

IN THE MATTER OF ANTHONY MASTERS WILLIAMSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A H B Holmes (in the chair)  
Mr J C Chesterton  
Mrs C Pickering

Date of Hearing: 15th September 2005

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Rosemary Jane Rollason solicitor and partner in the firm of Field Fisher Waterhouse, 35 Vine Street, London, EC3N 2AA on 11<sup>th</sup> March 2005 that Anthony Masters Williamson of Arundel, West Sussex, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars:

- (i) when drawing up a will on behalf of Mr A D under the terms of which he (the Respondent) was appointed as Sole Executor and Trustee, and was to benefit from a substantial portion of the Estate and therefore had a conflict of interest he:
  - (a) failed to advise the client to obtain independent legal advice;
  - (b) wrongly continued to act;

- (ii) between approximately March 2001 and May 2003, failed to ensure that his firm's two offices at Rustington and Lancing were adequately supervised in accordance with Rule 13 of the Solicitors Practice Rules 1990;
- (iii) for an unknown period up to March 2003, had failed to have in place an adequate written complaints procedure, as required by Practice Rule 15 Solicitors Practice Rules 1990;
- (iv) for an unknown period up to March 2003, had failed to provide clients with information as to costs and other matters, as required by Practice Rule 15;
- (v) took unfair advantage of clients by charging fees which were unreasonable in relation to the work evidenced on the clients files;
- (vi) over a period of approximately two years, failed to take steps to establish whether registration of an Enduring Power of Attorney in respect of Miss MWH was required in accordance with his duty to the Court;
- (vii) failed to act in accordance with the mortgage lenders' instructions in conveyancing transactions, more particularly in the matters of:
  - (a) Mr and Mrs A/Mr and Mrs W – purchase and sale;
  - (b) Mrs D/Mr P – purchase and sale;
- (viii) when purchasing property from clients, Mr and Mrs C, in his personal capacity, and when he therefore had a conflict of interest, he:
  - (a) failed to advise the clients to seek independent legal advice;
  - (b) wrongly continued to act;
- (ix) when acting for the mortgage lender in connection with his own property purchase from Ideal Homes, acted when he had a conflict of interest;
- (x) in his personal capacity purchased a car from the estate of HL (deceased) when he was acting for the executrix and so had a conflict of interest;
- (xi) took an executor payment of £1,000 in connection with the matter of the Estate of RERG in respect of the establishment and administration of a trust which had in fact never come into being.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 15<sup>th</sup> September 2005 when Rosemary Jane Rollason appeared as the Applicant and the Respondent did not appear and was not represented.

**At the conclusion of the hearing the Tribunal made the following Order:**

The Tribunal Orders that the Respondent, Anthony Masters Williamson of Arundel, West Sussex, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay

the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of The Law Society.

**The facts are set out in paragraphs 1 to 94 hereunder:**

1. The Respondent born in 1940 was admitted as a solicitor in 1966 and his name remained on the Roll of Solicitors.
2. At all material times, the Respondent was the sole principal of Williamson & Co. whose practising addresses were 62 The Street, Rustington, Littlehampton, West Sussex, BN16 3NR and 3,4 and 5 Station Parade, Lancing West Sussex, BN15 8AB.
3. The allegations against the Respondent arose from an inspection of his firm's books of account which commenced on 25<sup>th</sup> March 2003. The resulting Report dated 30<sup>th</sup> September 2003 was before the Tribunal.
4. The Law Society wrote to the Respondent on 13<sup>th</sup> October 2003 seeking his explanation in relation to the matters contained in the Report. Messrs RadcliffesLeBrasseur, whom the Respondent instructed to represent him, submitted a response with enclosures dated 7<sup>th</sup> November 2003 ("the Response").
5. During the inspection, the Investigation Officer interviewed the Respondent on various matters arising which were subsequently dealt with the Report. The interview was tape recorded and transcribed extracts appeared in the Report.

Allegation (i) – relating to Mr ADC (deceased)(Report paragraphs 8-17)

6. Mr ADC died on 31<sup>st</sup> January 2001. He executed his will, which was drawn up by the Respondent on 27<sup>th</sup> January 2000. By clause 3 of the will, the Respondent was appointed as Sole Executor and Trustee. Clause 6 of the will provided that Mr C's trustee shall "hold the residue to dispose of as he may think fit".
7. The Report noted that the sum of £5,188.48 was paid to various charities and that the Respondent had used the balance of £48,247 for his own purposes.

These purposes included:

- (i) the use of £36,300 to purchase a property;
  - (ii) £6,247 to pay for a trip to enter the New York marathon, and
  - (iii) £5,700 paid directly to the Respondent from Williamson & Co's client account.
8. The Investigation Officer conducted a final interview with the Respondent on 21<sup>st</sup> May 2003. The Report recorded that in the interview the Respondent:

- (i) admitted that he had paid 90% of Mr C's estate to himself, used in the manner described above;
  - (ii) admitted that he had not considered it necessary that Mr C should receive independent legal advice concerning his intentions relating to the residue, stating that Mr C was happy for him to do as he wanted and was clear in his intentions;
  - (iii) stated in relation to Mr C's intentions regarding the residue that "he was happy for me to dispose of it exactly as I wanted";
  - (iv) admitted there were no attendance notes on the file concerning any discussions that he had with Mr C on these points;
  - (v) admitted that he did not believe that he had advised Mr C to seek independent legal advice.
9. The Investigation Officer reminded the Respondent of the provisions of Principle 15.05 of the Solicitors Practice Rules headed "Gifts to Solicitor". This provides as follows:

"Where a client intends to make a gift inter vivos or by will to his or her solicitor... and the gift is of a significant amount, either in itself or having regard to the size of the client's estate and the reasonable expectations of prospective beneficiaries, the solicitor must advise the client to be independently advised as to that gift and if the client declines, must refuse to act".

