No. 9789-2007

IN THE MATTER OF JULIAN ROGER VICTOR KOWALIK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr K W Duncan (in the chair)
Mr R Nicholas
Mr G Fisher

Date of Hearing: 1st July 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by David Elwyn Barton, solicitor, of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX on 13th September 2007 that Julian Roger Victor Kowlik, a solicitor, of Seakens Solicitors of 12 Station Road, Watford, Hertfordshire, WD17 1EG might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

On 15th February 2008 David Elwyn Barton made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements.

The allegations were:

(a) contrary to Rule 1(c) of the Solicitors Practice Rules 1990 he had compromised or impaired his duty to act in the best interests of his lender clients by failing to inform them of material facts;

(b) he had failed adequately to supervise his office with the consequence that Max Kingsley was able to conduct immigration cases;

(c) he had been guilty of conduct unbefitting a solicitor in that he received money into his client account which he paid out on instructions from persons other than the remitters of the money when there was no underlying legal transaction and in so doing the Respondent had acted contrary to Rule 1 of the Solicitors Practice Rules 1990 in a manner likely to compromise or impair any of the following:

- his independence or integrity
- his good repute and that of the solicitors profession
- his proper standard of work

(d) in the course of the said transaction he acted contrary to his position as a solicitor to take unfair advantage for himself contrary to Principal 17.1 of the Guide to Professional Conduct of Solicitors in that he charged substantial fees when he did not provide legal advice or services in relation to the transactions;

(e) he gave comfort to persons investing in a property investment scheme by:

(i) causing or permitting the names of promoters of the scheme to appear on his website;

(ii) permitting his client account to be used for the deposit of investors' funds which were withdrawn by him on the instructions of others and became lost;

(iii) permitting his name and status as a solicitor to be used by the promoters of the investment scheme.

and thereby compromised his reputation and that of the solicitors' profession contrary to Rule 1 of the Solicitors' Practice Rules 1990.

The Respondent had been guilty of conduct unbefitting a solicitor in each and all of the following respects:

(f) he had practised as a solicitor in breach of practising certificate conditions imposed by the Society on 22nd March 2007;

(g) contrary to the provisions of Rule 22 of the Solicitors' Accounts Rules 1998 he had drawn money from client account in circumstances other than permitted by the said Rule and had utilised the money for his personal benefit. It is further alleged that in so doing the Respondent had been dishonest;

(h) contrary to the provisions of Rule 7 of the said Accounts Rules he had failed to promptly rectify errors upon discovery;

(i) he wrote a false and misleading letter to Eversheds solicitors which he knew to be so and he was thereby dishonest;

(j) contrary to the provisions of Rule 1 of the Solicitors Practice Rules 1990 he had:

(i) compromised or impaired his independence or integrity;

(ii) compromised or impaired the good repute of both himself and the solicitors' profession;

(iii) compromised or impaired his proper standard of work;

(iv) compromised or impaired his duty to act in the best interests of his clients.

As a consequence of having acted in or otherwise facilitated conveyancing transactions during the course of which he either failed to be alert or deliberately closed his eyes to the suspicious characteristics of those transactions. It is further alleged that he was dishonest. Alternatively he was grossly reckless.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 1st July 2008 when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

Application for adjournment

The Respondent had written a letter dated 16th June 2008 in the following terms:

"I now enclose my supplementary statement for your perusal.

I note you intend to call certain witnesses but to date have not received the witness statements of the individuals concerned. I look to receive the same at the earliest opportunity.

On 18th June I shall be flying to America but I am not sure I am going to be able to get back in time to make myself available for the hearing which I believe is listed for 1st July. On account of that I would be pleased if you would kindly arrange for there to be an adjournment.

Upon my return I shall take stock of the witness statements and the new hearing date."

The Applicant told the Tribunal that he would not make an application for an adjournment on behalf of the Respondent as he had suggested and, indeed, he resisted the adjournment application. In response to the Respondent's letter Mr Barton had said in his letter of 17th June 2008:

".....You have given me no reasonable notice of your intended departure and so I do not know whether you will receive this letter before you leave for America.

The hearing is fixed for the 1st July.

I enclose a copy of my letter of the 11th June which makes clear that I will be calling four witnesses and that you already have their statements in the form of the reports and attachments. I served you with the supplementary statement on the 21st February at the address you asked me to write to. You have acknowledged receipt of the Rule 4 Statement.

It is for you to apply for an adjournment and it is not something I can arrange as you have requested. My client wants the application to proceed and so I will not be

making any application. I will attend on the scheduled date with the witnesses and if you are not present I will apply for the hearing to proceed in your absence. It is your choice to be absent and you have known of the date since the Tribunal wrote to you on the 13th March."

The Tribunal considered the Applicant's application for an adjournment. He had given no indication why he was making a trip to America, how long ago that trip had been planned or the purpose of his visit. The allegations against the Respondent were serious. It was the Tribunal's view that there was no reason why the substantive hearing should not proceed. The Tribunal did not grant the application for adjournment and the substantive hearing took place forthwith.

The evidence before the Tribunal

The Tribunal had copies of all of the documents which had been served upon the Respondent. The Applicant handed up a small clip of papers at the hearing. The Tribunal heard the oral evidence of Ms Taylor, Ms Segar, Ms Ackers and Mr Stallard. Mr Stallard was a former client of the Respondent and the other witnesses were employed by The Law Society/The SRA in its Investigation Department.

