No. 7196/1996

IN THE MATTER OF MARTIN DOUGLAS FAIRBAIRN, solicitor

\- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Ground (in the Chair)
Mr. D W Faull
Lady Bonham Carter

Date Of Hearing: 10th March 1998

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application had been duly made on behalf of the Solicitors Complaints Bureau by David Rowland Swift then a solicitor and partner in the firm of Messrs Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead, on the 31st July 1996 that Martin Douglas Fairbairn of London SW7 might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

Andrew Christopher Graham Hopper solicitor of P O Box 7 Pontyclun, Mid Glamorgan, assumed conduct of the matter on behalf of the Office for the Supervision of Solicitors (the Office) which was the successor to the Solicitors Complaints Bureau (the Bureau).

Enquiries into the facts underlying the proceedings had continued and as a result a considerable volume of additional material was obtained by Mr Hopper. In his statement dated the 12th August 1997 the allegations made against the respondent were amended.

The amended allegations against the respondent were that the respondent had :-

(1) been guilty of conduct unbefitting a solicitor in that he failed to comply with professional undertakings;

(2) failed to comply with the Solicitors Accounts Rules 1991 in that he drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;

(3) been guilty of conduct unbefitting a solicitor in that he disposed of funds in breach of obligations which he had assumed to the providers of those funds, as to the circumstances in which the funds could be released;

(4) been guilty of conduct unbefitting a solicitor in that he failed to take any adequate or reasonable steps to ensure that the performance of his instructions did not mislead third parties;

(5) failed to comply with the Solicitors Accounts Rules 1991 in that he failed notwithstanding Rule 11(1) of the said Rules to keep his accounts at all times properly written up so as to show accurately his dealings with clients' money received, held or paid by him;

(6) been guilty of conduct unbefitting a solicitor in that he caused accounting records to be kept in a manner which was misleading;

(7) been guilty of conduct unbefitting a solicitor in that he produced to an Investigation Accountant of the Office documents purporting to record the movement of funds which were inaccurate and misleading.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 10th March 1998 when Andrew Christopher Graham Hopper solicitor of P O Box 7 Pontyclun Mid Glamorgan appeared for the applicant and the respondent did not appear and was not represented (the respondent had been represented during the course of the proceedings leading up to the hearing).

The evidence before the Tribunal included the oral evidence of Lin Kuo and David Shaw. The respondent had submitted a statement dated the 2nd March 1998 to the Tribunal and a second supplemental statement dated the 4th March 1998 had reached the Tribunal's office on the day before the hearing. In his original statement the respondent admitted allegation (1). The members of the Tribunal read the second statement before the commencement of the hearing. The statement contained certain admissions.

At the conclusion of the hearing the Tribunal ordered that the respondent Martin Douglas Fairbairn of London SW7 (formerly of London, SW7) solicitor be Struck Off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court.

The facts are set out in paragraphs 1 to 47 hereunder:-

1. The respondent, born in 1940, was admitted as a solicitor in 1963. At the material times he practised on his own account under the style of Fairbairn & Co. at Ground Floor, Knightsbridge House, 197 Knightsbridge London SW7. On the 11th June 1996 the Law Society resolved to intervene into the respondent's practice. At the time of the hearing the whereabouts of the respondent were unknown. He was thought to be in Hong Kong. He could be contacted via E Mail, which did not disclose his whereabouts.

2. Following due notice to the respondent the Investigation Accountant of the Law Society carried out an inspection of his Books of Account on the 21st May 1996. The Investigation Accountant's Report dated the 10th June 1996 was before the Tribunal.

3. The Investigation Accountant's Report revealed that the respondent's practice had been almost entirely devoted to acting for the promoters of "investment programmes" which promised substantial returns to investors. The respondent had told the Investigation Accountant that he had been involved in a number of such schemes over the previous two years and that none of the schemes had resulted in any profits for the investors, that no trading in the bank instruments had taken place and in addition a number of investors had lost their capital. The respondent himself had drafted the agreements referred to in the report, copies of which were before the Tribunal.

4. The respondent maintained the following bank accounts -

<u>Midland Bank Plc, 19 Grosvenor Place, London SW1X 7HT</u>

Clients US$ Current	37076902	29/05/96	US$1,499,838.85
Clients US$ Deposit	38021832	15/03/96	0.00
Clients Account	51464469	09/05/96	£5,000.00
Clients Moneymaster A/C	81464760	08/05/96	1.87
Office Account	61464442	23/05/96	9.24

In addition the respondent indicated that he had control over an account at Credito Subalpino Di Lugano, Via Cantonale 2, P O Box 2365, 6901 Lugano, Switzerland (CSL). It was described as clients' account number 400253 - for sub-account of G Trust Limited. The respondent contended that as at 29th May 1996 he held funds totalling US$4,225,000.00 in that account in relation to a number of "investment schemes" where he was holding investors' funds "in escrow". He did not provide evidence to the Investigation Accountant to support that contention.

5. The Investigation Accountant went on to report that the books of account were not in compliance with the Solicitors' Accounts Rules, as they contained the record of numerous improper payments made at the respondent's instigation.

6. A minimum cash shortage of US$6,092,500.00 existed on client bank accounts as at the 29th May 1996. The respondent admitted a shortage of US$1,280,000.00 to the Investigation Accountant.

7. The minimum shortage had arisen as a result of the respondent's breaches of a number of escrow and investment agreements under which he held investors' funds in trust and which he improperly disbursed.

