

IN THE MATTER OF MALCOLM ARTHUR HENRY MANSELL WILLIAMSON,
solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr L N Gilford
Mr J Jackson

Date of Hearing: 3rd November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by Margaret Eleanor Bromley, solicitor, of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ on 15th June 2009 that Malcolm Arthur Henry Mansell Williamson of Malcolm AHM Williamson Solicitors, 7 Finns Business Park, Mill Lane, Crondall, Farnham, Surrey, GU10 5RX, a solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations made against the Respondent were that:-

1. He acted in breach of the Solicitors Accounts Rules 1998 (“the SARs”) in that:-
 - (i) He has failed to maintain proper books of accounts contrary to Rule 32.

- (ii) He has transferred money from client to office account without first sending a bill or written notification of costs to the client contrary to Rule 19(2) and has withdrawn money from client account in breach of Rule 22(3)(b).
 - (iii) He has made improper withdrawals from client account in breach of Rule 22.
 - (iv) [Withdrawn]
 - (v) He failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7.
2. He has acted in breach of Rule 2.03 of the Solicitors Code of Conduct 2007 ("the Code") by failing to provide clients with the best information possible about costs.
 3. He has submitted inaccurate and/or misleading information to the firm's professional indemnity insurer contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 3rd November 2009 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent appeared and was not represented.

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

The Tribunal Orders that the Respondent Malcolm Arthur Henry Mansell Williamson of 7 Finns Business Park, Mill Lane, Crondall, Farnham, Surrey, GU10 5RX, solicitor, be Reprimanded.

The evidence before the Tribunal

The evidence before the Tribunal included the Applicant's Rule 5 Statement, together with accompanying bundle, and a letter from the Respondent to the Tribunal dated 27th October 2009 which enclosed a copy of a letter and enclosures dated 26th October 2009 sent to the Applicant which the Respondent said formed the basis of his submission to the Tribunal.

Preliminary Matters

Application to dismiss

The Respondent's letter to the Applicant dated 26th October 2009 referred to the fact that the investigation which gave rise to the allegations began very shortly after the conclusion of the Respondent's previous appearance before the Tribunal on 9th October 2007. The Respondent set out in the letter reasons why he suggested to the Applicant that there was no public interest in continuing these proceedings and that to do so was out of all proportion given the damage already done to the Respondent and his staff. The Respondent added that if the Applicant did not accept his suggestion he would make a request for dismissal to the Tribunal.

The Respondent indicated that if the matter proceeded all of the allegations would be contested. The Applicant stated that the SRA had indicated that they did not wish to

discontinue at this stage. The Respondent's application to dismiss was one based upon delay and proportionality in that, in his submission, this set of allegations arose from the continuation of issues which had been before the Tribunal previously and had been dealt with at a hearing on 9th October 2007. The investigation in this matter had started on 13th November 2007, very shortly after the date of the previous hearing. It had then taken until 8th July 2008 for the Investigation Officer to send his report to the Respondent with a request for explanation. Whilst the Respondent had replied to that report on 23rd July 2008 it was not until 22nd December 2008 that a decision was made by an authorised officer to refer Mr Williamson to the Tribunal. However Mr Williamson was not informed of the referral until 12th May 2009, some 18 months after the start of the investigation. In the Respondent's submission at no stage had the matter been taken forward with reasonable speed whilst he had made clear responses in good time.

The Respondent said that there was no public interest in continuing the proceedings and that the consequences that he had already suffered were serious.

The Tribunal's decision on the dismissal application

The Tribunal indicated that given the basis on which the Respondent's application had been made it had already had sight of the findings of the Tribunal hearing on 9th October 2007 to which the Respondent had referred. Whilst it would take into account in due course all the Respondent's representations concerning unreasonableness and disproportionality, it preferred in all the circumstances to hear all of the evidence in the matter and the Respondent's defence to the allegations and other submissions. Accordingly the case should proceed as normal on a contested basis.

