SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11311-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

TIMOTHY JOHN WILKINSON Respondent

Before:

Miss J. Devonish (in the chair)
Mr P. Housego
Mrs V Murray-Chandra

Date of Hearing: 13 to 15 October 2015

Appearances

Mr Geoffrey Williams QC of Farrar's Building, Temple, London EC4Y 7BD instructed by Blake Morgan LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant

Mr Richard Manning, Solicitor of O'Garra's Solicitors, 32 Park Square, Leeds LS1 2PF for the Respondent who appeared

---

JUDGMENT

Allegations

1. The allegations against the Respondent, Timothy John Wilkinson, were as follows:

1.1 The Respondent acted in breach of his duties as a professional executor and trustee and, in so doing, has acted in a way likely to compromise his independence and the good repute of himself and the legal profession contrary to Rules 1(a) and (d) of the Solicitors Practice Rules 1990 ("SPR").

1.2 The Respondent failed to act in the best interests of clients of Burr Sugden and behaved in a way that was likely to compromise his independence and the good repute of himself and the legal profession contrary to Rules 1(a), (c) and (d) SPR.

1.3 The Respondent acted where there existed a conflict of interest or a significant risk of a conflict of interest contrary to Principle 15 and/or Rule 6 SPR.

1.4 The Respondent agreed to include incorrect dates in documents and entered incorrect dates and/or was aware of incorrect dates being included in documents with the intention to mislead third parties and, in doing so, he compromised his duty to act with integrity and compromised his good repute and that of the legal profession contrary to Rules 1(a) and (d) SPR.

1.5 In respect of allegation 1.4, it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegation itself.

1.6 The Respondent acted recklessly.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 28 November 2014 with exhibit MRH1
- Respondent's Answer to the Rule 5 Statement dated 30 June 2015
- Applicant's Form 6 dated 21 September 2015
- Witness statement of William Walter Edward Crane dated 24 August 2015 with exhibit WC1
- Statement of the Respondent dated 30 August 2014
- Statement of Robert Fenwick Walker dated 28 August 2015
- Respondent's additional disclosure
- Civil Evidence Act Notice dated 1 May 2015
- Correspondence
- Applicant's schedule of costs

Respondent

- Agreement for tenancy of TH Farm dated 3 January 1987
- Bundle of testimonials

- Private client survey responses
- Personal Financial Statement of the Respondent dated 12 October 2015

Factual Background

3. The Respondent was born in 1947 and admitted to the Roll of Solicitors in 1972.

4. At all material times the Respondent was a solicitor and partner in Burr Sugden Solicitors, ("the firm") of Keighley, West Yorkshire.

5. The matter came to the attention of the Applicant as a result of a report dated 1 November 2012 by a partner at the firm Mr PF.

6. The Respondent had been in practice at the firm since admission and a partner since 1974. On the firm's website the Respondent held himself out as a specialist in certain fields to include: wills; trusts; administering estates and powers of attorney with knowledge of realty work for both commercial and domestic clients.

7. These proceedings arose out of the Respondent's involvement as an executor and trustee of the Wills of E dated 8 June 1983 and H dated 21 September 1987.

8. RC was the nephew of E and H and a lifelong acquaintance of the Respondent. RC and his wife PC had three children; two daughters RM born in 1977 and LC born 1978 and a son WWC ("W") born 1981.

9. H and E were brother and sister and neither had any children.

10. E died in March 1986 leaving her will and two manuscript codicils all of which were admitted to probate in August 1986. The Grant of Probate to the will was extracted by her brother H, HC (employee of a firm of solicitors PY) and the Respondent, all of whom were appointed as executors and as trustees of the trusts arising under the will.

11. E's will and two codicils bequeathed to H a pecuniary legacy of £5,000, to RC, his wife PC and to RM, LC and W a pecuniary legacy of £1,000 each together with one fifth of her residuary estate to each of the children. There were a number of other pecuniary legacies in the will and codicils together with a specific gift of her house to her brother H. The total value of the estate was in the region of £186,000.

12. At the time of her death E's estate comprised of various quoted shares; cash in various bank and building society accounts; 45 £1 ordinary shares in WRI Limited ("WRIL") which owned a considerable number of domestic properties; various other holdings; and her home (SM).

13. The total value of E's estate was in the region of £186,000 and the shares in WRIL fell into her residuary estate and therefore should have been distributed in accordance with the will; two fifths to RC and one fifth each to his children RM, LC and W.

14. H died in February 1988 leaving his will dated 21 September 1987 which was admitted to Probate on 6 September 1988.

15. The Grant of Probate to H's will was extracted by RC, HC and the Respondent all of whom were appointed as trustees of the trust arising under the Will.

16. At the time of his death, H's estate comprised of various quoted shares; cash in various bank and building society accounts; 38 £1 ordinary shares in WRIL; various other holdings; a loan to WRIL; SM; numbers 2, 14 and 16 L Terrace; B Street; TH Farm; and JT Farm.

17. At the Grant of Probate for H, HC was a former employee at PY and BS a partner of PY acted in the administration of the estates. RM, LC and W were all minors. RM would attain majority in July 1995, LC in October 1996 and W in June 1999.

18. In respect of RM, LC and W, H bequeathed in his will:

- The farmhouse, farm buildings and land known as TH Farm to W free of all taxes;
- 50% of his entire shareholding in WRIL to each of RM and LC; and
- one fifth of his residuary estate to each of RM, LC and W.

19. In the course of the administration of the residuary will trusts of E and H, RC embarked on a scheme of considerable complexity. Put simply it involved him becoming a tax exile and the assets of E and H's estates were transferred for tax purposes to RC and subsequently to companies based in the Isle of Man ("IoM"). The scheme was intended to be tax efficient. The companies were essentially under the control of PT a solicitor in the IoM specialising in tax matters.

20. The assets were subsequently transferred to a Cayman Islands company AL and later transferred to a Northern Ireland charity company MM, both controlled by PT, in an attempt to resolve financial difficulties following RC charging the assets to a bank.

21. Several meetings took place over the years between some or all of PT, RW (an accountant who subsequently became a will trustee) and the Respondent and some or all of the beneficiaries; those which featured most prominently in evidence occurred on 31 October 1998, 29 October 1999 and 13 April 2000.

22. PT died in May 2008. Ultimately control of the C family estate assets passed to PT's executor PK. Many of the assets held on trust not only for RC but, more particularly, for his three children were lost by way of sales to clear bank borrowing. On 9 April 2013, RC became bankrupt.

23. The Respondent was initially professional executor and trustee in respect of the estates and, thereafter, also the solicitor acting in many of the transactions which formed part of the scheme.

24. In furtherance of the scheme and in the course of affecting multiple transfers of assets from the estates, the Respondent acted for the executors and trustees of the estates which included himself, for RC individually and for various offshore entities including the IoM companies ACo, ICo, OCo and AL.

25. The children beneficiaries of the estates did not receive the entirety of their beneficial entitlement.

Witnesses

William Crane

26. The witness confirmed the truth of his statement 24 August 2015 save as to a few points which he clarified during evidence. The key points of his evidence were as follows. The witness, a farmer was the son of RC. He now rented a farm which his family had formerly owned. It was only latterly that he had gained a proper understanding of the estates when problems occurred and he and his siblings enquired further into the situation. He did not remember the Respondent ever telling him about the wills or writing to him about them. It was known that TH Farm had been left to him (he was not sure when it was first broached), and that his sisters would be left half each of WRIL. He only questioned his father when he was older. He later learned that school fees had been paid out of the money left. His sisters did not know much about the wills and it was only when they saw the wills that they realised that there was also cash. His sister RM had been sent a copy of the will by RW or the Respondent. (The evidence showed that RW had arranged for copy wills to be sent in 2010).

27. The witness was not sure when he first became aware of the IoM company ACo. His father would tell him that the companies were for his benefit and he went along with that. He agreed in cross examination that all the assets that he had in the UK had to go abroad with his father in a trust or settlement. He understood that the offshore arrangements were a form of making the situation tax avoidable. The buildings were still in the UK and as they had access to them the family thought of them as their own even when TH Farm was vested in ACo. His father did not go into detail as to what they could do with the property beyond saying that the arrangement was for their benefit and for tax saving.

28. The witness described his relationship with his father RC whom he described as both caring and very strong where the achievement of his wishes was concerned. He also described the issues that he had in challenging his father's wishes. He said in his statement that he thought he would have been around 16 years of age when his father went abroad; he only saw him a couple of times over the next two or three years. The witness remembered a conversation when he told his father he wanted TH Farm and his father refused on the basis that it was all wrapped up in an overall scheme for the family. As regards AL the Cayman Islands company and MM the Northern Ireland company, the witness said in his statement:

> "As demonstrated by my later request for the return of [TH], I had no appreciation of what it meant in terms of me inheriting that property and I continued in the belief that ultimately it would be mine."

When the properties passed to AL, the witness felt that his father seemed to be losing control. PT said that TH Farm was his and the witness always thought he would get it at some point when the time was right. He did not really appreciate that he should

have had it at age 18 and there was cash as well. The witness stated that he went to see PT in early 2007 in the IoM and at this meeting:

> "I asked [PT] for [TH] back. He said I could not have it on the basis that it was now too complicated and everything, in his words, "had been absorbed". I was not too concerned about this however as he assured me I would get it back eventually. I also spoke with [RW] about this who suggested that [TH] be put into a different company. [PT], again, said no"

29. The witness stated that he had met the Respondent a few times at meetings and he was "a nice chap"; they never had a one-on-one meeting. He thought of the Respondent as the family solicitor. He did not realise that the Respondent was a trustee and he was not particularly familiar with trustee duties. In questioning by the Tribunal, the witness stated that he did not think that he was aware that the Respondent was the solicitor for the beneficiaries; he did not remember being made aware that he was a trustee acting in their best interests. The witness felt that the Respondent looked after them as a family rather than as individuals. He stated that later on he was more involved with RW who was more supportive than the Respondent. Around 2010 he saw more of both of them. He believed both were straightforward and honest people. His father thought PT was in a different league. His father would instruct RW and the Respondent based on PT's advice. He did not recall having any conversations with the Respondent about the estates. There were conversations when the portfolio was being sold to third parties and everything was going wrong. He received just two letters from the Respondent. There may have been more but he did not have copies.

30. The witness could not remember if the Respondent told him when the assets of the estates were transferred to his father. His father talked about the IoM companies and said PT had come up with a great idea for saving tax. The witness did not understand capital gains.

31. The witness did not recall the earlier two of the three meetings; that on 31 October 1998 which took place when he was still a minor and on 29 October 1999. He had not seen the Respondent's and RW's statements when he made his statement and said he had no reason to challenge the accounts of the meetings they gave. In his statement the witness referred to the family meeting at which the Respondent was present in April 2000. He thought (correctly) that he was 18 years old at that time. He said:

> "I had no idea what he [the Respondent] was doing and assumed he was there as my father's solicitor"

The witness said in his statement that PT "was very much in control of the meeting and he also spoke with me and my sisters alone". Looking back and reading the Respondent's and RW's statements the witness thought that he had been wrong as to the subject matter of the meeting; he had thought it related to the moving of the assets to the IoM companies but it was about moving them into AL. He had said in his statement that while he could not recall the precise order of events, at some stage he learned his father was concerned about the complexity and costs of the structure he had in place and wished to simplify matters by consolidating assets. He seemed to recall that there was also an issue of control for his father.

32. At the April 2000 meeting, the witness testified that PT suggested that they could leave everything as it was with the IoM companies or "hive up" to AL. The way PT spoke was confusing; he never gave "Yes" or "No" answers but would give examples about company structures; the properties could remain in companies or they could go into one company which would save costs. He did not think PT would have said they should not do the latter; he just pointed out the different routes. As to whether he understood that his father wanted to consolidate everything into one pot, the witness remembered that his father wanted complete control but he would have thought why were the assets not under his control anyway and wherever the properties were, it was going to save tax. He understood that his father was doing all this for them and so it was no different if his father or a company was in control of the assets. The siblings were told it was best for them to have offshore companies. TH Farm would be worth a fortune and it would save tax. The witness had made no notes of any of the meetings and so he had nothing to look back on. At his then age and with professionals around, he did not really have a good understanding of what was going on save that it was all for their benefit and so he just fitted in to do what was best.

33. The witness stated that the IoM companies were in the siblings' names but they did not have cheque-books or accounts in their names. His father controlled the situation and they had no access. As to whether he now appreciated that the companies were never in the siblings' names, the witness stated that they were continually told that the companies were for them and were for their interests. TH Farm Cottage was sold for £180,000 he thought in 1999 and the proceeds sent to ACo. He understood that the money was for his benefit but he never had any access to it. He remembered his father mentioning that the TH Farm Cottage was being sold. The witness said that if it was that good they should get ahead and do it. Then planning approval was obtained for the barn and "for sale" signs were put up. His father then pulled out of the transaction. The witness did not recall being asked about the barn sale; he was at school at the time.

34. Of the final calamity when all the properties were sold by PK as PT's executor to pay off the bank borrowing, in his statement the witness said that around the time the transfers from AL (to MM) had occurred the debt was around £2 million but had gone up dramatically as a result of various costs and development works. The witness agreed that the debt problem and the property crash coincided. If PT was still alive he would have hung onto the assets. He thought that PT had the beneficiaries' best interests at heart. He referred in his statement to his father trying to hold up the sale process after PT's death. He also said in respect of CH Farm where the family lived:

> "...We learnt that, with [the Respondent's] help, my father had made my sisters essentially the landlords of the property without them knowing and any rights my mother may have had were lost as a result. Through whatever transfers had taken place we also lost farming rights we would otherwise have retained..."

The witness described his father's attempts to stop the assets being sold off to satisfy the bank borrowing and an abortive transaction involving his sister RM's father in law offering to help purchase the family home. At the first meeting he went to with PK and his mother, PK said that they had 10 days to get £3.1 million or he would sell everything. The witness had not known the extent that the debt had reached with PK.

They approached PK through RW rather than their father. PK said that the debt must be reduced by £1 million. His sister's husband offered that sum for the family home but agreement could not be reached with his father about an additional piece of land. PK then wanted all the debt repaid. The banks were getting more awkward with both PK and the family. Contracts were exchanged on the property but completion was put off with his father trying to litigate the matter in Northern Ireland and the IoM to try to stop completion. It appeared that the sale was possibly at an undervalue. The witness blamed his father for the collapse of his inheritance.

Robert Walker.

35. The witness confirmed the truth of his statement dated 28 August 2015. The key points of his evidence were as follows. The witness was a chartered accountant who had known RC since 1953. In 1994 RC contacted him leading to a meeting with RC and BS who was dealing with E and H's estates to finalise a settlement with HMRC with respect to the property values which had been disputed with the District Valuer for a considerable time. The witness achieved a small reduction on most of the properties. Most significant was that for TH Farm which had been given a valuation of in excess of £100,000. He had it reduced to £100,000 and then to £48,000 when the witness produced an agricultural tenancy agreement to which H had made the property subject in favour of RC and his mother.

36. RC had heard from friends that going abroad had some benefits. The principal motivating factor was tax saving for what RC referred to as the "C estate". The witness gave RC professional advice but some taxation skill was involved and so RC wanted a second, third and fourth opinion. They went to the various household name accountants' firm and their advice was the same as that of the witness. RC still wanted to go overseas. The witness referred him onto DM on the IoM; he was a chartered accountant previously in practice in Yorkshire and the witness knew of him because a number of the witness's clients dealt with him in the IoM. DM gave him the same advice. RC wanted to find a better way. DM introduced him to PT of whom the witness had not heard. RC met PT and was delighted; PT could produce all he wanted; vehicles with immediate and long term tax saving. RC decided he would use PT to set up the necessary scheme.

37. The witness agreed that as he was instructed to deal with several of the family companies and enterprises he met the family very regularly. All their accounting records were at CH Farm their family home.

38. There were long family discussions about RC's desire to go abroad; probably it was first mentioned to the family in 1996 or end of 1995. It took more than a year to get to the position that RC went in April 1997. During that time the witness was visiting the family home and there were a number of casual discussions about what was going to happen but there was a meeting that RW had at RC's request to talk to the family at CH Farm probably in March 1997 before he finally went. The family were all there and asked questions about the mechanics of moving and the witness explained how it would work. Mrs PC was the only one who asked a lot of questions. He was asked if had advised RC to leave for tax purposes and RW said he had not. They asked if he would leave the country and he said he would not.

39. The witness had never come across schemes remotely like this scheme or Capital Redemption Bonds (also described as Certificates or Contracts) which were part of the scheme. He undertook background checks on PT; he was a practising solicitor with a practising certificate. He had seen PT's CV which tied into everything they had checked. He seemed very impressive and came highly recommended by DM. The scheme was unique. All the PT schemes were tailor made to particular clients. As to implementation of the scheme; initially it was exactly the same as if it was a settlement; the properties were gathered together in the UK in RC's name at probate value from the various wills and he would arrive with them in the Isle of Man. Ultimately the assets went in separate IoM companies reflecting the beneficiaries' interests in those assets.

- ACo took TH Farm and land which was bequeathed 100% to W who was the beneficial owner of ACo.

- ICo received a bundle of properties of which the beneficiaries were RC and the three children.

- OCo was exclusively RC's; taking property that he owned 100% and which had not come through the wills of H and E.

40. The Respondent was a trustee of the wills and ultimately the witness also became a trustee. Initially he did not understand the scheme. When PT described the rules and the flow of assets and when they met PT he was happy that the properties would arrive where they wanted. He viewed PT as extremely intelligent, competent and knowledgeable. He was without doubt very impressive. The witness also had a very high opinion of the Respondent.

41. As to the witness's dialogue with the family as a trustee, initially the only scheme on the table was a settlement. The family were aware that all the properties would go abroad with their father but that they would then reside in trusts especially for them; number one trust for W; number two for RC and the sisters and number three for RC; that changed with the PT scheme. The witness did not have any notes of specific meetings or of when he talked to the family about the changes but PT's schemes were accepted by the whole family as being a better alternative to the settlements in that in the long term none of the monies drawn from Capital Redemption Bonds would be subject to tax whereas money drawn from a settlement would be. The witness stated that he and the Respondent constituted the settlor as they moved the properties from the UK via RC. He was also regarded more as settlor than anyone else but he was only an intermediary. He never regarded himself as owning the properties. The position was slightly different regarding AL.

42. In respect of whether the witness ever heard the Respondent give advice direct to the children beneficiaries, in so far as they had meetings where they explained what was happening and the children asked their views; he and the Respondent gave them their views. He suspected that was what they would have regarded as advice.

