SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10873-2011

On 27 June 2013, Mr Webb appealed against the Tribunal's findings on a number of grounds. In Judgments dated 19 and 29 July 2013 the appeal was dismissed with costs in favour of the SRA by Mr Justice Jeremy Baker. Webb v Solicitors Regulation Authority [2013] EWHC 2108 (Admin.) and Webb v Solicitors Regulation Authority [2013] EWHC 2225 Costs Only (Admin.)

On 11 September 2013, Lord Justice Kitchin sitting in the Court of Appeal dismissed Mr Webb's application for permission to appeal.

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID ALAN WEBB Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Mr R. Prigg
Mr S. Howe

Date of Hearing: 15th October and 16th November 2012

Appearances

Mr Edward Levey, counsel instructed by Jonathan Greensmith, solicitor of Russell Jones & Walker (part of Slater & Gordon Lawyers), 50 – 52 Chancery Lane, London WC2A 1HL for the Applicant

Mr Paul Stafford, counsel of 10 Old Square, Lincoln's Inn, London WC2A 3SU for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent were that he:

1.1 Acted in a position of a conflict of interests, contrary to Rules 3.01 and 3.04 of the Solicitors' Code of Conduct 2007 ("SCC");

1.2 Failed to act in the best interests of his client, contrary to Rule 1.04 of the SCC;

1.3 Breached an undertaking, contrary to Rule 10.05 of the SCC;

1.4 Failed to act with integrity and acted in a manner likely to diminish the trust the public placed in the profession, contrary to Rules 1.02 and 1.06 of the SCC.

Allegations 1.3 and 1.4 were made on the basis that the Respondent had behaved dishonestly.

Documents

2. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the Respondent, which included:

Applicant:

- Application dated 11 November 2011;
- Rule 5 Statement and exhibit "JJG1" dated 11 November 2011;
- Updated Skeleton Argument dated 15 October 2012;
- Statement of Costs for Hearing on 31 May 2012 dated 30 May 2012;
- Statement of Costs dated 12 October 2012;

Respondent

- Respondent's Response to the Rule 5 Statement and exhibits dated 26 March 2012;
- First Witness Statement of the Respondent and exhibits "DAW1", "DAW2" and "DAW3" dated 25 April 2012;
- Second Witness Statement of the Respondent and exhibit dated 14 May 2012;
- Third Witness Statement of the Respondent and exhibit dated 28 June 2012;
- Skeleton Argument dated 25 May 2012;
- Chronology dated 12 October 2012;
- Testimonials;
- Bundle of Authorities;
- Closing Submissions dated 16 November 2012;
- Financial Position of the Respondent and exhibit dated 15 November 2012;
- Statement of Costs for Hearing on 31 May 2012 dated 2 October 2012;

- Statement of Costs dated 16 November 2012.

Preliminary Matter

3. Mr Levey informed the Tribunal that the case had been adjourned from May 2012. The previous Order of the Tribunal had allowed for the filing and service of Skeleton Arguments by both parties and Mr Levey had updated his to correct two minor points; firstly, at paragraph 1 the date of client CW's death was 17 June 2010 and not 17 July. That also required amendment in the Rule 5 Statement at paragraph 9. Secondly, his previous Skeleton Argument stated that the Transfer had been effected before CW's death and it had been effected after; CW had died on 17 June 2010 and the Transfer was dated 7 July 2010. The Respondent had agreed the corrections.

4. The Tribunal consented to the corrections being made and the Rule 5 Statement amendment as to the date of client CW's death.

Factual Background

5. The Respondent was admitted as a solicitor on 1 December 1977 and his name remained on the Roll of Solicitors. At the material time the Respondent practised and continued to practise as David Webb & Co at 492 London Road, Westcliff-on-Sea, Essex SS0 9LD and through a branch office at 48 The Ridgeway, Westcliff-on-Sea, Essex SS0 8NU.

<u>Client CW</u>

6. The Respondent had been CW's solicitor for a number of years and had drafted a Will, executed by CW on 28 April 2009. The Respondent had also assisted CW with the transfer of title of 2A Armstrong Road, Manor Trading Estate, Benfleet, Essex SS7 4PW. CW had been an individual with substantial assets.

7. In June 2010 CW sought advice from another firm of solicitors, Barnes Coleman. CW told Barnes Coleman that he was concerned that he was being manipulated by people including his accountant Mr CS. He said that he had been introduced to the Respondent by Mr CS. CW described the Respondent as being "in cahoots" with Mr CS.

8. The concerns voiced by CW were set out, together with other background information, in a report to the Applicant dated 8 March 2011 by Barnes Coleman concerning the Respondent's conduct and carriage of CW's matters. Barnes Coleman acted for CW following his disinstruction of the Respondent's firm until his death on 17 June 2010.

<u>Conflict of Interests</u>

9. On 28 April 2009 CW signed a Will which had been drafted by the Respondent ("the 2009 Will"). The 2009 Will named the Respondent and Mr CS as CW's executors. Within the 2009 Will, CW had made the following legacies:

- £35,000 to Mr CS "in recognition of all the help and assistance given to me" (Clause 3);
- £10,000 to each of his two Grandsons (Clause 7);
- £5,000 each to his neighbours CT, PT and friend BC (Clause 8).

10. CW also established a trust of £100,000 to be administered by Mr CS and Mr SR to provide food, bedding and care products to various dog charities in Essex (Clause 10). The remainder of the estate, after settlement of debts and expenses, was to be donated to UCL Institute of Neurology for research into neurological diseases (Clause 11).

11. During his lifetime CW had made various loans and gifts and the 2009 Will made provisions in relation to those. Clauses 5 and 6 related to two loans, the borrowers being Mr BC and Ms NB. The clauses directed that, providing Mr BC and Ms NB continued to make weekly repayments in respect of the loans during CW's lifetime, on CW's death whatever remained of the loans would be written off. In respect of Ms NB the loaned amount was £30,000. Ms NB was an employee of the Respondent and also his cohabitee. Ms NB and the Respondent also owned property together.

Instructions from a Third Party

12. The Respondent provided the Applicant with a copy of the instructions upon which he had prepared the 2009 Will. The instructions for the 2009 Will were not provided directly from CW to the Respondent but had been sent by email from Mr CS.

13. On 13 April 2011 the Applicant wrote to the Respondent and requested his explanation of the matters raised by Barnes Coleman. The Respondent replied on 6 May 2011 and stated that:

    - His role in the 2009 Will had been to prepare the same in accordance with instructions received from CW's accountant, Mr CS; and
    - "It was clear that (CW) had discussed matters fully with his professional adviser who had clearly taken independent advice on what he required in his Will".

14. On 6 June 2010 CW had signed another Will ("the 2010 Will") which had been prepared by his new solicitors Barnes Coleman. As a result of the 2010 Will, the 2009 Will was revoked. CW died on 17 June 2010. The 2010 Will was the subject of legal challenge by both Mr CS and the Respondent's partner, Ms NB. The Respondent represented them both in that action.

Transfer of Property at 2A Armstrong Road

15. By letter dated 6 June 2010 drafted by Barnes Coleman on behalf of CW and signed by CW, the Respondent was instructed

    > "Kindly note that I no longer wish you to act on my behalf in any capacity and I have instructed new solicitors... Please be notified that I wish to revoke my instructions to transfer the above property (2A Manor Trading Estate,

> Benfleet, Essex) with immediate effect. Please take no further steps to effect the transfer and if it has been effected, you must rescind it immediately" [emphasis added].

For the avoidance of doubt 2A Manor Trading Estate was 2A Armstrong Road. The letter was accompanied by an authority signed by CW requesting that all papers held by the Respondent be forwarded to Barnes Coleman.

16. On 14 June 2010 the Respondent replied in relation to the collection of papers and files from storage and wrote

> "We confirm that we will not be registering any Transfer in respect of 2A Armstrong Road".

17. A Land Registry search conducted on 14 June 2010 showed that the Registered Proprietor of 2A Armstrong Road was CW; at the time of the Respondent's confirmation of instructions, no transfer in respect of 2A Armstrong Road had been registered.

18. A further Land Registry search was carried out on 10 February 2011 and showed that in the intervening period the Registered Proprietor of 2A Armstrong Road had been changed and was in the name of "RMP LLP", a Limited Liability Partnership. The office copy entry recorded that the transfer of ownership had been registered on 8 July 2010, based on documents which had been signed and submitted to the Land Registry on 7 July 2010, less than four weeks after the Respondent had confirmed that no such transfer would be registered.

19. The reistered address of RMP LLP, as recorded on the Land Registry documentation, was the same as the Respondent's firm's head office. The members of RMP LLP were Mr CS and Mr SR; the same two individuals who were set to become the Trustees of CW's Trust under Clause 10 of the 2009 Will. A copy of the relevant AP1 form, registering the transfer, had been signed by the Respondent and was dated 7 July 2010. The AP1 form also showed that the value of the transfer was £600,000 although the actual consideration paid was nil. The form showed that the Respondent had acted for both CW and RMP LLP in the transfer.

20. On 13 April 2011 the Applicant wrote to the Respondent and requested an explanation for his conduct. The Respondent replied on 6 May 2011 and stated that:

    - The transfer of 2A Armstrong Road had been completed before CW's letter of 6 June 2010;
    - He accepted that he had written on 14 June that he would not register the transfer and that he should not have given that assurance but he had forgotten that the transfer had been made;
    - "At the time that the transfer was completed I wrote to (CW) to be sure that the transfer was what he wanted" (a copy of the letter to CW was enclosed to the Applicant); and
    - "All that was done was done for the benefit and at the behest of (CW). I was not advising any of them only putting in to place what they had agreed".

21. The letter to CW enclosed by the Respondent was dated 3 June 2009 and stated that it enclosed a copy of the form of Transfer for the transfer of the freehold title of 2A Armstrong Road to RMP LLP. The letter stated that the transfer was for no consideration. The letter concluded

> "Assuming you want to proceed then do sign the transfer where indicated by the pencilled cross. You should sign in the presence of an independent witness who should add his/her address and occupation below your signature again where indicated. Do please then return the transfer to me".

There was no evidence that the transfer had ever been signed and returned by CW. The Respondent's position was that the letter had been sent at the time the transfer had been completed but the letter was dated one year prior to the transfer, 2009 and not 2010.

22. The AP1 form which registered the transfer from CW to RMP LLP had been signed by the Respondent and not CW.

Witnesses

23. The Respondent gave evidence. Two of his referees also gave evidence, Mr T L Brown and Mr T D Fearon.

The Respondent

24. The Respondent confirmed the truth of his three witness statements.

25. The Respondent told the Tribunal that he had had the Transfer in his possession and that he had been awaiting receipt of the registration fee. The documents in exhibit DAW1 had come from Mr CS and from his own Will file. The Respondent said that he had not seen the letter dated 8 June 2009 to Mr CS from Mr CW and this had only been given to him when he had told Mr CS of the Applicant's case against him. He had also not seen the Agreement between Mr CW, Mr CS, Mr SR and RMP LLP and he had also not seen the second Agreement between Mr CW, Mr CS and Mr SR until sometime after the complaint by Barnes Coleman. The Respondent referred to his third witness statement which stated:

> "Pages 49–55 are copies of the Agreements that I have referred to in paragraph 29 of my First Statement and copies of which are shown in my bundle DAW1/65-68 pages 53 and 54 show the documents with some writing by C [CW] that I have not seen until now...".

26. In relation to the undated TR1 form the Respondent said that he could only assume that a copy had been taken when he had sent the form to CW and before he had returned it. The Respondent said that he had not seen the letter addressed to him dated 22 April 2009 from CW regarding the proposed plan to transfer 2A Armstrong Road to Mr CS and Mr SR.

27. The last contact the Respondent had had with Mr CW was in approximately June 2009, after the letter dated 28 June 2009 from Mr CW to Mr CS.

28. In cross-examination the Respondent confirmed that the TR1 in the Applicant's exhibit was his version which he had sent to CW to sign. The Respondent said that the second version of the TR1 dated 27 May 2010 was exactly the same as the document attached to his defence and was the date upon which he had submitted the TR1 to the Land Registry.

29. The Respondent confirmed that his relationship with Mr CW had been a long-standing one, from 2002 until 2009 after which he had had no further contact with him. Communication with Mr CW had always been by correspondence and he acknowledged that was unusual. He agreed that it was fair to say that he had had a deep and close relationship with Mr CW and that he had treated him differently to other clients. He had been unable to attend the funeral but said that his partner Ms NB had done so. Mr Levey referred the Respondent to DAW2 and a letter dated 1 December 2005 from the Respondent to Mr CW which stated:

> "...
>
> I understand that you might by now have a new dog and I hope all is going well and that he has not either knocked you over or eaten your dinner!!"