8. The respondent told the Investigation Accountant that he acted for G Trust Limited (Mr SA) and N R D Ltd (Mr HA), the administrators, in connection with five participation agreements (investment schemes) and five escrow agreements. The respondent confirmed that he was the escrow agent provided in the participation agreement of the investment scheme and that the escrow account provided in the escrow agreement was Fairbairn & Co's US$ Client Bank Account.

9. The respondent told the Investigation Accountant that at the 29th May 1996 he had liabilities under the terms of the escrow agreements to the following investors as follows:-

Investor	Reference	See Paragraphs	Amount
G AG	GRAM-9601		US$1,250,000.00
FI SA	COV-9601	28 to 31	937,500.00
FI SA	WAL-9601	32 to 36	937,500.00
FI SA	WAL-9602	32 to 36	937,500.00
NF inc./ SS Ltd.,	KAR-9601		1,200,000.00
Total Liabilities			US$5,262,500.00

10. The respondent confirmed that during the period 27th March 1996 to 7th May 1996 he had received sums totalling US$5,262,500.00 into his firm's US$ client bank account held at Midland Bank.

11. The respondent confirmed that under the terms of the escrow agreements the solicitor might only pay out the deposit to the settlement bank against the receipt from the settlement bank of a commitment to pay directly to such distribution account from the proceeds of trades a sum equal to or greater than the sum of a demand guarantee issued by any of the top twenty five European banks in the name of the participant (investor), equivalent to 108% of the deposit and the aggregate amount of the return due to the participant, that being 100% of the deposit. The respondent told the Investigation Accountant that none of the required circumstances had transpired.

12. The respondent told the Investigation Accountant that on the 3rd April 1996 he had paid US$1,200,000.00 from those funds to Messrs Barry Phillips & Co., solicitors in connection with Mr SA's attempt to obtain a funding commitment from Barclays Bank Plc.

13. The respondent told the Investigation Accountant that that deal did not proceed and that accordingly on the 10th April 1996 he requested the funds to be transmitted to Wilson-Smith & Co., solicitors in connection with another attempt by Mr S A to obtain a funding commitment from Barclays Bank Plc. The respondent told the Investigation Accountant that that attempt had also apparently failed and that the US$1,200,000.00 had apparently been lost.

14. The respondent admitted that by the terms of the escrow agreements, he was not permitted to utilise the funds in the manner that he had done. He said that he did not have the relevant receipt in respect of the commitment but that the payment of US$1,200,000.00 was an attempt to obtain such a commitment. The respondent agreed that a resultant cash shortage of US$1,200,000.00 existed on his client bank account in respect of that matter alone. The respondent agreed that there remained a further US$4,062,500.00 to be accounted for.

15. The respondent produced a schedule headed G Trust Limited from his accounting records which purported to show a summary of the movements of funds held at CSL in Switzerland, that schedule was as follows:-

Date	Description	Amount in US$
31/12/95	Fairbairn & Co. USD Clients' A/c	1,750,000.00
12/01/96	BSS-UR-102456 (Paribas)	-150,000.00
12/01/96	VRP Ltd.	-100,000.00
18/01/96	VMG	-550,000.00
18/01/96	Fairbairn & Co. USD Clients' A/c	-100,000.00
18/01/96	G Trust Ltd: General	1,600,000.00
18/03/96	G Trust Ltd: General	550,000.00
15/04/96	Fairbairn & Co. USD Clients' A/c	962,500.00
15/04/96	F Investments	-937,500.00
21/05/96	G Trust Ltd: General	1,200,000.00
	Total	4,225,000.00

16. The respondent told the Investigation Accountant that Mr H A was the vice president designate of CSL. The Investigation Accountant noted that Mr H A was, in effect, an administrator of what the Investigation Accountant considered to be a fraudulent investment scam.

17. Upon being asked by the Investigation Accountant what prevented him from making arrangements for the funds to be returned to the UK on the basis that the money was held in an account in escrow at CSL in Switzerland on which the respondent was the sole signatory, the respondent said that he had not made arrangements for the funds to be returned to the UK but he would raise that matter with Mr HA who had told him that the funds would be paid to the investors within the ensuing seven to ten days.

18. The Investigation Accountant concluded and explained to the respondent that in the absence of any firm evidence that the respondent held US$4,062,500.00 at CSL he could only conclude that that sum together with the already admitted shortage of US$1,200,000.00 totalling US$5,262,500.00 existed as a shortage on the respondent's client bank accounts as at the 29th May 1996. The respondent agreed that if those moneys were not at CSL, then there would have been a further shortage.

19. The respondent had treated his account with CSL as having been maintained with a regulated financial institution under the supervision of the Swiss Federal Banking Commission as he believed it to be. He expressed himself devastated and mortified by the discovery that it was not so. He was also deeply embarrassed. The respondent

explained that he treated his account in that way because the allegations specifically related to the manner in which he conducted the account and recorded the entries therein. The respondent had not known that CSL was not an appropriately regulated financial institution at the relevant time.

20. The respondent genuinely believed and continued to believe that there were people who undertook business of the nature set out in the Investigation Accountant's Report. The respondent no longer believed that the man in the street was able to break into that business. It was, he said in his statement, an exclusive club with a privileged few who, not unnaturally if they were making the large profits specified, did not need to raise capital or accept funds from members of the public and only admitted newcomers as a very special personal favour to people who they deemed worthy for one reason or another.

