

IN THE MATTER OF DEREK CLYDE CORNELIUS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mr D Potts  
Mr D E Marlow

Date of Hearing: 25th July 2008

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by George Marriott solicitor and partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 6th February 2008 that Derek Clyde Cornelius of Cornelius Associates Limited, The Chestnuts, Brewers End, Takely, Bishop Stortford, Hertfordshire, CM22 6QJ, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think fit.

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

- (i) That he acted towards his client L in a deceitful and dishonest way;
- (ii) That he failed to act in the best interests of his client L;
- (iii) That he acted for his client L when he knew or ought to have known of the existence of a conflict of interest between himself, his client L and another client N.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 25<sup>th</sup> July 2008 when George Marriott appeared as the Applicant and the Respondent was represented by Jonathan Simpson of Counsel.

The evidence before the Tribunal included the oral evidence of client L and the Respondent.

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

The Tribunal ORDERS that the Respondent, DEREK CLYDE CORNELIUS of Cornelius Associates Limited, The Chestnuts, Brewers End, Takely, Bishops Stortford, Hertfordshire, CM22 6QJ, 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 fixed in the sum of £10,667.00.

**The agreed facts are set out in paragraphs 1 to 30 hereunder:-**

1. The Respondent, born in 1953, was admitted as a solicitor in 1981 and his name remained on the Roll of Solicitors.
2. At the material times the Respondent was a partner in the firm of Lee Davies & Co practising from Aylmer House, The High, Harlow, Essex, CM20 1DL and subsequently was a director of Cornelius Associates Limited of the Chestnuts, Brewers End, Takely, Bishop Stortford, Hertfordshire, CM22 6QJ.
3. The Law Society received a complaint from L in respect of the instructions she had provided to the Respondent.
4. In 2000 the Respondent was a partner in the firm of Lee Davies & Co. He resigned in July 2003.
5. The Respondent had been acting for N since 1999, and both the Respondent and N were directors and shareholders of a company called E Course Limited.
6. L, who lived in the same neighbourhood as N, became acquainted with N and was persuaded by N to invest the sum of £85,000.00 in E Course Limited.
7. At the material time L was about 60 years of age and had a home free of mortgage. N introduced L to the Respondent in connection with a part of her proposed investment which was to raise £60,000.00 against the equity of her home by way of an "equity release". At the conclusion of the exercise the monies were transferred by the Respondent to N.
8. After the money had been transferred to N, L discovered that N was a "confidence trickster" with previous criminal convictions, a bankrupt, and had been struck off the Roll of Solicitors. In September 2000, N had been sentenced to 4 years imprisonment for money laundering and his assets had been seized by HM Customs and Excise.
9. L lost the whole of her investment and she complained to Lee Davies & Co in January 2001. She later complained to the Law Society in April 2001. As a result of on-going police enquiries, the investigation into her complaint was delayed. The matter was concluded by The Law Society by an award for inadequate professional service in L's

favour in 2004, The Law Society having concluded that the Respondent had not breached any conduct rules. In July 2004 L complained to the Legal Services Ombudsman who reported in March 2005 and recommended that the Respondent's conduct issues be reinvestigated.

10. The Law Society reopened its investigation and resolved to refer the Respondent to the Tribunal in September 2006.
11. A company search revealed that E Course Limited had been incorporated on 23rd March 2000 and that from that date the Respondent was a director of it, N becoming a director on 9th June 2000. The registered office was the firm's address. The company was struck off the Register of Companies on 8th January 2002 and dissolved following notice in the London Gazette dated 15th January 2002. No accounts had ever been filed in respect of the company.
12. N recommended the Respondent to L by letter dated 23rd June 2000. The Respondent agreed to act on her behalf and said that he discussed the matter with her on the telephone.
13. When accepting instructions from L, the Respondent had acted for N since 1999 (via his limited company). He had known that N was a struck off solicitor before his retainer with L, and he knew that N had criminal convictions. The Respondent was under a duty to notify his client L of these facts.
14. By her authority dated 8th July 2000, L requested the Respondent to credit N's client account with the Respondent's firm and stated that the funds that were to be raised were to be available to N "absolutely and unconditionally". That authority had been sent from N's fax machine to the Respondent. It bore L's address, but, incorrectly N's postcode.
15. In both cases the Respondent stated that he had no reason to advise L about these matters concerning N as L had been introduced to him by N as a friend and nothing more, he had no knowledge of the relationship between L and N, and he had had no conversation with L concerning E Course Limited.
16. In the course of the equity release transaction, other solicitors acted for the institutional lender. The institutional lender sent to the Respondent a key information document which the Respondent hand delivered to L on 13th July 2000. In eight "bullet points" the document gave some limited advice and requested further documents or information from L. In his accompanying letter the Respondent proposed that the matter be completed on 17th or 18th July 2000 and confirmed that the proceeds would be forwarded to N.
17. L acknowledged receipt of the letter and that she understood the terms and conditions of the loan. One of the points in the key information document was to ensure that L understood that if she was going to invest in shares, she should seek the advice of an independent financial adviser.