43. The witness stated that PT regarded himself as another trustee of the children's assets under the direction of the witness and the Respondent. When the IoM companies were established they had internal meetings with PT and explained the position at issue

with the children beneficiaries in the wills and their entitlements and that whatever planning PT undertook they had to protect those interests. PT agreed and undertook verbally not to make any moves in the companies regarding the assets without agreement from the witness or the Respondent.

44. The witness described the three meetings with some or all of the family in October 1998, October 1999 and April 2000.

- His statement referred to the Respondent's file note dated 2 November 1998 of the meeting on 31 October 1998. Mrs PC wished to have this meeting; RC was out of the country and RM was not present. He and RW explained the IoM structure of the three companies and their relevance and the fact that they were designated for the three children and were effectively their shares.

- His statement covered the meeting of 29 October 1999. He gave a full review of the history including the wills. All the children were incredibly aware of the properties owned by the family; for example whether they were tenanted. This was the meeting where they explained to the family that RC wanted to close the companies in the IoM and pass all the assets into one company AL based in the Cayman Islands. As a trustee, the witness was not totally happy with that. It meant the protection they had set up for the children suddenly became non-effective unless they had another series of companies in the Cayman Islands specifically for the children. They discussed it with PT; who agreed. PT was concerned because prior to that he had received their instructions; the children's assets had to be protected and had been with the IoM companies. The witness stated that the children knew the overall position but were slightly confused about how the move would work and about the necessity for a number of companies. He and the Respondent explained that it was to keep them individually protected.

- Regarding the April 2000 meeting, PT, the Respondent and the witness were concerned that if everything went into one company effectively controlled by RC the children's assets were at risk because of the conflict between what RC wanted and what the Respondent and the witness felt was best for the children. PT said he needed to speak with the children and asked for a meeting to be called. The witness went to the family home the night before to explain as best he could the difference between the two schemes and that PT was coming to talk to them and explain to the children what the ramifications could be or would be for them. He told the children to think about it and about any questions they would like to ask PT to get the best out of his attendance. It was really PT's meeting and he insisted he wanted to speak to the children without anyone else being present so no one would have influence on them and he and they could say/ask what they wanted. The witness did not think that anyone would consider PT to be independent; he was too involved but he could give very straightforward impartial information. There was no huge benefit to PT as to which of the options the family adopted; he was not going to make a lot of money. After a while the witness was invited back into the meeting and PT gave a resumé of what he had told the children; basically that the Cayman Island route was a better route than the IoM. He wanted to protect their interests so he wanted a series of companies in the Cayman Islands to replicate those in the IoM. RC wanted one combined pot. PT advised the children not to go with their father's plan and that it would be safer going along the multi

company route. The witness spoke; the children asked him various questions perhaps to clarify what PT had said in not very easy to understand language. The witness expressed his opinion that was also the Respondent's that the safest route was to have their own separate companies. By April 2000 they were all adults. At the end of the meeting the children decided to go with their father's wishes as they trusted him to look after their assets and had no doubt that he would do everything for their benefit. It was a poor decision; up to that point their assets were there for them in the various companies. It was a difficult meeting. As the witness said in his statement he spoke to the children subsequent to the meeting and they confirmed what he had been told by PT. The witness felt the children had been given enough advice at the meeting to put them on alert. He agreed in cross examination that there was a third option which was not put to the children; that they could have their assets. It would have involved breaking up the IoM settlement and the CGT consequences would have been quite dramatic for W.

45. The witness stated that PT and the Respondent dealt with the move of the assets from the IoM to the Cayman Islands into AL. The Respondent dealt with the legal aspects under guidance and instructions from PT. It was another PT scheme, a continuation. The witness confirmed what he said in his statement:

> "I know that after this stage [the Respondent] described himself as "the mechanic". He was simply preparing the paperwork in accordance with the instructions which were being given to him which came through [PT]. His letter of 24 April 2002 to [PT] was illustrative of his preparation of papers whilst still having to submit them up to [PT] for his approval. So it was that when he wrote to [PT] again on 24 November 2002 again he was I would suggest providing documents but with some question mark about the procedure."

Once the assets were in AL any trusteeship had gone; the children had chosen what to do regarding the assets. The witness stated that he did not think he was still a trustee at that point. He felt who better to trust than the children's father who did what he did to enhance the family wealth. It was RC who knew which assets belonged to whom. He had prepared no trust accounts as he did not have the information to do so.

46. The witness agreed that RC was determined to get his own way and did so. The witness hated the corporate structure plan; he would have preferred a settlement where the trustees looked after the assets of the beneficiary with no added structure. He agreed that a trust was advised as the trustees would have control and that as a trustee he was part of the transfer of the trust assets to the sole name of RC without any security being taken but he had no fear of RC going bankrupt at that stage. He also agreed that there had been no attempt at the time that the risk was taken i.e. when the assets were transferred to RC to secure independent advice for the children.

47. The witness had been a trustee before but not on something as complicated as this. He said in his statement:

> "...this was way outside the scope of our knowledge and expertise and that up until this time neither of us [he or the Respondent] had ever dealt with or heard of "Capital Redemption Bonds"."

He agreed that PT controlled ACo and could dispose of the property if he wanted to but asserted that he could have done so as a trustee of a settlement. As to whether this would not have happened because he and the Respondent would have been the trustees of a settlement, the witness stated that they could not be; in the IoM trustees had to be overseas residents or the tax planning would have failed; once the assets had gone to the IoM whether in a settlement or company structure the witness and the Respondent could not be trustees any more. IoM settlements involved the settlor advising and making recommendations to the trustees and the witness had never come across any trustees who had not ultimately acceded to the settlor's wishes. Taking assets abroad always involved a risk but it had been done thousands of times. The witness rejected the suggestion that the assets were being given away; they were being placed in trust in their father going to the IOM and placing the assets back into their care. He agreed that the father would be in that role possibly for a number of months. PT was very experienced at tax planning and a company structure was more flexible with control resting in the directors and a protector specifically for the benefit for example of W. The witness felt that the role of Protector of an IoM company was somewhat stronger than described by the Respondent in his file note of 5 June 1997 regarding a meeting in the IoM:

> "Emphasised that the Protector can do little but to stop the Directors doing things but cannot in any way force them to do things required by [RC]. A great deal of trust is therefore being put in [PT] and [CK] who will be the shareholders of the 3 companies and the Directors and Secretary of the 3 companies..."

The Protector had the ability to change directors if they were not doing what he thought they should.

48. As to when things went wrong, the witness stated that RC had developed some properties. Debts were incurred by RC to build new units at M Mills and for the renovation of a property WH. The income from M Mills an RC property was not sufficient to cover the interest on the borrowing and living expenses and about this time they started to feel the tightening up of the banking system. RC banked originally with HSBC which wanted him to start reducing some of the overall borrowing; in properties he probably had at least £6m and borrowings of perhaps £2.5m. The sale of one of the properties was the only way to do it. The position with HSBC became desperate. On one occasion the witness flew to Amsterdam to see RC and proposed a plan and a cash flow for presentation to HSBC. The plan involved the sale of properties which RC did not like. There were any number of assets they could sell quickly. It was a matter of finishing WH and selling it, keeping some of the proceeds to refurbish the next property and reducing the borrowing and then doing it again. HSBC said if RC would sign and implement the plan the bank would go with them. RC received bank money to finish WH; an extra £100,000 and he spent it unprofitably on the loss making farming enterprise at CH Farm. It took HSBC a few months to realise what had happened and withdraw its support. RC therefore had to find more finance. PT arranged borrowing from NatWest sufficient for MM to buy the properties and repay the HSBC borrowing. NatWest then realised that RC was only just covering the interest and asked for a plan to repay the borrowing as HSBC had done. The end result was that ultimately the MM had to sell the properties. Meantime PT had died and his executor was PK who for some reason unknown to the witness

and to the Respondent had taken an instant dislike to RC some years before. PK asked for repayment. PK entered into a contract with a particular individual or one of his companies to sell all the properties for an amount sufficient to clear the NatWest borrowing but leaving no other money. The witness produced valuations from a national and local estate agents proving the property was worth considerably in excess of that amount; the lowest valuation was £5 million but the sale went ahead. The witness described the efforts made by the family to sell property including the proposal made by one of the sisters to buy CH Farm. He sent the wills to the children on 24 September 2010 because he was sending them to PK as part of his efforts to persuade PK to hold off from selling. He supplied the children with copies because he did not know if they already had them or not.

49. It was the witness's view that if the children had not agreed to the hive up their properties to AL they would still have been held there and PT would not have allowed borrowing against those properties. The bulk of the assets were RC's. TH Farm had no borrowings at all until it arrived in AL and then it was charged to secure RC's borrowing and money that had been spent to refurbish the L Terrace properties before they were sold initially to HSBC, moved to MM and later charged to NatWest. They were part of the ICo settlement.

Findings of Fact and Law

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

(The submissions below include those made by the parties in the documents and those made at the hearing. Paragraph numbers are omitted in quotations unless they aid comprehension.)

51. For the Applicant, Mr Williams submitted that Civil Evidence Act notices had been served and Notices to Admit and no counter notice was received and so the Tribunal could treat the documents as proved. The material events occurred many years ago and only came to the attention of the Applicant on 1 November 2012 when they were reported by Mr PF a partner of the Respondent. The Applicant carried out an investigation which it pursued expeditiously.

52. **Allegation 1.1 - The Respondent acted in breach of his duties as a professional executor and trustee and, in so doing, has acted in a way likely to compromise his independence and the good repute of himself and the legal profession contrary to Rules 1(a) and (d) of the Solicitors Practice Rules 1990 ("SPR").**

Allegation 1.2 - The Respondent failed to act in the best interests of clients of Burr Sugden and behaved in a way that was likely to compromise his independence and the good repute of himself and the legal profession contrary to Rules 1(a), (c) and (d) SPR.

Allegation 1.3 - The Respondent acted where there existed a conflict of interest or a significant risk of a conflict of interest contrary to Principle 15 and/or Rule 6 SPR.

(The Tribunal considered these allegations together as they arose out of the same facts.)

52.1 For the Applicant, Mr Williams submitted that the Respondent surrendered control of the assets left under the wills which the testators had wished to go to the three children of RC. It was well documented on his own account that the Respondent knew of the risks being run but carried on. He acted for multiple parties where there were obvious conflicts or risks of conflicts. He knew that the child beneficiaries had to be independently advised but he failed to arrange for that advice to be given. He relied on people on whom he had no business to rely in respect of his duties, and his failures proved catastrophic particularly in respect of W who lost a farm with land of around 24,500 acres that would have been of great value to him. The shares in a company WRIL which owned a large number of properties were left to the daughters of RC and were never transferred to them. These allegations were very serious although dishonesty was not alleged in respect of allegation 1.1 to 1.3.

52.2 Mr Williams submitted that there were three key events in respect of loss of control of the assets by the Respondent:

- The assets of the estate of H were transferred to the sole name of RC and the Respondent knew when that happened that they were gone;

- The assets were transferred from the sole name of RC to three companies set up in the IoM of which the Respondent was not a director or shareholder and over which the Respondent had no influence at all;

- The assets were transferred from the IoM companies to a Cayman Islands company AL which was controlled by PT.

In addition to the first transfer, the Respondent played a part in the second and third of these events even though he was not a director or shareholder and the transfers formed part of the allegations against him.

52.3 Mr Williams submitted that on attaining majority, the children were entitled to have transferred to them the assets which had been specifically left to them and their share of residue. The Respondent owed the same duty in his conduct to all four beneficiaries, the children and their father. Those duties were heightened whilst the children were minors but the duty of a trustee to protect the assets of the trust for the beneficiaries subsisted at all times. He had to be prudent and reliable so the trust assets could be delivered up to the beneficiaries at the appropriate time. It was the duty of an executor to ensure that the wishes of the testator were respected and carried out. The Respondent failed the child beneficiaries in the performance of these duties. It could be said that he failed RC but it was asserted that RC could look after himself at all times and exerted influence over the Respondent who did not resist.

52.4 Mr Williams submitted that it became clear at an early stage that RC wanted control. On 19 September 1988, BS solicitor of the firm PY which was undertaking the administration of the estates wrote to the Respondent including:

> "We shall have to discuss how the Trusts are to be looked at but how agreeable (sic) in the short term. I believe [RC] still feels that there should be a global fund of the Trust(s) out of which he can account to each of his children at the appropriate time. You are an Executor and will be a Trustee and will obviously be concerned for the future. No doubt you will be discussing."

On 16 December 1988, the Respondent wrote to RC:

> "... My position as the Trustee of both estates is not to be involved in the nitty gritty of dealing with matters but is to take an overall view of both estates for the benefit of the beneficiaries – particularly your children as you are well able to look after your own interests."

Mr Williams submitted that from this letter one could imply that the children were not able to look after their own interests and were dependent on the Respondent. On 23 March 1995, the Respondent made a file note of a meeting that he had at RC's house with accountant RW and executor HC. It included:

> "[E's] estate appears to be complete… It was agreed that [PY] should be asked to bring the Estate Accounts up to date as soon as possible...
>
> ...
>
> [RC] is keen to treat matters as a whole rather than as individual parts of a whole. He was reminded that the Trustees are responsible only to the Beneficiaries and in theory must account to the beneficiaries on attaining their 18th Birthdays. This will be shortly for [RM]."

Mr Williams did not know what "in theory" meant; he thought that it was what one had to do but the Respondent was aware of his duties to the children at this date.

52.5 Mr Williams submitted that TH Farm was of particular value and referred to another file note made by the Respondent on 24 November 1995 which included:

> "[TH] Farm will apparently be worth serious money in the not too distant future because it will be available for housing. This property was left to [W]."

In a letter dated 20 June 1997 to PT regarding TH Farm RW said:

> "This land represents the real "cherry on the cake" if and when planning is granted and certainly as far as [W's] land is concerned…"

The 24 November 1995 file note was made after meeting with RW and RC at RW's office. The note concluded:

> "[RC] still had in mind the possibility of moving abroad so that sales can take place free of Capital Gains Tax unless of course the Budget does anything to reduce the potential Capital Gains Tax liability which he has."

Mr Williams submitted that RC was now thinking of becoming a tax exile.

52.6 On 17 January 1996, HC retired as a trustee of H's estate by way of a deed of discharge and RC and the Respondent continued as trustees. By this time RM was 18 years old. By early 1996 when HC retired, the administration was complete leaving funds available to be dealt with by the executors. RC and RM could have had their assets but they were kept in two trusts controlled by the Respondent and RC. On the same day that HC retired, TH Farm and JT Farm were vested by way of Assent between RC, HC and the Respondent as executors and RC, HC and the Respondent upon trusts including the trust for sale contained in the will.

52.7 Mr Williams submitted that by March 1996, RC had determined to go abroad. On 29 March 1996, the Respondent wrote to him a retainer letter copying in RW setting out what RC was going to do. The letter began:

> "I write to record my thanks for your instructing my firm to deal with the various documentation arising from your decision to move abroad to further the estates of Uncle [H] and Aunty [E] and to assist with your personal affairs. Just for the record I have not been asked to advise on the Tax consequences of your decision to emigrate – this aspect has been fully covered by [RW] with the benefit of a second opinion from [ET] of ... in Leeds. My function is to prepare the documentation to give effect to the decisions already taken…"

Mr Williams submitted that in fact the Respondent's function was to protect the assets of all the beneficiaries; he might also have been involved in the preparation of documentation but his proper function was to take proper care of the assets. He was also acting for RC in his personal matters and as would be shown there was a demonstrable conflict between RC and the three children as trust assets were coming to be involved. The retainer letter referred to WRIL in which RM had been left shares and which on her attaining 18 years should have been vested in her. The letter stated:

> "[WRIL] the issued Share Capital is 100 shares. Seven shares are already in your name. I enclose four Stock Transfer Forms two for signing by you where marked in pencil, one for signing by [RM] where marked in pencil, and one for signing by [LC] where marked in pencil. Please then return the four Stock Transfer Forms to my office. I confirm I have already prepared a fifth Stock Transfer Form whereby you will gift all the issued Shares into the proposed settlement but will retain this for your signature later as it is not required at present. The effect of the first four transfers will be you are the owner of the whole of the issued share capital…"

The Respondent dealt throughout with RC regarding all of the beneficiaries and RC became owner of all the share capital in WRIL. In respect of JT Farm, the letter said:

> "This document records the fact that you take this property as part of your share of the residuary estate of Uncle [H]"

Regarding TH Farm, the letter stated:

> "[TH] Farm. I enclose the Transfer by which you purchase this property from Uncle [H's] estate subject to your existing Tenancy at the price of £48,000 for signing…"

Mr Williams explained that H had arranged for RC and his mother to take the agricultural tenancy purely to depress the farm's value for tax purposes. [The Tribunal asked to see a copy of the tenancy agreement and noted that it was a conventional agreement of its type.] The Respondent sent the transfer of TH Farm to RC while it had been gifted specifically to W for whom the Respondent was trustee. RC had all the shares and the trust properties in his sole name including JT Farm and was buying TH Farm out of the estate and in all these transactions the Respondent acted for all the parties while a trustee for all of them. There was a clear need for independent advice to the child beneficiaries. Mr Williams asked what would have happened if RC had died or gone bankrupt and suggested that the Respondent did not know. Once he acted in the transfer of trust assets to RC's sole name the bird had flown.

52.8 Mr Williams submitted that it was important to note the reference to a settlement in the retainer letter. The Respondent envisaged that RC would set up a trust in the IoM into which the assets would go once RC acquired them. In the retainer letter against the words "Title Deeds" the Respondent stated:

> "Probably you will be organising the funds to repay the borrowing so that the various properties can be gifted free of Charge into your proposed settlement."

The Respondent could not compel RC to put the assets into the settlement and no such settlement was ever created.

52.9 Mr Williams submitted that by 20 March 1997, RC had selected the IoM to be his tax exile. By then LC was of also age but the Respondent could not transfer her shares to her because they had gone to RC. By letter of 25 March 1997, the Respondent sought advice from DM in the IoM. This letter began:

> "I believe you have had discussions with [RC] and [RW] concerning the setting up and subsequent administration of at least two Settlements for the benefit of [RC] and his family following on from [RC's] exile for Tax purposes from this Country before 5th April. I have been friendly with [RC] and his family since my childhood days. I have been asked to prepare the necessary documentation…"

Later in the letter he said:

> "I feel it essential advice should be sought from a lawyer qualified to practice in the Isle of Man to give specific advice and comment on the document I have prepared. I assume (but cannot be certain) the Law of Trusts and Settlements is very similar within the two jurisdictions so hope the document, I have prepared is not too far wide of the mark!
>
> I enclose for comment and amendment as appropriate a draft of the "[RC] Number 1 Trust". Assets (principally freehold properties) will be introduced into the Trust by way of a gift when [RC] has left this jurisdiction for Tax purposes. I think it would be [RC's] wish to (in effect) have the final say in virtually all matters so I have included him as the protector in the draft deed…
> ...