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

The Tribunal Orders that the Respondent, Julian Roger Victor Kowalik of Victoria Close, East Barnet, Middlesex, (formerly of 12 Station Road, Watford, WD17 1EG) 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 Accountants of the Law Society.

The facts are set out in paragraphs 1-33 hereunder:

1. The Respondent, born in 1952, was admitted as a solicitor in 1992. His name remained on the Roll of Solicitors. At all times material to the application the Respondent practised in partnership under the style of Seakens Solicitors of 12 Station Road, Watford, Hertfordshire, WD17 1EG.

2. On 1st June 2005, an Investigation Officer employed by The Law Society began an inspection of the Respondent's books of account and other documents. A copy of her Report dated 8th May 2006 was before the Tribunal. Miss Taylor, the Investigation Officer, gave oral evidence.

3. Miss Taylor had reviewed a number of conveyancing transactions. Of the files reviewed, five of them involved Northern Rock as lender, for which the Respondent acted as well as for the purchasers. In each case the properties were subject to substantial discounts. Northern Rock was not informed of these as it should have been as the discounts amounted to a variation in the purchase price by something in the order of 20% to 25%.

4. The Respondent had asserted that the lender did not need to know because of the terms of his instructions. Instructions provided by Northern Rock contained questions and answers, including "Do I have to report incentives?". The answer was "Yes, unless the property is newly built at completion and where the borrower is purchasing directly from a recognised national house builder". It was the Applicant's case that

there was a clear distinction between an "incentive" and/or "discount". In these circumstances the prices were discounted. At an interview the Respondent agreed that it would have been in the best interests of his lender client to report a variation in price of 20% or 25%.

5. Miss Taylor also reviewed three more conveyancing files involving different lenders. In two transactions involving Bank of Scotland and Bristol and West as lenders, the Respondent accepted that he had not disclosed substantial discounts as was required by those lenders. In relation to the third matter the Respondent maintained that the lenders requirements had not been breached. In relation to the first matter the allowance was £50,292.38. In relation to the second transaction there was a discount of £55,974.04. In relation to the third transaction there was a discount of £24,833.67.

6. Miss Taylor reviewed the six transactions involving Mr H, or his company BS, and mortgages were obtained for the purchasers based on the full purchase price, which was not paid over. Although in two of the matters the purchasers were each based in two different parts of the United Kingdom, bankers drafts apparently supplied by them both were drawn on the same branch of HSBC bank and were consecutively numbered. It was the Applicant's case that that was an unlikely coincidence.

7. Max Kingsley had been made subject to an order pursuant to S.43 of the Solicitors Act 1974 (as amended) on 4th June 1996. The Respondent did not have the permission of The Law Society to employ Mr Kingsley. Mr Kingsley was able to write letters in connection with immigration cases using the Respondent's letterhead. It was the Respondent's position that he had not employed Mr Kingsley. He could not explain how Mr Kingsley had used the firm's letterhead, but he accepted that the letter written by Mr Kingsley bore the Respondent's reference.

8. In his written explanation of 8th May 2006 the Respondent said his firm received hundreds of communications a day, some of which had nothing to do with the firm and had to be redirected. The Investigation Officer brought three letters on Home Office paper to the attention of the Respondent. His defence had been that his firm did not deal with immigration and he would have ignored such correspondence. He maintained that the firm had always been properly supervised.

9. On 4th December 2006 Miss Taylor commenced a further inspection of the Respondent's books of account and other documents. Her Report of 24th May 2007 was before the Tribunal.

10. The Respondent operated a website which was used to advertise property services on the internet. The Respondent stated:

> "If you like the idea of building a portfolio but lack the time and knowledge to venture into this market on your own, why not consider employing a specialist portfolio builder? There are many companies offering similar services but to whom many of our clients have employed successfully are www.aic-ltd.com and www.portfoliobuildingservices.com"

11. Mr Stallard paid £41,875 to build a property portfolio of the type described on the Respondent's website. He and his wife were retired and he was aged 66 years at the date of his statement.

12. Mr Stallard had contacted Portfolio Building Services and was telephoned by Mr Dan Patterson who met with Mr and Mrs Stallard at their home. The agreement they entered into with the company required them to pay an upfront fee of £45,000 plus VAT which enabled Portfolio Building Services to source properties. They made this payment during early to mid 2005. It was indicated to Mr and Mrs Stallard that for a payment of this size, Portfolio Building Service would build up a property portfolio worth £1,500,000. On the 12th August 2005 Mr and Mrs Stallard were given a service agreement to sign. The service fee was to be paid through Seakens solicitors. The involvement of a firm of solicitors "boosted" their confidence. Mr Stallard had looked at Seakens website which made references to the two companies and which contained the statement that the firm had many satisfied customers.

13. Mr and Mrs Stallard paid the sum of £41,875 into Seakens' client account on 14th September 2005. All of it, apart from £1,267, was paid out to various individuals connected with the two companies within a period of two weeks. Those payments were not consistent with anything contained in the "Service Agreement".