10. The Respondent commented that the client did not seek independent advice and that he did not believe he had advised him to do so.

#### The Response

11. In the Response RadcliffesLeBrasseur asserted that the benefit derived by the Respondent was not 90% but accepted that it was "a significant amount", namely £48,247.
12. It was submitted in terms of Principle 15.05 that in the absence of prospective beneficiaries, the Respondent's judgment that it was not necessary for Mr C to be advised to seek independent legal advice was a reasonable interpretation of the principle, but he had not in any event acted wilfully or deceitfully.
13. RadcliffesLeBrasseur advised that the Respondent had made payment of £50,241.43 to the credit of the estate, representing the principle of £48,247.00 together with interest of £1,994.43.

Allegation (ii)-Supervision of the offices of Williamson & Co: (Report paragraphs 18-21)

14. The Report noted that both offices of the Respondent at Rustington and Lancing kept the same opening hours.
15. The Respondent employed two secretaries and a part-time book-keeper at his Rustington office and two secretaries at his Lancing office. He spent his mornings at Rustington and afternoons at Lancing.
16. The Respondent advised the Investigation Officer that his assistant solicitor, Mr L, had left his employment on 2<sup>nd</sup> March 2001 and that since that time he had practised alone. The Report noted that however, according to Law Society records Mr L left the employ of Williamson & Co on 23<sup>rd</sup> May 2000.
17. The Respondent had stated he took annual leave to run in various marathons around the world. When asked who supervised his office during his absences, the Respondent said he had arrangements with other local firms who did not attend Williamson & Co on a regular basis, but would go to the offices "when required".
18. At the final interview on 21<sup>st</sup> May 2003, the Respondent undertook to make immediate steps to rectify this situation.

The Response

19. An explanation was given of how the Respondent operated between the two offices. It was stated that Mr L had left the firm's employment on 2<sup>nd</sup> March 2001.
20. The steps the Respondent had taken since the inspection regarding proper supervision of his practice were identified.

Allegation (iii)-Breach of Rule 15 of the Solicitors Practice Rules 1990-no adequate written complaints procedure: (Report-paragraphs 22-23)

21. The Report noted that at the commencement of the inspection, the Respondent did not have any written complaints handling procedure. A written complaints handling procedure was subsequently instituted during the course of the inspection.

The Response

22. It was stated that the Respondent had given thought to a complaints handling procedure, albeit that it was inadequate. It was submitted his default was not wilful and any defect had subsequently been remedied.

Allegation (iv)-Failure to provide information about costs and other matters to clients: (Report paragraphs 24-44)

23. The Report detailed that certain clients of the firm had not been provided with any written information as to costs, nor with any other client care and complaints handling information.

24. In respect of certain other client matters set out in the Report, the Respondent confirmed that he provided client care information after the conclusion of the matter.
25. During the inspection, at the interview on 21<sup>st</sup> May 2003, the Investigation Officer asked the Respondent a number of questions regarding the various matters, namely concerning:

Miss M W H - Enduring Power of Attorney

Miss H was a spinster who lived in a nursing home. She was aged 95 and had no known relatives. The Respondent acted as her attorney under an unregistered Enduring Power of Attorney signed by her on 3<sup>rd</sup> July 1997. It was noted that although she had been billed on a regular basis since 1997, there was no evidence on the file that costs information had been given to the client.

BEE (deceased) - Probate

The Respondent assisted the executor Mr P in winding up the estate. There was no written information on file concerning costs or client care.

KRMC - Enduring Power of Attorney

The Respondent handled Mrs C's affairs under an Enduring Power of Attorney signed by her on 7<sup>th</sup> November 2000. This had never been registered. There was no written information as to costs or client care on file.

26. The Investigation Officer questioned the Respondent as to the information about costs which had been given to these clients. During the interview on 21<sup>st</sup> May 2003, the Respondent:
- (i) admitted that he was familiar with Solicitors Practice Rule 15 which requires solicitors to give the clients information about costs and other matters;
  - (ii) he further admitted that he was aware of the terms of paragraph 3 of the Solicitors Costs Code, Costs Information and Client Care Code 1999 which requires that costs information should be given to a client "at the outset of, and at appropriate stages throughout the matter";
  - (iii) he acknowledged that the files in respect of these matters showed no written confirmation of information as to costs.
27. The Investigation Officer then questioned the Respondent concerning the requirement of Practice Rule 15 that client care information be given to clients. In particular he asked him about the matters of:
- VMC (deceased) – Probate
  - EJM (deceased) – Probate
  - HLA (deceased) – Probate
  - Mr and Mrs C/ The Respondent - Purchase and Sale

28. The Investigation Officer had noted that in each of these cases, client care information as required by Practice Rule 15 had not been given to clients.

The Response

29. The specific clients were commented upon at paragraph 8 of the Response. A number of the failings to provide the necessary information were accepted, but it was asserted that there had been no complaint or query from the clients and that any breach was inadvertent.

Allegation (v)- Reasonableness of Fees charged: (Report paragraphs 45-57)

30. The Report referred to various probate and Power of Attorney matters where the Respondent had raised bills of costs which were not justified by the work evidenced on the relevant client matter files.
31. It was further noted that clients had been charged the same amount regardless of the amount, nature or complexity of the work done.
32. During the inspection interviews, the Respondent acknowledged that on the information available from the client matter files, the fees charged by the firm "would appear to be unreasonable, but did not include all the work that was done". However, he provided no evidence of any additional work undertaken on behalf of the clients which would justify the fees.
33. The Respondent confirmed to the Investigation Officer that his charge out rate was the same on all matters, other than conveyancing matters.
34. The client files concerned were:

Miss MWH-Enduring Power of Attorney: (Report paragraphs 45- 49)

The Investigation Officer referred to a previous inspection conducted by another Investigation Officer, which was concluded on 12<sup>th</sup> May 2000 with the issuing of an On Site Certificate. This had recommended, in respect of billing on Power of Attorney matters, that the Respondent should keep detailed attendance file notes. When asked by the Investigation Officer if he had complied with that recommendation, the Respondent said "it would appear not".

