



THE HIGH COURT

[2018] IEHC 344

[2015 No. 68SA]
[2015 No. 180SA]

IN THE MATTER OF THE SOLICITORS ACTS 1954 - 2011
AND IN THE MATTER OF HELEN LUCEY A SOLICITOR
ON THE APPLICATION OF HELEN LUCEY

APPELLANT

AND
THE LAW SOCIETY OF IRELAND

RESPONDENT
[2015 No. 180SA]

BETWEEN

LAW SOCIETY OF IRELAND

APPLICANT

AND
HELEN LUCEY

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 12th day of June, 2018

Introduction

1. There are two sets of proceedings before the court. The first is the appeal of Ms. Helen Lucey (Ms. Lucey), a solicitor against findings of professional misconduct made against her by the Solicitors Disciplinary Tribunal (SDT).
2. The second proceedings are brought at the instance of the Law Society of Ireland (the Law Society) with a view to this court confirming the findings of the SDT and imposing a penalty greater than that recommended by the SDT. The Law Society seeks to have Ms. Lucey struck off the Roll of Solicitors and that she make full restitution.

Ms. Lucey

3. Ms. Lucey was admitted and enrolled as a solicitor in 1975. She practises as the principal of a firm called Marshall & Macaulay in Listowel, Co. Kerry.

The findings of the SDT

4. The SDT found Ms. Lucey guilty of misconduct in respect of the following matters. She:-

"(a) caused a substantial deficit in the amount of circa €257,960 to arise on the client account on or around 31st July, 2011 which deficit was due or partly due to the withdrawal of client moneys from one or more client accounts in breach of one or more of the following regulations:-

(II) Regulation 7(1) of the Solicitors Accounts Regulations 2001-2006 (S.I. 421 of 2001 as amended)

(b) withdrew moneys in the amount of in or around €259,000 from the client account of Sheila Walshe in breach of Regulation 8(4) of the Solicitors Accounts Regulations 2001-2006 (S.I. 421 of 2001 as amended) and or

(c) failed to distribute moneys in the amount of €21,128 to nominated charities on the probate file of a former client, Cornelius Buckley in a timely manner

(d) failed to pay charitable bequests of a client, Joan Barrett, totalling €389,000 in a timely manner

(e) failed to send the following deeds to be stamped in a timely manner:-

(i) deed of a client, Windle, in the amount of €4,800 dating from 2007

(ii) deed of a client, Scanlon, in the amount of €6,030 dating from 2006

(iii) deed of a client, Daly, in the amount of €11,145 dating from 2006

(iv) deed of a client, O'Mahony, in the amount of €5,430 dating from 2005

(g) failed to distribute client funds amounting to €93,765 and €45,251 in the related files of Eileen Donegan and John Creed in a timely manner

(j) failed to distribute funds in the amount of €14,666 the proceeds of the sale of milk quota in February 2005, to a client, Michael Brown

(k) failed to pay over moneys in the amount of €20,546 retained on an account in respect of a former client, James Keane, deceased, even though the file was transferred to another solicitor in December 2007

(l) in withdrawing moneys in the amount of in or around €259,000 from the client account of Naomi Dillon relating to Sheila Walshe ("the client account") on or around March 30th, 2007, acted improperly and/or in a manner tending to bring the solicitors profession into disregard having regard to -

(i) the conflict of interest that arose

(ii) the duty owed to Ms. Sheila Walshe in view of both her position as client (pursuant to s.2 of the Solicitors Amendment Act, 1994) and in view of her age

(iii) the fact that the respondent failed to liaise directly with the solicitors on record for Ms. Walshe, namely A.&L. Goodbody in the context of the settlement of the purported counter claim

(iv) the fact that the respondent acted without any express instructions from Ms. Walshe

(vi) withdrew the amount of in or around €259,000 from the client account in breach of regulation 7(1) of the Solicitors Accounts Regulations 2001-2006 (S.I. 241 of 2001 as amended)"

There were a number of other counts in respect of which no findings of guilt were made hence the absence of some letters and numerals in the sequence above.

5. The hearing before the SDT went on over a ten day period throughout 2013, 2014 and 2015. The SDT recommended that Ms. Lucey not be permitted to practise as a sole practitioner or in partnership but only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least 10 years standing. It also recommended that she pay €15,000 to the Compensation Fund and half the costs of the Law Society. At all times the Society submitted that the appropriate penalty was that Ms. Lucey's name should be struck from the Roll of Solicitors and that she should make restitution in full of the amounts in question and pay all of the costs of the Law Society. That is the penalty which the Law Society continues to urge on me.

6. The hearing before this court also occupied many days of evidence and submissions. This judgment is confined to the question of guilt or otherwise. If Ms. Lucey is found guilty of some or all of the allegations the question of penalty will be dealt with at a later hearing.

The hearings before the SDT

7. There were two separate referrals of complaints to the SDT. The first bore record no. S3012/DT106/12. It arose on foot of a referral from the Society's Regulation of Practice Committee. It dealt with allegations arising from an investigating accountant's report prepared by Edward Sheehan on foot of an inspection of Ms. Lucey's solicitors practice. It is common case that the principal transaction identified involved the transfer to €259,000 from the client account of the estate of Ms. Naomi Dillon deceased to the office account of Ms. Lucey without, it was alleged, the express instructions of Ms. Sheila Walshe, being a beneficiary in the estate of Ms. Dillon deceased. Ms. Lucey characterised that transfer as being a payment deriving from the compromise of a right of action which she enjoyed in respect of Ms. Walshe but which had never materialised into actual proceedings.

8. Indeed in her affidavit grounding her appeal to this court Ms. Lucey described the matter as follows:-

"The principal charges against me arose in respect of my dealings with a Ms. Sheila Walshe. It was common case that on 30th March, 2007, I withdrew and credited to myself, the sum of €259,000 from moneys standing to the credit of Ms. Sheila Walshe in the client account relating to the sale of premises at Oranmore, Co. Galway. This was done on the instructions of Ms. Sheila Walshe's agent, authorised in writing in this regard, and in settlement of three sets of High Court proceedings instituted by Ms. Walshe against me and my proposed counterclaim against Ms. Sheila Walshe.

While the settlement figure was agreed with Ms. Walshe's agent on 13th October, 2006 he was informed that Ms. Walshe should issue instructions to her solicitors in relation to the settlement so that they might arrange to serve notice of discontinuance. The moneys were transferred following communication in writing in March 2007 confirming settlement of the proceedings from the solicitors on record for Ms. Sheila Walshe, Messrs. A.&L. Goodbody, solicitors who were then advised that I would inform the solicitor acting for me in relation to the proceedings, Ms. Frances Twomey then of Twomey Scott & Co., Limerick and my counsel that the proceedings had been settled."

9. The Law Society did not accept that Ms. Lucey was justified to do as she did and neither did the SDT.

10. This complaint bearing record no. S3012/DT106/12 also dealt with the allegations of wrongdoing concerning the other clients named in the various findings made against Ms. Lucey.

11. The second complaint bearing record no. S3012/DT20/14 resulted in the findings set out at paragraph 4(I) of this judgment.

12. The greater part of the hearing before the SDT was taken up with the matters which concerned the estate of Ms. Dillon something which was replicated in the hearing before this court.

No dishonesty

13. It is important to point out at this juncture that at no stage either in the hearing before the SDT or this court did the Law Society allege any dishonesty on the part of Ms. Lucey. Whatever may have been her shortcomings as perceived by the Law Society it made it clear on numerous occasions that none of the allegations against her involved dishonesty on her part.

Standard of proof

14. It is common case that the appeal before me on the part of Ms. Lucey constitutes a *de novo* hearing of the complaints against her and that the standard of proof that has to be achieved by the Law Society is that applied in the criminal courts namely proof beyond reasonable doubt.

15. In this judgment I propose to deal first with what Ms. Lucey herself described as the principal charges against her, *i.e.*, those relating to the estate of the late Ms. Dillon and then proceed to deal with the allegations of wrongdoing concerning the other clients.

Background facts to the principal charges

16. On 3rd February, 1995 Ms. Naomi Dillon made her last will and testament. She appointed Ms. Lucey as her sole executrix and sole trustee. The late Ms. Dillon created a trust of her property.

17. Naomi Dillon died on 15th April, 1995.

18. On 31st August, 1995 probate of the will issued from this court in relation to her Irish estate. Probate was granted to Ms. Lucey.
19. The main beneficiary of the estate was Ms. Sheila Walshe. She was about 74 years of age in 1995.
20. The main assets of the estate consisted of the Garda station in Oranmore, Co. Galway, an apartment in Dalkey, Co. Dublin where Ms. Walshe lived and a share portfolio in England. The Garda station was occupied at the time of Ms. Dillon's death and was ascribed a value of less than €100,000 at the time of her death.
21. Ms. Lucey began to deal with the administration of the estate in Ireland. For a variety of reasons including ones concerning tax it was decided to delay extracting probate to the United Kingdom estate.
22. In September, 1996 for reasons not known to Ms. Lucey Ms. Walshe instructed A.& L. Goodbody, solicitors to act on her behalf.
23. During the period of the retention of A.& L. Goodbody three sets of High Court proceedings were issued against Ms. Lucey by Ms. Walshe. One of them sought to have Ms. Lucey removed as executrix. There was also a complaint made against Ms. Lucey by Ms. Walshe to the Law Society.
24. In March 2004 a meeting was held at the Four Courts with Ms. Lucey and representatives of A.&L. Goodbody. Ms. Walshe was in attendance as was a Mr. Finbarr Ross (Mr. Ross). This meeting was held with a view to dealing with the break-up of the trust but did not involve any of the matters contained in the already extant proceedings against Ms. Lucey taken by Ms. Walshe. In June 2004 Mr. Ross appeared at Ms. Lucey's office in Listowel on the pretext of seeking to discuss a personal matter but in fact came to discuss the break-up of the trust created by Ms. Dillon and the sale of the Oranmore property. What happened at that meeting will be dealt with later in this judgment.
25. The Oranmore Garda station sale was completed in August 2005. It realised a sum of €4,500,000. That was far in excess of the original valuation of the property. The realisation of this enormously enhanced sum was due in no small part to the strategy adopted by Ms. Lucey in respect of the property. A good deal of correspondence took place between Ms. Lucey and A.& L. Goodbody about breaching the trust and the position of remaindermen. It is of no relevance to this case.
26. On 20th April, 2006 Ms. Walshe wrote to Ms. Lucey and in the course of her letter said that she gave Mr. Ross her full permission to speak to Ms. Lucey and make decisions on her behalf.
27. On 30th May, 2006 Ms. Lucey went to Muckross Park Hotel in Killarney to meet with Mr. Ross. The purpose of the meeting was to see if a solution could be found to the proceedings issued by Ms. Walshe against Ms. Lucey. At the meeting Ms. Lucey advised Mr. Ross to get independent legal advice.
28. On 13th October, 2006 Mr. Ross representing Ms. Walshe (who was then in her mid-eighties) met with Ms. Lucey at her office in Listowel with a view to finalising matters between Ms. Walshe and Ms. Lucey. He confirmed that he had taken independent legal advice. It was during the course of this meeting that it is alleged agreement was reached which justified Ms. Lucey in crediting herself with a sum of €259,000. I will consider in greater detail what occurred at that meeting but this is a sufficient introduction to the background to the case so as to set the evidence which I heard in context.

