In the Matter of Michael James Harvey

Case Number: SCT/107
Date of Hearing: 4, 5 & 15 August & 24 November 2003
Appearing Before: Mr P Short (Presiding Member/Practitioner Member)
Ms B Reaston (Practitioner Member)
Dr J Lamont (Lay Member)
In Attendance: Mr J W Broadley (Clerk)

Penalty: Fined $5,000.00

Charges

1. In breach of r86(2) of the *Rules of the Queensland Law Society Incorporated*, the practitioner guaranteed repayment to clients who loaned the sum of $390,000.00 to UMGLS, a company in which the shares were held by the practitioner and his partner in his legal practice, KMM.

Particulars

(a) As at November 1997, the directors of and shareholders in UMGLS were the practitioner and KMM.

(b) On or about 3 November 1997, UMGLS borrowed from KNMPL the sum of $390,000.00 for the purpose of settling the purchase of property described as Unit 4, 1953 Logan Road, Upper Mount Gravatt, being a strata titled commercial unit from which the legal practice of E&H was conducted.

(c) KNMPL was a solicitor's nominee mortgage company associated with the practice of PJNB.

(d) The practitioner and KMM guaranteed repayment of the loan by UMGLS to KNMPL.

(e) The lenders who contributed the amounts totalling $390,000.00 which was advanced on their behalf by KNMPL to UMGLS were persons who had sought to invest money through E&H-N or were approached by E&H-N and were not persons advised by another practitioner independently employed and instructed in respect of the transaction and were therefore clients of E&H as that term is defined for the purposes of r86.

(f) PJNB was not independently employed and instructed in respect of the transaction.

Particulars

(i) By letter dated 22 October 1997, E&H forwarded to PJNB a form of circular letter proposed to be sent to prospective investors and a form of loan application.

(ii) Under cover of letter dated 23 October 1997, PJNB provided E&H with:

(A) a form of circular letter to investors on the letterhead of PJNB;

(B) a form of general lending authority addressed to PJNB;

(C) a supply of the letterhead of PJNB.

(iii) On or about 23 or 24 October 1997, KDG of E&H telephoned prospective lenders who were either clients of E&H or persons who had sought to invest money through E&H and provided them with information concerning the proposed loan.

(iv) On or about 23 or 24 October 1997, E&H wrote to prospective lenders providing them with details of the proposed loan to UMGLS and inviting them to contribute to that loan; the letters were generated by E&H on the letterhead of PJNB and were in the form referred to in subparagraph (i) hereof, rather than the form referred to in subparagraph (ii)(A) hereof.

(v) By letter dated 24 October 1997, KDG forwarded to PJNB a list of prospective lenders she had contacted.

(vi) By further letter dated 24 October 1997, KDG forwarded to PJNB a form of specific lending authority she proposed be forwarded to lenders.

(vii) By letter dated 27 October 1997, KDG forwarded to PJNB copies of documents relating to the transaction, including a form of assignment of the valuation to PJNB and confirmation of the valuer's professional indemnity insurance.

(viii) By letter dated 28 October 1997, KDG forwarded to lenders a form of specific lending authority contrary to advice from PJNB that a form of general authority was required.

(ix) By letter dated 29 October 1997, E&H provided to PJNB a list of lenders who had agreed to contribute to the loan to UMGLS and advised that *"(E&H) will call of [sic] the lenders that are marked on this list on Thursday to ascertain how their funds are being sent to you so that you may identify any funds received direct into your trust account"*.

(x) By further letter dated 29 October 1997, KDG advised PJNB that E&H-MG, would act as PJNB's Queensland agents for settlement of the loan and gave instructions for telegraphic transfer of the net mortgage advance to enable settlement on 3 November 1997. On or about 30 October 1997, KDG contacted the lenders and made arrangements for payment to PJNB.

(xi) By letter dated 31 October 1997 on the letterhead of PJNB, KDG confirmed instructions to E&H-MG, to act as PJNB's agents for settlement of the loan

(xii) By letter dated 6 November 1997, under the letterhead of PJNB, KDG advised the contributory lenders of settlement of the loan to UMGLS.

(xiii) By letter dated 12 November 1997 on the letterhead of PJNB, KDG forwarded to E&H-MG PJNB's account and advised that payment could be made by instalments.