35. In particular, the record of the interview showed that 16 of the Respondent's invoices were for the same amount of £881.25 and Miss H was charged quarterly. The Investigation Officer pointed out that this appeared to be regardless of the nature of number of attendances and disregarding the Respondent's normal charge out rate of £120 per hour marked up by 50%.
36. The Report noted (paragraph 46) that the Respondent's fees so far totalled 28% of the client's gross assets, notwithstanding the fact that the administration of her affairs consisted of mundane administrative tasks, such as paying nursing home fees and pharmacy accounts.

37. The Investigation Officer asked detailed questions concerning a number of the Respondent's invoices on this matter during periods between April 1997 and January 2003 and the attendances detailed on file (paragraph 47). The Investigation Officer put it to the Respondent that the attendances shown on the file did not appear to justify the extent of the fees charged. The Respondent stated that the files did not show all the he had undertaken.
38. The Investigation Officer referred the Respondent to Principle 14.12 of the Solicitors Practice Rules headed "over charging", which provided that a solicitor must not take unfair advantage of the client by overcharging for work done or to be done. The Investigation Officer put it to the Respondent that there was evidence from the file that he had overcharged Miss Harrison, even applying his normal charge out rates. In response, the Respondent stated that he appreciated the comments, but said again that the file did not adequately reflect all the work that was done.
39. Copies of the attendances found on the client's matter file and the fees charged by the Respondent were listed in Appendix 4 to the Report.

BEE (deceased)- Probate: (Report-paragraph 50)

40. At the final interview on 21<sup>st</sup> May 2003, the Investigation Officer referred the Respondent to the Solicitors (Non-contentious Business) Remuneration Order 1994, Section 3.
41. The Investigation Officer pointed out that this was a straightforward estate totalling some £8,399.66 in total, of which two beneficiaries received £2,012.37 each. He pointed out that the Respondent's fees were in the sum of £1,977.53, representing some 24% of the gross assets in the estate. The Respondent stated that the charges were made in accordance with his firm's scale of charges.

VM (deceased)- Probate: (Report paragraphs 51-54)

42. The Report noted that the Respondent assisted the executrix, Mrs D in the winding up of the deceased's estate.
43. On 24<sup>th</sup> January 2003, the Respondent had sent the executrix a letter setting out his charges in which there was no mention of a mark up. However, notwithstanding, the Respondent applied a 50% mark up to his costs. (Appendices 6-7).
44. The Respondent said the omission to mention the mark up was an error, and that the mark up was referred to in the other files and correspondence. He said the client received a bill and an estate account of the matter and signed that with her approval.
45. The Investigation Officer then asked whether, given the straightforward nature of the estate, it was reasonable that the Respondent's fees should total 14% of the gross assets. The Respondent replied that he considered that his charges were reasonable for the work done.

The Response

46. The Response stated that Mrs D had retrospectively approved the charging of a mark up but that the mark up had in any event been refunded to her as a gesture of good faith.

EJN (deceased)-Probate: (Report- paragraph 55)

47. The Report noted that this was a simple estate in that the assets consisted of four bank accounts with Abbey National, an insurance policy, cash in hand and two National Savings Bonds totalling £19,745.55. The Respondent's fees totalled 11% of the gross assets (£2,823.28) and the Respondent stated he considered these to be "fair and reasonable".

48. KRMC- Enduring Power of Attorney: (Report- paragraphs 56-57)

The Respondent was asked a number of questions about the reasonableness of his charges. It was put to him that the invoices all came to the same amount, £881.25, regardless of the varying number of attendances. The Respondent stated that the charges were made on a quarterly basis.

49. The Investigation Officer put it to the Respondent that if his charge out rates were applied to the attendances recorded, then the amount did not equal the amount of money he had charged. The Respondent stated that he accepted the detail of the bill did not adequately describe the work done.

The Response

50. It was asserted that in each case the level of costs properly reflected the work undertaken but it was accepted that it was "unfortunate" that the files were not adequately reflective of the work. Any dishonesty was denied.

Allegation (vi)-Nonregistration of Enduring Power of Attorney-Miss MWH: (Report: paragraphs 58-62)

51. The Report noted that the Respondent had not registered the Enduring Power of Attorney. The Investigation Officer asked a number of questions in this regard.
52. In particular, the Respondent accepted that when he signed the Enduring Power of Attorney, he acknowledged that he had a duty to apply to the Court for the registration of the Enduring Power of Attorney "when the donor is becoming or has become mentally incapable".
53. It was pointed out that:
- (i) Miss H had been suffering from dementia and confusion since 1998;
  - (ii) there were no attendance notes on the file regarding any inquiries by the Respondent into Miss H's mental condition;

- (iii) according to the attendance notes on file, the Respondent had not visited Miss H since 1998;
  - (iv) Miss H was to be 95 in August 2003;
  - (v) the Respondent admitted that he had not visited Miss H "for some time – a couple of years or more".
54. The Respondent stated in response that he made the application for attendance allowance on her behalf and that he was guided by the nursing home who advised that Miss H was confused but not mentally incapable. He said this was the reason why he had not applied for registration.
55. However, the Report noted that the application for attendance allowance was made in 1998 and that the Respondent's reply did not deal with the intervening five years until 2003.
56. The Respondent suggested he had visited Miss H at the nursing home and said he would have to contact the nursing home to see if they had a record of his visits. He did not produce any evidence to show he had visited and by his own admission had not visited for "a couple of years or more".

