No. 7135/1996

IN THE MATTER OF STEPHEN BROOKHOUSE RICHARDS, solicitor

- AND –

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. L N Gilford (in the chair)
Miss T Cullen
Mrs. C Pickering

Date of Hearing: 1st June 2000

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors by Geoffrey Williams, solicitor, formerly of 36 West Bute Street, Cardiff CF1 5UA, but subsequently of 2A Churchill Way, Cardiff CF1 4DW on 23rd May 1996, that Stephen Brookhouse Richards, solicitor of Kensington, London W8 might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

At the opening of the hearing, the applicant, with the agreement of the respondent, sought the consent of the Tribunal to his withdrawing two of the three allegations made in the statement which accompanied the application. The Tribunal consented having being told that the applicant was not able to call any evidence in support of those allegations.

The remaining allegation made against the respondent was that he had been guilty of conduct unbefitting a solicitor in that he had drawn monies from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS, on 1st June 2000, when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff

CF1 4DW appeared as the applicant and the respondent was represented by Ronald Thwaites of Queens Counsel instructed by Messrs Arnold Rosen & Co of 199 Piccadilly, London W1V 9LE.

The evidence before the Tribunal included the admissions of the respondent and exhibit "SBR 1", a letter addressed by Arnold Rosen & Co to Geoffrey Williams, dated 19th May 2000. The Tribunal had before it a bundle of testimonials in support of the respondent handed in immediately before the hearing.

At the conclusion of the hearing following the announcement of the Tribunal's order an application was made to the Tribunal that the filing of its order with The Law Society be suspended pending the outcome of an appeal to the Divisional Court by the respondent. The Tribunal refused that application, giving as its reason that it was not the Tribunal's usual practice to accede to such a request. The respondent was not practising at the time of the hearing and there was no need for him to get his affairs and clients' business in order. Further the respondent had admitted the allegation and was aware of the gravity of the matters alleged against him.

At the conclusion of the hearing the Tribunal ordered that the respondent Stephen Brookhouse Richards, solicitor of Kensington, London W8 be struck off the Roll of solicitors, and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,525.00 inclusive.

Because the application had been made to the Tribunal in May 1996, the Tribunal here sets out the chronology provided by the applicant when opening the case on 1st June 2000.

Chronology

1991	The respondent was sole principal of the firm Francis & Francis at Wembley.
July 1995	The Investigation Accountant of the Law Society inspected the respondent's books of account.
1st August 1995	The date of the Investigation Accountant's Report which was exhibited to the application to the Tribunal and formed the basis of the application before the Tribunal.
11th August 1995	The Law Society intervened into the respondent's practice.
15th August 1995	The Law Society agreed that the respondent's practice (of Francis & Francis) might be disposed of to Mr T.
25th March 1996	Mr T took into partnership Mr D L. Mr T was at the time effectively running the intervention.
23rd May 1996	The disciplinary proceedings issued in the Tribunal.
31st October 1996	Was the date when the matter was listed for hearing before the Tribunal. The matter was adjourned on that date. The Tribunal issued a memorandum of adjournment recording that the respondent had sought discovery of certain documents. The discovery had been

made perfectly properly but in a piecemeal fashion. The respondent had obtained, and passed over, pass-books, ledger accounts and a great deal of other financial information. Mr Rosen, representing the respondent required to see certain actual client files but because of The Law Society's intervention into the respondent's practice it had proved difficult to locate them. The files had been tracked down a week or two before the interlocutory hearing and it was hoped the formal discovery might be concluded at an early date. There had been a great deal of co-operation on both sides and it was felt that no order was required in that respect as the Rules made clear provision as to the relevant procedures. The Tribunal had been invited to adjourn the matter and list it for an effective hearing. It was anticipated that the substantive hearing would take the best part of one day and Mr Rosen anticipated that the matter would be ready to proceed if listed on the first open date after 1st February 1997. There had been difficulties caused by The Law Society's intervention into the respondent's practice and difficulties in establishing precisely what the position was with regard to payments made by The Law Society's Compensation Fund. It was recognised that at the time the respondent was making efforts to repay and he asserted that he should be dealt with when the progress he had made in making repayment could be placed before the Tribunal. The respondent's efforts included payments made by him and through litigation. The respondent wished to establish the culpability of his former client Mr C and to obtain monies due from him.

