

IN THE MATTER OF BARRY JOHN O'BRIEN and
TIMOTHY WILLIAM JONES, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)
Miss N Lucking
Mr G Fisher

Date of Hearing: 2nd August 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Geoffrey Williams, Queen's Counsel of Geoffrey Williams & Christopher Green, Solicitor Advocates of 2a Churchill Way, Cardiff, CF10 2DW on 25th September 2006 that Barry John O'Brien whose address for service was Ashursts Solicitors, DX 639 London/City (ref: ECS/OBRO2.00001) might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The application had been made also in respect of a Second Respondent but The Law Society had, with the consent of the Tribunal, withdrawn the allegations against that Second Respondent in July 2007.

The application was heard at The Courtroom, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 2nd August 2007 when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondent was represented by Mark Howard of Queen's Counsel.

Preliminary matter

- (i) At the opening of the hearing the Applicant told the Tribunal that he and those instructing him and the Respondent had cooperated and had produced an agreed statement of facts. The Applicant would rely on the agreed facts in support of a new allegation which the Respondent admitted. That allegation was "by accepting on behalf of Freshfields Bruckhaus Deringer ("Freshfields") instructions to act for the Revival Consortium in its proposed bid for Marks & Spencer plc ("M&S") and by acting on behalf of Freshfields for the Consortium between 7th May and 3rd June 2004 when there was a significant risk of conflict between the interests of Freshfields to clients, M&S and the Revival Constortium, Mr O'Brien breached Rules 1(c) and 1(d) of The Solicitors Practice Rules 1990.
- (ii) The parties invited the Tribunal to substitute that allegation for those contained in the Rule 4 Statement.
- (iii) Initially the Tribunal expressed concern about this. The Members of the Tribunal had read all of the papers and the agreed Statement of Facts and the proposed new allegation had been placed before the Tribunal only on the day before the substantive hearing and one member of the Tribunal had been able to read those documents only on the morning of the hearing itself. The Tribunal expressed concern that allegations contained in the original statement accompanying Mr Williams's application were serious and the Tribunal was not minded to consent to the withdrawal of any allegation without satisfactory explanation for the position that the parties had put before the Tribunal at the opening of the substantive hearing.
- (iv) The allegations were contained in paragraphs 2 and 3 of the original "Rule 4" Statement and there were three parts, (a), (b) and (c), to the allegation contained in paragraph 2.
- (v) Mr Williams explained to the Tribunal that the agreed new allegation "rolled up" allegations 2(b) and (c). The Applicant's case was based on two breaches of Practice Rule 1 namely the Respondent's initial acceptance of instructions from the Consortium and secondly the pursuit of instructions when the circumstances became clear.
- (vi) With regard to the allegation contained in the third paragraph of the original Rule 4 Statement Mr Williams told the Tribunal that he would not place any evidence in support of that allegation before the Tribunal and he asked that he might withdraw that allegation in circumstances where he did not consider that he was in a position to substantiate it.
- (vii) Mr Williams assured the Tribunal that his application had not been made because of "horse trading" between the parties, but for the reasons he had outlined.
- (viii) Mr Howard on behalf of the Respondent supported the Applicant's application.

The Tribunal's decision

- (ix) The Tribunal at the outset had expressed its concern that the Applicant had in only the week before the substantive hearing sought to withdraw allegations against a Second Respondent in this matter. The current application was made shortly after that first application and at the eleventh hour. The Tribunal would have been assisted if it had been asked to consider the position in the round rather than being asked to deal with it piece-meal and with very short notice.
- (x) The Tribunal accepted Mr Williams's assurance that he wished to withdraw the allegation at paragraph 3 because he did not consider that he could provide the evidence to prove it. The Tribunal therefore agreed to the withdrawal of allegation 3.
- (xi) With regard to the allegations contained in paragraph 2 of the Rule 4 Statement the Tribunal had been told that the proposed new allegation "rolled up" the original allegations (b) and (c) and that being the case the Tribunal could see no reason why the proposed new allegation should be substituted for the original allegations at paragraph 2(b) and (c). The Tribunal required the parties to proceed on the basis that the allegations at paragraph 2(b) and (c) remained to be dealt with, on the understanding that the Respondent had admitted them. The Tribunal noted that paragraphs (a) and (c) of paragraph 2 had been put in the alternative and it was therefore acceptable for the Applicant to proceed with allegation (c) but not allegation (a).
- (xii) The parties accepted the Tribunal's ruling and it was confirmed that the Respondent did indeed admit allegations 2(b) and (c).

