

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PETER CHARLES BENNER, (The Respondent)

Upon the application of Margaret Bromley  
on behalf of the Solicitors Regulation Authority

---

Mr R B Bamford (in the chair)  
Mr J P Davies  
Mr R Slack

Date of Hearing: 5th August 2010

---

**FINDINGS & DECISION**

---

**Appearances**

Margaret Eleanor Bromley of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 OHQ was the Applicant.

The Respondent, who was present, was represented by David Morgan of Messrs RadcliffesLeBrasseur.

The application to the Tribunal, on behalf of the Solicitors Regulation Authority ("SRA"), was made on 14<sup>th</sup> October 2009.

**Allegations**

The allegations against the Respondent were that he had:

1. Contrary to Rule 1 of the Solicitors Practice Rules 1990 ("SPR") and, in respect of actions after 1<sup>st</sup> July 2007, contrary to the Solicitors Code of Conduct 2007 ("the Code") done things in the course of acting as a solicitor which had compromised or impaired or had been likely to compromise or impair:

- (a) his duty to act in the best interests of clients; and/or
  - (b) his good repute and the good repute of the solicitors profession and/or he had behaved in a way that was likely to diminish the trust the public places in him or his profession;
  - (c) his proper standard of work; and/or he had failed to provide a good standard of service to his clients.
2. Failed to provide clients with clear and accurate written costs information or with the best information possible about the likely overall cost of a matter and had failed to provide regular updates or interim bills in breach of the Solicitors Costs Information and Client Care Code ("the SCICCC") contrary to Rule 15 of the SPR and Rule 2.03 of the Code;
3. Failed to ensure that his practice had been properly supervised and managed in breach of Rule 13 SPR and Rule 5.01 of the Code;
4. Failed to return client money to clients promptly, as soon as there had no longer been any proper reason to retain those funds, in breach of Rule 15(3) of the Solicitors Accounts Rules 1998 ("SAR");
5. Failed to account for interest on money held in a separate designated client account, contrary to Rule 24 of the SAR;
6. Transferred funds from client account to office account without delivery of a bill or other written intimation of costs contrary to Rule 22 of the SAR;
7. Failed to comply with Special Measures imposed by the Solicitors Regulation Authority in breach of the Solicitors Indemnity Insurance Rules.

### **Preliminary Matter**

Mr Morgan, on behalf of the Respondent, explained that there was no dispute between the parties on the facts. The Respondent admitted all the allegations, except allegations one and three in respect of which the dispute was as to whether the admitted facts supported those two specific allegations.

### **Factual Background**

1. The Respondent, born in 1937, was admitted as a solicitor in 1963. His name remained on the Roll of Solicitors.
2. At all material times the Respondent had practised on his own account under the style of Houseman Benner from Commercial House, 52 Perrymount Road, Haywards Heath, West Sussex. The firm also had a branch office at 22 Brighton Road, Crawley, West Sussex.
3. The Respondent's firm employed eight members of staff including two admitted solicitors, Mr Nicholas William Jackson and Mr Jeremy Norman Tarran Jones. Mr Jones was employed part-time as a consultant based at the firm's Crawley offices, in

addition to practising on his own account. Mr Jackson had been on at least intermittent sick leave since October 2007 when he had begun treatment for cancer. As at January 2009 he had been on extended sick leave and it had not been known when or whether he would return. Mr Jackson's employment had been terminated 31<sup>st</sup> January 2009. He died on 30<sup>th</sup> March 2009.

4. The Respondent, the firm's sole principal, had split his time between the two offices typically attending the Haywards Heath office from 8.30 am until 11.00am and then again after 4.00pm with the remainder of his time being spent at the Crawley office.
5. On 13<sup>th</sup> and 14<sup>th</sup> January 2009 an inspection of the books of account and other records of Houseman Benner had been conducted by Jennifer Cutler, a Forensic Investigation Officer ("FIO") of the SRA, assisted on the second day by Roberto Ferrari, a FIO.
6. The inspection had been carried out as a result of the firm's inclusion, for the second year, in the Assigned Risks Pool ("ARP"). A previous monitoring visit had been carried out during its first ARP year on 12-14 May 2008 and a Report, dated 4<sup>th</sup> July 2008 ("the 2008 Report"), produced. Special measures had been imposed as set out in the SRA's letter of 6<sup>th</sup> August 2008.
7. A Report, dated 27<sup>th</sup> January 2009, had been produced following the second inspection ("the 2009 Report"). On 9<sup>th</sup> February 2009 the SRA had written to the Respondent setting out the special measures that were to be imposed following the 2009 inspection.
8. The SRA, during its 2009 inspection, had reviewed several client files, the main details of which were set out in the two Reports and summarised where relevant below.

