

IN THE MATTER OF LEWIS MICHAEL ROSE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Mr J N Barnecutt
Mr S Howe

Date of Hearing: 19th July 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 Jonathon Richard Goodwin of Jonathon Goodwin Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 28th November 2006 that Lewis Michael Rose of St Michael's Court, St Michael's Lane, Derby, DE1 3HQ, solicitor, might be required to answer the allegations set out in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to withdraw some of the allegations made against the Respondent. The Respondent agreed and the Tribunal consented thereto. The allegations set out below reflect that position.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely that:

- (i) he involved himself in the setting up of E Property Management Limited ("EPM Ltd") and/or other companies and became company secretary and nominee shareholder thereof with the intention of disguising from M Properties Limited ("M Ltd") the true beneficial ownership of EPM Ltd by M Ltd's director, Mr Y, and one of M Ltd's employees, Mr B, and in so doing the Respondent's conduct compromised or impaired or was likely to compromise or impair his independence or integrity as a solicitor, his

good repute or that of the solicitors' profession, contrary to Rule 1 of the Solicitors Practice Rules 1990;

- (ii) he acted in a transaction(s) the effect of which was that EPM Ltd purchased and sold on land and property so as to make a profit dishonestly or otherwise to the detriment of M Ltd and in so doing the Respondent's conduct compromised or impaired or was likely to compromise or impair his independence or integrity as a solicitor, his good repute or that of the solicitors' profession, contrary to Rule 1 of the Solicitors Practice Rules 1990;
- (iii) [withdrawn]
- (iv) in relation to the transaction involving the purchase and subsequent sale of land at CH Farm the Respondent made representations which were misleading and/or inaccurate in that he:
 - (a) [withdrawn]
 - (b) misled Goodger Auden (solicitors acting for Mr and Mrs C) regarding the extent of the land being bought and sold by EPM Limited by representing that EPM Ltd were selling on only a portion of the land being bought by them when in fact EPM Limited was selling all of the land being purchased by them, and/or;
 - (c) [withdrawn]
 - (d) misled Goodger Auden upon registration of the property by representing that in making the Land Registry application he had had the purported extra land bought by EPM Ltd from M Ltd excluded from the application, thereby continuing to give the impression that the transaction was not a back-to-back transaction.

Whilst dishonesty was alleged against the Respondent it was not an essential ingredient for the allegations, it being sufficient for the Tribunal to find that the Respondent's conduct itself amounted to conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th July 2007 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent was represented by Mr Jonathan Marks, Queen's Counsel.

The evidence before the Tribunal included the admissions of the Respondent to all of the allegations save he denied that he had been dishonest. The Respondent gave oral evidence as did Mr Arthur Titterton, solicitor. A bundle of written testimonials had been handed to the Tribunal immediately prior to the hearing.

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

The Tribunal Orders that the Respondent, Lewis Michael Rose of St Michael`s Court, St Michael`s Lane, Derby, DE1 3HQ, solicitor, be suspended from practice as a solicitor for the

period of one year to commence on the 16th day of August 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,000.

The facts are set out in paragraphs 1 - 22 hereunder:

1. The Respondent, 60 years of age, was admitted as a solicitor in February 1971. At the material time the Respondent was a partner in Messrs Flint Bishop and Barnet, solicitors of Derby.
2. The Respondent acted for Mr Y and Mr B. Mr Y was a director and employee of M Ltd between April 1996 and March 2001. Mr B had been employed by M Ltd until approximately March 2001. M Ltd dealt in property.
3. Mr Y and Mr B had been unhappy with their relationship with M Ltd and had decided that they would set up a property company, which when established would enable them to leave M Ltd. That new company was EPM Ltd.
4. The Respondent acted for Mr Y and Mr B in relation to the incorporation of EPM Ltd which was incorporated on 21st July 1999. The company was beneficially owned by Mr Y and Mr B. It was agreed between Mr Y, Mr B and the Respondent that the named director of EPM Ltd would be Mr W who was the brother-in-law of Mr B and that the company secretary would be the Respondent. Of the two issued shares in EPM Ltd, one was to be held in the name of the Respondent and the other was to be held in the name of Mr W. The proposals were carried through and the Respondent prepared the necessary deeds of trust and of indemnity.
5. The deeds of trust provided that the Respondent and Mr W held their respective shares in EPM Ltd upon trust and as nominee for Mr Y and Mr B. The deeds of indemnity provided that Mr Y and Mr B would indemnify Mr W and the Respondent against all demands, claims, liabilities, losses and expenses arising out of their respective activities as director and company secretary. This arrangement disguised the true beneficial ownership and control of EPM Ltd from M Ltd or anyone else and that was intended and such intention was known to the Respondent.
6. Following the incorporation of EPM Ltd it completed a number of purchases and sales between January 2000 and March 2001.
7. In a letter the Respondent addressed to Mr B on 14th November 1999 the Respondent said:

"The other area of attack is by [M Ltd] itself if it could establish that any profit made by EPM Ltd should have belonged to it. I have been over this territory with you at length but if you are a Director of [M Ltd] you have a fiduciary duty to account to it for any profit made which could arguably belong to it. The present deal is a case in point as it could argue it has lost the difference between the sale price to you and the sale price that EPM Ltd gets if it became aware of the arrangement. Mr W could not be criticised but the company could because of your position with it be made to pay back the profit. This is the area of risk which you are aware of. It is enhanced where EPM Ltd buys from M Ltd direct and sells on at a profit, and is lessened when you buy

something that perhaps M Ltd might have acquired (emphasis on might) and did not."

8. EPM Ltd did purchase property from M Ltd and sold it on at a profit. The Tribunal had before it details of the purchase and immediate resale of CH Farm to Mr and Mrs C.
9. Nelson's solicitors acted for M Ltd in its sale of CH Farm at the price of £210,000 to EPM Ltd. Goodger Auden & Co acted for Mr and Mrs C who had agreed to purchase CH Farm for £240,000. In Goodger Auden's initial letter to the Respondent's firm of 1st November 1999 they indicated their understanding that the Respondent's firm in fact acted for M Ltd. The Respondent's firm pointed out that they did, in fact, act for EPM Ltd.
10. By letter dated 14th December 1999 Goodger Auden sought an up date upon EPM's own purchase of the property and stated:

"We have to report this to our client's Building Society and indeed we see that M Ltd themselves only acquired the land in September of this year and we are obliged to inform our Building Society of that also as they wish to know if the property has changed hands within the last six months. Do you have any information that you are able to give us regarding the present transfer in hand and also the history of M Ltd's acquisition in September which may assist our client's Building Society in its deliberations?"

11. The Respondent wrote to Nelsons by letter dated 15th December 1999 noting that:

"M Ltd only acquired the land in September of this year and will be grateful for some history of this transaction as it occurred less than six months from anticipated completion."

12. Messrs Nelsons responded on 17th December 1999 stating inter alia:

"...Our client purchased the property with an existing farmhouse which was in a very poor condition and planning permission was granted for its demolition and the construction of a new property. Beyond that there is no further information."

13. By letter dated 20th December 1999 the Respondent wrote to Goodger Auden and said:

"As you know this transaction is part of our client's related arrangement with the present owners of the site and other land and we are under pressure to make further progress on this matter as soon as possible.... The position is that the whole site which includes the property to be sold to your client was purchased by M Limited in September 1999. They have decided to move most of that site on to our client company who in turn are selling part to your client as you know. There will thus be an existing transaction and the present purchase of the site and other land by EPM Ltd from M Ltd will take place simultaneously with your client's acquisition. We trust that this causes no

difficulty, but it is a perfectly normal set of arrangements where our client finds the property your client wishes to acquire surplus to their requirements."