18. In signing the certificate of title, the Respondent confirmed that he had explained to L the key information document and had complied with his duties under the Solicitors Practice Rules 1990.
19. On 13th July, (the same date that the Respondent wrote to L) N had a client account at the Respondent's firm. A print out recorded that from December 1999 through to the date of the letter to L, the client account was active with considerable sums of money being debited from and credited to it. The Respondent had had conduct of N's matters.
20. A cheque credited to N's account on 11<sup>th</sup> July had been returned by the bank marked "refer to drawer" so that N's account was overdrawn by £10,000.00. This deficit was not corrected until 26th July by £18,000 transferred from L's ledger to N's ledger. The resulting credit balance of £8,000 was paid by a cheque dated 26<sup>th</sup> July drawn on the Respondent's client account payable to the Halifax.
21. On 14th July 2000 L was present at N's home with the Respondent where she signed the mortgage deed. The institutional lender required the Respondent to witness L's signature. Completion took place on 26th July 2000. After the payment of £18,000.00, referred to in paragraph 20 above, the balance of £41,409.24 was sent to N also on the same day.
22. The Respondent advised L of the completion by letters dated 26th July, which L did not receive, and 3rd August.
23. Following L's complaint the Law Society sought explanation from the Respondent.
24. In a letter of 18th January 2001 the Respondent stated that his firm had not acted for E Course Limited, and that there had been no conflict of interest between the Respondent and L.
25. The Respondent wrote further letters to the Law Society on 12<sup>th</sup> September and 22nd October 2002. In his letter of 16<sup>th</sup> May 2003 the Respondent stated that there was no conflict of interest in his acting as he had no idea that L was a prospective investor in E Course Limited, that he would have opposed her investment in the company and that had he been aware of the proposed investment he would have told her to take independent advice and informed her that he could not act for her. He also stated that he was unaware of N's criminal convictions at the time he acted for L. This letter was signed off by the Respondent's partner, Mr W. It conflicted with the Respondent's admission that he did know about the conviction at the time of accepting instructions from L.
26. In his letter of 9th July 2002 the Respondent stated that the fact that N was a struck off solicitor had nothing to do with L's transaction and that he was unaware that N's forenames had been changed; and he was unaware that N was bankrupt. The Respondent said that he had been duped by N.
27. In his letter of 2nd December 2003 the Respondent said that he had not acted for N in any other matters than those he had disclosed and that he had no reason to advise L of the fact that N was a struck off solicitor and had criminal convictions. In his letter of

9th January 2004 the Respondent expanded this by stating that he had no reason for notifying L of N's past because L had been introduced to him by N as a friend and nothing more; he had no knowledge of any other relationship between L and N; he never had a conversation with L in respect of E Course Limited and was not aware of her knowledge of E Course Limited and N's past was his business.

28. In a letter of 22nd January 2005 the Respondent stated that he did not enquire from L how she wished to utilise the funds raised by the transaction. It was not unusual for a solicitor to have clients refer to him by other clients. It was not until completion that L directed him to transfer the proceeds of the transaction to N. The Respondent's firm only had one ledger account for N. The Respondent had no reason to suspect any duress or undue influence on the part of N to compel L to enter into the transaction.
29. In his letter of 7th November 2005 the Respondent stated that no conflict of interest check had been carried out because had one been carried out, no conflict would have been apparent.
30. In his letter of 18<sup>th</sup> November 2005 the Respondent said that his first retainer with N ended when an invoice was submitted on 22<sup>nd</sup> December 1999 and that the receipts into his client account were "debt repayments".

