No. 9961-2008

IN THE MATTER OF JAMES O`NEILL ROBB, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. N. Pearson (in the chair)
Mr. R. B. Bamford
Mr. D. E. Marlow

Date of Hearing: 29th January 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Margaret Eleanor Bromley solicitor of Bevan Brittan LLP Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ on 17th April 2008 that James O'Neill Robb of Clent, Stourbridge, solicitor might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that contrary to the Solicitors' Practice Rules 1990 he did something in the course of acting as a solicitor which compromised or impaired or was likely to compromise or impair his independence or integrity; his good repute or that of the solicitors' profession; his duty to the court, namely:-

(1) He provided to a beneficiary under a Will two versions of an attendance note which purported to be contemporaneous when they were not;

(2) He made a Witness Statement in proceedings in which he was a party which was misleading;

(3) He allowed to be served a Reply and Defence to Counterclaim which contained information which was misleading.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 29th January 2009 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent was represented by RF Ashton solicitor of Hacking Ashton LLP, Berkeley Court, Borough Road, Newcastle-under-Lyme, ST5 1TT.

The evidence before the Tribunal included the admission of the Respondent to allegation 1 including the allegation of dishonesty in relation thereto and his partial admissions to allegations 2 and 3 but his denial of dishonesty in relation to those allegations. The Respondent gave oral evidence.

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

The Tribunal Orders that the respondent, James O'Neill Robb of Clent, Stourbridge, 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 £7,750.00.

The facts are set out in paragraphs 1 – 28 hereunder:

1. The Respondent, born in 1944, was admitted as a solicitor in 1970 and his name remained on the Roll of Solicitors. At all material times the Respondent practised in partnership as George Green Solicitors, 195 High Street, Cradley Heath, West Midlands B64 5HW.

2. The firm of George Green Solicitors had acted for Miss P since about 1991 and during that time had made several Wills for her.

3. The Respondent had first been appointed as an executor of Miss P in the Will dated 1st February 1996 and he was appointed as executor in each successive Will together with Miss WP.

4. The Wills of 1st February 1996 and 16th October 1997 left a share of the residuary estate to the children of Mr NR and his wife, GR.

5. On 7th November 2001 the Respondent attended Miss P at her home and took instructions for a new Will. On 15th November 2001 the Respondent wrote to Miss P enclosing a draft Will. The Respondent then spoke to Miss P on 5th December 2001 when she indicated she was still giving the Will some thought.

6. The next contact between Miss P and the Respondent was on 21st March 2002 when Miss P gave some instructions to alter the draft Will.

7. The Respondent then attended Miss P at her home on 28th March 2002 when the Will was executed.

8. Miss P died on 10th April 2003.

9. Mr NR was a nephew of Miss P. He was married to G and by the date of Miss P's death they had four children. Mr R had been married previously and he had one daughter, L from that previous marriage.

10. The Respondent sent Mr R a copy of Miss P's Will on 10th April 2003. Between 24th April 2003 and June 2003 Mr R wrote to the Respondent and separately to the other

Executor, Miss WP, raising various issues concerning the Will and the way that the Estate was being dealt with. He also requested copies of all Miss P's previous Wills and copies of the Will file, correspondence and attendance notes.

11. On 10th November 2003 H & Sons Solicitors instructed by the Respondent and Miss WP wrote to Mr R in response to his letters of 2nd and 16th May to Miss WP and 24th June to the Respondent. With their letter they enclosed a statement made by the Respondent to which various documents were attached.

12. The instructions for the 2002 Will, were dealt with in the statement. In particular the Respondent stated " as the file copy of my letter of 15th November 2001 records I spoke to her by telephone on 5th December that year in which she promised to come back to me, wanting to give more thought to the matters.

    In practice we did not speak again on the topic of her Will until 21st March 2002 when Miss P told me that she had changed her mind slightly, wishing to make the alterations which resulted in the actual Will. Apart from come minor tinkering with the legacies the main purpose was to take out any reference to her nephew N receiving any share of the residuary estate and for his one quarter share to go to his children. W's three quarter share was also to go to those children if W did not survive her."

13. When responding to Mr R's letter dated 2nd May 2003, the Respondent commented "I suspect that they will be pleased that young children have been helped with a quarter of the residuary estate. It is notable that Miss P decided to leave nothing to N's eldest child from his first marriage. Not surprisingly, as with the J family, the emphasis tended to be on young children."

