

IN THE MATTER OF JOSEPH CHRISTOPHER MCDERMOTT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Ms A Banks
Lady Bonham Carter

Date of Hearing: 29th September 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, SG14 1BY on 12th June 2007 that Joseph Christopher McDermott of Latimer Lee Solicitors, Sankey Street, Bury, BL9 OJE, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order shall be made as the Tribunal should think right.

The allegations against the Respondent were:

- (i) that he failed to comply with an Order of The Law Society relating to payment of compensation to a client within a reasonable time;
- (ii) that he dishonestly produced correspondence with intent to mislead;
- (iii) that he dishonestly gave evidence to the Solicitors Disciplinary Tribunal which was false and misleading;
- (iv) that he practised otherwise than in accordance with conditions on his practising certificate;

- (v) that he acted with a lack of frankness and good faith towards other solicitors;
- (vi) that he dishonestly provided misleading information to an officer of The Law Society in the course of an investigation;
- (vii) that he failed to keep his books of account properly written up;
- (viii) that he withdrew monies from a client account other than as permitted by the Solicitors' Accounts Rules;
- (ix) that he failed to remedy breaches of the Solicitors' Accounts Rules promptly upon discovery;
- (x) that he made improper use of a client suspense account;
- (xi) that contrary to Solicitors Practice Rule 6(2)(i) he acted for vendor and purchaser in conveyancing transactions without first obtaining the written consent of both parties.

Additional allegations against the Respondent were made in a supplementary statement dated 3rd December 2007, namely that:

- (i) he failed to comply with a direction made by a Solicitors Regulation Authority Adjudicator on 7th March 2007;
- (ii) he failed to comply with a direction made by a Solicitors Regulation Authority Adjudicator on 22nd June 2007.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 29th January 2008 when Stephen John Battersby appeared as the Applicant and the Respondent appeared in person.

The Evidence before the Tribunal

The evidence before the Tribunal included the oral evidence of Ms. Higgs, Ms. Shearsmith, Mr Holland and Mr Shields in support of the Law Society's Case. The Tribunal accepted into evidence a statement by Ms Lidgate, recognising that this was untested evidence and giving it appropriate weight. Mrs. Hodgekiss gave oral evidence in support of Mr McDermott's case and he gave oral evidence. Bundles of documents prepared by the Applicant were before the Tribunal and the following documents were handed up at the hearing:- Letter dated 23rd September 2008 from Latimer Lee addressed "to whom it may concern", Notice of Eviction, copy incapacity for work questionnaire, Barclays Bank Cheque Book and Applicant's Schedule of Costs.

The Respondent admitted additional allegations (i) and (ii) on the basis that he did not pay because he could not pay. He denied that he had fabricated letters.

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

The Tribunal Orders that the respondent, JOSEPH CHRISTOPHER MCDERMOTT of PO Box 626, Timperley, Altrincham, WA15 7WX, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay all of the costs of and incidental to this application and enquiry, save for those relating to the Tribunal hearings on 8th January 2008 and 24th June 2008, to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

AND

The Tribunal also Orders that the Directions made by the Solicitors Regulation Authority Adjudicator on 7th March 2007 and 22nd June 2007 be treated for the purposes of enforcement as if they are Orders of the High Court.

The Respondent's History

1. The Respondent, born in 1956, was admitted as a solicitor in 1991.
2. At the material time the Respondent was in practice on his own account under the style of J C McDermott & Co, 23 Bolton Road, Irlams O'th'Height, Salford, M6 7HP. The Law Society intervened into the Respondent's firm on 9th November 2005. Prior to the hearing the Respondent had been employed by a firm of Solicitors in Bury as a title checker.

The Applicant's Case

3. During 2002/2003 The Law Society had increasing concerns about the way in which the Respondent was conducting his practice. Whilst carrying out its investigations The Law Society imposed a condition on the Respondent's practising certificate that he might act as a solicitor only in employment or as a member of a partnership, or as an office holder and/or shareholder of an incorporated solicitors' practice which was approved by The Law Society. Further any employer, partner, co-office holder and/or shareholder, and/or any prospective employer, partner, co-officer holder and/or shareholder was to be informed of the condition. The condition was to come into effect four months after the date of the letter, 21st August 2003, notifying the Respondent of the decision.
4. On 22nd August 2003 the Respondent telephoned The Law Society saying that he wished to appeal the decision to terminate his previous practising certificate (for the year 1999/2000). He had practised uncertificated from the date of this termination (16th May 2003) until 10th August 2003. During that telephone conversation there was no request by the Respondent to apply for a review of the conditions imposed on 21st August 2003. After 21st August 2003 the practising certificate did not become effective until 10th October 2003 because of a delay by the Respondent in furnishing The Law Society with his gross fees certificate for the purposes of his professional indemnity insurance.
5. On 26th September 2003 The Law Society opened a file under reference REG/18684-2003 to monitor the Respondent's compliance with the practising

certificate conditions. On 4th December 2003 The Law Society wrote to him reminding him that the conditions were due to become effective from 21st December 2003 and giving him information about compliance. He was told that The Law Society would need time to consider his proposals which would therefore need to be submitted before 21st December 2003. No response had been received to that letter by 18th December 2003 when The Law Society wrote to the Respondent again. On 19th December 2003 The Law Society received a letter dated 15th December 2003 from the Respondent in which he claimed that the letter of 4th December 2003 had only just come to his attention, although it had been signed for on 8th December 2003 and that in August 2003 he had verbally indicated his wish to have the imposition of conditions reviewed.