### **The Hearing**

31. L gave evidence to the Tribunal confirming her statement and indicating that she had met the Respondent for the first time at N's house. During that meeting she expressed concern about the possibility of losing her investment. The Respondent was present throughout the meeting but he said very little because L understood that he was unwell at that time.
32. In cross-examination L explained that she had first met N in January 2000 and she had been treating him professionally for a tight neck and migraines in her work as a complimentary therapist. She understood that he was an international businessman and had no reason to question him having been referred to her by a chiropractor she knew. She got to know N and the woman that she understood to be his wife. But whilst they had indicated that they wanted to assist L because she had been ill, she looked back and realised that they were manipulative and deceptive. She was persuaded to invest in E Course Limited and was shown spreadsheets and further information showing the development of E Course Limited. By 14<sup>th</sup> July 2000 she felt she knew enough about business and how her investment was to be used as everything that had been explained to her by N and the Respondent was interlinked with that of E Course Limited. By 14<sup>th</sup> July 2000 L was satisfied that everything N had said about E Course Limited was correct. L maintained that she had not been advised about seeking independent financial or legal advice about the transaction.
33. In his oral evidence the Respondent explained that he became involved with N in late 1999. At that time he was in a firm with 48 staff and could be said to be a success in his professional life. He was not living beyond his means.

34. The Respondent was specifically asked about the registration number of his car which L had referred to. This number plate was "DEL BOY". The Respondent said that this was nothing more than a joke as his name as Derek, and was not meant to suggest that he was a "wide boy" or was a risk taker.
35. He confirmed that he first met N in late 1999. He understood him to be a professional man who was charismatic and amiable. He was the purchaser of a property that the Respondent had been instructed to sell, and N acted on his own behalf. There was no indication at that time that N had been struck off or that there was anything to distinguish him from any other client.
36. The idea of E Course Limited came up jointly with N and the Respondent and it seemed a good project which both parties would develop jointly. The Respondent confirmed that the original idea was N's but they took an equal part in its development. The Respondent confirmed that he invested £20,000.00 in the business. There were just three directors. The business had been set up by the Respondent and his accountant and no further shares were issued, with cash being paid, not to the company, but to N into his company bank account in April or May of that year. The Respondent also had dealings with N in respect of purchasing commercial properties.
37. The Respondent explained that he had been heavily involved in setting up the business of E Course Limited and a great deal of time was spent preparing business plans and the general background of work needed to get the project off the ground. The Respondent's status with E Course Ltd was declared to other members of the firm. The Respondent had been out of the office for a great deal of time raising funds. It had been intended to approach venture capital firms with a view to raising half a million pounds to take business to the next level. Private funding had not been considered to be appropriate.
38. It was intended that accountants Ernst and Young and Close Brothers would be involved in the setting up of the business and funding and it was intended, if the business proved successful, to consider a float on the stock market.
39. The Respondent explained to the Tribunal that he first learned that N had been struck off as a solicitor in mid to late August 2000, when told by the other company director. He also learnt in August 2000 about N having criminal convictions. It was only after his arrest that the Respondent learnt that N had been made bankrupt.
40. The Respondent said that he first came into contact with L in mid 2000. She had been referred to him as a client and he did not regard her matter as being any different from routine matters and certainly there was nothing unusual about the way in which the equity release was being arranged.
41. The Respondent had learnt about the investment in E Course Limited on 8<sup>th</sup> July 2000. He regarded the transaction as a standard remortgage.
42. On 8<sup>th</sup> July 2000 when the time came for L to sign the papers, the Respondent explained that the borrower was required to sign the mortgage papers in the presence of a solicitor. The Respondent had not regarded the fact that the meeting was to take place in N's home as anything other than convenient.