#### Mrs M

9. The Respondent's firm (specifically Mr Jackson) had been instructed in relation to a property purchase by Mrs M. The purchase, funded by a mortgage from Abbey, had completed on 20<sup>th</sup> February 2004. The 2008 Report had found that significant delays had occurred in dealing with post-completion formalities. According to the 2008 Report, stamp duty land tax had eventually been paid in April 2007 and in November 2007 the files had been transferred, at the lender's request, to its new solicitors, DLA. At that time the transaction had remained unregistered.
10. As at 14<sup>th</sup> May 2008, there had been a residual client balance in the matter of £267.50. As at 31<sup>st</sup> December 2008, this had been reduced to £117.50. The Respondent had been unable to clarify exactly what that sum had represented at the time of the 2009 visit, stating that he thought the Land Registry fees had been paid by somebody else and that the balance of the money held had been sent to DLA. Subsequently that was found to have been incorrect.

#### Mr T

11. Mr Jackson of the Respondent firm had been instructed in relation to Mr T's purchase of his business partner's share of their kebab shop in February 2007. The contract for sale of the business had been signed by Mr T's partner on 29<sup>th</sup> June 2007 and the deed

for transfer of the lease was dated 5<sup>th</sup> July 2007. The purchase money had been handed over direct by Mr T to his business partner in July 2007.

12. As at the date of the 2009 visit, the client account balance for the matter had stood at £44 which Ms Cutler had believed might have represented an unpaid Land Registry fee. That balance had been in existence since 5<sup>th</sup> July 2007. The Respondent had stated, during the visit, that the client had been supposed to be bringing in a document, without which he believed they had been unable to register the lease. The Respondent had been unable to confirm whether registration had taken place or whether the client's position had been protected in the meantime.
13. In his letter of 13<sup>th</sup> March 2009 the Respondent had confirmed that the matter was "still ongoing and has not been completed until when registration does not arise". In his letter of 6<sup>th</sup> April 2009 the Respondent had stated that the Landlord's consent to assignment remained outstanding, although in his letter of 19<sup>th</sup> January 2009 he had said that the licence to assign had been received "last week".

#### Mr B

14. The substantive file for the matter (a property purchase) had been archived in 1996 and therefore had not been examined by the SRA. However, the computer ledger had included one entry with the reference "O/BAL" dated 1<sup>st</sup> March 1996 with a client account credit balance of £100. The 2009 Report had noted that the balance had remained outstanding as at 31<sup>st</sup> December 2008.
15. In his letter of 19<sup>th</sup> January 2009 the Respondent had indicated that the money had been provided "on account" by the client and that "unless further costs have been incurred this will be accounted for". The Respondent subsequently had forwarded to the SRA a copy letter dated February 2009 to Mrs B (the client's widow, the client having died since this matter was concluded) stating that:

"In the course of audit it has been discovered that the sum of £100 was held by us at the time of your purchase and for some reason was not included in the final payment to you. We therefore enclose this sum, with a further £50 to represent interest with apologies that it has taken so long...."

16. In his letter of 13<sup>th</sup> March 2009 the Respondent had confirmed that the matter had been "covered by a previous computer and there is no explanation as to why this balance was not carried forward."

#### Ms J

17. The Respondent had not been able to locate the file (which had been conducted by Mr Jackson) at the time of the SRA's visit. However the computer ledger had shown only one entry dated 1<sup>st</sup> December 2004 marked "Ms J for Court Fee" in the sum of £180.
18. In his letter of 19<sup>th</sup> January 2009 the Respondent had stated that:

"This .... appears to be a payment made on account (in this case for Court fees) but we have not been able to locate the file."

Subsequently in his letter of 6<sup>th</sup> February 2009 the Respondent had explained that:

"We have located the file and accounted less costs to Ms J. It is likely that the matter will revive."