The Applicant requested that allegation 1 (iv) be withdrawn and this was granted by the Tribunal.

The facts are set out in paragraphs 1 – 33 hereunder:-

1. The Respondent was born in October 1946 and was admitted as a solicitor in May 1970 and his name remains on the Roll of solicitors.
2. At all material times the Respondent practised on his own account under the style of Malcolm AHM Williamson at 7 Finns Industrial Park, Mill Lane, Crondall, Farnham, Surrey GU10 5RX.
3. The allegations arose following an inspection undertaken by Mr C Norton on behalf of the SRA's Forensic Investigation Unit resulting in the Report dated 29th February 2008 ("the FI Report").
4. The contents of the FI Report were raised by the SRA with the Respondent in a letter dated 8th July 2008 to which he replied by way of letter dated 22nd July 2008. Further information was also provided by the Respondent to the SRA during the course of its investigation by way of a letter dated 23rd September 2008.

Allegation 1 - Breaches of the Solicitors Accounts Rules

5. Mr Norton commenced his investigation on 13th November 2007 and identified a number of issues arising from a review of the firm's accounting records.
6. As a result of the errors and deficiencies identified in the firm's accounting records Mr Norton was unable to establish the firm's total liabilities to clients and whether or not there were sufficient funds available to meet those liabilities. In these circumstances the investigation was suspended and Mr Norton wrote to the Respondent on 26th November 2007 setting out the problems that he had identified with the firm's accounting records and identifying areas where enquiries and adjustments needed to be made. In particular Mr Norton noted:
 - (a) That there were approximately 60 credit balances on the office side of client matter ledgers totalling some £20,000.
 - (b) Some items in the list of matter balances were potentially unreliable.
 - (c) The frequency of posting to the ledgers was inadequate.
 - (d) Concerns about transfers of costs.
7. Mr Norton returned to the Respondent's firm on 8th January 2008 and was given a written response to his letter from Mr K (a freelance accountant) who maintained the Respondent's firm's books of account. The Response acknowledged the issues raised by Mr Norton and confirmed the steps being taken to rectify the position. In a discussion between the Respondent and Mr Norton on 9th January 2008 the Respondent also confirmed that he adopted Mr K's comments. Mr K also reported to Mr Norton that following his and the Respondent's enquiries into the credit balances on the office side of ledgers, an analysis of these matters showed that the issues arose due to a failure to post relevant transactions, posting errors and client money incorrectly retained in the office account.
8. Following the additional information provided by the Respondent and Mr K, Mr Norton identified a shortage on client account of £9,000.50 as at 31st October 2007. The shortage was due to:-
 - (a) An overpayment by the bank on 30th October 2007 of £3,500.00.
 - (b) Three client debit balances totalling £122.61 as a result of payments being made in excess of funds held for relevant clients which had arisen between December 2005 – October 2006.
 - (c) Fourteen office credit balances totalling £5,377.89 which represented client monies wrongly debited as a result of duplicate payments and transfers of costs, over transfers, incorrect transfers and failing to deliver a bill.

9. Mr Norton noted that the largest office credit balance of £3,115.75 related to Mrs SW's matter. The ledger recorded that £3,115.75 was transferred from client to office account on 6th August 2007. Mr Norton reviewed the file but was unable to determine the reason for the transfer. On discussion with the Respondent he explained that the transfer represented the costs of the matter but that no bill had been delivered to the client.
10. Mr Norton also considered the accounting position as at 31st December 2007 and identified a cash shortage of £5,302.76. The shortage arose due to:
 - (a) An error in respect of a transfer of £108.10 from client to office account on 17th December 2007.
 - (b) 10 office credit balances totalling £5,194.66 which had arisen in the period 1st September 2005 to 6th August 2007.
11. In discussion with Mr Norton, the Respondent recognised that a shortage of £5,302.76 existed at 31st December 2007.
12. As at 8th January 2008, the Respondent had resolved a number of issues but had been unable to resolve three remaining office credit balances totalling £497.63. Despite agreeing to send to Mr Norton evidence of the remaining corrective action to be taken, as at the date of the FI Report 29th February 2008, this was outstanding.
13. During the course of discussions with the Respondent, Mr Norton asked the Respondent if he had taken corrective action in relation to issues that had arisen in a previous Forensic Investigation in June 2006. The Respondent replied that many of the issues identified in the previous investigation had been longstanding and had taken time to resolve, and that he had prioritised issues relating to the client account. Mr Norton then asked whether such corrective action would have addressed the debit balances on the client ledgers. The Respondent confirmed that it would. In light of this response the Respondent was asked to explain the existence of the three debit balances all of which had existed in excess of one year and one of which had been referred to in the previous FI Report. The Respondent indicated that he thought corrective steps had been taken and was surprised to learn that they still existed.
14. The issues in relation to the Respondent's accounts were raised with him by the SRA on 8th July 2008. In his reply dated 22nd July 2008 he stated:

“How the mistakes were not seen I do not understand. I had deliberately employed a chartered accountant following my longstanding bookkeeper having a nervous breakdown... The accountant completed the year end books my bookkeeper had left in the air at the time of her breakdown and he had done it perfectly. Why he then failed to get on with the routine work while at the same time attempting to alter the accounting system rather than simply updating the system as I asked him to I will never understand. Clearly I accept responsibility for his failings and I should have intervened earlier but I am no good at causing people hurt even when it needs to be done.”

15. The Respondent set out details of the steps taken to rectify the errors in this letter and in his additional letter to the SRA dated 23rd September 2008. This included several transfers from office to client account on 8th January 2008 and an invoice sent to Mrs SW on 14th January 2008 in respect of the costs transferred to office account on 6th August 2007.
16. The office credit balances had all arisen between 1st September 2005 and 6th August 2007 and so had been in existence for a period between over 2 years and about 5 months. The client debit balances referred to had arisen between December 2005 and October 2006 and one had been referred to in the previous FI Report. They were not corrected until November 2007.

Allegation 2 Costs Information

17. During the course of his investigation Mr Norton reviewed estimates used in residential conveyancing matters. Estimates typically showed the firm's fee followed by a number of items which were listed under the heading "Disbursements", such items included Local Authority Search, Land Registry Search fee, Water/Drains search, etc. Under the heading "Disbursement" there are also two items described as "Bank Transfer Fee" £25 and "Fee for Completing Land Tax Form" £75.
18. The notes to the estimate in relation to disbursements provided "These are sums we pay on your behalf. If the sums we are charged by any other body or person are higher than shown then that cost will be passed on to you and reflected in your final account".
19. Mr Norton then reviewed a sample of completion statements and invoices. Mr Norton noted that the charges for the bank transfer fee and the fee for completing the Land Tax Form were referred to as follows:-
 - (a) On the completion statements the Bank Transfer Fee and Fee for completing Land Tax Form are referred to within the disbursements.
 - (b) On the invoice sent to the client there are no references to any disbursements incurred and both the fee for completing the Land Tax Form and the bank transfer fee are correctly itemised as "fees" itemised under "our fee as agreed".
20. The issue was raised with the Respondent in Mr Norton's letter of 26th November 2007 in which it was explained that if an item was described as a disbursement when in fact it constituted an element of profit costs, this was likely to constitute a secret profit. As a result of this letter the Respondent amended the format of his estimates and provided a copy of the revised estimate to Mr Norton.
21. Whilst the revised estimate accurately described the charges for completing the Land Tax Form, the bank transfer fee was still included in the list of disbursements.
22. During a meeting on 9th January 2008 Mr Norton suggested to the Respondent that the continued inclusion of the bank transfer fee in the list of disbursements was still

potentially misleading, notwithstanding the qualification “this includes both ours and bank charges”. Mr Norton asked the Respondent to clarify the charges made by his bank for transfers and the Respondent confirmed that where the transfer was made on line as was normally the case he was charged £8 for a transfer to another branch of his bank or £10 to a different bank. If not arranged on line the fee was £24. The Respondent disputed that anyone carefully reading the estimate would be misled.

