SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10763-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW DONALD VARLEY Respondent

Before:

Mr I. R. Woolfe (in the chair)
Miss T. Cullen
Mr. D. E. Marlow

Date of Hearing: 10 and 11 March 2015

Appearances

Mr David Barton, Solicitor Advocate, Flagstones, High Halden Road, Biddenden, Ashford, Kent, TN27 8JG for the Applicant

Mr Andrew Nuttall of Counsel, Lincoln House Chambers, Tower 12, The Avenue North, Spinningfields, 18-22 Bridge Street, Manchester M3 3BZ instructed by Farleys Solicitors LLP for the Respondent who was present

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JUDGMENT

Allegations

1. The allegations against the Respondent were as follows:

1.1 In breach of Rules 1.02 and/or 1.06 of the Solicitors Code of Conduct 2007 ("the Code") he failed to act with integrity and/or failed to act in the best interests of his clients (C&G and HBOS);

1.2 In breach of Rule 1.03 of the Code he allowed his independence to be compromised;

1.3 He failed to comply with Money Laundering Regulations and in doing so acted in a way that was likely to diminish the trust the public placed in him or the profession in breach of Rule 1.06 of the Code;

1.4 In breach of Rule 9.01 of the Code when receiving referrals of clients from a third party (DW/SD) he compromised his independence and/or his ability to act and advise in the best interests of his lender clients;

1.5 In breach of Rule 22 of the Solicitors Accounts Rules 1998 he withdrew money from client account in circumstances other than permitted by that Rule.

Allegation 1.5 was admitted; all the other allegations were contested.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 8 June 2011 with exhibit DEB 1
- Statement of costs dated 4 March 2015

Respondent

- Answer of the Respondent
- Extract from The Law Society's Conveyancing Handbook 13th Edition
- Extract from The Law Society's Anti-Money Laundering Practice Note
- Respondent's Personal Financial Statement dated 7 March 2015

Factual Background

3. The Respondent was born in 1950 and was admitted to the Roll of Solicitors in 1976. His name remained on the Roll.

4. At all material times, the Respondent carried on practice on his own account as A D Varley & Co ("the firm") in Preston, Lancashire.

5. On 1 December 2009, Mr Gordon Hair, an Investigation Officer ("IO") employed by the Applicant commenced an investigation of the books of account and other documents of the firm. He prepared a Forensic Investigation ("FI") Report dated 10 May 2010.

6. The FI Report recorded that during the period June 2007 to April 2008, the Respondent conducted property purchase transactions referred to him by DW of S Developments Ltd ("SD"), in which he acted for both buyer and lender. Each such transaction followed the same pattern and the lender was either C&G or HBOS.

7. In his comments on the FI Report, the Respondent stated that DW had contacts with the lenders and was able to expedite the issue of mortgage money. DW "was someone who facilitated the speedy completion of these transactions". The Respondent also said that M Mortgage Brokers ("MMB") dealt with mortgage applications for people introduced by DW. MMB arranged the mortgages and provided client identification for money laundering purposes.

8. On the same day as the IO commenced his investigation, Nottinghamshire police searched the firm's offices and seized a number of client files relating to transactions introduced by DW. (Proceedings against the Respondent were later abandoned.) The IO subsequently reviewed five of those files. The reviews and subsequent meeting with the Respondent on 5 March 2010 revealed certain common factors in the transactions.

9. The Respondent in his representations stated the following:

- DW cold called the firm having viewed its website;
- DW wanted transactions completed quickly and in some cases in seven days;
- DW could get mortgage advance monies within 24 hours;
- DW had a contact with HBOS with whom the Respondent should communicate who was able to "sort things out";
- If the Respondent was able to complete transactions quickly that would be reflected in fees, which were between £1,000 and £1,500 plus VAT;
- All the clients had DW as their first point of contact. It was DW who told them that they would have to pay higher than normal fees if they wanted the transactions completed quickly;
- In most cases DW/SD paid the fees, agreed between the purchaser and DW. Buyers paid double the normal rate;
- DW told the Respondent he would act as the client's agent and speak both to the Respondent and the lender to expedite the transactions. The Respondent also stated that in every case, the clients appointed DW as their agent and this:

> "...authorised me in effect to surcharge each client a nominal amount to cover any general expenses I might have which could either not be attributed individually to a client's file/ledger, or which related to aborted matters. This is the little bit of insurance";

- DW gave instructions on how stamp duty land tax (referred to as "stamp duty") was to be calculated and that the Respondent was at liberty to retain surpluses generated by this to cover additional fees and expenses;
- The Respondent neither met nor spoke with his purchaser clients and spoke only with DW;
- The Respondent had no written agreement with DW;
- The Respondent said that he knew that MMB was FSA registered;
- The Respondent described the fee paid to DW as a finder's fee;
- The Respondent acknowledged that the payments at the heart of the investigation were odd or unusual, but believed that he took appropriate steps to deal with that.

10. In the Rule 5 Statement, three of the five transactions examined by the IO were exemplified:

Mr C and purchase of 4 RC

11. According to the ledger, the file was opened on 23 November 2007 naming the Respondent as the fee earner.

12. The purchase was completed on 7 December 2007. C&G advanced £237,450 towards the purchase price of £249,950 as stated in the mortgage offer to the purchaser and instructions to the firm to act on its behalf. This equated to a loan to value ratio of 95%. The instructions specifically required the Respondent to tell C&G if its understanding about the purchase price was incorrect.

13. The Certificate of Title dated 7 December 2007 was unqualified and thereby confirmed compliance with all instructions. On the same day the mortgage advance was received into the Respondent's client account and £215,118.42 was sent to the seller's solicitors to complete. In addition, and on the same day, the sum of £17,822.58 was paid out of client account accompanied by the ledger narrative "FEE TO [TJ]". This was a payment made on the instructions of DW in a letter written by him on MMB notepaper, undated but showing a faxed transmission date of 7 December 2007. It asked for "... my funds to be paid into the above account." It gave account details in the name of Mr TJ. No other money was received and so C&G funded the purchase of the property in full, the fee paid on DW's instructions and all associated costs and fees. The purchaser provided nothing.

14. According to the Land Registry Register of Title, the price stated to have been paid was £249,950.

Mr L and the purchase of 323 T Road

15. According to the ledger, the file was opened on 14 August 2007 naming the Respondent as the fee earner. The purchase was completed in only three days on 17 August 2007 with a mortgage from HBOS.

16. HBOS advanced £200,305 against the purchase price of £206,500, a figure contained in the lender's instructions. An unqualified Certificate of Title was found on the file dated 17 August 2007, the date on which HBOS remitted £200,275 to the Respondent's client account ready for completion.

17. The Respondent sent the seller's solicitors £164,996.76 to complete and paid to DW's nominee Mr TJ, the sum of £31,715.76.

18. According to the Land Registry Register of Title, the price stated to have been paid was £206,500.

Mr B and the purchase of AL

19. According to the ledger, the file was opened on 23 November 2007 naming the Respondent as the fee earner. The purchase was completed on 18 December 2007 with a mortgage from HBOS.

20. Mr B's address was given by MMB as 4 RC, which was the address of the property bought by Mr C earlier the same month. The transaction files were opened on the same date, 23 November 2007. The IO found a letter on the matter file dated 13 December 2007 written on MMB's letterhead stating:

> "We have visited Mr [B] at 4 [RC...] on the 10/12/07.
>
> He has only been in the property for a very short period time and is due to move out this weekend therefore we only have proof of residence from his previous address on file."

21. The mortgage instructions enclosed a copy of the mortgage offer. The Conveyancer's Notes in the offer stated that the purchase price was £695,000 against which HBOS was to advance a mortgage of £625,500 equivalent to 90% of the purchase price.

22. The unqualified Certificate of Title was dated 13 December 2007 and the ledger showed the receipt into client account of the net mortgage advance of £625,470 on 14 December 2007.

23. On 18 December 2007, the day of completion, £591,600 was sent to the seller's solicitors to complete the purchase. The ledger also showed a receipt into client account of £65,048.63 accompanied by the narrative "funds received from client" and on the day of completion, in addition to the money sent the seller's solicitors, the sum of £68,394.50 was sent from client account with the narrative "Funds to [JF]"

24. The seller's solicitors CP Solicitors ("CP") raised an issue about the way that it was requested by the Respondent's firm to deal with the completion which resulted in an exchange of correspondence.

25. The Land Register entries showed that Mr B's purchase was registered stating the amount paid on 18 December 2007 to be £695,000 and according to the Land Transaction Return the total consideration paid in money or money's worth was stated to be £667,200.

26. The aggregate of the money paid to nominees of DW by the Respondent, in the manner exemplified by the three transactions, totalled £1,080,317.30. The figure was calculated as the total from the invoices described and identified in the Respondent's solicitor's letter of 25 November 2010.

Rule 22 of the Solicitor's Accounts Rules

27. The firm maintained a ledger in the name of SD. By 21 July 2008 it had a credit balance of £2,772.97 which the Respondent transferred to office account as costs. There were four transfers of costs. The surpluses were said by the Respondent to be "... a little bit of insurance."

Witnesses

28. **Mr Gordon Hair** Investigation Officer gave evidence.

Findings of Fact and Law

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

(The submissions recorded below include those made orally at the hearing and those in the documents.)

