

**The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was withdrawn.**

**SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10920-2012

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ALAN DOUGLAS COCKBURN

Respondent

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Before:

Mr J. N. Barnecutt (in the chair)

Mr J. P. Davies

Mr S. J. Hill

Date of Hearing: 17th September 2013

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**Appearances**

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

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

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that:
  - 1.1 he failed to disclose material information to his mortgagee client, contrary to Rule 1(a) and (c) of the Solicitors' Practice Rules 1990 ("the SPR") and/or contrary to Rules 1.02, 1.03 and 1.04 of the Code;
  - 1.2 [Withdrawn];
  - 1.3 he acted for the seller, buyer and lenders in the same conveyancing transactions without first informing the lenders in writing, contrary to Rule 6 of the SPR and/or Rule 3.18 of the Code;
  - 1.4 he signed an unqualified Certificate of Title in circumstances in which he knew or should have known that the information within was inaccurate, contrary to Rule 1 (a) and (c) of the SPR and/or Rules 1.02, 1.03 and 1.04 of the Code;
  - 1.5 he behaved in a way likely to have diminished the trust the public placed in him or the legal profession, contrary to Rule 1.06 of the Code;
  - 1.6 he acted in a position of conflict and permitted the interests of his purchaser clients to prevail over his duties to his lender client, contrary to Rule 3.01 of the Code and/or Principle 15.03 and/or Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1998.

## **Documents**

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

### **Applicant**

- Application dated 24 January 2012;
- Rule 5 Statement and exhibit "JCM/1" dated 24 January 2012;
- Previous Findings Case Number 10110-2008 dated 9 July 2010;
- Schedule of Costs dated 13 September 2013

### **Respondent**

- Financial documents;
- Handwritten testimonial dated 16 September 2013.

## **Preliminary Matters**

3. Mr Barton told the Tribunal that the allegations against the Respondent arose from commercial property transactions in which the Respondent was involved. He said that

at the end of 2012 the police had become interested in the transactions due to the other people involved namely the seller and the purchaser as it appeared that a fraud had been perpetrated against the lender, Yorkshire Bank.

4. Mr Barton said that the Respondent had initially been part of the police investigation but no criminal proceedings had been taken against the Respondent.
5. It became apparent to the Applicant in early 2013 that there was more to the transactions than the IO had initially thought and Mr Barton said that the Applicant had subsequently obtained more documentation by service of a Section 44B Notice which suggested that the bank's relationship manager might have known more about matters than had originally been thought.
6. On that basis Mr Barton said that the Applicant intended to proceed with the allegations bar allegation 1.2 which alleged that the Respondent had failed to notify his lender client that he did not have control over purchase monies in a purchase transaction. Mr Barton said that in light of the further details which had come to light as referred to by him, the indication to withdraw allegation 1.2 had been given in March 2013. He said that the Respondent's case appeared to be that he had had a number of conversations with the relationship manager concerning the transaction albeit the matter file was devoid of file notes which the Respondent accepted.
7. The Applicant could not gainsay an assertion that the Respondent had discussed matters from time to time with the relationship manager at the bank. It could only say that there were no attendance notes and no single letter to the bank formally reporting the features of the transaction which should have been reported.
8. Mr Barton said that as the Applicant could not present what the Respondent said to the relationship manager or when, on that basis it sought permission to withdraw allegation 1.2.

#### The Tribunal's Decision

9. The Tribunal considered Mr Barton's representations with regard to allegation 1.2. It was satisfied that the Applicant was not in a position to prove its case with regard to allegation 1.2 on the further information it had gathered and put before the Tribunal and the Tribunal consented to the withdrawal of allegation 1.2.

#### **Factual Background**

10. The Respondent was admitted as a solicitor on 1 September 1983 and his name remained on the Roll of Solicitors.
11. At all material times the Respondent was a partner in Megsons Solicitors and from April 2008 a member of Megsons LLP in Oldham, Lancashire ("the firm") with a branch office in Bradford. At all material times the Respondent was in partnership with Mr Satjit Abbas.
12. Upon due notice an Investigation Officer ("IO") of the Applicant attended the firm's head office in Oldham on 8 November 2010 to commence an inspection of the firm's

books of account and other documents. A Forensic Investigation Report (“FI Report”) followed dated 21 February 2011.