14. Messrs Goodger Auden wrote to the Respondent by letter dated 17th December 1999, in which they indicated that the Building Society wished to know the purchase price paid by M Ltd when they purchased the property and, "also the purchase price being paid by your clients."
15. The Respondent replied by letter dated 7th January 2000 and stated:

"We are not in a position to advise you of the price that our clients are paying to M Ltd for this and other transactions, nor are we prepared to let you have details of the price paid by M Ltd for a much more substantial area of land than that which is currently under discussion."
16. On the same day as he wrote to Goodger Auden, the Respondent wrote to Mr B and said:

"The position with regard to the sale and purchase is as you know dependent on being able to satisfy the solicitors for the purchaser that the transaction is in order. I enclose a copy of their letter of 17th December, to which I have now replied, in accordance with our recent discussion. Whether this will satisfy them I do not know. Clearly they will have to report to the lending institution under Rule 6, and obtain from them a ruling as to whether their client can proceed or not. As far as anything else is concerned, they have had the fullest possible information and they know that the related purchase from M Ltd will take place at the same time as the related sale. I have not explained that it is an exact transaction."
17. The parcel of land transferred from M Ltd to EPM Ltd was identical to that transferred from EPM Ltd to Mr and Mrs C. The Respondent had been aware of the intention that EPM Ltd should buy at least one further parcel of land at CH Farm from M Ltd. The purchase of one additional parcel of land took place after the purchase of the land sold on to Mr and Mrs C.
18. By letter dated 24th February 2000 to Goodger Auden the Respondent enclosed the land certificate and said:

"We applied for special expedition and also have managed to have "excluded" other land also acquired by our client company at the side. You are therefore free to proceed to your own registration which we believe is in the Land Registry in any event."
19. An examination of the client matter file did not reveal a copy of the Land Registry application or any correspondence to support the statement that any land had been excluded from the application. The only correspondence found either to or from the Land Registry was a document dated 14th February 2000 from Nottingham District Land Registry acknowledging receipt of an application and a request for expedition.

20. On 21st January 2000 the Respondent addressed the following letter to Mr Y and Mr B:

"Dear Mr Y and Mr B,

Re: (EPM Ltd]

I am writing to report the successful conclusion of the first "deal" which involved the company purchasing from M Ltd the property at CH Farm and then selling on to another purchaser.

Obviously, this has been a particularly difficult transaction for the reasons explained at length in earlier correspondence. I am sure you will appreciate that a purchase from M Ltd itself was certainly one of the greater risks which I have outlined in correspondence. It would be preferable to avoid transactions of this nature for the reasons stated.....

As you know, this firm has been involved in three separate elements of work so far for the company. The first element concerned the formation of EPM Ltd and associated work involved in the various Agreements between the parties. At the present time, we have not settled all the documentation and I am still waiting to hear from you with regard to the various final draft documents which were sent some time ago. You did ask me to prepare a resignation letter for [Mr W] and I enclose a copy of each letter for your kind attention.

.....This brings me to my proposed charges on the sale and purchase. The transactions have had to be kept strictly separate and indeed it has not been an easy exercise particularly as it involved exchanging on the purchase before the sale without having to explain to either party that there were transactions which were absolutely linked!"

21. In his letter to Mr Y and Mr B of 1st February 2000. the Respondent said:

"You will know from earlier correspondence that any purchase from [M Ltd] carries with it a risk that you will have to account to [M Ltd] for any profit that you make on any subsequent sale of that land in excess of the price paid to [M Ltd]. You will also be well aware that it would be far better if EPM Ltd did not buy direct from [M Ltd] but from other parties... I certainly feel that the proposed transaction might be best if EPM Ltd merely acquired the land before proceeding to sell it, in other words that it is not a "back to back" transaction as the previous one was."

22. In the CH Farm matter the contract for sale by M Ltd to EPM Ltd was signed by Mr Y on behalf of M Ltd in his capacity as director. Mr W had signed on behalf of the purchaser and the transfer deed had been executed by the director and secretary of EPM Ltd, the Respondent himself being the company secretary.

