

IN THE MATTER OF VIRESH PATEL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D Potts (in the chair)
Mr J R C Clitheroe
Mrs C Pickering

Date of Hearing: 9th December 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 Annabel Sarah de Mussenden Leathes solicitor with the firm of Penningtons LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR on 31st March 2008 that Viresh Patel solicitor of 69-71 High Street, Thornton Heath, Surrey CR7 8RY, 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 Applicant made a supplementary statement dated 8th October 2008 containing further allegations.

At the opening of the hearing the Applicant sought to withdraw certain of the allegations and to amend allegations contained both in the original and supplementary statements. The Respondent agreed and the Tribunal consented thereto. The allegations set out below are in the agreed amended form.

The allegations were that the Respondent had been guilty of professional misconduct in that:-

1. He failed to comply, within a reasonable time, with an undertaking to provide a DS1 form from his client ("Bankside complaint").

2. He failed to comply, within a reasonable time, with an undertaking to discharge on behalf of his client monies owed on completion of a house sale (“Rowe Radcliffe complaint”).
3. [Withdrawn]
4. He acted in a conflict of interest situation involving the sale of 66 L Road, (“the Property”) by preferring the interest of one client over another.
5. [Withdrawn]
6. He failed to comply with an order made under section 44(b) Solicitors Act 1974 (as amended) by failing to provide all documents in his or his firm’s possession, namely his whole original file of papers and ledger sheets in connection with the sale of the Property by the deadline of 14 December 2007 (extended from 12 November 2007).
7. He acted without instructions from his client, on the basis of third party instructions, contrary to instructions, when he failed to account to Mr M for the net sale proceeds within a reasonable time of completion of the sale of the Property.
8. He failed to account for interest following the sale of the Property, when he paid the sale proceeds to Mr M, in breach of Rule 24(2) of the Solicitors’ Accounts Rules 1998.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th December 2008 when Annabel Sarah de Mussenden Leathes appeared as the Applicant and the Respondent was represented by Robert Roscoe of Victor Lissack, Roscoe & Coleman, 70 Marylebone Lane, London W1U 2PQ.

The Evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent, Viresh Patel of 69/71 High Street, Thornton Heath, Surrey, CR7 8RY, 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 £10,000.00.

The facts are set out in paragraphs 1 – 50 hereunder:-

1. The Respondent, born in 1964, was admitted as a solicitor in 1995. At the material times he practised as a partner at DKLL at High Street, Thornton Heath, Surrey. The firm incorporated in 2007 and became a limited liability partnership on 6th February 2007. The Respondent at the time of the hearing was a member of the practice which had changed its name to Drummonds Kirkwood LLP.

Bankside Property Complaint

2. Bankside Property Limited Solicitors ("Bankside") made complaint to the Law Society. Bankside, acting for the purchasers of a property, had asked DKLL (acting for the vendor) in a letter of 1st July 2005 for confirmation that "all arrears in respect of service charges and major works account will be discharged out of the proceeds of sale on completion". The Respondent's response was "confirmed".
3. On 21st November 2005, Bankside sent DKLL a letter addressed to the purchaser from Merton Council (the landlord) showing that the arrears in respect of major works amounted to £6,216.91.
4. On 4th May 2006 the Respondent informed Bankside that he had had difficulties in contacting his clients and he would revert to Bankside within 7 days.
5. On 2nd June 2006, Bankside wrote to the senior partner at DKLL asking for an update, saying:-

"the London Borough of Merton have been in contact with our client and have informed her that they will shortly be taking steps to commence legal proceedings to recover the arrears from our client".
6. The Law Society referred the matter to the senior partner at DKLL and The Law Society instructed a solicitor to deal with the matter on its behalf.
7. In September and October 2006, there was ongoing correspondence between The Law Society's solicitors, the Respondent and the partners of DKLL. DKLL discharged the major works' arrears by cheque payable to London Borough of Merton of 6th October 2006, despite the senior partner's expressed opinion that no undertaking had been given.