14. Mr and Mrs Stallard lost their money. The Respondent received the money but no work was undertaken by him. The Respondent paid out the money without any reference to Mr and Mrs Stallard. After they complained to him on 20th March 2006 the Respondent wrote to them on 6th April 2006 saying:

> "We only acted in a limit capacity on behalf of AIC because of course you did not receive the draft agreement from us. We did not compile it on behalf of AIC and had no input into its content. As for recommending the services of AIC we were very careful how we represented them on our website. As you can see we made it clear that there are many companies offering to build portfolios and we simply sited two of them with whom clients of ours had in the past expressed satisfaction. As for taking your money are you seriously suggesting that the funds came from a doubtful source? What happened here was we were conducting some other business on behalf of AIC and were told that you owed certain monies under an agreement. We did not as we understand it have to press you for it. The money arrived from a recognised UK bank account and therefore in the ordinary course we considered it sound. Again we must ask you to consider the funds suspicious as we did not think that at the time. It is doubtful that you will ever be able to recover funds that you are now suggesting may have suspicious provenance.
> We note from the copy of the signed agreement that we have that you signed to say that you had received independent legal advice. You were therefore advised as to the nature of the agreement and obviously agreed to send the monies to AIC solicitors."

15. The ledger was opened in the name of Mr and Mrs Stallard, although the Respondent indicated that his client was AIC. When the Respondent wrote to The Law Society on 2nd July 2007 he stated:

> "The other business which this firm was transacting was not in the way of transacting business as such but in negotiating with AIC with a view to acting to them in respect of these types of agreements. This has been made quite clear elsewhere. There is no documentary evidence in support as negotiations took place over dinner in London as explained to the investigating officer."

16. Mr and Mrs Stallard had attempted to recover their money from the Respondent through civil proceedings in the County Court, but had been unsuccessful as the Court held that they were not clients of the Respondent. In his oral evidence Mr Stallard told the Tribunal that he had borrowed money against the security of his home and the £41,875 paid to the Respondent's firm represented a part of the money so raised.

17. A further inspection of the Respondent's firm was carried out on 11th January 2008 by The Law Society's Investigators. Their Report dated 1st February 2008 was before the Tribunal.

18. On 22nd March 2007 the Respondent's practising certificate for the year 2006/2007 was issued to him subject to a number of conditions. One of them prevented him from being a sole principal or sole director of an incorporated or unincorporated legal practice. The Law Society Investigators ascertained that the Respondent was practising as a sole practitioner in breach of a Practising Certificate condition. In his letter to the Applicant of 29th January 2008 the Respondent was named as the sole principal of the practice.

19. The Investigators identified a minimum cash shortage on client account of £35,106.12 as at 30th November 2007. The inadequate accounting documentation and information available to the Investigators made a full calculation impossible. The cash shortage was caused by the Respondent's making three improper withdrawals.

20. The first and largest withdrawal was of £31,547.90 on 28th September 2007 when he transferred it from client account to his personal account. On 18th January 2008 the Respondent was asked to explain the reason for the transfer but was unable to do so. In his letter of 21st January the Respondent stated that he was waiting for his bank to provide him with statements to enable him to ascertain the position. In his letter of 23rd January the Respondent's explanation was materially different from the suggestion previously offered. The latter explanation had been that the client funds had been abandoned.

21. The second withdrawal was of £2,550 and was not allocated to a client ledger. It was withdrawn on 27th November 2007. The Respondent had signed the cheque and stated that his firm formerly had a branch office in Letchworth which was closed on 27th May 20005. The withdrawal was for an office liability, although its precise nature could not be ascertained from the little evidence that was available.

22. The third withdrawal was for the sum of £1,008.22 and was made on 27th September 2007. The Respondent had been asked to provide an explanation for the transfer with details of the client involvement. He had offered an explanation unsupported by any documents or details of the client involved.

23. The payment of £2,550 from client bank account. The relevant cheque stub was completed with the following, "Repayment of loan from Letch OFF JK". The Respondent told the Investigation Officer that it was not his writing on the cheque stub but confirmed that he would have signed the cheque. In his letter of 23rd January 2008 he wrote "the sum of £2,550 was provided from the office account to the client account to enable stamping to take place. The cheque for the stamp office was later cancelled and so the monies returned."

24. With regard to the cheque payment of £1,008.22 the stub on the relevant cheque book showed the entry "STI to office". In his letter to the Investigation Officer of the 23rd January 2008 the Respondent said "the £1,800 [sic] transferred from the client account to the office account was simply the transference of fees billed to clients. This is sometimes done by telephone to the bank but sometimes done by cheque."

25. DLA Piper Solicitors had written a letter dated 7th February 2008 to The Law Society. On 16th March 2007 Kensington Mortgage Company Limited had sent to the Respondent £433,465. That money was to be used by the Respondent in connection with his client's purchase of a property, the Respondent acting for both the buyer and the lender. No purchase or charge had been registered by 25 January 2008. When an appointed agent attended the property, the Respondent's purchaser client was not in possession of the property. Client account was in credit by £134,772.60 at 30th November 2007. There was insufficient money in client account to pay back the advance.

26. The breaches of the Solicitors Accounts Rules (Rule 22) identified in the Investigators' Report had not been corrected by the Respondent.

27. The Respondent had written to Eversheds Solicitors on 17th January 2008. The letter contained misstatements of fact and was misleading. The Respondent told the Investigation Officers that the letter had been written as a "stalling tactic".