(xiv) Under cover of letter dated 24 February 1998, PJNB forwarded to E&H a cheque in the sum of $2,000.00 in payment of E&H's fees in relation to the advance by KNMPL to UMGLS (which payment was declined by E&H).

2. The practitioner failed to maintain reasonable standards of competence or diligence in relation to the transaction referred to in paragraph 1 hereof in that:

   (a) The purchase price payable by UMGLS for the security property was only $420,000.00;

   (b) The application for finance referred to the valuation in the sum of $590,000.00 and to a loan/value ratio of 66%, but made no reference to the purchase price of only $420,000.00 payable for the security property;

   (c) The circular letter to investors forwarded by E&H to PJNB under cover of letter dated 22 October 1997 stated that "the valuation provided gives a loan to value ratio of 66% (ie, $390,000.00/$590,000.00)" but made no reference to the purchase price;

   (d) The practitioner failed to advise the investors that, having regard to the discrepancy between the valuation figure of $590,000.00 and the purchase price of $420,000.00, further valuation evidence ought to be obtained to ascertain whether or not the security being offered by UMGLS was adequate.

3. The practitioner provided information to his clients which was incomplete and therefore misleading.

Particulars

(a) The facts alleged in subparagraphs 2(a) and 2(c) hereof.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr B Bartley, solicitor of Brian Bartley & Associates instructed by the Queensland Law Society Incorporated

(b) For the Practitioner:
Mr A M Daubney of Senior Counsel instructed by Messrs Robertson O'Gorman Solicitors and later Messrs Gilshenan and Luton Solicitors

Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge.
2. The Tribunal further orders that the Queensland Law Society Incorporated be allowed to call further evidence to support the amended Notice of Charge.
3. The Tribunal finds, excluding the evidence of Mr O'Donnell, that there is sufficient evidence for the Tribunal to infer the absence of the consent required by r86(2).
4. After hearing Mr O'Donnell's evidence, the Tribunal is satisfied that the Practitioner did not apply for or obtain consent under r86(2).
5. The Tribunal finds charge 1 in its amended form proved.
6. The Tribunal finds charges 2 and 3 not proved and dismisses them.
7. The Tribunal finds that the charge as proved amounts to professional misconduct. The Tribunal finds the practitioner guilty of professional misconduct.
8. The Tribunal orders that the practitioner pay a penalty of $5,000.00 to the Fund.
9. The Tribunal orders that the fine be paid by the practitioner on or before 15 January 2004.

Reasons

Findings given 9 October 2003

Background

The practitioner was admitted on 8 February 1974,and practises in partnership with KMM under the name E&H, at two locations, one in Brisbane and one at Nerang.

On 24 August 1997 the Practitioner and KMM agreed to purchase their Brisbane office premises for $420,000 and the conveyance was completed on 2 November 1997 in the name of a company UMGLS in which company the two partners were the only directors and shareholders. The purchase was financed by a loan of $390,000 made by a syndicate of eight lenders who are said to have been "clients" of the Practitioner either in the normal or traditional meaning of client or within the extended definition contained in r86(4). We shall call these eight people or companies "investors" in these reasons for neutrality. The scheme is that Solicitors commonly advertise, or otherwise make known that they facilitate private lending by joining like minded lenders, or credit providers into syndicates, or groups and find matching borrowers. The solicitor thus earns fees from putting the transaction together, from the lending transaction itself, and further fees from supervising the loan and distributing the repayments. In this syndicate there were a group of eight investors who appeared in evidence to be experienced in these transactions. Some had entered into many similar transactions through other solicitors and two had entered similar transactions through the practitioner here.

These Syndicated Loans, or Contributory or Nominee Mortgages are regulated specifically under r87. Nothing turns on the rather complicated provisions of r87 except to help explain this transaction and where the money was coming from.

Rule 86 regulates "Borrowing from clients". Of course a transaction such as a Solicitor entering into a business relationship with a Client, for example, borrowing from a client is also governed by normal principles. Rule 86 supplements and perhaps strengthens normal principles that govern a solicitor, and/or a fiduciary having dealings with a client. The scheme of r86 is that subrule (1) prohibits a practitioner borrowing from a client, subrule (2) prohibits the practitioner guaranteeing a loan made by a client, and subrule (3) prohibits a practitioner from acting in certain circumstances where he is a related party to the borrower. In this way the Legislature have attempted to further regulate a solicitor when borrowing directly or indirectly from a client. The Charge here is that the Practitioner, in breach of r86(3), acted for a client not that he borrowed contrary to r86(1) or gave a guarantee contrary to subrule (2).

