

IN THE MATTER OF PAUL MICHAEL BAXENDALE-WALKER &
WILLIAM HUGH DEREK AUDEN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr A G Ground
Mr G Fisher

Date of Hearing: 11th - 25th and 29th September 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

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1. The Application

An application was duly made on behalf of The Law Society by Peter Harland Cadman of Russell-Cooke, 8 Bedford Row, London, WC1R 4BX on 30th day of September 2004.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS with a hearing which commenced on 11th September 2006 and ran until 25th September 2006 and concluded on 29th September 2006. Timothy Dutton of Queen's Counsel and Chloe Carpenter of Counsel instructed by Messrs Russell-Cooke appeared on behalf of the Applicant and Mr Baxendale-Walker was represented by Mr Robinson of Irwin Mitchell Solicitors of 150 Holborn, London, EC1N 2NS. Mr Auden did not appear and was not represented. He had notified the Tribunal that he did not intend to appear and had made a written statement.

2. The Allegations

The allegations set out in the original statement of the Applicant made pursuant to Rule 4 of the Solicitors Disciplinary Proceedings Rules 1994 contained a number of allegations which for different reasons were not before the Tribunal at this hearing. To ensure clarity and simplicity the Tribunal has not adopted the numbering system in the amended "Rule 4" Statement dated 12th July 2006 but has numbered the allegations (i) to (iv) as set out hereunder:-

The allegations against both the Respondents were that they had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (i) That in breach of Practice Rule 1 and Principle 15.04 of the Guide to Professional Conduct they acted and/or continued to act where there was a conflict of interests between the interests of their clients and their own interests;
- (ii) That in breach of Practice Rule 1 and Principle 15.03 of the guide to professional conduct they acted and/or continued to act where there was a conflict between the interests of FSL and the interests of the clients of their firm;
- (iii) That they acted in breach of Practice Rule 1 by conduct that was or was likely to compromise or impair (a) their independence or integrity, (b) their duty to act in the best interest of their client, (c) the good repute of the solicitors or the solicitors profession;
- (iv) Against Mr Baxendale-Walker only that in breach of Practice Rule 1 (a), (d) and (e) in correspondence he concealed relevant information from and/or provided misleading information to third parties.

3. The Orders

At the conclusion of the substantive hearing the Tribunal made the following Orders:-

The Tribunal Orders that the Respondent, Paul Michael Baxendale-Walker of Baxendale-Walker Solicitors, 148-150 Buckingham Palace Road, London, SW1W 9TR, solicitor, be STRUCK OFF the Roll of Solicitors and they further Order that he do pay jointly and severally with William Hugh Derek Auden the costs of and incidental to this application and

enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society subject to the Law Society's undertaking not to recover more than 25 per cent of such costs from Mr Auden.

The Tribunal Orders that the Respondent, William Hugh Derek Auden of Baxendale-Walker Solicitors, 148-150 Buckingham Palace Road, London, SW1W 9TR, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay jointly and severally with Paul Michael Baxendale-Walker the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society subject to the Law Society's undertaking not to recover more than 25 per cent of such costs from Mr Auden.

4. The preliminary issue concerning admissibility of documents obtained by the Law Society from the A-G of the Isle of Man

- 4.1 In October 2005, the Respondents made an application to the Tribunal that the proceedings against them be struck out or stayed as an abuse of process. One of the arguments advanced was that the Isle of Man documents had been obtained by improper means and it was contended that they should be held inadmissible for that reason. The Tribunal refused the application for a stay and made a number of rulings contained in its written memorandum dated 11th November 2005. Mr Baxendale-Walker sought a judicial review of the Tribunal's decision which was refused but it was accepted that the admissibility of the Isle of Man documents had not by reason of the Tribunal's decision become a matter that was *res judicata* and that the application could be renewed at the substantive hearing. At the hearing on 11th September 2006 Mr Baxendale-Walker made an application to the Tribunal requesting it to make a ruling as to the admissibility of the Isle of Man documents as a preliminary issue.
- 4.2 Mr Barrington Mayne, The Law Society's Fraud Intelligence Officer, gave oral evidence.
- 4.3 The Tribunal's Memorandum of 11th November 2005 noted:-

“At the hearing before the Master of the Rolls Mr Baxendale-Walker was told that The Law Society was in possession of the Isle of Man documents. The hearing began in June 2005 but The Law Society had had those documents since the previous September.

This situation led to the Respondent's representative calling for correspondence passing between the Isle of Man Attorney General and The Law Society. Those documents were produced in August 2004 and the Respondents had contended that they disclosed that a series of extremely serious lies had been told by an officer of The Law Society to the Isle of Man Attorney General in order to obtain the documents and that there had been a gross misleading of a foreign law officer in a manner that was inexplicable. The Respondent considered that The Law Society's behaviour was grossly unfair and amounted to an abuse of process.

Whilst the Law Society's officer involved with seeking disclosure of the Isle of Man documents claimed he had done nothing wrong it was a demonstration that The Law Society had lost all objectivity in so far as Mr Baxendale-Walker was concerned and the bringing of allegations before the Tribunal was contaminated by this”.

- 4.4 The Tribunal's Decision in connection with these matters was set out in paragraph 59 of the November 2005 Memorandum as follows:-

“59. With regard to applications 3 and 4 the Tribunal gave careful consideration to the authorities to which it was referred. Even if the allegations made by the Respondents against The Law Society and its officer were true the Tribunal could not say with certainty that it would be proper to exclude the evidence obtained from the Attorney General of the Isle of Man. The Tribunal notes that the evidence had been used in proceedings before the Master of the Rolls and it would be anomalous for such evidence to be admissible at that hearing but for it not to be admissible before the Tribunal at its substantive hearing. The Tribunal was not satisfied that the Isle of Man documents had been illegally obtained under the relevant Isle of Man legislation but even if it had been, or had been obtained as a result of misrepresentation, that was not a sound reason on the authorities considered by the Tribunal for it not be placed before the Tribunal.”

Mr Barrington Mayne's Evidence

- 4.5 In his oral evidence Mr Mayne, a former high ranking police officer, explained that he was at all times while he was requesting that documents in the Isle of Man be provided to the Law Society of the belief that there were reasonable grounds to suspect that an offence had been committed involving serious or complex fraud and that there was good reason why the A-G should release papers for the purposes of the Law Society's investigation. Mr Mayne had been given information by his colleagues at the Law Society whom he had no reason to doubt. He pointed out that the A-G was aware that the Law Society was a regulator conducting an investigation. The A-G had been in touch direct with other authorities, the Inland Revenue and the Serious Fraud Office. Not only had there been an exchange of correspondence between Mr Mayne and the A-G, but a number of meetings had taken place. The A-G had been fully aware of the ongoing situation.

Mr Baxendale-Walker's Submissions

- 4.6 It was Mr Baxendale-Walker's submission that the documents obtained by the Law Society for use in these proceedings from the Isle of Man should be excluded from evidence.
- 4.7 The basis of that submission was that the A-G was misled by the Law Society, through its representative Mr Mayne, into believing that he had the appropriate authority under Isle of Man domestic legislation, Criminal Justice Act 1990, to order that documents be given to an appointed police officer for transmission to the Law Society.
- 4.8 It was Mr Baxendale-Walker's case that the documents were obtained by dishonest and improper means.
- 4.9 The powers of the Office of the A-G to provide assistance under statute is exercisable in any case in which it appeared to him:-
- “(a) on reasonable grounds that there is a suspected offence involving serious or complex fraud wherever committed; and

- (b) that there is good reason to do so for the purposes of investigating the affairs or any aspect of the affairs of any person.”
(section 24 Criminal Justice Act 1990)

4.10 It was Mr Baxendale-Walker’s submission that by a series of deceptions, namely assertions that there were investigations into suspected offences of serious or complex fraud involving Mr Baxendale-Walker when there was not, the A-G was persuaded to exercise his powers at a time when the pre-conditions to the exercise of those powers did not exist. Moreover the Law Society knew they did not exist.

Evidence may be excluded in civil and criminal proceedings, even in the absence of a statutory power.

4.11 Reference was made to R -v- Horseferry Road Magistrates Court ex parte Bennett [1994], R -v- Loosley AG’s Reference (No. 3 of 2000) and A and Others -v- Secretary of State for the Home Department [2005] UKHL 71.

The means by which the defendant was produced to the Court was relevant to whether he would receive a fair trial. Every Court has an inherent power and duty to prevent abuse of its process. The principle was that the courts will not shut their eyes to the way the accused was brought before the court or evidence of his guilt was obtained. It was the judicial nature of the proceedings which made the general principle relevant.

The Tribunal’s ability to regulate its own procedures under Rule 30(iii) of the Solicitors (Disciplinary Proceedings) Rules 1994 did not exclude the general principle of English law.

4.12 The principles which flowed from these authorities were:-

- (i) The Tribunal has power to exclude evidence if its admission would compromise the proper administration of justice and the integrity of the judicial system.
- (ii) The types of prosecutorial misconduct which permit the exercise of such discretion are not defined or definable; each case deals with general principles of English law and applies those principles to the particular facts.
- (iii) The exercise of the discretion to exclude is not dependent on there being an unfair trial if the material were to be allowed in evidence.
- (iv) The existence of rules permitting a suspension of the strict rules of evidence does not make the evidence admissible where it would otherwise be excluded as a consequence of abuse.

4.13 Evidence might also be excluded under a separate basis, that to admit it would cause unfairness so as to breach a party’s rights to a fair trial under Article 6 of the European Convention on Human Rights (ECHR).

- 4.14 The evidence obtained from the Isle of Man by deception practised upon the A-G should be excluded on the basis that
- (i) To admit it would be an abuse of process because of the way in which it was obtained and
 - (ii) That to admit it would lead to an unfair hearing in breach of Mr Baxendale-Walker's Article 6 ECHR rights to a fair trial.

The Applicant's Submissions

- 4.15 The basis for the application was Mr Baxendale-Walker's contention that Mr Mayne deliberately lied to and misled the A-G and that his lies caused the A-G to provide the Isle of Man documents. Mr Mayne would give evidence that he did not lie.
- 4.16 Even, in the unlikely event that the documents were obtained by lying that did not render them inadmissible.
- 4.17 At a pre-trial review on 25th October 2005 the Tribunal heard nine applications by the Respondents whereby they sought to have the proceedings stayed as an abuse of process. The objective was to stop the disciplinary proceedings. As part of these applications, in application 3, the Respondents alleged that the Isle of Man documents had been obtained from the Isle of Man illegally as a result of a deliberate deception by Mr Mayne. This was one of the grounds upon which a stay was sought. The Tribunal ruled that even if Mr Mayne had made the alleged misrepresentation (which was denied) (i) that the proceedings did not require to be stayed and (ii) they were not obliged to rule the Isle of Man documents inadmissible at that interlocutory stage. The Tribunal therefore decided that it did not need to hear evidence from Mr Mayne at that stage.
- 4.18 Mr Baxendale-Walker applied for judicial review of the Tribunal's refusal to rule the Isle of Man documents inadmissible at the interlocutory stage. On that application he sought an order remitting the issue of whether the Isle of Man documents were admissible to the Tribunal. He did not seek a ruling from the Administrative Court that the Isle of Man documents be ruled inadmissible. The application for judicial review was refused on paper. It was renewed at a hearing before Collins J which The Law Society attended. The Law Society's position was, *inter alia*, that the application was misconceived and unnecessary because the Tribunal had not yet heard any evidence from Mr Mayne or made any findings about whether the alleged dishonest misrepresentation was made. It would be open to Mr Baxendale-Walker's Counsel, at the final hearing, to cross-examine Mr Mayne and indeed Mr Duerden (both of whom would be giving evidence), about how the Isle of Man documents were obtained and to invite the Tribunal to rule the documents inadmissible if that was considered a sensible application to make.
- 4.19 The Law Society accepted that this issue was not *res judicata* as the Tribunal had not ruled on this issue at the interlocutory stage on the stay for abuse of process argument and had yet to hear from Mr Mayne or to make any findings of fact as to the alleged misrepresentations.
- 4.20 Collins J accepted that this was correct and refused the application for judicial review.

- 4.21 It was the Applicant's submission that the Isle of Man documents were admissible because the documents were lawfully and properly obtained.
- 4.22 Mr Baxendale-Walker's assertion that the Isle of Man documents were deliberately and dishonestly unlawfully obtained and/or obtained as a result of deliberately dishonest misrepresentations could not be sustained.
- 4.23 The Tribunal would form its own view of Mr Mayne's evidence but it was submitted that Mr Baxendale-Walker's submission could not succeed because the documents were properly and lawfully obtained by The Law Society from the A-G pursuant to a request for assistance made by The Law Society. The A-G lawfully authorised disclosure of the documents to The Law Society.

The way in which the documents were obtained was fully explained by Mr Mayne.

- 4.24 When Mr Mayne first sought the A-G's assistance to obtain the Isle of Man documents by letter dated 19th March 2002 Mr Baxendale-Walker was also subject to civil and criminal proceedings in connection with his alleged involvement in the removal of £2.135m from a pension fund.
- 4.25 Mr Mayne explained in his letter to the A-G requesting assistance that (i) the OSS was currently investigating Mr Baxendale-Walker and had serious concerns regarding Mr Baxendale-Walker's connection to and relationship with FSL and that there was strong circumstantial evidence to suggest he was the brains behind FSL and the beneficial owner of it; (ii) the A-G's assistance was required in an effort to establish links between Mr Baxendale-Walker, FSL and other related companies and trusts as detailed in the attached schedule; (iii) from its investigations into the FSL tax schemes, the OSS was of the view that the transactions were artificial and instead of mitigating tax liabilities they may be classed as tax evasion; (iv) if links to FSL could be established the OSS would be able to pursue allegations of serious professional misconduct against Mr Baxendale-Walker. Mr Mayne asked the A-G to authorise research of the records held in respect of the individuals and corporate entities referred to in the attached schedule (which entities were all thought to relate to FSL) and to provide The Law Society with details of the directors, shareholders and beneficial owners. He also asked the A-G to authorise research into the various trusts referred to within the schedule and disclose details of the trustees.
- 4.26 In the submission of the Applicant the requirements of the Isle of Man Criminal Justice Act 1990 ("the Act") were clearly satisfied. It was at all times clear that the suspected offence involving serious or complex fraud was Mr Baxendale-Walker's undisclosed ownership of, and closeness to, the FSL group of companies and his involvement with potentially fraudulent FSL tax schemes.
- 4.27 No misrepresentations had been made by Mr Mayne. Mr Baxendale-Walker was subject to civil proceedings. Although he had been found not liable for dishonest assistance in the fraudulent breach of trust, he had been found liable for "knowing receipt". Further, there was an outstanding appeal by a pension fund trustee and outstanding issues on costs rendering Mr Baxendale-Walker still subject to the proceedings. The criminal proceedings had been stayed against Mr Baxendale-

Walker (but not his co-defendants). They had not been dismissed, and their outcome might well have been affected by the civil appeal.

- 4.28 Mr Mayne had no motive to lie - the A-G had already indicated in the letter dated 19th July 2002 that he was in principle able to provide assistance.
- 4.29 Even if a misrepresentation had been made it was clearly made innocently and not dishonestly. It was also highly unlikely that this had any effect on the A-G's decision to authorise the obtaining of FSL documents.
- 4.30 The Act did not require Mr Mayne to show that there were criminal or civil proceedings against Mr Baxendale-Walker. Rather, there simply had to be reasonable grounds to suspect an offence involving serious or complex fraud.
- 4.31 The A-G clearly thought that the requirements of the Act had been satisfied. Indeed the A-G's office confirmed in its letters dated 21st July 2005 and 29th September 2005 that at the time of granting assistance to the Law Society it was satisfied that an investigation into serious or complex fraud was being conducted by the Law Society and that the documents obtained could be used by the Law Society in the disciplinary proceedings. The serious or complex matter with which the Society was then concerned was the FSL matter.
- 4.32 Even if, contrary to The Law Society's case, the Isle of Man documents were obtained unlawfully or as a result of misrepresentations, they should not be ruled inadmissible.
- 4.33 Mr Baxendale-Walker's first argument, that Mr Mayne's conduct in obtaining the Isle of Man documents was so heinous and abusive that the Isle of Man documents should be ruled inadmissible at common law as to admit them would lead to an abuse of process, was an argument largely based on the case of A and Others -v- Secretary of State for the Home Department [2005] UKHL 71. It was accepted that this case demonstrated that there was a constitutional principle at common law whereby a Court/Tribunal must rule statements inadmissible if they were obtained by torture. This is not a torture case.
- 4.34 It was also accepted that this case might support a further principle whereby if (i) the manner in which evidence was obtained falls short of torture but was so shocking that the conscience of the court is offended and (ii) admitting the evidence would abuse the processes of the court, the court might have a discretion to rule the evidence inadmissible. Otherwise the evidence is admissible in line with the rule that at common law, evidence obtained by interception of communications by overseas countries will not be excluded whether the interception was legal or illegal in the country in which it took place R -v- Governor of Pentonville Prison ex parte Chinoy [1992] All ER 317, R -v- Hardy [2003] EWCA Crim 3092, Cross and Tapper on Evidence, 10th edition, pages 539 and 549).
- 4.35 The principle whereby evidence might be excluded if the manner in which it was obtained so shocks the conscience of the court does not apply in this case because there is nothing here which so shocks the conscience of the court. The principle could only conceivably apply in cases of deliberate prosecutorial malpractice in bad faith a situation which had not arisen here. The Law Society submitted:-

- (i) even if the Tribunal were to find that there was a deliberate misrepresentation, and that such misrepresentation misled the A-G, the misrepresentation was not such as to outrage the court rendering it an abuse of process to admit the documents. Such conduct would have to be of a seriousness approaching torture.
- (ii) There was no abuse of process here; the A-G has expressed no dissatisfaction and the Respondents have had plenty of time to comment on the documents and had done so.
- (iii) Further, these documents were always obtainable when they were being sought from the A-G as The Law Society was indeed investigating a serious and complex fraud.

- 4.36 With regard to Mr Baxendale-Walker's claim that his Article 6 ECHR right to a fair hearing would be breached, Article 6 did not lay down any rules on the admissibility of evidence as such, which was primarily a matter for regulation under national law. Unlawfully obtained evidence would only be excluded under Article 6 where allowing it to be heard will render the proceedings as a whole unfair. So in Schenk -v- Switzerland (1991) 13 EHRR 242 and in Khan -v- UK (2001) 31 EHRR 45. If the trial would still be fair, unlawfully obtained evidence would be admissible.
- 4.37 The Isle of Man documents had been obtained from a police officer in the Isle of Man on behalf of the A-G. There was no doubt as to their authenticity. There was every reason to suppose that the Respondents could assist the Tribunal by giving their explanations as to the contents of these documents.
- 4.38 Under Rule 30(iii) of the Solicitors (Disciplinary Proceedings) Rules 1994 the strict rules of evidence do not, at the discretion of the Tribunal, apply. In Simms -v- Law Society [2005] EWHC 408 (Admin), the Appellant argued that certain evidence was opinion evidence and so inadmissible. The Divisional Court ruled at paragraph 32 that the evidence was not inadmissible but that they would in any event have ruled against the Appellant on the ground that the Tribunal had the discretion to disapply the strict rules of evidence. Similarly, the Tribunal had the discretion to allow the Isle of Man documents. They are plainly relevant documents. They might be prejudicial to the Respondents so far as they might appear to support the allegations of misconduct, but that was a reason for the Tribunal reading them, not excluding them, and hearing the Respondents' submissions on their contents.
- 4.39 It was highly material to any exercise of discretion that these documents had already been extensively referred to in proceedings between the parties.
- 4.40 Mr Mayne gave evidence and was subject to cross-examination. He confirmed that it was his honest belief that the Law Society was conducting an investigation of a case which involved or might involve serious or complex fraud. He denied misleading the A-G intentionally nor did he think he had done so inadvertently.

The Tribunal's Decision on the Preliminary issue

- 4.41 This application by Mr Baxendale-Walker sought to exclude certain documentary evidence (“the IoM documents”) which The Law Society had obtained pursuant to an Order made by the A-G under Section 25 of The Criminal Justice Act 1990 Isle of Man. It was claimed that the documents had been obtained by dishonest and improper means and that The Law Society had behaved in relation to its application to the A-G in a manner so egregious as to amount to an abuse of the Tribunal’s procedures thus rendering the documents it had obtained inadmissible. Authority for such a proposition was to be found in The Common Law and under the European Convention on Human Rights. The Tribunal was referred amongst other cases to decisions such as A and others -v- Secretary of State for the Home Department [2005 UK HL71] and R -v- Governor of Pentonville Prison ex parte Chinoy [1992] All ER 317 where the Court has ruled that where methods used to obtain statements, whether by use of torture or otherwise, are so shocking as to constitute an affront to the rule of law, the admission of such statements may thereby be rendered unacceptable.
- 4.42 The statutory provision for the disclosure of the IoM documents depended upon a claim that there was suspicion of serious and complex fraud, a phrase which is not defined in the Act but which was claimed by the Respondent to be a term of art.
- 4.43 The evidence before the Tribunal clearly demonstrated that at the time when The Law Society first sought access to the IoM documents, Mr Baxendale-Walker was being investigated by the Serious Fraud Office and possibly by the Revenue authorities. He was also the subject of civil and criminal proceedings in England which made serious allegations of his involvement in fraudulent misapplication of funds. Manifestly The Law Society could at that time reasonably suspect the involvement of Mr Baxendale-Walker in serious and complex fraud. Two of Mr Baxendale-Walker’s co-defendants in those proceedings were later convicted of fraudulent behaviour and sentenced to terms of imprisonment. The civil claim against Mr Baxendale-Walker was not successful following which the criminal proceedings against him were stayed.
- 4.44 The Tribunal had before it three statements of Mr BG Mayne, a former senior police officer employed by The Law Society as the head of its Fraud Intelligence Unit. Mr Mayne gave evidence and was subjected to cross-examination.
- 4.45 The basis for the claim that the IoM documents were inadmissible was set out in the Respondent’s Skeleton Arguments and developed in cross-examination.
- 4.46 It was said that knowing the fact that the civil case against Mr Baxendale-Walker had failed to establish liability against him and knowing that the criminal case against him had been stayed, led inevitably to the conclusion that The Law Society could not have continued to have a genuine belief that there was a serious and complex fraud about which The Law Society could have properly entertained suspicion of involvement on the part of the Respondents. It was acknowledged by Mr Mayne that he did not in correspondence with the A-G’s office specifically draw to its attention (after the criminal proceedings had been stayed) the fact that they had been. Mr Mayne in evidence stated that he understood that others including UK Fiscal and Regulatory Authorities may have been in communication with the A-G. So far as The Law Society was concerned it had throughout considered that it was concerned with the

case of serious and complex fraud and its regulatory duty was to establish what if any involvement there had been on the part of the Respondents.

- 4.47 The A-G had very properly been anxious to exercise powers scrupulously in accordance with the statutory provisions and although when the application was renewed seeking additional information it was refused, the A-G confirmed that he was satisfied that he had properly exercised his powers when on 1st December 2003 he gave an order which led to the disclosure to The Law Society of the IoM documents.
- 4.48 The Tribunal, having heard Mr Mayne give evidence, is entirely satisfied that he was an honest and straightforward witness and that neither he nor The Law Society had anything other than the honest belief that they were investigating the Respondents' involvement in what The Law Society thought was or might be a serious or complex fraud. The Tribunal therefore rejected the arguments advanced by the Respondents and found that the claim that The Law Society's behaviour was dishonest such as to affront the Tribunal's procedure and constitute an abuse of process was without foundation. The Tribunal accordingly ruled that the IoM documents be admitted as evidence. The Tribunal also rejects the arguments advanced based on the alleged infringement of Article 6 of the European Convention on Human Rights. The Tribunal is entirely satisfied that the admission of the IoM documents could not render the hearing of these allegations of professional misconduct unfair.

5. The evidence before the Tribunal at the Substantive hearing

The evidence before the Tribunal at the substantive hearing included:-

31 lever arch files of written material including witness statements of Mr Duerden and Mr Mayne and of the First and Second Respondents;

The oral evidence of Mr MP Duerden and Mr BG Mayne on behalf of the Applicant and Mr P Baxendale-Walker and pursuant to witness summonses issued by the High Court by Mr R Wolferstan-Bannister and Mr N Blackwell;

Some additional documents were handed up prior to the commencement of or during the course of the hearing which by agreement were admitted as evidence. These included a brief witness statement by Peter Trevitt of Queen's Counsel and a letter from the Louvre Group dated 19th September 2006, a chart scheduling requests made by The Law Society for information about loans made to Mr Baxendale Walker: and a copy of an email dated 24th September 2006 from Lynn Giovanni of Louvre Trust, a letter from Mr A Thornhill of Queen's Counsel dated 20th September 2006, a copy of the letter from Stafford Challis Accountants (with transcript) dated 27th February 1997 and copy correspondence commencing with a letter from Russell-Cooke Solicitors addressed to Paul Davis & Taylor of 19th September 2006.

After the hearing lasting 15 days, the parties made submissions to the Tribunal on 25th September 2006 and skeleton submissions were handed up on that day. During the course of submissions the following documents were handed up:-

- A revised chronology and written closing submissions;

- A judgement in the Queen’s Bench Division of the High Court relating to Mr Baxendale-Walker’s appeal against an earlier substantive decision of the Tribunal;
- Correspondence with Mr Auden relating to his non-attendance at the substantive hearing.

During the course of the hearing the Tribunal was shown a video recording of a seminar entitled “Independence Day” promoting FSL schemes and Mr Mayne gave evidence as to how the video came into the possession of the Law Society.

