No. 7403/1997

IN THE MATTER OF MICHAEL JAMES PALMER, ANTHONY COWEN, ALISTAIR CHARLES RICHARD LANGFORD, *RESPONDENT 4, RESPONDENT 5, RESPONDENT 6* AND *RESPONDENT* 7 *–NAMES REDACTED*, Solicitors

AND –

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. A G Ground (in the chair)
Mr. R B Bamford
Mr. M C Baughan

Date of Hearing: 12th - 14th March 2002

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 ("OSS") by Geoffrey Williams, solicitor then of 36 West Bute Street, Cardiff (now of 2a Churchill Way, Cardiff, CF10 2DW) on the 23rd May 1997 that Michael James Palmer, Anthony Cowen, Alistair Charles Richard Langford, *RESPONDENT 4*, *RESPONDENT 5* and *RESPONDENT 6* solicitors then all of 16 Berkeley Street, London, W1X 5AE might be required to answer the allegations contained in the statement which accompanied the application and that such Orders might be made as the Tribunal should think right. Mr. Palmer's address is now Lower Farm House, Longborough, Moreton-in-Marsh, Gloucestershire, GL56 0QT. The address of Mr. Cowen, Mr. Langford, *RESPONDENT 4* and *RESPONDENT 5* is now c/o Fairmays of 10 Babmaes Street, London, SW1Y 6HD and the address of *RESPONDENT 6* is PO Box 72708, Dubai, United Arab Emirates.

The allegations against the Respondents, as amended by consent at the hearing, were that they had been guilty of conduct unbefitting solicitors in each of the following respects:-

Against Mr Palmer, Mr Cowen, Mr Langford, *RESPONDENT 4*, *RESPONDENT 5* and *RESPONDENT 6*

(a) that they drew or caused or permitted to be 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; and

(c) that they had used clients' funds for their own purposes.

Against Mr Palmer, Mr Cowen and Mr Langford

(b) that they drew or caused or permitted to be withdrawn monies from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1986 contrary to the said Rules;

By an application dated 19th September 2000 Geoffrey Williams, solicitor applied that *RESPONDENT 7* then of London, W1 (now of Bath, BA2) 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.

By a supplementary statement of Geoffrey Williams dated 19th September 2000 further allegations were made against the first six Respondents in addition to the allegations made against *RESPONDENT 7*.

The further allegations as amended at the hearing by consent were of conduct unbefitting solicitors in each of the following respects:-

Against Mr Palmer alone:-

that he had been convicted of fifteen offences of dishonesty and had been sentenced to a term of imprisonment in respect thereof;

Against Mr Palmer, Mr Cowen, Mr Langford, *RESPONDENT 4*, *RESPONDENT 5* and *RESPONDENT 6*

(e) that they had further drawn or caused or permitted to be 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;

(f) that they had further utilised clients' funds for their own purposes;

(g) that they had misapplied or caused or permitted to be misapplied monies which they held in their client account in the capacity of stakeholders;

(h) that they had acted improperly in conflict of interest situations;

Against Mr Cowen alone

(i) that he acted improperly in a conflict of interest situation;

Against Mr Cowen, Mr Langford, *RESPONDENT 4*, *RESPONDENT 5*, *RESPONDENT 6* and *RESPONDENT 7*

(j) that they failed to maintain properly written books of account contrary to Rule 11 of the Solicitors Accounts Rules 1991;

(k) that they had drawn or caused or permitted to be 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;

Against Mr Cowen, Mr Langford, *RESPONDENT 4*, *RESPONDENT 5* and *RESPONDENT 6*

(l) that they acted improperly in conflict of interest situations; (withdrawn against *RESPONDENT 7*)

(m) withdrawn;

(n) withdrawn;

Against *RESPONDENT 5* alone

(o) that he misapplied or caused or permitted to be misapplied monies held in his firm's client account in the capacity of stakeholder.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 12th – 14th March 2002 when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams and Christopher Green, Solicitor Advocates of 2a Churchill Way, Cardiff, CF10 2DW appeared as the Applicant, the Respondent Mr. Palmer did not appear and was not represented and Messrs. Cowen, Langford, *RESPONDENTS 4, 5,6,7* were represented by Mr. Roger Henderson of Queen's Counsel instructed by Hempsons, solicitors of 20 Embankment Place, London, WC2N 6NN.

The evidence before the Tribunal included the admissions of Messrs. Cowen, Langford, *RESPONDENTS 4, 5,6,7* ("the second to seventh respondents") to the allegations as amended during the hearing save that such admissions were qualified, and save further that that part of allegation (k) which related to the matter of AH Ltd was denied.

By a letter to the Tribunal dated 5th March 2002 the first respondent Mr. Palmer admitted the allegations generally without specifying them and with some qualifications. The evidence before the Tribunal also included the oral evidence of the second to seventh respondents and of Mr. Partridge.

The following documents were handed in during the hearing:-

(i) three schedules prepared on behalf of the second to seventh Respondents;
(ii) correspondence relating to Mr. W and to OA Ltd;
(iii) a file of annexes and a file of testimonials submitted on behalf of the second to seventh Respondents;
(iv) a statement of Diane Gardner;
(v) two chronologies, one prepared on behalf of the second to seventh Respondents and one prepared by the Applicant.

At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Ordered that the Respondent Michael James Palmer of Gloucestershire, GL56 solicitor be struck off the Roll of Solicitors and they further ordered him to pay forty percent of the costs of and incidental to the application and enquiry to be subject to detailed assessment if not agreed.

The Tribunal Ordered that the Respondent Anthony Cowen of London, SW1Y, solicitor be struck off the Roll of Solicitors and they further ordered him to pay fifteen percent of the costs of and incidental to the application and enquiry to be subject to a detailed assessment unless agreed.

The Tribunal Ordered that the Respondent Alistair Charles Richard Langford of London, SW1Y solicitor, be Struck Off the Roll of Solicitors and they further Ordered him to pay fifteen percent of the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The Tribunal Ordered that *RESPONDENT 4* of London, SW1Y solicitor, pay a fine of £24,000, such penalty to be forfeit to Her Majesty the Queen and they further Ordered him to pay ten percent of the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The Tribunal Ordered that *RESPONDENT 5* of London, SW1Y solicitor, pay a fine of £24,000 such penalty to be forfeit to Her Majesty the Queen and they further Ordered him to pay ten percent of the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The Tribunal Ordered that *RESPONDENT 6* of, Dubai, United Arab Emirates solicitor, pay a fine of £14,000 such penalty to be forfeit to Her Majesty the Queen and they further ordered him to pay eight percent of the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The Tribunal Ordered that *RESPONDENT 7* of Bath, BA2 solicitor, be reprimanded and they further Ordered him to pay two percent of the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The factual background

The factual background is set out in paragraphs 1 to 117 hereunder.

1. At times material to the application the respondents carried on practice in partnership with each other and with others not party to the application under the style of Palmer Cowen ("the Firm") at 16 Berkeley Street, London, W1X 5AE.

2. The first Respondent, Mr. Palmer, was admitted as a solicitor in June 1962, and left the Firm on 24th July 1997. He had founded the Firm with the second respondent in 1981.

3. The second Respondent, Mr. Cowen, born in 1937 was admitted as a solicitor in 1959, and was joint Senior Partner with the first respondent from the founding of the Firm in 1981.

4. The third Respondent, Mr. Langford, born in 1958 was admitted as a solicitor in 1984. He became a salaried Partner of the Firm in 1987 and an equity partner in 1988.

5. The fourth Respondent, *RESPONDENT 4*, born in 1944 was admitted as a solicitor in 1974. He became a salaried partner of the Firm in 1993 and an equity partner in 1994.

6. The fifth Respondent, *RESPONDENT 5*, born in 1952 was admitted as a solicitor in 1978. He became a salaried partner of the Firm in 1989 and an equity partner in 1991.

7. The sixth Respondent, *RESPONDENT 6*, born in 1961 was admitted as a solicitor in 1985.He became a salaried partner of the Firm in 1991 and an equity partner in 1992.

8. The seventh Respondent, *RESPONDENT 7*, born in 1956 was admitted a solicitor in 1981. He became a salaried partner of the Firm in 1996 and an equity partner in 1997

9. From 14th November 1999 the Firm changed its name to Fairmays but continued to practise from 16 Berkeley Street, London, W1. The firm subsequently practised from 10 Babmaes Street, London, SW1Y 6HD.

10. *RESPONDENT 7* left the partnership of Fairmays in March 2000 and *RESPONDENT 6* left that partnership in April 2001.

First Investigation and Report

11. Upon notice duly given to the first to sixth Respondents an inspection of their books of account was carried out by the Investigation Accountant of the Law Society starting on 19th April 1996. The Report of the Investigation Accountant dated 15th August 1996 ("the First Report") together with relevant subsequent correspondence was before the Tribunal.

12. The Investigation Accountant noted the following matters in the First Report.

13. The books of account were not in compliance with the Solicitors Accounts Rules for the reasons noted below.

14 A list of liabilities to clients as at 31st March 1996 was produced for inspection and totalled £1,595,635.00, US$717,176,24, Germ DM 207,002.35 and Aust $5,729.70. Equivalent amounts were held on client bank accounts, at that dated, after allowance for uncleared items.

15. It was discovered, during inspection, that clients' funds totalling £248,927.80 had been misused thus:-

(a)	Improper transfers from Client to Office Bank Account	£50,000.00
(b)	Client's Funds Transferred from Client to Office Bank Account in respect of Unpresented Office Cheques –	
	(i) General	185,927.80
	(ii) Stamp Duty Liability	13,000.00
		198,927.80
		£248,927.80

16. The clients' funds misused had been partially reimbursed by 3rd July 1996 thus –

(a)	Office Payments cleared through Office Bank Account	£99,409.41
(b)	Clients' Funds transferred from Office to Client Bank Account	136,494.25
		£235,903.66

17. The partners indicated that the amount of £13,024.14 outstanding represented three client matters and they said that the client had been contacted and asked to present the relevant office cheques which they said were in their possession.

Improper Transfer from Client to Office Bank Account
Mr. W - £50,000.00

18. The firm (Mr. Cowen) acted for this client in connection with separation proceedings against his partner, CH. An agreement was entered into whereby Mr. W was to pay CH a sum of £50,000.00 upon receipt of which CH was to transfer her interest in their shared property to Mr. W. On 16th June 1995 Mr. W sent the firm £50,000.00 and this was banked in the firm's client bank account and credited to a client ledger account headed "W Mr. D W73.2"

19. Thereafter the ledger account and client bank account were debited with the following transfers from client to office bank account –

1995		Amount
August	18th	£10,000.00
	25th	40,000.00
		£50,000.00

20. During March 1996 Mr W requested the return of his £50,000 as CH had failed to transfer her share of the shared property to him. He was told that the funds had been used in the "running" of the firm. He was asked if the amount could be treated as a loan to the firm but said no.

21. The partners rectified the position on 22nd March 1996 (some seven months later) by the transfer of £50,000.00 from office to client bank account and payment to Mr. W from client bank account.

22. In a meeting with the partners on 11th June 1996 Mr. Palmer and Mr. Cowen said that the transfers totalling £50,000.00 had been actioned by Mr. Langford in their absence "in anticipation of paying a like sum out of office bank account on behalf of Mr. W".

23. They said that they had not checked the position on their return and consequently the £50,000.00 of clients' funds had remained in office bank account until March 1996.

24. The partners did not dispute any of the facts but made no comment as to whether this constituted "misuse" of clients' funds.

25. Mr. Cowen told the Investigation Accountant that Mr. W, who was a personal friend, had not complained about the matter and he had produced a letter written by Mr. W to the Solicitors Complaints Bureau ("the Bureau") dated 12th April 1996 a copy of which was before the Tribunal. In his letter Mr. W wrote:-

> "I have been asked to contact you regarding Mr. Cowen. I am concerned at your involvement in this matter, caused by third party intervention. I would like to make it perfectly clear to all concerned, my opinion of Palmer Cowen and Anthony Cowen in person.
>
> I and my company have been clients of Palmer Cowen for some fifteen years, during that time his guidance of all matters has been exemplary. I hold him personally in the highest regard, to the extent that I have lent him monies without any guarantees in the past and would do so in the future. I am sure that if Anthony had asked me to loan them monies, I would have done so without hesitation. I hope this clarifies my personal feelings on the matter."

26. In his report the Investigation Accountant took the view that that letter highlighted the fact that Mr. W had given no instructions to the Firm to utilise his funds in the manner described above. A review of the client file revealed that the Firm had written to the solicitors acting for CH on 22nd December 1995 in the following terms:-

> "Our client is ready willing and able to complete the agreement and as an expression of that has deposited with us to hold £50,000.00 to be paid over on completion."

<u>Clients' Funds Transferred from Client to Office Bank Account in respect of Unpresented Office Cheques</u>
<u>General - £185,927.80</u>

27. It was discovered, during the inspection, that the firm had adopted a procedure of making payments on behalf of clients by way of cheques drawn on their office bank account and simultaneously transferring funds from client to office bank account in order to meet these payments.

28. A review of the office bank account reconciliation as at 31st March 1996 revealed the following position:-

Balance per Bank Statement	£506,276.57	Overdrawn
Add: o/s Cheques	518,754.42	
	1,028,030.99	Overdrawn
Less: o/s Banking	570.00	
Due to Bank if Cheques Cleared	£1,024,460.99	Overdrawn

29. Included in the list of outstanding cheques totalling £518,754.42 were forty cheques totalling £185,927.80 which related to client matters and where the funds to meet these payments had been transferred from client to office bank account as early as May 1995, some twelve months earlier.

30. The Investigation Accountant set out details of the forty cheques showing the movement of the funds and the number of days the funds were held in office bank account which aggregated 5409 days for the forty cheques and in individual cases ranged from thirty five days to three hundred and ninety seven days.

31. The Investigation Accountant noted that as the office bank account cheques had taken many days to clear, the office bank overdraft had been substantially suppressed and the partners had benefited from clients money being effectively held in the overdrawn office bank account.

32. The partners were asked two specific questions regarding this procedure –
    (i) Why do you adopt a procedure of making payments on behalf of clients out of office bank account and then transfer money from client to office account?
    (ii) Does the procedure mean that clients' money is held in office bank account if the office cheques are not presented for some time?

33. The response of the partners had been appended to the First Report and was a letter from the second respondent on behalf of the Firm to the Investigating Accountant dated 10th July 1996 in the following terms:-

> "10th July 1996
> Dear Mr Davies,
> I write, as promised, to deal with the two specific questions which you put to me.
>
> **1. Question: Why do we adopt a procedure of making payments on behalf of clients out of Office Account and then transfer money from Client Account to Office Account?**
>
> Answer: This was of course one of the questions you put to us at our meeting following your audit. The answer is that we thought that it was perfectly in order to deal with making payments on behalf of clients in this manner.
>
> Rule 7 (a) (ii) for example specifically permits a withdrawal from Client Account of "money properly required in full or partial reimbursement of money expended by the Solicitor on behalf of the Client". In the Guide to Professional Conduct Paragraph 27.24 the profession is told in regard to this rule "a Solicitor will be treated as having expended money in these

circumstances when the Solicitor draws and despatches a cheque in respect of that item unless the cheque is drawn and despatched on a "hold to order" basis.

2. Question : Does the above procedure mean that Clients' money is in Office Account?

Answer: we considered that we were acting within the rules and that we were entitled to transfer money from Client Account to Office Account to fully or partly reimburse monies expended by us. We have not been able to find anything in the rules which states that if a cheque drawn in accordance with, say, Rule 7 (a) (ii) is not presented within a particular period of time, there is a breach. Again, we should be grateful for your guidance and if you are saying that we are in contravention of the Rules, we should be grateful if you could explain to us how and why and we will be happy to adjust the procedure accordingly.

We look forward to hearing from you in respect of the above. In the meantime, if you require any further information, or wish to discuss anything with us, please do not hesitate to contact me.

Yours sincerely,
ANTHONY COWEN"

34. A review of a sample of the relevant client files to which the forty cheques related showed the following:-

<u>Mr. EM - Probate - £50,000.00</u>

35. The Firm acted for the executors of the estate Mr. EM deceased and Ms G had conduct of the matter. The relevant client ledger account showed that on 31st October 1995 a cheque had been drawn on the office bank account for £50,000.00 and debited to the office column of the ledger. Simultaneously an amount of £50,000.00 was transferred from client to office bank account.

36. On 24th April 1996, six months later, this office cheque had still not been presented for payment so it was cancelled and a new office account cheque issued which was cleared by the bank on 10th May 1996 (some one hundred and ninety two days after the funds had been originally transferred to office bank account).

<u>F Investments – Re-mortgage - £5000</u>

37. The Firm acted for this client in connection with a re-mortgage and *RESPONDENT 5* had conduct of the matter. On the 29th February 1996 the office column of the relevant client ledger account was debited with £5.000.00 in respect of a cheque drawn on the office bank account and simultaneously, a like amount was transferred from client to office bank account.

38. The file contained a letter dated 29th February 1996 from *RESPONDENT 5* to M.S. of L.H. & Co which stated:-

> "Further in the above matter ……….. as arranged, I enclose a cheque in the sum of £5,000 which, as directed, you should hold to our mutual clients order (without presenting it for payment) until you hear further from them with regard thereto".

39. As at 2nd July 1996 (some one hundred and twenty four days later) this office cheque had still not been presented for payment and the funds were reimbursed by a transfer of £5,000.00 from office to client bank account.

<u>F141.1 FICC - £21,250.00</u>

40. The Firm acted for this client in connected with a litigation matter and the file contained an office cheque request dated 29th February 1996 with initials A.L. for £21,250.00 to be made payable to the client. The office column of the relevant client ledger account was debited with this amount and simultaneously an amount of £21,244.98 was transferred from client to office bank account. As at 31st May 1996 (some ninety two days later) this office cheque had still not been presented for payment and the funds were reimbursed by a transfer from office to client bank account.

<u>Clients' Funds Transferred from Client to Office Bank Account in respect of Unpresented Office Cheques</u>
<u>Stamp Duty Liability - £13,000.00</u>

41. On 29th June 1990 an amount of £19,384.75 was transferred from client to office bank account which included £13,000.00 in respect of a Stamp Duty liability in connection with a client matter. This liability remained unpaid and on 2nd July 1996 (some six years later) an amount of £13,000.00 was transferred from office to client bank account in order to rectify the position.

42. The partners said that the original transfer had been made under the "old 1986 rules" and that they were entitled to transfer the funds to the office bank account. They added that they could not complete the stamping as the original documents had been lost.

<u>R Overseas – W Membership - £49,937.50</u>

43. The Firm (*RESPONDENT 5*) acted for this client in connection with the obtaining of membership to the W Club Ltd for £42,500.00 plus VAT of £7,437.50. The relevant client ledger account showed that an amount of £49,937.50 had been received on 2nd February 1995 and lodged in client bank account. Thereafter the ledger account and client bank account were debited with the following transfers from client to office bank account:-

1995	Amount
February 2nd	£17,000.00
20th	32,937.50
	£49,937.50

44. It was noted, however, that the funds transferred to office bank account were disbursed on behalf of the client, by way of office account cheques, some two months later:-

1995	Amount
April 3rd	£20,000.00
5th	10,000.00
12th	10,000.00
19th	9,937.50
	£49,937.50

45. The matter file contained a letter dated 1st March 1995 from *RESPONDENT 5* to solicitors acting for the Club enclosing an office account cheque in favour of W Club Ltd in the amount of £49,937.50 and asking that it be held to order until the club had received the engrossed copy of the Agreement. However the file contained no explanation as to why this cheque had subsequently been cancelled and the four cheques, noted + above, substituted in its place.

Accountant's Reports

46. The First Report concluded by stating that the partners' Accountant's Report for the year ended 30th September 1995 signed on 29th March 1996 was qualified in respect of the following:-

> "Monies have been transferred from client account to office account to make payments due to various clients and also to settle disbursements payable to third parties and in a number of instances there was a delay before the office account cheque was cleared through the bank account."

47. There was placed before the Tribunal a copy of a letter from the Firm to the Solicitors Complaints Bureau, ("The Bureau") predecessor to the OSS, dated 4th September 1996, providing comments of the respondents on the First Report. In that letter the respondents fully accepted that they had been in breach of the Solicitors' Accounts rules, and deeply regretted this. They accepted that the procedure they followed would have left clients vulnerable if all office account cheques had been presented at once and that the procedure allowed them, as a practice, to benefit from Clients' money.

48. The letter outlined the steps the Firm was proposing to take to reduce and eliminate the procedure from their practice, including changing accountants, banks, the arrangement of financial facilities to support the practice, and a commitment, in addition to the Partnership Finance Committee meetings, that the Partners would meet fortnightly "for the sole and specific purpose of monitoring the accounts position. All Partners will attend unless abroad". The letter offered apologies and an assurance "that the breaches will never be repeated". The subsequent events and further reports indicated the extent to which this assurance was fulfilled.

Second, Third and Fourth Reports

49. Upon notice duly given to the partners of Palmer Cowen the Monitoring and Investigation Unit ("MIU") of the OSS carried out three further inspections of the firm's books of account. Copies of the three reports of the MIU arising out of the said

inspections were before the Tribunal together with copies of relevant subsequent correspondence.

50. The MIU Report dated 5th February 1998 (The Second Report") followed an inspection which started on 28th July 1997 and noted the following matters. In relation to Mr. Palmer, following an investigation by the Serious Fraud Office into the affairs of a client of Palmer Cowen, Mr. Palmer had been arrested in July 1997 in connection with an alleged conspiracy with a client to defraud, allegations of false accounting and an allegation of theft from a trust. Mr. Palmer had left the Firm on 24th July 1997.

51. The report noted that following the firm's financial restructuring, which included changing their bankers, their indebtedness to their new bankers was as follows. The position as at 31st March 1996 was also given by way of comparison:-

	Current Bank 30.6.97	Overdraft Facility	Previous Bank 31.3.96	Overdraft Facility
Bank Overdraft	£269,260	£258,000	£506,276	£450,000
Add: Cheques Outstanding	257,243		518,754	
	526,503		1,025,030	
Loan	383,333		64,250	
Total Indebtedness	£909,836		£1,089,280	

52. In general conversation, the partners said that they had been experiencing pressure from their previous Bank who had informed them that the business would not stand an increased facility.