21. The respondent's first introduction to the concept was when Mr CD, an American client, wanted the respondent's partner to investigate a proposed scheme. That particular scheme turned out to be a scam, not because of the nature of the business but because the promoters of the scheme never actually did anything other than collect and spend investors' money and clearly never intended to do anything else. The respondent had, despite his initial reticence, become convinced of the genuineness of the type of business in question, explaining that a former partner of Price Waterhouse had investigated it and had been convinced and he had been convinced of the involvement of senior members of the Swiss Government. He was then introduced to another body which amongst other things provided a very persuasive and cogently reasoned paper demonstrating that, statements of the authorities notwithstanding, there was an active market in "medium term notes" both corporate and bank issued. In his supplementary statement the respondent produced documents in support of his contention that the type of trade business undertaken did exist relating to B Finance Limited in which he was persuaded to proceed with that particular transaction by the written commitment of Barclays Bank Plc to issue a funding commitment expressly conditional upon the delivery of bank medium term notes at significantly discounted prices. The respondent took that as virtually conclusive proof that, given the right circumstances, such business could be and on occasionally was undertaken. The respondent also said that he knew of one person who was successfully enjoying the fruits of trading in bank debentures. She had become extremely wealthy and successful in that business.

22. The respondent remained of the view that the business of trading in bank-issued medium term debentures did exist. He considered that the problem was merely that it was so difficult for the man on the street to break into it that it was, for all practical purposes, impossible.

23. The respondent responded to the special reports put out by the International Chamber of Commerce as laudable attempts to prevent innocent members of the public from getting hurt. With regard to the words and expressions which Miss Kuo in her paper considered should trigger caution, the respondent set out in some detail those expressions to which she referred which could be entirely legitimate and others to which she referred which did not appear anywhere in the documents relating to the transactions with which the respondent had been concerned.

24. The respondent said that the Investigation Accountant had asserted that any person who had undertaken anything whatsoever in connection with a market in "prime bank guarantees and like instruments" was guilty of criminal deception. In response to the respondent's question as to whether the Investigation Accountant acknowledged that there could be a situation where a group of people set out together in all good faith to attempt to do the business believing that they could do it and in the end failed, the Investigation Accountant said that such a situation was impossible and there was always a fraudulent mastermind somewhere in the transaction who had set out deliberately to defraud unwary investors. The respondent vigorously disputed that statement. The respondent knew from personal experience that many good honourable and decent citizens sought to enter into a profitable investment business.

25. The respondent's "involvement" in the schemes involved only counselling, drafting and negotiating. The respondent said that at least ninety percent of the prospective transactions failed because the purported investors did not in fact have the money to invest.

26. Taking into account the overall conduct of the respondent's practice he pointed out that, apart from the funds on deposit with CSL or the funds placed with him in escrow, monies received for the purposes of investment had been refunded in full. None of such investors therefore had been defrauded.

27. The Investigation Accountant's Report went on to refer to funds paid to Messrs. Hicks Arnold solicitors in relation to a matter unconnected with that in respect of which the respondent was holding the funds employed to make that payment.

28. The respondent agreed with the Investigation Accountant that on the 27th March 1996 he had received US$1,250,000.00 from C H Limited into his Midland Bank US$ client account. H confirmed that that was in respect of ESCROW Agreement COV-9601 (F Investments SA)

29. On the 28th March 1996 the total of US$1,236,000.00 was paid to Hicks Arnold, Solicitors. The respondent said that he had used part of the US$1,250,000.00 received the day before on behalf of F Investments SA to make the payment which was not connected in any way with the affairs of the investor F Investments SA. The respondent said that the payment to Messrs. Hicks Arnold was the repayment of an earlier investor's fund. The respondent did not agree with the Investigation Accountant that the payment was improper. He contended that the funds held at CSL covered his escrow holding of US$937,500.00 (US$1,250,000.00 less US$312,500.00 repaid) re F Investments SA.

30. The Tribunal had before it copy correspondence recording dealings between the respondent and Messrs Hicks Arnold and others in relation to the transaction.

31. On the 5th December 1995 the respondent personally undertook to Messrs Hicks Arnold that he would use his best endeavours to invest funds in investment schemes and in the event of the respondent being unable to produce within a stated time a "bank endorsed irrevocable pay order" in a certain form the respondent was bound by his

undertaking to return the capital expressed to be invested to Messrs Hicks Arnold. In three separate but linked transactions the respondent thus bound himself to pay two sums of US$645,000 and one sum of US$1,000,000.00 on the "cut off date" which was to be "20 international banking days" after the receipt of the sums so "invested". It was clear from calculations undertaken by the respondent that he considered an international banking day to be one which was neither a holiday nor a Friday, Saturday or Sunday. Ms. Kuo, the Assistant Director of the International Chamber of Commerce Commercial Crime Bureau described that as "nonsense". As a result of the respondent's calculations he provided certain alternative versions of when the "cut off date" would be. His calculation was that at the latest sums would be due to be repaid within two days of Sunday 11th February on all three projects "before within and after all three projects". The respondent failed to comply with that dead-line which he had calculated and accepted when he came under ever increasing pressure to repay.

32. Copy correspondence before the Tribunal showed a variety of excuses and explanations relied upon for the delay in repayment, including a suggestion that "the removal of the ability to prove availability of the funds before the transactions in hand were complete might jeopardise the entire transaction" and subsequently that the fact that the funds were being dispatched internationally had caused some delay, but to avoid further embarrassment alternative funds were being made available. There were repeated assurances of expectations that monies would be received.