The following authorities were placed before the Tribunal:-

- Baron Investments (Holdings) Ltd (in liquidation) Halstuck and Another -v -Venvil
- Boulting and Anor -v- ACCT (CA 1960B No. 952)
- Hilton -v- Barker Booth & Eastwood (a firm) [2005] UKHL 8

6. Outline of the case against the Respondents

- 6.1 At the opening of the substantive hearing the Applicant explained that he put the allegations made against the Respondents in the following way.

Mr Baxendale-Walker was, in reality, the “puppet master”, pulling the strings of the FSL enterprise, and that Mr Auden came to assist him. Each compromised his independence as a solicitor and acted with conflicts of interest.

They had conflicts of personal interest and duty because of their personal involvement with FSL.

They had conflicts of duty to their clients because they were solicitors to FSL and simultaneously solicitors to the purchasing clients.

In the case of Mr Baxendale-Walker he misled and indulged in misleading conduct. That specific allegation did not apply to Mr Auden.

In respect of the compromise of independence and of conflict of duty and interest both Respondents acted with conscious impropriety and dishonesty. Mr Auden’s involvement was less grave than that of Mr Baxendale-Walker. Nevertheless Mr Auden was a knowing participant in the wrongdoing.

- 6.2 It was common ground that Mr Baxendale-Walker was a clever man who had great knowledge and expertise in the field of law relating to trusts and taxation. Mr Baxendale-Walker himself agreed that he was the architect of schemes formulated to enable wealthy individuals to mitigate their liability to U.K. tax. The schemes were complex and individual trusts and companies were set up in off shore jurisdictions to facilitate their operation.

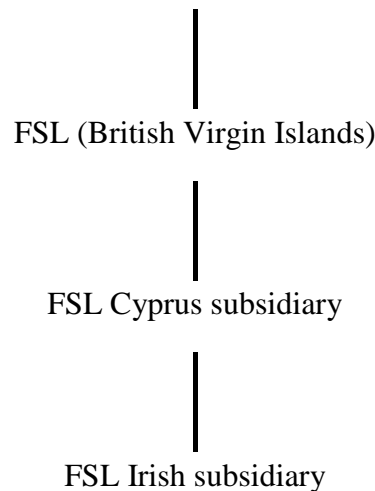
7. The structure of FSL Companies/Trusts

At the opening of the hearing a document setting out the structure of those trusts and companies was handed up. It was almost entirely agreed between the Applicant and Mr Baxendale-Walker.

“Structure of the FSL Companies/Trusts

1994 - October/November 1996

Mount Vernon Trust Trustee: Louvre (Trust Company Guernsey)

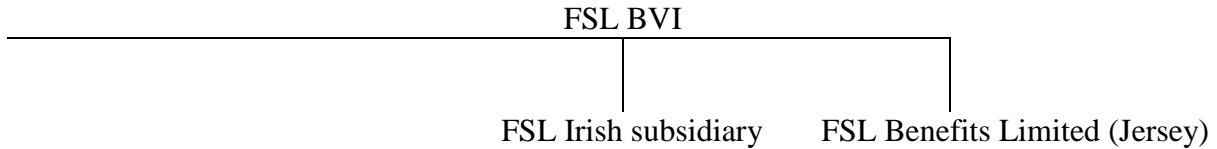


- 7.1 The Mount Vernon Trust (“MVT”) was established on 29th September 1994. The named beneficiaries of the trust are (1) Mr Baxendale-Walker’s grandchildren and remoter descendants (2) The International Red Cross and (3) the International League for the Protection of Horses. The trust deed permitted the trustees to add other beneficiaries. Mr Baxendale-Walker was the settlor of the trust. Louvre in Guernsey were the initial trustees.
- 7.2 Fiscal Solutions Limited was incorporated in the British Virgin Islands (“FSL BVI”) on 8th September 1994. FSL BVI was wholly owned by the MVT. FSL BVI changed its name to FSL Services Limited on 18th December 1995.
- 7.3 FSL BVI had a wholly owned subsidiary Avizza Consultant Ltd (a Cyprus company) (“the FSL Cyprus subsidiary”) and the FSL Cyprus subsidiary had a wholly owned subsidiary incorporated in Ireland (“FSL Services (Ireland) Limited”).

January 1997 to September 1999
(described as the trading structure)

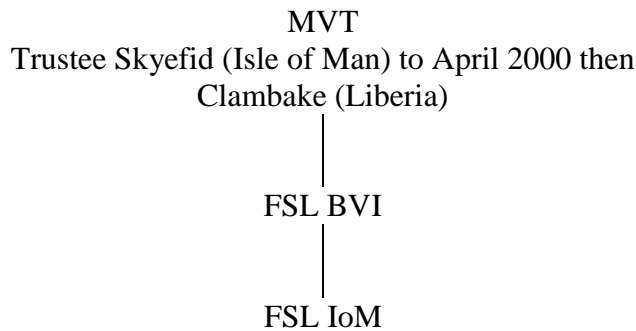
MVT
Trustee Louvre to April 1999
Skyefid (Isle of Man) April 1999 to 2000

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7.4 In January 1997 there was a new remuneration structure for introducers; the FSL Irish subsidiary founded the FSL Consultants Benefits Trust (“CBT”), a discretionary Trust to pay introducers. Louvre acted as trustees. The CBT owned various allocation vehicles, including Kravitz, Tavendish.

September 1999 to January 2001

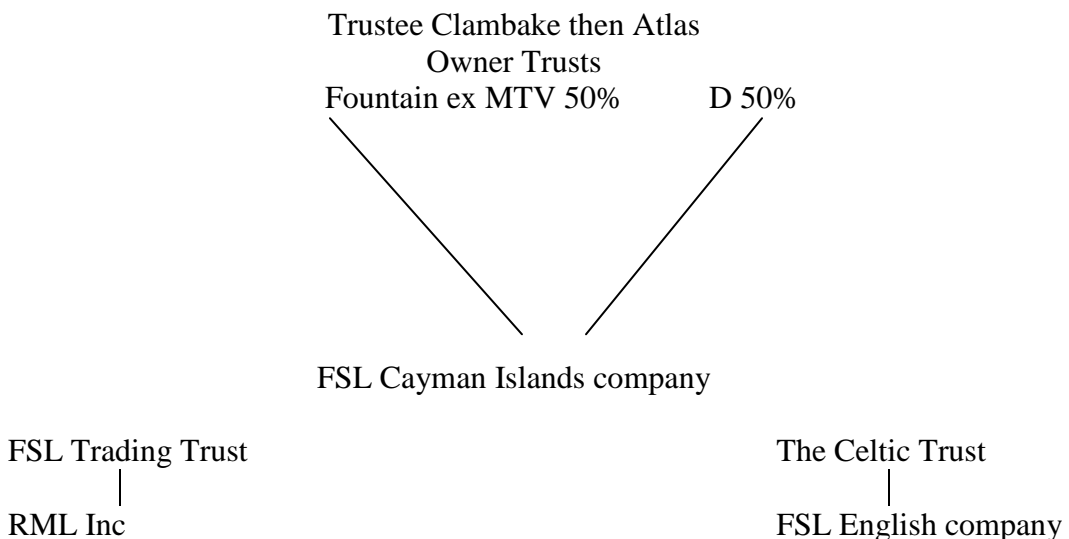


7.5 The FSL Irish subsidiary became dormant on 30th September 1999 and was subsequently struck off the Register of Companies in Ireland. FSL (IoM) Limited was incorporated in the Isle of Man in September 1999 and the new structure was as follows:-

7.6 Clambake Inc (Liberia) became trustees of MVT on 28th April 2000. The MVT changed its name to the Fountain No. 1 Trust on 13th July 2000.

7.7 The FSL IoM subsidiary changed its name to FSL Services Limited in 2000.

New structure set up between November 2000 and January 2001



- 7.8 On 1st January 2001 the FSL Isle of Man subsidiary became dormant. The FSL BVI parent company subsequently became dormant. The new structure of the FSL group was as follows.
- 7.9 A new company was incorporated called FSL Global Services Ltd, registered in the Cayman Islands (“the FSL Cayman Islands company”). The FSL Cayman Islands company owned all the intellectual property in the FSL products and bought product development research from Baxendale-Walker Solicitors. The FSL Cayman Islands company was owned by “owner trusts”. Atlas was the trustee of the owner trusts.
- 7.10 RML Services Ltd was incorporated in England on 14th November 2000 (“the FSL English company”). The FSL English company traded as FSL GB and subsequently changed its name to FSL GB Limited. The FSL English company was owned by the Celtic Trust. The FSL English company initially marketed FSL products under a sales and marketing agency agreement with the FSL BVI parent company under the “old” structure set out above. However, this was intended to be replaced with a sales and marketing agency agreement with the FSL Cayman Islands company once that company had been incorporated; thereafter the FSL BVI parent company of the “old” structure would become dormant.
- 7.11 RML Inc was incorporated, owned by the FSL Trading Trust. RML Inc was to be responsible for issuing engagement letters for the FSL Cayman Islands company and for billing for fees, pursuant to an agency agreement with the FSL Cayman Islands company. The fee income was to be distributed by RML Inc as follows: 50% to the FSL Cayman Islands company, 10% to the FSL English company, 40% to the Trust rewards account of the introducers. RML Inc entered into a contract with Quorum for Quorum to carry out this work. Mr Baxendale-Walker’s position was that he was unaware of the fees and did not agree that they were at the asserted fixed levels.
- 7.11 A new remuneration trust was to be created by the FSL Cayman Islands company, called FSL Global remuneration Trust. Atlas in Jersey were to be the trustees, replacing Skye Grantees Ltd in the Isle of Man. All allocation companies with the exception of Kravitz and Whiteside were to be transferred to the new remuneration trust.

8. The principal submissions of the Applicant

- 8.1 Mr Baxendale-Walker and Mr Auden worked together in Baxendale-Walker solicitors, a firm of solicitors with its principal offices in Victoria, London, SW1. They specialised in the creation of, and advice on, schemes which were intended through offshore arrangements to spare clients from paying tax in the UK.
- 8.2 Up until approximately September 1999, the schemes were “sold” to clients by FSL Services Ltd to its customers, that company being registered in Ireland but said to be managed from Guernsey and then from the Isle of Man. In September 1999, a company called FSL Services (Isle of Man) Ltd was registered in the Isle of Man and it took over the selling of the schemes, subsequently changing its name to FSL Services Ltd. Later, the FSL Group of companies was run from Jersey.
- 8.3 It was the Law Society’s case that both Mr Baxendale-Walker and Mr Auden were far too closely involved with the FSL group of companies for either of them to be able

properly to act as solicitors for FSL and as solicitors for FSL's customers, who were asked to pay large fees to FSL to take up any of the FSL schemes, as well as fees to Baxendale-Walker Solicitors for legal advice in connection with the schemes. There were conflicts of personal interest and duty as well as conflicts of interest between FSL customers and FSL which disabled the Respondents from being able to act. Their independence was compromised, yet the Respondents acted as solicitors for all the parties to transactions with FSL, and received fees as solicitors from FSL, as well as from FSL's customers. The Respondents also benefited financially (and significantly) from loans made to them by discretionary trusts set up so as to cause money to come to them which been provided to FSL by their customers who had also been clients of the Respondents. It was the Law Society's case that the Respondents' conduct was improper whatever their state of mind, but it was alleged that each of them was guilty of conscious impropriety, and that they deliberately flouted proper standards of conduct.

- 8.4 The Respondents' motive for compromising their professional standards was money: the huge rewards to be reaped from selling such schemes.
- 8.5 The Respondents denied that either of them had any interest in FSL or that they benefited from FSL save by arm's length negotiated solicitors fees, and they said that their relationship with FSL was a straightforward and proper arm's length one of solicitor and client. They denied that there was any conflict of personal interest and duty, or of duty and duty. They contended that FSL was owned by some entrepreneurs, whom they had not named. They not only denied conscious impropriety; but they denied that there was any misconduct at all.
- 8.6 The issues to be determined by the Tribunal were:-
- (i) What was the nature of the relationship between FSL and Mr Baxendale-Walker and FSL and Mr Auden respectively?
 - (ii) Were either or both of the Respondents guilty of the breaches of the rules and of conduct unbecoming as alleged?
 - (iii) If so, were either of the Respondents acting with conscious impropriety and dishonestly?

And, depending upon the answers to (i), (ii) and (iii)

- (iv) What was the appropriate penalty?

Mr Auden had provided an affidavit but had indicated that he would not attend the hearing and his evidence could not be tested.

- 8.7 Mr Baxendale-Walker had been in practice at Baxendale-Walker Solicitors since 1994 and at all material times had been the sole equity partner. Mr Auden joined the partnership in 1997. A letter from Mr Baxendale-Walker to Mr Bannister dated 21st January 1997 referred to Mr Auden as being part of Baxendale-Walker Solicitors with an hourly rate of £500. A new client memorandum dated 24th February 1997 was signed by Mr Auden on behalf of Baxendale-Walker Solicitors. Letters had been sent to purchasing clients where Mr Auden was the introducer in February and June 1997.

Baxendale-Walker Solicitors' letterhead referred to Mr Auden as a "consultant" from 4th February 1997 and later changed to refer to Mr Auden as "partner".

- 8.8 Each of the allegations arose out of the Respondents' involvement with the largely off-shore FSL group of companies. The FSL group of companies purported to sell tax saving products to clients. The Respondents admitted that at all material times Baxendale-Walker Solicitors acted as solicitors to FSL and appeared to admit that Baxendale-Walker Solicitors had designed for FSL, and advised FSL upon, the products that were being sold as well as upon FSL's structure/taxation. FSL required clients to obtain "independent" legal advice on the products and the Respondents as Baxendale-Walker Solicitors purported to provide such advice to purchasing clients.
- 8.9 It was the Applicant's case that in breach of Practice Rule 1 and Principle 15.04 of the Guide to Professional Conduct the Respondents acted and/or continued to act where there was a conflict of interest between the interests of their client and their own interests (i.e. a conflict between duty to client(s) and personal interest). Such a conflict exists whether the solicitor's personal interests are direct or indirect. The prohibition against solicitors acting where his direct or indirect personal interests conflict with those of the client is absolute and it is not rendered permissible by simply advising the client to seek independent advice or by obtaining consent. Moreover, the obtaining of independent advice by a client does not negate any conflict. In addition the solicitor must disclose with complete frankness whenever he has or might obtain any personal interest or benefit in a transaction in which he is acting for a client.
- 8.10 In breach of Practice Rule 1 and Principle 15.03 of the Guide, they acted and/or continued to act where there was a conflict of interest between the interests of two of their clients, namely FSL and private individual clients (i.e. a conflict between the solicitors' duty to FSL and the solicitors' duty to the private individual clients).
- 8.11 The Respondents acted in breach of Practice Rule 1 by conduct that was, or was likely to, impair their independence and integrity, their duty to act in the best interests of their client, the good repute of the solicitors' profession.
- 8.12 Mr Baxendale-Walker had acted in breach of Practice Rule 1(a), (d) and (e) when in correspondence he concealed relevant information from and/or provided misleading information to third parties.
- 8.13 Each Respondent acted dishonestly, i.e. with conscious impropriety and the Tribunal was invited to apply the test in Twinsectra -v- Yardley [2002] 2 AC 164 where dishonesty was defined as acting with conscious impropriety. Even if dishonesty was not present, the Respondents' conduct was unbecoming for a solicitor whatever the Respondents' state of mind.
- 8.14 Mr Baxendale-Walker did not disclose his financial interest in FSL. The structure of FSL, who owned and controlled it, had been made deliberately obscure. Mr Baxendale-Walker's interest was either by way of direct ownership of FSL or by way of indirect ownership by way of his having, directly or indirectly, a beneficial interest in FSL or MVT.

Mr Duerden's evidence

- 8.15 Mr Duerden gave evidence and was subject to cross examination on behalf of the Respondents. Mr Duerden confirmed his belief as to the accuracy of his Investigation Report dated 5th June 2003. Mr Duerden explained the circumstances in which he had stated that the Respondents had refused to attend for an interview. In other proceedings and at interlocutory hearings before the Tribunal the Respondents sought to portray Mr Duerden as ignorant, incompetent and lacking the necessary forensic skills to enable him to conduct an enquiry into the practice of Baxendale-Walker Solicitors. The Tribunal rejects this attack on Mr Duerden's integrity and ability. The Tribunal found him to be an honest and careful witness and accepted the accuracy of his evidence.

The Case against Mr Baxendale-Walker

- 8.16 It was the Applicant's case that Mr Baxendale-Walker owned FSL through MVT. He directed its affairs. He created its products. Mr Auden joined him in 1997. The success of FSL brought financial rewards. Their connection with FSL made it impossible for the Respondents to act for purchasers of FSL products. It also rendered it impossible for them to act for FSL as they had an interest in FSL and the products.
- 8.17 Both Respondents were privy to the inner workings of FSL and its various companies. Each of them received money in addition to fees from FSL.
- 8.18 The suggestion that either Respondent could act as solicitor for purchasers of FSL products without there being any conflict of interests was absurd.
- 8.19 Mr Baxendale-Walker was an incredible witness who had produced documents to the Tribunal which had been created after the event in order to assist his case.
- 8.20 Much of Mr Baxendale-Walker's evidence defied common sense. He shifted his evidence to suit his purposes as he went along. He told lies.
- 8.21 Mr Baxendale Walker had manufactured documents. In particular the first page of the letter dated 20th November 1996 purporting to have been written by Mr Bannister was a fabrication. It had been created when Mr Baxendale-Walker believed neither Mr Bannister nor The Law Society had access to the documents produced by Mr Bannister, a former Managing Director of FSL. This assertion and other submissions regarding the genuineness and reliability of documentation submitted in evidence are further examined in Section 12 below.
- 8.22 Mr Baxendale-Walker had attempted to prevent the Tribunal from seeing relevant documents having made applications to the Tribunal and judicially reviewed the Tribunal's rulings. He had accused Mr Mayne of dishonesty to try to prevent the Isle of Man documents being placed before the Tribunal.
- 8.23 Mr Baxendale-Walker hid behind shell companies and trusts and endeavoured to prevent legitimate inquiry by his regulator.

- 8.24 It was only when Mr Bannister produced to the Tribunal the 9th September 1994 letter from Louvre (the MVT administrator) that Mr Baxendale-Walker produced the MVT trust deed. Even then he produced part only (leaving out material clauses) although he later produced the whole, but only ever in copy form. Similarly Mr Baxendale-Walker had never produced originals of the impugned documents.
- 8.25 Both Mr Bannister and Mr Blackwell who had both at different times been appointed as managing director of FSL realised within a matter of months after their respective appointments that Mr Baxendale-Walker could not be trusted. Mr Blackwell became suspicious about the organisation shortly after his appointment and voiced concerns to the Police, the Revenue and The Law Society.
- 8.26 Mr Bannister's evidence established that Mr Baxendale-Walker was the person in overall charge of FSL. Mr Bannister produced the letter from Louvre Trust of 9th September 1994 addressed to Mr Baxendale-Walker stating that FSL had been incorporated on "your behalf".
- 8.27 Mr Bannister had resigned as Managing Director of FSL because he was not permitted to exercise an appropriate level of control.
- 8.28 Mr Blackwell, an honest witness, had a background in banking. Mr Baxendale-Walker described Mr Blackwell as a "dunce". He did so because he needed to demonstrate to the Tribunal that Mr Blackwell could not understand the corporate structure. Mr Blackwell's oral and written evidence demonstrated that in December 2000 and January 2001 Mr Baxendale-Walker was the driving force behind the FSL group and that in December 2000 Mr Baxendale-Walker and Mr Auden were driving the FSL business through obscure offshore trust structures which made Mr Blackwell very concerned.

Allegation 1: Conflict of interest between Mr Baxendale-Walker's own personal interests and the interests of his private clients purchasing FSL products

- 8.29 The prohibition against a solicitor acting for a client where the solicitor has a conflicting personal interest is absolute. The solicitor must (i) advise the prospective client that he, the solicitor, has a personal interest in the transaction and disclose that personal interest with complete frankness and (ii) decline to act and send the client for independent advice.
- 8.30 It was not in dispute that Mr Baxendale-Walker did not disclose to his individual private clients that he had a personal interest in FSL. It was Mr Baxendale-Walker's case that there was no personal interest to disclose. The sole issue on allegation 1 was, did Mr Baxendale-Walker have a personal interest in FSL which should have been disclosed and which disabled him from acting for private individual clients? Mr Baxendale-Walker had a personal financial interest in FSL, alternatively his control of and/or close connection with FSL amounted to such personal interest.
- 8.31 The documents pointed inexorably towards Mr Baxendale-Walker as the ultimate beneficial owner of the FSL group or to his being one of the ultimate beneficial owners.

- 8.32 Mr Baxendale-Walker was effectively the sole beneficiary, or one of the beneficiaries, of MVT in the MVT trust deed. MVT was established on Mr Baxendale-Walker's behalf as his vehicle established to own FSL, which was Mr Baxendale-Walker's creation and which was created for his benefit. Mr Baxendale-Walker was technically excluded from benefit for tax reasons but the rationale and raison d'être of MVT and FSL was to benefit Mr Baxendale-Walker by providing loans and payments to him and those connected to him and that, after his death, his grandchildren would take the benefits free from tax. Mr Baxendale-Walker's assertion that he was not the beneficial owner and he did not know and continued not to know who the beneficial owners were should be rejected.
- 8.33 Mr Baxendale-Walker attended a conference with Peter Trevett QC on 13th September 1994 about a proposed scheme he had designed for FSL before the MVT trust deed had been executed. He could not have been attending on behalf of the beneficiaries of MVT.
- 8.34 Mr Baxendale-Walker was "the settlor" of the MVT and referred to as such in the trust deed dated 29th September 1994. The protectors were Mr Baxendale-Walker's long-standing friend Sharmi Musgrave and her partner. The trust derived its name from Sharmi Musgrave's address. Mr Baxendale-Walker's grandchildren were the only human beneficiaries of the trust. Mr Baxendale-Walker wanted all of this to be kept secret from The Law Society.
- 8.35 The Tribunal should reject Mr Baxendale-Walker's explanation that FSL BVI had to be set up on his behalf as a non Guernsey resident for tax reasons and that he was simply a professional settlor and his grandchildren were selected simply to give the trust deed validity by providing possible human beneficiaries.

Mr Bannister's evidence

- 8.36 Mr Bannister gave evidence and was subjected to cross examination on behalf of the Respondents. Mr Bannister's evidence demonstrated, or was corroborative of the following:-
- (a) Mr Baxendale-Walker's close involvement in the business and affairs of FSL;
 - (b) His belief that Mr Baxendale-Walker was the effective beneficial owner of FSL profits with whose necessary concurrence Mr Bannister had been appointed;
 - (c) His belief that he was to provide an interface between the owners, FSL (in Mr Bannister's view Baxendale-Walker interests) and introducers and acquirers of FSL products, a function he described as that of a stooge;
 - (d) A willingness on the part of Mr Baxendale-Walker to provide false documentation and evidence designed to cast doubt on Mr Bannister's honesty and integrity;
 - (e) The entitlement of Mr Baxendale-Walker to benefit from FSL profits.

Parts of Mr Bannister's evidence are summarised in section 12.

8.37 By way of example documents disclosed by Mr Bannister included a fax dated 20th February 1997 to Mr Baxendale-Walker reviewing the structure and stating:-

“I feel that you need to give further thought to the structure in place at the present time. As you are aware, with the Irish company, the Cyprus company and the BVI company and the Trust, the total cost you are incurring on an annual basis... must be well in excess of £15,000.”

8.38 By fax dated 6th March 1997 to Mr Baxendale-Walker, Mr Bannister stated:-

“I refer to my fax dated 20th February 1997 and your reply dated 25th February 1997 in relation to the structure of FSL Services Ltd. In order to ensure that the beneficial owners wishes are met in respect of FSL Services Limited and associated companies, I feel that the ultimate beneficial owner should be instructing [Louvre Trust Company] concerning the matters within that letter.”

8.39. By letter dated 26th March 1997 to Mr Baudains at Louvre, Mr Baxendale-Walker instructed Louvre on the matters set out in Mr Bannister’s letter of 20th February.

Mr Blackwell’s evidence

8.40 Mr Blackwell gave evidence and was subjected to cross-examination on behalf of the Respondents. Mr Blackwell’s evidence demonstrated or was corroborative of the following:-

- (a) Mr Baxendale-Walker’s close involvement in the business and affairs of FSL;
- (b) His belief that Mr Baxendale-Walker was the effective beneficial owner of FSL profits with whose necessary concurrence Mr Bannister had been appointed;
- (c) The onshore and offshore structure was excessively complex and designed to obscure ownership and control;
- (d) Mr Blackwell did not know at the time of his appointment as Managing Director of FSL GB that the person who had interviewed him (and was he believed the effective owner of FSL) i.e. Mr Baxendale-Walker had been charged in connection with an investigation by the Serious Fraud Office.

Loans from MVT

8.41 The Isle of Man documents also pointed inexorably towards Mr Baxendale-Walker as the beneficial owner of the FSL group/MVT. The documents demonstrated that Mr Baxendale-Walker received numerous “loans” from the MVT. During a 21 month period ending 5th January 2001 Mr Baxendale-Walker received a total of £372,894.97 in loans from MVT (see Section 12B below).

Mr Baxendale-Walker’s “interest” in MVT

8.42 Mr Baxendale-Walker stated that he was an excluded person under the MVT trust deed. Whilst he might have wanted to appear to be excluded for tax and professional

conduct reasons, it was far from clear that the document did that. The exclusion of Mr Baxendale-Walker had been added by him in handwriting. There was no documentary evidence to establish the status of that amendment, and Mr Baxendale-Walker was not a reliable witness. Additionally the trust deed prohibited (by clause 22) loans to excluded persons. Mr Baxendale-Walker had received loans, suggesting that either he was not an excluded person or, if he was, he was not treated as one. Mr Baxendale-Walker's case that the trust deed allowed loans provided they were commercial should be rejected. The trust deed excluded persons receiving a "benefit of any kind" and stated that that included a loan. Mr Baxendale-Walker's reliance on the opinion of R Venables QC in relation to the Shaw matter that commercial loans were not a "benefit" did not assist him.