Client

There is no dispute that the loan was made to the company, owned by the Practitioner and KMM, on 3 November 1997 so the first enquiry is whether the lenders were clients at that time either in the traditional sense or in the artificial sense defined in r86(3). The activity that took place after the loan was made on 3 November in supervising the repayments, is largely a distraction, and does not help answer the question whether the Practitioner acted, and whether the investors were clients, up until 3 November 1997 when the loan was drawn. It might tend to corroborate a belief that a solicitor and client relationship existed, but the crucial time to test the issue is when the loan was made.

The traditional relationship between a solicitor and client is normally contractual, and the normal rules on the formation of such a contract, such as offer and acceptance, certainty of terms, intention, etc *prima facie* apply to the formation of the solicitor and client relationship. The relationship has serious consequences for both parties, once formed, and we should not infer such a relationship lightly. In the situation where solicitors advertise for investors who may wish to consider joining a lending syndicate, or lend money to private borrowers, we need to "apply a contemporary lens" to those arrangements, and not infer the solicitor and client relationship when in truth the parties are often simply making enquiry and are, in contractual terms, still in the pre-contract phase, or just shopping around.

The fact that a solicitor performs services for a person does not by itself necessarily constitute that person a "client". The solicitor may perform services for a person, and indeed have responsibility to a person, for example to the beneficiary of a trust or will, without making that person a "client". In addition, it is common for a solicitor to discuss a potential legal relationship, without forming such a relationship, as happens where the lawyer refers the client to another because of a conflict, or lack of expertise or available time, or where the parties are discussing services or fees. The examples are many, and the point is that in contemporary legal practice, where clients are more mobile than in previous times, and where clients regard business as transaction based and frequently "shop around" for quotes on fees and commonly use a number of legal advisors, there must normally be something in the form of a deliberate and consensual formation of the contractual relationship of solicitor and client. It is not likely to be entered into accidentally, or without an intention on behalf on both parties to form the relationship. Notions from a previous era where client loyalty expected a reciprocal loyalty from the legal advisor cannot necessarily be applied to the modern mobile client who views the relationship on a transaction to transaction basis.

In this respect there is not sufficient evidence that the investors intended to be clients of the Practitioner in the traditional sense in this transaction or that the Practitioner intended to be their solicitor in this transaction. Two (C and L) were clients in other earlier similar transactions, but that does not make them clients forever or for all transactions. The solicitor may have continuing obligations for past transactions, but that does not make the person a client for this transaction The weight of evidence is that all eight investors regarded their contact with the Practitioner (in the form of his staff either KDG or others,) in this transaction as a referral to PJNB.

The Law Society has therefore failed to show the eight investors were clients in the sense used in the first part of r86.

Extended definition of client

Rule 86 however, expands the normal concepts of client and sets out a special definition of "client". The definition is in r86(4):

> *"In this Section –*
>
> *...*
>
> *'client' means a person save and except a person advised by another practitioner independently employed and instructed in respect of that transaction) between whom and a practitioner (or partner at any time of a practitioner or employer of a practitioner) any relationship of solicitor and client exists and also includes any person seeking to invest money through a practitioner or approached by or on behalf of a practitioner for that purpose."*

To enliven this definition, the person must be either be a traditional client (in the sense explained above), or second a person seeking to invest money through a practitioner, or third (a person) approached by a practitioner for the purpose of having them invest.

In the case of the Practitioner his evidence shows that the Practitioner's firm had advertised to attract potential lenders into their "Law Loans" programme, and kept the names of persons who answered and were thus "seeking to invest money through (*the Practitioner*)". KDG or persons in the Practitioner's office at Nerang contacted them when PJNB said he did not have the loan funds. The Practitioner and KDG both said in evidence that part of KDG's job was to keep record of these people and to contact them when opportunity to invest arose. The evidence was it was common for those people to be referred to other solicitors if opportunity to invest arose elsewhere. We find it was within KDG's actual authority to contact them, as she did. Those eight persons thus are "deemed" to became "clients" for the purpose of the second and third limbs of the definition in r86(4), unless they come within the exception namely if they were "advised by another practitioner independently employed and instructed in respect of that transaction".

The Onus of showing the facts to trigger the deeming provisions of r86(4) falls on the Law Society and we find that they have proved those facts to our reasonable satisfaction, consistent with the gravity of the allegation and the gravity of the potential offence.