30. **Allegation 1.1 - In breach of Rules 1.02 and/or 1.06 of the Solicitors Code of Conduct 2007 ("the Code") he [the Respondent] failed to act with integrity and/or failed to act in the best interests of his clients (C&G and HBOS);**

Allegation 1.2 - In breach of Rule 1.03 of the Code he [the Respondent] allowed his independence to be compromised;

Allegation 1.3 - He [the Respondent] failed to comply with Money Laundering Regulations and in doing so acted in a way that was likely to diminish the trust the public placed in him or the profession in breach of Rule 1.06 of the Code;

Allegation 1.4 - In breach of Rule 9.01 of the Code when receiving referrals of clients from a third party (DW/SD) he [the Respondent] compromised his independence and/or his ability to act and advise in the best interests of his lender clients;

30.1 For the Applicant, Mr Barton submitted that at the time of the material events the Respondent had been practising for 30 years in a firm of which he was the sole equity partner. Allegations 1.1 to 1.4 arose out of the conduct of a number of conveyancing transactions which took place between June 2007 and April 2008 and they were founded on the close proximity of the relationship that the Respondent had with DW. Mr Barton submitted that DW and SD were essentially the same for the purposes of the application. The Respondent accepted referrals from DW in respect of property

purchase transactions in which he acted for the purchaser and the lender. Common factors in respect of the transactions were set out in the Rule 5 Statement:

- The Respondent did not meet his purchaser clients;
- The Respondent relied on certified copy identification documents which in most cases were signed by MMB. He did not carry out any further identification checks;
- The Respondent did not carry out any enhanced due diligence into DW or SD;
- The Respondent did not disclose fees paid to DW to his lender clients;
- The Respondent did not disclose to his lender clients that he did not have control over all of the purchase monies;
- The Respondent submitted unqualified Certificates of Title;
- The Respondent's fees were paid by DW;
- The Respondent never met DW;
- The Respondent did not act for DW or SD;
- The Respondent did not have in place a written agreement in respect of the referral arrangement by which DW referred clients to him, and he did not disclose to his purchaser clients the amounts paid by DW in respect of fees nor that advice given by him would be independent of DW;
- DW provided the Respondent with all relevant documents enabling transactions to be completed quickly, typically within a week;
- DW paid fees at approximately twice the usual rate because the Respondent proceeded quickly;
- The Respondent paid DW a broker's fee out of the purchase monies;
- The Respondent conducted approximately 25 purchases referred to him by DW;
- The arrangement which the Respondent had with DW could properly be described as odd or unusual.

30.2 The Applicant alleged that there were a number of features that should have caused an experienced conveyancer like the Respondent to stop and query. He should have realised that there was something improper. MMB effectively provided mortgages for all the purchases and DW had a relationship with MMB of which there were a number of examples in the exhibits to the Rule 5 Statement. The mortgage money provided by the lender was enough to complete the purchase, pay DW, pay all the disbursements and pay the Respondent's legal costs. The loan to value ratios in the three transactions exemplified in the Rule 5 Statement were all quite high, between 95% and 97% but when one took account of the money which was being paid to DW (or as he directed) the lenders were advancing sums significantly in excess of the purchase price. The Respondent should have paid some attention to that and queried the position. The lender was advised of the purchase price and not the price subject to enhancement by fee payments going to third parties. The mortgage offer clearly stated the price which was expected to be paid for the property and the lender would assume that to be the

case unless told otherwise. The lender should have been given the opportunity to reassess the basis of the loan if the purchase price stated in the mortgage offer was not to be paid.

30.3 Mr Barton submitted that the way the transactions appeared to develop was that DW gave instruction regarding his fees, whether called broker's or finder's fees. It was never clearly stated what DW did to earn his money but in all cases the fees due to him were paid to third parties whom he nominated to receive that money. Mr Barton submitted that this was one of the features that the Respondent should have seen for what it was. The Respondent received the lender's money into his client account but something less was paid to the seller's solicitors. The balance was paid to DW as the fee; another part was paid to the Respondent as an enhanced conveyancing fee.

30.4 Mr Barton further submitted that when the transaction came to be registered at the Land Registry and details were provided for stamp duty purposes, the transaction took place at the purchase price amount less the amount paid to DW resulting in a lower stamp duty bill. The Land Registry was given the gross purchase price figure which Mr Barton submitted would create difficulties for subsequent purchasers. It was the Respondent's case that the purchase price remained the full sum and that he effectively paid it over in two ways; an amount was paid direct to the seller's solicitors and another amount paid on the instructions of the seller's solicitors to DW, thus discharging an obligation of the seller to DW. The Applicant said that this was pure fiction and, if it had been paid in this way, stamp duty would fall to be assessed on the total sum. As to how this affected the buyer, Mr Barton reminded the Tribunal that the buyer personally paid nothing. No evidence was found that C&G was told about the differing amounts involved and what was paid to the seller's solicitors.

30.5 The Tribunal asked for clarification later in the hearing in respect of how the figure of £464,762.42 identified as having been paid to DW and or his associates was compatible with the figure of ££1,080,317.30 quoted in the Rule 5 Statement. Mr Barton explained that the lower figure had been arrived at by totalling amounts paid from the client ledger cards provided by the Respondent under cover of his solicitors' Farley's letter dated 2 September 2010. The higher figure was taken from a schedule provided by Farleys with their letter of 25 November 2010 which referred to "an updated version of [the Respondent's] "October Spreadsheet"" Mr Barton confirmed that there were a larger number of transactions on the October spreadsheet and that the Applicant's desk-based investigation continued after the IO finished his investigation. The ledgers which the Respondent produced earlier were a snapshot of what went on in those individual transactions. Both figures were agreed by the parties to be correct.

30.6 Mr Barton referred the Tribunal to a protocol which the Respondent created to deal with property transactions introduced by SD for a particular development VM in Derby. A solicitor PR acted on the other side in all those transactions that the IO was able to look at. The protocol confirmed that the Respondent did not meet the purchaser clients. MMB invariably provided the identification. Mr Barton particularly drew the Tribunal's attention to a paragraph in the protocol which said:

> "When all the other entries have been made on the statement page – insert a figure in the blank receipt field next to "payment from [SD] equal to the balance due from the client. This ensures that the balance due from the client on the statement is zero."

This clearly highlighted that the purchaser clients paid nothing towards the transaction. Later under the heading "Completion", the protocol stated:

> "To chase up completion monies ring Halifax Completions on...
>
> Remember the balance to [PR] is the purchase price less the stamp duty and discount, plus the doc fee rent & service charge and less the payment to [DW]."

At paragraph 10 the document stated:

> "Fax the summary to [DW].
>
> Write to Norwich Union for local search indemnity policy.
>
> When you do the SDLT1 remember to put the net price in not the premium stated in the lease and to reduce the stamp duty accordingly.
>
> NB The ledger will show a credit balance at the end equal to 1% of the builder's 4% (3% +1% Stamp Duty) allowance. This is because we have put 1% of the gross price in the statement but only pay tax on 1% of the net price. This is a little bit of insurance."

Mr Barton explained that this was why it was not completely possible to reconcile the figures for the individual transactions. Charging stamp duty on the higher price as set out in the protocol above and then paying it at the lower price built up a surplus in client account. When the Respondent took that surplus he carried out an admitted breach of Rule 22 (see allegation 1.5).

30.7 Mr Barton clarified for the Tribunal by reference to the case of Mr C that the purchaser would have made an application to C&G for a mortgage in respect of the purchase at £249,950. C&G then issued its mortgage offer based on that purchase price. In its instructions to the firm dated 5 December 2007, two days before completion, C&G stated under the heading "Specific instructions"

> "We understand that the purchase price is £249,950. If this is different to your understanding please contact us immediately."

The Tribunal asked for clarification in respect of a letter of 10 April 2008 from the firm to C&G, which included;

> "We enclose a copy instruction sheets for each of the clients listed on the enclosed sheet, which also sets out the purchase price, incentive and stage of registration if applicable for each matter.

> In each case where there is a 5% incentive we hold the consent of C&G on file..."

In the case of Mr C this led to a net figure reduced from £249,950 down to the £237,450 mortgage advance shown on the client ledger. Mr Barton distinguished this incentive allowed by the seller to the purchaser (which the lender was aware of and consented to) from the payments some of which were substantial and which were purportedly due to DW and not paid to him but to others. The ledger for Mr C showed how the mortgage money was utilised. On 7 December 2007, £237,450 was received from C&G by way of mortgage. On 7 December 2007, the sum of £215,118.42 was paid to the seller's solicitors. On the same day £17,822.58 was paid as "FEE TO [TJ]" which tied in with the faxed instructions received from DW. Costs and disbursements of £1,512 were transferred on 7 January 2008 and on the same day a fee of £220 was paid to the Land Registry. Because of the way that stamp duty was calculated a surplus of £353 was left on the client ledger of which £0.50 was transferred on 17 November 2008 for postage. On the same day £352.50 was transferred for costs and disbursements.

30.8 Mr Barton pointed out to the Tribunal that there was a second protocol for dealing with clients introduced by SD on four other developments. It contained a significant addition in that it stated:

> "Get solicitors express authority to pay [SD] invoice out their proceeds of sale."

30.9 It was submitted that the facts made out the allegations 1.1 to 1.4 because they demonstrated contrary to the Respondent's representations that:

- He did not disclose to C&G and HBOS the payment of significant sums of money to DW/SD from what were effectively the mortgage advances, and what amounted to variations or reductions in purchase prices and he devised an artificial structure (that he was not paying their money but rather that he was discharging a liability of the seller who by then owned the mortgage money) to justify his actions. Part 1 of the Council of Mortgage Lenders ("CML") Handbook at section 1.4 set the standard that C&G and HBOS were entitled to expect, that is to say of a reasonably competent solicitor acting on behalf of a mortgagee, and the Respondent did not provide this.