6. In a second letter dated 15th December 2003 also received by The Law Society on 19th December 2003, the Respondent claimed that a Law Society letter of 20th November 2003 had only just come to his attention and that he wished formally to apply for a review of the practising certificate decision.
7. The Law Society wrote to the Respondent on 22nd December 2003 pointing out that it had received no written request from him for a review of the conditions prior to his letter of 15th December 2003. He was asked why he had not actively pursued the matter.
8. The Law Society received no proper response from the Respondent and sent chasing letters to him on 15th January 2004 and 23rd January 2004. On 2nd February 2004 he wrote to The Law Society explaining that he had had an accident whilst abroad which had caused delay in responding and subsequently in a telephone call on 19th February 2004 he said that he would reply in full by 23rd February 2004. Nothing further was heard from the Respondent until he telephoned The Law Society on 13th April 2004 in response to a letter of 2nd April 2004. He stated that it did not appear that The Law Society had received his formal letter applying for a review. This was the first occasion upon which he had mentioned any such letter, which he said he would fax to The Law Society.
9. On 19th April 2004 the Respondent sent a covering letter to The Law Society enclosing a copy of a letter bearing the date 29th August 2003. This was a letter indicating that he wished to apply for a review of the practising certificate decision. The Law Society had not previously received that letter. It bore the reference "18684-2003" which had not been created until September 2003. The Respondent sought to explain this discrepancy by saying that no reference had been included in the original letter but when he sent it on 19th April 2004 he wrote on that copy letter the present reference with a view to its being tied in with the present case. The Respondent's letters were handwritten.
10. The Law Society's Review Panel considered the matter on 29th April 2004. The Review Panel decided that the conditions should remain and gave the Respondent a further two months in which to comply with them, i.e. by 29th June 2004.
11. The Respondent appealed to the Master of the Rolls against the imposition of the conditions. That appeal was heard on 18th January 2005. A transcript of the appeal hearing was before the Tribunal. The Respondent had admitted that he had not been complying with the conditions. The Master of the Rolls dismissed his appeal.

12. Letters dated 23rd May 2003 and 30th June 2003 were claimed by the Respondent to have been sent to The Law Society. His failure to respond to The Law Society's correspondence was one of the allegations put before the Tribunal on 6th April 2004. Prior to the hearing on that day the Respondent produced to the Applicant copies of these purported letters to The Law Society and the Applicant withdrew the allegation that the Respondent had failed to reply to correspondence addressed to him by The Law Society.
13. During the proceedings before the Tribunal on 6th April 2004 the Respondent gave evidence on oath that he had discharged a payment of compensation that The Law Society had directed him to make to a client, Mrs L. The Tribunal in its Order required the Respondent to produce to the Tribunal and the Applicant by 27th April 2004 evidence that payment had been made to Mrs L. Under cover of a letter to the Applicant of that date the Respondent attached a letter bearing the date 25th July 2003 which purported to have been sent to the new solicitors acting for Mrs L. Those solicitors did not receive that letter.
14. On 4th October 2004 Mr PAJ complained to The Law Society that the Respondent had delayed in complying with an undertaking, dated 31st August 2004, to discharge a second mortgage. Mr PAJ was the purchaser of a property in Prestwick and the vendor, Mr C, was represented by the Respondent. In December 2004 The Law Society asked Bevan Brittan, solicitors, to deal with the matter on its behalf. Mr PAJ subsequently confirmed that he had resolved the issue by contacting Mr C direct and that the second mortgage had been redeemed. Bevan Brittan continued to investigate the matter and on 10th March 2005 wrote to the Respondent formally raising the complaint of delay. No response had been received by 4th April 2005 and on that date an employee of Bevan Brittan spoke to the Respondent and was given to understand that his full response had been dictated and would be submitted by 7th April 2005. No such response was received. Bevan Brittan wrote again to the Respondent on 19th April 2005.
15. On 26th April 2005 the Respondent wrote to Bevan Brittan enclosing a copy of a letter dated 18th March 2005 which he claimed to have sent to them. This letter had not been received by Bevan Brittan. The Respondent had not referred to it during his telephone conversation on 4th April 2005. On that occasion he said that a response had been dictated and should be received by 7th April 2005.
16. The letter purportedly sent on 18th March 2005 was stated to enclose copies of letters of 24th June 2004 and 31st August 2004 to GH & Co and of 17th September 2004 and 18th October 2004 to DLA. Enquiries made revealed that neither GH & Co nor DLA had received those letters.
17. There were nine letters which the Respondent said he had sent but which had not been received by the purported addressees.
18. A transcript of the evidence which the Respondent gave before the Tribunal on 6th April 2004 was before the Tribunal. The Respondent said on oath that the payment of compensation to Mrs L had been made. Payment had not been made. The Respondent had sent a cheque to Mrs L on 15th August 2005.