43. In response to a question from the Tribunal, the Respondent confirmed that whilst he did not deny that he knew that the monies from the equity release were going to go from L to N, he did deny that he knew that the monies were going to go to E Course Limited. The Respondent was aware that N had other businesses and other interests but he did not know the details about those businesses.
44. The Respondent stated that he sat down and discussed the mortgage papers with L. There was no mention at all of E Course Limited and he did not recall that she was concerned about losing her money.
45. The Respondent said he felt that he had been duped particularly as N had been arrested for money laundering offences. He did not feel any reason to question the arrangement between L and N and did not consider that there was any conflict between N and the remortgage client. He explained that clients used remortgages for a number of reasons and there was no reason to challenge that.
46. In relation to the Solicitors Accounts Rules breaches, the Respondent accepted that there had been a breach. The Tribunal itself raised the question of the £23,000 cheque that was not honoured by the bank.
47. It was put to the Respondent that the issue of the dishonoured cheque was particularly important as he had a client, L, who was giving £60,000.00 and the Respondent needed to satisfy himself that the moneys were to be paid for a bona fide purpose and to a bona fide recipient. The Respondent was asked whether or not he would make enquires about a dishonoured cheque particularly as L was not known to be commercially astute and she was to pay £60,000.00 to N. It was put to the Respondent that the cheque had been returned on 11<sup>th</sup> July 2000 and as the relevant fee earner he had responsibility for ensuring that the client ledger balanced and that L was trusting the Respondent with £60,000.00 to be paid to N who had previously issued a cheque that was dishonoured.
48. In cross examination the Respondent confirmed that he was spending approximately three to four hours every day on developing E Course as a business. He had attended at Surrey University on 14<sup>th</sup> July 2000, the day that he had attended at N's house to meet with L. He did not meet with N every day but would speak to him frequently on the telephone.
49. It was put to the Respondent that the firm had acted as a bank when on 6<sup>th</sup> December 1999, payment was made to Hamptons International of £32,500.00 and then a further payment of £42,000.00 was made on 8<sup>th</sup> December 1999 following receipt of monies from Bonfords, where the firm did not have conduct of a relevant transaction and that monies were coming in and going out purely for the benefit of N. A further example was put to the Respondent, namely that on 3<sup>rd</sup> March 2000 £15,000.00 was paid into the firm and immediately was paid out on the same day, and was not related to any legal work. The Respondent denied that the firm had acted as a banker as he had satisfied himself that it was acceptable to treat the monies in this way.
50. The ledger also showed that payments and receipts were made to Dr SN, RN and N. The Respondent confirmed that these variations on the name related to the same

person and that he would have been responsible for authorising these movements of money.

51. The Respondent said that he had not acted in this way for any other client, but had only done so for N because the firm was acting as his solicitors. Further enquiries were not made with N about the monies.
52. The Respondent was asked if, when on 11<sup>th</sup> July 2000 he had been advised that a cheque for £23,000.00 had been dishonoured, he was aware that the Solicitors Accounts Rules required that any deficit had to be made good immediately and that he would be personally be liable for any shortages. The Respondent confirmed that he was so aware. The Respondent confirmed that he waited for 15 days to correct the deficit, which he did when L's matter was completed because he had authority from her to pay money from her account into N's account.
53. It was put to the Respondent that he had provided inconsistent answers to the SRA about his knowledge of N having been convicted of a criminal offence and the fact that he was a struck off solicitor and had been adjudicated bankrupt. The Respondent explained that he had no reason to advise L about N's striking off because L was introduced to him by N as a friend and nothing more. He had no knowledge of any relationship or otherwise between L and N. The Respondent had never had any conversation with L in respect of E Course and therefore had no reason to advise her of N's details. The Respondent did not even know whether L was aware of E Course. The Respondent considered that N's past was his business.
54. The Respondent said that he had not been aware that there was an issue until the overdrawn ledger was drawn to his attention. He had not been aware that N had been struck off until September 2007 when N was arrested. The fact that no client care letter had been sent to L and no copy note of the discussion which took place at N's house had been kept on the file were oversights.
55. The Tribunal put it to the Respondent that Equity Release schemes were usually for members of the older generation so that they could release capital and thereby derive income from their properties. These schemes had to be looked at extremely carefully because of the risk that those entering such schemes might lose their homes and/or their family members might lose their inheritance. The Respondent explained that in hindsight he would have done more to fully explain the position to L but he believed that he did carry out his duties.