Mr. Edward Sheehan

29. Mr. Edward Sheehan was the first witness. He is an investigating accountant employed by the Law Society and has been carrying out that work for some sixteen years.
30. On 25th August, 2011 he was authorised to carry out an inspection of Ms. Lucey's practice. On foot of that inspection he prepared a report which was put in evidence before me. It was this report which formed the basis of the complaint considered by the SDT.
31. The report contains a summary of findings as follows:-
- "Principal points*
- 3.1 At 31st July, 2011 a deficit of €257,960 was in existence.*
- 3.2 In a probate file that commenced in 1995 the solicitor paid €259,000 into her personal account 'for the aggravation caused by one of the beneficiaries'.*
- 3.3 In a probate file charities are unpaid since 2003. This matter featured in the previous investigation report. The solicitor promised to pay the charities but has not done so.*
- 3.4 In a probate file funds of €389,000 are to be paid to two charities.*
- 3.5 Four unstamped deeds with duty of €27,405 are to be stamped.*
- 3.6 The solicitor received funds of €20,000 in 2007 and 2008 in regard to a boundary rectification/ownership. No work has been done. The funds are in the client ledger.*
- 3.7 Funds of €93,765 and €45,251 remain undistributed in two related fees (sic).*
- 3.8 Funds of €5,000 are held pending a claim since 2003.*
- 3.9 A file dating back to the 1970s has a balance of €9,476.*
- 3.10 A file has funds of €14,666 since February 2005 with no movement on the file.*
- 3.11 A file that featured in the two previous investigation reports and dates back to 1980 still has funds of €20,546 with the file transferred to another solicitor in December 2007."*
32. Mr. Sheehan described the books of the practice as "Dickensian". He said "There are literally thousands of pages in four large

Twinlock files”.

33. On that part of the report dealing with the estate of Naomi Dillon he said as follows:--

"(i) On 30th March, 2007 the solicitor withdrew by way of a cheque an amount of €259,000 from the ledger account of a matter relating to a sale of property in a probate that commenced in April, 1995. The solicitor stated to me that this was a settlement arising from the aggravation caused by a beneficiary, Sheila Walshe (aged 90, died February 2011) who had complained the solicitor to the Law Society and instituted High Court proceedings to have the solicitor removed as executor and trustee of the estate. The funds were lodged to a personal account by the solicitor.

(ii) The estate is still not finalised. There were funds of €421,306 in the client ledger at 31st July, 2011. There was also a further net amount of €147,510 in a separate bank account arising from the sale of shares held in the U.K. until their disposal on 20th June, 2011. At this time there was a balance of €297,537 from which a payment on account of €150,000 was made to two further beneficiaries on 1st July 2011. It should be noted that the beneficiaries are also of advanced years.

(iii) Naomi Dillon died in April 1995. The solicitor was appointed executrix and trustee of the will dated 3rd February, 1995. The assets comprised of bank accounts; U.K. shares, an apartment in Dalkey where Sheila Walshe resided and the garda station in Oranmore, Co. Galway. The Irish grant of probate issued on 31st August, 1995.

(iv) On 10th December, 1996 Sheila Walshe through her solicitors A.&L. Goodbody made a complaint to the Law Society on the grounds of delay; failure to communicate and failure to make a partial distribution. The matter dragged on for many years. In November 2003 A.&L. Goodbody issued High Court proceedings seeking to appoint alternative trustees to the estate.

(v) The garda station in Oranmore was rented to the Office of Public Works. The estate successfully obtained possession of this property. The property was sold in August 2005 for €4,500,000 (net of withholding tax of 15% amounted to €3,825,000). Sheila Walshe was to receive 49% of the sale proceeds net of expenses. A payment of €800,000 was made on 20th September, 2005; a further amount of €400,000 was paid on 20th September, 2008 and an amount of €218,780 was paid on 14th September, 2009. I could not locate how this amount of €218,780 was arrived at.

(vi) I first inspected this practice in September 2001. During the inspection I requested the file of Naomi Dillon but was informed that the solicitor had been directed to hand the file over to another firm of solicitors by the Law Society.

I again requested the file as there were funds in the client listing of €421,306. A single file was given to me on 27th September, 2011. The Dillon ledger showed the payment of €259,000 to the solicitor on 30th March, 2007. I had an initial discussion with the solicitor about this. I stated that I could not understand how the solicitor could receive compensation where the client was the injured party who complained to the Law Society and the solicitor was the defendant in the High Court summons. When I returned to the practice on 19th October, 2011 I was presented with a large amount of files in connection with the Dillon estate. These related to various matters to do with the estate. The solicitor stated that there were three High Court actions, but there was no real movement in the proceedings by A.&L. Goodbody. There was an affidavit of Sheila Walshe and replying affidavits of the solicitor.

(vii) In the correspondence file for 2006 there is a note that a Mr. Finbarr Ross telephoned to inform the solicitor that the roof in Sheila Walshe's kitchen was leaking. The solicitor on being asked informed me that Finbarr Ross was a financial advisor to Sheila Walshe.

A little research disclosed that Finbarr Ross had defrauded investors of €7,000,000 in 2001, fled to America, spent two years in jail there before being extradited to Northern Ireland where he served a further prison sentence before being released on appeal. He is now an ordained minister (on a spiritual journey). He is also a director of the Institute of Love and Peace and operates a tour company called Celtic Mystical Journeys. Sheila Walshe was formerly a nun.

On 20th April, 2006 Sheila Walshe wrote to the solicitor stating at the beginning of the letter that Finbarr Ross had permission to make decisions on her behalf. The letter goes on to detail the leak recurring in the kitchen and the repair of windows. There was subsequent remedial work carried out in the apartment.

On 16th October, 2006 there is an email from Finbarr Ross stating 'Perhaps you also had the €250,000 plus the €9,000 we agreed on Friday in there also.' There is also further correspondence to costs drawer stating that there is no need to prepare a bill in relation to the firm who is acting for the solicitor in relation to action being taken by Sheila Walshe against the solicitor.

(viii) The solicitor drew the following fees from the estate of Naomi Dillon.

[There is then set out fees dating from 2005 to 2010 totalling some €224,783. These fees included those for the sale of the property in Galway.]

(ix) The solicitors acting in the probate of the estate of Sheila Walshe are T.G. McVeigh & Co., 28, Molesworth Street, Dublin 2. They had written to the solicitor on 20th July, 2011 regarding interest on the funds held by the solicitor. I believe that letter remains unanswered.

(x) In the letter to Sheila Walshe on 14th October, 2009 the solicitor makes reference to a statement of account in relation to the Oranmore property sale. I could not locate this on the file. Reference is also made to the future receipt of costs from the OPW in this matter. I could find no trace of the receipt of these costs.

(xi) There are many issues here, but the principal matter is the withdrawal of €259,000 from the client account into the personal account of the solicitor. Fees totalling €224,783 have been charged in the estate. The background of the financial advisor to a lady in her mid eighties is extremely questionable. The main asset of the estate was sold in 2005. The funds relating to the sale have not been fully distributed. No statement of account relating to the probate could be located. I am treating the €259,000 as a deficit on the client account. Appendix 1 has supporting documentation for this item.

(xii) The ledgers are truly in the 'pre-Dickenson (sic) era'. They consist of thousands of dog-eared loose leaf pages in four ledgers. Computerisation was promised in 2001 and again at the subsequent inspection in 2006. Assurances were given to the Regulation of Practice Committee during 2007, 2008 and up to 5th March, 2009 regarding the updating of the accounting system. There has been no computerisation."

34. The report then went on to deal with the other matters which I will deal with later in the judgment.

35. Appended to this report was a copy of the grant of probate and will of the late Naomi Dillon. There was also a copy of High Court proceedings commenced on 3rd November, 2003 at the suit of Ms. Walshe against Ms. Lucey. It alleged that she had failed to complete the administration of the estate and to vest her entitlements in the plaintiff and sought *inter alia* a revocation of the grant of probate and the appointment of new trustees. There was also a copy of a letter from A.&L. Goodbody dated 7th April, 2005 and an attendance of Ms. Lucey's appearing in court on 14th July, 2003 at a hearing presided over by Kearns J., as he then was.

36. Also included was the important letter from Ms. Walshe to Ms. Lucey dated 20th April, 2006 which *inter alia* said:-

"Thank you for your letter of 18th April and for the enclosure. I appreciate very much all you are doing. I am sure Finbarr will be in touch with you. I want you to know that Finbarr has my full permission to speak to you and make any decisions on my behalf."

There was also included a letter dated 15th March, 2007 from A.&L. Goodbody to Ms. Lucey concerning a set of High Court proceedings bearing record number 2003/4775P. The letter stated:-

"We refer to the above matter and further to the settlement reached between yourself and Ms. Walshe we have been instructed to discontinue the above-mentioned proceedings. You might therefore please furnish us with a letter consenting to the discontinuance of the said proceedings and we will arrange to strike out the proceedings with no order as to costs."