- In providing unqualified Certificates of Title to C&G and HBOS it was specifically confirmed that the Respondent had complied with Law Society Guidance on Property Fraud and Money Laundering whereas this was not so. He failed to identify the indicators of property/mortgage fraud/money-laundering such as the documented link between DW as a "broker" and his role as buyer introducer and mortgage broker and the payment of money on his instructions to unknown and identified third parties. The Respondent also had a wider public obligation in relation to money-laundering which he failed to discharge.

- The Respondent permitted DW/SD to interfere with his independence which as a consequence became compromised. DW's interests were preferred over those of C&G and HBOS. This was both a breach of the core duty in Rule 1.03 of the Code as well as a breach of Rule 9 because DW was an introducer. The Respondent charged higher fees for a streamlined service devised to deal with DW's introductions.

- In the transaction involving Mr B and the purchase of AL the Respondent provided information to the seller's solicitors CP that was misleading and he did not fulfil the undertaking to CP to pay SD £75,600. It was submitted that this went to integrity.

- The purchasers were registered at the Land Registry recording purchase prices higher than those actually paid.

30.10 It was also submitted that the Respondent informed the IO that it was his practice to telephone the seller's solicitors immediately prior to completion to explain his arrangement with DW/SD and obtain their authority to make a payment to DW purportedly on behalf of the seller. It was asserted for the Applicant that this was no answer to the criticism that the Respondent failed in his duty to his lender client to provide material information and to give it an opportunity to reassess the position. It was also submitted that the protocols for dealing with transactions introduced by DW contained nothing to support the argument that DW's broker fees were a liability of the seller or that the process required the seller's solicitors to appoint the firm as agent. It was also plain from the protocol for the VM development in Derby that the payment to DW was a price reduction because the stamp duty was to be calculated on the net price after deduction.

30.11 It was also submitted that it was relevant to have regard to the Respondent's "Comments on the Report" submitted under cover of his solicitor's letter of 2 September 2010. He challenged the description "broker's fee" however this overlooked DW's own description of his fee as a broker fee in his invoices, 12 which were before the Tribunal. It also overlooked the description given to it by the Respondent himself in the protocol for the Derby development. In addition there was no reason why, if the fee had been agreed between DW and the seller and confirmed by the seller's solicitors, the fee could not properly be discharged by the seller's solicitor.

30.12 It was also relevant that in the Respondent's "Comments on the SRA letter dated 6 July 2010", he stated that in every case that he conducted, his client had appointed DW to act as agent (although this did not feature in the protocols, it was not said what the agency terms were, and nothing of a documentary nature had ever been produced to substantiate or explain it). DW appeared on the Respondent's explanations to perform a number of roles for both purchaser and seller, but the reality was that the Respondent paid to DW or his nominees, sums of money sent to the Respondent by his lender clients as mortgage advances towards the purchase price and that money was in part used for another purpose. It was submitted that the Respondent's explanation was unsustainable

30.13 Mr Barton referred the Tribunal to the details of the three exemplified transaction which he submitted were typical of the way the entire 25 cases had been dealt with.

30.14 Mr Barton highlighted that in one transaction that for Mr B, the seller's solicitors queried the payment arrangements. There were the following exchanges:

- A letter from the seller's solicitors CP to the firm dated 10 December 2007 referred to a telephone conversation in which the seller's solicitor was required to instruct the firm to make a payment to SD a consequence of which was that CP would not receive the full purchase price of £695,000 on completion. The letter continued:

  > "Please confirm to us your understanding of the arrangements. If we are to proceed down this route we will require evidence from your lender that they are aware you will not be paying us the full price or you agree to the arrangement being reflected in the contract and transfer."

- The firm responded to this letter on 13 December 2007 including:

  > "The arrangement between your client and [SD] does not concern our client or his Lender.
  >
  > The payment is a matter between your client and [SD], our client will be paying the full purchase price to your client.
  >
  > The arrangement is simply that instead of us telegraphing the full purchase price to you and you then paying [SD], you instruct us to pay the invoice on your behalf out of the monies due to your client.
  >
  > We trust this now clarifies the position.
  >
  > We are sending an amended Transfer deed for the new purchaser."

- This prompted a further letter from CP sent by fax at 17.17 hours on 13 December 2007, (provided to the Applicant under cover of the Respondent's solicitor's letter of 25 October 2010). It proposed an additional clause to the contract to reflect the payment that the firm wanted it to make. CP asked for a copy of the SD invoice, although it was not possible to tell from the correspondence if one was actually sent. A copy of a document titled "Invoice" dated 13 December 2007 and addressed to the seller was expressed to be charging her £75,600 as a "Broker Fee" but there was no letter sending it to CP.

- By letter dated 17 December 2007, CP indicated the seller's willingness to exchange and complete that day upon confirmation that the firm was "holding the full £695,000" (which the ledger showed that it never did) and that the firm undertook to pay the SD invoice in the sum of £75,600, remitting to the seller's solicitors the balance (which would have been £619,400). The client ledger showed that the amount actually paid over was £591,600. The difference of £27,800 appeared to be attributable to the "Allowance for stamp duty" of this amount as set out in the contract. The contract showed the purchase price as

£695,000 with an "Allowance for stamp duty" of £27,800 leaving a balance of £667,200. Mr Barton submitted that the difficulty with reconciling the figures was the opacity created by the arrangement between the Respondent and DW which was at the heart of the case.

- On 18 December 2007, the firm faxed a letter in reply to CP stating:

  "We undertake to pay [SD] on completion as your agents the sum of £75,600 out of the proceeds of sale and to remit the balance to you."

- On 18 December 2007, the firm also wrote to CP including:

  "...we have in accordance with your instructions paid as your agents the sum of £75,600.00 out of the proceeds of sale to [SD]."

30.15 Mr Barton submitted that on the documents CP did not appoint the firm as its agents and in any event if the firm had, as the Respondent claimed, been appointed as CP's agents to discharge the seller's debt to SD it did so otherwise than in accordance with its undertaking to its principal. It used part of the sum to pay its own costs which the document showed CP knew nothing about. DW's instruction, to send all funds after deductions leading to the payment of the lower sum of £68,394.50 to the account in the name of JF, was contained in the fax dated 17 December 2007 addressed for the attention of the Respondent. The document did not specify the amount to be paid, leaving that for the Respondent to work out after deduction of costs. The document was instructive because it was faxed on 17 December 2007 at 14:59 hours, the day before the undertaking was dispatched to CP. Accordingly it was known that the sum of £75,600 was not going to be paid to SD but rather a lower sum to JF. It also showed the remitter of the fax as MMB and the fax number was the same as appeared on MMB's notepaper. The signature appeared to be the same MR of MMB which appeared certifying the copy of a utilities bill for Mr C, on a letter from MMB concerning Mr B's short stay at 4 RC and certifying a copy passport page for Mr B.

30.16 Mr Barton referred the Tribunal to a schedule provided by the Respondent as part of his explanation with his solicitor's letter of 2 September 2010 in response to the Applicant's first letter dated 6 July 2010 asking questions about his professional relationship with DW and SD. Mr Barton explained that in providing the spreadsheet, the Respondent provided ledgers for each matter sequentially. There were varying amounts on the ledgers and Mr Barton could not tell what determined the amount of the payments to DW or his nominee on the individual transactions. Some of the amounts included VAT and some did not; some invoices showed VAT and some did not. From those ledgers it was apparent that £464,762.42 had been paid out of client account to DW/SD and others. Mr Barton reminded the Tribunal of the particular characteristics of the transactions and that in interview the Respondent accepted that the transactions regarding DW were odd or unusual. In his comments he said:

  "In conclusion, I would like to point out that the only difference between these transactions and others which I have routinely dealt with over very many years, are the speed required, and the requests by the sellers that I paid the finder's fee on their behalf.

> I have enjoyed a lengthy professional career specialising exclusively in conveyancing matters. I am now aged 60 and have had health problems. I have held an unconditional Practising Certificate for 34 years and I have run my own Practice for 15 years.
>
> I did not consider that these transactions were suspicious nor did I take the view that there was anything untoward in them. I have always acknowledged that the payments which are at the heart of this investigation were "odd or unusual" but I believe that I took appropriate steps to deal with that by ensuring that any payment made was on the strict instructions of the seller's solicitors. Simply being "odd or unusual" does not mean that they are necessarily suspicious, and I was entitled to rely on the integrity of the seller's solicitors."

In respect of the Respondent's explanations in his solicitor's letters of 2 September, 25 October and 25 November 2010, Mr Barton submitted that it was important to see exactly how much money was paid to DW apparently through his nominees. He was paid a total of £1,080,317.30 by the Respondent in the manner exemplified by the three transactions. The figure was calculated as the total from the invoices described and identified in his solicitors' letter of 25 November. From the schedule provided by the Respondent it could be seen that payments were made to the following; A Autos, TJ, J Property Solutions, JF, S Tapes and CF. The Respondent's explanation was:

> "If [DW] wanted monies due to him to be paid to someone else that was a matter for him. For all I knew these gentlemen may have been his partners or relatives of his. I took the view that it was not my position to query or challenge what he did with his money."

Mr Barton submitted that this demonstrated a reckless disregard for the Respondent's money laundering obligations and was wholly contrary to the warnings to the solicitor's profession on property fraud. There were substantial and serial payments to unknown third parties.

30.17 No payments appeared to have been made directly to DW or SD in respect of its broker fees, which in each case charged VAT. That individual/company simply directed where the money was to be sent. It was submitted that these were classic indicators of fraud/money-laundering. Both the size of the payments, individually and collectively and the range of recipients with no explanation (offered or requested) ought to have put the Respondent on enquiry. There were documents in his possession showing a clear link between MMB and DW. The Respondent never met any of his purchaser clients or DW. He developed a streamlined service to process these instructions which were conducted with speed, charging twice the normal rate and robustly asserting that what arrangements might have existed as between the sellers and SD "does not concern our client or his lender." The documents clearly demonstrated an arrangement between the Respondent and SD and so the explanations had to be looked at in this context.