The substantive hearing

- (xiii) At paragraph 2 of the Applicant's Rule 4 Statement dated 25th September 2006 the allegations against Barry John O'Brien were:
 - (a) not proceeded with;
 - (b) the Respondent had breached the terms of Rule 1(c) of The Solicitors Practice Rules 1990 (the solicitor's duty to act in the best interests of the client) with respect to M&S by virtue of his acting for the Consortium;
 - (c) he had breached the terms of Rule 1(d) of The Solicitors Practice Rules 1990 (the good repute of the solicitor or of the solicitor's profession) by virtue of his acting for both the Consortium and M&S.
- (xiv) The further allegation contained in paragraph 3 of Mr Williams's Rule 4 Statement of 26th September 2006 - withdrawn.

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

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

The Tribunal Orders that the Respondent Barry John O'Brien c/o Mr E Sparrow, Ashurst Solicitors, Broadwalk House, 5 Appold Street, London, EC2A 2HA, solicitor, do pay a fine of £9,000.00, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £50,000.00.

The facts are set out in paragraphs 1 - 17 hereunder:

1. The Respondent, born in 1952, was admitted as a solicitor in 1978. His name remained on the Roll of Solicitors. At all material times the Respondent carried on in practice in partnership under the style of Freshfields Bruckhaus Deringer ("Freshfields") at 65 Fleet Street, London, EC4Y 1HS.
2. Between January and April 2001 M&S retained Freshfields to act on its behalf in the negotiation of an agreement with Mr D for the sale in M&S stores of a range of merchandise.
3. In late 2003 M&S and Mr D agreed to restructure their contractual arrangements. Freshfields were again retained to advise M&S and they opened a new file: "Project GII. After giving preliminary advice Freshfields received no further instructions until a meeting on 7th January 2004. Further advice on a different aspect of the matter was given on 19th February and 2nd March 2004. Freshfields submitted an interim account to M&S on 5th May 2004 and its file remained live, although no further instructions had been received.
4. In May 2004, therefore, M&S was an existing client of Freshfields.

The Revival Consortium ("the Consortium") instruction

5. On 4th May 2004 Mr O'Brien met with the Chairman of A Group. The Chairman informed Mr O'Brien that a Consortium involving the family owning A Group, ML and G proposed to make a £9 billion bid for M&S and it wished Freshfields to act on its behalf. It was the Consortium's intention that the bid be a recommended bid rather than a hostile one. Mr O'Brien told the Chairman that Freshfields would be interested in accepting the instructions but would first have to carry out certain searches in respect of clear conflicts.

Conflicts and other clearances

6. Freshfields internal new client and conflicts clearance procedures at the relevant time provided the steps to be taken to ensure the absence of conflicts between the interests of any new client and the interests of the firm or any existing client. The procedures stated that:

"the main responsibility for making decisions on actual or potential conflicts rests with the Chief Executive... Nevertheless primary responsibility for identifying conflicts and making sure that they are properly cleared rests with the partner taking on the job in question."

7. Following his meeting with the Chairman, Mr O'Brien identified three issues for him to consider and consult on with others at Freshfields before the instructions could be accepted. They were:
- (i) did Freshfields have other client relationships which might clash with the proposed instructions at a commercial level? Mr O'Brien's main concern in this regard was the firm's role as corporate counsel for another big client in the retail sector. One possibility, for example, was whether that client might be a rival bidder for M&S if it were in play;
 - (ii) would acting for the Consortium pose a risk for the reputation of the firm?;
 - (iii) did the firm have existing matters for M&S either as a client or a counterparty which were sufficiently material so as to prevent it from acting adversely to M&S on the bid?
8. On his return to the office, Mr O'Brien spoke to a number of partners about the prospective instructions including:
- (i) Freshfields Co-Relationship partner for the other big retail client. She and Mr O'Brien concluded that there was nothing to prevent Freshfields acting on the proposed bid insofar as the firm's relationship with that other client was concerned;
 - (ii) Freshfields Co-head of the Corporate Practice Group; Mr D:
 - (a) Mr O'Brien asked Mr D what his view was about any commercial or reputational issues that might arise from the firm agreeing to advise the Consortium. Mr D's view had been that he did not see any reason why the firm should not act for the Consortium. He also suggested that Mr O'Brien speak to Mr C, Freshfield's Chief Executive about these issues. Mr O'Brien did so and subsequently confirmed to Mr D that Mr C was also content on those issues.
 - (b) Mr O'Brien and Mr D also spoke about the potential impact of the instructions on the relationship with their other big retail client. Mr D did not disagree with Mr O'Brien's assessment that he was comfortable with the position;
 - (c) Mr D was concerned that a second corporate partner should be involved on the matter because of its potential scale and suggested that Mr O'Brien speak to Mr J, the Managing Partner of the London Corporate Department, about staffing. (Mr D himself subsequently spoke to Mr J about this);