13. The IO found no issues regarding the firm’s compliance with the Solicitors’ Accounts Rules 1998 (“the SAR 1998”) but during the course of the investigation found irregularities in respect of conveyancing client matter files in which the Respondent had acted for Mr AM, the brother-in-law of Mr Abbas.
14. The IO found that in a number of conveyancing matters conducted for Mr AM, the Respondent had failed to advise his lender client, Yorkshire Bank, in writing of material facts relating to the transactions. The IO exemplified various purchase and sale transactions in support of the Applicant’s case against the Respondent where he had acted for Mr AM and/or companies in relation to which Mr AM was a director.
15. During interview the Respondent, whilst expressing the view that Yorkshire Bank had been fully aware of the nature of Mr AM’s property dealings, accepted that if the client matter files did not contain relevant copy correspondence, then the bank had not been advised formally in writing of all material facts.
16. On 21 February 2011 the Applicant had written to the Respondent enclosing a copy of the FI Report and requesting an explanation of the matters raised therein. The Respondent did not reply. The matters detailed in the FI Report were considered by an Authorised Officer of the Applicant on 13 April 2011 when a decision was made to refer the Respondent’s conduct to the Tribunal.

#### **Witnesses**

17. None

#### **Findings of Fact and Law**

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

**Allegation 1.1**      **he failed to disclose material information to his mortgagee client, contrary to Rule 1(a) and (c) of the Solicitors’ Practice Rules 1990 (“the SPR”) and/or contrary to Rules 1.02, 1.03 and 1.04 of the Code;**

**Allegation 1.2**      **[Withdrawn];**

**Allegation 1.3**      **he acted for the seller, buyer and lenders in the same conveyancing transactions without first informing the lenders in writing, contrary to Rule 6 of the SPR and/or Rule 3.18 of the Code;**

- Allegation 1.4** he signed an unqualified Certificate of Title in circumstances in which he knew or should have known that the information within was inaccurate, contrary to Rule 1 (a) and (c) of the SPR and/or Rules 1.02, 1.03 and 1.04 of the Code;
- Allegation 1.5** he behaved in a way likely to have diminished the trust the public placed in him or the legal profession, contrary to Rule 1.06 of the Code;
- Allegation 1.6** he acted in a position of conflict and permitted the interests of his purchaser clients to prevail over his duties to his lender client, contrary to Rule 3.01 of the Code and/or Principle 15.03 and/or Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1998.

Submissions on behalf of the Applicant

19.1 Mr Barton referred the Tribunal to the Rule 5 Statement dated 24 January 2012 upon which he relied with regard to allegations 1.1, 1.3, 1.4, 1.5 and 1.6. He told the Tribunal that the Rule 5 Statement exemplified the transactions relied upon by the Applicant to prove its case. He said that the allegations had been admitted by the Respondent save for allegation 1.2 which had been withdrawn.

Allegations 1.1, 1.3, 1.4, 1.5 and 1.6

- 19.2 Mr Barton referred the Tribunal to the transactions regarding 47 E Street and 32/34 C Street, Manchester in relation to allegations 1.1 and 1.3.
- 19.3 Mr Barton said that the Respondent had acted for the seller, buyer and lender but that the lender, being Yorkshire Bank, had not been informed of that.
- 19.4 Mr Barton said that Mr AM was the purchaser. The seller was Mr ASK who was Mr AM's uncle. In addition, Mr Barton said the purchaser was related to Mr Abbas. Mr Barton referred to the Rule 5 Statement which stated:

“28. The Investigation Officer found no evidence that the Respondent had advised his lender client in writing:

- that the firm was acting for both buyer and seller;
- of the close connection between the buyer and seller;
- that payment of the purchase monies was to be deferred;

...

- Of the actual utilization (sic) of the mortgage advance”.

19.5 The IO discovered that the mortgage advance was not used to make any payment to the seller, Mr ASK. Instead the mortgage advance had been used to make transfers to a number of client ledgers in the names of business associates of Mr AM.