28. The Investigators' Report described the Respondent's participation in a number of conveyancing transactions, details of which were before the Tribunal. In each of five matters the Respondent had acted for the purchaser(s) and the provider of a mortgage advance.

29. In the first transaction the Respondent had failed to register the lender and buyer at the Land Registry; he had paid the mortgage advance/purchase money to a party other than the seller's solicitors; he had not conducted the transaction in such a way so as to ensure that the mortgage advance money was used solely for the purchase of the property. He failed to have proper regard for the suspicious nature of the transaction and his obligations as Money Laundering Reporting Officer.

30. In the second transaction the Respondent had not registered the charge in favour of his lender client; he had paid the mortgage advance/purchase money to a party other than the seller's solicitors (on the instructions of the same solicitors). He had failed properly to identify the buyer before proceeding. The Respondent asked for evidence of identity some 22 days after completion.

31. In the third transaction the Respondent did not pay stamp duty or complete the transaction.

32. In the fourth transaction the Respondent failed to inform the lender of an arrangement of which it should have been informed; he failed to inform the lender that payments from the mortgage advance were to be made to a number of recipients. He did not have regard to the unusual feature of making payments to different parties which might have evidence of money laundering and property fraud. He did not register the buyer and lender at the Land Registry, even though he had parted with the mortgage

advance money. The Respondent did not inform the lender of the difference between the purchase price recorded in the lender's acknowledgement of £610,000 and the price actually paid £397,500.

33. The fifth transaction was characterised by failures to inform the lender of an arrangement of which it should have been informed, namely that payments from the mortgage advance were to be made to a number of recipients; to recognise the mortgage fraud implications of two mortgage offers and instructions on the same property, each apparently for the full price. He received a second mortgage advance paid to the named recipients. He did not report to the lenders that the purchaser client had received two mortgage advances totalling £1,097,500 with one lender advancing £467,500 against a stated purchase price of £550,000 and the other advancing £630,000 against a purchase price of £840,000. Misleading client ledger entries had been created superficially to hide the fact that a second mortgage advance had been received.

The Submissions of the Applicant

34. The Applicant said that he had served appropriate Civil Evidence Act Notices upon the Respondent but need not rely on those notices as he was calling oral witnesses.

35. The Respondent had fallen down seriously in his duty to lender clients where he had not notified those lenders of substantial reductions in purchase prices paid by purchasing clients. The actual price paid by a purchaser is a material matter that must be reported to a lender as such a price would necessarily affect the formal valuation of the property and be a material matter in the lender's decision whether or not to make the proposed advance. In each of the cases exemplified in the original statement, it had been the Respondent's duty to notify his lender client of the circumstances of each of the transactions and he had not done so.

36. With regard to the position of Max Kingsley, he had been able to write letters in connection with immigration cases using the Respondent's letterhead. The Respondent had given certain explanations about this but in so far as they sought to justify or excuse his explanations about Mr Kingsley, were not accepted.

37. With regard to Mr and Mrs Stallard and the payment that they made to the Respondent's client account in connection, they believed, with building up a property portfolio, the Respondent had undertaken no work on their behalf in his capacity as a solicitor. The letter written by the Respondent to Mr and Mrs Stallard was in disingenuous terms. It had not been open to the Respondent to deal with the Stallard's money in the way that he did having received it into his client account. The ledger had been opened in the name of Mr and Mrs Stallard, although the Respondent indicated in his explanatory letter that his client was "AIC". The Respondent's explanation that negotiations had taken place with AIC rather than transacting business, was not consistent with the claim made on the website that many of the firm's clients had successfully employed AIC or the statement made in a letter that the firm was conducting other business on behalf of AIC. It was apparent from an answer given by the Respondent that no business of substance was in fact being transacted. It had been apparent from the review of the matter file by The Law Society's Investigation Officer that the Respondent had undertaken no legal work and yet he

received the stated fees. Effectively the Respondent had endorsed the two companies on his website which gave comfort to Mr and Mrs Stallard and as a result they lost their money. The Respondent's own conduct had facilitated that event.

38. With regard to the matters referred to in the Applicant's supplementary statement, it was established that the Respondent had continued to act as a sole principal at a time when there was a condition on his practising certificate prohibiting him from acting in that manner.

39. With regard to the transfers made by the Respondent from client account to his personal account, the amount of £31,547.90 was a large amount to be transferred when he was conducting relatively little work. He had subsequently provided inconsistent explanations including one that the client had abandoned the money. Client funds could not simply be abandoned. The money would remain client money and could only be removed from client account in the circumstances permitted by Rule 22 of the Solicitors Accounts Rules. What was clear was that the money had been deliberately removed to the Respondent's personal bank account and that combined with the inconsistent and unsubstantiated explanations which went to his state of mind, it was the Applicant's submission that such withdrawal was also dishonest. If the Respondent had held an honest belief that he was entitled to the money he would have provided an immediate, consistent and documented explanation when enquiry was made of him.