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

56. The Applicant explained that there were three allegations before the Tribunal, but that in respect of the first and second allegations the Tribunal need only find one or the other to be substantiated.
57. The Applicant submitted that there was clear evidence that the Respondent acted in a dishonest and deceitful way towards his client and continued to act for her in circumstances where there was a conflict of interest between his other client N and L as well as himself. Whilst it was acknowledged that the Respondent denied any knowledge concerning L's proposed investment into E Course Limited, the



Respondent knew that N's client account with his firm was in debt and therefore funds had to be introduced promptly to ensure that there was no continuing breach of the Solicitors Accounts Rules 1998. In those circumstances, the conflict extended beyond the evident conflict between L and N, to embrace himself. In addition, the Respondent had put himself in an impossible position, and knew what he was doing. Having become aware of N's past, he was under a duty to impart that information to L as she was his client, but he chose not to do so.

58. The case was put as a serious one involving allegations of dishonesty against the Respondent. The Tribunal was referred to the test for dishonesty in the case of Twinsectra v Yardley and others [2002] UKHL 12 in which Lord Hutton explained that:-
- “before there can be a finding of dishonesty it must be established that the defendant’s conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest”.
59. In relation to the third allegation, the conflict of interest between the Respondent, his client L and another client, N, it was submitted that the conflict was so obvious that there was inevitably a failure to act in the client L’s best interests. There was no need for the Tribunal to find the Respondent dishonest for it to find this allegation proved.
60. The facts before the Tribunal stemmed from the conduct of a former solicitor, N, together with whom the Respondent was investing in E Course Limited. The Respondent was a director of E Course Limited and had become a director before N did. N had persuaded L to invest £85,000.00, £60,000 of which to be raised by an equity release transaction conducted by the Respondent on her behalf. L wrote to the Respondent instructing him to act on her behalf in which she said that N had advised her that she could "put your name as my solicitor to act for me in the instance. I understand he has discussed this matter with you and you are aware of the situation". The Respondent was thereby put on notice of the position.
61. It was significant that no client care letter was provided to L. The Respondent indicated that a telephone call took place in which he explained matters to her and the work that he would conduct on her behalf. L denied that such a conversation took place. No attendance note was taken of the call. The Respondent's partner had confirmed that L had given authority for the Respondent to credit N's account. N had sent a letter to the Respondent in L's name which appeared to have been prepared by N. It bore N's postcode. A prudent solicitor would have checked the position with regard to the advance that was being paid to N. The Respondent was under a greater duty to ensure that the transaction was legitimate in view of the fact that N was in business with the Respondent. It was submitted that the Respondent knew that N was a struck off solicitor in 2000 before his retainer with L and he also had known that N had criminal convictions.
62. In his letter to the Law Society dated 2<sup>nd</sup> December 2003 in response to the question "on what date did you - the firm - learn that N had been struck off the Roll", he replied "I cannot be sure of the exact date but I believe that through one of the directors of E Course in mid to late 2000 during my dealings with E Course. I asked

N about this, to which he replied this was a matter of his past and that he had moved on since then". The Respondent was then asked "on what date did you - the firm - learn that N had been convicted of criminal offences?" to which the Respondent explained, "as above. I should also mention that I had no reason to advise L or any other friend of N about this". The Respondent had given reasons why he considered he had no reason to advise L of N's background in the letter of 9<sup>th</sup> January 2004.

