

IN THE MATTER OF GEORGE WILLIAM JOSEPH BRIDGE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

M. A H Isaacs (in the chair)
Mr R J C Potter
Mr M G Taylor CBE

Date of Hearing: 11th June 2002

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool on 28th August 2001 that George William Joseph Bridge of Margareta Terrace, London, SW3 might be required to answer the allegations contained in the Statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 4th February 2002 the Applicant made a Supplementary Statement containing further allegations. The allegations set out below are those contained in the original and supplementary statements. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

- (i) that he failed to disclose material information to mortgagee clients;
- (ii) that he submitted a report on title which was false and/or inaccurate;
- (iii) that he failed to act in the best interests of his lender client in breach of Rule 1 of the Solicitors' Practice Rules 1990;
- (iv) that he accepted instructions to act and or continued to act as solicitor for both lender and borrower when there was a conflict or in the alternative a significant risk of a conflict of interest, between those two clients.

- (v) the Joint Tribunal determined that the Respondent should pay Counsel [Miss J] the entire outstanding balance of her fees, £1,000 plus VAT (1,175). The Respondent was sent a copy of the decision on 6th February 2001.
- (vi) by letter dated 29th March 2001 the General Council of the Bar wrote to the OSS, indicating that Miss J had not received payment and requested that the matter be taken up with the Respondent.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 11th June when Jonathan Richard Goodwin appeared as the Applicant and the Respondent was represented by Craig Barlow of Counsel.

The evidence before the Tribunal included the admissions of the Respondent, his oral evidence and exhibits "GWJB1", the final page of the Respondent's conveyancing file, and "GWJB2", a copy of the conditions to which the Respondent's Practising Certificate was subject.

Preliminary Matter

- a) Before the commencement of the substantive hearing a preliminary application was made on behalf of the Respondent. The Respondent's Counsel had prepared a Skeleton Argument in respect of the allegations relating to the conveyancing transaction and in respect of the allegations relating to non-payment of Counsel's fees. The Skeleton Argument summarised the Respondent's argument as follows.
- b) The Respondent sought disclosure of ten categories of documents against the Applicant. Those documents were:-
 - (i) written evidence of the Solicitors Indemnity Fund Limited (SIF) practice and policies with regard to the interview of insured solicitors with a view to a refusal of indemnity because of the insured's fraud or dishonesty;
 - (ii) the status of such interview and the use and purpose of the interview and any transcript thereof;
 - (iii) SIF's practice and policies with regard to transmission of SIF's documents where indemnity was to be refused,
 - (iv) any change in the relationship between SIF and The Law Society affecting SIF's ability to transmit its documents to The Law Society or the lawfulness of so doing;
 - (v) the purpose and scope of enquiry carried out by SIF in connection with the Respondent's application for an indemnity;
 - (vi) correspondence or communications between SIF and The Law Society in connection with the Respondent;
 - (vii) representations made to the Respondent by SIF;
 - (viii) SIF and The Law Society's applications for registration under the Data Protection Act;
 - (ix) SIF's instructions to Mr Hughes of Queen's Counsel relating to his interview of the Respondent;
 - (x) all letters, correspondence or records of communications passing between SIF, The Law Society and the shorthand writers who prepared written transcripts of the interview with Mr Hughes;
 - (xi) all documents relevant to the preliminary issues before the Tribunal in this case.