13th March 1997 — Mr Rosen set out details for his client's defence and made request for discovery of documents which had been very difficult to deal with. The Tribunal had adjourned the matter again in 1997 because of those difficulties. Mr T had ceased to be a partner in the firm of Francis & Francis and had become a consultant, and then left the firm and went abroad. There had been dispute between Mr T and the respondent. The respondent had not been able to get an account of monies which Mr T was holding for the respondent.

Late in 1988/1999 — Mr Rosen indicated that the respondent was pursuing litigation which was coming to a head in August 1999 and until then the position would not have crystalised.

At a date in 1999 — There was a further intervention into the practice of Francis & Francis, so that in essence the intervenor had become the subject of an intervention. As a result Mr T's Practising Certificate had been suspended and indeed Mr Williams had issued disciplinary proceedings against Mr T. Extreme difficulties had been experienced in obtaining copies of files and accounting documents.

1st April 1999 — There had been another disposal of the firm of Francis & Francis.

7th October 1999 — The matter had again come before the Tribunal for Directions. Mr Williams had explained to the Tribunal that the gravamen of the case against the respondent was that cheques had been passed to the

respondent who had paid them into his client account and he had paid monies out against them when they had not been met. That had left a large gap. The respondent asserted that he had not been dishonest and had made substantial efforts to put that money back.

The Tribunal had been apprised of the fact that The Law Society intervened into the respondent's practice and the practice had been disposed of to another firm of solicitors. Thereafter that solicitor himself had been subject to an intervention by The Law Society and the firm who had been appointed to act on The Law Society's behalf in that intervention itself subsequently had been subject to an intervention. It was against that background that the respondent had been making efforts to put right what had gone wrong. It was reported that the respondent was at that time involved in litigation which had reached an advanced stage. Mr Rosen was then holding funds on behalf of the respondent which he hoped would be adequate to repay the whole of the cost to the profession to date. It had not been possible to quantify such cost.

The parties had agreed to Directions. There was no doubt that the situation was desperately complicated. Mr Williams agreed that the respondent would have been in danger of suffering serious injustice if the matter had been heard at an earlier stage.

The Tribunal made the Directions agreed between the parties and said it would list the case for hearing on the basis that it would take a whole day, on a day mutually convenient to the parties after 1st February 2000.

24th February 2000 — The matter was listed by the Tribunal for the substantive hearing. By letter of 9th February 2000, Mr Williams notified the Clerk that the respondent was not currently in practice – there was no question of any risk to the public. He agreed with Mr Rosen that it was crucial to the proper determination of the case that precisely how much if anything remained outstanding to The Law Society's Compensation Fund. It was regretted that that question would not be resolved prior to 24th February 2000 but it was hoped that a final decision could be made within the ensuing two months. It was not a case in which there was any criticism by the parties of each other in relation to the lapse of time. It was Mr Williams's considered view that a Tribunal would not be able to do justice to the respondent on 24th February 2000. In the interest of fairness to the respondent Mr Williams joined in Mr Rosen's adjournment application.

April 2000 — The respondent succeeded in his litigation against Mr C and the Court made a consent order that Mr C should pay £312,000.00 to the respondent by instalments on a weekly basis together with his costs.

1st June 2000 — The matter listed again for the substantive hearing on this day, which was effective despite the unavailability of detailed figures from The Law Society's Compensation Fund.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The respondent, born in 1941, was admitted as a solicitor in 1966. At the material times he practised as a solicitor on his own account under the style of Francis & Francis at 795 Harrow Road, Wembley, Middlesex HA0 2LR. He ceased so to practise in or about August 1995.

2. Following notice duly given to the respondent an inspection of his books of account was carried out by the Investigation Accountant of The Law Society. The inspection began on 18th July 1995. The Investigation Accountant's Report, dated 1st August 1995 was before the Tribunal.

3. The Report demonstrated that the books of account were not in compliance with the Solicitors Accounts Rules, as they contained numerous improper inter-client ledger transfers made at the instigation of the respondent.

4. A list of liabilities to clients as at 30th June 1995, was produced for inspection and totalled £721,978.26 after adjustments. The items were in agreement with the balances shown in the clients' ledger but did not include further liabilities of £134,779.22, which were not shown by the books. A comparison of the total liabilities with cash available in client bank and building society accounts at that date after allowance for uncleared items, revealed a cash shortage in the sum of the further liabilities, £134,779.22.

5. The Investigation Accountant went on to report upon other matters headed "Shortage on Client Bank Account as at 7th July 1993 - £491,061.00".