40. With regard to the second withdrawal of £2,550 there was an obligation on the Respondent to provide a complete explanation and he had failed to do so. In his letter of 23rd January he made a statement unsupported by any documents or any sensible explanation that the payment represented a refund of stamp duty. It was not apparent why money was transferred from office to client account for stamp duty in the first place as it was a client liability. If, for some reason, stamp duty had been paid by the Respondent the obvious step to have taken would have been to draw an office account cheque. In the submission of the Applicant the Respondent's inadequate explanation was a device to cover his improper and dishonest withdrawal of client money. The payment had been made directly from client account and had the Respondent been properly entitled to the money, there would have been appropriate debit and credit entries on the client ledger. There were not. The Respondent had not provided any documentary evidence to support his statement in his letter of explanation and he had not identified the client involved. The use of client money in this way, to discharge an office obligation, was improper and dishonest.

41. The third withdrawal from client account of £1,008.27 had been explained by the Respondent without any documents or details of the client to support the explanation. That was an unsatisfactory situation and the Applicant's submission was that the withdrawal represented an improper and dishonest use of client money on the part of the Respondent.

42. Further, the Respondent had written a letter to Eversheds on 17th January 2008 which contained misstatements of fact and was misleading. His explanation that the letter had been written as a "stalling tactic" demonstrated an intent and a dishonest state of mind.

43. The Respondent had conducted a number of conveyancing transactions in a manner that could well have facilitated mortgage fraud.

44. With regard to the fifth transaction referred to in the Investigation Officer's Report the Respondent was recorded as having accepted that the transaction was "peculiar" in that there had been two mortgage advances on the same property. In the submission of the Applicant this was a particularly serious breach as a competent solicitor properly directing his mind to the obvious receipt of two mortgage advances could not sensibly fail to see that there was an obvious risk of mortgage fraud.

45. Misleading client entries had been created apparently to hide the fact that a second mortgage advance had been received. That deliberate act supported the Applicant's allegation that the Respondent had been dishonest.

The Submissions of the Respondent

46. The Respondent played no part in the proceedings but had addressed a letter dated 16th October 2007 to the Applicant which is set out below (spelling and grammatical errors have not been corrected):

> "Dear Mr Barton
>
> I thank you for your letter of the 20th September.
>
> You will recall that this was sent to the previous address of the firm by Special Delivery and was not recovered for a fortnight and I therefore take it that I am allowed a further fortnight to answer these matters. As I noted in that telephone message the SRA had been informed of the change of address on the 1st May last so there was no reason why the communication should have been directed to Watford rather than to Welham Green.
>
> It would appear to be the case that at this stage I am asked to comment on the facts rather than address the allegations but while I am at it I may as well address the allegations as well in outline form and I will do this as follows following your numerical order as per your statement starting from the beginning.
>
> 1. Accepted
> 2. Admitted
> 3. Admitted
> 4. This may well be the case but as indicated above our address has changed and was properly notified to the SRA.

Allegations

5. I strenuously deny the allegations as follows:

(a) I deny having compromised or impaired my duty to act in the best interest of my lender clients by failing to inform them of material facts;

(b) I deny having failed to adequately supervise my office with a consequence that Max Kingsley was able to conduct immigration cases or any cases of any nature or matters at all;

(c) I deny being guilty of conduct unbefitting a solicitor in receiving monies into my client account which were received from a third party pursuant to an agreement by my client and deny that there was no underlying legal transaction as indeed there was quite a substantial one and therefore I deny that I compromised my independence or integrity or my good repute or that of the solicitors profession or my proper standard of work;

(d) I deny taking unfair advantage for myself in charging substantial fees for no legal advice as indeed substantial advice was given to my client;

(e) a website had been belatedly left in place albeit my computer engineers had been told to remove it and unwittingly appears to have given comfort to a third party;

(i) names of promoters did appear on the site

(ii) the monies received into the account were from the third party on the instructions of my client and were distributed according to my clients order. The fact that my client did not later honour the agreement into which the third party had entered independently and signed to say they had taken legal advice is not a matter for this firm;

(iii) my clients name did appear on the website but appears to have misled no-one into entering into any arrangement and indeed the third party did not enter into the arrangement by virtue of having seen my client's name on the website. I therefore conclude that I have not compromised my reputation nor that of the solicitors profession.

The facts

6. Admitted

7. Admitted

8. Admitted

9. Admitted in so far as Northern Rock was not informed of the discounts as their Part II instructions made it very clear that no discounts need not be reported if certain criteria were satisfied which in this case they were.

10. It is admitted that the Northern Rock Part II instructions are as stated here. It is not admitted that there is a clear distinction to be drawn between an incentive or discount. That is a matter of opinion not fact. Indeed, in these particular circumstances the discount was the incentive and it is made very clear that these need not be reported. Northern Rock at the time set itself to corner the market in newbuild Buy to Let and therefore reduced their requirements for disclosure.

11. The remark made is indeed a fact but is taken entirely out of context as in the ordinary course it would have been sensible to have reported a 20 or 25% discount but since Northern Respondent Rock had categorically made it clear they did not require any discount of any amount to be disclosed to them in the circumstances of this type of transaction then it would not have been the thing to have challenged Northern Rock's policy. Indeed it is not the part of a solicitor to challenge an institutions policy on matters of this nature when their instructions are clear.

12. Only in the matter of Camielleri was there any admissions that there had been failure to make a disclosure on the part of my firm. I had relied on representations from Ms Camielleri as the financial advisor to Affinity the Portfolio builder that she had indeed disclosed to Bristol & West the nature of her discount which I believed had been granted to Bristol & West on account of the special relationship that she had with them at the time. Subsequently disclosure was made to Bristol & West and no issues were raised by them after the event. It is denied that it is admitted that there was no disclosure in the other circumstances.