- c) The Respondent had been interviewed by Mr Hughes of Queen's Counsel about a conveyancing transaction where a claim had been made against the Respondent in respect of which he sought indemnity from SIF. SIF arranged the interview with Leading Counsel ostensibly to ascertain whether or not the Respondent had behaved dishonestly. The Tribunal was invited to rule that the transcript of the tape recorded interview was not admissible in evidence before the Tribunal.
- d) There were two transcripts one of which related to a conveyancing transaction which was not before the Tribunal and the other related to the conveyancing transaction upon which allegations (i) to (iv) were founded.
- e) It was the Respondent's case that the transcripts were inaccurate and contained material omissions. The Tribunal was invited to consider whether the interviews were conducted fairly and whether representations were made to the Respondent by SIF as to the purpose of the interview and the use that would be made of the transcripts.
- f) The Tribunal was further invited to consider the overall fairness of the interview procedure and proceedings.
- g) It was submitted that data protection issues arose.
- h) When considering admissibility of the SIF interview transcripts it was the Respondent's case that the transcripts amounted to hearsay and were inadmissible. They were prejudicial to the Respondent and that prejudice outweighed their probative value. The transcripts had been unfairly obtained and were in breach of Section 67(9) of the Police and Criminal Evidence Act 1984 and/or the Data Protection Act. The admission of the transcripts was likely to result in the Tribunal's hearing being unfair.
- i) The Tribunal was invited to consider human rights law and particularly that the admission of the transcripts would cause a serious imbalance in the equality of arms between The Law Society and the Respondent if they were admitted into evidence. Because the transcripts had been unfairly obtained then the admission of them into evidence would result in a breach of the "fair trial" guarantee under Article 6 of the European Convention on Human Rights.
- j) The Respondent was not cautioned or told of the use to which SIF might put the transcripts.
- k) The Tribunal was reminded that it had an inherent power to prevent an abuse of its own process. There was a potential for the Tribunal hearing to amount to an abuse of process because the proceedings were founded on the SIF interview transcripts.
- l) The Applicant responded by pointing out that the Respondent's concerns had not been ventilated at an earlier directions hearing before the Tribunal. The fact that there had been a change in the procedures adopted by The Law Society and SIF allowing the disclosure by SIF of matters of concern to The Law Society had always been in the public domain. It could not be said that the Respondent had been taken by surprise.

- m) With regard to the ten categories of documents required to be disclosed by the Respondent, the Applicant had made enquiry of the solicitors representing SIF and had notified the result of those enquiries to the Respondent. The categories of documents requested were in fact rather general and it was always open to the Respondent to make direct enquiry of SIF himself. It transpired that the Respondent had made enquiry of SIF in April of 2002 but he had not received a substantive reply.
- n) The Respondent admitted the allegations contained in the Rule 4 Statement. The sole issue before the Tribunal was whether or not the Respondent had behaved dishonestly.
- o) At the time of the SIF interview the Respondent's conveyancing file was not available. It had been made available shortly before the hearing. The reality was that the Applicant's case was not dependent on the contents of the SIF's transcripts.

The Tribunal's Decision

- p) The Tribunal ruled that the SIF transcripts in this particular case should not be admitted into evidence. The reasons for this ruling were that the Applicant was not in a position formally to prove the transcripts. There was a dispute about the accuracy of the transcripts. Other better evidence was available - particularly the Respondent's relevant conveyancing file had become available and copies had been placed before the Tribunal. The Tribunal had some doubts about the fairness of the way in which the SIF interview had been conducted as no specific warning about the use to which the transcripts might be put had been given to the Respondent. The Respondent had not unreasonably believed that the interview was conducted for the purpose of resolving matters relating to his professional indemnity position. The Tribunal further expressed concern as to the voluntary nature of the interview. Although it was quite right that on the face of it the Respondent had voluntarily attended the interview, he was dealing with his professional indemnity insurer and the insurance contract was one requiring the utmost good faith which would require him to supply information to his insurers. His failure to supply requested information would, of course, be prejudicial to his claim under the policy and the question of the Respondent having attended the interview of his own volition had to be qualified by that particular factor.
- q) As the Tribunal had ruled that the two transcripts of the SIF Leading Counsel's interviews with the Respondent should not be admitted into evidence the Tribunal made no ruling as to the disclosure of the ten categories of documents to which the Respondent had made reference.

The matter proceeded to a hearing at the conclusion of which the Tribunal ordered that the Respondent George William Joseph Bridge of Margarett Terrace, London, SW3, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £11,000 inclusive.

The facts are set out in paragraphs 1 to 43 hereunder: -

1. The Respondent, born on 16th July 1935, was admitted as a solicitor in July 1969.
2. At all material times the Respondent carried on practice under the style of G W Bridge & Co from offices at 13 Radnor Walk, London, SW3 4BP.