23. The issue was raised with the Respondent by the SRA in their letter of 8th July 2008. In his reply of 22nd July 2008 the Respondent stated:

“I do not accept that there was any breach of the Code of Conduct. I believe no client was or should reasonably have been misled and no complaints have been made. I do accept the wording could be even clearer and that is the reason I have changed the format as Chris Norton records. In passing you will note Note 12 to the estimate specifically tells clients they can prepare the SDLT return themselves. I reject the suggestion that these items should all be in one fee. I believe the client should have the choice to save money”.

24. In their letter to the Respondent of 11th September 2008 the SRA asked him to confirm that the position in respect of the reference to the bank transfer fee had also been dealt with. In his response of 23rd September 2008 the Respondent provided the SRA with copies of the amended documentation including the draft revised estimate, completion statement and bill.

Allegation 3 - Provision of misleading information to the firm’s professional Indemnity Insurer

25. At the commencement of the investigation Mr Norton asked the Respondent about his arrangements for professional indemnity insurance. The Respondent confirmed that he was insured with Q Insurance Limited (“Q”) and provided Mr Norton with a copy of a fax dated 19th September 2007 from the Professional Indemnity Company setting out the basis of cover. The fax included the following statement.

“IMPORTANT INFORMATION

The Contract of Insurance between the client and the insurers is based on their completed proposal form, therefore it is important that they have disclosed all relevant or material information. Material information is information that would influence an insurer in deciding whether a risk is acceptable and, if so, the premium terms and conditions to be applied.

Insurers cannot avoid or repudiate claims for the cover required under the minimum terms, but if they later find the client has not disclosed something material they may charge an additional premium or, in the event of prejudice, seek recovery of the claim from the firm. For claims above the statutory minimum limit, failure to disclose such information could result in the policy being rendered void so that claims would not be paid.

All material information must be disclosed to insurers to enable terms to be negotiated and cover arranged. This is not limited to answering specific

questions that may have been asked in the proposal form. Any changes which may occur or come to light after a quotation has been given must also be notified.

To ensure the cover is not prejudiced, please refer to The Professional Indemnity Company if you have any doubt as to what information needs to be disclosed”.

The fax also contained the following declaration:-

“I/We declare that to the best of my/our knowledge and belief the particulars and statements detailed in this form, plus the additional information provided in connection with this proposal, are true and complete and the proposal information provided and this declaration shall form the basis of the Contract of Insurance between the firm and Q... I/We declare that I/we have informed Q... of all facts that are likely to influence them in the acceptances or assessments of my insurance and understand that failure to do so could adversely affect the terms of the cover. I/We accept that if I am/we are in doubt whether any fact may influence Q... I must disclose it”.

The declaration was signed by the Respondent’s partner at the time on 19th September 2007, during the Respondent’s absence on annual leave from the office in September 2007.

26. Mr Norton asked the Respondent whether he had made the insurer aware of the previous FI inspection and of his then impending appearance at the Solicitors Disciplinary Tribunal (on 9th October 2007). The Respondent confirmed he had not made the insurer aware because at the time he had not appeared before the Tribunal and the matter had yet to be determined.
27. On 23rd November 2007 Mr Norton wrote to Q and requested a copy of the Respondent’s proposal form.
28. On reviewing the proposal form Mr Norton noted that the box indicating “No” had been marked in response to the following questions:-

Question 6

In the last ten years has any fee-earner in the practice practised in a firm subject to an investigation or an intervention by the Law Society or Solicitors Regulation Authority (including the OSS and CCS)?

Question 14

Is there any other material information that may be relevant to this application.

Mr Norton also noted that the form included a checklist indicating that “A copy of all reports issued by the Legal Complaints Service or the former CCS or OSS and Disciplinary Tribunal and/or any other regulatory body if applicable” should be included but the box for this item was not marked.

