

IN THE MATTER OF DAVID BARRINGTON BARNES, solicitor  
AND NICHOLAS HANBURY MOON, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mr A Gaynor-Smith  
Mr P Wyatt

Date of Hearing: 8th May 2007

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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The Respondents were members of the same firm, Lloyd Barnes, at Ipswich, Suffolk and with the agreement of all parties the Tribunal heard the two cases together.

An application was duly made on behalf of The Law Society by Gerald Malcolm Lynch, solicitor and consultant to the firm of Drysdales, Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex, SS2 6HZ on 12<sup>th</sup> October 2006 that the Respondent David Barrington Barnes of High House, High Rougham, Rougham, Bury St Edmunds, Suffolk, IP30 9LP might be required to answer the allegations contained in the statement annexed to the application and that the Tribunal might make such Order as it thought right.

An application was duly made on behalf of The Law Society by Gerald Malcolm Lynch on 31<sup>st</sup> October 2006 that an Order be made by the Tribunal directing that as from the date specified in such Order no solicitor, registered European Lawyer or Incorporated Solicitors Practice shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with his/her practice as a solicitor, Registered European Lawyer or member, director of share-owner of an Incorporated

Solicitors Practice, the person with respect to whom the Order is made or that such other Order might be made as the Tribunal should think right.

The allegations against the Respondent, Mr Barnes, were:

- (a) contrary to the provisions of Rule 17/01 of the Guide to Professional Conduct of Solicitors Eighth Edition 1999 Mr Barnes used his position as a solicitor to take unfair advantage for a client of a third party, Miss JMC;
- (b) Mr Barnes acted contrary to the provisions of Principle 12/05 of the Guide to Professional Conduct aforesaid in that he failed to obtain written instructions from Miss JMC in the position of a client, alternatively failed to take any appropriate steps to confirm instructions;
- (c) Mr Barnes continued to act in respect of a client when there existed, or when there was the possibility of, a conflict of interest between himself and his client;
- (d) contrary to the provision of Principle 24/03 of the Guide to Professional Conduct aforesaid Mr Barnes failed to confirm instructions given by the donee of an enduring power of attorney with the proposed donor;
- (e) Mr Barnes, contrary to the provisions of Rule 13 of the Solicitors Practice Rules 1990 and Principle 3/07 of the Guide to Professional Conduct, failed to exercise proper supervision over an unadmitted clerk, Mr Moon;
- (f) by virtue of each and all the aforementioned Mr Barnes had been guilty of conduct unbecoming a solicitor.

The allegations against Mr Moon were:

- (a) contrary to the provisions of Rule 17/01 of the Guide to Professional Conduct of Solicitors 8<sup>th</sup> Edition 1999, Mr Moon used his position as a solicitor's clerk to take unfair advantage of a client or a third party, Miss JMC;
- (b) Mr Moon acted contrary to the provisions of Principle 12/05 of the Guide to Professional Conduct in that he failed to obtain written instructions from Miss JMC in the position of a client, alternatively failed to take any appropriate steps to confirm those instructions;
- (c) Mr Moon continued to act in respect of a client when there existed or when there was a possibility, of a conflict of interest between himself and his client;
- (d) contrary to the provisions of Principle 24/03 of the Guide to Professional Conduct aforesaid Mr Moon failed to confirm instructions given by the donee of an enduring power of attorney with the proposed donor;
- (e) by virtue of each and all of the aforementioned Mr Moon had been guilty of misconduct.

**At the conclusion of the hearing the Tribunal made the following Orders:**

The Tribunal Order that the Respondent, David Barrington Barnes of High House, High Rougham, Rougham, Bury St. Edmunds, Suffolk, IPO30 9LP , solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,027.50.

The Tribunal Orders that the Respondent Nicholas Moon of 32 Lloyds Avenue, Ipswich, Suffolk, IP1 3HD, a person who is or was a clerk to a solicitor, do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

The evidence before the Tribunal included the oral evidence of Mr Barnes who admitted allegations (b) and (d) but denied allegations (a), (c) (e) and (f). A bundle of testimonials in support of Mr Barnes was handed up at the hearing. Mr Moon denied the matters alleged against him or that it would be appropriate for an Order pursuant to Section 43 of The Solicitors Act 1974 be made in respect of him. The facts were not in issue.

**The facts are set out in paragraphs 1- 36 hereunder:**

1. Mr Barnes was admitted as a solicitor in 1976. At the material times he was a partner, and subsequently, following the serious injury of his partner in a road accident, a sole partner in the firm of Lloyd Barnes which carried on business at 14 St Peters Street, Ipswich, Suffolk. Mr Barnes was 59 years of age.
2. Mr Moon, a licensed conveyancer, was born in 1966. He had been employed in the law since 1985 and had been employed at Lloyd Barnes from 1987 until July 2005 when Lloyd Barnes merged with another firm.
3. On 9<sup>th</sup> June 2005 the solicitor to Wiltshire County Council wrote to The Law Society to complain about the Respondents. The complaint was that the Respondents had taken unfair advantage of a Court of Protection patient, Miss JMC.
4. Miss JMC was the half-sister of Mr C who from time to time had been a client of the Respondents' firm.
5. Miss JMC had suffered a stroke in 2001. At this time her general practitioner did not think she had mental capacity to deal with her affairs. On 12<sup>th</sup> June 2003 Miss JMC suffered a further stroke and was hospitalised.
6. In a telephone call on 24<sup>th</sup> June 2003 Mr C instructed the Respondents' firm to draft an enduring power of attorney, and to effect its registration, in which Miss JMC was to appoint Mr C as her attorney. On the same day Mr Moon drew an enduring power of attorney in that form and sent it to Mr C to secure Miss JMC's signature to it. In the covering letter Mr Moon warned Mr C that he should check on Miss JMC's capacity to sign. It became apparent that Mr C could not obtain the signature immediately, but he did secure a signature to the enduring power of attorney on 3<sup>rd</sup> July 2003. Mr C's instructions to the Respondents' firm were then that Miss JMC had the mental capacity to sign. The document was witnessed on 9<sup>th</sup> July 2003.