- 8.43 Even if Mr Baxendale-Walker was an excluded person, that did not mean that Mr Baxendale-Walker did not found the trust as his own vehicle and for his own benefit. Mr Baxendale-Walker's tax schemes, as designed for FSL, often worked on the principle that although a trust would have hypothetical discretionary beneficiaries there was no need for those beneficiaries actually to benefit. Mr Baxendale-Walker advised that the trust could be used to provide loans to the person(s) who established it (who needed to be excluded from benefit in order to obtain tax relief on the payments into and out of the trust) and then, after they died, to provide benefits to their heirs. If Mr Baxendale-Walker was an excluded person the logical conclusion was that that he created the MVT as his vehicle to "benefit" himself during his lifetime by providing himself with tax-free loans but that he had to be excluded from benefit in order to obtain tax relief.
- 8.44 Mr Baxendale-Walker and his associates in business were receiving large loans and payments. He was far too close to the FSL operation to be able to act for buyers of its products which were the very source of these large loans and payments.
- 8.45 During his evidence in chief, for the first time, Mr Baxendale-Walker claimed, for the first time, that the beneficial owners of MVT were Mr Richter, Mr Baudains and Mr Howe. He claimed to have had this belief since 1998. He had previously claimed that he did not know who the beneficiaries were. The Law Society had put that to Mr Baudains and Mr Howe both of whom by letter received during the course of the hearing denied being beneficiaries. Mr Richter could not be traced. Mr Baudains and Mr Howe were respected fiduciaries who should be believed. Mr Richter was not even a client of Mr Baxendale-Walker in 1994 when the trust was set up. He seemed to have acquired a "PREBS" and to have been an adviser (because of his music/internet contacts) to Mr Baxendale-Walker in MPRO. Mr Richter ceased being a client of Baxendale Walker Solicitors in 2000.
- 8.46 Mr Baxendale-Walker placed great reliance on a letter from Clambake, former trustees of Fountain Trust, to Atlas (the new trustees) dated 26th March 2001 in which they stated:-

"In respect of the transfer of the administration of the above named trust to you please find enclosed the following documents...

5. All deeds of Additional Beneficiaries."

- 8.47 He said that this meant that he could not be the sole beneficial owner and moreover he would not be one of the additional beneficiaries because he was an excluded person. The only people that could have been appointed additional beneficiaries would be people who appeared on the computerised ledgers as being the recipients of payments. In fact, the only people who received payments from the Trust were Mr Baxendale-Walker and persons associated with him.
- 8.48 Early in 2001 Mr Baxendale-Walker advised Mr Blackwell that the trusts owning FSLGB were “sophisticated purpose trusts”. It was possible that the additional beneficiaries were additional bodies existing for such purposes rather than additional human beings.
- 8.49 Even if Mr Baxendale-Walker was not the ultimate beneficial owner (or one of the ultimate owners) of FSL/MVT he clearly had a personal interest in MVT in that he was able to obtain loans at short notice on advantageous terms simply by making a request.
- 8.50 He was in close proximity to MVT and to the FSL group and for professional conduct purposes this disabled him from acting.
- 8.51 Mr Baxendale-Walker had persistently denied a financial interest in MVT and FSL both to The Law Society, in the disciplinary proceedings and in the Macdonald litigation between 2000 and 2002. He had given answers to The Law Society which were lies and other answers which were wholly misleading. It was submitted that the only explanation for this was that he well knew that he was not permitted to act for clients purchasing FSL products if he had a financial interest in FSL. It followed that if a finding that Mr Baxendale-Walker had a financial interest in FSL were made it would mean that he acted dishonestly in acting for clients whose interests conflicted with that personal interest of his.
- 8.52 There were numerous documents showing that Mr Baxendale-Walker directed the affairs of and/or controlled FSL. Such documents were included in the papers produced by Mr Bannister and Mr Blackwell.
- 8.53 The documents showed that Mr Baxendale-Walker appointed both Mr Bannister and, later, Mr Blackwell.
- 8.54 In a letter to Mr Bannister dated 30th December 1996, Mr Howe (one of the Guernsey resident directors of FSL Ireland at that point - the other was Mr Langham) clearly had no idea about the management of the company and was not exercising any control.
- 8.55 In a fax by Mr Baxendale-Walker to Mr Baudains at Louvre (Louvre was FSL’s company secretary and administrator) copied to Mr Bannister. Mr Baxendale-Walker stated:
- “This is the latest example of innumerable instances where Louvre Trust’s due diligence and administration procedures have not operated in synchronisation with the provision of new clients to Louvre Trust by FSL or us. This is no longer acceptable. A procedures manual is being prepared which will address

all the relevant issues and set out simple and unvariable procedures for dealing with them....”

- 8.56 Mr Bannister was clear in his evidence that he had not instructed Mr Baxendale-Walker to prepare a procedures manual. Clearly neither had Mr Baudains as otherwise Mr Baxendale-Walker would not have written informing him of this. The inference to be drawn is that this work was not the subject of instructions by anyone: Mr Baxendale-Walker took it upon himself to prepare it because he was the directing mind of FSL. Further, a solicitor in an arm’s length relationship with FSL would not have written in such aggressive tone to FSL’s corporate secretary and administrator.
- 8.57 By a fax dated 3rd January 1997 to Mr Bannister, Mr Baxendale-Walker stated “please confirm urgently to FSL that the actions I have ordered must be carried out”. Mr Baxendale-Walker’s attempts to explain this away as merely the words of an adviser to a client are wholly devoid of credibility.
- 8.58 Mr Baxendale-Walker prepared a “Consultants Benefits Trust” for FSL. It did not appear that anyone at FSL instructed him to perform this work. He claimed it was done after consultation. Certainly there had been no consultation with the Managing Director, Mr Bannister. Nor had there been consultation with Mr Howe who appeared to have been surprised by Mr Baxendale-Walker’s plan to replace commissions payable to introducers with loans and other payments from a Consultants Benefits Trust.

Allegation (ii): conflict of duty and duty

- 8.59 Mr Baxendale-Walker continued to act in circumstances where there was a conflict between his duties to FSL and his duties to individual clients. He acted simultaneously in the same transaction for both FSL and individuals purchasing products from FSL when there was a conflict between FSL and the individual purchasers.
- 8.60 Mr Baxendale-Walker admitted that FSL was, in general terms, a client but argued that where he acted for clients buying products from FSL, he did not simultaneously act for FSL. No other firm acted for FSL. Even if Mr Baxendale-Walker did not act for both clients in the same transaction there was still a conflict in acting for the purchaser clients in circumstances where the seller, FSL, was a client of Baxendale Walker Solicitors and that firm had acted for FSL in designing/advertising the very product being sold and Baxendale-Walker Solicitors had acted for FSL on numerous other matters including the Macdonald litigation.
- 8.61 Mr Baxendale-Walker’s control over and/or close connection with FSL was such as to generate a conflict of duty even if he was not acting as solicitor for FSL in a particular transaction. Mr Baxendale-Walker, being in control of and/or having a close connection with FSL, could not properly advise clients who were considering purchasing products from FSL as his duties to act in FSL’s best interests conflicted with his duties to act in the best interests of individual purchasing clients.
- 8.62 Mr Baxendale-Walker accepted that he had acted for FSL in designing its various products and that he had acted for Mr Shaw who purchased a product. He considered that there was no conflict of interest as he did not act for FSL in that transaction.

There was no correspondence between Mr Baxendale-Walker and any other solicitor acting for FSL. The assertion that FSL was unrepresented was inconsistent with the documents which showed that Mr Baxendale-Walker saw himself as protecting FSL's interests. Even if Mr Baxendale-Walker did not act for FSL in this matter, he was hopelessly conflicted as he had acted for FSL in advising it in the past on the design of the product.

- 8.63 In his letter to Mr Baxendale-Walker dated 28th October 1997 Mr McKenzie referred to "our liberation plan" and "our PSLP questionnaire".

The Shaw Transaction

- 8.64 Mr Baxendale-Walker's engagement letter on behalf of Baxendale-Walker Solicitors to Mr Shaw dated 3rd November 1997 stated that he had been instructed to "advise in relation to the establishment of a Corporate Asset Trust", a scheme being acquired by Mr Shaw's company from FSL. Little advice was given by Baxendale-Walker Solicitors and a high fee was charged. There was no advice on the level of FSL's fees nor whether it was in Mr Shaw's interest to sign the fee letters to FSL dated 18th September 1998, whereupon he undertook a personal liability for FSL's £1million fee for the "CALP". Mr Shaw also undertook a personal liability of a £1million FSL fee for the "OTLP". These obligations replaced an earlier fee letter dated 17th November 1997 which provided for Mr Shaw's company, Jaymarke, to be liable for those fees.
- 8.65 Because of the conflicts, Mr Baxendale-Walker was disabled from giving Mr Shaw advice about his accepting that substantial personal liability. Mr Baxendale-Walker asserted that he was not instructed to provide advice on the fee letters as this was a matter for Mr Shaw's other legal advisor in Scotland, Colin MacLaren. That was inconsistent with Mr MacLaren's fax to Mr Shaw dated 22nd January 1999 in which he stated "I am assuming for current purposes that you are satisfied with all the advice received by Messrs Baxendale-Walker".
- 8.70 The only explanation for Mr Baxendale-Walker sending the highly prejudicial letter (requesting Mr Shaw to accept personal liability for two £1million FSL fees) to his client Mr Shaw for signature without offering any advice, was because in doing so he was also acting for FSL and indeed was preferring the interests of FSL. That was reinforced by the fact that he "blind copied" the faxes to Isle of Man and Robert Macdonald, an employee of FSL. The Applicant's submission was further reinforced by a draft letter from Mr Baxendale-Walker sent by fax to Mr McKenzie on 25th January 1999 in which Mr Baxendale-Walker stated that he had received very disturbing news from FSL that Mr Shaw had not paid the FSL fees due; Mr Shaw had broken his contract with FSL and set out various concerns which arose. That would have been a startling letter for a solicitor to write to his own client, but it was even more startling that he sent it to a third party whose position was in direct conflict with that of Mr Shaw.

The Morris & Thacker transaction

- 8.71 Where Mr Baxendale-Walker acted for individual clients, Mr Morris and Mr Thacker, he failed to provide any advice on the FSL engagement letter or the level of FSL fees. The engagement letter provided for a fee of 25% of the notional CGT liability. In his letter dated 22nd March 2000 Mr Baxendale-Walker stated that, on the assumption of

sale proceeds of £179million, the FSL fee would be £15.662million. It was Mr Baxendale-Walker and Mr Auden's case that they did not need to advise on the engagement letter or the fee because a member of the firm of Eversheds was doing so. That member of Eversheds had told Mr Auden that the client had asked him to cast an eye over the engagement letters and that the Eversheds Partner had been embarrassed about this, no doubt because he believed that Baxendale Walker Solicitors were responsible for advising on all the FSL issues and felt that he was being asked to check their work. Baxendale Walker Solicitors' engagement letter dated 14th March 2000 required them to advise in relation to the establishment of a Private Shares Trust and to review all documents supplied by the client to FSL which clearly included advising about the FSL engagement letter and the level of fee.

- 8.72 Mr Auden's letter to Eversheds of 6th April 2000 confirmed that Baxendale-Walker Solicitors was the chosen firm of solicitors for the purposes of the FSL engagement letter; and in his email dated 30th March 2000 Mr Auden stated that he had spoken to Mr Thacker who had "confirmed that they were relying on us for tax advice exclusively". To provide such advice was against the interests of FSL and Baxendale Walker Solicitors did not provide it.
- 8.73 This transaction commenced in March 2000 at a time when FSL and various connected companies and trusts were defendants to litigation in the Isle of Man (brought by Mr Macdonald and Mr Crew) and were the subject of a freezing injunction. FSL and connected companies/trusts had brought parallel proceedings against Mr Macdonald and Mr Crew for fraud. FSL was an offshore company in respect of which Messrs. Morris & Thacker were signing a contract to pay to it a huge fee. There was a conflict between Baxendale-Walker Solicitors' duties to Morris & Thacker and their duty to FSL, whom Baxendale-Walker Solicitors were assisting in the litigation, not to disclose such damaging information.
- 8.74 At the end of the transaction, when the notional CGT saving had to be calculated in order to work out the FSL fee, Smith Cooper, Accountants, advised by letter dated 30th January 2004 that the CGT rate would have been 10%. Baxendale Walker Solicitors advised that it would have been higher and such higher rate would in turn result in a higher fee being payable to FSL. Mr Baxendale-Walker and Mr Auden were disabled from giving this advice because of the conflict between the interests of Messrs Thacker and Morris and those of FSL.

The CEMA transaction

- 8.75 In a transaction concerning FSL and its customer Mr Ciaurro/CEMA Ltd no advice as to the FSL engagement letter or the FSL fees, which were at a high level (10% of all contributions to the PREBS) was given by Mr Baxendale-Walker or Mr Auden. It was on the customer's insistence that the FSL fee was not payable until after Revenue approval of the scheme. Baxendale-Walker Solicitors' client engagement letter to the FSL customer provided that it would advise in relation to the establishment of a Remuneration Trust and review all documents supplied by the client to FSL. It was clearly within Baxendale-Walker Solicitors' retainer to advise on FSL's engagement letter and fees. The inference to be drawn was that Mr Baxendale-Walker and Mr Auden failed to do so because they preferred the interests of FSL. The Respondents argued that they were not required to advise on this because the client was seeking advice from his accountant. It could not have been thought that the clients'

accountant was providing legal advice to the exclusion of Baxendale-Walker Solicitors who had the above-mentioned retainer.

Allegation (iii): breaches of Practice Rule 1

- 8.76 Mr Baxendale-Walker engaged in conduct that did, or was likely to, impair his independence and integrity, his duty to act in the best interests of his clients and the good repute of the solicitors' profession by acting for clients who were buying products from FSL in circumstances where he (i) had a financial interest in and/or (ii) exercised control over or had a close connection with FSL. As a result of these matters, he was not sufficiently independent from FSL to act for clients who needed independent advice about FSL and its products.

Allegation (iv) against Mr Baxendale-Walker alone

- 8.77 With regard to allegation (iv) Mr Baxendale-Walker had in correspondence concealed relevant information from and/or provided misleading information to third parties. Examples are set out below:

The Shaw Matter

- 8.78 Mr Baxendale-Walker wrote various correspondence in this matter in which he concealed relevant information and/or provided misleading information to third parties:-
- 8.79 By a fax dated 12th November 1999 to Clydesdale Bank, Mr Baxendale-Walker informed the Bank that (i) the delay in Jaymarke repaying its loan to the Bank had been caused by extensive due diligence and administration procedures upon which Baxendale-Walker Solicitors had insisted; (ii) It had been decided to change the trustees from Louvre to Atlas because the previous trustees had been in office for almost 2 years and it was felt that a change was due as a matter of good administrative practice; (iii) Given the importance of the trust, Baxendale-Walker Solicitors had considered it right to have the change of trustee subject to the approval of the Guernsey Royal Court; (iv) Ernst and Young were closely involved; (v) subject to the expected court approval the following Friday the Trust would be free to enter immediately into arrangements to discharge the loan. All of these statements were untrue and misleading. The delay (i) had been caused because Mr Shaw had sacked Louvre and appointed Atlas; (ii) Louvre had been in office for less than 1 year; (iii) Louvre was refusing to hand over the trusteeship because it was concerned that Mr Shaw had sacked them for an improper purpose, namely so that he could wholly benefit, via loans, from the trust to the exclusion of the real beneficiaries of the trust. Legal proceedings had been commenced, not to obtain the approval of the court to an administrative change, but to seek to compel Louvre to be replaced against their wishes and in the face of claims that they were acting improperly; (iv) Ernst and Young were not involved in the arrangements but were merely involved in Inverness's accounting returns to the Inland Revenue and (v) the reassurance in the letter to the Bank that the funds were secure and immediate arrangements could be entered into by the Trust to discharge the loan following court approval was misleading as the fundamental question was the Bank's lack of any entitlement to the funds themselves.

8.80 On a number of occasions Mr Baxendale-Walker blind copied letters or received letters which had been blind copied to him. That concealed from the recipient (including on occasion his own client) that letters were being copied to other parties. Many examples occurred in the Shaw matter, where letters were blind copied to Michael McKenzie. Mr Baxendale-Walker's position was that the Law Society had misunderstood the position of Mr McKenzie, incorrectly understanding him to be an FSL employee throughout, whereas Mr McKenzie had been an independent introducer, not tied to FSL, until 2000. However a document written from FSL on 1st April 1999 was sent from Mr McKenzie as "Operations Director" of FSL. As the introducer of the FSL product in the Shaw case, whether he was a tied agent or not, Mr McKenzie had an interest in the completion of the sale of the FSL product, as his commission was dependent on this. It was inappropriate for Mr Baxendale-Walker to copy legal advice to his client, Mr Shaw, to Mr McKenzie and even more inappropriate for him (i) to blind copy letters and (ii) to send draft legal advice to Mr McKenzie before it had even been sent to Mr Shaw.

9. The case against Mr Auden

Allegation (i): conflict of (a) personal interest and (b) duty to clients purchasing FSL products.

- 9.1 Mr Auden had produced inaccurate evidence in his affidavit and had refused to attend the hearing and be cross-examined.
- 9.2 There was a conflict of interest between Mr Auden's own interests and the interests of Mr Auden's clients (i.e. a conflict between his duty to his clients to advise them about the products which FSL was selling to them and his personal interests). The nature of Mr Auden's personal interests which gave rise to the conflict were as follows:-
- 9.3 The receipt by Mr Auden of financial benefits which derived from FSL including (i) his personal interest in receiving commission and for trust distributions and (ii) his personal interest in receiving loans derived from FSL, both of which were paid to him as a reward for acting as an FSL introducer.
- 9.4 It was inconceivable that Mr Auden, a solicitor, did not know or did not conclude that Mr Baxendale-Walker was the owner or the controlling influence behind FSL. He did not report his concerns or withdraw from FSL work.
- 9.5 The FSL and Baxendale-Walker Solicitors offices outside London were in the same building in Nottingham. The proximity of Mr Auden to the two FSL administrators had been engineered to ensure convenient guidance. Mr Auden had been on the interview panel for the managing director when Mr Blackwell was interviewed.
- 9.6 In December 2000 to January 2001 Mr Auden had conduct of 73 FSL cases on behalf of buyers of tax avoidance schemes.
- 9.7 Mr Auden was a dishonest participant in the wrongdoing. He acted with conscious impropriety and in a way which he knew was dishonest.

- 9.8 Mr Auden had control of and/or close connection to FSL. A personal interest need not be of an economic nature. Mr Auden knew he would risk losing his client FSL or his control over and/or close connection with FSL if he advised clients not to buy FSL products. His personal interest in maintaining that control and/or close connection conflicted with his duty to advise clients about FSL products. As a result of his control over and/or close connection with FSL, Mr Auden was able to secure large fees for Baxendale-Walker Solicitors both from FSL and from private purchasers of FSL products as FSL designated Baxendale-Walker Solicitors as the “independent” solicitors whom all clients were recommended to instruct. Mr Auden was a salaried partner. Mr Baxendale-Walker stated in evidence that the employees of Baxendale-Walker Solicitors had a profit share.
- 9.9 Mr Baxendale-Walker’s financial interest in FSL/the trusts owning FSL were not disclosed to clients. Mr Auden could not have been unaware of this. Principle 15.04 in the Guide to Professional Conduct applied not only where a solicitor was himself personally interested in a transaction, but equally where his partner was so interested.
- 9.10 Greed was Mr Auden’s motive for acting for FSL’s clients despite his conflicting personal interest. It enabled him to receive introducers’ commission and/or trusts distributions and/or loans in lieu of commission from FSL as well as his salary from Baxendale-Walker Solicitors and his share of profits.
- 9.11 Mr Auden accepted that he acted as an FSL introducer between approximately late 1996 and October 1997, whilst he was a salaried partner at Goodger Auden. As such, he was a discretionary beneficiary of the FSL Consultants Benefit Trust at this time. He received during this period a loan from Kravitz (a company owned by the FSL Consultants Benefits Trust) which was paid to his wife; and Goodger Auden received from Kravitz what Mr Auden and Goodger Auden thought at the time were commissions (but he had subsequently found out that they were trust distributions) from FSL for FSL introductions Mr Auden had made during this period. Mr Auden stated that all such trust distributions went into Goodger Auden’s profits rather to himself personally. He was however a partner of Goodger Auden and was entitled to share in its profits and at the very least he received a share of the trust distributions that derived from FSL and which were paid for his introductions.
- 9.12 Mr Auden had stated that he (a) did not become a salaried partner at Baxendale-Walker Solicitors until October 1997; and (b) he stopped being an FSL introducer at that time and therefore ceased to have any entitlement to loans, commissions or trust distributions from FSL.
- 9.13 Mr Auden had deliberately put forward a misleading impression at (a) and (b) was a deliberate lie.
- 9.14 Whilst it appeared that Mr Auden officially became a salaried partner at Baxendale-Walker Solicitors in October 1997, Mr Auden failed to disclose that prior to that and almost immediately upon becoming an FSL introducer he acted as a consultant to Baxendale-Walker Solicitors, probably from January 1997. Mr Baxendale-Walker accepted in his evidence that Mr Auden was a Baxendale-Walker Solicitors consultant before becoming a salaried partner. Therefore between January and October 1997 Mr Auden was both (a) (as he admits) an FSL introducer entitled to commissions via Goodger Auden of which he was a partner and (b) (as he had not disclosed but was

clearly the case) a Baxendale-Walker Solicitors consultant advising clients on purchasing FSL products.

- 9.15 Mr Auden's response to the Law Society's Investigation Accountant dated 13th June 2002 that since he "joined" Baxendale-Walker Solicitors neither he nor anyone connected with him had received any payments in connection with the introduction of work to FSL or any other person was false and misleading. Some of Mr Bannister's documents showed that during this period Mr Auden acted both as an FSL introducer and the Baxendale-Walker Solicitors adviser to the same client. Mr Auden was both "Baxendale-Walker Solicitors' contact" and "introducer" for Brennan/Snape on 25th February 1997, Mousell on 26th February 1997, Bakshi on 10th June 1997, Haines on 10th June 1997. The authorised payee in each case was Kravitz. A document dated 1st July 1997 shows Mr Auden as the introducer on three cases, namely "A/Sabre", "Garton" and "Cahill" with a commission entitlement of approximately £123,000. The document stated "BA means Bill Auden introduction where BA takes 1/3". That put him in a position of the most hopeless conflict. As the FSL introducer he was interested in the scheme going ahead come what may so that he would be entitled to receive payment from FSL, via Kravitz, for that introduction, whether via a loan to himself/his wife or via trust distributions to Goodger Auden. As the Baxendale-Walker Solicitors' adviser his duty was to advise the individual purchaser client fully and frankly as to the FSL product and whether it was suitable to the client's needs and interests.
- 9.16 This conflict continued when Mr Auden joined Baxendale-Walker Solicitors as a salaried partner in October 1997. Contrary to Mr Auden's case, he continued to act and be remunerated as an FSL introducer whilst at the same time purporting to provide independent advice to private clients of Baxendale-Walker Solicitors who were buying FSL schemes.
- 9.17 When Mr Auden was first a partner at Baxendale-Walker Solicitors, Mr Auden continued to receive his FSL introducers' payments via Kravitz, a company he admits was owned by the FSL Consultants Benefits Trust.
- 9.18 Mr Auden accepted that he received a total of five loans from Kravitz, four of them in 1999. He disputed that such loans demonstrated a personal interests in FSL. His argument was that (i) the trustees had agreed to make the loans whilst he was at Goodger Auden albeit that 3 of them were drawn down after he left to go Baxendale-Walker Solicitors and (ii) they were allegedly on full commercial terms and were repaid. That was not accepted. Mr Macdonald's letter referred to the loans being payable in connection with commissions, which was inconsistent with these being arm's length commercial loans. It appeared that in reality they were commission payments paid by way of loans for tax reasons. Mr Auden's case that the receipt of such loans was analogous to the receipt of a loan from a Bank was not accepted. All members of the public could apply for a loan from a bank but the FSL Consultants Benefit Trust only gave loans to introducers of the very products on which Mr Auden was purporting to advise clients. No evidence of repayment had been provided.
- 9.19 In early 1998, a separate FSL allocation company, Tavendish, was established for Mr Auden from which he continued to receive loans, trust distributions and other rewards as a result of acting as an FSL introducer. Mr Auden's loans from Kravitz had been assigned to Tavendish.