On 27<sup>th</sup> February 2009 the Respondent had stated that he could not trace any client care letter relating to this matter "the client being an existing client." He had enclosed a copy invoice addressed to Ms J and dated 30<sup>th</sup> January 2009 in the sum of £92 (£80 plus VAT) and a letter to Ms J dated 4<sup>th</sup> February 2009 purportedly enclosing the invoice and a cheque for the balance (£88).

19. However in his letter of 6<sup>th</sup> April 2009 the Respondent had stated that:

"as soon as I became aware she was accounted to and has instructed the retention of the small balance towards the revival of the proceedings which is in hand."

It was therefore unclear as to whether the money has been returned to Ms J.

#### Mr A

20. Mr Jackson had been instructed by Mr A on the remortgage of his property (which had been purchased in 1989) in December 2003.

21. The file contained a telephone attendance note dated 2<sup>nd</sup> December 2003 referring to an earlier handwritten note (not on file) and asking for a "package" price for the re-mortgage and a property purchase by the client's daughter. The note had stated: "Daughter buying for £170,000. Quoted c.£500 plus usuals". It had not been clear from the file whether any further costs information or advice had been given. There had been no evidence of client care information being given. In his letter of 6<sup>th</sup> April 2009 the Respondent had stated that:

"It is likely but could not be verified that advice on costs etc were given orally to this client."

22. The file had contained Office Copy Entries relating to the title printed on 23<sup>rd</sup> April 2004. Those had shown one current registered charge dated 13<sup>th</sup> October 1988 by Barclays Bank plc, Mr A's then mortgagee. No other charges had been registered against the title at that time.

23. Mr Jackson had also been instructed on behalf of the new mortgagee, Birmingham Midshires, in connection with the client's re-mortgage in the sum of £140,399 (less a £399 arrangement fee). On 4<sup>th</sup> May 2004 Barclays had confirmed the amount required to redeem their loan on the proposed completion date of 7<sup>th</sup> May as £35,877.83. The new legal charge had been executed (witnessed by Mr Jackson) on 7<sup>th</sup> May 2004. The mortgage monies had been received into the client account and, also on 7<sup>th</sup> May 2004, £35,877.83 had been paid out to redeem the Barclays mortgage. An invoice had been sent to the client the same day including fees for dealing with the re-mortgage and for "stamping/registration of title as appropriate". In his letter to the client, dated 11<sup>th</sup> May 2004, Mr Jackson had confirmed that there had been a balance due to Mr A of £103,466.70.

24. The file had contained a typed letter dated 10<sup>th</sup> May 2004 from Mr A asking Mr Jackson to place £30,000 in the account of "Mrs Z N A in re of BA" and to place the remaining balance (£73,466.70) into the account of the same Mrs A "in re of SA". Both sums had been transferred to those accounts the same day.
25. On 26<sup>th</sup> August 2004 Mr Jackson had written to Barclays requesting the DS1.
26. On 9<sup>th</sup> November 2007, over three years later, Birmingham Midshires had written to the Respondent explaining that upon checking at the Land Registry, it had transpired that the new charge had not been registered. The Respondent had replied on 12<sup>th</sup> November 2007 stating that:
- "The person dealing with this matter is at present on sick leave. The matter will be placed before him on his return unless we are able to deal with it sooner".
- Birmingham Midshires had written again on 23<sup>rd</sup> November 2007 and had received a response on 27<sup>th</sup> November 2007 explaining that the file had been located and that "it appeared that there is a problem regarding the discharge of a previous charge to which we are attending"
27. On 28<sup>th</sup> November 2007 the Respondent had written to Barclays chasing the DS1 which appeared to have been outstanding since May 2004. On 13<sup>th</sup> December 2007 Barclays had written to the Respondent confirming that "a DS1 has already been issued in respect of the charge ... and our charge has subsequently been removed from the title". A copy undated DS1 was on file but it had not been clear if that had been the DS1 to which Barclays' letter had referred.
28. The file had contained a signed SDLT form dated 12<sup>th</sup> May 2004 but that did not appear to have been used. On 17<sup>th</sup> December 2007 the Respondent had written to the client requesting that he complete and return a new SDLT form. It had not been clear from the file whether that had been returned or followed up.
29. In his letter of 19<sup>th</sup> January 2009 the Respondent had stated that he was "pursuing the outstanding question of an SDLT form". On 6<sup>th</sup> February 2009 he had reported that this "appeared to be resolved but the matter is still held up by the absence of a bank release which is being actively pursued". Upon further enquiry from the SRA as to the nature of this charge, the Respondent had stated in his letter of 27<sup>th</sup> February 2009 that "the release that is being sought to clear an entry at the Land Registry is a general charge by Mr M at their request. The Abbey required further information and accounts from Mr M which he says he is supplying. In his letter of 13<sup>th</sup> March 2008 the Respondent had attributed the delay in the matter to a "missing SDLT form and also to "the need, raised at a late stage, to remove the property from a general charge of which we were not aware initially. This is in the course of being resolved."
30. The existence of a charge registered in favour of Abbey as at November 2007 which had not appeared on the register as at 23<sup>rd</sup> April 2004 (two weeks before completion) showed that the position of Birmingham Midshires had not been protected and priority had not been maintained following completion in May 2004.
31. The Respondent had confirmed in his letter of 13<sup>th</sup> March 2009 that he had