3. At the time of the hearing the Respondent was a consultant to a firm of solicitors in Kensington.

The conveyancing matter

4. The Respondent acted for Mr A, Mr G and Leeds Permanent Building Society (which later merged with Halifax Building Society) in a conveyancing transaction.
5. On 23rd May 1991 Mr G as the potential purchaser of a flat for £225,000 applied to Leeds Permanent Building Society for an advance of £175,000 to be secured by way of legal charge over a leasehold flat in Cabbell Street, London, NW1 (hereinafter referred to as "the flat").
6. On 27th August 1991 Halifax Building Society made an offer of advance to Mr G of £175,530.
7. On 27th August 1991 Halifax Building Society instructed the Respondent to act on its behalf in connection with the proposed advance.
8. Bristol & West Building Society agreed to sell the flat as mortgagee in possession to Mr A at the price of £170,000. It appeared that simultaneously, Mr A agreed to sell the flat to Mr G at the price of £225,000, a "back to back" sale.
9. Contracts were exchanged and the completion date was agreed as "on or before 27th September 1991."
10. The lease of the flat contained a provision that a licence to assign was required from the lessor and an incoming lessee was to enter into a deed of covenant with the lessor.
11. The Respondent completed a report on title on 4th September 1991. He confirmed that he had investigated title to the property and the title was good and readily marketable. The Respondent made no further comment or representation concerning any other matter.
12. The Respondent did not inform his lender client of material information which was relevant to the lender client's decision to make the advance. In particular he failed to advise his lender client of the following matters:-
 - (a) that the Respondent acted for Mr A and Mr G;
 - (b) that Mr G was buying in a "back to back" transaction at a considerable uplift of price;
 - (c) no money other than the mortgage advance was to be handled by the Respondent. The reality was that the Respondent paid the sum of £170,000 directly to Bristol & West (the head vendor) and utilised the balance of the advance monies in payment of the borrower's costs and disbursements. He also paid the accounts of two public houses on the instructions of Mr A and Mr G.
13. In reliance upon the Respondent's report on title the Halifax advanced the sum of £175,000 (being the amount of the advance of £175,530 less deductions) to the Respondent.

14. On or about 27th September 1991 the advance monies were paid out by the Respondent as follows:-
 - a) £170,000 was paid to Bristol & West, the head vendor;
 - b) £179.46 was paid out as apportionments of ground rent and service charge;
 - c) £957.10 was paid out to the Respondent in respect of his fees; and
 - d) £3,228 was paid to settle two public house accounts.
15. The deed of transfer from Bristol & West Building Society to Mr A expressed the consideration to be in the sum of £170,000. The transfer from Mr A to Mr G also showed the purchase price to be £170,000. Both transfers were dated 27th December 1991, although completion monies were despatched by the Respondent on 27th September. In evidence the Respondent said that he might have inserted the December date to avoid a stamp duty penalty. He accepted that the insertion of the consideration figure of £170,000 in the transfer to Mr G had been wrong. He had had "his arm twisted" by Mr G to insert the incorrect figure. He said that £225,000 had been the true price paid by Mr G.
16. Mr G already owned another flat in the block which he had bought with the assistance of a building society mortgage advance. The Respondent in evidence said that Mr G had fallen into financial difficulties but at the time of the transaction relating to the flat Mr G had assured the Respondent that he had resolved his difficulties.
17. The Respondent did not complete the necessary Licences to Assign until March 1992. Registration of Mr G's title to the flat and the registration of the Halifax's mortgage was not completed until a date after that.
18. Mr A gave his address as "care of" the estate agent who negotiated the sale to Mr G. Documents requiring Mr A's signature were sent by the Respondent to Mr G. It was the Respondent's evidence that Mr A and Mr G were "buddies". The Respondent said he had met Mr A.
19. In due course Mr G defaulted in his obligations under the mortgage. Halifax took steps to enforce its security and in due course the Halifax took possession of the property. On 9th October 1991 Halifax sold the property for £146,000. Halifax Building Society looked to the Respondent to indemnify it against the loss it had sustained.

Counsel's fees –Miss J

20. By letter dated 7th December 1999 The General Council of the Bar made complaint to the OSS in relation to the non payment of fees due to Counsel, Ms Julia Jarzabowski. Counsel had been instructed by the Respondent and fee notes had been rendered.
21. The Respondent had challenged Counsel's fees. Both Counsel and the Respondent agreed that the dispute should be placed before the Joint Tribunal for determination. The Respondent was represented by Mr Arnold Rosen of Arnold Rosen & Co who by letter dated 3rd February 2000 wrote to the OSS enclosing the Respondent's written consent to be bound by the decision of the Joint Tribunal. The agreement to be bound, signed by the Respondent, dated 25th January was in the following terms:-

"I hereby agree to the Joint Tribunal procedure and to be bound by the decision of the Joint Tribunal by the standing orders and time scales held therein."