- (d) Mr D told Mr O'Brien that he assumed that Mr O'Brien would do the necessary conflict checks. Mr O'Brien said that he would.
- (iii) Mr O'Brien spoke to Mr J about the staffing of the matter were the instructions to be accepted. Mr O'Brien was minded to use another partner who had retail experience but who also had worked for their other big retail client. This led to a discussion in which Mr O'Brien explained that the relationship with that other client would not be a problem as it would not be bidding for M&S nor was it likely that that other client would object to the firm acting on the bid. He would discuss the matter further with Mr C and the Co-Relationship Partner.
- (iv) Mr O'Brien had also raised the reputational issue. The presence of the Chairman and the involvement of top line investment banks were seen by Mr O'Brien as reassuring. There was nothing to suggest that Freshfields should not act for the Consortium. Mr O'Brien confirmed he would discuss the matter with Mr C.
- (v) Mr O'Brien and Mr J went on to discuss possible conflicts of interest. For purposes unconnected with conflicts, Mr J had on his desk a marketing report containing a list of all files where M&S was or had been the firm's client. Mr O'Brien did not appreciate at the time that this list was a marketing report. He focused on its contents rather than what it was and he thought it was a conflict report. He subsequently placed this report on his file as evidence of the conflicts check. Mr O'Brien did not initiate a separate check of the firm's conflict database.
- (vi) Both Mr O'Brien and Mr J were aware that M&S was an existing client of Freshfields. They reviewed the list of matters the firm had or was handling for M&S. In particular they considered the matter identified in the list as Project G II. They understood that that file related to a consultancy/branding agreement with Mr D. That consultancy agreement was considered to be an ordinary course of business matter and therefore was not considered to be sufficiently material in the context of the £9 billion bid or require consultation with the Freshfields' lawyers working on it. Neither Mr O'Brien nor Mr J was aware of what work the firm was doing on the Project G II file. It had not been a significant matter in terms of resources required. The description of the matter, "restructuring of arrangements between client and Mr D" did not suggest to Mr O'Brien or Mr J that the work was significant, apart from its involving a well known figure in the retail sector. Nor were they aware of the potential significance the Mr D consultancy agreement might assume for the purposes of the tactical conduct of a bid by the Consortium. They did not identify any other matter that might be material to the proposed bid or which required consultation with the Freshfields lawyers involved.
- (vii) The confidentiality and price sensitivity of the Consortium's plans would have prevented Mr O'Brien or anyone else disclosing to anyone at Freshfields involved in any M&S matter why they were seeking information about possible conflict issues. However information could have been sought by someone other than Mr O'Brien to inform the decision whether or not to

accept instructions. No-one took this step. Mr O'Brien or anyone else at Freshfields did not seek M&S's consent to Freshfields acting for the Consortium. M&S was not informed of Freshfields decision to act. Again, confidentiality and price sensitivity would have prevented that.

During the course of discussion Mr J agreed with Mr O'Brien that two other partners in the Freshfields team should be involved. No note was made of the discussion.

