr NZ purchased the property with the assistance of a net mortgage advance of £115,830 from North of England Building Society. North of England Building Society was also represented by the Respondent in the transaction. On the file a bill of costs had been drawn naming Mr NZ as the debtor in the sum of £3,106.13. The Investigation Accountant reported that payments had been made by or on behalf of Mr KJ (the first purchaser) in the sum of £32,723.87. There did not appear to have been a bill drawn in respect of the work undertaken on behalf of Mr KJ. No deposit was paid in this transaction but it was said that contracts were exchanged on 10th December 1991 and completion was effected on 11th December 1991 and the Respondent did not consider it to be unusual that there was to be no deposit payable on exchange of contracts in such circumstances. North of England Building Society had not been notified of the "back to back" nature of the transaction and the difference in the two purchase prices.

Property at 42 G Gardens, Altrincham

6. Another firm of solicitors had acted for the initial vendor. The Respondent acted for Mr KJ who paid a purchase price of £82,000. The Respondent acted also for Mr NZ who purchased the property from Mr KJ at the price of £140,000. Mr NZ effected his purchase with the assistance of a net mortgage advance of £112,000 from Leek United Building Society, for whom the Respondent also acted. The file revealed that a bill had been raised to Mr NZ, the costs and disbursements being £1,020.50. There appeared to have been no bill payable by Mr KJ for the work done on his behalf. The Investigation Accountant reported that payments made to Mr KJ or on his behalf amounted to £28,979.50. In this matter there did not appear to have been a record of any stamp duty having been paid. The initial vendors who were separately represented, wished for a swift transaction and contracts were exchanged and completion took place simultaneously on 25th February 1992. Neither contract provided for the payment of deposit in view of the fact that exchange and completion were to be simultaneous. Leek United Building Society had not been notified of the back to back nature of the transaction.

Property at 152 M Road, Wilmslow

7. Another firm of solicitors acted for the original vendor. The Respondent acted for Mr AH who purchased the property at the price of £120,000 and effected an immediate sale to Mr and Mrs AF (for whom the Respondent also acted) at the price of £285,000. Mr and Mrs AF purchased the property with the assistance of a net mortgage advance from Britannia Building Society, for whom the Respondent also acted, in the sum of £274,543.75. The Investigation Accountant reported that the ledger had been set up in the name of NZ. When the Respondent first received the agent's particulars in this matter it appeared that Mr NZ had agreed to buy the property. The Respondent was subsequently instructed by Mr AH. The file and ledger had already been opened in the name of NZ and the Respondent continued to use that file and ledger rather than open a new one for Mr AH. Yorkshire Building Society selling as mortgagee in possession had pressed for speedy progress. The Respondent accepted that he believed no deposit passed through his hands or that of his firm from Mr and Mrs AF to Mr AH. However the Respondent had been advised by Mr AH that the sum of £35,000 had been paid to him in cash on 27th May 1993 by Mr AF in respect of the deposit. The Respondent considered he had no reason to question that considering that the transaction had been negotiated by members of an identifiable ethnic community where it was not unusual for matters to be dealt with in this way. The Respondent did not notify Britannia Building Society of the back to back nature of the transaction. It subsequently transpired that Britannia Building Society took possession proceedings in March 1995 against Mr and Mrs AF when it had been sold by the Society as mortgagee in possession at a price in the region of £225,000. A claim had been made against the Respondent's former firm by Britannia

Building Society in respect of losses sustained by it. It appeared that the sum of £120,000 had been paid to Messrs Hammond Suddard who had acted for Yorkshire Building Society, the initial vendor of the property as mortgagee in possession. The Investigation Accountant reported that payments had been made to or on behalf of the vendor totalling £121,905.87. In fact a payment of £10,000 had been recorded as being made to Mr and Mrs A and the sum of £111,905.87 was recorded as payable to "NZ-Cash". In this matter three bills had been raised two to Mr AH respectively relating to his purchase and his sale and one to Mr and Mrs AF. The total costs and disbursements were £5,637.88 which included two payments of stamp duty.

8. The Investigation Accountant told the Tribunal that he had not discussed the matter with the Respondent and had not therefore been in receipt of any explanation.

9. The Respondent told the Tribunal that in each of the conveyancing transactions in respect of which complaint had arisen, the purchasers and vendors for whom he acted were all established clients. Indeed they were clients for whom he had acted before becoming a member of Messrs Philip Conn & Co and the clients had followed him to that firm from his previous firm.

10. In none of the transactions had he had any sight of the mortgage application form nor of the valuation report. In each case the building society was satisfied that the property provided sufficient security for the amount of the mortgage advance. In respect of 70 G Road, Cheadle the Respondent had also been instructed in connection with a second charge secured on the property by National Westminster Bank plc which lender clearly also had been satisfied as to the valuation of the property. The fact that the transactions had proceeded by way of sub sale was open and above board and clearly set out in the conveyancing documents. The Respondent and his firm had derived no financial advantage from acting in the transactions other than proper fees for work undertaken. In none of the transactions had the relevant building societies required the solicitor instructed to make it known to them that the mortgagor's purchase was to proceed by way of sub sale and that there was a difference in the initial and subsequent purchase prices.