53. The books of account were not in compliance with the Solicitors Accounts Rules for the reasons noted below.

54. Although lists of the firm's liabilities to clients produced at each month end for the period 1st April 1996 to 30th June 1997 had appeared to be represented by equivalent amounts of funds held on client bank accounts at these month end dates, material shortages had existed on client bank account at each month end, as indicated below.

Deficient Client Account 1.4.96 to 30.6.97

55. A review of forty ledger accounts revealed that at all times during the period 1st April 1996 to 30th June 1997, client funds had been lodged in the Firm's overdrawn office bank account thus creating a deficient client account at each of the month ends noted below:-

1996	Client Account deficiency
April 30th	£38,000.00
May 31st	38,000.00
June 30th	58,000.00
July 31st	66,500.00
August 31st	146,736.93
September 30th	168,320.68
October 31st	233,320.68

November 30th	164,102.44
December 31st	173,899.04
1997	
January 31st	174,942.56
February 28th	176,663.27
March 31st	178,077.81
April 30th	199,518.80
May 31st	209,926.48
June 30th	234,746.58

56. Seven client matters totalling £230,697.18 were exemplified in the report, as set out below.

Replacement of Deficit as at 30th June 1997 - £234,746.58

57. In a meeting with Mr. Langford on 9th December 1997 he said, and it was accepted, that all matters had been corrected.

Misuse of Client's Funds - £86,243.97

58. It was noted that during August 1996 twenty two individual client ledger accounts were placed in debit, to a total of £86,243.97, due to the fact that funds had been transferred to the Firm's office bank account in excess of those properly available. On 30th August 1996 the debit balances were eliminated by the undernoted book entries:-

	Office to Client Transfer	Client to Office Transfer
Various – 22 items	£86,243.97	
Various		£745.55
Various		18,592.00
Various		1,087.25
Matter of Lady M		74,025.00
	86,243.97	94,449.80
Net cash transfer from client to office 4.9.96	8,205.83	
	£94,449.80	£94,449.80

59. The partners suggested that the debit balances fell into three categories:
(i) Double Transfers in Error
(ii) No readily identifiable explanation
(iii) Transfers, in anticipation of receiving funds from the client, attributable to Mr. Palmer.

An analysis of the categories was made thus:-

Category	DR Bals	No
(i)	£8,650.74	3
(ii)	59,165.48	14
	67,816.22	17
(iii)	18,427.75	5
	£86,243.97	22

60. A review of Category (ii) matters revealed that eleven of the fourteen client ledger accounts were matters where the fee earner was indicated as being Mr. Cowen, Mr. Langford, *RESPONDENT 4*, *RESPONDENT 6*, *RESPONDENT 5* or Ms G, a member of staff. The partners concerned said they had no explanations regarding these transfers other than that they had not authorised them.

Lady M - £74,025.00

61. The Firm acted for this client in connection with a property purchase and sale and Ms G had conduct of the matters. The relevant client ledger account relating to the sale showed than on 30th August 1996 a cheque had been drawn on the office bank account for £74,025.00 and debited to the office column of the ledger. This amount was in respect of estate agent's fees. Simultaneously an amount of £74,025.00 was transferred from client to office bank account. The office cheque had not cleared the bank by 29th November 1996 and the office ledger account showed it to be cancelled and a transfer of £72,623.48 made from office to client bank account.

62. A review of the client matter file showed that when the transfer of £74,025.00 was made, the Firm was instructed to hold these funds to the order of the purchaser's solicitors until 2nd September 1996 when contracts were exchanged. Furthermore, no authority for the transfer was on the file and correspondence indicated that it was not until 10th October 1996 that the estate agents submitted their account to the Firm in the sum of £68,744.08 and not £74,025.00 which had been previously transferred from client to office bank account.

63. When questioned, on 27th November 1997, Ms G said she had not authorised the transfer of £74,025.00. She added that she had become aware of the transfer at the end of August 1996 and had immediately informed *RESPONDENT 4*. In a memo dated 6th September 1996 from *RESPONDENT 4* to Mr. Palmer (and copied to Mr. Langford)*RESPONDENT 4* stated – "In the circumstances it seems that £74,025 needs transferring back to client account at once". However no corrective action was taken until 29th November 1996, some three months later, when funds were transferred from office to client bank account.

64. On 21st November 1996 estate agent's fees of £68,74.08 were paid from client bank account by Ms G and this had the effect of placing the client ledger in debit (due to the improper transfer of £74,025.00) and this position was rectified eight days later when funds were transferred from office to client bank account. Ms. G when asked why she had made the payment to the estate agents out of the firm's clients' bank account, said "I'd been told that the debit would be rectified".

(B) Misuse of Client's Funds
SR Ltd S 373.8 - £65,000.00

65. The Firm acted for this client in connection with the granting of a broadcasting licence and *RESPONDENT 6* had conduct of the matter. A review of the relevant client ledger account in the clients' ledger showed that on 3rd October 1996 an amount of £65,000.00 was lodged in client bank account and credited to this ledger. Correspondence was seen which indicated that the sum received was paid to the Firm by F Ltd pending the issue of a bank guarantee. Thereafter the ledger account showed fourteen transfers to related ledger accounts resulting in a Nil balance on this ledger as at 31st October 1996. A review of all the other ledger accounts indicated that these funds were subsequently transferred to the Firm's office bank account.

66. Correspondence dated 20th December 1996 from F Ltd's solicitors was seen which indicated that they thought that Palmer Cowen were still holding the £65,000.00 and *RESPONDENT 6* confirmed, on 12th January 1998, that the bank guarantee still had not been issued. *RESPONDENT 6* said that he thought the money had been despotised and the file put away. The shortage of client's funds was replaced during September 1997 (some eleven months later) by transfer from office bank account.

(C) Misuse of Client's Funds
OA Ltd 035.3 - £20,000.00

67. The Firm acted for this client in connection with a property transaction and *RESPONDENT 5* had conduct of the matter. The relevant client ledger account showed than on 24th June 1996 a cheque had been drawn on the office bank account for £20,000.00 (made payable to the client) and debited to the office column of the ledger. Simultaneously an amount of £20,000.00 was transferred from client to office bank account.

68. As at 30th June 1997 (twelve months later) the cheque for £20,000.00 had not been presented for payment and on 3rd October 1997 an amount of £20,000.00 was transferred from office to client bank account to fund a client account cheque, of a like amount, to the client.

69. The Second Report noted that although the Firm ceased the procedure of transferring monies from client to office bank account to fund office cheques, during September 1996, *RESPONDENT 5* said that he had not felt as if he had been "put on notice" regarding this particular cheque as he thought it had been paid.

(D) Misuse of Client's Funds
B - £38,000.00

70. The relevant client ledger account showed than on 30th April 1996 a cheque had been drawn on the office bank account for £38,000.00 (made payable to the client) and debited to the office column of the ledger. Simultaneously an amount of £38,000.00 was transferred from client to office bank account. As at 30th June 1997 (fourteen months later) the cheque for £38,000.00 had not been presented for payment and on 5th September 1997 the cheque was cancelled and the client paid on 8th September 1997 from client bank account following a transfer from office bank account. Mr. Langford informed the Investigating Accountant that they had previously had a

system to cancel cheques over six months old but that system seemed to have been halted.

(E) Mrs N Deceased N97.1 - £11,750.00

71. The Firm acted for the executors of Mrs N who died in April 1995. The relevant client ledger showed that on 16th September 1996 an amount of £11,750.00 was transferred from client to office bank account in respect of a bill of costs No. 017258 dated 30th September 1996. This bill was never delivered and subsequently a credit note was raised on 7th January 1997. The situation was finally rectified on 14th February 1997 and a review of the ledger account showed the following position relating to bills raised and monies lodged in office bank account:-

1996		Debit	Credit	Client Funds In Office
Sept 16th	From Client A/C		11,750.00	11,750.00
Nov 7th	From Client A/C		11,750.00	23,500.00
Nov 29th	Bill	6,418.53		
29th	To Client A/C	5,331.47		11,750.00
Dec 4th	From Client A/C		5,974.29	17,724.29
31st	To Client A/C	5,974.29		11,750.00
1997				
Jan 31st	To Client A/C	8,105.96		3,644.04
Feb 14th	To Client A/C	4,112.50		(468.46)
25th	From Client A/C		468.46	NIL
28th	To Client A/C	210.64		(210.64)
Mar 27th	Bill	5,933.16		(6,143.80)
Apr 22nd	From Client A/C		6,143.80	NIL

72. The partners informed the Investigating Accountant that they were reviewing the matter.

(F) Misuse of Client's Funds
AG Ltd A359.1 - £5,405.00

73. The Firm acted for this client in respect of property sales completing on 8th August 1997 and Ms G had conduct of the matter. The relevant client ledger account showed that on 27th May 1997 an amount of £5,405.00 had been transferred from client to office bank account in respect of a bill of costs No. 019258 addressed to the company c/o Palmer Cowen. A review of the client matter file revealed that when the transfer was made, the funds standing to the credit of the ledger were being held as stakeholder as stated in a letter written on 16th May 1997, by Ms G thus:-

> "Deposits paid to AG on exchange of contracts will be paid to AG as stakeholders, which means that they must remain held in escrow in Palmer Cowen's clients' account pending completion of the sale and no monies can be released prior to completion."

74. Ms G informed the Investigating Accountant that she had not authorised the transfer.

(G) Misuse of Client's Funds
The Executors of A-F - £4,298.21

75. The Firm acted for the executors of the above estate and Ms G had conduct of selling various properties. The relevant client ledger account showed that on the 19th June 1997 and 30th June 1997 two amounts totalling £4,298.21 were transferred from client to office bank account in respect of a bill of costs No. 018942 addressed to the executors c/o Palmer Cowen. A review of the client matter file revealed that the bill had not been delivered and Ms G said that although she had prepared the bill of costs she had not authorised the transfers.

Other Matters

Improper Payments by Mr. Palmer - £56,137.39

76. It was discovered during the inspection that the undernoted payments had either been made from the Firm's client bank account or the Firm's office bank account and funds transferred from client bank account to meet the office payments:-

Date	Payee	Ledger Account Charged	Amount
1991			
May 21st	Cash – Part	AF A28.2	2,601.00
1995			
Mar 28th	HC	F F102.01	6,299.00
Nov 10th	Mrs EM	Dr. AM 194.3	10,000.00
1996			
Jan 31st	JS	B	1,719.39
Feb 1st	C	B	3,750.00
Feb 2nd	Mrs K	B	2,218.00
Aug 6th	Cl	B	4,500.00
Aug 6th	DH	B	1,200.00
Aug 21st	Cash	B	2,750.00
Oct 25th	Q	BC C197.2	15,000.00
1997			
May 14th	SM	BC C197.2	6,100.00
			£56,137.39

77. No evidence was seen to indicate that any of the payments were connected with the ledger accounts charged. Mr. Palmer had introduced funds, totalling £47,237.39 into the firm's clients' bank account in respect of these matters and he indicated that the payments were either made in error or drawn with the authority of the client. However the Second Report drew attention to the following matter.

AF Investments Ltd

78. Mr. Palmer acted for this client in connection with the proposed purchase of a boat. A review of the relevant client's ledger account showed the following entries:-

1991		Client Account Debit £	Credit £	Balance £
April 11th	On A/C		15,500.00	15,500.00 CR
April 30th	Cli/Cli	6,500.00		9,000.00 CR
May 13th	D	5,500.00		3,500.00 CR
May 16th	Cash to You	2,250.00		1,000.00 CR
May 21st	Cash to You	3,000.00		2,000.00 DR
		17,500.00		
May 31st	Loan Payment		2,500.00	500.00 CR
Nov 25th	Client to Office	500.00		NIL

79. The client matter file showed that on 1st April 1991 Mr. L, on behalf of the company, wrote to Mr. Palmer indicating that the sum of £15,500.00 was to be used in two stages, approximately £4,500.00 in mid April, and the balance before delivery of the boat in early June. Invoices were to be sent to Palmer Cowen in due course. No evidence was seen to indicate that any of the four payments totalling £17,500.00 above were made on behalf of the client and on 15th April 1997 Mr. L wrote to Mr. Palmer thus:-

> "These delayed plans are now nearing completion and part of the funds will be needed towards the project, in fact for the engine. An invoice will follow separately. The funds may be on monthly deposit."

80. A review of the two unconnected client ledger accounts revealed that the following payments had been made on behalf of AF Investments Ltd thus:-

Date	Payee	Ledger Account Charged	A/C	Amount
1995				
March 28th	HC	F F101.01	Office	£6,299.00
1997				
May 14th	SM	BC C197.2	Client	6,100.00
				£12,399.00

and Mr. Palmer had written to Mr. L on 28th March 1995 regarding the first payment thus:-

> "I have pleasure in enclosing a cheque for £6,299.00 which I have drawn on Office Account because I did not have time to close the deposit ……."

(2) Loan Arranged by Mr. Palmer to Palmer Cowen
B Investments Ltd - £75,000.00

81. On 25th September 1995 a client ledger account headed B Investments Ltd was charged with a transfer from client to office bank account in an amount of £75,000.00 and the narrative on the office ledger indicated that this was a loan to the Firm and as at 30th June 1997 the Firm's trial balance indicated that the amount outstanding was only £48,700.00.

82. On 22nd September 1997 Mr. Cowen, on behalf of the Firm, wrote to the OSS in the following terms:-

"At a time when he was providing additional capital, Mr. Palmer informed us that he had arranged certain loans though or from clients of his in a proper manner for this purpose. As part of our own internal "audit" we rigorously reviewed those loans to ensure that the client had indeed so agreed, and that the matter was properly documented.

In the case of Mrs B (who lives in South America) there was a loan of approximately £75,000 of which we had repaid some £39,000. We were not satisfied with the documentation on the file, but in view of the overall circumstances considered that rather than trouble Mrs B we would at once repay the whole balance outstanding of the loan and all interest due. That was done."

83. When asked about the loan Mr. Palmer said that the client had known about the loan and that the money had been used by the Firm to run the business. He added that the loan had not been secured but that he had arranged it at a rate of 10% interest for the client.

84. The Second Report gave examples, not set out here, of certain matters dealt with by Mr Palmer which were then currently under investigation by the Serious Fraud Office. Of these matters The Second Report referred to certain loans arranged by Mr Palmer.

<u>Loans arranged by Mr. Palmer - £142,578.80</u>

85. It was discovered, during the inspection that Mr. Palmer had made the following loans out of funds held on behalf of E estates, of which Mr Palmer was one of two executors:-

Date	To Whom	Amount	Repaid
1993			
March 15th	D F	£105,078.80	14.6.93 & 17.6.94
May 10th	Palmer Cowen	£31,000.00	24.9.93
1996			
July 19th	A. Cowen	£6,500.00	10.2.97

86. Mr. Palmer said that his co-executor was not aware of any of these loans and that none of them had been secured. He added that he thought they represented, together with property, bank accounts, etc, a good mix of investments for the estate.

87. The partners said that they assumed that Mr. Palmer had suggested that his co-executor take independent advice regarding the loans. Mr. Cowen said, in respect of the loan of £6,500.00 to him personally, that in July 1996, he was negotiating for a couple of loans, partly for a holiday and partly for other expenses. He mentioned it to Mr. Palmer who said he would arranged a loan from the E estate.

The Third Report

88. The MIU Report dated 10th July 1998 ("The Third Report"), followed an inspection which started on 7th May 1998, and noted the following matters.

89. The books of account were not in compliance with the Solicitors Accounts Rules.

Liabilities to Clients

90. Lists of liabilities to clients as at 31st March 1998 were produced for inspection. The liabilities, which totalled, after adjustment, £6,666,316.02, US$80,479.07, German DM1,886.22, Swiss Fr.35,355.00 and Italian L.2,384,707 were in agreement with the balance shown in the clients' ledger. Additional liabilities to one client of £49,895.05 existed, however, which were not shown by the books and a comparison of total sterling liabilities to clients with cash available, after allowance for uncleared items, showed the following position:-

Liabilities to Clients per the Books	£6,666,316.02
Additional Liabilities not shown by the Books	49,895.05
Total Sterling Liabilities to Clients	6,716,211.07
Cash Available – Sterling	6,666,316.02
Cash Shortage – Sterling	£49,895.05

Cash Shortage - £49,895.05

91. The Third Report noted a cash shortage of £49,895.05 which was replaced prior to and during the inspection by the payment of the disbursements to the relevant third parties. Mr. Langford and Mr. Cowen agreed the existence of the cash shortage of £49,895.05 which had arisen as funds which had been received from one client in respect of professional disbursements had been lodged in office bank account but the disbursements had not been paid. The Third Report exemplified this in the following manner.

Unpaid Professional Disbursements - £49,895.05

92. On 15th January 1998 and 17th February 1998 amounts of £90,000.00 and £162,747.57 respectively had been received from, or on behalf, of a client N Ltd, which had been placed in client bank account and three client ledger accounts were operated by the firm in connection with this matter. The amounts received were substantially in respect of bills raised during January and February 1998 which included disbursements to three counsel totalling £72,645.09 which remained unpaid as at 31st March 1998.

93. As at 31st March 1998 there remained a balance due to the Firm from N Ltd of £21,375.10 in respect of bills raised. Between 15th January 1998 and 31st March 1998 funds totalling £294,678.08 had been transferred from the Firm's client to office bank account in respect of the Firm's costs and disbursements, leaving a balance remaining on the relevant client ledger accounts of £1,374.94.

94. Mr. Cowen and Mr. Langford agreed that amounts which had been received from the client in respect of professional disbursements which remained unpaid as at 31st March 1998 had been incorrectly transferred to the Firm's office bank account and that a shortage of client's funds existed in the amount of £49,895.05 (£72,645.09-£21,375.10-£1,374.94).

95. Mr. Langford stated that the shortage had arisen due to "inadvertence not of intention" and he said that the system which the Firm operated for disbursements was difficult, therefore problems arose. He said that the Firm's finance manager would liaise with the fee earner to prevent problems in the future.

Other Matters
Loans to The Partners of The Firm from Clients or Family Members

96. The Third Report noted that Mr. Cowen and Mr. Langford confirmed to the Investigation Accountant that several loans had been made to the partners of the Firm as a result of "exceptional circumstances" which had existed following Mr. Palmer's departure from the firm in July 1997. They said that they had discovered shortages of clients' funds which had been caused by Mr. Palmer and loans to the Firm which had been created by Mr. Palmer. They said that to "fill in the holes" and repay the loans they had to arrange further loans as detailed below. Mr. Cowen and Mr. Langford said that their partners had been aware of the existence of the further loans and the general situation but that only Mr. Cowen and Mr. Langford were aware of the detail.

Mrs S - £207,724.23

97. Mr. Cowen acted for himself and his wife, the executors of the estate of his wife's mother, Mrs S. Mr and Mrs Cowen also acted as trustees in the trust created by the will for, inter alia, pecuniary legacies to be paid to three grandchildren. Mrs Cowen was the residuary beneficiary of Mrs S' estate.

98. Mr. Cowen also acted for himself and his wife as trustees of the trust created on 21st July 1987 for a London leasehold property to be held as to one half for Mrs S absolutely and one half for the grandchildren in equal shares on attaining the age of twenty five. Funds were dealt with in these matters through client bank account and accounts in the client ledger and through a separate Executors' Account at the Firm's bank.

99. Between 19th August 1997 and 3rd December 1997 nine amounts ranging from £2,518.28 to £50,000.00 and totalling £207,724.23 were lent from the S matters to the partners of the Firm. Mr. Langford and Mr. Cowen provided the Investigation Accountant with copies of two letters from Mrs Cowen to Mr. Langford dated 10th September and 20th October 1997 giving her authority to make available to Palmer Cowen amounts up to £250,000 from her mother's estate.

100. Mr. Cowen said that his wife had been aware of the loans at the date of the first transfer of funds, 19th August 1997 but, Mr Langford said, the paperwork "took time to catch up". Mr. Langford said that he had urged Mrs Cowen to take independent legal advice but he said that he did not take any steps when she chose not to take such advice.

101. The Third Report noted that Principle 15.04 of The Guide to the Professional Conduct of Solicitors 1996 stated:-

> "A solicitor must not act where his or her own interests conflict with the interests of a client or potential client."
>
> Commentary to the Principle, Point 1 stated:-
> "… In conduct there is a conflict of interest where a solicitor in his or her personal capacity sells to, or purchase from or lends to or borrows from his or her own client. The solicitor should in these cases ensure that the client takes independent legal advice. If the client refuses to do so, the solicitor must not proceed with the transaction …."
>
> Commentary to the Principle, Point 5 stated:-
>
> "Independent advice means not only legal advice but where appropriate, competent advice from a member of another profession …"

102. Mr. Cowen and Mr. Langford confirmed that they had not complied with this principle but they said that there were exceptional circumstances existing at the time.

103. When asked if Mr. Cowen agreed that the trustees had not acted in the best interests of the trusts in lending funds to the partners when:
    (i) no security existed,
    (ii) no advice was taken,
    (iii) there was no formal loan documentation,
    (iv) no interest nor capital had been repaid,
he said that they "did what was right for the family".

Conviction of First respondent

104. On 19th April 1999 the first Respondent, Michael James Palmer was convicted of fifteen offences of dishonesty at the Central Criminal Court. He was sentenced to various terms of imprisonment being in total 21 months. There was no appeal. A copy of the certificate of conviction and a copy of the sentencing remarks of Collins J. were before the Tribunal.

The Fourth Report

105. The MIU report dated 23rd December 1999 ("The Fourth Report") followed an inspection which had started on 23rd February 1999. The Fourth report noted that with effect from 14th November 1999 the name of the Firm had changed to Fairmays. The Fourth Report noted the following matters.