14. Attached to the statement was a copy of the Respondent's letter of 15th November 2001 to Miss P on which there were two manuscript notes. One related to the telephone conversation on 5th December 2001 and one related to 21st March 2002. The latter was in the following terms. "21.3.02 changed mind again, substitute N and G's children in place of N."

15. The 2002 Will as executed left a quarter of the residuary estate to "such of the children of my nephew NHR as survive me and attain the age of 25 if more than one in equal shares." As drafted therefore the Will benefited L, Mr R's daughter from his first marriage.

16. On 26th May 2004 Mr R wrote to the senior partner of George Green Solicitors putting them on notice that he was considering making a claim for negligence against the firm. In that letter he referred, for the first time, to his daughter from a previous marriage and the fact that she was entitled to share in the estate.

17. On 25th June 2004 H & Sons sent to Mr R "copies of all documents from the Will file of Mr Robb of George Green." This included a copy of the letter of 15th November 2001. The notes endorsed on that letter were in the following terms: "21.03.02, changed mind-substitute N's children in his place." This was the first time Mr R had seen this version of the letter.

18. On 8th July 2004 H & Sons wrote to Mr R. They confirmed that there was no attendance note of the meeting on 21st March 2002 but went on to state that the

Respondent did "endorse a brief note of that meeting on his file copy of the letter which he had sent to Miss P on 15th November 2001. Although you will already have seen a copy of this letter in the copy of the Will file which was forwarded to you some time ago, we enclose a further copy at this stage." The copy of the letter of 15th November 2001 enclosed was identical to the one enclosed with the will file sent on 25th June.

19. On 30th July 2004 Particulars of Claim were served in proceedings between the Respondent and Miss WP (Claimants) and NR (Defendant). Those proceedings sought a Decree of Probate of the 2002 Will in solemn form. In those proceedings the Respondent made a Witness Statement dated 7th April 2005 and signed a statement of truth. He stated:

    (a) "As the file copy of my letter of 15th November 2001, a copy of which is attached hereto marked NR4, records I spoke to her by telephone on 5th December 2001 in which she promised to come back to me, as she wanted to give more thought to matters.

    (b) In practice we did not speak again on the topic of her until 21st March 2002 when Miss P told me she had changed her mind slightly, wishing to make the alterations which resulted in the actual Will. Apart from some minor tinkering with the legacies the main purpose was to take out any reference to her nephew N receiving any share of the residuary estate and for his one quarter share to go to his children. W's three quarters share was also to go to those children if W did not survive her."

    The copy of the letter attached to his Witness Statement had the manuscript note which referred to N's children rather than N and G's children.

20. A Defence and Counterclaim were served on 29th July 2004 and referred to the note endorsed on the letter of 15th November 2001 to Miss P namely "21.3.02 Changed mind again, substitute N and G's children in place of N's."

21. A Reply and Defence to Counterclaim was served on 7th September 2004 and supported by a Statement of Truth signed by the Respondent. At paragraph 7 it stated "as to paragraph 12, with a letter dated 10th November 2003 the claimant's solicitor provided the defendant with a copy of a statement made by the first claimant Mr R. Exhibit NR4 was a brief note written by the first claimant on a copy of his letter to the deceased dated 15th November 2001. It records: "21.03.02 changed mind – substitute N' children in his place." At paragraph 20 it was averred that "the first claimant's file note is as set out in paragraph 7 above."

22. In April 2006 the proceedings concerning the Will were settled on agreed terms.

23. On 18th January 2007 Mr R complained to The Law Society about the Respondent. Enclosed with the letter of complaint were the two copies of the letter of 15th November 2001 with different endorsements relating to the 5th December 2001 and 21st March 2002 conversation. A copy of Mr and Mrs R's letter was sent to George Green Solicitors on 15th March 2007 and on 19th April 2007 the Respondent was asked to respond to the allegations including that he had altered the handwritten amendments on the letter of 15th November 2001 to suit his own objectives.

24. The Respondent replied by letter dated 11th May 2007. In response to the allegation of altering the attendance notes he stated, "neither of the two versions of my copy letter dated 15th November 2001 contains contemporaneous notes of my conversations with Miss P in that they were added subsequently and from memory. The first version, referring to N and G's children was added when I was challenged to produce my Will file for Miss P. At that point in time I had no idea that Mr R had been previously married and had a child from that first marriage. On learning of this from Mr R I realised that I had no memory at all of instructions from Miss P which specified that the children were confined to those of both N and G, as opposed to the children of N himself. I consequently altered the note to refer solely to the children of N believing that this more accurately reflected Miss P's wishes as contained in her last Will duly approved and executed by her."