#### The Response

57. It was asserted that the Respondent was not in breach of his duty and was entitled to reply on the nursing home to provide information about Miss H's mental condition.

#### Allegation (vii)-Failed to act in accordance with the instructions of the mortgage lender

#### Mr and Mrs A/Mr and Mrs W-Purchase and Sale: (Report paragraphs 63-73)

58. The Report recorded that Mr and Mrs A sold a property to Mr and Mrs W. Mrs W was the daughter of Mr and Mrs A. The Respondent acted for both the vendors and the purchasers and also acted for Mr and Mrs W in the sale of another property they owned, part of the proceeds of which were used to purchase the property from Mr and Mrs A. The Respondent also acted for HSBC Bank who provided a mortgage to Mr and Mrs W for their purchase of the property.
59. The Report noted that HSBC's "Instructions and Guidance Notes to Solicitors and Licensed Conveyancers" instructed that the solicitors must not act for the vendor and purchaser unless the bank agreed.
60. In interview on 29<sup>th</sup> April 2003 the Investigation Officer put to the Respondent that he could find no correspondence on file advising HSBC that he was acting for both seller and purchaser nor seeking their agreement. The Respondent accepted that he had not advised HSBC.
61. In a further interview on 21<sup>st</sup> May 2003 the Respondent modified his answer stating that all parties were aware of what was happening and at local level HSBC were

entirely familiar. By "local level" he was understood to be referring to the Worthing branch of HSBC. He still accepted he had not formally written to HSBC prior to completion but had written since and that HSBC had acknowledged his letter but had not made any comment.

62. The Respondent asserted that it was a discretion on HSBC's part and there was no complaint. He said if there had been a complaint or any conflict of interest then he would not have acted for both parties.
63. The instructions were issued not from the local branch at Worthing but from the HSBC Mortgage Service Centre at Sheffield. The instructions, rather than allowing any discretion, expressly stated the solicitor must not act unless the bank agrees. There was no evidence on file that the Respondent had advised HSBC or that they were aware.
64. The Respondent signed the Certificate of Title which incorporated the Appendix to Rule 6(3) of the Solicitors Practice Rules 1990 which provided:

“Except as otherwise disclosed in writing:

- (vi) if the property is to be purchased by the borrower...
- (c) we are not acting on behalf of the seller.”

65. By the terms of paragraph 2(h) of the Appendix to Rule (6)(3) the Respondent undertook to notify the lender in writing:

"If any matter comes to our attention which would render the Certificate given above untrue or inaccurate..."

66. Following the inspection the Investigation Office provided a letter dated 30<sup>th</sup> June 2003 providing, at his request, the bank's retrospective consent to his acting for both parties in this matter.

#### The Response

67. The Response appeared to indicate that the criticisms in this matter were accepted but that any failings were inadvertent and made in error. The Respondent did not believe the Certificate of Title to be false or misleading.

#### Mrs D/Mr P-Purchase and Sale: (Report (paragraphs 74-89))

68. Mrs D sold a property to Mr P, her son. Mr P had obtained a mortgage from HSBC Bank. The Respondent again acted for the seller, purchaser and lender and similar issues arose as in the case of A/W above and were set out in the Report.
69. The Respondent also gave similar answers to the Investigation Officer when issues were raised with him.

70. After the inspection the Respondent provided a letter from the Bank dated 4<sup>th</sup> June 2003 providing, following his request, retrospective consent to his acting for both parties.

Allegation (viii)-Purchasing property from clients, failing to ensure those clients obtained independent legal advice and continuing to act when he had a conflict of interest: (Report- paragraphs 90-94)

71. The Report noted that the Respondent purchased a property from Mr and Mrs C and that he conducted the conveyancing related to this transaction. Two of his secretaries, both of whom worked at his Rustington office, exchanged contracts on 27<sup>th</sup> June 2001.
72. The Investigation Officer asked the Respondent if he had advised his clients to obtain independent legal advice. The Respondent replied that it was certainly discussed but that Mr and Mrs C were more than happy for him to act. The Report noted there was no evidence on the file that the Respondent had advised them to obtain independent legal advice.
73. The Investigation Officer put the requirements of Principle 15.04 of the Solicitors Practice Rules to the Respondent. This principle provides that a solicitor must not act where there is a conflict of interest or potential conflict of interest between the client and the solicitor. It goes on to state that there is a conflict of interest where a solicitor in his or her personal capacity purchases from his own client.
74. The guidance provides that the solicitor should ensure in such cases that the client takes independent legal advice and if he refuses to do so, the solicitor must not continue to act. The fact that the client accepts the conflict does not permit the solicitor to continue.
75. The Respondent's response was that the clients were fully aware of their position and had asked the Respondent to deal with the matter. He said that they had had adequate opportunity to obtain independent advice if they had wanted to. Their instructions were clear.

Allegation (ix)-Acting for Mortgage Lender in connection with his own property purchase: (Report-paragraphs (95-107)

76. The Respondent purchase a new property from Ideal Homes and did the conveyancing for his purchase. Of the total purchase price of £132,111.76, £36,300 was from the estate of C (deceased)(see paragraph 7 above), £59,970 was by way of a mortgage over the property from NatWest Bank, £31,250 was from the Respondent and £4,591.76 was paid from the office account of Williamson & Co.
77. The Respondent also acted for the lender, NatWest Bank and in this capacity provided the bank with a Certificate of Title which incorporated the Appendix to Rule 6(3) of the Solicitors Practice Rules 1990. Paragraph 2 (ix) of the Appendix provides that:

"Except as otherwise disclosed to you in writing.... neither any principal.... in the practice giving the Certificate.... is interested in the property.... as mortgagor."