30. The Respondent confirmed that he had been made an Executor of Mr CW's 2009 Will. He said that he had had to pester him to formalise his Will as he was concerned for him. He accepted that there had been a conflict of interest by virtue of Ms NB having been due to benefit under the 2009 Will. He acknowledged that he had been under an obligation to advise Mr CW to seek independent legal advice but said that in this particular case, it had not been applicable. He considered that his independent advice to Mr CW had been sufficient and that he could prepare the 2009 Will. He felt that he had acted in CW's best interests and that had Mr CW obtained independent legal advice, he would not have challenged the Will.

31. Mr Levey referred the Respondent to the email from Mr CS to the Respondent dated 7 April 2009 which set out the instructions for CW's 2009 Will. The Respondent said that he had not seen CW until 28 April 2009 when he had attended the office to sign the Will. The Respondent confirmed that he had not discussed Mr CS's email with CW. Mr Levey submitted that there were differences between the email instructions and the Will, for example the Will gifted the sum of £35,000 to Mr CS whereas the email instructions referred to that sum being given to Mr CS "(for distribution by CS as previously discussed)".

32. The Respondent said that Mr CW had told him that Mr CS knew what he had to do with the money. He acknowledged that he had not pointed out the inconsistency to Mr CW.

33. In relation to being an Executor of the Will, the Respondent acknowledged that it was not referred to in the Will but said that he assumed it would follow on from the 2003 Will. He said that he had not discussed it with Mr CW. The Will had also omitted any reference to Charity or the Conservatives albeit referred to in the email from Mr CS. The Respondent acknowledged that he had not discussed that with Mr CW. He agreed that he had not followed the instructions in the email and that the terms of the 2009 Will were inconsistent with the written instructions given.

34. In relation to 2A Armstrong Road, the Respondent said that he had not been involved in the drafting of the Agreements at all. He had dealt with the incorporation of the LLP. He said that Mr CS had been the orchestrator of the scheme and he had prepared the documentation including the LLP document. The Respondent accepted that he had prepared the TR1 document.

35. The Respondent said that he believed that the property was to be held on trust for income tax purposes and not for inheritance tax purposes. He had not been asked to give any advice and had he been asked, he said that it would have been outside his area of expertise. He denied that the scheme had made him feel uncomfortable.

36. Mr Levey referred to the Respondent's letter dated 3 June 2009 to Mr CW, which stated:

> "I refer to the above [2A Armstrong Road] and enclose a Transfer under which you transfer the freehold title in 2A to RMP LLP. I know you have discussed this with C [Mr CS] and S [Mr SR].
>
> Do not rely on me for any advice on the transfer..."

37. The Respondent confirmed that had been the extent of his involvement in the arrangement between Mr CW, Mr CS and Mr SR and he had merely dealt with the formalities. He said that he had not discussed the transaction with Mr CW and had had no further contact with Mr CW until he had received notice that he had been disinstructed.

38. The TR1 form had been returned in February 2010 and the Respondent told the Tribunal that it had been returned by Mr CS who had confirmed that Mr CW was ready to go ahead. The Respondent said that he had not made contact with Mr CW and had relied on what he had been told by Mr CS. In relation to the TR1 form the Respondent had been awaiting receipt of the application fee to register the Transfer which he confirmed had been received from RMP LLP and not Mr CW. The Respondent said that he had not known the state of Mr CW's health or that it had deteriorated but he said that Mr CS had known.

39. In relation to the Probate proceedings the Respondent said that he was acting for the Defendants, namely Mr CS, Mr SR and Mr BC. Mr Levey referred to the Particulars of the defence and counterclaim, which stated:

> "(1) In the months leading up to the execution of the June 2010 Will, the Deceased's mental capacity deteriorated substantially and rapidly. The Deceased's memory started to fail, the effects of which resulted in him being admitted as an emergency patient in hospital. The Deceased had previously arranged for a hospital appointment due to take place on 25 May 2010. As the Deceased suffered from a severe case of Dystonia, the hospital would arrange for the Deceased to be collected from his home. On 25 May 2010 the Deceased waited to be collected from his home to attend the said hospital appointment. The Deceased waited for approximately 2 hours outside his home and in the summer heat. Despite the Deceased's deteriorating physical condition, he continued to wait in the extreme heat for such an excessive

amount of time that upon being discovered he was rushed to hospital where he was admitted as suffering from severe and potentially fatal dehydration.

(2) Up and until around the end of March, early April 2010, there were further fundamental and radical changes in the Deceased's behaviour indicating that his mental capacity was diminishing. Prior to this time, the Deceased had been aware of the location of all his belongings in his home and ensured and always ensured that everything was always stored in its 'correct' place. In the event that any item was not stored in its place, the Deceased would immediately notice this fact".

40. The Respondent agreed that Mr CS must have known that Mr CW had been admitted to hospital and he accepted that it had been around that time, 26 May 2010, that Mr CS had given him the £550 to effect registration of the Transfer. The Respondent could not recall exactly but agreed that he may well have been told by Mr CS that Mr CW was in hospital and was unwell. The Respondent said that he therefore had gone ahead with the application to register the Transfer but that he had not seen the Agreement/ Partnership Agreement.

41. The AP1 was dated 27 May 2010 and the Respondent confirmed that he had submitted that immediately but it had not been effected. On 7 June 2010 the Respondent said that he had informed the Land Registry not to proceed with the registration, having been informed by Mr CW on 6 June 2010 that he did not want to proceed. Mr Levey referred the Respondent to the Partnership Agreement which stated:

"2) The beneficiary shall be entitled to ask for any of the partnership property to be returned to him if he so desires, and the partners agree that they will make all efforts to ensure that such requests are dealt with timeously and without hindrance".

42. Mr CW's instructions to rescind the agreement were contained in a letter to Mr CS dated 5 June 2010, which stated:

"I refer to the recent agreement that I entered into whereby I gifted the above property to a limited partnership established by you and Mr SR and for which I receive in return a monthly payment into a segregated bank account established in your names but for my ultimate benefit.

I hereby wish to exercise my right to rescind this agreement and I formally request that you ensure that title to the above property [2A Armstrong Road] is restored and registered in my name with immediate effect".

43. The Respondent accepted that if the Transfer had happened, it had been revoked as a result of Mr CW's letter of 5 June 2010 and the partnership was under an obligation to transfer the property back.

44. Mr Levey referred to the letter dated 6 June 2010 which had disinstructed the Respondent. The Respondent said that he had still been Mr CW's solicitor and friend and he had had no warning that he would be disinstructed. Mr CS had suggested that Mr CW was unhappy with his services and that he had not liked the Respondent's

letter which stated that the Respondent would not be advising on the transaction. The Respondent agreed that he had been surprised and upset and his feelings had been hurt.

45. Mr Levey referred to Mr CW's letter of 6 June 2010, which stated:

> "Kindly note that I no longer wish you to act on my behalf in any capacity and I have instructed new solicitors Messrs Barnes Coleman & Co. I enclose my signed authority to you and request you forward all my files to them.
>
> Re: 2a Manor Trading Estate Benfleet Essex [2A Armstrong Road]
>
> Please be notifed (sic) you (sic) that I wish to revoke my instructions to transfer the above property with immediate effect. Please take no further steps to effect the transfer and if it has been effected, you must rescind it immediately. I enclose a copy of a letter I have sent to CS to same effect".

The Respondent said that the copy letter to Mr CS had not been enclosed.

46. The letter continued:

> "Re My Will
>
> Please be advised that I have today made a new Will which revokes my previous Will held by you. Please also send the original of that will to Barnes Coleman & Co".

47. The Respondent confirmed that he had been confused by this letter and had wanted to know what was going on.

48. Mr Levey said that Mr CW had also written to the Respondent on 4 June 2010 and the letter contained a handwritten annotation "& I do mean ALL paper work". The Respondent acknowledged this but said that he had not immediately returned all papers albeit he did not have a lien over them. He agreed that there had been no good reason for him not to return them and he had not done as he was asked. The Respondent admitted that he had wanted to speak to Mr CS about what was happening albeit it had been CW who was his client. He said that he had not asked Mr BC.

49. Mr Levey referred the Respondent to the letter from Barnes Coleman & Co dated 11 June 2010, which stated:

> "...
>
> We would inform you that our client is in hospital at the present time and any delay in the return of these documents is causing him great distress and it is imperative that you now send these documents to us by return. Urgent arrangements have to be made for his healthcare and it is essential that we are made fully aware of the contents of the Power of Attorney you hold.
>
> ...
>
> In the meantime, we refer to our client's letter of authority dated the 6th June

and we shall be obliged if you would in particular let us have your response to the title relating to 2a Manor Trading Estate, Benfleet, Essex and what is the current situation relating to that property".

50. The Respondent acknowledged that he had not returned the papers but said that he had offered for them to be collected. He told the Tribunal that he had already advised Barnes Coleman about 2A Armstrong Road in previous correspondence.

51. Mr Levey referred to the Respondent's letter to Barnes Coleman dated 17 June 2010, which stated:

> "We write having been informed that CW passed away today.
>
> Obviously the urgency has now gone out of the situation. Would you please let us have sight of a copy of the latest will.
>
> We will obviously require the authority of the executors named in the new will, assuming that the writer is no longer an executor.
>
> For now the executors may telephone to make an appointment to look at the files that we hold".

52. The Respondent said that he had wanted to see the new Will but accepted that he was not entitled to see it. As Mr CW had died, the Respondent said that he considered that the urgency to return the files had gone out of the situation. The Respondent accepted that he had had concerns regarding Mr CW's state of mind as had Mr CS and that they had discussed the new Will and what to do next. The Respondent said that he was concerned at having been disinstructed and was concerned for others. The new Will had removed friends as beneficiaries and had replaced them with Mr CW's daughter.

53. The Respondent acknowledged his letter dated 7 July 2010 sent to the Land Registry and which stated:

> "We refer to our recent correspondence and do renew the Application for Registration.
>
> As explained before the fee is calculated on the value even though there was no cash consideration in the transfer".

54. The Respondent confirmed that the instructions to renew the registration application had come from Mr CS. Mr CS had attended at his office and asked him to proceed with the Transfer and he had done so. He denied that he had been anxious about the Transfer proceeding, having found out about the new 2010 Will. The Respondent told the Tribunal that he had not remembered giving his undertaking to Barnes Coleman in June 2010 that he would not proceed with the Transfer. He said that the undertaking had been on another file. He also said in evidence that he had not remembered that he had already tried to register the transfer.

55. Mr Levey referred to the Respondent's letter dated 7 July 2010 which stated "...renew the Application for Registration" and the Respondent accepted that it appeared that he had been aware of the undertaking.

56. Mr Levey referred the Respondent to the various letters between him and Barnes Coleman where they had sought the return of Mr CW's files and papers. In addition, on 8 July 2010 Barnes Coleman had written:

> "...
>
> We note that you state that your Mr Webb (the Respondent) and other "friends of C" are expressing disquiet about the latest Will. This is obviously because of the substantial difference between the two Wills and because various benefits to various "friends" have been revoked".

57. The Respondent denied that it had been on his mind at all when he had renewed the registration application that the new Will had revoked benefits to friends.

58. A further letter from Barnes Coleman dated 23 February 2011 stated:

> "...
>
> We have obtained up to date office copy entries which we are astounded to see shows the property was registered on the 8th July 2010, in the name of RMP LLP, despite the assurance contained in your letter to us dated the 14th June 2010 when you stated "...we can confirm that we will not be registering any Transfer in respect of 2a Armstrong Road...".

59. The Respondent accepted that he had not then responded to say that he had forgotten about his undertaking. He said that he had been horrified at the realisation. The Respondent agreed that when put to him by Barnes Coleman that he had breached his undertaking he had not replied that it had been an innocent mistake nor had he notified his insurers. Whilst he did not consider that there could have been a claim against him as he believed there had been no loss, the Respondent agreed that he should have notified his insurers.

60. In relation to acting for the Defendants in the Probate proceedings, the Respondent acknowledged that there could be a potential conflict of interest since he had now accepted that the Transfer should never have happened but he said that his clients' position was that it should.

61. Mr Levey said that Barnes Coleman had been replaced by Birkett Long Solicitors who had also entered into correspondence with the Respondent regarding the Transfer of 2A Armstrong Road. The Respondent acknowledged that he was asked to explain his conduct and over a period of months he had not advised Birkett Long of his breach of undertaking nor that it had been an innocent mistake. The Respondent said that the first time he had mentioned his mistake had been to the Applicant. The Respondent said that mistakes happened and he did not consider that the public thought worse of the profession for that.

62. In re-examination the Respondent said that Mr CW had attended at his office on 28 April 2009 to sign his Will. In relation to the written instructions received by the Respondent from Mr CS by email dated 7 April 2009, the Respondent said that he was unsure whether that email had been seen by Mr CW.

63. In the period June/July 2010, the Respondent confirmed that he had received various letters from Barnes Coleman on behalf of Mr CW, he had given his undertaking not to register the Transfer and had then sought to renew the registration of the Transfer. The Respondent told the Tribunal that at that time he had had a normal workload including carrying out his own accounts. He said that he had generally worked from 6.30am until approximately 7.30pm.