7. On 8<sup>th</sup> July, prior to their receipt of the power, the Respondents' firm, through Mr Moon, sought the deeds of a property owned by Miss JMC (the property). The deeds were obtained and the property was put up for sale.
8. Mr Barnes wrote to the Court of Protection to register the enduring power of attorney on 12<sup>th</sup> August 2003. On 22<sup>nd</sup> August he advised the court that Miss JMC had capacity to execute the power.
9. Neither of the Respondents at any time during this course of events took any step to contact Miss JMC direct for confirmatory instructions or to ensure that she had capacity to act. At all times reliance was placed upon the assurances of Mr C.
10. No later than September 2003 the Respondents were on notice of doubt as to the capacity of Miss JMC and as to her vulnerability. When giving instructions, Mr C had not been able to give basic details about his half-sister. He did not know her middle name or her date of birth. An attendance note made of a conversation with Mr C made reference to the difficulty Miss JMC might experience in signing any legal documents, indicating that she had been incapacitated as a result of the stroke she had suffered.
11. On about 4<sup>th</sup> August 2003 Mr C advised Mr Barnes that he was in need of £10,000. Mr Barnes introduced Mr C to his own bank, HSBC. The bank was prepared to lend £10,000 to Mr C on condition that the Respondents' firm held the deeds of Mrs JMC's property and that the firm would act in its sale.
12. On 8<sup>th</sup> August Mr Barnes wrote to HSBC giving his firm's undertaking to repay the £10,000 loan on completion of the sale of the property, irrevocable instructions to this effect having been received from Mr C.
13. On 12<sup>th</sup> August 2003 Mr Barnes wrote to the Court of Protection to register the enduring power of attorney, "because (Miss JMC) is unfortunately incapable of managing her own affairs".
14. A day later, on 13<sup>th</sup> August, at a Wiltshire County Council family/team case conference the view was expressed that Miss JMC had capacity to make decisions if information was presented appropriately. The Respondents were not aware of this at that stage of the proceedings.
15. On 5<sup>th</sup> September 2003 Mr C borrowed a further £10,000 from HSBC. Mr Barnes gave another firm's undertaking in the same terms as the earlier undertaking.
16. On 8<sup>th</sup> September when the enduring power of attorney had still not been registered at the Court of Protection, Mr Barnes wrote to Mr C to confirm that it was "critical" that matters be dealt with as soon as possible.
17. Wiltshire Social Services had been in contact with the firm on 27<sup>th</sup> August 2003 to express concern about whether or not Miss JMC had the necessary capacity to sign the enduring power of attorney. Wiltshire County Council wrote again on 15<sup>th</sup> September 2003 requesting full details and again raising the question of Miss JMC's capacity. Mr Barnes wrote to Mr C to seek details.

18. On 23<sup>rd</sup> September 2003 under instructions from Mr C, Mr Moon arranged a further loan to Mr C of £10,000 from HSBC bank at which point Mr C had borrowed £30,000 against the proposed sale of Miss JMC's property. Repayment to HSBC was secured by the Respondents' firm's undertaking as before.
19. Mr C had told Mr Barnes that the money raised by loans from HSBC would be spent for the benefit of Miss JMC or in connection with her affairs. Mr Barnes subsequently ascertained that Mr C had utilised these monies for his own purposes and not for the benefit of his half-sister.
20. On about 8<sup>th</sup> October 2003 Mr C wrote to Wiltshire County Council to say that he was no longer instructing the Respondents' firm.
21. The Respondents' firm maintained contact with Mr C in relation to his borrowing of the £30,000 from HSBC which was protected by the firm's undertakings.
22. Mr C instructed Burnett Barker Solicitors. A correspondence between that firm and the Respondents' firm ensued about the repayment of the £30,000.
23. On 10<sup>th</sup> February 2004 Mr C again instructed the Respondents' firm to act in the transfer by gift of Mrs JMC's property to Mr C. By internal memo Mr Moon drafted a suitable form of legal charge in favour of HSBC to be placed on the file in preparation for the transfer of the property.
24. Mr Moon had then formed the view that Miss JMC should be separately represented in the proposed transfer. Mr Cameron of the Merriman Partnership agreed to see her and to act on her behalf.
25. On 19<sup>th</sup> February 2004 Mr Cameron visited Miss JMC. He declined to take her instructions as he formed the view that she was incapable of understanding what was happening. Mr Cameron confirmed this with Lloyd Barnes by telephone on 19<sup>th</sup> February.
26. The next day, on 20<sup>th</sup> February, Mr Barnes wrote directly to Mr C sending the documents to transfer the property. In his covering letter Mr Barnes stated:

"I do not act for either [Miss JMC] or yourself in this transaction and accept no responsibility for the correctness or otherwise of the forms. It is your responsibility to ensure that the forms are suitable for their purpose and you must take your own legal advice if you need to take any advice on them".
27. In an internal memo from Mr Moon to Mr Barnes, he confirmed that the transfer documents had been sent off to the client and that the draft legal charge had been prepared in advance pending the proposed sale of the property. The legal charge drawn in favour of Lloyd Barnes would secure the £30,000 borrowed from HSBC and enable the firm to discharge its undertakings to that bank. The memo also indicated that the charge should be registered at the earliest opportunity at the Land Registry.

28. On 24<sup>th</sup> February 2004 Mr Cameron wrote to the Respondents' firm confirming his telephone message and his opinion that Miss JMC did not have capacity to deal with her affairs.
29. On 24<sup>th</sup> February 2004 Mr Barnes wrote to Mr C expressing concern at the circumstances relating to the transfer of the property. On 2<sup>nd</sup> March Mr Barnes asked Mr C to confirm that the transfer had been effected.
30. On 16<sup>th</sup> March 2004 Mr Moon confirmed to Mr Barnes that Mr C had registered the property in his name and set out what needed to be done to get the legal charge in favour of HSBC registered. On 19<sup>th</sup> April 2004 Lloyd Barnes was released from its undertakings to HSBC to pay £30,000 from the sale proceeds of the property in view of the legal charge in favour of HSBC to secure that sum. The Respondents' firm acted also for HSBC in connection with the legal charge.
31. In June 2004 the Public Guardianship Office requested information about the legal charge and Wiltshire County Council requested a report on all dealings with the property.
32. The Respondents' firm drafted a response on behalf of Mr C in the following terms:

"The Solicitor  
Wiltshire County Council

23 June 2004

Dear Sir

Court of Protection Patient .....: Miss [JMC]  
[The Property]  
[Mr C]

We thank you for your letters dated 17 and 18 June which the writer had read on his return from leave. These raise issues of the confidentiality of our client's affairs. However we can say in reply to your questions that:-

1. Mr C has been an occasional client of this firm for upwards of twenty years.
2. Mr C acted in person in effecting the transfer and registration of 60 High Street, Pewsey into his name.
3. N/A
4. At the request of HSBC Bank plc this firm acted both for the Bank and Mr C in his grant of a Legal Charge to the Bank and the registration of the Legal Charge at the Land Registry.

You must be well aware Mr C is the proprietor of the property and that the Bank has a Charge as you have applied to register a restriction against it.

In your letter under reply, you refer to [Miss JMC] as a patient. How long and at whose instance has [Miss JMC] been a patient of the Court of Protection?

In relation to your letter to Mr [C] dated 18 June we must reiterate we understand Mr C's plan always was and remains now to move his sister and her companion, Miss B from Wiltshire to Thurston near Bury St Edmunds in Suffolk, where he, his wife and family can conveniently care for them. As this is Mr C's intention perhaps he should be encouraged in it rather than threatened with injunctive proceedings, which only frustrate what he is trying to do. Your colleagues and yourself are, or should be, well aware of this and we would refer you, for example, to our letter to you dated 7 October 2003.

Meanwhile Mr C assures you that he will not move his sister without prior liaison with Wiltshire and Suffolk Social Services. He cannot meet with your colleagues this week but will arrange to do so within the next fortnight. He wishes the writer to attend this meeting with him and we should therefore ask you to contact us to discuss dates. As the bungalow in Thurston is already in the course of extensive renovation and adaptation it would be sensible for this meeting to take place in Suffolk with Suffolk Social Services representatives in attendance. Would your team be able to meet us here to inspect the bungalow and hopefully settle arrangements for Miss JMC's welfare and care?