The Law Society then accepts that it also has the burden of negativing the existence of facts bringing the case within the exculpatory provision. Whether the Law Society has the burden or the Solicitor has the burden of showing he comes within the protection is not presently an issue as the Law Society accepts for these proceedings it must carry the evidentiary burden. They must negative the possibility that PJNB advised the "clients" and PJNB was independently employed and instructed. We emphasise at this point that this must have taken place before the loan was made on 3 November 1997 to be effective. Much of the evidence related to what PJNB did in managing the repayments in the months and years after the loan was made and the affidavits produced on behalf of the Practitioner are not conclusive of the legal relationship between the lawyer and the investor

There is a preponderance of evidence in favour of the assertion that PJNB was the Solicitor who advised KNMPL, and was the Solicitor who took responsibility for documenting the transaction on behalf of the Investors. Much was made on where the documents were printed or prepared, and whether the Practitioner knew that his office Manager was "moonlighting" for another Solicitor, PJNB and preparing the documents in the Practitioner's office on PJNB notepaper. We don't think that issue has much impact on the question of who had the intellectual contribution in their preparation, and who took responsibility for the documents. If things went wrong with the legality of the mortgage for example, it would have been PJNB not the Practitioner who would be sued.

However the fact that PJNB took responsibility for the documentation, does not go far enough to gain the protection of the exception as it is the eight investors who having answered the definition of client who are to be protected and who are to be independently advised. At best they can say they received an Authority purportedly from PJNB's office in the mail, or were told by KDG from the Practitioner's office that the Practitioner could not act, or were told to ask PJNB or to get advice from PJNB. All that tends to show that the Practitioner did not act and PJNB was put forward. There is no satisfactory evidence or proof, direct or circumstantial, that any of the investors spoke to PJNB about the borrowing let alone received advice from him. We were not persuaded by the Affidavits which were at odds with the evidence of events.

Once the definition in r86(4) is enlivened and the investors are clients from whom he or a related party is to borrow, it is for the solicitor who has put them in harms way to see that the clients get independent advice if he wants to proceed. It is not sufficient to tell them where to get advice, or say he cannot advise them himself; they must be "advised". The investors do not have to heed that advice but the purport of the rule is that independent advice must be not just available as would be sufficient for a fiduciary, but the investor must have been "advised by another practitioner independently employed and instructed in respect of that transaction." to cure the defect. We find that the Law Society has satisfactorily negatived the prospect that the exception applies.

This means that the prohibitions in r86 come into force, namely under r86(1) the Practitioner cannot borrow from a "client" as described, under r86(2) he cannot guarantee and under r86(3) he cannot act for the "client" as described.

He has not been charged with borrowing, because the Rule prohibits only personal borrowing not borrowing by a corporation. On the evidence we have found he did not act for the investors as he was at some pains through the efforts of KDG to refer the investors to PJNB. We find therefore that the first charge has not been proved.

The second charge must similarly fail, as we have found that the practitioner did not act for the investors in this transaction. It follows that if anyone failed to maintain reasonable standards it was PJNB. In so far as contact was made by or on behalf of the Practitioner with the investors it was to tell them of the opportunity and refer them to PJNB, who took the transaction from there.

Charge 3 has a similar fate. The information provided to investors was to contact PJNB if they wanted to be involved and thereafter the transaction was handled by PJNB.

Amendment

Having made these findings we were invited by Mr Daubney SC for the Practitioner to dismiss the charges, and by Mr Bartley to adjourn the matter to allow the Law Society to consider and if necessary formally resolve to bring other charges, probably under r86(2).

Rule 8 allows amendment of a charge at any time up to the point the charge is dismissed. In *Law Society of South Australia v Jordan* BC 9804072, the Full Court of South Australia in similar circumstances said:

> *"Proceedings before this Tribunal are brought in the public interest, not to punish the practitioner. The public interest requires that the fitness of a practitioner to practise be resolved as soon as practicable. That is not to suggest that the Tribunal can ignore questions of fairness."*

The rules allow amendment so we should facilitate amendment if we believe that is the expedient manner of disposing of the matter and we can do so fairly. This hearing proceeded at all times on the basis that the charge in the broad related to borrowing from clients in the transaction set out in charge 1, and the findings that we have made reflect the way the evidence has fallen. There is an admission that the loan was made and guaranteed by the Practitioner, and we have made a finding that the investors were "clients" within the extended definition in r86.

