

IN THE MATTER OF ROGER PITTS-TUCKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A H B Holmes (in the chair)  
Mrs E Stanley  
Mrs N Chavda

Date of Hearing: 18th November 2008 - 1<sup>st</sup> December 2008

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Margaret Eleanor Bromley of TLT Solicitors, 1 Redcliff Street, Bristol, BS1 6TP, solicitor, that Roger Pitts-Tucker, solicitor, 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 Allegations**

The Allegations against the Respondent were that:-

1. He had been guilty of conduct unbecoming a solicitor and in breach of his professional obligation in Practice Rule 1 not to do anything in the course of practising as a solicitor which compromised or impaired, or was likely to compromise or impair, the solicitor's independence and integrity, the good repute of the solicitor and the profession, and the solicitor's proper standard of work in that:-
  - 1.1 The Respondent in the course of practising as a solicitor for BFI Ltd and/or Mr B acted in about 13 transactions in the period 1999 to 2003, the details and circumstances of which are summarised below, whereby his client purported to sell and convey feudal titles to third parties, notwithstanding that:-

- (a) the transactions were:-
    - (i) dubious, in that they bore indicators of possible fraud, as more particularly detailed below; and
    - (ii) the Respondent knew or suspected this, alternatively the circumstances were such that he should have done;
  - (b) the Respondent knew or suspected that the purpose for which his client involved him as a solicitor during the above period was to lend credibility to the client and the transactions and/or to assist the client in taking unfair advantage of the other party to the transaction; alternatively, if the Respondent did not know or suspect these matters, the circumstances were such that he should have done; and/or
  - (c) the Respondent knew or suspected that the other party to the transaction (i) had no separate legal representation; and/or (ii) had no or no adequate opportunity to satisfy themselves as to his client's right to convey the feudal title or as to the effectiveness of the conveyance before parting with their money; and/or
  - (d) the Respondent knew or suspected that his firm's role in the transactions was being misrepresented to the purchasers but failed to take any steps to correct this and/or failed to advise them to instruct their own solicitor and/or acted for both sides to the transactions (or some of them) when to do so was improper; and/or
  - (e) the Respondent suspected that his client was not intending to convey, and/or could not convey, good title or, indeed, any rights to the feudal titles that were the subject of the transactions; alternatively if the Respondent did not suspect these matters, the circumstances were such that he should have so suspected; and/or
  - (f) the Respondent suspected that the transactions were not effective to convey the feudal titles, either because the client did not own them or because the transactions did not effect the conveyance of the feudal titles or for both of these reasons; alternatively if the Respondent did not suspect these matters, the circumstances were such that he should have so suspected; and/or
  - (g) the Respondent failed to make such enquiries as he should have made, as more particularly detailed below, so as to satisfy himself as to the bona fides of his client and of the transactions; and/or
  - (h) the Respondent continued to act for the client in circumstances where he should have declined to do so; and/or
- 1.2 He made deceitful representations to third parties and/or prospective purchasers calculated to lend credibility to the transactions and/or to the Respondent's client and/or to encourage the prospective purchaser to enter into the transactions, knowing the same to be untrue or reckless as to their truth; alternatively, if such statements were not deceitful, they were improper having regard to the Respondent's knowledge

or suspicion of the matters referred to in the first allegation above and/or his lack of adequate grounds for the representations.

- 1.3. He acted for both seller and buyer (Mr OS) in the purported sale of the Feudal County of Fiume Bovanti when there was a conflict of interest.
  - 1.4. He failed to account to KGF for money paid to him to be held to KGF's order.
  - 1.5. He made deceitful representations to KGF when he questioned why his money had not been held for him and/or he made a deceitful representation to Mr G as to The Law Society's position regarding KGF's complaint.
  - 1.6. He had purportedly taken Statutory Declarations when the maker of the Statutory Declaration has not been present and in matters where he was acting for one of the parties in the transaction or his firm was otherwise interested.
  - 1.7. He had purportedly witnessed the Transferor's signature to Deeds of Transfer when the Transferor had not signed the Deed in his presence.
2. Further in conducting himself in the manner set out above the Respondent had acted with conscious impropriety and therefore dishonestly (in that the Respondent's conduct was dishonest by the ordinary standards of honest behaviour and the Respondent knew that he was transgressing those standards).

### **The Hearing**

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 18<sup>th</sup> November 2008 - 1<sup>st</sup> December 2008 when Patricia Robertson QC and Marianne Butler of Counsel appeared for the Applicant and the Respondent was represented by Gregory Treverton-Jones QC and Alexis Hearnden of Counsel.

### **The Evidence before the Tribunal**

The evidence before the Tribunal included the oral evidence of the Respondent and the following oral witnesses: Gordon Hair, Keith Griffiths, Jane Orrell, Christopher Braddock, Paul Blakemore, Gerald Duke, Stephen Hawes and Naffisa Sheikh.

The Respondent admitted allegations 1.6 and 1.7 but denied all other allegations, including the allegation that he was guilty of conduct unbecoming a solicitor as set out at the commencement of allegation 1.

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

The Tribunal Orders that the Respondent, Roger Pitts-Tucker of Pitts-Tucker & Co, 2 Priory Court, Pilgrim Street, London, EC4V 6DE, solicitor, be suspended from practice as a solicitor for the period of six months to commence on the 1st day of March 2009 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £80,000.00.

### **Summary of the Evidence**

#### **The Respondent's Background**

1. The Respondent, born in 1946, was admitted as a solicitor in 1973 and his name remained on the Roll of Solicitors.
2. The Respondent explained that he had started the firm of Pitts-Tucker & Co in February 1989 and since May 2007 he had been a sole practitioner who undertook litigation in the fields of common law, insurance and maritime law and private client work to include conveyancing, tax and investment advice.
3. An inspection of the Respondent's books of account by the Forensic Investigation Officer ("the FIO") of the SRA was commenced on 15<sup>th</sup> September 2003. The FIO's Report dated 14<sup>th</sup> June 2004 was before the Tribunal. It expressed concern about the Respondent's involvement in 13 transactions.

### **The Transactions on which the allegations were based**

4. The allegations related to the professional conduct of the Respondent and his actions in thirteen transactions relating to the purchase by individuals of "feudal titles."
5. The Tribunal noted that in some cases members of the Respondent's staff had conducted some of the matters and some actions were personally those of his staff member but the Tribunal has adopted the position throughout that the Respondent was ultimately responsible for what took place in his capacity as a solicitor and sole principal. The Tribunal has noted the particular input of a staff member only where it is relevant to the question of culpability.

### **The Thirteen Transactions**

6. The transactions on which the allegations were based are summarised below and the summary gives the name of the purchaser, the name of the title, its country of origin and the month and year when the Respondent was involved.
  - (1) Mr Goff. Prince of Halberstadt. Germany. January 2000.
  - (2) Mr Braddock. Lordship of the Manor of Carrowreagh. Ireland. January 2000.
  - (3) Mr Owen Smith. Feudal County of Fiume Bovanti. Albania. February 2000.
  - (4) Mr Braddock. Barony de Laci. France. May 2000.
  - (5) Mr. Braddock. Barony of Bywell. England. July 2001.
  - (6) Mr Shaner. Lordship of the Manor of Drumtarrif. Ireland. November 2001.
  - (7) Mr Shaner. Lordship of the Manor of Carrigtoholl. Ireland. November 2001.
  - (8) Mr Braddock. Lordship of the Manor of Inniskenny. Ireland. November/December 2001.
  - (9) Mr Blakemore. Viscounty and Barony of Kenry. Ireland. November 2001.
  - (10) Dr Bogacki. County of Clissa and Nono. Croatia. December 2001.
  - (11) Mr. Williams. Barony of Clonakilty. Ireland. March 2002.
  - (12) Mr Black. Lordship of the Manor of Nagle. Ireland. April 2002.
  - (13) Mr. Griffiths. Viscounty and Barony of Barrymaol. Ireland. September/October 2002.

The Irish Titles were described as "subsumed titles" understood to be minor titles that had been held under the cloak of a main title. All Irish titles save number (12) above were described as "Barrymore Titles."

### **The Respondent's Instructions**

7. During the period 1997 to 2003 the Respondent acted for BFI Ltd and Mr B in connection with 13 transactions involving the sale of feudal titles. Mr B "owned" BFI Ltd. Mr B was known by other names, some of which were themselves titles. It was the Respondent's evidence that these 13 transactions had been conducted over a period of some three years and that Pitts Tucker & Co had handled approximately 255 feudal title sales for BFI/Mr B in the same period. No complaint had arisen in respect of these other title sales. The Respondent believed that such complaints as there were had been generated by a hostile and defamatory website compiled by one of Mr B's competitors.
8. The Respondent explained that Mr B had assured him that prospective purchasers were entitled to request documentation or raise questions prior to the agreement being reached. The Respondent had sought and obtained assurance that purchasers had the opportunity to ask for documents prior to contract and that they got what they paid for. The Respondent had advised Mr B to improve his system of contracting, suggesting one that was closer to that adopted in England.

### **The Respondent's explanation of Feudal Titles and their transfer**

9. The Respondent explained the history of feudal titles to the Tribunal at some length and explained that feudal titles such as "Lord of the Manor" or "Barony" commonly existed and until October 2003 could be registered at HM Land Registry. Whether registered or not such feudal titles could affect land in England as "overriding interests". A feudal title comprised the right to own a name or honorific title. Landowners could sell honorific titles whilst retaining the land. The sale of a feudal title was the sale of a name or a purely "vanity title" and was intangible. There may or may not be appurtenant rights.
10. The Respondent went on to explain that lordships over time had been freely subdivided into smaller shares. Some titles had a better provenance than others. English aristocratic families were the best sources for obtaining those titles as the titles were usually linked to large land holdings. "Baronies" comprised a number of lordships and could be sold. It could be difficult to trace the exact history of every development of a manor or lordship because there were gaps in documents or the history. Some of the thirteen titles were "titles by tenure" or possessory titles. In the feudal title market a seller would claim to be the owner of a title that he wished to sell. He would produce a Deed of Transfer and a Statutory Declaration setting how he came to own the title. Gaps in the chain of ownership were common.
11. The Respondent further explained that a practice had grown up whereby researchers had discovered defunct titles not claimed by any family and had attempted to sell them. In the feudal title market these titles were called "titles by tenure". Few manorial titles had been registered at HM Land Registry. Sometimes a seller would provide a declaration from a surviving member of a traceable owning family which renounced that family's claim to the title. Sometimes the seller himself would make a Statutory Declaration as to his own entitlement. The purchaser had to satisfy himself as to the pedigree of a title and the right of the holder to sell it.

12. The Respondent said that he first became involved in the law relating to feudal titles when in April 1996 a former partner did not search for overriding interests to establish that a conveyancing client had rights of vehicular access over a common. The Respondent had thoroughly researched the position which had proved useful in his understanding of feudal titles. The Respondent held that the world of feudal titles was specialist and complex.
13. The Respondent explained that the nature of feudal titles and their origin, and gaps in the ownership/pedigree, meant it was often possible for researchers to reach differing conclusions. Titles were challenged or questioned but such questioning did not make the title or its ownership invalid. The Applicant had been unable to prove in any of the 13 instances that the titles did not exist or that the purchaser did not get what he had bargained for.
14. Where purchasers questioned any part of the sale details, the Respondent said he regarded that as part of the sale process or just a dispute over the historical aspects of the title.
15. The Respondent's expertise had been recognised when in 2000 and 2004 he had been instructed to represent two villages that had been adversely affected by the claims and activities of the Lord of the Manor.

#### BFI Ltd

16. Between 1997 and 2003, BFI Ltd ("BFI"), a company incorporated in Delaware, another company of the same name incorporated in the Seychelles and their principal, Mr B, instructed the Respondent in the sale of feudal titles. Mr B was known also as AB, ABC, Marquis of A, Lord CA and Baron C. BFI had a website and much of its business was done over the Internet. The Respondent first had contact with Mr B in 1997 when Pitts-Tucker & Co witnessed transfer documents for Mr B.
17. In October 1999 Mr B had presented proposals to the Respondent detailing how they would work together. In his letter Mr B stated:-

"I need a British face of unquestionable professional reputation...a mutually profitable ongoing business for the two of us would be to link up...I see no reason to go through the long and laborious process of "convincing" S & P (an essentially real estate firm) of the existence, ownership and sellability [sic] of titles to only get three sold in one auction...when we could be doing more sales ourselves".....

All you would need to do is to receive the responses, send out the catalogues or info for each sale and answer standard questions when they call in. We would supply all the historical and statutory declarations plus contracts etc. You would do the actual conveyancing part and getting the documents notarised, etc. I think people would be much more likely to buy when they know that a British solicitor is handling the entire matter...We both seem to understand that "elastic nature" of the manor as solicitor Barsby calls it in his Manorial Law book and that one is buying a small piece of history which can't possibly be as clear cut and as exceptionally well documented after almost a millennium as a modern property could. The profit potential is staggering and

tax free.”

18. The Respondent had been approached by BFI in about 1999 to handle monies relating to a contract into which BFI and the purchaser had already entered.
19. In February 2000 the terms on which Pitts-Tucker & Co acted for Mr B and BFI were formalised. Mr Pitts-Tucker was paid a retainer of £1,250 per month for which Mr B received “a full service” for the sale of feudal titles. In July 2000 the retainer was increased to £2,000 per month. The retainer was increased in February 2001 to £2,500 per month. The “full service” was described as “drafting of legal documents, advising on sales, acting as Mr B’s representative in the UK, communicating with Mr B’s customers, giving administrative and support services, handling funds received from customers and accounting to Mr B for the proceeds of sale”. The Respondent’s total fee income for this work for the period 31<sup>st</sup> August 1999 to 31<sup>st</sup> May 2003 was in excess of £120,000. The total sum remitted from Pitts-Tuckers & Co’s client account to Mr B in the period 17<sup>th</sup> February 2000 to 6<sup>th</sup> February 2003 was £286,451.68 plus \$1,032,445.98.
20. The Respondent said that Mr B had offered him a commission on the sales of feudal titles but he had refused it as to accept such an arrangement would have compromised his independence.