"supervised/dealt with" Mr Jackson's files in his absences. The Respondent had also stated in his letter of 6<sup>th</sup> April 2009:

"I have overall view of all matters and especially those raised on accounting print-outs but it is not realistic to expect a principal in another office to be conversant with the daily conduct of every file in the control of a senior fee earner. This is archived (sic) where possible by spot checks and calling for files."

32. Ms Cutler had noted that a residual client balance of £150 had been held since May 2004.

#### DHP Will Trust

33. Mr DHP had died on 7<sup>th</sup> November 1999. Houseman Benner had been instructed in connection with the estate and the Will Trust. Mrs P had been entitled to a life interest in the property. She had died on 14<sup>th</sup> November 2007.
34. A statement of account, covering the period 6<sup>th</sup> April 2001 to 1<sup>st</sup> September 2003, showed Houseman Benner's costs of £587.50. Thereafter no information had been sent to the Trustee about accumulating costs. The fee earner in the matter, Mrs Elizabeth Benner, had confirmed that no interim bills had been sent out on this matter as there had been no available funds from the estate with which to pay.
35. A statement of monies held by the firm as at 14<sup>th</sup> November 2007 referred to £3,065.12 held on deposit account and interest earned on the deposit account. A time report print-out showed time being recorded against the file continuously from 18<sup>th</sup> July 2001 to 3<sup>rd</sup> December 2007. There was on file a letter dated 7<sup>th</sup> March 2008 to the Trustee, Mr AP, enclosing a statement of monies held by the firm as at 14<sup>th</sup> November 2007 and "our bills and "our bills to then". However the invoices on the file were dated March 2009 and on 20<sup>th</sup> January 2009 a letter had been sent to Mr AP enclosing "our bill for work done in respect of the Trust between September 2003 when we last rendered a bill to November 2007 when the Trust came to an end for your approval." The bill had been approved by Mr AP on 26<sup>th</sup> February 2009.
36. On 27<sup>th</sup> March 2009 a further account had been sent to Mr AP for his approval covering the period November 2007 to March 2009. That had been approved on 30<sup>th</sup> March 2009.
37. The Respondent had confirmed during the SRA's visit that "it was the firm's general policy to interim bill, but only where there are sufficient funds available to settle the bills so that the firm does not incur VAT liabilities for long periods before the bill is paid". In his subsequent letters of 13<sup>th</sup> March and 6<sup>th</sup> April 2009 the Respondent had also stated that "the rendering of interim accounts is advisory not mandatory".

#### Mr JD deceased

38. Mr JD had died on 25<sup>th</sup> June 2008 and Houseman Benner had been instructed in connection with his estate. The Respondent had previously also acted in the estate of Mr JD's late wife, Mrs PD. The client ledger in respect of Mrs PD's estate commenced in May 2008 with a withdrawal for the oath fee. The executors and

trustees under Mr JD's Will had been the Respondent and Mr JD's daughter, Mrs SV. The Grant of Probate had been obtained on 29<sup>th</sup> August 2008.