33. In a letter addressed by the respondent to Messrs Hicks Arnold under a heading "The question of Credibility" the respondent described how false statements had been made to him by CSL and in particular that CSL had maintained that US$1,500,000.00 had been returned to the respondent's client account when in fact no such payment had been made. Also that CSL had confirmed that US$3,000,000.00 had been remitted from a particular source when it had not.

34. By the 14th March 1996 Messrs Hicks Arnold were writing to the respondent expressing their concern in particularly strong terms. They made it plain that if the further co-operation of the respondent was not forthcoming they would issue a statutory demand, report matters to the police and take their complete file to the Law Society with a request that the Law Society intervene into the respondent's practice.

35. In documents concerning CSL placed before the Tribunal, CSL claimed to be " a symbol of quality and excellence in banking and financial services." It was registered as a company in Switzerland. It was not and never had been a bank.

36. The respondent agreed with the Investigation Accountant that on the 3rd April 1996 he had received a total of US$2,500,000.00 into his Midland Bank US$ Client Account. He confirmed that that was in respect of two escrow agreements numbered WAL-9601 and WAL-9602 (for F Investments SA). On the 3rd April 1996 a total of US$1,263,000.00 was paid to Messrs Hicks Arnold solicitors. The respondent admitted that payment had no connection in anyway whatsoever with the affairs of the investor, F Investments SA. The respondent told the Investigation Accountant that that payment to Messrs Hicks Arnold was in fact a repayment of an earlier investors' funds.

37. On the 3rd April 1996 US$1,210,000.00 were paid to Messrs Barry Phillips & Co. solicitors. The respondent said he had used part of the US$2,500,000.00 received that day on behalf of F Investments SA to make that payment. The respondent did not agree with the Investigation Accountant that the payment of US$1,263,000.00 was improper. He contended that funds held at CSL covered his escrow holding of US$1,875,000.00 (US$2,500,000.00 less US$625,000.00 repaid) re F Investments SA.

38. The respondent told the Investigation Accountant that he acted for C Finance Ltd the programme manager in connection with an investment scheme. The respondent said that a Mr F also represented C. The respondent had subsequent to the commencement of the investment scheme also acted for E Ltd the facilitator provided in the agreement. The respondent told the Investigation Accountant that the treasurer provided in the investment scheme agreement was a company which he controlled and of which he was the chairman. He added that the treasurers account provided in the agreement had been his firm's US$ client bank account. There were apparently two investors. The respondent agreed that by the investment agreement dated the 2nd November 1994 his duty, inter alia, as the treasurer to the scheme, had been to receive investment sums from other investors in the programme, to aggregate those sums in the treasurer's bank account and to pay into the trading account the sums due under the programme as and when they fell due. The agreement provided that the trading account was to be "an account to be opened with the bank by the programme manager in its name for the purpose of establishing and operating the programme." No such account in the name of the programme manager was ever opened.

39. In connection with another investor Mr C, the respondent acted for H Investments Limited the facilitator in connection with an investment scheme. Mr CDS and Mr F also had a connection with that company. Subsequent to the commencement of that investment scheme the respondent had also acted for E Limited. The respondent had been the solicitor provided for in the investment scheme agreement and his firm's US$ client account had been the solicitor's client account referred to in the agreement. The respondent's duty under the investment agreement which had been dated the 8th September 1994 had been to receive the investment sum and investment sums from other investors in the programme and to aggregate those sums in the client account and to pay into the deposit account the sums due under the programme as and when they fell due. The agreement provided that the deposit account was to be "an account to be opened with the bank by the facilitator in its name for the purpose of establishing the programme". The respondent agreed that no such account in the name of the facilitator was ever opened. The respondent had received no authority from the proposed investors to vary the terms of his holding of the investment sums of US$600,000.00 and US$150,000.000 respectively.

40. As at the 2nd November 1994 the respondent held, inter alia, the following investors' funds in his firm's US$ client bank account in respect of a client ledger entitled CIC Investment account which included the investment sums of both investors. US$750,000.00 had been paid in by the two investors. US$50,000.00 had been paid to Mr CD and after the credit of bank interest less charges the sum of US$703,805.97 was arrived at. The respondent did not agree that the payment of US$50,000.00 to Mr

C D was improper. He contended that that payment in cash was necessary "in order to create the ability to trade."

41. The respondent told the Investigation Accountant that on the 9th February 1995, following his retirement from his firm, he arranged for funds totalling US$754,803.96, including the US$703,805.97 referred to above, to be transferred to the US$ client bank account of Fairbairn.

42. During the period 9th February 1995 and 19th April 1995 the C I account client ledger, in the books of the firm, was charged and credited with ten receipts and payments totalling US$703,805.97 thereby reducing the balance thereon to nil. The respondent accepted that those payments were made other than to an account opened with the bank by the programme manager/ facilitator in its name for the purpose of establishing and operating the programme. Following the disappearance of Mr F, E Ltd stepped in to act as the programme manager and it was for that reason that payments had been made to E limited to facilitate the trades. The respondent accepted that no trades had in fact taken place. The respondent had accepted that the payments made from his client bank account totalling US$703,805.97 had been improper as they had not been made in accordance with the relevant agreements and he did not hold funds at the inspection date in respect of the two investors. Upon being told by the Investigation Accountant that there was therefore a minimum cash shortage of US$750,000.00 on the firm's client account at the 29th May 1996 the respondent said that he would need to take advice as to whether he was responsible in his capacity as a solicitor for the loss of US$750,000.00.