The Respondent was the mortgagor and this was therefore not correct.

78. The Respondent said he considered the fact that there might be a conflict of interest where he was purchasing a property in his personal capacity and was also requested to act for the lender in his professional capacity but he was satisfied that there was no conflict.
79. Principle 15.04 of the Solicitors Practice Rules, however, states:

"In conduct there is a conflict of interest where a solicitor in his or her personal capacity.... borrows from his or her own client".

#### The Response

80. The Respondent accepted he should not have acted in this matter. It was said he gave consideration as to whether there was a conflict of interest and concluded there was none. He acted in ignorance of Principle 15.04.

Allegation (x)-The Respondent acted for the executrix in his professional capacity and then purchased a motor vehicle from the estate in his personal capacity (not reflecting the motor vehicle as an asset in the estate accounts)-HLA (deceased)- Probate (Report-paragraphs 108-112)

81. The Report noted that the Respondent costed out his attendances for the period 22<sup>nd</sup> May 2001 to 3<sup>rd</sup> October 2001 at £4,314.60 inclusive of VAT. From this he deducted £3,500 because he took over the ownership of a car which had belonged to the deceased.
82. When questioned by the Investigation Officer and a Senior Investigation Officer, the Respondent stated that the estate was being handled by the executrix's son who had the deceased's motor car. The son wished to dispose of the car and the Respondent was interested in purchasing it. He stated that the son fixed the price of the car and he billed the estate for the balance of the fees taking account of the value of the car.
83. The Respondent confirmed he had not obtained an independent valuation. When questioned about a potential conflict of interest between his role as solicitor for the executrix and buying property from the executrix in his personal capacity, he stated that he was aware of the potential conflict but that there was no conflict.
84. The Respondent acknowledged that the car was not shown as an asset in the estate accounts, although it belonged to the deceased at the time of her death and therefore ought to be reflected as an asset in the estate accounts. The Respondent was unable to explain the exclusion of the motor vehicle to the Investigation Officer's satisfaction.
85. The Investigation Officer asked why an invoice for the £3,500 plus VAT was never raised. The Respondent stated it was a transaction between himself and Mr A, the

son. The Investigation Officer asked why in that case the value of the car was deducted from the fees. The Respondent stated he came to an arrangement with Mr A which was reflected in the amount billed to the estate, although the Investigation Officer pointed out that Mr A was not the executor.

86. The Investigation Officer put to the Respondent that his fees shown in the estate accounts were therefore inaccurate by showing the sum to be £752.10. He confirmed no invoice had been raised nor tax or VAT accounted for on the full amount.

#### The Response

87. The Respondent had considered whether there was a conflict of interest and concluded there was not as the price was set by Mr A and accepted by the Respondent. He accepted that he should have accounted for VAT on the full amount of his fees but did not appreciate this at the time.

#### Allegation (xi)-RERG (deceased)- Probate: (Report-paragraphs 113-117)

88. The Respondent was the executor in this matter. By Clause 4(a) of his will the deceased intended to create a trust. However, as the beneficiary predeceased the testator, the trust never came into being.
89. Clause 4(b) of the deceased's will had provided for £1,000 to be paid to the executor for making and administering the funds of the trust.
90. Despite the fact that the trust was never created, the Respondent still provided for executor payment of £1,000 in the estate accounts which were approved by the deceased's wife in April 2002.
91. When questioned, the Respondent informed the Investigation Officer that the payment was made because Mrs G had requested that it be paid. However, he further confirmed that he did not make a note of Mrs G's request and nothing was found on the file to substantiate this.
92. The £1,000 executor payment had not been paid from Williamson & Co's client account at the time of the completion of the inspection.

#### The Response

93. It was stated that in the light of the advice given in the inspection the Respondent had taken steps to reverse the provision made.
94. During The Law Society's investigation into these matters, after the inspection, but before the Adjudication Panel considered the matter in March 2004, The Law Society was advised in late November 2003 that the Respondent had sold his practice to another firm. The Respondent was thereafter employed by that firm as a consultant and worked from its Lancing office (formerly the office of Williamson & Co). The Respondent had subsequently retired.

### **The Submissions of the Applicant**

95. It had been asserted by the Respondent's representatives that the Respondent had health and personal problems and it had been suggested to The Law Society that the allegations should lie on file. No medical evidence had been submitted until the letter from the Respondent's general practitioner dated 13<sup>th</sup> September 2005. The Tribunal and the Applicant had sought to ascertain the Respondent's position and the Tribunal was referred to the e-mail dated 15<sup>th</sup> September 2005 from RadcliffesLeBrasseur confirming that the Respondent was not seeking an adjournment.
96. The Applicant had served the usual Notices in respect of which no challenge had been received. The Respondent's solicitors had then submitted detailed submissions dated 9<sup>th</sup> September 2005. The Applicant submitted that the Tribunal was entitled to rely on her documentation including the Investigation Report and Appendices. These included a transcript of the Investigation Officer's interviews with the Respondent. These had been tape recorded with the Respondent's consent.
97. The Applicant submitted that dishonesty was implicit on the face of allegation (v) and that it was open to the Tribunal to find dishonesty. The Applicant submitted that the assertion on page 2 of the Respondent's submissions that there was no allegation of dishonesty against the Respondent related only to the matter of the C estate.
98. The Applicant had two concerns regarding the Respondent's submissions. Firstly RadcliffesLe Brasseur had stated in their letter to the Applicant of 20<sup>th</sup> July 2005 that the Respondent was not going to be in a position to give instructions yet the submissions were set out in detail. Secondly the submissions made some changes to the previous Response and in particular appeared to give evidence regarding the Respondent's thought processes. The Tribunal was urged to treat the weight to be given to the submissions with caution. The Respondent had not provided a witness statement and was not present.