33. The firm wrote the following letters to Wiltshire County Council in June 2004:

"The Solicitor  
Wiltshire County Council

30 June 2004

Dear Sir

[JMC]  
High Street, Pewsey

Further to our letter of 28 June we are now ready to write to you in reply to the first two pages of your first letter of 25 June 2004. We will be writing to you again tomorrow after meeting our clients for confirmatory instructions concerning the proposal mentioned in our without prejudice letter.

Although Mr & Mrs C accept that you are likely to succeed in showing that Jean did not have capacity on 23 February 2004 because of the medical evidence you can adduce, they wish you to know that she knew perfectly well what she was doing in making the gift and did so voluntarily.

We are instructed JC is of an age, background and disposition which makes her very flustered and disturbed by persons in authority and from "the Council". J fears that the Council are going to take her away to the workhouse or wherever. It follows that the impressions made on various officials and strangers may not have reflected the true state of J's mind.

Mr and Mrs C and RB have separately told us that at times J is lucid and clear in her intentions. We are instructed that this was the case on the making of the gift on 23 February.

It follows that Mr C does not consider he has done anything wrong or fraudulent in accepting the property and subsequently mortgaging it to the Bank. He instructs his raising of money on the Pewsey property was rather part of his strategy for dealing with the family problem created by J's stroke and indisposition.

Mr C effected the transfer on his own because of the difficulties described above after a conversation with Mr Cameron led him to realise he could do this.

If you are criticising this firm for subsequently acting for the Bank and Mr C in the charging of the property on 8 April, we reject this completely. By that date Mr C had acquired the property and registered it. Our separate and subsequent instructions to act in the executing and registration of the Charge were from the Bank. We simply did what we were instructed to do by the Bank. We were not then concerned or required to be concerned with JC's capacity. In addition we would say that had Miss B disapproved of our acting in the making of the Charge there is no way she would have now asked us to act for her in helping her and J to move.

Although you can and do say that your Council is concerned about JC's protection, we are instructed that the effect of what it has done and are doing is to upset both her and her companion R. Your Client seems to be obsessed with the transaction and to be disregarding the practical solutions being devised by the C's for not just J but her inseparable companion. You have made discussion about their future conditional on compliance with terms which you have imposed using your client Council's clout as a wealthy opponent and also as the Judge of our client's actions and in your application to become Miss C's Receiver.

Our clients have neither the financial or emotional strength to resist the Council on all these issues which is why the proposal in our without prejudice letter of yesterday has been formulated. (We would mention here we will be meeting our clients tomorrow to take confirmatory instructions). Meanwhile our clients currently await with interest the Council's response to their invitation to meet them to discuss their plans for rehousing J and R in Suffolk. Although you said in your letter of 25 June that your clients are happy to meet our clients, we note that no attempt has been made to do so since then. Our clients are sceptical as to whether any such meeting will happen, although they continue to prepare for it and would hope and expect to be able to show your clients the Thurston property and the works that have been done to adapt it for JC.

Yours faithfully  
Lloyd Barnes"

"The Solicitor  
Wiltshire County Council

28 June 2004

Dear Sir

Court of Protection Patient .....: Miss JC  
Property: HS, Pewsey, Wiltshire

With reference to your three letters of 25<sup>th</sup> June 2004, as a matter of expediency this letter in reply deals mainly with your requirements starting at the bottom of the second page and continuing on the third page of your first letter (received at 9.40am) and your other two letters.

However in broad brush terms our client does not in any way accept the criticisms or allegations set out on the first two pages of your letter and we will write to you again to refute these in the next day or two when we have time. For now, Mr C specifically refutes your allegation of fraud. He instructs us he was freely given the Pewsey property and has dealt in it (i.e. charged it to secure borrowings) openly and without duress or undue influence over his sister. He has been satisfied throughout that J has known what she is doing with him, in contrast to when she has been confused and flustered by outsiders of whom she is very apprehensive.

Reverting to the numbered items in your first letter under reply (and using your numbering) we are instructed as follows:-

- (1) The sum is Thirty Thousand Pounds (£30,000.00) plus interest.
- (2) Mr C has spent the Thirty Thousand Pounds on miscellaneous outgoings and expenses, relating to both himself and his sister.
- (3) Confirmed but see 4 below.
- (4) 4 St PW, Thurston does not yet belong to Mr EEC or Mrs JAC. Mrs C is the first named Executor and MW the second named Executor of the Estate of the late Mrs JS, who died in November 2003. Mr C is purchasing 4 St PW which was Mrs S's home, from the Estate as a home for his sister and R. However, at the time of writing contracts have not been exchanged and we understand the Executors of Mrs S deceased remain the legal owners of that property.

In these circumstances, your demand for Mr C's agreement to a restriction being placed on 4 St PW is wholly inappropriate and impossible for him or Mrs C to agree. From your second letter (received 12.01) it appears to be based on the misconception that Mr C has already purchased that property, which is not the case. This restriction cannot be agreed.

- (5) As to your demand that there be an immediate cessation of works on 4 St PW Mr and Mrs C have undertaken extensive refurbishment, renovation and updating improvement works to the property prior to exchange of contracts with the consent of the solicitor handling the Estate. These works include:

1. New central heating
2. New gas supply
3. New bathroom
4. New Kitchen
5. Wider back door (wheelchair access)
6. New interiors
7. Electrics
8. Carpets

The solicitor dealing with the Estate agreed that the C's could do these works pre-exchange of contracts whilst the mortgage was being processed.

The cost of these works is upwards of £20,000 which we understand has been mainly funded from Mrs C's inheritance.

If Mrs C chooses to spend her money from her inheritance on purchasing a property with her husband and refurbishing this property for J and R to live in, what right does Wiltshire County Council have to say she should not do so? Why do you see it as your role and duty to prevent this and to demand an immediate cessation of such works?

- (6) Mr C undertakes to dispose of his assets other than in the ordinary course of his business of dealing in new and used catering equipment. Obviously the sale and purchase of stock is the *raison d'etre* of that business and he must remain free to trade in that.

- (7) Mr C's assets comprise:
- |                      |                   |
|----------------------|-------------------|
| Stock in trade       | £7,000.00         |
| Motor car            | 4,000.00          |
| Garden Shed          | 1,000.00          |
| Chattels and effects | <u>1,000.00</u>   |
|                      | <u>£13,000.00</u> |

- (8) As to your demand that he remove the Pewsey property from the market, it cannot be sold as a Restriction has been placed on it by yourself. In the interests of trying to resolve this matter our client will take it off the market, but please see below as to the efficacy of this step and confirm that you really want this having regard to what we say below.

If you go ahead with an application for a Freezing Order then our client will tell the Court (assuming this time he is actually given notice of your application) that you have proceeded on wrong facts and jumped to the

conclusion that the purchase of 4 St PW is being funded with Miss C's money, which it is not. We repeat it is being purchased and refurbished with Mrs JAC's inheritance monies for J and R and with a mortgage being obtained by the C's.