25. On 15th May 2007 the Respondent was asked to comment on the duty set out in Principle 17.01 – duty not to act towards anyone in a way which is fraudulent, deceitful or otherwise contrary to their position as a solicitor and Principle 21.01 – duty not to mislead Court. In his reply dated 14th June 2007 the Respondent said that the significance of the reference to the children of NR and GR never occurred to him. He stated "it was only when Mr R mentioned the existence of his eldest daughter that I suddenly realised that in her latest round of instructions to me Miss P had not referred to the children of both N and G but only to her nephew's children."

26. On 31st July 2007 the Respondent was asked when he made the notes on the letter of 15th November 2001. In his reply dated 8th August 2007 he stated "I cannot be wholly accurate as to exactly when I added my notes to the file copy letters of 15th November 2001. The first note would have been sometime in June/July 2003. The amended version would have been made around May/June 2004 when I first became aware that Mr R had a child during his first marriage." The Respondent had, however, made reference to that child in his statement sent in November 2003.

27. On 16th October 2007 an adjudicator decided to refer the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

Allegation 1

28. NR first requested a copy of the Respondent's Will file on 24th June 2003. At that date NR had made no mention of a child by another marriage. In his statement enclosed with H & Sons letter of 10th November 2003 the Respondent stated that Miss P had decided to leave nothing to NR's eldest daughter from his first marriage. The Respondent was therefore clearly aware of the existence of NR's daughter from his first marriage before being told of her existence by NR. It was only on 26th May 2004 that NR made reference in his letters to a daughter from a previous marriage.

29. The Respondent's manuscript notes of 7th November 2001 referred to N and G and to "their children." The Will as drafted by the Respondent and executed by Miss P did not reflect this intention but also benefited NR's eldest daughter, L.

30. In correspondence and documentation after November 2003 the Respondent maintained that he had been unaware of the existence of L until May/June 2004. This was untrue.

31. The Respondent created attendance notes of the meeting of March 2002 which were intended to give the appearance of being made contemporaneously. He subsequently altered the note and concealed the fact that he had done so.

32. In the course of the litigation the Respondent failed to disclose the existence of the original attendance note either in the pleadings or on discovery.

33. It was only in May 2007 in correspondence with The Law Society that the Respondent revealed that the attendance notes had not been made contemporaneously but "were added subsequently and from memory." In his letter of 8th August 2007 the Respondent indicated that the first note would have been made in about June/July 2003 and the amended version around June/July 2004.

34. In the course of negotiations to settle the proceedings the Respondent wrote to NR on 14th July 2005 and stated "it is, I fully appreciate your stance that Miss P did not intend L to inherit from her estate. That was not my understanding because I never knew of L's existence and I am totally confident that Miss P understood the contents of her last Will." That was not true, the Respondent was aware of L's existence and his recollection of Miss P's intentions in November 2003 had been that she did not intend L to benefit.

Allegation 2

35. The Respondent's witness statement of 7th April 2005 was misleading in that:-

    (i) it implied that the notes made on the file copy of the letter of 15th November 2001 were made contemporaneously.

    (ii) the instructions given by Miss P on 21st March 2002 were for NR's one quarter to go to his children.

    (iii) Miss P was extremely clear in her instructions to the Respondent that she had decided to benefit NR's children rather than NR himself.

36. The Respondent did not draw the Court's attention to the fact that the first attendance note he had made of the meeting on 21st March 2002 had been in substantially different terms and that neither that note nor the subsequent version of the note had been made contemporaneously.

Allegation 3

37. The Reply and Defence to Counterclaim was misleading in its reference to the Respondent's file note stating "substitute N's children in his place." The note endorsed on the letter of 15th November 2001 which was exhibited to the Respondent's statement of November 2003 referred to N and G's children not N's children.

38. The Reply and Defence to Counterclaim made no reference to the fact that the manuscript notes made on the letter of 15th November 2001 were not made contemporaneously nor did it refer to the fact that the Respondent made two different attendance notes as to the instructions given at the meeting of 21st March 2002.

Dishonesty

39. The Respondent had admitted that he had acted dishonestly in respect of allegation 1. The Applicant submitted that this could assist the Tribunal in deciding whether or not there had been dishonesty in relation to allegations 2 and 3.