19. The Master of the Rolls, in refusing the Respondent's appeal, gave him a further 28 days in which to comply with the conditions on his practising certificate.
20. The Respondent had recruited a solicitor, Miss NS who was admitted in 2001, purportedly to become his partner. She commenced her duties at the beginning of April 2005 and stayed for just over two months before leaving on 4th June 2005. The Adjudicator's decision of 8th March 2005 stipulated that JC McDermott & Co should be the main practising address for Miss NS and that she should share responsibility for client money, be a signatory to office and client cheques and have access to the books of account. Miss NS had worked at the firm's new office premises at Tyldesley. The Respondent had insisted that Miss NS be a salaried partner rather than an employed assistant. Miss NS was never a signatory on any of the firm's bank accounts. In late May or early June 2005 Miss NS had telephoned the Salford office and was told that the Respondent was on holiday. He had not told her that he proposed to take a holiday. Miss NS needed a signatory on client account to enable her to complete clients' transactions during the week when the Respondent was away. Miss NS found that little or no preparation had been made at the Salford office for the Respondent's absence. She did her best to assist clients whose expectations were not being met. Upon the Respondent's return from holiday Miss NS told him that she resigned forthwith. Miss NS wrote to the Law Society on 3rd June 2005 indicating that she had resigned her position with immediate effect. It was Miss NS's oral evidence that she did not consider remaining in the post. She left the Respondent in no doubt about that. There were no discussions about her changing her mind, although in her oral evidence Ms NS did accept that she had agreed to meet the Respondent to discuss matters further.
21. The Law Society became concerned about the situation, having learnt from Miss NS of the problems which she had encountered. An officer of The Law Society contacted the Respondent on 7th June 2005 when the Respondent said that Miss NS was "taking a few days break." Miss NS, the following day, made it clear to the officer that she had no intention of withdrawing her resignation and the Respondent must have been aware of this. When the Respondent spoke to the officer again on 9th June 2005 he claimed to be in negotiation with Miss NS who, he said, was taking a break due to personal problems.
22. Subsequently the Respondent recruited another solicitor, Mr PH. Their partnership was approved by The Law Society on 24th August 2005. Mr PH, who worked at Tyldesley, resigned on 10th October 2005. Mr PH was a conveyancing solicitor of many years experience and had been told by recruitment consultants that the Respondent was looking for an experienced property lawyer to set up and run a new office at Tyldesley. At an interview with the Respondent Mr PH was told that a partnership was a possibility should Mr PH prove successful. After he had pressed for written confirmation of the job offer, Mr PH received an email from the Respondent which contained the first indication that he was to be engaged as a "salaried partner". Mr PH subsequently learned for the first time of the conditions imposed on the Respondent's practising certificate by The Law Society.

23. Mr PH was very unhappy with a number of the aspects of the way that the Respondent conducted his practice and his clients' affairs. Mr PH's offers of help were not taken up.
24. Mr PH noticed that Salford office letterhead was changed by the addition of Mr PH's name, but there was no mention of the Tyldesley office.
25. Mr PH had required that the firm's accounts be made available to him, but they had not.
26. Mr PH had trusted the Respondent, but after hearing of previous disciplinary proceedings brought against the Respondent and the conditions placed on his practising certificate, he had come to recognise that he had been too trusting and possibly naïve.
27. On 21st February 2005 an inspection of the Respondent's books of account and other documents was commenced by a Law Society Investigation Officer, the IO. The IO's Report dated 31st August 2005 was before the Tribunal and the IO gave oral evidence. The Report revealed that the records of account had not been properly written up. In particular:
 - (i) there was no accurate record of the monies held on behalf of each client;
 - (ii) the books had not been maintained on the double-entry principle;
 - (iii) the client ledger accounts did not have a heading that provided a description of the matter or transaction;
 - (iv) office account entries and client account entries in relation to each client were not maintained up to date;
 - (v) there was no effective system in place for checking the balances on client ledger accounts to ensure that no overdrawn balances occurred;
 - (vi) there was no master list of all general client accounts to show the current status of each account;
 - (vii) reconciliations of client accounts had not been carried out at least every five weeks as required by the Solicitors' Accounts Rules;
 - (viii) the accounting records were not properly written up to show the Respondent's dealings with client and office money relating to each client matter;
 - (ix) all dealings with client money were not properly recorded in a client cash account or on the client side of the client ledger account.
28. The Respondent had made improper and wide-ranging use of a suspense account, which in September 2004 showed an overdrawn balance of £39,011.47. In the

reconciliation for January 2005 the overdrawn balance on the suspense account was £42,982.24.