This was followed by a further letter from the same firm arising out of the same proceedings in the following terms:-

"We refer to the above matter and to our letter dated 15th March, 2007. We are eager to bring this matter to a conclusion and in particular to file the notice of discontinuance and we would be obliged if you could revert to us at this stage as our client is anxious to achieve closure."

37. There was also appended to the report a reply to those letters in the following terms:-

"We refer to your letter of 15th March and 12th April herein. We confirm that notice of discontinuance may be served and we further confirm that the writer is instructing her solicitors in that regard so they may in turn instruct her counsel."

38. Mr. Sheehan's report also included as an appendix an important email from Mr. Finbarr Ross to Ms. Lucey dated 16th October, 2006. It read as follows:-

"Dear Helen,

Thank you for the meeting on Friday and I am delighted that we are now moving forward to a place of completion.

You may remember on Friday I talked with you about Sheila being entitled to part of her money tax free and it did not ring a bell with you. Well upon returning to Dublin I checked the files and found it. Your letter of April 11th, 2005 to Goodbody's states in paragraph 3 that 'Sheila will receive €722,000 free of capital gains tax in relation to her life interest as laid out in the Kenneally and Twomey report. This, of course, means she will get a further €144,000.

The second point is in your notes you had written down €700,000 in relation to the cost of selling the property. Using the wildest figures I cannot work this out as it makes no sense to me. I know that you will be giving us a full accounting of it but would just like to point out the following.

Real estate broker 3%	€135,000
Advertising	€25,000
Legal closing costs 1.5%	€67,500
This gives us a total of	€227,50

I know that there are fees in relation to getting the vacant possession, etc. Perhaps you also had the €250,000 plus the €9,000 we agreed on Friday in there also? But that even still leaves a lot of money.

We look forward to getting your final accounting. In the meantime I would be grateful if you could confirm the tax free element of the sale in relation to Sheila and just for my own peace of mind look at the other figure. Thank you again. Blessings, love and peace, Finbarr."

39. This email was in turn responded to by Ms. Lucey in a letter of 23rd October, 2006 sent by email. It is only necessary to quote some parts of the letter. It said:-

"I do recall that on Friday you made mention of Ms. Walshe being entitled to €8,000 tax free and it did not ring a bell immediately as I would obviously have to check the matter. We subsequently decided that perhaps the €800,000 to which you referred was the payment on account which had been made.

I am pleased to be in a position to confirm to both yourself and Ms. Walshe that you are quite correct in relation to the 16% life interest portion, i.e., that under the tax planning arrangement, the 16% in respect of Ms. Walshe's life interest will not be taxable insofar as Ms. Walshe is concerned, albeit that they are only receiving 25¼% each, it is the remaindermen who will have to pay capital gains tax on 33¼% each according to the advices of Kenneally and Twomey.

As you are aware, I did a very rough calculation and did not advert to the fact that the capital gains tax divide is different to the parties percentages ... as you will note from the foregoing, the figure of €259,000 agreed on 13th October is an entirely separate issue and agreement having been reached, I am giving instructions to my solicitors who in turn will instruct my counsel and I am notifying the remaindermen that agreement has been reached on these aspects of matters which will mean that the cost drawers will not have to draw up bills of costs and which will also mean that they, the remaindermen will not be seeking reimbursement from Ms. Walshe in relation to waste."

40. The appendix to the report also contains an email of 13th October, 2009 from Mr. Ross to Ms. Lucey as follows:-

"I called your office today to know when Ms. Walshe's cheque would be mailed. As you are aware she is 89 years old and when someone tells her they are going to do something on a specific date she expects this to happen or she starts fretting that it is lost in the mail, etc.

I would greatly appreciate it if you could email as to when it will be mailed so that I can contact her and give her specific information and put her mind to rest so that she can sleep and stop worrying."

There are a number of other enclosures to the report but I do not think that it is necessary or relevant to set them out for the purposes of this judgment, save to note that in October 2009 a cheque for €218,780.42 was sent to Ms. Walshe by Ms. Lucey together with a statement of account in relation to the sale of the Oranmore property.

41. In the course of his evidence Mr. Sheehan went through this report in considerable detail and confirmed its contents. He was then taken through the response made by Ms. Lucey before the SDT and to extracts from Messrs. A.&L. Goodbody's files.

42. Insofar as the written response from Ms. Lucey was concerned it ran to some 30 pages, 13 of which dealt with the €259,000 settlement concerning Ms. Sheila Walshe. It is not necessary to reproduce it in full for the purposes of this judgment.

43. It dealt with the background to the estate of the late Ms. Dillon and the affairs of Ms. Sheila Walshe. It is said that she had not paid any income tax for decades and was concerned that this would come to light when she would have to file tax returns in relation to her income after her inheritance from the late Ms. Dillon. To facilitate Ms. Walshe in sorting out these problems a strategy was agreed whereby Ms. Lucey would delay the issue of the English grant of probate with a view to delaying the valuation date. She says that for some inexplicable reason in the autumn of 1996 Ms. Walshe went to A.&L. Goodbody and they went to the Law Society making a complaint against her shortly after they had been appointed. Ms. Lucey perceived the kernel of the entire matter as being the fact that there was an agreed strategy to delay the English grant and she said that she wrote a full explanation at the outset pointing this out. In her dealings with the Law Society she felt as if she were batting her head off a stone wall. She described the obtaining of possession and the sale of the Oranmore property. It was her strategy to obtain possession before attempting to sell and she was successful in that regard.

44. She pointed out that unknown to her Ms. Walshe instituted proceedings against her in 2001 and further proceedings in 2003. She described her appearance before Kearns J. and how those proceedings came to an end.

45. She indicated that when the initial complaint was made to the Law Society her response to that should have brought the matter to an end. She felt that the Law Society's investigation was biased and unfair and that she should be entitled to bring a claim against Ms. Walshe for defamation, the damage to her business and the stress and trauma which she suffered. She said that she felt that she could probably seek indemnity or contribution from Goodbodys. She could not see how she could bring the claim against Ms. Walshe but when she (Ms. Walshe) instituted proceedings against her she felt that she could deal with the matter by way of a counterclaim. It was her intention to counterclaim, particularly when the third proceeding was instituted. She described the various attempts to settle the court proceedings and ultimately the meeting which took place at which the agreement to transfer the moneys from the client account to her own account was arrived at. This is what she said:-

"When Mr. Ross arrived in the office in October 2006 he confirmed that he and Ms. Walshe had taken advice. I told him that my all-in figure to cover damages and outlays was €250,000 on the basis of 50% liability. He immediately agreed to same and I realised that he had anticipated that the figure would be much greater. I then mentioned to him that given that they were claiming that they had got bad advice from Goodbodys I should really be reimbursed in respect of the fees which I had paid to Goodbodys in a sum of approximately €18,000. He, on the basis that I had indicated that I felt the Law Society was 50% responsible indicated that Ms. Walshe would pay €259,000, i.e., the original €250,000 plus €9,000 moiety of the fees which I had paid to Goodbodys and we shook hands on that. He indicated that the settlement figure due to me should be paid from moneys which were in the client account to Ms. Walshe's credit. We then went through figures in general terms as to what further sums might be due to Ms. Walshe.

I told him that Ms. Walshe should instruct Goodbodys as they would have to serve notice of discontinuance in relation to the extant proceedings. Ultimately, on 15th March, 2007 Goodbodys wrote referring to the settlement and advising that they had been instructed to discontinue the above-mentioned proceedings. In point of fact they had a wrong record number and should have referred to two sets of proceedings. They indicated that they would arrange to strike out the proceedings with no orders as to costs. In fact they apparently have struck out one set of proceedings but not the other."

46. When I asked Mr. Sheehan if he had been given any indication as to where the figure of quarter of a million (€250,000) came from in this context he said that Ms. Lucey said to him that that was 50% of the liability that she was due with a further €250,000 from the Law Society. It is thus clear that she valued her claim at €500,000. Insofar as that was concerned he said:-

"I was gobsmacked, President, I was absolutely gobsmacked by the half a million and especially coming out of a probate file. A probate file should only have payments out to the beneficiaries and a payment for fees. There should not be a payment to the solicitor."

47. In cross-examination Mr. Sheehan accepted that Ms. Lucey had been found not guilty of a number of allegations made against her before the SDT. He also accepted that as far back as 2001 Ms. Lucey suggested to him that she was contemplating proceedings arising out of the way she felt she had been treated by Ms. Walshe and the Law Society. His advice to her was not to "draw hassle on herself".

48. Mr. Sheehan was also taken in some detail through the *Solicitors Accounts Regulations*. He also accepted that again in 2004 there was a record of Ms. Lucey's intention to make a claim against Ms. Walshe.

Mr. Stephen Hamilton

49. The next witness called on behalf of the Law Society was Mr. Stephen Hamilton who was at all relevant times a member of the firm of A.&L. Goodbody working in the private client department. He and a number of other solicitors in that firm worked on the instructions of Ms. Walshe. He gave evidence of the instructions which he received and also of the fact that Mr. Ross was introduced into the whole business by Ms. Walshe. He said of Ms. Walshe that she was an elderly lady but quite clear in her head in any dealings that he had with her. He said that she was always very clear and wrote very good letters. However she was in financial need. Ms. Dillon had died in 1995 and towards the end of November 1996 she was concerned about when in her lifetime she might see the moneys coming to her from her friend's estate. He expressed the view that very often a beneficiary needs representation to help in their dealings with the solicitor acting for the executor or acting in the administration of the estate. It was in that context that Ms. Walshe approached A.&L. Goodbodys. He identified Ms. Walshe as quite clearly his client. However, insofar as Ms. Lucey's role was concerned he said:-

"Well that solicitor/executor is a multi-faceted role. I mean they are both acting in the administration of the estate, they are acting for themselves, they are acting for the beneficiaries under the will. So, I suppose in the broader sense the beneficiaries under the will are also clients of the solicitor/executor."

He gave evidence that in 2006 he was not aware of the settlement with Ms. Lucey which had been negotiated through Mr. Ross. He was, however, made aware of it subsequently. Settlement negotiations, he said had been going on for more than two years but unbeknownst to him which was "a bit surprising".