22. By letter dated 5th February 2001 the General Council of the Bar forwarded a copy of the Award to the OSS, confirming that a copy of the decision had been passed to the Respondent.
23. The Joint Tribunal determined that the Respondent should pay Counsel the entire outstanding balance of her fees of say, £1,000 plus VAT (£1,175). The Respondent was sent a copy of the decision on 6th February 2001.
24. By letter dated 29th March 2001 the General Council of the Bar wrote to the OSS indicating that Miss Jarzabowski had not received payment and requested that the matter be taken up with the Respondent.
25. A representative of the OSS telephoned the Respondent on 30th March 2001 to ascertain why payment had not been made in compliance with the Award. The Respondent indicated that he had passed the decision to Arnold Rosen & Co who acted on his behalf and indicated that they were contesting the Award. The Respondent was informed that payment should have been made within 14 days in compliance with the Joint Tribunal's standing order.
26. By letter dated 10th April 2001 Arnold Rosen & Co wrote to the OSS suggesting that a letter from the Respondent dated 24th September 1999 was a contractual document. It enclosed a cheque in the sum of £500 plus VAT and which was expressed to be "in full and final settlement" with the consequence that it did not permit, once the cheque had been cashed, a finding that Counsel had not accepted the sum. Mr Rosen argued that the Respondent had been advised that the Joint Tribunal had misconstrued its function by failing to make any finding of fact in respect of the letter dated 24th September 1999. Mr Rosen requested reconsideration by the Joint Tribunal.
27. A copy of Mr Rosen's letter dated 10th April 2001 was sent to Mr Michael Douglas QC and Mr Richard Hegarty who comprised the Joint Tribunal and who had determined the Award, for their consideration.
28. By letter dated 18th May 2001 Mr Hegarty responded to the OSS confirming that the letter dated 24th September 1999 was included in the relevant papers and, indeed, reference to it was made in paragraph 2 of the Award. Mr Hegarty pointed out that the whole basis of the relationship between solicitors and Counsel is not contractual and that is one of the reasons why the Joint Tribunal system was created. He indicated that the Respondent accepted the jurisdiction of the Joint Tribunal and in any event by letter dated 10th September 1999 Counsel's clerk had written to Bridge & Co making it clear that she did not accept the sum of £500 plus VAT as a full and final payment, with the consequence that it was impossible to suggest that the claim for full payment had been compromised. Mr Hegarty confirmed that he had spoken to Mr Douglas QC over the telephone who concurred with the contents of his letter.

29. By letter dated 1st June 2001 the OSS wrote to the Respondent enclosing a copy of Mr Hegarty's letter informing him that payment to Counsel should be made within 14 days.
30. The Respondent did not make payment to Counsel in compliance with the determination of the Joint Tribunal or the request from the OSS.
31. By letter dated 24th October 2001 the OSS wrote to the Respondent seeking his explanation for non payment.
32. By letter dated 1st November 2001 the Respondent provided a response to the OSS in which he suggested that the Joint Tribunal were only concerned with the contents of the legal case upon which Counsel had been instructed and that they failed to address the fundamental point with regard to costs, that was to say, that payment had been made in full and final settlement of her claim. He asserted that the Award was invalid.
33. The Respondent confirmed that he had not paid the full amount set out in the Award of the Joint Tribunal. He had not done so because the Award was defective.

Counsels' fees – Mr RT, Mr R and Mr K

34. By letter dated 7th December 1999 the General Council of the Bar made complaint to the OSS in relation to non payment of Counsels' fees. The Respondent had instructed Mr R Tager QC, Mr Edward Rowntree and Mr P Kremen in the same client matter for which fee notes were duly rendered. The Respondent challenged Counsel's fees and it was suggested that one way to resolve the matter would be to place the matter before a Joint Tribunal. By the letter dated 24th December 1999 the Respondent agreed to be bound by the Joint Tribunal procedure and to be bound by the decision of the Joint Tribunal, by the standing orders and time scales held therein.
35. The Respondent accepted that he had not paid Mr Rowntree and he should have done. He had made arrangements to make such payment.
36. By letter dated 16th May 2001 Arnold Rosen & Co invited the Joint Tribunal to dismiss Counsel's claims for want of prosecution and/or by reason of the Tribunal's own failure to comply with standing order (5).
37. By letter dated 30th May 2001 Mr Michael Douglas QC, on behalf of the Joint Tribunal forwarded a copy of the Award to the OSS. The Joint Tribunal indicated that there was no question of the claimants being responsible for the length and time it had taken for the Award to be made and concluded that there was nothing raised in Mr Rosen's letter that would make any difference to the Award that they had made. The Joint Tribunal determined as follows:-
 - a) that the Respondent should pay to Mr Tager QC reduced fees in the sum of £12,284.04 plus VAT (£14,433.75).
 - b) that the Respondent was not obliged to pay any further sum towards Mr Kremen's fees;
 - c) that the Respondent should pay to Mr Rowntree the entire amount of his outstanding fee note, namely £250 plus VAT (£293.75).