29. Monies had been withdrawn from client account other than as permitted by Rule 22 of the Solicitors' Accounts Rules 1998. A total of 67 client ledgers had overdrawn balances which totalled £19,520.50 at 30th September 2004. After the IO's review of a client matter file, the total debit balances increased to £27,690.50.
30. The firm's bank charges had been paid from client account.
31. The Respondent had explained to the IO that he had had difficulties with his bookkeeper but it was clear that he had been made aware of breaches of the Solicitors Accounts Rules and had not rectified them.
32. A minimum cash shortage of £40,942.75 existed at 30th September 2004 which was accounted for by over-payments from client account totalling £27,690.50 and receipts which had not been credited to client bank account in error totalling £13,252.25. The Respondent did not agree that there was a shortage at the level the IO calculated but he did agree a shortage of £22,742.25.
33. By 31st August 2005 the Respondent had replaced £12,360.25.
34. On one ledger account, an overdrawn balance went back about six years without having been rectified.
35. The IO reviewed the client bill book section of the spread sheet reconciliations that were available and ascertained that over a five year period up to August 2004 the Respondent had acted for both buyer and seller in a number of conveyancing transactions. He was unable to determine whether the Respondent had also been acting for the lender. During August 2004 alone, there had been 18 clients represented by the Respondent in the buying and selling of nine separate properties. The Respondent had acted for both buyer and seller in each of these nine transactions. The parties had not given their written consent.
36. On 29th September 2005 The Law Society wrote to the Respondent to seek an explanation for his conduct. The Respondent replied on 21st October 2005 enclosing with his letter a large number of accounting documents covering the period February to August 2005. The Respondent explained that the suspense account had been used by his bookkeeper to deal with unexplained transactions. He accepted that he should have provided the bookkeeper with explanations to avoid this difficulty. He assured The Law Society that he would, in future, keep his books properly written up. He was considering employing a full time bookkeeper. He said that he would ask his accountant to undertake monthly reviews of reconciliations and that all shortages were being replaced, there having been no loss to any client. The Respondent said where he had acted both for vendor and purchaser in conveyancing transactions, he had sought oral approval from the clients for this.
37. In 2002 the Respondent was instructed to act in the purchase of a residential property by Miss TB. Following completion he paid stamp duty at £1,195. In September 2006

Miss TB discovered that the property should have been exempt from stamp duty and she made a complaint to The Law Society.

38. The Respondent was contacted regarding the complaint. He accepted that he was at fault and offered to refund the stamp duty to his client and to pay her £255 by way of compensation - a total of £1,450. His proposals for making the payment by small monthly instalments followed by a lump sum were not acceptable to Miss TB. On 7th March 2007 an Adjudicator of The Law Society directed the Respondent to pay £1,450 within seven days of notification of the decision, which was by letter dated 19th March 2007.
39. The Respondent discussed the matter with the Solicitors Regulation Authority and eventually agreed to deal with the matter by making three equal payments. The first of these was paid into The Law Society's bank account at the beginning of July 2007 but no further payments were received. The outstanding amount was £966.66.
40. In 2005 the Respondent carried out conveyancing work for Mrs JH who complained to The Law Society on 23rd August 2005 about the level of service she had received. The Law Society was not satisfied with the Respondent's response to its enquiries.
41. Eventually Mrs JH's complaint was referred to an Adjudicator who on 22nd June 2007 directed the Respondent to pay Mrs JH £200 representing Inland Revenue penalties incurred together with £500 compensation. He also directed the Respondent to pay to The Law Society the costs of the investigation of £840. The letter notifying the Respondent was dated 13th July 2007 and he should have complied with the direction by 21st July. He had not complied at the date of the hearing.

Submissions

42. It was the Applicant's case that the Respondent's letter dated 29th August 2003 had been fabricated after the event by the Respondent to facilitate his application for a review of the conditions placed on his practising certificate.
43. This letter had been hand written and had contained a reference number which had not yet been allocated at the purported date on the face of the letter. Other letters claimed to have been sent by the Respondent, including two that were produced prior to the previous hearing and those to GH & Co and DLA and BB, had been fabricated by the Respondent after the event to make it seem that he had responded to letters addressed to him when that had not been the case. The letters were headed in a way that was different from other letters that had been typed by the Respondent's secretary.
44. There were nine letters which the Respondent said he had sent but which were not received by the purported addressees. Those letters all had one factor in common in that if they had been sent as claimed by the Respondent they would have got him out of a difficulty. The Tribunal was invited to reject the Respondent's evidence and to conclude that it was outside the bounds of coincidence that nine letters such as these had all gone astray. It was the Applicant's case that the Respondent had fabricated correspondence after the event to suit his own needs. That was not the conduct of an honest solicitor.