29. The proposal form concluded with the declaration:-

“I/We declare, that after full enquiry of all partners and staff, all claims and circumstances which may give rise to a claim, have been reported to SIF and/or previous and/or current insurers and that the statements in this proposal form (and attachments if any) are true and complete and shall form the basis of any contract of insurances effected thereupon. I/We undertake to inform insurers of any material alterations to the information provided or any new fact or matter arising before completion of the Contract of Insurance, which may be relevant to the contract of insurance”.

The form was signed by the Respondent on 24th July 2007.

30. On 3rd December 2007 Mr Norton sent an email to Q asking whether or not the Respondent’s failure to disclose the previous Forensic Investigation and impending appearance at the SDT would have affected their decision to offer cover or the premium payable. Q responded by email the same day confirming that had they been aware of the position “This would of definitely affected our decision on whether to offer insurance in the first place and indeed the level of premium we would of charged had we offered insurance. It would be seen as a material fact that has been withheld from us.”
31. On 9th January 2008 Mr Norton discussed the professional indemnity insurance position again with the Respondent who confirmed his earlier response that there had been no direct question on the position and the final position was awaiting determination.
32. Mr Norton then referred the Respondent to the specific question about investigations on the proposal forms and asked why the Respondent had answered “No” to the question. The Respondent’s explanation was that he did not realise the question included previous Forensic Investigations and had acted on the basis that disclosure was not needed until a final determination had been made by the Tribunal. Whilst Mr Norton pointed out that the question was whether there had been an investigation or intervention, not whether the investigation had been concluded, the Respondent said he had focussed on the word intervention and consequently answered in the negative.
33. Mr Norton also referred to the proposal requiring disclosure of any other material information and asked the Respondent whether he considered his impending appearance before the SDT to be material. The Respondent said he believed that this question related to whether there had been any claims or other detriments to clients which there were not, hence his answer in the negative. The Respondent also confirmed that none of the documents relating to the previous FI investigation as set out in the checklist had been included in the proposal.

The Submissions of the Applicant

34. The Applicant presented her case on the basis that none of the allegations was admitted. The Respondent admitted certain facts but not the conclusions that had been drawn from them.

35. In relation to the breaches of the Accounts Rules in allegation 1 the Applicant submitted that since these were offences of strict liability and the facts had been admitted then the offences were automatically made out. In her submission these were serious breaches of the Accounts Rules as it was a fundamental requirement that solicitors should comply with them meticulously. The mixing of client and own money was a fundamental breach of the rules which had happened on a number of occasions. An aggravating factor was that there had been a protracted period when the Respondent had failed to comply with the Rules.
36. With regard to allegation 2 the Applicant submitted that the costs information provided to the client did not provide the client with the best information possible. It was misleading as it implied that the payments comprised the reimbursement of sums paid by the firm on behalf of the client whereas the charges in fact comprised income and profit for the firm. In relation to the Bank charges, the clients were also not informed that of the £25 fee only £8 - £10 of this was in fact paid to the bank and the balance accrued to the benefit of the firm. The problem with this was that rock bottom quotes attracted clients who were then unaware that additional fees were actually hidden as disbursements in the costs. The Applicant submitted that the Respondent had done this in order to attract work which was an aggravating feature.
37. With regard to the third allegation the Applicant said that the Respondent knew that he had been referred to the Tribunal at the relevant time and the hearing had been listed. He should therefore have disclosed the matter on the insurance proposal form. A contract of insurance was one entered into in the utmost good faith. All relevant matters should therefore be disclosed and this became particularly important in the insurance of solicitors' practices as insurers could not avoid policies based on misrepresentation. The Applicant therefore submitted that this affects the confidence that insurers could have in the integrity of solicitor applicants for insurance. The allegation was not put on the basis that the Respondent acted dishonestly but nonetheless it was put on the basis that he demonstrated a reckless disregard to his obligations as a solicitor.
38. In regard to the issues raised by the Respondent at the beginning of the proceedings the Applicant recognised that there had been a delay within the SRA which had come from internal problems in transferring files. However, these allegations all stemmed from the Forensic Investigation Report carried out at the Respondent's practice after the conclusion of the previous proceedings.
39. With regard to costs the Applicant presented a statement of costs totalling £15,649.42, including £7,747.58 for the costs of the Forensic Investigation.