Our clients have (or at any rate had until your client Council interfered) alternative strategies for the funding of 4 St PW and J and R's move.

In the first case, Mr C would purchase the Thurston property subject to mortgage and pay the mortgage during J and R's occupation and thereafter. This would not involved any capital input from J and R at all. The question of any "rent" has not at this stage even been considered, but (thinking about it) payment of a fair rent might be appropriate as the C's will struggle to pay the mortgage on Mr C's income.

Another option would be for the sale of Pewsey property to go ahead and for the proceeds of the Pewsey property to be applied to the discharge of the mortgage of the Thurston property. Mr C, being satisfied his sister had validly given him the Pewsey property, (which she neither lived in or wanted) envisaged that in this instance his mortgage would simply be discharged and that J and R would live there for the rest of their lives. (Please note a prospective Purchaser has just made an acceptable offer subject to contract which could be accepted).

However, if it serves to negate your client Council's allegation of fraud etc and if it can be legally achieved, then the C's are quite happy that J should own the Thurston property jointly with them, bearing in mind Mrs C has contributed equity to the refurbishment and will contribute more equity to the deposit. A proper apportionment could be worked out to reflect the respective contributions.

The C's had envisaged that their priority - moving J and R to Suffolk - and their secondary objective - sorting out the finance and property assignment - could have been achieved within the family with a minimum of expense and distress. That this has not happened is because your Council has interfered and jumped to wrong conclusions and become or applied to become the Receiver in the case.

As your client Council is now involved in this way we should tell you that the C's and Miss B are most unhappy about this on J's behalf. The C's have gone to great trouble and expense to help J and R and they are exhausted by all the travelling to and from Wiltshire over the last year and by this argument with your Council, which seems to have endless resources to litigate against them.

Matters are further complicated for us in that RB has now asked us to act for her and J in assisting their move to Suffolk, which move, she confirms, is what they both want. We shall have to see her and decide whether we can act for her but for now, we can tell you she is upset and depressed by the obstructions

the Council is placing in the way of her move to Suffolk with J.

Yours faithfully  
Lloyd Barnes"

"The Solicitor  
Wiltshire County Council

29 June 2004

Dear Sir  
JC  
HS, Pewsey

Without prejudice

Thank you for your letter received at 12.48 today, which we have discussed in our telephone conversation and in respect of which we have formulated a proposal as follows:-

1. The Bank will not allow the borrowing on the Pewsey property to be increased and our client agrees not to increase it.
2. Subject to Mr C completing the purchase of the Thurston property, the Bank will replace its Charge over the Pewsey property with a Charge over the Thurston property, and will release the Pewsey property.
3. Mr C will accede to the voiding of the Transfer of the Pewsey property so that it will revert to J.

Summary

The foregoing is subject to us obtaining certain assurances from Mr and Mrs C which are satisfactory to the Bank and to us obtaining written instructions. We are hoping to meet our clients tomorrow to achieve this and ascertain the state of the Thurston property purchase, which is thought by the C's to be close to exchange.

This proposal would have to be in full and final settlement of all matters and costs except for the issue of the appointment of a Receiver, which is likely to be contested on 13 July.

On this basis, and with the Land Registry restrictions in situ we trust you will agree any proceedings to recover the property pursue the Charge or freeze our clients' assets are unnecessary at the present time.

In suggesting the above solution the C's wish to say that they have only ever acted in J's best interests and that whatever your raft of experts may say they know she knew just what she was doing. They consider your client Council

has acted in a manner which has distressed the whole family and Miss RB and they remain determined to continue trying to do the best they can for J and R in the face of all the difficulties they have unfortunately experienced.

Yours faithfully  
Lloyd Barnes"

34. It was Mr Moon's position that he had come to specialise in commercial property work and was undertaking commercial conveyancing almost exclusively at the material time. Mr Moon considered Mr Barnes to be well respected by his clients and other professionals, and Mr Moon believed Mr Barnes to be a person of excellent judgment and integrity and he was happy to trust him. Mr Moon was not supervised closely by Mr Barnes in connection with the area of work in which he had expertise and experience but Mr Barnes had always been supportive.
35. Mr Moon had come to accept that he should have taken positive steps to obtain Miss JMC's direct instructions. In that respect he had made a mistake.
36. Mr Barnes had believed when asked by Mr C and Miss B, Miss JMC's lifelong companion, to assist in Miss JMC's case that Miss JMC (then living at the property in Wiltshire) would be looked after by her family in Suffolk and that the family's plans and Miss JMC's wishes were being thwarted by Wiltshire County Council.

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

37. The Applicant did not allege that the Respondents had conspired together in the subject matter of the allegations nor did he seek to accuse either of them of acting dishonestly.
38. It was the Applicant's position that Mr Barnes had adopted a very subjective approach. A solicitor must always have objectivity particularly in any matter where there is doubt about the capacity of a lay person. The Applicant accepted that Mr Barnes had been driven by the view that he was acting in the best interests of Miss JMC, but he had been entirely mistaken in that view. That was what led to the breaches alleged against him. It was accepted that in many ways Mr Barnes had reasonable intentions but he had lost sight of The Law Society's requirements. Both of the Respondents had been dealing with a vulnerable person. It was accepted by The Law Society that they had not been deliberate in their transgressions.
39. The Respondents appeared not to have regard for the danger of proceeding with an application to register transactions relating to Miss JMC's property knowing that there were concerns about her capacity.
40. The Respondents had been aware of doubts about Miss JMC's capacity and had become concerned which had led to Mr Moon's letter to Mr Cameron.
41. A grave situation had arisen when the Respondents sought to obtain a legal charge in favour of HSBC bank to secure the firm's position where the firm had given an undertaking to cover loans to Mr E made by the bank. The fact that the firm had

entered into such undertakings was an incentive to them to arrange to get Mrs JMC's property transferred.

42. After Mr Cameron had notified Mr Barnes that he considered Miss JMC did not have mental capacity to act, it was highly improper of Mr. Barnes to have sent documentation required to effect transfer of the property to Mr C.
43. In response to enquiry made of them by The Law Society neither Mr Barnes nor Mr Moon had been aware of the effect of Principle 24/03. Mr Barnes said he believed that Wiltshire County Council were acting on behalf of Miss JMC.
44. In relation to the transfer of Miss JMC's property it was asserted that the firm did not act for either Mr C or Miss JMC.
45. Between June and August 2003 Mr C, the client of Lloyd Barnes, had obtained the enduring power of attorney, had obtained his half-sister's deeds, sought to sell the property and had borrowed £10,000 secured on Miss JMC's property. All those measures had been taken while the Respondents were acting for Mr C and before the involvement of Wiltshire County Council on behalf of Miss JMC.
46. Both of the Respondents should have been on their guard with regard to the integrity of Mr C. The correspondence in late 2003 from the firm to him and to Mr C's subsequent newly instructed solicitors indicated that the Respondents had become aware that Mr C had appropriated the £30,000 loan from HSBC entirely for his own purposes. In those circumstances, it was submitted, it was inappropriate in any event for Mr Barnes to agree to act for Mr C on 10<sup>th</sup> February 2004 in the transfer of the property. It was nonetheless the case that it was in the interests of the Respondents' firm so to act in order to ensure that the money borrowed against their undertakings was repaid. It was submitted by The Law Society that in the scenario surrounding the loans and its renewed instructions, the Respondents' firm had an overriding interest in recovering £30,000 and achieving relief from the burden of the undertakings given whilst acting upon the instructions of Mr C. An actual or potential conflict of interest was clearly evident on this basis alone.
47. It was submitted that the correspondence supported this view as did the preparation of draft deeds of assignment prepared by Mr Barnes (but which were not used) and were designed to ensure reimbursement of the sum the subject of the undertakings by the firm. De facto at the time of the negotiations Mr C was in the position of owing the HSBC Bank and/or Lloyd Barnes £30,000 together also with fees he had incurred. There was no evidence that at any time he was advised to seek independent legal advice before Lloyd Barnes accepted renewed instructions.
48. It was clear that Mr Barnes and Mr Moon acted in breach of Principle 24/03 and the same was admitted.
49. It was clear that several steps were undertaken by Mr Moon with the knowledge of Mr Barnes in circumstances where Mr Barnes should have been on notice of difficulties arising from Miss JMC's lack of capacity. There was no apparent supervision of Mr Moon in these matters;

