

IN THE MATTER OF JOSEPH CHRISTOPHER MCDERMOTT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr K W Duncan (in the chair)  
Mr I R Woolfe  
Ms A Arya

Date of Hearing: 8th January 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 Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, SG14 1BY on 12<sup>th</sup> June 2007 that Joseph Christopher McDermott of Latimer Lee Solicitors, Sankey Street, Bury, BL9 OJE, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order shall be made as the Tribunal should think right.

The allegations against the Respondent were:

- (i) that he failed to comply with an Order of The Law Society relating to payment of compensation to a client within a reasonable time;
- (ii) that he dishonestly produced correspondence with intent to mislead;
- (iii) that he dishonestly gave evidence to the Solicitors Disciplinary Tribunal which was false and misleading;
- (iv) that he practised otherwise than in accordance with conditions on his practising certificate;

- (v) that he acted with a lack of frankness and good faith towards other solicitors;
- (vi) that he dishonestly provided misleading information to an officer of The Law Society in the course of an investigation;
- (vii) that he failed to keep his books of account properly written up;
- (viii) that he withdrew monies from a client account other than as permitted by the Solicitors' Accounts Rules;
- (ix) that he failed to remedy breaches of the Solicitors' Accounts Rules promptly upon discovery;
- (x) that he made improper use of a client suspense account;
- (xi) that contrary to Solicitors Practice Rule 6(2)(i) he acted for vendor and purchaser in conveyancing transactions without first obtaining the written consent of both parties.

Additional allegations against the Respondent were made in a supplementary statement dated 3<sup>rd</sup> December 2007, namely that:

- (i) he failed to comply with a direction made by a Solicitors Regulation Authority Adjudicator on 7<sup>th</sup> March 2007;
- (ii) he failed to comply with a direction made by a Solicitors Regulation Authority Adjudicator on 22<sup>nd</sup> June 2007.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 8<sup>th</sup> January 2008 when Stephen John Battersby appeared as the Applicant and the Respondent did not appear and was not represented.

### **Application for Adjournment by the Respondent**

#### **The Respondent's Submissions**

- (1) The Respondent had by letter dated 2<sup>nd</sup> January 2008 sought an adjournment of the substantive hearing. This letter was in the following terms:

"I write to advise that I have unfortunately for the past few months not been physically well and as a result within the last couple of weeks have had medical investigations carried out for testicular/prostate cancer and following these investigations have been referred to a specialist for ongoing tests/treatment. I am at the moment on sick leave from work.

In the circumstances I am not either physically or mentally in a position to handle the forthcoming hearing and would therefore respectfully request an adjournment. I would suggest an adjournment for at least three months as by that time my prognosis should be more definite.

I would apologise to all parties concerned for any inconvenience caused but trust in the circumstances you will understand my position.

Yours sincerely,  
(Signed) Joseph McDermott

- (2) The Respondent provided a letter from his general practitioner in the following terms:

"I have been Mr McDermott's GP since 1996. Five days before Christmas he came to see me with some medical symptoms which required examination at that time. As a result of the examination and his symptoms I have referred him to a specialist at Wythenshaw Hospital and hopefully he will be seen within the next couple of months. Obviously his symptoms are a cause of concern for him, but hopefully all further investigations will prove to be satisfactory.

(Signed) Dr Brendon G Smith"

### **The Submissions of the Applicant**

- (3) The Applicant accepted that the hearing should be adjourned if the Respondent wished to attend and was not well enough to do so. He pointed out that the general practitioner's letter did not state that the Respondent was unfit to attend the hearing. The Applicant adopted a neutral stance in connection with the Respondent's application but was ready to proceed with the substantive hearing should the Tribunal so require.