#### BFI’s Terms and Conditions

21. The Respondent had written a letter of 5<sup>th</sup> November 1999 to Mr H at the estate agency S & P headed “AB – Various Titles for Auction (10<sup>th</sup> November 1999)” and stated that he enclosed “the contract which comprises the special conditions of sale” which Mr B had drafted and he did “not yet have a transfer available since I am in the course of drafting it”.
22. The Respondent’s file contained a copy of Special Conditions dated 1999 for the sale of one of the Barrymore titles. Condition 2 provided,
 

“The Vendor will pay all solicitor’s fees for Vendor as well as Purchaser. The solicitor shall be Mr Roger Pitts-Tucker, Esq,…”
23. Special Conditions 1, 3, 4 and 6 enabled BFI to say that the contract was duly performed and that BFI was entitled to payment even if the vendor had no interest in the feudal title being sold.
24. The Respondent explained that BFI’s terms and conditions were for use at auction, where a purchaser would have been able to inspect the pedigree of the title prior to the auction, and were presumed to have been drafted by BFI’s previous solicitors. The November 1999 auction was a failure and those terms had not been used.
 

The Respondent could not recall exactly when but he said following that auction Mr B had instructed him that those terms were not to be used.
25. None of the 13 transactions placed before the Tribunal was a sale by auction. The buyers had negotiated direct with BFI Ltd.
26. The Respondent explained that for later private sales over the Internet he had

suggested revised draft terms and conditions to Mr B but the Respondent was in no position to know how the Internet sales were conducted. When the Respondent enquired Mr B said he had adopted abbreviated auction particulars and would attempt to explain what the purchaser would be buying. The Respondent said that the auction terms and conditions were never used by the Respondent on behalf of his client, and in particular the Respondent never offered such terms to Mr OS.

27. In September 2000 Mr B instructed the Respondent to remove a clause in the sale contract that gave the buyer the option to approve the sale documents. An internal memorandum dated 21<sup>st</sup> September 2000 indicated that Mr B additionally wanted to incorporate a clause in the sale contract to attempt to bypass or limit the rights of any purchaser paying by credit card.
28. The Respondent explained that the contract of sale was amended in accordance with his client's instructions to benefit the purchaser. The context was that credit card sales could be revoked within 180 days by the purchaser if the "goods" sold were unsatisfactory.
29. The Respondent denied that he knew or should have suspected that the transactions were not effective. He had no reason to suppose that the transactions were dubious in any way. The Law Society had, in the Respondent's view, erroneously approached the transactions as if they were standard property conveyancing transactions. The Respondent had no reason to suspect the bona fides of Mr B who had no convictions for fraud. The declarations he produced were scholarly.
30. The Respondent denied stating that the vendor would "pay all solicitors fees" because of the implication that he would be acting for both the purchaser and BFI. If the terms had been implemented that would have meant that the vendor would pay any solicitors fees as an incentive to purchase. There was no suggestion that a buyer could not instruct a solicitor of his own choice. The Respondent said he had tried to stress the limits of his own involvement.
31. If a purchaser had doubts about what he was buying it was open to him to challenge the terms and/or withdraw from the transaction. The buyer had to beware and knowingly took the risk in a purchase where the pedigree or history of a title was incomplete. The Respondent pointed out that BFI's conditions of sale (at clause 4) provided:-
 

"The purchaser having had the opportunity to consider and investigate any books and records of the Lordship, Barony or other feudal title, shall be deemed to have inspected and considered the same, and to have satisfied himself as to all information therein and shall not be entitled to raise any objection, requisition or enquiry to or upon such matters including (but without limitation) that such books and records contain no or defective information or have been misdescribed or been incorrectly identified".
32. In the thirteen transactions the parties had negotiated the sale with each other direct on the Internet. The contract document had been prepared by BFI. The Respondent said his function had been to hold the funds (the consideration paid by the purchaser) as agent for the vendor. That was dependent upon his receiving a Deed of Transfer document, to be witnessed, and Mr B's Declaration setting out the "pedigree" of the

particular feudal title. It was the Respondent's evidence that he had not conducted a "conveyancing transaction" and neither the Deed of Transfer nor the Declaration had been drawn by him on any occasion.

33. The Respondent said that his role had been to "legalise" the transaction which meant the process of certifying that documents had been duly signed and obtaining confirmation from the Legalisation Office of the Foreign and Commonwealth Office that the Respondent was known to, and registered with them, a process akin to notarisation securing the recognition of a document in a foreign jurisdiction.
34. The Respondent said that the transaction was finalised when the legalised Deed of Transfer and/or Declaration had been completed and sent to the purchaser. On transmission of those documents to the purchaser, the monies held by Pitts-Tucker & Co were applied to the order of BFI.
35. An attendance note of a meeting between the Respondent and Mr B on 29<sup>th</sup> January 2001 recorded the Respondent's advice that Mr B should have a contract for each sale as:-

"...we are encountering problems with purchasers who are now disputing that titles have passed to them or questioning various aspects of the title, by having a contract we can minimise such disputes."

36. In an initial interview with the FIO on 15<sup>th</sup> September 2003 the Respondent said his involvement was as an "escrow agent", holding monies for Mr B in connection with the sale of feudal titles.

### **The Transactions' Paperwork**

37. Although there were some variations in each of the thirteen cases the way in which the Respondent handled the paperwork was broadly the same.
38. It was the Respondent's evidence that he did not blindly follow drafts prepared by Mr B. He had always made it plain that Pitts-Tucker & Co could have no view on the pedigree or history of a title and no purchaser could have believed that the Respondent or his firm had drafted the declarations supplied. On its face the declaration was made by the declarant.
39. The Respondent explained that he had prepared a precedent draft transfer for Mr B to use. Mr B had then produced the transfer and a Declaration for each transaction and had sent it to the Respondent for him to send on to the purchaser. Mr B had wanted the name of Pitts-Tucker & Co to be on the Transfer and the Declaration so that any correspondence connected with it would be channelled through the Respondent.
40. The Respondent said he had been unaware of the conveyancers' convention that putting a firm's name on the back sheet implied that the firm had drafted that document. He did not believe that an ordinary member of the public would have been aware of such a convention, or that the firm's name on the document indicated that the firm guaranteed the title. The documents did not relate to the conveyance of land.

41. At the request of Mr B in August 1998, the Respondent agreed to recognise the signature of Mr B without his being present. The Respondent adopted a written formula to deal with this and stated on the face of the document that the signature was “seen for the signature of X personally known unto me and duly authorised on behalf of the Transferor named herein by me R A Pitts-Tucker a practising solicitor.” It was the Respondent’s position that the nature of the witnessing was clear on the face of the document. The Respondent said that he honestly believed at the time that he could confirm Mr B’s signature in this way.
42. The Respondent accepted that “technically” he might have been in breach of Professional Conduct Rule 17.06 by taking Mr B’s Declarations in the manner that he did, but he did not do so dishonestly or to be misleading. He was following accepted notarial practice. He had come to accept that it was arguable that by witnessing Mr B’s signature in such a way he was also technically in breach of the Professional Conduct Code Rule 17.07 because he was acting for one of the parties.

#### BDGI Company – Title Indemnity Insurance

43. Mr B offered his feudal titles with title indemnity insurance for which he charged a premium of 10% of the purchase price or \$1000 whichever was the greater. The insurance cover was said to be provided through BDGI, a company said to have been registered in Niue, a Pacific island, on 10<sup>th</sup> October 1996. Mr B had an interest in and/or controlled the company.
44. Mr B emailed Pitts-Tucker & Co on 24<sup>th</sup> March 2000,
- “Please see a letter H [of S & P] wrote to [the Respondent] that he’s worried that Barryogh might not go through because of the same reasons Barryroe fell through, i.e. that I have an interest in the insurance co...I think this is ridiculous, something he need not have revealed...”

This referred to the November 1999 auction. Mr B had given instructions that Mr H should be told that Mr B was “neither a director nor stockholder [of the insurers] but merely “knew them very well”.

45. At his final meeting with the FIO on 21<sup>st</sup> October 2003 the Respondent said that he knew that Mr B owned BDGI and that he was “self insuring”. The Respondent said that he had come to learn this but he had not known it in 2000.
46. In March 2000 a potential client of BFI, Mr L, had expressed concern over the title indemnity insurance cover being offered because of discrepancies in the proposed insurance cover note provided dated 6<sup>th</sup> March 2000 which referred to the insurer as “BDGI” and also as “BDI Co Ltd”. One of the policy conditions was, “conveyancing to be done by R.A. Pitts-Tucker & Co”. A New Zealand address had been given for the insurer.
47. Mr L’s concern led him to contact the New Zealand Companies Registry which told him that BDGI was not registered there. When Mr L contacted the bank manager for BDGI he was told no contact number could be given for BDGI.
48. A trainee solicitor at Pitts-Tucker & Co wrote a memo to the Respondent on 9<sup>th</sup>

March 2000 following her communication with Mr B, noting Mr. L's concerns about discrepancies in the cover note and explained that Mr B believed that BDGI might have been struck off the Register for non-payment of fees and that Mr B had indicated that, whilst he would pay the overdue fees, he could not find the necessary company documents and that it would take a week to produce the terms of the policy. That memo ended:-

“So in short Mr B wants us to (i) stall for time; (ii) explain that the company is small, deals mostly in reinsurance and so deals only through brokers and agents...we are to say that this is the reason there is no contact number; the company has no customer service department because it does not deal directly with the public. Of course this may look strange because who are the insured to contact should they want to claim?? The argument that B may disappear is strong – unless we give assurance on his part... (iv) they have no right to ask questions, they are not even entitled to insurance – they should pay up and complete asap. This is a tricky situation and I need advice on the matter”.

49. The Respondent said he had had little to do with Mr B's insurance of the titles being sold. He had advised Mr B that if he was going to conduct insurance business in the United Kingdom it would be subject to formal regulation. Mr B had assured the Respondent that insurance sales were only made from the USA and that the British regulatory system was not relevant.
50. Mr B's insurance provisions were evidenced by two letters from MW, the personal banking manager at the RSB who explained that BFI had a very strong financial history and had sufficient funds to issue a title warranty indemnity policy sufficient to cover £45,000.00. An American attorney had told the Respondent that BDGI had been incorporated on 10<sup>th</sup> October 1996 and acted as a reinsurance company and operated an investment portfolio.

**Events which the Applicant asserted put the Respondent on notice of the dubious nature of the feudal title transactions**

Correspondence with Mr H and S&P

51. In 1999 and 2000 there was correspondence between Mr H of S & P and the Respondent in which Mr H expressed concerns over the evidence provided by BFI and Mr B in support of Irish feudal titles for sale. On 19<sup>th</sup> July 1999 Mr H wrote to Mr B about the fact that Mr B, having previously bought and then sold on the Baronies of B and B, was now offering for sale Baronies and Viscountcies which he claimed to have acquired as a result of his purchase of those Baronies. Mr H questioned whether the titles existed and whether Mr B still retained them after his sale of the Baronies of B and B.
52. Mr B had written to the Respondent,:-

“We need to position Mr H that you and I are lawyers who are better versed in legal matters...instil some confidence into him...the objective is to have him believe in what he is selling...”

53. Mr B made various suggestions to the Respondent as to how he should reply to Mr H. Mr H had written to Mr B, with a copy to the Respondent, saying:-

“...As before, I shall be pleased to offer on your behalf such titles as are confirmed and which Roger Pitts-Tucker is satisfied to be still held by you following your purchase and subsequent sale of B...it is imperative that we maintain credibility in the sector.”

54. The Respondent wrote to Mr B saying:-

“I think my line to Mr H will be that the buyer of any of your titles will have to satisfy himself that what is being sold is what is being sold...the buyer will have to rely on your research...no absolute warranty is to be implied...the buyer must rely on the statements in your statutory declaration...I am thinking of how to tackle Mr H to quell his fears”.

The correspondence continued between the Respondent and Mr B as to what the letter to Mr H should say.

55. The letter that was sent to Mr H by the Respondent contained the following:-

“I have been asked by you to give my legal opinion as to whether these titles are genuine legal creations, and are thus capable of sale by Mr B. Undoubtedly they are...”

In support of this opinion, the Respondent referred to “The Law of Real Property” (fifth edition) by Megarry and Wade, citing various pieces of English legislation and a report of Dr ES. The Respondent adopted Mr B’s drafting as to the legal basis on which Mr B claimed to have acquired and to be entitled to split and sell titles separately from the main title.

56. On 9<sup>th</sup> May 2000 Mr B emailed the Respondent concerning a “false email” that had been sent by a disgruntled customer of BFI to other clients about their titles. Mr B was of the view that they were “banding together to form a “support group” of “victims”” and the Respondent was instructed to write them a “damage-limitation” letter.
57. The historical research evidencing BFI’s right to sell the various manors and titles was said to have been undertaken by Dr ES (and variations on that name). In a letter to Mr B, Mr H remained, “concerned that within his reports and the attachments, Dr ES has not included any extract text which confirms these as a feudal Barony and Lordship of the Manor respectively, apart from modern reference works.”
58. Mr H wrote again to Mr B on 13<sup>th</sup> September 2000. Mr B’s letter in reply dated 19<sup>th</sup> September 2000 included, “I have also the same concerns not to fall in the same circumstances as OS.” (OS was involved in litigation concerning the sale of a feudal title).
59. Mr H had asked Mr B to remove reference on BFI’s website to S & P as “a partner” in March 2000, Mr B had not done so. In his letter of 19<sup>th</sup> September 2000, by which date he had received complaints from Mr Bg, Mr L and Mr OS, Mr B stated:-

“I apologise for the incorrect reference to your firm on our website...we have been so busy and flooded with sales that our web master has been unable to change that and add other important references which I had requested. We will do it as soon as possible...My company is doing and selling exactly what it says on the website and I am happy to report that we have not received a single complaint much less a law suit as our friend [OS] has”.