- 19.6 Mr Barton said that paragraph 28 of the Rule 5 Statement set out the failures of the Respondent to notify his lender client of any of those details in written form despite the Council for Mortgage Lenders' Handbook ("CML Handbook") requiring solicitors to notify of such matters in writing.
- 19.7 Mr Barton said that in interview with the IO the Respondent had confirmed, inter alia, that:
- 19.7.1 he had previously acted for Mr ASK but had no formal retainer to act on these property sales;
  - 19.7.2 there was no signed contract of sale;
  - 19.7.3 the transfer documents had been given to Mr AM for signature by Mr ASK;
  - 19.7.4 if there was no confirmatory correspondence on the client file, the bank had not been advised in writing of all material facts relating to the transactions;
  - 19.7.5 he had submitted an unqualified Certificate of Title.
- 19.8 With regard to allegation 1.4, Mr Barton said that there was no question of dishonesty in this case but that it was put on the basis that the Respondent should have known that the Certificate of Title contained inaccurate material. He referred the Tribunal to the Certificates of Title for 47 E Street and 32/34 C Street. In relation to both, Mr Barton said the Certificates of Title submitted by the Respondent to the bank detailed the confirmations made by the Respondent, which included:
- “ ...
- (v) if the Property is to be purchased by the Borrower;
- ...
- (c) we are not acting on behalf of the seller;
- ...
- (h) will notify you in writing if any matter comes to our attention before completion which would render the certificate given above untrue or inaccurate...
- (i) we confirm that we have complied, or will comply, with your instructions in all other respects to the extent that they do not extend beyond the limitations contained in paragraph (3) (c) of rule 6 of the Solicitors' Practice Rules 1990”.
- 19.9 Mr Barton submitted that in completing and signing the Certificate of Title a solicitor was complying with the requirements of the Certificate and of Rule 6 namely that

he/she had fulfilled all instructions from the bank which would then enable the bank to release the mortgage advance which in these cases it had done.

- 19.10. Mr Barton submitted in relation to allegation 1.5 that having acted in two transactions for his lender client Yorkshire Bank, for the purposes of Rule 1.06 of the Solicitors' Code of Conduct 2007 ("the Code") the bank was part of the public and it was the Applicant's case that the first of the two transactions in particular which were conducted by the Respondent diminished the trust placed by the bank in its solicitor being the Respondent.
- 19.11 Mr Barton referred the Tribunal to the letter from Cobbetts Solicitors LLP dated 1 April 2010 to Quinn Insurance which had been the firm's insurers. He said that the letter detailed what had gone wrong with the transactions involving 47 E Street and 32/34 C Street. This included that completion had taken place on or around 20 July 2007 when the bank had transmitted £267,500 to the firm's client account but that notwithstanding the drawdown of those funds in July 2007, registration of the bank's first legal mortgages over the properties had not been completed by October 2008.

- 19.12. The letter from Cobbetts stated that:

"The whereabouts of the Bank's advance are unclear and the Megsons' files contain no conclusive evidence that the advance was used for the purchase of the Properties..." and "On the information held to date it appears that Megsons allowed the loan advanced by the Bank to be dissipated in a manner wholly inconsistent with their obligations arising from: the Bank's instructions; the CML Lenders' Handbook England and Wales ("CML"); the code of professional conduct applicable to Megsons at the relevant time; Megsons' certificate of title; and at common law..."

- 19.13 Mr Barton referred the Tribunal to the other exemplified transaction regarding 46 and 48 W Road. He said that this had involved the same purchaser client [Mr AM]. He referred the Tribunal to an email from the Respondent to his client Mr AM dated 14 March 2007 regarding 46 W Road which stated:

"...

The contract excludes assignment of the contract to another party. Wew (sic) could ask to exclude this provision but to do so would alert the Seller to the profit you (sic) are to make. I suggest (sic) that we proceed (sic) with you or AMP buying at £200k with a back to back with B [B L Limited] at a higher price. If you sell (sic) on to B at £265k you will pay stamp at 3% not 1% so you might want to limit it to £250k and take the other £7,500 direct from H. This will cost £2k stamp on your purchase but avoids (sic) the Seller knowing what you are doing.

...

If you do as I suggest you can tell YB [Yorkshire Bank] that you are buying at £250k (sic) they don't need to (sic) know that you have bought it in (sic) on the same day at £200k, provided it stacks up on valuation..."