> There is to be a further Trust to accommodate some of the assets due to [RC] and his three children from the estate of his late uncle [H] and his late aunt [E]. Dealing for the moment with just the residuary provisions of both estates [RC] is entitled to two fifths and each of his children are entitled to one fifth. The intention is that [RC] will take at their Probate value (which is not necessarily their current value) certain assets as his share of residue which he will then introduce into the second Trust leaving only cash as the children's share of residue in this country. The beneficiaries of the second Trust will be [RC] and his three children…
>
> The proposed split of the residuary assets to be introduced into the second Trust is that [RC] can direct the destination of the initial introductory value – I suspect that in due course this will be in favour of the three children…"

Mr Williams submitted that again there was no way that RC could be compelled to put assets into a settlement and in any event there never was one. Clearly it was the Respondent's intention that there would be an IoM settlement so that he could protect the children's assets although they were gone. Mr Williams also pointed out that the probate value referred to, was not necessarily the current value of the assets. The letter also referred to TH Farm:

> "An additional problem is created by the fact that [H] left [TH] Farm (which is potentially very valuable) to [W]. For the purpose of exporting this asset [RC] has purchased it from the estate with a view to introducing it into the second Trust or (if you prefer) a third Trust. Again [RC] will be entitled to dictate the destination of the cost price but any increase in value will belong to [W]..."

At this time the Respondent spoke to RW and as recorded in a file note dated 27 March 1997 they agreed that RC ought to resign as a trustee. Mr Williams did not know whether RC had ever done so.

52.10 Mr Williams referred the Tribunal to a letter written on 18 March 1999 by RW to the Respondent saying:

> "[RC] has asked me to confirm to you the assets which were transferred to him prior to his April 1997 departure, and the monies which he paid the various sources. An appropriate schedule is enclosed."

This schedule listed monies described as paid by RC to purchase three properties from WRIL totalling £62,500, to purchase from H's estate five properties including three houses, TH Farm split into land and house and JT Farm totalling £101,500 and from E's estate WRIL shares valued at £15,750. The total monies paid were shown as £179,750. Mr Williams submitted that it was not clear if cash had been paid or if RC took these assets at a value set-off against his share of residue. Mr Williams suspected that no cash had been produced in many cases. In a file note dated 8 April 1997, the Respondent recorded:

> "[H] deceased. [RC] has taken as his share of the estate [JT] Farm for £25,000 and the three [L] Terrace properties for £28,500. He has also acquired [TH] for £48,000. He will therefore have to be debited with these amounts and at the end of the day may well end up owing the estate."

Mr Williams submitted that there was no cash payment for these properties; it was said that they should be given a value and it should be taken off RC's share of residue but these were probably not market values and so he would owe the estate. The Respondent acted in all three transactions relating to these sets of properties where there was a conflict. There was a need for independent advice to the other beneficiaries; it was not given or even suggested. It was done because RC instructed the Respondent to do it. Later in the file note the Respondent stated:

> "... Agreed we hope that [RC] does not have a secret agenda and is genuinely trying to improve the position for his family. [PC] is extremely exposed at present if there were any matrimonial problems as in effect all the assets will have disappeared abroad…"

Mr Williams submitted that this referred to the fact that RC had no money or property because it was all to be in the settlement in the IoM. In the file note it was also stated:

> "Agreed that our client is [RC] so it is not our position to try to protect [PC] or the children. Further agreed this is not quite the position with the properties in [H's] estate where I am the Trustee. I said this is why I was determined to be the Protector of the Settlement for these properties to try to keep an eye on them for the benefit of the family in the future. [RW] agreed with this."

Mr Williams submitted that the Respondent recognised the need for a trust in the IoM but there was nothing he could do to create one. He wanted to "try" to keep an eye on the assets; this statement was remarkable as his duty was higher than that. The Respondent did not see the children as clients. It was not suggested that the Respondent ever tried to disadvantage the children but it was entirely the Respondent's duty to protect the children at all times and he did not do so. This file note was the beginning of the Respondent's concerns regarding RC's agenda and was possibly why they wanted him removed as a trustee.

52.11 Mr Williams referred to a file note dated 28 April 1997 made by the Respondent about a telephone call from RW reporting on his recent trip to the IoM. It included:

> "Re-emphasised that so far as I was concerned I was extremely keen on a Settlement for at least the [H] properties as otherwise there is a distinct possibility the properties could just disappear and never pass to the three children as intended. [RW] fully appreciates this and will continue to press for the Settlements. Said I was not at all worried about a Settlement for [RC's] own properties. This was entirely a matter for him..."

Mr Williams submitted that the risk had been identified that the properties might not find their way to the children and that was what happened. The Respondent having identified the risks said he was determined that the assets were going to an IoM settlement of which presumably he would be the trustee.

52.12 Mr Williams referred to a file note of the Respondent dated 2 May 1997 and asked the Tribunal to note that this was the first time that there was a reference to PT:

> "Spoke to [RC] in the Isle of Man. He has now met and had discussions with [PT] who seems keen on forming a company rather than proceeding by way of Settlement…"

PT was a solicitor who practised on the IoM and he presented himself as having expertise in tax planning. PT did not like the idea of a settlement and wanted the trust assets in a corporate structure but this was not what mattered; the Respondent's duty was to protect the children and he was not entitled to delegate any part of his executorship or trusteeship to anyone else. Mr Williams submitted that neither the Respondent nor anyone else understood the corporate scheme proposed by PT. A file note dated 16 May 1997 included:

> "Went across to see [RW]. He gave me the additional information supplied by [PT]. General discussion with a conclusion that he was not very happy about advising [RC] that [PT's] scheme will work as he simply has insufficient experience or knowledge to judge. Said I was like minded."

Mr Williams submitted that one would not expect an English solicitor to understand the intricacies of the type of scheme that PT was setting out and there was a need for particular care because it was clear that there would be no trust. According to his statement, the Respondent drew comfort from the fact that there was another solicitor on the other side. A file note dated 20 May 1997 included:

> "Spoke to [RW]. Said I had been through the additional documentation supplied by [PT]. Said the whole scenario seemed very logical and I was unable to find fault with it but had insufficient knowledge of the Tax laws in general to advance a proper criticism. He says he is in a similar sort of position and is doing his best not to advise about the matter. Apparently a Mr [KR] who is [PT's] tame Solicitor will be contacting me as he will be acting for the Isle of Man companies to ensure arms length transactions."

Mr Williams submitted that one could conclude that a "tame Solicitor" was nothing like an independent solicitor; he did what he was told and that proved to be the case as shown by the next paragraph of the note:

> "[KR] telephoned. His telephone number is… and his Fax number is… He retired from Practice in ... in about May 1995 and now works from home which is…. [address in the UK] He is hoping to arrange to visit me tomorrow to check through the Title Deeds. I asked him about his relationship with [PT]. They were in Partnership together apparently in the early 1970s and have maintained contract (sic) ever since. Asked what his experience was of transactions of this nature. He was fairly vague but suggested that one has been done in the past which has not been challenged by the Revenue. He will be looking out his file. Asked what the Stamp Duty position was on the transfer of the properties to the company. He was very vague and didn't really answer. He said he would be speaking to [PT] before he visits so will know more tomorrow."

52.13 On 2 June 1997, there was a meeting at the Respondent's office with RW and KR:

> "to try to progress the matter in anticipation of the forthcoming meeting on the Isle of Man on Thursday. [KR] provided a draft of the Deed of Agreement with the Capital Redemption Contract annexed and drafts of the various Transfers and Conveyances from [RC] to the nominee companies. The vehicle for [TH] Farm is to be [ACo], the vehicle for [JT] Farm and 2, 14 and 16 [L] Terrace is to be [ICo] and the vehicle for the rest of [RC's] freehold properties is to be [OCo]. .."

Mr Williams submitted that at this meeting assets were discussed which should be in trust, which were in RC's sole name and which would be divided up between three nominee companies on the IoM. There was nothing the Respondent could do to compel what he suggested as follows:

> "The suggestion is for the properties that these are first transferred by [RC] to the two nominee companies as his trustee..."

Mr Williams could not see how the Respondent could do what he then proposed but it was clear that he appreciated his total loss of control:

> "I emphasised that for [TH] Farm and the properties ex-held (sic) [H's] Estate it was essential I saw these safely lodged with the Isle of Man company before the properties left [RC's] name – in other words all the documentation to be executed together. [KR] accepted my reasoning for this request."

In a file note a few days later on 5 June 1997, the Respondent recorded:

> "Attended a meeting at the… Hotel and Country Club in the Isle of Man. Left home at 9:00 am. Returned home 6:00 p.m. present at the meeting were [RC], [RW], [the Respondent], [PT], [KR] and [CK] the latter being the accountant introduced by [PT] to deal with the company formalities etc.
>
> [PT] opened the meeting by saying that [RC] has little alternative other than to proceed with the proposed scheme. [KR] produced the 3 Deeds of Agreement for execution and [CK] produce copies of the Memo and Articles for the 3 companies although little opportunity was afforded to look at these. The whole format of the company was then discussed in further detail. The intention is that [the Respondent] will be the Protector for [ACo] Limited and for [ICo] Limited and the company wholly owned by [RC] will be the Protector for [OCo] Limited. The prospect of the Protector being a British Virgin Islands company has been abandoned. Went through in detail the position of the Shareholders, the Directors, and the Protector. Emphasised that the Protector can do little but to stop the Directors doing things but cannot in any way force them to do things required by [RC]. A great deal of trust is therefore being put in [PT] and [CK] who will be the Shareholders of the 3 companies and the Directors and Secretary of the 3 companies...
>
> It was emphasised by [RW] and [the Respondent] later after the other attenders (sic) had (de)parted that considerable wealth was being put in the

> hands of people we did not really know and therefore there was a definite risk involved. Emphasised that [RC] has had much more discussion with [PT] then either [RW] or I and the decision at the end of the day must be his. Again emphasised we could find nothing wrong with the scheme but as we had never come across it before we were not in a position to guarantee it – indeed even [PT] during the meeting emphasised he was not able to guarantee the scheme would work. He obviously expected it would do."

Mr Williams said that he did not know what "little alternative" meant. Not only had the assets gone to RC's sole name but they were now going to three IoM companies of which the directors and shareholders were PT and his associate; even RC would no longer have any control. Mr Williams submitted that the last paragraph quoted above was crucial; the decision in question had to be that of the Respondent. Mr Williams also noted that PT could not guarantee that the scheme would work. Later in the file note it was stated:

> "During the meeting the Deeds of Agreement for all three companies were executed together with the Conveyances/Transfers for [ACo] Limited and for [ICo] Limited. Only the first Conveyances/Transfers for [OCo] Limited were available and executed because of the constraints of time. [KR] is to produce further documentation for execution as soon as possible… [PT] emphasised he wanted me to register the properties in the names of [MX] Limited at the Land Registry before then dealing with a further registration in favour of the particular Isle of Man company. This will incur additional Land Registry fees but he is most anxious that [RC's] name disappears from the scene as the Land Registry talked to other Government Departments. It is expected the Title Deeds will remain with me."

Mr Williams noted that RC's name was to disappear from the scene and that the assets had gone from the trust to his sole name and would now go to MX and from there to three IoM companies over which PT and a colleague had control.

52.14 Mr Williams submitted that by September 1997, RC was pressing for everything from both estates to go to the IoM. In a file note dated 15 September 1997, the Respondent recorded in relation to a telephone call from RW:

> "[RC] has apparently been suggesting that the estate monies should go over to the Isle of Man. [RW] does not think this a good idea as he and I as Trustees should keep hold of this money as it belongs not to [RC] but to the 3 children. Agreed we will have to try to resist [RC's] suggestions on this point.

52.15 Mr Williams referred the Tribunal to a letter dated 11 June 1998 from the Respondent to RC which included in respect of ICo:

> "I may well be the Protector of this company but the existence of the Midland Bank deposit account is a good illustration of my lack of control over the company's affairs. Presumably a mandate has been completed for the deposit account but I have no idea who are the signatories on the deposit account and hence have no control (or indeed knowledge) of the movement of the company's funds…"

The status of Protector did not seem to be all that effective. The Tribunal asked for clarification of the role of Protector. Mr Williams said that this was a rather esoteric function in the IoM. It was someone who had the right to be notified but could not prevent things happening or make things happen; an overseer. There was nothing that the Respondent could do to protect the children once their assets had gone into RC's sole name and they had been further removed once they had gone to people that the Respondent did not know. Mr Williams submitted that the Respondent knew of the risk and it was reckless for him to proceed as he did. According to the attendance note quoted above dated 5 June 1997, the deeds of agreements were executed on that day and all the transactions were formally completed on 26 June 1997. This was recorded in the Respondent's file note of that date:

> "The documentation for all 5 companies was finalised and the executed documents were all retained by [KR] so he could deal with the stamping formalities....
>
> It would seem that [PT] and [CK] are the Directors of all 5 companies and [CK] is the Company Secretary. The shareholding was a little vague. It may well be another Isle of Man company but this will be to clarify later."

Mr Williams submitted that it was remarkable that the Respondent conveyed the property when he did not even know who the directors and shareholders of the IoM companies were. W was still two years away from attaining the age of majority. His farm had gone from his deceased uncle's estate to his father and then to MX and then to an IoM company without anyone trying to advise him.

52.16 Mr Williams referred the Tribunal to a letter from the Respondent dated 29 July 1997 which detailed the properties transferred and stated their values. The structure of IoM companies was recorded in letter from CK to the Respondent dated 9 February 1998 which included:

> "There is one share in each of the companies in issue and in each case that share is held by [L] Limited of... Isle of Man.... There are no non-shareholder members in the companies. The directors of each are [PT] and myself and I am the secretary in each case."

Mr Williams pointed out that the address given for L Ltd kept coming up; it was the same as that for a company K Services of which CK was also a director. Mr Williams submitted that one would have thought that this information about the structure of the companies was something that the Respondent would have needed when he conveyed the properties to the IoM companies. Mr Williams exemplified the transactions relating to a property 16 L Terrace which was part of H's estate. It was the subject of a complex series of transactions set out in the Rule 5 Statement as follows.

> "(i) Transferred from [R] to [V] Nominees Limited and [P] Nominees Limited pursuant to a conveyance dated 26th June 1997.
>
> (ii) Transferred from [V] Nominees Limited and [P] Nominees Limited to [MX] Limited pursuant to a conveyance dated 1st July 1997.

> (iii) Transferred from [M] Limited to [ICo] pursuant to a transfer dated 29th September 1997."

Mr Williams did not seek to explain these transactions. Consideration of £9,500 was recorded as being paid to the estate by RC probably by netting off. It was then sold to a Ms IH for £56,600 an amount £47,100 over and above what RC had acquired it for from the estate which was a 500% increase in five months. The proceeds were payable to one of the nominee companies ICo and sent to RC. The Respondent acted in all these transactions.

52.17 Mr Williams submitted that there was a similar scenario regarding 2 L Terrace which formed part of H's estate. RC paid £9,500. On 31 July 1997, CK for MX instructed the Respondent to exchange contracts on the sale for £55,000. MX's address was the same as that for L Ltd. The whole scheme was being operated from that particular address. Mr Williams anticipated that this was a building with a lot of brass plates outside. Mr Williams submitted that once these properties were in the IoM they were put on the market. On 20 August 1997, the Respondent wrote to RC about the property, reporting that he had finalised the sale to a Ms D-J and enclosed his firm's cheque payable to ICo. The letter was sent to RC's private address in the IoM. Again the Respondent was acting for all the parties. Apparently RC had decided to make a loan to ICo according to the Respondent's file note of 15 February 1999:

> "[RC] telephoned to say he had cleared with [PT] the closure of the [H] and [E] estates with the funds to be lodged with [ICo] Limited on loan."

Mr Williams submitted that it was not for RC to clear things with PT and lend on whatever terms; it was for the Respondent to take control but the problem was that he could not because RC and PT were running matters.

52.18 Mr Williams referred to a letter from the IoM address referred to above from CK to the Respondent of 16 April 1998 which for the first time referred to AL Investments ("AL"):

> "As you may be aware, the subject Cayman Islands company is going to be used by [RC] as a central "money box..."

The proprietorship register relating to TH Farm showed that as at 2 March 2004 the care of address for AL was the Respondent's firm. This was documentary evidence of the Respondent acting for AL as well. The structure of AL was set out in a letter to PT dated 17 April 1998 from another firm of solicitors. The letter named the sole Director, existing secretary and existing protector of AL, the last of which was PT. Neither RC nor the Respondent had any control and the Respondent had no influence and a further loss of control was represented by the use of AL. In a file note dated 20 April 1998, the Respondent recorded a conversation he had had with RC who called him from the IoM:

> "The discussion then moved on as to the cash in the Isle of Man companies being transferred to the Cayman company for investment in one general pool. Said I was not very happy with such an arrangement as the monies in [ACo] and [ICo] belonged to the three children and not [RC] so as a Trustee for the

> children under [H] and [E's] estates I ought to keep some sort of control over the money due to the children which on the face of it was not really possible if everything was lumped together in the Cayman company…"

Mr Williams submitted that rather than "some sort of control"; the Respondent should have complete or total control. On 21 April 1998, the Respondent recorded a conversation with RW:

> "Spoke to [RW] for a general discussion concerning the above. He had already heard from [RC] so was expecting my call. He too is concerned that I should have some measure of control over the children's funds and he would back me in this in any debate with [RC]. At the moment he is not sure exactly what sort of company has been formed in the Cayman Islands although he suspects it is probably a bearer share company…"

Clearly RW and the Respondent were aware of the risks involved but it was impossible for the Respondent to have any sort of control over the children's assets because they had been given to RC and then to the IoM companies. The children were supposed to have a bond for their assets but this proved to be worthless and when AL took the assets no similar bonds were put in place for the children. This was no way to control assets; to let them go out of your control and take a bond from a nominee company.

52.19 On 11 June 1998, the Respondent recorded in a file note:

> "[RC] is wanting the girls to pay to him what they can from [H's] estate. He then intends investing this money via [AL]. The down-side for the girls is there will no longer be any funds under the trustees (sic) control from which their living expenses are obtained at present and secondly the funds will then pass effectively into [RC's] hands and will be under his control. Both [RW] and I are concerned that this is not a good idea.
>
> "[RW] was further concerned concerning the monies which have passed from the Estates to [ACo] and [ICo] for the benefit of the children as [RC's] idea is to invest funds via [AL] and again these monies therefore fall out the Trustees control and into [RC's] control. [PT] did suggest that [ACo] and [ICo] could employ [AL] to manage the monies on their behalf in return for a bond but the bottom line is that it would be difficult to control the cash if it is with [AL]. Agreed to throw the problem back to [PT] and [RC] to thrash out a solution as we could not come up with anything which in our opinion gives us as the Trustees with adequate control."