43. The respondent said that if he had refused to make payment where instructed by his clients in the discharge of their duties as the programme manager he believed that they would have been justified in reporting him for breach of the Solicitors Accounts Rules and in holding him liable in damages for the anticipated profits due under the transaction he would have frustrated.

44. He said the funds were applied in exactly the manner they would have been applied from the Company's own trading bank account. His actions implemented the intentions of all parties to the agreements within his actual implied authority. Failure to implement those intentions would in his submission have been misconduct.

45. The respondent said that the transaction failed. He had been advised that the only way success could be achieved was by opening E Limited's own approved trading account. It was upon instructions that the respondent made payment from funds in his client account.

46. The respondent acknowledged that he exercised discretion in connection with the payment of US$50,000.00 to Mr CD. He had been assured by Mr CD that the payment was not for his personal benefit but required in order to facilitate the commencement of trading. The respondent did not disbelieve him and exercised his discretion to make the payment.

47. In the matter of Mr RW involving US$80,000 the respondent told the Investigation Accountant that he had acted for AR Limited (Mr SA) the administrator in connection

with an investment scheme. The scheme provided that the respondent should hold Mr W's investment funds in escrow. As at the 21st May 1996 the respondent held US$479,883.74 in client bank account representing a part payment of Mr W's deposit in the participation (investment) agreement. The respondent had paid US$150,000.00 to Messrs. Preston-Rouse & Co., solicitors in connection with an agreement for the participation of AR Limited and G Trust Limited's participation in a "Commercial placement contract" in which Mr W was to share in the profits. The respondent told the Investigation Accountant that the deal was not to proceed, that Messrs. Preston-Rouse & Co. were holding the funds to the respondent's order and that the moneys were in the process of being returned to his firm's US$ client bank account. However a payment of US$80,000.00 had been made on the 22nd May 1996 at the respondent's instigation to SQ H Trading AB which had been charged against Mr W's funds. That payment had no connection with the affairs of Mr W. The respondent had accepted that the payment was improper and a resultant cash shortage of US$80,000.00 therefore existed on client bank account as at the 29th May 1996. The respondent contended that the shortage had been rectified since the inspection date and that he would furnish proof of that in due course. The respondent retracted his admission that at any time an improper payment or shortage on clients' account had occurred. The respondent said that he had sent the funds to Messrs. Preston-Rouse & Co. under cover of a letter confirming that they were sent against the obligation to provide a demand guarantee. The following day he received a call from a gentleman dealing with the matter at that firm advising that no guarantee would be available in that transaction. The respondent said that he immediately cancelled the transaction and the funds were returned. At the same time, Mr SA had immediately refunded the US$80,000.00 to the respondent's firm's clients' account.

The submissions of the applicant

48. The respondent was not within the jurisdiction and although a solicitor was responding to correspondence and enquiry on behalf of the respondent in reality that solicitor did not represent him but acted merely as a "post box".

49. The respondent had not challenged the documents which had been placed before the Tribunal.

50. In the submission of the applicant the respondent had absented himself and was believed most probably to be in Hong Kong. He was contactable only by E mail, which did not disclose his whereabouts.

51. The respondent had made written representations, late in the day, but he had not appeared before the Tribunal to put his explanations and submissions. In the submission of the applicant undue weight should not be placed upon the respondent's written statement and submissions. In reality the Tribunal had before it an example of what had come to be known as "prime bank instrument fraud". Fortunately such matters were a rare experience within the legal profession but inevitably when such a matter arose it was one for considerable concern. In a nutshell the fraudulent scheme was one to convince those who had more money then sense of the existence of a secret market trading financial instruments for huge rewards guaranteed to be received in an extremely short time scale.

52. In one of the transactions. which was placed before the Tribunal, an investor or victim had put up US$1,000,000 with a return guaranteed by a prime bank of US$20,000,000 within eleven months. It was said that such a profit element was capable of being generated within a period of two months. The outline of the scheme was enough to put any sensible person upon enquiry: no sensible person would be able to believe that such a scheme existed. Particularly as in any question of financial trading there was to be a profit for both parties. The question should be asked as to why should anyone wish to part with a financial project which was able to generate such a return?

53. This area of fraud had been the subject of considerable warnings issued by the Commercial Crime Bureau of the International Chamber of Commerce since 1994. Because of the publicity following upon the heels of such fraudulent schemes there had been a far greater public awareness of them. Indeed, the applicant told the Tribunal, an article had appeared in the Investors Chronicle only shortly before the hearing date which took the form of an instruction booklet on how to set up this type of fraud.

54. Solicitors were persuaded to give false credibility to a fraudulent scheme. There was no other reason why the fraudster should seek to involve a solicitor. A unique aspect of the respondent's position was that he set himself up as an expert in a field of work which simply did not exist. He attempted for two years to operate a "niche" practice to enable him to break into this spurious market of huge returns. The expertise which the respondent professed to have was outside any normal experience of legal practice - the field in which he purported to practise involved fraud from beginning to end.

55. To a certain extent the respondent had admitted that the schemes in which he had become involved were fraudulent and had invited the view that he had been naive, had been duped and was himself a victim. However he then went on to deny a number of matters.

56. In the submission of the applicant the respondent's state of mind was crucial to the guilt which he bore. It was inadequate for the respondent to suggest that he had parted with large sums of money to an organisation which he believed to be a bank. In his position as a legal advisor he should have checked first. The respondent had made a number of assertions to third parties and as a result his subsequent denials were unsustainable. In the applicant's submission the respondent was in all of the matters before the Tribunal an active co-conspirator.