#### Allegation (i)

99. The Respondent had accepted that he did not advise Mr C to obtain independent advice. Mr C was over 94 at the time of signing his will and in a nursing home. By two months from the date of signing the nursing home had said that he was unable to conduct his affairs. He was a frail and vulnerable client and in the submission of the Applicant the circumstances were open to potential abuse.
100. RadcliffesLeBrasseur had construed Principle 15.05 incorrectly. It was not correct to say that there was no conflict of interest because there were no prospective beneficiaries. A sum of over £48,000 was a significant amount by any assessment and Principle 15.05 applied. It had been accepted in the first Response on behalf of the Respondent of 7<sup>th</sup> November 2003 that the sum was a significant amount.
101. RadcliffesLeBrasseur had submitted that it was to the Respondent's credit that he had rectified matters. In the submission of the Applicant however rectification implied fault.

102. The Applicant relied on the Respondent's statements to the Investigation Officer. It was now suggested on behalf of the Respondent that he had gone through a thought process regarding Principle 15.05 and had exercised professional judgement. The Respondent's comments in interview with the Investigation Officer had not suggested that at all.

Allegation (ii)

103. There was no dispute that the Respondent ran two offices ten miles apart and divided his time between the two each day. The Respondent had accepted that he was the only admitted person from March 2001. He also took periods of leave.
104. Practice Rule 13 provided inter alia that principals in a solicitor's practice must ensure that the practice was supervised so as to provide that every office had at least one solicitor qualified to supervise for whom that office was his or her normal place of work. The Tribunal was referred to the Rule and the notes to the Rule. It was submitted that the Respondent did not meet the Rule either normally nor while on annual leave. The offices of Williamson & Co had been inadequately supervised for at least two years. The responses on behalf of the Respondent suggested that there was an element of discretion but this was not accepted by the Applicant.

Allegation (iii)

105. Practice Rule 15 required that solicitors operate a complaints handling procedure in accordance with the Solicitors Costs Information and Client Care Code. This required that a client must be told the name of the person in the firm to contact with a complaint and there must be a written complaints procedure and complaints must be handled in accordance with it.

Allegation (iv)

106. The Respondent had admitted that costs information had not been given to the client in the case of Miss H and had said that in the case of BC and KC costs information had been given but not recorded. He had accepted that client care information other than costs information had not been provided to VC, EJM, HLA and Mr and Mrs C.
107. Paragraph 13.02 of the Solicitors Costs Information and Client Care Code provided that the main object of the Code was to make sure that clients were given the information they needed to understand what was happening generally and in particular on the cost of legal services and responsibility for their matters and set out further detail of such information.
108. The Note (i) to Practice Rule 15 in the Guide to the Professional Conduct of Solicitors (Eighth Edition) provided that a serious breach of the Code or persistent breaches of a material nature would be a breach of the Rule. It was submitted that the evidence demonstrated that the Respondent had committed persistent and material breaches of the Code.

Allegation (v)

109. The Investigation Officer had been very thorough in his questioning of the Respondent. The Tribunal was asked to note Appendix 4 to the Report. This amply demonstrated that in some cases hourly rates calculated in relation to the attendances found on the file meant that the fees charged would be hundreds of pounds per hour. The Tribunal was asked to note that Miss H was 95 years old in a nursing home with no known relatives.
110. The Tribunal was asked to note that the Respondent had previously been told by means of an on-site certificate not to deal with matters in this way .
111. The Tribunal was asked to note:
- (i) some of the clients concerned were vulnerable and potentially easily taken advantage of ;
  - (ii) a solicitor was in a fiduciary relationship with his client of which he might not take advantage;
  - (iii) while the Respondent asserted that work was undertaken on those matters which justified the fees he charged, he accepted there was inadequate evidence of it on the files;
  - (iv) the Report pointed out that, regardless of the evidence of work done, the limited nature of the actual work required in these matters would indicate that the fees charged were unreasonable;
  - (v) there was a question, given the absence of records of work done on the files, as to how the Respondent could accurately have calculated the billing figures, in particular in matters which had been ongoing for some years. Hence there was a high risk that unfair advantage was being taken of these clients.

Allegation (vi)

112. It was submitted that the Respondent had not fulfilled his duty to the court in that he had not for at least two years made enquiries regarding Miss H's mental capacity. The Applicant did not accept the submission on behalf of the Respondent that this was not a conduct matter.

Allegation (vii)

113. The Certificate of Title signed by the Respondent was untrue and inaccurate and the Respondent therefore breached his undertaking to the lender. Further the Respondent had confirmed to the lender that he had "complied or will comply with your instructions in all material respects". He had failed to do this.
114. By signing the Certificate of Title the Respondent had certified to the bank that he was not acting for the seller when in fact he was. It was submitted that the

Respondent had failed to consider the conflict of interest raised by the circumstances and noted at paragraph 73 of the Inspection Report.

115. The Respondent had not challenged the underlying facts nor the Inspection Report nor his comments made in interviews.
116. The allegations amounted to conduct unbecoming. Some of the allegations were regulatory, for example allegations (ii)-(iv) but that did not mean that the breaches were trivial. The Rules were imposed by The Law Society for good reason i.e. to protect the public. Other allegations, for example, allegations (i) and (vii)-(x) showed either ignorance or disregard of the Rules relating to conflict of interest. In the submission of the Applicant the Respondent had shown a broad disregard rather than ignorance. The Rules relating to conflict of interest were there to protect the client and the client could not waive them.
117. The allegations presented a very concerning picture. The matters before the Tribunal were serious.