30.18 The Respondent now accepted that DW and/or SD were engaged in fraudulent activity. He stated in his Comments document in respect of the Applicant's letter of 6 July 2010:

> "I never acted for [DW] or [SD] and it follows that I still do not do so. Further, I have had no contact with him or [SD] since 2008, nor would I encourage or welcome any, given that I have become involved in this matter generally because of his alleged fraudulent activity, as I now understand it to be."

It was submitted that the facts and documents contained very clear indicators of fraud. The Respondent was on his own assertion a conveyancing solicitor of 30 years experience. To have failed to see DW/SD for what they were or even to be suspicious and to make enquiries, to question and to challenge was a serious dereliction of professional duty. The Respondent was thus grossly reckless in the way he discharged his duties as a solicitor.

30.19 The Respondent accepted that in each case his firm acted for both purchasers and lenders. In each transaction exemplified in the report, the Respondent acted for the lender clients pursuant to the CML Handbook. That imposed an obligation on the Respondent to follow the guidance in the Law Society's Green Card on mortgage fraud and to comply with Money Laundering Regulations. The Certificate of Title in each case confirmed to the lender that all such instructions had been complied with. The FI Report specified the extracts from the warning card and the Regulations with which the Respondent did not comply. The property fraud warning card required him to verify and question instructions and he did not do so. The warning card required him to focus on informing the lender of the true price and other relevant facts, highlighting such warning signs as unusual or suspicious instructions, transactions controlled or funded by a third party or a request to pay money to a third party. The Respondent paid over £1 million to third parties on instructions from someone he never met. In relation to the purchase by Mr B he received into client account the sum of £65,048.63 on 17 December 2007 with inadequate identification of his client whom he never met. He could not possibly have known where that money came from and it was paid in and out of client account in one day with no discernible reason. It was not needed to fund the purchase because the mortgage advance did that.

30.20 Contrary to his assertion that he properly looked after his lender client's best interests, the facts demonstrated the Respondent did not. He preferred the interests of DW whose instructions he unquestioningly followed. He compromised his independence in doing this. His explanation that he did not pay DW's fees from the mortgage advances was unsustainable. It was the Respondent's case that he was doing no more than discharging a debt payable by the seller on the seller's behalf out of money which by then belonged to the seller. His solicitors advanced this argument in their letter of 25 November 2010. The Respondent in fact held money on trust because it was in his client account, sent to him by his lender client to complete purchases at prices stated in its instructions.

30.21 The Tribunal enquired about letters in the trial bundle such as that from a firm FC dated 8 April 2008 acting for a developer/seller thanking the firm for forwarding completion monies directly to their client company's account and for settling an invoice for SD. Mr Barton explained that there were a number of such letters from seller's solicitors but that the documents did not include authorities for every transaction. He submitted that the question was whether the existence of such letters relieved the Respondent of his obligation to his lender client to act in their best interests, and the answer was that it did not. On occasion the Respondent reported

incentives within the permitted 5% allowance and Mr Barton questioned why he did not also tell the lender that a percentage was going to a third party for whom he was not acting, as a broker's or finder's fee and inform them that the purchaser client was not funding any of the money himself or herself. Sizeable funds went to DW or his nominee. The Respondent did not ask the lenders whether they were content with that.

Submissions for the Respondent

30.22 For the Respondent, Mr Nuttall referred to allegation 1.1, failing to act with integrity and/or in the best interests of C&G and HBOS the lender clients. He submitted that there did not seem (in substance) to be any allegation about integrity. The IO accepted the Respondent's word in cross-examination. All the essential facts were agreed. It was a question of interpretation of the facts and whether what the Respondent did was permissible or not. The solicitor had a core duty to act in good faith and it was clear from the Respondent's evidence that he believed that what he did was appropriate and that he acted in good faith throughout. Factually there were no victims and there had been no complaints from lender clients. There was no evidence that the lender client objected to what took place. The IO's evidence was that he had not seen such an arrangement before and did not believe it to be permissible but he did not raise any queries of the lender clients or the seller's solicitors. His was an opinion but it was not evidence. The IO did not suggest that the Respondent lied or sought to be deceitful. The IO did not agree with the Respondent's view of how he went about the transactions but others, the seller's solicitors and other purchasers did exactly the same thing. Although that did not make it right, it meant that the Respondent was not alone. Other purchasers' and sellers' solicitors were in communication orally and in writing with the Respondent. It was known that M of the firm (whom the Respondent said dealt with the transactions on his behalf while he was ill from 18 November 2007 to 12 December 2007) was a long-standing conveyancer; it was assumed that he was still practising and he did exactly the same thing.

30.23 Mr Nuttall also submitted that an important aspect of the case was what exactly the Respondent did. A simple analogy would be a case where a property was sold for £100,000. The Respondent had said throughout since 2007-2008 that if a seller sold a property and the value was £100,000 that value did not change. Building societies had their own valuation of the property. The mortgage was granted on the basis of the £100,000 valuation and the property was sold for that price. A builder might spend £40,000 building a house and on the face of it make £60,000 profit. If he could find someone to source purchasers so that he could move a lot more houses he would do so. The builder took a reduction in profit to pay the finder but that was nothing to do with the mortgage; it did not reduce the price of the house. The only difference was the profit taken by the seller. This was not a secret; everyone had always known. The clearest example was the letter from PR solicitor for the seller of six apartments in the VM development in Derby. In his letter of 1 August 2007 to the Respondent, he said:

> "In anticipation of these sales proceeding I believe that my client sent you plans yesterday for each lease expecting leases to be e-mailed to you today. As we discussed you preferred that I send you prints for signature by post and these are enclosed. Could you bind the leases with the plans.
>
> I also enclose title packs for each sale and a contract.

> If you confirm which dates you want to complete each sale I will e-mail a statement to you. I confirm at completion you should account to [DW] with his fees as set out on the statement that I will supply.
>
> Finally could you please note that there were previous investment buyers for flats 020, 028 and 126. In each case the contract will be rescinded at completion..."

PR gave the Respondent clear instructions about what to do at completion, that he should account to DW. This was not a one-off. Mr Nuttall also referred to a letter dated 1 February 2008 from a firm of solicitors MW in respect of a different development:

> "You are authorised to pay [SD] the figure detailed in your letter as long as you undertake to do this on completion and to provide evidence of this."

Mr Nuttall submitted that the Respondent's letter to CP of 13 December 2007 quoted above set out the Respondent's case and how the Respondent understood the position at that time. If the seller's solicitors had said that the money should be sent to them and they would deal with it, the Respondent would have complied and now he wished in hindsight that had taken place. The evidence was overwhelming that the Respondent never thought that he was doing anything impermissible.

30.24 Mr Nuttall also submitted that there had been no complaint about how the Respondent conducted his practice in respect of his files or accounts. He had an unblemished history. It was an ignominious and sad end to a fine career. He had been open with everybody including with the IO, as the IO said. The Respondent's case was supported by important evidence; in April 2008, C&G raised concerns about the identity of one of the purchasers and took it up with the Respondent who in turn took it up with DW and was not satisfied with his answer. The Respondent stopped all conveyancing there and then which was indicative of the professionalism of his work and the integrity of the man, and so Mr Nuttall submitted that allegation 1.1 must fail.

30.25 Mr Nuttall submitted that allegation 1.2 regarding compromising independence must also fail. The Respondent acted on the instructions from the seller's solicitors and nowhere was it alleged that he acted on DW's instructions. Mr Nuttall specifically asked the IO about that and he replied that there was no evidence that the Respondent did so. In April 2008, the Respondent did not relinquish his independence, acting decisively when the passport matter was brought to his attention.

30.26 In respect of allegation 1.3 relating to compliance with Money Laundering Regulations and diminishing the trust of the public, Mr Nuttall submitted that he had put it to the IO that he should look at 4.9.1 of the Law Society's Practice Notes. The Respondent abided by the guidance: he looked at the Law Society's guidance about Enhanced Due Diligence. It clearly stated that the Respondent had an absolute right to follow the guidance. He checked to ensure that MMB was FSA certified and relied on them.

30.27 In respect of allegation 1.4, relating to breach of Rule 9.01 of the Code (when receiving referral of clients from a third party and compromising independence and ability to act or advising in the best interests of lender clients), Mr Nuttall submitted that there was a certain amount of duplicity in the charges which was inevitable. He again submitted that there had been no complaints from anyone and there were no victims and no action had been taken against the Respondent between 2007-2015. Mortgages were taken out, properties were valued by building societies and a proper price was paid for them. There was no evidence that the Respondent's independence was compromised by a third party.

30.28 Mr Nuttall submitted generally that there was a question, as the IO acknowledged, of a solicitor's judgement; with all professionals one man's judgement might not be shared by the next. He was eloquent in his exposition of what he had done. He never faltered from the belief that what he did was clearly right. He even checked by looking at the Conveyancing Handbook. The IO had not seen the arrangement before. The price of being a professional was sometimes that one found oneself in a novel situation. However the solicitor must also act in the ethos of the profession and Mr Nuttall submitted that the Respondent's letter of 13 December 2007 was the best evidence of that. Not one solicitor came back and said that they were not sure or did not agree. Had they done so Mr Nuttall would not now be making submissions. The Tribunal must determine if what the Respondent did was acceptable under the rules and within the ethos of the profession.