50. Mr. Hamilton then went through the various sets of proceedings which had been instituted all of which had been commenced on the advice of counsel. The first was in 2001 and involved a claim alleging negligence. A second claim was initiated in the same year but not served until 2003. This was an application seeking the appointment of an administrator pursuant to s.27(4) of the Succession Act 1965. The third proceedings dated 3rd November, 2003 which sought to revoke the grant of probate have already been mentioned in this judgment. The first set of proceedings were never pursued. The second were the subject of an order by Kearns J., in effect striking them out and the third were the subject of a contested application for an adjournment but ultimately were not proceeded with either. He accepted that the motivation behind the issue of the third set of proceedings was to put some pressure on Ms. Lucey. In cross-examination the following was put to him:-

"The net effect of this is that you were suing Ms. Lucey, putting her at risk of damage to her reputation, putting her at risk in costs, under circumstances where you were doing so, not because you think you have a case against her, but because you want to keep up some pressure for negotiation purposes on her?"

Answer: Well that was after everything else had failed, all attempted meetings to move matters on. I mean this is five, six years into the whole matter."

It was again put to him that he was:-

"Issuing proceedings against Ms. Lucey, putting her at risk of damage to her reputation, putting her at the risk of costs, not because you think she has done anything wrong, but because you want to have some negotiating position?"

Answer: Well you could take that view. I mean I'm not a litigation solicitor and litigation tactics would not be what I would be strong on."

51. He also gave evidence of being informed of the settlement that had been reached after the event. However, he had no concern about Ms. Walshe's ability to give instructions or to settle claims. He never had any such concerns and accepted that her letters were clear. She was more like a woman ten or fifteen years younger than she actually was. He was content that she could make her own decisions. He was not involved in the settlement and was not aware of its terms until after the event. However, he said, that if he had been made aware of the fact of the €250,000 being paid to Ms. Lucey he would have been very surprised by it. He made it clear that Ms. Lucey never brought any counterclaim on the basis that any of the proceedings were unmeritorious or vexatious or indeed any other basis. No proposed counterclaim was ever brought to his or his firm's attention. In his closing evidence he repeated that he was not told about the settlement meeting that was to take place and did not participate in it. It was subsequent to those events that he became aware of them and the terms agreed.

52. The third witness called by the Law Society was Ms. Rita Garvey.

Ms. Rita Garvey

53. Ms. Garvey was called as an expert witness on behalf of the Law Society.

54. She is a partner in the firm of A.C. Forde & Co., solicitors. She qualified as a solicitor in 1996 and is a member of the Society of Trust and Estate Practitioners in Ireland as well as being an associate of the Institute of Taxation in Ireland.

55. For the last eighteen years she has worked in the areas of conveyancing, landlord and tenant, wills, trust and probate work. She has considerable experience in dealing with the administration of estates and advising private clients generally. She also gave evidence before the SDT.

56. She prepared a written report which was placed before that tribunal and this court in which it is clear she examined all of the relevant documents and also the written responses that had been furnished by Ms. Lucey. She also prepared and placed before the SDT a supplemental opinion as a result of some further documents being placed before her.

57. As a result of submissions which were made it is clear that some elements of the opinion expressed before the SDT and reiterated in evidence before me no longer remain part of the case. Accordingly, paragraphs 48 through 56 of her opinion no longer need to be considered for the purposes of this judgment. Paragraphs 48 and 49 dealt with a possible conflict of interest in respect of the remaindermen. Paragraphs 50 through 56 dealt principally with a contention that Ms. Lucey failed to advise Ms. Walshe to obtain independent legal advice in respect of the withdrawal of the €259,000 from the client account.

58. Ms. Garvey was of opinion that Ms. Lucey acted improperly in withdrawing the sum of €259,000 from the client account. That was improper in circumstances where she held those funds in her capacity as a solicitor in trust for beneficiaries and not for the purpose of meeting any personal claim she might decide to take herself. She perceived a conflict of interest with the beneficiaries when dealing with the assets of the estate and believed Ms. Lucey should not have continued to act. She went on to say that it is standard practice in dealing with the administration of an estate that a solicitor would prepare a detailed account of the assets and

liabilities. No such accounts had been prepared save for the statement attached to a letter to Ms. Walshe in 2009 and that only dealt with the distribution of a moiety of one asset in the estate. Ms. Garvey was of opinion that these funds were paid out by Ms. Lucey to herself in the absence of any authority to do so from Ms. Walshe. She believed that Ms. Lucey as an experienced solicitor ought to have been aware that neither Mr. Ross or Ms. Walshe were in a position to reach an agreement with her in respect of an unproven claim particularly in circumstances where they had not taken adequate independent advice or had sufficient information available to them in October 2006 to take such advice. They had no information in respect of the claim of Ms. Lucey and had no information on the funds which she held in her client account.

59. Ms. Garvey was of opinion that a solicitor must always act in an objective and transparent way and maintain the highest level of standards in particular when dealing with clients' moneys. To do otherwise would be to bring the solicitors' profession into disrepute. She did not believe that Ms. Lucey acted objectively in reaching the "settlement" with Mr. Ross in October 2006 nor did she behave objectively and transparently in taking the payment of €259,000 from the client account some months later.

60. She referred to the Guide to Professional Conduct which sets out the functions of a solicitor and expressed the view that when a solicitor acts in disregard of the interests of a client it brings the profession into disrepute. She took the view that Ms. Lucey negotiated a settlement of an unproven claim in favour of herself personally and paid it out to herself at a time when she held funds in a fiduciary capacity as solicitor.

61. Insofar as the conflict of interest that arose is concerned she pointed out that it is the duty of a solicitor to act at all times in the best interests of their client. Section 3.1 of the Law Society Guide recites that:

"Where a conflict of interest exists between the interests of a solicitor and those of his client the solicitor must not act for the client. If a conflict arises during the course of a transaction, the solicitor must cease to act for that client."

Other statements from the guide refer to the obligation to observe independence, confidentiality and to avoid situations of conflict of interest. Furthermore, solicitors are obliged to retain their professional independence and their ability to advise their clients fearlessly and objectively.

62. Ms. Garvey was of the view that Ms. Lucey did not retain professional independence and could not advise objectively in relation to the funds which she held in circumstances where she intended to seek to make a claim for a substantial amount of money from the beneficiaries or any of them.

63. Ms. Garvey was also of the opinion that a duty owed to Ms. Walshe in view of her position as a client, having regard to the statutory definition of that term in s.2 of the Solicitors Amendment Act 1994 and in view of her age was also breached by Ms. Lucey.

64. The definition of "client" in s.2 of the 1994 Act is stated as:-

"includes the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm has been instructed; and includes a beneficiary to an estate under a will, intestacy or trust".

Ms. Garvey was of the view that having regard to that definition Ms. Walshe was a client of Ms. Lucey and that she ought not to have continued to act for her because she had a conflict of interest by so doing. She was also of opinion, that having regard to the advanced age of Ms. Walshe, a prudent solicitor would have been conscious of that and of her capacity and background. Ms. Walshe's background was that she had been a nun, a teacher and a librarian and would not have had experience in dealing with the administration of an estate or High Court proceedings or the negotiation of settlements. She accepted that age did not necessarily indicate incapacity but she called attention to s.2.2 of the Guide to Professional Conduct which states:-

"The relationship between a solicitor and a client is a fiduciary relationship. Accordingly, in dealing with any client a solicitor should be cognisant of the inexperience, youth, age, want of education, lack of knowledge or business acumen of the client".

65. Ms. Garvey was of opinion that Ms. Lucey failed to treat Ms. Walshe as a vulnerable client and to ensure that she had objective and independent advice available to her at all times in relation to all matters.

66. Ms. Garvey was also of opinion that Ms. Lucey was wrong to act as she did on foot of the letter of 20th April, 2006 from Ms. Walshe indicating that Mr. Ross had full permission to speak to her and to make any decisions on her behalf. In this regard she called attention to s.2.1 of the Guide to Professional Conduct which states:

"A solicitor should take instructions directly from the client. When instructions are first received from a third party the instructions should be confirmed directly with the client."

In this case she was of opinion that Ms. Lucey did not take instructions directly from Ms. Walshe and / or the solicitors on record for her but simply agreed with Mr. Ross with regard to the drawdown of the €259,000. She also pointed out, as is the fact, that Ms. Lucey withdrew the sum from the client account in purported settlement of proceedings which were not in being.

67. In the course of cross-examination Ms. Garvey had put to her the expert view that would subsequently be given in evidence by Mr. Terence Casey, solicitor on behalf of Ms. Lucey. Some concessions were made, for example, the original view expressed by Ms. Garvey was that Ms. Lucey acted improperly in withdrawing €259,000 from the client account in circumstances where she held them not merely as solicitor but also in trust for the beneficiaries. She clarified the position that her view was confined to Ms. Lucey acting simply as solicitor and not as a trustee for the beneficiaries. But by and large she maintained her views.

Helen Lucey

68. Ms. Lucey has spent practically all her professional life working in the firm of Marshall & Macaulay. She joined that firm on 1st March, 1976 and has been there ever since. The practice was established over 100 years ago and she described it as being "a very old style practice". She explained that the late Naomi Dillon had a very special relationship with the practice and was known to it from the time that Ms. Dillon was a child. She explained how the late Ms. Dillon was the sister of the Bursar in Mount Anville Convent where the late Sheila Walshe was a sister in religion. She wished to become laicised and when that occurred she lived with the late Ms. Dillon as her companion. She gave lengthy testimony concerning the whole background to the making of the will by Ms. Dillon and her efforts in administering that estate.

69. Following the death of Ms. Dillon she extracted a grant of probate to her Irish estate in August of 1995. The following month she met with Ms. Walshe who *inter alia* related the problem which she had with the Revenue Commissioners to Ms. Lucey. She had not apparently paid any income tax for the preceding eighteen years. She also discussed the Garda station at Oranmore which was at that time in "appalling condition".

70. The upshot of this discussion was an agreement that the extraction of a grant of probate to the English estate would be deferred.

71. By September 1996 Ms. Walshe's problems with the Revenue Commissioners had been resolved and on 14th September of that year Ms. Lucey received a letter from her which *inter alia* said:

"As you know all my affairs, you will know how urgent it is for me to receive whatever moneys are coming to me from Ms. Dillon's will".