38. By letter dated 4th June 2001 the OSS wrote to Mr Bridge enclosing a copy of the Award of the Joint Tribunal and indicating that payment was due within 14 days. The letter was returned by the Post Office marked "address incomplete" with a consequence that a copy of the Award was sent to the Respondent on 3rd July 2001.
39. By letter dated 3rd July 2001 the General Council of the Bar wrote to the OSS indicating that none of the three Counsel had received payment of the fees awarded by the Joint Tribunal. The letter confirmed that fee notes were sent on 7th June in respect of Mr E Rowntree and Mr R Tager QC, Mr Tager's fee note being for the reduced amount.
40. By letter dated 15th August 2001 the OSS wrote to the Respondent seeking his explanation for his failure to comply with Award of the Joint Tribunal.
41. By letter dated 28th August 2001 the Respondent wrote to the OSS indicating that he had written to Mr Tager QC personally. He enclosed a copy of his letter to Mr Tager. In that letter the Respondent pointed out and that the Joint Tribunal had denied him an oral hearing; he was almost retired and could not afford to pay, and also setting out a number of areas in which he was dissatisfied. He concluded by saying "Just think about this and confirm to me that we can call it a day."
42. By letter dated 1st October 2001 the General Council of the Bar wrote to the OSS enclosing a copy of the Respondent's letter addressed to Mr Tager and confirming that Mr Tager had not replied to it. The fees determined by the Joint Tribunal remained outstanding.
43. It was the Respondent's position that he had not paid Mr Tager because his complaint to the General Council of the Bar remained outstanding.

The Submissions of the Applicant

44. With regard to the conveyancing transaction, the Respondent largely accepted the facts and, indeed, he had given evidence as to what had happened in the conveyancing transaction to the Tribunal. The Respondent himself accepted that his conduct fell below that which was required. The Respondent had failed to notify his lender client that its borrower, Mr G, was purchasing the flat from Mr A in a "back to back" transaction.
45. The transaction took place after the publication by The Law Society of its guidance on mortgage fraud, issued in December 1990 and the "Green Card" issued by The Law Society in March 1991. The Green Card gave specific warnings about unusual instructions, misrepresentation of the purchase price and direct payments between the parties.
46. The Respondent did not inform his lender client that the borrower was apparently making no personal contribution to the purchase at all and had instructed the Respondent to pay the purchase monies (apparently in the first of the back to back transactions) directly to the vendor, Bristol & West Building Society. He had been instructed to utilise the balance of the mortgage advance to discharge the Respondent's own costs and disbursements and to make other payments.

47. The Respondent had failed to identify the fact that he was acting in a situation where there was a conflict of interest between his clients. He had not notified the lender of this. He should have notified the lender that in the circumstances he could not longer properly act on his behalf.
48. The Respondent had failed to advise his lender client that there were facts and matters known to him which cast doubt on the bone fides of the transaction and which suggested that the borrower, Mr G, had made misrepresentations to the building society which might well have influenced its decision to lend.
49. Dishonesty was not an essential part of the case against the Respondent. It was open to the Tribunal to make a finding that the allegations made against the Respondent had been substantiated. It was, however, open to the Tribunal to make a finding that the Respondent had behaved dishonestly.
50. With regard to the non-payment of Counsel's fees, the Respondent accepted the jurisdiction of the Joint Tribunal. In accepting the Joint Tribunal's standing orders he accepted that he would comply with the Award of the Joint Tribunal. In particular at paragraph 10 payment of any sum found to be due was to be paid within 14 days of the date of notification of any determination by the Joint Tribunal.
51. It was inappropriate for the Respondent to seek to explain his non-compliance with the Award of the Joint Tribunal on the basis that such Award was not valid and binding. The Respondent had accepted the Joint Tribunal's jurisdiction.
52. With regard to the fees owing to Mr Tager QC the fact that the Respondent had made a complaint to The General Council of the Bar in relation to Mr Tager was not the issue. The Respondent had agreed to be bound by the decision of the Joint Tribunal and the standing orders contained therein. The Joint Tribunal had determined that Mr Tager's fees should be reduced.
53. The Joint Tribunal had dealt with issues raised by the Respondent and having had regard to the arguments advanced by him had rejected them.
54. The Respondent had belatedly properly admitted the allegation in so far as Mr Rowntree's fees were concerned.
55. With regard to the other outstanding fees the Respondent was under an obligation to comply with the Award of the Joint Tribunal whose jurisdiction he voluntarily accepted. He had failed to comply and his assertion that the Award was invalid was hopelessly misconceived.