### **The Tribunal's decision on the adjournment**

- (4) The Tribunal had given very careful consideration to the Respondent's application for adjournment which it has approached with the utmost care and caution. It was very conscious of the Respondent's right to appear before it. It was also very conscious of its duty to see that the public is protected and its duty to protect the good reputation of the solicitors' profession.
- (5) The Respondent was served with the documentation in the proceedings, including Civil Evidence Act Notices, as long as 19<sup>th</sup> September 2006. He has served no documentation whatsoever in his defence. In particular he has not responded to the Civil Evidence Act Notices.
- (6) The Respondent's application was made at the very last minute. It was based on medical grounds. The only supporting evidence he produced was a letter from his general practitioner. This letter did not indicate that the Respondent was unfit to attend the hearing or that there was any particular urgency or seriousness attached to his condition. It contrasted with the letter from the same general practitioner at page 44 of the Applicant's bundle which did indicate that at that time the Respondent was unfit to attend an imminent hearing back in 2004.
- (7) The allegations against the Respondent were very serious indeed. They included lying to the Tribunal on a previous occasion; fabricating letters to justify his conduct;

misleading other solicitors to enter into partnership with him; and misleading the Investigation Officer from the Solicitors Regulation Authority.

- (8) In the light of the history of the Respondent's failure to comply with conditions on his practising certificate, as recorded in the judgment of the Master of the Rolls at pages 83-87 of the Applicant's bundle, the Tribunal was concerned that it would not be fulfilling its duty to protect the public if it adjourned the substantive hearing on the basis of the Respondent's application.
- (9) The fact that the Respondent's practising certificate required that he only practise as a solicitor in approved partnership or employment did not address the Tribunal's concerns.
- (10) The Tribunal had considered the speeches in the House of Lords in the case of Jones [2002] UKHL 5 (20<sup>th</sup> February 2002) and the check-list set out in paragraph 22 in the Court of Appeal judgment in that case. The Tribunal had paid regard to the judgments in the cases of Brabazon-Drenning -v- United Kingdom Central Council for Nursing, Midwifery and Health Visiting October 2000 (co/490/2000) and Tait -v- The Royal College of Veterinary Surgeons [2003] respectively concerning the nursing and the veterinary surgeons' professions and their disciplinary bodies.
- (11) The Tribunal concluded after very careful consideration that the nature of the allegations against the Respondent were such that the case should be heard without delay.
- (12) The Tribunal refused the Respondent's application for an adjournment.

The matter proceeded forthwith to the substantive hearing. The Respondent had been notified that this might be the outcome in a letter addressed to him from the Tribunal's office dated 4<sup>th</sup> January 2008.

#### The Evidence before the Tribunal

The evidence before the Tribunal included the Respondent's admissions as to allegations (ix) and (x) contained in his letter of 21<sup>st</sup> October 2005 at page 327 of the Applicant's bundle of documents. In his letter at page 328 of that bundle, the Respondent had indicated an admission of allegation (xi) when he stated that he had obtained the oral consent of the parties (where written consent was required).

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

The Tribunal Orders that the Respondent Joseph Christopher McDermott of PO Box 626, Timperley, Altrincham, WA15 7WX, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties, to include the costs of the Investigation Accountant of the Law Society.

AND

The Tribunal further Orders that the Directions made by the Adjudicator of the Law Society respectively dated 7th March 2007 and 22nd June 2007 be treated for the purposes of enforcement as if they are Orders of the High Court.