#### **The Submissions on behalf of the Respondent**

118. Written submissions on behalf of the Respondent dated 9<sup>th</sup> September 2005 were before the Tribunal.
119. The submissions stated that there was no allegation of dishonesty against the Respondent and also set out details of attempts by the Respondent retrospectively to remedy defaults.
120. In relation to allegation (i) it was submitted that the Respondent had judged that the requirement to advise Mr C to seek independent advice had not arisen as there were no prospective beneficiaries. It was a matter for the Tribunal whether the Respondent's judgement was reasonable in all the circumstances. The Respondent had reached his judgement in good faith.
121. The Respondent had acted with the utmost integrity by restoring all moneys to the estate with interest.
122. Allegation (ii) was denied and details of how the Respondent operated between the two offices were set out. It was submitted that the absence of clients' complaints and the fact that the books of account were fully in compliance with the Solicitors Accounts Rules suggested that his supervision was effective and adequate. The Respondent's steps to improve the position following the investigation were set out.
123. In relation to allegation (iii) it was submitted that it was not correct that the Respondent had no written complaints handling procedure. Rather the issue was whether the terms of the original client care letter were adequate. Any default was unintended.
124. The Respondent said that in two cases clients were given costs and other information at the outset of their matters, although this was not confirmed in their writing. In four

other matters costs information was provided but not other client care information. In the case of Miss H costs information was not provided.

125. It was submitted that these defaults did not represent persistent breaches of the Solicitors Costs Information and Client Care Code of a material nature. In none of the cases had there been a wholesale disregard of the Code but rather a failure to comply with the same fully. Further, only seven cases had been identified which was not a significant number in the context of his practice. These were isolated incidences of unintended and honest mistakes. None of the relevant clients had complained. The allegation was denied. Where possible the Respondent had attempted to make amends for any default by providing clients with relevant information after the event.
126. In relation to allegation (v) the Respondent's position was that the charges rendered by him in the cases identified were fair and reasonable. He had explained that the files did not give a complete picture of all the work undertaken and there was no evidence to contradict that assertion. The opinion of the Investigation Officer was not a sufficient evidential basis for a conclusion that the fees charged were unreasonable.
127. It was unfair to conclude that in the absence of records of work done there was a high risk that unfair advantage was being taken of the clients. In fact there was an equally high risk that the Respondent was not charging enough.
128. The precise nature of allegation (vi) was not clear. The only duty acknowledged by the Respondent was a duty to apply to the Court in certain circumstances which was different from breaching a duty owed to the Court. The Enduring Powers of Attorney Act 1985 did not refer to the duty being to the Court, but imposed a statutory duty. Breach of a statutory duty ought not to be regarded as a conduct matter.
129. Any duty would only arise when the donor was becoming mentally incapable which was a matter for medical opinion. There was no medical evidence to suggest that the duty had arisen.
130. In relation to allegation (vii) the Respondent had believed that his disclosure of the fact that he was acting for vendor and purchaser to the local HSBC branch was sufficient compliance. If that was not the case then the Respondent had simply made an honest mistake. Believing he had made sufficient disclosure he believed the Certificate of Title was accurate. He had not noted that the Certificate required that the disclosure be in writing. Disclosure having been made in fact, the Certificate of Title was neither false nor misleading and the Respondent should not be regarded as having breached any undertaking. If the Tribunal was not of that view then it was submitted that the failure on the Respondent's part was inadvertent and he had acted in good faith. HSBC had provided retrospective consent.
131. In relation to allegation (viii) the Respondent's position was that although he had advised the clients to seek independent legal advice he had not fully appreciated the requirements of Principle 15.04 which meant that he had to decline to act if they refused to obtain independent legal advice. By way of mitigation there was no actual conflict in this case rather the Respondent had fallen foul of the deeming provision contained in Principle 15.04 whereby there was deemed to be a conflict in particular circumstances. Any degree of culpability was at the very lowest end of the scale. The

Respondent had given active consideration to the existence of the conflict and concluded that there was no conflict. He had done this in ignorance of the provision which deemed a conflict to exist.

132. The Respondent's response in respect of allegation (ix) was the same as that offered in relation to allegation (viii).
133. In relation to the purchase of a motor vehicle (allegation (x)) the Respondent denied that he acted in a conflict of interest. He had considered the point but concluded that there was no conflict on the basis that the price for the vehicle was set by Mr A and the Respondent accepted the same without negotiation.
134. In relation to RERG (deceased)(allegation (xi)) the £1,000 executor payment had not been taken by the Respondent but remained in client account. The allegation was misconceived. He believed he was entitled to the payment as evidenced by the provision in the estate account but had not acted on that belief.
135. The Tribunal was asked to find the Respondent not guilty of conduct unbecoming a solicitor and it was again asserted that no dishonesty was alleged against him. No breaches of the Accounts Rules were alleged against him. Any shortcomings on his part were the result of errors of judgement or honest mistakes. He had sought to make amends even in advance of any finding of fault and had incurred such substantial financial expense in doing so. He had treated the obligation to discharge his responsibilities with seriousness.
136. The Tribunal was invited to consider the correspondence annexed to the submissions. It was submitted that there was no necessity for the Applicant to pursue the matter before the Tribunal and that the allegations could have been left to lie on file. The Respondent was 65 years of age and had retired from practice. He had suffered a family tragedy and had been diagnosed with a serious illness. It was unreasonable for the Applicant to have proceeded and the Tribunal was invited not to award the Applicant her costs.

### **The Findings of the Tribunal**

137. The Tribunal considered carefully the documentation including the submissions on behalf of the Respondent. The Tribunal had been assisted by the clear documentation provided by the Applicant.
138. The Applicant had submitted that it was clear on the face of the allegations that dishonesty was alleged. The Tribunal noted however that the Respondent's solicitors in the written submissions had twice stated that no allegation of dishonesty was made against the Respondent. In the absence of a clear prior warning to the Respondent that allegation (v) was an allegation of dishonesty, the Tribunal did not think it was appropriate to make such a finding. The Tribunal however found all the allegations substantiated on the documentation and applying the appropriate high standard of proof.