The Submissions of the Applicant

23. It was evident that the purpose of Mr Y, Mr B and the Respondent in acting as they did was to enable Mr Y and Mr B to make a profit by purchasing property from M Ltd and/or others at artificially low prices and then selling on to third parties at higher prices in "back-to-back" transactions, such purchases and resales being conducted by the Respondent.
24. The Respondent was a party to and assisted Mr Y and Mr B in their attempts to profit from M Ltd in circumstances where he knew that the transactions should not have been pursued and were improper because of the relationship of Mr Y and Mr B with M Ltd and the fiduciary duty they owed to that company. In so doing the Respondent acted with conscious impropriety such that no reasonable prudent or honest solicitor would have acted as he did.
25. The Respondent had indicated that his initial reaction to the suggestion of Mr Y and Mr B was to consider whether it would be lawful to sell properties on a "back- to-back" basis. He had told them that he was not happy with it as it exposed them to the maximum criticism. He said he had maintained that stance throughout. He said that his initial thought had been that such conduct might be fraud (either civil or criminal) but after careful consideration he felt that it was neither although profit could have been called to account in view of their fiduciary relationship with M Ltd.
26. In the submission of the Applicant the Respondent facilitated the scheme advanced by Mr Y and Mr B. No reasonable honest or prudent solicitor would have acted as the Respondent did in seeking to disguise the true beneficial ownership of EPM Ltd from M Ltd and/or others and subsequently act in relation to a series of transactions on behalf of EPM Ltd in the purchase of property from M Ltd. The Respondent was prepared to act on behalf of his clients notwithstanding that he knew that the transactions should not be pursued and he had provided such advice to his clients. The Respondent was complicit in the inappropriate activities of his clients and facilitated those activities.
27. In the course of acting on behalf of EMP Ltd in relation to the purchase of land at CH Farm from M Ltd and the subsequent onward sale by EPM Ltd to Mr and Mrs C, the Respondent made representations which were misleading and/or inaccurate to Messrs Goodger Auden, acting on behalf of Mr and Mrs C, both with regard to the extent of the land being bought and sold by EPM Ltd and in stating that he had arranged to have additional land bought by EPM Ltd excluded from the title that was passed to Mr and Mrs C, when the reality was that the whole of the parcel of land purchased by EPM Ltd was transferred to Mr and Mrs C.
28. In the submission of the Applicant the appropriate test when considering the question of dishonesty to be applied by the Tribunal was that in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 that before there could be a finding of dishonesty it must be established that the Respondent's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.

The Submissions of the Respondent

29. The Respondent's principal motivation in these matters was one of representing his clients' interests to the best of his ability.
30. The transactions before the Tribunal were not the transactions the Respondent had advised might be permissible. Having given advice and set up the arrangements the Respondent felt he had to proceed down the route which subsequently became clear even though he appreciated in hindsight this was something he should have declined to do.
31. The proposition which had been put to the Respondent by an accountant was that Mr Y and Mr B were most unhappy with their lot at M Ltd and felt they had been unfairly treated with promises of shareholdings and rewards from that company frequently made but never delivered. They felt that if they threatened to leave the company they would have been summarily dismissed and lose everything. They therefore wanted to create a situation whereby they could build up their own organisation and have somewhere to go and earn a living when the inevitable showdown with M Ltd's owner took place. It was not unusual for the principal workers in a company where the majority shareholder does not take part in the day to day hard work of the company to become very dissatisfied if the rewards they were promised were never delivered. Mr Y and Mr B were advised to challenge their unsatisfactory position but did not feel they could do so without losing everything. The Respondent had suggested that they form their own property company and run this in parallel with their activities at M Ltd until such time as they felt strong enough to resign and go their separate ways. That was the direction they pursued.
32. The Respondent honestly felt at the time EPM was formed that they would only purchase land from others and not from M Ltd and would build up their separate existence. He had come to appreciate that this was a somewhat naïve assumption. Proceedings between M Ltd and Messrs B and Y brought in many matters and transactions of which the Respondent was unaware. In so far as any profit made by EPM Ltd was concerned the Respondent and his partners had compensated M Ltd for the amount of the profit plus interest and costs.
33. The Respondent accepted with the benefit of hindsight that his intentions could be perceived to be of a dishonest nature. He appreciated that he should have said "no" when Mr Y and Mr B decided to purchase from M Ltd and not from others as the Respondent had thought they intended to do. In his naïve efforts to be helpful the Respondent had been unwise but not dishonest.
34. With regard to the CH Farm transaction the Respondent had sought to explain to his clients that the sale and purchase charges were to be kept separate and were kept separate thus making it a more complicated transaction than it might have been if this had been a sub purchase arrangement. The Respondent did not intend to use the words "exchanging on the sale before the purchase". Funding a purchase from a sale even in a "back-to-back" transaction is not of itself unusual or of itself contrary to the established Rules.