The Submissions of the Respondent

40. The Tribunal had before it the submissions of the Respondent in his letter to the Applicant of 26th October 2009. The Respondent's letter included the following points:-
- (i) The Respondent's previous appearance before the Tribunal in October 2007 concerned admitted Accounts Rule breaches. These had not been discovered

by the Law Society/SRA but had been drawn to the auditor's attention by the Respondent himself who had taken strenuous steps to resolve them.

- (ii) The original investigation had been a disproportionate reaction by the Law Society and the SRA who were "effectively aiming at an open goal". Prosecution of the current case was wholly disproportionate.
 - (iii) The Respondent was shocked that the new investigation was started within a month of the previous hearing. Between 13th November 2007 and 9th January 2008 the Respondent and his accountant Mr K had resolved the principal accounts discrepancies which were similar in nature to those identified at the previous hearing, largely pre-dated it and involved no damage to clients. The decision to prosecute was not notified until 12th May 2009 by which time the Respondent had allowed Mr K to leave.
 - (iv) The suggestion that the Respondent had misled insurers was false. His partner had signed the form complained of, not he; but solely as a result of SRA action still being outstanding his insurers were not willing to renew. As a result he was not renewing his practising certificate and had closed his practice, the cost of which would cost most if not all his small amount of capital.
41. The Respondent submitted that whilst he agreed with the facts given he did not agree with the conclusions drawn. The problem that he had was not with the principle of the Forensic Investigation but with the context of it in relation to the earlier hearing. He had been under continual investigation since 2006 which he had found both distressing and wearing.
42. The Respondent had worked with the same bookkeeper for some 30 years and he had had complete confidence in every aspect of the way in which she had handled the accounting reports. However she had had a nervous breakdown in 2005 and had left before the end of the accounting year. The Respondent had found a chartered accountant who was prepared to undertake his accounts and on the first occasion he had done these impeccably. However, for some reason he had not carried on in the same way and the Respondent fully accepted (and had done at the previous hearing) that the accounts had not been kept as they should have been. He then employed a Mr K who was instructed to deal with the current matters first. Mr K had no experience in solicitors' client accounts but liaised with the auditors and was working his way through the problems prior to and after the previous hearing.
43. With regard to the existence of three office credit balances totalling £497.63 still outstanding on 28th February 2008 the Respondent said that these related to three clients, Mr C, Mr B and Mr D. In regard to Mr C's matter this related to probate which the Respondent did not deal with and he had no idea about how the £220.00 credit had arisen but this had now been replaced. Mr B was a longstanding client with four matters and monies owed on different ledgers. Mr D was again a longstanding business client with a large number of matters involving sales and purchases. One of the matters appeared to have been dealt with by his partner and a bill was not entered onto the correct ledger. In the Respondent's submission these were perfectly reasonable explanations for these three matters.