63. It was submitted that because the Respondent was aware of N's convictions and his striking off he was consequently "in bed" with N as they were co-directors in E Course. The Applicant submitted that the Respondent, in having that knowledge acted where there was a conflict between the two clients. The Respondent was under a duty to enquire what L's moneys were to be used for. The lending institution's key information document gave warnings that L should seek independent financial advice, sought confirmation that the solicitor had explained to her the contents of the key information document, and the offer of advance and that the mortgage deed and mortgage conditions had been read to her and she had understood them. This document had been handed to L at N's home but no steps had been taken to ensure that any of those warnings were heeded. An undated letter from L addressed to the Respondent confirming that "there will be no other person aged over 17 residing at the property at the date of completion" had been dictated by the Respondent whilst he and L had been at N's house. It was submitted by the Applicant that that meeting which took place at N's house was a strange meeting in that there was no opportunity for L to discuss any of the issues surrounding the equity release transaction or the potential consequences of her entering it.
64. Reference had been made to the financial transactions recorded on the client ledgers but the Applicant made it clear that a breach of the Solicitors Accounts Rules, had not been alleged but rather the case was put in far more serious terms. Consideration had to be given to the ledgers and the way in which the transaction was handled as this was material to determine whether there was a conflict of interest and whether or not the Respondent had acted dishonestly and/or in a deceitful way.
65. On 26<sup>th</sup> July 2000 the mortgage advance moneys received by the firm into its client account for L were simultaneously transferred to an account in the name of S N, who was the same person as N. Up to that point the client account had been in debit, a clear breach of the Solicitors Accounts Rules, as the result of which other unrelated clients were subsidising N up to £10,000.00. That had not been the first time that client account had been in debit. On 6<sup>th</sup> December 1999 a payment had been made to Hamptons representing the rent due for N's home. This account remained in debit without explanation for some time until moneys came in. It was submitted that the Respondent was playing "fast and loose" with client account and this provided further evidence of the "tight and cosy" relationship that the Respondent allowed himself to have with N. The client account deficiency had been corrected by a payment to regularise the position.
66. The Applicant submitted that the Respondent was under a duty to his client L to make further enquiries from her to establish the reason for this request, but no evidence was provided that he did.

67. The Respondent's case was that he did not know L was going to invest in a company of which he was a director and shareholder together with N. The very fact that N had introduced L to him on the basis that the Respondent knew of the situation, that N was a struck off solicitor and had criminal convictions meant that he was under a duty to investigate far more closely L's authority for him to forward the £60,000.00 advanced on her property to N "absolutely and unconditionally".
68. The Applicant submitted that there was clear evidence that the Respondent acted in a dishonest and deceitful way towards his client and continued to act for her in circumstances where there was a conflict of interest between his other client N and L as well as himself. Whilst it was acknowledged that the Respondent denied any knowledge concerning L's proposed investment into E Course Limited, the Respondent knew that N's client account with his firm was in debit and therefore funds had to be introduced promptly to ensure that there was no continuing breach of the Solicitors Accounts Rules 1998. In those circumstances, the conflict extended beyond the evident conflict between L and N, to embrace himself. In addition, the Respondent had put himself in an impossible position, and knew what he was doing. Having become aware of N's past, he was under a duty to impart that information to L as she was his client, but he chose not to do so.
69. The Respondent had made a number of written responses to enquiries made by The Law Society about his connection with N which contained a number of discrepancies.
70. The Tribunal was invited to find the allegations had been proved to the requisite standard and that the Respondent's conduct had been dishonest.

### **The Submissions of the Respondent**

71. The Tribunal was asked to consider the rogue element of N in the transactions, he was a man who had duped the Respondent and had also misled L. N had taken a great deal of money after establishing their trust.
72. The Respondent did not take as active a part in E Course as claimed by L and the serious allegation of deceit and dishonesty had not been proved. The Respondent had at worst been naïve but he had not been dishonest.
73. The Respondent had explained the apparent inconsistencies in his explanations provided to the Law Society. The impact of his arrest and having to endure the criminal justice process had affected the Respondent deeply.

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

74. The Tribunal listened very carefully to the evidence and had read the papers prior to the hearing. The Tribunal regarded the evidence from L and the Respondent as particularly important.
75. L and the Respondent had provided materially different accounts. The Tribunal had to decide what weight was to be attached to L's evidence and that of the Respondent. Having seen her in the witness box, the Tribunal found that L was an honest and reliable witness. Having seen and heard the Respondent give evidence the Tribunal

found the Respondent to be unreliable, evasive and lacking in credibility in significant parts of his evidence.