40. The Respondent had admitted that he had not made clear in his witness statement in the probate proceedings nor in his Reply and Defence to Counterclaim the circumstances in which the two versions of his instructions had been recorded. This was aggravated by the Respondent's claim to the SRA that he had not known of L's existence when in fact he had.

41. The Applicant referred to the tests for dishonesty cited in the case of Bryant and Bench – v – The Law Society [2007] EWHC 3043 (admin). In making his admission to dishonesty in respect of allegation 1 the Respondent had accepted both objective and subjective elements to the test set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In the submission of the Applicant that dishonesty continued into the other two allegations as at no time had the Respondent corrected the misconception. Both documents (the Witness Statement and the Reply and Defence to Counterclaim) had continued to give the impression that the attendance note was contemporaneous. The Respondent had not disclosed the existence of the earlier version. It was clear that the attendance notes were intended to give the impression that they were contemporaneous. The Respondent's conduct was dishonest in his misleading of NR and of the court.

42. The Tribunal was referred to the case of The Law Society – v – Brendan John Salsbury [2008] EWCA C iv 1285. In this case the court had reiterated what had been said by the then Master of the Rolls in the case of Bolton – v – The Law Society [1994] 1 WLR 512 upon which the Applicant relied. The Court of Appeal had made clear in Salsbury that where there was a finding of dishonesty it was almost inevitable that the appropriate sanction would be the Striking Off of the solicitor. The facts in Salsbury were such that the misconduct almost amounted to forgery. In the submission of the Applicant the Respondent's actions in the present case were similar. He had presented to NR and to the court a document as contemporaneous when it was not. This was serious conduct on the scale of dishonesty and undermined public confidence in the Profession.

43. The Applicant sought her costs in the agreed sum of £7,750.

Oral evidence of the Respondent

44. The Respondent confirmed the truth of his Witness Statement dated 16th January 2009 subject to the following clarification. The Respondent had written

> "That I intended no deceit is illustrated both by the executors instructing H & Sons rather than my own firm once it became clear that the Will would be contested and in my revealing at the 'Discovery' stage of the proceedings both letters with notes that conflicted each other."

The Respondent said in evidence that at the time he had made that statement he had believed it to be true. The documents produced had made him subsequently realise that this had not been the case and he had been wrong.

45. When the Respondent had made his original purported attendance note on the letter of 15th November 2001 referring to the children of N and G his state of mind had been one of panic. He had never encountered such aggressive letters from disappointed beneficiaries previously. Without the attendance note he would only have had his word as a solicitor as to what had been said.

46. Miss P had been extremely clear in her instructions that she had decided to benefit NR's children rather than NR in whom she had become disappointed.

47. The Respondent could not recall when he had told H & Sons the solicitors for the executors, that the attendance note was not contemporaneous but he would like to think he had done so at some point. He did not know whether he had told them that he had altered the attendance note.

48. The Respondent accepted that in Reply and Defence to Counterclaim the attendance note referred to had been that relating to "N's children" whereas the attendance note exhibited to his November 2003 Witness Statement had referred to "N and G's children." He had signed the Reply and Defence to Counterclaim with a Statement of Truth and accepted that it was incumbent on him to check that the contents were true. The proceedings had however been drafted by Counsel instructed by H & Sons acting for the executors.

49. The Respondent accepted that he had changed the first version of the attendance note with the effect that the residuary beneficiaries included all of N's children not just N and G's children. He had been relying on memory and had thought that the matter was clear at the time. Miss P had had the draft Will for four months and had been actively considering it. With the benefit of hindsight the Respondent believed that Miss P would have been aware of L's existence.

50. The Respondent had not made a distinction between N's children and N and G's children until he realised the existence of L. He was not sure when this had occurred as it was probably after the death of Miss P. He had made no note at the time so the only records were his subsequent endorsements which were made long after the conversation had taken place.

51. The Respondent could not remember the precise words used by Miss P in March 2002. His instructions on 21st March had been in a telephone call but he had seen Miss P within the week. The Respondent accepted that there had been inconsistency as to the children involved even within two parts of his November 2003 statement. Miss P had been clear in her instructions at the time although after this length of time the Respondent could no longer be clear.

52. The Respondent did not know why he had not addressed in the probate proceedings the fact that he had altered the attendance note.

Submissions on behalf of the Respondent

53. The Tribunal had before it written submissions on behalf of the Respondent dated 22nd January 2009. The Tribunal was told that the Respondent had had a long and distinguished career as a solicitor for nearly forty years.