Rowe Radcliffe Complaint

8. By a letter dated 16th March 2006 the Respondent had written to Rowe Radcliffe Solicitors stating:-

"as consideration of the DS1s please accept this letter as our undertaking to provide you with a DS1 from [his client] who has an equitable charge over the property. The form is to be provided within four weeks of the date of this letter".
9. By letter of 9th May 2006 Rowe Radcliffe reported to the Law Society that the undertaking had not been fulfilled.
10. Between July 2006 and September 2006, there was correspondence between the Law Society's solicitor and the Respondent about the matter.
11. By a letter dated 14th September 2006 Rowe Radcliffe informed the Law Society's solicitor that the matter had:-

“been resolved satisfactorily and [my] client no longer wishes to pursue the complaint previously made. [We] can confirm that Mr Patel has shown [us] every co-operation in endeavouring to resolve the matter”.

12. On 15th September 2006 the senior partner of DKLL wrote to the Law Society’s solicitor to explain that the Respondent had been instructed by Mr S in the sale of a freehold property to a buyer represented by Rowe Radcliffe. A first legal charge was secured on the property by Bank of Scotland. A restriction in favour of ID was registered. Contracts were exchanged on 17th October 2005 with completion fixed for 24th October 2005. Following completion the Respondent sent forms DS1 and RX4 with the Transfer on 2nd November to Rowe Radcliffe, concluding the matter. After the conclusion of the matter an equitable charge secured by MW and dated 1st October 2004, was registered at the Land Registry. In the light of negotiations between several parties (including the buyer and the seller) which involved a series of properties, the Respondent had been confident that he could have the equitable charge (registered on 1st October) discharged. The various matters negotiated were not concluded as promptly as the parties to the negotiation (or the two solicitors) envisaged so that the Respondent was unable to comply with his undertaking promptly. The undertaking was subsequently discharged and the matter had been resolved to the satisfaction of Rowe Radcliffe.
13. A former client of the Respondent, Mr M, had submitted a complaint form dated 17th May 2007 to The Legal Complaints Service in relation to the role played by the Respondent in the sale of a property. Mr M had explained to the LCS that Mr O and the Rev R had bought the property together on a “hand-shake” deal. The Rev R was the sole registered proprietor. The Rev R was married to Mr M’s sister. The Rev R died and Mr M was the executor of his estate. The Rev R’s widow needed the proceeds of the sale of the property to pay off her own mortgage. Mr M had asked Mr O if he could recommend a London-based lawyer to undertake the conveyancing and he recommended the Respondent. The Respondent had dealt with the sale but had refused to pay the money to Mr M. He had paid the sale proceeds to Mr O.
14. The sale transaction had in fact taken the following course. By a letter dated 28th April 2005, Levys Solicitors, acting for the purchaser, contacted DKLL about the purchase of the property from DKLL’s client, Mr O.
15. The Respondent sent Mr O a client care letter on 5th May 2005. Also on 5th May 2005, the Respondent wrote to Levys confirming that he was instructed. He subsequently pressed Mr O to deal with matters referred to in his 5th May letter.
16. The Respondent obtained office copy entries from HM Land Registry on 26th May 2005 which recorded that Rev R was the sole registered proprietor.
17. On 1st June 2005 the Respondent wrote to Mr O asking him for the account number for the mortgage secured on the property.
18. On the same date, the Respondent wrote to Levys sending a draft contract and pre-contract documents.
19. By a letter dated 2nd June 2005 Levys asked the Respondent to deduce Mr O’s title to the property, as they had noted that Rev R was the registered proprietor.