**The facts are set out in paragraphs 1 - 37 hereunder:**

1. The Respondent, born in 1956, was admitted as a solicitor in 1991.
2. At the material time the Respondent was in practice on his own account under the style of J C McDermott & Co, 23 Bolton Road, Irlams O'th'Height, Salford, M6 7HP. The Law Society intervened into the Respondent's firm on 9<sup>th</sup> November 2005. At the date of the hearing the Respondent was employed as an assistant solicitor with a firm in Bury.
3. During 2002/2003 The Law Society had increasing concerns about the way in which the Respondent was conducting his practice. Whilst carrying out its investigations The Law Society imposed conditions on his practising certificate that the Respondent might act as a solicitor only in employment or as a member of a partnership, or as an office holder and/or shareholder of an incorporated solicitors' practice which was approved by The Law Society. Further any employer, partner, co-office holder and/or shareholder, and/or any prospective employer, partner, co-officer holder and/or shareholder was to be informed of the condition. The conditions were to come into effect four months after the date of the letter, 21<sup>st</sup> August 2003, notifying the Respondent of the decision.
4. On 22<sup>nd</sup> August 2003 the Respondent telephoned The Law Society saying that he wished to appeal the decision to terminate his previous practising certificate (for the year 1999/2000). He had practised uncertificated from the date of this termination (16<sup>th</sup> May 2003) until 10<sup>th</sup> August 2003. During that telephone conversation there was no request by the Respondent to apply for a review of the conditions imposed on 21<sup>st</sup> August 2003. After 21<sup>st</sup> August 2003 the practising certificate did not become effective until 10<sup>th</sup> October 2003 because of a delay by the Respondent in furnishing The Law Society with his gross fees certificate.
5. On 26<sup>th</sup> September 2003 The Law Society opened a file under reference REG/18684-2003 to monitor the Respondent's compliance with the practising certificate conditions. On 4<sup>th</sup> December 2003 The Law Society wrote to him reminding him that the conditions were due to become effective from 21<sup>st</sup> December 2003 and giving him information about compliance. He was told that The Law Society would need time to consider his proposals which would therefore need to be submitted before 21<sup>st</sup> December 2003. No response had been received to that letter by 18<sup>th</sup> December 2003 when The Law Society wrote to the Respondent again. On 19<sup>th</sup> December 2003 The Law Society received a letter dated 15<sup>th</sup> December 2003 from the Respondent in which he claimed that the letter of 4<sup>th</sup> December 2003 had only just come to his attention, although it had been signed for on 8<sup>th</sup> December 2003 and that in August 2003 he had verbally indicated his wish to have the imposition of conditions reviewed.
6. In a second letter dated 15<sup>th</sup> December 2003 also received by The Law Society on 19<sup>th</sup> December 2003, the Respondent claimed that a Law Society letter of 20<sup>th</sup> November

2003 had only just come to his attention and that he wished formally to apply for a review of the practising certificate decision.

7. The Law Society wrote to the Respondent on 22<sup>nd</sup> December 2003 pointing out that it had received no written request from him for a review of the conditions prior to his letter of 15<sup>th</sup> December 2003. He was asked why he had not chased the matter.
8. The Law Society received no proper response from the Respondent and sent chasing letters to him on 15<sup>th</sup> January 2004 and 23<sup>rd</sup> January 2004. On 2<sup>nd</sup> February 2004 he wrote to The Law Society explaining that he had had an accident whilst abroad which had caused delay in responding and subsequently in a telephone call on 19<sup>th</sup> February 2004 he said that he would reply in full by 23<sup>rd</sup> February 2004. Nothing further was heard from the Respondent until he telephoned The Law Society on 13<sup>th</sup> April 2004 in response to a letter of 2<sup>nd</sup> April 2004. He stated that it did not appear that The Law Society had received his formal letter applying for a review. This was the first occasion upon which he had mentioned any such letter, which he said he would fax to The Law Society.
9. On 19<sup>th</sup> April 2004 the Respondent sent a covering letter to The Law Society enclosing a copy of a letter bearing the date 29<sup>th</sup> August 2003. This was a letter indicating that he wished to apply for a review of the practising certificate decision. The Law Society had not previously received that letter. It bore the reference "18684-2003" which had not been created until September 2003. The Respondent sought to explain this discrepancy by saying that no reference had been included in the original letter but when he sent it on 19<sup>th</sup> April 2004 he wrote on that copy letter the present reference with a view to its being tied in with the present case. The Respondent's letters were handwritten.
10. The Law Society's Review Panel considered the matter on 29<sup>th</sup> April 2004. The Review Panel decided that the conditions should remain and gave the Respondent a further two months in which to comply with them, i.e. by 29<sup>th</sup> June 2004.
11. The Respondent appealed to the Master of the Rolls against the imposition of the conditions. That appeal was heard on 18<sup>th</sup> January 2005. A transcript of the appeal hearing was before the Tribunal. The Respondent had admitted that he had not been complying with the conditions. The Master of the Rolls dismissed his appeal.
12. Letters dated 23<sup>rd</sup> May 2003 and 30<sup>th</sup> June 2003 were claimed by the Respondent to have been sent to The Law Society. His failure to respond to The Law Society's correspondence was one of the allegations put before the Tribunal on 6<sup>th</sup> April 2004. Prior to the hearing on that day the Respondent produced to the Applicant copies of these purported letters to The Law Society and the Applicant withdrew the allegation that the Respondent had failed to reply to correspondence addressed to him by The Law Society.
13. During the proceedings before the Tribunal on 6<sup>th</sup> April 2004 the Respondent gave evidence on oath that he had discharged a payment of compensation that The Law Society had directed him to make to a client, Mrs L. The Tribunal in its Order required the Respondent to produce to the Tribunal and the Applicant by 27<sup>th</sup> April 2004 evidence that payment had been made to Mrs L. Under cover of a letter to the