45. It was alleged that the Respondent gave false evidence on oath and created the letter bearing the date 25th July 2003 after the event. When questioned on that matter by the IO during the inspection the Respondent was unable to produce any evidence from his bank as to the purported payment. It appeared clear that the evidence given by the Respondent to the Tribunal was misleading. At the hearing the Respondent produced a Barclays Bank personal account cheque book with a cheque stub which the Respondent claimed demonstrated that he had made the payment he claimed with a cheque dated 27/10/04. The Tribunal was invited not to place any reliance on this. It was alleged that the evidence which the Respondent gave on oath was deliberately dishonest and when required to produce evidence of payment by the Tribunal he perpetuated this dishonesty by producing a letter created after the event.
46. The Respondent clearly had been guilty of a totally unacceptable delay in complying with the order of the Adjudicator made on 2nd May 2003. The Respondent had made payment only after he had been interviewed by the IO.
47. With regard to the Respondent claiming that he had taken Miss NS into partnership, this was not a true partnership but rather a partnership of convenience to give the outward impression that the Respondent was complying with the conditions attached to his practising certificate. It was also clear that the Respondent failed to act with good faith towards Miss NS who felt obliged to leave the partnership after a very short time as a result. The oral evidence as to what occurred was clear and accurate.
48. The Tribunal was invited to consider whether The Law Society would have approved the Respondent's partnership with Miss NS had it realised that Miss NS would be based at a new branch office in Tyldesley rather than work with the Respondent at the main office. One of the reasons given by the Adjudicator for the imposition of the condition was that it was in the interest of the public and the profession that the Respondent practised only in an environment with supervision and support and where the responsibilities of a solicitor in private practice were shared.
49. When an officer of The Law Society spoke to the Respondent about Miss NS who had resigned with no intention of withdrawing her resignation, the Respondent's claim to be in negotiation with Miss NS, who he said was taking a break due to personal problems, was dishonest and misleading.
50. The Respondent's partnership with Mr PH was one of convenience to make it appear that he was properly complying with the conditions on his practising certificate. Mr PH resigned on 10th October 2005 after expressing concerns about the situation.
51. The period during which the Respondent should have complied with the conditions on his practising certificate ran from 29th June 2004 until The Law Society's intervention into his practice on 9th November 2005. This was a period of just over 16 months. From that period there should be deducted the time allowed by the Master of the Rolls for compliance (28 days). The period of approved partnership of Miss NS was 86 days and the period of approved partnership of Mr PH was 47 days. Of the 527 days between 29th June 2004 and 9th November 2005 the Respondent was in compliance with the conditions (or was excused from compliance) for 161 days.

52. The Respondent had been guilty of breaches of the Solicitors' Accounts Rules. Rule 32(16) of the Solicitors' Accounts Rules 1998 provided that suspense ledger accounts might be used only when a solicitor can justify their use, for instance for temporary use on receipt on an unidentified payment if time is needed to establish the nature of the payment or the identity of the relevant client. The Respondent had made improper and wide ranging use of a suspense account.
53. Practice Rule 6.2.a(i) had not been complied with by the Respondent in a number of conveyancing transactions. The rule required, where a solicitor acted for both seller and buyer, he must not do so without first having obtained the written consent of both parties. Oral consent did not meet the requirements of the Rule.

The Respondent's Case

54. It was the evidence of Mrs Hodgekiss, who had been the Respondent's conveyancer/personal assistant secretary from 1997 until 2005 that she had some forty years of conveyancing experience. It had been Mrs Hodgekiss's practice to type all of the Respondent's correspondence. He did not type letters himself and she told the Tribunal that it had been the Respondent's practice sometimes to hand-write letters.
55. Mrs Hodgekiss said she had never been asked by the Respondent to fabricate letters indeed, she said, she would not have allowed that to occur.
56. Mrs Hodgekiss had been aware that the Respondent had been required to obtain a partner and she had been aware that he had approached both Miss NS and Mr PH. She said she was sometimes privy to conversations in which they had been told that the Respondent had a condition on his practising certificate.
57. Mrs Hodgekiss explained that at the Salford office the Respondent occupied the room at the front, Mrs Hodgekiss's room was in the middle and the back room was a store room. Mrs Hodgekiss had understood that there was a plan for the back room to be re-furnished to provide an office for a new partner. She confirmed that she understood the plan had been that when the firm had two partners both partners would operate from both of the firms' offices.
58. Mrs Hodgekiss when asked how she would layout a letter in particular with regard to the reference of the firm to which the letter was addressed said that she would set it out in such a way that it looked best. She confirmed that the firm had changed its computer. She was unable to remember when but explained that that might explain why letters written on different dates apparently had a different type face. Mrs Hodgekiss confirmed that, for example, the letter addressed to Messrs Stevensons concerning Mrs L and dated the 25th July 2003 stating that it enclosed a cheque for £250 was written in her style.
59. At the date of the hearing Mrs Hodgekiss in fact had retired and was no longer working.
60. In his representations, which the Respondent did not give as sworn testimony, he admitted that he had delayed in making payments which he had been directed to pay in connection with inadequate professional services. With regard to the matter of Mrs

L, he had found out from the bank that the initial cheque he had sent had not been cashed.