- (viii) Mr O'Brien had spoken to Mr C by telephone and had asked about the reputation issue. Mr O'Brien had said he had spoken to Mr D who thought it was "ok". Mr O'Brien and Mr C discussed the fact that the Consortium involved persons and banks with high reputation and included an existing client. Mr C asked Mr O'Brien if he had done a conflict check. Mr O'Brien replied that he had. They briefly discussed M&S and Mr O'Brien said that he had talked to Mr J about this issue. Mr O'Brien also told Mr C that he had considered the issue of their other big retail client but had cleared that.
9. On the basis of these discussions it was concluded by Mr O'Brien and the others involved that there was no obstacle to Freshfields accepting the instructions to act for the Consortium. Mr O'Brien communicated that decision to the Consortium's Chairman.
 10. Shortly after work started on the bid Mr O'Brien spoke to the Co-Senior Partner of Freshfields and informed him of the new instruction from the Consortium.
 11. The conclusion that Freshfields was free to act for the Consortium was reached against the background of discussions between the firm and M&S in 1999 and 2000 about the future relationship between the two organisations when Freshfields had refused to act for M&S in a particular matter when M&S appointed Slaughter & May. Following those discussions Mr O'Brien and others at Freshfields held the misconception that with the passage of time M&S would not object to Freshfields acting for a bidder for M&S.
 12. Work on the bid commenced on 7th May 2004. Mr O'Brien led the team. The Mr D and M&S contract was mentioned in a team meeting on 7th May 2004 and in documents drafted for the purposes of the Consortium's bid.
 13. On 11th May the financial advisers to the Consortium circulated a draft announcement document listing as one of the pre-conditions of the bid, a satisfactory review by the Consortium of Mr D's agreement with M&S.
 14. By 18th May Mr D and M&S agreement had become sufficiently important for due diligence purposes for Mr O'Brien to decide to put in place an information barrier to protect the confidentiality of information held on the relevant files. He did not tell the Consortium that Freshfields had been involved, on behalf of M&S, in the contractual arrangements with Mr D.

15. On 27th May the Consortium's bid for M&S was publicly announced indicating that a recommended bid would be sought. At this time M&S did not know that Freshfields were acting for the Consortium.
16. On 28th May the Legal Week published a report on the bid noting that Freshfields was advising the Consortium which was brought to the attention of M&S by a partner in Slaughter & May, M&S's lawyers.
17. After obtaining confirmation that Freshfields were acting for the Consortium, M&S applied to the High Court for an injunction to restrain Freshfields from acting on the bid. That injunction was granted on 2nd June 2004. On 3rd June the Court of Appeal refused permission to Freshfields to appeal. As a consequence Freshfields ceased acting for the Consortium.

The Submissions of the Applicant

18. The Respondent was a partner of seniority at Freshfields Bruckhaus Deringer. By the date of the substantive hearing Mr O'Brien had decided to retire as a partner and had become a consultant at Freshfields.
19. The Tribunal was invited to consider the judgment of The Honourable Mr Justice Lawrence Collins relating to the injunction proceedings brought by M&S plc and in particular when he said:

"I am satisfied that there is a real or serious risk of conflict. The [Mr D] contract is a very important part of the M&S business. On the evidence before me, it is also a very important part of the tactics of the bid and it does seem likely that some form of criticism will be made of it, and that if Freshfields are acting for the Consortium they will be putting their names or at any rate approving documents which are in direct conflict with their present duty to act in the best interests of M&S in connection with the restructuring of the contracts. In particular, I was told, although this may not be fully reflected in the evidence, that steps could be taken by M&S to ensure that the contracts continue irrespective of any bid.

.....

"The principal ground for an injunction, therefore, is the actual or potential conflict of interest in which Freshfields find themselves.

On the second, and alternative, basis of the application, there is, obviously, a huge amount of confidential information relating to the affairs of M&S within Freshfields. Some of it is, plainly, material to a potential bid, if only to be discarded as not being sufficiently important. I cannot see, even with a firm of the size of Freshfields, that any effective barriers could be put in place given the very large numbers of people concerned even on the two matters in relation to which I have details of the personnel involved. If the other matters are taken into account, there must be very many members at Freshfields who have a great deal of knowledge about the affairs of M&S. In those circumstances, it seems to me that, to the extent that the information is

confidential, and I am satisfied that there is a great deal of confidential information, Chinese walls would not be perceived to be - perception here is very important - sufficient."

20. Two conduct issues arose from these matters. First, when the Respondent agreed to act for the Consortium seeking to buy M&S and secondly when he decided to continue to accept instructions during the period from 7th May until 3rd June 2004.
21. The breaches of Practice Rule 1 occurred when Mr O'Brien "picked up the ball" and then continued to run with it. It should have been apparent to him that to take either of these steps was not open to him.
22. The fundamental principle was that a solicitor must not act where a conflict of interest or a significant risk of conflict arises between two or more clients. Principle 15.01 is that:

"a solicitor or firm of solicitors should not accept instructions to act for two or more clients where there is a conflict or significant risk of a conflict between the interests of those clients.

The commentary to that principle points out that where a solicitor already acts for one client and is asked to act for another client whose interests conflict or are likely to conflict, with those of the first client the solicitor must refuse to act for the second client. Further even if an actual conflict of interests exists and is disclosed to the client and the client consents to the solicitor acting the solicitor must not accept the instructions. Further 15.02 provides that if a solicitor or firm of solicitors has acquired relevant confidential information about an existing or former client during the course of acting for that client the solicitor or the firm must not accept instructions to act against the client. A solicitor was under a duty to a client to inform it of all matters which are material to the retainer. Consequently a solicitor in possession of confidential information concerning a client which is or might be relevant to another client is put in an impossible position and cannot act against that client.