50. No step at any time was taken to contact or discuss with or to take instructions from Miss JMC;
51. There were clear elements of conflict of interest in the circumstances in which the firm accepted instructions to act on Mr C's behalf in the transfer of the property at a time when it had an interest in securing repayments of moneys the subject of its undertakings;
52. It was submitted that in the circumstances in which steps were taken to obtain and register the enduring power of attorney, to obtain the deeds to Miss JMC's property, to effect the sale thereof and at a later date to agree (when on notice of her incapacity) to assist in the transfer and registration of the property from Miss JMC to Mr C there was breach of the requirement that a solicitor should act with fairness.
53. It was further submitted that the facts and the documents before the Tribunal demonstrated that the Respondents acted in circumstances where they sought to take an unfair advantage of Miss JMC.

#### **The Submissions of Mr Barnes**

54. Mr Barnes had always endeavoured to give not only legal services but also pastoral care to his clients. Mr Barnes had over the years helped Mr C to resolve life's problems, often without charge. Mr Barnes had known Mr C for some thirty years. He regarded him as an unsuccessful but honest family man.
55. Mr Barnes had previously been involved in a case where a local authority had prevailed over the wishes of an individual and her family. He had resolved not to allow this to happen again.
56. That was how he felt when Mr C and Miss B, Miss JMC's lifelong companion, asked him to assist in Miss JMC's case. It appeared that Miss JMC was being kept in "cold storage", removed from her brother and that she and Miss B were stuck in Wiltshire when Mr E and his family would have looked after them in Suffolk and where they would have been part of an extended family. Mr Barnes had felt sorry for Mr C who had been exhausting himself driving to and from Wiltshire to see Miss JMC. Mr Barnes believed that what Wiltshire County Council was doing was wrong. If Mr C had had the funds to resist it in the Court of Protection, Mr Barnes believed his own plans for his half sister and her companion would have prevailed.
57. Mr Barnes had held what he perceived to be "the moral high ground". He did all he could to enable Miss JMC and Miss B to move to Suffolk. Mr Barnes received instructions from Mr C and Miss B that were critical. The property and the money were never the priority although they came into the equation. The priority was to move Misses JMC and B to Suffolk.
58. Mr Barnes believed what he had been told by Mr C and Miss B and he sought to assist Miss JMC by trying to achieve her move to Suffolk. He believed firmly that he was acting in the interests of Miss JMC and was not taking any advantage of her.

59. Mr Barnes accepted that he did not obtain written instructions from Miss JMC. Mr C was his client. Miss JMC could not give instructions but Mr C told Mr Barnes what she wanted as did Miss JMC's lifelong companion, Miss B, whom he met in Suffolk before taking instructions from Mr C. Miss B assured Mr Barnes that she and Miss JMC wished to move to Suffolk to be near the C family. There was no-one for them in Wiltshire and that when they moved to Suffolk the C's would be able to help with Miss JMC's care at home. Miss B's views made a big impression on Mr Barnes. She had deprecated the interference of Wiltshire County Council in their affairs.
60. Mr Barnes had come to learn of Principle 23/04, namely the requirement to obtain confirmation of instructions from the donee of a power, but in the circumstances Lloyd Barnes had been asked only to advise generally on enduring powers of attorney and then draft one. The firm had not been involved at all in procuring its execution, which Mr C was always going to handle himself.
61. Mr Barnes thought highly of Mr Moon. He and Mr Moon discussed the documents he drafted. The letters under cover of which these were sent to Mr C contained "health warnings" inserted by Mr Moon on Mr Barnes's instructions. The relationship between Mr Barnes and Mr Moon was candid and open and they had no secrets from each other.
62. Mr Barnes did not believe that his conduct was unbecoming a solicitor. He was doing the best he could for Miss JMC in trying to arrange for her move with Miss B to Suffolk. He was still trying to achieve this in July 2004. Mr Barnes had arranged a compromise between Mr C and Wiltshire County Council.
63. Right from the start the Respondent had been apprised of Mr C's plan to move Miss JMC and Miss B to Suffolk. Attendance notes demonstrated that and the fact that Mr C was indifferent as to whether the property was actually transferred to him.
64. Mr C had indicated to Mr Barnes that the first loan of £10,000 was to make temporary improvements and adapting Miss JMC's house in Wiltshire for her as an invalid.
65. Attendance notes on the file recorded Mr C's instructions and his view that Wiltshire County Council's actions "were a disgrace".
66. Mr Barnes believed Mr C with regard to his intentions and as to the competence of Miss JMC. He had come to accept with hindsight that he might have checked the position direct with the Wiltshire County Council Social Services. The reason he did not was that the representative of Wiltshire County Council was his opponent. She was also against Mr C and as Mr Barnes had been acting for him, he could hardly enlist her help. Another representative of Wiltshire County Council had told Miss B that Mr C "did not exist".
67. In early October 2003 Mr C decided to represent himself. There were then three "live" issues, Miss JMC's capacity, Mr C's objection to the appointment of a Court of Protection Receiver and his continued desire to look after Miss JMC and his willingness to meet and cooperate with Wiltshire County Council. Mr Barnes drafted letters for Mr C in connection with these matters. Mr C went on to instruct new solicitors but returned to Lloyd Barnes early in 2005 in connection with his

acquisition and intended sale of the property in the context of his purchase of a bungalow for Miss JMC near Bury St Edmunds. At this point HSBC took a legal charge over Miss JMC's property.