61. The Law Society had intervened into the Respondent's practice and his files had been taken away. He had at the time of the hearing been able to locate his original cheque book with the stub relating to the cheque which he had sent to Stevensons in July 2003. He had ascertained that that cheque did not go through his bank account. In answer to a question from the Chairman of the Tribunal why the cheque stub indicated that Mrs L's cheque had been drawn in July 2003 but the next cheque stub in the book bore the date of October 2004 and then the cheque book was used again in 2006, the Respondent explained that he used two or three cheque books at the same time. He confirmed that the compensation was finally paid to Mrs L in 2005 and accepted that it was just two years after he had been directed so to do.

The Respondent said that he had made both of his salaried partners fully aware of his situation.

When he spoke to Ms Lidgate at the SRA about Ms NS's intentions she had agreed to meet him to discuss matters further. Miss NS conceded this in her oral evidence. It had not been correct to say that she had made a final and non-negotiable decision to resign.

62. The Respondent invited the Tribunal to rely on the evidence of Mrs Hodgekiss. She said that the two letters written to Graham Harvey and the two letters to DLA had been typed in a way that made it appear that she had typed them. She believed she had. Ten other letters had passed between the Respondent's firm and the other firms. The Respondent was adamant that none of the letters alleged to have been fabricated had been fabricated. Mrs Hodgekiss's evidence supported that.
63. With regard to allegation (xi) the Respondent accepted that he had not obtained the required written approval from the clients but he had gained their oral approval. He had made attendance notes recording that approval which were retained on the files.

The Findings of the Tribunal

64. The Tribunal found all of the allegations to have been substantiated save for allegations (iii) and (vi).
65. On 6th April 2004 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were:-
- (i) [withdrawn with the consent of the Tribunal]
 - (ii) That he failed to respond to correspondence from the OSS in relation to a complaint made by Broadcastle Finance Ltd;
 - (iii) That he failed to comply with an undertaking or alternatively failed to comply in a reasonable time with an undertaking given to WM & Co;

- (iv) That he failed to respond to correspondence from the OSS in connection with a complaint made by WM & Co;
- (v) That he failed to release papers to a former client's new solicitors promptly upon request;
- (vi) That he failed to respond to correspondence from the OSS in connection with a complaint by S & Co;
- (vii) That he delayed unreasonably in complying with an undertaking given to S & Co;
- (viii) That he failed to respond to correspondence from the OSS in connection with a further complaint by S & Co;
- (ix) That he did fail to keep his clients properly informed of the position with regard to their conveyancing transaction;
- (x) That he did fail to discharge fully a mortgage on completion of a sale;
- (xi) That he did fail to respond to letters and telephone calls from his clients.
- (xii) [withdrawn with the consent of the Tribunal]

By supplementary statement of Stephen Battersby dated 8th December 2003 it was further alleged against the Respondent:-

- (xiii) That he failed to comply with the decision of a Law Society Adjudicator.

By a second supplementary statement of Stephen Battersby dated 6th January 2004 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in that:-

- (xiv) Between 16th May 2003 and 10th October 2003 he practised whilst uncertificated;
- (xv) He failed to provide a substantive response to correspondence from the OSS.

The Tribunal found all allegations (ii), (iii), (iv), (v), (vi), (viii), (ix), (x), (xi), (xiii), (xiv) & (xv) to have been substantiated. The Tribunal found allegation (vii) not to have been substantiated.

In April 2004 the Tribunal said that:-

- “85. A substantial number of serious allegations against the Respondent had been found to have been substantiated. There were five instances of failure by the Respondent to correspond with the Law Society when required to do so. This showed a flagrant disregard of the regulatory requirements within which all solicitors had to operate.