Applicant of that date the Respondent attached a letter bearing the date 25<sup>th</sup> July 2003 which purported to have been sent to the new solicitors acting for Mrs L. Those solicitors did not receive that letter.

14. On 4<sup>th</sup> October 2004 Mr PAJ complained to The Law Society that the Respondent had delayed in complying with an undertaking, dated 31<sup>st</sup> August 2004, to discharge a second mortgage. Mr PAJ was the purchaser of a property in Prestwick and the vendor, Mr C, was represented by the Respondent. In December 2004 The Law Society asked Bevan Brittan, solicitors, to deal with the matter on its behalf. Mr PAJ subsequently confirmed that he had resolved the issue by contacting Mr C direct and that the second mortgage had been redeemed. Bevan Brittan continued to investigate the matter and on 10<sup>th</sup> March 2005 wrote to the Respondent formally raising the complaint of delay. No response had been received by 4<sup>th</sup> April 2005 and on that date an employee of Bevan Brittan spoke to the Respondent and was given to understand that his full response had been dictated and would be submitted by 7<sup>th</sup> April 2005. No such response was received. Bevan Brittan wrote again to the Respondent on 19<sup>th</sup> April 2005.
15. On 26<sup>th</sup> April 2005 the Respondent wrote to Bevan Brittan enclosing a copy of a letter dated 18<sup>th</sup> March 2005 which he claimed to have sent to them. This letter had not been received by Bevan Brittan. The Respondent had not referred to it during his telephone conversation on 4<sup>th</sup> April 2005. On that occasion he said that a response had been dictated and should be received by 7<sup>th</sup> April 2005.
16. The letter purportedly sent on 18<sup>th</sup> March 2005 was stated to enclose copies of letters of 24<sup>th</sup> June 2004 and 31<sup>st</sup> August 2004 to GH & Co and of 17<sup>th</sup> September 2004 and 18<sup>th</sup> October 2004 to DLA. Enquiries made revealed that neither GH & Co nor DLA had received those letters.
17. There were nine letters which the Respondent said he had sent but which had not been received by the purported addressees.
18. A transcript of the evidence which the Respondent gave before the Tribunal on 6<sup>th</sup> April 2004 was before the Tribunal. The Respondent said on oath that the payment of compensation to Mrs L had been made. Payment had not been made. The Respondent had sent a cheque to Mrs L on 15<sup>th</sup> August 2005.
19. The Master of the Rolls, in refusing the Respondent's appeal, gave him a further 28 days in which to comply with the conditions on his practising certificate.
20. The Respondent had recruited a solicitor, Miss NS who was admitted in 2001, purportedly to become his partner. She commenced her duties at the beginning of April 2005 and stayed for just over two months before leaving on 4<sup>th</sup> June 2005. In her Affidavit Miss NS said that the Adjudicator's decision of 8<sup>th</sup> March 2005 stipulated that JC McDermott & Co should be the main practising address for Miss NS and that she should share responsibility for client money, be a signatory to office and client cheques and have access to the books of account. These stipulations were not met.