- 19.14 Mr Barton told the Tribunal that this aspect of the transaction regarding 46 and 48 W Road was relevant with regard to allegations 1.1 and 1.5 and he submitted that it was evidence of a lack of integrity on the part of the Respondent particularly having regard to allegation 1.1. Yorkshire Bank had been a client of the Respondent at the material time and 46 and 48 W Road had clearly involved a back to back transaction with a mark-up which had not been disclosed by the Respondent to his lender client.
- 19.15 Mr Barton said that in relation to allegation 1.6 there had been a clear conflict of interest between the Respondent's purchaser client's interests and those of his lender client and that the Respondent had allowed the former to prevail over the latter. The Respondent owed duties to his lender client but it was as if he had forgotten that the lender was his client. Mr Barton submitted that the Respondent could easily have discharged those duties by having written the simplest of letters to the bank setting out the position but he had not done so.
- 19.16 With regard to the loss to the bank Mr Barton told the Tribunal that a claim had now been made against the Compensation Fund which was ongoing.

#### Submissions on behalf of the Respondent

- 19.17 Mr Brunskill told the Tribunal that in relation to the Respondent's client Mr AM he had appeared to be a bona fide commercial property developer client and a valued client of Yorkshire Bank who had had his own relationship manager assigned to him at the bank. Mr AM had been granted by the bank a £5 million facility with regard to his property dealings. Mr Brunskill said that this had been a global facility which had included the E Street and C Street and 46/48 W Road property transactions.
- 19.18 Mr Brunskill asked the Tribunal to understand the view taken of Mr AM by the bank, the firm and the Respondent albeit the Respondent had admitted a number of shortcomings in that regard.
- 19.19 Mr Brunskill said that in mitigation it was intended to show that there had been no dishonesty on the part of the Respondent and whilst that was not alleged, it was also evident that there had not been any intention on the part of the Respondent to defraud or to cause loss. He submitted that the Respondent had misjudged the situation in his efforts to facilitate the work received by the firm from Mr AM.
- 19.20 Mr Brunskill said that Mr AM had been a wholly unscrupulous fraudster whose current whereabouts were not known. He had been dishonest in his dealings with the Respondent which had resulted in a number of police investigations into which the Respondent had been drawn including that the Respondent had been arrested but there had been a lack of evidence and the case had been dismissed. Mr Brunskill told the Tribunal that there had been an abuse of process argument put forward on behalf of the Respondent and the prosecution had been struck out.
- 19.21 Mr Brunskill said that Mr AM had been a huge burden upon the Respondent who regretted deeply ever having met Mr AM.



19.22 Mr Brunskill said that in relation to the particular exemplified transactions the Respondent had been investigated by the police but no criminal action had been taken against him.

47 E Street and 32/34 C Street

19.23 Mr Brunskill said that in relation to the £5 million facility provided to Mr AM by the bank, information had had to be provided to the relationship manager regarding Mr AM's projects. The role of the relationship manager was to represent the bank as an officer of the bank and was also to generate business for the bank. He said that the relationship manager was paid on that basis. He submitted that it appeared that there had been a difference in approach of the relationship manager to the Respondent, Mr AM and these transactions than the approach taken by other departments within the bank including those departments dealing with the advancement of funds.

19.24 Mr Brunskill told the Tribunal that the Respondent stressed that the relationship manager was fully aware of the nature of these transactions from conversations with the Respondent and with Mr AM.

19.25 With regard to E Street and C Street Mr Brunskill said that these were a block of properties owned by a Mr C, a wealthy client who had previously been a client of the Respondent. He said that the essence of the transactions had been that Mr C was selling E Street and C Street to Mr AM but that payment was being deferred to a later date. He said that the monies were being advanced by Yorkshire Bank for the transactions but that Mr C, Mr AM and the Respondent should have made clear to the bank as the lender what was happening.

19.26 Mr Brunskill acknowledged that the transactions had ultimately involved the raising of finance but had proceeded as a sale and purchase, with payment deferred and the mortgage monies had been advanced but not used for that purpose namely the purchase and instead had been used by Mr AM for other purposes including the sum of £18,000 which had been used to pay the deposit for 46 W Road. Mr Brunskill submitted that the mischief had been the use by Mr AM of the monies advanced by the bank not for the purported sale and purchase but for other purposes.

19.27 Mr Brunskill said that it was admitted that there had been a too cavalier approach by the Respondent to drawing down the funds and the Respondent admitted the allegations on that basis and that he should not have done things in the way that he did. Mr Brunskill submitted that it could not have been foreseen that the subsequent difficulties would arise and that in the pre-2008 conveyancing world too little attention had been paid, inter alia, to record/file keeping and to formally notifying the bank of required information.