54. The Respondent was before the Tribunal because in a moment of madness, utterly untypical of the standards he had always strived to maintain, when faced by angry and disappointed relatives, who had thought they would be major beneficiaries and who were making a variety of personal allegations against him, he realised he had not made any note of the instructions he had been given in relation to a change in the terms of Miss P's Will.

55. The changes were relatively minor in that instead of a quarter of Miss P's estate going to NR it was to go to his children.

56. Instead of saying as he should have done that while no note had been made the amendments to the Will reflected the Respondent's instructions, the Respondent had done something stupid and totally out of character in making a note on his letter to Miss P of 15th November 2001 which gave the appearance of being a contemporaneous note of his instructions. The Respondent could only attribute that to the pressure he was under from Mr and Mrs R.

57. Subsequently the Respondent realised that the note he had made did not reflect the terms of Miss P's Will in that the Will referred to the quarter share of the estate going to the children of NR whereas his note referred to it going to the children of N and GR.

58. At some point, and the Respondent was now unable to say how or when, he realised there was a crucial difference between the two in that NR had a daughter L by a previous marriage and from whom it would appear he was estranged. As a result Mr and Mrs R were upset at L being made a beneficiary under the Will.

59. Stupidly and again feeling under pressure from Mr and Mrs R the Respondent changed the note he had made on his letter of 15th November 2001 so that it referred to the children of N as opposed to N and G. The Respondent had done this because he believed that the note as amended correctly reflected the instructions he had been given as incorporated in the terms of Miss P's Will. The Respondent accepted that he was wrong to do so but felt that he was under extraordinary pressure.

60. The extent of the Respondent's confusion was shown by his November 2003 statement in which he had referred to Miss P deciding to leave nothing to L. In fact the terms of the Will had been that L would be one of the beneficiaries. These were the actions not of a person who was setting out to deceive in a calculated manner but of one who was very confused. The extent of the confusion was also shown by later correspondence to which the Tribunal was referred.

61. The Respondent was adamant that the Will as executed correctly reflected Miss P's wishes.

62. With regard to allegation 3 this was redolent only of the Respondent's confused state of mind and not of any dishonest intent.

63. The Respondent accepted that he was dishonest in providing two versions of an attendance note which purported to be contemporaneous when they were not. This was something he very much regretted and for which he was sincerely sorry. In accepting that dishonesty the Respondent accepted the Tribunal was bound to consider his being struck off. After the other mistakes that were made he asked the Tribunal to accept that they were no more than mistakes made under the pressure of the moment and the aggressive manner in which Mr and Mrs R conducted the litigation.

64. The Respondent had in many ways been a victim of his own naivety and in relying on those instructed by him. He sincerely apologised for having fallen from his own normal very high standards. He did not benefit personally from Miss P's estate and there had been no intention of any personal gain or benefit. The Respondent asked that in the circumstances some other penalty than being struck off be imposed. The Respondent suggested that was dishonesty at the lower end of the scale. The Tribunal was asked consider the original recommendation from those investigating on behalf of the SRA that the Respondent be reprimanded. His appearance before the Tribunal was punishment in itself. The Tribunal was asked to take into consideration the considerable time it had taken to bring the matter before the Tribunal and the effect that had had on the Respondent and on his health.

65. The Respondent was not a naturally dishonest person as shown by the fact that he had appeared before the Tribunal and given evidence in which he had accepted his mistakes. The Tribunal was asked to take into account the many testimonials in support of the Respondent.

66. The following additional oral submissions were made on the Respondent's behalf.

67. The Applicant had suggested that because dishonesty had been admitted in respect of allegation 1 there had been dishonesty in respect of the other matters. It was submitted on behalf of the Respondent that the opposite was true. The Respondent had been straight forward in accepting dishonesty in respect of allegation 1. This admission gave credit to his other submissions. The Respondent had accepted that some of the things he had said might have been wrong but he had not been consciously dishonest in relation to allegations 2 and 3.

68. The Respondent had accepted his failure to make clear that there were two versions of the attendance note and that they were not contemporaneous but NR and his solicitors had had both versions as had H & Sons. The executor's solicitors had allowed the Respondent's statement to go in as it did. This had been a result of confusion rather than a deliberate intention to deceive.

69. The Applicant had said that the Respondent's firm settled the negligence action. The matter had been settled for less than the amount of the firm's excess under its professional indemnity insurance policy and it was reasonable to assume that it had been settled for nuisance reasons only rather than any admission of liability.