21. The Law Society became concerned about the situation, having learnt from Miss NS of the problems which she had encountered. Miss NS had confirmed her resignation to The Law Society on 2<sup>nd</sup> June 2005. An officer of The Law Society contacted the Respondent on 7<sup>th</sup> June 2005 when the Respondent said that Miss NS was "taking a few days break." Miss NS, the following day, made it clear to the officer that she had no intention of withdrawing her resignation and the Respondent must have been aware of this. When the Respondent spoke to the officer again on 9<sup>th</sup> June 2005 he claimed to be in negotiation with Miss NS who, he said, was taking a break due to personal problems.
22. Subsequently the Respondent recruited a solicitor, Mr PH. This partnership was approved by The Law Society on 24<sup>th</sup> August 2005. Mr PH, who worked at Tyldesley, resigned on 10<sup>th</sup> October 2005.
23. On 21<sup>st</sup> February 2005 an inspection of the Respondent's books of account and other documents was commenced by a Law Society Investigation Officer, the IO. The IO's Report dated 31<sup>st</sup> August 2005 was before the Tribunal. The Report revealed that the records of account had not been properly written up. In particular:
  - (i) there was no accurate record of the monies held on behalf of each client;
  - (ii) the books had not been maintained on the double-entry principle;
  - (iii) the client ledger accounts did not have a heading that provided a description of the matter or transaction;
  - (iv) office account entries and client account entries in relation to each client were not maintained up to date;
  - (v) there was no effective system in place for checking the balances on client ledger accounts to ensure that no overdrawn balances occurred;
  - (vi) there was no master list of all general client accounts to show the current status of each account;
  - (vii) reconciliations of client accounts had not been carried out at least every five weeks as required by the Solicitors' Accounts Rules;
  - (viii) the accounting records were not properly written up to show the Respondent's dealings with client and office money relating to each client matter;
  - (ix) all dealings with client money were not properly recorded in a client cash account or on the client side of the client ledger account.
24. The Respondent had made improper and wide-ranging use of a suspense account, which in September 2004 showed an overdrawn balance of £39,011.47. In the reconciliation for January 2005 the overdrawn balance on the suspense account was £42,982.24.

25. Monies had been withdrawn from client account other than as permitted by Rule 22 of the Solicitors' Accounts Rules 1998. A total of 67 client ledgers had overdrawn balances which totalled £19,520.50 at 30<sup>th</sup> September 2004. After the IO's review of a client matter file, the total debit balances increased to £27,690.50.
26. Bank charges had been paid from client account.
27. The Respondent explained that he had had difficulties with his bookkeeper but it was clear that he had been made aware of breaches of the Solicitors' Accounts Rules and had not rectified them.
28. A minimum cash shortage of £40,942.75 existed at 30<sup>th</sup> September 2004 which was accounted for by over-payments from client account totalling £27,690.50 and receipts which had not been credited to client bank account in error totalling £13,252.25. The Respondent did not agree that there was a shortage at the level the IO calculated but he did agree a shortage of £22,742.25.
29. By 31<sup>st</sup> August 2005 the Respondent had replaced £12,360.25.
30. On one ledger account, an overdrawn balance went back about six years without having been rectified.
31. The IO reviewed the client bill book section of the spread sheet reconciliations that were available and ascertained that over a five year period up to August 2004 the Respondent had acted for both buyer and seller in a number of conveyancing transactions. He was unable to determine whether the Respondent had also been acting for the lender. During August 2004 alone, there had been 18 clients represented by the Respondent in the buying and selling of nine separate properties. The Respondent had acted for both buyer and seller in each of these nine transactions. The parties had not given their written consent.
32. On 29<sup>th</sup> September 2005 The Law Society wrote to the Respondent to seek an explanation for his conduct. The Respondent replied on 21<sup>st</sup> October 2005 enclosing with his letter a large number of accounting documents covering the period February to August 2005. The Respondent explained that the suspense account had been used by his bookkeeper to deal with unexplained transactions. He accepted that he should have provided the bookkeeper with explanations to avoid this difficulty. He assured The Law Society that he would, in future, keep his books properly written up. He was considering employing a full time bookkeeper. He said that he would ask his accountant to undertake monthly reviews of reconciliations and that all shortages were being replaced, there having been no loss to any client. The Respondent said where he had acted both for vendor and purchaser in conveyancing transactions, he had sought oral approval from the clients for this.
33. In 2002 the Respondent was instructed to act in the purchase of a residential property by Miss TB. Following completion he paid stamp duty at £1,195. In September 2006 Miss TB discovered that the property should have been exempt from stamp duty and she made a complaint to The Law Society.