- 9.20 The Isle of Man documents did not contain a set of documents on Tavendish. The documents concerning the other companies showed numerous payments into Tavendish and showed that FSL companies and connected trusts (usually the FSL Irish company) made numerous payments to Tavendish. It appears that the total payments to Tavendish over the 21 month period covered by the Isle of Man documents was £1,726,953.20.
- 9.21 In his letter of 19th January 1998 to Mr Macdonald Mr Auden set out the cash owed to Tavendish as at that date - £15,224 - and enclosed a copy of his passport and asked Mr McDonald and Mr Baxendale-Walker to act as referees. It was clear that Mr Auden knew that FSL had established an allocation company using his name and that he was the beneficiary of sums paid to this company. FSL fees payments memorandum forms signed by Mr Auden showed that commissions were to be paid to "Tavendish: Mr Auden". Other later forms showed commission payable to Tavendish but the reference to Mr Auden did not appear, because Mr Auden did not want a paper trail identifying him as the beneficial owner of or having a financial interest in Tavendish.
- 9.22 Mr Auden's assertion that he did not receive any payments from Tavendish and that the use of his name was simply because the trust required a contact name and that this did not mean he was a beneficiary of Tavendish was incredible. Mr Auden's argument was that the FSL Consultant's Benefits owned Tavendish and the FSL Consultants Benefits Trust deed excluded all Baxendale-Walker Solicitors' partners from being beneficiaries of the FSL Consultants Benefits Trust. That was untrue. The FSL Consultants Benefits Trust Deed (within the Bannister documents) did not provide for Mr Baxendale-Walker or any other partner of Baxendale-Walker Solicitors and their spouse to be excluded from benefit.
- 9.23 It was submitted that Mr Auden was the FSL introducer in the Messrs Morris & Thacker matter. The FSL PSLP questionnaire stated "please provide the following information and documents with the assistance of your FSL representative". Mr Auden completed the PSLP questionnaire dated 16th March 2000 indicating that he was the FSL representative and introducer. The document purported to state that the FSL representative was Clive Needham. However, Clive Needham was a director of FSL based in the Isle of Man. He did not assist Messrs Morris & Thacker with the completion of the form, Mr Auden did. A director of FSL could not have been the introducer entitled to commission. On a fax from Eversheds dated 16th March 2000 next to Mr Auden's name was a percentage of 0.695. Someone had crossed out Mr Auden's name and written "Tavendish Enterprises Ltd". It was to be inferred that Mr Auden was to receive a financial reward for introducing this business.
- 9.24 In an email from Mr Blackwell dated 17th January 2001 to Mr Auden, Mr Blackwell praised Mr Auden's delivery and skills at a meeting they both attended, which Mr Blackwell regarded as being exemplary for sales people and FSL, suggesting that Mr Auden's role was essentially to sell FSL products.
- 9.25 The Blackwell documents also supported the Law Society's case that Mr Auden acted as an FSL introducer.
- 9.26 Debbie Mills of FSL administration emailed to Mr Blackwell on 19th December 2000 stating that Mr Auden had 73 active cases.

Evidence showing Mr Auden directing the affairs of/controlling FSL

Morris & Thacker

- 9.27 There was substantial evidence before the Tribunal showing that Mr Auden was concerned (with Mr Baxendale-Walker's concurrence) with the business of FSL. Examples are his involvement with the Morris & Thacker transaction, with discussions concerning Quorum and the fact that Mr Blackwell regarded Mr Auden as involved in FSL's management. FSL and Baxendale-Walker Solicitors were treated by Mr Auden as one interchangeable entity rather than as separate businesses.

Baxendale-Walker Solicitors receipt of fees from FSL

- 9.28 Mr Auden had a financial interest in Baxendale-Walker Solicitors continuing to receive huge fees from FSL and this put him into a position of conflict when asked to act for clients purchasing products from FSL. For example, Baxendale-Walker Solicitors received (i) £100,000 from FSL BVI for "reconstruction work" on 31st October 2000 (ii) £250,000 from FSL BVI for "litigation support services" on 31st October 2000 (iii) £200,000 from FSL BVI for the research and development of the estate income plan on 31st October 2000. Mr Auden appeared to make the same argument as Mr Baxendale-Walker on this, namely that clients were all informed that Baxendale-Walker Solicitors acted as adviser to FSL. However, there was no documentary evidence that clients were so advised and none of the FSL publicity material showed that Baxendale-Walker Solicitors were FSL's lawyers, rather it identified them as "independent". Clients did not all receive independent legal advice as was claimed. In the Ciaurro/CEMA case the clients did not have an independent lawyer acting. They had an accountant who acted for them but he was not in a position to give legal advice. In the Shaw and Thacker/Morris cases, there were other solicitors acting, but they were not acting as taxation solicitors and therefore were not able to provide independent advice on the FSL schemes. Mr Auden was a salaried partner in Baxendale-Walker Solicitors and was entitled to a profit share.

Allegation (ii): conflict of duty and duty

- 9.29 Mr Auden continued to act in circumstances where there was a conflict between his duties to FSL and his duties to individual private clients.
- 9.30 He acted simultaneously for both FSL and clients purchasing products from FSL when there was a conflict of interest between his client FSL and his other clients.
- 9.31 Mr Auden admitted that FSL was in general terms a client, but argued that where he acted for clients buying products from FSL, he did not simultaneously act for FSL. No other firm acted for FSL and so Mr Auden claimed that FSL was not represented. The Law Society did not accept that Mr Auden did not simultaneously act for both sides of the transaction. In acting for the purchaser clients in circumstances where (i) the seller, FSL, was a client of the firm and (ii) Baxendale-Walker Solicitors had acted for FSL in designing/advising on the very product being sold there was a conflict. Mr Auden claimed in his affidavit dated 17th August 2006 that all clients were told that Baxendale-Walker Solicitors could not continue to act for either FSL or the client in the event of a conflict arising between them. However, there was no documentary evidence that such advice was actually given. Given its importance had

such advice been given it would have been written down. Baxendale-Walker Solicitors did act after conflicts arose between the client and FSL as in the Shaw matter, where conflicts arose in connection with the non-payment of FSL fees.

- 9.32 Mr Auden's control over FSL was such as to generate a conflict of duty even if, whilst acting for an FSL purchaser, he was not acting as a solicitor for FSL in the particular transaction. A similar conflict of interest prevents a director of a company or a shadow director from properly advising a person whether to enter into a contract with the company (at least without disclosing he is a director) as his duties to the company will conflict with his duties to that person.
- 9.33 Various examples were cited of a conflict between Mr Auden's duties to FSL and his duties to other clients.
- 9.34 For example, Mr Auden knew, at the time that Morris & Thacker were asking for advice on the FSL product (March 2000), that FSL was engaged in litigation in the Isle of Man and in England with Macdonald and Crew with allegations of fraud being made by both sides. FSL was the subject to a freezing injunction in the Isle of Man in connection with this litigation. This was highly relevant information to Morris & Thacker which Mr Auden was under a duty to disclose. He had a conflicting duty to FSL to keep the information confidential. This point applied with equal if not more strength to Mr Baxendale-Walker.

Allegation (iii): Evidence of Mr Auden's lack of independence

- 9.35 Mr Auden engaged in conduct that did, or was likely to, impair his independence and integrity, his duty to act in the best interests of his client, and the good repute of the solicitors' profession by acting for clients who were buying products from FSL when he had received commissions and/or financial benefits from FSL and controlled and/or had a close connection to FSL. As a result of these matters, he was not sufficiently independent from FSL to act for clients who needed independent advice about FSL and their products. The receipt of commission payments and other financial benefits and Mr Auden's control over and close connection to FSL were also factors.
- 9.36 It was the Applicant's case that Mr Auden acted dishonestly. He would very quickly have come to know that Mr Baxendale-Walker was the ultimate owner of FSL or very closely involved in its direction. He would have seen and learned what Mr Bannister and Mr Blackwell saw and learned. He would not have had FSL in an office next door to his at Nottingham without acquiring a close knowledge of its business and workings. He must have known that it was improper to act as both an FSL introducer and a Baxendale-Walker Solicitors adviser to clients purchasing FSL products. His awareness of this was the explanation for his denials that he acted as an FSL introducer whilst at Baxendale-Walker Solicitors and his lack of frankness about the fact that he joined Baxendale-Walker Solicitors as a consultant in January 1997, almost immediately upon becoming an FSL introducer. He sought to hide his interest in FSL by channelling it through Tavendish.
- 9.37 Mr Auden must have known that he could not properly act as independent adviser to FSL's clients whilst at the same time acting for FSL. That was not a mere technical breach, where Mr Auden was technically conflicted because another employee at

Baxendale-Walker Solicitors had advised FSL. He himself acted as adviser to FSL. He was involved in investigating the business affairs of FSL and its remuneration trust during January 2000 in connection with the Macdonald/Crew allegations. He was personally conflicted from acting for FSL private individual clients.

- 9.38 It followed that he also acted dishonestly with regard to allegation (iii), which was founded on the same facts as allegations (i) and (ii).

10. The principal submissions of Mr Baxendale-Walker

- 10.1 It was Mr Baxendale-Walker's position that he had assigned the intellectual property rights in tax saving schemes to FSL. He had thereby relinquished his ownership of them and FSL was free to sell those schemes to customers seeking to make tax savings. Customers were introduced by introducers who were rewarded for making such introductions.
- 10.2 Mr Baxendale-Walker in his oral evidence explained that he could not himself "sell" the schemes to clients as, because he was a solicitor, he could not pay introduction and referral fees. He would need "introducers" of clients interested in such schemes. Other scheme providers were not solicitors and could reward introducers of clients and were because of this preferred by introducers. As a solicitor he was seriously disadvantaged in the commercial world. FSL could operate in the commercial world on the same basis as other commercial scheme providers.
- 10.3 It was Mr Baxendale-Walker's case that he was not the controlling influence of FSL and certainly not the beneficial owner of it. Mr Baxendale-Walker and Mr Auden were not closely connected to the FSL group of companies in any way other than as independent legal advisors.
- 10.4 Mr Baxendale-Walker denied he had recruited Mr Bannister. Mr Baxendale-Walker did not give Louvre instructions relating to FSL sales teams. He did not give instructions to FSL or anyone connected to FSL about any aspects of FSL's business, including recruitment of staff.
- 10.5 Mr Baxendale-Walker did not use blind copied letters to conceal a relationship with FSL from Baxendale-Walker Solicitors private individual clients.
- 10.6 Invoices raised by Baxendale-Walker Solicitors were in respect of work undertaken for clients on an arm's length basis. As a consequence of their relationship with FSL, Baxendale-Walker Solicitors was never in a position of conflict with its private individual clients.
- 10.7 Where there was the potential for conflict between the interests of Baxendale-Walker Solicitors' clients and FSL's interests, the position was resolved in the clients' interests. Baxendale-Walker Solicitors' clients received proper and full advice on the structure of the FSL fee charging mechanism and the amount of FSL fees. Baxendale-Walker Solicitors' clients received proper and full advice on the nature and purpose of the FSL products they were buying.

- 10.8 The documents chosen by the Applicant to support the allegations represented a small and partial selection. A fuller and fairer selection would have demonstrated that the allegations were unfounded.

The Respondents, The FSL Group of Companies and Tax Schemes

- 10.9 FSL was a client of Baxendale-Walker Solicitors. In the course of that relationship FSL instructed one or other of the Respondents to carry out research on their behalf into tax saving products and to develop tax products. The intellectual property in those products belonged to FSL. Baxendale-Walker Solicitors were also retained, for a fee, in connection with other FSL business to include tax advice, litigation, assisting in the appointment of senior members of staff, providing training to intermediaries and in the restructuring of parts of its business.
- 10.10 FSL operated through an offshore corporate structure that was advised on and put into place by lawyers other than Baxendale-Walker Solicitors. FSL had a series of professional advisors. Firms of solicitors other than Baxendale-Walker Solicitors were instructed to act for clients purchasing FSL products.
- 10.11 Mr Baxendale-Walker and Mr Auden and the firm of Baxendale-Walker Solicitors did not promote or market FSL tax schemes.

The FSL Tax Schemes

- 10.12 Baxendale-Walker Solicitors was instructed by private individual high net worth clients after the tax schemes had been marketed by “introducers” who were remunerated through offshore trusts set up by FSL. FSL’s fees were large because they were geared to the tax saving to be achieved. Sometimes that amounted to a considerable sum of money.
- 10.13 It was correct that in the Shaw matter FSL’s fees were £1 million. It was not true that in relation to Morris & Thacker the fees were £15.6 million. In this case Morris & Thacker, the shareholders of Internet Investments Inc, believed that they might achieve a sale of their shares at £200 million. The value of technology sector shares collapsed and this figure was not achieved. The figures had been speculative and that was known by all parties. Later the shareholders took a completely different route, reversed into a NASDAQ shell and disposed of their shares in April 2003. Only then did the FSL fee become payable. In relation to those events Baxendale-Walker Solicitors advised independently of FSL and acted to the client’s benefit as opposed to FSL’s.
- 10.14 Mr Baxendale-Walker denied that the various tax schemes were marketed by FSL “in close collaboration with the Respondents”.
- 10.15 FSL did not appoint Baxendale-Walker Solicitors to act for a scheme purchaser. In all cases the clients directly engaged Baxendale-Walker Solicitors to act on their behalf.
- 10.16 The Law Society and the Applicant had misunderstood the nature of some of the schemes but it was right that FSL schemes were marketed through introducers. Baxendale-Walker Solicitors and the Respondents were not involved in the marketing

of FSL schemes. The introducers were not known to the Respondents or Baxendale-Walker Solicitors. There were many introducers including solicitors, accountants and Independent Financial Advisors. The Respondents knew some of them. Only Mr Auden had been an introducer at Goodger Auden. He ceased to be an introducer when he joined Baxendale-Walker Solicitors.

- 10.17 The remuneration of introducers was a consequence of trustees exercising their discretion to award payments to them through the vehicle of companies chosen by the trustees, not the introducers.
- 10.18 It was right that on occasions the firm acted for FSL and/or its shareholders or parties with an interest in FSL such as the Mount Vernon Trust. FSL were clients for whom Baxendale-Walker Solicitors acted on an arm's length basis. Bills for those legal services were raised, submitted and paid. The fact that FSL were Baxendale-Walker Solicitors' clients was disclosed to every client seeking to take up an FSL scheme.
- 10.19 Mr Baxendale-Walker did not have a financial interest in FSL or its associated companies and trusts. He did not receive dividends or a salary. He was not an introducer in receipt of commission. Mr Auden had an interest as a beneficiary in the Consultants Benefits Trust but that interest ceased when he became a Baxendale-Walker Solicitors' partner.
- 10.20 FSL was first established in 1994. Its incorporation and ownership was advised on by Guernsey lawyers who put in place the structure through which the group of companies operated. The business operations were run from Guernsey. At that time it was a relatively small scale business managed by resident directors, Messrs Howe, Latham and Kenny with a local fiduciary company, Louvre, providing administrative services. The group's corporate and trust advice was provided by Ozannes, a firm of Guernsey lawyers. FSL acquired 20 to 30 introducers of its products. The agreements through which those introducers were paid were drafted by Tarlo Lyons Solicitors in London. FSL approached Baxendale-Walker Solicitors to provide product development advice on a solicitor/client basis. On the occasions that Baxendale-Walker Solicitors acted for a corporation or an individual purchasing an FSL product, the Baxendale-Walker Solicitors/FSL solicitor/client relationship was always disclosed to the purchasing client.
- 10.21 In 1996-1997 the number of FSL introducers was growing. Some were unfamiliar with technical aspects of the products and had fallen into the habit of calling Mr Baxendale-Walker or other members of Baxendale-Walker Solicitors for ad hoc advice. These enquiries were disruptive and time consuming. The range of questions was wide and Baxendale-Walker Solicitors was unremunerated for its assistance. Mr Baxendale-Walker had raised this issue with FSL on a number of occasions. In November 1996 in conjunction with advice from its legal advisers, Ozannes, and Louvre, the shareholders of FSL decided to appoint a Managing Director to oversee the administration and management of FSL and its introducers.
- 10.22 Mr Baxendale-Walker had not been aware of the decision or the actual appointment of Mr Bannister until after the event. He played no part in the decision to recruit or the choice of candidate as was demonstrated by a letter dated 20th November 1996 written by Mr Bannister to Mr Baxendale-Walker. A meeting was arranged for the 6th December 1996. That was the first time Mr Baxendale-Walker met Mr Bannister. Mr

Baxendale-Walker took the opportunity to reinforce his complaint about introducer queries and elicit Mr Bannister's agreement to rectify the problem.

- 10.23 Mr Bannister proved to be a disastrous appointment. He created and conducted lengthy disputes with senior members of the introducer network. Those disputes were largely fuelled by his belief that his remuneration should match that of the senior introducers. He did not remove the problem of introducer queries, instead he became a conduit for them because of his inability to master the technical aspects of the FSL products. He reneged on his agreement to move to Guernsey where he had to be in order to manage a Guernsey based company in order to protect its UK tax free status. In general terms he caused disruption and disharmony. He was required to resign, which he did in July 1997.
- 10.24 While Mr Bannister was Managing Director Baxendale-Walker Solicitors were retained to advise on and implement a new method of remunerating introducers through discretionary trusts operating through offshore companies. This involved a global reconstruction of FSL's organisation and was a major piece of work. As an adjunct to that Mr Baxendale-Walker was instructed to ensure that the agents' manual complied with the new tax efficient remuneration structure from a taxation perspective.
- 10.25 After Mr Bannister's resignation in July 1997 the administration of FSL moved to the Isle of Man and a new local management team was set up. They instructed new corporate advisors, Caine & Co, a firm of Isle of Man lawyers. This was intended to be a fresh start after the disruption caused by Mr Bannister.
- 10.26 FSL requested Mr Baxendale-Walker to spend 6 months travelling round the country supporting introducers and providing technical support. This was an instruction to provide legal services given on an arm's length basis, which services were properly remunerated.
- 10.27 Prior to receiving those instructions in mid-1997 Mr Baxendale-Walker had indicated to FSL his desire to cease to accept any instructions at all from them. He was persuaded not to adopt this course on the basis that management would change.
- 10.28 After the 6 months travelling Mr Baxendale-Walker would decide whether to continue the solicitor/client relationship with FSL. He did decide to do so.
- 10.29 In 2000 FSL discovered that it had been the victim of a large scale fraud perpetrated by Robert Macdonald the FSL Sales Manager and persons associated with him by falsely claiming that he was entitled to commissions. This had taken place under the Isle of Man management which took control in mid-1997. As a consequence of the discovery of the fraud FSL shareholders decided to move the management to Jersey. As a form of damage limitation Baxendale-Walker Solicitors was instructed to act in the worldwide corporate restructuring of FSL including a review of FSL internal documentation spanning the previous 4 years. The restructuring work was done for a fixed fee of £100,000.
- 10.30 As part of its reorganisation FSL opened a London representative office and appointed Michael McKenzie as its temporary representative pending the appointment of a permanent Managing Director.

- 10.31 Mr Baxendale-Walker was instructed to assist in the appointment of a new Managing Director to the extent that he was required to ensure that the new appointee had sufficient technical background and expertise to be able to deal with FSL products. He was also instructed to deal with some of the practice matters surrounding the appointment of the new Managing Director.
- 10.32 As part of its strategy of increasing its visibility in the marketplace FSL asked Baxendale-Walker Solicitors to update and improve its corporate brochure to reflect the solicitor/client relationship between Baxendale-Walker Solicitors and FSL.
- 10.33 Baxendale-Walker Solicitors was by now a successful and busy firm with a high reputation in a niche market and FSL hoped to use its relationship with Baxendale-Walker Solicitors to increase its own profile.
- 10.34 From the Baxendale-Walker Solicitors perspective there was no need for this to be done but an agreement was reached that if FSL paid for new brochures then Baxendale-Walker Solicitors would be prepared to go to the trouble of preparing them. That was done. FSL met the cost.
- 10.35 FSL had become a substantial international organisation. In the UK alone it had hundreds of clients. In the last four years Mr Baxendale-Walker had met six of them. FSL instructed PWC for strategic marketing and management advice and GSC Solicitors together with Smith and Williamson, Chartered Accountants for corporate advice. Baxendale-Walker Solicitors retained its role as solicitors to FSL in relation to product development. Baxendale-Walker Solicitors continued to act for persons or corporations purchasing FSL products. When such instructions were received the solicitor/client relationship with FSL was, as it always had been, fully disclosed.
- 10.36 Mr Baxendale-Walker had not given instructions to FSL. He was carrying out his instructions to create a new remuneration structure for the introducers. That structure involved the use of offshore companies. Mr Baxendale-Walker wrote a letter that concerned the incorporation of the companies to be used in that structure together with an explanation of the inter-relationship of the various entities, a standard letter for a solicitor to write when instructed to carry out work of that nature. It did not support the allegation of control or inappropriate closeness to FSL on the part of Mr Baxendale-Walker.
- 10.37 A letter and report dated 10th January 1998 following a meeting in Guernsey was clear in its content. Baxendale-Walker Solicitors was independent of FSL. That letter did not support the allegation of control or inappropriate closeness of Baxendale-Walker Solicitors to FSL.
- 10.38 The letter, the report and recommendations had been written by Mr Bannister as a self-serving justification in response to mounting criticism of his performance. Mr Baxendale-Walker had found it necessary to complain in April 1997 that he was constantly, "almost weekly" being brought into Mr Bannister's disputes with introducers, in the main with Mr Macdonald. On 22nd May 1997 Mr Baxendale-Walker received a telephone call from Mr Bannister. Mr Baxendale-Walker made a note of that telephone conversation. The note recorded that Mr Baxendale-Walker secured a reduction on FSL's fees for his client demonstrating that in so far as there

was a conflict of interest between the client and FSL over FSL's fees, it was resolved in the private client's favour.

- 10.39 Mr Bannister's report stated that because of Mr Baxendale-Walker's involvement with them "my position is somewhat diminished ... it appears that the main task is to put in writing onto FSL paper the promises you have made to clients, employees on behalf of FSL and smooth over administrative problems. If I am to be proactive in the affairs of FSL and carry out the duties of Managing Director the recommendations I have made must be seriously considered".
- 10.40 Mr Baxendale-Walker's position was that the "involvement" which diminished Mr Bannister's position was nothing to do with taking control or management of FSL away from him but related to Mr Baxendale-Walker's comments about being requested by Mr Bannister to act as a mediator between him and introducers, secondly Mr Baxendale-Walker's observation that he constantly received complaints about Mr Bannister with which he had sympathy and thirdly that Mr Baxendale-Walker would take Mr Bannister's side against Mr Macdonald.
- 10.41 Concern had been expressed about liability and damages if an FSL product did not produce the fiscal benefits claimed for it. Mr Bannister had said that such liability would initially rest on FSL but as that commercial entity in itself had no assets he believed that civil liability would pass to himself. Mr Bannister wished to have an "E and O" policy purchased to protect him in such event, or he wished Baxendale-Walker Solicitors to accept liability so as to relieve him from the possibility of having personally to meet any claim for damages. The reference to Mr Baxendale-Walker/Baxendale-Walker Solicitors claim for independence from FSL did not relate to control of FSL, but to advice, when researching and developing FSL products, being given from a position of independence.
- 10.42 Baxendale-Walker Solicitors had advised on the FSL products and were saying that they were independent of FSL by virtue of their solicitor/client relationship when providing that advice. In any possible suit brought in respect of a product the liability fell on FSL and not Baxendale-Walker Solicitors. It was in that context that the word "independent" had been used. It was in fact a threat that Baxendale-Walker Solicitors would be brought into any litigation unless steps were taken to relieve Mr Bannister from any potential personal liability.
- 10.43 On 27th June 1997 Mr Baxendale-Walker wrote "It is plain to me that you are seeking to enlist my assistance in your remuneration enhancement exercise by suggesting that my Firm bears responsibility as technical advisors to FSL for potential product liability. You seek to procure for yourself Director's Liability Insurance. You are explicitly threatening to take the position that my firm is not "independent" of FSL, on the basis that we have had technical input into FSL's product development, and because we have given advice to the FSL shareholders. In other words if FSL sales people, or indeed you, are giving incorrect technical guidance to customers about FSL products, then FSL would seek to hold my firm liable..... If that is now the Board and shareholder's position, then my firm will have no alternative but to cease to act for FSL. I am copying the Board this letter with a view to ascertaining whether the position stated by you (and not copied to the Board) is the company's position or just yours." That did not suggest control of FSL by Mr Baxendale-Walker.

- 10.44 Mr Bannister said “If you wish to appoint a “stooge” Managing Director then that is your prerogative”. The precursor to which was the exchange recorded on the 22nd May 1997 file note. Mr Baxendale-Walker had written on the file note shortly after it was made “This guy’s judgment and professionalism is non-existent”.
- 10.45 Mr Baxendale-Walker had responded “your suggestion at your recommendations paragraph 6 as to “stooge” Managing Director is regrettably offensive. As you are well aware I did not appoint you. Mr Baudains recommended you to the Board”.
- 10.46 Mr Baxendale-Walker had prepared a briefing paper “Crowsley Day Firm Meeting July 1997”. Crowsley was the name of Mr Baxendale-Walker’s house where the meeting took place. Paragraph 2 dealt with the historic relationship and traced the growing tension between the needs of FSL and the consequences of growth of Baxendale-Walker Solicitors. When the relationship was first formed in 1994 FSL and Baxendale-Walker Solicitors were both in their infancy. In the intervening years both had grown in size and significance within their own marketplaces. Paragraph 2.6 referred to Mr Bannister “who consistently failed to appreciate that we are external professional advisors not in-house lackeys” - hardly consistent with Mr Baxendale-Walker controlling and having hidden financial interests in FSL.
- 10.47 At paragraph 3.11, Mr Baxendale-Walker wrote “I have not met Charles Caine or his directors team and I do not propose to do so. I feel that this is a real opportunity for Baxendale-Walker Solicitors to return to the long distance relationship which we enjoyed with FSL until around 1996”. In paragraph 5.5 we find “The episode demonstrates the correctness of our decision to focus our efforts on the new non-FSL business”. In paragraph 6.6: “Baxendale-Walker Solicitors to refuse any involvement with FSL management/structure/remuneration matters save only for case completion certification through FPM. New Manx company is appointed and Caine & Co as corporate advisors. All such matters are their responsibility not ours”. Finally in paragraph 6.10 “We should review the state of our client relationship with FSL in six months time. If the new Board can take proper control and direction and keep their sale force away from Baxendale-Walker Solicitors then FSL can continue to be a useful adjunct to the client roster. If not we are all agreed that we must be ready to move on”. These extracts from a document created by Mr Baxendale-Walker in July 1997 demonstrated that FSL and Baxendale-Walker Solicitors, whilst enjoying a commercial relationship, were independent of each other.
- 10.48 Mr Bannister’s letter of resignation (not copied to Mr Baxendale-Walker) was not in fact a voluntary action taken as a matter of principle, it amounted to a self serving complaint rather than a principled analysis of events. The reference to the shareholders being “happy to be reliant on the company’s lawyers for critical decisions (both managerial and operational) that pertained to FSL” was not to be taken as a reference to Baxendale-Walker Solicitors. It referred to FSL’s Guernsey legal advisors who, amongst other things, advised on Mr Bannister’s termination of contract. In his letter to Mr Baxendale-Walker of 20th November 1997 Mr Bannister stated “Derek (Baudains) thinks there is too much reliance on the company lawyers for management decisions” he does on to say “too much time and cost taken in referral of administrative matters to the lawyers”. There could be no doubt that this reference to “company lawyers” was to Ozzanes. The reference to Macdonald being appointed by FSL’s lawyers was similarly not a reference to Baxendale-Walker Solicitors but Ozzanes. The reference in paragraph 2 to the appointment of Joanne

Scott and a letter sent from FSL's lawyers to Louvre saying "Joanne is joining FSL" was again Ozzanes' and not Baxendale-Walker Solicitors.