60. On 21<sup>st</sup> September 2000 Mr B instructed Pitts-Tucker & Co, “please write something that will reassure” Mr. H, saying that his doubts were tiresome. In his evidence the Respondent said that those involved in selling feudal titles were fiercely competitive. He considered criticism of Mr B’s competitors to be indicative of a propensity “to sling mud” and that there had been “turf wars.”
61. The Respondent explained that in 2000 Mr B had made the Respondent aware that he had created a website. He had not asked the Respondent to vet or approve the website contents. The Respondent did not monitor the website, not considering that he had any duty to do so.
62. The Respondent said that when he became aware of Mr B’s reference on his website to his working together with “our partner firm S & P”, the Respondent felt Mr B was “over-selling” and being over-enthusiastic and this was not an attempt to mislead. Mr B had worked with S & P, a well known auction house, in the sale of three viscountcies prior to the Respondent’s involvement. The Respondent had spoken to Mr B and had advised him against describing his relationship with S & P as a “partnership”. The website wording had been changed. The Respondent did not consider that such wording served to alert him to the possibility that Mr B had been engaged in dubious transactions.
63. On 2<sup>nd</sup> October 2002 Mr H copied to the Respondent a letter relating to a complaint by the Chichester family that BFI was offering for sale a title which that family owned.

#### Mr Bg’s complaint

64. Mr Bg emailed Mr H at S & P, stating that he was surprised to see several titles sold by Mr B in their auction catalogue as,

“Since 1994, he sold several false titles. He used his own name, his pseudonym LA and especially the titles of Lord B and Deputy Lord High Steward of Ireland, to sell titles absolutely fabricated”.

65. Mr Bg said that he had lodged complaints with police in both London and Singapore concerning the transactions. Mr H faxed a copy to the Respondent on the same day and asked,

“Does this impact in any way on the business we are involved in?”

66. The Respondent written response of 5<sup>th</sup> November 1999 was that Mr Bg’s assertion was “rubbish.”

67. The Respondent said that it was neither possible nor appropriate for him to make independent enquiries into Mr Bg's complaints. Given Mr B's responses the Respondent considered that Mr Bg's bona fides were questionable. Mr B had explained that Mr Bg was a stooge put up by Mr OS, a competitor, to discredit titles being sold by him. The Respondent did not doubt his client merely because he had been criticised.
68. Mr C appeared in correspondence in May 2000. Mr B informed the Respondent that Mr C was the same person as Mr Bg and indicated his involvement in nefarious activities. The Respondent understood that Mr B did not recognise Mr Bg as a genuine complainant because of his dubious character, and the fact he had his own business selling feudal titles as a direct competitor of Mr B.

#### Concerns raised by Mr DB

69. Mr DB's letter to the Respondent dated 31<sup>st</sup> December 1999 complained about a response that he had received from The Manorial Society of Great Britain when he sought to join on the basis of his ownership of "The Barony of the Island" in Cork, which he had bought from BFI. The Manorial Society had told him,

"There is no feudal barony, or any title of this name in Co Cork, and it appears that the only evidence produced in its favour is a Statutory Declaration by a person living in Florida ..... I do not know what a "reputed prescriptive viscounty" is and a viscounty cannot be bought and sold."

Mr DB sought the Respondent's assistance in having his title registered at the Foreign Office as "This would certainly help in proving title for me later".

#### BFI's Former Solicitors

70. In January 2000, a trainee solicitor at Pitts-Tucker & Co contacted the solicitors who had previously acted for BFI (Mr MH) about Mr B's past purchase of the Barony of Barrymore. The trainee recorded what H had said in a memo to the Respondent dated 7<sup>th</sup> January 2000, "He said B's business is fishy and he always followed the principle "caveat emptor.""
71. The trainee also recorded that MH had suggested that Pitts-Tucker & Co should check whether feudal titles currently being sold by Mr B had been sold before."
72. The Respondent said that Mr B had been displeased with his previous solicitor who did not understand the nature of the transactions and who had lost some vital original documents. The papers transferred from the previous solicitors to Pitts-Tucker & Co had been collected by the Respondent's trainee solicitor. The trainee had made the only written record of a conversation contained in the file in which she wrote "whole thing is fishy". The Respondent denied that MH had told him direct that B's business was fishy. Mr B had wanted to obtain a copy of the transfer to him of the Barrymore titles. He believed that his previous solicitors had a copy on their files. At that time the Respondent's task had been to find the missing Declaration by the Earl of Shannon. MH had said to the trainee he was feeling uncomfortable with dealing with that type of work as it was not ordinary conveyancing. The Respondent said in

the circumstances he had not been put on notice in the way suggested by the Applicant.

Further Statements on BFI's website

73. On 21<sup>st</sup> June 2000 The Law Society wrote to the Respondent indicating its concerns about BFI's website and seeking the Respondent's comments in particular with regard to three statements on the website, namely:-

“We (BFI) are the only fulltime legal firm in the world dedicated exclusively to international peerage law”

and

“Our attorneys are Solicitors to the Supreme Court of England and Wales and as such are licensed and insured by The Law Society of England”

and

“The Principal Solicitor is the Hon. R.A. Pitts-Tucker, Esq. who holds the position of Agent to her Majesty's Privy Council and is also Her Majesty's Clerk of the Green Cloth for Ireland, a historic position.”

74. A copy of the website pages as at 8 November 2001 was on the Respondent's files. The Respondent knew at the latest by that date that the website made reference to:-

“our specialised, fully licensed Attorneys by The Law Society...solicitors to the Supreme Court of England and Wales...notaries and agents to Her Majesty's Privy Council...covered by professional malpractice insurance...have many years of extensive experience”.

75. Prospective purchasers were told on the website that their payment in advance for the feudal title should be by:-

“wire transfer directly into our solicitor's trust account...the funds are held in trust and are not released until you have received all of the sales documents.”

76. The Respondent explained that Mr B had a degree “in nobiliary law from the Madrid Campus of Lisbon University”, giving him experience of the law pertaining to the sale of feudal titles.

77. The Respondent said that he was a “Clerk of the Green Cloth” which sprang from a title bought by his client, giving him power to appoint such an official. It caused Mr B amusement to reward those near to him with such titles on a temporary basis. The “Honourable” had been added by Mr B because he felt it was the correct form of address, which the Respondent accepted was not correct. The Respondent had told Mr B that he had to correct the website. The Respondent also accepted that Mr B could not refer to BFI as being a “law firm”. The Respondent had regarded these matters as characteristic of Mr B's tendency to “over-sell. “

78. The Respondent considered that Mr B had adopted the term “conveyance” to signify the transfer of the title. Where reference had been made to moneys held “in trust account” that meant in “client account” as agent for the vendor. In some cases, the Respondent explained, the money had been returned to the prospective purchaser. The Respondent did not think that an ordinary layman looking to purchase a title would have understood the words “trust account” to mean that the Respondent was acting for him and such term was not misleading.
79. The Respondent explained that he did not describe himself as a notary, and with the exception of the accidental failure to delete the word on a document, he never drafted documents which described him as a notary, or requested a legalisation to be made by him as a notary. BGI’s website stated that the Respondent was a notary in error.

#### RSB and Letter of Recommendation

80. On 22<sup>nd</sup> June 2000 BL, solicitors acting for RSB of Florida (a bank), wrote to BFI and the Respondent about a purported letter of recommendation dated 10<sup>th</sup> October 1999 which had been published on the BFI website. That letter had been written on RSB (a bank) letterhead and signed by MTW. RSB’s solicitors stated, “the letter appears to have been signed by [MTW]...as you know BFI have never been a customer of our client...our client’s headed notepaper has been used without its consent...our client suspects that the notepaper was stolen by [MTW] when he left its employment ... your site appears to be an attempt to obtain money by deception.”
81. Mr B prepared a draft reply which said that BFI was a wholly owned subsidiary of one of RSB’s clients and that everything that MTW wrote could be shown to be true and that his letter had been written before he left RSB. Removal of the letter from the website was however agreed.
82. The Respondent said he had consulted with both Mr B and MWT. They denied BL’s statement. MWT was a deputy Vice President with wide authority. He had not been dismissed, but resigned on 16<sup>th</sup> March 2000 on amicable terms for personal reasons. MWT was the operations manager at the bank and would know whether Mr B had an account with the bank. The information given to the Respondent was that the source of BL’s instructions was a marketing manager, who would not know about bank operations. Mr B had supplied the Respondent with a bank statement recording a substantial credit balance at RBS. The Respondent had investigated the matter when it arose and obtained an explanation from his client. He believed the facts upon which BL relied were wrong.

#### Letter from Dr D

83. On 30<sup>th</sup> July 2000 Dr D wrote to the Respondent referring to Albanian titles being offered by BFI. He said that heraldic authorities and the exiled King of Albania had said that there were no legitimate Albanian titles and the Albanian College of Arms did not exist.

#### Complaint by Mr OS

84. On 31<sup>st</sup> July 2000 Mr OS wrote to Pitts-Tucker & Co asking for comments on a number of matters concerning his purchase of the County Fiume Bovanti (Transaction

(3). He said he had been,

“a victim of a wicked and costly fraud ....

there are no supporting documents that should have been included with the Deed of Transfer that would provide proof that such a feudal property exists. This documentation would show a chain of ownership from the date the property was created and the manner it was created through to the present owner. This would follow as an abstract in support of the Deed of Transfer”.

He reported that he had been informed that there was no College of Arms of the Republic of Albania. Questions about the existence of the feudal title and the legality of its subsequent sale were raised.

85. The Respondent said that he had never been asked to act on behalf of Mr OS. The Respondent had never considered that he was acting for both parties, but only for the seller. He would have recognised the conflict of interest that would have arisen had he acted for both sides.
86. The Respondent explained that Mr OS considered himself a competitor of Mr B, by virtue of his operating Manorial Auctioneers. The Respondent regarded all of those who dealt with feudal titles as learned men, passionate about such matters who were, like academics, inclined to squabble.
87. Mr Q (see below) had informed the Respondent in January 2001 that in his opinion the county of Fiume Bovanti did not exist. The Respondent had continued to correspond at length with those acting for Mr OS refuting their concerns about the authenticity of Mr OS's title. He continued to act for BFI in its sales of other feudal titles.
88. In about September 2001 it was proposed by BFI that Mr OS should return the title of the County of Fiume Bovanti and take the Barony of Bocland in exchange, subject to a price adjustment.
89. On 11<sup>th</sup> September 2001 Mr OS's solicitor asked Pitts-Tucker & Co to deduce title to the Barony of Bocland.
90. Pitts-Tucker & Co replied on 18<sup>th</sup> October 2001 indicating they could provide root of title back to 1984. On 22<sup>nd</sup> January 2002 Pitts-Tucker & Co indicated that prior to producing the Deed requested by Mr OS's solicitor, they required payment of the price adjustment of \$2,000.00. Mr OS did not send the Respondent this money and his solicitor stopped corresponding with the Respondent.
91. Following a complaint by Mr OS to The Law Society in January 2003, the Respondent wrote to his solicitor on 9<sup>th</sup> April 2003 in which he stated,

“Our client believes the title is perfectly valid and nothing has been brought to his attention by your client to indicate this might not be so”.

Questions raised by S & P concerning Dr ES

92. On 26<sup>th</sup> September 2000 Dr ES faxed Mr H (copying in the Respondent) explaining why Mr B was able legitimately to sell the Barry titles. He concluded by asking for further correspondence to be directed to Mr B (to forward on) as Dr ES would be in Australia “for the foreseeable future”.
93. On 28<sup>th</sup> September 2000 Mr H replied to Dr ES (sending a copy to the Respondent) raising concerns that he had not received a reply to earlier letters and requesting additional information about various titles, particularly an unusual sub-division of the original Barrymore title. The letter stated :-

“From my experience in this sector, primarily in the marketing for sale of feudal titles and particularly recent legal challenges on the authenticity of some Irish and other British titles I have expressed some apprehension”.

Mr H went on to express concern at the lack of records that would normally be available.

94. On 29<sup>th</sup> September 2000 the Respondent emailed Mr B:

“Unfortunately, but quite understandably, Mr H wants confirmation regarding the history of the titles...on the matter of the Statutory Declarations, I cannot be described as a ‘notary’ as this is not legally correct...With a much greater volume of titles now passing through us, it would be prudent to re-phrase the execution for the Deed of Transfer, by deleting “In the presence of” to “Seen for the signature of...known personally unto me.””

95. The Respondent accepted that Dr ES’s scholarship was not of the same level as that expected by Mr H. That did not make it insufficient, or cause the Respondent to have doubts. At the material time the Respondent explained he had no reason to question Dr ES’s legitimacy or the validity of his research. The auctioneers had been keen to satisfy themselves as to title because of their liability as auctioneers. Their questions did not signify something fraudulent or suspicious about the title or its ownership. Mr H was experienced in such matters and he had decided to include the titles in S & P’s auction sale and that firm continued to do business with Mr B.

96. On 24<sup>th</sup> November 2000 Mr B emailed a member of staff at Pitts Tucker & Co,

“Please prepare a draft letter to H regarding the sale of the Barryroe stating that your firm is prepared to deal with the conveyancing of this barony which I own (that is the point of it).”

The email went on to say that Pitts-Tucker & Co should tell H that they now had “independent confirmation” that the barony is feudal or territorial in nature as opposed to being an “administrative barony.” That was the other point he wanted to hear”.