86. The Respondent had also let down clients. The distress caused to Mr & Mrs. C was evident from the correspondence and the Tribunal found the Respondent's attitude to Mr & Mrs C to have been completely unacceptable. He had failed to keep them informed and had failed to correspond with them and other members of the solicitors' profession. This was not an acceptable way for a solicitor to conduct his practice.
87. The Respondent had assured the Tribunal that he had now complied with the decision of the Adjudicator in respect of a compensation payment to Mrs L but the Tribunal would expect the Respondent to support that assurance with appropriate documentary evidence.
88. The Respondent had caused serious inconvenience and difficulty to a number of clients. His evidence to the Tribunal in respect of these matters had been unsatisfactory and apparently ill prepared.
89. The Tribunal had given serious consideration to suspending the Respondent from practice. The Tribunal had however heard and taken into account the Respondent's submissions in mitigation and the fact that this was his first appearance before the Tribunal. The Tribunal hoped that the Respondent had learned a serious lesson from this appearance and that he would never appear before the Tribunal again. In all the circumstances the Tribunal would deal with the matter by way of a substantial fine which would reflect the Tribunal's concern at the Respondent's conduct.
90. The Tribunal made the following order:-
- The Tribunal order that the Respondent, Joseph Christopher McDermott of 223 Bolton Road, Irlams' o'th'Height, Salford, Manchester, M6 7HP solicitor, do pay a fine of £20,000, such penalty to be forfeit to Her Majesty the Queen, and they further order that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed. The Tribunal further order that evidence be produced by the Respondent to the Clerk to the Tribunal and to the Applicant by 4.00 pm on 27th April 2004 that the Adjudicator's award of £250 was in fact paid in July 2003."

The Tribunal's Reasons

66. The Tribunal found allegation (iii) not to have been substantiated. The Tribunal had been provided with a cheque stub together with a letter by the Respondent indicating that he had dispatched the cheque to Mrs L's solicitors on the date that he had previously indicated to the Tribunal. This allegation had been put as one involving dishonesty on the part of the Respondent and the Tribunal recognised that not only was the burden of proof upon the Applicant but also for the Tribunal to find that allegation to have been proved it had to consider the matter on the basis that it would make its decision on the facts so that it was sure. The Tribunal recognised how difficult it was for the Applicant to prove a negative. The Applicant could not prove that the letter and the cheque had not been sent. The Respondent had provided some documentary evidence that the cheque had been drawn on the day that he said it had and similarly a letter had been typed on the day that he earlier had indicated. The

Tribunal was concerned that the Respondent had not produced corroborative evidence, for instance an earlier cheque book or a bank statement showing that cheques drawn on either side of that cheque had not been cashed or indeed that the cheque apparently made out to Mrs L had not been paid but the Tribunal recognised that it was not for the Respondent to prove that he had not acted as alleged but rather for the Applicant to prove that he had and because of the high standard of proof the Tribunal concluded that the Applicant had not discharged the burden of proof that fell upon him and for these reasons the Tribunal found allegation (iii) not to have been substantiated.

67. With regard to allegation (vi) the Tribunal did not find that the Respondent had provided misleading information to the Law Society (Miss Lidgate) as alleged. Miss NS's evidence had been that she had not had contact with the Respondent after her letter of resignation but it transpired that she had been wrong in that assertion as there had been a meeting to see if the matter could be resolved. The Tribunal further recognised that the Respondent had been denied the opportunity of cross-examining the Law Society's representative, Miss Lidgate, on the matter. In the case of allegation (vi) the Tribunal found that the Law Society had not met the burden and the standard of proof which it had to meet in order for this allegation to be substantiated.
68. There was no doubt that the Respondent did not comply with the order of the Law Society relating to payment of compensation to Mrs L within a reasonable time. It is incumbent upon members of the solicitors' profession to comply promptly with Orders made by their own professional regulatory body.
69. With regard to allegation (ii) where it was alleged that the Respondent had dishonestly produced correspondence with intent to mislead, the Tribunal had found that allegation to have been substantiated. When it came to a number of responses to correspondence which the Respondent asserted that he had made the Tribunal reached the conclusion that the Respondent was a stranger to the truth. The Tribunal did not believe him. There were a number of facets of the letters which the Applicant alleged to have been fabricated that distinguished them from letters which had been written by the Respondent and received by the addressees. By way of example the Tribunal pointed out that the type face on the letter dated 25th July 2003 was not the same type face as that used on other (received) letters. The way the heading had been set up on other typed letters which the Applicant sought to demonstrate had been written after the event were not the same. Even though Mrs Hodgekiss said the letters were set out in a form that she herself might have used it was noteworthy that on letters which appeared to have been produced routinely in the Respondent's office the addressee's reference was referred to as "Your reference" but on the typed letters alleged to have been fabricated was referred to as "Yr ref", some of the letters were signed off as "Yours sincerely" and the Tribunal did not consider it likely that a trained PA/secretary of Mrs Hodgekiss's experience would have concluded a letter addressed to "Dear sirs", with "Yours sincerely".
70. Some of the letters, of course, had been hand written and that in itself required explanation. Mrs Hodgekiss said she was aware of the conditions on the Respondent's practising certificate and there would have been no reason why she or another secretary would not have typed them. The Tribunal recognised that Mrs Hodgekiss

might not have typed those letters herself as she had been away from the office at some time owing to a family bereavement.