68. Mr Barnes had taken detailed instructions and had made a detailed note of them in order to deal with Wiltshire County Council's letters of 25<sup>th</sup> June 2004. Mrs C, wife of Mr C, told Mr Barnes about her own inheritance and intended purchase of the Bury St Edmunds bungalow and that Miss JMC and Miss B should live there with the proceeds of sale of JMC's property to redeem the HSBC mortgage. Mr Barnes believed all this and continued to regard the priority in this case to be the implementing of the C family plan to move Miss JMC and Miss B to Suffolk.
69. In the light of Wiltshire County Council's concerns Mr Barnes had spoken with HSBC and with its cooperation devised the compromise proposal set out in his "without prejudice" letter dated 29 June 2004. Those proposals were accepted by Wiltshire County Council. Obviously Mr C was the loser as he and his family lost the equity capital deriving from the intended sale of the property, notwithstanding they still intended to re-house Miss JMC and Miss B in Suffolk. Mr C was disposed to agree so that he could get Wiltshire County Council "out of his hair" and concentrate on caring for Miss JMC and Miss B.
70. That letter demonstrated that Mr Barnes was not a solicitor taking advantage of anyone or indeed acting in a conflict situation but was a solicitor actively and energetically representing his client's interests in a pragmatic manner, and for the benefit of the third parties, Miss JMC and Miss B.
71. Attendance notes were produced which confirmed that the move was just what Miss JMC and Miss B wanted.
72. Wiltshire County Council continued to doubt the bona fides of Mr C and his activities were reported to the police. He was charged but the charges were later dropped.
73. Mr Barnes continued thereafter to correspond with Wiltshire County Council mainly in relation to the implementation of the compromise agreement and as to progress (or lack of it) on the purchase of the C's Bury St Edmunds property. Had Lloyd Barnes been abusing its position it was inconceivable that it would have remained involved nudging and pushing for the completion of the agreement.
74. Notwithstanding all efforts, the purchase of the Bury St Edmunds bungalow by the C's did not proceed to completion. Wiltshire County Council's opposition to Miss JMC's move contributed to this. Mr C told Mr Barnes that Miss B had been side-lined by Wiltshire County Council and that he himself at that stage was still facing prosecution. Mr Barnes thought that the C's gave up at that stage.
75. In February 2005, Mr Barnes learned that Mr C had gone bankrupt.
76. Mr Barnes did have grave concerns about Miss JMC's vulnerability but these were that Wiltshire County Council were preventing her from moving. His concerns were not directed towards Mr C whom Mr Barnes believed to be genuine. He believed Miss JMC wished to move to Suffolk. He was aware that she had suffered strokes

and believed that she had capacity to make decisions, but she became flustered and panicked in the presence of strangers.

77. Mr Barnes had no reason to suppose that Mr C was "a rogue". Wiltshire County Council had never been explicit about its concerns about him.
78. Mr Moon did not have authority to give the undertaking that he gave in the absence of Mr Barnes. Mr Barnes did not criticise Mr Moon who was a senior Licensed Conveyancer who had worked for Lloyd Barnes for fifteen years whom Mr Barnes trusted. He was using his judgment based on the file while Mr Barnes was on leave and acted as he thought best.
79. Mr Barnes had been livid to discover that Mr C had spent his sister's money for his own benefit and that he had lied to Mr Barnes as to how he intended to spend it. Mr Barnes expressed his strong disapproval of this by letter and during a home visit. Further Mr C's actions tended to complicate Mr Barnes's task, on instructions from Mr C which, to assist Miss JMC by persuading Wiltshire County Council that she and Miss B should move to Suffolk.
80. Mr Barnes had thought and continued to think that Mr C's plan was a good one and consistent with his earlier instructions about rehousing Miss JMC and Miss B but he had come to realise that his thinking was naïve. Mr Barnes believed that Mr C was seriously flawed, but he could and would nevertheless look after Miss JMC and Miss B.
81. Immediately after Mr Cameron declined to accept instructions from Miss JMC, Mr C demanded the transfer document. Mr C had attended on Miss JMC with Mr Cameron and Mr Cameron had advised he could do the transfer himself. With Mr C being the client, it was believed he was entitled to take possession of the copy documents, the originals of which had already been issued. Mr Barnes had thought the transaction Mr. C proposed to effect himself would be likely to be challenged. He put his concerns in a letter to Mr. C and clearly warned Mr C that there was a danger that the transaction would be attacked as indeed it was.
82. With regard to the HSBC legal charge, the bank suggested to Mr C that this replace the informal temporary security. This was not unusual. It was agreed that this had the effect of extinguishing Lloyd Barnes's undertakings. The lending arrangement was between Mr C and the bank. The lending and the legal charge were nothing to do with Lloyd Barnes. Mr Moon and Mr Barnes discussed whether they should act in the legal charge before it was executed. Mr Barnes ruled that they could witness the charge only and could not act for either party and that they were to write to Mr C and the bank to this effect. Mr Barnes's motivation was to assist Mr C (who could not afford to pay any other solicitor's fees) to get that business done by further forbearing to charge him. Mr Barnes dealt with his reservations by writing unambiguous letters warning Mr C of the possible consequences and making it clear in these that Lloyd B Barnes was not acting for him in these transactions. In respect of both the transfer form and the legal charge they were pre-existing documents and the decision whether to supply or withhold them was made on the fine edge of a blade. New documents had not been generated. Both the transfer and legal charge documents were on the

file. They were released to Mr C with clear "health warnings" in each case and in each case Mr C was absolutely resolved to effect the transactions.

83. The letter of 23<sup>rd</sup> June 2004 showed that after release from its undertakings Lloyd Barnes was still taking care of Mr C. That served to negate the allegation that the Respondents were only interested in getting released from the undertakings.
84. With regard to Lloyd Barnes supplying the necessary forms to effect the transfer, Mr C was the client and he demanded them. These forms were in any event in the public domain and could be obtained from HM Land Registry website. Mr C most plausibly continued to assert his sister's comprehension, her wish to transfer the property to him and above all her wish to move. Lloyd Barnes regarded Mr C as the only client and complied with his instructions and believed him when he said that he intended to reinvest the proceeds in a new home for Miss JMC and Miss R. The action was taken in good faith and with cautionary words to Mr C.
85. Lloyd Barnes had become aware that Mr C had appropriated the loan money for his own use (although he subsequently informed Mr Barnes that he had in fact expended a portion of it for Miss JMC's benefit in the home being refurbished for her in Suffolk) and Mr Barnes had criticised him severely for having lied to him to obtain it. Mr Barnes urged Mr C to make repayment, which he said he would do. Mr Barnes hoped and believed Mr C would still try to care for Miss JMC although his misappropriation had exacerbated the problems of acting for him in the fight against Wiltshire County Council to enable Miss JMC and Miss B to move to Suffolk. Mr C's dishonesty notwithstanding, Mr Barnes did not take the view that his case for moving Miss JMC to Suffolk was wholly invalid. He just adjudged it to have become much more difficult. Mr Barnes still believed Mr and Mrs C would have looked after Miss JMC and Miss B and he continued to help them develop and articulate their plan.
86. Mr Barnes made persistent attempts to bring this move about and also to see the Wiltshire property re-transferred to Miss JMC and his efforts to replace the HSBC's bank's mortgage over the Wiltshire property with a second legal charge over the Suffolk property was compelling evidence that Lloyd Barnes was trying to achieve a great deal for Miss JMC and her companion after the release of the Lloyd Barnes undertaking.
87. Whilst a breach of Rule 24/03 was admitted by Mr Barnes, he denied that Lloyd Barnes acted in the enduring power of attorney. It was on Mr C's instructions that they drafted it for him to take away and get signed. It had been explained that the firm could not act for a person who lived in Wiltshire as it was too far away. This explanation was given when Lloyd Barnes declined to accept instructions from Miss B.
88. Miss JMC had never been a client of Lloyd Barnes but Mr Barnes believed that he was at all times helping her and acting in her best interests.
89. The Tribunal was invited to take into account the large bundle of testimonials written in support of Mr Barnes, all of which attested to his competence and integrity.