97. On 30<sup>th</sup> November 2000 a Pitts Tucker & Co staff member met with Mr H. It was apparent from a note of the meeting that Mr H questioned the authenticity of Dr ES whom he could not locate. A file note recorded that Mr B had told Mr H that Dr ES was still travelling in Australia and that he was no longer being used by BFI. Mr H had commented that it was highly unusual for anyone to be selling seven baronies as

they were rare, none having been created after 1265. He added that, contrary to what was written in the Statutory Declaration, it was possible to ascertain the exact location of the title being sold and there was no guarantee that a member of a titled family had the right to sell.

Mr Q's concern about Dr ES

98. On 27<sup>th</sup> November 2000 the Respondent contacted Mr Q, the former ambassador to Albania, by telephone and on 1<sup>st</sup> December 2000 he wrote to Mr Q,  
 “DL has warned me that you may wholeheartedly disagree with what Mr B does in this business. At any rate I would be interested in exploring with you what contribution you could make to Mr B's “pedigrees” for each title .....I do not want you to have any contact with Mr B, who is quite likely to pick your brains for free, and then liberally quote you on his internet site...”
99. In a letter to the Respondent of 28<sup>th</sup> January 2001 Mr Q said that he did not want to get involved in any way with Mr B and his business and went on to point out that there was no such place as Fiume Bovanti and that historical facts supplied by Dr ES were readily available from standard sources.

Mr Bd's concerns

100. On 31<sup>st</sup> July 2000 the Manorial Society of Great Britain had written to Mr Bd enclosing a copy of a letter from the Earl of Shannon which stated that the Earl was not aware that his family had ever owned the Manor of Carrowreagh and that he did not make a conveyance of it to anyone in 1993.
101. Mr Bd instructed solicitors in connection with the Manor of Carrowreagh and in their letter dated 2<sup>nd</sup> October 2000 to the Respondent they conveyed the Earl of Shannon's view and asked about the transaction, pointing out that the conveyance had been drafted by Pitts-Tucker & Co as would be normal in a routine conveyancing transaction and that that the Statutory Declaration was defective as Pitts-Tucker & Co acted for the declarant and the exhibits provided no proof of the title. They asked why Pitts-Tucker & Co had acted for both sides in the transaction.
102. In his reply dated 13<sup>th</sup> October 2000, the Respondent denied acting for both sides. He claimed that this would however have been permissible and asserted that Mr Bd had been informed that his option was to appoint his own solicitor. He said:-  
 “We believe, not least because of our own connection, that BFI take the greatest care in preparing their titles for sale and it should be a recommendation to you that such a prestigious auction house as Messrs S & P are prepared to deal with BFI and sell their titles at public auction”.....  
 for our part we have been solicitors to BFI in recent years. If this letter is to be construed as a “reference” it is given without any financial liability on our part.”
103. On 2<sup>nd</sup> March 2001 Pitts-Tucker & Co sent revised documents to Mr Bd relating to the Lordship of the Manor of Carrowreagh. The Transfer and the Statutory Declaration had the firm's name and address on their back sheets. The Transfer and

the Declaration had been witnessed by the Respondent using the “seen for” formula. Paragraph 57 of the Declaration provided,

“These properties subsist today as feudal incorporeal hereditaments under the Law of Property 1922 and 1924-1925 and included the Lordship of the Manor of Carrowreagh”

104. The Respondent said he made appropriate enquiries of Mr B who said that the Earl had sold the barony of Athenry, and that the Manor of Carrowreagh was a subsumed title within that barony. The Respondent had no reason to question what his client said. The Respondent considered that Mr Bd’s solicitors had not understood the nature of the transaction and their concerns had been based on incorrect presumptions.
105. The “reference” given by the Respondent related to Mr B and the company, not the historical antecedents of the title. The Respondent had been careful to state that he could not have an opinion about that aspect.
106. Mr OS had instructed solicitors and they wrote to Pitts-Tucker & Co on 10<sup>th</sup> October 2000 pointing out,
- “your client has so organised his affairs that it will be extremely difficult to take any action against your client.”
107. They asked why the transfer of the Albanian title followed an English form.
108. In his reply of 19<sup>th</sup> October 2000, the Respondent stated,
- “As Representatives for BFI in the UK, we have to check the drafting of the Deeds of Transfer, which in any event includes some words and phrases, specifically requested by our client”.
109. The Respondent stated that his firm had not drafted the contract for sale. He went on to say that the law of real property applied to incorporeal hereditaments, just as it did to corporeal land.

#### Communication from Mr OS’s Solicitors

110. The Respondent said that Mr. OS’s solicitors thought that the titles were real property and had to be transferred according to the law of the place where they originated. The Respondent repeated his view that feudal titles were personal property and that Albanian law did not apply to the transaction and was not relevant.

#### **Representation made by the Respondent to the NBR**

111. NBR refused to release credit card payments of \$30,000 pending investigation into BFI’s sales. On 2<sup>nd</sup> October 2000 the Respondent wrote a letter saying,

“As English lawyers, we can vouch for the legal validity of the sale of certain titles of nobility being conducted by BFI and through Expat World...the titles

are real, legal entities, and are feudal, being based on historic ownership of certain lands to which titles were connected. These titles exist to this day, despite the passage of time and history...we believe BFI to act in good faith and to be thorough in describing the pedigree or history of each title being sold to every purchaser...We believe, not least because of our own connection, that BFI take the greatest care in preparing their titles for sale..."

112. The Respondent said he had not sought to lend credibility to BFI's business and said that by providing a reference he sought to explain Mr B's business and say that it was genuine. He was not confirming the validity of any title.
113. The Respondent said that he could genuinely vouch for the validity of the sale because he knew the contract that would be agreed between the parties and he knew that the chosen law of contract applied, not the property law of the country of origin of the title.

#### Mr G

114. The Respondent said he had no experience of German titles and he had been concerned only with the transmission of whatever title Mr B could give to the purchaser.
115. The Respondent said that there had been nothing to put him on notice that Mr B's Declaration might be false or that the title was not genuine. The Respondent knew that other German princes had sold titles in the USA. The deal had been concluded before the Respondent was instructed by the seller. Mr B had wished the corporate structure of the Hhz, the seller, to be kept confidential That was justified and was a common business requirement.
116. The Respondent regarded Mr B's letter as notice of nothing more than his personal flamboyance but that did not mean the client was engaged in any "dubious" business transactions.
117. The Respondent had no responsibility to check or deduce the title to the feudal title. His role was limited as it was in the other cases.

#### Mr B's instructions concerning the London Gazette

118. On 1<sup>st</sup> November 2000 Mr B told the Respondent that he wished to have a notice inserted in the London Gazette and said,

"I want the publication to be as low key as possible...make the notice under a different corporate name and as boring and as incomprehensible as possible in Legalese...fiefs in decreasing order of interest, mix in the English, Irish and Scottish ones...people will probably not read beyond a certain number of foreign names and hopefully ignore the rest...shorten the response time (for objections) to three weeks...the tinier the print the better, hopefully illegible. Also we must prepare what responses we will give to objections - perhaps the address of Trade Consult Group ... in the Seychelles!!!"

On 6<sup>th</sup> November 2000 Mr B told a Pitts Tucker & Co employee in an email that he

owned Trade Group Limited and was a director of the company.

119. In a further letter dated 7<sup>th</sup> November 2000 Mr B added:-

“divide the list into three separate issues to make it less of a shock more low key ... include Barryroe in the first publication as I have learnt that OS is planning to sell Barryroe via the Earl of Shannon and I need to pre-empt him at the earliest...could you get manorial auctioneers’ (OS) list of titles, do this under cover with a different name and address...address for objections should be Trade Consult Group in the Seychelles, if your name is put on it everybody will know that it is BFI...to make matters more difficult, costly and time consuming for potential enemies & competitors to object request that written objections be in French ... use the word seisin rather than possession.”

Letter to NWB

120. On 16<sup>th</sup> November 2000, the Respondent wrote to NWB giving a reference for BFI stating:-

“As English lawyers, we can vouch for the legal validity of the sale of certain titles of nobility being conducted by [BFI]. The honorific titles being sold are real, legal entities, and are feudal... These titles exist to this day... We believe our client, [BFI] to act in good faith and to be thorough in describing the pedigree or history of each title being sold to every purchaser... We are not aware of any legal proceedings being taken against BFI nor of any circumstances in which funds have been returned to purchasers. We understand BFI to maintain a deposit fund to give full title guarantee to any prospective purchaser... We believe...that [BFI] take the greatest care in preparing their titles for sale...”

Representation to Dr D

121. On 11<sup>th</sup> December 2000 a member of staff at Pitts Tucker & Co sent an email to Dr D stating:-

“We understand you are considering purchasing a feudal title from BFI and are dealing with Mr B, who is a client we have known for about 4 years...we are available to give assistance to any intending purchaser as this market is unusual”.

122. After advising caution in respect of other websites and unscrupulous people, she stated:-

“These are not the practices of BFI. BFI sells existing honorific feudal titles. The company sells the actual title itself and the sale is made by way of a Deed of Transfer or Conveyance, which is the legal method of effecting such a sale.....

I think you will find British Feudal to be a firm of integrity and reliability.”

Complaint made by Mr Hg

123. On 6<sup>th</sup> June 2001 Mr Hg, a prospective title purchaser, wrote to Mr H of S & P and said that he was unable to agree to the purchase of the title, and saying,

“I have written to the vendor’s solicitors (Pitts-Tucker & Co) outlining some of the inaccuracies contained in the statutory declaration and the wholly inadequate evidence of title supplied. I note with some concern that these flaws were not picked up earlier when the title should have been checked.”

The Respondent received a copy of the letter.

Bd transaction – the “feudal barony of Bywell”

124. In July 2001 Mr Bd accepted BFI’s emailed offer to sell him the English feudal Barony of Bywell for \$US6,000 having been given a short history of the barony. BFI claimed that the barony had been “forgotten until sold by the heir of the St. Pol family to the investment portfolio of a merchant bank.” Mr Bd sent a cheque for £3,780.00 for the barony to Pitts-Tucker & Co.
125. On 8<sup>th</sup> August 2001 Pitts-Tucker & Co wrote to Mr Bd enclosing a Deed of Transfer by BFI and a Statutory Declaration. When Mr Bd requested a copy of the Deed referred to in the Statutory Declaration he was supplied with a copy of a Deed. The Deed sent was a Deed which did not match the Deed referred to in the Statutory Declaration. It contained anomalies on its face, there being two different dates and being made between parties of similar but different names.

Details of the progress of the 13 transactions

126. The Tribunal had before it a wealth of detail about of all of the thirteen transactions but it has confined itself to reciting the details of the transactions herein which give a flavour of how all of them progressed.

Mr B as “Lord C”

127. In about October or November 2001 the Respondent became aware that Mr B was referring to himself as Lord C. There was no such British peerage title. It was accepted that had Mr B bought a manor called the Manor of C, he would have been entitled to call himself “Lord of C” or “Lord of the Manor of C.”

Dr Bck’s concerns

128. Dr Bck had required changes to be made to his transfer documents after completion of his purchase of feudal titles. Dr Bck had been corresponding with Pitts Tucker & Co and TVC had written to him on 21<sup>st</sup> December 2001 about “forthcoming changes.” Mr B had supplied a copy of that letter to the Respondent saying, “Here’s Mark’s reply to this jerk.” TVC was another name for MTW.
129. In correspondence Dr Bck asked the Respondent to confirm that the titles were genuine after he had completed his purchase of them. On 25<sup>th</sup> February 2002 Dr Bck had informed BFI that he had become aware of “very serious allegations creating doubt about the validity of my titles” and reiterated his request that Pitts-Tucker & Co

confirm that he was the legal owner, under English law, of the titles.

130. On 27<sup>th</sup> February 2002 Mr B emailed Dr Bck, with a copy to the Respondent in which he said, amongst other things,

“Pitts-Tucker & Co would normally charge you about £1,000 to handle a conveyance for you. We paid for that and avoided you that cost ....it might interest you to know that if you have ever been in London the firm of Pitts-Tucker & Co, located in the City of London by St Paul’s Cathedral, are one of the most prestigious and powerful law firms in the City. Mr Roger Pitts-Tucker was himself an agent to Her Majesty’s Privy Council and practises as such in a number of countries. Your title is perfectly legitimate and let me be very clear on this, you bought something which to the best of our research, knowledge, ability and INSURABILITY is a perfectly valid and legitimate title.”

131. On 2<sup>nd</sup> March 2002 BFI wrote to Pitts-Tucker & Co describing Dr Bck as a “moron” and instructing them to take a very tough line and to “do the usual” if he threatened to go to a solicitor.

132. On 7<sup>th</sup> August 2002 Pitts Tuckler & Co wrote to Dr Bck enclosing a letter dated 5<sup>th</sup> July 2002 which stated,

“We are writing to confirm that the Deed of Gift relating to the transfer of the feudal County of Clissa and the feudal County of Nona was drawn in accordance with English Law and that therefore you have the right to be named as the owner of the legal estate in these feudal titles.”

133. Mr B emailed the Respondent on 3<sup>rd</sup> September 2002 saying,

“he (Dr Bck) insists documents are questionable ...he says he will send a schedule/timetable of actions he will take ... try to get that out of him...we might be able to pre-empt some of the harm he intends to do.”

134. On 11<sup>th</sup> September 2002 Pitts-Tucker wrote to Dr Bck, saying,

“we inform you that we advise BFI upon various aspects of the sale of feudal titles and ensure that the documentation conveying the feudal titles is valid according to English law ...[the terms and conditions] provide that you no longer have the right to raise any objection, requisition or enquiry regarding the above-mentioned feudal titles ... We understand that your problems stem from you having shown the documentation to the Vice-Consul at the Croatian Consulate in Australia, the Council of Damatia and Faculty of Law at the University of Split and their failure to recognise the titles.”