106. The books of account were not in compliance with the Solicitors Accounts Rules.

Cash Shortage - £5,212.55

107. A cash shortage of £5,212.55 was identified. Mr. Langford agreed the existence of the cash shortage, which had been addressed by the payment of disbursements from office bank account totalling £3,801.55 and by transfers from office to client bank

account of £1,411.00. The cash shortage arose as a result of five incorrect transfers from client to office bank account varying in amount between £352.50 and £1,411.00 and totalling £5,212.55. In four instances transfers from client to office bank account totalling £3,801.55 were made in respect of Counsel's fees which remained unpaid as at 29th January 1999. In one instance a duplication of a costs transfer from client to office bank account of £1,411.00 arose.

108. In relation to a client AH Ltd, the Report examined a number of transactions made in respect of the Firm's costs totalling £60,688.00. This sum was transferred by means of four transfers from client to office bank account and the Investigation Accountant took the view that the transfers were improper and amounted to breaches of the Solicitors Accounts Rules taking the view that the client had not received appropriate written intimations of costs or bills at the correct time. Copies of the correspondence between the firm and the client were before the Tribunal.

109. During the inspection Mr. Langford told the Investigation Accountant that he had generally informed the client that monies could and would be deducted for fees from monies held on his behalf.

110. *RESPONDENT 4* said that the letters in January 1999 were geared to telling the client what was to be paid. *RESPONDENT 7*, Mr. Langford and *RESPONDENT 4* did not agree with the Investigation Accountant that the Firm had improperly transferred the sum of £60,688.00 from client to office bank account between 4th and 22nd January 1999.

DM Inc. and Mr. A – Conveyancing

111. *RESPONDENT 5* said that he had acted for DM Inc. in the sale of a property to a Ms G for £2,700,000.00. He said that he also acted for Mr. A in the purchase of a leasehold property at a price of £3,350,000.00 and that Mr. A was the "ultimate beneficial owner" of DM Inc. He explained that the property was purchased in the name of an individual to allow the subsequent enfranchisement of the freehold.

112. The report set out details of the transactions and the Investigation Accountant took the view that there had been a misuse of funds received as stakeholder in that:-

(i) an amount of £11,963.63 was transferred to office bank account out of the sale deposit of £270,000.00 received as stakeholder funds.
(ii) the purchase deposit paid (£323,000.00) utilised the sale deposit of £270,000.00 received as stakeholder funds.

113. *RESPONDENT 5* said that the transfer from client to office bank account of £11,963.63 on 20th April 1998 in respect of the Firm's costs had "probably" been made at his instigation. The Investigation Accountant asked *RESPONDENT 5* whether in his view, bearing in mind that the transfer was made from stakeholder funds, those funds were properly available for the purpose of paying the firm's costs. *RESPONDENT 5* responded, "no, in fact there was a mistake because I didn't think these monies were being used."

114. The Investigation Accountant also questioned whether the payment on 10th June 1998, of the deposit to the solicitors acting for the vendor of the second-mentioned property

was proper as the majority of the funds constituting the payment were being held by the firm as stakeholder, and the conditions set out in the contract for the sale of the first-mentioned property had not been fulfilled.

115. *RESPONDENT 5* and Mr. Langford contended that although the contract for the purchase of the second-mentioned property did not specifically refer to the status of the deposit and the vendor's solicitors had stated in writing that they would "not agree the matter of stakeholding of the deposit" the contract was, nonetheless, governed by the Standard Conditions of Sale (Third Edition).

116. *RESPONDENT 5* and Mr. Langford further contended that the relevant provision of the Standard Conditions of Sale (Third Edition) were such that the vendor's solicitors received the deposit as stakeholders, as required under the contract for the sale of the property in Queen's Grove.

117. The Investigation Accountant asked *RESPONDENT 5* if he agreed that the utilisation of stakeholder funds for the purposes of the deposit in respect of the purchase of the property in Avenue Road represented a misuse of those funds. *RESPONDENT 5* did not agree stating "no, it was the way it (the deposit) was being applied".

The Submissions of the Applicant

118. The Applicant in opening referred to the Schedule of Pleas which had been presented to The Tribunal at the start of the hearing on behalf of the second to seventh respondents represented by Mr Roger Henderson Q.C. The Applicant did not find the Schedule unhelpful. In essence in the Schedule of Pleas the second to seventh respondents pleaded guilty to all the allegations save for one contested area in relation to one of the lesser allegations, allegation (k), where that part of the allegation relating to the matter of AH Limited was of a rule breach only and not conduct unbefitting.

119. The guilty pleas on behalf of the second to seventh respondents in respect of the other allegations were mostly qualified as being "guilty by reason of being an equity partner" and/or indicated a lack of personal knowledge. The issue for The Tribunal would be the degree of knowledge and culpability of each individual Partner.

120. However equity partners were all culpable of breaches by the Firm and received direct benefit from misuse by the Firm of clients' money. The Applicant however stated that the OSS did not agree with the assertions made on behalf of the respondents of lack of personal knowledge of the breaches. Save for the limited area already mentioned, all the allegations were of conduct unbefitting. As was clear from the allegations, they did not all involve all of the partners.

121. In two areas the Tribunal would need to examine whether there had been dishonesty. This issue had been made plain to the Solicitors acting for the second to seventh respondents, namely the respondents other than Mr Palmer. These areas were:-

(i) The case of Mr W.
(ii) The setting up and operation of a scheme whereby clients' payments were made out of office account accompanied by the transfer of funds from the client account to office account.

Intervention concerning the issue of dishonesty

122. Mr Henderson Q.C. on behalf of the second to seventh respondents intervened at this point to say that in respect of each allegation concerning those respondents in the Reports and the Rule 4 Statements an allegation of dishonesty was not set out in terms anywhere. In relation to such allegation the Tribunal would have to apply the criminal burden of proof. Furthermore if any allegation of dishonesty was to be made it had to be made expressly.

123. If the Applicant's position was that the issue of dishonesty had been put to the respondents' solicitors, there would still need to be a letter confirming the position, and even that would not necessarily be enough. Mr Henderson stated that he had been put on guard on this issue when he had received only the previous Friday from the Applicant the copy Judgement in the Royal Brunei Airlines case where Lord Nicholls dealt with the issue of dishonesty. Mr Henderson stated that each of the respondents denied dishonesty.

124. The Applicant in response to this intervention made the following comments:-

(i) The allegations were of conduct unbefitting;
(ii) In two meetings with the Solicitors for the second to seventh respondents he had made it clear that the issue of dishonesty arose in relation to the allegations;
(iii) The Applicant's letter to the respondents' Solicitors of 25th February 2002 related to the Pleas, and referred to the need for their clients to convince the Tribunal of their involvement or lack of it in the various transactions. In the letter he informed the Solicitors that he was taking it that the allegations were admitted subject to mitigation. He had added: "You are also aware that dishonesty is being alleged in certain respects, particularly with regard to the First and Second Reports".
(iv) The respondents in their statements addressed directly the issue of dishonesty.
(v) The Investigating Accountant made it clear that dishonesty was in the frame.
(vi) It would be for the Tribunal to decide the gravity of the admitted misconduct.

125. In response to the Applicant's comments Mr Henderson Q.C. said that all of those comments missed the point that for someone to be accused of dishonesty there had to be a charge.

126. The Tribunal, after retiring to consider this exchange, stated that at this early stage of the proceedings the Tribunal was not disposed to disbar itself from any particular finding that might appear to be justified by the evidence as the case progressed, but that it noted and would give due weight to the submissions that had been made. The Tribunal would require the criminal level of proof to be satisfied before reaching any finding of dishonesty.

The Applicant's case continued

127. The respondents had all been equity Partners in the Firm of Palmer Cowen. The firm's practice was now being carried on by some of the respondents in Central London under the name of Fairmays.

128. The case was unusual. Four Inspections by the Monitoring and Investigations Unit had been involved.

129. At the material times the firm had operated a London office and also had a presence in Bahrain. The matters before the Tribunal did not relate at all to the Bahrain office. *RESPONDENT 6* had been resident in Bahrain. He accepted responsibility but has had geographical separation. The Bahrain Office was being closed at the end of the month. *RESPONDENT 7* had become an equity partner only recently in 1997.

130. All the Respondents were experienced solicitors. The proceedings were the result of the conduct of the Respondents when faced with financial difficulties. The Applicant's case was that the acts of the Respondents faced with those difficulties had led them to serious misconduct themselves. The degree **of that misconduct was** a matter for the Tribunal.

131. Throughout the relevant period the Firm had been substantially indebted to its bankers. The Firm had put into place a scheme which the Tribunal might find highly novel and perhaps quite clever but which led to the misuse of clients' money. Clients' money had been used knowingly or unknowingly by the Respondents when in financial difficulties. They collectively accepted responsibility for the scheme's existence. All were aware of the operation of the scheme in general if not of particular details.

132. The Respondents had been co-operative with the Law Society when asked for explanations and these had been included in the documentation.

133. The allegations contained in the Applicant's First Rule 4 Statement dated 23rd May 1997 arose from the First Report which detailed the "misuse of clients' funds". The Applicant also regarded the transfers there referred to as a misuse of clients' funds in breach of Rules 7 and 8 of the 1991 Rules and Rule 7 of the 1986 Rules.

134. The Applicant regarded the matter of Mr. W as a particularly serious case of professional misconduct Mr. Langford had accepted that he had transferred the sum of £50,000.00 from client to office account. That transfer was known by Mr Palmer and Mr Cowen. The letter of 12th April 1996 written by Mr. W led to the direct conclusion that Mr. W had not been asked whether this could be done.

135. While Mr. Cowen (whose client Mr W was) had been away and in anticipation of paying out £50,000.00 of Mr W's client monies to CH there had been transferred, whether or not under the scheme, into the office account two separate tranches of Mr. W's money separated by a week, namely £10,000 on 18th August and £40,000 on 25th August 1995. The transfers had been made by a partner, Mr Langford, who did not have conduct of the matter. The funds had stayed in the heavily overdrawn office account.

136. The two transfers had been totally improper. The Applicant asked why, if the money was transferred in anticipation of being paid out, it had not been paid back. The letter of 22nd December 1995 from the Firm to solicitors for CH said that the client, Mr W, had deposited £50,000.00 with the firm "to hold" and to be paid over on completion. At the time that letter was written the money had already been in the office account for some four months.

137. In a letter dated 22nd March 1996 to the Bureau DJ Freeman, solicitors instructed by Mr. W wrote that Mr. W had been a client of Palmer Cowen and in particular of Mr. Cowen for some fifteen years. They further wrote that:-

> “There is prima facie evidence of a serious breach of the Solicitors Accounts Rules on the part of Mr. Cowen and/or his firm … we are instructed that Mr. Cowen has acknowledged to Mr. W that the sum of £50,000.00 belonging to Mr. W and deposited in the firm’s client account had been ‘inadvertently used’ in the running of the firm. Mr. Cowen also told Mr. W that he needed to produce to his firm's auditors a letter, which as it was described to Mr. W, would have the effect of authorising the use of such money by the firm. Mr. W understood that the letter was to be back dated and would confirm that the £50,000 was a loan to the firm by Mr. W……. We are instructed that Mr. W refused to sign the letter (which he did not see) and demanded the immediate return of the money which Mr. Cowen said was not possible at that time. Mr. Cowen offered to repay the money by May of this year and offered a legal charge over his own house as security.
>
> We are instructed that, after further discussion, a sum of £50,000 was transferred today to Mr. W’s personal bank account.”

138. In a letter dated 27th March 1996 to the Bureau Mr. Cowen wrote:-

> "The sum of £50,000 was in fact paid to Mr. W by my firm on 22nd March and agreed interest on the morning of Tuesday 26th March 1996.
>
> I very deeply regret this breach of the Solicitors Accountancy Rules and would assure the Bureau that no other such breach has occurred and that this singular incident in my firm’s history will never be allowed to recur.”

139. Mr. Langford, Mr. Cowen and Mr. Palmer knew of the two wholly improper transfers into office account. The money was allowed to stay there and when the client asked for it he could not have it. In the submission of the Applicant the case of Mr. W was an example of what happened when a scheme of the type operated by the Firm went wrong. There had been no possible justification for the transfers which amounted to using clients’ funds for the Respondents’ own purposes. . The merit of the explanation of each of Mr Palmer, Mr Cowen and Mr Langford that each thought one of the others was dealing, and would deal with the matter was poor.

140. The scheme might, in the experience of the Tribunal, be unique. It related to the situation where the Firm held clients' money which it was going to pay out. Usually payment out by a client account cheque would be the common practice. However instead of writing client account cheques the firm wrote office cheques and then transferred the funds from client account to office account to match the payments out.

141. The Respondents’ justification for the scheme came from the 1996 Seventh Edition o the Guide to the Professional Conduct of Solicitors, Rule 7(a)(ii) which:-

> “permits a solicitor to transfer to office account money properly required in full or partial reimbursement of money ‘expended’ by the solicitor on behalf

> of the client. Money is expended at the time when the solicitor draws and dispatches a cheque, unless the cheque is to be 'held to order'."

142. In the submission of the Applicant the Solicitors Accounts Rules should be construed according to their spirit. The spirit of this Rule was that solicitors could transfer money from client to office account if a disbursement has been paid, or if a bill has been issued, but not if the office account cheque was not dispatched when drawn, and not if the cheque was not to be presented .

143. The scheme was an artificial way around the rule, and it fell down. In the forty cases identified by the Investigation Accountant in the First Report there was no evidence that the office account cheques were despatched (except for two matters) at the time the money arrived in the office account. When not despatching the cheque immediately the Respondents were breaching the Rule, and where they gained the benefit in terms of reducing the overdraft on office account they were using clients' funds for their own benefit.

144. The Applicant asked the Tribunal to consider why the scheme was put in place; why would any firm operate this system which involved extra postings when it would be simpler to write a cheque on client account. The only reason to construct such a scheme would be to gain from it. The scheme was being operated to obtain a benefit.

145. The Respondents had not complied with the commentary in the Guide because the office account cheques were not being sent out. Some of the Respondents might not have known that the cheques were not sent out but if they had done their duty by looking at reconciliation accounts they would have seen a welter of unpresented office account cheques. They could easily have stopped the scheme which should never have started.

146. It was a scheme to assist the funding of the Firm. If all the office account cheques identified by the Investigation Accountant had been presented they would not have cleared. Discovery had been sought as to whether these cheques were being despatched and the effect on the office account if all had been presented. The result was to confirm that with regard to the 40 matters the partners had the benefit of the use of large amounts of clients' money. Where letters had been sent they were sent after a delay when the monies had been in office account.

147. The first use of the scheme identified by the Investigation Accountant in the First Report had been in May 1995 and the last in March 1996. The total sum of money involved under the use of the scheme as identified in the First Report was £185,927.80.

148. In a letter to the Investigation Accountant dated 10th July 1996 in response to the question why the system had been adopted, Mr. Cowen wrote:-

> "The answer is that we thought that it was perfectly in order to deal with making payments on behalf of clients in this manner."

149. In the submission of the Applicant this did not explain why the Respondents had adopted the procedure but merely said that the procedure was alright. The Applicant

submitted that it was not alright. For example in relation to F Investments the money sent out on 29th February 1996 was to be held to order. The Guidance clearly excluded such payments. The Guidance must have been in the Respondents' minds because they relied on it to justify the scheme. One hundred and twenty four days later (on 2nd July 1996) the cheque had not been presented and there could have been no possible justification for making the transfer.

150. In relation to the matter of R Overseas and the W Club membership, £17,000 had been transferred into office account on the day it came in from a client on 2nd February 1995. The remaining funds had been transferred to office account 18 days later and the firm then found out that the membership could be paid by instalments. The office account cheque despatched on 1st March 1995 had again been required to be "held to order". The funds should not have been transferred out of client account under the Guidance. The Tribunal was invited to consider why these improper transfers were done in this way.

151. The Respondents had had the benefit of half a million pounds of client money in 1996, as indicated in the office account Bank reconciliation as at 31st March 1996. This was somewhat in excess of their actual overdraft on office account. The firm had been over its overdraft limit nearly all the time. The risk to which the clients had been exposed had been considerable. Given the overdraft situation it was not possible to be confident that the cheques would have cleared.

152. There was little evidence that the office account cheques had been sent out whereas solicitors would normally send a letter out with cheques especially those representing client money.

153. A pattern did emerge in the Respondents' conduct. Schedule 2, included in the Respondents' documents, showed that some letters had been sent out but only after the delay period identified by the Investigation Accountant. For example item no. 28 on Schedule 2 related to money transferred into the office account on the 18th March 1996 but the letter sending out the office account cheque was dated the 31st May 1996. There were ten cases identified in the Schedule where the funds had been transferred back to client account with no suggestion of office account cheques having been sent out.

154. Looking at the financial circumstances of the firm the scheme was, in the submission of the Applicant, set up to assist the funding of the firm. It was a dangerous scheme and the Respondents had accepted that it created an environment where breaches could occur. If the scheme had been proper the office account cheques should have been sent out promptly. Solicitors acting prudently would reconcile their office account every five weeks and this would have made clear that client money was being held in office account. The only option would be to pay the money back in immediately which the Respondents had not done.

155. Whilst the scheme was in operation the Respondents were "banging up" against their overdraft limit. If the cheques had been despatched they probably would not have cleared. The scheme was fraught with danger. If the money had been retained in client account as was normal there would have been no risk.

156. This had been a systematic placing of clients' funds at risk and the Tribunal would have to decide which Respondents had knowledge and which Respondents should have had knowledge.

157. In their letter of the 4th September 1996 the firm had written:-

> "We fully accept that we have been in breach of the Solicitors Accounts Rules, and we deeply regret it. We can only offer our most earnest assurance that it will never happen again. In the particular case of Mr. W the transfer from client to office was made before any payment out of office account and therefore was obviously in breach of the Solicitors Accounts Rules. We now recognise however that the procedure adopted of making payments on behalf of clients out of office account and then transferring monies from client account to office account by way of reimbursement instead of making payment directly from funds held for the purpose on client account, produced an environment where it was easier for such incidents to occur. As explained below, we have taken steps to stop using this procedure… We accept that the procedure would have left clients vulnerable if all office account cheques had been presented at once and that the procedure allowed us, as a practice, to benefit from clients' money. We also realise that the procedure created an environment where breaches could more readily occur. In these respects, we now recognise that the procedure was not in accordance with the spirit of the Solicitors Accounts Rules …We are all extremely embarrassed by the breaches which we find in our accounts and will be vigilant to ensure that we do not again fall short of the standard expected of us."

158. Whilst as at that date, September 1996, the respondents were clearly on notice that the scheme was a serious breach, it continued beyond that point as was admitted in a letter dated 8th January 1998 from the Firm to the Investigation Accountant in relation to items identified in the Second Report. The Firm, in relation to counsel's fees, wrote:-

> "we confirm to you that, with effect from February 1997 we were no longer using the system making payment out of office account by way of reimbursement. You have however twelve instances where monies appear to have been transferred to office but a cheque for disbursements had not been drawn contemporaneously in respect of counsels fees totalling around £16,000."

This implied that the scheme went on into February 1997.

159. Allegation (d) was made against Mr. Palmer alone and the Applicant did not seek to suggest a connection in respect of these matters with the other Respondents. In April 1999 Mr. Palmer had been sentenced at the Central Criminal Court to a term of 21 months' imprisonment having been convicted in respect of 15 serious offences of dishonesty. The Certificate of Conviction recorded indictments of furnishing false information, conspiracy to defraud, making a false instrument, false accounting and eleven counts of theft. This brought disgrace on the profession.

160. At the time of the Second Report dated 5th February 1998 there was not a big difference in the financial position of the firm compared with the position at the time

of the First Report eighteen months earlier. It was noted that at all times between 1st April 1996 to 30th June 1997 client funds had been lodged in the firm's overdrawn office bank account thus creating a deficient client account at the end of each month. This was despite the letter referred to above in which the Firm said that the scheme had stopped in February 1997.

161. The Applicant accepted that the scheme had stopped in February 1997 but other client account shortages had arisen and the scheme had taken until December 1997 to work through and be put right. April 1996 had been a pertinent date when the first inspection had taken place and from then on the partners were under the closest possible scrutiny. After the date of issue of the First Report the Respondents had given assurances of vigilance in the letter to the Bureau dated 4th September 1996 referred to above.

162. The matter of Lady M was a serious matter. The file was conducted by a salaried partner and the Applicant understood that the Respondents would say that Mr. Palmer had made the transfer of client's money to office account on 30th August 1996, only days prior to the said letter.

163. *RESPONDENT 4* had been aware of what had occurred within a few days of the event. *RESPONDENT 4* had written a memo on 6th September 1996 to Mr Palmer, copied to Mr Langford, stating that the sum of £74,025 needed transferring back to client account at once. It was not sufficient for an equity partner to write a memorandum about the matter. He could have dealt with the matter himself.

164. Following on from the First Report, this was a very serious transgression. The other partners must have known by this time that they could not rely on Mr. Palmer.

165. In relation to SR Ltd the Second Report identified sums totalling £65,000.00 going from client account to office account in October 1996 and staying there for some eleven months. This was very shortly after the First Report, and the said letter giving assurances of future vigilance. This might have been an example of one partner transferring balances on the file of another partner but the Tribunal was asked to consider whether it demonstrated a departure from the promised standard of vigilance.

166. In relation to OA Ltd the office account cheque drawn on 24th June 1996 had not been presented for twelve months. *RESPONDENT 5* had said that he "thought" the cheque had been paid. Given the fact of the scheme, in the submission of the Applicant it was not enough to "think", he should have found out. One year after the promised vigilance this matter was put right by a transfer back to client account.

167. In relation to B the office account cheque for £38,000 had not been presented for payment fourteen months after the transfer from client to office account on 30th April 1996.

168. Mr. Langford had said that the Firm previously had a system to cancel cheques over six months old. Even that, in the submission of the Applicant, was not sufficient. If cheques were not presented immediately the matter should be chased up as client money was being held in office account.

169. In relation to N Deceased, the other Respondents would say that this was Mr. Palmer's matter and that the mechanics of this were down to Mr. Palmer. Likewise in relation to AG Ltd it was claimed that Mr. Palmer was carrying out significant transfers on Ms G's files without her knowledge. In many cases nevertheless failures had occurred where there had been a failure to rectify earlier matters after the promise of vigilance. The Respondents had not been vigilant enough.