35. It was not contrary to the Rules because no cheque could be drawn on client account until one had been received. Like any exchange in any sale and purchase the exchange took place through a "release" mechanism so a purchaser had the confidence of having sold before he could buy.
36. The Respondent had, rightly or wrongly formed the impression that his clients were going to buy more of the CH Farm site. Subsequently they did so. He did not want to over complicate the matter and indeed felt that dealing with it as he did made matters easier for the purchaser who was not in any way prejudiced by the arrangement. The Respondent had made it clear that the transaction was of a "back-to-back" nature.
37. With hindsight the Respondent regretted that he accepted instructions from Messrs B and Y to act in relation to the transactions of EPM Ltd. However the Respondent maintained that he did not intend to mislead anyone and he did not believe that he was acting dishonestly in what he was doing. Again, with hindsight, he accepted that he was incautious in the pursuit of his clients' interests and failed fully to appreciate the professional implications of the conduct of the transactions in which he was instructed.
38. The events before the Tribunal took place some seven years ago. M Ltd, the losers by Messrs B and Y's conduct had recovered the potential profits they had lost. The Respondent had had the ordeal of these matters hanging over him for a number of years. The Respondent had learned greatly from this experience.
39. The Respondent was highly thought of in the locality in which he practised. The written testimonials spoke highly of his competence and integrity. He was described by another solicitor who had known him personally and professionally for many years as an "old fashioned" solicitor who was always polite, professional, completely honest and had unfailing integrity. He was sometimes "an aggravating stickler for detail and ensured the job must be done correctly". He was described as a likeable and popular solicitor of whom solicitors and others spoke highly.
40. The Respondent not only served his clients and his profession but had also played a part in local political life being both a parish and a district councillor. He had been a school governor, a member of the Rotary Club and the Chamber of Commerce and had been involved as a trustee in the provision of almshouses for elderly people. He had held office in a number of the organisations with which he was associated.
41. The Respondent had recognised, as he always did, that his duty to his client was paramount. Sometimes a solicitor had to exercise judgement in difficult circumstances and sometimes a solicitor would get it wrong.
42. The Tribunal was invited to give a proper weight to the evidence before it of the Respondent's character. It was necessary to distinguish the conduct of the Respondent's clients from the conduct of the Respondent himself. The Applicant had muddled those two issues on a number of occasions.
43. It was important to distinguish the concept of dishonesty from the concept of conduct which compromised and/or impaired the independence and integrity of a solicitor. The Respondent had accepted, having looked at matters in the cold light of day, that

his involvement in acting for his clients did indeed amount to a breach of Practice Rule 1 but his action fell short of dishonesty. The Applicant himself accepted that the allegations against the Respondent could be substantiated without a finding of dishonesty.