30.29 The Respondent gave evidence, including as to how the arrangement started. He stated that the practice had been in existence before he became involved and had been undertaken by whichever solicitors DW had previously used. Prior to the first transaction the Respondent received the letter of 1 August 2007 from the builder's solicitors (PR) saying that that was the arrangement. The Respondent had not discussed with DW the propriety of conducting the transactions in this particular way since the seller's solicitors told him what they wanted him to do.

30.30 The Respondent was asked what he found out about DW. He stated that he had DW's address but he did not know at what stage he obtained it. As to why he had never met DW, the Respondent testified that it did not seem to be necessary. The Respondent had not committed any of their initial conversations to writing. The firm used to get several people saying that they would introduce business (without it coming to anything). DW telephoned him and told the Respondent basically what he did but the Respondent could not say what he said in that conversation or subsequently nor whether DW had told him over the telephone about the finder's fee, but he stated that he must have done so in conversation. The Respondent confirmed that it was the first time in 30 years of practice he was asked to deduct money in an arrangement with the seller.

30.31 The Respondent knew that DW used MMB to obtain mortgages for purchasers but he did not know about the proximity between them. It was only after he ceased to act for DW that he found that DW and MMB were "hand in glove". However the Respondent now considered DW to be a dishonest man. The Respondent agreed that DW was calling the payment a broker fee which was distracting because such fees were paid by the purchaser whereas these fees were paid by the seller.

30.32 As to the fact that there were no notes of telephone conversations with DW, the Respondent stated that these conversations were not significant and that most of the time DW was looking for information. There were no notes about individual transactions where DW was that referrer. DW referred work but there was no formal agreement. The Respondent had estate agents referring business without agreements and without payment and he hoped this was because they liked the work the firm was doing.

30.33 The Respondent gave his view that the point in the process at which completion occurred was very similar to that in exchange of contracts. He based it on mutual undertakings by the seller's and purchaser's solicitors; the former to send the transfer and other documents and the latter (the Respondent) to send the purchase monies. The Respondent believed that this was fairly common practice; it was the only way the profession could deal with completion The Respondent stated that if he were acting for the seller, in practice he might wait for the money to arrive before sending the transfer.

30.34 The Respondent accepted that normally if DW was to be paid by the seller's solicitors he the Respondent would have paid the seller's solicitor and then they could pay DW or his nominee. He did not believe that what actually happened was any different. He could see nothing which prevented it in the Practice Notes and it seemed very much like an example given in the Law Society's Conveyancing Handbook 13th edition, published in 2006 at section 3.7 "Discharge of the seller's mortgage" which set out that the seller's solicitor might choose to ask the purchaser to draw a separate banker's draft in favour of the lender or make a direct transfer to a separately represented mortgagee's solicitor to discharge the seller's mortgage. The Respondent would still see it as unusual; he had never been asked to send money to a seller's lender. The Respondent took the view that if the seller told him to pay money to a third party this would be no different from paying for example an estate agent, which he would think acceptable if he was asked by the seller's solicitors to do it.

30.35 The Respondent confirmed that in each transaction he contacted the seller's solicitors; the whole point was to get authority for what he was doing. In the cases where PR was the seller's solicitor, the Respondent had been contacted in advance; otherwise if DW told him that this was the arrangement he would check with the seller's solicitor. As to whether the arrangement had ever been queried with him, the Respondent had the one letter from CP asking whether the lender had been informed. The Respondent could not conceive that CP would have proceeded without his client's instructions. The Respondent took it that when he contacted the seller's solicitors CP went to his client and asked whether what the Respondent said was correct and that the seller client agreed. The Respondent believed that CP had raised a query with him without taking instructions. The firm's reply dated 13 December 2007 had set out his understanding of the arrangement although it was not his file but M's. If the arrangement was not as set out in the Respondent's letter, he would have expected CP to tell him to stop the transaction.

30.36 The Respondent clarified for the Tribunal his view that if there had been a reduction in the purchase price he would need to ensure that the lender knew, but he did not think that was what occurred; he did not believe the sale price was split up; the sellers were paying DW to obtain purchasers. The Respondent thought that the full price had

been paid and that, while he was holding the money for the seller, he was told to pay to DW. This was before the credit crunch, when lenders granted 95% or 97% mortgages. There was a building boom and builders would make such payments to finders. It was possible to get a £20,000 or £30,000 discount on a flat. A client in Birmingham obtained a 40% discount by buying a second flat. Pre-credit crunch, builders probably only had to sell 40% or 50% of a development to pay back the bank and then it was pure profit. It was common for builders to make large discounts in order to turn a development over and move onto the next one.

30.37 If the Respondent had telephoned the lender and informed them that the seller's solicitors had instructed him to pay £30,000 to their agent after the sale the lender would have laughed. If the lender asked if he had paid the purchase price he would say that he had paid it as in the case of Mr L £206,500 less 5% and he was holding the money for the seller. In clarification the Respondent stated that the arrangement had absolutely no effect on the value of the property. The building society had surveyed the property and one presumed could sell it again by paying an estate agent a far more modest commission. The builder/seller chose to pay DW a very large commission. The seller would have saved a lot of money by dealing with estate agents to find purchasers but perhaps thought that they could not sell as quickly.

30.38 As to the fact that the money came out of his client account, the Respondent stated he was merely the instrument who wrote the cheque. He confirmed he understood the basic concepts of money laundering and that solicitors had to be careful to whom they paid money out of client account and he expected the seller's solicitors to be careful and to check that DW was genuine and that the people who received the money were entitled to be paid. He was simply acting as their agent. He agreed that he made no checks regarding the authenticity of the recipients because he felt that if DW was entitled to the money he was also entitled to tell the Respondent where to send it. He rejected the suggestion that this was a classic situation of money-laundering; the money had come from a building society.

30.39 The Respondent accepted that as a solicitor he had certain responsibilities but he made a distinction between money which he had control over and money like this. He agreed that he could have refused and told the seller's solicitors that if the seller had liabilities the solicitors should pay them off. He had not done so because he had found the guidance in the Conveyancing Handbook that suggested that what he was being asked to do was unusual but not frowned upon. He did not feel that he had the right to say that he had to check on the person to whom he was sending money; if he was holding it to someone's order he did not have control over it. He still did not think that what he had done was wrong; he followed what he believed to be the authorities. He wished that he had not done it and he would not do it again because it did not work out.

30.40 It was put to the Respondent that only two lenders were involved and that there was repetitive pattern of behaviour in the transactions which they would like to know about. It was easy with the benefit of hindsight to say that if he had taken one course of action the lenders would have done something else. He did not think that he had an obligation to tell the lender what was happening and thought that if he did tell them they would not be interested. He had paid over the purchase price in two directions and in return obtained title to the property for the lender. As to the amount of money

which DW had received from the builder/sellers the Respondent considered that it had been paid for services rendered and he had to assume that they thought it was worth the money. It was pointed out that in the case of Mr B the seller was a private individual rather than a builder. The Respondent could not explain why DW was finding a purchaser for a private individual but he suspected that this was the only transaction involving a private seller. The Respondent still believed that he acted correctly but now he would err on the side of caution. He still did not believe that he would be required to inform the lender but thought that he would be foolish not to.

30.41 As to the reference in the completion statement to the balance due from the purchaser client, this was needed to "zero off" everything because DW was paying the costs and disbursements and stamp duty and so a payment received from SD was shown in order to remove a debit balance which would otherwise appear. The Respondent had drafted the instructions to do this in the protocol; it was the Respondent's decision. The Respondent took the view that as the payment of costs and disbursements etc was made by deduction, it was a payment even though DW/SD did not part with any money. The Respondent understood that the fact that the purchasers would pay nothing from the outset was DW's unique selling point.

Determination of the Tribunal in respect of allegations 1.1 to 1.4

30.42 The Tribunal considered the evidence including oral evidence, the submissions for the Applicant and the submissions for the Respondent. At the heart of the factual matrix giving rise to the allegations was the process which the Respondent followed in dealing with the seller's solicitors. The Respondent did not dispute that he had paid away monies to third parties, but asserted that he was entitled to do so at the direction of others and, at the point he did so, it was of no legitimate interest to the lender client. The Tribunal considered carefully the Respondent's analysis of the completion process. His defence crucially depended upon the Tribunal accepting his interpretation which was that at the point when the seller's solicitor gave an undertaking to send the buyer's solicitor the transfer, and the buyer's solicitor gave an undertaking to remit the purchase monies, completion took place and because the purchaser's solicitor/Respondent at that point held the purchase monies to the order of the seller's solicitor the monies ceased to comprise the mortgage advance and had become the proceeds of sale. There were varying approaches to the completion process but the Tribunal considered that generally completion was only achieved when the purchase monies were physically received by the seller's solicitor. The Tribunal's analysis was reinforced by the lengths to which the Respondent went to structure the process by which he disbursed DW/SD's fees. On his own evidence in respect of the six transactions at the VM development in Derby where PR was the seller's solicitor the Respondent adopted a process which PR set out in his letter of 1 August 2007. In the other transactions the Respondent initiated the process. On his evidence, he telephoned the seller's solicitor to explain the arrangement by which the seller's solicitor had to obtain an undertaking from the Respondent to pay DW his fees out of the completion monies which the Respondent held to the seller's solicitor's order. The Respondent drew a parallel with a situation covered in The Law Society's Conveyancing Handbook where the purchaser's solicitor was asked to deal separately with part of the purchase monies in order to discharge the seller's mortgage. The Tribunal considered that this was a false analogy; in those circumstances the purchaser's solicitor was assisting in removing a bar to completion. The Tribunal

found the process employed by the Respondent to be an artifice by which he sought to justify what he did with the elements of the mortgage advance which went to SD/the nominees. The Tribunal was in no doubt that, at the point when he dealt with the payments, the Respondent was disbursing part of the mortgage advance. The Tribunal also noted that having set up this elaborate device the Respondent then ignored the instructions that he received and in no case paid DW but instead paid SD or another of DW's nominees. He further undermined his own argument when he sought to rely on the money as having come from an institutional lender as a defence to breach of the Money Laundering Regulations.