57 The Tribunal was invited to discount the respondent's assertion that he had been duped and he himself had been persuaded to "put his head in a noose".

58. In the matter of the undertaking to Messrs Hicks Arnold, the respondent personally undertook to use his best endeavours to invest funds in investment schemes and in the event of the respondent being unable to produce within a stated time a "bank endorsed irrevocable pay order" in a certain form the respondent was bound by his undertaking to return the capital "invested" to Messrs. Hicks Arnold. The succeeding correspondence clearly demonstrated that the respondent failed to comply with the deadline which he had calculated and accepted and came under ever increasing

pressure to pay. The correspondence before the Tribunal revealed a variety of excuses and explanations for the delay in repayment.

59. In correspondence the respondent had eventually described how certain statements had been made to him by CSL and in particular that CSL had maintained that the US$1,500,000.00 had been returned to the respondent's client bank account when in fact no such payment had been made and that CSL had confirmed US$3,000,000.00 had been remitted from a particular source when it had not. In the submission of the applicant it was relevant to later actions of the respondent and to his expressions of confidence in CSL and the availability of funds in the control of that organisation that at March 1996 he was aware that CSL had deliberately misled him.

60. The manner in which the reassurances and promises had been made by the respondent to Messrs. Hicks Arnold had been, in the submission of the applicant, "stage managed". The Tribunal was invited to note that the respondent had said in his letter of the 26th March 1996 "the most important thing to remember about the letter is that for the lawyer to be able to write the letter at all required the completion of six hours of documentation. The fact that we have received the letter means that such has been done."

61. CSL claimed to be " a symbol of quality and excellence in banking and financial services" but although it was registered as a company in Switzerland it was not and had never been a bank. Comments by the respondent to the effect that there were funds held in his account at CSL could have been no more than the assertion that CSL owed him money. The most basic enquiries made by the respondent would have established that it was not a bank.

62. By at least the 11th March 1996 the respondent knew that CSL had misled him over monies which that company maintained had been repaid to his Midland Bank Client Account in February 1996. In fact those monies had never been paid. Despite that the respondent continued to pay further sums to CSL. The respondent had requested the return of sums in excess of US$4,000,000 from CSL but despite promises made following injunctions obtained on behalf of the Law Society after intervention into the respondent's practice, the funds had not been returned.

63. With regard to the respondent's breaches of Rules 7 and 8 of the Solicitors Accounts Rules, it was not uncommon when faced with allegations of this type and nature for a solicitor to contend that funds in question were held by him to the order of his client (as opposed to the order of the investors) and thus in complying with his clients' instructions he could not have been said to have been in breach of the Solicitors Accounts Rules. The case against the respondent was that clients' money might be drawn from client account for payment to or on behalf of the client where such a payment is proper. Where the respondent paid such funds to his client's order in breach of an obligation that he had assumed for a third party, he did not make the payment in accordance with the Solicitors Accounts Rules.

64. The respondent claimed to the Law Society's Investigation Accountant that the credit balance of his account at CSL (to the extent that it could ever be said that there was such a balance) had been increased by a receipt of US$1,600,000 on the 18th January

1996 and by a further receipt of US$550,000.00 on the 18th March 1996. There was however no record to substantiate such receipts. The Investigation Accountant pressed the respondent to supply such record and when the receipts were produced they were inherently dubious. A letter had been sent by fax to the respondent on the 6th March 1996, (from a hotel in Switzerland) the date upon which the respondent produced them to the Investigation Accountant stating "I will transmit the sums on Tuesday, forward you the same day value date so you can pay the funds to (Messrs. Hicks Arnold) upon their arrival". Further documents appearing to support the receipt of funds by CSL amounting to US$1,600,000 upon analysis had to be construed as no more than promises to pay by another party.

65. It was in those circumstances that the respondent's books of account did not show the true position. The respondent attempted to improve his position by obtaining documents which were themselves false and sought by their use to mislead the Investigation Accountant.

66. The Tribunal was invited to consider the copies of the escrow and participation agreements which were produced so far as they survived together with other records from the respondent's files which demonstrated the manner in which the transactions progressed. The respondent had been aware that client funds should not be held abroad. He was also aware that the funds were urgently required. They were never returned, and the respondent clearly knew that he was in breach of the Solicitors Accounts Rules in that he was obviously unable to recall funds placed with CSL on demand.

67. The respondent gave many assurances to "investors" claiming the availability of huge returns. The respondent relied entirely on CSL to satisfy the conditions which he agreed would be met.

68. The Tribunal was invited to consider documents produced by the Commercial Crime Bureau of the International Chamber of Commerce which had been placed before them and also the expert evidence of Ms Lin Kuo, the Assistant Director of the ICC Commercial Crime Bureau. She had examined copies of the Investigation Accountant's Report and the relevant agreements. She was of the view that the purported transactions set out in the various agreements were identical to those described in the Commercial Crime Bureau's special reports on crime bank instrument frauds. The purported transactions set out in the agreements were fraudulent. If the respondent had carried out any checks it would not have been difficult for him to establish that the clients for whom he was acting were not what they said they were and could never have performed the transactions stated in the agreements.

69. In evidence Ms. Kuo said some of the names were recognisable to her, as being persons implicated in other fraudulent schemes. It was also Ms. Kuo's opinion that the respondent had agreed to act as escrow agent to hold the deposit and deal with it in accordance with the terms of the agreements. By making such a statement he had in fact given false promises to the investors and led them to believe their investments would be safe with him.