6. The respondent acted for Mr C in connection with his affairs generally and specifically in relation to three companies, F E, E H D and M A I Corp PLC. Each of the clients' ledger accounts reviewed in respect of those companies showed numerous receipts from Mr C and his companies and numerous client bank account cheque payments to Mr C and his companies.

7. The Investigation Accountant discussed those matters with the respondent who agreed that there were no specific transactions he was dealing with on behalf of Mr C, but he was merely receiving and paying monies into and out of client bank account as a favour to Mr C as Mr C needed to show activity on his bank account and needed client account cheques for certain transactions.

8. The Investigation Accountant produced a summary of the client account receipts and payments on behalf of Mr C which is set out below:

Client Ledger Title & No		Period Covered	Total Receipts £	Total Receipts £
Firstview Estates	FIR1	19.05.93 – 30.06.93	1,401,800.00	1,401,800.00
Firstview Estates	FIR2	26.05.93 – 30.06.93	1,408,912.00	1,408,912.00
Firstview Estates	FIR3	17.06.93 – 30.06.93	3,182,300.00	3,182,300.00
Firstview Estates	FIR4	20.06.93 – 06.07.93	3,385,689.00	3,876,750.00
Metropolitan AIC	MET1	30.04.93 – 30.06.93	2,355,000.00	2,355,000.00
Eton House Developments Ltd				

	ETO1	28.10.92 – 30.06.93	1,541,650.00	1,541,650.00
E H Developments Ltd	ETO2	14.05.93 – 30.06.93	1,285,000.00	1,285,000.00
E H Developments Ltd	ETO3	02.06.93 – 06.07.93	1,085,212.00	1,085,212.00
E H Developments Ltd	ETO4	07.06.93 – 30.06.93	3,888,237.00	3,885,237.00
			£19,530,800.00	£20,021,861.00

Excess Payments £491,061.00

9. Those receipts and payments resulted in a shortage on the client ledger account combined of Mr C of £491,061.00 as at 7th July 1993, owing to cheques received from Mr C and lodged in client bank account not having being met on presentation.

10. The resultant shortage was reduced to £134,779.22 by the respondent introducing funds into client bank account during the period between 30th June 1993 and 30th June 1995 (total sum introduced £356,281.78).

11. The Investigation Accountant went on to report that for the respondent's financial year ended 31st January 1995, an Accountant's Report filed with The Law Society showed liabilities to clients as being equalled by funds held on client bank and building society accounts at that date. No mention had been made of the shortage of £134,779.22 which had been in existence at that date.

The Submissions of the Applicant

12. The applicant placed the facts before the Tribunal and in his submission the question of honesty or dishonesty remained entirely a matter for the Tribunal. Submissions had been made on behalf of the respondent that he had not been dishonest and the Tribunal would be referred to the bundle of written testimonials in support of the respondent.

13. At the material times cheques totalling nearly £28,000.00 had been paid in and out of the respondent's client account at the behest of Mr C. The shortfall on client account had arisen when the respondent had paid monies out to Mr C against cheques paid in which subsequently were dishonoured. The applicant accepted that the respondent had made dramatic efforts to repay.

14. The respondent first became aware of the difficulty in July 1993. Because the respondent continued to run his practice as a solicitor it was inevitable that he had utilised other clients' money when making payments out of client account to Mr C or his companies. Those payments had been made as the result of a scheme apparently to demonstrate activity on Mr C's bank account. The respondent should have had nothing to do with that scheme.

15. The applicant accepted that there was no professional conduct principle which obliged a solicitor to report a shortage on his client account. A solicitor was, however, obliged to report such a matter to the Solicitors Indemnity Fund. There was of course no guarantee that that body would have indemnified the respondent as they might well successfully have argued that the payment in and out of money for the purpose of demonstrating activity on the respondent's client's bank account was not work undertaken in the normal course of a solicitor's business. It was accepted that the Solicitors Indemnity Fund might have reported the matter to The Law Society.

16. In the submission of the applicant the respondent could not properly have continued to practise as a solicitor for two years knowing that there was a large shortage upon his client bank account. Inevitably that put him in breach of the Solicitors Accounts Rules every time he wrote a cheque on client account. Practising with a large but unquantified shortfall in client funds inevitably meant that clients' monies were placed at risk.

17. An intervention by The Law Society followed the Investigation Accountant's findings. The ensuing circumstances had been outlined in the chronology presented to the Tribunal. The intervenor into the respondent's practice himself had been the subject to an intervention. The situation which ensued was described by the applicant as "a complete shambles". It was the respondent's position that if he had not been subject to an accounts inspection then he would have replaced all of the monies represented by the shortfall and very probably would not have been brought before the Tribunal.