The Submissions of the Respondent

The conveyancing transaction

56. The Respondent accepted that his handling of the conveyancing transaction had not met with the high standards required of members of the solicitors' profession. The Respondent had made some mistakes but he vigorously and vehemently denied that he had been dishonest. The Tribunal was invited to consider the test for dishonesty

set out in the case of *Twinsectra Ltd v Yardley and Others* in the House of Lords (21st March 2002). It was pointed out in that case that Mr Leach in receiving money and paying it to Mr Yardley without concerning himself about its application could be said to have acted dishonestly. The Judge found that in so doing he was "misguided" but not dishonest. He had "shut his eyes" to some of the problems but thought he held the monies to the order of Mr Yardley without restriction. The Court of Appeal reversed the finding of the Judge and held that Mr Leach had been dishonest. The House of Lords had reinstated the Judge's finding.

57. Reference was made in the *Twinsectra* case to the principles laid down by the Privy Council in *Royal Brunei Airlines v Tan* (1995) and it was said that those principles required more than knowledge of the facts which make the conduct wrongful. They require a dishonest state of mind that is to say consciousness that one is transgressing ordinary standards of honest behaviour. In *Twinsectra* Lord Hutton said:-

"Whilst in discussing the term "dishonesty" the courts often draw a distinction between subjective dishonesty and objective dishonesty, there are three possible standards which can be applied to determine whether a person has acted dishonestly. There is a purely subjective standard, whereby a person is only regarded as dishonest if he transgresses his own standard of honesty, even if that standard is contrary to that of reasonable and honest people. This has been termed the "Robin Hood test" and has been rejected by the courts. As Sir Christopher Slade stated in *Walker v Stones* [2000] *Lloyds Rep* PN 864 para 164:-

"A person may in some cases act dishonestly, according to the ordinary use of language, even though he genuinely believes that his action is morally justified. The penniless thief, for example, who picks the pocket of the multi-millionaire is dishonest even though he genuinely considers that theft is morally justified as a fair redistribution of wealth and that he is not therefore being dishonest."

Secondly, there is a purely objective standard whereby a person acts dishonestly if his conduct is dishonest by the ordinary standards of reasonable and honest people, even if he does not realise this. Thirdly, there is a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. I will term this "the combined test."

58. The Tribunal was also invited to consider the view taken by the Court of Appeal in *Mortgage Express Limited v Newman & Co* in which it was said that the Judge had considered that Mrs Newman had not consciously suspected a mortgage fraud. She had deliberately refrained from making enquiries and giving advice which an ordinary honest and competent solicitor would have made and given in all the circumstances and that she had no excuse for not doing so other than the fact that she had taken a highly restricted and blinkered view of the duties that she owed to her clients. The Judge considered that the explanation for this behaviour was to be found in what she had been told by an insurance and mortgage broker, Mr Baruch, at the outset of the

whole transaction which was that a particular client was not the kind of client who required to be advised of the matters of which a purchaser would normally be advised. The Judge found that the solicitor had not been dishonest. He had said:-

"Her fault lay in her grossly defective appreciation of the nature of the duties she owed to Mortgage Express and a determination at the outset not to concern herself with any matters which were not strictly within the tunnel of her vision. If she honestly believed that it was proper for her to take such a restricted view of her duties and did not in fact come to suspect that a mortgage fraud was being committed then in my judgment however gross the negligence she was not guilty of a dishonest or fraudulent omission within the meaning of Rule 14(?). I have concluded that unreasonable as it was for her to hold it, the view that she held was the very restricted ambit of her duties to Mortgage Express was honestly held....my conclusion is that her whole approach to this problem was from the outset both naive and well below the standards which should be expected of her profession, but it was not dishonest."