170. In the matter of the loan from B Investments Ltd it was accepted that while Messrs. Cowen, Langford, *RESPONDENT 4* and *RESPONDENT 5* had known of the loan arranged by Mr. Palmer at the time, as indicated in the letter from Mr Cowen to the OSS on 22nd September 1997, *RESPONDENT 6* had not known until subsequently. The loan showed the firm financing itself in an unorthodox way by taking a loan from a client without being satisfied that the client had received independent advice.

171. In relation to the loans from the E estate referred to in the Second Report the then partners had told the Investigation Accountant that they had assumed that Mr. Palmer had suggested that his co-executor take independent advice. The loan to Mr. Cowen from the E estate of £6,500 was a matter of very serious misconduct and a conflict of interest. While the Applicant was not suggesting dishonesty on the part of Mr. Cowen in respect of this loan it was plainly against the professional guidance to borrow money without ensuring that the client had received independent advice.

172. At the time of third MIU investigation reporting the Firm's position as at 31st March 1998 the Firm's indebtedness was slightly less than that one year previously but not substantially improved, with bank borrowing down but other loans increased. The Third Report identified another cash shortage, two years on from the first MIU inspection. Sums had been transferred in relation to N Limited from client to office account in respect of professional disbursements leading to the cash shortage. This was well after the firm had been put on the clearest possible notice of its duties. The funds should not have gone into office account unless the disbursements were being paid at that time. If ever there was a case of a need for vigilance the transfer of client funds in respect of N Ltd was it.

173. The loan to the firm from Mr. Cowen's family member was a further example of unauthorised financing which amounted to a breach of the rules of conduct. The executrix had declined independent advice and the firm should have known that the loan could not proceed. The loan was taken improperly by the firm to finance itself.

174. It was accepted that *RESPONDENT 7* had been only a salaried partner at this time.

175. At the time of the fourth MIU inspection as at February 1999 the firm's indebtedness remained substantial. Another cash shortage was identified in the Fourth Report albeit in a smaller sum.

176. In relation to the matter of AH Ltd the allegations were contested. The Applicant accepted that the allegations amounted to breaches which were technical in nature and not to conduct unbefitting a solicitor.

177. No dishonesty was suggested in relation to this matter. Nevertheless it was submitted that a client must be told in writing that money was being taken for costs as this

enabled him to know where his money was and to challenge the action of the firm if appropriate. The letters sent in this regard did not go far enough.

178. The Tribunal was asked to consider the authorities submitted by the Applicant namely Bolton v the Law Society (1994 1 WLR) , Weston v the Law Society (The Times LR 1998) and Royal Brunei Airlines v Tan (1995 2 AC).

179. The relevant principles were set out in the Bolton case and were commented on in Weston. There it was stated that the Solicitors' Accounts Rules existed both to afford the public maximum protection against the improper and unauthorised use of their money and to ensure them of that protection. Solicitors were accordingly under a heavy obligation, quite distinct from their duty to act honestly, to ensure observance from the rules. Where, therefore, a solicitor was guilty of non-compliance with the Accounts Rules but against whom no dishonesty was alleged his conduct could be unbefitting that of a solicitor and depending on all the circumstances, including his actual knowledge, he might be struck off the Roll of Solicitors.

180. In a reference to the Bolton case Lord Bingham, in the Weston Judgement, said:-

> "It is important to appreciate that in speaking of "trustworthiness" in that passage the court had in mind, of course, honesty but also had in mind the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. That is violated if one solicitor with a duty to see that the rules were observed fails to do so."

181. The case of Royal Brunei Airlines v Tan set out the test of dishonesty. This had been held to be the appropriate test to apply to solicitors as long as its application was made clear in the Tribunal's Findings and reflected in the sentencing.

182. This had been a Firm of solicitors which had been under financial pressure for many years. For a long time and on a large scale the firm committed breaches of the Rules of professional conduct with regard to clients' funds. The client account was sacrosanct. Where clients' funds were held in office account they were at risk, especially given the position of the office account in this case.

183. In the submission of the Applicant the matter of Mr. W and the existence of the scheme would trouble the Tribunal the most. The matters came to the attention of the then partners early on and thereafter special vigilance was called for and promised.

184. Mr. Palmer had plainly been dishonest and much would be laid at his door. The Tribunal was asked to consider the following questions:-

(i) what did the other equity partners know about the scheme and the way it was operated?
(ii) What as solicitors should they have known?
(iii) Had they done enough to protect the interests of their clients?
(iv) Did they take any steps to stop it happening?

185. The allegations were of very serious misconduct indeed. The Firm had fallen very far short of the standards required. The Tribunal was asked to consider why the scheme was put in place in the first instance and what was the culture at the firm with

regard to the client account. The Applicant sought such orders as the Tribunal thought fit, and sought costs to be subject to a detailed assessment, including the costs of the Investigating Accountants.

The Submissions of the First Respondent

186. The submissions of Mr. Palmer were set out in his letter dated 5th March 2002 to the Tribunal as follows:-

> "May I first say that, as you know, I have since July 1997 made it clear to you that I should not wish to renew my Practising Certificate. In a major sense therefore I do not need myself to take up the Tribunal's time and I regret that it has had so much trouble on my account.
>
> I enjoyed 35 years' practice as a solicitor. It was a rich and varied time and I am even more aware now of the rich privilege that a solicitor enjoys in giving service to his clients. The loss of it is great.
> The ending of my own career as a result of clear breaches of professional rules is a matter of great distress to me and the results have inevitably been harsh. Quite frankly, a prison sentence was the least of them.
>
> I would like to record that although I pleaded guilty to serious charges and was unquestionably guilty of the more peripheral and technical ones, I am entirely confident that I was never truly guilty of theft and never for one moment was I intending to steal money. The debts were recorded and I have already begun steps in an improving financial climate to repay accounts from which money had been borrowed.
>
> I suspect that only if one has been in the situation in which I found myself can one know or understand the reasons why an accused pleads guilty. When I made my decision it was, as my solicitors advised me, on pragmatic grounds. Only later did I realise that those pragmatic grounds could not only not be pleaded in mitigation, but not even mentioned.
>
> My reasons were not of any feelings of guilt on the substantial charges against me. They were related to the advice that a jury would not be likely to acquit me and to the discount in sentence for an early plea; To the lack of money and legal aid to pay for my defence; To the wish to avoid friends and clients being called to give evidence; To the wish to avoid a long and taxing trial in which I would have had to defend myself when I was already in a state of clinical depression; To get it over quickly rather than for myself, my friends and family and particularly for my former partners to suffer extended publicity and in part to sheer exhaustion and a lack of fighting spirit.
>
> I wish to state this because it is, I believe, important in any judgement that is made of me.
>
> However I shall, of course, abide by and accept the Tribunal's decision and for that reason I shall not take their time in attending before them.

Of the matters in respect of which criminal charges were brought against me, my former partners were, with one minor exception, entirely unaware of the matters concerned. They should not be blamed in any way.

Of the other detailed accounting complaints which arose from enquiries made before my own individual problems came to light I fear, that without records, I must leave these to my former partners.

I would however like to say that whilst, as it was pointed out to us, we could be accused of abusing the rules, the payments system we followed was strictly within them. It would be pointless to ignore the fact that our cash flow at that very difficult time for the profession was such that we needed to help ourselves by paying disbursements in the way that we did. However we were eventually able to come through that period without embarrassment. If I myself was at all typical of my partners I can only say that the daily pressure was relentless and stressful. It was not a situation that we found comfortable. Had our clients paid their bills more quickly we would not have been in that situation, despite the general financial malaise which affected small firms such as ours so badly.

I am aware from papers that I have seen that in certain instances blame has been attributed to me by my former partners when that was not so. Perhaps that is inevitable but I regret it. I have not shirked in accepting responsibility for my own errors and you will realise that I have nothing to gain for saying other than the truth. I shall however not pursue this aspect further.

May I repeat that I deeply regret embarrassing the profession, my partners, my clients, my friends and myself by what has occurred."

The Submissions on behalf of Messrs. Cowen, Langford, RESPONDENTS 4, 5, 6, 7

187. The submissions on behalf of these second to seventh respondents were made by Mr Henderson Q.C. A Schedule of Pleas was submitted at the hearing on their behalf together with two supporting schedules. Statements of each of these respondents were before the Tribunal, and each gave sworn oral evidence.

188. In the Schedule of Pleas each of the respondents pleaded guilty to the allegations against him, qualified, save for one exception, by wording of varying content depending on the particular factual background. Typical of the qualifying wording, in addition to the word "guilty", were the words "by reason of being an equity partner"; or "had the use of the money but was not aware of the facts until later"; or "had the use of the money but was never aware of the fact"; or "knew of the transaction but did not sufficiently question whether or not it was permissible".

189. Only in the case of one respondent, Mr Langford, did the Schedule of Pleas record an unqualified "guilty" plea. That plea related to allegations (a) and (c) concerning the Mr W matter, the comment concerning allegation (c) in relation to that matter being "guilty, ie had the use of the monies and was aware of the fact at the time".

190. It was agreed that the most serious matters were those concerning Mr. W and the scheme.

191. Without wanting to suggest that the second to seventh Respondents could slough off responsibility by laying it at the door of Mr. Palmer there was one vital matter. February 1997 was the end of the scheme and September 1997 was the end of its effect. The matter of Mr. W occurred in 1995/6. Matters which occurred five to four and a half years ago and had been admitted soon afterwards were the most serious matters.

192. The Respondents had never been suspended and their last five accounts had been entirely clear. They had achieved the Lexcel standard.

193. The Tribunal would be sentencing a completely different set of Respondents now from then. Submissions would be made on delay in the matter coming before the Tribunal and the effect of delay on penalty. It was not asserted that delay had prevented the respondents having a fair trial. (See below).

194. It was accepted that the risk to clients' funds was greatly increased by the state of the Firm's debt.

195. In relation to the loan from the E estate this came out of the executors' account not the client account. There would therefore have been no client account ledger. The signatories would have been Mr. Palmer and his co-executor who was now a High Court Judge. The breach of duty had been admitted because there had to be some obligation on a partner.

196. The Applicant had asked what the Respondents other than Mr. Palmer had known about the scheme and its operation. Except in the case of *RESPONDENT 6* this was dealt with in the Respondents' statements. It was accepted that as solicitors they should have known everything. They had not done enough to protect the interests of their clients. They had taken steps to stop it but too little and too late.

197. The scheme had been put in place by Mr. Palmer and began at his door because he exercised nearly unchallengeable control in the Firm. To those who questioned the matter Mr. Palmer lied. To some he said that the scheme had been cleared by the accountants and to others he said it had been cleared by the Law Society. There was reluctance on the part of those who had to challenge Mr. Palmer to do so.

198. The reason for the scheme lay with the lack of working capital. Mr. Palmer had started stealing from the clients' account of the firm in 1990/91 and had covered this up with false accounting. If dealing with someone who was charming, powerful, dominant and a bully but, unknown to others, dishonest and who was challenged then he would try to stop access to the books. His letter to the Tribunal showed he was still prepared to dissemble.

199. The Respondents had believed that the system was being operated correctly. The practical problems of having a partner such as Mr. Palmer were put forward not as an excuse but as an explanation and went to mitigation. The culture of the firm in relation to the client account had been inappropriate.

200. The powers of the Tribunal were to make such order as they thought fit. It was submitted that a striking off would be excessive in relation to the second to seventh

Respondents, given their individual cases, on principle given the delay in bringing the matter to a hearing and given the performance of the firm in obtaining five clear sets of accounts. By that the Respondents had shown themselves able to properly and honestly to run a practice.

201. It was submitted that suspension would also be excessive given the delay and reformation. In relation to a fine, delay was also a problem. Delay had enabled the firm to put its house in order from an administrative point of view. A fine would not be an inappropriate penalty but could be discounted because of the delay and the inherited financial burdens.

202. The payment of costs was clearly appropriate subject also to the impact of delay. Part of the costs however flowed from Mr. Palmer exclusively. His was a pivotal dishonest role.

203. In terms of a reprimand, *RESPONDENT 7* had had the least involvement by a very long way and a reprimand would allow the Tribunal to express its displeasure and disapproval. It was anticipated that the Tribunal would not consider a reprimand enough for some of the Respondents.

204. The Respondents were aware of the Tribunal's role in protecting the reputation of the profession. Breaches of the Accounts Rules were a matter of strict liability. The Respondents did appreciate what they had done wrong. Professional misconduct was a matter of professional and judicial opinion, whether or not there was strictly a breach of the professional rules.

205. It was accepted that failure to abide by the rules could be a dereliction of duty. The case of Weston said that this would depend on all the circumstances of the case.

206. The breaches by the second to seventh Respondents were not deliberate. They had been deceived by Mr. Palmer. They did not take action as they should have done but they believed that they could transfer funds from client to office account.

207. The Respondents acknowledged their guilt but denied dishonesty in so far as it was, or was allowed to be alleged. The Respondents denied turpitude.

208. The fraud by Mr. Palmer and his position and power corroded the partnership but the second to seventh Respondents had been wholly unaware of frauds. These had come as a bolt from the blue. In his sentencing remarks regarding Mr. Palmer Mr. Justice Collins had said:-

> "What you have done is described by those who knew you well as astonishing, something quite out of their recognition of the person with whom they are friends or acquaintances, or who has been running their affairs as a solicitor for them."

The Respondents should have seen through this but Mr. Palmer's role was to prevent them. The trust of the Respondents had been seriously misplaced but their stewardship had also been misplaced.

209. After Mr. Palmer, Mr. Cowen had been the most senior partner in terms of age. He had been responsible for staff and administration while Mr. Palmer had been responsible for finance. When the firm grew Mr. Palmer retained control of the finances despite the existence of a finance committee.

210. As explained in Mr. Cowen's statement at that time transfers from client to office account were not shown on the monthly "executive action" list. In practice it was, wrongly, not possible for the fee earners to see the position. The Tribunal was referred in this regard to the relevant paragraphs of the statements of the other Respondents.

211. There had been no call on the Compensation Fund in respect of the Firm. The Solicitors Indemnity Fund had met the thefts by Mr. Palmer.

<u>Submissions on behalf of the second to seventh respondents in relation to factual matters concerning the individual allegations</u>

212. On behalf of the second to seventh respondents Mr Henderson set out for the Tribunal matters in respect of the individual sets of facts to which the allegations related, which are identified below by the item number used in the Schedule of Pleas

<u>Item 1.:The matter of Mr W.: £50,000 of client funds in office account for seven months (allegations (a) and (c)</u>
<u>The admissions and the issue of delay</u>

213. Mr Henderson referred to the letter dated 10th July 1996 in which Mr. Cowen had accepted that things had plainly been done in breach of the Rules.. By a letter dated 4th September 1996 Mr. Cowen had written to the Bureau concerning the matter of Mr W:-

> "… the sum was transferred from client to office account in anticipation of paying it out . ..before any payment was actually made. We fully accept that we have been in breach of the Solicitors Accounts Rules and we deeply regret it."

214. By a letter dated 8th December 1997 the Respondents' solicitors had written to the Applicant:-

> "It is admitted that the Respondents withdrew or caused or permitted to be withdrawn monies in client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules."; and "It is admitted that the respondents used clients' funds for their own purposes only to the extent that the procedure adopted meant that the Firm's overdraft was less than it would have been otherwise."

215. These were clear admissions some four and a half to five years ago of a matter which was only now coming on for adjudication. Whatever the gravity of the allegations this created a conundrum for the Tribunal.

216. Mr. Palmer had had control of the Firm's finances and was the dominant member of the Firm. Mr. Palmer had beguiled *RESPONDENT 5* into thinking that

RESPONDENT 5's concerns about the scheme were wrong. Mr. Palmer had said he had checked the matter with the Law Society. The breach of the Rules contributed to the impermissible transfers.

217. The transfers in respect of Mr. W had occurred when Mr. Cowen and Mr. Palmer were on holiday. Mr. Langford had made the transfers. When Mr. Cowen became aware of what had occurred he had said that the matter was not acceptable and the money must be replaced but it was not. The letter saying that it should have been replaced had been written years ago. It was accepted that the Firm had gained an advantage in that the firm's overdraft was at or beyond its limits.

218. In March 1996 Mr. Cowen had been to see Mr. W. Mr. Cowen had brought the matter to a head despite the objections of Mr. Palmer. Mr. W was a long standing client and Mr. Cowen had told him what had happened and had asked if the £50,000 could be a loan. Mr. W had said "could the firm pay the money back?" He had not said "will the Firm pay the money back?"

219. The first request that the money actually be paid back came via DJ Freeman whom Mr. W had consulted after Mr. Cowen advised him to take independent advice. When Mr. W asked for the return of the money it was paid the next day followed by the interest four days later. DJ Freeman reported the matter to the Law Society.

220. *RESPONDENTS 4, 5, 6* pleaded guilty as partners but had no knowledge of the matter at the time. *RESPONDENT 7* had not been a partner at the time.

221. The Tribunal was asked to note that Mr. Cowen had brought the matter to a head not Mr. W. There had been a prompt explanation, a curing of the default with interest and different degrees of knowledge by the Respondents.

222. The delay in this matter coming to the Tribunal should operate to reduce the penalty.

223. The Respondents had striven to put in new procedures and this had been dealt with principally by Mr. Langford. If his role in the matter of Mr. W had been most deserving of criticism then his role since in relation to subsequent reform had been deserving of praise and commendation.

<u>Item 2: The matter of unpresented office cheques: £185,927.80 of clients' funds held in office account for periods up to 247 days as a result of office cheques in relation to 40 matters being unpresented following related transfers from client to office account (allegations (a) and (c)</u>

224. The Tribunal was referred to the statement of Mr. Langford which said:-

> "The system which the firm had adopted of making payment out of office account and then transferring funds across from client to office concerned me greatly because it masked the fact that the business was not being run properly. In fact, I would rather send someone out to pick up a cheque which was for money due to us then to transfer funds across in that way.
> MJP (Mr Palmer) had told me that he had checked with the Law Society who had said that the system was acceptable. I felt that even so it was not a sensible procedure to follow."

225. The Tribunal was referred to *RESPONDENT 4*'s statement which said:-

> "I know that the firm had adopted a procedure of paying disbursements out of office account and simultaneously transferring monies from client to office. I questioned MJP about it but he assured be that he had cleared the procedure with the partnerships' accountants. I realised that the procedure meant that we obtained the benefit of the monies until the cheque cleared but foolishly I relied on MJP's assurance that it was permissible to do this. I declined however to use the system where I did not think a payment could properly be described as a disbursement.
>
> I now realise that the procedure allowed us use of the clients money which was inappropriate, and that it placed the clients' money at risk had all the cheques been presented at once.
>
> I was aware that the firm was heavily overdrawn. I was not aware that the amount which was being transferred under the procedure correlated with the amount needed to keep the firm within its overdraft limit. Further I was not aware of any policy to delay the sending out of the office account cheques."

226. The Tribunal was referred to the statement of *RESPONDENT 5* which said:-

> "I was aware that as a firm we adopted a procedure by paying out of office account and then transferring funds from client to office account by way of reimbursement instead of making payments directly from funds held for the purpose on client account. MJP told me at some stage that the partnership accountants had informed him that the procedure was fine. I now appreciate that the practice resulted in the use of client's funds and further that if all cheques had been presented for payment at once we would not have been able to meet them. I did not think about this at the time. I knew that the firm was overdrawn and that it was always close to the limit of its facility. I did not however know that the amount being transferred correlated with the amount needed to keep the office account within the overdraft facility. I was also unaware of any policy to delay the sending out of cheques once drawn.
> The following items referred to in the schedule prepared by Mr. Davies [Investigation Accountant] were in respect of files with which I was the fee earner involved. I do not know who authorised the client to office transfers nor when I became aware of them, as the system at the time was such that the accounts department would effect transfers usually on the oral instructions of MJP, without necessarily any reference to the fee earner. Although, I did not appreciate it at the time, such a system meant that, without the knowledge of the fee earner concerned, transfers could be made in breach of the Rules. I accept however, that I am ultimately responsible for the files in respect of which I was the fee earner and as such apologise for and deeply regret the transgressions."

227 The Tribunal was referred to the statement of *RESPONDENT 6* which said:-

> "I was not aware that the finance committee had formally or informally adopted a 'system' or 'protocol' for the payment of monies properly payable

> by clients out of the firm's office account, having first transferred the funds from client account to office account. Had I known I hope would have raised the matter at a partners' meeting."

Item 3: The matter of M: £50,000 transfer from client to office account, simultaneous office account cheque not presented for six months and then cancelled (allegation (c))

228. This matter highlighted the problems arising from the procedure which the firm had adopted. The Tribunal was referred to the statement of Mr Cowen which said:-

> "I had no knowledge of this matter until it became the subject of the Investigation Accountant's report in August 1996. This matter was of a conveyancing transaction being dealt with by Miss G (who was a salaried partner) in October 1995. By this time, of course, the matter had been put right, so there was nothing for me to do. For reasons I have made clear above, she would not be aware from her monthly list that the cheque was still outstanding. Once a cheque had been drawn, it would be debited to the appropriate account, and therefore show a nil balance. It would only be the bank reconciliation which was carried out by the accounts department and seen certainly by Mr. Palmer that would indicate what cheques were still outstanding."

Miss G would not have been aware of the non encashment but Mr. Palmer would have been.

229. Mr. Langford was not aware of the matter until later.

Item 4: The matter of F Investments - the client account transfer to office account, the office account cheque for £5000 not being presented for 124 days and funds then being reimbursed to client account (allegations (a) and (c))

230. The Tribunal was referred to the statement by *RESPONDENT 5* which said:-

> "I was the fee earner on this file. Although, again for reasons stated above, I am not certain who authorised the client to office transfer, I recall that just as I was about to send the cheque, drawn on office account, to the client's accountants, one of the beneficial owners telephoned to ask me to ensure that the accountants hold the cheque pending his further instructions. On the client's instructions a week or so later, I released the cheque to the accountants. In sending the cheque to the accountants and asking for it to be held to order, I did not appreciate that this would automatically result in a breach of the rules as soon as the corresponding transfer was made from client to office account but I do not know when I first knew that such a transfer had been made. At the time of issuing the cheque I gave no order for transfer and would only have expected to do so when the time arose for the cheque to be met. I accept that the transfer should not have been made at all and the fact that it was again highlights the fact that unfortunately the practice which we thought permissible at the time created a climate in which breaches more readily occurred."