44. The Respondent accepted that he had involved himself in setting up EPM Ltd. The disguising of the true beneficial ownership was not in itself dishonest. There were many cases where solicitors were instructed by a client who desires to withhold commercial information from others. That was not generally regarded as dishonest to pursue a course of non-disclosure. It might be dishonest where the non-disclosure was deliberately designed to achieve personal gain or harm others.
45. It was accepted that a solicitor was not entitled to act for a client doing something morally wrong, but where a client is in breach of contract or is about to commit a breach of contract or is in breach of his fiduciary duty or about to be in breach of his fiduciary duty and a solicitor advises and acts, his conduct falls outside the strict test for dishonesty. For example it might be considered that "guzzumping" is morally wrong but it was plain that solicitors were bound to carry out their clients' instructions in such circumstances. It would be an extraordinary proposition to suggest that a solicitor was not entitled to accept instructions from a client who proposes to act in breach of contract. Lawyers were often requested to advise clients who were proposing to repudiate contracts. That was daily bread and butter for solicitors with commercial clients. It was far from rare for a company in flagrant breach of contract to intend to set up in competition with the party against whom the breach is made.
46. In this particular matter the difficulty was that Mr Y and Mr B had duties as director and employee respectively of M Ltd when setting up a company that might go into competition which involved or might involve a breach of their fiduciary duty to M Ltd. The Respondent had accepted that in continuing to act in those circumstances had impaired his own independence or integrity.
47. Transactions such as those entered into by EPM Ltd were common. Disgruntled directors do set up in competition with the companies in which they are directors. The Respondent accepted that he should not have acted because of his clients' fiduciary duty and in particular he should not have acted as a shadow officer of EMP Ltd. The Respondent had been anxious to assist his clients, who he believed had been badly treated by M Ltd. He had no motivation of personal gain nor, indeed, did he make any personal gain.
48. The Tribunal was invited to conclude that ordinary citizens would not have believed that the Respondent's actions were dishonest. The Respondent was a man of integrity and honesty and had allowed himself to be driven by his one weakness which was his enthusiasm to assist his clients.
49. The allegations concerning statements made to Goodger Auden had been overplayed. It might be said that technically the Respondent was guilty with regard to the suggestion that EPM Ltd had purchased a larger quantity of land. They were in fact to do so and it was clearly disclosed that the transaction being the sale from EPM Ltd to Mr and Mrs C was a "back-to-back" transaction. The Respondent was under instructions not to disclose details of his clients' purchase to Mr and Mrs C. That, of

course, was often a feature of a back-to-back transaction and had a commercial purpose. If the ultimate purchasers were aware of the price paid by the intermediate buyer to the original seller then an opportunity would arise for the intermediate buyer who sells on to be cut out of the transaction with the ultimate purchaser offering to buy direct from the original seller. It was a stock feature of commercial life that profits could be made by trading in land in this way. When handling such a transaction a solicitor had to maintain a careful balance between keeping his clients' situation confidential and not misleading the other side. One of the letters complained of had been wholly accurate but was perhaps open to misinterpretation and that letter had been written by a member of the Respondent's staff.

50. Where the Respondent's letter had indicated to Goodger Auden that the Respondent's clients were selling part of the land to Mr and Mrs C and the land being sold was surplus to their requirements, the Respondent in reality had muddled the main stream of the overall transaction with the sale of the particular parcel of land to Mr and Mrs C. There had been three individual properties concerned and two contracts were in the bundle prepared for the Tribunal. It was perfectly accurate to say that the Respondent's clients were selling part. The reference to timing was inaccurate but that might have been what the Respondent thought at the time. There was a fine line between stating a belief and actual misrepresentation. The criticism of the Respondent in not advising the purchase price of CH Farm paid by EPM Ltd at the request of Mr and Mrs C's solicitors was unfair. The Respondent was in accordance with his instructions keeping confidential information confidential.
51. Where the Respondent said he had applied for expedition for registration and had excluded other land, the contracts relating to property forming part of the overall land relating to CH Farm had been exchanged. With regard to the suggestion that there should be a transfer of part, it should be noted that the parcel of land sold to Mr and Mrs C had the same title number as the whole of the CH Farm land and, of course, it was for Mr and Mrs C's solicitors to draft the transfer in the form they considered appropriate having been supplied with office copy entries.
52. It was agreed that the Tribunal should retire to consider the matter as a whole and not to make its decision on the question of dishonesty before mitigation. The Respondent had accepted the allegations and the Tribunal was invited to take into account in mitigation that there had been no element of personal gain for the Respondent whatsoever. His clients had driven the transactions and the clients' interests were at the forefront of the Respondent's mind. There was no element by which the Respondent expected or sought to have a personal benefit. The Tribunal was invited to conclude that even in the unlikely event that it found dishonesty established against the Respondent the ultimate sanction in all the circumstances would not be appropriate.
53. The Tribunal was invited to take into account the considerable personal anguish suffered by the Respondent. This matter had been hanging over his head for seven years. This fact could be said to be punishment enough.
54. The matter had come before the Tribunal when the Respondent was 60 years of age. The subject matter of the allegations had taken place when he was 53. There had been appalling delays. The Respondent had not sought a ruling that there had been a