20. Documents sent with a Land Registry letter of 6th October 2005 confirmed that the Rev R continued to be the registered proprietor of the property.
21. On 10th October 2005, Mr M wrote to the Respondent in the following terms:-
- “Dear Sir
- I am [the Rev R’s] brother in law and also his legal (sic) appointed executor.
- I have been advised that his partner in an house investment (sic) has instructed you in the sale of [the property]. Please be advised I am happy to cooperate with the sale as the legal owner of this property.
- Please revert at all time to me directly.
- Please arrange (sic) for all funds to be back transferred (sic) to [Rev R’s] estate account.
- Please return death cert + Grant ASAP.”
22. Mr M enclosed a copy of the death certificate, a copy of the grant of representation and completed client sale questionnaire (which had been provided to Mr O on 5th May 2005).
23. By a letter dated 27th October 2005 the Respondent forwarded to Levys various documents. In the heading of the letter, the Respondent referred to “Our client Mr M - Executor of Mr JR”. Both names were spelt incorrectly. No explanation for the change in client was provided.
24. On 10th November 2005 Mr O wrote to Mr M with a copy to a Rev E, the Rev R’s widow and the Respondent. The letter stated that Mr M and Mr O had agreed that on completion of the sale of the Property, £3,000 would be payable to Mr M. The letter also stated that the balance, after expenses, would be paid to Mr O and the Rev E, being their “capital invested and left over of the profit shared”.
25. Under cover of a letter dated 14th November 2005 the Respondent sent Mr M the contract and the transfer for signature. The Respondent asked Mr M to confirm that “from the sale proceeds £3,000 was to be sent direct to [Mr M] and the balance to be sent to Mr O”. This letter was sent again on 21st November 2005. The Respondent followed up the letter again on 1st December 2005.
26. Mr M wrote to the Respondent on 4th December 2005, stating “I the executor of (Rev R) give you as my lawyer and more importantly the lawyer paid for by the estate of [Rev R] to contract the sale of the property..., the power to sell the property on our behalf”. Mr M said that the Probate Office had informed him that all assets of the estate must first be collected and then all registered creditors must be paid. Following that, the residue could be used by Rev R’s wife. Mr M said that he accepted Mr O’s interest because he had prior knowledge of this deal with Rev R but that it was “not legal” for him to pay him prior to other creditors. Mr M said that his sister (Rev R’s wife) was also aware of the arrangement and intended to pay Mr O from the estate. Mr M confirmed “all funds must legally be paid to [“Mr AM”] executor of Rev R.

27. By a letter dated 10th February 2006, the Respondent confirmed to Levys the simultaneous exchange of contracts and completion. The contract recorded LE Limited as the buyer and “Mr M (misspelt) executor of Rev R (misspelt) as the seller.
28. The statement of account for the transaction showed a balance due to the executor of Rev R’s estate of £21,465.76 after payment of solicitor’s fees of £192.25.
29. On 21st June 2006, Scottish solicitors instructed by Mr M, Ballantyne and Copland, wrote to the Respondent to request that the proceeds of the sale of the property be forwarded, as per his previous instructions, within 7 days of receipt of their letter.
30. The Respondent replied to Ballantyne and Copland on 23rd June 2006 saying:-

“Your client will be fully aware that a substantial sum of money is also owed to Mr O... We are happy to have this matter resolved and would therefore be grateful for your assistance”.

31. By a letter dated 27th July 2006, Ballantyne and Copland wrote to the Respondent saying that it appeared to them that there might be a conflict of interest in connection with his involvement with the matter. The letter pointed out that the Respondent had been instructed to sell the house on behalf of the executor of the estate and not Mr O and/or Mr E.
32. By a letter dated 24th August 2006, Ballantyne and Copland followed up their letter dated 27th July 2006. On 9th October 2006 the Respondent wrote to Ballantyne and Copland, saying:-

“As I pointed out the executor has previously indicated that the property which was sold was held by the deceased on trust for three parties.”

He confirmed that the funds were held on behalf of the executor.

33. After a four month break in correspondence, on 6th February 2007, Ballantyne and Copland wrote to the Respondent. Amongst other things, Ballantyne and Copland said, “Our client confirms (as executor) that he has received nothing in writing which would amount to a claim on the estate. Therefore, as executor, he cannot simply distribute monies from the estate without receiving any written requests for payment. You will appreciate that our client has certain duties as executor and has to satisfy the administration of probate. Therefore we hereby make a final request that you forward the monies currently being held by you, to us, and advise your clients to issue a written demand for payment of sums which they believe are due.”
34. By a letter dated 28th March 2007, Ballantyne and Copland wrote to the Respondent, informing him that unless they heard from him by return, they were instructed to engage the services of English agents to recover the monies due to their client.
35. On 10th April 2007, the Respondent wrote to Ballantyne and Copland and said that his client, Mr O, had been out of the country and that he was advising him to forward the funds to Ballantyne and Copland, “on the basis that there are sufficient proceeds from the estate to deal with our client’s claim”.