34. The Respondent was contacted regarding the complaint. He accepted that he was at fault and offered to refund the stamp duty to his client and to pay her £255 by way of compensation - a total of £1,450. His proposals for making the payment by small monthly instalments followed by a lump sum were not acceptable to Miss TB. On 7<sup>th</sup> March 2007 an Adjudicator of The Law Society directed the Respondent to pay £1,450 within seven days of notification of the decision, which was by letter dated 19<sup>th</sup> March 2007.
35. The Respondent discussed the matter with the Solicitors Regulation Authority and eventually agreed to deal with the matter by making three equal payments. The first of these was paid into The Law Society's bank account at the beginning of July 2007 but no further payments were received. The outstanding amount was £966.66.
36. In 2005 the Respondent carried out conveyancing work for Mrs JH who complained to The Law Society on 23<sup>rd</sup> August 2005 about the level of service she had received. The Law Society was not satisfied with the Respondent's response to its enquiries.
37. Eventually Mrs JH's complaint was referred to an Adjudicator who on 22<sup>nd</sup> June 2007 directed the Respondent to pay Mrs JH £200 representing Inland Revenue penalties incurred together with £500 compensation. He also directed the Respondent to pay to The Law Society the costs of the investigation of £840. The letter notifying the Respondent was dated 13<sup>th</sup> July 2007 and he should have complied with the direction by 21<sup>st</sup> July. He had not complied at the date of the hearing.

#### **The Submissions of the Applicant**

38. The Applicant relied upon the facts set out in his two statements made pursuant to Rule 4 of the Solicitors Disciplinary Rules 1974. It was the Applicant's case that the Respondent's letter dated 29<sup>th</sup> August 2003 had been fabricated after the event by the Respondent to facilitate his application for a review of the conditions placed on his practising certificate. Other letters claimed to have been sent by the Respondent, including two that were produced prior to the previous hearing and those to GH & Co and DLA and BB had been fabricated by the Respondent after the event to make it seem that he had responded to letters addressed to him when that had not been the case.
39. There were nine letters which the Respondent said he had sent but which were not received by the purported addressees. Those letters all had one factor in common in that if they had been sent as claimed by the Respondent they would have got him out of a difficulty. The Tribunal was invited to conclude that it was outside the bounds of coincidence that nine letters such as these had all gone astray and it was invited to reach the conclusion that the Respondent had fabricated correspondence after the event to suit his own needs. That was not the conduct of an honest solicitor.
40. It was alleged that the Respondent gave false evidence on oath and created the letter bearing the date 25<sup>th</sup> July 2003 after the event. When questioned on that matter by the IO during the inspection the Respondent was unable to produce any evidence from his bank as to the purported payment. It was therefore clear that the evidence given by the Respondent to the Tribunal was misleading. He had been aware in advance of the hearing that this allegation would be made and had he actually paid the compensation

the Tribunal was invited to ask itself the question why he did not bring proof of payment with him to the hearing. It was alleged that the evidence which the Respondent gave on oath was deliberately dishonest and when required to produce evidence of payment by the Tribunal he perpetuated his dishonesty by producing a letter created after the event.