In the letter dated 4th September 1996 to the Bureau it had been accepted that the cheque was tantamount to a cheque being held to order.

Item 5: The matter of FI - transfer of £21,250 from client to office account, office account cheque unpaid for 92 days when funds reimbursed to client account (allegations (a) and (c))

231. The Tribunal was referred to the statement of Mr Langford which said:-

> "I do not recall signing the cheque request but have no doubt that it is my signature. SE dealt with the matter. As to the transfer I do not know who made it but it was almost certainly done pursuant to the policy then in operation to pay client disbursements out of office account but to transfer the monies before the office cheque cleared the account. I imagine he was given the cheque and if it was not to go out then he would have held on to it. I have no idea when and if the client asked us not to send out the cheque. I accept that the transfer should not have been made and that if I had known of the circumstances of the client's instructions the money should have been replaced in client account."

Item 6: The matter of R: transfer of £13000 from client to office account for stamp duty not paid (allegations (b) and (c))

232. This transfer had occurred in 1990 and was coming before the Tribunal in 2002. The Tribunal were referred to the statement of Mr. Langford which said:-

> "I believe I became aware of this matter as a result of a query raised by S the firm's then accountants on a client account audit. This was the occasion that MJP asserted that he had checked on the policy of making transfers between client and office in respect of cheques drawn on office but not yet presented. MJP said he had checked with the Law Society and we were entitled to act as we were doing. I can recall long discussions between MJP and Mr. S about this subject and MJP inviting him to make his own enquiries. I believe that MJP had made the original transfer which was to pay Stamp Duty as I recall but certainly I was aware of it some time in late 1996 and I accept that despite his assertions we should have transferred it back to client account. It was I believe a file of **'s originally although the beneficial owner was a client of MJP's."

233. The Tribunal were referred to the statement of *RESPONDENT 5* which said:-

> "I was the fee earner on the file and was a salaried partner at the time. R was the alter ego of HK, one of MJP's clients whose financial and tax affairs MJP handled. I acted for R in connection with its purchase of a flat which only had 18 years or so left to run. In purchasing the lease, I understood from MJP that the client with MJP's assistance was negotiating with the landlords a lease surrender and a grant of a new extended lease. All my dealings with the client were through MJP and I do not remember ever speaking direct to HK. I do not know who authorised the original client to office transfer but would suspect that almost certainly it would have been MJP. Neither do I remember

when I first became aware of it. I had no involvement with the file after 1990."

234. The Tribunal would see that whilst it had originally been stated that the money was properly transferred under the old rules none of the respondents now maintained this position but accepted that the transfer was contrary to the spirit of the old rule.

Item 7: The matter of RO Corporation - client account to office account transfers of £49,937-50 (allegations (a) and (c))

235. The Tribunal was referred to the statement of *RESPONDENT 5* which said:-

> "I do not know who authorised the client to office transfers. I am fairly certain, however, that I would not have done so. As I have already mentioned, unfortunately we no longer have any of the "M" files. From my recollection, however, I am sure the matter related to the acquisition of certain membership rights in the W Club on behalf of RO Corporation, a company belonging to M one of MJP's long standing clients and the payment of various subscriptions. As far as I can remember, I was dealing with the W Club and the Club's solicitor and our client was not sure what to subscribe for and how it wished to pay – whether by instalments or in one lump sum. I think originally I sent a cheque to the solicitors for the full amount only to be advised that the cheque should be made payable to their clients. This would explain why the first cheque was cancelled and reissued. The only reason I suppose I would have required the replacement cheque to be held to order was to await finalisation and execution of the agreement. I do not know why this second cheque was subsequently cancelled and further office account cheques in split amounts but totalling the same were later issued. I recall that I was on holiday for some of this time (unfortunately I cannot remember when) and left the file with MJP. I cannot remember when I first became aware of the transfers but I must have known (at least after my return from holiday) that cheques in split amounts had been issued. I am sorry to say that I doubt whether I would have challenged MJP with regard thereto but it would not have occurred to me that the fact that separate cheques had been issued might suggested something suspicious."

Item 8: The matter of the Debit Balances in August 1996 : twenty two individual client ledger accounts in debit to a total of £86,243-97 due to the fact that funds had been transferred to office accountin excess of those properly available (allegations (e) and (f)

236. The Tribunal was invited to consider the letters written by the firm to the OSS on 16th January 1998 and 25th February 1998. In the first of these Mr Cowen had explained that whilst each of the second to sixth respondents had had the conduct of one or more of the related files it was not true that the partner/fee earner would necessarily have known about the debits at the time. The "Executive Action" list received by each fee earner each month set out against each file in the fee-earner's name the balances held on office and client account as at the date of the list. If corrective action had been taken before the issue of the list the debit would not appear on the list and the fee earner would not be aware of it. The debits were

principally attributable to Mr Palmer effecting the transfers under the scheme without the knowledge of the partner/fee earner conducting the file.

237. The Tribunal was referred to Mr Cowen's Statement which said:-

> "For my part, I can say that I was unaware of any of these items until they were listed in the report.." (i.e. the Second Report dated 5th February 1998) "..I was not therefore aware that any of this money might have been used in office account to the benefit of the Firm, save for the knowledge which is attributable to me as a partner"

238. The Tribunal was referred to Mr Langford's Statement which said:-

> "On a general note, it is virtually impossible, given the practice in the accounts department at the time and the passage of time to say who authorised the transfer further. One of the difficulties we always faced was the time lag between an entry being made and it being entered on the system. Indeed there could be weeks between such an event and receiving an EA list, all of which had to be printed out centrally. At this time nobody but the accounts department had access to screens with the data on them. Getting information involved submitting a written request to accounts and waiting whilst they processed it. This could take a couple of days and a week was not unknown. If posting was not up to date then what you got was inaccurate anyway and had to be amended, for example when a bill was submitted for processing, when time was wasted manually checking the day sheets to see if there were any unposted entries on the file.
>
> I suspect that this was why, for example number 1 [of 22 items noted by the Investigation Accountant] occurred. Nobody was required to sign off on the transfer and it is no real proof to say that a cheque request was signed by a particular partner either since if no other partner was around the accounts staff would ask the nearest one and the signing was seen as a mere formality not a step in risk management………..
>
> ……….I was responsible for the file in item 12. I was aware of this transfer well before the month end for some reason possibly because I had cause to ask to look at the ledger in order to chase the outstanding costs. This client made numerous promises of payment and we ended up suing for our costs. I do not believe I made the transfer but nor can I say who did since no documentary record of authorisation was kept. As I was aware of it soon after it was done I accept responsibility for it. I should have done more to correct it earlier but this was financially impossible."

239. The Tribunal was referred to *RESPONDENT 4*'s statement which said:-

> "I have no direct knowledge of nor did I have any involvement in the matters referred to with one exception which is matter number H178.151 HAW planning. This was a file for which I was responsible but I did not authorise the transfer in question which appears to have been made on 28th August 1996 and reversed two days later. I was not aware of the matters complained of until I saw the relevant Accountant's Report."

240. The Tribunal was referred to the statement of *RESPONDENT 5* which said:-

> "I regret that I can be of little assistance regarding these matters. I suspect in most if not all cases the relevant transfers and/or posting errors would have emanated from the accounts department carrying out MJP's instructions. It was a constant source of difficulty that the transfers were often made between related ledgers with the result that where there were many different matters for the same ultimate client, reconciling the ledgers was a task that only the accounts department could realistically undertake."

<u>Item 9: The matter of Lady M: £74,025 of client's funds transferred to office account to pay agent's fees, which were unpaid during a three month period (allegations (e) and (f))</u>

241. The Tribunal was referred to the statement of *RESPONDENT 4* which said:-

> "Lady M was a client and friend of MJP whom she instructed to sell her house. The matter was delegated by MJP to Ms G to deal with. I was however responsible for the matter on one occasion when Ms G was on holiday from 3 to 18 October 1996. I did not know that the transfer had been made until Ms G drew it to my attention. On the day she did so, I sent a note to MJP pointing out that the transfer should not have been made and that it required reversing. I copied the note to Alistair Langford as a matter of routine as he was a member of the finance committee. I was given a verbal assurance by MJP that this would be done which I accepted. As I heard nothing further in the matter, I took it for granted that the matter had been rectified. I very much regret that I was not more pro-active in pursuing the matter at the time. I was not aware that a cheque for £68,000 was subsequently drawn placing the client account in debit."

242. It would be reasonable to infer that the transfer had been the work of Mr. Palmer. *RESPONDENT 4* regretted this matter very much. *RESPONDENT 4* and Mr. Langford had tried to reverse this matter.

<u>Item 10: The matter of SR Limited: transfer of £65,000 from client to office account, replaced eleven months later (allegations(e) and (f))</u>

243. In this matter the money had been transferred by Mr. Palmer without the knowledge of the fee earner, *RESPONDENT 6*, and this remained undiscovered until much later. *RESPONDENT 6* considered that he discovered the transfer but statements of other Respondents thought that it had been discovered by an internal audit. The money was not replaced until September 1997 when it was repaid with interest.

<u>Item 11: The matter of OA Limited: £20,000 transfer from client to office account, simultaneous office account cheque drawn, unpresented for twelve months when client account reimbursed (allegations (e) and (f))</u>

244. The Tribunal was referred to the statement of *RESPONDENT 5* which said:-

"I was the fee earner on this file. The £20,000 in question represented the refund to OA of the previous over payments by them of that amount to us. I had been dealing with Mr. G the Finance Director of OA regarding the proposed completion of OA's new lease of their office premises and the payment by OA of the substantial amount (£200,000) OA were to pay by way of rent and service charges. Mr. G put us in funds and in settling the final amount with the landlords I queried the correct amount due. I confirmed the full amounts with the landlords and with Mr. G before paying the amounts due and accounting to Mr. G for the balance, as agreed. I had no reason to doubt that the £20,000 sent to OA had not been received as otherwise Mr. G who would have been expecting the money would have said. I was not concerned that my letter of 24th June 1996 was not acknowledged. I continued to deal with Mr. G and OA on other matters throughout the intervening period and he never mentioned not having received the cheque. At the time I sent the original cheque to Mr. G, I was discussing with him and Mr. J (OA's property manager) the impending rent review in respect of their existing offices. They were concerned, particularly in view of the then depressed state of the property market and the already high rent they were paying, to try and secure a nil increase at review on 29 September 1996. Mr. J therefore sent the accompanying letter dated 14 June 1996 to the landlords' managing agents who responded by their letter of 24 June 1996. The significance of this early exchange of correspondence on the impending review is that we were able successfully to argue that the landlords' agents letter of 24 June 1996 did not amount to a rent review notice and therefore the rent was not able to be reviewed until 25 December 1996 instead of on 29 September 1996 (i.e. after the actual rent review notice dated 11 November 1996 as per the attached copy). The rent review negotiations were protracted and involved seeking our Counsel's opinion on the interpretation of the rent review clause. It was not until September 1997 that the new rent was finally agreed between the parties. Throughout this period, I was in constant touch with Mr. G and OA and he never mentioned not having received the cheque I had sent to him and I do not believe I gave the matter a second thought. It was when I was in the process of rendering an invoice for the rent review work that I discovered that OA had apparently never presented our earlier cheque. It was then that I sent Mr. G a replacement cheque with my letter of 2 October 1997. As it happens, Mr. G did not acknowledge receipt of this letter and replacement cheque either, even though I continued to deal with him and Mr. J in order to complete the rent review memoranda which were not finally executed until December 1997."

245. This matter was not another secret transfer by Mr. Palmer and the use of the monies had been accepted by the Respondents.

Item 12: The matter of Mr B: £38,000 transfer from client to office account with simultaneous drawing of office account cheque not presented for fourteen montsh and then cancelled (allegations (e) and (f))

246. Mr. Palmer had told the partners that a cheque had been sent to the client but it had not. It was probably one of the two cheques found in Mr. Palmer's desk.

247. The Tribunal were referred to the statement of Mr. Cowen which said:-

> "…..when Alistair Langford and I went through Michael Palmer's desk in August 1997, he found hidden in a drawer two office account cheques. My recollection is that one of these was the cheque to Mr. B, despite what Mr. Palmer had told partners. Our then office manager GS dealt with the reconciliation with the client. Alistair Langford will doubtless refer to this in his statement, but I can certainly add that, as result of the reconciliations, Michael Palmer repaid a sum in excess of £13,000 to client account to make up discrepancies in the amount available for the client."

248. The system to cancel cheques over six months old had not worked.

Item 13: The matter of Mrs N: £11,750 of client's money taken for costs with no delivery of a bill, and a credit note issued after three months (allegations (e) and (f))

249. In relation to this matter none of the second to seventh Respondents had known anything of it. The Tribunal were referred to the statement of Mr. Langford which said:-

> "This was an MJP matter and formed part of a much larger problem that I dealt with on his departure. We had "inherited" the practice of a friend of MJP's, a Mr JM, a sole practitioner with whom MJP had been friendly for many years. MJP arranged that we would take over and run the practice when Mr JM died suddenly. This was done with the full knowledge of his widow and executor, another solicitor…. Because of the way MJP set the whole administration up the ledgers of the JM client with us had got into a horrendous mess. This was not helped by the fact that he appeared to have used client account money indiscriminately to pay bills on JM's clients in circumstances where I could not even be sure the bill had been rendered. With the help of GD and AM I gradually unravelled each account, put the ledgers in order, rendered bills or provided cash statements and accounted to clients. MJP controlled the JM cheque book and had persuaded Lloyds to allow him to be a signatory. I had no dealings with this file or this client and was not aware of these transactions.".

Item 14: The matter of AG Limited: £5405 transferred from client to office account of monies held by the Firm as stakeholders (allegations (e) (f) and (g))

250. This matter had been delegated to Ms G by *RESPONDENT 4*. Mr. Cowen in his statement had said that Mr. Palmer had made the transfer and the second to seventh Respondents could not shed further light on this matter.

Item 15: The matter of AF: £4298-21 transferred from client to office account in respect of a bill not delivered (allegations (e) and (f))

251. The Tribunal were referred to the statement of Mr Cowen in which he said that this was a transfer made by Mr Palmer. The second to seventh Respondents had had no knowledge of this matter and their responsibility lay in their stewardship as partners.

Item 16: The matter of improper transfers by Mr. Palmer (allegation (e)

252. These improper transfers aggregating some £56,000 had been made between May 1991 and May 1997 by Mr Palmer where there was no evidence to connect the payments with the ledgers. Mr. Palmer had repaid £47,000. The matters had been reported to the OSS following their discovery by Mr. Langford and Mr. Cowen on Mr. Palmer's departure. The Tribunal was asked to note that Mr. Cowen and Mr. Langford had immediately contacted the OSS after Mr. Palmer's departure and indeed had paid some money which was not due. This showed a degree of responsibility which the Tribunal would hope to find and which the Tribunal was asked to bear in mind.

<u>Item 17: The matter of AF Investments: Payment of £1750 of clients' funds for unrelated matters (allegation (e))</u>

253. This related to improper debits from the client account by Mr Palmer which the Tribunal was asked to note had taken place in 1991.

<u>Item 18: The matter of B Investments: £75,000 transfer from client to office account taken as a loan to the Firm (allegation (h))</u>

254. This was a matter of Mr Palmer misleading his trusting partners regarding the propriety of the loan which he had arranged through one of his clients. The Tribunal were referred to Mr Cowen's statement which said:-

> "Alistair Langford and I were not at all satisfied with the documentation on the file that the client had been properly advised. We certainly could find no evidence of the written agreement for the loan which Mr. Palmer had assured us existed. As soon as we discovered this situation, Alistair Langford and I had to decide whether to approach Mrs B, who is the effective controller of the company, and see whether she would be prepared to renew the loan for the balance outstanding but, of course, taking independent advice and entering into proper documents. In the event, we decided that we would not trouble Mrs B but that it would be better from every point of view if we simply repaid the £39,000 balance together with all interest due. That was done in September 1997 once the figures for capital and interest had been agreed."
> Mr. Langford had stated that it was Mr. Cowen's money which had been put into the firm in order to achieve repayment with interest.

<u>Item 19: The matter of the loans out E Funds: loans to the Firm and Mr Cowen arranged by Mr Palmer (allegation (h))</u>

255. The Applicant had accepted there had been no dishonesty by Mr. Cowen in relation to this matter. Mr Palmer's coexecutor of this estate was now a High Court Judge.

256. The Tribunal were referred to Mr Cowen's statement which said:-

> "This was a fully documented loan to the firm actually suggested by Michael Palmer as one which he was authorised to make and which he was prepared anyway to advise the E Estate to make. The firm had obtained a judgement against a Mr. P for unpaid costs, and had obtained charging orders upon Mr. P's property within England. Mr. Palmer suggested that the estate would take

an assignment and lend the money because it was fully secured as a result of the charging orders. This loan was made in May 1993 and repaid in the envisaged manner. I was therefore aware from the date of the loan that the money was used for the benefit of the firm, but believed it to be correct. The executors were both lawyers and the debt was secured."

257. Mr Palmer, perhaps cleverly, had allowed a couple of days before the matter went forward so apparently giving him enough time to consult his co-executor. The loan to the firm was secured and in writing but the co-executor had probably not been involved. The partners had accepted Mr. Palmer's assurances. The loan to Mr. Cowen had not been put into writing but both loans had been repaid.

Item 20: The matter of N Limited: unpaid professional disbursements of £49,895 (allegations (j) and (k))

258. The Tribunal were referred to Mr Langford's statement which said:-

> "This was a vast civil litigation case conducted with at least 4 counsel by SE (assistant). Billing at some times was in excess of £100,000 per month. In addition there were a number of lawyers in foreign jurisdictions. I did indeed authorise the transfer based on advice that I received from the accounts department that the fees against which the transfer had been made had been paid. When the accountants arrived we were already investigating this matter and we drew it to their attention. It arose through administrative error not helped by the antiquated accounts system with which we were then dealing".

259. If the fees had been paid to counsel as Mr. Langford had wrongly been informed neither Rule 8 nor Rule 11 of the Solicitors Accounts Rules would have been breached.

Item 21: The matter of the estate of Mrs S: Loans to the Firm from Cowen family members (allegation (l))

260. The Tribunal were referred to the statement of Mr Langford which said:-

> "This loan was introduced almost immediately after MJP left as part of the plan which the remaining equity partners put together to raise additional capital. It was agreed that I would deal with (Mr Cowen's wife) and all the partners were aware not only of the loan but that I was handling this matter. We agreed that the monies were to be credited to Anthony Cowen's capital account with each of the partners agreeing to be jointly and severally liable for the repayment of the amount borrowed. I suggested this because in that way Mr Cowen got interest on his capital account as well as Mrs Cowen getting interest on her loan. This is important because (the Invetigating Accountant) Mrs Prue was later to suggest that we could have avoided any problems by Mrs Cowen lending Anthony Cowen the money and he could have lent it to the Firm. This was never considered. I did urge (Mrs Cowen) to take independent advice the cost of which I said we would bear but she declined saying that she knew the score better than most and that she would make the loan even in the face of advice against doing it. We had no security to give as this was all pledged to the Bank anyway."

261. On behalf of the respondents it was reiterated that had this loan been made not to the Firm but directly to Mr. Cowen and he had then lent the money to the firm there would have been no breach. Mr. Cowen's relatives had been advised by Mr. Langford to take independent advice at the Firm's expense but she had refused. The partners did not, but should have, appreciated that that should have concluded the matter.

Item 22: The matter of the cash shortage as at 29th January 1999: £5212-55: allegation (j))

262. The Tribunal were referred to Mr Langford's statement which said:-

> "I am unable to identify £1349-78 of the amount…..the other transfers …..were administrative oversights in the Accounts Department by the person charged with checking the counsels' fee reconciliation. They would only have been transferred if the Accounts Department had indicated they had been paid or that there were fees included in the bill being paid. I would not have knowingly transferred the amounts otherwise"

Item 23: The matter of AH Limited: Transfers from client account (allegation (k)

263. The Applicant had made clear that this matter was now alleged as a rule breach not constituting conduct unbefitting. The plea here was not guilty. The Tribunal was referred to Rule 7(i)(a) and to Rule 8. For a withdrawal to be proper there did not necessarily have to be a bill but there did have to be a written intimation and the client did have to know the amount of costs. The Tribunal was referred to the firm's client care letter and it was submitted that that permitted the money to be taken. That letter had been sent in advance on 23rd October 1998.

264. The power was therefore exercisable if the money was properly required for costs which it was. There had been a written intimation of costs incurred. The matter had been conducted within the Rules and the second to seventh Respondents pleaded not guilty to allegation (k) in so far as it related to AH Ltd. At every single stage there had been another written intimation and there had been proper attention to the rules by *RESPONDENT 4*. This was a careful compliance with the spirit and letter of the rules.

(Items 24 and 25 had been withdrawn by the Applicant)

Item 26:The matter of DM Inc and Mr A: misapplication of monies in client account: (allegation (o))

265. The Tribunal was referred to the statement of *RESPONDENT 5*, who had been acting for Mr A and for DM Inc., in which he said:-

> "As far as the payment of our costs is concerned, I never intended that they should be paid out of the deposit monies we were holding in respect of the sale but instead out of the monies my client had said that he was sending.

Evidently the latter reached our account after the former and the costs were taken out of the deposit monies by mistake for which I apologise."

266. This had been a mistake which had been fully explained in a letter dated 24th August 1999 from *RESPONDENT 5* to the Investigation Accountant.

Oral evidence

267. The Submissions on behalf of the second to seventh Respondents were supported by their oral evidence and the oral evidence of Mr. Partridge.

Oral Evidence of Mr. Cowen

268. Mr. Cowan confirmed the truth of his Statement which was before the Tribunal. He was now retired as a partner of the Firm and worked as a consultant for an average of three days per week.

269. Mr. Palmer and Mr. Cowen had divided up responsibility within the Firm from day one and the financial aspect had always been the province of Mr. Palmer. Mr. Cowan did not however seek to evade his responsibility as a partner.