76. The Tribunal believed L's evidence and her account of the meeting that took place on 14<sup>th</sup> July 2000 at N's house. The Tribunal concluded that the Respondent knew full well that L was intended as an investor in E Course Limited, of which he was a director, and in which he had an interest. He was to share 70% of the profits after having himself invested £20,000.00. The Respondent's conduct at the 14<sup>th</sup> July meeting fell far below the standards expected of a solicitor and he had little regard for the duties that he owed to L in his capacity as her solicitor.
77. The Tribunal concluded that the Respondent had failed to act in the best interests of the client, L. He had failed to advise L of the risks involved in the investment. It emerged during the evidence that there were serious failings in the running of the Respondent's firm which resulted in a deficit of £10,000.00 on client account which arose in connection with N. The overdrawn position was only rectified after receiving L's equity release moneys.
78. The Respondent had allowed the client account to be used in the nature of a bank. This had not been an allegation before the Tribunal but it was part of the background. This served to indicate that L might well be putting at risk the monies that she had obtained through the equity release scheme.
79. The Tribunal found the first and third allegations to have been substantiated. The Tribunal did not accept that the Respondent was unaware that there was a high degree of probability, if he did not actually know, that L's moneys were to be used for the purposes of E Course Limited
80. The Tribunal fully considered the two part test for dishonesty as set out in Twinsectra v Yardley. The Tribunal found that the Respondent acted towards his client L in a deceitful and dishonest way by persuading her to invest in a business of which he was a director which gave rise to a conflict of interest and in failing to notify her of N's unfortunate history, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard the Respondent give oral evidence and having heard his explanation the Tribunal was also satisfied so as to be sure that the Respondent knew that what he was doing was dishonest by these same standards.
81. Even if the Tribunal had not found the Respondent to be dishonest, the Tribunal noted that the Respondent had a large financial interest in ensuring that the investment from L was obtained, particularly as he was devoting a great deal of time to the business of E Course Ltd and had himself invested £20,000.00; he had a vested interest in the money being obtained from any source to ensure that the venture could be progressed. He was aware of N's background and had a personal business relationship with N. The Respondent failed to bring to the attention of L the obvious risk that she was running in dealing with N when he knew that a £23,000 cheque from N had been referred marked "refer to drawer" before 14<sup>th</sup> July 2000 and the overdrawn position would be rectified only by L's money being used to meet the shortfall. To accept instructions from L in those circumstances was such a serious failure to meet the fundamental duties as a solicitor and that he had towards L, the Tribunal would have taken the gravest view of the Respondent's conduct.

82. The Tribunal regarded as simply incomprehensible the explanations provided by the Respondent about the way in which the client account had become overdrawn and the way in which he dealt with dishonoured cheques. The Tribunal considered that the Respondent had provided misleading answers. Initially he explained that the procedure for sending out letters where there had been a returned cheque was a relaxed procedure but later he agreed upon cross-examination that shortages had to be made good immediately. The Respondent's evidence in this regard was poor and unreliable.
83. The Tribunal noted the Respondent's explanation that he had been "sucked in" but considered that he had been up to no good. There were several pieces of conclusive evidence against the Respondent. The Tribunal was entirely satisfied that the Respondent knew that L was to invest in E Course Limited.
84. There was the clearest possible conflict of interest between L, N and the Respondent which the Respondent said he failed to see. This was simply not credible. The complete lack of advice to L at any stage was disgraceful especially where the lay client was putting her property and/or other savings at risk.
85. Mitigation was provided on the Respondent's behalf and the Tribunal has taken this into account. The Tribunal felt that this was a case of such seriousness that the appropriate and proportionate sanction to be imposed upon the Respondent in order to protect the public and maintain the good reputation of the solicitors' profession was to strike off the Respondent from the Roll. The Tribunal ordered costs in the sum of £10,667.00 to be paid by the Respondent. The Applicant had sought costs in this sum. The Tribunal considered it right that the Respondent should bear the Applicant's costs and that the figure sought was reasonable, and in order to save the expenditure of further time and cost, fixed those costs in the figure sought.

Dated this 1<sup>st</sup> day of December 2008  
On behalf of the Tribunal

D J Leverton  
Chairman