Allegation (i)

139. The Tribunal did not accept the Respondent's submission that because Mr C had no prospective beneficiaries the requirement to advise Mr C to seek independent advice did not arise. The Tribunal further did not accept the submission that the fact that the Respondent had derived a personal benefit from the estate was irrelevant to the allegation. Principle 15.05 was clear. There was no doubt that the sum involved was substantial. The Respondent's subsequent conduct in relation to the personal benefit he derived illustrated perfectly the purpose of the Rule and why it should not be breached. This was not a technical breach but rather a fundamental canon of the profession and the Tribunal found the allegation to be substantiated.

Allegation (ii)

140. Having carefully considered Practice Rule 13, and the Respondent's explanation as to how the offices were supervised, the Tribunal was satisfied that there had been a breach of Practice Rule 13 although it noted the absence of client complaints and the fact that the books of account were in compliance with the Solicitors Accounts Rules.

Allegation (iii)

141. The Tribunal accepted the information contained in the Inspection Report at paragraphs 22-23 and found the allegation substantiated noting that the situation was rectified in the course of the inspection.

Allegation (iv)

142. The Respondent had admitted this allegation in respect of Miss H and admitted that the information had not been confirmed in writing in two other cases. The Respondent further admitted failing to supply other client care information in four other matters. The Tribunal noted the submission that the Investigation Officer had identified only seven cases where information about costs and other matters had not been provided but the Tribunal did not accept the submission that this was not a significant number. The importance of the failure to provide information about costs was demonstrated by allegation (v). The Tribunal found allegation (iv) substantiated.

Allegation (v)

143. The Tribunal did not accept the submission of the Respondent that the absence of records of work done on the files meant that there was an equally high risk that the Respondent was not charging enough. The Tribunal accepted the submission of the Applicant that the limited nature of the actual work required in the matters indicated that the fees charged were unreasonable. The Tribunal noted that the Investigation Officer had asked detailed questions of the Respondent to establish the facts. The Tribunal was satisfied that allegation (v) was substantiated.

Allegation (vi)

144. The Tribunal noted that there was no evidence that the Respondent had made any enquiries into Miss H's mental condition. The Respondent had referred only to the

application for an attendance allowance in 1998 when he had been told that Miss H was confused but not mentally incapable. He admitted that he had not visited Miss H for "a couple of years or more". The Tribunal was satisfied that the allegation was substantiated.

Allegation (vii)

145. The Tribunal was satisfied that this allegation was substantiated on the documentation. The Tribunal noted that the bank had given retrospective consents in the two matters.

Allegation (viii)

146. The Respondent in his submissions had accepted that by virtue of Principle 15.04 he ought not to have continued to act in this matter. The Tribunal was satisfied that the allegation was substantiated.

Allegation (ix)

147. The Tribunal was again satisfied on the documentation that this allegation was substantiated and the submissions of the Respondent appeared to accept, by reference to the submissions in relation to allegation (viii), that there had been a breach of Principle 15.04 in respect of allegation (ix) also.

Allegation (x)

148. The Respondent had denied that he had acted where there was a conflict of interest stating that the executrix's son had fixed the price which he accepted without negotiation. The Respondent had confirmed that there was no independent valuation and the Tribunal was satisfied that there was a conflict of interest between the Respondent's role as solicitor for the executrix and his purchase of property from her in his personal capacity.

Allegation (xi)

149. The Tribunal did not accept the Respondent's submission that the fact that money remained in client account meant that the allegation was misconceived. The Respondent had clearly identified the sum of £1,000 in the estate accounts as money to be paid by the executor to the Respondent for establishing and administering the funds of a trust which had not come into being. No evidence was found to substantiate the Respondent's assertion that this had been done at the request of the deceased's wife. The Tribunal was satisfied that the allegation was substantiated.
150. The Tribunal considered that the substantiated allegations were matters of grave concern. The highest standards of probity, integrity and trustworthiness were expected of solicitors. Some of the clients affected by the Respondent's conduct were vulnerable and elderly, indeed those clients whom the solicitors' profession was particularly expected to protect. Professional rules which existed to achieve that protection had been blatantly ignored. Allegations (i), (v), (vi), (viii), (x) and (xi) were particularly serious. The Tribunal was concerned that in his submissions the

Respondent did not appear to appreciate the seriousness of allegation (i). No reasonable solicitor could have considered that this was proper conduct. The Tribunal was also deeply concerned at the charging of unreasonably high fees, particularly in respect of vulnerable clients who were easily taken advantage of. The Tribunal considered that the Respondent's conduct in this regard had been disgraceful. The Tribunal considered that allegation (vi) also represented very serious misconduct by the Respondent.

151. The Tribunal considered that some of the allegations individually would warrant striking the Respondent's name off the Roll of Solicitors. Considering the allegations in the aggregate the Tribunal was entirely satisfied that striking the Respondent's name off the Roll was the only proper penalty. The Respondent's misconduct, particularly towards elderly and vulnerable clients, had severely damaged the reputation of the profession and although the Respondent had retired from the profession it was right that the most severe penalty be imposed. The Tribunal rejected the submissions that there had been no necessity for the Applicant to pursue this matter. These were matters which were fundamental to the profession. The Tribunal likewise rejected the Respondent's request that the Applicant be denied her costs.
152. The Tribunal Ordered that the Respondent, Anthony Masters Williamson of Arundel, West Sussex, solicitor, be Struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of The Law Society.

DATED this 25th day of November 2005

on behalf of the Tribunal

A H B Holmes  
Chairman