36. On 12th April 2007, Ballantyne and Copland wrote to the Respondent to say that they looked forward to receiving the funds within seven days of that letter. On 25th April 2007 they wrote again, asking for further information about the payment of the funds.
37. On 22nd May 2007, Ballantyne and Copland wrote to the Respondent confirming they were in receipt of £21,465.76 and asking the Respondent to confirm that it was the proceeds of the sale of the property.
38. On 31st May 2007, the Respondent wrote to Ballantyne and Copland confirming that the sum transferred did represent the proceeds of the sale of the property. The letter also enclosed the completion statement. No payment was made for interest on the proceeds of the sale.
39. On 3rd July 2007, the Respondent responded to the Legal Complaints Services' enquiry about this matter. The Respondent denied that confidentiality had been breached as he did not believe that he had divulged confidential information to Mr O. He said that it was acknowledged by Mr M that sale moneys were due to Mr O, as a joint partner with the deceased. The Respondent acknowledged that he did hold back the proceeds of the sale of the property from Mr M but said that after discussion with Mr M's solicitors, he sent the funds to them and informed Mr O that he should make a claim against the Rev R's estate for the money he believed to be due to him. The Respondent confirmed that he would calculate interest accruing on the proceeds while his firm held them and forward it to Mr M's solicitors. The Respondent stated:-

“I found my situation was compromised and at this stage the issue of conflict was becoming apparent and I did request of Mr O that the funds be returned”.

The Respondent admitted that there had been a delay in corresponding with Mr M and/or his solicitors and he apologised for this. He confirmed that he was happy to deal with Mr M's request that he contribute towards his legal costs.

40. On 29th October 2007 the Solicitors Regulation Authority (“SRA”), under S.44(B) of the Solicitors Act 1974 required the Respondent to produce within 14 days, all documents in his or his firm's possession relating to this matter. On 13th November 2007, the Respondent telephoned the SRA to inform them that he had not heard anything from them since their initial letter in September so the SRA forwarded by fax and post copies of their 29th October letter and the S.44(B) Notice.
41. Later that day, the Respondent telephoned the SRA again and asked for 14 days in which to provide his comprehensive response.
42. With the documents provided by the Respondent in response to the Section 44(B) order the Respondent provided a letter of 27th November 2007 in which he gave the Respondent provided his response to the SRA's letter of 29th October. The Respondent pointed out that DKLL solicitors were acting in the matter before that firm was placed in administration, following which Drummonds Kirkwood LLP acquired the practice on 6th March 2007. The Respondent also confirmed that the firm had discharged Mr M's legal costs, he had been compensated and the full proceeds of sale, together with the interest due, had been paid.

43. In its letter dated 4th December 2007 the SRA informed the Respondent that there were gaps in the documentation provided by him; correspondence and telephone attendance notes between the Respondent and Ballantyne and Copland and between the Respondent and Mr M appeared to be missing. There appeared to be gaps for periods of time in the correspondence, for example, between June and October 2005, December 2005 and February 2006 and following 10th February 2006. There were also no ledgers.
44. On 14th December 2007, the Respondent wrote sending correspondence which he said he had not appreciated was required by the SRA. The Respondent also said that he had not taken a note of his conversation with Mr M in 2005 in which they discussed the moral duty to make payment to Mr O.
45. Following telephone conversations with the SRA, the Respondent, by a letter dated 19th December 2007 confirmed that he sent the original client care letter to Mr O who then forwarded it on to Mr M.
46. On 11th February 2008 the SRA wrote to the Respondent with a summary of the matter and an analysis of the issues. The Respondent was asked to provide a full answer to the issues raised within 14 days and was also asked for further information and documents. The Respondent was warned that failure to provide an adequate reply might lead to disciplinary action.
47. On 3rd March 2008 the SRA wrote to the Respondent again asking for a reply within the next 8 days. A copy of the letter had been sent to another member of the firm. An extension of the time to reply was granted to 14th March 2008.
48. On 14th March 2008 the Respondent asked for a further extension of the deadline to 17th March 2008. This extension was granted.
49. By a letter dated 17th March 2008 the Respondent said that he had decided to obtain counsel's opinion in the matter before making his response.
50. A report for an adjudication was prepared and copied to the Respondent. In his letter of 18th April 2008 the Respondent provided his response in which he denied that he had acted in a situation of conflict of interest. He denied specific breaches of the professional principles set out in the Guide to the Professional Conduct of Solicitors (8th Edition) 1999. He also denied that he acted in breach of confidentiality by disclosing details of the completion of the sale of the property to Mr O and he said that he believed that all documents required by the SRA had been provided and apologised for the delay. He said that he accepted that Mr M did not receive the full sale proceeds until 16th May 2007 and said that there had been an issue regarding the distribution of the net sale proceeds. The Respondent denied that he acted without client's instructions or on the basis of third party instructions.