39. The FI Officer had noted that there was no client care or costs information on file. The first letter on file to Mrs SV, dated 5<sup>th</sup> August 2008, had enclosed the Inland Revenue Account and Oath for swearing. On 19<sup>th</sup> November Mrs Benner had written to Mrs SV enclosing accounts for approval. On 28<sup>th</sup> November a bill had been raised in the sum of £2,250 plus VAT and a copy of the final accounts had been sent to Mrs SV on 17<sup>th</sup> February 2009.
40. On 27<sup>th</sup> February 2009 the SRA had written to the Respondent requesting an explanation about the absence of costs information. The Respondent had replied on 13<sup>th</sup> March and 6<sup>th</sup> April 2009 explaining that the firm had also acted only a short time previously in respect of the deceased's late wife's estate; that the same people had been involved and that identification of those people had been taken on the previous file. No explanation had been given for the lack of client care or costs information.

RLP Limited

41. The Respondent's firm (Mr Jackson) had been instructed on the proposed purchase of 40 L Drive by RLP Limited ("RLP") in June 2008. On 20<sup>th</sup> June 2008 RLP had paid £250 on account in respect of search fees. The vendors of the property had been the personal representatives of Mrs WT deceased and had been represented by another firm.
42. The purchase price for the property had been reduced by agreement from £275,000 to £210,000. On 1<sup>st</sup> July 2008 RLP had deposited £100,000 with the Respondent's firm in respect of the purchase and on 3<sup>rd</sup> July 2008 that had been placed in a designated deposit account. The client ledger showed that the following amounts of interest had been earned in respect of that money and credited to the client account:

<u>Date</u>	<u>Interest earned</u> (£)
15 <sup>th</sup> August 2008	52.25
	0.03
18 <sup>th</sup> September 2008	104.64
10 <sup>th</sup> October 2008	0.27
10 <sup>th</sup> November 2008	0.24
18 <sup>th</sup> December 2008	<u>0.06</u>
Total	<u>£157.49</u>

43. The purchase had become complicated due to the occupation of the property by members of the deceased's family and RLP's requirement of vacant possession. The matter had not proceeded.
44. On 22<sup>nd</sup> August 2008 RLP had written to the Respondent seeking return of the £100,000. On 26<sup>th</sup> August 2008 the Respondent had replied confirming that the monies would be returned and stating that "we will retain any interest earned against costs already incurred". There had been no evidence on file of the client's consent to

that course of action although the Respondent, in his letter of 27<sup>th</sup> February 2009 had stated that there had been an "oral agreement" to offset any interest against costs.

45. The client ledger showed that £100,000 had been transferred to RLP on 28<sup>th</sup> August 2008. The 2009 Report had noted that as at 13<sup>th</sup> January 2009 the ledger showed a client account balance of £206.05, including the sum of £157.49 accrued in respect of the monies previously held in a designated deposit account. The matter had not been billed, and costs had not been taken. In his letter of 13<sup>th</sup> March 2009, the Respondent had confirmed that the matter was still to be billed. In his subsequent letter of 6<sup>th</sup> April 2009, the Respondent had not confirmed whether or not the matter had yet been billed, but had stated that the client had agreed to the retention of monies and interest to be applied against "other on-going transactions".
46. When the file had been reviewed in October 2009 there had been no invoice on the file and no correspondence or other documentation after 24<sup>th</sup> September 2008.
47. The FI Officer had noted that there had been no evidence of identification on file for the client. The Respondent had explained that the firm had acted for the client on a number of matters and that the evidence had been retained "somewhere". Although the Respondent had repeated the point in subsequent correspondence, no evidence of identification had been produced.

#### Mr M

48. On 5<sup>th</sup> July 2004 Mr M as director of FH Ltd had instructed the Respondent in connection with the proposed purchase of G Care Home. The file had been opened in the name of Mr M. On 10<sup>th</sup> August Mr M had written confirming that the purchase of G Nursing Home and of P House would proceed with funding from NatWest. G was to be purchased in the name of T Ltd and P House in the name of H Limited and both companies would be based offshore.
49. On 8<sup>th</sup> September 2004 the Respondent had written to NatWest giving estimated costs in respect of the various transactions. The transactions had completed on 4<sup>th</sup> October 2004. In fact G Nursing Home had been purchased in the name of F Healthcare and P House in the name of C Healthcare Ltd.
50. The FI Officer had found no evidence of the provision of costs or client care information.
51. In his letters of 13<sup>th</sup> March 2009 and 6<sup>th</sup> April 2009 the Respondent had stated that Mr M had been a director of the various companies involved in the transactions and that he therefore had "ostensible authority" to act on their behalf. The Respondent had also asserted that Mr M had been a long-standing client "from a period prior to the current identification and client care regime" and "before the present regime of identification and costs estimates were in place".
52. The purchase had completed in October 2004. As at the date of the SRA's 2009 visit, the client ledger had shown a residual credit balance of £134.02. In his letter of 27<sup>th</sup> February 2009 the Respondent had confirmed that the amount had been included "in a subsequent bill". There was on the file a bill dated 9<sup>th</sup> February 2009 for £116.54 plus VAT making a total of £134.02. There was no evidence on the file of the bill or of