- 10.49 It was accepted that the reference in paragraph 3 to "the lawyers acting for FSL" might well have been reference to Baxendale-Walker Solicitors.
- 10.50 The final paragraph to Mr Bannister's letter of resignation where, despite resigning and reciting a litany of complaints, he stated that he would be writing to his team of introducers to assure them that this position as their team leader and his position as an introducer in his own right would not be affected showed that he still wished and intended to retain a commercial relationship with FSL despite his asserted misgivings.
- 10.51 Atlas were professional trustees. They acted as trustees for a number of the trusts set up on behalf of Baxendale-Walker Solicitors' clients. They became the trustees of the trust which related to Mr Shaw. They were independent professionals based in Jersey. Given Atlas's background it was not surprising that they and Baxendale-Walker Solicitors had mutual clients. Atlas acted as professional trustees for many clients who were not Baxendale-Walker Solicitors and/or FSL clients.
- 10.52 The Law Society drew attention to three invoices. The bill for £100,000 represented a fixed fee for work done when Baxendale-Walker Solicitors were instructed to act in the corporate restructuring of FSL in the wake of the discovery of Macdonald's fraud. The bill was in a round sum because that was the fixed amount and it contained no detail because FSL knew what work had been carried out on its own reconstruction. The bill for £250,000 was for work done, some of it offshore, over a period of six months on instructions from FSL who were responding to a request from their litigation lawyers to have this work carried out. It was necessary for Baxendale-Walker Solicitors to do the work as what was required was an expert analysis of FSL's accounting documentation in order to respond to allegations made in Macdonald's defence about the fiscal basis of the FSL's consultant remuneration structure.
- 10.53 FSL's litigation lawyers were not capable of conducting the analysis themselves and recognised the need for Baxendale-Walker Solicitor's expertise. Again this was a fixed fee bill and again FSL did not require detail on the bill to know what work had been done. The bill for £200,000 was, as the document itself disclosed, for research and development of a financial product namely an Estate Income Plan. Mr Baxendale-Walker understood that this had proved to be an excellent product so far as FSL was concerned and had sold extremely well. The work was undertaken on an arm's length basis with the fees agreed at the outset of the work. Mr Baxendale-Walker, Mr Auden or Baxendale-Walker Solicitors did not retain any financial interest in the product after the bill for the work carried out was paid. In his oral evidence Mr Baxendale-Walker explained that the third bill represented FSL's payment for the intellectual property rights in a tax savings scheme. The fact that the three bills were not detailed was not a reflection on the nature of the relationship between FSL and Baxendale-Walker Solicitors. FSL did not challenge the bills and that was a reflection of the fact that they were paying fees agreed at the outset for work which they knew had been carried out. The three bills did not demonstrate that non-detailed bills were sent routinely to FSL or that such bills were evidence of the asserted control or closeness of Mr Baxendale-Walker to FSL.

- 10.54 As part of his fraudulent conduct Mr Macdonald advanced £750,000 from a Consultants Benefit Trust to Ronald Winter. Ronald Winter was the manager and producer for Elkie Brooks, a successful popular music artist, to finance a tour by Elkie Brooks and to record and promote a new album. The trustees of the defrauded Consultants Benefit Trust instructed Mr Baxendale-Walker and their litigation solicitors, Paul Davidson Taylor, jointly to approach Ronald Winter to attempt to negotiate a return of funds to the trust. Ronald Winter indicated that the funds had been invested in the tour and an album and that he was not in a position to make any form of repayment until the investment returned a profit. He needed further funds for the investment to succeed and without those funds there was a very strong possibility that the entire investment would fail. The trustees, advised by Paul Davidson Taylor, decided to advance by way of loan a further sum of money in an attempt to secure the return of the £750,000 outstanding. The trustees were advised by Paul Davidson Taylor that if the loan were not repaid they, whilst having a cause of action, were faced with the practical impediment of being an offshore claimant who would have to provide security for costs. The trustees decided, again on advice from Paul Davidson Taylor, to lend to a UK corporate entity that would on-lend to Ronald Winter. The corporate entity chosen was MPRO Ltd, a company with which Mr Baxendale-Walker had a close connection and which was involved in the music industry. To avoid any possible difficulties in connection with security for costs in the event that litigation was necessary, Mr Baxendale-Walker was asked by the trustees, because he was connected to MRPO, if he would insert himself into the lending chain in a personal capacity so that if litigation proved necessary he could sue as an individual. That request was made on advice from Paul Davidson Taylor. Mr Baxendale-Walker was content to do that and funds came to the Baxendale-Walker Solicitors client account from the remuneration trust Skye Grantees, which they lent to Ronald Winter through the route described. In fact Ronald Winter defaulted on the debt and Mr Baxendale-Walker took proceedings in his personal capacity. Ronald Winter was by the time of those proceedings bankrupt and Mr Baxendale-Walker became a creditor in that bankruptcy, effectively a constructive trustee of the debt for the trustees of the Consultants Benefit Trust.
- 10.55 In acting in this way Mr Baxendale-Walker was responding to reasonable requests, made in advance, from a long established and important client.
- 10.56 When another Managing Director was sought by FSL Mr Baxendale-Walker was in contact with Jonathan Lee Recruitment to replace Mr Bannister. Mr Baxendale-Walker dealt with Jonathan Lee he did not instruct them. They were instructed by FSL. FSL decided in 2000 to open a London office and Mr McKenzie was appointed as a temporary managing director whilst a permanent appointee was sought. That person was Nick Blackwell. Mr Baxendale-Walker was asked by FSL to advise on the selection process and vet the technical competence of any applicant. Mr Baxendale-Walker was also asked to liaise with Jonathan Lee, to act as a conduit for information and to deal with practical matters as and when necessary. One such practical matter was drawing up the contract of employment and to deal with the recruitment agency's fees. All payments made on behalf of FSL were later recovered when they were billed for the work done.
- 10.57 Nick Blackwell resigned for personal reasons within a very short time after taking up the appointment. Jonathan Lee wrote to confirm they were prepared to discount their fees to FSL and recognised that Mr Baxendale-Walker was the local point of contact

able to speak and act on his client's behalf. Jonathan Lee clearly regarded his contract for services as being with FSL, referring to the payment of its fees.

- 10.58 With regard to the Applicant's assertion that correspondence between a solicitor "and his own client" could not properly be blind copied to other parties, and that letters which had so been copied showed that Mr Baxendale-Walker/Mr Auden/Baxendale-Walker Solicitors were deliberately withholding from their own clients the fact that copies were being so sent, one of the copied letters exemplified had been copied to a client's agent in accordance with instructions; one was only a draft which had not been sent; one was not sent to a client but was copied to the client and his agent - and another was not sent to a client, but was copied to the client's agent. It had not been sent by Mr Baxendale-Walker. Another had not been sent to a client and had not been sent by either Respondent or Baxendale-Walker Solicitors. One letter had been sent to a client and was open copied to the client's agent on the client's instructions.
- 10.59 One letter was sent to a client: it was copied internally within Baxendale-Walker Solicitors and also to the client's trustee. It concerned a loan made by Baxendale-Walker Solicitors to the client which was required urgently in litigation being conducted by legal advisors to the client. The fact of the loan was known to all relevant parties. This document was copied for information. The client expected her trustee to be informed. The client was not being deceived or disadvantaged in any way.
- 10.60 Of the 14 documents advanced by the Law Society in support of its assertion that letters to clients were blind copied to third parties without the client's knowledge, only 3 of the documents were actually letters sent to clients. A number of letters had been sent to third parties and blind copied to the client. There was no evidence that clients' interests had been subordinated to FSL's interests through the device of using blind copies.
- 10.61 Mr Baxendale-Walker had not preferred FSL's interests over Baxendale-Walker Solicitors' clients. Mr Baxendale-Walker did not behave in a consciously improper way.
- 10.62 There were no conflicts of interests between lay clients and FSL. Mr Shaw had been advised by a major Scottish law firm.
- 10.63 Mr Thacker and Mr Morris had been advised by Eversheds. The Clients' share sale was completed by Eversheds with no CGT liability. Mr Auden was retained by Messrs. Morris & Thacker and Eversheds continued to act and advise. In particular Eversheds were asked to advise on the FSL engagement letter. Mr Auden made it perfectly clear that FSL were clients of Baxendale-Walker Solicitors. Mr Auden had sought to be satisfied that the clients' fee liability would be certain to decrease in the event that the value of the deal decreased and was thereby protecting the clients' interests against FSL as opposed to promoting FSL's interests at the expense of the clients.
- 10.64 Mr Baxendale-Walker had been proactive in offering advice to individual clients to their benefit when dealing with FSL rather than promoting FSL's interests at the client's expense.

- 10.65 In the matter of Ciaurro & Cema Ltd, the shareholders and directors were advised throughout by Nottingham Chartered Accountants and the firm was private advisor to the individual shareholders as well as the corporate advisors and auditors. The chartered accountants insisted upon a re-draft of the engagement letter so that the FSL fees only became payable in the event of the Inland Revenue confirming the desired tax treatment of payments into the trust. On the basis that FSL were prepared to take that line Mr Auden agreed that Baxendale-Walker Solicitor's fees were only to be payable on the same basis.
- 10.66 It was not right that because an alleged lack of independence from FSL Baxendale-Walker Solicitors clients received no advice in relation to FSL fees. Baxendale-Walker Solicitors did act in the transactions but had been part of a wider team of competent advisors.
- 10.67 On a wider scale Baxendale-Walker Solicitors acted for clients who had no connection with FSL and FSL sold products to clients who instructed lawyers other than Baxendale-Walker Solicitors to act for them.
- 10.68 In the C matter Mr Baxendale-Walker advised a corporate client working closely with the company's accountants on a share reconstruction which was tax efficient. That was not an FSL plan but a use of Mr Baxendale-Walker's own expert tax and company work. There were major tensions between Baxendale-Walker Solicitors and Mr Bannister who consistently failed to appreciate that they were external professional advisors and not in-house lackeys. The development and marketing of Baxendale-Walker Solicitors own branded expertise was never a problem for the old Board at FSL as Baxendale-Walker Solicitors' professional success reflected enhanced value on such of their product developments as Baxendale-Walker Solicitors had advised on. There was clearly demonstrated a desire by Baxendale-Walker Solicitors to compete with FSL. Baxendale-Walker Solicitors marketed its own products in competition with FSL. Baxendale-Walker Solicitors, as a matter of policy, never required its clients to purchase FSL products.
- 10.68 It was not right that FSL's or similar products were not necessary to achieve what the client needed. The client's competent legal, accountancy and financial advisors recognised that the schemes were "perfect solutions" or were appropriate.
- 10.69 Independent advisors were happy for their clients to purchase FSL products because they recognised that every tax problem required its own individual solution and, in respect of the circumstances they were advising on, the FSL product under consideration provided that solution. Sometimes an FSL product would be what was needed to arrive at "a perfect solution" sometimes other solutions would prove satisfactory. Sometimes, as was seen from the Shaw transaction, the considerations which drove the decision as to what was needed were as much commercial as legal. In the circumstances where FSL solutions were not necessary, or not specifically demanded by their clients, Baxendale-Walker Solicitors used their own products. Ordinarily clients came to Baxendale-Walker Solicitors after they had made the decision to purchase an FSL product from an introducer. Mr Shaw was an example of that. He was by no means unique.

11. The Principal Submissions of Mr Auden

- 11.1 Mr Auden had resigned his salaried partnership with Mr Baxendale-Walker on 26th October 2005. He had not practised as a solicitor since 31st March 2006 and had not felt able to seek employment as a solicitor until the disciplinary proceedings had been concluded.
- 11.2 Mr Auden's submissions were contained in a statement dated 17th August 2006. This was not accepted by the Applicant as reliable evidence and it was not tested by cross-examination.
- 11.3 Mr Auden submitted that the allegations against him were not well founded but had been based upon a misunderstanding of the true position.
- 11.4 Mr Auden never personally acted for FSL, which instructed Baxendale-Walker Solicitors. Mr Auden believed that he was regarded as "guilty by association".
- 11.5 With regard to the allegation relating to conflict of interest, "interest" in that context was nowhere defined.
- 11.6 None of the examples given to illustrate conflict of interests were comparable to the circumstances of Baxendale-Walker Solicitors accepting instructions to act for a client who had already agreed to purchase a scheme from FSL.
- 11.7 In the absence of knowledge, suspicion or belief as to the salient facts giving rise to a conflict, a solicitor could not be guilty of unbefitting conduct. A failure to disclose a conflict of which a solicitor was unaware could not amount to unbefitting conduct.
- 11.8 There was no evidence of personal interest or benefit on the part of Mr Auden and no evidence that he knew of or even suspected Mr Baxendale-Walker's alleged involvement as a controlling or managing influence of FSL or his alleged benefit from FSL.
- 11.9 The Law Society had misjudged the position. The allegation that Mr Auden's conduct had been consciously improper could not succeed.
- 11.10 Mr Auden had come to learn that the FSL Consultants Benefits Trust, a commercial discretionary trust, was established by FSL in 1997, when Mr Auden was a partner of Goodger Auden Solicitors. As an introducer of business to FSL, Mr Auden was then a discretionary beneficiary of that trust.
- 11.11 Instead of paying commissions direct to introducers, funds which were to be made available for distribution, or retention for investment, were paid into the FSL Consultants Benefits Trust. The independent trustees then awaited an expression of wishes from FSL before making gratuitous capital distributions to various discretionary beneficiaries. As there was no entitlement to payment there were tax advantages.
- 11.12 When Goodger Auden received what Mr Auden believed to be introductory commission from Kravitz Industries, it was in fact receiving a discretionary distribution from the FSL Consultants Benefits Trust. Mr Auden had no knowledge

of the Trust or its operation until informed of it by the directors of FSL in spring 1998, having joined Baxendale-Walker Solicitors as a salaried partner on 1st October 1997.

- 11.13 Mr Auden had been told in early 1997, whilst still a partner of Goodger Auden Solicitors, that Kravitz had funds from which it could make a personal loan on commercial terms to Mr Auden. At the time his wife needed to replace her car and such a loan was attractive. The fully repayable commercial loan was not a ‘benefit’ giving rise to a discloseable interest. Four further loans had been made to Mr Auden by Kravitz during 1999. It suited Mr Auden’s cash flow requirements to draw these loans down during the last three months of the year, which coincided with his first three months as a salaried partner at Baxendale-Walker Solicitors.
- 11.14 Mr Auden had repaid in full all five loans many years ago. Mr Auden’s position was to be compared with that of a conveyancer borrowing funds from an institutional lender whilst acting for a client who invests in that bank or building society. He did not have a discloseable interest. For the purposes of tax or trust law such a loan could not be regarded as “a benefit”.
- 11.15 Mr Auden introduced himself to Mr Baxendale-Walker at a time when he was unhappy with his current partnership arrangements. Mr Baxendale-Walker told him of his firm’s work for the FSL group of companies in the development of a number of generic tax, trust and pension solutions and what those solutions, properly implemented, could achieve. Mr Auden asked who owned FSL and was told exactly the same information that he had been told consistently by Mr Baxendale-Walker and by directors and managers at FSL over the years, namely that FSL was owned by non-institutional shareholders consisting of a number of private family trusts. He was further told that Mr Baxendale-Walker was excluded from benefiting from such trusts as were any spouse or children he might have, and as were the partners of Baxendale-Walker Solicitors and their families.
- 11.16 During the material time Mr Auden did not know, believe or even suspect that Mr Baxendale-Walker had any ‘interest’ in or derived any ‘benefit’ from FSL or its owner trust or the FSL Consultants Benefits Trust other than through the solicitor/client relationship.
- 11.17 Mr Auden as a trust and tax professional might have applied a literal interpretation to terms used, but he did not know that a conflict of interest existed by virtue of an interest or benefit enjoyed by him or Mr Baxendale-Walker in FSL or any other company or trust connected with FSL.
- 11.18 Baxendale-Walker Solicitors was run autocratically by Mr Baxendale-Walker. Mr Auden was no more than an assistant solicitor when he joined, having limited expertise in tax and trust matters. Mr Baxendale-Walker gave him the status of a partner because of his previous long history as an equity partner in a solicitors’ firm.
- 11.19 Mr Auden played no part in the financial control or management of Baxendale-Walker Solicitors. Mr Auden had no knowledge about Mr Baxendale-Walker’s finances. Their relationship was strictly business orientated: they were not friends.
- 11.20 Mr Auden never discussed with Mr Baxendale-Walker his work for the FSL Group of companies, its owner trusts or the Consultants Benefits Trust. They never spoke of

FSL's organisation, structure or finances. Mr Auden was not consulted in relation to the firm acting for FSL or advising FSL on its operations, finances or management.

- 11.21 Mr Auden could not name or describe the various owner trusts and companies which FSL represented save for the Consultants Benefits Trust and a number of allocation companies, two of which were Kravitz Industries and Tavendish Enterprises Ltd. Most of what he knew about the FSL ownership structures had been gleaned from the papers in the disciplinary proceedings.
- 11.22 Mr Auden had never exerted any direction or control over FSL or any of its companies or trusts.
- 11.23 Mr Auden had merely tried to help Mr Blackwell, following his appointment, by making himself and his office staff available to him to answer some of his multitudinous questions where these related to products and their implementation. At the time Mr Blackwell was obviously out of his depth in terms of tax solutions, their implementation and how they worked, and he showed little aptitude for understanding tax and trust clients' needs and concerns.
- 11.24 Mr Blackwell had been horrified to learn of the Serious Fraud Office case involving Mr Baxendale-Walker. From that moment he devoted his whole energies to self preservation and extracting himself from his new role. Mr Blackwell had indicated that he could remember little, in any event he never understood the solicitor/client relationship between FSL and Baxendale-Walker Solicitors.
- 11.25 There was nothing wrong with Mr Auden seeing a high proportion of the prospective clients of Baxendale-Walker Solicitors. Mr Baxendale-Walker and Mr Auden were both content with the division of the Baxendale-Walker Solicitors responsibilities.
- 11.26 By the time Mr Auden joined Baxendale-Walker Solicitors he had built up a modest network of reputable introducers and potential introducers for FSL products. Numerous enquiries had been handed on to FSL but only a small number of clients progressed to engage FSL or subsequently became clients of Baxendale-Walker Solicitors.
- 11.27 Although he was on a steep learning curve Mr Auden found working at Baxendale-Walker Solicitors on the implementation of schemes interesting and satisfying. Mr Baxendale-Walker was an excellent tutor who seemed to have a complete mastery of tax, trust and pension law. To an extent Mr Auden was there to be trained by him.
- 11.28 Because the FSL directors were keen to take Mr Auden's contacts that might produce business for them in the future, unbeknown to Mr Auden they decided to establish an allocation company, Tavendish Enterprises Limited, using Mr Auden's name as the reference point name.
- 11.29 The Administrator at Louvre Trust explained to Mr Auden that they required the name of an individual for administration purposes under their compliance rules for every company or trust formed. Mr Auden had no beneficial interest in the company and had no control or management role. He had been given no information about the company.

- 11.30 Mr Auden later claimed that Tavendish Enterprises Ltd was to be an allocation company for handling certain discretionary distributions for the FSL Consultants Benefits Trust. FSL management sometimes asked Mr Auden who was who and who had introduced each client, other than dealing with these enquiries Mr Auden had no other input.
- 11.31 The 'Tavendish Trust', through which it was claimed Mr Auden received commission payments, and the 'Kravitz Trust' never existed. Any monies paid into Tavendish Enterprises Limited by the trustees remained under the ownership control and discretionary powers of the FSL Consultants Benefits Trust trustees until distribution.
- 11.32 The former Goodger Auden business introducer network had been absorbed into FSL and received distributions through Tavendish Enterprises Limited.
- 11.33 Mr Auden had never owned, controlled or directed Tavendish Enterprises Limited or its directors or attempted to do so. He had not held any interest in the company. He never received a penny of commission from Tavendish Enterprises Limited or attempted to pay a penny of commission into Tavendish Enterprises Limited. Tavendish Enterprises Limited had been used to distribute Consultants Benefit Trust funds to many introducers who were nothing to do with Mr Auden. Some of those introducers he had never met and did not know.
- 11.34 Mr Auden had no interest in FSL Consultants Benefits Trust or Tavendish Enterprises Limited other than in the limited respect he explained. He did not know at the time but had come to know that he had been a discretionary beneficiary of the FSL Consultants Benefits Trust when he was a partner at Goodger Auden Solicitors. When Mr Auden joined Baxendale-Walker Solicitors he became an excluded beneficiary from the FSL Consultants Benefits Trust by virtue of becoming a salaried partner in the firm of Baxendale-Walker Solicitors.
- 11.35 The exclusion of all Baxendale-Walker Solicitors partners from the FSL Consultants Benefits Trust was disclosed to all clients and prospective clients of FSL by FSL introducers. It was also disclosed to all clients and prospective clients of Baxendale-Walker Solicitors by Mr Auden or whichever partner or principal was dealing with that prospective client. Such disclosure by Baxendale-Walker Solicitors was made orally with FSL's express knowledge and consent.
- 11.36 Mr Auden had not expressly disclosed to clients that he had been a discretionary beneficiary at Goodger Auden Solicitors, but he was certain that no client would have been influenced against instructing him and Baxendale-Walker Solicitors to act for him in the implementation of an FSL scheme. No client had been prejudiced by that very limited non-disclosure.
- 11.37 Mr Auden told all Baxendale-Walker Solicitors clients (including Morris & Thacker) prior to the acceptance of instructions:-
- (1) That FSL Group were major corporate clients of Baxendale-Walker Solicitors and that Baxendale-Walker Solicitors had developed a number of highly specialised tax and trust solutions for FSL.
 - (2) That FSL was owned by non-institutional shareholders consisting of a number of private family trusts which excluded Mr Baxendale-Walker and his spouse

and children (he having neither), and from which all the partners of Baxendale-Walker Solicitors, Mr Auden included, and their families were also excluded.

- (3) That Mr Auden had no interest in FSL or its trusts and could not receive a benefit from either FSL or its owner trusts. He did disclose that it had been possible for him to borrow money from an FSL discretionary trust on commercial terms. That had been in answer to a direct question about loans from one of the prospective clients, Mr Thacker.
- (4) That Baxendale-Walker Solicitors' ongoing work with FSL was highly lucrative in terms of solutions already developed, the development of new solutions for FSL, and the ongoing maintenance, enhancement and development of such solutions in the UK market.
- (5) That notwithstanding the existence of these generic instructions, Baxendale-Walker Solicitors could accept instructions from Mr Morris and Mr Thacker to act for their company, Internet Investments Inc, to implement an FSL model solution for them, as Baxendale-Walker Solicitors' ongoing instructions from FSL were not in any way, nor could be, case specific and Baxendale-Walker Solicitors could not see any point of conflict arising between FSL and Mr Morris and Mr Thacker's company, but should any conflict arise, Baxendale-Walker Solicitors would not act for them or their company against FSL or for FSL against them or this company. Baxendale-Walker Solicitors would have to stop acting for both in connection should a dispute arise which would create a conflict.

11.38 Mr Morris and Mr Thacker told Mr Auden that they had already had discussions with a partner of Eversheds Solicitors and a partner of Smith Cooper and were aware of FSL's solutions.

11.39 Mr Morris and Mr Thacker asked Mr Auden to ensure that the FSL terms of engagement and the Baxendale-Walker Solicitors terms of engagement were sent to Eversheds to advise on them.

11.40 There had been questions about the size of FSL's fees in the Mr Morris and Mr Thacker case. Mr Auden addressed them in the following way:-

- (1) 25% of the tax saving was broadly a starting point for many fee calculations across the tax industry. That was not unusual or excessive.
- (2) If the transaction had gone ahead, the clients would have saved a CGT liability of some £45million.
- (3) The sale had aborted, the "dot.com bubble" burst and when the company was finally sold, the trust's shares had been diluted and it was sold for a much lower value. The exchange rate moved against the clients and the taper relief rules had been changed, all of which served to reduce the clients' CGT liabilities. Leading Counsel and accountants were retained to advise.