breach of his rights under Article 6 of the European Convention on Human Rights to a fair trial but the Respondent sought to reserve his position in that respect. It was right that the Tribunal took the very considerable delay into account in considering penalty and in particular that the Respondent's fifties had been blighted by his concerns about the disciplinary action taken against him.

55. The Tribunal was both entitled and bound to take into account in considering the question of penalty the fact that the Respondent was a solicitor of the highest possible standing. It would be an affront to any sense of fair play and unnecessary for the Tribunal to consider that either for the protection of the public or the good reputation of the solicitors' profession it should interfere with the Respondent's right to practise.
56. The Tribunal was invited to conclude this unfortunate episode by accepting that it was very clear that the Respondent would never again act as he did in connection with Mr Y, Mr B and EPM Ltd.
57. Even to suspend the Respondent at his age would amount to the equivalent of his being struck off the Roll.
58. In the light of all of the circumstances, the Respondent's excellent character, the delay and the Respondent's admissions that with hindsight his actions had been inappropriate and the fact that the Respondent had been severely chastened by the appalling experience of the investigation into his actions by The Law Society and his facing proceedings before his own disciplinary body, the Tribunal was urged to consider that a financial sanction should properly be imposed on the Respondent.
59. The Respondent accepted that he must be responsible for the costs of and incidental to the application and enquiry and was able to confirm to the Tribunal that the Applicant's costs had been agreed in the inclusive sum of £13,000.

The Tribunal's Findings

60. The Tribunal found this to be a difficult matter. The Tribunal accepted that the Respondent had enjoyed a long unblemished career as a solicitor. The Tribunal accepted that in his dealings with other members of the solicitors' profession, other professions and members of the public he had been found to be an upright solicitor who clearly demonstrated that he was a solicitor of competence and integrity. The Respondent was a man of good character who had not only proved that to be the case in connection with his practice as a solicitor but he had given freely of his time for the benefit of the wider community.
61. It was the Respondent's case that he had come to accept with hindsight that he had made an error of judgement in becoming involved in the transactions involving EPM Ltd and M Ltd.
62. The Tribunal identifies the gravaman of the matter to be that Mr Y and Mr B, a director/employee and an employee of M Ltd sought to disguise their respective personal involvement in transactions to which their employer was a party by forming a company where the directors, shareholders and the company secretary would give no indication of the true beneficial ownership of the company. The Tribunal accepted

that that in itself was not necessarily a situation with which the Respondent should not have become involved. The Tribunal noted that, of course, the company secretary was the Respondent himself which inevitably led not only to his acting as a solicitor in conveyancing transactions on behalf of the company, but also his executing documents in that capacity leaving him with a clear personal involvement and responsibility. The Respondent was aware of the relationship of Mr B and Mr Y with M Ltd. He was aware that they had a fiduciary duty towards M Ltd. He was aware that should the circumstance arise whereby EPM Ltd made a secret profit at the expense of M Ltd those two gentlemen would be in breach of their fiduciary duty to M Ltd. He, himself, had considered this difficulty at the outset and indeed had at an early stage considered whether such action by Mr B and Mr Y could possibly amount to civil or even criminal fraud. He had advised them about the consequences of a breach of their fiduciary duty.