#### The Respondent’s advice to Mr B

135. On 21<sup>st</sup> March 2002 the Respondent emailed Mr B,

“You appear still to be complaining that I am not supporting you. Nothing can be further from the truth” and reminding Mr B,

“again of my previous advice about your method of contracting which is vulnerable”.

136. The Respondent’s advice to Mr B was that he was vulnerable because he accepted payment and completed paperwork without providing terms and conditions which could be incorporated into the contract. He advised that English law would not look favourably on the practice of leaving the terms and conditions out of the contract.

Mr D’s correspondence with the Respondent

137. On about 27<sup>th</sup> March 2002, Pitts-Tucker & Co received a letter from Mr D referring to the fact that BFI was a client of Pitts-Tucker & Co and BFI had,

“passed me your banking account details and requested that I deposit funds in your client account so I may purchase the title of Barony of Winterbourne St Martin. I enclose a copy of a letter to BFI placing them on notice that I am the Lord of the Manor of Winterbourne St Martin and requiring that they desist from offering this title for sale. I will be grateful to receive your confirmation that this has been attended to”.

138. In subsequent correspondence Pitts-Tucker & Co explained that BFI was selling the Feudal Barony of Winterbourne and not the Manor. Mr D said that was likely to be a bogus title and listed reasons for this.

Re-incorporation of BFI in the Seychelles

139. On 13<sup>th</sup> April 2002 Mr B wrote to the Respondent saying that BFI was now a Seychelles corporation of which he was the sole Director. “please do not inform ANYONE of where the Company is incorporated, this gives us the advantage of sounding British (and our Britishness is one of our selling points).”
140. It was the Respondent’s position that it was Mr B’s privilege to arrange for personal anonymity in his business dealings and to incorporate in an offshore jurisdiction. Mr B had taken this step without notifying or taking any advice from the Respondent. Mr B wished to have his personal involvement shielded in view of the problems with his competitors that had arisen.

Advice given to Mr B in relation to a proposed change of name

141. On 24<sup>th</sup> April 2002, the Respondent advised Mr B about changing his name by deed poll; Mr B indicated that he wanted to proceed. The Respondent said he had given standard advice to his client and forms had been sent to Mr B in August 2002. Mr B did not go ahead.

The Seventh Earl of B’s advice

142. In about July 2002, the Respondent became aware that the Seventh Earl of B was advising the public through a website that the Respondent was helping Mr B to sell fake titles to the public.

The KGF transaction – the Barony of Barrymaol and his payment of funds

143. In about September 2002 KGF emailed BFI and offered the sum of \$22,000 for the Barryladir titles advertised on the BFI website. On 8<sup>th</sup> September 2002 BFI informed KGF that these titles were no longer available. He was offered instead the viscounty and barony of Barrymaol for the same price. The emailed response included,
- “this would be a re-sale and we have obtained our usual Power of Attorney from the present owner of the Viscounty & Barony of Barrymaol...to act on their behalf in selling these twin and separable titles...[funds should be transferred to] our solicitors, Pitts-Tucker & Co., who are fully licensed by The Law Society of England and Wales and are agents to Her Majesty’s Privy Council, where the funds are held in trust until you receive the documents.”
144. A few weeks later KGF contacted Pitts-Tucker & Co by telephone indicating that he was proposing to send some money with reference to BFI. His bank transferred \$22,000 to Pitts-Tucker & Co which Mr KGF said was held on trust to KGF’s order.
145. KGF wrote to Pitts-Tucker & Co on 8<sup>th</sup> October 2002 confirming the transfer of \$22,000 to its trust account for the possible purchase of the Barrymaol title. He specified that the funds were to be held to his account pending his further written instructions. In his evidence the Respondent said he did not see that letter and he asserted that that letter was a forgery.
146. KGF had been aware of uncomplimentary articles about BFI on the Internet. He spoke to a member of staff at Pitts-Tucker & Co on 18<sup>th</sup> October 2002 and reminded her that his money was held to his order which was confirmed. The staff member agreed to provide proof that the titles were genuine, capable of being sold and that the seller was legally entitled to sell them. KGF wrote to confirm the conversation.
147. Over the ensuing few days KGF had a number of telephone conversations with Pitts-Tucker & Co and also exchanged emails with the BFI website. KGF stressed that he required proof that the titles were genuine, capable of being sold and that the seller was legally entitled to sell them and that in the meantime Pitts-Tucker was to hold his money to his order.
148. Mr B emailed KGF on 25<sup>th</sup> October 2002,
- “It should be a fairly simple matter to provide statutory evidence of ownership and I think we would have no problem in consummating a deal to take care of the Barrymaol title.”
149. By letter of 25<sup>th</sup> October 2002 Pitts-Tucker & Co sent KGF a draft Deed of Transfer, draft Statutory Declaration and history. The fact that the transaction was a “re-sale” with BFI acting under a Power of Attorney was not reflected in the Statutory Declaration.
150. KGF wrote to Pitts-Tucker & Co again on 28<sup>th</sup> October reiterating his instructions that his money was to be held pending his further written instructions. .
151. On 5<sup>th</sup> November 2002 the Pitts Tucker & Co staff member spoke with KGF on the

telephone when he asked how much interest he would be paid on his money held by Pitts-Tucker & Co. He was told that he would be paid at the rate stipulated by The Law Society, which would later be clarified. On 8<sup>th</sup> November 2002 KGF was told that he would be paid interest at the rate of ½ per cent. During that conversation KGF was also told that the money would be held in an account subject to the joint instructions of KGF and Mr B. KGF was not happy with that and in his letter of 11<sup>th</sup> November he requested the Respondent to return his money plus interest. The Respondent did not do so.

152. Pitts-Tucker & Co wrote to KGF on 15<sup>th</sup> November 2002 in which it was asserted that BFI had accepted KGF's offer to purchase and that he had paid \$22,000 to their account,

“without any simultaneous requests that the money was to be held to your order.....

we inform you that our bankers...have confirmed that they do not pay interest on the sum of US\$22,000 because it is below the specified minimum amount eligible for interest”.

The letter claimed that the firm held the money as stakeholder and it would require the signature of both interested parties to release it and concluded by saying that BFI reserved the right to sell the title to another customer if KGF did not confirm his instructions that the sale was to go ahead within 14 days.

153. In that letter it was said,

“Our client is prepared to provide a certified copy of the 1993 conveyance from the Ninth Earl of Shannon. We confirm that it will take approximately one month to obtain this.”

154. KGF wrote on 18<sup>th</sup> November 2002 requesting an undertaking from the Respondent that he would deal with his money exactly as he had been instructed. In the absence of such an undertaking KGF said that he would make a complaint to The Law Society. In the absence of such response KGF complained to the Law Society on 6<sup>th</sup> December 2002.
155. On 9<sup>th</sup> December 2002 Pitts-Tucker & Co wrote to KGF saying that the monies were held as agent for the vendor until completion which would occur once the documents had been provided and KGF's questions had been answered and saying that The Deed of Transfer between The Earl of Shannon and Mr B, had been lost.
156. On 10<sup>th</sup> December 2002 KGF wrote to Pitts-Tucker & Co chasing up his queries about title. He pointed out how easy it should have been to obtain documents. He insisted on the provision of certified copies of the conveyances. KGF had begun to have doubts about the transaction and asked Pitts-Tucker & Co., “Are you convinced this is a bona fide transaction?”
157. On 31<sup>st</sup> January 2003 the Respondent telephoned KGF and asked if he still required the titles. KGF said that he was still awaiting a lot of information in order to make up his mind. KGF again asked the Respondent to return his money and the Respondent

refused. The Respondent said he had found the original conveyance from the Earl of Shannon to Mr B in 1992/3 and that a copy would be sent shortly, even though an explanation of how the Transfer came to be lost had been given by letter and the Statutory Declaration. In answer to KGF's question the Respondent said he personally would be convinced by the proofs of authenticity and that BFI was entitled to sell and that had he been in the market for titles he would be prepared to buy.

158. With his letter of 21<sup>st</sup> March 2003 the Respondent enclosed a Statutory Declaration made by Mr B on 10<sup>th</sup> February 2003 and a copy of the executed Transfer from BFI to KGF. The Statutory Declaration recorded that the Transfer from Lord Shannon had been lost. It provided no evidence that the Barony of Barrymaol existed or that BFI was entitled to sell it. The Deed of Transfer was stated to have been signed "for and on behalf of BFI" (without reference to execution under a power of attorney). The Respondent expressed the hope that KGF would withdraw his complaint to The Law Society.
159. In a letter to The Law Society of 21<sup>st</sup> March 2003 the Respondent said,
- "The funds were not remitted to the seller in fact until 30<sup>th</sup> January 2003".
160. In the telephone conversation with KGF on 31<sup>st</sup> January 2003 the Respondent had confirmed that he still held KGF's money. The accounting records recorded that the monies were released to Mr B on 18<sup>th</sup> December 2002.
161. The Respondent denied not accounting to KGF for money paid to him. It was the Respondent's position that KGF wanted to purchase a title and had already contracted to do so. The relevant documents had been provided to him. KGF's instructions to hold the money to his order were said to have been contained in a letter dated 8<sup>th</sup> October 2002, but the Respondent had not received that letter at the time and was not aware of any such instructions. The Respondent contended that KGF had forged that letter after the event, following his change of heart about the purchase of the title. The alleged letter had not been mentioned in any of KGF's contemporaneous and subsequent emails or letters. The Respondent said he had not made any deceitful representations to KGF.

Advice to Mr B to cease trading

162. On 25<sup>th</sup> November 2002 Pitts-Tucker & Co, under the Respondent's reference, wrote to Mr B referring to discussions that "we have had" over the previous couple of weeks and giving advice that BFI should cease trading for a number of months until things quietened down because there had been defamatory remarks on the Internet, investigations by a number of governmental organisations in the USA, the likelihood of legal action by various individuals and a pending investigation by the Inland Revenue into BFI's tax affairs.
163. In a letter dated 20<sup>th</sup> December 2002 from Pitts-Tucker & Co (which also bore the Respondent's reference) to Mr B it was said,
- "We are writing further to our letter dated 25<sup>th</sup> November 2002. We are aware of the great number of complaints being made against BFI Ltd, yourself and employees of the company, in the United Kingdom and the United States of

America. We therefore strongly advise you to look for a “safe haven” where you can remain until these matters are resolved.”

164. The Respondent denied that he had given such advice and attributed the letter to one of his trainees. The Respondent said that a vindictive and defamatory website of one of Mr B’s competitors was causing harm to his business.

Respondent’s Advice to Mr B on Extradition

165. In February 2003 the Respondent gave Mr B advice on extradition following discussion that Mr B might be accused of racketeering, money laundering or tax evasion. The Respondent advised Mr B that the sale of fake titles in good faith, with no mens rea, would not be a criminal offence.

Exchanges in relation to complaints by purchasers

166. The Respondent faxed a letter to Mr B on 21<sup>st</sup> March 2003 entitled “Complaints against your titles – Office for the Supervision of Solicitors” . It began, “Yet another complaint has been received by me in respect of the sale of your titles...”

This referred to JH’s complaint. After referring to his correspondence with the OSS the Respondent continued,

“I think it is fair to say that as regards to the legalisations work I do not “deduce title” for you since those cases come to me as “done deals” when all the selling has been done on the internet by the purchaser to yourself or your assistants. In this connection enclose a copy of my latest fax to MM. It is important we liaise closely with each other and present the correct “front””.

167. On 28<sup>th</sup> May 2003, Mr G emailed Mr B regarding his purported purchase of the Prince of Halberstadt. This email was forwarded to the Respondent on the same day,

“After over two years I have been consistent in my requests – give me proof – the evidence that my title is real. But as it stands right now, as far as the world is concerned, all people believe that the Imperial and Royal Family of Prussia still own all the rights, etc to the title of Halberstad. The head and spokesman of the Imperial House through their attorney declare they have never heard of you nor did any business with you. In your letter to Mr Pitts-Tucker of March 5 2003, you wrote “...the solicitor needs only deduce title going back fifteen years” and “Roger Pitts-Tucker, conforming to the norms of English law deduces title strictly back to the fifteen years required by English law”.

**The Submissions of the Applicant**

168. The Application related to the Respondent’s representation of his client, Mr B, and his company BFI in relation to sales of feudal titles. All of the allegations related to the Respondent’s conduct from 1999 to 2003. There were so many signs that Mr B’s

business was dubious that the Respondent should never have been prepared to represent him (or should not have continued to do so). The Respondent gave references for Mr B's business in terms which were improper, given what he knew, and he improperly paid over to his client money paid to him by a prospective purchaser, KGF, in circumstances where he was obliged to account to KGF for that money. As a result dishonesty was alleged against the Respondent.