Mr Williams submitted that the Respondent should not have thrown the problem back to PT and RC because their interests conflicted with those of the children. The note later recorded:

> "A further problem is the [WRIL] monies. [RC] has taken a good proportion of these to the Isle of Man at rock bottom price for tax purposes so if and when the funds are realised there should be an introduction into the companies for the benefit of the children. Agreed this will be to watch in the future."

Mr Williams questioned what if RC did not have the money when the funds were realised? Things had totally spun out of the Respondent's control.

52.20 On 12 June 1998, the Respondent recorded in a file note:

> "Spoke to [PT] in the Isle of Man... Said the essence of the problem so far as [RW] and I are concerned is that we started out looking after the childrens (sic) funds and wish to continue to do so. Said we are concerned that [RC] seems to want to gather everything into one pot where he will in effect have absolute control of the position. Said that so far as the children are concerned and therefore so far as [RW] and I are concerned this is not very satisfactory. [PT] said he too had his doubts ... so understood fully what we were trying to avoid and what we were trying to achieve. He did not think that accumulating everything together in the [AL] pot would give [RW] and I adequate control. One suggestion was that I should be an alternate Director for [AL] but said I was reluctant to do this to become dragged in any further into the scheme. [PT] appreciated this view. He said there would be difficulties if the children's pot ended up in [AL] in any event because a specific provision of the [AL] Articles prohibits the payment of income to UK residents…"

Mr Williams submitted that the Respondent should not be relying on what PT had to contribute. Later in the note it was stated:

> "Said a third concern was the children will probably not aware of the position in [H's] estate other than from anything said to them be (sic) [RC]"

Mr Williams submitted this was a remarkable state of affairs to admit. The note continued:

> "[PT's] view was that as the 2 girls are of age they should be provided with full information concerning the estate. Said this would mean they would learn that they and not [RC] had effectively paid for their education which might come as news to them..."

Mr Williams submitted that all knew that the beneficiaries were in the dark and the Respondent was well aware of the further risk and he took it. PT further highlighted the risk in a letter dated 22 May 1999 to RW;

> "...It is within my knowledge that Mr [RC] plans to get away from the Isle of Man as soon as possible and for as long as possible, leaving behind only a residential flat address at which he does not need to have to reside for lengthy periods, with a presumed view to embarking upon a nomadic existence which will take him virtually anywhere but possessing the ability through [AL], to control all money connected with...[OCo/ICo/ACo and AL's] activities without being accountable to anyone…
>
> As [AL] has limited liability and I have no control over it…"

Mr Williams submitted that W then came of age the following month and was entitled to TH Farm but he never received it.

52.21 On 10 April 2000, the Respondent recorded in a file note about AL and discussions with RW in advance of the 13 April meeting:

> "... The principal concern is still that [RC] is seeking to put all the family assets in one pot namely [AL] which might mean difficulties for the children in extracting monies to which they are entitled if their father does not agree."

Mr Williams submitted that whatever did or did not happen at the meetings (in 1998, 1999 and 2000) it was far too late as the assets had gone. The Respondent made a note of the meeting dated 13 April 2000 which began;

> "Attended a meeting at [CH] Farm [the family home] with [RW], [PT], and the entire family some of whom [PT] had not met previously. The idea of the meeting was to progress [RC's] wish for everything to be accumulated within [AL] so that all the various companies can be dispensed with apart from [AL] and [B&T and IoM company of RC's]. [RC] as ever is anxious to scoop everything into one pot under his control... It would appear the children have been kept partly in the dark in the past although there have of course been previous meetings with [RW] and myself and the children."

Mr Williams submitted that it was difficult to know how far the children had been kept in the dark but they should never have been. The note recorded:

> "[PT] then indicated he preferred to speak to the children either jointly or individually alone so the rest of the group withdrew to allow this to happen..."

Mr Williams submitted that the Respondent was the children's trustee and PT was the person whose company was getting control of their assets. The Respondent agreed that PT should take them into a room alone. At a later point the file note stated:

> "[PT] then outlined his scheme which is to create a further 4 Cayman companies for the family so that each member of the family has his/her own company with that person as Protector of that company and therefore the controller of their own destiny..."

Mr Williams expressed scepticism about the family members' ability to control their own destiny. The Respondent's file note of 18 April 2000 recorded that during a telephone call from RC as follow up to the meeting, he and RC "then went on to discuss [TH] Farm [Barn and building at the rear] and its proposed sale." The property which was W's was put on the market.

52.22 Mr Williams referred the Tribunal to a file note dated 19 June 2000, in which the Respondent recorded that RC informed him that he had the family's agreement to the transfer of all the assets to AL:

> "Returned [RC's] called to the office when I was out. Apparently he had a summit with the children over the weekend and it has been agreed that all the property can be accumulated together under the [AL] umbrella. He is therefore anxious to dispense as soon as possible with the Isle of Man companies…

> ... [RC] is clearly anxious to move matters along and now."

Mr Williams submitted that this last line showed that the pressure was on. It was for the Respondent rather than RC to have a summit with the children and the Respondent should have been telling them to obtain independent advice, which advice could be to sue him because he had permitted the first transfer of trust assets.

52.23 On 20 June 2000, the Respondent recorded that he had returned a call from RW to bring matters up-to-date:

> "He has apparently asked [RC] to confirm in writing the children are happy with everything being moved into [AL] ... Agreed the likely scenario is [AL] will purchase the Isle of Man companies for £1 each taking over all their assets and liabilities and then all the assets will be hived up to [AL] so the Isle of Man companies can be dispensed with. The bonds situation is that the owners of the bonds will have to novate these to [AL] so that eventually [AL] becomes the owner of the assets and liabilities which will cancel each other out..."

This was the first reference to "hiving up" and it was obviously a matter for the Respondent to see that the children agreed. No novation ever took place. A file note on 24 August 2000 of a telephone call from RC to the Respondent referred to a recent meeting of RC with RW, CK and PT "with a view to progressing matters." It showed that RC was driving the matter and the beneficiaries' own pot referred to was "pie in the sky":

> "Apparently it has now been agreed to put everything into [AL] without major changes to the constitution of that company on the basis that each beneficiary will have their own pot in the company to which only they have access. This therefore seems to be the scheme that [RC] has been requesting throughout."

The note also included:

> "The position regarding [AL] is to remain the same in that the protector will be [PT] and the director and company secretary will be [PT's] two foreign companies. [RC] is also a further director of [AL]"

When the assets went into AL they would be controlled by PT and perhaps also by RC. From the Respondent's file note of 6 October 2000 it became apparent that RC wanted to remove PT from AL and that there were difficulties between them:

> "... [RC] is trying to persuade [PT] to relinquish control of [AL] so that he can be in control whilst he is abroad. [PT] will continue to be the professional adviser as [RC] rates him very highly regarding this but he does not feel his business acumen is sufficient to leave him in control of the various companies…"

52.24 Mr Williams referred the Tribunal to a letter from the Respondent on 3 April 2001 to RC about the sale of TH Farm (the barn and attached building); it reported completion and enclosed a cheque for £181,862.44 payable to ACo.

52.25 Mr Williams then referred to a file note dated 16 July 2001 headed up AL which recorded a meeting at the offices of RW involving the Respondent, RW and RC. It included:

> "[RC] also had concerns about [PT] in effect controlling [AL] although in this case he is a Director with the two BVI companies under [PT's] control. Ideally [RC] would like the two BVI companies to resign so he is in effect the sole Director of [AL] although [PT] would remain as the protector.
>
> [RC] did make the comment during the course of the discussions that he did not want to be held to ransom by the children. This remark was noted by both [the Respondent] and [RW]. This rather contradicts previously (sic) statements that the children would be in control of their own personal "pots" in [AL] and perhaps needs to be watched although the three children are all adults now so perhaps it is their problem to deal with their father as they think fit."

Mr Williams submitted that the Tribunal would have to assess the expression by the trustees that this was the children's problem but he suggested it was the Respondent's problem as it had been throughout.

52.26 Mr Williams then referred to an e-mail dated 25 October 2001 from an entity M Administration addressed to the Respondent and signed off with a forename which Mr Williams submitted was that of CK which stated:

> "As you know [RC] wants to empty all of the assets from the 5 Manx companies up into [AL] and we are commencing work to achieve this however, before actually implementing anything [PT] has asked me to confirm that all interested parties other than [RC] i.e. the children are happy about this (we have [ACo] and [ICo] in mind). Are you able to confirm that everyone is happy about all the assets being kept in [AL] under [RC's] control."

M Administration was a PT entity. Mr Williams then referred the Tribunal to the Respondent's reply on 26 October 2001:

> "I have received your E-mail of yesterday…
>
> I can only refer to the meeting at [CH] Farm on 13th April 2000 when [PT] specifically broached the subject with the 3 children and (as I understand it) obtained their instructions they were content to proceed in this way. Certainly I have not been given any instructions to the contrary since that meeting.
>
> If [PT] is having second thoughts about his instructions from the 3 children then he may wish to clarify the position with them direct."

Mr Williams submitted that it was not for PT to obtain instructions. The Respondent was the children's solicitor and trustee and it was for him to obtain further instructions but for whatever reason he did not.

52.27 Mr Williams also referred the Tribunal to a file note dated 19 December 2001 recording a telephone call from RW who was reporting on a meeting he had recently attended in the IoM with RC and CK. The Respondent recorded:

> "[PT] has mentioned the children should be separately advised on their position before the Isle of Man companies are introduced into [AL]. Said I was not really in a position to do this as I was too close to [RC] to be able to give independent advice. [PT] is also reticent to giving advice on the subject. The reality is that at the moment for example [W] has [ACo] as his company but if the proposal goes through then everything will be in [AL] and will be difficult for [W] to control. This is the reason for the children requiring independent advice..."

Mr Williams submitted that years after the obligation arose at last someone, although not the Respondent, had spotted the situation and this was key to why advice had not been given because the Respondent was too close to RC and allowed RC to rule him. On 15 February 2002, RW wrote to the Respondent including:

> "Everything you say is correct and I agree with your sentiments, but I'm not sure at this stage what, if anything, we ought to do or what, if anything, we can do.
>
> The moves which were made some time ago and which effectively separated the children from their assets have been fully explained to them in joint meetings with you, [PT] and me…"

Mr Williams submitted that the Applicant did not accept that the children had had matters fully explained to them. On 18 February 2002, the Respondent wrote to RW:

> "I have considered your letter of 15th February. I have no instructions from [RM], [LC] and [W] to act on their behalf but do consider it necessary for me to meet with them at some stage with a view to drawing to their attention yet again the total loss of control of their funds will follow from the "hiving up" of assets to the Cayman Company.
>
> I agree [W] has much more at stake than the two girls…"

Mr Williams submitted that the Respondent did not protect the children and drafted the documents to give effect to the hiving up. On 24 April 2002, he wrote to PT about AL including:

> "I gather [RC] is anxious to progress the "hive up" of the assets and liabilities of the 5 Isle of Man companies to the Cayman Company.
>
> …
>
> I enclose for you to consider to check (sic) I am working on the right lines the proposed draft Agreement between [ICo] and the Cayman Company..."

On 20 November 2002, the Respondent wrote in similar terms saying he had instructions from RC to progress the hive up of the assets and liabilities of the three IoM companies to the Cayman Company and enclosed three engrossment Transfer documents for approval and then for signature and execution. Office copy entries showed that by 21 August 2003, AL, care of the Respondent's firm, had ownership of JT Farm. The Respondent was acting for the company as its use of his firm for a care of address demonstrated. On 1 September 2003, the Respondent wrote to RC concerning his actions. On the same day he wrote to PT including:

> "I assume [RC] will be dealing with the hive up of any other assets and also the liabilities of [ICo] to effectively "clear out" the Isle of Man company.
>
> …
>
> ... [JT] Farm is not a problem as it still exists but the three terraced cottages in… have all been sold off and turned into cash. I do not know what has become of the cash but doubtless if necessary [RC] will be able to provide the information.
>
> The same principal (sic) will in due course apply to the other 4 Isle of Man companies as and when these have all been hived up to [AL]. I am not too concerned about 3 of these companies but do have concerns about [ACo] Limited which you will recall is specifically for [W] and includes the potentially valuable development land at [TH] Farm..."

52.28 Mr Williams referred to a file note dated 15 September 2003 which reported on a meeting with RC and RW to discuss the retirement of PT and his companies as "the Protector Member Director and Secretary of the Cayman company as [RC] prefers to have these under his control..." It showed that RC still wanted to remove PT. On 18 September 2003, a staff member on behalf of the Respondent e-mailed RC regarding ICo:

> "I forwarded a draft Novation Deed to [PT] for approval and if approved for execution and return relating to the capital redemption policy. I enclose for your information as an attachment a copy of the Novation Deed.
>
> I have received a response from [PT] – copy attached how do we go about arranging independent advice for [RM] [L] and [W]?"

Mr Williams submitted that this was a very important document. It was the Applicant's case that the Respondent knew throughout that the children needed independent advice and it was remarkable that when he finally insisted on them having independent advice he asked RC who had received and dealt with their assets, how to go about it.

52.29 On 13 January 2004, the Respondent wrote to RC who was in Andorra reporting on the transfer of assets from five IoM companies including ACo, ICo and OCo to AL. The transfers had all occurred in the same month before the letter was sent. Office copy entries dated 2 March 2004 show the transfer of TH Farm that belonged to W to AL again care of the firm. On 25 March 2004, the Respondent wrote to RC:

> "I report I have dealt with a transfer of [TH] Farm out of the company to [AL] Investments and hold the Title Deeds for the property in my firm's safe custody index on behalf of [AL]."

Mr Williams submitted that there was no letter to W or any of the beneficiaries and he submitted that in all the boxes of documents from the firm, the Applicant had not found a single letter of advice to a single beneficiary.

52.30 Mr Williams then referred to a file note made by the Respondent dated 27 April 2004 which reported on a meeting at the family home with RC and RW. The note included:

> "I first reported the up-to-date position with the 5 Isle of Man Companies. I confirmed that with the exception of the Fishing Rights which are still at the Land Registry all the properties in [ACo, ICo and OCo] had been transferred to [AL]..."

The significance of this statement was that it meant at all of the property had gone. On 9 December 2004, the Respondent's office sent an e-mail to RC signed off by the Respondent which included:

> "I have as requested revisited my files for the five Isle of Man Companies.
>
> I confirm that the freehold properties and the freehold reversion in the properties have all been transferred out of five Isle of Man Companies to [AL] so provided you have dealt with the transfer out of the (sic) all the other assets of the five Isle of Man Companies then the five Isle of Man Companies have been stripped of all their assets…"

This meant that AL had total control of all these assets. A file note dated 30 June 2005, referred to a telephone conversation between the Respondent and RC. It included:

> "He has discovered that all 5 companies were struck off the Isle of Man Register on 23rd May 2005"

52.31 Mr Williams submitted that in August 2006, AL went into administration following action by a combination of HMRC and HSBC. PT then introduced a Northern Ireland company MM a charity controlled by him. By 2 October 2007, AL had transferred all the trust properties to MM. AL took a legal charge to MM against a sale at an undervalue, which ranked second to NatWest. In 2008 PT died. His executors sold the assets and nothing was paid into the will trust meaning that everything was lost. RC litigated but abandoned his case. MM received £3,278,000 for the assets which were sold at a figure which RC believed to be an undervalue. On 9 April 2013, RC went bankrupt resulting in a complete calamity for the children.

52.32 Mr Williams submitted that the facts and these submissions were about the gravity of a trustee of two substantial estates whose task was not complex but perfectly straightforward to protect the assets and to convey them when the children became entitled. He allowed himself to be put into a scheme whereby the assets went outside his control and one which he did not understand. He delegated discretion to people he

hardly knew and to whom his trusteeship did not allow him to do so. His duties to all the beneficiaries were the same but all his letters were to RC and he did not seek or receive instructions from the children. Mr Williams submitted that there were clear and obvious conflicts of interest which gave rise to a duty for the Respondent to arrange independent advice for the children and this duty was paramount. The Respondent failed in that duty over a period of years. The Respondent facilitated RC's wishes. Independent advice should have been given to the children before the assets were transferred to RC's sole name. It was for the Respondent to protect the children and not RC. The Respondent's duty arose at each trigger event and it might have been possible to save the day. The Respondent had no right to act for all sides in the transactions. He acted for MX, for the nominee companies V and P, for the IoM Companies ICo, ACo, OCo, for AL for the children and for RC. Mr Williams submitted that it was astonishing that the Respondent thought that he could act for all of these at the same time. RC was allowed to acquire assets which had been specifically given to the children. It was the executor's duty to ensure that the testator's wishes were respected and there had been a total failure of the Respondent's trustee duty in this regard. The Respondent never asserted his independence but rather did the opposite. Things were out of control from an early stage and the Respondent was out of his depth; he did not understand the schemes and he should have abandoned his position and been replaced by someone who did understand. This was as grave a breach of trust as could be imagined. The reputational damage to the profession was vast and the children beneficiaries paid the price.

Submissions for the Respondent in respect of allegations 1.1 to 1.3

52.33 For the Respondent, Mr Manning submitted that the Respondent was a "five-year man" who had been admitted in 1972 and had been at the firm throughout his career. The Tribunal had read his superb personal references including one from a retired judge and a remarkable schedule of client comments regarding the Respondent and the firm responding to a survey issued without a stamped addressed envelope. It was a testament to the professionalism of the Respondent which Mr Manning asked the Tribunal to take into account. The Respondent was not a very forceful person but a man of integrity and truth. Mr Manning referred to the views expressed by W and by RW. The Respondent had done his best to give evidence in a non-evasive and straightforward manner. He could have done better and he said with hindsight he acknowledged that and that was a brave statement to make.

52.34 The Respondent acknowledged that he did not ordinarily send wills to the beneficiaries and said perhaps it was desired or best practice. His approach was similar in respect of notifying the beneficiaries of their entitlement at age 18. He was not afraid to take guidance or advice or afraid to go elsewhere for it if he was unsure. At the time RC was exploring the possibility of an overseas settlement, advice was sought from named firms of accountants who had whole departments set up to undertake offshore work. The answer RC got was not to his liking. All close to RC including W were convinced that he was honest and intended to build the family estate into a bigger, better and finer entity. Also he did not want to pay tax. If to achieve that he had to go away for two years he decided that was the price he was prepared to pay. There was nothing illegal or unlawful in RC's desire to pay no tax or to pay as little as possible. He persisted in seeking to avoid putting everything into a settlement. RW who was experienced in offshore matters trusted DM and was happy

to recommend him. DM gave the same advice as had the large accountancy firms; to create a settlement in the IoM and then the trustees would administer the settlement. The trustees had to be to a majority of offshore residents but in practice the trustees would accede to the wishes of the settlor or beneficiaries. It was an often used device. It was not what RC had in mind; he wanted something where he could make day-to-day decisions and wanted to find another vehicle.