19.28 Mr Brunskill told the Tribunal that the Respondent apologised for his failings.

19.29 When the Transfer had subsequently been sent to the Land Registry Mr Brunskill told the Tribunal that the Land Registry had made an error and had only registered the freehold reversion in the name of Mr AM and the leasehold title had not been registered in the name of Mr AM. He said that this problem had been seized upon by Mr C and Mr AM and had resulted in an apparent mortgage fraud. Mr Brunskill told

the Tribunal that the Respondent had noticed the error and had sent the amended documents to Mr C to sign and Mr C had opportunistically denied that he had ever been involved in the sale. The Respondent had also given the Transfer document to Mr AM to arrange for Mr C to sign but acknowledged that he should not have done so and should have sent the Transfer to Mr C independently. He said that the Respondent knew it was untrue that Mr C had not been involved in the sales of the E Street and C Street properties and that was a total falsehood.

- 19.30 In response to a question from the Tribunal, Mr Brunskill acknowledged that the Respondent had not filed a statement in accordance with the earlier directions from April 2013 but said that the Respondent had now made admissions and this was a huge shift from April 2013 when there had been no admissions. The case had changed substantially between then and now and had the Respondent stated his case in April 2013 it would have been superseded in any event.
- 19.31 Mr Brunskill said that the Respondent had not foreseen the problems which had arisen and the disastrous circumstances which had been brought about by his failure to act as he should have done. Mr AM was now bankrupt and Mr Brunskill said that there was no prospect of the monies advanced by the bank being recovered. The firm had also been exploited by Mr AM.
- 19.32 Mr Brunskill told the Tribunal that Cobbetts had not pursued a claim against the firm and that they were now time barred from doing so but that there was no explanation for that.

#### 46 and 48 W Road

- 19.33 Mr Brunskill said that Mr AM had entered a contract to purchase 46 and 48 W Road and that there would be a back to back sale with B L Limited at a profit. Mortgage monies advanced were used by Mr AM to make the initial purchase. Mr Brunskill acknowledged that the back to back transaction was not disclosed or the onward sale but he said that the valuation of the second property had been a true valuation and there was no suggestion otherwise.
- 19.34 Mr Brunskill agreed that there had been a cavalier use of the £5 million facility afforded to Mr AM which had enabled Mr AM to make a personal profit but he submitted that there had been no loss to anyone with regard to the 46/48 W Road transactions. The Respondent had again however not disclosed facts he should have done as for E Street and C Street.
- 19.35 Mr Brunskill told the Tribunal that in relation to 46 W Road this had been a £150,000 purchase by Mr AM which had included a £15,000 deposit paid by way of a loan from the firm's office account and the balance of £135,000 was paid by B L Limited. The property was sold for £200,000 to B L Limited and the £15,000 deposit was repaid by Mr AM to the firm. Mr Brunskill submitted that the loan by the firm evidenced the trust it had had in Mr AM.
- 19.36 Mr Brunskill submitted that the Respondent had been too eager to make the transaction work.

- 19.37 In relation to 48 W Road Mr Brunskill said that that had been a purchase in the sum of £180,000 by Mr AM, the £18,000 deposit had come from the E Street/C Street advance and the balance of £162,000 from B L Limited to whom the property had been sold for £180,000.
- 19.38 Mr Brunskill said that with regard to the Respondent's email to Mr AM dated 14 March 2007, the Respondent maintained that the relationship manager had at all times been aware of the transaction arrangements regarding 46 W Road and whilst it may have been a cavalier approach by the Respondent it had not been dishonest. Mr Brunskill submitted that the Respondent's comment "If you do as I suggest..." had been the Respondent facilitating the transaction.
- 19.39 Mr Brunskill accepted that to a certain extent the underwriters had been hoodwinked with regard to advancement of the funds as they had not known the details of the transactions but he submitted that the relationship manager at the bank was fully aware and had placed pressure on the Respondent and on the firm and Mr AM to proceed to enable the funds to be advanced as he was paid according to the business he facilitated.
- 19.40 Mr Brunskill said that the relationship manager would not have attended the hearing and the Respondent had not been in a position to ask him to attend.
- 19.41 Mr Brunskill referred the Tribunal to its Guidance Note on Sanctions and asked that it take into account that:
- in relation to aggravating features, there had been no dishonesty or criminal intent on the part of the Respondent and that had not been alleged and was not admitted;
  - there had been no serial misconduct. These were the admitted transactions and had involved one client;
  - in particular with regard to E Street and C Street an unforeseen situation had arisen which had already had extremely severe consequences for the Respondent including the trauma of having been arrested and investigated by the police;
- 19.42 Mr Brunskill said that the Respondent had since left the firm and had been working as a consultant since 1 June 2013 undertaking private client work only and no conveyancing work which Mr Brunskill submitted meant there was no risk of repetition of these events as the Respondent was no longer involved in work of this type. The Respondent was also now supervised in his work and the partners of the firm for whom he was working were aware of these proceedings.