169. In nine of the transactions before the Tribunal, the Respondent administered the Statutory Declaration when the declarant (in most cases Mr B), was not in his presence. In all cases the Statutory Declaration was signed by the Respondent on the basis that it was "seen for the signature of."
170. The Respondent also administered the Statutory Declaration in three cases where he was acting for the seller or person otherwise interested in the proceedings.
171. The Applicant's case focussed on the Respondent's conduct in relation to the sale of 13 feudal titles. One of these was English, the others were German, Irish, French, Albanian and Croatian. The first of the transactions took place in January 2000, the last in September 2002. The Respondent had indicated that his professional contact with BFI ceased in October 2003.
172. The allegations fell into two groups. The first concerned the Respondent's decision to act (and to continue acting) for BFI and Mr B; and the second concerned further discrete breaches of professional conduct perpetrated by the Respondent in the course of so acting.
173. With regard to the first group of allegations, the Applicant's position was that the Respondent should not have agreed to act in respect of any of the 13 transactions. In the alternative, he continued to act for Mr B/BFI in circumstances where, conducting himself in accordance with Practice Rule 1, he should have declined to do so.
174. The transactions were dubious in that they bore indicators of possible fraud. The Respondent's role was to lend credibility to the transactions and/or to assist his client to take unfair advantage of the purchasers. The Respondent knew or suspected that his firm's role was being misrepresented to the purchasers, who were not separately legally represented and/or had no adequate opportunity to satisfy themselves as to what was being sold before parting with their money. The Respondent did not make such enquiries as he should have made to satisfy himself as to the bona fides of his client and of the transactions.
175. The second group of allegations related to conduct during the course of acting for Mr B and BFI. The Respondent made representations to third parties/prospective purchasers which were deceitful or improper; he acted for seller and buyer (Mr OS) when there was a conflict of interest; he failed to account to KGF for money paid to him to be held to KGF's order and he made deceitful representations to KGF. The Respondent administered Statutory Declarations when the maker was not present and in matters where he was acting for one of the parties to the transaction or his firm was otherwise interested. The Respondent witnessed the Transferor's signature to Deeds of Transfer when the Transferor did not sign the Deed in his presence.

176. The Applicant alleged that the Respondent had acted with conscious impropriety and therefore dishonestly. In the alternative, if he failed to appreciate what an honest and competent solicitor in his position would have appreciated, then this was such a serious failure in the circumstances that either way his conduct amounted to conduct unbecoming a solicitor.
177. The Applicant referred the Tribunal to The Guide to the Professional Conduct of Solicitors 1999 and the Solicitors Practice Rules 1990, Practice Rule 1 (a)(d) and (e). Practice Rule 6(1) set out the particular circumstances in which a solicitor may act for more than one party in a conveyancing transaction.
178. Principles in the Guide, 3.07, 12.02, 17.01, 17.06 and 17.07 were relevant to the matters before the Tribunal.
179. The Tribunal was invited to consider the relevant caselaw, in particular a solicitor should not continue to act in respect of transactions which he suspected or should suspect could involve illegality or impropriety unless he was able to satisfy himself as to the bona fides thereof: *Simms v The Law Society* [2005] EWHC 408 (Admin). A transaction was dubious if it bore the indicia of fraud or possible fraud and was therefore (objectively) a transaction in which no reasonable solicitor would act without satisfying him/herself that the transactions were not in fact fraudulent: *Bryant v The Law Society* [2007] EWHC 3043 (Admin). Whether or not a transaction was dubious required a consideration of the nature of the transaction, the work that the client instructed the solicitor to carry out, the background of the client, the professional obligations of the solicitor and his general duties under the law. Every solicitor was required to look behind the narrow remit of his clients' instructions and to consider the wider picture. (*Michael Shuman and Periasamy Mathialagan and in the Matter of the Solicitors Act 1974* [No. 9116-2004, 13<sup>th</sup> & 14<sup>th</sup> February 2006] ).
180. The Applicant did not seek affirmatively to prove that the 13 underlying transactions were fraudulent, that the titles did not exist, nor that such titles as there might have been were never transferred by Mr B.
181. The Respondent had discovered from researches he undertook after the FIO's report was served on him that German law only permitted titles to be passed to non family members by adoption. The transfer to Mr G of his German title (Prince of Halberstadt) was by way of sale, not adoption, and it followed it was ineffective as a matter of German law. This was an illustration of the kind of potential problem that could beset the sale of foreign titles. The critical point, in conduct terms, was that the Respondent undertook no such investigation at the time. That was reckless or he turned a "blind eye" to obvious deficiencies in the "pedigrees" supporting the titles and the warnings that he had been given. At the very lowest, the Respondent's involvement was held out as giving prospective purchasers meaningful comfort that the transactions were bona fide and that their money would be safe. That appearance was illusory as KGF's case starkly illustrated.
182. The Respondent claimed that English law applied to the transactions and that he had no obligation to deduce title or examine the histories supplied in support of the titles. His role was limited to "legalising" documents produced by his client and holding the purchasers' money as "agent for the vendor".

183. In the Applicant's submission it was clear that at the time the Respondent thought the feudal titles, including the foreign titles, were classed as a type of interest in land and had to be conveyed as such. The need to consider the possible application of foreign law to foreign feudal titles should have been obvious. The Respondent's role was described to purchasers as "conveyancing". His firm's name appeared on the front of the transfer documents so that purchasers were led to believe he was drafting the transfer documents and deducing title.
184. Purchasers rarely had their own solicitors. Mr B's business model sought to discourage that. Either the Respondent was acting for both sides (and should not have been) or he appeared to be and did nothing to correct that impression, which helped his client take unfair advantage.
185. Varying terminology was used to describe the basis on which the Respondent held purchasers' money. The words "trust account", "escrow agent", "stakeholder" were used. All was designed to create the impression that the involvement of a solicitor gave purchasers' money some protection. The reality was that Mr B was selling a "pig-in-a-poke" and there was no protection for purchasers' money.
186. The argument that the Respondent was involved only post contract was spurious. He frequently provided references to prospective purchasers, and even if a contract had been entered into when he sent documents out, that would not absolve him if the whole mode of doing business was one with which he should not have been involved.
187. If the work undertaken by the Respondent really was limited to "legalising documents" and holding money as agent for his client, as he claimed, that was no proper job for a solicitor. The Respondent was being used to lend respectability to dubious transactions.
188. The inconsistencies in the Respondent's explanations should be taken into account when considering whether he acted with conscious impropriety. Notably, he now maintained that he did not believe the feudal titles were land or being conveyed as such, that he thought purchasers had the opportunity to see what they would be getting for their money in advance of contracting to buy and that he was holding money as agent for the vendor. These assertions were inconsistent with descriptions (by him, or known to him) of what he was doing at the time.
189. The chronology of events was important, given the allegation that the Respondent should never have agreed to act in the 13 transactions in the first place. Alternatively, as his knowledge increased over time, he should have ceased to act.
190. The Applicant had identified a number of common themes which emerged from the transactions. The themes, as to Mr B's mode of doing business and the Respondent's role in it, were well illustrated by KGF's case. That case raised a specific allegation of failure to account. KGF was unrepresented. The Respondent was obliged either to hold KGF's money to his order (as instructed) or return it. The failure to account to KGF served to illustrate the reasons why the Respondent's role in these transactions was inappropriate. There was an obvious risk that the Respondent would be used to help Mr B take unfair advantage of the other party to the transaction by enabling Mr B to take the buyer's money without the buyer having any real opportunity to see what he would be getting for it in return. In effect, there was a risk that this was no more

than a form of advanced fee fraud.

191. The Respondent's claims as to the fabrication of the 8<sup>th</sup> October letter (a direct instruction to him to hold money to KGF's account) came very late.
192. No completed statutory declaration was ever provided to KGF, nor the additional documents and information that Mr B had agreed to supply. The Respondent's decision to pay KGF's monies over to Mr B in the circumstances that he did was improper. Throughout the transaction the Respondent breached his duty of fairness. The same broad pattern emerged in the other transactions.
193. The Respondent already knew enough as at January 2000 that he should not have been prepared to act in any of the transactions.
194. The Respondent had had to look at his client's website on a number of occasions when complaints had been made about its content and he must have known how Mr B's business, and Pitts-Tucker & Co's role in it, was portrayed. In acting for BFI he had a responsibility to know its contents.
195. It must have been obvious to the Respondent that the use of reference to moneys being held in trust was intended to convey more to prospective purchasers than that. It hinted at a protection which was non-existent as the release of the money was in Mr B's power.
196. The net effect of Mr B's terms and conditions was that Mr B could provide whatever documents he liked even if they were incomplete, defective, or otherwise invalid, and the purchaser would be told he had no redress.
197. Matters had reached such a stage by late 2002, in the midst of KGF's transaction, that letters were going to Mr B on Pitts Tucker & Co's letterhead advising him to stop trading and seek a "safe haven." The Respondent claimed these to have been sent by his trainee without his authority. She denied that, just as she denied that she sent an earlier letter without the Respondent's authority. By February 2003, the Respondent was advising Mr B about extradition.
198. Against this backdrop, the Respondent could not have genuinely believed what he told KGF in a telephone call at the end of January 2003, namely that he would himself be convinced that the Barrymaol title was genuine and if he were in the market for titles he would be prepared to buy it.
199. The Tribunal was asked to conclude that there was in each case cogent grounds (known to the Respondent) to doubt that Mr B did have good title; that the documents supplied were plainly inadequate to evidence that he did have good title; and that the Respondent had no basis for thinking they were adequate to transfer title in any of the foreign titles (because he never looked into what that would require). The Respondent knew that there was a complete mismatch between how his role was being presented to prospective purchasers and what he was in fact doing.
200. The Respondent's role was very limited and gave purchasers no real protection. It appeared to them to do so. Mr PBK had been told that Pitts-Tucker & Co were acting for BFI but he "understood that because they were English solicitors I would be

protected”. Mr B had made inflated and inaccurate descriptions of the Respondent’s status.

201. The Respondent had frequently been involved in giving references to prospective purchasers which he could not properly give.
202. If the Respondent was right that the use of language of trust/escrow was “American” usage by Mr B he should have corrected it to “held as agent for vendor” to avoid confusion. The Respondent had repeatedly described himself as an escrow agent in the interview with the FIOs but then denied this afterwards.
203. The Respondent did not pick up and correct basic errors in the Statutory Declarations. He was not in the position of an independent solicitor taking a Statutory Declaration, he was on a retainer in relation to those transactions and he knew how his role in them was being portrayed to purchasers. He also knew of the many complaints about his client’s business. In not reading the Statutory Declaration he was deliberately turning a blind eye because he suspected his client had no intention of conveying good title. A client engaged in a bona fide business would have remedied obvious defects rather than taking refuge behind the unincorporated website terms or making obfuscatory accusations about a “turf war” with others engaged in the same business.
204. The Respondent should have enquired as to what the law in the other jurisdictions said about the rights being asserted to the title purported to be sold, whether it permitted the title as land to be transferred under English law and, further, what the law said as to the formalities of such a transaction.
205. In responding to complaints made by purchasers as to the documents that they had received from Mr B, Pitts-Tucker & Co consistently sought to rely on the BFI terms, asserting for example, that “the terms of contract were quite plainly set out for you to see on my client’s website”. This was not so.
206. The Respondent’s evidence that the BFI terms were incorporated into such contracts was obviously wrong and this assertion was contradicted by his own advice at the time.
207. It was basic contract law that, in the absence of a signed written contract embodying the terms, terms would only be incorporated into a contract, and a party would only be legally bound thereby, where reasonable notice of them had been given. Furthermore, if the particular condition relied upon was one which was a particularly onerous or unusual term, or was one which involved the abrogation of a right given by statute the party tendering the document must show that it had been brought fairly and reasonably to the other’s attention. It was clear that the Respondent had all this well in mind when he gave advice to Mr B. In the context of these transactions, with all their indicia of fraud, and in a context where purchasers were unrepresented, it was not professionally acceptable for the Respondent to be involved in assisting Mr B to carry on his business in this way.
208. The Respondent had admitted allegations that he had taken Statutory Declarations when the maker of the Statutory Declaration was not present and in a transaction where he was acting for one or more of the parties and had witnessed deeds in the absence of the signatory in eleven of the thirteen transactions.

209. The Respondent had not addressed his mind at all to the question of whether English law applied until after Mr OS's solicitors raised the point.
210. Confronted with the evidence that his client was continuing to offer insurance from BDGI Company Limited the Respondent had no explanation for how he could have thought it could be acceptable to let his client go on offering that insurance, knowing as he did that this was just self-insurance by Mr B and that the appearance of independent insurance was a complete fiction. Mr L certainly saw it as a fraud.
211. No one could have guessed at the reality, which was that the Respondent was just "rubberstamping" documents drafted by his client without applying his own mind to them at all (or instructing his trainees that they needed to do so).
212. In the submission of the Applicant the Respondent had changed his story to extricate himself from the problem that purchasers had a reasonable expectation, based on the language used, that he was deducing title. An honest solicitor would have faced up to it when the issues were pointed out by the OSS. The Respondent resorted to re-writing history.

### **The Submissions of the Respondent**

213. The case against the Respondent was unusual and somewhat over-complicated. It was contained in a long and dense statement of the Applicant. It started life as a 46 page FIO's report but many of the concerns in that report had fallen away.
214. There had been great delay on the part of the Applicant in bringing the case to the Tribunal. The initial very long statement of the Applicant had been subject to considerable amendment making it somewhat longer. That was an unsatisfactory way to bring professional disciplinary proceedings and would have costs implications. The Tribunal was invited to consider whether the SRA's approach in this case had been a proportionate one.
215. The Respondent had spent a great deal of time in considering and preparing his response to the matters put to him. The Respondent had produced a long and comprehensive statement.
216. It had been asserted that in January 2000 Mr B instructed his former solicitors to hand over their files to Pitts-Tucker & Co and that contained within those files was a letter of 1997 in which Mr B had been accused of fraud. The Respondent's evidence was that he did not see that letter .
217. Other lawful and unexceptional actions of Mr B were turned against the Respondent as being further matters which ought to have put him on enquiry about his client's bona fides.
218. Concern was expressed about the use by Mr B of a number of names and titles and the fact that he was considering changing his name by deed poll. The Respondent saw nothing inherently wrong in this. He understood that Mr B was entitled to use the titles that he did.
219. The fact that Mr B wished to incorporate BFI offshore was not an indicator that the feudal title transactions might be fraudulent. All sorts of clients wished to set up

offshore companies for all sorts of reasons, among them a desire to make life difficult for their creditors. That was not a matter that would have alerted the Respondent to the possibility of nefarious activity on the part of his client.