30.43 Having undertaken its analysis and arrived at a determination that the Respondent was dealing with the mortgage advance in paying the nominees, the Tribunal went on to consider whether allegations 1.1 to 1.4 were accordingly proven. The Respondent conceded that the transactions were odd or unusual but disputed that this should have put him on alert or that he had not discharged his obligations as a solicitor in the particular circumstances. The Tribunal considered the nature of the transactions and whether they were such that they should have been reported to the lender clients and whether they should have alerted the Respondent to his duties under the Money Laundering Regulations. It also looked at the referral arrangements between the Respondent and DW. The Tribunal had regard to the features of the transactions and found as follows:

30.44 There were several features of the transactions which on their face did not immediately give cause for concern. The Tribunal noted the Respondent never met DW and he did not act for DW or SD and this formed part of the factual matrix but was not of itself necessarily suspicious. Also the fact that DW provided the Respondent with all relevant documents enabling transactions to be completed quickly, typically within a week, was not particularly significant nor was his role as go-between to expedite the transactions with the mortgagee, bearing in mind that he was the introducer. However there were other factors which when all were taken together, painted a very alarming picture. One was the fact that the Respondent did not meet with his purchaser clients. When considered in the context of the Respondent's own comments on the FI Report to the effect that he never even spoke to the purchaser clients the overall situation became very concerning:

> "The transactions were to be completed quickly, the clients were based generally with (sic) the East Midlands area, and there was no need for me to see them. I would of course have met them at my offices if they had wanted to travel to Preston. It was also unnecessary to speak to them by telephone; the transactions would complete within a very short period of time and I was satisfied that these transactions were valid. I had no need to speak to the clients because I had signed instructions from them that I was to treat [DW] as their agent for the purposes of a particular transaction. [DW] was regularly in contact with my office in any event."

In fact the purchasers hardly featured in the transactions at all. The Respondent stated in evidence that the fact that the purchaser clients were not required to pay anything for their purchase was DW's unique selling feature, but the Tribunal considered that where a purchaser client contributed nothing and moreover someone else paid their

legal fees, the arrangement was sufficiently unusual to prompt a solicitor to make further enquiries.

30.45 The Respondent paid DW's nominees a fee out of the purchase monies which in the invoices sent by DW was termed a "broker's fee". A broker normally dealt with mortgages rather than land, and the terminology showed for whom DW was acting, that is the seller rather than the purchaser. The Tribunal noted that in his submissions, Mr Nuttall placed emphasis on the Respondent's explanatory letter to CP of 13 December 2007 but the Tribunal found that CP's enquiry letter of 10 December 2007 was more significant with its reference to requiring evidence from the purchaser's lender that "they are aware you will not be paying us the full price or you agree to the arrangement being reflected on the contract and transfer." Whether termed a broker's fee or a finder's fee, the fee was manifestly a device and CP for one saw through it immediately.

30.46 The Tribunal agreed with the Applicant that both the volume of the transactions and the level of payments diverted to DW's nominees should have been significant in terms of alerting the Respondent to make further enquiries. The Tribunal considered that the size of the fees paid to nominees was one of the most telling of the factors against the Respondent; they represented such a large proportion of the purchase price that the Respondent should have realised that there was something suspicious about the payments and he should have informed the lender clients. As an example in the Derby development an amount of £38,921.87 was paid to an automotive firm as the nominee of DW in a transaction where the purchase price was £226,500. In total, in excess of £1m was paid away from 25 transactions.

30.47 Another factor relied on by the Applicant was that the Respondent did not disclose to his lender clients that he did not have control over all of the purchase monies. The Tribunal disagreed with this assertion; it found as a fact that the Respondent had physical control of the monies paid over but he gave evidence that he regarded this control as giving him no right or obligation to take an interest in the third parties to whom part of the mortgage monies were disbursed. The Respondent sought to place all the responsibility for checking the nominees with the seller's solicitors.

30.48 The Respondent stated that DW paid fees at approximately twice the usual rate because the Respondent proceeded quickly. The Tribunal considered that fees being charged at twice the normal rate had a suspicious air to it. As most if not all of the properties involved were on new building developments, after the first property was dealt with, usually very little additional work would be required for subsequent purchases making each transaction even more profitable.

30.49 The Tribunal was also concerned by the Respondent disclosing that DW gave instructions on how stamp duty was to be calculated and that the Respondent was at liberty to retain surpluses generated by this to cover additional fees and expenses. The Tribunal considered that this was very unusual and an indicator of potential fraud.

30.50 While noting that according to the Respondent it seemed to be common practice at the time for sellers to make an allowance at completion (often around 5%) but for the original purchase price to be shown on the registered title, the Tribunal considered

that this was not a valid approach and it was unacceptable for the Respondent to register a purchase price which had not in fact been paid.

30.51 In the Rule 5 Statement, reference had been made to an unexplained payment of £65,040.63 made into client account on 17 December 2007 in respect of Mr B's purchase. The Tribunal had not been presented with any evidence relating to this payment and could therefore make no determination in respect of it.

Tribunal's determination in respect of each of allegations 1.1 to 1.4

30.52 Lack of integrity had been alleged in respect of all the facts which went to support allegations 1.1 to 1.4. In considering the allegation that is breach of Rule 1.02, the Tribunal used the definition of integrity to be found in the case of Hoodless v Blackwell v FSA:

> "That a person lacks integrity if he/she acts in a way which, although falling short of dishonesty, lacks moral soundness, rectitude and steady adherence to an ethical code."

And as set out in Vukelic v FSA

> "For this purpose a person may lack integrity even though it is not established that he/she has been dishonest."

No allegation of dishonesty had been made against the Respondent. In the Rule 5 Statement it was alleged that the Respondent, a conveyancing solicitor of 30 years' experience, was grossly reckless in the way he discharged his duties as a solicitor, because the documents and facts showed very clear indicators of fraud. Reckless disregard of his money laundering obligations was alleged in his stated attitude that if DW wanted monies due to him to be paid to someone else then that was a matter for him. The Tribunal followed the definition of recklessness in R v G [2004 1 AC 1034, as being satisfied with respect to (i) a circumstance where someone is aware of a risk that exists or will exist and (ii) a result when that person is aware that a risk will occur and it is, in circumstances known to him, unreasonable to take the risk.

30.53 In respect of allegation 1.1, the Tribunal agreed with Mr Barton that the payments to the third party nominees of DW/SD were clear indicators of fraud and money-laundering and should have put the Respondent on notice that he needed to enquire further. Furthermore having regard to his very considerable experience as a conveyancing solicitor, the Tribunal agreed that he had been grossly reckless in discharging his duties. He paid little or no heed to the Law Society's green card or the Money Laundering Regulations. The Respondent expressly stated he was being asked to undertake "odd or unusual" transactions but he felt that this did not engage his obligations towards the lender clients. He examined the Conveyancing Handbook and by way of defence stretched an example of discharging the seller's mortgage to cover an unrelated situation involving unknown third parties. He had deliberately operated an artificial system around completion, whether of his own making or inherited from an unidentified predecessor or DW/SD, in dealing with the mortgage advance which involved keeping his lender clients completely unaware that very material payments were being diverted from the mortgage advance to SD or third party nominees.

Setting aside the issue of the crucial point at which completion became effective, the Tribunal considered that having regard to the unusual circumstances the Respondent should have told the lenders where money was to be paid to the nominees at or before the point of completion. The Tribunal also agreed that in providing unqualified Certificates on Title to C&G and to HBOS the Respondent specifically confirmed that he had complied with Law Society Guidance on Property Fraud and Money Laundering while in fact he had failed to identify the indicators of mortgage fraud, and money-laundering. He also failed in his wider duty to protect both the reputation of the profession and the public.

30.54 The Tribunal considered that the Respondent had been presented quite starkly with classic indicators of mortgage fraud and money-laundering in a considerable number of transactions in which he was permitted to charge no less than twice the going rate for quite simple work, all of which was introduced by one individual about whom he carried out no enquiries apparently because that person was not his client and he paid away a significant part of the mortgage advance to unknown third parties without question. Moreover he did so in a situation where at his own instigation he only had the authority of the seller's solicitors to pay DW. Furthermore there were inconsistencies; he gave an undertaking in the B transaction to CP to pay £75,000 to DW but in fact he paid a different and lower figure to someone else. As a result of the Respondent's behaviour more than £1 million from mortgage advances was paid out to nominees of DW/SD.

30.55 The Tribunal had been asked to make allowances for the fevered state of the property market immediately before the global financial crisis but the Tribunal considered that the Respondent enabled payments to be made which reeked of mortgage fraud/money laundering. The fact that apparently no lender client had complained was irrelevant. Mr Nuttall had also asked Tribunal to allow for variations of judgement between solicitors but the Respondent's conduct had gone far beyond any reasonable variation. The Tribunal also considered that it was unnecessary to determine whether the Respondent made payment to the nominees and to SD as an agent for the seller's solicitors or on his own account; the fact was that he made the payments from his client account and had to take responsibility for them. Some points had been raised that what the Respondent was doing was customary in the profession because the seller's solicitors in the main did not challenge it. No evidence had been brought to the Tribunal to show that other solicitors were in fact doing what the Respondent had done.