### The Tribunal's Findings

- 19.43 The Tribunal found allegations 1.1, 1.3, 1.4, 1.5 and 1.6 proved on the facts and on the documents. It noted that the Respondent had admitted the allegations.
- 19.44 The Tribunal had heard the full details with regard to the transactions involving E Street, C Street and 46 and 48 W Road. The Respondent admitted that he had acted

for the purchaser, seller and lender without having disclosed that to his lender client and ultimately to the detriment of his lender client which had suffered significant losses which remained unrecovered. It was possible that those losses would fall to be paid by the Compensation Fund.

- 19.45 The Tribunal found that the Respondent had taken a wholly cavalier approach to his professional obligations and not for the first time having regard to the previous proceedings in November 2009 when findings had been made against him which included breach of undertakings. There had been a clear abrogation by the Respondent of the duties owed to his lender client and this was at the highest end of misconduct having regard to the associated risks. The Tribunal had found proved breaches of Rule 1 of the SPR 1990 and SCC 2007 being overriding obligations to act, inter alia, with integrity and that by his actions the Respondent had diminished the trust the public placed in him or in the profession.
- 19.46 The Tribunal was satisfied that the Respondent had allowed the interests of his purchaser client [Mr AM] to prevail over his duties to his lender client and all that that had entailed and the repercussions had been substantial. The Tribunal was not satisfied that the Respondent's failure to keep records was any form of defence or that the relationship manager had been aware of all matters since there was no evidence of that before the Tribunal.

### **Previous Disciplinary Matters**

20. The Respondent had appeared before the Tribunal previously on 30 November 2009 under Case Number 10110-2008. He was fined in the sum of £7,500 and ordered to pay costs in the sum of £21,000 jointly and severally with his co-Respondent. The Tribunal had also ordered that if the Respondent did not comply with two undertakings by a set date then the Respondent would be suspended indefinitely.

### **Mitigation**

21. Mr Brunskill referred the Tribunal to his submissions which included mitigation on behalf of the Respondent. He said that in relation to the previous proceedings before the Tribunal in November 2009 these had also related to Mr AM. Monies had been lost with regard to those proceedings and the firm being the Respondent and Mr Abbas had had to repay approximately £200,000. The Respondent had admitted breach of undertakings and had been fined and ordered to pay costs jointly with his former partner.
22. The Respondent in these proceedings had admitted the allegations. The Respondent considered that Mr AM had been a terrible blow to his practice and to the Respondent personally.

### **Sanction**

23. The Tribunal had found all of the allegations proved against the Respondent save for allegation 1.2 which had been withdrawn.

24. The Tribunal considered that these were allegations of the most serious misconduct and whilst they had been admitted by the Respondent, admissions had not been made until the day of the substantive hearing and no statement had been filed by the Respondent albeit directions had been given that he should do so.
25. The Tribunal had regard to the testimonial produced on behalf of the Respondent and it had regard to its Guidance Note on Sanction with regard to the sanctions available to it.
26. The Tribunal assessed the seriousness of the Respondent's misconduct to determine which sanction to impose. It was satisfied that the Respondent was culpable and that he had had direct control and responsibility for the circumstances which had given rise to the misconduct including having given a very important document to Mr AM to give to Mr C and having failed to comply with his professional obligations to his lender client. The Respondent had been in a position of trust which he had breached.
27. The Respondent was a senior solicitor with a lengthy career in property work and the harm caused by his misconduct had been significant having regard to the losses sustained by his lender client, a member of the public and the harm to the reputation of the profession. Even had Mr AM been a fraudster, the Tribunal found that that would not have prevented the Respondent from doing his job which he had singularly failed to do in these instances. The Tribunal had also been most concerned by the content of the email of 14 March 2007 from the Respondent to Mr AM with regard to the back to back transactions since it was evident from that that the Respondent had been aware of and had played a part in the back to back transaction being facilitated.
28. The Tribunal was satisfied that the Respondent's motivation had clearly been to have facilitated work for the firm and for his client Mr AM and the financial benefit to the firm which would result from this. It was satisfied that the Respondent had shown no insight into his misconduct since he had clearly blamed the Land Registry for the error regarding E Street and C Street yet it had been the Respondent who had failed to take the correct procedural steps once the problem had been identified.
29. The Tribunal was not satisfied that the issues which arose were wholly unforeseeable for a solicitor of some 30 years standing where these had been standard transactions, not out of the ordinary and it attached no weight to this argument.
30. The Tribunal was extremely mindful of the harm to the public perception by the Respondent's misconduct and of the impact upon the profession's reputation. The Tribunal was not satisfied that there were any mitigating factors.
31. The Tribunal decided that no order, a reprimand, a fine or suspension were not appropriate sanctions in all the circumstances of the case.
32. The Tribunal noted that no dishonesty was alleged but in the absence of dishonesty it was satisfied that the appropriate sanction was that the Respondent be struck off the Roll of Solicitors because the seriousness of the misconduct was so high that there could be no other sanction having regard to the overall facts of the misconduct and in particular, the Tribunal had regard to the effect that allowing the Respondent's name to remain on the Roll would have upon the public's confidence in the reputation of the