### **The Submissions of Mr Moon**

90. Whilst working for Mr Barnes, Mr Moon dealt with all aspects of residential and commercial conveyancing along with related matters including company sales and purchases but latterly he almost exclusively undertook commercial conveyancing and had assistants to deal with residential conveyancing. Mr Barnes inspected the incoming post but gave Mr Moon little other direct supervision. He was always ready and available to assist but did not actively involve himself in Mr Moon's work unless asked to do so.
91. Mr Barnes was well respected by all. He had excellent judgment and Mr Moon was always happy to trust it. Often when Mr Moon did ask for assistance on a particular file it would be more for Mr Barnes's tactical guidance than purely legal input. He was a very good negotiator and had good general business/commercial acumen. Mr Moon did not require close supervision but Mr Barnes was always very supportive and having satisfied himself as to Mr Moon's level of competence, was content to give him responsibility and trust him to do the job properly.
92. Mr C had been Mr Barnes's client for whom Mr Moon had not acted prior to his initial involvement with him in the summer of 2003.
93. Mr Moon had received a telephone call from Mr C in June 2003, was told that the firm acted for him and as there was no-one else available, he was asked to draft an enduring power of attorney for his half sister, Miss JMC. Mr Moon drafted the document and sent it to him along with a suitable letter of advice setting out what was required to ensure valid execution. Mr Moon had come fully to appreciate, but he did not at the time, that he should have taken positive steps to contact the donor of the power and obtain her direct instructions. Mr Moon's failure was a genuine and innocent mistake which he would certainly never repeat.
94. Mr Moon knew that Mr Barnes arranged a loan from HSBC for Mr C and that he gave an undertaking to repay the debt out of the sale proceeds of Miss JMC's property. Mr Moon had no involvement in the transaction save to extend the undertaking to relate to £30,000 from £20,000. Mr Moon honestly did not think that Mr C's request was unreasonable as the principle of the undertaking had already been established and he could not imagine that the property was worth less than £30,000. Mr Moon would not have become involved in this aspect of the matter had Mr Barnes not been on holiday at the time.
95. During the latter part of the summer of 2003 Mr Moon became aware of the fact that Wiltshire County Council was opposed to Miss JMC's proposed move to Suffolk and that Mr Barnes was in correspondence with the Council. Mr Moon understood that the move was being arranged purely and simply to benefit Miss JMC and from what little he knew of the background he respected Mr Barnes's judgment and thought that he was working in her best interests.
96. Mr Moon had not been actively involved in private client work of this type. He drafted various documents as required and at Mr Barnes's request. In particular he was required to draft transfer documents to enable Miss JMC's property to be transferred to Mr C. By the time he was asked to do this Mr Moon had been well

aware of the fact that Miss JMC was elderly and that doubts had been raised as to her capacity. Mr Moon therefore persuaded Mr Barnes that it would be prudent to ensure that she had independent advice before she completed the transfer. Mr Barnes agreed and it was in those circumstances that Mr Moon instructed the Merriman Partnership (Mr Cameron) to attend on her and give her appropriate advice. Mr Cameron did not consider Miss JMC to be capable of transferring the property. Following further discussions between Mr Barnes and Mr C, Mr Moon was required to provide the transfer documents direct to Mr C. Mr Moon had done as he had been told but he also said to Mr Barnes that he did not consider it was appropriate, having regard to the clear advice received from the Merriman Partnership.

97. Subsequently Mr Moon became aware that Mr C had been registered as the proprietor of the property and at that point Mr Barnes wished to be released from the undertaking he had given to HSBC bank. The bank agreed provided they had a charge over the property and Mr Moon was therefore instructed to obtain Mr C's execution of a legal charge which was then registered at the Land Registry. Mr Moon did not act for the bank or give them any report on title. It simply arranged for the execution of the charge and its subsequent registration. Mr Moon had no further involvement with this particular matter save to deal with enquiries from Wiltshire County Council.
98. Mr Moon had understood that Mr C was going to buy another property near Bury St Edmunds which would be occupied by Miss JMC. He had instructed other solicitors in connection with that matter and Mr Moon was used as a reluctant conduit between these solicitors and Wiltshire County Council.
99. Mr Moon had no reason to take advantage of Miss JMC. If his actions assisted Mr C, it was not his intention. Mr Moon acted in good faith at all times, influenced by the fact that Mr Barnes voiced no concerns about Mr C's motivation and indeed was supportive of him in his declared intention to improve Miss JMC's situation.
100. Mr Moon was completely unaware of the provisions of Rule 24/03 as indeed was Mr Barnes.
101. Mr Moon did not seek to absolve himself from responsibility but he believed throughout that Mr Barnes and Mr C were acting in Miss JMC's best interests. Mr Moon had no personal interest in the business and did not accept that there was a conflict of interest between himself and the firm's client.
102. Mr Moon had no intention of taking unfair advantage of anyone, least of all Miss JMC. No specific complaint had been made about Mr Moon as an individual.
103. Mr Moon had not been aware of Miss C's capacity at the time of the drafting of the enduring power of attorney. Mr C informed Mr Moon on 4<sup>th</sup> July 2003 that the enduring power of attorney had been executed. Mr C himself collected the deeds from solicitors, Morrison and Masters. He took the original enduring power of attorney with him as evidence of his entitlement to the deeds. Mr Moon sent that firm a fax confirming Mr C's instructions. Mr Moon had no involvement in the application for registration of the power with the Court of Protection.