Shortly thereafter Ms. Walshe apparently consulted A.& L. Goodbody's and on 8th October, 1996 Ms. Lucey received the first letter from that firm. Ms. Lucey responded to this in December 1996 pointing out that matters had been proceeding in the administration of the estate in accordance with the specific agreement of Ms. Walshe. On the very same day, namely 10th December, 1996 a complaint was made by Ms. Walshe through A.& L. Goodbody to the Law Society. She told me she was "horrendously upset" about it.

72. She realised that the letter which she had received from Ms. Walshe in September was what she described as a "goodbye letter". She was shocked at this and that Ms. Walshe had gone to Goodbody's and to the Law Society. Meanwhile Ms. Lucey continued to deal with the Garda station at Oranmore. It became necessary to take steps to seek to recover vacant possession of it involving service of a notice to quit followed by High Court proceedings with a notice of intention to claim relief being served by the respondent. Resolution of these issues came about in 2002. As I have already acknowledged, the way in which Ms. Lucey dealt with this hugely enhanced the value of the Garda station from an original value of less than €100,000 to €4.5 million. Vacant possession was not actually recovered until 2005.

73. During this time the three sets of proceedings were instituted against her by Ms. Walshe. Two commenced in 2001 but she did not become aware of them until 2003. They were served that year. One was to remove her from administering the estate and cancelling the grant and the other was an action alleging breach of trust and negligence. The action to remove her she described as the "binned proceedings" which came before the court in the summer of 2003. They were dismissed in July of that year with the costs being held over to await administration proceedings which commenced in November 2003.

74. Ms. Lucey's attitude to all of these proceedings was that they were without merit or justification. She believed they were being used to force her to do certain things and to put pressure on her.

75. I was given a good deal of evidence of the various toings and froings concerning these proceedings, meetings with counsel, and attempted settlements, the precise details of which are not necessary for the purposes of this judgment.

76. The complaint made in December 1996 to the Law Society was not dealt with by the SDT until 2004. The substantive complaints against Ms. Lucey were dismissed but she was censured and fined €5,000 in respect of a failure to deal with correspondence from the Law Society and to return documents. All of the complaints concerning the alleged delay in the administration of the estate were dismissed.

77. It was during the course of the hearings of that year that she had a meeting with Mr. Finbarr Ross on 16th June at her offices. She kept an attendance of that meeting and gave extensive evidence in respect of it. Mr. Ross was known to Ms. Lucey because she met him at a meeting on 10th March, 2004 to discuss the Oranmore property and tax planning. Mr. Hamilton of A.&L. Goodbody, counsel for Ms. Walshe and Ms. Lucey attended that meeting. Mr. Ross was there with the A.&L. Goodbody team. He was presented to Ms. Lucey as Ms. Walshe's financial advisor at that March 2004 meeting.

Meeting of 16th June, 2004

78. Two days beforehand Mr. Ross telephoned Ms. Lucey's office. He made an appointment to see her on a personal matter. The meeting opened by him giving her his card which read "Celtic Mystical Journeys". He then confessed embarrassment because the appointment was not in relation to a personal matter at all but rather he was there to speak to her on behalf of Ms. Walshe. He knew that such an approach was a bit unorthodox. He said he wanted to talk to her "as two sensible people". Only Ms. Lucey and himself knew that he was there.

79. Ms. Lucey wisely stopped him at that stage and said she would need to think about matters from an ethical point of view. She asked him to remain quiet for a short time while she considered the matter.

80. Having done so she told him that she felt she could speak to him in her capacity as trustee in relation to the estate. It would not be in order for her to speak in relation to the court proceedings if she were the solicitor acting for the other party to the proceedings without getting clearance from Goodbody's. However as she was the actual client then she did not believe there was anything to prevent such a meeting. On that basis she told him that he could proceed.

81. He proceeded to recount a lengthy history of his involvement with Ms. Walshe since she first asked him to advise her eighteen months beforehand. He expressed the view that things had in his and Ms. Walshe's opinion got out of control and Ms. Walshe wanted to sort them out. Ms. Lucey agreed that they had got out of control but said it was not her fault that that was so. He said there was fault on both sides. He apologised about a meeting which had taken place in March 2004. There was then a lengthy discussion about all aspects of the matter. This was gone into in considerable detail in evidence by Ms. Lucey. Coming towards the end of the meeting he inquired about the status of the three sets of proceedings and the costs involved. Ms. Lucey told him:-

"... that I had flagged that I would not stand back from proceedings and proceedings had been threatened repeatedly and I had made the position clear, that she (Ms. Walshe) had gone in with her eyes open in relation to the question of costs furthermore I intended counterclaiming and it would be a matter for her as to whether she joined other parties or sought indemnity contribution".

82. When asked about this counterclaim in evidence Ms. Lucey said that she felt she was entitled to make a claim in defamation because of the damage done to her practice and her name because of these actions taken by Ms. Walshe. She had also incurred a lot of fees. She also "had a feeling at the time that there was some collusion in relation to the orders that were being made ... by the Law Society". She felt that no heed was being paid to what she was saying to the Law Society and that the matter had not been

properly investigated. She felt that her letters had not been read.

83. At the conclusion of the meeting Ms. Lucey indicated that she would bring its fact to the attention of her solicitor and counsel. There was no question of the meeting taking place on a without prejudice basis and he indicated that he in turn would get on to Goodbody's about it.

84. At the conclusion of that meeting Ms. Lucey assumed that Ms. Walshe would get to hear of this as indeed would Goodbody's.

85. Later in 2004 and into 2005 there were further efforts largely initiated by Goodbody's to try and settle the issues that had arisen.

86. Throughout all of this time Ms. Lucey did not regard Ms. Walshe as her client. Once she received the letter from Goodbody's in September 1996 she regarded her business relationship with Ms. Walshe as being at an end. Once the "farewell letter" was received that brought an end to the solicitor/client relationship as far as Ms. Lucey was concerned. She did, however, feel that she had a duty to the estate and a duty to the late Ms. Dillon to carry out her wishes.

87. The question of Ms. Lucey's perception of the capacity in which she was holding the money was discussed. She felt that she held it on behalf of the people:-

"who were entitled to the extent of their shares, the tax would have to be paid because the tax planning had to go through and there was difficulty about that."

She saw herself as owing a duty to all such persons but with no greater obligation to Ms. Walshe than to anybody else. She said:-

"I was a trustee and I should look after people, you know, look after the trust money. That wasn't trust money of course at that point in time. But, no, I didn't, I felt no extra obligation to Ms. Walshe there was no reason why I should".

The letter of April 2006

88. In April 2006 Ms. Lucey received a handwritten letter from Ms. Walshe. It read insofar as it is relevant:-

"Dear Ms. Lucey,

Thank you for the letter of 18th April and for the enclosure. I appreciate all you are doing.

I am sure Finbarr will be in touch with you. I want you to know that Finbarr Ross has my full permission to speak to you and make any decisions on my behalf."

The letter goes on to discuss a leaking roof.

89. Although Ms. Lucey had been introduced to Mr. Ross as Ms. Walshe's financial advisor this was the first occasion on which she had received a letter indicating that he had Ms. Walshe's full permission to speak to her and to make any decisions on her behalf.

The meeting of 13th May, 2006

90. In the month following that letter, a meeting took place between Mr. Ross and Ms. Lucey at the Muckcross Park Hotel in Killarney. The meeting was on 13th May, 2006 which was a Saturday.

91. At that meeting Mr. Ross indicated that Ms. Walshe wished to settle the High Court proceedings.

92. Ms. Lucey's response was to indicate that she had no difficulty in letting the cases run in which case she would counterclaim successfully and costs would follow the event. He inquired of her as to whether she would be prepared to consider settling the proceedings. She told him that if she were to do so it would be by way of a substantial payment of damages in respect of her counterclaim and that she obviously would have to be paid outlays in respect of the defence of the proceedings. Mr. Ross asked her for a "ball park figure". She told him that she would not have a figure in mind and that she would have to take advice. She also said that if he were negotiating on Ms. Walshe's behalf he really needed to take legal advice as well. She suggested that he should discuss the position with A.&L. Goodbody's and make sure that he had all of the documentation. She also suggested to him that he should consider taking independent legal advice as well because Goodbody's might well have a conflict of interest given allegations made by Mr. Ross about that firm having given bad advice. She expected that Mr. Ross would take advice from Goodbody's. Mr. Ross said he had some friends in Dublin who were solicitors and he would consult with them. That brought the meeting to an end.

93. Subsequent to that meeting Ms. Lucey spoke to Mr. Noel McCarthy, her financial advisor who was familiar with what had been going on. She described him as an astute businessman who fully appreciated that she had been maligned and defamed before her colleagues and the remaindermen in the estate and that she had suffered considerable stress and trauma. He had at one stage said to her that "mud sticks". She felt that any figure that she might mention in any subsequent meeting with Mr. Ross should represent only 50% of that to which she might be entitled because she was always of the opinion that the claim should probably be against the Law Society as well as Ms. Walshe. The Law Society in turn might seek indemnity/contribution from Goodbody's. She was also alert to the costs involved.

94. Ms. Lucey confirmed to me that insofar as her counterclaims were concerned they were in respect of defamation to her name and reputation, aggravation that she had suffered and costs. Insofar as any aggravation was concerned she confirmed to me that she needed no medical attention of any sort in respect of it. Even though the experience was stressful it did not necessitate even a consultation with her general practitioner. As to the costs which she had incurred she thought it was somewhere between €100,000 – €150,000 all in. In fairness she said she did not have an actual calculation done but it would probably be somewhere between those figures. The following day in evidence at trial she admitted that that figure was "absolutely absurd" and the real figure was a miniscule fraction of the figure quoted.

The settlement meeting

95. The third and final meeting at which settlement talks occurred directly with Mr. Ross was on 13th October, 2006. Ms. Lucey was in the habit of keeping very full attendance notes. Indeed, some might say that they were too detailed by times. Rather surprisingly, in respect of this all important meeting, Ms. Lucey told me that she did not create an attendance note for it.