The Submissions of the Applicant

51. The Respondent had admitted the allegations and the Applicant had nothing to add to the facts which had been placed before the Tribunal.

The Submissions of the Respondent

52. The Respondent had admitted the allegations and the Tribunal was invited to consider them against the background of considerable problems with the practice of DKLL and the Respondent's personal problems.
53. The Tribunal was invited to consider the two breaches of undertaking in isolation. If each had occurred separately it was unlikely that the matter would have been brought before the Tribunal. Both of the undertakings had been discharged, albeit somewhat late.
54. In the matter of the failure to discharge arrears of a landlord's major work charges the property concerned had been the subject of a possession order and the Respondent had properly accounted for all moneys due, including the repayment of the discount granted by London Borough of Merton when Mr S had purchased the property, a council house. Mr S had, because of the background, not been an easy person to trace and Mr S had in fact benefited from a substantial overpayment when the Respondent forgot to deduct the arrears from the proceeds of sale. The Respondent had reported the matter to the equity partners in the firm, he being a salaried partner at the time, and it had taken some time for the matter to be resolved when it was out of the Respondent's hands.
55. With regard to the second undertaking, it had been given following the sale of a property by Mr S to Messrs M & W. All three men were well known to each other. Each of them was separately represented. The restriction placed on the register by Mr W had not been on the register at the time when the property sale had been completed. A position of stalemate had been reached between the three parties concerned and their dispute had taken time to resolve.
56. No dishonesty had been alleged against the Respondent and there had been no loss to any client.
57. With regard to the property of which the Rev R was the registered proprietor, that had been an investment property purchased by a group of friends. One of them had been Mr R, Mr O was another and there had been a third investor. Mr O had instructed the Respondent in the sale of the property. The Respondent had expected the registered proprietor to be Mr O. The accurate position had been drawn to his attention only when he received the letter from Mr M stating that he was the executor of the Rev R who had died. The Respondent had not seen any problem in this connection.
58. The Respondent had come to accept that there was a risk of conflict of interest between the parties which should have been evaluated and considered, however both Mr O and Mr M had wanted the property to be sold. There was no mortgage involved.
59. Completion should have taken place in December 2005 but the sale was not completed until 10th February 2006. It was at that stage that problems arose.
60. The Respondent's duty was clear. The proceeds of sale should have gone to the executor of the registered proprietor and Mr O should have claimed his proportion

from the estate. Unfortunately, the Respondent had frozen “like a rabbit in headlights”. He did nothing.