13. Although it is admitted that three transactions are treated between paragraphs 18 and 35 they would not appear to be the same three transactions mentioned in paragraph 12 above as the three transactions in paragraphs 18-35 relate to Bristol & West, Northern Rock and London Mortgage Company not 2 involving Bank of Scotland and 1 of Bristol & West as stated there. In any event it is denied that the discount was not reported to Bristol & West as I had the categorical assurance of our financial broker client that this had been done but I personally had not made that disclosure.

Paragraph 27 of the report is a quotation of a letter sent by Seakens Solicitors to the Bristol & West and not from the lender to Seakens. In actual fact the firm received no reply.

14. In respect to the second transaction the discount was not disclosed as it was Northern Rock and no disclosure of discounts was required according to their Part II instructions.

15. It is denied that there was any discount at all. The sum of £24,833.67 was a rent deposit that was notified to the lender as is clearly stated in paragraph 34.

16. That paragraphs 36-61 of the report contain an analysis of two of the conveyancing transactions of which 6 are set out in appendix 3 is admitted. These were indeed reviewed by the investigating officer but it is denied that the full purchase price was never paid over. Indeed where they completed the full purchase was always paid over. All these transactions proceeded by way of assignment and it is the standard practice in such transactions that certain of the monies is paid to the developer and the other to the assignor which happened in all these cases where they completed.

17. It was indeed brought to my attention that two drafts appeared to be consequetively numbered. Since these were received by the firm at different times and the monies were received from our clients we did not notice anything untoward.

18. In each case exemplified it was the case that the lender was indeed informed that the matter was proceeding by way of an assignment.

19. It is admitted that it would appear that Max Kingsley had written on some of his own form of Seakens headed paper but that the number of such letters were strictly limited. It is also the case that there is very limited evidence to suggest that one or two letters from the Home Office to Seakens had been provided to Max Kingsley for him to be able to answer those letters again on forged Seakens paper. No explanation could be provided for this at the time of the investigation but subsequently upon the break up of the firm at the Watford office earlier this year where all the practitioners and their secretarys went their separate ways, my erstwhile secretary at the time disclosed to me that indeed she had on one or two occasions taken a call from Max Kingsley who had persuaded her to send a response because as he had said it was nothing to do with Seakens and should have come directly to him. She told me she had not informed me of that because she did not think it worthwhile and indeed knew that any communications of which there were very few which had come to Seakens from the Home Office had been left in what the firm called "no mans land" as not concerning the firm along with all manner of communications which the firm received in the course of the year. Although it had been admitted that no satisfactory explanation could be provided at the time

it is denied that the office was inadequately supervised. Indeed this cannot be considered a fact but only a matter of opinion.

20. It is denied that the part of the statement entered her is a fact in any shape or form but only an opinion and is therefore out of place here among a list of so called facts.

21. Admitted

22. Admitted

23. Admitted in so far as at the time of the investigation the site was still in place although instructions had been given many months before its removal as it was no longer relevant referring to a former branch office in Letchworth that no longer existed.

24. Admitted

25. It is admitted that the Stallards entered into an agreement with AIC and agreed to pay a substantial up front fee part of which was tendered directly to AIC, AIC requesting that the rest be sent to Seakens. It is denied that the Stallards entered into any agreement relying on any representations made by Seakens and indeed the Stallards have never said that that is the case.

26. It is admitted that the sum of £41,875 was remitted to the Seakens client account which was expected by us pursuant to the Stallards agreement with AIC. The money was not to be held to the Stallards order and indeed the agreement they had entered into was signed to the effect that they had taken independent legal advice. It is denied that any mention should have been made in the agreement in respect of what was to happen with the money. The monies were our clients and were held quite properly to their order and distributed in accordance with their order.

27. It was brought to my attention by the investigating office that the Stallards had lost their money. It is denied that no work was undertaken by me. Indeed very substantial work was undertaken by me in that I reviewed the entire Service Agreement and reported to my client accordingly. It is admitted that the money held on the client account was paid out without reference to the Stallards as the monies were no longer theirs as they had been sent pursuant to an agreement with our client. I deny that I wrote in disingenuous terms. Such terms in which I wrote were stating what had actually transpired. It is denied that it was not open to me to deal with the Stallards money and indeed I consulted Ethics in respect of distributing money held to a clients order and was told categorically that it is indeed normal practice so to hold clients money. I am concerned that what is a matter of opinion is within these paragraphs stated as a fact.