64. The Respondent acknowledged that in all of his correspondence with Barnes Coleman and Birkett Long Solicitors he had not provided an explanation for his breach of undertaking which he described as an innocent mistake. He said that he still could not explain it and that when the breach had been identified to him by Barnes Coleman, he had been shocked. The Respondent told the Tribunal that he had not wanted to reply to Mr K of Barnes Coleman as he alleged that Mr K had been aggressive towards him in correspondence and had made accusations regarding the loan by Mr CW to the Respondent's partner, Ms NB.

65. In response to a question regarding the Probate proceedings, the Respondent said that he had taken advice from Counsel that there was no reason for him not to act for the Defendants in those proceedings.

Mr T L Brown

66. Mr Brown told the Tribunal that he had been a solicitor for over thirty years and had known the Respondent since the 1980s whilst working in the Southend area. He knew the Respondent reasonably well having dealt with matters where the Respondent was the opposing solicitor and they had also discussed a possible merger although that had not taken place.

67. Mr Brown confirmed that he had read the Rule 5 Statement and the Respondent's Response after which he had written his testimonial dated 1 May 2012 in support of the Respondent. He told the Tribunal that in all of his dealings with the Respondent he had found him to be straightforward and honest. Had he not done so, Mr Brown said that he would not have contemplated a possible merger; albeit the merger did not proceed, that had had nothing to do with any issue regarding the Respondent's honesty.

68. Mr Levey referred Mr Brown to the testimonial from former District Judge Skerratt dated 23 May 2012, which stated:

> "...
>
> I also observed that he could allow sympathy for an unfortunate client to lead him to seek the unlikely or downright impossible when a more practical approach would have been to tell the client to accept the inevitable".

69. Mr Brown said that from his experience, the Respondent's professional judgment could not be clouded. The Respondent had always been very conscientious and tried to do his best for his clients.

Mr T D Fearon

70. Mr Fearon confirmed that he had qualified in 1975 and had continued in practice since then. He referred to his testimonial on behalf of the Respondent dated 23 May 2012.

71. He said that he knew the Respondent very well having been in partnership with the Respondent for approximately eighteen months. They had been full equity partners and had worked very closely together. Since then, Mr Fearon said that he and the Respondent had known each other socially; he recommended work to the Respondent and they would speak on the telephone occasionally in a professional capacity and the Respondent was always helpful.

72 Mr Fearon told the Tribunal that he had come to speak on the Respondent's behalf as there was no doubt in his mind that the Respondent would not do anything which was dishonest. He might make a mistake but that did not mean that he had been dishonest.

73. Mr Levey referred Mr Fearon to the same comments of former District Judge Skerratt, as he had Mr Brown. Mr Fearon said that he had no experience of the Respondent having allowed his personal sympathies to cloud his professional judgment.

Findings of Fact and Law

74. **Allegation 1.1: Acted in a position of a conflict of interests, contrary to Rules 3.01 and 3.04 of the Solicitors' Code of Conduct 2007 ("SCC");**

Allegation 1.2: Failed to act in the best interests of his client, contrary to Rule 1.04 of the SCC;

Allegation 1.3: Breached an undertaking, contrary to Rule 10.05 of the SCC;

Allegation 1.4: Failed to act with integrity and acted in a manner likely to diminish the trust the public placed in the profession, contrary to Rules 1.02 and 1.06 of the SCC.

Submissions on behalf of the Applicant

74.1 Mr Levey referred the Tribunal to the Rule 5 Statement and exhibited documents upon which the Applicant relied. He also referred to his updated Skeleton Argument.

74.2 There were, he said, two issues in the case before the Tribunal:

74.2.1 The Wills; and

74.2.2 The transfer of 2A Armstrong Road

74.3 Allegations 1.1 and 1.2 arose from preparation by the Respondent of CW's Will in April 2009 from which Ms NB, the Respondent's co-habiting partner and his employee, stood to derive a significant financial benefit.

74.4 Allegation 1.1 was admitted by the Respondent but allegation 1.2 was denied. Mr Levey said that the Applicant could not understand on what basis the Respondent

denied that he had not acted in the client's best interests. There had been a clear conflict of interests and in those circumstances, the Respondent had been under a duty to advise his client (CW) that he should have obtained independent legal advice; that was in the client's best interests. If he failed to do so, which Mr Levey said the Applicant maintained he had done, he had not acted in the client's best interests.

74.5 Allegations 1.3 and 1.4 related to the transfer of 2A Armstrong Road to RMP LLP. The Transfer had been effected by a form AP1 sent to the Land Registry and completed by the Respondent, purportedly acting on behalf of CW on 7 July 2010, notwithstanding that CW had, to the Respondent's knowledge, died a few weeks earlier. Mr Levey said that the Transfer had been made in circumstances where the Respondent had been instructed by CW in writing on 6 June 2010 that he no longer wished the Respondent to act for him and that all papers should be returned to his new solicitors. In addition, that the instructions to transfer the property had been revoked "with immediate effect". The Respondent had also undertaken to CW's new solicitors in writing on 14 June 2010 that the property would not be transferred.

74.6 Mr Levey told the Tribunal that allegation 1.3 was admitted by the Respondent but he denied allegation 1.4. He submitted that it was in reality "and/or" in relation to allegation 1.4; it was open to the Tribunal to find one or both proved but it was not necessary for the Applicant to succeed on both as they were separate and distinct allegations.

74.7 As to the allegation of lack of integrity, Mr Levey said that the Respondent denied that he had breached Rule 1.04 of the SCC as he said that he had forgotten about his undertaking not to effect the Transfer.

74.8 Mr Levey said that it was more difficult for the Applicant to understand how the Respondent continued to deny that he had breached Rule 1.06 of the SCC. It was the Applicant's case that the Respondent had done something, by effecting the Transfer in breach of his undertaking, which meant that a member of the public would have less confidence in the profession having heard the case than if they had not done so.

74.9 Mr Levey told the Tribunal that client CW had been elderly and very ill. He had been a client of the Respondent's for many years and the Respondent had been his friend as well as his solicitor. The Respondent was an Executor of CW's 2009 Will. The Respondent's co-habiting partner, Ms NB, would have benefitted from the 2009 Will by virtue of a loan made to her by CW being written off. Out of the blue the Respondent had received a letter from CW's new solicitors disinstructing him. Mr Levey said that it was striking how anxious CW had been for the Respondent to return all of his papers. It had been made very clear to the Respondent that there should be no transfer of the property at 2A Armstrong Road and he had stated to CW's new solicitors that there would be no registration of the property; that had been his undertaking.

74.10 Mr Levey said that Mr CW had then died and only a few weeks later, the Respondent did what he had been instructed not to do and he effected the transfer of the property by registering the Transfer at the Land Registry. Mr Levey submitted that even had it been an honest mistake, as put forward by the Respondent, the public would think that

the profession and the Respondent as a solicitor, was not as trustworthy as one would expect them to be.

74.11 Mr Levey referred the Tribunal to the authority of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. He said that on the authorities, the test for dishonesty was as set out in Twinsectra namely the objective and subjective tests.

74.12 The Applicant did not accept that the Respondent had made a mistake in registering the Transfer or that he had forgotten about his undertaking and it was the evidence placed before the Tribunal by the Applicant which was the truth. Mr Levey submitted that more had been going on behind the scenes than the Respondent was prepared to admit. It was evident that he had been very concerned that he had been disinstructed by Mr CW. As to the question of dishonesty, the Respondent had put forward mistake as the reason for the registration but Mr Levey submitted that was not possible on the evidence. The Respondent's conduct in breaching the undertaking and having conducted himself with a lack of integrity and/or having diminished the trust the public placed in the profession, had been dishonest.

74.13 Mr Levey said that there were ongoing Probate proceedings in relation to the dispute between the 2009 Will and the 2010 Will. The Respondent continued to act in those proceedings which the Applicant considered to be inappropriate and to be a clear conflict of interest. His clients in those proceedings, namely Mr CS, Mr SR and Mr BC, were seeking to uphold the 2009 Will and the transfer of 2A Armstrong Road. Mr Levey said that on his own evidence the Respondent had accepted breaching his undertaking to Barnes Coleman by transferring the property and he had accepted that he ought not to have done it. His clients in the Probate case were seeking to uphold the Transfer notwithstanding that the Respondent accepted that the Transfer ought not to have happened. Mr Levey submitted that was a clear conflict of interests and in his evidence, the Respondent had acknowledged that.

Submissions on behalf of the Respondent

74.14 Mr Stafford referred the Tribunal to the Bundle of Authorities. He addressed firstly the standard of proof. He referred to the case of Campbell v Hamlet [2005] UKPC 19, in which Lord Brown of Eaton-Under-Heywood stated:

> "[16] That the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession, their Lordships entertain no doubt...
>
> ...
>
> [20] ...in Re A Solicitor [1992] 2 All ER 335, [1993] QB 69, concerning the standard of proof to be applied by the Disciplinary Tribunal of the Law Society. Lord Lane CJ, giving the judgment of the court, referred to the Privy Council's opinion in Bhandari's case and continued:
>
> '...We conclude that at least in cases such as the present, where what is alleged is tantamount to a criminal offence, the Tribunal should apply the criminal standard of proof, that is to say to the point where they feel sure that the charges are proved or, to put it another way, proof beyond reasonable doubt..".

74.15 In the case of <u>Richards v The Law Society(Solicitors Regulation Authority)</u> [2009] EWHC 2087 (Admin) Sir Anthony May stated:

> "22. Further, Mr Dutton Queen's Counsel for the Solicitors' (sic) Regulation Authority came close to accepting – although he was not allowed to argue the point completely – that this court is bound by the decision of this court presided over by Lord Chief Justice Lane in <u>Re A Solicitor</u> (1993) QB 69, as considered and applied by the Privy Counsel (sic) in <u>Campbell v Hamlet</u> (2005) 3 All ER 1116. Insofar as these two authorities might arguably leave some minor room for manoeuvre in cases where the alleged misconduct does not have criminal overtones, that is better debated and decided in a case where the standard of proof makes a difference, and probably in the House of Lords..."

74.16 As to dishonesty, Mr Stafford referred to <u>Bryant and Bench v The Law Society</u> [2007] EWHC 3043 (Admin) and the judgment of Lord Justice Richards, which stated:

> "151. Then in Bultitude v The Law Society [2004] EWCA Civ 1853, when giving the reasons of the Court of Appeal for a decision previously announced, Kennedy LJ said this (at para 32):
>
> '[Counsel for Mr Bultitude] submitted, and I would accept, that the test to be applied when deciding dishonesty is as formulated by the House of Lords in Twinsectra..., namely, in the context of this case: first, did Mr Bultitude act dishonestly by the ordinary standards of reasonable and honest people, and if so: secondly, was he aware that by those standards he was acting dishonestly?'.
>
> ...
>
> 153. In our judgment, the decision of the Court of Appeal in Bultitude stands as binding authority that the test to be applied in the context of solicitors' disciplinary proceedings is the Twinsectra test..."

74.17 Mr Stafford submitted that the key test to be applied was that as set out in <u>Twinsectra</u> and as referred to in <u>Bryant and Bench</u>. Mr Stafford said that in relation to character references, this had also been addressed in <u>Bryant and Bench</u>. Lord Justice Richards stated:

> "Dishonesty: the exclusion of character evidence
>
> 158. It is contended in the second ground of appeal that there was a further error in the tribunal's approach to the issue of dishonesty.
>
> 159. The tribunal was asked to consider, prior to its decision on liability, a number of written character references adduced on Mr Bryant's behalf. They were rightly described by Mr Treverton-Jones as "unusually impressive". They came from a retired High Court Judge, a former Deputy Chairman of the Board of Inland Revenue, a former President of the CBI...They testified to Mr Bryant's honesty and integrity. It was submitted to the tribunal that the evidence was relevant to the question of propensity to be dishonest and also to Mr Bryant's credibility when giving evidence.

160. The tribunal rejected the application... Accordingly, it left the character evidence out of account when reaching its finding of dishonesty...

161. Mr Treverton-Jones submitted, and we accept, that the tribunal fell into legal error in adopting the course it did. Unfortunately, it did not have the benefit of the decision of the Divisional Court earlier this year in Donkin...in which materially the same issue arose. As already mentioned, Donkin was another case in which a finding of dishonesty was made. The tribunal received a large number of character references in support of the solicitor, but made no reference to that evidence when setting out its findings on dishonesty. On appeal, Maurice Kay J (with whom Goldring J agreed) dealt with the issue as follows:

'...

23. In other words, it is the context which determines whether material which would be relevant to personal mitigation is also relevant to 'the prior question'. The mischief which was the concern of the Court in Campbell was the situation where personal mitigation might be misused to downgrade what would otherwise amount to serious professional misconduct to some lesser form of misconduct.