any other written intimation of costs being sent to the client. The last document on the file, prior to the invoice, was a letter dated 8<sup>th</sup> September 2006 to Mr M. The costs had been transferred from client to office account on 9<sup>th</sup> February 2009.

#### Compliance with Special Measures following 2008 Report

53. Following the 2008 Report the SRA had written to the Respondent on 6<sup>th</sup> August 2008 setting out the Special Measures to which he was to be subject. These included:
- "1. To review, revise and amend the firm's standard costs and client care information for each area of work sufficient to comply with Rule 2 of the Code (especially 2.02 and 2.03) by providing clients with the best information possible about the likely overall costs of a matter at the outset and as it continues ....The revised documentation should be available by 31<sup>st</sup> August 2008."
  2. "Review and revise the firm's complaints handling procedure to include the current contact details for the Legal Complaints Service ("LCS") by 31<sup>st</sup> August 2008."
  3. "Review, revise and the office procedure manual to reflect the current realities of the firm and to address any areas of weakness identified by the Self-Assessment Risk Audit i.e. time limits, relationships with third parties, business continuity and risk management. The firm's completion and file closure procedures should also be reviewed and revised to ensure that dormant matter/residual client account balances are addressed appropriately and in a timely manner. Once completed, the manual should be indexed and paginated, and each page should include details of the date when last reviewed. The revised manual should be completed by 31<sup>st</sup> August 2008."
  4. "Remedy the shortcomings identified in relation to the accounts and accounting procedures as soon as possible and in any event no later than 15<sup>th</sup> August 2008. In particular, any apparently dormant/static balances should be investigated and appropriate remedial action taken as these may represent issues that have not been attended to. Reconciliations of client account should be conducted at not more than five-weekly intervals and once checked by Mr Benner it is good practice for that checked to be evidenced by signing and dating the reconciliation statement."

#### Client care information

54. The Respondent had three broadly similar standard client care letters in respect of general matters (including litigation), probate and conveyancing.
55. The letters had changed only slightly since 2008, for example, by the addition of the LCS as a point of contact for complaints. In respect of costs information the 2008 letter, in respect of general matters, had contained hourly rates but no provision for an overall costs estimate. The letter in respect of probate matters had contained hourly

rates but no provision for an overall costs estimate with the following additional paragraph:

"In probate cases it is difficult to estimate fees in advance and our charges are based upon The Law Society's recommended guidelines and will be either on the basis of a value element related to the amount of the estate involved together with a proportion of the time spent or, in simple cases, on time spent as detailed below."

None of the above had been altered in the 2009 versions and consequently there remained no provision for an overall costs estimate.

56. The 2008 conveyancing client care letter had also provided details of hourly rates but had contained the following additional paragraph:

"In cases of domestic conveyancing, because you usually need to estimate fees in advance, our charges are usually based upon a quotation in accordance with The Law Society's recommended guidelines and will be a fixed amount from which we will only depart if substantial and unforeseen extra work arises subsequently. On the information currently available we would estimate the basic fees to be £000.00 in this case."

The letter, like the others, had contained no breakdown of expected disbursements but had given an estimate of £200-£250 in respect of local searches.

57. The 2009 conveyancing client care letter had remained the same, save that the final sentence of the costs paragraph had read:

"On the information currently available we would estimate the basic fees to be a minimum of £250 in this case."

58. In his letter of 13<sup>th</sup> March 2008 the Respondent had denied that the client care letters did not contain provision for overall costs estimate saying "some do, and some do not", and adding that in areas of work that were difficult to estimate, he would give a "ball-park figure or bracketed estimate."

59. Of the files reviewed by the FI Officers there had been no client care or costs information on the files of Mr A, DHP Will Trust, Mr D deceased, RLP, or Mr M. In his letter of 27<sup>th</sup> February 2009 to the SRA the Respondent had stated that he could not trace any client care letter relating to the matter of Miss J.