28. It is admitted that the file was initially opened in the name of Stallard this being an administrative error on the part of secretarial staff as the file should have been opened in the name of AIC Stallard indicating that it was one of the matters of AIC being the matter of Stallard. This was later corrected on the file but remained in the name of Stallard on the ledger but was always understood to be AJC. The Stallards themselves have never ever maintained that they were clients of Seakens. It is admitted that the report on my study of the Service Agreement was delivered over dinner in London over which dinner substantial comment was made on the agreement which I found basically very well drafted and quite sound and to which I would not think I would need to make any amendment if I were to act in the future in respect of these matters. It is denied that this is not consistent with what was stated on the website as many of the Portfolio building fraternity were in many respects inter-related and a substantial amount of Portfolio business had been transacted through the firm by the time the Stallards thought they would wish to invest. It is denied that no business of substance was being transacted as indeed telephone discussions had been numerous in respect of these matters leading to the dinner in London. It is denied that no legal work had been undertaken as substantial work had indeed been undertaken and the fees were thought to be very reasonable indeed by my client. It is admitted that two AIC companies were mentioned on the website and these may have given comfort to the Stallards before sending the money to Seakens but it must be noted they had previously sent money directly to AIC and would indeed have sent the balance to them were it not for the fact that AIC stated that they would prefer the money to come to their solicitors. It is categorically denied that my conduct enabled the Stallards to lose their money. The Stallards had entered into an agreement with the benefit of legal advice and had sent monies already directly to AIC and were sending the balance to me to AICs order not to their own. Again and most emphatically your statement that "the respondents conduct enabled that to happen" is the representation of an opinion and has no place in this list of facts.

29. It is admitted that the Stallards have unsuccessfully been attempting to recover their money through the County Court because successive judges have made it very clear to the Stallards that Seakens received the monies as agent and not as principal which is the key point which the Stallards seem to overlook and which point The Law Society seems also to overlook is the fact that all client monies are held to the clients order as agent for a principal and then distributed according to the clients instructions.

I have above commented on both your allegations and what purport to be facts. Which of your facts I have either not admitted or else expressly denied, if you are to maintain that they are indeed facts, I must put you to strict proof of the same."

The Tribunal's Findings

47. The Applicant put the allegations before the Tribunal as serious and in a number of them he had alleged that the Respondent had been dishonest.

48. The Tribunal found all of the allegations to have been substantiated and where dishonesty had been alleged the Tribunal found that the Respondent had been dishonest save in the case of allegation (i) where the Tribunal accepted the Respondent's explanation that he had written a "stalling" letter and had not intended to be dishonest.

49. A catalogue of unbefitting conduct and breaches of the Rules of Practice had been substantiated against the Respondent. In particular the Tribunal had found the Respondent to have been dishonest applying the highest standard of proof so that it was sure and applying the test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In particular the Tribunal found that in taking money from client account and paying it into his personal account and in taking money from client account to meet an office liability without giving a satisfactory explanation and in particular seeking to explain his action by saying that the client had abandoned the money, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having read the explanations given by the Respondent during the course of his interviews with The Law Society's Investigating Officers the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he had a right to take the money that he did and therefore he knew that what he was doing was dishonest by those same standards. Further, the Tribunal was of the view that where the Respondent had received money into his client account which he paid out on instructions from persons other than the remitters of the money where there was no underlying legal transaction (the matter of Mr and Mrs Stallard) the Respondent's conduct was dishonest by the standards of reasonable and honest people and the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that what he was doing was acceptable and therefore that he knew that what he was doing was dishonest by those same standards.

50. Tribunal was of the view that during the course of dealing with Mr and Mrs Stallard the Respondent acted contrary to his position as a solicitor and had charged substantial fees where he had not provided legal advice or services and that further would be regarded as dishonest by the standards of reasonable and honest people. The Tribunal was in no doubt that the Respondent did not have an honest belief that to take fees when no work had been undertaken was acceptable and therefore he knew that what he was doing was doing was dishonest by those same standards. The Tribunal further considered it dishonest of a solicitor to cause or permit the names of promoters of a property investment scheme to appear on his firm's website and to permit his name and status as a solicitor to be used by the promoters of the investment scheme and in permitting his client account to be used for the deposit of investors' funds and withdrawing those monies on the instructions of others was conduct that was dishonest by the standards of reasonable and honest people. The Respondent had given certain explanations but in the light of those explanations the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that acting in that way was appropriate and therefore that he knew that what he was doing was dishonest by those same standards of reasonable and honest people.

51. It considering whether allegation (j) amounted to dishonesty, the Tribunal found that in facilitating conveyancing transactions during the course of which the Respondent did not report material matters to lender clients, when such matters had been drawn to his attention by The Law Society and in the instructions given to him by the lenders, and in particular where the Respondent acted for a purchaser client who had taken two mortgages from different lenders on the same property, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having considered such explanations as had been given by the Respondent, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was acting as he should have done as a solicitor and therefore that he knew what he doing was dishonest by those standards.

The Respondent's Previous Appearance before the Tribunal

52. At a hearing before the Tribunal on 13th February 2003, the Respondent was one of four Respondents required to answer allegations. The allegations against the Respondent and one other Respondent (Mr. Paynter) were that they had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:

(a) That they practised as solicitors whilst there was a cash shortage on their firm's client account of which they should have been aware.

(b) That they drew monies from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules or alternatively contrary to Rule 22 of the Solicitors Accounts Rules 1998.