24. On behalf of the appellant, [counsel] submits that where the issue is dishonesty, evidence of good character, particularly evidence as reliable and extensive as was produced in this case, is relevant to credibility and to propensity just as it would be in a criminal trial. She further suggests that it is also relevant to an examination of the circumstances in which the misconduct took place although, ultimately, this may add little to propensity in the sense that that word surely denotes propensity to commit the offence in the circumstances which are established.

25. In my judgment the evidence of good character in this case was relevant to the issue of dishonesty. As in a criminal trial, it cannot afford a defence in itself. Moreover, the weight to be attached to it is in the last resort a matter for the Tribunal. In the present case the reasons stated by the Tribunal do not disclose that it gave any consideration at all to this evidence in this context. I am not satisfied from the text of the stated Reasons that it played any part in its consideration of dishonesty. I find that to be a significant legal error...'

162. We are in full agreement with that reasoning, which applies with equal force in the circumstances of the present case. The character references in support of Mr Bryant were cogent evidence of positive good character and were of direct relevance to the issue of dishonesty. The tribunal's refusal to take that evidence into account when deciding the question of dishonesty was a significant legal error".

74.18 Testimonials had been provided for the Respondent, including those of Mr Brown, Mr Fearon and former District Judge Skerratt. Mr Stafford submitted that the testimonials were relevant both as to facts and mitigation and to the Tribunal's ultimate decision. Mr Stafford said that allegations 1.1 and 1.3 were admitted by the Respondent but allegations 1.2 and 1.4 were denied. The testimonials had to be considered and borne in mind by the Tribunal in relation to the Respondent's oral evidence; Mr Stafford submitted that was significant.

74.19 Mr Stafford referred the Tribunal to the written testimonials of Mr Brown, Mr Fearon and former District Judge Skerratt on behalf of the Respondent.

74.20 Mr Stafford said that whilst the Applicant's Skeleton Argument referred to essential facts not being in dispute, they were and in particular:

Confirmation of instructions for the 2009 Will

74.21 Mr Stafford referred the Tribunal to the Rule 5 Statement, which stated:

> "...
>
> 16. ...Furthermore, the Respondent has been unable to provide the SRA with any evidence to demonstrate that he took steps to confirm CW's instructions.
>
> ...
>
> 18. In these circumstances, the SRA submit that the Respondent failed to act in the best interests of his client by accepting instructions to draft a Will from a third party, who, was set to be a beneficiary, executor and trustee under the Will without confirming those instructions with the client".

74.22 This was the client's best interests point but Mr Stafford said that there was clear evidence from the documents which existed before, during and after the Will was drafted in 2009 that CW knew and had approved the contents of that Will and that he had not lacked testamentary capacity. This was evident from the documents themselves and when the Will was signed. Mr Stafford said that under Section 1 of The Mental Capacity Act 2005, the testator was presumed to have capacity to make the Will. There was also a presumption that the testator knew and approved the contents of the Will.

74.23 In the event that the Respondent was found to have prepared the 2009 Will without CW's instructions, Mr Stafford submitted that CW had nonetheless understood and approved the contents of the 2009 Will. Mr Stafford acknowledged that CW had been referred to as an elderly and ill client and had agreed that at the end of his life he had been. However, in 2009, whilst he was aged 78 and suffering from Dystonia, Mr Stafford said that he had been clear in mind and a man of considerable ability and intellect.

Transfer of the property 2A Armstrong Road

74.24 Mr Stafford said that the property was valued at £600,000 and acknowledged that it was a significant asset. It was the Respondent's case that the Applicant was confused regarding the transfer of property. The Rule 5 Statement stated:

> "36. The letter to CW enclosed by the Respondent was dated 3 June 2009 and stated that it enclosed a copy of the form of Transfer for the transfer of the freehold title of 2A Armstrong Road to RMP. The letter stated that the transfer was for no consideration. The letter concluded, "Assuming you want to proceed then do sign the transfer where indicated by the pencilled cross. You should sign in the presence of an independent witness who should add his/her address and occupation below your signature again where indicated. Do please

then return the transfer to me." There is no evidence that the transfer was ever signed and returned.

...

38. ...the SRA submit that the Respondent's comments that the transfer was completed before he sent his letter on 14 June 2010 simply do not square with the evidence. The AP1 form which executed the transfer is signed and dated 7 July 2010 [emphasis added] and Office Copy Entry (sic) shows that the transfer was completed on 8 July 2010".

The Respondent's Response to the Rule 5 Statement stated:

"42. The statement in paragraph 36 that 'There is no evidence that the transfer was ever signed and returned' is, with respect, misconceived. The Land Registry would not have registered the title of the LLP without the original copy of the transfer signed by Mr CW as transferor to the LLP as transferee".

74.25 Mr Stafford told the Tribunal that the TR1 dated 27 May 2010 for 2A Armstrong Road showed the Transferor as Mr CW and the Transferee as RMP LLP. The address for the Transferee was the Respondent's office address. The TR1 had been executed by CW and witnessed by a Mr S who was CW's GP. The TR1 was dated by the Respondent 27 May 2010 being the day it was sent to the Land Registry. Mr Stafford submitted that the copy TR1 document served by the Applicant prior to 31 May 2012 had been an exact copy other than that it was not dated. Despite the Respondent's Response and the TR1 dated 27 May 2010, the Applicant persisted with the allegation regarding the Transfer and Mr Stafford submitted that it should not have done so.

74.26 Mr Stafford submitted that there appeared to be some confusion; Mr Levey's Skeleton Argument stated that the Transfer had been effected pursuant to the AP1 on 7 July 2010 but the AP1 did not effect the Transfer; it registered the Transfer which had already been effected. Whilst the Respondent admitted the breach of undertaking, Mr Stafford submitted that the actual breach was registration of the Transfer and not effecting the Transfer itself.

74.27 The property was transferred by CW prior to 27 May 2010 to be held on a bare trust for CW. Mr Stafford referred the Tribunal to the Agreement entered into between CW, Mr CS and Mr SR, signed by the three of them and RMP LLP and undated. The Respondent said that he had not received the document from Mr CS until after the complaint had been made against him. The Agreement stated:

"1) The partnership holds the partnership property on behalf of the beneficiary"

74.28 Mr Stafford told the Tribunal that the partnership under the terms of the Agreement held 2A Armstrong Road as Trustees on a bare trust so that the beneficial ownership still remained with CW and on his death would revert to his estate. The Agreement also stated:

"2) The beneficiary [CW] shall be entitled to ask for any of the partnership property to be returned to him if he so desires...".

74.29 Mr Stafford said that this was not a document in relation to which the Respondent had had any part. Whilst registering the Transfer had led to breach of his undertaking, the consequence of the Respondent's breach was that legal ownership was transferred to RMP LLP but the beneficial ownership never was.

CW's Dystonia

74.30 Mr Stafford said that there was common ground regarding CW's medical condition. Dystonia was a neurological movement disorder causing sustained muscle contractions and repetitive movements. However CW had had the condition since he was aged 19/20 and it had not affected his capacity at the time he was a client of the Respondent's.

74.31 Mr Levey informed the Tribunal that it was no part of the Applicant's case that it questioned CW's state of mind regarding the 2009 Will. No issue was taken with that. Issues in relation to the 2010 Will also would not require findings in that regard since that was part of the Probate proceedings and a decision for the Probate Registry in the Chancery Division.

74.32 Mr Stafford referred the Tribunal to his Skeleton Argument, filed for the adjourned May 2012 hearing, which stated:

> "4. The complaint was made by solicitor Barnes Coleman on 7.3.11. They appear to have been instructed on 4.6.10 by Mrs PL to prepare a new will ('the 2010 will') for her father, Mr CW. Mrs PL was Mr CW's only child and was normally resident in the Cayman Islands, where she had lived for a number of years with her financier husband...The clear inference from the documents written by Mr CW himself is that over a long period before June 2010 father and daughter had little contact. He also seems to have disliked her..."

74.33 Mr Stafford said that in relation to the 2009 and 2010 Wills, the estate of CW had had a value of at least £1,000,000. The Respondent's case was that the 2009 Will had been drafted so as to avoid the inheritance tax liability altogether as the bulk of the estate was bequeathed to charity/research. That was not the case however with regard to the 2010 Will; the effect of the 2010 Will was to create a liability to inheritance tax of approximately £250,000.

74.34 Mr Stafford said that the main provisions of the 2009 Will, executed on 28 April 2009, were:

- The executors were the Respondent and Mr CS, Mr CW's accountant;
- There were bequests of £35,000 to Mr CS and £5,000 to a Mr and Mrs T for the help and assistance given to Mr CW;
- There were release of debts due to Mr CW from Mr BC in respect of a loan on a trawler and from Ms NB in respect of another loan (of £30,000) on condition that weekly repayments were made by them up to the date of CW's death;
- A gift of £100,000 to Mr CS and Mr SR to form a charitable trust to provide products to Essex Dog Rescue charities;

- The residue to be placed in trust for funeral expenses and for the UCL Institute of Neurology for research into neurological disease; and
- A declaration by clause 7 that no provision was made for Mrs PL [CW's daughter] "who lives in the Cayman Islands on the basis that she had no requirement for financial help of money from myself and that I have had no contact with her for many years".

74.35 Mr Stafford told the Tribunal that in relation to the release of debt to Ms NB, the Respondent's cohabiting partner, she had since disclaimed any such interest and had repaid in full the outstanding sum due on the loan. The Respondent had failed to appreciate the meaning of taking independent legal advice. Mr Stafford told the Tribunal that the Respondent had since fully accepted that he had not done that and he should have done.

74.36 Mr Stafford said that the main provisions of the 2010 Will, executed on 6 June 2010, were:

- The executors and Trustees were Mrs PL's husband and Mr K of Barnes Coleman;
- A bequest of £5,000 was provided to a Mr and Mrs T;
- The residue was placed in trust for Mrs PL and her two sons (upon reaching 21) in equal shares;
- The Trustees were given power to use capital and/or income of the vested or contingent share of Mr CW's two grandchildren during their minority for their maintenance, education or advancement.

74.37 Mr Stafford told the Tribunal that Mr CW's assets had been the same at death as they had been in April 2009. The Tribunal was not however being asked to pronounce on the validity of one Will over another. Rather he submitted the Tribunal was being asked to assess the accuracy and inferences of Mr CW's conduct and intention in the context of the allegation that the Respondent had taken no steps to confirm the 2009 Will with Mr CW, having received instructions for the Will from Mr CS.

74.38 Mr Stafford said that Mr CW had been anxious to have an independent income which had come from the loans he made to people he knew and from the rent for 2A Armstrong Road. The idea of the transfer of the property had come from Mr CS, as Mr CW's accountant, as a tax saving scheme to avoid paying 40% higher rate income tax. Mr Stafford submitted that the inference of the transfer to RMP LLP was that the LLP would receive the rent from the tenant and Mr CS would decide how best to use the money on behalf of Mr CW to avoid paying higher rate tax.

74.39 Mr Stafford told the Tribunal that it was the Respondent's advice to Mr CW about this transaction on 3 June 2009 which led to Mr CW deciding to stop instructing him that month. Mr Stafford submitted that Mr CW had signed the Transfer before 27 May 2010 and had sent it to the Respondent but he could not apply to register the Transfer until he received the application fee of £550. That fee had been received on or shortly before 27 May 2010 when the application to register had been made. Mr Stafford said that during May to July 2010 the Respondent had acted only for

RMP LLP as he was no longer instructed by Mr CW. He had acted promptly on 7 June 2010 to halt the registration having received the letter from Barnes Coleman dated 6 June 2010. He had however forgotten by July 2010 about his undertaking to Barnes Coleman. Mr Stafford submitted that had been a mistake but had not been dishonest.

74.40 Mr Stafford referred the Tribunal to the exhibits to the Respondent's First Witness Statement [DAW1, DAW2 and DAW3] and his Chronology upon which he relied. Mr Stafford referred to a letter dated 12 August 2002 from the Respondent to Mr CW, which stated:

> "...
>
> ...I do enclose a copy of the will and codicil that you previously made.
>
> I obviously await hearing from you with your instructions for your new will and look forward to hearing from you".

74.41 Mr Stafford said that in his reply dated 13 August 2002, Mr CW annotated the letter from the Respondent and stated:

> "Thankyou (sic) for this David, I won't confuse you with faxes (as sometimes I get – misunderstood) I will go thru (sic) via Chris [Mr CS] – who helps me along".

74.42 Mr Stafford said that the Respondent had attended upon Mr CW on 14 February 2003 and referred the Tribunal to an attendance note of that date which evidenced that Mr CW had attended with Mr CS. Mr Stafford said that as per the Respondent's evidence, he normally communicated with Mr CW via fax/in writing or if by attendance upon the Respondent, Mr CS would be present. The Respondent wrote to Mr CW on 22 April 2003 and stated:

> "...
>
> As you will appreciate C [Mr CS] is particularly concerned that there is someone who is in a position to administer your affairs in your absence. I think C, who has more knowledge of your affairs than myself, is particularly concerned to avoid your daughter being in a position to take over.
>
> With that in mind I enclose a form of Enduring Power of Attorney. This gives power to C and I jointly to administer your affairs should the need arise. It also makes provision that in the event that you become particularly ill that C and I must apply to the Court of Protection, now the Public Guardianship Office, for authorisation of the Court to administer any of your affairs. This in essence would prevent any dissipation of your assets as obviously the court would only look to ensure that your affairs were run correctly.
>
> For the moment I would be grateful if you would confirm that you are happy to sign this form of Power of Attorney...".