96. The meeting began with the arrival of Mr. Ross in her office where he confirmed that he and Ms. Walshe had taken advice. Ms.

Lucey then told him that her all-in settlement figure to cover damages and outlay was €250,000 on the basis of 50% liability. Her evidence was that Mr. Ross immediately agreed to pay that sum and she took the view that he had anticipated that her figure would be much greater. She went on to tell Mr. Ross that Ms. Walshe had got bad advice from Goodbody's and that she should be reimbursed in respect of the fees which she had paid to that firm in a sum of approximately €18,000. She took the view that the Law Society was 50% responsible and therefore she indicated that Ms. Walshe should pay her €259,000. Her evidence was Mr. Ross told her that the settlement figure should be paid from the moneys that were in the client account to Ms. Walshe's credit. At the conclusion of that meeting she thought that Mr. Ross and through him Ms. Walshe would go and talk to Goodbody's about what had occurred. She said *"I would have told him to go – I told him to go back to Goodbody's"*. She possibly mentioned to him that they would have to serve notices of discontinuance of all the proceedings, being three in number.

97. As it happened notice of discontinuance was served only in respect of one case but the other cases were not pursued. In March of the following year (2007) a letter was received from Messrs. Goodbody's indicating that they had been instructed to discontinue one of the sets of proceedings further to a settlement reached between Ms. Lucey and Ms. Walshe. They sought a letter of consent to the discontinuance of the proceedings so that they could be struck out with no order as to costs.

98. On foot of this verbal agreement with Mr. Ross and having received the letter from A.&L. Goodbody in March 2007 the €259,000 was transferred from the client account to Ms. Lucey.

99. Ms. Walshe died in February of 2011. Ms. Lucey met with her once subsequent to the settlement before her death and the relationship at that meeting she described as civil and not as cordial as it had been previously. No complaint was made by Ms. Walshe then or at any other time about the payment of €259,000 to Ms. Lucey.

100. When it was specifically put to Ms. Lucey that all of this was highly inappropriate in that she was both executor and solicitor in respect of the proceeds of sale of Oranmore she said that she did not regard Ms. Walshe as being her client. In relation to her continued involvement in the conveyancing it was a matter of convenience. She also said that insofar as competence or ability on the part of Ms. Walshe to comprehend was concerned she had no concerns at all.

101. On 16th October, 2006 Mr. Ross sent an email seeking clarification as to how the €259,000 was arrived at. On 23rd October, 2006 Ms. Lucey wrote to Mr. Ross advising him that the settlement was separate to her work on behalf of the estate. No other explanation was offered.

102. It is interesting that on that same day (23rd October, 2006) Ms. Walshe wrote to A.&L. Goodbody stating that she had reached settlement with Ms. Lucey regarding the estate. Despite further correspondence before the actual Notice of Discontinuance was served in March 2007 none set out the amount of money involved.

103. The first time that Ms. Walshe appears to have received any form of written notification from Ms. Lucey concerning this settlement was three years later under cover of a letter of 14th October, 2009. That was when the final account was being furnished. Insofar as this settlement was concerned it is dealt with in a single line as "settlement of three sets of High Court proceedings €259,000". No further details are provided.

104. At the commencement of her cross examination Ms. Lucey seemed to suggest that the agreement which she came to with Mr. Ross was not a concluded one. She said it did not conclude until after she had heard from Goodbody's. She did not hear from Goodbody's until she got the letter of March 2007 asking for consent to the discontinuance of one of the sets of proceedings.

105. It is clear from the evidence that Ms. Lucey valued her claim against both Ms. Walshe, A.&L. Goodbody's and the Law Society as being of the order of €½ million (€500,000). She attributed half of the liability to the Law Society and thus concluded that the value of her claim against Ms. Walshe was €250,000. In cross examination she was asked about how she arrived at that figure. She recounted for the first time that she had taken what she called a "Capel Street opinion" prior to entering into the negotiations with Mr. Ross. That was a phrase with which I was unfamiliar. So also was counsel for the Law Society but Ms. Lucey's own counsel had apparently heard the phrase quite independently of these proceedings. It is apparently a casual opinion that a barrister may be asked to express without anything in writing. To quote Ms. Lucey:-

"It is an expression a barrister had used to me. It is one that is very casual, you don't write and get a written opinion, you just discuss, that is my understanding of it. I presume it comes from barristers meeting on Capel Street or something, I do not know".

She told me that she had received such an opinion from a counsel who was not named but whom she retained quite frequently. He had indicated to her that she was entitled to be compensated for giving up the right to bring proceedings. However when I asked her (day 4, p.54) if she had asked the legal team she had retained, either solicitor or counsel to advise her on her claim/contribution, she said *"I had mentioned it and of course they considered it would be a bit foolhardy to take on"*. Her 'Capel Street' advisor felt she was also entitled to be reimbursed in respect of sums paid to counsel. They ultimately transpired to amount to no more than €12,500. She was then pressed on how the rest of her alleged counterclaim was made up. Three heads were identified. First was for defamation. Second was for loss of profits in the running of her practice and third was for stress and anxiety. This counterclaim for the €250,000 had of course figured at various stages before the SDT and indeed the Regulation of Practice Committee. She was reminded of what was said by the Chairman of the Regulation of Practice Committee on 8th December, 2011. This is what is recorded:-

"The Chairman stated that this was totally bizarre. He stated that it was beyond belief and that the committee was sitting in incredulity and the whole matter was absolutely bizarre. He stated that the committee wanted a credible explanation and an explanation that the solicitor had not profited from the estate. Ms. Liston (Ms. Lucey's then solicitor) stated that the settlement was for €259,000. The Chairman asked were they legal costs. Ms. Liston stated that they were not. Ms. Liston stated that they were for defamation. The Chairman asked if she issued proceedings. Ms. Liston said that it was her intention."

Ms. Lucey confirmed that this record was correct.

106. Later in the cross examination a further statement made by her then solicitor and recorded in the minutes of the Regulation of Practice Committee was put to Ms. Lucey. The statement was this:-

"Ms. Liston stated that she believed it was a settlement of the counterclaim that was proposed to be taken by the solicitor, and for what happened the solicitor and the Law Society and in the Disciplinary Tribunal. She stated that the solicitor intended to join these two bodies in her action against the estate. The committee member, Mr. O'Sullivan,

asked how the payment was categorised. Ms. Liston stated she is calling it damages. Mr. O'Sullivan asked was it accepted that it was a unilateral award. The solicitor said yes it was."

Whilst this elicited a lengthy response from Ms. Lucey I do not believe that she controverted this account of the matter in any way. The only other part of the cross examination of Ms. Lucey that is necessary to refer to specifically is that which asked her for her views concerning Mr. Ross. At question 216 on the fourth day of the hearing she was asked:-

"Q.: And you also had, secondly, a concern in relation to Mr. Finbarr Ross because you knew the reputation he had.

A.: Exactly, I was wary of him, yes."

I do not believe that it is necessary to reproduce in detail any other elements of the cross examination of Ms. Lucey. I will be basing my conclusions upon her entire testimony in the witness box. I turn now to a consideration of the evidence of the final witness in the case, Mr. Terence Casey. He was called as an expert witness on behalf of Ms. Lucey.

Mr. Terence Casey

107. Mr. Casey qualified as a solicitor in 1975 and was in general practice in Killarney for approximately 40 years. He is now retired. He has extensive experience in probate and the administration of estates.

108. Mr. Casey expressed the view that section 2 of the 1994 Act did not apply when Ms. Lucey negotiated the settlement with Mr. Ross because she had been either discharged or dismissed or even sacked as acting as solicitor for Ms. Walshe long before that date. He was of the view that section 2 ceased to have any application. Furthermore, Ms. Walshe had also instructed her solicitors to issue High Court proceedings against Ms. Lucey to have her discharged from acting as executrix and trustee of the will of Ms. Dillon who was in fact the client of Ms. Lucey. Those proceedings, he said, were ruled in the High Court in favour of Ms. Lucey and therefore she was entitled to continue in her role as executrix and trustee.

109. He expressed the opinion that the relationship of solicitor and client between Ms. Lucey and Ms. Walshe no longer existed. Rather, that relationship existed between Ms. Walshe and Messrs. A.&L. Goodbody and it was that firm that had responsibility for advising Ms. Walshe. He did, however, express the view that the relationship of client/solicitor under s.2 of the Act continued to exist between Ms. Lucey and the other beneficiaries as they had not disputed her role nor had they opted to get alternative solicitors. He therefore disagreed with the opinion expressed by Ms. Garvey. He also expressed the opinion that Ms. Lucey did not deduct the €259,000 in her favour without agreement or without having advised Ms. Walshe to take the advice of her own solicitor. He said that that was evident by the letter written by A.&L. Goodbody of 15th March, 2007. He expressed the view that there was no dishonesty on the part of Ms. Lucey and he expressed disagreement with the number of the contentions which were contained in Mr. Sheehan's report.

110. He also gave interesting evidence in cross examination concerning the unusual nature of this entire transaction.

111. At the conclusion of his evidence Mr. Casey confirmed that he was of opinion that Ms. Lucey was acting as solicitor having carriage of sale she was also responsible to Ms. Walshe for Ms. Walshe's share of the proceeds. So, as solicitor having carriage of sale, her brief was to complete the sale and also to see to the distribution of the proceeds of sale to those entitled. But she had no duty over and above that in his opinion.

112. On one further matter of fact Mr. Casey described Ms. Lucey's office as a "shambles". He said there were papers everywhere and he did not know how she finds anything. He described it as unbelievable. This is reminiscent of the description given in Mr. Sheehan's report.

Conclusions

113. There are elements of the settlement which was negotiated between Ms. Lucey and Mr. Ross which are disquieting. That Ms. Lucey felt aggrieved at having been the subject of three sets of proceedings and a complaint to the Law Society I have no doubt. She believed she had been wronged. I find it extraordinary that she believed that she had a cause of action against both Ms. Walshe and the Law Society with a total value of €½ million (€500,000). This cause of action was in her own mind to be mounted by means of a counterclaim to one of the three sets of proceedings commenced against her by Ms. Walshe. As far as I can ascertain nothing was ever put in writing to give notice to either Ms. Walshe or the Law Society of this claim.