41. The Respondent clearly had been guilty of a totally unacceptable delay in complying with the order of the Adjudicator made on 2<sup>nd</sup> May 2003. The Respondent had made payment only after he had been interviewed by the IO.
42. With regard to the Respondent claiming that he had taken Miss NS into partnership, this was not a true partnership but rather a partnership of convenience to give the outward impression that the Respondent was complying with the conditions attached to his practising certificate. It was also clear that the Respondent failed to act with good faith towards Miss NS who felt obliged to leave the partnership after a very short time as a result.
43. The Tribunal was invited to consider whether The Law Society would have approved the Respondent's partnership with Miss NS had they realised that Miss NS would be based at a new branch office in Tylseley rather than work with the Respondent at the main office. One of the reasons given by the Adjudicator for the imposition of the condition was that it was in the interest of the public and the profession that the Respondent practised only in an environment with supervision and support and where the responsibilities of a solicitor in private practice were shared.
44. When an officer of The Law Society spoke to the Respondent about Miss NS who had resigned with no intention of withdrawing her resignation, the Respondent's claim to be in negotiation with Miss NS, who was taking a break due to personal problems, was dishonest and misleading.
45. Again, the Respondent's partnership with Mr PH was one of convenience to make it appear as if he was properly complying with the conditions on his practising certificate. Mr PH resigned on 10<sup>th</sup> October 2005.
46. The period during which the Respondent should have complied with the conditions on his practising certificate ran from 29<sup>th</sup> June 2004 until The Law Society's intervention into his practice on 9<sup>th</sup> November 2005. This was a period of just over 16 months. From that period there should be deducted the time allowed by the Master of the Rolls for compliance (28 days). The period of approved partnership of Miss NS was 86 days and the period of approved partnership of Mr PH was 47 days. Of the 527 days between 29<sup>th</sup> June 2004 and 9<sup>th</sup> November 2005 the Respondent was in compliance with the conditions (or was excused from compliance) for 161 days.
47. The Respondent had been guilty of breaches of the Solicitors' Accounts Rules. Rule 32(16) of the Solicitors' Accounts Rules 1998 provided that suspense ledger accounts might be used only when a solicitor can justify their use, for instance for temporary use on receipt on an unidentified payment if time is needed to establish the nature of the payment or the identity of the relevant client. The Respondent had made improper and wide ranging use of a suspense account.

48. Practice Rule 6.2.a(i) had not been complied with by the Respondent in a number of conveyancing transactions. The rule required where a solicitor acts for both seller and buyer he must not do so without first having obtained the written consent of both parties.

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

49. The Respondent did not make submissions.

### **The Findings of the Tribunal**

50. The Tribunal found all of the allegations to have been substantiated.

51. On 6<sup>th</sup> April 2004 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were:-

- (i) [withdrawn with the consent of the Tribunal]
- (ii) That he failed to respond to correspondence from the OSS in relation to a complaint made by Broadcastle Finance Ltd;
- (iii) That he failed to comply with an undertaking or alternatively failed to comply in a reasonable time with an undertaking given to WM & Co;
- (iv) That he failed to respond to correspondence from the OSS in connection with a complaint made by WM & Co;
- (v) That he failed to release papers to a former client's new solicitors promptly upon request;
- (vi) That he failed to respond to correspondence from the OSS in connection with a complaint by S & Co;
- (vii) That he delayed unreasonably in complying with an undertaking given to S & Co;
- (viii) That he failed to respond to correspondence from the OSS in connection with a further complaint by S & Co;
- (ix) That he did fail to keep his clients properly informed of the position with regard to their conveyancing transaction;
- (x) That he did fail to discharge fully a mortgage on completion of a sale;
- (xi) That he did fail to respond to letters and telephone calls from his clients.
- (xii) [withdrawn with the consent of the Tribunal]

By supplementary statement of Stephen Battersby dated 8th December 2003 it was further alleged against the Respondent:-

(xiii) That he failed to comply with the decision of a Law Society Adjudicator.