74.43 Mr CW sent a further annotated letter dated 25 April 2003, which stated:

> "Thankyou/this (sic) David, C [Mr CS] and I have to visit soon to sign "P of Att" [Power of Attorney] form. We can chat then. C's thoughts all thru (sic) have been – my condition, ie dystonia & now heart/lung (difficult for C)".

74.44 Mr Stafford said that evidence of Mr CW's capacity was borne out by his further handwritten letter to the Respondent and Mr CS, which stated:

> "C/David
>
> Must have written millions of words since dystonia at 19/20 yrs (sic) old.
>
> Sorry recently to you, it's a pain both to you and to me.
>
> I've even written the draft of a book on Russia/Trans Siberian railway trip to Hong Kong & China, via Japan/by sea".

74.45 Mr Stafford said that the Respondent had written again to Mr CW on 12 May 2003 and reminded him about completion of the Power of Attorney. Mr CW had replied by letter dated 12 May 2003 and stated:

> "Dear David,
>
> ...
>
> Ref yours – your lines 4, 5, 6 point out the only two issues of concern, ie daughter interference, either before, or at death.
>
> Rather than sign such a drastic form & relinquish reins as laid out, con 36 E
>
> A – A new will could make it clear that you & C [Mr CS] would be in control at <u>death</u> [emphasis added]
>
> B – Regarding any interfere (sic) should I become <u>very</u> [emphasis added] ill pre-death, & which would <u>not</u> [emphasis added] be welcomed –
>
> Could we not meet that situation in a way less drastic than this here form, which I do not like.
>
> As I read con 36 E/1 – no one of sound mind could happily sign – I have a small army of good friends, and 100% help etc, should I fall ill
>
> I am 101% aware & in good mental nick (sic), with a long way to go before a con 36 E step".

74.46 Mr Stafford said that it was evident that Mr CW did not want to sign the Power of Attorney and referred to "that form – frightened" but he was concerned regarding his daughter's possible interference in his affairs and he wished to find an alternative way to deal with that by advice from the Respondent. The Respondent wrote to Mr CW on 18 June 2003 and referred to finalising his will. Mr Stafford told the Tribunal that Mr CW was also concerned, as borne out in correspondence from him to the Respondent, that he should have adequate income "for old age", including from the loans he had made and that his concerns about his daughter could be addressed by a "simple new will".

74.47 Mr Stafford referred to the Respondent's attendance note dated 2 October 2003, which stated:

"Attending CW and CS at my offices and discussing matters. At the end of the day we were able to complete the Power of Attorney and draft will. This will is effectively only something for now. [CW] is going into hospital on the 10th October and for some reason wants to finalise his will before then".

74.48 By letter dated 3 October 2003, Mr Stafford said that the Respondent wrote to Mr CW and enclosed the draft Will and also copied the draft Will to Mr CS. While the draft Will had been sent to Mr CW and considered by him, Mr Stafford said that it had not been signed by him. The draft Will appointed the Respondent and Mr CS as Mr CW's Executors. Mr Stafford referred to the draft Will, which stated:

"4. I GIVE to CDS [Mr CS] net of tax the sum of Thirty Five Thousand Pounds in recognition of all his help and assistance given to me

5. I DIRECT that in the event that BC formerly of........do until the date of my death continue to make weekly payments in respect of the repayment of the mortgage on the Golden Bay Trawler then in such circumstances the sum then outstanding and owed by BC be deemed to be written off such that BC owes no more money on the mortgage and I direct that my Executors and Trustees produce such form of discharge as may be necessary.

6. I GIVE DEVISE AND BEQUEATH all the residue of my personal estate whatsoever and wheresoever situate unto my Trustees upon trust to sell call in and convert the same into money but with full power to postpone such sale calling in and conversion for so long as my Trustees in their absolute discretion think fit without responsibility for any loss and after payment of my just debts and funeral and testamentary expenses hold the net proceeds of such sale calling in and conversion and all parts of my estate to the time being and sold under and converted

(a) upon trust to pay thereout all my debts funeral and testamentary expenses and subject thereto

(b) upon trust for the National Hospital for Neurology and Neuro-surgery Development Foundation of Queens Square London WC1N 3BG for research into neurological disease

7. I have made no provision for my daughter PSL who lives in Bermuda on the basis that she has no requirement for financial help or money from myself".

74.49 Mr Stafford said that thereafter, the Respondent wrote to Mr CW on 23 February 2004 and stated "C [Mr CS] mentioned the potential change to your will". Mr CW annotated that letter and returned it to the Respondent, stating "We must "refine" that quicky will". An attendance note dated 26 October 2005 made by the Respondent recorded that "After that discussed [CW's] Will. He indicated that he would give this some thought with a view to making changes". Mr Stafford said that the Respondent had followed this up by letter dated 8 November 2005 and had enquired whether Mr CW had had a chance to consider the provisions of his Will or intended to leave it for the moment. The Respondent had then written again in February 2006 offering Mr CW an appointment regarding his Will. Mr Stafford told the Tribunal that this exemplified the course of Mr CW's dealings over the years with the Respondent and Mr CS including with regard to Mr CW's Will.

74.50 Mr Stafford said that Mr CW's medical condition continued to deteriorate and in March 2009, Mr CW wrote to the Respondent and described his condition as "Having a rough ride with this Dystonia which I've always known is degenerative...". Mr CS then wrote to the Respondent by email dated 7 April 2009 and stated:

> "David
>
> Further to our conversation yesterday, [Mr CW's] instructions concerning his current position, a form of living will should he need residential care, and his will are as follows;

Asset	Current	Living Will	Will
2a Armstrong Road	As discussed	As discussed	As discussed
10 Burnham Road	Continue to live in	Rental out towards care costs	To provide income/capital for Neurological Research
Bobby Loans	Continue as is	Continue as is	Write off
Hodges loan	Collect asap	Collect asap	Collect asap
Chattels	Continue as is	CS to take and dispose of/distribute as he sees fit	CS to take and dispose of/distribute as he sees fit
Chad (the dog)	Continue as is	Return to Julie the breeder	Return to Julie the breeder
N [NB]	Continue as is	Continue as is	W/off
LM	Pursue	Pursue	Pursue

> £100,000 to form a charitable trust to provide food, bedding and care products to Dog Rescue charities located in Essex, to a maximum of £5,000 per annum, and all donations to be provided by way of products supplied. Charities requested to write in to apply for distributions.
>
> £10,000 to each of his grandsons.
>
> £35,000 to CS (for distribution by CS as previously discussed).
>
> £5,000 each to Christine, Paul and Bobby, to thank them for their help over the years..."

74.51 Mr Stafford said that the Respondent maintained that he had not seen before the letter dated 22 April 2009 from Mr CW, until after the complaint against him had been made. The letter stated:

> "Dear David
>
> C's [Mr CS] idea for 2A with him and S [Mr SR of RMP LLP] becoming partners & me gifting 2A to S (I think was part of C's plan)?

Well the idea was/is well beyond my ken, but not yours of course. All I really know is that C was/is trying on the rent – tax front for me making S & C tax responsible for me.

Would you go over C's plan with him, please, so that you know more what's involved/going on please. For me it looks awfully complex – not being an accountant or solicitor."

74.52 Mr Stafford said that it appeared that the letter had not actually been sent by Mr CW.

74.53 On 24 April 2009, the Respondent had written to Mr CW requesting the names of his grandsons in order to finalise the Will ready for Mr CW to sign it. Mr Stafford referred the Tribunal to the 2009 Will itself dated 28 April 2009 and which had been signed by Mr CW and witnessed.

74.54 Mr Stafford referred to the Application for Incorporation of an LLP in relation to RMP LLP, dated 29 April 2009 and signed by Mr SR. The Respondent had written to Companies House on 5 May 2009 enclosing the Application and accompanying cheque for £20 following which the Certificate of Incorporation had been sent to the Respondent by letter dated 8 May 2009. Mr Stafford said that the Respondent had then written to Mr CW on 3 June 2009 and stated:

"...

Re: 2A Armstrong Road

I refer to the above and enclose a form of Transfer under which you transfer the freehold title in 2A to RMP LLP. I know you have discussed this with C [Mr CS] and S [Mr SR].

Do not rely on me for any advice on the transfer.

The effect is that for no consideration you are transferring ownership to the LLP. Rent will thereafter be paid to the LLP and not to you. I take it C has fully discussed with you the tax implications.

Assuming you want to proceed then do sign the transfer where indicated by the pencilled crosses. You should sign in the presence of an independent witness who should add his/her name address and occupation to below your signature again where indicated. Do please then return the Transfer to me".

74.55 Mr Stafford said that this was how the signed Transfer had come to be and which was annexed to the Respondent's defence.

74.56 By letter dated 8 June 2009 Mr Stafford said that Mr CW wrote to Mr CS and stated:

"C

Got letter & form [the Transfer] from David.

It reads in effect that he wants nothing to do with advising me (ie giving away a property asset, worth at least I suppose 500K so could we not look into the keeping of my huge asset & transferring just the rent which a tenant pays, to circumvent 40% tax. David saying that has woken me up a bit, & I have to admit that I have not grasped your clever scheme, which was, and is 'well'

over my worn out head, & I must think of the ramifications for me; to give away a property does look to be solicitor reckless".

74.57 Mr CW wrote again to Mr CS on 26 June 2009 and stated:

> "C
>
> This is a repeat request, as you've said nothing re 1st request.
>
> David said not to ask his advise (sic) re 2A gifting & your clever scheme.
>
> If we do not want David's advise (sic) all I'm requesting is for you to speak with (or see David is best). Would he merely upgrade your letter outlining scheme onto one of his usual agreement forms or documents bit more official and last better which the 3 of us ie you/me/S can sign., rather than a letter (far as advise (sic) – I'll go with yours). If you do not want to do that for me please tell me C".

74.58 Mr Stafford said that in relation to the letters from Mr CW dated 8 and 26 June 2009, the Respondent maintained that he had not seen them before and they had not been on his own file, as per his third Witness Statement.

74.59 Mr Stafford said that Mr CW had written a further letter to Mr CS dated 28 June 2009, which stated:

> "Dear C
>
> Do not require any solicitor advise (sic).
>
> Ref 2A plan of yours.
>
> This is a quite simple & private agreement between 3 honest gentlemen of standing and repute & which I'm happy about as is provided we 3 "private" friends can/must sign & each get a copy of course.
>
> I see no need for anything else C – it's merely a "private" matter – a handshake job – not a form job via a govt dept & via a solicitor. It's how it used to be years ago nothing to do with officialdom and forms.
>
> ...I do not wish to sign any form – I see no need so let us just "do it" & - done with. Ie (sic) what you thought up to help & protect me; tax & stress. Do not want a lot/if any/more contact with David [the Respondent]. Let us go along on our own now on – ok?
>
> Please try to put everything within an agreement please C & I will sign including whatever you/S [Mr SR] think/want if I pass on or something bad.
> As it stands my GP has me under control/heart wise."

74.60 Mr Stafford referred to the Partnership Agreement between Mr CW, Mr CS and Mr SR which had been signed by all three of them and which stated:

> "The Agreement
>
> 1) The partnership holds the partnership property on behalf of the beneficiary.

2) The beneficiary shall be entitled to ask for any of the partnership property to be returned to him if he so desires."

74.61 The Agreement also signed by all three of them and undated referred to the Transfer and stated:

> "The Transfer
>
> 1) Under this agreement the existing owner hereby transfers the property to the recipients by way of a gift..."

74.62 Mr Levey remarked that the documents referred to by Mr Stafford were not in a file of the Respondent's and it was not known from where the documents originated. Mr Stafford said that it was the Respondent's case that the Agreements had been drafted by Mr CS and not the Respondent.

74.63 In relation to the Transfer, Mr Stafford said that the AP1 form to register the Transfer dated 27 May 2009 had been signed by the Respondent as he was acting for RMP LLP. As at 27 May 2009, Mr Stafford told the Tribunal that the Transfer had therefore been effected but had not been registered, which had been prior to the letter from Barnes Coleman stating that the Transfer should not be effected. Mr Stafford said that in any event the application to register had been rejected as no Land Transaction Return ("LTR") Certificate had been lodged. The Respondent wrote to the Land Registry on 4 June 2010 and advised that there was no LTR Certificate because there had been no consideration in the Transfer.