270. The "scheme" was one implemented by Mr. Palmer. Mr. Cowen had queried it at the time and Mr. Palmer had told Mr. Cowen that he had checked it with the Law Society and that it was a perfectly proper scheme. Mr. Cowen could recall a meeting with the Firm's accountants in the early nineties when they had queried it. The accountants had received the same answer as himself but Mr. Palmer had invited the senior partner of the firm of accountants to check the matter with the Law Society before issuing a certificate for that year.

271. Mr. Cowen heard nothing more but the accounts had not been qualified in respect of the scheme and he had made the assumption that the accountants were satisfied that the scheme was proper. Mr. Cowen had thought that the scheme related to monies to be disbursed for or on behalf of clients which were to be paid by cheque drawn on office account and with that drawing and the sending of the cheque monies would be transferred from client to office account.

272. Mr. Cowen clarified that in relation to the loan from the E funds the delay of two to three days by Mr. Palmer and the repayment of the loan related to the loan to Mr. Cowen not the loan to the firm.

273. The pressure from the Serious Fraud Office ("SFO") investigation had been relentless. When they arrived in 1996 they were ostensibly investigating a client but it became apparent that the investigation was also very much in respect of Mr. Palmer and the SFO were also suspicious regarding the partners and associates. Responsibility for dealing with the SFO had been entirely on Mr. Cowen. He had received section 10 demands from the SFO almost weekly with enquiries going back over a considerable period often containing fifty or sixty questions to be dealt with within a short time.

274. If not all questions were answered he would received a notice threatening court action. This meant that Mr. Cowan could do very little professional work and had very little sleep.

275. Only fourteen months after the investigation had started did the SFO write to the Firm's solicitors to say that they were not now investigating anyone else in the Firm except Mr. Palmer. Mr. Cowen would not want to live through those fourteen months again.

276. Mr. Cowen had submitted references to the Tribunal.

277. In the course of cross-examination Mr Cowen stated the following in answer to questions from the Applicant :-

- Mr Palmer had conceived the scheme in the early to middle 90's, and it went on until after he left;
- The scheme came about originally when the office manager insisted that all VATable disbursements had to be paid out office account otherwise the Firm was unable to recover the VAT; for example if Counsel's fees were paid out of client account it was said that the Firm couldn't reclaim the VAT. The Manager had been employed since 1991. Because of the risk of confusing VATable and non-VATable payments all payments were made out of office account.
- The scheme also covered non-VATable payments.
- He agreed that the Partners' Accountants' Report for the year ended 30th September (Paragraph 49 of the First Report) 1995 referred to monies transferred from client to office account to make payments and in a number of instances a delay before the office account cheque was cleared through the bank account, so that Report was qualified in respect of the scheme, and so as at September 1995 there was an awareness of delays in clearing.
- Asked why he didn't stop the scheme, he said that he wasn't aware of the position until the First Report, apart from the matter of Mr W.
- Asked why, given that he was aware from September 1995, he didn't stop it then he said that that side of the Firm was controlled by Mr Palmer.
- Asked whether he exercised control over the client account, he said that he should have exercised more control.
- Asked whether the Scheme was designed to help the office account he said that was a benefit. He asked Mr Palmer if it was proper.
- As to any action he took when, in 1995/6 Mr Palmer was under investigation and Mr Cowen was aware of the scheme, he said that the office manager was asked to report large transfers, double signatures were required on all cheques and the Firm started to look for a new head of the Accounts Department.
- He acknowledged that in this way judgement about suspicious transactions was delegated. He had done nothing personally to look at transfers from clients account.
- Asked what his duty was concerning clients' money, he said that it was sacrosanct, and the client account rules must be abided by.
- Asked whether he was troubled by the scheme, and whether it wasn't dangerous he said he didn't see the danger then. He had questioned whether it was right to draw cheques on office account.
- Asked whether it wasn't it obvious that the danger arises when office cheques are not being sent, he said he was not aware that cheques were not being sent. He thought the scheme only related to disbursements.

- Asked why he didn't stop the scheme he said that the situation was in the hands of Mr Palmer. It would have led to a blazing row with Mr Palmer. He didn't mistrust him. He was a difficult man to deal with. Now Mr Cowen would answer that if he were aware of such a scheme he would stop it or leave the Firm and tell the OSS.
- He stated that he was aware that the scheme was being used for general client account transfers.
- Asked whether he was afraid of Michael Palmer, he said he was, and that Mr Palmer undermined one's faith in oneself.
- Asked whether that fear over-rode the need to protect client funds, he said he was aware of the jeopardy to clients.
- He accepted that by late 1995 he had actual knowledge of the scheme and took no steps.
- Asked whether, if the cheques had been promptly presented, they would have been dishonoured, and whether the Firm was knocking on the overdraft limits, he said that was so, as it now appeared.
- He did not agree that there were substantial sums of clients' money at risk.
- It was put to him that Mr Davies (Investigating Accountant First Report) had reported that the Bank overdraft was at £506,000 and unpresented cheques at £518,000. He responded that Mr Palmer would see that proper transfers were made to meet cheques as they would fall due. Mr Cowen didn't know the extent to which it would it would have been done. The effect of the scheme was to defer a problem which was there. Mr Palmer always said that if clients paid on time there would be no problem. The Partners only discovered the true state afterwards.
- He agreed that Mr Palmer as Finance Partner would be on the look out for monies properly payable.
- Asked whether any check was put on Palmer post 1995 given that he was rampaging through the client account, he said that it transpired that he had done so.
- He accepted that the Firm was being financed by clients' money, and for a period of years.
- Asked whether his investigation of Palmer was when he had left the premises, he said he could have done more to stop it.
- It was put to Mr Cowen that he was aware of the misuse of clients' money from 1995, that Mr Davies was in the office in April 1996 and it took Mr Cowen until 1997 to bring the client account into balance. Mr Cowen agreed but said that the Firm "started stopping" the scheme as soon as they could.
- Asked when he knew it had to stop Mr Cowen referred to his letter of 10th July 1996 to Mr Davies, answering his questions, and seeking guidance on the rules applicable to the scheme procedure, and said he never got an answer to that letter.
- Mr Cowen was then referred to his letter of 4th September 1996 to the Bureau when he said the scheme procedure would be stopped, but it was put to him that the scheme went on until after Mr Palmer left in July 1997, so that he was aware that until December 1997 client money was being used. He agreed and added that that this was so even though the overdraft limit was being breached.
- Asked who carried out the office account reconciliation he said it was left to the Finance Committee.
- Asked why he had not taken an interest he said he had been wrong but he trusted Mr Palmer.
- Mr Cowen was referred to the matter of Mr W. £50,000 had come in to client account to pay off a former partner of Mr. W. Mr Langford transferred £50,000

from client to office account. Mr Cowen was on holiday. He was asked if he would you have made the transfer if he had been there. He said he would not, it was the first time he was aware of a wholly improper transfer.

- It was put to him that first £10,000 had been taken because £10,000 was needed. He said he could not answer that.
- Asked if he discussed this with Langford he said that Langford was in litigation and the Mr W case was very interesting. He would have known Mr Cowen was trying to push for a £50,000 settlement. Mr Cowen couldn't say but he was almost sure he would have said to Langford to send the money if the lady asked for it.
- Asked if he would have made the £40,000 transfer Mr Cowen said no, he knew it was not yet needed, and if it had been he would have paid out of client account.
- Asked whether, when he got back from holiday and found out in early September 96 that £50,000 has gone from client account, he said that the money would have to be replaced, Mr Cowen said that he told Palmer that it would have to go back.
- It was put to him that he was aware that it couldn't be paid back due to cash-flow problems, and that in September, October, November 1995 his Executive Action lists would have told him that the money was still in office account. He agreed and said he knew it couldn't be paid back. He said he kept asking Mr Palmer whether the Mr W. money could go back to client account.
- It was put to him that he did nothing to get the money back. He replied that Palmer's attitude was that the Firm would find it if it had to.
- Asked if he had done nothing until March 1996 he agreed .
- Asked if he had failed totally in his duty concerning clients' funds he agreed.
- It was put to him that there was really no alternative but to restore the money. He agreed and said that it troubled him greatly. By mid-February 1996 he decided he was going to face the client. His subsequent action would depend on the client's reaction.
- Asked if he consciously breached the Accounts Rules concerning Mr W he agreed.
- Asked whether one partner could transfer client funds from a principal's matter without the other principal being involved, he agreed.
- Asked whether he worried about that he said did not, apart from the Mr W matter he had no instance of it happening.
- It was put to him that he had rescued the Firm by financing the practice in improper ways - the scheme, the loans, they were all improper. Asked whether he agreed he said he did and with hindsight he should have been aware pre-1997.

278. Further during his oral evidence Mr Cowen said that in the period up to the first MIU investigation he felt that the office manager had had misguided loyalties toward Mr. Palmer. It transpired that Mr Palmer had abused client account and had taken money for his own purposes and for the benefit of the practice keeping under the overdraft limit.

279. Mr. Cowen agreed that the firm had been kept afloat by the use of clients’ money for a period of years. The firm had started stopping the system from the beginning of 1997. The scheme was then run down as fast as funds permitted and the firm moved to the scheme which it presently had. As cheques were presented the situation was putting itself right. It was not possible to transfer all the money back as the overdraft limit was reached.

280. In relation to the loan from the E funds Mr. Cowen had begun to make arrangements to mortgage his house to provide more capital for the firm and for personal matters. Mr. Cowen had believed Mr. Palmer to be a man of financial substance. Mr. Palmer had said that he could make a loan available from the E estate if commercial interest was paid. He would need two or three days to see if it could be done.

281. Mr. Cowen had taken the view wrongly that Mr. Palmer was a solicitor and the other executor was also a lawyer and that this was a short term loan. He now accepted that he should not have taken the loan.

282. In relation to the loan from the estate of Mrs S this had been in the context of wanting to save the firm and with the agreement of the older children who were adult beneficiaries. Mr. Cowen had not regarded the loan to Palmer Cowen as exceptionally high risk. Mr. Langford and Mr. Cowen had been going through everything Mr. Palmer had done to ensure that no client had suffered and that everything improper had been paid back. After Mr. Palmer left they had been desperately trying to sort everything out.

283. The partners had accepted joint and several liability for the loan from the estate of Mrs S. Even if the firm had collapsed the money would have been there. It might have been easier to let the firm collapse. With hindsight he accepted that the firm had been rescued by improper means but this had been a family loan which he had regarded as being in a different category.

284. Mr. Cowen said it was quite obvious he should have been aware of what was going on before 1997 and he had lived with that fact since then. He had asked himself but in a less kind way the same questions which had been put to him in cross examination. He had told himself that he should not have trusted Mr. Palmer and should have exercised more control. From that time on with the systems and structures which had been put in the Firm had tried to put things right and had done so

285. He had been considering his attitude to what had happened since 1997 in the early hours of the morning and during all of his working day. It was what had prompted him to go and see Mr. W despite being shouted at.

286. Mr. Cowen was ashamed of what had happened. He would never again withhold from taking the steps he should have taken. He was very conscious of the lapse and it would never happen again were Mr. Cowen a partner.

<u>The Oral Evidence of Mr. Langford</u>

287. Mr. Langford confirmed that his statement was true, adding that in terms of the culture of the Firm there was a great distinction between July 1997 and the present day. Anyone not in the firm at the time could not fully appreciate the effect Mr. Palmer had influenced over the Firm. The Respondents were not absolving themselves of responsibility but it was important to understand how difficult it was to make change while Mr. Palmer was there. When Mr. Palmer had gone the pace of change had increased dramatically.

288. In terms of that task the Applicant had rightly criticised the Firm for not getting its house in order as quickly as he would have liked but there was a huge amount to do

when Mr. Langford had taken over. There had been a huge task in auditing files in relation to Mr. Palmer together with Mr. Langford's professional workload and the need to keep staff, bankers and particularly the clients on board.

289. Mr. Langford had had to fit all the administrative changes into his working day. There was now a far better accounting system. At the Berkeley Street offices the firm had been on seven floors and Mr. Langford would often have seen only his own department for several days at a time. The system had not worked and all needed to be changed. It was like an engine which had had to be rebuilt whilst it was running.

290. The cost to the Firm of Mr. Palmer's depredations in terms of increased professional fees, increase in insurance premiums, write-off's of bills and disbursements which proved to be illusory and work in progress and not including the time of Mr. Cowan and Mr. Langford totalled one to one and a half million pounds.

291. The Firm had now received five unqualified Accountant's Reports. The report previous to that had been qualified in respect of DM Inc and Mr. A which matter had been brought to the attention of the accountants by the firm and to one other matter not before the Tribunal which the Firm had also brought to the attention of the accountants.

292. In the course of cross-examination Mr Langford stated the following in answer to questions from the Applicant:-

- He was first aware of the scheme around late 1995.
- Asked whether the Mr W. matter was an example of the scheme, he said it was but it wasn't a disbursement.
- Asked how he had become aware of the scheme he said he had been party to discussion with Mr Palmer and Mr Cowen, and Palmer had said it complied with the rules. Mr Langford had had concerns first as to whether it was sensible to do it because it put clients' money at risk.
- Asked why this was so he said because if the Firm were to cease to trade the monies could be lost.
- Asked if the Firm was on a knife-edge concerning the overdraft he agreed. He said his second concern had been that in his crude way he felt it was a bad business practice because it shielded a problem - it flattered the office account - he knew that in 1995.
- It was put to him that nevertheless he had allowed it to persist. He agreed. He said that Mr Davies' visit had given rise to concern, but there were difficulties in the Firm in the way of a change.
- He was referred to his statement where he had said that had all the cheques hit the Firm could not have met them from its resources, and was asked whether the Firm was not at risk. His response was that he should not have stayed on.
- It was put to him that until Palmer left he had done nothing. He said that he got new bankers and accountants.
- Concerning Lady M he told Palmer that they shouldn't make the transfer.
- Asked what the scheme was he said the Firm were entitled to pay out disbursements from office account provided the cheques were sent. He I was aware of the delays but delays were not part of the scheme.

- Asked whether he was aware from Mr Davies that the scheme was not only for disbursements, he agreed he was, stating that he was aware that non-disbursements were paid.
- It was put to him that in August 1995 in relation to the Mr W. matter he had transferred £50,000 to the office account from the client account, and he was sked why. He replied that the Firm needed the money for the practice.
- It was put to him that that was wholly incorrect. He agreed that it was wholly incorrect.
- Asked why he had transferred £10,000 when there was no suggestion that the Mr W. matter was about to complete, he said he had seen the file correspondence, and there had been pressure from the office manager.
- Asked whether that was honest he said it was not intended to be dishonest. He was alone in the office on the day. He was under pressure from the office manager.
- It was put to him that he had needed the cash for the Firm's office account so he had taken it from the client account, and that the next week a further £40,000 was taken. Asked why, he said it was his decision.
- Asked whether there was no dishonest intent he said that he fully expected that the monies would be paid out.
- It was put to him that he knew when the £40,000 was transferred that it wasn't required to be paid out. He said he panicked, he was running the office alone.
- Asked whether he expected it to be paid out at a time when the overdraft was at its limit, he said he did.
- It was put to him that if the money was called for it might not be met. He agreed and said he alerted Palmer and Cowen to what had happened. Mr Cowen had been upset. It had been a difficult conversation.
- Asked whether he had taken any steps to get the money back into client account, he said he had not, he had told Palmer and Cowen and expected them to sort it out. It was Cowen's client, he left it to him.
- It was put to him that he had knowingly left £50,000 of client's money in office account. He said that the Firm had over £1 million of debtors. Mr Palmer had regarded it as below the belt to chase titled people for money.
- It was put to him that he had taken the money consciously in breach of the accounts rules for the benefit of the Firm and told no one outside the Firm. He agreed.
- Asked whether he had been under undue pressure, he said he had. He accepted that before Palmer went he had been found wanting.
- He was referred to the matter concerning Lady M. at paragraph 30 of the Second Report in respect of which he knew that *RESPONDENT 4* had written to Mr Palmer on 6th September 1996 stating that £74,000 was in office account and needed transferring back to client account. Asked what he had done he said he had tried to speak to Palmer, and tried to generate the cash to enable the money to be repaid.
- It was put to him that the Law Society had been told by the Partners at about the same time that they would all be especially vigilant. Asked why he had not told the Law Society he said Palmer was very difficult to control. Mr Langford agreed he had not acted as he should have done.
- It was put to him that the Firm had been financed by the improper use of clients' money. He agreed.
- It was put to him that but for that the Firm would have collapsed. He agreed, saying that the alternative had been for Partners to put money in.

- It was put to him that he had fallen below the standards. He agreed.

293. Further during his oral evidence said that he did not seek to hide behind Mr. Palmer and accepted that he had not done what he should. He had now put in systems which would have prevented Mr. Palmer operating in the way that he did.

294. Mr. Palmer had the ability to make a person feel that their contribution was not huge and that they only drew a salary because Mr. Palmer let them. Mr. Langford had been a "grinder". His work came from clients introduced by Mr. Palmer and Mr. Palmer made Mr. Langford feel that moving firms would be a risk.

295. Mr. Langford should have left. He had tried to get the firm moved to new bankers and had persuaded Mr. Palmer to get new accountants. He accepted that insecurity, lack of resources and a lack of direction in the Firm had prevented him from doing his duty to clients. Mr. P (a former principal) with whom Mr. Langford had been able to talk had left the firm.

296. In relation to the loan from the E funds Mr. Langford had had no reason at the time to doubt Mr. Palmer's word that he would ask his fellow executor. In relation to the loan from the estate of Mrs S Mr. Langford had told Mr. Cowen's relative to take independent advice.

297. Mr. Langford regarded Mr. Cowan and Mr. Palmer as senior equity partners and founders. The relationship with them was difficult. To Mr. Langford's eternal shame he had not done enough to control Mr. Palmer.

<u>The Oral Evidence of *RESPONDENT 4*</u>

298. *RESPONDENT 4* confirmed the truth of his statement which was before the Tribunal, subject to three minor corrections.

299. In cross examination *RESPONDENT 4* said that the practice within the Firm of a transfer on a file without reference to the fee earner had come to his attention when he had seen an alteration in an instruction given by him to the accounts department.

300. He had requested a client account cheque. This had been changed to an office account cheque and Mr. Palmer had said that this was alright. *RESPONDENT 4* had told Mr. Palmer that this was not a practice to which he wished to subscribe.

301. Later *RESPONDENT 4* had realised that this was part of a scheme. This realisation had probably come after the case of Mr. W when Mr. Cowen had drawn it to *RESPONDENT 4*'s attention in late March 1996.

302. *RESPONDENT 4* denied that he was afraid of Mr. Palmer but said that he was a non confrontational person and to his continuing shame he had not pursued things sufficiently. He had become aware that Mr. Palmer was still transferring funds on the files of other fee earners.

303. After March 1996 he had recognised that there had been a breach of the Accounts Rules but he did not recall when he realised that this was a pattern.

304. It had been difficult to get access to ledgers. The process had been cumbersome although he had not been conscious of obstruction. It could take a week to get a printout and it might in any event not have been accurate.

305. *RESPONDENT 4* acknowledged that he had abdicated financial responsibility.

306. *RESPONDENT 4* did not recognise that anything further had come to his attention after March 1996 until the matter of Lady M.

307. *RESPONDENT 4* accepted that it was only after Mr Palmer left that the scheme of transferring money from client to office account in anticipation of presentation of an office account cheque should cease. From March 1996 until then *RESPONDENT 4* said he had not been sufficiently proactive. It had not entered his mind to dissolve the partnership.

308. *RESPONDENT 4* had been aware that there had been a breach in the matter of Mr. W and that this had been corrected. He had not been aware of other specific instances of that nature until Lady M.

309. *RESPONDENT 4* was ashamed that he had done little as a member of the finance committee. If he had looked at the office reconciliations he would have seen that client money was in danger. He accepted that it would have been inside his power to discover the delay of sending out office account cheques if he had had any reason to enquire.He regretted that he had not enquired after March 1996. He accepted without question that he was responsible and that he had opted out of his responsibility.

310. He accepted that he should have seen that the money relating to Lady M was put back straight away. He did not accept that writing a note had been inadequate. He had received a telephone call from Mr. Palmer saying that the matter was being attended to. He did accept that he was wrong in not pursuing the matter. Ms G had not mentioned it again. Under day to day pressure he had not chased the matter again.

311. *RESPONDENT 4* accepted that he had not lived up to the vigilance promised to the Law Society. He had not checked the position regarding the accounts and was aware that the firm might not have been able to put the money back.

312. In relation to the loan from the estate of Mrs S Mr. Langford was to speak to Mr. Cowen's relative. *RESPONDENT 4* was aware of the rule that independent legal advice had to be offered. He was unaware at the time that if independent advice was not taken the firm had to cease to act. He regretted he had not explored this rule in sufficient detail.

313. He had not thought to report Mr. Palmer regarding the matter of Lady M. It had never occurred to him that Mr. Palmer might be lying in his telephone call regarding Lady M.

314. *RESPONDENT 4* accepted, in relation to the period after he joined the firm only, that the firm survived through the 1990's through the misuse of clients' funds. *RESPONDENT 4* accepted that he could have ascertained the details if he had made proper enquiries.

<u>The Oral Evidence of *RESPONDENT 5*</u>

315. *RESPONDENT 5* confirmed the truth of his statement which was before the Tribunal.

316. In cross examination *RESPONDENT 5* said that he was not on the finance committee. He looked after property issues within the firm. With the benefit of hindsight he was very concerned to find himself in this position. He could not abrogate responsibility.

317. *RESPONDENT 5* could not remember when he first became aware of the scheme for the payment of disbursements out of office account with simultaneous transfer from client account but believed it was in the early 1990's. He could not be specific about when he became aware of the fact that the scheme was being used for general client account payments. He was also unaware of any policy to delay sending out cheques once drawn. The system made it easier for breaches to occur.

318. In relation the matter of F Investments *RESPONDENT 5* had issued the office account cheque to be held to order but he did not appreciate that this would be an automatic breach of the rules as soon as the corresponding transfer was made from client account to office account. He gave no order for such transfer, only expecting that he would have to do so when the time arose for the cheque to be met. He did not know when he first knew that a client to office account transfer had been made. He apologised for the automatic breach which arose when the transfer from client account was made.