52.35 Mr Manning submitted that DM knew of PT. He was checked out by the Respondent and confirmed to be a solicitor with a practising certificate. RC went to see him and he produced a scheme, something not heard of before, involving Capital Redemption Certificates (or Bonds or Contracts) but it did not matter because PT told RC that neither he, his family nor his grandchildren would ever have to pay tax. RC went home and told his wife that he was going to the IoM for two years. He did not take the plunge straight away. It was April of the following year 1997 that he went to the IoM. He had already embarked on fulfilling his aim of maximising the family wealth by obtaining planning approval to make a barn into two dwellings. The result was the merger of an agricultural tenancy and the creation of extra wealth because the farm then had a higher value. Then RC embarked on the renovation and sale of the L Terrace properties and further planning approvals were obtained. This was someone putting his intentions into practice. What was known of the relationship between the Respondent RW and PT was given right at the end of RW's evidence. He said the new companies were effectively under their direction, his and the Respondent's; PT would not take any action without consulting them and deferring to them and their wishes to protect the non-adult beneficiaries and that W's share was in ACo and nothing was to happen to it without their consent.

52.36 Mr Manning submitted that Mr Williams suggested that by the time the properties reached the IoM the bird had flown. Mr Manning submitted that the properties were left in the hands of RC for a couple of months which was a little time. He could have died or disappeared but he did neither. He was a man of his word and did what he said he would for the benefit of the family as a whole. There was a convoluted loop of nominee companies to ensure there was no association with the family name and the properties ended up in the offshore companies.

52.37 Mr Manning submitted that the Respondent and RW were not satisfied just to accept RC's euphoria in finding a saviour in tax mitigation; they needed to be satisfied that PT had the necessary tax expertise and so far as that could be ascertained that he was a man of integrity and honesty. There were papers in the bundle in which a Member of Parliament made some remarks regarding PT covered by parliamentary privilege but there was no cogent reason to heed them. It was not part of the decision-making process and PT was not here to answer. The Respondent could not have known about the criticism at the material time as it was only published in 2012.

52.38 Mr Manning reminded the Tribunal that the Respondent and RW met PT. RW had an earlier meeting with PT when the latter was in hospital. They had his CV, a formidable document which showed that he specialised in the complex area of tax law and if HMRC challenged and one followed his steps he would win. So far as they could the Respondent and RW had checked out PT. By checking with the Law Society, looking at his CV, taking the recommendation of DM a professional person

and weighing up PT's character in personal meetings, Mr Manning submitted that they could not be expected to have done more.

52.39 PT said he would introduce the Respondent and RW to his team including a solicitor KR who had previously been involved in such schemes. The Respondent took prudent and appropriate steps to satisfy himself that KR was a solicitor and had a current practising certificate. At the initial meeting which the Respondent attended he told PT that they needed to maintain separation of assets and control of the two estates of which he and RW were trustees. Assurances were given which satisfied the Respondent and RW. Mr Williams had reeled off the names of seven companies through which the assets passed before they ended up in the IoM. The route was laid out by PT to ensure the scheme was not defeated by HMRC. All the companies operated from the same address but there were a vast number of little brass plates on offices in the IoM. The Respondent understood they were all PT companies. The Respondent had carried out proper enquiries and thought he was being guided by an expert, a professional person and there was nothing the matter with that.

52.40 Mr Manning submitted that the Respondent said he did not believe there was any conflict between any of the companies; the result achieved was what had been sought; ACo ended up as a company designated for W's benefit and ICo was the recipient of the remaining assets in proportions of two fifths for RC and individual fifths for the children as provided for by the wills. Mr Manning submitted that the Respondent was justified in his faith in RC when he said he would always do the best for the family. When asked whom he blamed, W said his father for placing everything in AL, although his motive was to reduce the amount of professional fees in respect of the separate companies. Control was in place to that moment where the assets were uncharged and undisturbed and it was then lost.

52.41 Mr Manning submitted that RW was a man of integrity who made two attempts in 24 hours to persuade the children not to make a decision just to follow their father. It was a difficult situation where the father said that it was for the best for everyone but PT, the Respondent and RW said not to do it. PT was an expert who came especially for the meeting. Criticism had been made of the Respondent for not putting a third option to the children now that they were all adults; that their properties should be vested in them. Mr Manning submitted that there would be very great consequences if they took the settlement properties back onshore in terms of a large tax bill. It was not known what went on between the father and the children. It was a major thing for even adult children to go against their father. He had invested two years of his life for them and he was asking them to do something for the benefit of everyone to reduce costs. There was nothing the Respondent could do; in law they were adults and PT and RW had attempted to dissuade them.

52.42 Mr Manning addressed the fact that the Respondent described himself as a "mechanic" when the assets were being hived up to AL; he was saying that he was carrying out certain steps or procedures which he had been advised by an expert were necessary to fulfil the goal. In his own mind he was sure PT was an expert and that the intention was likely to be carried out; also the Respondent held the title deeds to the properties. PT assured him he would defer and confer and the Respondent believed that RC acted for the benefit of the children. The Respondent was the protector of ACo and ICo. It was a decision he was entitled to make as trustee.

52.43 Mr Manning submitted that the practical manifestation of what happened was as intended; the assets arrived as expected and there was no change in the structure prior to the April 2000 meeting. There were two other meetings on 31 October 1998 and 29 October 1999. W could not remember either of the two meetings but accepted after reading the statements of the Respondent and RW that the meetings took place and that what was said about them was correct. Mr Manning was not going to get into what a seventeen year old understood or did not. W accepted that the Respondent and RW were people of truth and integrity. Mr Manning referred the Tribunal to what the Respondent and RW said in their statements. The meetings with all the children started with full background histories; in 2010 when RW was asked to provide copies of the wills in respect of PK's activities) he copied them to the three children and RM replied that there was not anything they did not already know.

52.44 Mr Manning submitted that there was some criticism of the Respondent for the lack of letters to the beneficiaries and to his credit he accepted that he was probably more involved in preparing detailed file notes than letters and that probably with hindsight writing would have been good but it was clear that all the beneficiaries knew about the wills. RW was at the house more often than the Respondent; he could be there once a week or once a month. RW spoke to the children and knew what was going on. W testified that he knew from an early age that he was to have TH Farm. It was unfortunate that the only person he asked for it was his father and he obtained a negative response. It was a pity he did not ask the Respondent or PT but he did not.

52.45 It was Mr Manning's submission that the two meetings in 1998 and 1999 were important. As to the 13 April 2000 meeting, W was aged (nearly) 19 years. He recollected the meeting. He felt PT's explanation was not clear but he and his sisters decided to follow their father. They were the only people at the meeting. PT was not at the Tribunal but the evidence of RW was that he then went into the meeting after PT had spoken to the children; it was pretty straightforward. RW gave the children his view, which he held jointly with the Respondent and on whose behalf he spoke, as he had done the evening before to the effect that they should not agree to the hive up to AL. PT had come all the way from the IoM to tell them not to agree. W said they felt they had to follow what their father said. It was a bad decision and W probably now regretted it. Mr Manning submitted that they must have understood what they were being asked and why it was not in their interests to agree to the course their father required. However they were entitled to make the decision as they were adults.

52.46 Mr Manning accepted that the history of the collapse was not happy. The family was asset rich and income poor and RC was only just able to pay the interest and some expenses but the banks wanted cash. There was nothing the Respondent or RW could do because RC had everything. PT arranged another source of borrowing and the situation continued. RC was in the process of restoring WH and was not anxious to sell any properties. The bank wanted £3.15m to pay off its borrowing. The mortgagee had no duty to maximise the assets but sought just to recover its money. Mr Manning referred to the abortive attempt to purchase the family home. Assets of £5m to £7m were lost in a sale for around £3.15m. RC alleged sale at an undervalue. A Judge gave an order for specific performance. Mr Manning attributed the losses to RC's decisions. A regulated sale would have stopped this happening.

52.47 Mr Manning submitted that this hearing came about because of a letter to the firm from the family's solicitors alleging negligence (following which a partner of the firm made a report to the Applicant). The claim was resisted by the firm's PII insurers. The litigation was not to be pursued. If W had obtained the farm and the money from the proposed sale had been realised there would have been no loss, no claim and no report to the Tribunal.

52.48 Mr Manning asked the Tribunal to look at the allegations and to look at the Respondent's evidence including his statement:

> "It is suggested by the Applicant I acted in breach of my duties as a professional executor and trustee but I respectfully submit this is incorrect. Advice was sought and from a highly knowledgeable and experienced solicitor [PT] with the best interests of the [C] children constantly at the forefront of my mind as demonstrated on numerous occasions over the many years covered by the papers within the Rule 5 Statement adduced by the Applicant... The structures were only later changed but this was at the time the children were adults and was with their knowledge and approval."

In respect of allegation 1.2, the Respondent stated:

> "It is suggested by the Applicant I failed to act in the best interests of clients of my firm and behaved in a way likely to compromise my independence and the good repute of myself and the legal profession but I respectfully submit this is incorrect. The evidence adduced within the Rule 5 Statement clearly demonstrates the efforts I made to maintain a separation between [RC] and the children although this was obviously difficult with the assets in [ICo] being in both ownerships...."

In respect of allegation 1.3 regarding conflict of interest the Respondent stated:

> "...but the reality is that each and every one of these structures was under the control of [PT] and at the end of the day was nothing more than the corporate entity he utilised to implement the strategy put in place for his clients..."

Mr Manning submitted that the Respondent had no hand in the estate accounts and was just doing a job of work carrying out instructions to the best of his skill and understanding and when he did not possess it he sought expert advice with his co-trustee a chartered accountant. The Respondent gained no benefit.

Evidence of the Respondent

52.49 The Respondent confirmed the truth of his witness statement. Key points from his evidence not covered elsewhere were as follows. His father and the father of RC had been friends and then there was a gap in their acquaintance. At some point H asked the Respondent to undertake some conveyancing for him. H told the Respondent that he would be an executor of H's will with HC. The Respondent was flattered. H made it clear that HC would probably deal with the administration of his estate. On E's death H decided that HC's firm would deal with her estate. As executor, the Respondent could have refused but he did not because he wanted to respect H's

wishes. E's estate was not large. H expressed a wish that HC's firm should deal with his estate. The Respondent was disappointed but accepted it. RC obtained regular updates from HC's firm to keep the Respondent posted. RC telephoned RW without telling the Respondent and met up with RW and asked him to continue the administration. Only taxation and valuation was left to be dealt with and there were difficulties. The Respondent felt that initially valuations of the properties had been put in at too high a figure. On 7 April 1995 the District Valuer wrote to RW giving valuations for the land at TH Farm at £24,000 and the house at £24,000. The reductions negotiated by RW meant that the figures in the accounts would have to be read based on those figures.

52.50 The Respondent did not think it was correct that W had no knowledge of the wills. The Respondent was referred to an e-mail at dated 23 September 2010 which had been sent by RW stating:

> "Sue sent the copy wills – was there anything in them which was new to you..."

On 24 September 2010 an email on behalf of RM to RW included:

> "Don't think anything in Wills that was so new to us but [the Respondent] has agreed to clarify anything (today) should we want to speak to him…"

The Respondent stated that the children had no conversation with him about this.

52.51 The Respondent stated that PT was a former partner in a firm of Manchester solicitors. He had a worldwide practice. He was a founder member of STEP and an expert in his field. The Respondent and RW went to meet PT and form their own judgement as to the appropriateness or not of what was proposed. PT was in hospital at the time. He was very impressive. PT's view was that settlements were a structure attacked by the Revenue all over the world and a corporate structure provided a greater shield against the Revenue.

52.52 PT prescribed the deed of agreement for the transfer by RC of TH Farm to ACo in return for a Capital Redemption Certificate. This was a concept new to the Respondent. There was a series of intermediate steps to transfer TH Farm to ACo for W's benefit. Legal title in V and P was transferred to MX Ltd an IoM trust company which only needed one trustee. MX held TH Farm for ACo on trust. MX was the new beneficial owner of the property. Then MX transferred the beneficial ownership to ACo. MX had moved the property from the UK to the IoM. RC ended up as the owner of the Capital Redemption Certificate which was issued as value for transferring the property and subsequently RC completed a deed of assignment so W had the benefit of the Capital Redemption Certificate in ACo.

52.53 As to the cash and the use made of it for the children during their minority, the Respondent stated that H wanted the children to be privately educated and to go to university if they were capable. He knew that RC was asset rich and cash poor and H wanted to pay for their private education. He died and could not fulfil that wish and so the Respondent was hoping for estate funds to be used for that purpose. By the time they had completed their university education; the sisters had already had more than

their cash entitlement and owed the estate money. Effectively RC's money was used. W was still in education and he thereby took all the cash that he was entitled to and more and he had TH Farm as well. As to whether any steps were taken to secure RC's debt to the estate, the Respondent stated RC also had an entitlement to other assets in the estate. As to RC doing better out of the estate the Respondent would now agree but did not think so at the time. The Tribunal asked about the Respondent's file note dated 12 June 1998 and the children thinking that their father had paid for their education and not wanting to tell them:

> "Said a third concern was the children were probably not aware of the position in [H's] estate other than from anything said to them be (sic) [RC]. [PT's] view was that as the 2 girls are of age they should be provided with full information concerning the estate. Said this would mean they would learn that they and not [RC] had effectively paid for the education which might come as news to them…"

The Respondent said it could have caused great difficulty in the family and he did not want to cause difficulties. The Respondent was asked why PT needed to tell him that the two sisters should be given full information. The Respondent stated there was no change in 1998 or 1999. He rejected the suggestion that the policy was to keep them in the dark. RC subsidised the position out of his share of the estate. He was asked why he had ignored the sisters and stated that contact with them was not easy. RW, with whom the Respondent was in regular contact, made regular visits to the family home. The Respondent stated he probably had not seen them at this stage in the context of communicating with them about the wills.

52.54 The Respondent agreed that he had duties as trustee of the estate and agreed to the involvement of PT and KR whom he had not met previously. He met them a lot over the years and formed an opinion that was wrong in respect of them. He checked PT and KR with the Law Society. KR was a solicitor who had professional indemnity insurance. That was all the Respondent could do in terms of checking at the time and they were introduced by DM and RW knew DM well. His duty as an executor was to maximise the benefit for the beneficiaries and to ensure the beneficiaries received the assets they were entitled to. This was difficult as they were left in the estate and were all in the form of property. It made no sense to sell a farm which was rented out but when the tenant died or gave up it would be worth more. As to the 500% profit alleged by Mr Williams in respect of L Terrace, the Respondent stated that at the date of death the cottages were rented out and so given a low valuation by the District Valuer. When they were vacant and had been renovated by RC at his expense they were all sold for the best price at the time on the open market and the proceeds of sale introduced to ICo. The Respondent stated that he was in regular contact with RC for example when the three cottages were sold. An IoM company was the seller and the Respondent acted getting all the documents signed. RC kept him fully informed. In respect of TH Farm, RC bought it for £48,000 and the Respondent stated that his it was his intention that anything over and above that amount was for William.

52.55 In respect of the meetings with the beneficiaries, the Respondent stated that at the meeting that the Respondent and RW had with PC, the children's mother, LC and W on 31 October 1998, they were trying to get a way forward but they never seemed to get there. There was not much that could be done because the development money

from the properties was not yet available. RW and the Respondent tried to persuade RC to give up farming which was loss making. He did so for a while. In respect of the 29 October 1999 meeting, the Respondent's file note of that date recorded:

> "Attended a meeting at [CH Farm] where the whole [C] family apart from [PC] were present. [RW] went through the whole history again in a fairly simplified version so the three children were brought up to date with the position and knew where we now are. [RC] then confirmed he wished to develop the position further by investing in [AL] rather than in the Isle of Man companies. The question of control was mentioned. It was explained that at the end of the day the company is effectively in the hands of [PT] and his various companies but [RC] said he was keen for him to have control of his share of the funds but also is equally keen for the children to be in control of their funds. No exploration was done as to how this is to be achieved so presumably this is something to be looked at in the future..."

The Respondent stated that he was in no doubt that the children understood the position; they were bright intelligent children and W was now 18. The children were not asked to make any decisions at this meeting.

52.56 Later RC became concerned about the expenditure of running the company structure that PT had created and wanted to streamline it. The Respondent stated that he, RW and PT all resisted. They arranged the meeting on 13 April 2000. As to the issues for the Respondent as a trustee, he testified that he was concerned that any funds available would be mixed into something where it was impossible to identify the funds and who they belonged to unless there was very strict accounting. He was also concerned about who would control and manage the funds and did not think that this should be done by RC. The Respondent attended the house but was not at the meeting. He described the events on the day in similar terms to RW. Afterwards the Respondent prepared the documentation and submitted it to PT for approval as he was the director of the companies in the IoM. The Tribunal asked the Respondent in what capacity he was present at the 13 April 2000 meeting. He stated that he was part of PT's scheme. As to who paid him to attend it was difficult to say who his client was; he probably did not raise a bill for that day; he was there to assist as much as anything. It was always difficult; he was acting for the different entities and there was the question of how to apportion the costs. Some bills went to RC; it depended on what he was doing for the entities.

52.57 The Respondent stated that there was no conflict; AL was under the control of PT which gave the Respondent some comfort although the children had made the wrong decision. PT could outvote RC on AL. PT was always acting for the Respondent and RW in effect as the trustees because after RC went abroad he resigned as a trustee of H's estate and the Respondent and RW took the view that they had instructed PT to look after the children's assets via ICo and ACo – that was where their benefit was. As to the reference in CK's letter to him of 16 April 1998 to the "central " money box"..." the Respondent stated that he was not sure what was meant by that as to whether it was RC's money or the estate money. He received many letters from CK as K Services acted for RC's companies.

52.58 In cross examination, the Respondent confirmed that he understood that significant losses arose out of the matter. The Respondent confirmed that he was experienced in trust work and knew about the duty of the trustee and as an executor. He agreed that in order to protect the assets one had to have control over them.

52.59 The Respondent agreed that he had been impressed with PT and was referred to a profile of him in the papers. It included:

> "His experience and knowledge had taught him two valuable lessons which are still apparent today in the solutions recommended to clients – (i) where possible, never part people from, or let them lose control over, their own assets... And (ii), wherever possible, ensure that any income generated goes to a UK entity..."