- 11.41 The clients had been delighted with the tax outcome, not surprisingly. Mr Morris and Mr Thacker's professional advisors had not been able to offer this solution or direct their clients to the source of an equivalent solution. Their solicitor and accountancy advisors did not advise that the fees charged or proposed were excessive.
- 11.42 There had been no breach of any professional rule of conduct.
- 11.43 With regard to the CEMA case - Frank Ciaurro, it had been alleged that the client failed to receive independent advice. Mr Ciaurro and his co-directors were wholly reliant at all stages of the transaction upon advice from chartered accountants experienced in taxation and trust matters.
- 11.44 As far as Mr Auden was aware no fees had been paid by Cema Limited to FSL in this matter. Fees did not become payable prior to securing a corporation tax deduction from HMC&R for the contributions made to the Employees Benefit Trust established by Cema Limited. If no such deduction were to be obtained, no such fees would have fallen due.
- 11.45 Independent legal and relevant suitable advice had to be given to a client where a conflict or potential conflict of interest arose under principles 15.04 and 15.03. Whether or not any such conflicts of interest or potential conflicts of interest arose in this case the chartered accountants had relevant knowledge and expertise and gave 'independent legal and relevant suitable advice' in this transaction and those advised were entitled to rely on it.
- 11.46 Baxendale-Walker Solicitors' client relationship with FSL was spelled out to the clients, concerning the development of generic solutions only, prior to receiving their express instructions to act for them alone in relation to this particular transaction. It was explained to and accepted by the clients and their advisor that should any conflict of interest arise between FSL and Cema Limited that Baxendale-Walker Solicitors would not act for either of them in relation to the same.
- 11.47 Mr Auden did not conceal deliberately or otherwise any facts concerning a personal interest in FSL or FSL's Consultants Benefits Trust or give any information which misled or was intended to mislead Cema Limited or Frank Ciaurro or Morris and Thacker or any other clients or prospective client of Baxendale-Walker Solicitors at any time whilst he was a partner of Baxendale-Walker Solicitors. He told the absolute truth to the best of his knowledge and ability and was completely open concerning Baxendale-Walker Solicitors' client relationship with FSL.
- 11.48 All clients were on the clearest possible notice that Baxendale-Walker Solicitors and its partners benefited in the broadest sense from their relationship with the FSL Group as it prospered. If a client paid substantial fees to FSL, FSL would increase its profit and then FSL was clearly going to have more funds with which to develop new schemes and pay Baxendale-Walker Solicitors' fees. Clients sought and acted on Baxendale-Walker Solicitors' advice, notwithstanding the client relationship with FSL, because they were happy to do so, based on their own judgement that Baxendale-Walker Solicitors would only act in their best interest and based on independent advice taken from their existing professional advisers concerning FSL proposals, fees and terms. Their trust in Mr Auden personally and Baxendale-Walker Solicitors was well founded. He and the firm always acted in that way.

- 11.49 Baxendale-Walker Solicitors' clients were sophisticated businessmen and women with sophisticated and experienced professional advisors. Such advisors were invariably invited to attend at all prospective client meetings, or at the very least consulted afterwards and brought to subsequent meetings or attended telephone conferences.
- 11.50 The partners and office staff at Baxendale-Walker Solicitors and all FSL introducers made a point of inviting all relevant professionals to such prospective client meetings since their advice was always going to be taken on FSL's fees and terms. If they attended the first meeting, it saved time and expense by reducing the number of follow up meetings and the consultations and queries that would be required. Only once a client and his professional advisors were happy to proceed would engagement letters be requested from FSL and Baxendale-Walker Solicitors, and Baxendale-Walker Solicitors would accept instructions to act in a particular client matter.
- 11.51 The majority of Baxendale-Walker Solicitors' clients were delighted with the advice and service they received. No client complaints had been made to the Law Society.
- 11.52 Mr Auden denied ever having directed the affairs of FSL. Mr Blackwell's evidence was no more than an opinion. Initially he stated he had no recollection of events.
- 11.53 Mr Auden attended the meeting (referred to in Mr Baxendale-Walker's email to Mr Blackwell of 30th November 2000) when Mr Blackwell met with Mr Baxendale-Walker and Mr MacKenzie "to have a wide ranging discussion of the FSL cosmos". The meeting was consistent with Mr Auden's role as a partner of Baxendale-Walker Solicitors, discussing the technical features of FSL products and the implementation of FSL solutions with its new Managing Director.
- 11.54 Mr Blackwell's manuscript note of 12th December 2000 stated that Mr Auden was involved in 80% of client meetings. This was right but had no relevance to the running of FSL.
- 11.55 Mr Auden had been asked to assist Mr MacKenzie to explain to Quorum how many mistakes Quorum was making in issuing incorrect engagement letters to prospective clients of Baxendale-Walker Solicitors. Baxendale-Walker Solicitors could not accept any instructions from a client who had not agreed and signed an engagement letter with FSL. Quorum's inefficiency was delaying the ability to deliver Baxendale-Walker Solicitors' service to the client promptly and efficiently and was reflecting badly on Baxendale-Walker Solicitors. That was why Mr Auden was willing to become involved.
- 11.56 The Group's quarterly report was intended to contain feedback for Baxendale-Walker Solicitors about Baxendale-Walker Solicitors' efficiency. This was entirely consistent with Mr Auden's position as a salaried partner of Baxendale-Walker Solicitors and had nothing to do with directing the affairs of FSL.
- 11.57 Mr Auden did not know why Mr Blackwell thought it appropriate to raise his concerns with Mr Auden as well as Mr Baxendale-Walker. It might have been because he found Mr Auden more approachable and generous with his time. Perhaps he thought Mr Auden owned and controlled FSL all along and was wrong in this.

- 11.58 Mr Auden had been asked to attend a small FSL workshop about one of FSL's corporate strategy products, of which he had considerable experience. Mr Baxendale-Walker thought it would be helpful to share that experience with FSL business introducers and it was consistent with Mr Auden's role as a salaried partner of Baxendale-Walker Solicitors and had nothing to do with directing the affairs of FSL.
- 11.59 Mr Blackwell's email of 18th January 2001 showed Mr Auden organising a meeting with Mr Mather, an IFA, which Mr Auden cancelled at the last minute. This did not demonstrate that Mr Auden was exercising management and control over FSL's sales network.
- 11.60 Mr Auden was in charge of Baxendale-Walker Solicitors' Nottingham office. It would have been surprising if he had not been in receipt of emails about the future of FSL's Nottingham office. FSL was a major client of the firm. FSL's admin staff had been in the habit of contacting Baxendale-Walker Solicitors frequently to the irritation of Baxendale-Walker Solicitors' staff. Mr Auden thought this was because Baxendale-Walker Solicitors was on the doorstep and probably over-helpful and approachable. It did not show that Mr Auden was controlling FSL.
- 11.61 Following Mr Blackwell's resignation, the bank mandate for RML was held by any two directors of the company or any partner in the firm of Baxendale-Walker Solicitors. Mr Auden had not been aware of this, until this assertion was put to him in the disciplinary proceedings. He certainly never agreed to it. He was never asked to sign anything on behalf of RML and did not do so.
- 11.62 An email from Mr Baxendale-Walker to Mr MacKenzie confirmed that Mr Auden was not remunerated by FSL. He was not part of any introducer team after joining Baxendale-Walker Solicitors.
- 11.63 An undated report from Debbie Mills to Mr Blackwell purported to show that Mr Auden had 73 active cases. It showed that a large number of FSL's cases were being handled by Mr Auden as a salaried partner of Baxendale-Walker Solicitors and his Nottingham team, probably because the members of the Nottingham team were popular and excellent at their jobs.
- 11.64 Mr Blackwell's email to Mr Auden of 17th January 2001 praised his delivery and skills at a meeting they both attended. This communication did not provide any evidence that Mr Auden's role was essentially to sell FSL products.
- 11.65 Mr Baxendale-Walker's email of 13th December 2000 demonstrated that there was no conflict of interest. It showed that Baxendale-Walker Solicitors were working for their client's issues in relation to the implementation of FSL's solutions. The staff were not working for FSL.
- 11.66 Mr Auden's email letter to Mr Blackwell was described as showing him acting for a client, WP and FSL on the level of FSL fees. The email had been misinterpreted. Mr Auden had been asking Mr Blackwell the question whether this fee was in order; a rather different thing. Mr Blackwell was new and inexperienced. Mr Auden was trying to help him to get a feel for what clients might expect from FSL based on past experience of previous cases. Mr Blackwell was not asking for Mr Auden's advice, and Mr Auden was certainly not advising FSL on the level of fees. This was hardly

acting in a client and client conflict in breach of Principle 15.03 of the Guide to the Professional Conduct of Solicitors.

- 11.67 It was a chance of fate that Mr Auden had been in London to take part in the FSL Managing Director interviews. He had been invited to sit in. Improved management at FSL would assist Mr Auden with his work at Baxendale-Walker Solicitors' Nottingham office. FSL's directors asked Mr Auden to attend to help with any technical queries. Mr Baxendale-Walker was also present to answer technical queries. Mr Blackwell was the most promising communicator of the applicants for the Managing Director post.
- 11.68 Mr Auden thought Mr Blackwell at the interview latched on to him as the friendly face at Baxendale-Walker Solicitors and thought that that was why Mr Blackwell copied his letter of 15th January 2001 to him. Mr Auden did not respond. He was not acting for FSL.
- 11.69 Mr Auden gave a presentation at the seminar, 'Independence Day', 25th May 2000. It was acceptable for Baxendale-Walker Solicitors to project its prowess and experience at implementing FSL's solutions.
- 11.70 Mr Auden could not comment on FSL's organisational charts and internal documents as he had no knowledge or input into their design, purpose, function or usage.
- 11.71 In anticipation of joining Baxendale-Walker Solicitors, Mr Auden had given careful consideration to the principles relating to conflict of interest and their impact on the way he would be working for Baxendale-Walker Solicitors as a salaried partner. He concluded there would be no breach in acting for private individual clients as he had no discloseable interest in FSL having had loans or having previously received what he believed had been commission, whilst introducing business to FSL as a partner of Goodger Auden Solicitors. Mr Auden continued to be of that view.
- 11.72 When Mr Auden left Goodger Auden to become a partner at Baxendale-Walker Solicitors he had to abandon his position both as an introducer and as head of his team of introducers. Whilst at Goodger Auden commissions due to Mr Auden (which were paid into the partnership profits) and also due to the individuals within his network were paid through a company called Kravitz. After Mr Auden joined Baxendale-Walker Solicitors it was decided by FSL Management to move the introducer network which he formerly ran under the umbrella of a completely new company to distance the continuing network of introducers as far as possible from anything relating to Mr Auden. At about the same time Michael McKenzie (MMK) had introduced work to FSL, most notably Mr Shaw, and a new company was needed through which such commissions as the trustees of the FSL Consultants Trust felt should be paid to him could be channelled. Louvre as the then administrators and as company formation agents were asked to incorporate the new companies. Mr Baxendale-Walker was obviously aware of what was happening both as a partner of Mr Auden and also as the person working most closely at that time with Mr McKenzie. Mr Auden never was entitled to and never did receive any moneys emanating from FSL.
- 11.73 There never was a Baxendale-Walker Solicitors Consultants Benefits Trust. There was the FSL Consultants Benefits Trust. That trust was advised on and created by Mr Baxendale-Walker acting on instructions from FSL shareholders.

- 11.74 Mr Auden properly responded to a proper request for information by setting out his entitlements relating to introductions made by him before he left Goodger Auden.
- 11.75 Lionel Davies ran a network of introducers who sold FSL products. A meeting took place at FSL premises. Mr Auden was invited to the meeting in case his advice on technical matters was needed and whilst he was present, he was not acting for any party at the meeting. The main purpose of the meetings was for Macdonald and Davies to examine ways to increase the flow of business to FSL by expansion of the introducer network. Mr Auden did not have, nor could he have, any interest in any such introducer network. A letter subsequently written did not reflect any agreement entered into by him. In particular the reference to commission “to yourselves” made no sense because under the terms of the trust deed (drafted by Baxendale-Walker Solicitors when advising on the setting up of the remuneration scheme trust) all partners and employees of Baxendale-Walker Solicitors were excluded from benefit. Mr Auden plainly had not been responsible for what was written.
- 11.76 The extent of Mr Auden’s position was that he had not been involved in advising, structuring, directing, controlling or influencing FSL or its business either alone or with Mr Baxendale-Walker. He had no interest in FSL or its owner trust and could not benefit from FSL or its owner trusts in any way.
- 11.77 Mr Auden was unaware of any client complaint against him personally in his 23 years as a solicitor. Baxendale-Walker Solicitors at Nottingham generated goodwill and received compliments and messages of thanks and support from professional contacts.
- 11.78 Mr Auden had done nothing wrong. He had not acted unprofessionally or breached Practice Rule 1. He had not acted in conflict of interest. He had not acted in any way improperly either alone or with Mr Baxendale-Walker as alleged.
- 11.79 Having considered conflicts and acted in a fully open and honest way towards all clients, Mr Auden acted properly and professionally at all times and certainly did not act with ‘conscious impropriety’.
- 11.80 The allegations against Mr Auden had been the cause of personal and financial hardship for him and his family. He and his family had suffered considerable anxiety about the matter and Mr Auden’s health had been adversely affected.

12. The Tribunal’s Findings of Fact and Conclusions on Issues of Fact as Found

- 12.1 The allegations of conflict of interest depended on the relationship of Mr Baxendale-Walker and Baxendale-Walker Solicitors (including Mr Auden) to FSL and its controlling trust or trusts. The Mount Vernon Trust (later Fountain Trust) was the apparent owner of the whole of the issued share capital of FSL BVI from 1994 until about 2001 and later the whole or a substantial part of FSL BVI’s successor company in the Cayman Islands.
- 12.2 FSL BVI was incorporated in the British Virgin Islands on 8th September 1994. Mr Baxendale-Walker gave evidence that it was in response to discussions he had had with Mr Derek Baudains of Louvre Trust Limited, a Guernsey company which provided services as trustee including trust administration. The discussions had

included a proposition that Mr Baxendale-Walker would sell or otherwise vest in FSL, the intellectual property rights (IPR) belonging to Mr Baxendale-Walker or Baxendale-Walker Solicitors in relation to at least one tax scheme (the PREBS) which Mr Baxendale-Walker had been developing. The agreement vesting the IPR in FSL was not in evidence.

- 12.3 FSL was apparently purchased as an “off the peg” company and instructions were given for it to issue shares to bearer. A letter from Louvre to Mr Baxendale-Walker of 9th September 1994 said it had been incorporated “on your behalf” and that the shares would be held for the benefit of “your grandchildren’s trust.” The letter said that it anticipated that Mr Baxendale-Walker would prepare the necessary trust document and that Louvre would be the Trustee.
- 12.4 The Tribunal finds that Mr Baxendale-Walker caused an Isle of Man Trust to be formed called The Mount Vernon Trust (“MVT”). It is to be inferred and the Tribunal finds that the name was chosen by Mr Baxendale-Walker rather than Louvre since a long time associate of Mr Baxendale-Walker, Ms Sharmi Musgrave, lived at Mount Vernon in Glasgow. Ms Musgrave and her partner were protectors of the Trust with powers to appoint and remove the trustees. Mr Baxendale-Walker was the settlor of the MVT but he said he did not draft the Trust Deed though he amended it. The original of the trust deed was not in evidence but a copy was supplied from Mr Baxendale-Walker’s files though not at the outset of the Law Society’s investigations. It was dated 29th September 1994 and the stated beneficiaries were Mr Baxendale-Walker’s grandchildren (at the time and to date he was not married and had no children) and two charities. It was acknowledged that it was not intended that either charity should benefit, their inclusion being only so as to ensure that the trust was not void for infringing the Rule against Perpetuities. Mr Baxendale-Walker as settlor was by reason of a manuscript addition claimed to be excluded from being a beneficiary together with any spouse or children though his widow (if any) was not excluded. By clause 10 of the Trust Deed, beneficiaries could be added by the Trustees by written resolution in circumstances where according to Mr Baxendale-Walker the beneficiary could insist that his identity could be kept confidential. Mr Baxendale-Walker stated that neither he nor anyone else could require the Trustees to disclose whether they had added beneficiaries pursuant to clause 10 nor could they breach confidence to disclose who such beneficiaries were. He had not asked the Trustees to supply a certified copy of the Trust Deed nor disclose who (if any) were beneficiaries other than those mentioned in the original deed who were assumed to be those stated above. There was no evidence as to who had drafted the Trust Deed, or instructions from anyone to do so or professional advice in relation to the Trust Deed.
- 12.5 The Tribunal finds that, in accordance with the Louvre letter to Mr Baxendale-Walker of 9th September 1994, the MVT trust document was drafted by or on the instructions of Mr Baxendale-Walker. The Tribunal rejects Mr Baxendale-Walker’s claim that the MVT was formed on the instructions of and for the benefit of entrepreneurs either known or unknown to him. It concludes that his future family interests were intended as future beneficiaries.

By the terms of clause 22

“(b) No part of the capital or income of the Trust Fund shall be paid or lent or applied for the benefit either directly or indirectly of any such Excluded Person in any manner or in any circumstances whatsoever;”

- 12.6 It is manifest that until the Trustees chose to add beneficiaries the MVT had no beneficiaries who were immediately able or intended to benefit. It was a trust whose sole or most material asset at any rate initially consisted of shares in FSL whose principal asset was the IPR which Mr Baxendale-Walker said he had sold to FSL. It was a trust which owned a business but no controlling shareholders apart from Trustees for (in effect) beneficiaries who could not or were not intended to benefit. It was claimed by Mr Baxendale-Walker that at an early stage MVT also acquired 100 bearer shares in Hammer Advisers Corp another BVI company incorporated on 17th August 1994. Mr Baxendale-Walker was a director and was later to be a borrower from this company.
- 12.7 In order to market the FSL IPR, subsidiaries were set up in Cyprus and Ireland. The tax consequences of income flowing through these companies are not in the Tribunal’s view material to the issues before the Tribunal. Until about 2001 when the FSL companies were reorganised the potential purchasers of FSL products would not have had any reason to distinguish between the different companies within the FSL umbrella. After the reorganisation in January 2001 the marketing in the UK appears to have been through FSL GB (a UK incorporated company) as agent for a new owner of the FSL IPR named FSL Global Services Limited incorporated in the Cayman Islands but ultimate ownership of FSL IPR appeared to have been split between Fountain No 1 Trust (formerly MVT) and another trust. FSL the BVI company ceased to trade and its assets were said to have been transferred to the FSL (Cayman Island) company with 100 shares issued of which 50 were held by Fountain and 50 by Dossier and Atlas in each case as trustee. It was said that the beneficiaries were unknown to anyone other than trustees.
- 12.8 The Law Society’s investigations, which had not been assisted by the Respondents, had raised in its mind the question as to whether Mr Baxendale-Walker was involved in improper tax schemes which also gave rise to suspicion of close involvement in or a controlling interest in FSL and consequent breach of professional duties. This enquiry produced a barrage of complaint, legal challenge and strong criticism, principally from Mr Baxendale-Walker, of The Law Society and its investigators. The Law Society’s investigation was condemned as ignorant and incompetent and it was accused of shifting its ground. The Respondents refused to attend for an interview with the Law Society’s Investigation Officer, on the ground that there was no statutory right given to The Law Society to conduct interviews.
- 12.9 The Tribunal regards the obstructive attitude towards the profession’s regulatory arm as unreasonable, improper and lacking any sense of proportion. As a matter of professional conduct, it is the Tribunal’s view, that every solicitor has a duty to give an explanation of actions which in The Law Society’s reasonable opinion give rise to any question related to the proper performance of professional duties. The Tribunal considers this to be so even if the Respondent can claim he believes that The Law Society’s questions are wholly unjustified.

- 12.10 The unsurprising consequence of the Respondent's attitude towards The Law Society has been to increase rather than allay its concerns. It has resulted in greatly increased costs on both sides and a process which can only be described as analogous to drawing teeth.
- 12.11 Mr Baxendale-Walker said that in each case FSL BVI had acquired the IPR once the scheme had been developed to the stage at which it could be marketed and that FSL paid for the IPR. Mr Baxendale-Walker said FSL did not always acquire a scheme and that FSL had schemes to market other than those produced by Mr Baxendale-Walker. The Tribunal however had no evidence before it of schemes developed by FSL other than those created by Mr Baxendale-Walker, no evidence of FSL clientele other than those using IPR developed by or advised on by Mr Baxendale-Walker or his firm nor evidence of the sale of IPR to FSL BVI. Mr Baxendale-Walker's claim that FSL was a substantial international organisation with hundreds of clients was not supported by any evidence before the Tribunal. The only example of payment for IPR said to have been acquired from Mr Baxendale-Walker was to be found in a "Pro Forma Invoice" for professional services which made no mention of IPR or its transfer.
- 12.12 The IoM documents showed payments emanating from the FSL to Baxendale-Walker Solicitors of large sums (£250,000, £200,000 and £100,000 against Pro Forma Invoices). These were for professional charges including research development and production of the Estate Income Plan. Mr Baxendale-Walker in his evidence said that this invoice despite its wording was effectively a payment for the IPR attributable to the scheme in question and that it was supported by a formal assignment of the IPR. This however was not in evidence before the Tribunal.
- 12.13 There are numerous other matters explored in the voluminous written evidence, witness statements and oral evidence given over eleven days of the hearing. The Tribunal has reached the conclusion that Mr Baxendale-Walker's evidence is unreliable. It was not provided promptly as a frank response to enquiries properly made by The Law Society but dribbled out as Mr Baxendale-Walker thought necessary over a period of time. It was often modified as more information came into the possession of The Law Society. On a number of occasions his evidence was in conflict with what he had said earlier.
- 12.14 The Tribunal found the evidence of Mr Bannister and Mr Blackwell convincing and to be believed. Where it was in conflict with evidence given by Mr Baxendale-Walker their evidence was to be preferred.
- 12.15 The Tribunal finds that in many instances Mr Baxendale-Walker's evidence was inconsistent and economical with the truth sometimes deliberately so as to create a false impression.

A. Mr Baxendale-Walker, MVT and ownership of FSL

- A.1 The Tribunal heard much evidence, some contradictory, regarding the ownership of FSL and those beneficially interested through MVT. Following the production of the MVT Trust Deed Mr Baxendale-Walker acknowledged that the whole of the share capital of FSL was held by the MVT. This was confirmed by a letter from Louvre

dated 9th September 1994. Following a re-organisation in 2001 it was said in evidence that FSL was controlled by the same owner trusts (50% Fountain Trust (formerly MVT) and 50% by Dossier).

A.2 Mr Baxendale-Walker in his Overview, undated but said to have been made available on the 29th September 2003, stated that Mr Baudains of Louvre Trust a Guernsey Trust Company had contacted Mr Baxendale-Walker and said that his reason was that he (Mr Baudains) was “acting for a group of entrepreneurs who had set up a company called FSL Limited”. Mr Baxendale-Walker said that “Following the telephone introduction a meeting was arranged between Mr Baxendale-Walker and Baudains clients”.

A.3 These statements conveyed the impression:-

- that the initiative for the creation of FSL came from Mr Baudains
- that Mr Baudains was acting for clients (“entrepreneurs”)
- that the FSL had been set up before Mr Baxendale-Walker’s involvement
- that a meeting was arranged and took place between Mr Baxendale-Walker and the entrepreneurs
- that FSL had been formed speculatively without knowing of its ability to acquire Mr Baxendale-Walker’s IPR.

A.4 The evidence before the Tribunal demonstrated that all these statements were inconsistent with other evidence or were so improbable as to be given little weight. The main reasons are:-

- 4.1 Mr Howe’s letter of 9th September 1994 which refers to FSL being incorporated “on your [ie Mr Baxendale-Walker’s] behalf”.
- 4.2 The shares of FSL being held by “your grandchildren’s trust” i.e. the MVT.
- 4.3 Mr Baxendale-Walker was expected to be “preparing the necessary documentation for the Trust” and Louvre were to be the Trustees.
- 4.4 The Louvre letter of 9th September 1994 went on to set out the scheme the purpose of which was stated to be to avoid the Revenue deeming sums payable by Mr Baxendale-Walker’s clients (“your clients”) as royalties. Under the scheme:-
 - FSL was to cede its intellectual property rights in its products to a Cyprus Company in return for 92.5% of the gross income to be received by the Cyprus Company;
 - The Cyprus Company was to cede its rights to an Irish Company for 98% of the gross income received by the Irish Company;
 - The Irish Company would deal and contract with “your UK clients” and receive 100% of the royalty.

- 4.5 Mr Baxendale-Walker's denial that he knew who the entrepreneurs were and had never met them.
- 4.6 Mr Baxendale-Walker's evidence in the course of the hearing that he suspected that the FSL beneficiaries/owners were Richter, Baudains and Howe. If Baudains and Howe as directors of Louvre (and prospective Trustees of MVT as per their setting-up letter of 9th September 1994) were to be the beneficiaries/owners in any event, Louvre would not have been independent trustees and the letter of 9th September 1994 would have been misleading in its reference to FSL being incorporated "on your i.e. Mr Baxendale-Walker's behalf". Louvre had provided a letter to the Tribunal during the hearing saying that Mr Baudains and Mr Howe were never beneficiaries. They also said that Richter was not known to them which is inconceivable if they had added him as a beneficiary.
- 4.7 The lack of evidence of any contemporaneous file note of instructions, note of meeting or other written or oral evidence supporting Mr Baxendale-Walker's account of why and how FSL was set up.
- 4.8 The copy letter of 9th September 1994 from Louvre Trustees before the Tribunal had been provided by a former Managing Director of FSL and was not complete, consisting of only two pages of which the second was not the final page. At the end of the 8th day of the hearing the Applicant's Counsel asked Mr Baxendale-Walker whether he would have any objection to Louvre being asked to release the remainder of the letter. Mr Baxendale-Walker refused on the basis that the letter was privileged and he would not waive it.
- 4.9 Although incomplete the Tribunal finds this extract from the letter genuine and Mr Baxendale-Walker had only challenged the interpretation of it.
- A.5 The Tribunal finds that Mr Baxendale-Walker was at the outset in effect the owner (or the person able to enjoy the fruits of ownership) of FSL for the following reasons:-
- 5.1 FSL was formed on his behalf.
- 5.2 MVT was formed by or for Mr Baxendale-Walker and there was no evidence that it was formed for anyone else. MVT's named beneficiaries included Mr Baxendale-Walker's unborn grandchildren and charities.
- 5.3 There was no convincing evidence that any beneficiary had been added to the MVT trust. Neither charity had benefited nor it appeared was intended to benefit.
- 5.4 The Protectors of the MVT Trust (with power to appoint and remove trustees) were Sharmi Musgrove an old friend of Mr Baxendale-Walker's and her partner. The power was frequently exercised. In the absence of contrary evidence it was likely that the initiative for change came from Mr Baxendale-Walker.
- 5.5 Mr Baxendale-Walker claimed to have transferred IPR to FSL BVI though there was no evidence before the Tribunal that he had actually done so by a formal assignment.