Any amendment that will fall within this envelope of facts could most efficiently, fairly and quickly be dealt with by amendment, not by dismissing and requiring new charges. In different proceedings the prosecution would amend the charge then and there and we would have probably allowed that amendment as the parties could hardly say that they were surprised or in any doubt about the nature of the charges they were facing. The fact that the Law Society has to formally resolve to bring charges prevents the charges being amended immediately, so we are of the view that our duty to resolve the substantial issue efficiently and fairly is best discharged by adjourning the matter till October to allow all parties time to amend if necessary and for the practitioner time to prepare or to challenge our decision if he feels we have exceeded our power. An appropriate cost order that reflects our factual findings will resolve any perceived unfairness in not dismissing the charges before amendment

Responsibility for KDG

There is then the question of KDG, and whether the Practitioner is responsible for what she did.

In case the issue becomes relevant we will summarise our findings. The Practitioner had two offices and KDG was a long standing employee who was and remains office manager of the office at Nerang. Her responsibility included keeping lists of people who had seen the public advertisements, and keeping details of their requirements, and contacting them when opportunities arose. Her duties also included documenting lending transactions.

There is a clear obligation that a solicitor must not only observe all the rules of Professional Conduct (including here fiduciary obligations to clients and statutory rules) but must take reasonable care to ensure that the employees do not commit any breach of those same duties. The profession has a long tradition of supervision of the personal conduct of solicitors and expects a high standard of personal conduct. If a solicitor employs others to help in the solicitor's work, it is generally no answer to say the solicitor did not know what they were doing. He must show that he took steps, for example by proper supervision, proper procedures and training, to ensure that employees did not breach rules. No evidence of this nature has been proffered. No doubt it was within the scope of KDG's employment to answer calls from prospective investors who had answered the advertisements, so the Practitioner is responsible for what KDG did in his office in contacting clients in this transaction.

The evidence of KDG was unsatisfactory, and she was evasive and unconvincing on crucial issues. Her evidence was so unsatisfactory as to be of little value. Much was made of the fact that the documents were prepared in the Practitioner's office by KDG but that misses the point. Rule 86, and the general principles of equity require independent advice, not independent supervision of documents or procedural transactions to conclude a commercial transaction. What is required is independent advice from a competent person who is free of the taint of the transaction and who can see that the client understands the nature and consequences of the transaction. The requirements of the Rule do not differ from the requirements of equity that have been laid out many times (see for example *Coomber v Coomber* (1911) 1 Ch at 729). The supervision of the documentation might have provided corroborative evidence to support another proposition if we were in doubt, but we have found that no advice was given by PJNB within r86(4) let alone independent advice from someone "free of the taint" of the transaction. PJNB undoubtedly holds the key to the true relationship but neither party called him as a witness. We are told he has himself been struck off the Solicitors Roll, We are left with the impression that there is more to the relationship between PJNB, the Practitioner, and KDG than has been set out in evidence, but apart from making their evidence generally difficult to follow or contradictory and thus unreliable, nothing seems to turn on the relationship that may or may not have existed between the three of them. What is clear is that KDG, an employee of the Practitioner and his office manager, prepared the documents for the Practitioner's loan in his office. She did so either under PJNB's instruction or according to his direction or mandate. The Practitioner says he did not direct the documents be prepared and did not know that his employees were assisting PJNB in this way. There is nothing unlawful in one solicitor preparing documents for another. It may be unusual, and in a lending transaction it may be regarded as foolish but it is not unheard of and it (preparation of documents) is not conclusive of the underlying relationships. The responsibility for the accuracy of the documents in fulfilling the transaction is ultimately more important than who drafts or prints or delivers the documents, and on this it seems clear to us that PJNB was held out as the responsible party, and was in fact the responsible party.

He was the Solicitor for KNMPL but, as we have found, he was not a person giving advice before the loan is made to the "clients".

Even if the Practitioner had known about her moonlighting, that did not, without more, make him the author of the documents or the solicitor for the lender KNMPL or the investors. Her evasion was largely unnecessary and her evidence largely irrelevant. It did not go to the point of the section namely whether the investors received advice. That section is generally in accord with general fiduciary principles, namely once a disability arrives (here the solicitor for the lender wanting to be the borrower) that disability must be purged by actual and informed consent after independent advice. Consent without advice is not sufficient and nor would it have been in equity. Our conclusions therefore conform to general equitable principles as well as the specific section.