profession. The Tribunal had regard to the case of Solicitors Regulation Authority v Emeana, Ijewere and Ahanaku [2013] EWHC 2130 (Admin) in its decision.

### Costs

33. Mr Barton referred the Tribunal to the Applicant's Schedule of Costs. He said that the Applicant claimed its costs in the sum of £40,626.52 which included the previous costs of Field Fisher Waterhouse which had had original conduct of the case.
34. In response to a question from the Tribunal with regard to the losses sustained in the case Mr Barton said that he had no knowledge as to why Cobbetts had not pursued the claim but he was aware that a claim had been made to the Compensation Fund which had its own rigorous investigation procedures.
35. Mr Brunskill said that Quinn Insurance had had its own difficulties in the insurance market albeit it was still operating under the style of Liberty Insurance and he could not see why the claim had not been pursued in those circumstances, prior to the claim being time barred which it now was.
36. Mr Brunskill referred the Tribunal to the Respondent's financial documentation and schedule of his income and outgoings which included his wife's income together with attached copy bank statements. Whilst the Respondent had some assets Mr Brunskill said that certain of those were in the name of the Respondent's wife and the matrimonial home had always been in the Respondent's wife's sole name. The mortgage account had a balance of £56,609.90 owing.
37. Mr Brunskill told the Tribunal that there were significant debts owed by the Respondent which included £5,000 owed to HM Revenue and Customs and the debts of the firm which included a share of the rent in the sum of £22,000, the PI debt work share in the sum of £350,000 albeit there was no documentation in support of that.
38. In addition Mr Brunskill told the Tribunal that the Respondent had a pension fund with an approximate value of £130,000. He said that the Respondent would be entitled to draw down 25% at the age of 55 which would be in December 2013. He said that the Respondent had intended to retire in December 2013 in any event and to use the pension fund as income.
39. Mr Barton asked the Tribunal to consider making a fixed costs order in light of that and allowing the parties to agree payment.
40. The Tribunal had regard to the parties' submissions on costs and had taken into account the documentation it had seen with regard to costs including that of the Respondent which detailed his income and outgoings but without any supporting documentation other than three months' copy bank statements. It noted that there was also no supporting documentation with regard to the Respondent's matrimonial home or in relation to the debts.
41. The Tribunal considered that the costs were significant and noted that the case had been taken over by Mr Barton and that there appeared to have been an element of duplication of work. There had been approximately 101 hours of forensic

investigation costs and a further 100 hours of solicitors' costs which the Tribunal considered was excessive in the circumstances of the case.

42. The Tribunal was satisfied that the Respondent would be able to pay the costs of the proceedings which had been properly brought and which had been found proved, by virtue of access to a percentage of his pension fund which would be available in December 2013. It summarily assessed the costs in the sum of £30,000 and ordered that the Respondent pay costs in that amount. It expressed its expectation that the Applicant would discuss with the Respondent the arrangements for payment.

### **Statement of Full Order**

43. The Tribunal Ordered that the Respondent, ALAN DOUGLAS COCKBURN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00.

Dated this 10<sup>th</sup> day of October 2013  
On behalf of the Tribunal

Mr J N Barnecutt  
Chairman