23. The fact that Mr O'Brien considered it necessary to put in place an information barrier to protect the confidentiality of information held on the M&S file in connection with the contractual arrangements with Mr D in itself demonstrated that there was a conflict of interest situation, as did the fact that neither Mr O'Brien, nor anyone else at Freshfields, sought M&S's consent to the firm acting for the Consortium as confidentiality and price sensitivity would have prevented that.
24. Mr O'Brien had been guilty of a serious transgression of the Solicitors Practice Rules. The Applicant did not, however, put his case on the basis that Mr O'Brien had disclosed any confidential information to anyone that should not have been given it. Mr O'Brien owed a fiduciary duty to M&S as a partner in the firm of Freshfields which had acted and continued to act for M&S in a particular matter at the time when he accepted instructions from the Consortium and Mr O'Brien had not fulfilled his professional duty to M&S. It had been an unusual step for M&S to take to seek an injunction to prevent Freshfields from acting for the Consortium but the fact that it

had been constrained to do so and had been successful could serve only to damage the good reputation of the Respondent and the solicitors' profession as a whole.

25. In the submission of the Applicant there had been a failure by Mr O'Brien to live up to the high standards required by members of the solicitors' profession when he had the opportunity to handle a large transaction involving public companies. He allowed commercial and business considerations to override his professional obligations. Mr O'Brien was of course to be given credit for his later recognition of this.
26. Mr O'Brien had accepted that he must be responsible for The Law Society's costs in bringing the disciplinary proceedings and the parties had agreed those costs in the figure of £50,000. The Tribunal was invited to reflect that agreement in its order.

The Submissions of Mr O'Brien in mitigation

27. Mr O'Brien was a distinguished solicitor of more than thirty years standing who had a record of outstanding service to his clients, to Freshfields, to the legal profession and to the wider community.
28. Although he was not the only partner involved in the decision making process, Mr O'Brien accepted responsibility for that decision. It was taken after he and others had satisfied themselves that there was no impediment to Freshfields acting for the Consortium. It was a bona fide, albeit mistaken, decision.
29. Freshfields and Mr O'Brien had come to accept that the decision to act for the Consortium was inappropriate in the circumstances as there had been a failure to recognise the conflict of interest arising by reason of Freshfields prior relationship with M&S. That this occurred was a matter of deep and profound regret for Freshfields and for Mr O'Brien personally. They apologised unreservedly for what had happened.
30. Freshfields conflicts clearance procedures had since been improved.
31. It was submitted that it would not be in the public interest or proportionate to impose any sanction or to make any further order in respect of Mr O'Brien.
32. Prior to 1999 Freshfields had acted as M&S's main corporate lawyers. That year they were unable to act for M&S in defending a possible bid because of conflicting instructions from another major retailer. As a result M&S instructed Slaughter & May. Inconclusive discussions with M&S led Mr O'Brien and colleagues to believe that with the passage of time M&S would not object to Freshfields acting for a bidder for M&S.
33. Mr O'Brien had been careful to undertake checks in respect of reputational issues; commercial sector issues relating to the firm's other major retail client and conflicts.
34. Freshfields had internal procedures for checking for situations where conflicts of interest arose. Mr O'Brien wrongly believed that a marketing report was a conflict report, although all of the material information, which would have been in a conflict search, was in that marketing report.