The Respondent agreed with this and that if there was a risk of conflict between the interests of one beneficiary and the others, the parties must receive independent advice. He rejected the suggestion that he was too close to RC to give independent advice; they were never really close, RC was a client. The file note in which he said he was too close to give advice referred to when W was to be involved. It was put to the Respondent that he could not go against RC. The Respondent stated that RC did not get his own way; they got everyone together at an early date and the Respondent, RW and PT resisted for quite a number of years. The Tribunal would not hear from RC because the Respondent did not know where he was. As to the fact that he transferred all the assets of the estate without security prior to departure of RC to the IoM in April 1997, the Respondent stated that it was part of devised plan that the assets would go and they did go, as planned. He trusted RC; he had no intention of giving the assets away.

52.60 Mr Williams asked would W have had a tax problem on reaching 18 years and the Respondent replied that he would only have such a problem if he sold TH Farm. The Respondent was asked how he assessed conflict and how he could not now see the obvious conflict between W and his father. The Respondent replied that there was an obvious advantage because what happened resulted in a big uplift in the value of farm. As to who explained the situation to W, who was under age at the time, and where the trustees were his father and the Respondent, the Respondent stated that he tried to ensure that W received the farm. The Respondent stated that PT was acting as an ongoing trustee in protecting the assets. It was put to the Respondent the PT was not involved at this time but the Respondent stated it was all part of the same transaction. He was referred to his statement where he said:

> "I therefore saw [PT] as my replacement as a trustee of the 2 estates…

The Respondent stated that he was in a position to appoint a new trustee but he agreed that PT was not appointed. He also accepted that he could not delegate his trusteeship. The Respondent accepted that the shares in WRIL were specifically gifted to RM and LC and that RM was over 18 years at the time of the transfer. As to why he had not given RM her shares he stated that the transfer was in her favour. He did not accept that he was doing what RC told him to. As to whether he told RM, he thought there was a conversation about one of the properties but no letter was written; everything was verbal. He rejected the suggestion that he never understood the scheme; it was a

simple scheme working through a complex structure. He asked that it be borne in mind that he thought that RC was acting in the best interests of the children and W thought so too. It was put to him that it was for him to do his best as trustee and not RC and the Respondent rejected the suggestion that there was a conflict because as their father RC had the best interests of the children at heart.

52.61 As to whether the Respondent vested anything in LC and RM as they were of age when RC went to the IoM, the Respondent said they were entitled to a fifth [each] so he could not separate their shares out of the whole. He agreed that he found himself in the position that he could not do his duty even if he tried. He stated that it all went through as a series of transactions aimed to achieve the goal that was trying to be achieved for the family. The Respondent maintained that he perceived his duty to be higher than he set out in what he described as a hastily prepared file note dated 28 April 1997 where he referred to the distinct possibility of the assets disappearing outside a settlement. He agreed that RC and the children were his clients. As to all the assets being held in RC's sole name, the Respondent stated that the documents were all completed almost simultaneously with the transfer to the IoM companies. MX was at all times a trustee.

52.62 The Respondent was challenged that he and RW did not understand the scheme by reference to his file note of 16 May 1997 referring to insufficient knowledge; he said this just referred to RW not being happy that the scheme would work regarding HMRC; he was comfortable it would work from the protection point of view. He was referred to his file note of 20 May 1997 this time referring to his insufficient knowledge and the use of a "tame" solicitor. He agreed it was an unfortunate term; it meant that KR had worked on a lot of schemes with PT for many years. The Respondent's impression was that PT was the linchpin and KR only wanted to do as he was told by PT, the documents. The Respondent understood the route taken by the properties when he saw the documents.

52.63 The Respondent was referred to the file note of the meeting on 5 June 1997 which referred to "considerable wealth was being put in the hands of people we did not really know and therefore there was a definite risk involved." The Respondent stated that he was not concerned (about the unknown individuals) because he had been introduced by RW to DM who was therefore thence a trusted source who introduced them to PT. RC was also putting a lot of assets of his own into the IoM company and if he had not done so they would not have done so either. The Respondent stated that he had not talked to the children at the time and the decision to put their assets into the IoM companies was not just his; RC was also a trustee. With hindsight he would have consulted the adult sisters about putting their assets into their father's sole name but he thought he was acting in their very best interests. As to any element of risk there was a risk of attack by the HMRC if the family name was mentioned. The Respondent was not concerned about risk otherwise. He never had concerns that PT would not look after the assets properly. In cross examination in respect of his acting for all the parties involved, the Respondent stated that this was not in the usual way of acting for companies. It was the route PT prescribed. MX and P and V were companies in PT's stable. RC transferred to them as trustees for RC; the beneficial interest never moved; it had gone direct from RC to ACo. No one acted for V and P as such; PT signed all the documents. This route was needed so that the transfers would not be seen as a transaction of the family by HMRC and to save Stamp Duty.

52.64 As to whether he generally did what PT told him, the Respondent stated that it was PT's scheme and that he knew how to operate it and everything that he said seemed logical. It was put to him that in the file note dated 26 June 1997 he identified the risks and then took them. It referred to a meeting in the IoM which he had attended and that PT and CK were to be the directors of all five companies with CK as the company secretary. The shareholding was a "little vague". The Respondent replied that they were controlled by PT. He accepted that he did not know until February 1998 who the shareholders were in the companies where the assets had gone. He agreed that he had no control for the beneficiaries once the assets moved to these companies but PT knew where he was coming from regarding the executors/trusteeship and he was almost the Respondent's client in that respect. He accepted the beneficiaries did not know that PT was holding their assets. PT was fully aware of the position; there had to be separate arrangements for RC's substantial assets and the children's assets. W was still a minor whose farm was going to a company controlled by PT and, with hindsight, perhaps he should have had some independent advice but the Respondent was not sure how to arrange it. He had no litigation experience. It was put to the Respondent that when TH Farm Cottage had been marketed, W was an adult. The Respondent stated the money went to ACo and was earmarked W's benefit. As to the fact that PT controlled the company and what benefit W would have, the Respondent stated that he, W, was still being educated. As to his note of 20 April 1998 referring to the need for trustees to have some measure of control rather than total control the Respondent described this as "phraseology."

52.65 The Respondent agreed he acted for AL and registered TH Farm in its name but stated he did this after the hiving up had been agreed by the children. The Respondent was referred to PT's letter to RW of 22 May 1999 when he referred to AL as a limited liability entity and his having no control over it. The Respondent stated that RC was one of three controlling directors and the other two were British Virgin Islands companies which were both under PT's control; RC did not have the majority. PT controlled it. PT signed the documents. The Respondent stated that he did not want the trust monies to go there. The Respondent agreed that the hiving up took two years and stated that he was dragging his feet, on purpose.

52.66 As to his having not given the children advice or taken their instructions about AL, the Respondent stated that while he did not speak to them at the 2000 meeting he had conversations with them, which were not noted, and he had had contact with them. His instructions were that the children had agreed regarding AL. They said they did not want independent advice. Attention was drawn to his letter of 18 February 2002 to RW where he said he had no instructions from the children and considered it necessary to meet with them at some stage with a view to drawing their attention yet again to the "total loss of control" of their funds that would follow from the hiving up of assets to AL. The Respondent stated that was not how he understood his instructions; they came through the other people involved. The Respondent was referred to his letter to RC dated 13 January 2004 and that he acted in the transfer of the assets to AL without instructions when he reported that the agreement to hive up the assets to AL had been signed. It was put to the Respondent that the third trigger point was when the money passed to AL. The Respondent stated that he thought that he had instructions. The siblings were still relatively young and they did not need to be bombarded with information. The Respondent was referred to his e-mail to RC on 18 September 2003 when he asked how to go about arranging independent advice for

the children after PT indicated that he felt the children should have such advice. The Respondent confirmed that he understood that his duty was to see that they had independent advice or not to act. The Respondent replied that he had a discussion with RW who reminded him that the children had said they would not take independent advice. If they had said "No" the hive up would not have happened.

52.67 The Respondent was referred by the Tribunal to his file note of 2 June 1997 which mentioned various transfers in conveyances from RC to the nominee companies as part of the asset transfer. He was asked if he saw himself as the mechanic or the driver. The Respondent replied that by then they had got to the position that he was the mechanic and PT was the driver; PT had taken over running of the trusts by the corporate structure. The Respondent's role was to support PT by preparing the documents necessary to implement his strategy.

52.68 The Respondent agreed with the Tribunal's suggestion that he had an equal obligation to each and every one of the beneficiaries when they were adult. In respect of the comments about RC not wishing to be held to ransom by the children in one of the file notes, the Respondent said that RC did not like to be controlled, which was exactly what the Respondent wanted him to be. He thought RC was trying to do the best for the children, but he was possibly misguided about what were their best interests and that he was possibly not the best person to do so. The Respondent rejected the suggestion that RC controlled the assets; PT was in control. If RC sought to persuade PT to do things throughout the period until the children were adults, that was always resisted if the Respondent and RW did not think it appropriate.

52.69 The Tribunal asked the Respondent about describing PT as his alter ego while at the same time agreeing that a trustee could not delegate. The Respondent stated that he thought he was delegating his position to PT and he, PT, was in effect stepping into the Respondent's shoes by his corporate structure to look after the interests of the children. As to whether he had asked PT to look after their interests, the Respondent stated that RW asked PT. RW visited the house the evening before the April 2000 meeting to try to bring the children up to date so they could get the most out of PT's visit. The Respondent confirmed that there was nothing in writing between him and PT about PT acting on the Respondent's instructions; it did not occur to the Respondent at the time. As to there being nothing about PT and the beneficiaries, the Respondent stated at the original meeting PT knew where he was coming from as a trustee - that there had to be a separation to be maintained for the benefit of the children and ACo was earmarked for W. The file notes were all that the Respondent could gather. The Respondent was not sure what he could to control the situation regarding PT; he hoped PT knew where he was coming from. This was very much done in meetings and the sort of thing that he made file notes about afterwards. He thought PT disliked putting things in writing purely because of the HMRC aspect. The fact that PT was a solicitor gave him confidence. He was asked whether he would not put things in writing if PT did not and he stated that he would do so now, but at the time he thought that the file notes he had made were alright.

52.70 The Tribunal asked the Respondent about the children's absolute right to their assets on attaining their majority. The Respondent stated that with PT under his control and acting in accordance with what RW and the Respondent thought was appropriate they could circumvent RC. The Respondent had not known that W had asked his father for

TH Farm. As to whether W knew that he could have asked the Respondent for that farm, the Respondent stated that W knew he was involved and that he thought that he knew he (the Respondent) was a trustee but he could not say for certain. The Respondent stated that if once the assets were in the IoM companies, one of the adult beneficiaries had said that they wanted their assets immediately, he would have spoken to PT and made arrangements. As to the possibility of PT refusing, the Respondent thought although there was no formal retainer PT was acting for the benefit of the children.

52.71 The Tribunal asked the Respondent why, when he made such detailed file notes, he did not document his verbal communications with the children. The Respondent stated that if he went to the house he might have a two minute conversation with them which would not be worthy of noting. RW had more regular contact and RM worked in his office for a while. There were no letters; the remaining assets were properties and nothing was happening to them at the time. TH Farm Cottage was the first one to be acted on and W was consulted. The Respondent confirmed that he had given his views. He thought there was a file note and that it had been discussed at a meeting.

52.72 It was put to the Respondent that in a file note of 12 June 1998 he recorded considering becoming a director of AL but was reluctant to do so. The Respondent stated this was before the children had any involvement with AL. The assets were not in the company at that time and that was how he wanted it to stay; he did not want to be any further part of RC structure. He was also referred to the final paragraph of a letter dated 12 June 1998 in which RW wrote to RC;

> "Additionally I believe that we will require a form of guarantee/indemnity from you to cover us in the case of the "... maiden scenario" I think [the Respondent] will be able to produce the necessary document."

The Respondent stated that the beneficiaries' assets were safe in their companies as they were earmarked for their benefit. He had all the title documents where something needed to be done. Other than when they were at the Land Registry they never left him.

52.73 As to the risk of death, the Respondent expected the structure to sail on. It was a regular question they asked of PT. The Respondent agreed PT had medical problems but mentally he was 110%. The Respondent described the move of assets to MM in Northern Ireland similar to RW and attributed RC's problems at this time to having attracted the attention of HMRC through one of his UK companies. MM was controlled by PT, so everything was in PT's hands and he could keep an eye on RC if he needed to do so. As to what finally went wrong, the Respondent stated that there was the banking crash of 2007 and 2008. The bank was beginning to take a bit of interest but was not overly concerned. PT had given assurances that all would continue after his death through the people whom he had appointed to deal with the properties as he had done hithertofore. The Respondent and RW met a barrister, JT, and an accountant, SR, who announced themselves as PT's successors - but they found that PK had been appointed as PT's executor. He removed PT's appointees and in effect took control. They were amazed when PK came on the scene. The Respondent could not explain PK's actions. If the sale had gone through to RM and her husband it would have relieved the pressure from the bank. A couple of hundred

thousand pounds was needed to finish WH which could then have been sold for £700,000 or £800,000. The Respondent was asked whether if the children had followed the advice of PT/RW at the meeting of 13 April 2000 would the circumstances in which the Respondent now found himself have happened. The Respondent thought it unlikely; the merger of the assets into the one company was the start of the problem. If the assets had still been in ACo then they could have been extracted from PK without a problem.

Determination of the Tribunal in respect of allegations 1.1, 1.2, and 1.3

52.74 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant and for the Respondent. The Tribunal had heard the evidence of W, the youngest of the siblings. His recollection of events was not perfect because of the passage of time and probably also because of his youth at the time of the material events. He was a thoroughly credible witness. The Tribunal had also heard from RW. His evidence did not diverge from that of the Respondent in any material particular. The Tribunal had also heard from the Respondent at length. This matter involved disastrous events for one particular family and in order to determine the allegations against the Respondent the Tribunal had heard the detail of events over a period of many years. Criticisms express and implied, had been made by the parties of the roles and actions of several individuals other than the Respondent. Not all of those individuals had been present and it was no part of the Tribunal's role to express an opinion on the criticisms of those individuals. The Tribunal's determination, which follows, focuses only on the conduct of the Respondent and his professional obligations but of course the Tribunal had regard to the context in which the Respondent acted in arriving at its determination.

52.75 Much of the documentation before the Tribunal consisted of meticulous file notes made by the Respondent recording events, concerns and opinions; his own and those of others involved. On occasion in giving evidence the Respondent had placed an interpretation on his words different to what they said on their face, but generally he did not resile from what he had recorded, sometimes within hours of the meetings and telephone calls to which they referred. The Tribunal found it helpful to go through them in this judgment at the cost of some repetition of the evidence recorded above. The Tribunal first considered the Respondent's duties as a trustee. In a letter to RC dated as early as 16 December 1988, the Respondent set out his view of his duties as a trustee:

> "... My position as the Trustee of both estates is not to be involved in the nitty gritty of dealing with matters but is to take an overall view of both estates for the benefit of the beneficiaries – particularly your children as you are well able to look after your own interests."

The Respondent accepted in evidence that it was the duty of an executor to hold title, and safeguard and give effect to, the terms of the testator and deliver the assets safely to the beneficiaries. In a retainer letter to RC dated 29 March 1996, the Respondent described his duties:

> "I write to record my thanks for your instructing my firm to deal with the various documentation arising from your decision to move abroad to further the estates of Uncle [H] and Aunty [E] and to assist with your personal affairs. Just for the record I have not been asked to advise on the Tax consequences of your decision to emigrate – this aspect has been fully covered by [RW] with the benefit of a second opinion from [ET] of ... in Leeds. My function is to prepare the documentation to give effect to the decisions already taken…"

Thus it was at the beginning of March 1996 that the Respondent began to go wrong. This was his opportunity to tell RC what his duty was as a Trustee and what he was going to do to protect the children, and he did not take that opportunity. The schedule of assets sent to HM Land Registry set out the effect of the Respondent's actions, which was that RC became the owner of all the properties within the estates. On 25 March 1997, the Respondent drew up draft trust deeds with a view to all the assets transferred to RC being introduced by him into settlements in the IoM. At this point one of the children was a minor and two were adults. The Respondent was letting the assets go and yet did not even consult RM and LC, who were then adult "child" beneficiaries. On 25 March 1997 the Respondent wrote to DM setting out the actions he was taking and describing the proposed settlements in the IoM. He was agreeing to export the assets into settlements, over which he would not have the control necessary as a Trustee. The Tribunal determined that placing the assets in the sole name of RC and giving him beneficial ownership placed them out of reach of the other beneficiaries as soon as he changed his mind about setting up the settlement. This was the first of the trigger points identified by Mr Williams, and the Tribunal found that it was at this point that there was loss of control of the Trust assets by the Trustees. The Tribunal considered that the properties should not have been transferred to RC out of the control of the child beneficiaries and their representatives, the Respondent and RW. The Respondent recognised his duties but he sat back and did nothing to fulfil them. Indeed he drew up the documents which effected the loss of control from him to RC. On 28 April 1997, the Respondent created a file note in which he said:

> "Re-emphasised that so far as I was concerned I was extremely keen on a Settlement for at least the [H] properties as otherwise there is a distinct possibility the properties could just disappear and never pass to the three children as intended..."

This is to exemplify the error of the Respondent. At this point he abrogated his obligations as a Trustee, and, in effect, gave away those responsibilities to RC, and so failed in his duties as a Trustee for the children of RC. This was just one of the documents which demonstrated that the Respondent recognised that the assets were at risk. On 1 July 1997, RW wrote to the Respondent listing the assets which he believed to be in the estate and commented:

> "Until the accounts are actually finalised I cannot tell how much [RC] owns the Estate – but he will undoubtedly owe a net figure."

The Tribunal understood this to mean as a fact that RC was withdrawing money from the estate without control of the Trustees, in addition to the fact that he already had all the assets in his name.

52.76 The next key point followed the meeting between RC and PT. The Respondent went along with PT's advice that there should be a corporate structure with three companies in the IoM instead of settlements and his approach was that this was not a problem, because PT was the creature of the Trustees and would confer with them and defer to them. There was no evidence that the Respondent had spoken to the family (that is the children of RC) about this arrangement and the Tribunal considered that it proved not to be safe, because PT did not in the event confer with the Trustees and defer to them. In any event in law the Respondent could not delegate his role as an executor/trustee to PT. There was no written agreement with PT and the Respondent was neither a director nor shareholder of any of the three IoM companies; according to the Respondent's file note dated 9 June 1997 they were PT and CK. The Respondent was to be the Protector of ACo and ICo, two of the companies which held assets for the beneficiaries - but in his own words in that file note the Respondent:

> "Emphasised that the Protector can do little but to stop the Directors doing things but cannot in any way force them to do things required by [RC]. A great deal of trust is therefore being put in [PT] and [CK] who will be the shareholders of the 3 companies and the Directors and Secretary of the 3 companies..."