18. Upon the first intervention into Francis & Francis a subvention grant was paid by The Law Society's Compensation Fund to Mr T the intervenor. Mr Rosen, on behalf of the respondent, had made much effort to establish how much of that money remained outstanding. Calculations had been made and Mr Rosen held in his firm's client account a sum of money sufficient to discharge the balance due to the Compensation Fund. At the time of the hearing the Compensation Fund was not in a position to confirm whether or not the sum so held was acceptable. The applicant was not able to indicate to the Tribunal that as a result of the respondent's actions there would be a loss to the solicitors' profession. It certainly was hoped that there would be no loss to the profession. In the submission of the applicant it would be right for the Tribunal to approach the matter on the basis that there would not be a loss to the profession. The settlement of the final figure might have to be dealt with in a practical rather than a precisely calculated way.

19. In the submission of the applicant the respondent had been guilty of conduct unbefitting a solicitor in that he had been guilty of serious breaches of the Solicitors Accounts Rules. He had permitted a massive shortfall to arise on his firm's client account. He had continued to practise for a considerable period of time when that shortfall was in existence. That had placed clients' funds at risk. The applicant recognised the respondent's efforts to ensure that ultimately neither the solicitors' profession nor clients of the firm would suffer any actual loss.

The Submissions of the Respondent

20. The respondent had been a scholar winning an exhibition to Oxford University where he had been a Rugby Blue. He had graduated in 1963, served his articles of clerkship with a national company's legal department leading to his admission to the Roll in 1966. After serving as an assistant solicitor he had entered into partnership in Sheffield until a growing interest in a property company took the respondent to London in the mid-1980s.

21. Following the collapse of the property market the respondent entered employment and from 1990 to 1991 worked for Mr C. Thereafter he acquired the practice of Francis & Francis, a small firm in Wembley. The respondent had grown to know Mr C well and had no doubt that he was a person of reliability and integrity. Mr C had expressed the wish to instruct Francis & Francis in connection with his own property transactions. At first no property transactions emerged. The respondent had agreed to receive cheques into his client account and to draw cheques on that client account to be paid into Mr C's

own bank account in order to demonstrate to Mr C's bankers that there was activity on his account which apparently would be to the advantage of Mr C. The respondent had been told by Mr C that other solicitors had expressed themselves to be happy to perform such a service. With hindsight, of course, the respondent had come to recognise that the wisdom of agreeing to adopt that course had to be questioned.

22. As time went by the amounts of the cheques paid in and paid out became larger. Eventually cheques paid into the respondent's client account had not been honoured but the respondent had drawn cheques against them leading to the deficit reported by the Investigation Accountant.

23. The respondent had made huge personal efforts to reduce the deficit on client account. He had got together money from all possible sources including the cashing in of a life policy. Mr C himself had undertaken to replace the money quickly and had paid some money back.

24. If the respondent had reported the situation to The Law Society and The Law Society had closed his practice there was a significant possibility that the monies would never have been paid back, at considerable loss to the solicitors' profession.

25. The respondent had in fact been in limbo for the previous five years. He had not been able to practise as a solicitor, he had made big efforts to put the money back and had encountered great difficulties in establishing what sums were owing upon the intervention. Never a day passed without the respondent thinking about the matter which had hung over his head like a Sword of Damocles for a very long time. The respondent had not disclosed his difficulties to his family or his friends. He had wished to avoid troubling his wife who enjoyed fragile health.

26. The respondent had been badly let down by a person he trusted. He had made an error of judgement in not telling The Law Society what had happened at an early stage. That position had been mitigated by the respondent's undertaking to put the money back himself. In reality he himself had been defrauded.

27. Mr C was a mercurial character. He had promised to pay back the monies – he had paid some money but eventually after being pursued through the courts he had subjected to a consent order by which he was required to pay £312,000.00 by weekly instalments over a period of eight years. The Tribunal would rightly conclude, therefore, that the deficiency very largely had been made up from the respondent's own resources.

28. The Tribunal was invited to give due weight to the written testimonials contained in the bundle before them. All persons approached willingly provided letters. All of those writing were distinguished people and were not the sort of people who would normally give references. They were people accustomed to assessing the character of others. They held the respondent in high esteem.