30.56 The Tribunal considered that there were other factors which fed into lack of integrity. The Respondent's evidence indicated that one of his drivers in undertaking the work was the ability to make this high level of profit and he referred to the level of charging being related to his personal involvement. Furthermore in his representations the Respondent said in respect of the purchaser clients appointing DW as agent, that this:

> ""... authorised me in effect to surcharge each client a nominal amount to cover any general expenses I might have which could either not be attributed individually to client's file/ledger, which related to aborted matters. This is the "little bit of insurance""

30.57 The Tribunal also considered that the Respondent's transfer of money from client to office account (which was the subject of allegation 1.5), having participated in this arrangement which allowed him "a little bit of insurance" built up from the mortgage advance in each of the transactions, was evidence of lack of integrity being part of his general approach. It could be taken into account because while allegation 1.5 was limited to the scope of a particular paragraph of the Rule 5 Statement, allegation 1.1 was not. The Tribunal also noted the correspondence between the Respondent and CP in the transaction for Mr B. It found that the Respondent gave an undertaking to CP to pay £75,600 to SD with which he did not comply. The undertaking was not the subject of any allegation but the Tribunal agreed that his actions in respect of it were relevant to the allegation of lack of integrity. The Tribunal found that the Respondent's attitude towards his responsibilities showed no, let alone, steady adherence to an ethical code and thereby he lacked integrity. The Tribunal found lack of integrity breach of Rule 1.02 proved to the required standard.

30.58 The Tribunal also found proved to the required standard that the Respondent had failed to act in his lender clients' best interests in breach of Rule 1.06 because he did not disclose information to his lender clients that he should have done, firstly the payment of sums of money to SD/nominees from the mortgage advances, amounts which were material to the lender's decision to grant a mortgage, and secondly what amounted to variations or reductions in purchase prices. The Tribunal found both aspects of allegation 1.1 proved to the required standard.

30.59 Allegation 1.2 related to breach of Rule 1.03 of the Code, allowing his independence to be compromised, and again was based on all the facts which went to support allegations 1.1 to 1.4. In the transactions which he conducted, involving referrals from DW and in which he ignored his lender clients' best interests, the Tribunal considered that the Respondent had allowed his independence to be compromised because he preferred to maintain a system in collaboration with DW which gave him considerable benefits in terms of double fees. The Tribunal found allegation 1.2 proved to the required standard.

30.60 Allegation 1.3 related to failure to comply with Money Laundering Regulations and thus acting in a way likely to diminish the public trust in breach of Rule 1.06. The Applicant relied on the Money Laundering Regulations 2007. It was asserted for the Respondent by Mr Nuttall that he had no need to carry out Enhanced Due Diligence in respect of DW/SD, based on the Law Society's Anti-Money Laundering Practice Note at 4.9.1. The Note referred to Regulation 14 of the Anti-Money Laundering Regulations:

> "Regulation 14 provides that you will need to apply enhanced due diligence on a risk-sensitive basis where:
>
> - the client is not dealt with face to face...
>
> - There is any other situation which can present a higher risk of money-laundering..."

> Regulation 14(2) outlines possible steps which can be taken above standard verification procedures to compensate for the higher risk of non face-to-face transactions...
>
> ...consider whether the certifying person is regulated with respect to the regulations..."

The Respondent relied on certified copy identification documents in respect of the purchaser clients, certified by an entity MMB which was registered with the FSA. However in relying on MMB and its FSA registration, the Respondent had either ignored or decided to disregard the obvious links between DW/SD and MMB which called into question the appropriateness of relying on MMB's certification not least that DW sent his instructions for payments to the nominees from MMB's fax number and some of his communications were on their notepaper. The Tribunal noted particularly that it was set out in 4.9.1 that Regulation 14 extended to "any other situation" which could present a higher risk of money-laundering, beyond the situation where the client was not dealt with face-to-face. Neither DW nor SD was a client of the firm and no money was received from them but payments were made to DW/SD's nominees. The Respondent said that he knew that there was no money laundering because the money in question came from an institutional lender which the Tribunal found unconvincing; it was the nature and structure of the transactions and the use to which part of the mortgage advance was put and the consequences which flowed from that in reducing the purchase price and thereby undermining the lenders' security, not the source of the mortgage advance which were the issues. The Tribunal found that this was a situation where there was a higher risk of money laundering and the Respondent carried out no enhanced due diligence in respect of DW/SD and their nominees when he should have done. The Respondent accepted validations of identity from MMB without any further enquiry because they were registered with the FSA while the documents showed that there was a link between DW/SD and MMB not least because DW sent his instructions from MMB's fax machine. The Respondent's attitude was typified by his Comments:

> "If [DW] wanted monies due to him to be paid to someone else that was a matter for him. For all I knew these gentlemen may have been his partners or relatives of his. I took the view that it was not my position to query or challenge what he did with his money."

In giving evidence the Respondent had also completely repudiated his obligations and tried to convince the Tribunal that all responsibility rested with the seller's solicitor. He did not appear to accept that he had any obligations in the matter at all. For this reason and the reasons set out above, particularly the artificial aspects of the payment arrangements, the Tribunal found that the Respondent had failed to comply with the Money Laundering Regulations by ignoring clear indicators of suspicious behaviour and carrying out no due diligence investigations about DW/SD or their nominees. The Tribunal considered that his conduct showed reckless disregard of his money laundering obligations whether or not he was truly unaware that what he was faced with were classic indicators of mortgage fraud and money-laundering; if he was aware then he recklessly ignored them and if he was not, the result remained that very substantial payments had been diverted from mortgage advances in flagrant disregard of his lender clients' best interests. Having regard to the important role which

solicitors played in guarding against money-laundering the Tribunal considered that the Respondent's behaviour inevitably diminished public trust and found allegation 1.3 proved to the required standard.

30.61 Allegation 1.4 related to Rule 9.01 of the Code when receiving referrals of clients from DW/SD in that by breaching the rules the Respondent compromised his independence and/or his ability to act and advise in the best interests of his lender clients. The Tribunal noted that the Applicant drew attention to the fact that the Respondent did not have in place a written agreement in respect of the referral arrangement with DW. Rule 9 of the Solicitors Code of Conduct 2007 included:

> "9.02 additional requirements apply when you enter into a financial arrangement with an introducer:
>
> (a) the agreement must be in writing and be available for inspection by the Solicitors Regulation Authority;

The Tribunal considered that this was a financial arrangement because DW met the Respondent's fees, a feature common to all the transactions. The Tribunal therefore found as a fact that the Respondent was in breach of Rule 9.01 of the Code by not having a written agreement and it remained to be determined whether thereby he compromised his independence and/or his ability to act in the best interests of his lender clients. It was also asserted that the Respondent did not disclose to his purchaser clients the amounts DW paid in respect of fees or that advice given by the Respondent would be independent of DW. Rule 9.02(g) stated:

> "you must give the client in writing all relevant information concerning the referral, in particular:
>
> ...
>
> (iii) -where the introducer is paying you to provide services to the introducer's customers, (A) - the amount the introducer is paying you to provide those services;
> (iv) -a statement that any advice you give will be independent and that the client is free to raise questions on all aspects of the transaction
> (v) -confirmation that information disclosed to you by the client will not be disclosed to the introducer unless the client consents."

The Tribunal studied the Mortgage Information Sheet produced by the firm which contained none of the required information and the letter to the client, the example being that to Mr C on 23 November 2007 written in response to receipt of his instructions. The Respondent stated in evidence that this was a computer-generated letter. The completion statements referred to SD but the purchaser clients were not forewarned as required about the financial arrangements. The Tribunal noted however that allegation 1.4 referred only to compromise of independence and ability to act in the best interests of the lender, rather than purchaser clients, and failure to deal with disclosure under Rule 9 was not alleged. The Tribunal considered however that the Respondent had been in breach of Rule 9.01 in respect of the introducer. There was no evidence that the Respondent had brought the Rule to the attention of the

introducer DW/SD or that he had complied with the additional requirements which applied under Rule 9.02 when he entered into a financial arrangement with DW. The Tribunal had found as a fact that the Respondent compromised his independence and his ability to act in the best interests of his lender clients in considering allegations 1.1 and 1.2 and his breach of Rule 9.01 fed into the circumstances whereby his independence and his ability to act in their best interests were compromised. The Tribunal found allegation 1.4 proved to the required standard.

31. **Allegation 1.5 - In breach of Rule 22 of the Solicitors Accounts Rules 1998 he [the Respondent] withdrew money from client account in circumstances other than permitted by that Rule.**

31.1 For the Applicant, Mr Barton submitted that the transactions the subject of allegations 1.1 to 1.4 produced credit balances which the Respondent recorded in a client ledger for DW/SD even though neither was a client and the Respondent periodically transferred balances to office account in breach of Rule 22. Mr Barton referred the Tribunal to a schedule provided by the Respondent as part of his explanation with his solicitor's letter of 2 September 2010 in response to the Applicant's first letter dated 6 July 2010 asking questions about his professional relationship with DW and SD. The schedule listed all the transactions which the Respondent conducted and included:

> "In every case the client had appointed [DW] to act as his/her agent. As explained on page 4 of the accompanying document, each client through his agent had authorised me in effect to surcharge each client a nominal amount (as explained on page 4) to cover any general expenses I might have which could either not be attributed individually to a client's file/ledger, or which related to aborted matters. This arrangement is referred to me at the end of both documents within Appendix 14 (pages 4 and 8, of 8). I have described it as..." a little bit of insurance" which on reflection is perhaps an unfortunate choice of words, but reflected the true position. If I had added to the final sentence of the two documents so as to read: "This is a little bit of insurance against additional work and aborted matters" then that would have more appropriately reflected the true position."