By a second supplementary statement of Stephen Battersby dated 6th January 2004 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in that:-

(xiv) Between 16th May 2003 and 10th October 2003 he practised whilst uncertificated;

(xv) He failed to provide a substantive response to correspondence from the OSS.

The Tribunal found all allegations (ii), (iii), (iv), (v), (vi), (viii), (ix), (x), (xi), (xiii), (xiv) & (xv) to be have been substantiated. The Tribunal found allegation (vii) not to have been substantiated.

In April 2004 the Tribunal said that:-

- “85. A substantial number of serious allegations against the Respondent had been found to have been substantiated. There were five instances of failure by the Respondent to correspond with the Law Society when required to do so. This showed a flagrant disregard of the regulatory requirements within which all solicitors had to operate.
86. The Respondent had also let down clients. The distress caused to Mr & Mrs. C was evident from the correspondence and the Tribunal found the Respondent’s attitude to Mr & Mrs C to have been completely unacceptable. He had failed to keep them informed and had failed to correspond with them and other members of the solicitors' profession. This was not an acceptable way for a solicitor to conduct his practice.
87. The Respondent had assured the Tribunal that he had now complied with the decision of the Adjudicator in respect of a compensation payment to Mrs L but the Tribunal would expect the Respondent to support that assurance with appropriate documentary evidence.
88. The Respondent had caused serious inconvenience and difficulty to a number of clients. His evidence to the Tribunal in respect of these matters had been unsatisfactory and apparently ill prepared.
89. The Tribunal had given serious consideration to suspending the Respondent from practice. The Tribunal had however heard and taken into account the Respondent’s submissions in mitigation and the fact that this was his first appearance before the Tribunal. The Tribunal hoped that the Respondent had learned a serious lesson from this appearance and that he would never appear before the Tribunal again. In all the circumstances the Tribunal would deal with the matter by way of a substantial fine which would reflect the Tribunal’s concern at the Respondent’s conduct.
90. The Tribunal made the following order:-

The Tribunal order that the Respondent, Joseph Christopher McDermott of 223 Bolton Road, Irlams'o'th'Height, Salford, Manchester, M6 7HP solicitor, do pay a fine of £20,000, such penalty to be forfeit to Her Majesty the Queen, and they further order that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed. The Tribunal further order that evidence be produced by the Respondent to the Clerk to the Tribunal and to the Applicant by 4.00 pm on 27th April 2004 that the Adjudicator's award of £250 was in fact paid in July 2003."

### **The Tribunal's sanction and its reasons**

52. On the evidence before it the Tribunal was satisfied that the Respondent had fabricated letters claiming that he had sent them on a date earlier than the date on which he produced them and he told the Tribunal at an earlier hearing that he had paid an inadequate professional services award when he had not. He had not acted with frankness and good faith towards other solicitors and he had provided misleading information to an officer of The Law Society.
53. The Tribunal accepted that in respect of allegations (ii), (iii), (v) and (vi) the Respondent had been dishonest. Dishonesty on the part of a solicitor is not to be tolerated.
54. The other allegations found to have been substantiated against the Respondent were in respect of serious failures on his part.
55. The Respondent had been deliberately untruthful and had not met his responsibilities as a solicitor and did not appear to care in either case. Mindful of its duty to protect the public and of its duty to protect the good reputation of the solicitors' profession, the Tribunal concluded that it was both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors. The Tribunal further ordered that the directions made by The Law Society in connection with the Respondent's inadequate professional services be treated for the purposes of enforcement as if they were orders of the High Court.
56. It was right in all the circumstances that the Respondent should bear the costs of and incidental to the application and enquiry, such costs to be subject to a detailed assessment unless agreed between the parties.

Dated this 20th day of March 2008  
On behalf of the Tribunal

K W Duncan  
Chairman