35. Mr O'Brien and colleagues with whom he discussed the matter identified the Mr D and M&S contract as a possible conflict but concluded - wrongly - that it was not material to the proposed Consortium bid and, accordingly, was not a "related matter". They had not been aware of the potential significance that the Mr D consultancy agreement might assume for the purposes of the tactical conduct of the bid by the Consortium.
36. When he realised that the Mr D contract might be material to the Consortium bid, Mr O'Brien perceived a difficult position. His duties to the Consortium required him not to disrupt the preparations for the bid at a sensitive time and Freshfields' duties to M&S required that details of the Mr D contract remained confidential. Mr O'Brien decided to address the issue of any potential misuse of M&S information with an information barrier. There had never been any suggestion that information did leak from the M&S/Mr D team at Freshfields to the Consortium bid team or that there was any serious risk that it might do so. It was, however, recognised that an information barrier was insufficient to overcome the conflicts difficulty.
37. The decision-making about Freshfields' response to the M&S application for an injunction passed to a group of its partners. The decision to resist M&S's application was taken in the interests of the Consortium and on their instructions supported by eminent Leading Counsel. Mr O'Brien played no part in that decision.
38. Freshfields and Mr O'Brien accepted that the decision to act for the Consortium represented an error of judgement. This should not have happened. It represented a lapse from the high standards which they set themselves and which are to be expected of members of the profession. It was recognised that further information concerning the Mr D contract should have been sought and that in any event once the conflict became apparent the information barrier was not a solution to the problem. The decision to act was bona fide and though it represented an error of judgment, it was as a result of a genuine and honest mistake. This had been recognised by the court and The Law Society.
39. Neither M&S nor the Consortium had suffered any loss and neither of them had made any complaint.
40. Mr O'Brien and Freshfields had cooperated fully with The Law Society.
41. Mr O'Brien had had the investigation and the disciplinary proceedings hanging over him for more than three years.
42. Although he had enjoyed widespread support from clients, colleagues and members of the legal profession, it had been a worrying and stressful time for Mr O'Brien. He had been subject to press speculation.
43. Mr O'Brien had become a partner of Freshfields in 1986 and he had occupied a number of important and senior roles within the firm. Mr O'Brien had the full support of Freshfields and was recognised as one of the leading practitioners of his generation. He enjoyed a high reputation and his high level of competency was exemplified by the fact that he had received awards from his firm and from Lloyd's

from whom he received the Lloyd's Silver Medal in recognition of his efforts, an award given rarely and hardly ever to someone outside the market.

44. Mr O'Brien acted for a number of corporate clients including many leading household names. The testimonials placed before the Tribunal attested to his great competence and integrity.
45. As well as being a leading solicitor Mr O'Brien also played an active role in the wider community being an active member of a RC church, a school governor, a member of Business in the Community Education Leadership Team, and a member of City Committee of Wooden Spoon Children's Charity. He participated in Freshfields mentoring scheme for head teachers.
46. The Tribunal was invited to take into account that Mr O'Brien was a truly exceptional and outstanding solicitor. He contributed much to the good standing of the profession. In May 2004 he fell short of the high standards which he had always set himself. He accepted that, with his partners, he committed an error of judgement in accepting the Consortium as a client. He had apologised for this and had accepted personal responsibility. This lapse constituted a blemish on an otherwise distinguished career and had caused him considerable personal embarrassment and stress as well as the loss of standing and the opportunity to stand for election to the post of Freshfields senior partner. It would not be appropriate or proportionate or in the public interest to impose any further sanction on him or to make any other order.

The Findings of the Tribunal, its decision and its reasons

47. The Tribunal found allegations (b) and (c) to have been substantiated, indeed they were not contested.
48. The Tribunal carefully considered what has been said about this case and the fact that Mr O'Brien had admitted both of the allegations made against him.
49. The first was that he breached the terms of Rule 1(c) of the Solicitors Practice Rules (the solicitor's duty to act in the best interests of the client) with respect to M&S by virtue of acting for the Consortium and that he breached Rule 1(d) of the Solicitors Practice Rules (the good repute of the solicitor or the solicitor's profession) by virtue of his acting both for the Consortium and M&S.
50. The Tribunal took note of the explanation put forward by Mr O'Brien and read carefully the references that had been submitted on his behalf and took these fully into account. However Mr O'Brien was a senior and experienced partner at a leading firm of solicitors. That firm had in place procedures to check for possible conflicts. In this case those procedures were not followed and it was accepted by Mr O'Brien that he made an error of judgement in acting for the Consortium when a potential conflict of interests existed with regard to his and Freshfields relationship with M&S.
51. Mr Williams for The Law Society categorises these as serious matters and the Tribunal agrees with this assertion, particularly given the profile and size of this job and the seniority and experience of the Respondent.

52. In these circumstances, and notwithstanding the outstanding career that Mr O'Brien had enjoyed, the Tribunal did not consider it appropriate to impose no sanction but rather in respect of allegation 1(c) a fine of £5000 and in respect of allegation 1(d) a fine of £4000 (giving a total of £9,000) were imposed and the Tribunal Ordered that Mr O'Brien pay the costs of and incidental to the application and enquiry fixed in the agreed sum of £50,000.

Dated this 3rd day of October 2007

On behalf of the Tribunal

A N Spooner
Chairman