#### Complaints procedure

60. the Respondent's standard client care letters had been amended to include reference to the LCS, albeit without contact details.
61. A copy of the 2008 complaints procedure was contained within the 2008 office manual. At the end of the procedure it stated that:

"I will also give you the name and address of our Consumer Complaints Service, If you are still not satisfied, you can contact them about your complaint."

62. A copy of the "updated" complaints procedure was contained within the office manual inspected at the 2009 visit. It had not been changed.

#### Office Manual

63. The two versions of the office manual, 2008 and 2009, appeared to be almost identical, albeit with the inclusion of the slightly amended client care letters in the 2009 manual. The SRA had noted that the areas of weakness identified had not been addressed, there were no new procedures in relation to time limits, relationships with third parties, business continuity and risk management and that there was no documented and comprehensive anti-money laundering procedure sufficient to comply with current regulations. The manual had not been properly indexed or paginated and there was no note on each page showing when it was last reviewed.
64. In his letter of 13<sup>th</sup> March 2009 the Respondent denied that the office manual had not been reviewed saying that "It is under regular review and amendments made as necessary."

#### Accounting matters/client account reconciliations

65. On 13<sup>th</sup> January 2009 Ms Cutler had checked the file of reconciliation statements which had covered the period September to December 2008. She had noted that none of those on the file had been signed to evidence the Respondent's check of their contents. The Respondent, in his letter of 13<sup>th</sup> March 2008, had stated that had been an error "due to pressure of work", and, in his letter of 6<sup>th</sup> April, that the reconciliations had been correctly done but had not been placed before him for signature.
66. Ms Cutler had noted that the client matter balances listing for those matters with a balance greater than zero had compromised ten pages. With about 42 matters listed on each page that had amounted to some 420 matters. If all open matters on the system had been included, the report increased to some 132 pages. Mr Benner had appeared to accept that there remained a significant number of completed matters that had yet to be closed and archived on the accounting system.
67. On 9<sup>th</sup> February 2009 the SRA had written to the Respondent setting out the special measures to be imposed following the 2009 inspection. Those had been in very similar terms to the special measures imposed in 2008, demonstrating that the Respondent had not complied with the initial special measures imposed to the satisfaction of the SRA.

#### **Documentary Evidence before the Tribunal**

68. The Tribunal reviewed the Rule 5(2) Statement and the documentary exhibits attached to the Statement. It also had the benefit of a witness statement, from the Respondent, dated 19<sup>th</sup> July 2010, with exhibits.

### **Submissions by the Applicant**

69. Having taken the Tribunal briefly through the details of the admitted allegations, the Applicant addressed the Tribunal in relation to allegations one and three.

#### Allegation 1 - Breach of Rule 1 SPR and, from July 2007, of Rule 1 of the Code

70. The Applicant submitted that in the matter of Mr T the Respondent had delayed unreasonably in progressing the matter and had failed to take any steps to protect his client's position in that, some 18 months after the completion money had been handed over, there had still been documents outstanding and the client's interest had not been registered. Moreover, in his letters to the SRA, the Respondent had given inconsistent answers as to whether the licence to assign had been received.
71. In the matter of Mr A, the Applicant submitted that the Respondent had delayed unreasonably in progressing the matter post-completion and in particular had not taken appropriate steps to register the Birmingham Midshires' mortgage between May 2004 and November 2007. Moreover, that the Respondent had failed to take sufficient steps to protect the interests of his lender client, in the interim, such that a further charge appeared to have been registered against the title, subsequent to the transaction, and in priority to Birmingham Midshires.

#### Allegation 3 - Failure to supervise

72. Referring to the details of the relevant provisions, the Applicant submitted that the Respondent had failed to exercise proper or adequate supervision of his staff.
73. In the case of Mr T, the Respondent had failed to ensure that Mr Jackson had completed the matter within a reasonable timescale, had failed to protect the client's position pending completion/registration and had failed to deal with the matter himself in the absence of Mr Jackson.
74. In the case of Mr A, the Respondent had failed to ensure that Mr Jackson dealt with the post-completion matters in a timely manner, leading to a delay in the registration of a mortgage for a lender client from May 2004 until November 2007 and in a failure to take steps to protect that lender client.
75. In the matter of some seven outstanding client balances on Mr Jackson's files (outstanding for periods ranging from six months to 13 years) the Respondent had been unaware of the sums. Moreover, the Respondent had failed to ensure Mr Jackson's compliance with money laundering regulations in his dealings with his client RPL.