In its findings dated 17th April 2003, the Tribunal said:

> "353. The Fourth, Second [Mr Kowalik] and Third Respondents [Mr. Paynter] had admitted the allegations and the Tribunal found the allegations against them to have been substantiated.
>
> 354. The First Respondent had initially admitted some of the allegations only but on hearing clarification during the proceedings had admitted all the allegations but denied dishonesty. The Tribunal found the allegations against the First Respondent to have been substantiated in accordance with his admissions and the evidence before them. The outstanding issue for the Tribunal to consider was whether or not the conduct of the First Respondent amounted to dishonesty. The standard of proof for dishonesty was that the Tribunal had to be satisfied beyond reasonable doubt. The Tribunal considered carefully the test set out in the case of Twinsectra v. Yardley. Applying that test, the Tribunal was not satisfied to the high standard required that the First Respondent's conduct had been dishonest. The Tribunal did find, however, that there had been a gross dereliction of duty and a massive failure of stewardship by the First Respondent. He had financed clients' transactions using other clients' money with a complete disregard as to whether client money was being wrongly used. In these circumstances where such a massive client account deficit existed associated with a

reckless disregard as to what client monies were held, the Tribunal had concluded that in the interests of the public the First Respondent should be prevented from practising. The appropriate penalty was to strike the First Respondent's name off the Roll of Solicitors.

355. In relation to the First Respondent's contribution to the Applicant's costs, in view of the unacceptable and unexplained delay of the OSS to which the First Respondent had referred and notwithstanding the apologies tendered by Mr Williams, whom the Tribunal did not blame for the delay, the Tribunal had decided that the First Respondent should pay only 60% of the legal costs together with the agreed costs in relation to the MIU reports.

356. In relation to the Second and Third Respondents, they had accepted that they should have taken more active steps to investigate the accounts of Van King & Co rather than relying on verbal assurances by the First Respondent. This had been a commercial error on the part of the Second and Third Respondents for which they had paid a heavy price. They had accepted their responsibility for the Accounts Rule breaches which they had unwittingly inherited. The Tribunal considered that the error they had made, despite being an omission that no prudent solicitor would have made, was only marginally conduct unbefitting a solicitor and the Tribunal considered that in the case of the Second and Third Respondents the appropriate penalty was a reprimand together with the agreed proportion of costs.

357. In relation to the Fourth Respondent, the Tribunal had considered the submissions put forward on his behalf and the testimonials in his support. The Tribunal had, however, serious concerns that the Fourth Respondent had lent his name to a partnership in return for remuneration yet had undertaken none of the responsibilities of partnership abdicating those to the extent that clients might be prejudiced. The Tribunal considered that it was right that an order be made prohibiting the restoration of the Fourth Respondent's name to the Roll of Solicitors except by order of the Tribunal. The Tribunal noted that the Fourth Respondent was not resisting the imposition of such an order. The Fourth Respondent would also be ordered to pay the agreed figure being a proportion of the Applicant's costs.

The Tribunal made the following Orders:

The Tribunal Ordered that the Respondent Peter Daniel Hastings of 35 Bridge Street, Hitchin, Hertfordshire, SG5 2DF (formerly of 38 Great North Road, Stanborough, Welwyn Garden City, Hertfordshire, AL8 7TJ) solicitor be struck off the Roll of Solicitors and they further ordered that he pay 60% of the legal costs of and incidental to the application and enquiry together with the full costs of the Investigation and Compliance Officer in relation to the Report of 24th May 2000 and 50% of the costs of the Investigation and Compliance Officer in relation to the Report of 30th November 2000 to be subject to detailed assessment unless agreed.

The Tribunal Ordered that the Respondent Julian Roger Victor Kowalik of 34 Talisman Street, Hitchin, Hertfordshire, SG4 OEZ (formerly of 1 The Ridge, Letchworth, Hertfordshire, SG6 1PP) solicitor be reprimanded and they further order that he be jointly and severally liable to pay the legal costs of and incidental to the application and enquiry fixed in the sum of £2,373.50 together with the costs of the Investigation and Compliance Officer to be subject to detailed assessment if not agreed.

The Tribunal Ordered that the Respondent Timothy Clement John Paynter of 81 Bingen Road, Hitchin, Hertfordshire, SG5 2PR (formerly of 74 Pascal Road, Letchworth, Hertfordshire, SG6 1DL) solicitor be reprimanded and they further order that he be jointly and severally liable to pay the legal costs of and incidental to the application and enquiry fixed in the sum of £2,373.50 together with the costs of the Investigation and Compliance Officer to be subject to detailed assessment if not agreed.

The Tribunal Ordered that the Respondent James Walter Gray of 72 High Street, Puckeridge, Hertfordshire, SG11 1RX former solicitor be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal and they further order him to pay the legal costs of and incidental to the application and enquiry fixed in the sum of £1,500 together with 50% of the costs of the Investigation and Compliance Officer in relation to the Report of 30th November 2000 to be subject to detailed assessment unless agreed."

53. The Tribunal found all of the allegations save one to have been substantiated and made serious findings of dishonesty against the Respondent. It was both appropriate and proportionate, in order to protect the public and maintain the good reputation of the solicitors' profession, that the Respondent be struck off the Roll of Solicitors. It was further right and proportionate that the Respondent should bear the costs of and incidental to the application and enquiry, although the Tribunal did not concur with the Applicant's suggestion that it should summarily assess the figure. In the absence of the Respondent the Tribunal concluded that the appropriate Order would be that he should pay the Applicant's costs to be subject to a detailed assessment unless they were agreed between the parties.

54. The Tribunal Ordered that the Respondent, Julian Roger Victor Kowalik of Victoria Close, East Barnet, Middlesex, (formerly of 12 Station Road, Watford, WD17 1EG) 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 Accountants of the Law Society.

Dated this 4th day of September 2008
On behalf of the Tribunal

K W Duncan
Chairman