70. Ms. Kuo was further of the opinion that the participation of the respondent had falsely given credibility to the fraudulent transactions. Although he undertook to perform the role of a solicitor in the agreements, in fact he was acting as a conduit in the fraudulent investment programmes. His participation was an essential part of the fraud, not because of his legal qualification but because of the trust which he had been able to gain from the investors.

71. The applicant drew the attention of the Tribunal to statements made by the respondent in his own proposals in support of an application for an insolvency voluntary arrangement. Extracts from those proposals had been placed before the Tribunal the most relevant passage being to the effect that "the respondent was introduced in July 1994 to the business of "role programmes" or "high yield investment programmes". He said, "It is not necessary for me to rehearse in this statement the frustrations of the learning experience in this business which many of my creditors know something about. Suffice it to say here that it is a business in which fraud appears to be more prevalent than real business by a factor of about ninety nine to one and the manner of conduct of the business is to spend an absolute fortune in both time and communications expenses going around in ever decreasing circles."

The submissions of the respondent (contained in his statement of 2nd March 1998 and his supplementary statement of the 4th March 1998)

72. In his introduction the respondent said he could not deny that he had allowed himself to be hoodwinked in a way that was naive, gullible and foolish. He was desperately sorry that others were hurt as a result but, he was the one who had been hurt the most and even though he had certainly been naive and gullible he did not deliberately participate in any fraudulent activity nor did he personally benefit from any of the losses incurred by others.

73. The respondent admitted allegation No. 1. He failed to comply with professional undertakings to Messrs Hicks Arnold & Co. and to the three participants under the five agreements introduced by CSL. He said that the failure was forced upon him by others but he fully accepted that the whole point of a professional undertaking was that the solicitor should not allow himself to be placed in a position where a third party was capable of forcing upon him a breach of undertaking. He admitted the allegation and proffered his humble apologies.

74. The respondent went on to say that he denied all of the other allegations. In making such denials he treated his account with CSL as having been maintained with a regulated financial institution under the supervision of the Swiss Federal Banking Commission as he believed it to be. He had been devastated, mortified and deeply embarrassed by the discovery that it was not so.

75. Over a period of several months Mr D had trained the respondent in the principles of the business and the respondent had been wholly convinced by his explanations. In particular the respondent had been convinced that the deals were in an exclusive business which only a few privileged bankers knew about which had been derived from special, high level connections in the banking industry.

76. The respondent set out in detail the evidence placed before him and believed that a friend of his had become extremely wealthy after successfully enjoying the fruits of trading in bank debentures. The respondent said that the only logical conclusion that he could draw from the evidence placed before him was that the business of trading in bank-issued medium term debentures did exist. The problem was that it was so difficult for the man in the street to break into it that it was for all practical purposes impossible. He said at the very least there had to be sufficient doubt as to whether such a business existed that it had to be reasonable for the brave or the foolish to want to test for themselves whether it could be conquered. He considered that the special reports put out by the International Chamber of Commerce could only be seen as laudable attempts to prevent innocent members of the public, such as the respondent himself, from getting hurt. The respondent pointed out that many of the phrases, including fictitious banking terms, which would trigger suspicion had not in fact been used in the schemes in which the respondent had been involved. The respondent had annexed to his statement a selection of documents which were readily available on the Internet including publications of investor information concerning medium term notes and debentures and related matters.

77. The respondent said that the Law Society's Investigation Accountant had told him that any person who purported to do anything whatsoever in connection with the type of business under consideration was guilty of criminal deception. The Investigation Accountant told the respondent that it was impossible that there could be a situation where a group of people set out together in all good faith in an attempt to do the business believing that they could do it but, in the end, failed. He went on to say that there were always fraudulent masterminds somewhere in the transaction who set out deliberately to defraud unwary investors. The respondent vigorously disputed that statement. Good honourable and decent citizens could be drawn innocently into such a scheme.

78. The involvement of the respondent in all of the cases before the Tribunal was limited only to counselling, drafting and negotiating. At least ninety percent of the prospective transactions failed because the purported investors did not in fact have the money to invest.

79. The respondent set out in some detail the areas in which he considered that the Investigation Accountant's Report had been biased against him.

80. In a lengthy statement the respondent made it plain that his submission was that he had not been instrumental in putting the business schemes together. He had been told that matters had been well underway and that another firm of solicitors had been instructed with whom it transpired the parties had been dissatisfied.

81. The respondent had been convinced as to the bona fides of the people with whom he was dealing and of CSL both by paper work placed before him and the hard work of the individuals concerned. With the benefit of hindsight the respondent had come to realise that his loyalty had been misplaced and what he had seen as courage turned out to be naivity

82. The respondent said that the letter from CSL, being an unconditional undertaking to pay the sum of US$3 million by March 18th, had not been exhibited to the applicant's statement. It was only after the respondent received the formal unconditional promise to pay from CSL that he considered the surplus of that commitment over the current balance in his account to be an increment to the funds due upon that account.

83. The respondent's assertion was that his books of account did show the true position, he did not need to and did not attempt to improve his position in the manner alleged. He tried to assist the Investigation Accountant by obtaining documents which he insisted he required.