63. The Respondent having, as the Tribunal accepted, given the matter not inconsiderable thought, had concluded that the arrangements which he assisted to set up were acceptable if EPM Ltd's transactions involved parties other than M Ltd. The Respondent clearly had become concerned when he was instructed to act for EPM Ltd in a purchase from M Ltd and a simultaneous sale on to Mr and Mrs C. In this transaction, Mr Y as director of M Ltd had executed documents facilitating the sale of property by M Ltd and the Respondent himself had executed the transfer in his capacity as secretary of EPM Ltd, to Mr and Mrs C. The Respondent was fully aware that the property was being sold on at a profit and was in little doubt that Mr B and Mr Y were in breach of their fiduciary duty to M Ltd.
64. In considering whether or not the Respondent had been dishonest the Tribunal had, as was accepted by both parties to be appropriate, applied the test in Twinsectra v Yardley. In so doing it recognised that the seriousness of that allegation required it to make a finding having applied a very high standard of proof. Although it had applied the civil standard it had applied it at such a level that it would be indistinguishable from the criminal standard.
65. The Tribunal found that in being personally involved in a transaction in which Mr Y and Mr B had made a secret profit in breach of their fiduciary duty to M Ltd and in being less than precise in corresponding with the ultimate purchaser's solicitors, Messrs Goodger Auden, the Respondent's conduct would be viewed as dishonest by the standards of reasonable and honest people. However, having heard and seen the Respondent give evidence and having heard his explanation for his involvement in the transactions before the Tribunal and his assertion that he had given careful and close consideration to the matter the Tribunal was satisfied so that it was sure, that the Respondent did at the material time have an honest belief that what he was doing was not dishonest, nor could he be said to have exercised a reckless disregard which negated honest belief. In reaching this conclusion the Tribunal took into account the Respondent's good character and his long established reputation for integrity evidenced before the Tribunal.
66. In view of the fact that the Tribunal did not find the second subjective part of the test in Twinsectra v Yardley to have been met to the requisite standard of proof the Tribunal reached the conclusion that the Respondent had made a very serious error of judgement but he had not been dishonest.

67. The Tribunal noted the submission made on behalf of the Respondent that to suspend him from practice at his age would amount to striking off the Roll. The Tribunal did not agree with this submission. It was open to the Tribunal if it felt it appropriate to Order that the Respondent be struck off the Roll and it had to be said that the Tribunal gave careful consideration to the imposition of such a sanction.
68. Nonetheless the Tribunal took into account the fact that it had not made a finding of dishonesty against the Respondent. It also took into account the fact that the matter had been hanging over the Respondent's head for a long time. The Tribunal considered that the seriousness of the Respondent's actions could not be met by the imposition of a financial sanction. Whilst the Tribunal recognised that the Respondent was an honest and trustworthy solicitor and it need not take any step in order to fulfil its duty to protect the public, the Tribunal considered it necessary to impose a sanction upon the Respondent that would serve to protect the good reputation of the solicitors' profession. The Tribunal recognised that whilst its Orders might well be very hard on individuals, the collective reputation of the solicitors' profession was more important than the fortunes of one of its individual members.
69. In all of the circumstances the Tribunal considered that it was both appropriate and proportionate that the Respondent be suspended from practice for the period of one year. The Tribunal Ordered that the period of suspension was to commence on 16th August 2007 so that a minimum of inconvenience would be caused to the Respondent's clients.
70. The Tribunal noted that the Respondent had very properly agreed to pay the Applicant's costs and also had agreed the quantum. The Tribunal therefore Ordered the Respondent to pay the Applicant's costs fixed in the agreed sum.
71. Having pronounced its Order the Tribunal was invited by the Applicant's representative to consider a stay of the filing of the Order with The Law Society pending the outcome of an appeal.
72. The Tribunal had delayed the implementation of the Suspension Order for some four weeks to cause the minimum of inconvenience to clients. The Tribunal could see no good reason why the Order, which it made for the purposes of protecting the good reputation of the solicitors' profession, should not come into force on 16th August 2007. It was, of course, open to the Respondent to make an application to the Administrative Court for the effect of the Tribunal's Order to be stayed and it remained open to him to appeal the Tribunal's decision should he be advised so to do.

Dated this 12th day of October 2007

S N Jones
Chairman