The Findings of the Tribunal

11. The Tribunal found all of the allegations to have been substantiated.

The Reasons

The members of the Tribunal could not fail to comment upon the paucity of evidence placed before them in particular by the Respondent who was alleging two of the lay clients in each transaction were established clients. On the face of it the Respondent in the four transactions concerned acted for a vendor selling by way of sub sale to

a purchaser and for that purchaser's mortgagee in circumstances where a substantial profit was taken by the second vendor against the second purchaser where the Respondent acted for both parties. It had been the Respondent's contention that both of those parties were fully aware of the profit taken by the vendor in that transaction.

The Tribunal had borne in mind the much greater awareness of the potential for mortgage fraud existing at the date of the hearing than existed at the time when the transactions took place. However the Tribunal consider that a solicitor acting for both sub vendor and sub purchaser in such circumstances should have been extremely cautious before acting for both parties in each transaction.

The Tribunal had been told the view that both sub vendor and sub purchaser had been members of the same ethnic community, were aware of the particularities of the transaction, had discussed matters and indeed had arranged for payments to be made inter se without involving the Respondent or his firm. The Tribunal considered that it might well be argued that members of an ethnic community who are not allowing their solicitor to deal with the totality of the transaction on their behalf might well be placing themselves or third parties at greater risk of conflict of interest than would be the case in an ordinary arm's length transaction where ethnic minority or cultural similarities played no part. A solicitor should be even more on the alert in such circumstances.

It had been alleged that all of the private individual parties to these transactions were established clients of the Respondent. The Respondent himself had deduced no corroborative evidence that these clients were already established as clients of him or his firm. The Tribunal consider it highly desirable that in any conveyancing transaction where a solicitor is acting for both vendor and purchaser he should append a memorandum to the file setting out why that solicitor believes the matter falls within the exceptions to the generality of Practice Rule 6, namely that a solicitor or solicitors practising in associated practices must not act for both seller and buyer on a transfer of land for value at arm's length unless one of the specified exceptions to that Rule can be shown.

There is no doubt that the Respondent should have been put on notice that the matters required particularly careful consideration as the sub purchasers were the same person in two of the transactions and the same person in the other two transactions. The vendor was the same in two transactions with the same sub purchaser.

A solicitor must not ignore the fact that a lending institutional client is a client and is entitled to the same protection as a private individual. The Tribunal is in no doubt that the fact that the transaction to the lending institutional client borrower proceeded by way of sub sale and that there was a very large discrepancy between the two purchase prices was material information which should have been disclosed to

the lending institutions even if the solicitor's written instructions were not specific in that area. That failing on the part of the Respondent meant that he had failed to disclose material information to his clients and had been in breach of his duty to inform his building society clients of all relevant information. It was clear that allegation (d) referred to the fact that the Respondent had acted for a purchasing vendor, a sub purchaser and a building society lender in the same transactions in circumstances that were improper.

The fact that a private individual was purchasing a second domestic property with the assistance of a mortgage on which he would obtain tax relief under Miras was also a matter which should cause a solicitor alarm and cause him to consider whether facts existed which he was under a duty to report to his mortgagee client.

The Tribunal gave consideration to imposing a sanction that would have prevented the Respondent from continuing in practice. Solicitors who are instructed in transactions which float any suspicion of fraud run a very grave risk. Members of the solicitors' profession were well aware that there were certain obvious "triggers" which should alert them to the potential for fraud and solicitors should thereafter monitor transactions with extreme care and review their own professional position. Solicitors do, of course, have a duty to protect their institutional lender clients.

The Tribunal have borne in mind that no dishonesty has been alleged against the Respondent. The allegations have been substantiated to the effect that the Respondent did not take the steps which he should have done. The Tribunal have also borne in mind that the Respondent was supported by excellent references. It was clear that he had worked honestly and competently as a solicitor over a long period of time. The Tribunal accept that the four transactions placed before them had been conducted by the Respondent in a way that was out of character. The Tribunal further accept that the Respondent had suffered a great deal both from the attitude of his former partners and the fact that he had lost a considerable sum of money in reaching an agreed alteration to the terms upon which his former partnership was determined following notification of a claim or claims by the lending institutional clients in the transactions in question.

The Tribunal have also noted the considerable period of time which has elapsed since the transactions took place.

In order to mark the seriousness with which they view the Respondent's failures they imposed upon him a fine of £5,000 and ordered him to pay fixed costs in a substantial sum which included the costs of the Investigation Accountant of the Law Society."

89. The Tribunal had regard to the previous findings and this placed these allegations in a new light as he had employed a similar modus operandi in respect of those previous matters.

90. The Tribunal Ordered that the Respondent, Leon Raymond Heron of Heron Solicitors, 35 Wilmslow Road, Cheadle, Cheshire, SK8 1DR, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 23rd day of July 2009
On behalf of the Tribunal

L N Gilford
Chairman