71. It was, of course, noteworthy that the Respondent had addressed a hand written letter to the Law Society on which he quoted a reference which had not been allocated to the matter until after a date which appeared on the face of that letter. The Tribunal found that the Respondent's explanation that he had appended that reference to the copy of the letter which he supplied in order to assist with the identification of the matter to which it related to be implausible. The Tribunal concluded that the Respondent had fabricated that letter and backdated it. The Tribunal accepted the submission made by the Applicant that all of the nine letters which the Respondent had fabricated, had the effect of getting the Applicant out of difficulty. The Tribunal reached the conclusion that the Respondent had as a course of conduct adopted the approach of fabricating letters and backdating them and asserting that the addressees had not received them. The Tribunal considered that to be a dishonest course of conduct. Any person receiving a letter from a solicitor is entitled to believe without question that what appears to be the case on the face of the letter is in fact the true position.
72. It was clear from the explanation of dates given by the Applicant that there had been times when the Respondent had practised otherwise than in accordance with conditions on his practising certificate. With regard to allegation (v) it followed from the fact that the Respondent had fabricated letters addressed to other solicitors that he had not been open and frank towards those solicitors nor had he been open and frank towards the solicitors which he engaged in his firm.
73. The Tribunal found allegation (vi) not to have been substantiated.
74. With regard to allegations (vii), (viii), (ix) and (x) the Respondent admitted failures to comply fully with the Solicitors Accounts Rules.
75. It is of course of the utmost importance for a solicitor in private practice to act at all times fully in compliance with the Solicitors Accounts Rules as such compliance safeguards clients' money and the good reputation of the solicitors' profession.
76. With regard to allegation (xi) the Respondent accepted that he had acted for vendor and purchaser in conveyancing transactions with only the oral consent of the parties when the relevant practice rule required written consent.
77. The Respondent had admitted that he had not complied with directions made by the Solicitors Regulation Authority on the 7th March 2007 and the 22nd June 2007, his position being that he had not complied because he was not in a position to comply.
78. The Tribunal has, of course, found that the Respondent acted dishonestly. In that connection the Tribunal applied the two part test in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal found that in producing fabricated correspondence the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence and heard his explanations why it appeared that a number of letters had been fabricated, which the Tribunal did not accept, the Tribunal was satisfied so that it was

sure that the Respondent did know that what he was doing was dishonest by those same standards

The Respondent's Mitigation

79. The Respondent had begun his firm in 1997 and he had worked hard to make it a success. The closure of the firm had been a severe blow both to the Respondent himself and to his family. He had thereafter been out of work for some six to seven months. The Respondent had symptoms of what might well have been a serious illness which was very worrying which gave him a very anxious time but fortunately the diagnosis had not been as serious as had been anticipated. There had been a downturn in the property market and no job had been available to the Respondent.
80. The Respondent had a wife and four children. The Respondent's wife had suffered ill health and was in receipt of incapacity benefit. To all intents and purposes the Respondent had had to bring up his children on his own.
81. Because of the Respondent's parlous financial position he had been served with an eviction notice by his landlord and anticipated being made homeless shortly after the disciplinary hearing.
82. The Respondent had tried to deal with things as best he could. He had always been honest with people. He accepted that he had been in breach of the Solicitors Accounts Rules but invited the Tribunal to take into account that no clients had suffered loss. In all of the circumstances the Respondent hoped that the Tribunal might be able to deal with him with leniency.

Costs

83. The Applicant sought the costs of the application and enquiry. The costs were substantial and include the fact that there had been a hearing in January 2008, an application for re-hearing in June and then the re-hearing itself.
84. The Applicant recognised that if the medical evidence produced by the Respondent in support of his application for a re-hearing had been available to the Tribunal at the earlier hearing in January it was likely that the hearing would have been adjourned.
85. The Respondent pointed out that he was being asked to pay twice for the same proceedings. The Respondent had produced a letter from his doctor in January 2008 and had considered it to be sufficient to enable the Tribunal to grant an adjournment.
86. The Applicant pointed out that included in the costs which he sought were the January hearing costs of just over £2,000.00 and the costs of the hearing on the 24th June 2008 of some £700.00.

The Tribunal's Sanction

87. Having found the Respondent to have been dishonest in order to protect the public and the good reputation of the solicitors' profession it was both appropriate and

proportionate that the Tribunal ordered that the Respondent be struck off the Roll of Solicitors.

88. Having heard the submissions on the question of costs the Tribunal concluded that it would be proportionate to order that the Respondent pay all of the costs of and incidental to the application and enquiry save those relating to the Tribunal hearings on 8th January 2008 and 24th June 2008, such costs to be subject to a detailed assessment unless agreed between the parties and such costs to include the costs of the Investigation Accountant of the Law Society and the Law Society's internal costs.

Dated this 9th day of December 2008

On behalf of the Tribunal

Mr L N Gilford
Chairman