Knowledge of the Practitioner

In case it becomes relevant we find it is improbable that KDG prepared the Practitioner's loan documents in his office without him knowing. If necessary we would have found as a fact that the Practitioner knew that KDG, his office manager, prepared the documents for his borrowing in this transaction.

Reasons regarding leave to amend notice of charge

When the hearing resumed Mr Daubney argued forcefully that the amendment should only be allowed if no prejudice to the practitioner results. and cited a line of consistent authorities including *R v Maher* [1987] Qd R 171, and *R v Lewis* [1994] 1 Qd R 613 and urged us to prefer the test of no prejudice to the (accused) practitioner that is consistently used in the criminal jurisdiction to the approach taken in the South Australian Court of Appeal in *Jordan's* case (*supra*) BC 9804027 where the Chief Justice referred to the power to amend saying *"it (the Tribunal) can or should allow a procedure that would not be followed in criminal proceedings or in civil proceedings"*.

Whilst our power to allow amendment in r8 is seemingly absolute, the power should be exercised so as to give effect to the purpose of these proceedings, and the purpose of the statute. We should not substitute our own idiosyncratic views onto the situation, as Justices Kirby and Callinan said in *Gerlach v Clifton Bricks* (2002) 209 CLR 478 at 503:

> *"... where a discretion is conferred by statute, it must be exercised in accordance with the language by which it is conferred and to achieve the purpose for which the power has been granted. To talk of "absolute" judicial discretion... involves a contradiction in terms. Absolute discretions are a form of tyranny..."*

The purpose of these proceedings is to protect the public and they are not criminal proceeding. The procedures in a criminal trial are not always appropriate in this Tribunal. They are however a good guide as they have developed over a long period to ensure fairness, and we should always do everything possible to see that the practitioner has a fair hearing. To achieve fairness in this case we adjourned the matter to allow the practitioner to prepare to meet the amended charges and as the new charges come from the same envelope of facts, we believe no unfairness will result from allowing the amendment.

This approach seems consistent with the approach taken by Mr Justice Muir in *AG v Clough* [2002] 1 Qd R 116 at 132, where an amendment was allowed during the Appeal.

The amendment did not introduce new elements into the hearing.

After amendment we invited the practitioner and the Law Society to reopen their evidence and to call further evidence, The practitioner chose not to do so and ,after argument the Law Society called evidence to show that no consent was applied for or obtained under r86(2).

Without that evidence we would have been prepared to infer the absence of consent but the evidence satisfied us that the Practitioner did not apply for or obtain consent under r86(2).

Findings given on 24 November 2003

We have found that the investors were clients in the meaning of r86. They were not clients except in this defined and artificial sense, but we must presume that the Legislature intended to prohibit the financial dealings the subject of these proceedings to protect the public.

The drafting of the section may be technical, but the message is clear. A solicitor must avoid having financial dealings with his or her clients. The section is technical, and the practitioner has made an attempt to comply by refusing to advise in relation to this loan and to involve another legal practitioner, PJNB, albeit as we have found in an ineffective way, as the investor clients did not get the advice that is necessary to enliven the protection.

No person has suffered any loss, and we have had regard to the fact that the section is highly technical and an attempt was made to comply. It was an isolated, not a systemic breach, and the practitioner has already been put to financial and personal embarrassment by these protracted proceedings.

The hearings were protracted, but the Practitioner was entitled to defend himself and no reflection should be made for him defending himself as he has.

In 1997 the Practitioner was found guilty of nine charges of professional misconduct and fined. He cannot therefore claim to have an unblemished professional career. He produced an impressive personal array of references vouching for his professional and personal integrity, which we have taken into account.

We've been urged by Mr Daubney SC for the Practitioner, that censure would be sufficient in the circumstances. The Queensland Law Society, on the other hand, urges us to consider a fine in line with corresponding sections relating to loans to clients, of which r86 forms part of the line of preventative and protective sections.

Findings as to costs

As to costs, effectively the first three days were, on one view, thrown away because the findings at the end of those three days led to an amendment and the hearing today. Some of that evidence on the first three days was re-usable in the sense that it led to the proof of the charge today.

We've deliberated over what would be a fair order as to costs, and in the circumstances we think that fairness can be achieved by making no orders as to costs, so that each party bears its own costs.