61. Mr M took advice from Scottish solicitors who got in touch with the Respondent. Eventually the money had been sent by DKLL on 25th April 2007. There followed an issue about costs that had been incurred. Finally, interest on the moneys held by the firm was paid in November 2007 totalling £710.00.
62. As the result of an Order made by a Solicitors Regulation Authority Adjudicator £500.00 compensation and £210.00 in costs had been ordered to be paid by the successor firm to DKLL of which the Respondent was an equity partner.
63. The Respondent accepted that a conflict of interest had arisen. The Respondent also accepted that he had failed to comply with the S.44(B) Notice which had been served upon him.
64. The Tribunal was invited to take into account the Respondent’s mitigating circumstances which have been set out below.
65. The Respondent had been born in Uganda. He was a married man with two daughters aged 14 and 12.
66. The Respondent was involved in raising funds since 1995 for various hospices in and around Greater London. He was on the board of management at the Indian YMCA Youth Hostel.
67. The Respondent had been a salaried partner at DKLL. In December 2005 the salaried partners received bankruptcy petitions at their home addresses from HMRC demanding payments in excess of £300,000.00. The two equity partners confirmed that they had sorted out the problem with HMRC but the pressure of work had begun to mount.
68. At the same time the Respondent’s father was seriously ill. The Respondent’s family were very close. The journeys to hospital and working at the same time, took its toll.
69. In December 2006 the four salaried partners at DKLL were asked to attend a meeting on Boxing Day at the Epsom office by the equity partners. There they were asked to sign papers and enter into an IVA. They were shocked at the amount of the incurred debt and decided that they needed time to think things over. They refused to sign and instructed their own solicitors.
70. The salaried partners pursued their claim against HMRC that as salaried partners they were not responsible for the debt. They spent some £20,000.00 in legal fees and fortunately succeeded in their case.
71. The salaried partners then decided to purchase the practice of DKLL from the administrators. Unfortunately three of the four salaried partners subsequently decided that they could not afford to purchase the practice at the eleventh hour (the purchase price being £400,000.00). The Respondent had arranged a loan of £225,000.00 but could not purchase the business alone. The staff were loyal, and he felt that because of this he needed to find someone else to join him in the purchase. He was introduced

to Mr S, a barrister of some 30 years standing. He had qualified as a solicitor in the previous 18 months. It was agreed that he would join the Respondent in the purchase of the practice. Mr S agreed with the administrators that he would pay the balance of the purchase price, £150,000.00, in 3 quarterly payments. The administrators took a debenture over Drummonds Kirkwood LLP. The practice was purchased in March 2007.

72. The Respondent and Mr S also acquired two other practices in Victoria and Sutton shortly thereafter. These acquisitions appeared viable at the time.
73. The Respondent had found himself running between practices, seeing to his father and looking after a family. The pressure was building. Mr S had not contributed the funds initially agreed with the administrators. The funds had to be paid to the administrators from the office account of the practice on the quarter days initially agreed. As a result great pressure was placed on the financial viability of Drummonds Kirkwood LLP. The partnership was failing and the previous good relationship that the Respondent had with Mr S to all intents and purposes had broken down, culminating in a series of arguments.
74. In July 2008 Drummonds Kirkwood LLP was placed into administration. The firm was purchased by other practices and the Respondent worked as a consultant for E & J Law LLP.
75. During his time as a member of Drummonds Kirkwood the Respondent took very little in drawings as things were tight. The Respondent had debts and his financial position was precarious. His motor car had recently been repossessed. His earnings at E & J Law LLP were based on his billing and were modest.
76. The Respondent had placed a number of written testimonials in support of him before the Tribunal all of which attested to his competence and honesty. His wife had also addressed a letter "To whom it may concern" explaining how the Respondent's difficulties had had an impact on his health and how he had not been able to take a holiday.

The Findings of the Tribunal

77. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested. No allegation of dishonesty had been made against the Respondent and there could not, of course, be any finding that he had been dishonest. Nevertheless the Tribunal was deeply concerned by the Respondent's behaviour. He appeared to have given undertakings without any due thought as to their appropriateness or whether he would certainly be in a position to discharge them.
78. The Tribunal accepted that the Respondent made a genuine mistake in respect of the failure to hold back sufficient money to discharge the landlord's charges for major works on the sale of a property but it was nevertheless the case that the purchaser's solicitor had asked a question about the payment of the arrears for major works and those matters had specifically been drawn to the Respondent's attention. The Tribunal was not told of any steps that the Respondent had taken to ensure that the purchaser, to whom the undertaking had been given, was not caused distress or anxiety by the breach of the undertaking. The Respondent appeared rather to have

shrugged his shoulders and to have passed the matter to equity partners in the firm thereby seeking to absolve himself of responsibility.