59. The climate in which conveyancing transactions were carried out in the present day was very different from the climate in which the Respondent had conduct in 1991. The Respondent in evidence had said that he had not been aware of The Law Society's guidance relating to the possibility of mortgage fraud taking place and he had not been guilty of conscious impropriety.

Non payment of counsels' fees

60. With regard to the allegations relating to Counsel's fees, the Respondent denied the validity of the Award made by the Joint Tribunal. The Award was not valid and binding and the Award was not communicated to the Respondent until 5th February 2001. The Respondent had accepted the jurisdiction of the Joint Tribunal but that jurisdiction had not been validly exercised and the purported Award was invalid.
61. The Award was defective on its face. The Joint Tribunal had failed to address the issue of the contestation before it. The Respondent's case was that he had paid £500 plus VAT to Miss Jarzabowski in full and final satisfaction. The Joint Tribunal had failed to address or deal with that issue in their reasons at all. There simply had been no adjudication on whether the Respondent's payment of £500 plus VAT discharged his liability.
62. The Respondent was entitled to written reasons why he won or lost on the main points of contestation. No reasons had been provided.
63. It was reasonable of the Respondent to refuse to comply with a purported adjudication which did not address the main plank of his argument.
64. The Respondent did not accept the ipso facto reasoning advanced by Mr Hegarty's letter of 18th May 2001. It did not matter whether the source of the obligation to pay was contractual. What mattered was whether that obligation had been properly extinguished.

65. The argument was advanced that the obligation to pay was extinguished by contract. Miss Jarzabowski's letter of 10th September 1999 rejected the Respondent's previous offer in a letter of 29th July 1999 but he made a further offer in his letter of 29th September 1999 and enclosed the cheque for £500 plus VAT. That subsequent offer was capable of acceptance and it was in fact accepted by the encashment of the cheque. There had been a failure to reject that offer.
66. The Respondent accepted that he had not complied with the Joint Tribunal's Award made in respect of Miss Jarzabowski's fees but he was not guilty of conduct unbecoming a solicitor. Under the circumstances he reasonably was refusing to pay.
67. With regard to fees owing to Mr Tager QC the Respondent did not accept that fee notes had been duly rendered. The fee note for Mr Tager QC was not due to be paid in the amount specified (as the Joint Tribunal found) or at all.
68. The Respondent accepted that he had not complied with the Award made by the Joint Tribunal. In the submission of the Respondent it was material that the Joint Tribunal made findings in the Respondent's failure that were adverse to Mr Tager QC and reduced the level of fees.
69. The Respondent justified his refusal to pay the fees awarded on the basis that he had lodged a complaint before The General Council of the Bar in relation to the matter and that the complaint was being considered by The Bar Council. It had passed the preliminary stage namely that Mr Tager QC was being called upon by the Commission to answer the complaint. In the respectful submission of the Respondent in view of the pending complaint against Mr Tager QC he was reasonably justified in failing to comply with the Award.
70. The Respondent admitted that he had not complied with the Award relating to the fees of Mr Rowntree. The Award was not communicated to the Respondent until 3rd July 2001 however he had not paid that Award of £250 plus VAT when he ought to have done so. The Respondent made arrangements to pay Mr Rowntree. The Respondent had mentally wrapped up Mr Rowntree's fees in the dispute with Mr Tager QC. The Respondent accepted that he had been wrong and he apologised to the Tribunal, Mr Rowntree and to The Law Society in that regard.

The Findings of the Tribunal

71. The Tribunal found all of the allegations to have been substantiated. The Tribunal found that in inserting the consideration of £170,000 in the transfer from Mr A to Mr G when the real purchase price was £225,000 he had acted with conscious impropriety and the Tribunal concluded that his actions had been dishonest.

Previous Findings

72. In 1970 the Disciplinary Committee of The Law Society (the predecessor of the Tribunal) had struck off the Respondent following his conviction for certain offences and sentence of imprisonment imposed on him. In 1976 the Respondent had applied for restoration to the Roll of Solicitors and the Tribunal, with some misgivings, decided to grant the application.