- 5.6 Mr Bannister and Mr Blackwell both gave the evidence that they believed Mr Baxendale-Walker was the effective owner of FSL, and that he acted as its controller.
- 5.7 Mr Baxendale-Walker by reason of his strongly asserted entitlement to obtain payments from the MVT (notwithstanding that he was stated not to be a beneficiary and was an excluded person under the MVT) was able to enjoy access to FSL's profits derived from the assets he claimed to have transferred and that he in fact did so (see below under section 12 C).
- A.6 The Tribunal rejected Mr Baxendale-Walker's arguments that because he claimed to have received no taxable benefit he received no benefit at all.
- A.7 The Tribunal finds that regardless of the taxation treatment of sums paid to Mr Baxendale-Walker from the MVT, he received such sums as loans which were not permissible within the terms of clause 22 of the MVT Trust Deed. The Tribunal finds this to be so whether or not for MVT these payments were investments.
- A.8 There was no convincing evidence that after allowing for the cost (including commission) of marketing the schemes anyone other than Mr Baxendale-Walker:-
- received any benefit from the exploitation of Mr Baxendale-Walker's IPR said to have been sold to FSL.
 - engaged in or took an active interest in the business or affairs of FSL or its owner trust or trusts.
 - gave directly or through trustees any instructions in relation to FSL's business or corporate structure other than instructions suggested or arranged by Mr Baxendale-Walker.
- A.9 The Tribunal rejects Mr Baxendale-Walker's arguments that payments he had from MVT as disclosed by the IoM documents were received by him in a non-beneficial capacity or if so received this makes any difference to the issue of conflicts of interest.
- A.10 The Tribunal rejects Mr Baxendale-Walker's arguments in relation to monies advanced from the MVT to Sam Jessop (see section 12 C.6).
- A.11 The Tribunal considers that notwithstanding any advice of Leading Counsel as to the tax treatment of monies provided to Mr Baxendale-Walker from the MVT, it was not professionally proper for Mr Baxendale-Walker to claim to The Law Society that he had not received a loan which was prohibited by the terms of clause 22 of the MVT Trust Deed (see section 12B).

B. The nature of Mr Baxendale-Walker's loans from MVT

- B.1 Clause 22 of the MVT Trust Deed was in the following terms:-

“Subject only to Clause 21 hereof no Excluded Persons shall be capable of taking any benefit of any kind by virtue or in consequence of this Settlement and in particular but without prejudice to the generality of the forgoing provisions of this clause:-

- (a) The Trust Fund and the income thereof shall henceforth be possessed and enjoyed to the entire exclusion of any such Excluded Person and of any benefit to him by contract or otherwise;
- (b) No part of the capital or income of the Trust Fund shall be paid or lent or applied for the benefit either directly or indirectly of any such Excluded Person in any manner or in any circumstances whatsoever; and
- (c) No power or discretion hereby or by any appointment made hereunder or by Law Society conferred upon the Trustees or any of them shall be capable of being exercised in such manner that any Excluded Person will or may become entitled either directly or indirectly to any benefit in any manner or in any circumstances whatsoever.”

B.2 Mr Baxendale-Walker claimed (PWB’s Overview of 29 September 2003) that:-

- 2.1 “he did not benefit from or have involvement in overseas trusts which exercise control over FSL company”.
- 2.2 “Mr Baxendale-Walker has no proprietary or financial interest in FSL. The only financial interest is that it [FSL] is a client [of Baxendale-Walker Solicitors].
- 2.3 “It is not accepted that Mr Baxendale-Walker had any material interest in FSL. Plainly given the structure of FSL he cannot have any shareholding but neither does he benefit from or is he involved in any trusts which exercise control over FSL companies”.
- 2.4 Mr Baxendale-Walker also claimed although the Tribunal had no evidence that this was reflected in any of the documents produced in evidence that he had

“requested that the Trust Deed should be drafted to ensure that neither he personally nor his firm nor anybody connected with him or any partner in his firm or any close relation of any partner in his firm both present and future should be permitted to derive any benefit from the trust which owned FSL”.

The Trust Deed for the MVT contained no such provisions.

- B.3 In the Overview (page 165) there is discussion (in relation to Mr Shaw) of The Law Society’s enquiries about a loan made to him. Mr Baxendale-Walker said “Mr Shaw did not benefit under the Trust Deed”. “To say that Mr Shaw has “benefited” is a loose non technical sense of the word. What it really means is that he has had an advantage in that he has been permitted by the trustees to borrow money at commercial rates from a Trust Fund. This does not mean that he has benefited from a trust from which he is excluded from benefiting.”
- B.4 At the time Mr Baxendale-Walker submitted his Overview he knew that The Law Society did not have the MVT Trust Deed (supplied by Mr Baxendale-Walker in July 2005) and he did not know that The Law Society might obtain the IoM documents. When it did, at the end of May 2004, they showed that over a 21 month period the

MVT had made loans or other payments to Mr Baxendale-Walker of the order of £350,000.

- B.5 The Tribunal considers it is significant that:-
- (a) all these payments were made to Mr Baxendale-Walker or those associated with him;
 - (b) all were said to be investments not loans by the MVT;
 - (c) all were said not to be loans prohibited by the MVT Trust Deed ;
 - (d) none were said to confer benefit - or taxable benefit - on the payee .
- B.6 It was also relevant that none of the payments made out of the MVT account can be shown to represent any return to other possible MVT beneficiaries (for example the ‘entrepreneurs’ known or unknown suggested by Mr Baxendale-Walker) in respect of FSL’s exploitation of its assets (the IPR which FSL had, according to Mr Baxendale-Walker, acquired).
- B.7 The Overview contains no mention of loans or other payments to Mr Baxendale-Walker, only a discussion of loans made or to be made to Mr Shaw. Mr Baxendale-Walker had asserted to Mr Duerden that he had received no loans. When this omission and denial is set beside Mr Baxendale-Walker’s statements at 2 and 3 above the Tribunal finds his Overview and his reply to Mr Duerden seriously false and misleading and in the Tribunal’s view deliberately so.
- B.8 Mr Baxendale-Walker relies on his explanation of what constitutes a benefit in relation to Mr Shaw’s loans as justifying his omission to mention the loans to him from MVT. He relies on the “technical” nature of a taxable benefit but in the non technical sense it is apparent he did receive a benefit or an advantage: something Mr Baxendale-Walker recognises (see 3 above).
- B.9 It is not for the Tribunal to make a finding that Mr Baxendale-Walker did or did not receive a taxable benefit when he received payments from the MVT. The terms on which he borrowed might or might not justify the argument that for tax purposes they were not beneficial loans. However, the argument that was advanced that an investment by one person cannot be a loan for another is absurd. In the Tribunal’s view Mr Baxendale-Walker was obtaining a loan from the MVT and arguments to the contrary are unsustainable. The taking of a loan whether or not in breach of trust was, given the specific terms of the trust deed, unconscionable and improper. The Trust Deed was being used by Mr Baxendale-Walker to disguise the fact that he had had loans by implying that he was prohibited from receiving any loan. The Trustees willingness to agree to Mr Baxendale-Walker’s request that they invest MVT moneys by lending to him would no doubt have been strongly influenced by Mr Baxendale-Walker’s insistence that notwithstanding the specific terms of the Trust Deed Mr Baxendale-Walker could be the recipient of a loan and by their knowledge that, if they disagreed, Mr Baxendale-Walker could influence his friend the Protector to remove them as Trustee. This indeed happened in the case of Mr Shaw’s trust.
- B.10 For the purposes of professional duties “interests” in the context of Rule 15 clearly include benefits in the non-technical sense. That is because the Rule is concerned not

with taxation but with a solicitor's independence and his fiduciary duties. It is manifest that neither could be judged by applying a very technical approach, something every honest solicitor knows. Mr Baxendale-Walker cannot have thought otherwise.

- B.11 The Tribunal has no doubt that the monies made available to Mr Baxendale-Walker however described and whether or not they gave rise to UK taxation constituted for Mr Baxendale-Walker an interest. His refusal to disclose such an interest when enquiry was being made by the profession's regulatory body was deplorable. It was also in the circumstances deliberate.
- B.12 The Tribunal on the basis of this evidence finds:-
- (a) that Mr Baxendale-Walker benefited from the payments out of the MVT whether or not such benefits were taxable;
 - (b) that these payments were in substance loans benefits or advantages to him which did not cease to be so whether or not the lender (MVT) could justify them as investments; and
 - (c) Mr Baxendale-Walker had an interest in the loans and MVT (and as a result in FSL) which affected his independence and constituted a conflict between his personal interests and those of his clients.

C. Utilisation of FSL profits through MVT

- C.1 Mr Baxendale-Walker denied in answer to a letter from Mr Duerden of 27th May 2002 that he had had any loans from a Trust which derived funds from FSL. The question was clear and a claim by Mr Baxendale-Walker that he did not understand it could not in the Tribunal's view be honestly made. His answer was that he had had no loans. This was a lie made at a time before Mr Baxendale-Walker had disclosed the MVT Trust Deed and before disclosure to The Law Society of the IoM documents.
- C.2 When, after the disclosure of the IoM documents, it was clear that Mr Baxendale-Walker had received payments from MVT he acknowledged that he had had loans but denied they were beneficial loans (see Section 12 B). He also claimed that the loans were incurred by him on behalf of others and that he therefore had no interest in them.
- C.3 The IoM documents which covered a period from November 1998 to April 2000 showed that sums had been paid to Mr Baxendale-Walker or a person associated with him as follows. This is not a complete list.
- C.3.1 To Mr Baxendale-Walker/Baxendale-Walker Solicitors:-

<u>Date</u>	<u>Amount</u> £	<u>Description</u>
12 th November 1998	1,132.70	Printing costs for Baxendale-Walker Solicitors brochure
26 th November 1998	349.88	Baxendale-Walker Solicitors Professional Disbursements
18 th May 1999	32,849.75	Loan to Mr Baxendale-Walker
3 rd September 1999	10,000.00	Loan to Mr Baxendale-Walker

<u>Date</u>	<u>Amount</u> £	<u>Description</u>
15 th September 1999	5,000.00	Loan to Baxendale-Walker Solicitors
23 rd September 1999	43,722.00	Loan to Baxendale-Walker Solicitors re Porsche (Macdonald)
29 th October 1999	20,000.00	Loan to Mr Baxendale-Walker
3 rd November 1999	34,323.00	Loan to Mr Baxendale-Walker
17 th December 1999	20,000.00	Loan to Mr Baxendale-Walker
31 st January 2000	8,237.95	Loan to Mr Baxendale-Walker (ex Hammer)
9 th February 2000	34,492.24	Loan to Mr Baxendale-Walker
23 rd February 2000	150,000.00	Loan to Mr Baxendale-Walker
15 th March 2000	37,000.00	Loan to Mr Baxendale-Walker (Ron Winter)
26 th April 2000	4,320.00	“Professional” disbursements re purchase of car

C.3.2 Including the first two items, Mr Baxendale-Walker received by way of loans from MVT in this period approximately £350,000. The loan of £150,000 on 23rd February 2000 was said to be a funding of a loan made by Mr Baxendale-Walker on different terms to Ron Winter on 11th February 2000.

C.4.1 MPRO was a company which Mr Baxendale-Walker said to carried on business as representative of persons inter alia engaged in the music or entertainment industry and that Mr Baxendale-Walker was Chairman of this company.

C.4.2 Loans made to MPRO from MVT or FSL associated companies or individuals.

The IoM documents showed payments made as follows:-

<u>Date</u>	<u>Amount</u> £	<u>Description</u>
21 st June 1999	30,000.00	Funds for MPRO disbursements paid to Baxendale-Walker Solicitors ex Kravitz
13 th August 1999	21,000.00	Loan ex Kravitz
8 th October 1999	10,000.00	Loan from MVT
5 th April 2000	6,000.00	Loan from MVT
12 th April 2000	200,000.00	Loan from MVT

C.4.3 Kravitz was a company which received commission payments in respect of sales of FSL products.

C.4.4 The total of the above sums all of which appear to have been derived from FSL related transactions amounted over a ten month period to £660,000.

C.5 Payments to Mr Auden

- C.5.1 Mr Auden was entitled to be paid commission for introducing FSL schemes to those who might be interested in buying them. This started when he was a partner of Goodger Auden and continued when he left to become first a consultant and later a salaried partner of Baxendale-Walker Solicitors.
- C.5.2 Mr Baxendale-Walker had devised a scheme (Consultants Benefits Trust) where instead of introducers being paid commission they could instead obtain a tax free loan. The scheme depended on the recipient of the loan not having an entitlement but receiving payment following the exercise of discretion by the Trustees. Mr Blackwell was informed that payment was “officially discretionary but unofficially will always be 50 per cent” to be paid to the Team Leader as soon as FSL’s total invoice was paid. The Tribunal finds that for the purposes of determining whether Mr Auden had an interest in FSL commissions within the terms of Practice Rule 1 and Principle 15.04 the alchemy by which these sums they were said to have been translated into tax free loans had no effect. The sums are therefore hereafter referred to as commission.
- C.5.3 After he became a consultant to Baxendale-Walker Solicitors and later a partner, Mr Auden received commission from FSL related sources as follows. This is not a complete list.

<u>Date</u>	<u>Amount</u> £	<u>Description</u>
14 th April 1997	22,500.00	Loan by Kravitz
31 st October 1997	9,500.00	Loan by Kravitz to Mr Auden
12 th November 1997	7,000.00	Loan by Kravitz to Mr Auden’s wife
13 th November 1997	7,000.00	Loan by Kravitz to Mr Auden
11 th December 1997	5,000.00	Loan by Kravitz to Mr Auden

- C.5.4 The Tribunal finds that Mr Auden became associated with Baxendale-Walker Solicitors as a consultant on or about 4th February 1997 and as a salaried partner on 1st October 1997.
- C.5.5 A consultant’s benefit trust for the benefit of Mr Auden was established using the name Tavendish and loans made by Kravitz were assigned to Tavendish. Mr Auden in his statement said all loans had been repaid. There was no conclusive evidence before the Tribunal that loans had been repaid but the Tribunal finds that loans were made to Mr Auden (and by his direction to his wife) of at least £57,000.

C.6 Ms Sam Jessop (Fantasia)

- C.6.1 Mr Baxendale-Walker in his witness statement said that he had “a relationship” with Ms Jessop but in evidence denied a relationship but said she was a friend. FSL and MVT (by then Fountain) provided money to Ms Jessop or for her benefit. This, as the Tribunal finds, was sometimes through Taree Holdings (Taree).

<u>Date</u>	<u>Amount</u> £	<u>Description</u>
24 th August 2000	50,000.00	Loan from MVT to Taree re Fantasia
24 th August 2000	50,023.00	Payment ex MVT/Taree to Baxendale-Walker Solicitors client account
30 th August 2000	49,000.00	Advanced rent for tenancy of April Cottage.

<u>Date</u>	<u>Amount</u> £	<u>Description</u>
		Tenancy in the name of Mr Baxendale-Walker and Ms Jessop
6 th September 2000	10,000.00	Payment by Taree to Sam Jessop Fantasia
25 th September 2000	30,000.00	Loan by MVT to Taree
26 th September 2000	10,000.00	Payment by Taree to Sam Jessop
20 th October 2000	8,070.02	Expenses for house warming party reclaimed by Baxendale-Walker Solicitors from Fantasia Trust

- C.6.2 On the basis of the above information some £80,000 was provided by FSL/MVT to Ms Jessop.
- C.6.3 Although this money was ostensibly provided by way of loans from MVT, Mr Baxendale-Walker claimed in his evidence that the money was Ms Jessop's. He suggested, though there was no evidence as to this before the Tribunal, that Ms Jessop was the beneficiary of a remuneration trust (similar in effect in the Tribunal's view to the Consultant's Benefit Trust devised by Mr Baxendale-Walker) whereunder Ms Jessop's employer MPRO paid to the Trust what would otherwise have been her earnings. The Trustees were then able in the exercise of a discretion to pay Ms Jessop the earnings (which would be taxable) or lend on commercial terms which would not. Mr Baxendale-Walker said he had helped Ms Jessop by providing a better covenant under the lease.
- C.6.4 The Tribunal finds that the evidence establishes that Mr Baxendale-Walker provided financial assistance to Ms Jessop from MVT by purporting to borrow from MVT what he said was her money. Ms Jessop was not a beneficiary of the MVT and the arrangement whereunder MVT allegedly invested in a loan to Mr Baxendale-Walker to enable Ms Jessop access to her own money was in the Tribunal's view so artificial as to amount to an example of smoke and mirrors. The Tribunal also rejects Mr Baxendale-Walker's theory in his oral evidence that perhaps MVT was acting as a Trustee of a settlement made by Ms Jessop.

C.7 Taree, Ron Winter

- C.7.1 The Tribunal received evidence that funds emanating from FSL and/or MVT were paid to Taree (a company connected to Mr Macdonald an introducer) and to Ron Winter an entertainment artistes' promoter. Mr Baxendale-Walker had some involvement in these payments. The Tribunal considered the evidence relating to these matters and concluded that none of it was inconsistent with the conclusions they had reached based on the evidence summarised at paragraphs 1-6 above.
- C.8 On the basis of the above evidence the Tribunal unhesitatingly concludes that:-
- (i) Mr Baxendale-Walker had the ability to secure for his purposes moneys derived from the exploitation of FSL products;
 - (ii) Mr Baxendale-Walker did in fact benefit from moneys provided to him by MVT;

- (iii) in the context of interests for the purposes of Practice Rule 1 and Principle 15.04 his access to and benefit from moneys made available to him by MVT were unquestionably interests which might conflict with Mr Baxendale-Walker's personal interest of supplying professional services through Baxendale-Walker Solicitors and the interests of Baxendale-Walker Solicitors as a firm;
- (iv) in these circumstances, denial of any conflict of interest between the above interests and the interests of clients of Baxendale-Walker Solicitors buying or selling FSL products, quite apart from conflicts resulting from acting for the buyer and the seller, could not have been made by an honest solicitor;
- (v) Mr Baxendale-Walker's denial was not in the circumstances honest.

D. Mr Baxendale-Walker's association with FSL

- D.1 The Law Society alleged (and Mr Baxendale-Walker denied) that his closeness to FSL disabled him from advising those who purchased FSL schemes by reason of conflicts of interests and duty.
- D.2 Mr Baxendale-Walker claimed that his relationship with FSL was merely that of a solicitor and client. He accepted that FSL was his client but claimed that in relation to matters where he acted for FSL's customers he had no conflict.
- D.3 The Tribunal finds that the relationship between Mr Baxendale-Walker went far beyond a normal solicitor and client relationship for the following reasons.
 - (1) Mr Baxendale-Walker claimed to have sold IPR to FSL. Mr Baxendale-Walker asserted that FSL sold tax mitigation schemes other than those based on the IPR it was said to have acquired but there was no evidence of this before the Tribunal. The video recording of a marketing promotion by FSL demonstrated the closeness of Mr Baxendale-Walker/Baxendale-Walker Solicitors to FSL. The Tribunal finds that FSL relied to a very material extent, if not exclusively, on Mr Baxendale-Walker's schemes.
 - (2) In the period before Mr Bannister's appointment Mr Baxendale-Walker said he was plagued by enquiries from FSL introducers. The evidence showed that, apart from Louvre who were Trust administrators, FSL had no management.
 - (3) The Tribunal finds that in the period 1994-1997 Mr Baxendale-Walker was the effective manager of FSL's commercial activities. This finding is independent of the question whether Mr Baxendale-Walker was effectively the owner of FSL. It was supported by the fact that there was no evidence of anyone else providing management to FSL.
 - (4) Mr Baxendale-Walker was instrumental in securing the appointment of Mr Bannister as Managing Director although he was formally appointed by Louvre as Trustee of the MVT.
 - (5) Mr Bannister in evidence which the Tribunal accepted said he resigned because he was not prepared to be a stooge of Mr Baxendale-Walker.

- (6) The reorganisation of FSL in 2001 had the effect (and the Tribunal finds this was at least one of its purposes) of distancing Mr Baxendale-Walker from FSL whilst leaving unchanged his ultimate ownership of FSL through MVT and, with or without such ownership, leaving unchanged Mr Baxendale-Walker's effective control of FSL.
- (7) Mr Blackwell gave evidence, which the Tribunal accepts, that his function was to act as a barrier between Mr Baxendale-Walker and FSL and the introducers. This satisfied Mr Baxendale-Walker's wish not to be involved in FSL's administration but was also a step designed to put distance between Mr Baxendale-Walker and FSL.
- (8) Both Mr Bannister and Mr Blackwell said in evidence that they thought Mr Baxendale-Walker was the person who effectively controlled FSL and Mr Bannister said that when he reported to Mr Baxendale-Walker an enquiry asking for confirmation from "the beneficial owner" Mr Bannister gave that confirmation after speaking to Mr Baxendale-Walker.

D.4 Mr Baxendale-Walker in evidence said:-

- (a) He saw no reason from the outset in 1994 why he should not carry on advising clients buying tax schemes from FSL and helping FSL who held the intellectual property in his tax schemes;
- (b) Baxendale-Walker Solicitors acted for FSL in connection with the development of its tax scheme product base and its business of selling tax schemes, and that as such FSL in addition to being a purchaser of the IP in Mr Baxendale-Walker tax schemes was a client of Baxendale-Walker Solicitors from which Baxendale-Walker Solicitors derived fees;
- (c) FSL sold tax schemes to its clients charging fees based principally on a percentage of the tax mitigated, such fees being shared with introducers, the FSL 'residual' fees being paid up to its owner MVT;
- (d) Mr Baxendale-Walker had received loans from MVT (a matter now admitted but which he had denied to the Law Society investigators);
- (e) Mr Baxendale-Walker had extensive contact with the FSL sales force/introducers for whom he was the only person to whom they could talk in relation to the schemes and their exploitation;
- (f) The FSL/Baxendale-Walker Solicitors relationship was to encourage introducers to send scheme-buying clients, which he sometimes called 'lay clients', to Baxendale-Walker Solicitors for advice on the implementation of the schemes, Baxendale-Walker Solicitors in that role being described to clients as independent;
- (g) Baxendale-Walker Solicitors were happy to act and did act as solicitors for the 'lay' clients buying such schemes from FSL on referrals from FSL introducers, and charging fees to such lay clients;

(h) The FSL/Baxendale-Walker Solicitors relationship was such that inter alia FSL and Baxendale-Walker Solicitors considered together their respective liabilities to clients buying such schemes and buying the services of Baxendale-Walker Solicitors; that Mr Baxendale-Walker had advised within the FSL/Baxendale-Walker Solicitors relationship that if the scheme being bought by clients of FSL did not work the client could sue FSL for a refund; that Baxendale-Walker Solicitors accepted that they would have a duty of care as to the scheme's efficacy, and accepted responsibility for the product FSL was selling; that FSL as an offshore entity would not be an attractive target for litigation; in a structure memorandum to the Managing Director of FSL Mr Baxendale-Walker had said that since FSL submitted its products to "detailed individualisation" through expert solicitors (which were usually Baxendale-Walker Solicitors) any liabilities arising would arise to the solicitors and not FSL; and that he had advised FSL that in relation to their product liability there was no need for FSL to set aside a retention fund or take out insurance.

- D.5 These findings of fact and reasons, some individually and unquestionably cumulatively, satisfy the Tribunal beyond doubt that Mr Baxendale-Walker was in effective control of FSL and that FSL was throughout exploiting Mr Baxendale-Walker's IPR for Mr Baxendale-Walker's benefit.
- D.6 The Tribunal also finds that Mr Baxendale-Walker's claim that Baxendale-Walker Solicitors could be represented to clients as independent was false. Mr Baxendale-Walker made it clear that he regarded his schemes as so perfect that it was impossible to question them. This being his belief it was also impossible for him to provide advice which was truly independent. Those who did express an opinion which called the scheme into question were attacked as incorrect or incompetent and insufficiently skilled (compared to Mr Baxendale-Walker) to comment on the scheme. In the case of Mr Shaw, Louvre were removed as Trustee amid accusations of criminal behaviour on the part of Louvre made by Mr Baxendale-Walker - so he claimed on instructions - which he said in evidence he thought were inconceivable. These were not the actions of an independent adviser. Whatever other purpose they had they were actions taken to defend FSL's assets. If as the Tribunal finds Mr Baxendale-Walker was the effective owner of FSL, these actions were taken to protect his assets but the conflict of interest is clear, whether or not Mr Baxendale-Walker was the ultimate owner of FSL.
- D.7 Mr Baxendale-Walker had in the Tribunal's view blatantly ignored the profession's rules designed to ensure that a solicitor's advice to his client is untainted by his personal interest or conflict of interest in relation to two or more clients. The FSL structure had in the Tribunal's view a dual purpose of removing the profit to be generated from exploitation of Mr Baxendale-Walker's IPR from being subject to taxation and disguising the nature of Mr Baxendale-Walker's relationship with FSL. The ingenuity of Mr Baxendale-Walker's arguments could not ultimately withstand the evidence which led inescapably to the conclusion that Mr Baxendale-Walker was not a credible witness.