220. There was a danger that in the wealth of documents placed before it the Tribunal would be distracted by unnecessary minutiae.
221. At the heart of the case was the simple Allegation that the Respondent acted for Mr B when he should not have done so and that he was prepared to mislead others while doing so.
222. The SRA was not able and did not seek to prove that any of the 13 transactions was fraudulent. The Respondent vigorously disputed that any of the transactions was fraudulent. In the case of Bryant and Bench a “dubious transaction” was one in which no reasonable solicitor would act. The Applicant has to demonstrate that at least one of the transactions was “dubious” in that sense and that the Respondent knew that to have been so.
223. The sale and purchase of feudal titles was an unusual and minority interest. It might well be concluded that those who seek to purchase such titles exhibit a degree of eccentricity, being prepared to expend significant sums of money on something that has no intrinsic value. There is undoubtedly a real market for the sale and purchase of feudal titles. Mr. H of S & P provided independent confirmation of this. The subject matter of the transactions was very different from the fraudulent investment cases that had been considered by the Tribunal. It was also clear that those who dealt in this area were highly competitive and prone to accuse each other of fraud. Others involved in the market ran websites which were highly critical of Mr B.
224. Because The Law Society had received some complaints from title purchasers it had aligned itself with those who attacked Mr B. There was evidence that some of those attacking Mr B had adopted illegal or improper business practices. The S & P auction had been sabotaged in 1999. Mr OS had been severely criticised by a County Court Judge for his business practices in a case which arose out of a newspaper competition, the prize for which was to be the acquisition of a Cornish feudal titled. Mr G failed to disclose the Halberstadt title in his bankruptcy. This was the sort of market in which complaints might be expected once the purchaser realised that he had paid a significant sum of money for something intrinsically worthless.
225. The Applicant had to establish that the transactions were “dubious” in the Bryant and Bench sense and that the Respondent knew that to be so.
226. In the majority of cases the Respondent became involved only after the purchaser had made his decision and had contracted to buy. The Respondent believed and had reasonable grounds for his belief that Mr B was acting in good faith. The Respondent was acting only for Mr B/BFI and was not acting for the purchaser. The Respondent was not qualified to and did not advise the purchaser on the quality of the feudal title or whether he was obtaining a good title to it. The transaction was not a conveyance of land.
227. The Respondent’s involvement was limited in the way that he described, witnessing documents drawn up by Mr B, sending them to the purchaser and holding the purchaser’s money until completion of the transaction. It was accepted that a number

of the documents had been poorly drafted. International commercial lawyers were familiar with poorly drafted and sometimes nonsensical contract documents. The Respondent had come to recognise with hindsight that it was undesirable for his firm's name to appear on the documents.

228. It was clear from Mr B's website that he was given to displays of grandiloquence and the Respondent accepted that that gentleman was inclined to be flamboyant.
229. There was no reason when the Respondent's association with Mr B began why he should not act. He was instructed to act in an auction sale conducted by a highly reputable firm of estate agents and auctioneers. No solicitor would have thought that he should not accept instructions at that point. The SRA had not identified a point at which it contended that the Respondent should have ceased to act for Mr B. It was the Respondent's view that he properly acted for Mr. B throughout.
230. The Respondent fulfilled his professional duty to act throughout in the best interests of his client, having given strong advice to the client about the wisdom or propriety of a particular course of action. A solicitor does not have to like or approve of his client, indeed the Respondent did not greatly like Mr B.
231. The Respondent throughout believed that Mr B was acting in good faith and that the contracts were valid and effectual to pass the feudal titles and as Mr. B's solicitor considered that it was his duty in the best interests of his client to seek to set the purchasers' minds at rest or to act on his client's instructions when Mr B refused to renegotiate the completed bargain.
232. The Respondent had acted in some 255 such transactions. He was entitled to be judged on that basis, namely that the overwhelming majority of Mr B's sales were unremarkable.
233. It was relevant that the Allegations against the Respondent related only to the work he undertook for one client.
234. The Tribunal was invited to give due consideration to the dangers of hindsight. A solicitor's professional conduct was to be judged in the light of the situation that faced him at the material time. It was all too easy for an investigator to pick over the bones of a solicitor's file and point to matters that could have been done better or differently, Solicitors did not have the luxury of hindsight when taking steps and making decisions.
235. Overall it was the Respondent's case that he sought to provide a bona fide service to a bona fide client who was conducting business in a controversial market beset by allegation and counter-allegation made by somewhat unusual individuals. He succeeded while so doing in complying with the professional and ethical rules by which he was bound.

### **The Tribunal's Findings of Fact**

236. The Tribunal found that Mr B did use a number of different names and titles but the

Respondent did not consider it suspicious as Mr B was a flamboyant character and he was engaged in the business of selling titles.

237. The Respondent admitted that he took Declarations and witnessed Transfers made by Mr B when Mr B was not present. The Respondent had devised a formula using the words “seen as” when doing so but the Tribunal found that in apparently witnessing such documents the Respondent did mislead those relying on the face of the document. On one occasion the Respondent was described on a document as a notary public/solicitor empowered to administer oaths. The Tribunal found that the inclusion of the description “notary public” was an innocent error.
238. The Tribunal found that the transactions in which the Respondent first became involved were not obviously to be recognised as dubious. However, when Mr B suggested the terms in which the Respondent should write to Mr H at S&P the Respondent was being used to lend credibility to the transactions. He was an experienced solicitor at the time and that would have been apparent to him.
239. When the Respondent wrote to Mr H about the Barry titles he adopted Mr B’s drafting. The Respondent had no adequate grounds for concluding that the title existed nor did he satisfy himself as to the Irish position or the application of Irish law to the transaction as he should have done.
240. The Respondent was put on notice of concerns about the existence and/or bona fides of Dr ES. Those concerns did amount to a warning of possible fraud.
241. Mr B made it plain to the Respondent that he needed a “British face of unquestionable professional reputation” and that “people would be much more likely to buy when they know that a British solicitor is handling the entire matter.” He also anticipated “staggering” profits. This did amount to an indication of the presence of fraud. The hyperbole practised by and inaccuracies employed by Mr B were not just a reflection of his flamboyance, but amounted to an indicator of nefarious activity on his part in particular when he inaccurately and improperly referred to S & P as a “partner.” The Respondent’s evidence that he did not monitor Mr B’s website was not accepted. The Respondent was aware of its contents. Mr B had asked the Respondent on more than one occasion to adopt obfuscatory language for example in an advertisement to be inserted in the London Gazette and in connection with insurance arrangements.
242. The Tribunal found that Mr B did suggest that the Respondent should act for both sides in the transactions. The conditions of sale published on BFI’s website stated that “the Vendor will pay all solicitor’s fees.” This gave the appearance that the Respondent was acting for both sides, however the Respondent did not do so although he did not make that absolutely clear to the purchasers and he did not advise purchasers to seek their own legal advice.
243. The appearance of the name and address of Pitts-Tucker & Co on the transaction documents would lead any person dealing with those documents to believe that that firm had drafted the documents and had been fully involved in the transaction including the deduction of title.
244. The Respondent did not deduce title to the feudal titles. He acted as a conduit for Mr B and received payments from his client’s customers. The nature of the transaction

and the payment to the Respondent of the purchase price pending completion of the transaction was akin to a land conveyance transaction. The holding of money in those circumstances was not an appropriate role for a solicitor acting for a vendor. The Tribunal rejected the Respondent's assertion that solicitors were permitted to act only as "commercial agents" in these circumstances. The Respondent's true involvement was to lend undeserved and spurious credibility to the transactions.

245. The Respondent worked on a retainer basis for Mr B. The service provided in return for the retainer consisted primarily of allowing the name of Pitts-Tuckekr & Co to be used on documents that had been prepared by Mr. B and transmitting them to purchasers.
246. When it was suggested to Mr H that Mr B had sold false titles using a pseudonym the Respondent replied that that was "rubbish" when he had not carried out any proper enquiries.
247. The complaints and criticisms of Mr B and his business of which the Respondent was made aware could not be explained away by the fact that the sale of feudal titled was a very competitive business and those engaged in such business also engaged in "turf wars." They were clear indications that something was wrong.
248. The Respondent did not research what laws applied to the transfer of a foreign title. In the case of the Albanian title the Respondent referred to the effect of English statutes which related only to England and Wales. He was reckless as to which system of law applied and reckless as to the effectiveness of the conveyances.
249. Where it was stated that documents were executed under a power of attorney, the Respondent believed that there was a power of attorney in existence. He did not certify and provide a copy of such power with the documents as he should have done.
250. The Respondent's trainee had spoken to Mr B's former solicitor who had described Mr B's business as "fishy" and she had reported this to the Respondent.
251. Where the Respondent had said that a trainee had written unauthorised letters the Tribunal did not believe him and preferred the trainee's evidence that she did not.
252. Mr B's files handed to the Respondent by his former solicitors contained a letter dated February 1997 accusing Mr B of fraud. The Tribunal accepted the Respondent's explanation that that letter did not come to the attention of the Respondent until he was interviewed by the FIO.
253. The Tribunal found that the Respondent did not know initially that Mr B was "self-insuring." The Respondent had advised Mr B of the legal requirements in the United Kingdom if he were to sell insurance here. The Respondent was in no doubt as to the insurance position after learning of Mr L's enquiries.
254. The Respondent wrote references for Mr B/BFI couched in glowing terms when he was not in a position to know the truth of what he was writing.
255. In the particular case of the Halberstadt title the Respondent was put on notice by Mr G that the Principality of Halberstadt did not belong to the Hohenzollen family.

Under German law such a title could not be conveyed.

### **The Tribunal's findings on the Allegations**

256. Allegation 1

The Tribunal found that the Respondent's behaviour was such that he was in breach of Practice Rule 1 and found Allegation 1 to have been substantiated and in doing so had regard to the following further findings.

257. Allegation 1.1

- (a) The Tribunal found Allegation 1.1 (a) to have been substantiated. The Tribunal found that the feudal title transactions were dubious and did bear the indicators of possible fraud and the Tribunal found that the Respondent knew this to be the case.
- (b) The Tribunal found Allegation 1.1 (b) to have been substantiated on the basis that he knew that his client had involved him as a solicitor to lend credibility to the client and the transactions and that he should have known that he was assisting the client in taking unfair advantage of the other party to the transaction.
- (c) The Tribunal found Allegation 1.1 (c) to have been substantiated in full on the basis that the Respondent knew that the other party to the transaction had no separate legal representation and had no or no adequate opportunity to satisfy himself as to his client's right to convey the feudal title or the effectiveness of the conveyance.
- (d) The Tribunal found Allegation 1.1 (d) to have been substantiated on the basis that the Respondent knew and did not take any adequate steps to correct the misrepresentation and that he failed to advise purchasers to instruct their own solicitors. The Tribunal did not find that the Respondent acted for both sides in any transaction.
- (e) The Tribunal found Allegation 1.1 (e) to have been substantiated in the alternative, namely that the Respondent did not suspect the matters but the circumstances were such that he should have so suspected.
- (f) The Tribunal found Allegation 1.1 (f) to have been substantiated to the extent that he did not suspect that the transactions were not effective to convey the feudal titles but the circumstances were such that he should have so suspected.
- (g) The Tribunal found allegation 1.1 (g) to have been substantiated.
- (h) The Tribunal found allegation 1.1 (h) to have been substantiated in that the Respondent should have declined to act for Mr B no later than the autumn of 2002 upon receiving the concerns relating to Mr G's transaction.

258. Allegation 1.2

The Tribunal found allegation 1.2 to have been substantiated save that the Tribunal did not find that the Respondent knew that the transactions were dubious at the outset but he had come to be apprised of their true nature.

259. Allegation 1.3

The Tribunal found allegation 1.3 not to have been substantiated.

260. Allegation 1.4

The Tribunal found Allegation 1.4 not to have been substantiated.

261. Allegation 1.5

The Tribunal did not find Allegation 1.5 to have been substantiated in that the Respondent did not make deceitful representations to KGF but it did find this Allegation to have been substantiated in that the Respondent did make a deceitful representation to Mr. G as to The Law Society's position with regard to KGF's complaint.

262. Allegations 1.6 and 1.7

The Respondent admitted both of these allegations and the Tribunal found them to have been substantiated.

263. Allegation 2

With regard to Allegation 2 and the question of dishonesty, or conscious impropriety, the Tribunal had given careful consideration to the many excellent written references supporting the Respondent and speaking highly of his integrity. However, the Tribunal gave due consideration to the two part test set out in *Twinsectra -v- Yardley* and found that the Respondent's involvement in the feudal title sales, and in particular after autumn of 2002, was dishonest within the terms of that test.

264. The Tribunal having made its finding on dishonesty indicated that it had an open mind as to the appropriate sanction to be imposed on the Respondent.

**The Closing Submissions of the Respondent including submissions on delay, sanction and costs**

265. It was recognised that the Tribunal would either make a striking off order, order a suspension or impose a fine on the Respondent. If the Respondent were found to have been dishonest then it was recognised that the Tribunal would strike off or suspend. In the particular circumstances of this case the Tribunal was invited to consider the imposition of a fine.

266. The Respondent was sixty two years of age and a sole practitioner. He had enjoyed a long marriage and had two grown up children.

267. The Tribunal was invited to take into account the excellent testimonials written in

support of the Respondent. The writers spoke with one voice about the high regard in which the Respondent is held in all areas of his life.