29. The respondent had, perhaps, been gullible and naïve. He had not perpetrated any deception but rather the deception had been practised upon him. He was professionally embarrassed. He had almost succeeded in putting back all of the monies due to client account before The Law Society's intervention into his practice. The respondent was a mature professional man whose good reputation had to be examined with care.

30. The respondent had never before appeared before his professional Disciplinary Tribunal and had hitherto led a blameless life. The Tribunal was invited to regard the respondent as a man who had suffered misfortune and not a man who had carried out any misconduct. There was no taint of dishonesty upon the respondent.

31. In view of the respondent's age he was unlikely ever again to practise as a solicitor.

32. The respondent was proud of his profession – he had been a member for thirty-five years. It was very much hoped in the extraordinary circumstances of this case that the Tribunal would be able to allow the respondent to retire with dignity and not in disgrace.

33. The respondent accepted that the use of client account to assist a client in the way that he did might well have been a cover for a money laundering operation. He accepted that in the climate which prevailed at the time of the hearing solicitors were far more sophisticated and careful in their dealings with clients' money in the knowledge of the possibility that their accounts might be used for the purpose of money laundering. That had not been a matter of general knowledge at the time when the subject matter of the allegations arose.

34. The respondent had funded his repayments to client account by the sale of a life policy, cash available in his own bank accounts and by his earnings as a solicitor.

35. A letter (referred to under the heading in the evidence as "SBR1") written by Mr Rosen, stated the following:

> "There is a need to clarify one matter contained in my last letter to you. That concerns paragraph 29 of the Accountant's Report.
>
> ....Mr Richards cannot accept the alleged shortfall of £134,779.22 referred to in paragraph 29 (*of the Investigation Accountant's Report*). He maintains that eight additional credits to those set out in paragraph 28 totalling £94,200.00 have to be put alongside the figure of £356,281.78. That makes a total of £450,481.78. That does not affect his position on culpability re the uncleared cheques drawn on client account.
>
> There was a deficit as at July 1993 of £491,061.00 because certain of Mr C's cheques failed to clear. By July 1995 he states that the deficit was only the difference between £491,061.00 and £450,481.78 = £40,579.22.
>
> Mr Richards does not and has never accepted that the work in progress figure of £6,616.00 was accurate. The amount of work in progress would have to be far greater. I have sought to deduct that figure from the sum of £40,579.22. That equals £33,963.22. Hence my offer of £35,000.00 on his behalf.
> Mr Richards understands from Mr T that the old Francis & Francis client account, at present held by the proprietor of that firm, contains over £93,000.00 of unallocated client funds.
>
> In addition the sum of £38,182.73 was paid by the Compensation Fund to Mr T when it was thought that P S was in deficit. In fact there was no deficit and the money remains in a separate building society account, unless used for some purpose by Mr T."

The Findings of the Tribunal

The Tribunal find the allegation to have been substantiated.

The members of the Tribunal recognise that there has been very great difficulty in establishing the accurate final figures, but it is clear that as a result of the respondent issuing cheques on his client account against the uncleared cheques of his client, a very large deficiency on client account was established in 1993, which continued in significant amount until the first intervention.

The members of the Tribunal consider that at best the respondent was naïve in the extreme. The Tribunal have had to consider whether in all of the circumstances the respondent has acted with the propriety, integrity and trustworthiness required of a solicitor.

Although not the subject of a formal allegation the Tribunal has taken note of the fact that the respondent continued to practise and use his client account when he was fully aware that there was a very large shortfall of clients' funds, making it inevitable that monies belonging to other clients had been used to make payments to Mr C or his companies. The respondent had been aware that the payment of monies from and into the bank account of Mr C or his companies had been intended to demonstrate activity on those accounts when in fact there was no genuine activity but money was simply being "windmilled" which fact was quite possibly disguised by the payment in of cheques drawn on a solicitor's client account. Such cheques would lend credibility to any contention by Mr C that he or his companies were trading successfully.

The Tribunal have also taken note of the fact that the respondent had apparently been entirely content to lodge with his professional regulatory body an accountant's certificate which he knew on its face inaccurately represented the true position.

By reason of the matters above, the Tribunal finds itself compelled to conclude that the respondent has not acted with probity, integrity and trustworthiness nor, of course, has he exercised a proper stewardship over clients' monies. It was right that the respondent be struck off the Roll of solicitors and the Tribunal further ordered that he should pay the applicant's costs in a fixed sum previously agreed by the respondent.

DATED this 7th day of August 2000

on behalf of the Tribunal

A N Gilford
Chairman