319. *RESPONDENT 5* had not been aware of the scheme as a resulting from a decision. Mr. Palmer had said that it was common practice. *RESPONDENT 5* had regarded Mr. Palmer as a man of integrity.

320. *RESPONDENT 5* accepted that there had been a qualified accountants' report in late March 1996 regarding the scheme and that this allied with the matter of Mr. W had brought it to his attention.

321. *RESPONDENT 5* had not thought that the solvency of the firm depended on the scheme.

322. After March 1996 there had not been a choice of staying "in the dark". On the back of the investigation information had come out and *RESPONDENT 5* was thankful for Mr. Langford's assistance in sorting out the consequences. It was correct that things had not changed between March 1996 and the departure of Mr. Palmer in July 1997.

323. *RESPONDENT 5* had not appreciated the danger of the scheme in the way he now did. He had not addressed the matter sufficiently and he apologised. He had not confronted Mr. Palmer.

324. He had only been aware of the matter of Mr. W after the event.

325. He had been totally unaware of the matter of Lady M until after the event probably as a result of subsequent reports.

326. It was not that the partners were excluding *RESPONDENT 5*, he had not asked.

327. *RESPONDENT 5* had not known at the time of the matter of Lady M which had occurred two days after the letter promising vigilance. *RESPONDENT 4* had told him subsequently that he was trying to get Mr. Palmer to pay the money back.

328. Mr. Palmer had kept a very tight reign on financial information. When *RESPONDENT 5* had joined he had never received any accounts. When *RESPONDENT 5* had made further cash injections he had not asked for accounts. The information had not been available. The information available had been nothing like the information the partners now had.

329. *RESPONDENT 5* was not afraid of Mr. Palmer as such but he was not confrontational and at the time he had had misplaced respect for Mr. Palmer. He had not doubted Mr. Palmer's integrity. Mr. Palmer had an impressive personality and client base.

330. As a person Mr. Palmer had been very persuasive. He had never given *RESPONDENT 5* any reason to doubt his integrity. Mr. Palmer had a temperament and mood swings. *RESPONDENT 5* had felt pressurised and bullied by him but had not been afraid of him.

331. The matter of Mr. W had not come to such prominence in March 1996. Mr. Palmer was saying that it was an accident and he had in any event not made the transfer. March 1996 was not when the full force of mistrust had hit *RESPONDENT 5*. Even when the SFO came in Mr. Palmer had put this onto the client.

332. *RESPONDENT 5* said he had not authorised the transfer from client to office in relation to the matter of F Investments referred to in the First Report. Palmer often made transfers without *RESPONDENT 5*'s agreement, *RESPONDENT 5* should have known about the transfer but could not say that he did know. *RESPONDENT 5* could not remember what he had done when Mr. Palmer continued to make transfers on his files after March 1996.

333. *RESPONDENT 5* had not been aware at the time that Mr. Palmer was financing the practice with the client account. He had not wilfully disregarded the matter.

334. *RESPONDENT 5* could not discharge his duty through someone else, the client account was and always should be sacrosanct. *RESPONDENT 5* had been lulled into a false sense of good practice. He had not looked at the office bank reconciliation statements but now did so. He was sorry he had not taken as active a role as he should have done.

335. In relation to the loan from the estate of Mrs S he was now aware there was an obligation to ensure that a client took independent advice before making a loan but at the time he had been aware only that the client had to be advised to take independent advice. He had not been aware that the firm should have ceased to act.

336. His knowledge had come from practice not from the rule book and was fairly basic. He regretted that he had not been aware at the time that the Firm should not take the loan.

337. The firm had been accepting its responsibility and had been looking to put money in to sort out a bad situation. *RESPONDENT 5* had been getting money from his bank. *RESPONDENT 5* had thought of the loan as being Mr. Cowen's money but as it was coming from trustees it was thought better that all the partners should accept liability.

338. They had recognised that Mr. Cowen should not participate in negotiations and Mr. Langford was to front the matter. *RESPONDENT 5* thought that due process had been put in place. The firm had had an absolute determination to survive and had not looked at alternatives.

339. In relation to RO Corporation *RESPONDENT 5* had not made the transfer or been aware that it was being done. The client was one of Mr. Palmer's close clients. There had been no proper reason for the payment of which *RESPONDENT 5* had been unaware.

340. In retrospect *RESPONDENT 5* thought that the money had been taken to finance the practice. *RESPONDENT 5* had still been negotiating with the solicitors for the W Club. He did not know when he found about the transfers but accepted responsibility. He accepted that he must have realised that the money had been transferred by the 1st March 1995. He accepted that he was responsible for the file and had not done anything knowing that money had gone from client account office account.

341. Looking back it worried him. He had not realised the ramifications. *RESPONDENT 5* had not written the four cheques and could not remember what had happened.

342. In relation to V Management Inc and Mr A, a mistake had arisen in that someone in accounts had said that the monies were in and *RESPONDENT 5* had thought that this meant the extra £65,000 which the client was sending not the deposit. *RESPONDENT 5* had thought that he was taking costs from the £65,000 of which £35,000 was for costs. This had been a genuine mistake on the part of *RESPONDENT 5* for which he apologised. The £65,000 had come in a few days later.

343. In relation to unpresented cheques in specific instances *RESPONDENT 5* had not been certain who had authorised transfers but accepted that he should have been because that was the system. It was a matter of timing especially with cheques held to order. *RESPONDENT 5* accepted that he must have had actual or implied knowledge.

344. In his statement he had said:-

> "I now appreciate that the practice resulted in the use of clients' funds and further that if all the cheques had been presented for payment at once we would not have been able to meet them."

345. This had been said with hindsight. *RESPONDENT 5* had not been aware at the time of the number of cheques delayed. *RESPONDENT 5* had been unintentionally part of the failing system.

346. *RESPONDENT 5* had seen Mr. Palmer most days as he worked on the same floor. The accounts office was also on that floor. GS had not been very co-operative. Just getting a printout had not been as easy as it should have been.

347. In re-examination *RESPONDENT 5* confirmed that he did not know in relation to RO Corporation that the two transfers had been made. If he had been asked on the 1st March 1995 to put the money into office account he would have said no. The money would go into office account after the cheque was sent out.

348. The process was for the cheque to be requisitioned and sent out and then the partner in charge would authenticate the transfer. *RESPONDENT 5* thought that when he sent out the cheque he might have said it was to be held to order. He did not remember authorising the transfer. He would expect to authorise the transfer from client to office when the cheque was released i.e. no longer held to order.

349. As at the 1st March 1995 he had not discovered the system whereby transfers were made when there was no proper reason.

<u>The Oral Evidence of *RESPONDENT 7*</u>

350. *RESPONDENT 7* confirmed the truth of his statement, which was before the Tribunal, subject to a minor amendment.

351. In cross examination *RESPONDENT 7* confirmed that he became an equity partner in September 1997 and left the Firm in March 2000 after being approached by another Firm to which he could travel more easily.

352. *RESPONDENT 7* had been a salaried partner when Mr. Palmer was arrested. The financial difficulties had been glossed over and *RESPONDENT 7* had not been aware of the depth of these.

353. *RESPONDENT 7* had not known of the "scheme" at all. The first time he knew it was an organised thing was when it was raised before the Tribunal yesterday.

354. *RESPONDENT 7* had become an equity partner by the time of the Third Report. When the Report came out he had been made aware of the cash shortage of £50,000. This had not been *RESPONDENT 7*'s matter.

355. *RESPONDENT 7* had not been aware of the seriousness of the position until after he became an equity partner. He had put capital into the firm of £75,000.

356. None of the cash shortages raised in the Third and Fourth Reports were on *RESPONDENT 7*'s files. *RESPONDENT 7* understood that they had arisen as a result of errors. *RESPONDENT 7* was not aware of any practice in the firm of delaying payments out.

<u>The Oral Evidence of *RESPONDENT 6*</u>

357. He confirmed the truth of his statement, which was before the Tribunal, subject to a minor correction.

358. *RESPONDENT 6* said that he had resided in Dubai since leaving Bahrain. He had ceased to be a Partner of the Firm on 2nd April 2001.

359. He had become an equity partner in 1992 and began to take an active role in the affairs of the Bahrain office. He spent much of his time overseas on client business from 1996 onwards and became the resident senior partner of the Firm's Bahrain office in 1999.

360. *RESPONDENT 6* had never been on the finance committee and had taken virtually no part in the running of the finances including the client account. *RESPONDENT 6* regretted this very deeply.

361. *RESPONDENT 6* had been aware of the firm's financial difficulties but had not been aware of the scheme. On reading the accountant's reports he believed these were isolated incidents not a scheme.

362. In October 1996 *RESPONDENT 6* had been admitted to hospital for over two weeks and had been away from the office ill until after the following Christmas. It was during that time that the transfer had been made on his file of SR Ltd.

363. The transfer on the SR Ltd file had come to his attention subsequently and he had been deeply upset. The transaction had been completed and there was no reason why any action should have been taken. Someone had put the financial position of the firm first. If *RESPONDENT 6* had been in possession of facts which had been brought forward during the proceedings before the Tribunal he would have done something.

364. In his statement on this matter *RESPONDENT 6* said:-

> " I was appalled when I discovered that my SR Limited file's accounts had been tampered with without my knowledge or consent. ……I spoke to GS and said that the funds must be transferred back to client's account immediately. He said he needed to speak to the Finance Committee. I called Mt Langford on the internal phone and said that the funds were on deposit as stakeholder and no authority could be given for the transfer of those funds or any part thereof without the consent of both our client SR Limited and their customer. There was an escrow agreement dealing with this matter on the file and I referred to it.
>
> Mr Langford said he would speak to Mr Palmer regarding this. I recollect sending a memorandum dealing with this matter to the members of the Finance Committee. I also recollect a memorandum dealing with the request to place funds on deposit. Copies of both memoranda would have been placed on file together with my initialled copy of the ledger print outs as seen by me at the time the funds were deposited in the Firm's client account. I requested sight of the file but Hempsons were advised by Mr Langford that the 'file was returned to Dr M shortly after Michael Palmer left the Firm.'
>
> Dr M was not a director or other officer of SR Limited as I recollect."

365. The Tribunal were told by Counsel for the second to seventh respondents that Mr Langford did not take exception to the above paragraphs in the statement of *RESPONDENT 6*: Mr Langford could not recall the comments concerning him, but could not say they were wrong.

366. *RESPONDENT 6* in his oral evidence said that he would not have thought that it was at all necessary to make transfers of sums properly payable out of client account. There were dangers in that procedure and it led to unnecessary accounting procedures.

367. In re-examination *RESPONDENT 6* said that he had done a great deal of travelling but had been resident in London at relevant times. His visits to Bahrain had increased and it had been decided that he should reside there.

Oral Evidence of Mr. Robert Partridge

368. The Tribunal had before it a witness statement of Mr. Partridge who had assessed the Firm as now constituted and called Fairmays for a Lexcel award and for recognition as an Investor in People. Mr. Partridge gave the Tribunal details of his experience in such assessments.

369. Mr. Partridge had recommended Fairmays for recognition for a Lexcel award. His report recommending the award listed nine items which gave rise to comment or criticism but he clarified for the Tribunal that it was extremely unlikely that an assessment would be done which would not generate some non compliances and observations. Nine such comments were not excessive.

370. Mr. Partridge had formed the view while assessing the firm in respect of the Lexcel award that it might be of a such a quality especially in relation to the management of its staff that it might qualify for recognition as an Investor in People. Mr. Partridge had reached that view on a Lexcel assessment on only one other occasion.

Further Submissions on behalf of the Second to Seventh Respondents

371. The Tribunal was invited to consider the statement of Diane Gardner which was important in relation to the metamorphosis of the Firm since the time to which the proceedings related.

Final Submissions on behalf of the Second to Seventh Respondents

372. No person should be convicted of dishonesty unless this had been expressly charged. A seminal rule of civil proceedings was that fraud or fraudulent intent must be pleaded.

373. Dishonesty was alleged against Mr. Palmer which added force to the submission on behalf of the remaining second to seventh respondents.

374. There had been no application to amend the allegations and the only relevant reference put at its highest on cross examination was when Mr. Langford was asked, in relation to Mr. W, “was it honest?” and Mr. Langford had responded that there had been no intent to be dishonest.

375. The Divisional Court had given guidance in the case of Royal Brunei Airlines v Tan. Counsel had not made submissions regarding the disapplication of this case to disciplinary proceedings and wished only to reserve the point. This would be a different submission in the absence of a charge of dishonesty.

376. It had been put to Mr. Cowen and Mr. Langford that without the loan from Mr. Cowen's wife's estate the Firm would have gone under, the implication being that both of them had failed to deal with that and that the loan could not have been made.

377. This was wrong. It would have been perfectly permissible for Mr. Cowen's relatives to lend the money to Mr. Cowen himself rather than to the Firm. There would have been no breach. The money was therefore available in any event.

378. The Applicant had referred to "draft pleas" having been tendered. The changes to pleas simply recognised that some of the earlier pleas had been falsely based. The Tribunal might infer from that that the Respondents were genuinely contrite. They had thrown themselves on the mercy of the Tribunal and had been prepared to admit things that were not properly there to be admitted.

379. They had acknowledged that they had failed in their duties as solicitors with regard to the breaches of the Accounts Rules.

380. The Tribunal was asked not to obtain the erroneous impression that items 20, 22 and 26 were part of the "scheme" as they were not. Item 20 had been a mistake regarding counsel's fees which had been drawn to the accountant's attention. Items 22 and 26 had also been errors.

381. The scheme had been a thoroughly bad scheme whose provenance and genesis could now be better understood and which came to an end in 1996/97 with its dying breath carried over into 1997.

382. Item 15 (A-F) had been the last charge relating to the scheme. This had been a transfer by Mr. Palmer in June 1997 of which no-one else had had knowledge. There had been a matter handled by Mr. Palmer in May 1997 but otherwise the transfer matters had been in 1996 or earlier.

383. The scheme did not die instantly following the First Report but it was dead by October 1996. Although the word "scheme" had been used this simplified what had happened to the disadvantage of the second to seventh Respondents. The MIU Reports had not talked about a "scheme" but a defective system.

384. The Tribunal was asked to consider each Respondent's evidence.

385. The scheme had had an honest beginning relating to VAT but Mr. Palmer had been taking money since 1990. He had been a clever man who had put up shields.

386. The Tribunal might think that the matter of Mr. W was the most important. The ordinary judgement of Mr. Langford had inevitably been contaminated by that had been going on.

387. The evidence of the Respondents had been self accusatory not exculpatory. he Respondents had recognised their faults and none had sought to say that Mr. Palmer's conduct in dissembling or their trust in him were an excuse, just an explanation.

388. *RESPONDENT 5* had failed to make his own case in giving evidence as he had not been able to see the erroneous assumption in the question put to him. In a stakeholder

position he would expect no transfer until the cheque was called for. This cast light on his level of contrition.

389. Not a single question had been asked during the hearing regarding the product of Mr. Langford's work in making this Firm into a Lexcel qualifying firm and Mr. Langford's prodigious mitigating efforts. The Tribunal was asked to give them full weight.

390. Mr. Langford recognised that the matter of Mr. W in effect called for exceptional mitigation and he recognised its full gravity.

391. There was a combination of the mitigation to which Mr. Langford was entitled by virtue of law (Attorney-General's Reference referred to in legal submissions) together with the prodigious remedial work which was exceptional.

392. The Tribunal had been advised at a directions hearing in 1997 subsequent to the matter of Mr. W that there was no question of the public being at risk if the proceedings were adjourned for a short time.

393. There had been three further MIU Reports yet there had been no intervention and no call upon the Respondents to show cause why there should not be. By inference the judgement at that time was that the matter had less gravity than was now alleged.

394. The allegations had been made against Mr. Langford and Mr. Cowen but they that there had been allowed to practise and to spend every day trying to live with the allegations, to handle the SFO and to establish proper practices in a serious damaged firm.

395. The Tribunal was referred to the six Accountant's Reports which had been clear except for one "blip".

396. The firm had undergone a truly remarkable metamorphosis. That was indicated by the Lexcel and IIP achievements which were largely due to Mr. Langford. The office manual was a high quality document, an indicium of something unknown and unknowable in the 1996/early 1997 era.

397. It would be unfair given the nearly seven years since the impermissible transfer five years since the charge to treat the matter of Mr. W and the scheme as meriting punishment or condemnation which might have been appropriate earlier.

398. No message need go out from that that such conduct was to be tolerated.

399. The two and a half year delay in the case of Bolton had led to the absence of suspension.

400. The language of the Tribunal could reflect the situation.

401. Mr. Langford had used his time since 1997 to create a new firm and he was the architect of quality.

402. If the Tribunal concluded that Mr Langford's misconduct was at the top end of that of the Respondents present, his had been the greatest expiation and the Tribunal was asked to give him full credit for that. It would be a particularly cruel end if he and his staff and the culture he had fostered were to be rewarded by his removal from practice be that permanent or temporary. The pragmatic message would be that it would be better to walk away from clients and seek an Individual Voluntary Arrangement.

403. There had been no accrued loss to the clients or to the profession and money would come to the child beneficiary in relation to the estate of Mrs S. The Tribunal was invited to consider each Respondent individually.

404. Counsel had singled out those Respondents facing the greatest charges. The Tribunal had been told of Mr. Cowan's painful years with the SFO investigation. The Tribunal was asked to bear in mind what the Respondents had said and the consequences which counsel categorised as credits, wounds and healing.

405. The credits for the Respondents were their good character except for a previous reprimand for *RESPONDENT 5* which had involved no loss to clients or the profession.

406. Further credits were that there had been no gain but rather a substantial loss to the Respondents, there had been no dishonesty and there had been full co-operation. Everything had been rectified.

407. The practice had been reorganised and viable over a substantial period. There had been assistance to the authorities and to the Tribunal and very early and consistent pleas of guilty.

408. These were competent and useful practitioners. The wounds to the Respondents were the losses of one to one and a half million pounds following the departure of Mr. Palmer, the historic debts and the difficulty in getting new blood into the practice.The Firm had reached the level for a Lexcel qualification but could not receive the award pending the present proceedings.

409. There had been incalculable efforts to rebuild the practice under diabolical pressures. The healing for the Respondents was the recognition as an Investor in People, the testimonials which were before the Tribunal and the statement of Diane Gardner.

The issue of dishonesty

410. Counsel for the second to seventh respondents referred again to the legal submissions made on the opening day on the subject of dishonesty, to which the applicant had provided a response.

411. Allegations of dishonesty against the second to seventh Respondents had not been set out in terms anywhere.

412. The Tribunal had to apply the criminal burden of proof. If an allegation of dishonesty was to be made it should be made expressly. If a case was to be put on the basis of dishonesty it was submitted that that would need to have been expressly charged.

413. At the very least there should have been a letter from the Applicant to counsel's instructing solicitors but counsel did not concede that that would be sufficient. Counsel had been put on notice at the end of the week prior to the Tribunal hearing on receipt of a small bundle of authorities. A letter of 25th February 2002 from the Applicant to the instructing solicitors had said: "You are also aware dishonesty is alleged."

414. It was submitted that this was not sufficient. Unless dishonesty was charged the Tribunal could not find dishonesty. It was not enough to say that the matter had been discussed and the Respondents knew that dishonesty was alleged. It was the right of anybody against whom dishonesty was alleged to have been expressly charged with it.

The issue of delay

415. Counsel for the second to seventh Respondents referred again to the issue of delay that in the matter coming before the Tribunal which should operate to mitigate any penalty.

416. It was conceded that in 2001 there had been some delay on the part of the Respondents but the Respondents had made admissions and could have been tried in 1997/98.

417. It could not be acceptable for proceedings to be heard in 2002. The Tribunal could only ignore the delay if the Respondents had caused it by their deliberate action.

418. The delay lay with the prosecution of Mr. Palmer. Disciplinary proceedings had unfortunately been delayed, at the time no doubt for the best of considerations.

419. Mr. Palmer had been sentenced in 1999 and from that time, consistent with earlier directions given, the matter could have gone to trial.

420. No criticism was made against Mr. Williams, the Applicant.

421. Against the background of the 1997 directions the delay was not acceptable. The Respondents had a right to have the allegations heard in good time.

422. The Tribunal was asked to consider the authority submitted of the Attorney-General's Reference No. 2 of 2001. The Tribunal's attention was drawn to the relevant sections of that case.

423. It was submitted that the appropriate penalty should be substantially reduced by delay.

424. It was accepted on the part of the second to seventh Respondents that they were able to have a fair trial but it was submitted that the Tribunal should mark the unacceptable delay and in any event must mark the delay bearing in mind the protection of the public and the fairness to the Respondents.

425. The relevant time would ordinarily but not always date from the point of the charge and in this case the First Report led to the most serious charges which were contained in the Rule 4 Statement of 23rd May 1997.

426. This not being a case where a fair trial could not take place or where there was an abuse of process, but rather where the trial was not taking place in reasonable time , the Tribunal could take account of the delay in reducing the sentence.

427. It was not a question of a culpable omission but rather an objective consideration of whether or not a Respondent had been tried within a reasonable time.

428. Whatever may have been the problems flowing from the prosecution of Mr. Palmer, the second to seventh Respondents were entitled to have had their case heard a long time ago.

429. A chronology prepared on behalf of the Respondents was read to the Tribunal and their attention drawn in particular to the decision of the Compliance and Supervision Committee of the OSS on 23rd November 1998 to refer the conduct of the equity and salaried partners to the Tribunal and the further decision of that Committee to rescind its decision to take disciplinary proceedings against the salaried partners on the 31st August 2000, one year and ten months later.

430. It was submitted that many of the matters that were the subject of the allegations dated back to a number of years ago, for example the matter of Mr. W was sent to the Bureau in March 1996 some six years ago.

431. The fourth MIU inspection had commenced in February 1999 but the Report had not been sent to the Respondents until 5th April 2000, one year and one month after the inspection and three months after the report had been written.

432. In the case of Bolton there had been a reduction in penalty by virtue of delay yet the delay in that case was far less than in the case presently before the Tribunal.