74.64 Following this, Mr Stafford said that Barnes Coleman wrote to the Respondent on 7 June 2010 enclosing a letter of authority from Mr CW and a further letter from him dated 6 June 2010. The letter of authority stated:

> "I CW of ...hereby request and authorise you to release to my Solicitors, Messrs Barnes Coleman & Co of 30 Rectory Road, Hadleigh, Benfleet, Essex SS7 2ND all documentation and files relating to me including any original Will you hold on my behalf."

74.65 Mr Stafford said that the letter of authority was also annotated in Mr CW's handwriting with "& I do mean ALL paper work".

74.66 Mr Stafford said that the letter dated 6 June 2010 also from Mr CW stated:

> "Kindly note that I no longer wish to instruct you to act on my behalf in any capacity and I have instructed new solicitors Messrs Barnes Coleman & Co. I enclose my signed authority to you and request you forward all my files to them.
>
> <u>Re: 2a Manor Trading Estate Benfleet Essex</u> [2A Armstrong Road]
>
> Please be notified you (sic) that I wish to revoke my instructions to transfer the above property with immediate effect. Please take no further steps to effect the transfer and if it has been effected, you must rescind it immediately. I enclose a copy of a letter I have sent to CS [Mr CS] to same effect.

Re Power of Attorney

Please also take this letter as my instructions to you that my Enduring Power of Attorney which is lodged with you is no longer of effect and is to be revoked immediately. Please ensure all documentation relating to these matters are (sic) also sent to my Solicitors, Messrs Barnes Coleman & Co...

Re My Will

Please be advised that I have today made a new Will which revokes my previous Will held by you. Please also send the original of that will to Barnes Coleman & Co."

74.67 Mr Stafford said that by letter dated 7 June 2010 the Respondent wrote to the Land Registry and requested

> "For the moment would you please not process the application and do return the papers to us."

Mr Stafford submitted that this had been done as soon as the Respondent was aware of the instructions from Mr CW per his letter dated 6 June 2010. The Respondent received the Cancellation of Application from the Land Registry dated 10 June 2010.

74.68 Mr Stafford referred the Tribunal to the Respondent's letter to Barnes Coleman dated 14 June 2010 which stated:

> "We can confirm that we will not be registering any Transfer in respect of 2A Armstrong Road."

Mr Stafford submitted that the Respondent undertook not to register the Transfer, not that the Transfer would not be effected, since it already had been. Mr Stafford said that the Respondent acknowledged that he had breached his undertaking as he had gone on to register the Transfer of 2A Armstrong Road in the name of the partnership but his evidence was that he had done so having forgotten that he had given such an undertaking. Mr Stafford submitted that the question for the Tribunal was whether the Respondent had done so dishonestly or by genuine mistake.

74.69 Mr Stafford told the Tribunal that as at 14 June 2010 Mr CW was still shown as the proprietor of 2A Armstrong Road on the Proprietorship Register. Mr CW had then died on 17 June 2010. Mr Stafford referred to the Respondent's letter to Barnes Coleman dated 17 June 2010:

> "We write having been informed that CW passed away today.
>
> Obviously the urgency has gone out of the situation. Would you please let us have sight of a copy of the latest will.
>
> We will obviously require the authority of the executors named in the new will, assuming that the writer is no longer an executor."

74.70 Mr Stafford said that on 7 July 2010 the Respondent wrote to the Land Registry and renewed the Application for Registration of the Transfer of 2A Armstrong Road. The

Applicant was RMP LLP [Mr CS and Mr SR] and the Respondent signed as acting for RMP LLP.

74.71 Mr Stafford said that Barnes Coleman complained to the Applicant on 7 March 2011. The Applicant wrote to the Respondent on 13 April 2011 and the Respondent replied by letter dated 6 May 2011, which stated:

> "CW Deceased – conflict of interest rule 3 SCC
>
> 1-3 Firstly I can confirm that NB is an employee of my firm and is my partner.
>
> My role in the Will was to prepare the same in accordance with instructions received which came by Mr Ws [Mr CW] (sic) professional advisor, his accountant, CS [Mr CS]. I enclose a copy of the instructions that I received. It was clear that Mr W had discussed matters fully with his professional advisor who had clearly taken independent advice on what he required in his Will.
>
> 2a Armstrong Road, Manor Trading Estate
>
> 4. The transfer had been completed prior to the letter from Mr W."

74.72 Mr Stafford concluded his submissions by informing the Tribunal that Probate proceedings had subsequently been issued by Mr CW's daughter and her husband on 28 August 2011 against Mr CS, Mr BC and Mr SR. The Respondent represented the Defendants in those proceedings.

Closing Submissions on behalf of the Applicant

74.73 At the resumed substantive hearing on 16 November 2012, Mr Levey summarised the Applicant's case:

74.74 Mr Levey reminded the Tribunal that the Respondent had denied failing to act in the best interests of his client and he had denied failing to act with integrity or that he had acted in a manner likely to have diminished the trust the public placed in the profession. The Applicant alleged that in relation to allegations 1.3 and 1.4, the Respondent had acted dishonestly.

74.75 Mr Levey said that in his evidence, the Respondent had clung to his explanation that the breach of undertaking had been an innocent mistake, that he had forgotten the undertaking and that he had initially applied to register the Transfer, had withdrawn it and had then sought to renew it a couple of weeks later.

74.76 Mr Levey told the Tribunal that the chronology of events had been as follows:

- The Respondent began the application to register the Transfer. At the relevant time, as shown by the pleadings in the Probate proceedings, Mr CW had been unwell and in hospital. The Respondent had said that he and Mr CS became aware that Mr CW was unwell;
- The Respondent had been instructed in clear terms not to proceed with the Transfer by the letter from Barnes Coleman and from Mr CW himself, which required return of "ALL" of his papers;

- In his evidence, the Respondent had told the Tribunal that he had taken responsibility for withdrawal of the application to register the Transfer and that he had been responsible for the letter sent to the Land Registry;
- Mr CW had died and following that the Respondent, in evidence, said that he had discovered the new Will [the 2010 Will] in which Mr CW had decided to gift his estate to his daughter after all. The Respondent was aware that Mr CW had made fundamental changes to his bequests. The Respondent had said that he did not believe then or now that Mr CW had had proper mental capacity regarding the 2010 Will and confirmed that he was acting for the Defendants in the Probate litigation;
- A week or so after Mr CW's death, the Respondent had sought to renew the application to register the Transfer without any credible explanation why; the Respondent told the Tribunal that he had forgotten the original application;
- The day after the Transfer had been re-submitted to the Land Registry, Barnes Coleman had written to the Respondent and asked about 2A Armstrong Road but even then the Respondent had not told them that the Transfer had been registered; he had remained silent.

74.77 Mr Levey invited the Tribunal to reject the Respondent's explanation of "innocent mistake" for the following reasons:

<u>That the explanation was inherently unlikely</u>

74.78 Mr CW was a long standing friend of the Respondent's. There's had been an unusual relationship as Mr CW had been very ill physically and their communication had mainly been in writing. The Respondent had accepted that their relationship had gone beyond mere solicitor/client.

74.79 The Respondent had also accepted that he had been disinstructed by Mr CW without any prior warning and that he had been upset and troubled by it.

74.80 From the evidence, the Respondent had been very keen initially to comply with the instruction not to proceed with registration of the Transfer and had written to the Land Registry promptly to withdrawn the application. He had then discovered the new 2010 Will which had bequeathed all of CW's estate to his daughter. The Respondent did not accept that CW had been competent regarding that Will. The application had been renewed but without any explanation from the Respondent as to why.

74.81 Mr Levey submitted that it was inconceivable that the Respondent had simply forgotten his written undertaking or that he had forgotten commencing the registration application for the Transfer and that he had then withdrawn the application. Mr Levey told the Tribunal that it was inherently unlikely even for a forgetful or incompetent solicitor, neither of which the Respondent was.

<u>The explanation made no sense on the facts</u>

74.82 The Respondent's explanation had been that the undertaking was on another file and he had forgotten that he had given it. Mr Levey submitted that was not credible because the file for the registration of the Transfer [DAW3] was also the entire file for

RMP LLP including the original application for registering the Transfer and the letter to the Land Registry withdrawing the application for registration. When the Respondent renewed the application Mr Levey said that he had to have seen that it had only been two weeks earlier that he had withdrawn the application. Mr Levey submitted that the idea that the Respondent had forgotten was so unlikely as to be fanciful and had to be rejected.

<u>The explanation was inconsistent with the Respondent's reaction when the allegation was first put to him.</u>

74.83 Mr Levey said that the Tribunal had been told that it was often useful to see how a Respondent reacted when allegations were put to him. He said that the Applicant agreed with that and that on countless occasions the Respondent had been given the opportunity to explain his position yet he had kept silent. There had been various correspondence from Barnes Coleman and Birkett Long but the Respondent had either not replied or had not addressed the matter of his undertaking and that he had purportedly "forgotten" it.

74.84 Mr Levey submitted that the Tribunal might have to find what it thought had happened in this case. He submitted that the Respondent had wanted to comply so had given his undertaking. He and Mr CS had then discovered the bequest to Mr CW's daughter in the new Will and had not believed that that was what Mr CW had wanted. Mr Levey submitted that the Respondent and Mr CS had then decided by a misguided view to register the Transfer as being what Mr CW had wanted. Mr Levey submitted that they had ignored CW's instructions not to proceed as he was ill and in hospital and in their view, not competent. Mr Levey acknowledged that the Respondent had not benefitted in any way from his actions but he had chosen to ignore instructions from his client and had acted out of a misplaced belief.

74.85 Mr Levey invited the Tribunal to reject the Respondent's explanation of innocent mistake. He submitted that if the Tribunal accepted that the Respondent had made a conscious decision to breach his own undertaking, then the Respondent had lacked integrity and had acted so as to have diminished the trust of the public in him as a solicitor and in the profession. In so doing, Mr Levey submitted that the Respondent had acted dishonestly:

74.85.1 Mr Levey said that the Respondent had taken the law into his own hands. He and Mr CS had decided to countermand instructions from Mr CW and from his new Solicitors. That was wrong and Mr Levey invited the Tribunal to find that the Respondent had been dishonest by his lack of integrity and having diminished trust;

74.85.2 The Respondent had lied to Solicitors subsequently representing Mr CW if he had made a conscious decision to register the Transfer. Mr Levey said that on the Applicant's version of events, the Respondent had deceived the other Solicitors and had been dishonest by his lack of integrity in doing so;

74.85.3 The Respondent had still not been prepared to tell the truth, either to the Applicant or to the Tribunal.

74.86 Mr Levey submitted that if the Tribunal accepted his submission that "innocent mistake" was not credible and that the Respondent had therefore not been full and frank in his evidence on oath, the Respondent must have known that by not telling the truth he had acted dishonestly.

74.87 In relation to "effecting the Transfer" and "registering the Transfer" Mr Levey submitted that it was an interesting point raised by Mr Stafford but completely irrelevant; although the Transfer had been executed, the instruction had been not to register it.

Closing Submissions on behalf of the Respondent

74.88 Mr Stafford questioned the Applicant's hypothetical situation put forward by Mr Levey regarding the Respondent's alleged reasons for his conduct and how far that was the stated case of the Applicant. The Tribunal stated that it viewed the hypothetical situation as just that and that there was no evidential basis for such a hypothetical situation. The Tribunal stated that it had to decide whether there had been an "innocent mistake" or not and that was the sole consideration.

74.89 Mr Stafford referred the Tribunal to his Closing Submissions document upon which he relied in its entirety. In addition to his submissions, Mr Stafford referred the Tribunal to his closing submissions, which included, inter alia, that:

- Mr CW's disability was strictly physical and neurological. Mr CW had not been taken advantage of;
- The Respondent had met with Mr CW on 28 April 2009 to go through the 2009 Will and in relation to the gift of £35,000 to Mr CS, when asked in cross-examination how he knew it was what CW had instructed, he had said "I know this because of when we went through the will when he came back on 28 April... He sat there and read it through".

Allegation 1.2

74.90 Mr Stafford said that in cross-examination it had been put to the Respondent that he had not acted in Mr CW's best interests. The Respondent had accepted, with reference to the circumstances, that in principle it was not in a client's best interests to fail to advise him to get independent legal advice but he added "I felt I did [act in his best interests]. Had he got independent legal advice, he would not have changed his mind. It would not have made any difference". Mr Stafford said that this was consistent with the Respondent's second witness statement wherein he had stated "I have no doubt that this [2009] Will clearly followed the wishes of C [CW] at the time" and that the Respondent asserted that the Will generally, including the £35,000 bequest to Mr CS and the contingent release to the Respondent's partner, Ms NB, would have been the same if Mr CW had received independent legal advice.