84. With regard to the paragraph written in support of the respondent's individual voluntary arrangement the respondent said the paragraph should be viewed in the light of the fact that ninety percent of frauds in the business were perpetrated by would be investors who provided fraudulent documentary evidence of funds. Most people involved in the market were aware of the 99:1 ratio but considered the potential rewards to be a sufficient incentive to attempt to trade. The paragraph had been written in the anguish of hindsight knowing that the respondent had been defrauded and conned. The respondent had spent the whole of his fortune in support of his commitment not to profit unless and until his clients and their investors did, all to no avail. He was the principal victim.

85. Mr A had convinced the respondent that the funds were there and available to the respondent's account from CSL. Further he had been convinced that to remove the funds from CSL's asset management programme would have jeopardised the interest of the investors as well as the respondent's clients. The interest of all parties was best served by leaving the funds on deposit and the maintenance of the investment activity would achieve a more attractive and sure return for new investors. The respondent agreed that the vouchers sent by Mr A were inherently dubious and could only conclude that they were a superficial attempt to humour the respondent in his desire. The respondent however was not responsible for what Mr A had chosen to send him. The respondent offered considerable explanation of other specific matters but in respect of the B Finance Limited matter admitted a shortage of US$1.2 million on his clients' account not because the payment was improper but because he had been defrauded of that amount.

86. At the time the agreements were entered into the respondent was not sole proprietor of the solicitors' firm, he was a partner. His solicitor's practice was not his principal business. His principal business had been as an officer of an international management group called "IME" a group which had branches both in London and Gibraltar. The principal activity of "IME" was administrative management of the affairs of international companies and their promoters, managers and other associates. Although the offices were in the same building they were clearly distinct.

87. In connection with the payment of US$50,000 paid to Mr D, the respondent said that he had questioned Mr D about the payment and had "been looked straight in the eye and been given an assurance on his honour that the payment was not for Mr D's personal benefit but categorically required in order to facilitate the commencement of trading and that, as a solicitor, the respondent would probably prefer not to know any

further details." The respondent saw no reason to disbelieve him and exercised his discretion to make the payment.

88. The respondent set out in detail the areas in which he believed that he and his clients had been treated wrongly by the Law Society. He had not misappropriated any client funds. He pointed out that that former allegation had been dropped. Even those payments alleged to be improper had not gone anywhere except in the furtherance of the relevant clients' or investors' own transactions.

89. The respondent said that he had been shocked by the investigation and embarrassed by the need for intervention. He was at the same time delighted at the prospect that he might gain some assistance and a contribution of resources to resolve some of his clients' problems. He advised the Investigation Accountant that he would close his practice on the 31st May 1996 but would pay rent on the premises for a further month to facilitate a smooth hand over for the intervention.

90. The respondent believed that the applicant's interpretation of the evidence before the Tribunal presented a highly distorted view of the respondent's own motivation and behaviour. An inspection of his files would reveal how he had coached people on how to avoid frauds and there were many people who owed the fact that they had not lost money to the training which they received from the respondent in such avoidance techniques. In particular the respondent had advised many people not to place their money with third parties or into any bank account that was not in their own name and not to deliver inappropriate powers of attorney to third parties over funds retained in their own name.

91. Throughout the whole of the time in question the respondent had never entertained the possibility of "dipping into" or "borrowing" funds in client account. He always believed that, with a little more skill, a little more effort, a little more faith in God and a little more persistence, he would eventually succeed.

92. The respondent said that there were tens of thousands people all over the world who were active in this particular market place trying to make it work. The respondent had attempted to create a specialist professional niche in the market place in which a number of clients persuaded him that they needed him and that his talent and experience could be of benefit and profitable. The respondent knew that it was fraught with dangers but he believed that he had both the knowledge and resource to be able to succeed in it if anybody could.

93. As a result the respondent had lost everything: his home, all of his money, all of his assets apart from a few personal and household effects, his name, reputation and professional accreditation. The respondent was in fact the principal victim in the entire debacle.

94. The respondent entirely accepted that to the extent that he inadvertently contributed to his own loss he had himself to blame and that it was entirely appropriate that he should not seek to practise again - at least not as a sole practitioner - although his mistake was not of the kind that any person would be likely to make twice.

95. As a victim of fraud by others the respondent asked that the Law Society accept his undertaking not to apply for a Practising Certificate in the future.

The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated. The Tribunal was entirely satisfied that the respondent was an active co-conspirator in the fraudulent investment schemes.

The Tribunal has set down only a flavour of the wealth of complex and apparently sophisticated paper work involved in the investment schemes.

The Tribunal has no doubt that the investment schemes in which the respondent had become involved were entirely spurious and were no more than vehicles to defraud gullible "investors" of very large sums of money.

The respondent had been closely involved and indeed had himself drafted what purported to be legal documents.

He apparently still believed that such investment opportunities existed albeit only for the highly privileged few and if the schemes had been fraudulent he was an innocent dupe and a victim as well as the "investors".

The Tribunal find it hard to believe that a highly educated and qualified lawyer should be so gullible: they find it hard to believe the respondent had not been aware that investors were not to be encouraged to place huge sums of money in schemes upon the promise of impossibly high returns over a very short period of time. Plain common sense if not legal and financial knowledge should have directed the respondent away from such involvement. The Tribunal consider that the respondent deliberately involved himself in the fraudulent schemes and that such behaviour on the part of a solicitor was deplorable and could not be tolerated. The Tribunal imposed the ultimate sanction upon the respondent and ordered him to pay the applicant's costs to be taxed by one of the Taxing Masters of the Supreme Court.

DATED this 1st day of May 1998

on behalf of the Tribunal

A G Ground
Chairman