In his file note the Respondent accepted that the role of Protector was limited and he expressed concern about that. Clearly he knew what the problems were and yet he did nothing about them; again at this point he abdicated his responsibilities as trustee. By a file note dated 8 April 1997, the Respondent recorded that RC had taken as his share of the estate JT Farm for £25,000 and also three L Terrace properties for £28,500 and had acquired TH Farm for a total for house and land of £48,000. The note continued:

> "He will therefore have to be debited with these amounts and at the end of the day may well end up owing the estate…"

The Tribunal found that the children had not been consulted about these actions. How it was that the Trustees allowed RC to owe money to the Trust that was for his children, but take no action about this deficiency, was not explained by the Respondent.

52.77 The next key point was the transfer of all the assets from the IoM companies to AL. In respect of this movement of the assets, there were meetings including with the child beneficiaries, who were all now adults, and who were consulted particularly in April 2000. The Tribunal noted that the beneficiary who gave evidence, W, did not know who the executors and trustees were. He believed that the Respondent acted as the family's solicitor in all these matters. RW gave evidence that he spoke to the children on his own and on the Respondent's behalf. The Respondent allowed PT to talk to the child beneficiaries alone, and he allowed himself, a Trustee, to be excluded from that meeting. This was to abrogate his responsibility as a Trustee. He said that the children insisted on following their father's wishes against the better judgment of himself, RW and PT. This was evidence that PT was not deferring to the Trustees. The Respondent said that the move to AL was a bad idea, but he let it happen. He then blamed the children, who had no independent legal advice for poor decision making. It was his responsibility, as their Trustee, to ensure that they had such independent advice. Any advice given by PT could not be independent because of his role in the matter. The

hiving up to AL took some time, and on the Respondent's evidence the matter was drawn out by him precisely because he did not like what was happening. Then in a file note dated 19 December 2001, the Respondent stated;

> "[PT] has mentioned the children should be separately advised on their position before the Isle of Man companies are introduced into [AL]. Said I was not really in a position to do this as I was too close to [RC] to be able to give independent advice. [PT] is also reticent to giving advice on the subject. The reality is that at the moment for example [W] has [ACo] as his company but if the proposal goes through then everything will be in [AL] and will be difficult for [W] to control this is the reason for the children requiring independent advice..."

The situation had moved from the advice of PT being deemed to be independent, to PT saying that in effect he was not. At this point the Tribunal found that again the Respondent should have ensured that the children of RC obtained independent advice, which he acknowledge that he could not give – but he made no effort to ensure that they obtained such advice. Instead he drafted all the documents to hive up the properties to AL. Even before that CK had e-mailed the Respondent (on PT's behalf) on 25 October 2001 to check that all the interested parties were happy about the AL proposal:

> "As you know [R] wants to empty all of the assets from the 5 Manx companies up into [AL] Investments and we are commencing work to achieve this however, before actually implementing anything [PT] has asked me to confirm that all interested parties other than [RC] i.e. the children are happy about this (we have [ACo] and ICo] in mind). Are you able to confirm that everyone is happy about all the assets being kept in [AL] under [RC's] control."

In doing so the Respondent was, in effect, acting as solicitor for RC and in so doing had abandoned his responsibilities as Trustee for the children of RC. He relied on the meeting in April 2000 in his reply of 26 October 2001 to CK:

> "...I can only refer to the meeting at [CH] Farm on 13th April 2000 when [PT] specifically broached the subject with the 3 children and (as I understand it) obtained their instructions they were content to proceed in this way. Certainly I have not been given any instructions to the contrary since that meeting.
>
> If [PT] is having second thoughts about his instructions from the 3 children then he may wish to clarify the position with them direct."

It was not for the Respondent to take the view that "as he understood it" the children of RC were happy. He was their Trustee. He should not have assumed anything. He should have ensured that they had proper advice and had made an informed decision based on unbiased advice. He did not do so.

52.78 The Tribunal noted the Respondent's reference to PT having broached the subject with the children and that he, PT, had obtained instructions as being on the basis "as I understand it". The Tribunal was doubtful whether he really knew anything about the

meeting PT had alone with the children, and he had of course not taken the opportunity on that occasion to take their instructions. He had been present but had intentionally absented himself from that meeting, while being in the building when it took place. The Tribunal found it was not so much a case that the Respondent had not been given instructions, but rather that he took no instructions from the children. He abdicated all responsibility to PT. Even if the Respondent himself had given the explanation to the children that would not have been enough to satisfy his duty as a trustee because, as his letter of 20 November 2002 quoted above showed, he was RC's creature. If he had placed himself in a position where he, the Respondent, could not give independent advice (itself an extraordinary situation) he should have brought in someone else to give independent advice to the children of RC, and if those children had refused to receive such advice he should have ceased to act.

52.79 The Tribunal also noted the contents of a file note made by the Respondent on 9 January 2002 of a telephone conversation he had when RC phoned him from Andorra. It included:

> "Said there was still the difficulty protecting the children' interest as it had been mentioned by [PT] the children would have to be separately advised before the Isle of Man companies could be transferred up to [AL] he was not keen on this idea and did not think it really necessary…"

Here the Respondent was being told that PT wanted independent advice for the children but that RC did not think it necessary, and the Respondent still did nothing. On 30 January 2002, the Respondent wrote to RW including:

> "I agree with [PTs'] suggestion the children should be independently advised. I suspect a considered response to the proposal by the children would not approve the proposed format... This after all was the very reason for having more than one Isle of Man company from the outset although the position has moved on in that the children are now all over 18 and (legally) can consent to the proposal if they wish...
>
> I am not sure what records are kept by the Cayman company but stress these ought to be very detailed if the proposal proceeds as otherwise there will be a horrendous mess on [RC's] death in trying to unravel the position where there is a particular requirement of keeping funds separate for the 3 children and also (very importantly) keeping income and capital separate for the children.
>
> I am not sure how we move forward with [RC's] children. What are your views"

The Tribunal considered that this letter showed that the Respondent was well aware of the risks and the issues. RW replied on 15 February 2002:

> "Everything you say is correct and I agree with your sentiments, but I'm not sure at this stage what, if anything, we ought to do or what, if anything, we can do.

> The moves which were made some time ago and which effectively separated the children from their assets have been fully explained to them in joint meetings with you, [PT], and me (in various combinations and singly)."

This reply confirmed that both trustees knew of the issues. The Tribunal particularly noted the reference to moves made some time ago which had separated the children from their assets. On 18 February 2002, the Respondent replied to RW:

> "I have considered your letter of 15th February. I have no instructions from [RB], [LC] and [W] to act on their behalf but do consider it necessary for me to meet with them at some stage with a view to drawing to their attention yet again the total loss of control of their funds will follow from the "hiving up" of assets to the Cayman Company.

Here the Respondent admitted that he had no instructions from the children to act. The Tribunal considered that the Respondent was acknowledging that he had to tell the beneficiaries that there had been a total loss of control, a dreadful admission for a trustee to have to make, but he did not do so and instead he went ahead and prepared the documents to move all the assets to AL, which would sever any vestigial link between those assets and the children of RC.

On 20 November 2002 the Respondent wrote to PT in the Isle of Man including:

> "have instructions from [RC] to progress the "hive up" of the assets and liabilities of the 3 Isle of Man Companies to the Cayman Company…
>
> I enclose the 3 engrossment Agreements together with the three engrossment Transfer documents for approval and then the signature and execution in the usual way before return to my office…"

The Tribunal noted that this letter made no reference at all to the children, and the enclosed documents were to give effect to the move from the IoM companies to the Cayman company so as to effect the final severance of the children from their inheritance.

52.80 From the date of the hive up the trustees had no idea of where the assets were as they were all controlled by RC/PT. The beneficiaries had no idea what was going on in AL. Subsequently properties which had been bequeathed to W and his two sisters were charged to secure RC's personal debts and ultimately their assets were sold to pay the personal debts of RC, their father. And so the inheritance of the children of RC, left to them by their other relatives, was permitted by the Respondent to be diverted to satisfy the debts of another, their father. The Tribunal considered that the concerns expressed in the Respondent's file note of 9 January 2002 quoted above constituted a classic example of a solicitor compromising his independence. Everything he did showed that he followed the scheme that PT had devised for RC. In breach of the best interests of the three children he, the Respondent, handed their assets to their father, and lost control of them – their assets - and then allowed the position to become worse by allowing them to be passed to PT without consulting them (once adult) on either occasion or advising the three beneficiaries, one of whom gave evidence that he did not even know that the Respondent was an executor/trustee.

There was no evidence that the wills were sent to the beneficiaries until RW did so in 2010. The Respondent himself never sent the wills of the testators to the beneficiaries. On his own evidence the Respondent did not tell the children they were entitled to the property left to them under the wills when they came of age, and so were entitled to the assets as of right. The Tribunal found that the meeting in April 2000 was PT's meeting and under his control. The Respondent was not proactive and his evidence about the meeting was double hearsay; he got it from W, whose evidence to the Tribunal had been clear (and which the Tribunal accepted in its entirety) that he did not understand PT's explanation, and from RW who attended part of the meeting. The Tribunal found it astonishing that the Respondent as a trustee was present in the house but played no role at all. The Tribunal considered that throughout his period of trusteeship from the time RC's move to the IoM was mooted the Respondent failed utterly in his duties as a professional executor and trustee (allegation 1.1). There had been no trust accounts for years, demonstrating the loss of control, as the Respondent simply did not know which assets were notionally attributed to each beneficiary.

52.81 In respect of allegation 1.2 (acting in clients' best interests), when the Respondent was asked who his clients were he said that he was confused. It was RW's evidence that by the time that the assets were passed to AL he felt he was not really a trustee at all. The Respondent also said that he no longer regarded himself as a trustee as he had handed that role over to PT. The Respondent regarded PT as an alter ego even before the assets passed to AL. A trustee may not delegate his trust. Two and a half years after the April 2000 meeting on 20 November 2002 the Respondent sent the necessary documentation for the hive up. The Tribunal found that the Respondent failed to act in the best interests of the three child beneficiaries by losing control of the assets to RC in April 1997 and then in turn to PT without consulting or advising the three child beneficiaries. The Tribunal doubted that the beneficiaries even knew that the Respondent was their trustee and certainly W did not know. The children were given no opportunity to consider whether they wished their assets to be exported to the IoM or whether they would have preferred to pay the tax liability, nor were they advised of their right to take their assets when they attained majority. The Tribunal found that the Respondent failed to act in the best interests of his children beneficiary clients and in following the wishes and instructions of RC and PT and disregarding the interests of the children he compromised his independence and the good repute of himself and the legal profession.

52.82 The Tribunal found that there were clear conflicts of interest (allegation 1.3) all along from the point in 1996 when the Respondent was asked to transfer all the assets in the estates to RC, in the expectation that he would then settle them in the IoM. That he did so is not to the point. He did the bidding of RC and transferred to RC legal title to trust assets held for the children of RC. Thereafter he continued in the same way throughout the many years that he spent doing the bidding of RC. An example of this was the file note of 8 April 1997 which recorded RC having assets from the estate in a situation where he might well end up owing the estate money. This was an illustration of the Respondent doing exactly as he was told by RC. The Tribunal noted that for entirely understandable reasons, W blamed his father for what had happened but it was the Respondent's duty to ensure that it did not happen and he failed in that duty. It was clear W did not understand that the Respondent's duty was to protect the assets for him. RC should never have been able to lose the assets. Even at the point when the assets were hived up to AL, the Respondent could have tried to hold back the

children's assets. The Tribunal noted particularly that the Respondent undertook conveyancing work and so it was he who charged the properties to secure debts run up by RC on the beneficiaries' assets even though he knew that this would impact upon the three beneficiaries. The Respondent relied throughout the hearing on his and the beneficiaries' total belief in the dedication of RC to the family's welfare and to enhancing its estate. However well founded this belief could not be a good defence because of the enormous risks that the scheme involved by removing the assets from the trustees' control; risks which tragically came to be fulfilled. The Tribunal found that there were clear and obvious conflicts of interest between the children beneficiary clients and their father RC. The Respondent continued to act and indeed was proactive in preferring the interests of RC to those of the children.

52.83 The Tribunal found allegations 1.1, 1.2 and 1.3 all proved on the evidence to the required standard.

53. **Allegation 1.4 - The Respondent agreed to include incorrect dates in documents and entered incorrect dates and/or was aware of incorrect dates being included in documents with the intention to mislead third parties and, in doing so, he compromised his duty to act with integrity and compromised his good repute and that of the legal profession contrary to Rules 1(a) and (d) SPR.**

Allegation 1.5 - In respect of allegation 1.4, it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegation itself.

53.1 For the Applicant, Mr Williams submitted that this allegation related to backdating documents. The Applicant did not allege tax fraud or any attempt at tax fraud. It was also an allegation of dishonesty. Mr Williams reminded the Tribunal that the two limbed test for dishonesty was that set out in the case of Twinsectra v Yardley [2002] UKHL 12 and the allegation had to be proved beyond reasonable doubt by the Applicant. If dishonesty was to be established by inference it must be by an irresistible inference and allegation 1.4 could be proved without dishonesty. Mr Williams referred to a file note of the Respondent's dated 27 March 1997 of the conversation with RW. It included:

> "Agreed I would date the Transfer taking the properties out of [HC's] estate 17th January 1996 i.e. the date when [HC] resigned as Trustee. He will in fact back-date in the Trust Books to shortly after 7th April 1995 when the values were agreed with the District Valuer.
>
> Agreed I will prepare a Contract dated just after 7th April 1995 for [RC] to acquire [TH] subject to his existing Tenancy although this will never see the light of day if at all possible."

Mr Williams submitted that this discussion in March 1997 related to an improper transfer of trust assets to RC being in hand. They were agreeing to backdate the contract and the trust books significantly. The agreement to backdate to the last day of HC's trusteeship could implicate him in the improper transfer of assets to RC from the trust. The contract was to be back dated to two years previously in 1995 and Mr Williams referred particularly to the reference to it never seeing the light of day if

at all possible. The copy of the agreement for sale of TH by RC and the Respondent to RC of TH Farm bore the typewritten date 1995 and in pencil "17th January 1996" as agreed. A list of documents sent to the Land Registry by the firm bearing the Respondent's reference dated 3 September 1997 included a reference to a conveyance dated 17 January 1996 from RC and the Respondent to RC for TH Farm. Mr Williams referred again to a letter from the Respondent to RC dated 29 March 1996 in which the Respondent referred to enclosing the transfer by which RC purchased TH Farm from H's estate for signature which meant that the transfer could not have existed at 17 January 1996 when the Respondent by his registration application informed the Land Registry it had been created and a contract could not have existed in 1995 because the contract did not exist until it was signed. It was of no particular relevance why the Respondent did this; one was looking at a tangled web. The transfer document and contract told lies on their face and the Respondent submitted the transfer to HM Land Registry which action Mr Williams submitted was dishonest or was acting without integrity. Mr Williams clarified that the allegation did not relate to selling the property at an undervalue (the transfer of TH being made at an undervalue was referred to in the Rule 5 Statement) but stood as pleaded. It was also referenced in the Rule 5 Statement to it being anticipated that the backdating might be to facilitate a saving in CGT or Stamp Duty Land Tax. No application was being made to amend the Rule 5 Statement.

53.2 Mr Manning reminded the Tribunal that in respect of the contract the Respondent said in evidence he was at a loss about the date; he did not think the contract was necessary; RC instructed him to do so, and so he drew it up. Mr Manning questioned whether the beneficiaries; HMRC or HM Land Registry were misled. There was no intention to mislead and no one was misled. As to the Respondent's state of his mind at the time, he pencilled in a date on the contract in circumstances of uncertainty. The District Valuer's letter put the probate value at £48,000. The Respondent gave evidence that RC wanted a contract prepared relating to the sale to RC of TH Farm but the Respondent saw no point; it was not required and would be overtaken by a transfer in any event. Rather than waste time arguing with RC, the Respondent signed and sent the contract to him. It was never intended to be used. No one would ever see it. It was not done with the intention of RC being the owner save for a brief period until the property could be reintroduced into an arrangement for W. The Respondent did not know when to date it. He could not date it after HC resigned as he could not be a party after that date. The reference to the contract never seeing the light of day was a poor choice of words in the file note of 27 March 1997. The Respondent did not date it; he just put a pencil date 17 January 1996. The Respondent denied that what he had done with the document compromised his integrity because he never expected the document to appear anywhere. The Respondent stated that the sale was not at an undervalue because the value had been agreed between RW and the District Valuer; there were no anticipated CGT savings and there were no stamp duty implications arising out of the price and no advantage to the Respondent or any other person in that price being included in the contract.

53.3 In cross examination, it was put to the Respondent that about the time the assets were being transferred he agreed to date the transfer 17 January 1996. The Respondent stated this was because he did not know when the documents effecting the transfer were signed and it was a logical date being when HC resigned. He knew that the transfer could only have been prepared after the March 1996. If he had checked the

file which he did not, he would have realised that it was backdated to a date when it could not have been executed. It was put to him that he would not have forgotten the date of the transfer of the farm to RC but the Respondent stated that there were a lot of documents in the file. The Respondent was referred to the form sent to the Land Registry which referred to a conveyance dated 17 January 1996. It was put to him that he knew when he sent in that form on 3 September 1997 that the date on the conveyance was not the date it was executed. The Respondent said he did not know that was the position. He saw no significance in the document and did not think HM Land Registry would pay any attention to it but he was not saying that it did not matter. It was put to him that both documents told lies on their face and could implicate HC in the purported transaction. The Respondent responded that HC retired that day.

53.4 As to the allegation that the Respondent acted dishonestly, Mr Manning submitted that the Tribunal might have come to the conclusion that the Respondent was naive and not as knowledgeable of the complex route suggested by PT and that he was out of his depth but was he dishonest; did he apply his mind to doing something he knew to be wrong.

Tribunal's Determination regarding allegation 1.4

53.5 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant and for the Respondent. The allegation related to two separate documents, a contract and a transfer/conveyance. It was not disputed that the Respondent included incorrect dates on the documents and that he was aware that they were incorrect. As a principle solicitors should not backdate documents. The evidence he gave was that the backdating was done to tie the documents up to the estate accounts. In respect of the contract for TH Farm and its acquisition by RC subject to his existing tenancy the date was in pencil and the document went nowhere. The Respondent's evidence was that he considered the document to be unnecessary and he prepared it in order to keep RC quiet. As usual he was following RC's instructions. The Tribunal agreed that the words ("will never see the light of day if at all possible") were unfortunate in the file note dated 27 March 1997 but the Tribunal was satisfied that the Respondent created the document to keep RC quiet and wrote only a pencil date on it. It lay unused on the file and the Tribunal could find no proved intention to mislead anyone regarding the contract and therefore the allegation underlying the Rule breaches was not found proved and so there could be no proved breach of the rules themselves and the question of dishonesty did not therefore arise.