114. Insofar as she sought any formal legal advice from the legal team she had instructed in her defence of the proceedings taken against her she was told the claim would be "*a bit foolhardy to take on*". This was hardly a ringing endorsement of her alleged claim worth €500,000.

115. No other legal advice apart from a "Capel Street opinion" from an unnamed barrister appears to have ever been taken by Ms. Lucey concerning this very substantial claim which she believed she had.

116. She knew that Messrs. A.&L. Goodbody were acting for Ms. Walshe but the settlement negotiations were not conducted with that firm. It had no knowledge of them. Instead she dealt face to face with Mr. Finbarr Ross admittedly on foot of the letter which she had received from Ms. Walshe. However, she was also aware of Mr. Ross's background and indicated that she would have been "wary" of him. Notwithstanding all of that she proceeded to negotiate and settle her alleged counterclaim for half of its full value.

117. Despite the habit of Ms. Lucey to take detailed and extremely lengthy attendances no such attendance was taken of the crucial settlement meeting.

118. The meeting itself seemed to have been highly unusual. She simply nominated the figure that she wanted and Mr. Ross readily agreed to it. No haggling, no negotiation of any sort took place. Subsequent to the meeting she made no effort to contact A.&L. Goodbody although she did tell Mr. Ross that he should do so and likewise inform Ms. Walshe. The first letter which she received from A.&L. Goodbody by reference to the settlement was that of March of the following year which recounted no details whatsoever of the settlement.

119. Having obtained her €250,000 from Ms. Walshe on foot of this strange negotiation she took no steps whatsoever to pursue her claim for the other €250,000 against the Law Society. There is no evidence that Ms. Lucey ever wrote to her solicitor Ms. Frances Twomey who represented her in the litigation commenced by A.&L. Goodbody informing her of the settlement.

120. Her own counsel accepts the unorthodox nature of this entire transaction. But he points out that unorthodoxy does not

necessarily mean that she is guilty of professional misconduct. It is, therefore, in the light of his submissions, necessary to look at the capacity in which she was acting at the time when she negotiated this settlement.

121. The SDT considered Ms. Lucey to have had a duty to Ms. Walshe at the time when this settlement was negotiated in circumstances where Ms. Walshe was a beneficiary under the will in respect of which Ms. Lucey was executor and trustee. It is to be noted that Ms. Lucey was given extensive powers as trustee concerning such matters as postponement of sales. The SDT took the view that the relationship and position of the parties was such as to give rise to obligations on the part of Ms. Lucey. It also took the view that Ms. Lucey was in a "type of ascendancy" (*sic*) over Ms. Walshe. In that regard it is to be noted that although Ms. Walshe was elderly, nobody had any doubt about her capacity or competence in making her own decisions. Accordingly, I attach little significance to her chronological age.

122. The crucial issue which falls for determination is the capacity in which the moneys were held by Ms. Lucey and whether or not there was a conflict of interest at the time that the settlement was negotiated between her and Mr. Ross.

123. Ms. Garvey was clearly of the view that Ms. Lucey continued to act for Ms. Walshe and that there was a conflict of interest. She was pressed on this in cross examination and it is instructive to reproduce some elements of that. Notwithstanding the fact that Messrs. A.&L. Goodbody were acting for Ms. Walshe, Ms. Garvey took the view that the relationship of solicitor and client continued insofar as Ms. Lucey had possession of the purchase moneys which she was holding for the beneficiaries of the estate.

124. Counsel for Ms. Lucey asked the following question (Day 3, p.50).

"Q. So if there was a solicitor/client relationship here, the extent of it was simply in respect of holding the money and then distributing it, isn't that correct?"

A. She was holding the money, yes.

Q. Yeah.

A. Are you talking about the conflict of interest?

Q231. I am. And I'm suggesting to you that there isn't really a conflict of interest properly so seen here, that this is more complex than simply saying that there is a solicitor/client relationship and, therefore, there was a conflict.

A. But there is a conflict. If you're holding money for somebody else and you want some of it. Of course there's a conflict.

Q232 But – alright. But is there actually here, Ms. Garvey? Because you're not advising them on the merits as to how they came by the money, isn't that correct, you just have the money, isn't that right?

A. But you're their solicitor.

Q. In respect of the receipt of that money.

A. Yes.

Q. Alright.

A. So you have to give it to them.

Q235 And is it fair to say that you were acting more as caretaker of the funds under those circumstances than you were really any solicitor/client relationship?

A. No, you know, you're acting as their solicitor, holding those funds for them in your client account. I don't think you can lessen that obligation."

125. The views of Mr. Casey were to the effect that once it became clear that Ms. Walshe had sued Ms. Lucey there was no longer a solicitor/client relationship there. It was put to Ms. Garvey that he would say that once she went to a different firm of solicitors there was no longer a solicitor/client relationship. Her answer was *"But that doesn't affect the conflict of interest, does it?"*

Later in the cross examination I asked Ms. Garvey the following:

"Q.239 ... I wasn't clear as to your view in response to that question as to whether the relationship of solicitor and client continues to exist at least insofar as the purchase moneys were concerned?"

A. Oh I do believe that the solicitor and client relationship exists when you're holding purchase moneys for somebody you've just sold a property for.

President: And you put it very pithily a few questions earlier when you said that if you're holding money and you have a claim on it then you have a conflict of interest.

A. Absolutely.

President: That's one aspect. But notwithstanding that answer, you're of the view that the relationship of solicitor and client continues to exist for as long as the solicitor is holding purchase moneys on behalf, in this case, of Ms. Walshe.

A. Yes."

This is clear evidence on the part of Ms. Garvey that Ms. Lucey was acting as solicitor and held the moneys in that capacity. It is also her view that there was a conflict of interest in her so doing when she had in contemplation a counterclaim which she satisfied in part against those very moneys.

126. I accept the evidence of Ms. Garvey. Insofar as it conflicts with that of Mr. Casey I prefer that of Ms. Garvey. Her views are, in my view, more in accord with the statutory provisions, the Account Regulations, the Guide to Professional Conduct and indeed common sense. I believe Ms. Lucey continued as solicitor and there was a conflict of interest. The fact that A.&L. Goodbody were acting whilst Ms. Lucey continued to administer the estate and had the proceeds of sale of the principal asset in her client account did not, to quote Ms. Garvey, "lessen her obligation". As she said "you are acting as their solicitor holding those funds for them in your client account. I don't think you can lessen that obligation". I believe Ms. Garvey correctly characterised the obligation and duties on Ms. Lucey. She was the solicitor for Ms. Walshe at least insofar as the purchase moneys were concerned. A conflict of interest arose in her deducting moneys from the proceeds of sale in favour of herself on foot of her purported counterclaim. As Ms. Garvey put it, if one is holding money belonging to somebody else and one is asserting a claim against that other person then a clear conflict of interest arises. If one seeks to satisfy such claim out of those moneys it must be done in a proper and transparent way. What occurred here fell very far short of that.

127. Ms. Garvey's view is supported by the relevant statutory provisions.

128. The legal definition of a "client" is provided in s.2 of the Solicitors (Amendment) Act 1994 which I have already set out in para. 64.

129. A similar definition is to be found in s.2 of the Solicitors Accounts Regulations 2001 which provides that:-

"client includes the personal representatives of a client and any person on whose behalf the person who gave or is giving instructions was or is acting in relation to any matter in which a solicitor or his or her firm had been or is instructed; and includes a beneficiary to an estate under a will, intestacy or trust; and includes any person on whose behalf a solicitor receives, holds, controls or pays clients' moneys in the course of and arising from his practice as a solicitor". (My emphasis)

130. In *Condon v. Law Society* [2010] IEHC 52 Kearns P. said of those definitions:-

"The definition of 'client' in s.2 of the Act of 1994 not only addresses the usual position of a person who by giving instructions to a solicitor becomes a 'client', but, much more significantly, extends the definition to include a beneficiary to an estate under a will, intestacy or trust. This provision, in my view, is deliberately framed to cover situations where solicitors are acting in the dual capacity of executors and solicitors, because, absent such a provision, a definition confined to the 'normal client' would mean that an executor solicitor could not be held accountable to beneficiaries in respect of services which he provides to them. As has been pointed out, the logic of the applicant's argument would lead to the consequence that beneficiaries would never have recourse to a solicitor's professional body in situations where he provided inadequate services. This in my view would entirely defeat the whole point of defining beneficiaries as clients in s.2 of the 1994 Act."

Later he said:-

"I think the wider definition of 'client' as contained in s.2 must necessarily be the correct one. The sole purpose of the work which the applicant was doing was to benefit the beneficiaries. In my view the clear and obvious purpose of s.2 - and the fact that a beneficiary is therein defined as a client - is to ensure that a beneficiary obtains all the protections under the Act which any other client of a solicitor would obtain. I am also satisfied that the purpose of the 1994 Act is not to create two classes of clients, namely those who can make a complaint about inadequate services and those who cannot make a complaint about inadequate services.

It would be absurd to have a situation whereby the beneficiaries would be entitled to have the applicant removed as executor on application to the court, but were powerless to advance a complaint to the solicitor's professional body. They are the persons for whose benefit the professional services are provided. In my view, on the interaction of s.2 and s.8, the definition of client contained in s.2 must prevail. I simply do not accept that the Act is designed to ensure that where a solicitor is acting both as executor of the will and solicitor that he is in consequence to enjoy an immunity from the provisions of s.8 of the Act of 1994."

131. In *Sandys & Another v. The Law Society of Ireland* [2016] IECA 395 Finlay Geoghegan J. said:-

"I am not intending to express any view adverse to the conclusion reached by Kearns P. in Condon that a beneficiary under a will may be a 'client' for the purposes of s.8 of the 1994 Act. It is also the position that no objection has been pursued by the appellants to the respondent entertaining the complaint by the Society (which must be as a client) under s.9 of the 1994 Act. I cannot, however, agree that the definition of 'client' in s.2 means - as stated by Kearns P. in Condon - that 'a beneficiary obtains all the protections under the Act which any other client of a solicitor would obtain'. After all, s.2 expressly provides that the definition is to apply "unless the context otherwise requires" and had the Oireachtas intended that a beneficiary should be equated with the position of a 'client' for all purposes, this critical proviso would have been unnecessary."