31.2 There were four transfers of costs recorded in the FI Report. It noted that the IO asked the Respondent if new procedures were required to deal with the SD matters. The Respondent said that he did what he would do for every client but quickly. With regard to the monies retained for "insurance", the Respondent said that he could not recollect how these monies had been accounted for, although he believed they were held on a client ledger for SD. The Respondent stated that the firm did not benefit. The IO noted that on other SD matters transfers had been made to a SD general client ledger. The ledger in the name of SD was opened on 27 September 2007 and by July 2008 had a credit balance of £2,772.97, the amount alleged to have been taken across to client account as costs and disbursements. This post-dated the termination of the relationship between the Respondent and DW. The Tribunal noted that in for example the case of Mr C the ledger card showed £352.50 transferred as costs and disbursements indicating that an invoice had been raised. Mr Barton explained that the allegation in the Rule 5 Statement was confined to the amount stated on the ledger for SD. The ledger recorded four transfers from client to office bank account totalling

the sum of £4,223.71. The final transfer of £2,772.97 on 21 July 2008, which included costs and VAT, reduced the client balance to nil and this was the extent of the allegation. Mr Barton submitted that this all went back to the point in the protocol about the "little bit of insurance".

31.3 For the Respondent Mr Nuttall submitted that the admitted breach of Rule 22 blemished a 40 year career. The Respondent had explained it and accepted that what he had done was wrong. When he was asked if he would do it again the Respondent said in view of what had taken place "Clearly no" but if he believed that what he did was right at the time "Yes". This was the reply of an honest man. In giving evidence as to how the monies arose, the Respondent stated that initially he was inclined to calculate stamp duty based on the full purchase price. He then realised that it should be based on the purchase price less the allowance. The Respondent told DW that he had overcharged him and DW told him to carry on with the practice and use the relatively small amounts of money to cover abortive work or work that the Respondent needed to do. If the Respondent had realised that the ledger would be looked at by anyone other than the firm's staff, the entries would have been clearer. There were a couple of abortive transfers and after April 2008 there were a lot. The Respondent stated that he should have dealt with this money differently but he was not sure where the money should go. The Respondent suggested that the ledger should have been headed "Clients introduced by SD". The Tribunal asked the Respondent whether he had prepared an invoice for the amount £2,772.97 and if so did it include VAT and disbursements and against whom was it issued but he said that he was not really sure.

31.4 The Tribunal considered the evidence including oral evidence, the submissions for the Applicant and the submissions for and admissions of the Respondent. The Tribunal found allegation1.5 proved to the required standard indeed it was admitted.

Previous Disciplinary Matters

32. None.

Mitigation

33. Mr Nuttall summarised the Respondent's health problems. The Respondent had given up being a solicitor as a result of these proceedings. His firm had been properly disposed of resulting in continuing costs. He had closed the firm a lot sooner than he would have wanted. This was the end of a long and hitherto unblemished career and he was more than a little disgusted to find himself in this position. Mr Nuttall accepted that one of the options open to the Tribunal was to strike off the Respondent. There was no chance of a recurrence of the misconduct; not only did the Respondent have no intention of practising again but he was in no position to do so. Mr Nuttall asked the Tribunal not to strike him off; the Respondent had not sought to hide what he had done and the IO had given a quite glowing account of his cooperation. He had not shirked any enquiries or sought to impede the investigation and there had never been any question of dishonesty. The Respondent intended to come off the Roll but his time had been taken up with the heavy burden of financial affairs. He was not being pursued in civil or criminal proceedings. Any sanction would be a heavy blow.

Sanction

34. The Tribunal had regard to its Guidance Notes on Sanction and to the mitigation put forward for the Respondent. In assessing the seriousness of the Respondent's conduct the Tribunal considered that the Respondent's level of culpability was high. He was clearly motivated by the increased level of fees which he could obtain from accepting the referrals and operating the improper payments system, the implications of which he shut his eyes to. His actions were planned rather than spontaneous and he had direct and complete control of, and complete responsibility for, the circumstances giving rise to the misconduct. This was not affected by the fact that some of the transactions had been undertaken by a member of his staff. The Respondent was a solicitor of very long experience. In terms of the harm caused by the Respondent's misconduct, the Tribunal had regard to the fact that more than £1 million deducted from mortgage advances had been paid away to the nominees of a person whom the Respondent now accepted was dishonest. At the time, the transactions had all the hallmarks of fraud. There did not appear to have been any harm to any individual person and no complaints had been made but the Tribunal considered that the impact on the reputation of the profession was serious; the Respondent had been found guilty of misconduct including lack of integrity, not acting in the lender clients' best interests and a serious breach of the accounts rules by taking balances left in client account. The extent of the harm caused to the reputation of the profession was reasonably foreseeable. In terms of aggravating factors, no dishonesty had been alleged or proved but the misconduct was deliberate, calculated and repeated. It took place across 25 transactions over a period of nine to 12 months so this was not a one-off misconduct. There was no evidence that any of the people involved were vulnerable and the Respondent had not concealed what he was doing; rather he had not disclosed what he should have done to his lender clients. He certainly knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the profession and he should have known and understood what the requirements of the Money Laundering Regulations were all about. The Tribunal was particularly concerned about the complete lack of insight shown by the Respondent; the Tribunal found that he had been an evasive rather than a credible witness and that in his answers he relied either on not being able to recall what had occurred or on repeating his interpretation of conduct which the Tribunal had found to be contrived and designed to pay lip service to his obligations to his lender clients by recasting the mortgage advance as proceeds of sale. The Tribunal had regard to the case of Bolton v the Law Society [1994] 1 WLR 512 in which it had been said that:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed on him..."

The Tribunal found the seriousness of the misconduct to be such that suspension or strike off must be considered. The Respondent's failure to act with integrity and without regard to his client's best interests taken together with his compromise of his independence and the damage to the profession made his misconduct very serious. He fell far below the standards required of a solicitor notwithstanding that no dishonesty had been alleged and his considerable experience made his conduct all the more reprehensible. In order for the conveyancing system to operate lender clients must be

able to place reliance upon the solicitors acting for them. The Tribunal noted that the Respondent had suffered from ill health but did not consider that there was any personal mitigation such as would reduce sanction. In order to maintain the reputation of the profession and to send a message to other solicitors and to the public, trust in the profession must be maintained. The Tribunal considered that it would be appropriate to strike off the Respondent.

Costs

35. Mr Barton applied for costs for the Applicant in the sum of £34,643.89. He had not yet been served with the Respondent's Personal Financial Statement. Mr. Nuttall submitted that the Respondent had become eligible for state pension two weeks previously and his outgoings succeeded his income. The family home was to be sold and from his half share of the equity he would be able to deal with all his debts which were just in excess of £30,000. The Respondent had moved out of his local area to a property which his wife had inherited. He also needed to pay his solicitor's fees and his accountants. His costs were in excess of £30,000. Mr Nuttall informed the Tribunal that the Respondent had admitted allegation 1.5 from the beginning of the proceedings and in September 2014, because of the substantial costs and because he was not intending to practise as a solicitor again, he had been prepared to come to an agreed arrangement with the Applicant. That arrangement had been rejected by an earlier division of the Tribunal. At that point Mr Barton's costs had been agreed at around £12,500. The costs had now tripled. Mr Barton explained that there had been protracted communications between the parties during the first six or seven months of 2014 after the CPS offered no evidence in certain criminal proceedings. During the 2014 discussions, the Respondent had indicated that he would not practise again and he had provided information about his health. For the purposes of those negotiations the Applicant was prepared to accept a costs figure which did not completely cover the costs of the FI Report and the legal costs. Mr Barton was aware that the Memorandum in respect of the hearing at which the earlier division of the Tribunal had reached its decision had not been placed before this division of the Tribunal (in order to avoid prejudice). Having heard information provided by Mr Nuttall, Mr Barton noted that potentially equity was available in four properties. Mr Barton asked that the Tribunal make an immediately enforceable order for costs. The Respondent could come to terms with the Applicant over time.

36. Mr Nuttall handed up the Respondent's Personal Financial Statement and informed the Tribunal that for the purposes of the earlier proposed agreement, the Respondent had admitted all the allegations save the lack of integrity. Once the Tribunal indicated that it would not sanction the agreement the Respondent had reverted to denying the allegations with immediate effect after the September 2014 hearing. That had played a part in the costs. Mr Nuttall submitted that he could not make any representations about the costs save in respect of the Respondent's ability to pay them.

37. The Tribunal noted that that this matter had had quite a protracted history with a number of case management hearings and also an abortive hearing about the proposed agreement. While a Personal Financial Statement had been provided at the last minute no supporting evidence has been produced The Tribunal noted the Respondent's anticipated share of the equity in his former home and that there were three other properties jointly owned with his wife, subject to mortgage with equity in each. There

was also a net cash balance in the bank. The Tribunal was informed that the Respondent funded the joint expenditure of himself and his wife but he had no information about her financial position. For the Respondent, Mr Nuttall had not challenged the costs schedule but the Tribunal considered that it was somewhat high, in terms of time spent on documents and preparation of the FI Report. The Tribunal was satisfied that this was not a situation where the Respondent's means were such that costs should be anything other than immediately enforceable. The Tribunal assessed costs in the sum of £30,000.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, Andrew Donald Varley, 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 £30,000.00.

Dated this 24th day of April 2015
On behalf of the Tribunal

I.R. Woolfe
Chairman