268. The Tribunal's findings on the allegations had come as a shattering blow to the Respondent, his family and all those who knew him.
269. The SRA had adopted the realistic approach of allowing the Respondent to continue his sole practice for the last six years. It had not been considered necessary to place a condition on his practising certificate. It was, however, open to the Tribunal to make clear the conditions to which the Respondent should be subject in the event that he was permitted to continue in practice.
270. The concept of dishonesty was not helpful in this particular set of circumstances. The Tribunal considered that the Respondent shut his eyes to all obvious problems and that that was a fair way to look at what happened. A financial penalty together with an expression of the Tribunal's view as to appropriate conditions for practice would satisfactorily meet the case.
271. If the Tribunal were to impose a suspension upon the Respondent it was asked to consider delaying its implementation to give the Respondent sufficient time to make the necessary arrangements for the running of his firm and to ameliorate problems that his clients might encounter. It would prove difficult to find someone to take on a sole practice.
272. The Tribunal was reminded of the Respondent's age: a long period of suspension would finish his career. The Tribunal was entitled to reduce the sanction to be imposed in view of the delay in bringing the case before the Tribunal. This was accepted by the Applicant. It was common ground that the delay ran from the date of the referral of the case for disciplinary proceedings until the date of the issue of the Rule 4 Statement. Despite the complexity of the case, that period of delay had been absolutely unacceptable. Time had been taken by the SRA but by the time of the production of the FIO's report, the basis for the case had been established and further delay after that in the drafting of the Rule 4 Statement could not be explained. Such delay served only guilty solicitors. It did not serve an innocent Respondent, the public or the good reputation of the solicitors' profession. The Tribunal itself had indicated that it considered that it should take no longer than three months for the production of a Rule 4 Statement. There had been no satisfactory answer why it had taken twenty two months to prepare the Rule 4 Statement in this matter.
273. It was recognised that all delay applications considered by the Tribunal were fact sensitive when considering authorities placed before the Tribunal
274. The Applicant's leading counsel had indicated that she was seeking costs at the level of £300,000 which the Respondent's representative described as "eye-watering." The award of such costs against the Respondent would spell ruin for him. The necessity of the SRA expending such huge sums of money to bring disciplinary proceedings was questioned. The Tribunal was invited to take into account the fact that the Rule 4 Statement had been subject to considerable amendment prior to the hearing and the great delay in preparing the matter and these factors should be reflected in any costs order that the Tribunal might make.

### **Applicant's closing submissions on Delay, Sanction and Costs**

275. It was accepted that there had been no common law abuse of process argument as there had been no prejudice to the Respondent.
276. With regard to the claim that Article 6 had been breached, the Applicant accepted, for the purposes of this case only, that the date from which time began to run was the date when the matter had been referred by the SRA for disciplinary proceedings.
277. The delay was of 22 months. The Tribunal was referred to a number of authorities. There had been a number of cases where the period of delay had been as long or longer where the issues involved were not complex and there was held to be no breach of Article 6. It was agreed that the complexity of the subject matter of the case had to be taken into account. It was accepted that the Respondent made no contribution to the delay.
278. It was questioned how the Tribunal could properly take into account the delay when considering the sanction to be imposed upon the Respondent. The relevant principle was that in *Bolton -v- The Law Society*, namely that it might be hard on an individual but the good reputation of the solicitors' profession was more important than the fortunes of an individual member. The Tribunal would have carefully to consider the public interest dimension.
279. The Applicant sought the costs of and incidental to the application and enquiry. The bulk of the allegations against the Respondent had been found to have been substantiated, including a finding that the Respondent had been dishonest. It was essential that the principle of *Bolton v The Law Society* be upheld in order to protect the public. Solicitors must not act in dubious transactions. It was accepted that the facts in this case were not likely to recur. It was however sometimes necessary for the SRA to bring a solicitor before the Tribunal in such a case. In principle, where the bulk of the allegations were found to have been proved, the regulator is entitled to its costs.
280. The Tribunal was invited to order the Respondent to make a payment on account in the region of £90,000 to £100,000 and further to order that the costs be subject to a detailed assessment.

### Sanction and Reasons

281. The core of the complaint made against the Respondent was that he acted on behalf of a client who had sold feudal titles and in doing so the Respondent had acted in breach of his obligations as a solicitor and dishonestly.
282. The SRA did not seek a ruling on whether the feudal title market was bogus and/or whether the feudal titles sold did exist or whether the Respondent's client was a conman. When the matter was first referred to the Tribunal, the Rule 4 Statement in its original form would have required such a ruling. The allegations had been amended so that the case had come to focus only on the duties and obligations that the Respondent was under in his capacity as a solicitor and the Tribunal has addressed these issues.

283. It followed that the Tribunal was not required to form a view of Mr B's character or the business he was in and it has not done so. The Tribunal must, however, make it plain that in putting the best interests of his client first it is not open to a solicitor to assist a client in any fraud or wrongdoing. It is serious misconduct for a solicitor to do so.
284. At the heart of this case were the obligations and responsibilities that the Respondent was under when acting as he did. The transactions were unusual and not ones of which the majority of solicitors would have had any experience. The Respondent had no real experience of such matters although he claimed to have conducted research that gave him relevant knowledge. The duties of the respondent in these transactions could helpfully be compared to those duties a solicitor would be under in a routine property mortgage transaction. Many solicitors would have direct experience of a mortgage transaction. This was not an exact comparison. Questions as to who was the client and what duty was owed to whom were relevant.
285. Solicitors were described as 'gatekeepers' and it was the Tribunal's opinion that one of the Respondent's roles in this unusual market was to ensure that unrepresented purchasers fully understood that they were not represented and what they were buying. If they were not explicitly told this by Mr B then that duty fell on the Respondent's shoulders. The Tribunal found that he failed in that duty. He argued that "caveat emptor" (let the buyer beware) applied. However, the Respondent was a solicitor and his duty to act fairly and with integrity towards third parties was fundamental to a solicitor's role and responsibilities. The unusual nature of the transactions did not detract from those responsibilities.
286. The Applicant had submitted that Mr B had engaged a firm of solicitors to add a mantle of credibility to the transactions. The Tribunal considered that such credibility would not be justified if the solicitor was able to act in a transaction and divest himself of his duties and obligations. As it was, the part played by the Respondent was no more than the "rubber stamping" of documents and sending them on to purchasers and collecting money from the purchasers. This task could have been undertaken by any unqualified person. No input by a solicitor was necessary. Indeed, where the Respondent did act as a solicitor in witnessing Transfers and apparently administering Declarations the Respondent did not act properly as he witnessed both types of documents without the transferor or the declarant being present. The formula "seen by" adopted by the Respondent had no real significance and did not excuse the Respondent from his duty to ensure that his witnessing of the transfers was as stated on the face of the document and that he had formally administered the Statutory Declaration. His failure in this regard was made a great deal worse where he indicated that he had administered declarations in cases where he was acting for the declarant. The administration of such a Declaration is required to be undertaken by an independent person who is authorised so to do. It was to be expected that solicitors acting as witnesses and in administering oaths and declarations do so with the utmost probity and integrity. Third parties are entitled to expect this to have been the case. The fact that the Respondent had signed such documents in his capacity as a solicitor and that the name and address of his firm had appeared on the documents could reasonably have been understood by a purchaser as an indication of the validity and bona fides of the documents and their contents.
287. The SRA had alleged that the Respondent had been dishonest in relation to the 13

feudal title transactions that took place between 1999 and 2002 which had been placed before the Tribunal. The SRA had conducted a lengthy investigation followed by a delay of 22 months before the matter came before the Tribunal. Nevertheless, the Tribunal considered it to be an important consideration that the SRA had taken no steps to intervene into the Respondent's practice, had issued him with unconditional practising certificates and had permitted him to continue in practice without hindrance or imposing any additional regulatory requirements. The Tribunal did not take issue with the SRA's stance in this respect.

288. The Respondent had been cross-examined for four days. He was defiant, maintaining a firm attitude that he was reliant upon the instructions of Mr B, his client, and that consequently he was discharging only the duties he owed to his own client. It was repeatedly put to him that by doing so he misled purchasers who mistakenly understood that he was acting for them and he must have realised that because of their enquiries. He did nothing to correct their misapprehensions.
289. The Respondent was occasionally petulant which was inappropriate for a Respondent appearing before his own regulatory tribunal to answer serious allegations, and the Tribunal found much of his evidence less than convincing.
290. The Respondent had the benefit of exceptionally glowing references written in his support and the Tribunal were mindful of the decision in Donkin that it should take into account the Respondent's propensity for dishonesty when considering the issue of dishonesty. In this case there was a wealth of written evidence as to the Respondent's character to confirm that the Respondent was incapable of being dishonest. The Tribunal found that he did not have a propensity for dishonest behaviour.
291. The Tribunal was asked to consider the possible indicators of fraud that were present such as keeping the work to himself, but it noted that two trainee solicitors had given evidence and had explained that they too had dealt extensively with Mr B's work. It had been suggested that the income generated by Mr B's instructions was critical for the Respondent's firm. The Tribunal accepted that it in fact represented only 10% of the firm's income.
292. The very helpful submissions of both representatives enabled the Tribunal to go through each element of each allegation in detail.
293. The Tribunal accepted that the Respondent was a generally honest man and accepted that when he was first instructed by Mr B he had no reason to question the bona fides of his business, although the Tribunal was of the view that the Respondent, as an experienced solicitor, could not have failed to realise how unusual that business was and it was incumbent upon him to exercise the utmost care. The Tribunal noted the Respondent's evidence that during the relevant period of time he not only handled the thirteen transactions that were before the Tribunal but he had handled some two hundred and fifty more in which no complaint had arisen.
294. Nevertheless, the Tribunal has carefully considered the incidents that the Applicant invited it to consider amounted to warnings that Mr B and his company were not to be trusted. The Respondent explained why he did not consider these incidents to amount to warnings. The Tribunal did not accept that the Respondent could discount complaints because of "turf wars" between rival feudal title sellers and it did not

accept that the Respondent could entirely attribute false descriptions and assertions made by Mr B to Mr B's flamboyance. In particular when Mr G made it plain that the Halberstadt title might well not exist, could not have been owned by the Hohenzollern family and was not capable of being transferred, the Tribunal was of the view that the Respondent was aware of mala fides on the part of Mr B and the Tribunal did not accept that the Respondent was unaware Mr B's activities were nefarious when he advised him to seek a safe haven.

295. The Tribunal considered carefully and applied the test set out in Twinsectra v Yardley [2002] UKHL 12, as expressed by Lord Hutton, "...before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest," which had been confirmed in the case of Bryant and Bench.
296. The Tribunal also took into account Lord Hutton's further comments, "dishonesty requires knowledge by the defendant that what he was doing was regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he set his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct".
297. The Tribunal had concluded that the feudal title transactions were dubious and that the Respondent had on a number of occasions been put on notice of this, unequivocally in the case of Mr G's information about the Halbertstadt title. Whilst there was a market for such titles, it was a controversial, even eccentric, market and it was the manner in which the Respondent allowed those transactions to be conducted by "rubber stamping" his client's paperwork that compelled the Tribunal to conclude that the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. The Tribunal had heard and seen the Respondent give oral evidence. The Tribunal was satisfied so that it was sure that the Respondent turned a blind eye to the nature of the transactions, the nature of his involvement in them and the questionable bona fides of Mr B and his business. The Respondent knew that what he was doing was dishonest by those same standards.
298. The Tribunal's first duty was to protect the public. It is fundamental that the public is entitled to be able to trust a solicitor "to the ends of the earth". The Tribunal's second duty was to maintain the good reputation of the solicitors' profession. The Tribunal accepted that there was a time when the Respondent did not know that there was anything dubious about the transactions, but that position changed as the Respondent was repeatedly put on notice of concerns about his client's activities.
299. The Tribunal carefully weighed the need to protect the public against the Respondent's particular circumstances. It took into account the fact that the profession's regulator, while being fully aware of the nature of the Respondent's conduct, had granted him unconditional practising certificates and had permitted him to continue in practice over a substantial period time. There was also the factor that the allegations against the Respondent were not pursued with any great degree of expedition. It would not have been surprising if the Respondent in such circumstances had not considered there was a possibility that he would be deprived permanently of his ability to practice. The Tribunal had found delay on the part of the

SRA in prosecuting this case and that was a matter to be taken into account when deciding on the proportionate sanction to be imposed. The Tribunal also took into account the Respondent's good character exemplified by his references and that the conduct complained of was out of character.

300. The Tribunal had also carefully weighed the need to maintain the good reputation of the solicitors' profession against the particular circumstances of the Respondent.
301. In all the circumstances of this case, which were out of the ordinary, the Tribunal concluded that its duties would be met by an interference with the Respondent's ability practice which fell short of his removal from the Roll. A period of suspension is a particularly grave sanction when it is imposed upon a sole practitioner.
302. The Tribunal concluded that the Respondent's conduct could not be met by a reprimand or a fine. The Tribunal concluded that it was both appropriate and proportionate to impose a six months period of suspension upon the Respondent.

### **Costs**

303. An indicative figure of £300,000 had been provided for the SRA's costs and a schedule totalling £277,000 was later provided to the Tribunal. This figure was substantial and did not include the cost of the Investigation Officer's Reports.
304. Having found the majority of the allegations substantiated and, significantly, also the allegation of dishonesty, the Tribunal felt in principle that the Respondent should meet the SRA's costs. The Tribunal had been provided with limited details about the Respondent's income and profits from his practice. The Tribunal was aware that the costs of the Respondent's defence were being met by insurers. The Tribunal had been made aware that were the Respondent to be made to pay the SRA's full costs he would inevitably face financial ruin. The Tribunal had noted the decision in the case of Merrick and had therefore to consider the impact upon the Respondent of his bearing such costs when the Tribunal's order would have an adverse impact on his ability to earn his living as a solicitor. The Tribunal considered that there was some merit in the submission made on the Respondent's behalf that the case against the Respondent had been "over-prosecuted." The Tribunal was not prepared to award the full costs of the case against him. The Tribunal realised that the balance of costs would have to be borne by the profession and that was unfortunate. The Tribunal ordered the Respondent to pay costs fixed in the sum of £80,000.

Dated this 11<sup>th</sup> day of August 2009  
On behalf of the Tribunal

A H B Holmes  
Chairman