E. Misleading third parties

E.1 The Law Society alleged that Mr Baxendale-Walker had misled third parties. The evidence in support of this included the letter dated 12th November 1999 written by Mr Baxendale-Walker to Clydesdale Bank in the following terms:-

“ Dear Mr Fulton

Re: Jaymarke Developments Limited

I am writing to confirm the information which I provided to you yesterday on the telephone.

1. In early 1998, IRBP established a commercial Remuneration Trust. You may be comforted to know that I am the author of the standard industry work on this subject (together with Andrew Thornhill QC), namely ‘The Law and Taxation of Remuneration Trusts’ (1997). The Trust is governed by English law and the Trust instrument was drawn by my Firm. The chartered accountants to IRBP, Ernst & Young are fully aware of the existence of the Trust and, indeed, my Firm is presently working in close cooperation with Ernst & Young on the accounting and Revenue reporting compliance returns concerning the Trust.
2. The present Trustees are Atlas Trust Company in Jersey. Their senior director dealing with this Trust is Mr Ian Swindale.
3. That trust now holds cash funds of just in excess of £7 million. I understand from the current Trustees that those funds are presently held on cash deposit at the Royal Bank of Scotland, Guernsey.
4. I appreciate that Mr Shaw had suggested to you that funds would be made available from the Trust to discharge loan monies due to Clydesdale Bank plc (“the Loan”) somewhat earlier than is the actual case. We must be the responsibility for that, in the sense that it is due to the completion of extensive due diligence and administration procedures, upon which we have insisted, that is delaying the discharge.
5. It was decided earlier this year to change the then Trustees to Atlas. The then Trustees had been in office for almost 2 years and it was felt that a change was due, as a matter of good administrative practice. Given the importance of this Trust to the continuing commercial affairs of IRBP and Jaymarke and the other IRBP shareholder, my Firm has considered it right to have the change of Trustees subjected to approval by the Guernsey Royal Court. The Trustees always have of course the right to ask the Court to give such approvals. You will appreciate that it is vital that all matters concerning the [illegible] be not only done properly, but be seen to be done properly. The official judicial approval of the Guernsey Royal Court provides such seal of unassailable propriety.
6. You will no doubt take comfort from the fact that all the affairs of the Trust are required by the Court to be placed before it in adjudicating upon such matter. Whilst we respect the fact that no allegation has been raised by you as to the security of the Trust funds, we trust that you will draw considerable

comfort from the fact that the Court must be satisfied that the financial affairs of the Trust are wholly in order; and where that is not the case, it would be inconceivable that anyone would wish to draw any such hypothetical irregularity to the scrutiny of the Guernsey Royal Court.

7. The delay in dealing with the discharge thus arises from the necessity of ensuing that the documentation of the affairs of the Trust meet the very high standards expected by the Court. The Court may require minor other matters to be attended to, before giving its approval, but that is exactly why this judicial ratification is being sought.
8. The Court appointment has now been set for next Friday, according to the Guernsey lawyers acting on the Trust matters. Assuming that the Court does issue its approval (of which we are very confident) and does not require any further documentary administration to be effected (which we are confident our efforts have made unnecessary), the Trust will be free to enter immediately into such arrangements as you think fit for discharge of the Loan.
9. We would suggest that, immediately upon the above Court approval being issued, Trust funds of an amount necessary to cover the Loan liability be deposited by the Trust with Clydesdale Bank. The Trustees should be happy to make that deposit at your Fraserburgh branch, if that is what you wish. We are certainly happy to recommend that to them. If that is your wish, then would you be kind enough to send to us the account opening forms that are necessary for a trust account and we will arrange for the Trustees to complete them.
10. We would then suggest that such deposit be followed immediately by a payment instruction from the Trustees to you to debit the Trust account in favour of the Bank, in discharge of the Loan. To do so, the Bank will need to issue to us a statement of the sum owing (including accrued interest). It would be helpful if that statement could be prospectively calculated as at 3rd December 1999, which I consider a realistic date for actual payment. From that date, the Bank debt is discharged and is substituted in law for a debt due by Jaymarke to the Trust.
11. I hope you will appreciate that, since there exists no direct creditor relationship between the Bank and the Trust, the strict requirements of trust law necessitate that discussions on this matter are routed through my Firm, as Solicitors who act jointly for the Trust and the IRBP and Mr Shaw personally.

I trust that this letter gives you the information that you need and that the above proposals meet with your approval. Please do contact me if you require any further information. In the meantime, I look forward to receiving the banking information referred to above so that preparation for repayment can be effected in good time.

Yours sincerely

Paul Baxendale-Walker”

E.2 The Applicant claimed that the letter was inaccurate in the following respects:-

- (a) the Trustee had been in office for “about 2 years” (it was for less than 1 year);
 - (b) The Trustee was being replaced for administrative reasons;
 - (c) The Trustee was being replaced as a routine and normal change.
- E.3 Mr Baxendale-Walker in evidence acknowledged that none of these statements was true but in the case of (a) said it was a lapse of memory and that the other statements were a matter of diplomacy.
- E.4 Clydesdale Bank were concerned about the security of substantial sums owed to it which had been secured on property which had been sold. It was relying on an unsecured solicitors undertaking given by Messrs. Paul & Williamsons. Mr Baxendale-Walker’s letter sought to reassure Clydesdale Bank.
- E.5 Mr Baxendale-Walker knew that Louvre were being removed because of alleged impropriety on their part (including the allegation that they might have misapplied the funds entrusted to them) and that proceedings had been instituted to secure their removal. The statements at 2(b) and (c) were knowingly untrue and the statement at 2(a) was (as the Tribunal finds) made in support of the statements at 2(b) and (c) and also untrue.
- E.6 The purpose of the letter was to dissuade Clydesdale Bank from taking steps to recover what was owed to it. The letter went way beyond mere economy with the truth but deliberately stated what Mr Baxendale-Walker knew to be untrue. It was in the Tribunal’s view intended to mislead - a misrepresentation which cannot be justified regardless of whether the loan was ultimately repaid.
- E.7 For the purposes of this Finding the Tribunal does not deal with other alleged instances where third parties were misled but it finds that such examples as were cited by the Applicant were cases where third parties had been misled by Mr Baxendale-Walker.
- E.8 The Tribunal finds allegation (iv) proved beyond reasonable doubt.

13. Findings in relation to Mr Auden

- 13.1 The evidence before the Tribunal submitted by Mr Auden cannot be afforded the same weight as other evidence tested by cross-examination. The Tribunal has concluded that in a number of material respects Mr Auden’s witness statement is not reliable and cannot be reconciled with evidence supporting the Applicant’s allegations which evidence is to be preferred. It was not in dispute that Mr Auden was when with his previous firm a successful introducer of FSL products and received commission for his introductions. The Tribunal accepted evidence which showed that Mr Auden became a consultant to and then a partner of Baxendale-Walker Solicitors from January 1997. His failure in his witness statement to mention his involvement with Baxendale-Walker Solicitors before his formal appointment as a “salaried” partner created a false impression which disguised the fact that from January 1997 he continued to receive payments for introduction of FSL products to clients. These payments were in the Tribunal’s view commissions or fees paid for introductions and denial of such receipts from the time Mr Auden accepted employment with Baxendale-Walker Solicitors cannot have been honestly made.

- 13.2 The Tribunal does not accept that Mr Auden as a partner of Mr Baxendale-Walker and as a person with a substantial work load of FSL matters can have remained in ignorance of the FSL structure and business and Mr Baxendale-Walker's role and interest in FSL. A number of examples were given of Mr Auden's involvement in FSL affairs which cast such doubt on his denial of knowledge of or involvement in FSL as to lead to the conclusion that in this respect his evidence is not credible. The Tribunal rejects Mr Auden's claim that commissions or non-taxable loans in lieu of commission received by him gave rise to no interest which might conflict with his duty to give independent advice on transactions in respect of which the "commission" was being paid. The Tribunal considers no honest solicitor could have so thought. The Tribunal accordingly finds the allegations against Mr Auden proved beyond reasonable doubt, and in relation to such alleged conduct that Mr Auden was dishonest.

Previous Finding against Mr Baxendale-Walker alone

- 13.3 At a hearing on 4th & 5th April 2005 the Tribunal found the following allegation against Mr Baxendale-Walker alone that he provided a reference in circumstances in which he knew, or ought to have known, were improper and/or unprofessional to have been substantiated.

- 13.4 On that occasion the Tribunal said:-

“116. The Tribunal did not agree with Mr Baxendale-Walker that the letter of reference given on behalf of Mr N to a bank, which reference was both improper and unprofessional, comes at the lower end of the scale of professional misconduct. Members of the public and organisations such as banks are entitled to expect to be able to trust a solicitor to the ends of the earth.

117. At the time when Mr Baxendale-Walker gave the reference he had been qualified for five years. The Tribunal rejected Mr Baxendale-Walker's submission that at the time when he wrote the reference he was young and inexperienced. Mr Baxendale-Walker held a solicitors' Practising Certificate and was entitled to practise as a fully-fledged member of the profession and on his own account.

118. People who are not qualified as solicitors are able to recognise that it is improper to give a reference on behalf of a person that they do not know. Solicitors know that they can only properly give references which are truthful in all respects. This inevitably precludes commenting on the attributes of a person who does not exist.

119. The Tribunal was in no doubt that Mr Baxendale-Walker gave a false reference indicating that the person he referred to was a person of good standing when he neither knew nor had any opportunity to know whether that was accurate.

120. Dishonesty had not been alleged against the Respondent in this respect and if it had been the Tribunal would have had no difficulty in making an order that Mr Baxendale-Walker be struck off the Roll of Solicitors. The

Tribunal is further in no doubt that to write such a false reference was both improper and a serious breach of a solicitor's professional duty. In writing such a letter the Respondent had been at the very least extraordinarily reckless with regard to this professional duty.

121. The Tribunal concluded that it must impose a sanction and that a suspension for three years would be both proportionate to the seriousness of the allegation and would provide a clear indication, both to members of the solicitors' profession and to members of the public, that such behaviour on the part of a solicitor is wholly unacceptable and would not be permitted to go unmarked even where dishonesty was not alleged.
122. With regard to the question of costs, the Tribunal recognised that Mr Baxendale-Walker had been successful in his defence of the first allegation and in such circumstances it would not be right that the Respondent pay The Law Society's costs. It would be right that The Law Society pay a proportion of Mr Baxendale-Walker's costs. The Tribunal concluded that a fair and reasonable position with regard to costs would be achieved in ordering that The Law Society pay 30% of Mr Baxendale-Walker's costs such costs to be subject to a detailed assessment unless agreed between the parties. In making such an order the Tribunal recognises that a greater proportion of the costs incurred by the Respondent would have related to his defence of allegation (1) and that overall the percentage of costs to be paid by The Law Society meant that the costs order properly reflected the outcome."
- 13.5 The Tribunal's decision on sanction was upheld by the Court at the hearing of Mr. Mr. Baxendale-Walker's appeal. The Tribunal's Order for costs was varied.

14. Conclusion, the Tribunal's sanction and its reasoning

- 14.1 The Tribunal was invited to be satisfied that the evidence given by Mr Baxendale-Walker was not credible. In forming the view that the Tribunal was so satisfied the Tribunal has applied the appropriate standard of proof. These are civil not criminal proceedings but the Tribunal applies the high standard (which equates to the criminal standard) in cases involving allegations of dishonesty or conscious impropriety on the part of the solicitor. The Tribunal has approached this question on the basis that it must be satisfied so that it is sure that the explanations given in evidence are incorrect, contradictory or so improbable as to be not credible and the following matters are in the Tribunal's view relevant in coming to that conclusion.
- 14.2 The Tribunal found Mr Blackwell's evidence wholly convincing. He gave his evidence pursuant to a witness summons. His evidence was largely unchallenged and the worst that was said of him was that Mr Baxendale-Walker thought he was "a dunce". The Tribunal had quite a different impression. He was a scrupulous and careful witness. Where his evidence conflicted with Mr Baxendale-Walker's version of events the Tribunal was in no doubt that Mr Blackwell's evidence was to be referred.
- 14.3 The Tribunal also found Mr Bannister's evidence compelling. His evidence particularly in relation to the letter of 20 November 1998 and the letters and file notes

are accepted by the Tribunal. In the light of this evidence the letter of 20th November 1998 cannot be a genuine and contemporaneous document. It was put forward by Mr Baxendale-Walker as both genuine and contemporaneous. The document was produced in evidence in other proceedings before the Master of the Rolls. This was at a time when Mr Baxendale-Walker did not know that another letter of the same date (the genuineness of which is unquestioned) would be produced. The two letters are not consistent. The letter produced by Mr Baxendale-Walker for the proceedings before the MR is only an extract and contains no second or subsequent page containing a signature. Mr Bannister says it was written on letter-head never used by him and that he never sent it. A copy is not to be found amongst the papers he produced pursuant to a subpoena. The Tribunal has no doubt that it should accept Mr Bannister's evidence on this point and reject Mr Baxendale-Walker's assertion to the contrary. The Tribunal therefore finds that this document is not genuine or contemporaneous. The Tribunal finds that Mr Baxendale-Walker's assertion that it was, was not credible and therefore cannot have been honestly held. The Tribunal considers that it is probable that documents were not created on the dates on which it appeared they had been created and the Respondent's assertions based on these documents were materially misleading.

- 14.4 Both Mr Bannister and Mr Blackwell, when acting as Managing Director of FSL and FSLGB respectively, gave evidence that they thought Mr Baxendale-Walker was effectively the owner. Both denied that they had any reason to suppose that some other person was the owner or owners of FSL companies. The evidence of Mr Bannister in relation to Mr Challis' request in a letter dated 19th February 1997 for confirmation of approval from "the beneficial owner" was answered by Mr Bannister with a confirmation that he had spoken to "the beneficial owner" whom he identified when giving his oral evidence as Mr Baxendale-Walker. Mr Baxendale-Walker's claim that he had not met Mr Bannister before his appointment as FSL managing director was clearly untrue but in the Tribunal's view Mr Baxendale-Walker was seeking to put distance between himself as effective owner of FSL and FSL.
- 14.5 The Tribunal has no reason to doubt that when FSL and MVT were set up it was on the initiative and for the benefit of Mr Baxendale-Walker and his newly formed practice Baxendale-Walker Solicitors of which he was and has remained the sole equity partner. There was no contemporaneous evidence that he was doing so for third parties and strong evidence to the contrary. The motivation was clearly to enable Mr Baxendale-Walker to exploit the tax schemes he had devised or thought he would be able to develop. Mr Baxendale-Walker knew he could not secure the optimum utilisation of those schemes by marketing them from Baxendale-Walker Solicitors and that this would require incentivisation of Independent Financial advisers and others : something he could not do as a solicitor. In order to achieve his tax and commercial aims the FSL and MVT structure was set up. But for the achievement of those aims, it was not essential that MVT had beneficiaries other than Mr Baxendale-Walker's yet unborn grandchildren. Mr Baxendale-Walker himself could and did benefit from MVT. The Tribunal rejects Mr Baxendale-Walker's argument that he had no benefit because he assumed an obligation to pay the equivalent of interest on his borrowings from MVT. The Tribunal regards the argument that the elimination of a taxable benefit is the negation of any benefit at all as fallacious certainly in relation to conflicts of interest. The Tribunal has no doubt that borrowing on these terms was only possible because it was not genuinely at arms

length. The ‘investment’ by the trustees in a fixed term loan to Mr Baxendale-Walker whether or not on commercial terms did not negate the advantage for Mr Baxendale-Walker of obtaining finance from this source. Even if, which in the opinion of the Tribunal is most unlikely, a similar advantage could have been as easily obtained from any other independent source, the fact is that it was the obtaining of such an advantage from this source rather than from an independent source which contributed to the conflicts of interest referred to above.

- 14.6 Mr Baxendale-Walker’s strongly asserted view that he could borrow from MVT notwithstanding the terms of Clause 22 of the MVT trust deed demonstrates that he was confident that if FSL was successful he could at all times obtain finance from FSL via MVT. In the Tribunal’s view, the claim that this was of no benefit to Mr Baxendale-Walker is not credible nor could its assertion be honestly made.
- 14.7 For so long as the MVT remained hidden from view, there was nothing to connect FSL with Mr Baxendale-Walker except the professional relationship. When the IoM Documents became available and later in July 2005 when the MVT Trust Deed was produced the connection between Mr Baxendale-Walker and FSL was obvious. The Trust ostensibly benefited future generations of his family. Also although not stated to be a beneficiary and said to be excluded from benefit under the trust, he knew that he could benefit whether or not such benefit was taxable in his hands. The Tribunal takes the view that the wording of Clause 22 (see 12 B.1) created an impression (which the Tribunal regards as misleading) that Mr Baxendale-Walker could obtain no benefit from the MVT when he says he knew that he could. Mr Baxendale-Walker’s reliance on the argument that he had received no taxable benefit and therefore no benefit at all is unconvincing and rejected. He claimed that ability to receive loans from MVT did not need to depend on his being a beneficiary but the argument that anything he received other than in that capacity could not be a benefit to him is plainly untenable.
- 14.6 Mr Baxendale-Walker had in response to The Law Society’s enquiries made no disclosure of the MVT trust deed or of the loans he had received from MVT. In his response to Mr Duerden’s questions, he said he had received no loans. The Tribunal does not accept that Mr Baxendale-Walker could have honestly thought he was answering the questions posed in Mr Duerden’s letters. Mr Baxendale-Walker’s responses were in the Tribunal’s view either a lie or intended deliberately to mislead.
- 14.7 This analysis of the position leads the Tribunal to the conclusion that until the disclosure of the MVT trust deed Mr Baxendale-Walker thought he was safe to rely on the connection between the MVT and his firm being concealed by the description of FSL being controlled by ‘non-institutional shareholders’ and later by “sophisticated trusts.” Once the MVT Trust Deed was disclosed, Mr Baxendale-Walker must have appreciated that the problem for him was not tax related (he was very confident in relation to FSL and MVT that his schemes were effective to defeat any claim to tax) but the conflict of interests and duties. His loans from MVT might or might not withstand an attack by the Revenue but once the IoM documents were disclosed it would be known that he was receiving substantial sums of money from MVT much of which could be shown to have derived from FSL. In the Tribunal’s view it was this that pointed to the need to create the impression that there were beneficiaries of the MVT other than the unborn grandchildren of Mr Baxendale-Walker. This, rather than their alleged anonymity provides an explanation why there is no evidence that the

alleged entrepreneurs communicated directly or through the trustees in relation to their allegedly valuable investment. This is in the Tribunal's judgment particularly relevant to the reorganisation of the FSL Group in 2001 for which Mr Baxendale-Walker charged a large fee of £250,000. There was no evidence before the Tribunal of any instruction or discussion in relation to this emanating from anyone other than Mr Baxendale-Walker. The reorganisation was to create a further cloud of complication to distance Mr Baxendale-Walker from FSL.

- 14.8 Mr Baxendale-Walker said to the Law Society and in proceedings before the Master of the Rolls that he did not know who the real owners of the MVT assets were nor could anyone know other than the Trustees who were sworn to secrecy. He said he could only speculate and when his speculations turned out to be in all probability wrong he was thrown back on saying he had no idea who were the true owners and that he could take no steps to satisfy himself as to who the true owners were - an unconvincing position to adopt which did nothing to enhance his credibility. The Tribunal regards much of Mr Baxendale-Walker's evidence in this respect as being theoretical rather than real. There is no evidence that any of those canvassed as beneficiaries were asked to confirm whether they were or were not beneficiaries. There was no evidence that the Trustees were asked to confirm that Mr Baxendale-Walker or persons connected to him had no interest in the MVT. There is no evidence that the alleged beneficiaries of the MVT either directly or indirectly through the Trustees gave instructions to Mr Baxendale-Walker which had not been instigated by him. The only person who asserts the existence of other beneficiaries is Mr Baxendale-Walker.
- 14.9 In relation to the critical question of whether Mr Baxendale-Walker is to be believed in his denial of any beneficial ownership of the whole or part of FSL, the Tribunal has concluded that it cannot believe him. The evidence to the contrary, despite the sophistication of his arguments, is in the Tribunal's view overwhelming. His explanations were not credible. The Tribunal wishes to make it clear however that even if Mr Baxendale-Walker had no beneficial interest in FSL through MVT or Fountain Trust or otherwise, allegations (i), (ii) and (iii) against Mr Baxendale-Walker and Mr Auden and their related dishonesty would be established by their roles and involvement in FSL's operations.
- 14.10 The evidence of Mr Baxendale-Walker's closeness to the Trustees, to the FSL operations and its products and its employees, to introducers and to users of FSL products, all point conclusively to a relationship which went far beyond a solicitor and client relationship. This in the Tribunal's view led unquestionably to a fatal loss of independence which is the foundation of the professional rules regarding conflicts of interest and duty both with regard to Mr Baxendale-Walker and Mr Auden because Mr Auden was a solicitor working closely with Mr Baxendale-Walker and FSL. The Tribunal finds that he could not be unaware of Mr Baxendale-Walker's own position and, indeed, he treated Mr Baxendale-Walker and FSL as if there was little to distinguish between them. He was not the "prime mover" but he played an important role in which he was fully conversant with the arrangements and from which he derived substantial financial benefit, disguised by being channelled through corporate bodies.
- 14.11 The Tribunal has no doubt that in significant areas (see in particular Section 12) Mr Baxendale-Walker's evidence is not credible. As a consequence it finds that at least

until 2001 Mr Baxendale-Walker was the owner of FSL or if not technically the owner the person who was able to enjoy the fruits of ownership through borrowing from the MVT. The Tribunal had no evidence that after the reconstruction of the FSL group in 2001 the position changed nor would its view be materially altered if at that date some part of the economic interest in FSL no longer accrued for the benefit of Mr Baxendale-Walker or his unborn grandchildren.

14.12 Although Mr Baxendale-Walker was stated not to be a beneficiary and excluded from benefit under the MVT Trust, he knew (as the Tribunal finds) that he could benefit from unsecured loans. Although the IoM documents relate only to a period from March 1999 to January 2001 there is no evidence that apart from professional fees paid in connection with the Macdonald litigation, anyone other than Mr Baxendale-Walker and persons connected to him (e.g. MPRO Mr Winter, Sam Jessop, Sheila Hill and Bryan Davis) received anything from MVT. In the light of the Tribunal's findings the Macdonald litigation was conducted for Mr Baxendale-Walker's benefit in order to protect assets which in reality were his. If there were entrepreneurs having a beneficial interest in MVT nothing was identified as being any return to them. The Tribunal regards this as corroboration of their conclusion that there were no added beneficiaries or none with a material interest in the MVT assets. This view is not inconsistent with Mr Baxendale-Walker's claim that in a letter sent by Clambake Trustees (Liberian Trustees connected to Skyefid), there was a reference to a purported enclosure of letters relating to the beneficiaries "added" to the MVT Trust. The letters themselves were not in evidence. There was no corroborative proof that the letters existed nor of their dates. It was not known if they mentioned beneficiaries unconnected to Mr Baxendale-Walker. Until noticed by Mr Baxendale-Walker on Day 10 of the Hearing, Mr Baxendale-Walker had not drawn attention to this letter, though he hailed it as important proof of the existence of added beneficiaries. There was no evidence of beneficiaries being added prior to the 2001 reorganisation. These factors cumulatively satisfy the Tribunal that there were no added beneficiaries or none who had a material interest in FSL superior to or to the exclusion of that of Mr Baxendale-Walker.

14.13 The Tribunal finds that Mr Baxendale-Walker/Baxendale-Walker Solicitors including Mr Auden acted in a legal capacity or were in a position to give instructions at least during the period 1994 to 2001 in respect of:-

- MVT
- FSL companies both before and after the reorganisation of the FSL Group
- Purchasers of FSL products
- Introducers of FSL products who were paid (or prospectively were to be paid) introductory fees
- Trustees of MVT (Louvre, Skyefid, Clambake and Atlas)
- MPRO
- Sam Jessop

in circumstances that gave rise to acute conflicts of interest and duty.

14.14 The Tribunal is satisfied so that it is sure that the allegations against both respondents are proved. In the light of the Tribunal's findings much of Mr Baxendale-Walker's and Mr Auden's evidence was untrue and their assertion that it was true, cannot have

been honestly held. In reaching this conclusion the Tribunal has applied the test for dishonesty laid down in the Twinsectra case.

- 14.15 In the light of its findings, in exercise of its duties to protect the public and maintain the good reputation of the solicitors' profession the Tribunal concluded that it was both appropriate and proportionate to order that both Mr Baxendale-Walker and Mr Auden be struck off the Roll of Solicitors.
- 14.16 The Order sought by the Law Society was that it should recover all of its costs and that each Respondent be jointly and severally responsible for payment of the Law Society's costs. It was reasonable to seek to limit Mr Auden's costs exposure to 25%, given his lesser role in the subject matter in that, unlike Mr Baxendale-Walker, he was not an equity partner in Baxendale-Walker Solicitors, did not have a role in the original creation of the FSL products, or FSL or its trust ownership structure. In order to protect Mr Auden's position on costs the Tribunal noted in its order the Law Society's undertaking not to seek to recover more than 25% of the costs from Mr Auden.
- 14.17 Given Mr Baxendale-Walker's key role in the matters before the Tribunal the Tribunal decided that it was not appropriate to seek to limit Mr Baxendale-Walker's liability.
- 14.17 Whilst the Tribunal has made a joint and several costs order, the Tribunal is of the view that it would be unjust that in the circumstances as between Mr Baxendale-Walker and Mr Auden, Mr Auden's liability for costs should exceed 25% of the total costs ordered to be paid.

DATED this 11th day of January 2007

On behalf of the Tribunal

A H Isaacs
Chairman