433. The Tribunal was referred to the relevant section in Cordery on Solicitors.

434. The Tribunal being minded in 1997 to adjourn proceedings had made an impeccable decision but the basis for that decision had evaporated as the Tribunal had had in mind the receipt of the Second Report early in 1998 and then directions.

435. Had directions been given in 1998 consistent with the relevant section of Cordery then the Tribunal would not have postponed further directions until September 2001.

436. In all professions major frauds would given rise to a tension between discipline and justice in the criminal sense.

437. If it was assumed that the criminal proceedings should have been accorded absolute priority then the preliminary disciplinary proceedings could have proceeded. From 1999 when Mr. Palmer pleaded guilty and the Fourth Report had been concluded there could have been a hearing. Without the delay relating to the Fourth Report the case could have been heard at the end of 1999 or early in 2000.

438. This submission was on the assumption that the matter of Mr. W and the scheme could not have been brought without the other matters before the Tribunal yet that was almost certainly unfair to the Respondents.

439. The pressure of six years from the admission of culpability to trial was not acceptable. The profession had to do better than that and the Respondents had a right to better than that. The Tribunal was invited to say that the delay was unacceptable and even to an extent inexplicable.

440. It was commonplace even in the case of Bolton that a striking off did not have to follow a finding of a lack of probity. Bolton had said that it would be a very unusual order if less than a suspension was imposed in such a case. This was however a very unusual case.

441. The matter should be distinguished from the case of Kang where although the incident had taken place in 1990 the matter was first considered in 1997. The matters in the case before the Tribunal today arose in 1995 and 1996 and were substantially considered then.

The Submissions of the Applicant in relation to the issue of delay

442. The Attorney-General's Reference No. 2 of 2001 was a case within the criminal jurisdiction. It dealt with an application for a stay for abuse of process. No such application had been made before the Tribunal.

443. The penalty was not a matter for the Applicant but the attention of the Tribunal was drawn to the judgement in the case of Bolton where it was said:-

> "Because orders made by the Tribunal are not primarily punitive it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness…….The reputation of the profession is more important that the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

444. Delay in disciplinary proceedings is less relevant than in criminal proceedings.

445. The Tribunal was invited to consider the case of Kang. The Tribunal was asked to consider relevant passages. This case had related to a single conveyancing transaction in 1990.

446. In relation to the Fourth Report it had not taken ten months to write the report, rather there had been a long investigation.

The Findings of the Tribunal
Preliminary matter

The submissions on behalf of the second to seventh respondents on the isssue of delay and its impact on penalty

The Tribunal noted the submissions made on behalf of the second to seventh respondents that, without apportioning blame, there had been a failure to proceed with due expedition, and that should have an impact in reducing the penalties that might otherwise be appropriate.

The Tribunal noted that at the Directions hearing on 25th November 1997 it was agreed by the Respondents and the Applicant that it was appropriate to adjourn the case to allow for two matters: first the criminal proceedings against Mr Palmer, and second to allow for any matters deriving from the second MIU Investigation then in hand to be dealt with together with the First Rule 4 Statement allegations. In fact the conviction of Mr Palmer did not come until April 1999, an dby then there had been two further MIU Investigations bringing the total to four, the last of which was not completed until December 1999.

At the Directions hearing in September 2001 it was conceded by Counsel for the second, third, fourth and fifth respondents that the lapse in time in this matter being brought to the Tribunal was not the fault of the Law Society.

Even if there not been due expedition, and the Tribunal did not consider that to be the case here, the Tribunal did not consider in any event that that should affect the decision of the Tribunal on penalty where it decided that due to relevant considerations, including particularly the reputation of the profession, a solicitor's behaviour, for example involving conscious impropriety, was such that he should not remain a member of the profession. If conduct was found to be incompatible with continued membership of the profession it was unlikely to be appropriate to allow the factor of delay to allow such membership to continue. The Tribunal noted the passage quoted by the Applicant from the case of Bolton. The issues there of the impact of time and post-offence efforts to restore and redeem reputation did not, as delay did not here, touch the essential issue: which was the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable probity, integrity and trustworthiness, and that the reputation of the profession was more important than the fortunes of any individual member.

In general in relation to the impact of the alleged delay the Tribunal noted that it was not asserted on behalf of these respondents that they could not have a fair trial.

The Tribunal did not in this case consider that there had been excessive delay, neither did they consider that had there been such delay it should necessarily affect the penalty which was considered appropriate for a finding of conduct unbefitting.

The conduct of the Firm for which the respondents are responsible

The Tribunal found all the allegations relating to conduct unbefitting a solicitor to have been proved. They did not find proved the alleged rule breach, which was not charged as conduct unbefitting, which derived from the facts concerning item 23, which formed part of the basis of allegation (k). The remaining facts concerning allegation (k) and all the other allegations were found proved, and were found to constitute conduct unbefitting.

Indeed all such allegations were admitted, and admitted to constitute conduct unbefitting, albeit qualified as between the respondents in relation to whether the plea of guilty was a matter of personal knowledge or culpability as opposed to the strict liability, which was accepted by all the respondents, which an equity partner has for breaches committed by or on behalf of the Firm.

The conduct of the Firm for which the Partners at the time are responsible was wholly shocking and disgraceful. It is clear that over a period of some years in the middle of the 1990's the Firm systematically used clients' money to finance the operations of the Firm. The first inspection undertaken in April 1996 revealed that as at 31st March 1996 clients' funds used in the business, at some £518,000, exceeded the Firm's bank overdraft then at some £506,000. Part of these client funds then in use included some forty unpresented office account cheques, related to monies transferred from client account, which represented client monies held in office account for periods of up to and over one year. The First Report catalogued a flagrant misuse of client funds and improper transfers.

When confronted by this catalogue the Partners initially, in July 1996, affected to the then Bureau an ignorance of what rule breaches were involved and purported to explain that they were complying with the Guide to Professional Conduct which permitted withdrawals from client account for the reimbursement of monies expended on behalf of the client, "expended" meaning when the solicitor draws and despatches a cheque other than on a "hold to order " basis.

Whilst the system may have had an innocent beginning in being limited to the simultaneous extraction from client account of monies to be expended immediately for disbursements, it is apparent that the system was allowed to develop so that that the Firm was effecting withdrawals from client account in relation to office account cheques, not just for disbursements, which were either not drawn at all, or not drawn simultaneously, or if drawn were not despatched, and if despatched were not presented for payments for very long periods of time.

The evidence of the respondents confirmed that the Partners in the Firm responsible for the finance function were generally allowed to effect withdrawals from client monies held in relation to client files of other principals and partners without reference to the principal or partner who had conduct of such file.

Within one month in 1996 of affecting not to understand what rule breaches were being committed the then partners, being the first to sixth respondents, by the 4th September 1996 acknowledged to the Bureau that they recognised that their procedures were not in compliance with the accounts rules and regretted the inappropriate transfers and misuse of clients' funds. They undertook that there would be no repetition, that steps were being taken to refinance the practice and modify

practices, and they undertook that in addition to the partnership finance committee meetings , the partners were to meet fortnightly for the sole specific purpose of monitoring the accounts position. They added sincere apologies and an "earnest assurance" that the breaches would never be repeated. From that moment all the first six respondents were party to such assurance to the Bureau and on notice of the scheme or procedure by which the Firm was misusing clients' funds.

The "earnest assurance" was not fulfilled. The Second Report recording the position as at 30th June 1997 recorded significant and continuing misuse of clients funds. For example whereas the Second Report recorded that as at August 31st 1996, a matter of days before the "earnest assurance" the client account deficiency, comprised of client funds lodged in the Firm's overdrawn office account, stood at £146,736, at the end of the following month it had risen to £168,320 and one month later to £233,320. The deficiency remained at above the £100, 000 level for whole of the ensuing period under review and at the date of the Second Report review stood at £234,746 as at 30th June 1997.

Whilst the then partner respondents were on notice that Mr Palmer was a major architect and operator of the scheme of improper client account transfers to finance the office account, they did not take adequate steps to stop the scheme, or control the activities of Mr Palmer, and improper transfers continued after Mr Palmer left the Firm in July 1997. Indeed the second to sixth respondents who were then partners acknowledged that the scheme continued in operation until February 1997, some five months after the "earnest assurance" that it would stop.

The personal culpability and knowledge of the individual respondents

Each respondent has pleaded guilty to the allegations made against him. Save for the unqualified guilty plea on the part of Mr Langford with regard to the improper transfers in the case of Mr W., each of the second to seventh respondents qualified his pleas of guilty variously as being guilty as a result of being an equity partner, or with varying amounts of awareness or knowledge at relevant times of the particular facts and the related improper conduct of the Firm. The Tribunal accepts that the respondents are not all equally culpable in terms of involvement in, or knowledge of, the particular conduct perpetrated in the name of the Firm which is the subject matter of the allegations.

As is mentioned below there can be no doubt about the principal and dishonest role of Mr Palmer in relation to the operation of the scheme and the misuse by the Firm of clients' money.

It was submitted on behalf of the second to seventh respondents that the Tribunal could not reach a finding of dishonesty against any of them because dishonesty had not been specifically charged in the Rule 4 Statement allegations. It was also asserted on behalf of the second and third respondents that the Tribunal's finding of conscious impropriety against them, which is referred to below, constituted a finding of dishonesty which for the same reason as set out above the Tribunal was not at liberty to reach.

The Tribunal reject this. At the outset of the hearing in response to submissions made on behalf of the second to seventh respondents the Tribunal refused to disbar itself

from any particular finding in advance of hearing the evidence and all the submissions.

Having heard the evidence and the submissions the Tribunal do not accept that the respondents can have been in any doubt whatsoever that the case they had to meet would concern issues relating to their individual probity and integrity, and to their personal individual knowledge of, and role in, the admitted impropriety of the Firm from which they derived personal and admitted benefit.

The respondents can have been in no doubt of the case they had to meet. The allegations were of conduct unbefitting in relation to the systematic misuse of clients' funds by the Firm and its respondent partners for their own purposes over a period of years. The respondents can have been in no doubt that those allegations called into question their personal probity and integrity.

The Tribunal were satisfied beyond reasonable doubt, as set out below, that the second and third respondents had behaved with conscious and advertent impropriety. In cross-examination each of those respondents admitted, in relation to their personal acts and defaults, conscious and serious misconduct in relation to the admitted allegations. The Tribunal were not however satisfied that the fourth, fifth, sixth and seventh respondents had behaved with conscious impropriety, notwithstanding the admitted allegations found against them

The Finding and Order in respect of Mr Palmer

The Tribunal found Mr Palmer guilty of all the allegations against him, indeed they were admitted. Mr Palmer clearly bore a major responsibility for the setting up and operation of the scheme and the disgraceful and systematic misuse of clients funds for the benefit of the Firm. One of the allegations against him was that he had been convicted and imprisoned on fifteen counts of dishonesty. The Tribunal also found Mr Palmer guilty of conscious impropriety in relation to the other allegations against him.

Such behaviour could not be tolerated and the appropriate penalty was that he should struck off the Roll. The Tribunal also ordered that he pay forty per cent of the Applicant's costs subject to a detailed assessment if not agreed.

The Finding and Order in respect of Mr Cowen

The Tribunal found Mr Cowen guilty of all the allegations against him, and indeed they were admitted. The Tribunal considered that Mr Cowen bore a heavy personal responsibility for the misuse of clients' funds by the Firm. He had set up the Firm with Mr Palmer in 1981, and it bore both their names. He was joint senior Partner, and after Mr Palmer left was also the senior litigation partner.

Mr Cowen knew about the scheme from an early stage, and knew that it did not only apply to the payment of disbursements. He knew that the scheme benefitted the Firm's office account by the use of client monies. He was aware from the Partners' Accountants' qualification of their Report for the year ended 30th September 1995 that delays in clearances of office account cheques was enabling the Firm to use clients' money improperly.

Mr Cowen was also aware from September 1995 that in respect of his client matter concerning Mr W. £50,000 had been transferred from client to office account and could not be paid back. He admitted that he had allowed this position to continue for six months without taking steps to refund the monies to client account, or report the matter to the client, or the Law Society. He admitted before the Tribunal that he totally failed in his duty concerning Mr W's funds, and acknowledged that he had consciously breached the accounts Rules concerning Mr W.

In oral evidence before the Tribunal Mr Cowen admitted that he took no steps to stop the scheme from 1995 because that side of the Firm was controlled by Mr Palmer. He allowed the misuse of client funds to be perpetrated as a result of the operation of the scheme and the behaviour of Mr Palmer to continue until 1997. In spite of the knowledge that he had from 1995, he admitted that he had delegated to others judgement about suspicious transactions and did nothing himself to look at transfers from client account.

Mr Cowen admitted avoiding confronting Mr Palmer because he was frightened of him and wanted to avoid having a blazing row.

Mr Cowen wrote the Firm's letter to the Bureau on 4th September 1996 giving the "earnest assurance" that the scheme would be stopped. However it was not stopped and he acknowledged that it went on until 1997.

The Tribunal find Mr Cowen to have acted with conscious impropriety in the matter of the misuse of Mr W's client moneys, and furthermore note that Mr Cowen admitted in relation to that matter conscious breach of the Accounts Rules.

The Tribunal find that prior to and after 1995, when he had knowledge of the misuse of clients' funds from the operation of the scheme, Mr Cowen as a senior partner with knowledge, wholly failed to take the steps necessary to stop the misuse of clients' funds which resulted from the operation of the scheme and the improper transfers of Mr Palmer. His conduct involved a gross abstention of duty to ensure that the Accounts Rules were applied by the Firm and clients' funds protected. Without that abstention of duty the breaches could have been stopped. Failure to act in that situation to prevent serious breaches of rules is not the behaviour to be expected of a solicitor.

Given these failures over a long period and the admitted conscious breach of the Accounts Rules the Tribunal consider that Mr Cowen had acted with conscious impropriety and not with the integrity to be expected of a solicitor. A solicitor who knowingly misuses clients' funds and knowingly fails to rectify misuse could not expect to remain as a member of the profession. Clients' funds are sacrosanct and public confidence in a solicitor's duty to protect clients' funds had to be maintained.

The Tribunal therefore considered that the appropriate penalty for Mr Cowen was that he be struck off the Roll, and be ordered to pay fifteen per cent of the Applicant's costs, to be assessed if not agreed.

<u>The Finding and Order in relation to Mr Langford</u>

The Tribunal found the allegations against Mr Langford to be proved, indeed they were admitted.

Mr Langford was a member of the Finance Committee and acknowledged being aware of the scheme from 1995.

In relation to the matter of Mr W. Mr Langford is the only respondent to have pleaded guilty without qualification. Mr Langford admitted in oral evidence that he had effected the transfer of £50,000 from client account in August 1995 because the money was needed for the practice. He admitted to panicking when he was alone in the office under pressure from the office manager to find funds to assist the office account then at its overdraft limit.

Mr Langford admitted that he then took no steps to ensure that the money was returned to client account, but left the matter for Mr Palmer and Mr Cowen to sort out.

Mr Langford denied dishonest intent but admitted to the Tribunal in oral evidence that he had consciously taken the Mr W. money out of the client account in breach of the Accounts Rules for the benefit of the Firm, and that he told no one outside the Firm. He did nothing for the ensuing six months to see that the money was replaced.

He admitted that his failure to control Mr Palmer then and subsequently was due to the difficulty of doing so. He knew as from 6th September 1996 that £74,000 of Lady M client monies were in office account and needed transferring back to client account, but did no more than try to speak to Mr Palmer about the need for the re-transfer.

Mr Langford agreed in oral evidence that he was aware that the Firm was financed by the improper use of clients' money, and that but for that the Firm would have collapsed unless the Partners put in their own money, but he had not taken the necessary action.

The Tribunal were impressed with the efforts made by Mr Langford after the departure of Mr Palmer to restore the practices and procedures of the Firm. However the fact was that Mr Langford had admitted acting in conscious breach of the Accounts Rules in relation to the improper transfer of the Mr W. client monies, and had wholly failed to stop, control, report or rectify the effects of the improper use by the Firm, at the hands of Mr Palmer and through the operation of the scheme, of large amounts of clients' funds.

As in the case of Mr Cowen the Tribunal considered that this combination of conscious impropriety and gross abstention in the performance of his duties was not the conduct to be expected of a solicitor with integrity who should act at all times to protect clients' monies.

Accordingly the Tribunal decided that the appropriate penalty for such conscious impropriety in the case of Mr Langford was that he be struck off the Roll and be ordered to pay as in the case of Mr Cowen fifteen per cent of the Applicant's costs to be assessed if not agreed.

<u>The Findings and Orders in the cases of *RESPONDENT 4* and *RESPONDENT 5*.</u>

The Tribunal found the allegations against *RESPONDENT 4* and *RESPONDENT 5* to be proved, and indeed they were admitted. Each had admitted abstention from duty in not acting to ascertain, control and prevent breaches committed by the Firm and failure to exercise vigilance to prevent the operation of the scheme and the resulting misuse by the Firm of clients' money.

However the Tribunal was not satisfied beyond reasonable doubt that either of them had acted with conscious personal impropriety, or with such lack of integrity that should affect their continued right to practice.

The Tribunal considered that in each of their cases the appropriate penalty in respect of the admitted serious allegations was an aggregate fine of £24,000 with an Order that each should pay eight per cent of the Applicant's costs to be assessed if not agreed. The aggregate fine in the each of the cases of *RESPONDENT 4 RESPONDENT 5* was made up as to £5000 in respect of each of allegations (a), (c), (e) and (f) and as to £1000 for each of allegations (g), (j), (k), and (l)

The Finding and Order in the case of *RESPONDENT 6*

RESPONDENT 6 became an equity partner of the Firm in 1992 and ceased to be a partner in April 2001. He was not a member of the Finance Committee of the Firm. He informed the Tribunal that his practice generally did not involve the handling of client monies and that he was not aware that the Finance Committee had adopted a system such as the scheme.

RESPONDENT 6 spent much time overseas on client business from 1996 onwards and in 1999 became the resident senior partner of the Bahrain office. The Tribunal was told that he was not one of the inner circle of partners who knew the workings of the finances of the Firm, and as a junior partner was not made privy to the scheme system, nor was aware of transferring and retaining client monies in office account pending disbursement.

The Tribunal was informed that when he became aware of the transfer of client funds, which had taken place in his absence and without his knowledge or approval on his matter concerning SR Limited, he was appalled and urged his colleagues to transfer the funds back to client account immediately. However *RESPONDENT 6*'s protestations were ineffective since the funds were not replaced for eleven months.

RESPONDENT 6 regrets that he did not do more to question the activities of his colleagues and says that the culture of the Firm was against this. He pleads guilty to the allegations against him on the basis that he must share the responsibility with his equity partners for the defalcations of the Firm.

RESPONDENT 6's absences abroad, and his non membership of the Finance Committee or the Firm's "inner circle", cannot absolve him from the consequences of not exercising greater vigilance over the activities of his partners in the name of the Firm. Such mitigating circumstances do not absolve his abdication of responsibility for ensuring that the Firm pursued proper practices and procedures in accordance with the rules of conduct.

However the Tribunal do not find that *RESPONDENT 6*'s admitted conduct involved conscious impropriety and consider that the appropriate penalty in his case is an aggregate fine of £14,000 and an order that he pay eight per cent of the costs subject to a detailed assessment if not agreed. The aggregate fine in relation to *RESPONDENT 6* is made up as £2,500 in respect of each of allegations (a), (c), (e) and (f) and £1000 in respect of each of allegations (g), (j), (k), and (l).

The Findings and Order in the case of RESPONDENT *7*

RESPONDENT 7 did not become an equity partner in the Firm until 30th September 1997 and left the Firm on 31st March 2000. When he became an equity partner the scheme was essentially a thing of the past, Mr Palmer had left and the other respondents were rectifying the practices of the Firm.

RESPONDENT 7 is not a respondent to the principal allegations in the first Rule 4 Statement, and in relation to Second Rule 4 Statement is only a respondent to allegations (j) and (k). The Tribunal finds these allegations proved, and indeed they are admitted, but these are not amongst the most serious of the allegations before the Tribunal. To these allegations *RESPONDENT 7* pleaded guilty by virtue of being an equity partner, without personal knowledge.

The Tribunal did not find *RESPONDENT 7* guilty of personal impropriety in respect of the admitted allegations. The Tribunal was satisfied that in relation to this finding concerning *RESPONDENT 7* the appropriate penalty was a reprimand, and an order that he pay two percent of the costs to be assessed if not agreed.

Submissions on behalf of Mr Cowen and Mr Langford for a stay in the filing of the Orders

Counsel for Mr Cowen and Mr Langford sought a stay of the Striking-off Orders pending appeal. It was submitted that they had been allowed to remain in practice for six years and had plainly achieved a great deal. It had been said originally there was no risk to the public.

The Tribunal had rejected the submissions regarding the appropriate approach to dishonesty and it was submitted that the filing of the Order should wait until the Tribunal’s reasons were available. A possible period for any stay of filing the orders could be fourteen days from the issue of the Tribunal’s Findings.

The Applicant, whilst not opposing this application, said this was an unusual case. The Tribunal had made findings of conscious impropriety as it was perfectly entitled to do. The two respondents in question had been in practice for some years since and there were other partners there.

The Tribunal's decision on a stay

The Tribunal said that having reached a finding that Mr Cowen and Mr Langford should be struck-off the roll on the grounds that they had acted with conscious impropriety and lack of integrity in relation to admitted and serious allegations of conduct unbefitting, it did not consider it appropriate for it to grant a suspension of its order pending appeal.

Submissions in relation to Costs

The Tribunal heard submissions as to costs and in particular the appropriate apportionment of costs between the various Respondents.

The Applicant indicated that should the two per cent of costs which the Tribunal decided should be payable by *RESPONDENT 7* exceed the sum of £1,000 then the Law Society would not seek from *RESPONDENT 7* a sum in costs greater than £1,000.

The Applicant, not being able to give a final figure for costs to include the costs of the MIU investigations, accepted as appropriate the order for costs to be subject to detailed assessment unless otherwise agreed.

DATED this 20th day of June 2002

on behalf of the Tribunal

A. G. Ground
Chairman