74.91 Mr Stafford referred the Tribunal to nine points of evidence in support of that, which included:

- An earlier draft Will which the Respondent had prepared and sent to Mr CW

with a covering letter dated 3 October 2003 and which made no mention of Ms NB, provided by clause 4 "I give to CDS [Mr CS] net of tax the sum of Thirty Five thousand pounds in recognition of all his help and assistance given to me". Mr Stafford said that it was clear from Mr CW's manuscript note on a fax to the Respondent dated 23 February 2004 that Mr CW had considered the 2003 draft Will;

- The provision in the draft Will of 2003 was identical to the clause in the 2009 Will regarding the bequest to Mr CS and since 2003, the written evidence in Mr CW's own hand showed that Mr CS continued to help him – almost every fax from CW to the Respondent was copied to Mr CS. Mr Stafford said that there was no reason to suppose that as at 28 April 2009, anything had changed;

- The 2003 draft Will contained a provision for the conditional cancellation of the trawler loan debt owed to Mr CW by Mr BC which was repeated in the 2009 Will and a provision in the same form in the 2009 Will in relation to the loan by CW to Ms NB;

- Mr Stafford said that the loan to Ms NB was for £30,000 and made without the Respondent's knowledge. From the outset she had repaid it at the rate of £127 per week and the sum outstanding at CW's death had been approximately £18,000. The maximum value of the potential benefit to Ms NB at the time the 2009 Will was signed was approximately £24,000;

- Mr Stafford referred to a letter from Ms NB to Barnes Coleman dated 4 August 2010 regarding her friendship with Mr CW, which stated:

  > "Such was our friendship that we would discuss things which were going on in each other (sic) lives – sometimes in written form, sometimes not when he could not speak clear (sic) enough for me to understand him. It was during those times that C [CW] knew I was buying an old house which completely needed renovating. He would always ask me how it was going – it took some 12 months to complete. During one particular conversation I said that I had put a halt on the works as I had run out of money. He asked if it would assist if I could loan some monies from him. I would point out that I never at any time asked C for the loan – it was offered without condition to me on the basis of the promissory signed by us both. I was extremely grateful to him for his assistance and could not thank him enough.
  >
  > It should be pointed out this loan was made some 3 or 4 years after meeting him and I do not believe he did it for any other reason than that of fondness for me – as I equally felt for him."

  Mr Stafford said that Ms NB's evidence was consistent with that of the Respondent in his first witness statement which stated

  > "Over the years in seeing C {Mr CW] she built up a great relationship with him";

- Between the signature of the 2009 Will and CW's death, Mr Stafford said that Ms NB continued to pay the loan back at the rate of £127 per week. There was nothing unusual about the loan arrangement. Mr Stafford referred the Tribunal

to Mr CW's letter to the Respondent dated 28 August 2006, which stated "I can, and will help people with terms no bank, no society can match";

- The clause in the Will concerning Ms NB was a simple one and its content was not difficult for Mr CW to understand;
- Mr Stafford said that the value of the potential benefit to Ms B was small in relation to the value of Mr CW's assets and his estate; comfortably over £1 million. Mr Stafford submitted that there were no reasons to think that Mr CW would have acted differently in relation to the 2009 Will had he received independent legal advice.

74.92 Mr Stafford submitted that the test for whether a solicitor had failed to act in his client's best interests had to be an objective test. He said that the Respondent had believed that he was acting in the best interests of his client Mr CW. Mr Stafford submitted that unless the Tribunal could be confident that Mr CW, had he received independent legal advice, would have acted differently in relation to the contents of the 2009 Will, it should not find that the Respondent had not acted in his client's best interests.

<u>Allegation 1.4 - Transfer of 2A Armstrong Road</u>

74.93 Mr Stafford submitted that the Applicant's case was based on incomplete knowledge of the facts due to lack of crucial documents. He told the Tribunal that these documents were:

(1) The Transfer TR1 form signed by Mr CW and dated by the Respondent 27 May 2010, namely ten days before the letter from Mr CW dated 6 June 2010 and drafted by Barnes Coleman disinstructing the Respondent in any capacity while requiring/instructing him to "take no further steps to effect the transfer and if it has been effected, you must rescind it immediately"; and

(2) The (undated) trust declaration signed by CW, CS and SR on a date before 27 May 2010, whereby Mr CS and Mr SR were declared partners holding 2A Armstrong Road on trust for Mr CW and where Mr CW had the right to ask for the property to be returned to him if he so desired.

74.94 Mr Stafford submitted that since it had never been part of the Applicant's case that Mr CW's signature on the relevant documents had been forged or fraudulently obtained, the legal consequences of the two documents [the Transfer and Trust Declaration] were:

- "As between the parties, the transfer [on the TR1 Form] takes effect from the date that it is executed" per Megarry and Wade, The Law of Real Property (8th edition). Mr Stafford submitted that the Transfer was effected and the legal title to 2A Armstrong Road passed from Mr CW to the partnership no later than 27 May 2010;
- "Although, in Box 10 [on the TR1 Form], provision is made for a declaration of trust, the making of such a declaration, although highly desirable, is not mandatory" Megarry and Wade (because by Section 78 of the Land Registration Act 2002 ("LRA") "the registrar shall not be affected with notice

of a trust"). Mr Stafford submitted that the absence of words in Box 10 of the TR1 did not mean that at the date of transfer the property was not subject to a trust; and

- The beneficial interest in 2A Armstrong Road at all times remained vested in Mr CW or, after his death, in his estate. Mr Stafford submitted that vesting was not altered or affected by the transfer or by the subsequent registration of the Transfer.

74.95 Mr Stafford said that the Applicant had maintained its case at the hearing on 15 October 2010 including the allegations of dishonesty regarding the property but Mr Stafford submitted that:

74.95.1 After the Respondent's letter to him of 3 June 2009 enclosing the Transfer and advising him of its effect, Mr CW had signed the Transfer and returned it to the Respondent;

74.95.2 The Transfer had been "effected" by CW's signature on the TR1 Form no later than 27 May 2010, which had passed the legal ownership of the property to the partnership which held it on trust for CW;

74.95.3 The Transfer had not been "executed" by the AP1 form as that form was the mechanism not for executing a Transfer but for registering an executed Transfer;

74.95.4 It had been the Respondent's application to register the Transfer on 7 July 2010 which had breached his undertaking but the consequence of that breach was not and could not have been to deprive CW's estate of the property worth in the region of £600,000 because the beneficial interest had remained vested in the estate. The registration had resulted in legal title to the property having been vested in the partnership but the register could have been altered by an application under Section 65 of the LRA 2002, by those representing CW's estate;

74.95.5 The registration of the property in the name of the partnership had not and could not have conferred any benefit on either the partners in RMP LLP or on the Respondent.

74.96 Mr Stafford referred the Tribunal to his Closing Submissions regarding the Respondent's state of mind. He said that under the Twinsectra test the Tribunal had to be persuaded beyond reasonable doubt that the Respondent had acted dishonestly; by the standards of reasonable and honest people and that the Respondent had to have been aware that by those standards, he had acted dishonestly.

74.97 Mr Stafford submitted that the Respondent's admitted breach of undertaking had consisted not of "effecting" the transfer as alleged by the Applicant but of the registration of the executed Transfer. Mr Stafford submitted that the Respondent's explanation for that, of "innocent mistake" was to be believed. Mr Stafford said that there had been no benefit to either the Respondent or to the partnership in registering the Transfer. It was impossible to identify any motive that the Respondent had for registering the property. Mr Stafford submitted that motive was relevant to the

Respondent's state of mind and that there was no evidence that the Respondent's intention in writing to the Land Registry on 7 July 2010 to register the property had been anything more than a desire to obey an instruction given to him that day by a client Mr CS on behalf of the partnership, which was the legal owner of the property since Mr CW's execution of the Transfer.

74.98 Mr Stafford submitted that the Respondent's response to the request he had received from Mr CW on 7 June 2010 had not been that of a dishonest man.

74.99 Upon his disinstruction, notice of which he had received by fax dated 7 June 2010, Mr Stafford said that the Respondent had written immediately to the Land Registry to cancel the application for registration of 2A Armstrong Road which he had sent on 27 May 2010 and again on 4 June 2010. His letter to the Land Registry had been sent at 7.32am.

74.100 Mr Stafford acknowledged that the Respondent had not taken steps to rescind the Transfer but said that it had not been within the Respondent's power to have done so. Mr CW had also confirmed in his letter that he had written to Mr CS [by letter dated 5 June 2010] and asked him to rescind the Transfer. Mr Stafford said that in cross-examination the Respondent had told the Tribunal that he had not received a copy of that letter to Mr CS and he had thought that Mr CS would deal with arrangements to rescind the Transfer. In June/July 2010 the Respondent had not seen or been in possession of the Declaration of Trust/Agreement. In evidence in chief, the Respondent had told the Tribunal that Mr CS had only supplied his letter from CW after the complaint had been made.

74.101 Mr Stafford told the Tribunal that the Respondent had not known that CW's health was deteriorating in June 2010 albeit he was aware that CW was in hospital. The Respondent had said that when he received the letters on 7 June 2010 it had not occurred to him that CW was not of sound mind. He had denied in cross-examination that he had ignored the instructions to return the papers but said that he had not acted immediately to do so as the papers were extensive and some were in storage. Mr Stafford told the Tribunal that the Respondent had invited Mr K of Barnes Coleman to come to his office on 12 June 2010 to collect the papers but that Mr K had cancelled the appointment and had later refused a further offer to collect the papers. Mr Stafford submitted that the Respondent's cautious reaction to the letters from CW and Barnes Coleman had not been unreasonable; he had not been instructed by CW since June 2009 and the June 2010 instructions contradicted those he had received from 2002 until 2009.

74.102 Mr Stafford submitted that it would be irrational and perverse for the Tribunal to find that the Respondent had been dishonest unless it could be sure beyond reasonable doubt that the Respondent had been aware, on 7 July 2010, that he was going to obtain some benefit by proceeding to register the executed Transfer of a property which he believed, correctly, was held on trust for Mr CW.

74.103 Mr Stafford said that the Respondent had been cross-examined for approximately two hours and throughout that time had done his best to answer fully, clearly and honestly all of the questions put to him. The Applicant's case that there was more going on

behind the scenes than the Respondent was prepared to admit was nothing more than speculation.

74.104 Mr Stafford submitted that the Applicant had been unable to establish any reason for the Respondent having registered the Transfer which displaced the Respondent's explanation that it had been an innocent mistake with no dishonest intent. Mr Stafford said that the Respondent had repeatedly been asked by Counsel for the Applicant why he had not told Barnes Coleman or Birkett Long that the registration was an innocent mistake and the Respondent had stated that he did not know. Mr Stafford submitted that no inference of dishonesty could be found upon the Respondent's inability to explain why he had not told the Solicitors for Mr CW that the registration was an innocent mistake.

The Tribunal's Findings

74.105 The Tribunal applied its usual standard of proof namely beyond reasonable doubt. The Tribunal had listened very carefully to the representations on behalf of the Applicant and the Respondent and had read with the utmost care and in detail all of the documents to which it had been referred.

74.106 The Tribunal found all of the allegations proved on the facts and on the documents. It noted that allegations 1.1 and 1.3 had been admitted by the Respondent.

Allegation 1.2

74.107 The Respondent denied that he had failed to act in Mr CW's best interests.

74.108 The Tribunal noted that the Respondent had accepted instructions directly from Mr CS regarding the 2009 Will, in relation to which Mr CS was to benefit in the sum of £35,000. Mr CS was an Executor and a Trustee. In addition, the Respondent's cohabitee, Ms NB, was to be released from the outstanding loan due to Mr CW. In evidence, the Respondent had accepted that he had not advised Mr CW to seek independent legal advice but he had maintained that even had Mr CW done so, he would not have changed his mind regarding the terms of the 2009 Will.

74.109 The Tribunal, while it noted that the Will was not absolutely in accordance with the written instructions from Mr CS, had no doubt that Mr CW had approved the Will and that it had been properly executed. The Tribunal was also satisfied that there was no question that Mr CW's signature was not genuine. The Tribunal also accepted that Mr CW had had a fond relationship with Ms NB over a number of years which had led to him making the loan to her.

74.110 However, the Tribunal did not accept that the test for acting in the client's best interests was an objective one and it did not accept the argument that unless it was confident that had Mr CW received independent legal advice, he would have acted differently, it should not find that the Respondent had not acted in the client's best interests. The Tribunal found that whether Mr CW would or would not have acted differently was irrelevant. It was impossible to second guess that since there was no way of asking Mr CW as he had died. The issue was that the client should have been advised to seek independent legal advice and had not been so advised by the

Respondent; the Respondent had admitted as much. By virtue of his failure to advise the client to seek independent legal advice, the Tribunal was satisfied that the Respondent had breached Rule 1.04 of the SCC and the Tribunal found allegation 1.2 proved.

Allegation 1.4

74.111 The Tribunal noted that the Respondent had admitted allegation 1.3 in relation to his breach of undertaking but denied that he had acted without integrity or had diminished the trust of the public in the profession.