53.6 In respect of the conveyance/transfer, this document was sent to HM Land Registry and was misleading on its face. It had been sent to the Land Registry according to a schedule prepared by the Respondent and was listed as item 22. On principle solicitors should not backdate documents and this transfer was backdated by one and a half years. This was a completely different matter from correcting the dates in the trust books which was also referred to in the 27 March 1997 file note and which related to the date when values had been agreed with a District Valuer. The Tribunal found that in backdating the transfer which was clearly destined for HM Land Registry and upon which it would rely, although there were no apparent adverse consequences, the Respondent had acted with lack of integrity and compromised his independence in serving the interests of his client RC. An allegation of dishonesty

was also made in respect of the transfer. The Tribunal considered the objective test in the case of Twinsectra and was satisfied that by the ordinary standards of reasonable and honest people what the Respondent had done would be considered dishonest but having heard the Respondent's oral evidence they were not satisfied to the required standard that he was aware that by those standards what he was doing would be considered dishonest; the Respondent was muddled rather than dishonest. Accordingly dishonesty was not found to have been proved in satisfaction of the subjective test and therefore dishonesty was not found proved the required standard on the evidence in respect of the transfer.

53.7 The Tribunal did not find allegation 1.4 proved to the required standard in respect of the contract but it found the underlying allegation regarding the transfer proved to the required standard along with the Rule breaches alleged relating to it. The allegation of dishonesty (1.5) was not found proved in respect of the contract or the transfer in respect of allegation 1.4.

54. **Allegation 1.6 - The Respondent acted recklessly.**

54.1 For the Applicant, Mr Williams relied on his oral above. It was also set out in the Rule 5 Statement that other than the letter from the Respondent to RC of 29 March 1996, there was no evidence of other retainers between the Respondent or RC or PT or any of the companies on whose behalf the Respondent appeared to have acted in various property transactions. In an affidavit sworn by the Respondent on 13 June 2012, the Respondent stated his understanding of the aims of the scheme. Whilst the Respondent may have been aware of the aims of the scheme, it was alleged that this was quite different to understanding how the scheme was supposed to work. The Rule 5 Statement went on to refer to the Respondent identifying the possible risks of the corporate structure in his file note of 28 April 1997, his file note of a telephone conversation on 16 May 1997 between himself and RW referring to insufficient experience or knowledge to judge the scheme; a file note of a further telephone call with RW on 20 May 1997 again referring to insufficient knowledge of the tax laws in general; a file note of the meeting on 5 June 1997 between RC, RW, PT, KR, CK and the Respondent which included references to the risks involved in terms of a great deal of trust being put in those who would be the shareholders of the three IoM companies and considerable wealth being put in the hands of people the trustees did not really know. The Applicant also relied on deeds of agreement for execution and various other documents being executed at the meeting which effectively wrested control of the properties from RC and the Respondent as they were neither directors nor shareholders of the three companies. The Applicant also relied on the Respondent having facilitated the transfer of the properties to RC where they had been specifically bequeathed to one or more of the child beneficiaries or had fallen into the residuary estate. The Applicant relied particularly on the file note of 5 June 1997 and quoted passages to illustrate the Respondent's awareness of the risks involved; the fact that he effectively did what was asked of him by RC even though he had equal responsibility as trustee; and his lack of a proper understanding of how the scheme was supposed to work. It was alleged that in acting as he did, he failed in his duties as a trustee mainly to ensure that the wishes of E and H as set out in the Wills were put into effect and that he failed to protect the interests of the beneficiaries. It was asserted that knowing of the risks involved he nevertheless went ahead and complied with the instructions of RC and PT and that in doing so he acted recklessly. His

awareness of his lack of control was alleged to be demonstrated by his letter to RC of 11 June 1998 in which he referred to his role as Protector of the company ICo but having no idea who were the signatories were on a deposit account and hence having no control or indeed knowledge of the movement of the company's funds. He also applied this comment to ACo. Reference was also made to a file note of a conversation with RW on 25 June 1998 which referred to a forthcoming meeting and trying to agree a strategy so that the two companies effectively remained under the Respondent's control. There were also references to issues about lack of clarity around controlling the funds in AL or other companies and also what would occur when PT died or if anything happened to RC. It was alleged that the Respondent continued to act for all parties in relation to the subsequent hive up to AL despite the fact that specific concerns had been raised that this would not give the trustees adequate control.

54.2 For the Respondent, Mr Manning submitted as to whether the Respondent was reckless applying the old adage of recklessness being utterly unconcerned regarding the consequences of one's action that was not the Respondent. It was not what he did or how he acted according to him and to RW. Mr Manning referred the Tribunal to his testimonials and his statement. In the latter he stated:

> "It is suggested by the Applicant I acted recklessly but I respectfully submit this is incorrect. I was entirely satisfied with [PT's] abilities to safeguard and protect the children's assets having been introduced to him via a trusted source and having formed my own opinion of his knowledge and ability. This was the very reason for him putting in place the Isle of Man companies by the names of [ACo] and [ICo] earmarked to follow the provisions of the 2 Wills. He was an English solicitor subject to the usual controls of the SRA. Demonstrated in the evidence adduced by the Applicant within the Rule 5 Statement are regular expressions of my concerns and efforts to protect the children's assets even though I was not in control and was not in a position to do more than influence the actions of [PT] as the scheme adviser and [RC] as the children's father. I believe I was successful in my efforts to the time when the children attained their majorities and were able to decide for themselves."

It was put to the Respondent that it was alleged that he had failed in his professional duty and been reckless in acting for all the various companies. He did not accept this. He stated that of the companies involved; three were no more than trustee companies as the assets went to ACo and ICo. The Respondent saw no conflict as the companies were under the control of PT and were part of the route he devised to get the assets to their destination. It was not in his nature to be reckless; he tried to be cautious in everything he did. He thought it was a good scheme to benefit RC and to the great advantage of him and the three children. He always thought that RC had the best interests of the children at heart. The Respondent did not think that he could have done more to protect the children's interests.

Determination of the Tribunal regarding Allegation 1.6

54.3 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant and for the Respondent. The Tribunal found that the evidence clearly showed that the Respondent was aware of the risks involved in RC's activities

regarding the estate property from the outset and thereafter at many stages in the transfers. It became clear at an early stage that RC wanted control. As early as 19 September 1988 BS, the partner dealing with the estates in the firm of solicitors for which the executor HC worked, advised the Respondent that RC wanted a global fund. BS warned the Respondent:

> "You are an Executor and will be a Trustee and will obviously be concerned for the future. No doubt you will be discussing."

In a file note dated 23 March 1995 the Respondent stated:

> "[RC] is keen to treat matters as a whole rather than as individual parts of a whole. He was reminded that the Trustees are responsible only to the Beneficiaries and in theory must account to the beneficiaries on attaining their 18th Birthdays. This will be shortly for [RM]."

In his letter to RC of 29 March 1996 the Respondent stated:

> "The effect of the first four transfers will be you are the owner of the whole of the issued Share Capital [in WLRL]"

In spite of his knowledge of the risks, the Respondent facilitated the transfer of the assets into RC's sole name. He completed the documentation for the transfer and thereafter the transfer of the assets to the various companies. The Respondent was unaware of who his clients were and he failed to advise the beneficiaries himself or to seek independent legal advice for them. He did however seek accountancy advice. He had no written retainers with clients but he recorded the risks in his attendance notes. The situation went from bad to worse to catastrophic. Once the assets were hived up to AL every vestige of control was lost and the position was hopeless. The Respondent researched and recorded the risks all the way along over the years but ploughed on regardless complying with the instructions of RC and PT. The Tribunal found allegation 1.6 proved on the evidence to the required standard.

Previous Disciplinary Matters

55. The Respondent had appeared before the Tribunal as the Third Respondent in case number 10021-2008 on 12 February 2009. At the conclusion of the case, the Tribunal ordered that the Respondent be reprimanded and pay the costs of and incidental to the application and enquiry fixed on the joint and several basis in the sum of £12,000. He and his fellow Respondents admitted all the allegations which were that they:

1. "Rewarded introducers of work, by the payment of commission or otherwise, contrary to Section 2(3) of the Solicitors Introduction and Referral Code 1990 ("SIRC")
2. Failed to carry out the required review of referral arrangements with an introducer of work, namely The Claims Doctor Ltd ("CDL") contrary to Section 2(10) of SIRC.
3. Failed to maintain a record of agreement(s) with CDL and My Claim, for the introduction of work, contrary to Section 2(9) of SIRC.

4. Failed to obtain an undertaking(s) from CDL and My Claim indicating that the introducer would comply with the terms of the Code contrary to Section 2A(2) of SIRC.
5. Failed to provide all relevant information to clients upon receipt of referrals, to include the amount payable for the referral contrary to Section 2A(3) of SIRC.
6. Failed to satisfy themselves that the introducer(s) had provided clients with all relevant information before the referral took place, and as to how the introducer(s) had acquired the client, contrary to Section 2A(4) of SIRC.
7. Withdrawn

The Tribunal hearing the application was concerned that the firm had breached the Code at a time when there was a ban on referral fees and the payments made by the firm to the three named companies amounted to referral fees. That Tribunal however felt it appropriate to apply a proportionate penalty bearing in mind that the firm had not allowed itself to be drawn into the kind of dealings with such companies which in other cases had caused damage to the profession's reputation.

Mitigation

56. For the Respondent, Mr Manning submitted that his previous appearance before the Tribunal had been of an entirely different nature with which the Tribunal agreed. The matters complained of in this application occurred almost 20 years ago. Nothing of a similar nature had ever come into the Respondent's office before or since. This was complete one-off and if such a matter came in again he would not take it on; he should say it was outside his ability. The Respondent had had partnership difficulties in his professional life. He was now was a sole practitioner. He would have liked to retire and wanted an orderly wind down of his firm. He had many wills and deeds on his shelves. He was continuing working during the week, until he could sell the firm or possibly merge it with another. He had been persuaded a short while ago to sell his house to retire elsewhere but he was now in the process of divorce and the financial provisions were awaiting the outcome of these proceedings. His wife had equity from the former matrimonial home and he was house sitting for a relative. He expected that part of his pension would be allocated to his wife and he would have to find a modest flat. Mr Manning referred the Tribunal to what he described as amazing references in respect of work that the Respondent had carried out. He also referred to the customer service survey for the firm; it spoke volumes. He did not think that RW had understated when he expressed his good opinion of the Respondent: "...you could not find a straighter or more honest person..." Mr Manning found the Respondent exactly as described. He was disappointed and ashamed at the Tribunal's finding. He was a straightforward person of integrity. He appreciated the Tribunal's duty to the profession and Mr Manning reminded the Tribunal that when W was asked who was to blame it was not the Respondent. W had no bitterness towards him. Mr Manning referred the Tribunal to the Respondent's Personal Financial Statement in respect of the claim for costs against him.

Sanction

57. The Tribunal had regard to its Guidance Note on Sanctions, to the mitigation offered for the Respondent and to the testimonials submitted. The Tribunal considered the seriousness of the misconduct. Considering culpability, the Tribunal felt that the

Respondent's motivation for the misconduct was low. What he had done was not planned or spontaneous. He had acted in breach of a position of trust and the extent of breach was the way he failed the three children beneficiaries. They did not even know that he was a trustee and he did not look after their interests at all; he failed to act as the guardian of the assets intended for them by the testators. All the way through he fully appreciated that independent advice was absolutely essential and that he could not give it. His awareness which was referred to in his file notes even extended in a file note dated 12 March 1997, to the need for Mrs PC to have independent advice in respect of a Deed of Consent she was being asked to sign for to satisfy a bank. The note referred to the possibility that she would feel happier taking independent advice as the Respondent was dealing with a number of matters for RC. He failed to ensure that independent advice was obtained for the beneficiaries at any point. Nor while minors were they competent to give instructions even if they received independent advice. Furthermore the Respondent failed to stand down and resign as a trustee when it became clear that there was a conflict between the four beneficiaries, the children on the one hand and their father. He purported to delegate authority to PT to act as trustee and when the assets all went into AL he effectively regarded himself as no longer a trustee at all. The Respondent should have had direct control and taken responsibility for the circumstances. He was one of the executors and trustees and the only legally qualified trustee one at the time when the assets were transferred to RC because on 17 January 1996, the only other legal trustee non solicitor Mr HC had dropped out. The Respondent had a lesser amount of contact with the beneficiaries than his fellow trustee RW who on the evidence tried to talk to them about the issues. The Respondent was a very experienced solicitor; having been admitted in 1972 and a partner since 1974. According to the Rule 5 Statement the firm's website showed that the Respondent held himself out as a specialist in certain fields including wills, trusts, administering estates and powers of attorney with knowledge of realty work for both commercial and domestic clients. He had no experience of settlements involving overseas trusts or complex schemes such as that designed by PT and yet he became embroiled in it. As to the harm which the Respondent's misconduct had caused, the three child beneficiaries received nothing save cash for their education because the Respondent opened the door to their assets passing out of their reach by deferring to the other beneficiary their father. What had happened had a devastating effect on the reputation of the legal profession where a solicitor had allowed a situation to develop which resulted in three beneficiaries receiving almost nothing and where the trustees came to have no idea of what the assets of the trust were and where the income was. The Respondent relied on RC to act in the best interests of the children. As to whether what happened was reasonably foreseeable, warning bells had been sounded in 1988 about the risk by the solicitor acting in the estate administration. The Respondent himself wrote about it in his retainer letter of 29 March 1996 to RC - and from then on it appeared in the attendance notes. There were aggravating factors in this case. The misconduct was repeated over many years of trusteeship. The Respondent had had no less than three opportunities, the trigger points described by Mr Williams when he could have taken action including giving up the trusteeship; the transfer of all the assets to RC; their passage to the three IoM companies and then the hiving up to AL and in each case he abdicated all responsibility. His meticulous attendance notes showed that he knew of the risk and deliberately went ahead. Once the assets had all been placed in AL it was his view that it was no longer his problem and that the beneficiaries were adults. The Tribunal was particularly concerned at the way the Respondent had tried to pass responsibility for obtaining independent advice back to

others. While the Respondent did not take advantage of vulnerable people the beneficiaries were minors initially and the Respondent failed to protect them. The attendance notes showed that the Respondent knew or ought reasonably to have known what the consequences could be and that he was in material breach of his obligations to protect the public and the reputation of the legal profession. It was clear that he knew what he needed to do to protect the interests of his beneficiaries; he was given warnings and wrote notes about it but failed to take any meaningful action. The Tribunal attached no weight to his previous appearance before the Tribunal; although arguably it again showed that he was doing what he was told by other people. As to possible mitigating factors, the Tribunal was concerned to note that the Respondent showed no insight; he did not ask himself how he let events happen but blamed everyone else including the beneficiaries for agreeing to the transfer of the assets to AL when it was clear that they did not understand the information that they had received from PT. The Tribunal had considered his testimonials. He had shown a lack of integrity by backdating a transfer and submitting it to the Land Registry but the Tribunal accepted that this was a discrete allegation and lack of integrity was only found proved in respect of this particular incident in this estate. The Tribunal also accepted that the Respondent was clearly out of his depth in this particular case. PT's scheme was complex but losing control of the assets to RC was a simple act of misconduct; a solicitor did not give control of the assets to one of the beneficiaries; this was a basic principle about conflict of interest. As to other mitigation, Mr Manning had said that the Respondent took advice in reaching his goals but unfortunately the goal in this case was not a legitimate one. He believed in RC and that belief may have been justified regarding RC's dedication to the best interests of his family but the duty of trustee remained and the Respondent had no one to blame for his predicament but himself. The Tribunal had also found the Respondent to be reckless and overall found that the Respondent's misconduct had been very serious although it related only to one estate in all his years of practice. This was a cataclysm which the Respondent had brought upon himself. The Tribunal considered that what had happened was far too serious for a reprimand and considered whether a fine, suspension or strike off should be imposed. The Respondent said he was winding down his practice in an orderly fashion and the Tribunal considered whether he should be allowed to continue to do that but the Tribunal was particularly mindful of what public confidence in the legal profession demanded and it would certainly think that what had happened merited more than fine. The more serious penalty of suspension would not be proportionate because of the extent to which the Respondent knowingly allowed risks to be run and those risks eventuated in the worst possible way. This was a major breach of trust. For the reassurance of the public the Tribunal considered that it would be essential and proportionate for the Respondent to be struck off the Roll.

Costs

58. For the Applicant, Mr Williams referred the Tribunal to an updated costs schedule in the sum of £72,629.47. There were no forensic investigation fees because the Applicant had commissioned his instructing solicitors to conduct the investigation. They had looked at many boxes of files of papers to distil the relevant documents to place before the Tribunal. The costs schedule set out the rates and details for the work done. No financial information had been provided by the Respondent as directed by the Tribunal at the Case Management Hearing. Mr Havard had written the usual letter

to the Respondent pointing out the requirements of The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) in terms of providing evidence of his means. Mr Manning indicated that the Respondent did not reply because he had money from which costs could be met. Mr Williams applied for costs to be immediately enforceable in the amount sought subject to summary assessment by the Tribunal. Mr Williams accepted that the Respondent had a degree of success in respect of the dishonesty allegation but submitted that it was a discrete matter that had not taken a lot of time and he had brought on his own head. The Tribunal had found lack of integrity. For the Respondent Mr Manning submitted that he made no challenge to the charging rates but he did challenge the amount of time spent. He would have undertaken complex fraud cases for less. He submitted that to have leading counsel was not a necessity in this Tribunal for a fairly large but not necessarily complicated case. He particularly challenged the amount of time spent on preparing the Rule 5 Statement at £10,000, over 60 hours. The Tribunal considered the case was reasonably brought. This was a complex case and a very large amount of work was involved and the time spent had been considerable. The Tribunal did not criticise counsel's fees but the remaining £50,000 was a very large amount for a three day case. The Tribunal determined that it would not be appropriate to make a deduction in respect of the finding that dishonesty was not proved in respect of allegation 1.4 as the underlying facts had been proved and it had been reasonable to bring the matter of the backdated contract here as there was another backdated document and in respect of which the underlying allegation and rule breaches had been found proved. The Tribunal was mindful that by striking off the Respondent it was removing his ability to practise but he was in any event winding down the firm and so the Tribunal considered that to be an irrelevant consideration. The Respondent also accepted that he had money in the bank from which to pay costs. The Tribunal assessed costs in the sum of £65,000.

Statement of Full Order

59. The Tribunal Orders that the Respondent, Timothy John Wilkinson, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £65,000.00.

Dated this 11th day of February 2016
On behalf of the Tribunal

J. Devonish
Chairman