79. With regard to the second undertaking to remove a restriction from the Land Register, it was extraordinary that that undertaking had been given after the completion of the sale which he had conducted on behalf of a vendor. The Respondent appeared to have allowed the fact that he knew that all of the parties to the transaction knew each other entirely to have clouded his judgment. It was perhaps a matter that should have been resolved between those parties and not a matter which the vendor's solicitor could seek to resolve by giving an undertaking which he was in no position to be certain that he could discharge. At best the Respondent's giving of that undertaking was naïve and foolish.
80. The Tribunal considered that the Respondent exercised a serious lack of good judgment when he acted in the sale of the property of which the Rev R was registered proprietor. He was immediately alerted to the potential for difficulty when he discovered that the client instructing him was not the registered proprietor of the property. He had been told that the registered proprietor had died which further complicated matters. Whilst it did appear that Mr O and Mr M had notified the Respondent that they agreed that the property should be sold, he had also been notified that a third party, Mr E, apparently had an interest in the property. The Respondent could not have been certain of the position and should have insisted that each of the interested parties was separately represented and that each of them had consented to the sale and how the proceeds of sale were to be distributed before exchanging contracts.
81. It was said on the Respondent's behalf that after finding himself in difficulty he behaved like a "rabbit caught in the headlights". It was the Tribunal's view that having achieved a sale of the property and finding himself in possession of the proceeds of sale he should at least have taken formal advice and told Mr O and Mr M that they should be separately represented and should have tried to make contact with Mr E to advise him also to seek separate representation.
82. The Tribunal was deeply dismayed to learn that the Respondent did not provide a full set of papers to the Solicitors Complaints Service when he was required to do so by an Order made under S.44 (B) of the Solicitors Act 1974.
83. When eventually the Respondent did decide to pay over the monies to Mr M he did so apparently without any thought for the fact that his firm had held the money for some time and that interest should be paid.
84. The Respondent had offered in mitigation the fact that his father had been seriously ill. Of course the Tribunal had very great sympathy for the Respondent in that connection but a solicitor as a professional person has to recognise that however difficult his personal circumstances may be, he cannot abdicate his duties and responsibilities as a solicitor.
85. The Tribunal has also taken into account the unfortunate situation which apparently existed at DKLL and how worrying it must have been for the salaried partners when Her Majesty's Revenue and Customs looked to them to discharge a very large liability.

86. The Tribunal, mindful of its first duty to protect the public and also of its duty to protect the good reputation of the solicitors' profession had to ask itself whether the Respondent was fit to be a solicitor. In this context the Tribunal considered the Respondent had no proper grasp at all of the professional responsibilities of a practising solicitor and he therefore posed to a high degree a hazard to the public and impaired the reputation of the profession.
87. The Tribunal considered the sanctions available to it. It considered that the matters before it were too serious and the public would not be protected if it were to impose a reprimand or fine upon the Respondent.
88. The Tribunal considered suspending the Respondent from practice. This was not a case of for instance illness where an indefinite suspension might be appropriate and whether or not suspension from practice for a fixed period might have reflected the seriousness of the Respondent's misconduct. The Tribunal was mindful that it would be open to the Respondent to return to practice after any period of suspension imposed on him and the Tribunal had no confidence whatsoever that at that stage his attitude to his duties and obligations as a solicitor and the wisdom with which he conducted his professional life would have improved.
89. The Tribunal concluded in all the circumstances of the case that the appropriate and proportionate sanction to impose in order fully to protect the public and to protect the good reputation of the solicitors' profession was to impose a striking off order on the Respondent.
90. The Tribunal recognised that the imposition of this sanction was harsh on the individual, but it was necessary to protect the public and the Tribunal had to take the view that the protection of the public and the collective reputation of the solicitors' profession was more important than the fortunes of an individual.
91. It was right in the circumstances that the Respondent should bear the costs of and incidental to the application and enquiry and ordered that he do pay the costs fixed in the sum of £10,000.00.

Dated this 3rd day of March 2009

On behalf of the Tribunal

D Potts
Chairman