74.112 The Tribunal was not satisfied that it was in any way credible that the Respondent could have forgotten that he had given an undertaking or that he had made an "innocent mistake" in renewing the application to register the Transfer. In relation to the Respondent's credibility as a witness, the Tribunal found:

(1) that until these proceedings, the Respondent had not said anything about the registration having been a mistake. He had not admitted it immediately nor had he taken any action to rectify it subsequently albeit that could have been done by an application under Section 65 of the LRA 2002;

(2) in evidence the Respondent had told the Tribunal that he had forgotten the undertaking and the original application to the Land Registry to register the Transfer yet in his further letter to the Land Registry dated 7 July 2010 he had referred to "renewing" the application for registration.

74.113 The Tribunal found that the Respondent's credibility had been significantly damaged by the above points (1) and (2) and taken with the chronology of events, the Tribunal was not satisfied that the Respondent had merely made an "innocent mistake" or had forgotten his undertaking. Mr CW had been a longstanding client and friend of the Respondent and for such a client to abruptly terminate his instructions in trenchant terms and to instruct new solicitors was a matter which the Respondent could not simply have forgotten as it was an important, and for the Respondent hurtful, event. Neither did the Tribunal believe that the Respondent would have simply forgotten, only about 3 weeks later, that he had given such an important undertaking in respect of a major transaction involving Mr CW's affairs. The Tribunal was satisfied that the Respondent's conduct had been deliberate in renewing the registration application in breach of his undertaking and that he had acted without integrity and that his conduct had diminished the public's trust in the profession in so doing.

74.114 The Tribunal acknowledged that there was no evidence of benefit to the Respondent and in fairness, by virtue of the beneficial trust which had apparently been created, no-one appeared to have benefitted other than Mr CW. The Tribunal found the whole scenario somewhat questionable but it had made its decisions based only on the evidence and the facts before it.

74.115 As to the allegation of dishonesty, the Tribunal had regard to and applied the test as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal found that the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people [the objective test] and that by those standards, the Respondent knew that he had acted dishonestly [the subjective test]. The Tribunal, having found that the

Respondent had not made an "innocent mistake", was satisfied that the Respondent knew by his conduct in breaching his undertaking and registering the Transfer contrary to his instructions, he had acted dishonestly. The Tribunal did not accept that the Respondent had to benefit from his dishonesty in order for dishonesty to be proved; whether the Respondent had or had not benefitted was not relevant.

74.116 In making its findings as to dishonesty, the Tribunal had also had regard to the testimonials lodged on behalf of the Respondent. It had borne in mind the authorities of Bryant and Bench, Campbell and Donkin and in particular that "...As in a criminal trial, it cannot afford a defence in itself". The Tribunal was not satisfied that the testimonials were cogent evidence of the Respondent's good character. Whilst the Tribunal had considered the testimonials and listened carefully to evidence of the two referees who attended on behalf of the Respondent, it was not persuaded that the three written testimonials were of sufficient weight to influence its decision regarding whether the Respondent had been dishonest or not. The Respondent's own evidence had been credible to the Tribunal. In addition, the Tribunal had differentiated the testimonials in this case to those in the cases of Bryant and Bench and Campbell, in that it did not consider them to have been either "unusually impressive" or "extensive".

Previous Disciplinary Matters

75. None

Mitigation

76. Mr Stafford told the Tribunal that the Respondent had qualified as a Solicitor in 1977 and until these proceedings he had had no history of either disciplinary proceedings or of successful negligence claims against him. The case itself had begun in early 2011 and Mr Stafford said that since then there had been no similar complaints against the Respondent and he had been allowed to continue practising. The Respondent had shown insight by his prompt admissions of allegations 1.1 and 1.3 and his full co-operation with the Applicant.

77. As to allegation 1.2, Mr Stafford said that since the material time, the Respondent had taken steps to address the gap in his knowledge by taking relevant Continuing Professional Development courses.

78. Mr Stafford submitted that the written evidence from former District Judge Skerratt and the written and oral evidence from Mr Brown and Mr Fearon had been impressive in its clarity and insistence on the Respondent's honesty and integrity. Mr Stafford said that the Respondent' referees had taken the time to read the Applicant's case against the Respondent and his Response. Mr Stafford acknowledged that they had not seen the supporting documentation. He submitted however that there was no reason to doubt their evidence and that it went to the Respondent's credit and propensity as well as to mitigation.

Sanction

79. Mr Stafford referred to the Tribunal's Guidance Note on Sanctions in relation to

assessing the seriousness and harm caused by the Respondent's conduct and found proved by the Tribunal. He said that the extent of the harm was a matter for the Tribunal and reminded the Tribunal that the beneficial interest had remained with the client and there had been no identifiable harm to any individual or financial loss to the estate but he acknowledged that harm in light of the Tribunal's decision was harm to the profession itself by the breach of Rule 1.06 of the SCC.

80. Mr Stafford submitted that there had been no motive on the part of the Respondent.

81. Regarding dishonesty, Mr Stafford submitted that whilst an aggravating factor, there were clearly degrees of dishonesty and that it was for the Tribunal to consider what consequences had flowed from its dishonesty finding. Mr Stafford submitted that the likely sanction of a strike off would be devastating for the Respondent and that it was not an appropriate sanction and a lesser sanction would be more appropriate. Mr Stafford submitted that there were exceptional circumstances, as referred to at paragraph 38 of the Guidance Note. He said that there had not been any question of personal benefit to the Respondent.

82. Mr Stafford said that the peculiar circumstances of the case were exceptional. He submitted that the Respondent's actions had not been calculated or planned but had happened as a single act and he asked the Tribunal to view the Respondent's conduct as an isolated incident.

83. The Tribunal had regard to its Guidance Note on Sanctions. In Bolton v The Law Society [1994] 1 WLR 512, the Tribunal noted the judgment of Sir Thomas Bingham, which stated "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 upon him by the Solicitors Disciplinary Tribunal".

84. In assessing seriousness, the Tribunal noted that the Respondent had had control of Mr CW's files/matters and it had been the Respondent's own actions which had led to the registration of the Transfer contrary to instructions from Mr CW, the Respondent's former client and to the Respondent not having advised Mr CW to seek independent legal advice. The Tribunal found that the harm to the profession had been significant, resulting from the diminution of trust and it had been aggravated by the Tribunal's findings of dishonesty.

85. The Tribunal considered the cases of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) and Solicitors Regulation Authority v Spence [2012] EWHC 2977 (Admin) with regard to sanction.

86. The Tribunal had regard to all of the sanctions available to it. It found that the seriousness of the Respondent's misconduct and the requirement to protect the public and the reputation of the profession required an order that the Respondent be struck off the Roll of Solicitors. Any lesser sanction was wholly inappropriate. The Tribunal was satisfied that there were no exceptional circumstances which justified an alternative sanction.

Costs

87. Mr Levey referred the Tribunal to the two Statements of Costs on behalf of the Tribunal. He told the Tribunal that the first Statement related to costs incurred for the hearing on 31 May 2012 which should have been the original substantive hearing date and which had been adjourned. Mr Levey said that those costs had been reserved to this Tribunal. There was also the more recent Statement of Costs for the substantive hearing which had begun on 15 October 2012. Mr Levey said that the latter did not include the costs of the resumed substantive hearing on 16 November 2012.

88. In relation to the costs of the adjourned hearing, Mr Levey said that the Applicant had provided further correspondence between Barnes Coleman and Birkett Long and the Respondent. The Applicant had wished to rely on it as it demonstrated throughout that there had been no suggestion by the Respondent that he had forgotten having given his undertaking. Mr Levey told the Tribunal that whilst it had been fair to adjourn the 31 May 2012 hearing as the documentation had only been produced a few days prior to the hearing the Respondent had seen the correspondence previously, at the material time.

89. Mr Levey told the Tribunal that the previous Tribunal had wanted to allow the Respondent time to reflect on the correspondence and had indulged the Respondent following which he had produced his third witness statement which Mr Levey submitted had not added to the proceedings or altered anything. Mr Levey said that the correspondence/documentation had been disclosed on the same day it had been received. Mr Levey referred the Tribunal to the Memorandum for the 31 May 2012 hearing. He submitted that the costs should have been ordered as costs in the case.

90. Mr Levey said that the Respondent had privately funded his defence and that the Respondent's Counsel's fees amounted to £19,395 including VAT but did not include the costs of the adjournment. He submitted that there was no evidence that the Respondent could not afford to pay his costs and that he would have the ability to earn a living even if he was suspended or struck off the Roll.

91. Mr Levey submitted that the Applicant's costs were due in full including the costs of the adjournment and that the proceedings had been properly brought. He submitted that there should be no order in favour of the Respondent regarding the adjournment. If no order for costs were made against the Respondent Mr Levey submitted that the Applicant's costs of approximately £25,000 would fall to be borne by the profession. He told the Tribunal that the Applicant would seek to agree payment arrangements with the Respondent and would not make any Respondent bankrupt.

92. Mr Stafford said that the Applicant's costs amounted to £28,000 in total and the Respondent's £23,000. He told the Tribunal that whilst the Respondent was funding his defence privately it did not follow that he had paid all of the costs set out in his Statement of Costs. Mr Stafford said that he was still owed £6,000 plus VAT by the Respondent.

93. With regard to the adjourned hearing on 31 May 2012, Mr Stafford said that it was not until that date that the Applicant had sought to narrow the number of additional documents which the Respondent had to deal with. In relation to the Tribunal's

Memorandum of that hearing, Mr Stafford said that the Tribunal had granted the adjournment on the basis of the seriousness of the allegation of dishonesty and that the Respondent had to be allowed time to deal with the additional disclosure. The Respondent had filed his Response dated 26 March 2012 and his first witness statement dated 25 April 2012 and Mr Stafford submitted that had been the Applicant's opportunity to obtain the additional information from Birkett Long but it had not done so until much later.

94. Mr Stafford referred to the Memorandum, which stated:

> "...In reaching the conclusion that the matter should be adjourned today, the Tribunal made no criticism of the Applicant but it also noted that had the additional disclosure been considered and narrowed down earlier, then it might have been possible to have proceeded with the hearing today".

95. Mr Stafford submitted that the Applicant should pay the Respondent's costs of the adjourned hearing or if the Tribunal was not minded to order that, that the Applicant should not be allowed its costs of the adjourned hearing.

96. Mr Stafford referred the Tribunal to the authority of Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) upon which he relied and he referred the Tribunal to the Respondent's Financial Position Statement. The Tribunal commented that the Respondent's Financial Statement was lacking, with no detail regarding the property he referred to having purchased and that the document was not helpful in relation to the Respondent's means.

97. The Respondent gave evidence as to his means. The Respondent told the Tribunal that he had no assets and no owned property. He said that the property he had purchased with a mortgage of £300,000 and credit card debts of £85,000, his parents' property, had been sold for less than had been spent on it and that he had received approximately £20,000 equity which had been placed in savings and had now been spent on his legal costs. The Respondent said that he was now in rented accommodation with his cohabitee Ms NB for the foreseeable future and paid rent of £800 per month. The Respondent said that he still owed his brother £50,000 from the sale of their parents' property.

98. The Respondent told the Tribunal that he drew £450 - £550 per week from his firm and had done so for the last four to five years. He said that he had had three private pensions until his bankruptcy in 1997 when they had been lost and his two remaining pensions were projected to only pay him approximately £1,000 per annum. The Respondent's cohabitee was employed by the Respondent's firm and earned £45,000 per annum.

99. In the event that the firm closed, Mr Stafford submitted that there would be no further income for the Respondent or his cohabitee. Mr Stafford submitted that the Tribunal should take into account the Respondent's financial circumstances in making any costs order and that any such order should be limited as to the Respondent's ability to pay.

100. The Tribunal had regard to the previous Tribunal's decision in its Memorandum of the adjourned 31 May 2012 hearing and it considered carefully the representations on behalf of the Applicant and the Respondent as to costs.

101. The Tribunal noted that the Respondent did not appear to have been told that the Applicant was making further enquiries, which had led to the additional disclosure which had then been served upon the Respondent late in the day. The Tribunal agreed with the previous Tribunal's decision and in particular that since the allegations included dishonesty, this was a case of the utmost seriousness. In the interests of fairness the Respondent had to have been allowed additional time to consider the disclosure and to ensure that he was not prejudiced; it was not a question of indulgence.

102 The Tribunal accepted the Respondent's evidence as to his means and acknowledged that their decision to strike the Respondent off the Roll of Solicitors would affect his earning capacity. The Respondent's age was also taken into account and his ability to earn in the future. The Tribunal noted that the Respondent's means were not challenged by the Applicant and went undisputed.

103. The Tribunal accepted that on the authorities whilst it had to consider the question of a costs order, any such order should not be an additional penalty imposed upon the Respondent. The Tribunal summarily assessed the Applicant's costs in the sum of £23,000 less the sum of £3,000 in favour of the Respondent with regard to the adjourned hearing of 31 May 2012. The Respondent was therefore ordered to pay £20,000 not to be enforced without leave of the Tribunal.

Statement of Full Order

104. The Tribunal Ordered that the Respondent, David Alan Webb, 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 £20,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 7th day of December 2012
On behalf of the Tribunal

J N Barnecutt
Chairman