70. The Tribunal was asked to note that Miss P had had a draft of the Will for a number of months with a clear reference to the children of N rather than the children of N and G. In the absence of clear and cogent evidence to the contrary it was right to assume that the Will accorded with her wishes.

71. The Respondent had instructed solicitors and had relied on advice which was a sign of his honesty in the matter despite the confusion. If the Respondent had been setting out to be dishonest then it would be very incompetent dishonesty as the situation was so apparent on the face of the documents. This was a case where confusion had rained supreme.

72. The Tribunal had to apply the two-fold test in considering whether the Respondent had acted dishonestly including the subjective test. Having regard to the documents as a whole and the fact that the Respondent was advised by solicitors and Counsel who had all the documents the Tribunal was invited to say that the Respondent had not acted dishonestly in regard to allegations 2 and 3.

73. The Tribunal was asked to consider the testimonials in support of the Respondent not only in respect of penalty but in considering dishonesty in accordance with the judgement in Bryant and Bench – v – The Law Society.

The Findings of the Tribunal

74. The Respondent had admitted the allegation that he had provided to a beneficiary under a Will two versions of an attendance note which purported to be contemporaneous when they were not, and that he had done this dishonestly.

75. The Respondent had admitted providing misleading information as alleged in the remaining two allegations but denied dishonesty. The Tribunal considered carefully the tests for dishonesty set out in the case of Twinsectra – v – Yardley [2002] UKHL 12 and Bryant & Bench – v – The Law Society. The Tribunal noted that the Respondent had instructed solicitors in relation to the proceedings in which his Witness Statement and the Reply and Defence to Counterclaim had been served. It was clear to the Tribunal that the documents referred to in allegations 2 and 3 were misleading. The issue before the Tribunal was whether the Respondent had acted dishonestly in signing off those documents as being true when they were not. Although the Respondent was a client of other solicitors in the proceedings he remained an Officer of the Court. He had signed Statements of Truth. It was incumbent on him to satisfy himself that the contents of the documents were in fact true. The Tribunal found that in signing the documents his conduct was dishonest by the standards of reasonable and honest people. The Respondent had admitted dishonesty in relation to allegation 1. He had been aware of his actions in relation to the two versions of the attendance note at the time he signed the Witness Statement and Reply and Defence to Counterclaim referred to in allegations 2 and 3. The Tribunal had heard the Respondent's evidence in relation to these matters and was satisfied so that it was sure that the Respondent did not have an honest belief at the time of making the Witness Statement or allowing to be served the Reply and Defence to Counterclaim that the information in them was true. The Respondent's actions had been described as a moment of madness by his representative, and yet the Respondent had followed through on his initial error in purporting to create a contemporaneous attendance note on a second occasion and had altered the wording of the attendance note. In allowing the misleading statement and Reply and Defence Counterclaim to go forward as representing the true position with his signature appended thereto the Tribunal was satisfied that the Respondent knew that what he was doing was dishonest by the standards of reasonable and honest people. In reaching that conclusion the Tribunal had taken careful note of the numerous testimonials put

forward on behalf of the Respondent but were satisfied on the evidence that the appropriate test for proving dishonesty had been met in regard to the allegations made.

76. It had been emphasised on the Respondent's behalf that this had been one issue in a lifetime's career from which he had received no personal benefit. It had also been said that he had been acting under pressure in difficult circumstances. That pressure however was one which a solicitor should be able to withstand. In considering the appropriate penalty the Tribunal had again taken into account the fulsome testimonials on behalf of the Respondent and the fact that in regard to one allegation he had admitted his dishonesty. This was however a matter of dishonest conduct on more than one occasion albeit in relation to the same matter on each occasion. The Tribunal noted the Respondent's long career as a solicitor. It also noted, however, the importance of solicitors acting honestly and truthfully before the Court and with regard to the public. In their activities solicitors had to be and be seen to be beyond reproach. The Tribunal had a duty to uphold public confidence in the profession and in the light of the findings it had made the Tribunal was satisfied that the appropriate penalty was to strike the Respondent off the Roll of Solicitors.

77. The Tribunal would also Order payment of costs in the agreed sum.

78. Accordingly the Tribunal Ordered that the Respondent, James O'Neill Robb of Clent, Stourbridge, 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 fixed in the sum of £7,750.00.

Dated this day 14th of July 2009
On behalf of the Tribunal

Mr N Pearson
Chairman