### **Witnesses**

76. The Respondent gave his evidence adopting his statement dated 19<sup>th</sup> July 2010. He confirmed that the address of the LCS was now included in his firm's client care letters and that the letter dealing with domestic conveyancing costs was being revised. The Respondent said that the firm's Crawley branch office had been closed. He stressed that although he had admitted five of the seven allegations, he wished the

Tribunal to know that his firm had only ever had one complaint; from the lender client in the matter of Mrs M.

77. In cross-examination, the Respondent explained that in several matters there would have been conversations about costs with clients that had not been recorded. In relation to matters arising from his duty to supervise Mr Jackson, the Respondent accepted that “the buck stopped with him”. He stressed that he had raised matters with Mr Jackson and had tried to follow such matters through by way of notes and by speaking to him. The Respondent accepted that there had been problems during 2006/2007 and that there had been long delays in solving some of those problems. However, he insisted that he had pursued Mr Jackson on a regular basis and, as such, had done his best in the circumstances.
78. In response to a question from the Tribunal, the Respondent confirmed that he had been aware that Mr Jackson had been subject to a condition that he practice only in supervised employment. With hindsight, the Respondent said that he should have taken some matters away from Mr Jackson and increased his support at the Crawley office. However, he had been very anxious not to terminate Mr Jackson’s employment while he was receiving medical treatment.

#### **Submissions on behalf of the Respondent**

79. Mr Morgan reminded the Tribunal that most of the individual breaches had been carried out by Mr Jackson, an experienced and trusted fee-earner, who had failed to carry out the remedial action as specified by the Respondent. The problems caused by those breaches had cost the Respondent some £50,000 to put right. Mr Morgan submitted that in the particular circumstances where a senior fee-earner had concealed matters, the Respondent had done all that he could in the way of supervision.
80. Mr Morgan detailed the professional history and personal circumstances of the Respondent who had now remedied all the matters and who, at 73, had never previously appeared before the Tribunal.

#### **The Tribunal’s Findings as to Fact and Law**

81. Having considered all the evidence and the helpful submissions of the Applicant and on behalf of the Respondent, the Tribunal found all the allegations proved, indeed all, except allegations one and three, had been admitted by the Respondent.
82. The Tribunal noted that both allegations one and three had arisen from the Respondent’s failure to exercise effective supervision over an experienced and senior fee-earner. However, the Tribunal was satisfied that, as a Principal, the Respondent had an obligation both to carry out effective supervision and, where problems had been identified, to follow those matters through so as to ensure that appropriate steps were taken to protect the interests of clients. The Tribunal found that in a number of matters and most particularly in the matters of Mrs M and of Mr A, the Respondent had failed to take such steps.

#### **Mitigation**

- 83.. Mr Morgan referred to his previous submissions and told the Tribunal that the

Respondent had always believed over his very many years of practice, that he acted in the very best interests of his clients. However, he had accepted that in a few cases he could and should have provided a better service.

### **Application for Costs**

84. The parties informed the Tribunal that costs had been agreed in the sum of £9,100.

### **Sanction and Reasons**

84. Having fully considered the details of all the allegations as proved and the mitigating circumstances, the Tribunal considered that a financial penalty was appropriate. It noted that the Respondent no longer had a branch office and intended to continue to practice from one office only and with one fee-earner. The Tribunal explained that it had some concerns about the Respondent practising on his own, but had determined that such concerns could be met by the Respondent attending appropriate practice management courses. The Tribunal looked to the SRA to ensure that any necessary condition was attached to the Respondent's Practising Certificate. The Tribunal stressed the importance of both client care and costs information and further that it was essential, in the interests of both clients and of the Profession, that the provisions of the Code of Conduct should be complied with by all solicitors.

### **Decision as to Costs**

85. The Tribunal ordered that the Respondent pay the costs fixed in the sum of £9,100.00.

### **The Orders of the Tribunal**

The Tribunal Ordered that the Respondent, Peter Charles Benner of Houseman Benner, Commercial House, 52 Perrymount Road, Haywards Heath, RH16 3DT, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,100.

Dated this 7<sup>th</sup> day of October 2010  
On behalf of the Tribunal

R B Bamford  
Chairman