44. In regard to the office credit balance of £3115.75 relating to a matter of Mrs SW, the Respondent said that Mrs SW was a longstanding client who was involved in the development of a building. She had formed a company in order to do this and there had been some discussion as to whether the company should be billed or whether the bill should go directly to her. She was fully aware of the Respondent's outstanding charges. She had said she would think about who should be billed and revert to the Respondent. The only reason that a bill had not been prepared at the time was because the Respondent was waiting to hear from her. When the issue arose the Respondent spoke to her on the telephone and she had told him that she did not mind who was billed and the bill was made out to her but the costs had already been transferred. In the Respondent's submission no injustice had been done to anyone in this case.
45. In relation to the bank transfer fees in the Respondent's submission these were never intended to show a profit. At an earlier stage the cost had exceeded the £25 charged as someone from the firm had needed to attend the bank. However once a broadband connection was in place it was accepted that the costs and charges would have reduced. There was however an element of the £25 which went to defray the cost of running the broadband banking system. Conveyancing was not key to the practice and the number of referrals from quotes was in the order of about 20 per year so in the Respondent's submission there was no element of seeking to get business by being the lowest quote around. Conveyancing referrals were based on personal relationships and it could certainly not be said that the firm was trying to corner the cheap end of the market.
46. The SDLT was always shown as a separate item on the bill and the clients had been given the option of completing the forms themselves, in the Respondent's recollection only one had ever done so. In his written documentation term 12 explained to the client that they could fill the form in themselves if they wished to do so.
47. In relation to the firm's insurance the firm had always dealt with one firm of brokers. However at the time in question (May/July 2007) the firm had received a large number of proposal forms and the Respondent had completed one as a rough draft in May of that year. In July 2007 the firm had come under pressure to put in a proposal form to another insurer but not to the insurers who did ultimately insure the practice. His intention had been to send it to the other insurer to test the market, but it was not intended to result in a contract because the Respondent wanted to stay with his long term insurer. Whilst the Respondent was on holiday his then partner who was anxious to manage the practice took forward an insurance proposal with a different broker and did so by copying the rough draft that he had already prepared attaching it to and signing the new proposal form on 19th September 2007. He did not therefore send in the proposal form.
48. On 23rd November 2007 after the October 2007 hearing and in the course of the new FI investigation started on 13th November 2007 the Senior Investigation Officer wrote to the new insurers Q stating that he had visited the firm as part of the Law Society's standard procedures. He asked to be sent a copy of the proposal form submitted by the firm. Q supplied a copy of the proposal form signed by the Respondent's partner which incorporated the above draft form signed by the Respondent on 27th July.

49. On 3rd December 2007 the Senior Investigation Officer wrote to Q stating that at the time the form was signed a Forensic Investigation Report into the firm had been completed and the Respondent had been notified that issues raised in it were being referred to the Tribunal. He asked Q to say whether the offer of cover and/or the premium payable would have been affected if that information had been disclosed by the Respondent. Q responded in the affirmative saying that the information would have been seen as a material fact that had been withheld from them. However when the Respondent had eventually told his insurers Q of his circumstances following his appearance at the Tribunal in October 2007 they had renewed his policy with no increased premium. He had suffered unfairness because of the delay within the SRA. Whilst the investigation had essentially been completed by 8th January 2008 the FI Report dated 29th February 2008 had not been brought to his attention until 8th July 2008. The Rule 5 Statement had not been issued until 15th June 2009. If the SRA had acted promptly he could have remained in practice.
50. The Respondent had only had one negligence claim in 39 years of practice.
51. In the Respondent's submission there was a question of proportionality to be considered. This matter had to be considered in the context of the earlier hearing, the continuity of the facts and the substantial pressure which he had been put under. Proportionality had not been reflected in the way the SRA had dealt with it and the consequences to him were relevant. The consequences were that as a result of the SRA action still being outstanding his insurers were not willing to renew and he would not renew his practising certificate. With no income and no capital behind him this constituted a personal disaster.
52. The Respondent submitted the following chronology:-

13 th November 2007	FI Inspection starts
9 th January 2008	FI Concluded
29 th February 2008	FI Report
8 th July 2008	FI Report sent to Respondent
23 rd July 2008	Respondent responds
11 th September 2008	Further SRA letter to Respondent
23 rd September 2008	Respondent responds
22 nd December 2008	Decision made to refer case to Tribunal
12 th May 2009	Respondent informed of referral
15 th June 2009	Proceedings issued

The Respondent had heard nothing for six months from the SRA between January 9th and July 8th 2008. He had responded quickly to SRA requests for comment between 8th July 2008 and 23rd September 2008. He then heard nothing for the ensuing eight months until told of the referral to the Tribunal on 12th May 2009. There was no possible justification for these delays. All relevant information was available to the SRA within two months of the start of the investigation.