In April 1997 the Tribunal found substantiated an allegation that the Respondent had been guilty of conduct unbefitting a solicitor in that he had made false and misleading statements in correspondence with the Citizens Advice Bureau. It was acknowledged that the Respondent appeared to have had an unblemished career as a solicitor since his restoration to the Roll in 1976. The Tribunal decided that the misconduct found established against the Respondent justified a fine of £5,000 and an order for costs was made.

73. After the Tribunal announced its finding that the allegations had all been substantiated, the Respondent noting that the Tribunal had made a finding that he had been dishonest with regard to the insertion of the incorrect purchase price in the transfer to Mr G made the following representations by way of mitigation:-
- (a) The conveyancing transaction had taken place eleven years before the hearing.
 - (b) There had been no similar occurrences in the interim.
 - (c) The insertion of an incorrect price in the transfer had been a very regrettable matter and it was recognised that the Tribunal would take that matter seriously.
 - (d) an appropriate way to address that matter was not by imposing the ultimate sanction. The Respondent could be made subject to appropriate supervision when undertaking conveyancing transactions.
 - (e) The Respondent was 67 years of age and hoped shortly to enjoy retirement. At the time of the hearing the Respondent was engaged as a consultant to a firm of solicitors in Kensington.
 - (f) The Respondent's current Practising Certificate had been issued subject to conditions.
74. The Tribunal's reasons for finding the allegations before them in 2002 to have been substantiated are as follows.
75. The Respondent had conduct of a conveyancing transaction in which there were a number of glaring anomalies. The transaction had taken place at a time when The Law Society had given warnings to solicitors about the tell tale signs of mortgage fraud. The nature of the transaction, and in particular the back-to-back sale, and the fact that the Respondent was acting for the head purchaser and the second purchaser as well as the building society lender should have been disclosed to that lender client, as should the uplift in the purchase price.
76. The report on title submitted to his building society client was clearly inaccurate. The Respondent had failed to report on title matters which should have been reported and as a result of the Building Society was misled. Licences to assign and deeds of covenant required under the lease had not been entered into and consequently the Respondent could not properly state that the property had a good and marketable title. It was abundantly clear that the Respondent had failed to act in the best interests of his lender client. He had not reported to them significant factors that might have affected their decision to make the mortgage advance.
77. The Respondent had acted for both the head purchaser and the second purchaser as well as the lender and in seeking speedily to complete the transaction he had paid out the monies received from the lender as the mortgage advance before he was in a position properly to complete the transaction. He had preferred the interests of his lay

clients over the interests of his lending institutional client and where such a situation of preference arose that demonstrated in the clearest possible way that there was a conflict of interest.

78. The Applicant had drafted the allegations and had set out the details of the transaction without the benefit of access to the conveyancing file. Late in the day the Respondent had produced his file. The file had been before the Tribunal and the Respondent had given oral evidence. It had originally been the Applicant's case that the price paid by Mr G had been £170,000 and that the Respondent had allowed his building society client to believe that the price paid was £225,000. It had been the Respondent's evidence that the real price paid by Mr G had been £225,000 but he had been pressed by Mr G to insert the consideration of £170,000 in the transfer. The insertion of a false price in a deed which is produced to the Inland Revenue and registered at HM Land Registry is a serious matter. Knowingly to insert a wrong figure is a dishonest act.
79. With regard to the non-payment of Counsel's fees, the arguments put forward by the Respondent were rejected by the Tribunal. He voluntarily agreed to be bound by Awards made by the Joint Tribunal. The Joint Tribunal had made clear Awards requiring the Respondent to make payments in specific sums. He had not done so. The Tribunal found allegations (v) and (vi) to have been substantiated namely that the Respondent had failed to comply with the Award of the Joint Tribunal relating to the fees of Miss Jarzabowski and also with regard to the fees of Mr Tager QC and Mr Rowntree. The non-payment of Counsel's fees is regarded as serious professional misconduct on the part of a solicitor and a failure to comply with an Award of the Joint Tribunal attracts a heavy penalty.
80. The Tribunal considered that the six allegations now found proved against the Respondent demonstrated that the Respondent could not be relied upon to comply with his professional obligations and some of his actions involved conscious impropriety. The Tribunal considered that the matters found established against the Respondent fully justified a decision that he be struck off the Roll. This decision was given added weight when the Respondent's long history of disciplinary offences was taken into account.

DATED this 22nd day of August 2002

on behalf of the Tribunal

A H Isaacs
Chairman