I do not read this view of the Court of Appeal as a finding that a beneficiary under a will is not a "client" for the purposes of the 1994 Act or that the provision would not be applicable on the facts of this case.

132. These statutory provisions, in my view, support the opinion of Ms. Garvey since Ms. Walshe was a beneficiary under the will of Ms. Dillon and was therefore a "client" within that statutory meaning. This is not just a technical point because Ms. Lucey continued to act in a very real way as Ms. Walshe's solicitor long after A.&L. Goodbody's appearance on the scene. For example, there was a completion notice served dated 14th April, 2005 describing "Sheila Walshe, Valerie Blackster and Patricia Joy McElligott - vendors". That completion notice was signed by Ms. Lucey and she described herself as "solicitor for and on behalf of the vendors" one of whom was, of course, Ms. Walshe. This arose in the context of evidence being given before me when I posed the following question to Ms. Lucey.

"President: Well, if it looks like a solicitor and it describes itself as a solicitor and it charges a fee like a solicitor is it not a solicitor?"

Ms. Lucey: Yes, a solicitor in the conveyancing sense, yes".

133. Even later on 12th August, 2005 there was a letter from Ms. Lucey seeking instructions from Ms. Walshe concerning a question

of interest to be charged. That clearly demonstrates, that in seeking instructions notwithstanding all that had taken place, the relationship of solicitor and client continued and was intended to continue in the mind of Ms. Lucey.

134. As Ms. Lucey was acting as solicitor to Ms. Walshe she was bound by the terms of the Solicitors Accounts Regulations 2001. Paragraph 7(1) of those regulations sets out the circumstances in which a solicitor may withdraw funds from a client account. None of those are applicable here. Paragraph 7(2) provides that it is a breach of the Regulations for (a) a debit balance to arise on any client's ledger account in respect of any client of a solicitor, other than a debit balance which is totally offset by a credit balance arising on another client's ledger account in respect of the same client and (b) for a solicitor to discharge personal or office expenditure from client account. Paragraph 8(4) prohibits a solicitor from withdrawing moneys from a client account other than moneys permitted by and in accordance with regulation 7, unless the Society, upon application by the solicitor, gives directions in writing in respect of such other withdrawal. The withdrawal in this case is not one permitted under paragraph 7 of the regulations and therefore was a breach having regard to the provisions of paragraph 8(4).

135. I finally turn to the €½ million claim of Ms. Lucey. 50% of it was attributed by her to a counterclaim that she believed she had against Ms. Walshe. She may very well have had the basis for such a claim concerning the allegations made against her. It must be borne in mind that the principal allegations of the first complaint made against her were not upheld by the Law Society. The three sets of proceedings appear to have been brought with a view to moving matters on rather than without any real belief in the basis of the claim.

136. Mr. Hamilton said on the second day of the hearing at question 280:

"Q. And is it not, and again, correct me if I am wrong, if this is an unfair paraphrase, but it is not suggested that Ms. Lucey had done anything wrong it is just suggested 'we need to have something in being to put some pressure on?'"

A: But isn't that exactly my point exactly? The whole essence of this was to get Ms. Dillon's estate administered, not to be pandering on and going round in circles. We wanted to get to the end."

Mr. Hamilton was pressed on this when he was asked the question which I have already reproduced at para 50 of this judgment but which I set forth again:-

"Q. You are issuing proceedings against Ms. Lucey putting her at risk of damage to her reputation, putting her at the risk of cost, not because you think she has done anything wrong, but because you want to have some negotiating position?"

A: Well you could take that view. I mean I am not a litigation solicitor and litigation tactics would not be what I would be strong on."

There may well have been no real basis for these claims. They undoubtedly caused distress and cost to Ms. Lucey. But as against that Ms. Lucey never issued any proceedings against the Law Society nor made any counterclaim in the proceedings instituted against her. She did not open any counterclaim file. Her own legal team insofar as they were asked to advise her on the claim told her it would be a bit foolhardy to take on. She did not take any counsels opinion on her case apart from the "Capel Street opinion". Insofar as she suffered stress she needed no medical attention for it. Insofar as she took any semi formal professional advice it appears to have been from Mr. McCarthy, the accountant. Even then the conversations appear to have been general. How was the figure of €½ million arrived at? It appears to have been fixed by Ms. Lucey herself with little input or advice from anyone else.

137. By behaving as she did Ms. Lucey succeeded in receiving damages for half the value of her perceived claim without having even to write a letter of claim. She appears to have foregone the other half of her claim worth €250,000 against the Law Society. Not even a letter before action was sent to it. In addition, settlement negotiations took place, as I have described, with the dubious figure of Mr. Ross sitting in the negotiating seat. She made no contemporaneous note of the agreement whatsoever. Given that Ms. Lucey indicated that she was wary of him it is more than surprising that in dealing with this "dodgy character" she departed from her normal practice of most detailed attendance notes being prepared.

138. It has also to be said that the value of this alleged claim was extremely high. I find the valuation of €500,000 very hard to justify or accept and yet in the negotiations no bargaining of any sort took place. Ms. Lucey simply nominated the figure and Mr. Ross agreed to pay it.

139. Why did she assume that Mr. Ross would contact A.&L. Goodbody? Why did she not as a matter of professional prudence and courtesy at least have her solicitor contact them? Why not follow the normal practice instead of the extraordinary one which was followed?

140. Ms. Lucey was as a matter of law acting as solicitor for Ms. Walshe when she deducted the moneys from the funds under her control. If that was to be done it had, as Ms. Garvey attested, to be done in a proper and transparent way. It was neither. She was not correct or justified in making the deduction where there was a clear breach of her obligations to Ms. Walshe. As the SDT said *"it is difficult to envisage a more obvious conflict of interest in that what was now in issue was Ms. Lucey prioritising her own interests over and above"* the interests of Ms. Walshe. The matter was made worse because of the unorthodox elements of the whole affair and that Ms. Lucey was, on her own admission, dealing with Mr. Ross a person of whom she was wary.

141. In my view the SDT was amply justified in coming to the conclusions which it did and consequently insofar as this aspect of the matter is concerned I dismiss Ms. Lucey's appeal.

The remaining complaints

A. Cornelius Buckley

142. It is possible to deal with the remaining complaints in a much shorter compass. Ms. Lucey was found by the Tribunal to have failed to distribute moneys in the sum of €21,128 to charities nominated by Cornelius Buckley deceased in a timely manner. A bequest of €5,000 ought to have been given to the Sisters of Marie Repatrice in Limerick. The balance ought to have been given to an appropriate charity for the education of African priests.

143. Ms. Lucey accepted that there was "quite a substantial delay" on her part in distributing these funds. Mr. Sheehan had put the delay at about eight years. Ms. Lucey did not accept that and gave an explanation as to why the period of years should be less. She was unable to specify with precision what the actual period should be but she did accept that it was a period of years. She told me

that she subsequently visited the convent and spoke with the sisters, apologised and paid interest on the bequest.

144. Whilst that approach by Ms. Lucey is something that can be taken into account on the question of penalty, I am satisfied that the SDT was correct in making a finding of professional misconduct against her having regard to the very lengthy delay of a number of years duration.

B. Joan Barrett

145. The finding against Ms. Lucey was that she failed to pay charitable bequests of a client Joan Barrett totalling €389,000 in a timely manner. The delay in this case was much less than in the Buckley case. About a year was involved and that was not disputed by Ms. Lucey. Whilst an explanation was proffered by her it did not, to my mind, amount to circumstances which excused this delay and I uphold the SDT's finding in this regard also.

C. Failure to stamp deeds

146. Four specific instances relating to clients Windle, Scanlon, Daly and O'Mahoney were involved here. The oldest of these cases dated from 2005 in the case of the O'Mahoney client. The delay in that case was six years which was the longest of the four. She said that each of the cases had some bit of a problem that caused a delay and in one instance the Revenue Commissioners lost the deed. However, she actually paid the penalties on all four because it was easier than arguing. She felt that in at least two of the four cases there might have been a reason why it was somebody else's fault but she nonetheless "took it on the chin". I uphold the SDT findings.

D. Eileen Donegan and John Creed

147. The finding here was that she failed to distribute clients' funds amounting to €93,765 and €45,251 in these related files.

148. Without going into all of the details of the explanation given I have come to the conclusion that insofar as this matter is concerned there is a reasonable doubt as to her guilt. I find the explanation given sufficient so as not to justify the finding of guilt on the criminal standard of proof. I allow this appeal.

E. Michael Brown

149. This was a finding that she failed to distribute funds in the amount of €14,666 the proceeds of the sale of a milk quota in February 2005. Mr. Sheehan took the view that there was no evidence that any work had been done to progress the matter or to distribute the funds. I accept the evidence which Ms. Lucey gave concerning the difficulty that she had with this client and the problem that she encountered in trying to get him to cooperate. The client had a drink problem and his wife in any event preferred that the money would not be paid out to him because he would dispose of it in a certain way. I find this explanation to be plausible and accordingly I allow the appeal in respect of this finding.

F. James Keane

150. In this case Ms. Lucey was found to have failed to pay over moneys in the amount of €20,546 retained on account in respect of a former client James Keane deceased even though the file was transferred to another solicitor in December 2007. Again this case had a complex background and the amount was retained by Ms. Lucey in respect of an undertaking. She was dealing with land transactions in respect of Mr. Keane when he went to another solicitor. It was not clear to her whether she had an outstanding undertaking or not. She wrote to his new solicitor on two occasions asking him to clarify the matter but by 2011 he had not done so. Ultimately, she sent the new solicitor the money. Despite all of this complication she accepted that it was her job to see to the distribution of the money but all of this took quite some time. In this case I believe that the finding of professional misconduct was made out although background circumstances will have to be taken into account as mitigation on the question of penalty.

Disposal

151. For the reasons which I have given above I dismiss Ms. Lucey's main appeal and uphold the finding of the SDT. Insofar as the other findings of the SDT are concerned I have already indicated my view in respect of them.

152. It was agreed that this phase of this protracted case would only deal with the question of liability. I will now fix a date for a hearing on the question of penalty.