53. With regard to costs the Respondent said it was an overwhelming issue. He had no money with which to pay them. The lack of proportionality of the case and the delays in its bringing must have a bearing on costs. It was not a good use of resources. The issues could have been dealt with more simply and quickly.

54. The Respondent had submitted references and had taken an active part in his local community, never having seen financial gain for himself as central to the business of being a solicitor.

The Tribunal's Findings and its reasons

55. The Tribunal found allegations 1 (i) to (iii) proved. The Respondent had admitted the facts and as these were offences of strict liability there could be little doubt that these matters were proved. However the matters behind the allegations were minor in scale and had been quickly resolved. Allegation 1(iv) had been withdrawn by the Applicant.
56. In relation to allegation 1(v) the Tribunal found this matter not proved. They had not been satisfied that the Respondent failed to remedy breaches promptly on discovery. He had been as prompt as possible in trying to sort matters out and rectify the position. Some of the matters complained of were de minimis in any event.
57. In relation to allegation 2 the Tribunal found this matter proved. The evidence presented to the Tribunal showed that there was a period of time when the Respondent's firm did list costs matters as disbursements. Whilst the Respondent had amended the format of his letter concerning the SDLT form, the bank transfer fee was still included in the list of disbursements. The Tribunal noted that the Respondent disputed that anyone carefully reading the estimate would be misled and asserted that the quote to clients was always intended to reflect cost and not make a profit. Whilst finding this allegation proved, the Tribunal considered it to have been a matter at the lower end of the scale which could have been resolved without reference to the Tribunal.
58. In relation to the alleged provision of misleading information to the firm's professional indemnity insurer the subject of allegation 3, the Tribunal found that this had not been proved and were not satisfied that the Respondent had submitted the information to the brokers. It accepted the evidence that his partner had submitted the form and moreover the information put before the Tribunal tended to show that the insurer Q had not been misled by information given by the Respondent's firm. The breach of Rule 1.02 alleged in this allegation concerns inter alia an allegation of failure to act with integrity. The Tribunal were not satisfied that the Respondent had shown any lack of integrity.
59. The Tribunal heard details of the Respondent's previous appearance before it on 9th October 2007. On that occasion, the allegations were similar to those contained within allegation 1. The allegations were all admitted and the Respondent had been fined £1500 with a costs order of £6349.22. In making the order the Tribunal had taken into account "the Respondent's long and unblemished career as a solicitor." The Tribunal on that occasion also stated that the FIO's Report did not result in any client being out of pocket, indeed the Respondent had been the only one who had been financially disadvantaged. The Tribunal then had also noted that no clients had lost any money and generally had benefitted; nor had any client complained to the Respondent or to the Law Society. Client account had never been overdrawn.

Furthermore the Tribunal noted on that occasion that the Respondent had put matters right.

60. On 3rd November 2009 the Tribunal found that this matter could have been resolved by the SRA more quickly. Two significant delays in dealing with the matter by the SRA had compromised the Respondent's practice and in the Tribunal's opinion could have been dealt with without reference to it. The matters found proved were at the lower end of the scale. In particular allegation 2, whilst having been made out, was technical in nature and it was the Tribunal's belief that the clients were aware of the overall cost of the transaction.
61. On 3rd November 2009 as on 9th October 2007 there was no evidence that any client had suffered loss or had complained.
62. The Respondent presented information about his distinguished career outside the practice of law as a public servant.
63. The Tribunal was concerned about a number of aspects of this case including the significant delays in prosecution which the Respondent had suffered. In the circumstances the Respondent would be reprimanded in respect of the found allegations and the Tribunal would make no order for costs.
64. The Tribunal Ordered that the Respondent Malcolm Arthur Henry Mansell Williamson of 7 Finns Business Park, Mill Lane, Crondall, Farnham, Surrey, GU10 5RX, solicitor, be Reprimanded.

Dated this 6th day of April 2010
On behalf of the Tribunal

A G Ground
Chairman