104. Where it was suggested that Mr C's lack of knowledge about Miss JMC should have alerted Mr Moon, in fairness it was not unusual for people not to know the full names and dates of birth of their relatives. Mr Moon attached no particular significance to the fact that Miss JMC might have had physical difficulty in signing the document.
105. It had been Mr Moon who told Mr Barnes that Miss JMC should have separate independent legal advice. Mr Moon did not sign the letter to Mr C with copy transfer documents. He drafted that letter but had told Mr Barnes that he did not think it was the right thing to do. Mr Moon was aware of the letter and its contents, but he wanted nothing to do with it and distanced himself from it. The internal memorandum was simply confirmation of the procedure that would have to be adopted by Mr Barnes and Mr C to achieve the stated objective.
106. Mr Moon had prepared documents as requested by Mr Barnes and had been a reluctant participant particularly in the latter stages.
107. Mr C had not been Mr Moon's particular client: Mr Moon had not sought to take unfair advantage of Miss JMC or of anyone else.
108. Mr Moon had been in partnership with Mark Hayward since the beginning of January 2007. He and previous employers had been made fully aware of the disciplinary proceedings. When the opportunity to branch out presented itself to Mr Moon, he took it. He was solely concerned with commercial property transactions and did not undertake any private client work. Mr Moon held a full practising licence from the Council for Licensed Conveyancers and had disclosed to them the allegations that had been made against him. The Council did stipulate that he must work in partnership with another Licensed Conveyancer and he had also been required to give them an undertaking that he would notify them of the outcome of the disciplinary proceedings.
109. Mark Hayward and Mr Moon monitored each other's workload and reviewed each other's post. They also had a system for reviewing each other's files. There was no prospect that Mr Moon might get into a situation similar to that which had resulted in the disciplinary proceedings.
110. Mr Moon admitted the errors he had made and was deeply sorry. Mr Moon had learned a painful and costly lesson, making him acutely aware and mindful of his professional responsibilities.
111. The role played by Mr Moon, his position in the firm and the fact that he warned his principal against particular steps that he took, did not demonstrate that the public's interest or that of the solicitors' profession would be served by making the regulatory order pursuant to Section 43 of the Solicitors Act 1974. Mr Moon was a capable and honourable licensed conveyancer whose employment within the solicitors' profession (or with certain other lawyers) need not require the permission of The Law Society.

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

112. After carefully considering the evidence and the submission in this case the Tribunal found with regard to Mr Barnes: Allegation (a) to have been substantiated; allegation (b) to have been substantiated indeed it was not contested; allegation (c) to have been

substantiated; allegation (d) to have been substantiated indeed it was not contested; allegation (e) was not substantiated; allegation (f) was substantiated.

113. With regard to Mr Moon the Tribunal concluded that Mr Moon was an employee of and driven by Mr Barnes. He had been instructed by his principal who ought to have known better. Mr Moon was to be given credit for raising with his principal the fact that independent advice should be obtained by Miss JMC, in particular with a view to ascertaining her capacity. Mr Moon had admitted and regretted the errors that he did make. In all of the circumstances the Tribunal did not consider that Mr Moon was a danger to the public or to the good reputation of the solicitors' profession and it declined to make the Order sought by The Law Society pursuant to Section 43 of The Solicitors Act 1974 (as amended).

#### Costs

114. The Tribunal heard submissions from all parties on the question of costs. The Law Society sought the costs of and incidental to the application and enquiry and informed the Tribunal that all parties had agreed the quantum of those costs at £6,027.50 inclusive.

#### The mitigation of Mr Barnes

115. The Law Society had made it plain that it did not allege that Mr Barnes had been dishonest. He had been foolish but he was not a rogue. He was moved by the best possible motives but accepted that his motivation might have been mistaken. He allowed himself to be blinded by a pre-conceived notion about local authorities and a failure to appreciate that Miss JMC was the client in connection with the preparation of the enduring power of attorney. Mr Barnes's firm had not benefited by his actions. Mr Barnes had enjoyed an unblemished career in the law since 1976. The Tribunal was invited to give due weight to the large number of excellent and impressive testimonials written by members of the solicitors' profession, members of other professions, clients and others, all of whom had no doubt about the probity and integrity of Mr Barnes and his competence and capabilities as a solicitor.
116. Mr Barnes had been in partnership with Mr Lloyd who had been involved in a serious car accident leading to his having to retire from practice. At this point Mr Barnes became a sole principal. Mr Lloyd's road accident had occurred in January 2004 just before Mr Barnes had made the mistake of sending the transfer documents to Mr C in February 2004.
117. As a result of what had happened Mr Barnes decided that he could not carry on in practice. He had joined another firm. However he felt so demoralised and because of his embarrassment at the disciplinary proceedings, he resigned. He then joined a firm as a consultant dealing solely with the unusual area of law relating to firearms practice. Mr Barnes was a specialist in that area of law which was a rare specialism.
118. What had happened had had a severe impact on Mr Barnes's earnings. He enjoyed an extremely modest income. His wife was no longer able to contribute. Mr Barnes would have to meet his own costs and would be expected to meet The Law Society's draconian costs.

119. There would be no repetition of the matters complained of. Mr Barnes would restrict himself to his specialist area of law and was not in a position to make any decisions as principal of a firm.
120. The investigation and bringing the matter before his professional disciplinary tribunal had been a cause of great despair and shame to him. He had been caused much distress. Mr Barnes wished to express his sincere apology and shame to the Tribunal, The Law Society and the solicitors' profession.
121. The Tribunal was invited to bear in mind that there was a degree of overlap between the various allegations. They did relate to what amounted to a single lapse on the part of the Respondent and related to one or two particular clients. At the time Mr Barnes had believed that he had been acting in the best interests of Miss JMC and Mr C. That he failed to do so caused him to be deeply ashamed and he would never allow such a thing to happen again.

### **The Tribunal's decision and its reasons**

122. The Tribunal considered that Mr Barnes had failed to recognise his duty as a solicitor. Many warning lights had been flashing but he failed to react in a professional and correct manner. There could be no doubt that Mr Barnes was highly thought of. The large number of references written in his support were impressive. The Tribunal has noted that Mr Barnes has retired as a principal in private practice and he continues to work as a consultant in a specialised area of law. There had been no allegation made against Mr Barnes that he had been dishonest and his integrity and probity had not been brought into question, rather he had been guilty of gross errors of judgement. Those matters were serious and could not go unremarked particularly as Mr Barnes's error of judgement concerned an elderly lady who had suffered two strokes, whose capacity to make decisions and manage her own affairs was seriously in doubt and should have been given the most careful consideration.
123. In all the circumstances the Tribunal considered that it would be both appropriate and proportionate to impose a financial penalty upon Mr Barnes. The Tribunal ordered Mr Barnes to pay a fine of £5,000.
124. The Tribunal concluded that Mr. Moon had followed the instructions of his principal whom he regarded as a man of the utmost probity with good business acumen and a competent solicitor. Mr. Moon was to be given credit for raised his concerns in this matter with his principal.. He could not have been said to have doggedly followed instructions without question. He accepted that he had made a mistake in not seeking direct instructions from Miss JMC. The Tribunal did not consider in all the circumstances that the making of a single mistake necessitated an Order regulating the future employment of Mr. Moon.
125. With regard to the question of costs the Tribunal noted that all parties agreed that The Law Society's inclusive costs amounted to £6,027.50. Although the Tribunal had declined to make an Order pursuant to Section 43 of the Solicitors Act 1974 in respect of Mr Moon he did, as he himself accepted, bear some responsibility for what had happened in that he handled an aspect of the case on his own while Mr Barnes was

away on holiday and had disapproved of an action taken by Mr Barnes but had not taken steps to prevent it. That having been said the Tribunal did accept that Mr Moon was an employee of Mr Barnes and it was hardly surprising that he felt that he had to do as he was told by a principal in whom he placed great belief and trust. The Tribunal considered that it was fair and proportionate to Order that Mr Moon should pay a contribution towards The Law Society's costs of £1,000 and that Mr Barnes should bear the balance of the Law Society's costs, namely £5,027.50.

DATED this 29<sup>th</sup> day of June 2007  
on behalf of the Tribunal

D J Leverton  
Chairman