No. 7871/1999
No. 8085/2000
(Rehearing)

IN THE MATTER OF ANDREW JOHN DUTTON, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H B Holmes (in the chair)
Mr. A G Ground
Ms. A Arya

Date of Hearing: 20th February 2003

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 Roger Field, solicitor and then a partner in Messrs Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands DY1 1EY on the 14th April 1999 that Andrew John Dutton solicitor of Birtsmorton, Worcestershire, 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.

A further application was duly made on behalf of the OSS by Roger Field on the 21st January 2000 that Andrew John Dutton solicitor of Longmead, Birtsmorton, Worcestershire, WR13 6AW might be required to answer the allegations contained in the statement which accompanied the allegation and that such order might be made as the Tribunal should think right.

A further application was made by Roger Field on the 16th June 2000 that Andrew John Dutton solicitor of Birtsmorton, Worcestershire, 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.

The Tribunal was aware that the Respondent had been granted a rehearing and notes it here in view of the length of time between the date of the application and the date of the substantive hearing. This was a hearing ab initio before a new division of the Tribunal.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in that:-

(i) He had breached the terms of a professional undertaking;

(ii) He had acted in his professional capacity towards a third party in a way which was deceitful, misleading or otherwise contrary to his position as a solicitor;

(iii) Withdrawn;

(iv) Having accepted instructions on behalf of a client he failed to carry out those instructions with diligence and the exercise of reasonable care and skill;

(v) He had accepted instructions to act for two or more clients where there was a conflict or a significant risk of a conflict between the interests of those clients;

(vi) Withdrawn;

(vii) He utilised clients' funds for his own benefit and/or for the benefit of another;

(viii) He failed to pay clients' money into a client account in accordance with Rule 3 of the Solicitors Accounts Rules 1991;

(ix) He practised in breach of the condition applying to his Practising Certificate that he may act as a solicitor in employment which is approved by the OSS in connection with the imposition of that condition by running his own practice;

(x) By his actions the Respondent compromised or impaired or was likely to compromise or impair any or all of the following:-

(c) his duty to act in the best interests of the client;
(d) his good repute or that of the solicitors' profession;
(e) his duty to the Court.

(Solicitors' Practice Rules 1990, Rule 1)

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Roger Field, solicitor and then a partner in Messrs Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands DY1 1EY appeared as the Applicant and the Respondent was represented by Andrew Lockley solicitor and partner in the firm of Irwin Mitchell, St Peters' House, Heartshead, Sheffield, S1 2EL.

The evidence before the Tribunal included the admissions of the Respondent as to allegations (i), (v), (viii), (ix) and (x). The admission of allegation (i) was on the basis that the

Respondent had breached a professional undertaking because he did not adequately oversee the way funds provided to him were disbursed. The Respondent handed up the following documents:- Affidavit of T.J. Archer dated 20th January 1998; letter dated 31st May 1996 Martlew & Co to Mr S; bundle of documents and a chronology relating to the Respondent's Practising Certificate breaches. The Respondent strenuously denied dishonesty on his part.

At the conclusion of the hearing the Tribunal ordered that the Respondent Andrew John Dutton of Birtsmorton, Worcestershire, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment if not agreed.

The facts relating to the admitted allegations are set out in paragraphs 1 to 52 hereunder:-

The agreed facts before the Tribunal

1. The Respondent, born in 1945, was admitted as a solicitor in 1988. At the material times the Respondent carried on in practice in partnership under the style of John Martlew & Co. at Solicitors Chambers, 30 Cambray Place, Cheltenham GL50 1JP. The Respondent ceased to be a partner on 7th May 1998. Thereafter the Respondent carried on practice on his own account under the style of Dutton & Co. at Longmead, Birtsmorton, Worcestershire WR13 6AW and he was employed as a consultant undertaking advocacy work by RA Eggleton & Co. at School Lane, Quedgeley, Gloucester.

Allegations (i), (v), and (viii) (breach of professional undertaking – conflict of interest – breach of Rule 3 of the Solicitors Accounts Rules 1991)

2. Following notice duly given an Investigation and Compliance Officer (ICO) of the OSS attended at the offices of John Martlew & Co. at Cheltenham to inspect the firm's books of account. Amongst other things the ICO identified a cash shortage of US$20,000. The ICO reported that the cash shortage arose as a result of breach of undertaking given by the Respondent to CHA Inc. The cash shortage had been replaced on the 15th May 1998. The Respondent indicated to the Tribunal that he had personally provided such monies.

3. The Respondent told the ICO that he had acted for Mr W of SJI Foundation, a Delaware company, and Mr C, a private and international banking consultant, in connection with the proposed leasing/rental of U.S Treasury instruments in the sum of US$10,000,000.

4. The Respondent said that Mr C's role was to bring together the parties to the proposed transaction and he confirmed that the proposed lessee was CHA Inc, which was represented by Mr A, its executive compliance director.

5. The Respondent had agreed that Mr A had expressed his concerns in connection with a proposed advance to be made to Mr C of US$20,000. Mr A said that he believed this was possibly illegal and he stated he would not comply with the request for an advance fee.

6. In a letter dated 18th January 1996 the Respondent gave a professional undertaking to Mr A whereby US$20,000, to be provided by CHA Inc, would be dealt with in accordance with a memorandum raised by his clients (Mr C and Mr W) entitled "Procedure for the Expense Account".

7. The "Procedure for the Expense Account" stated that the funds would be held in a client bank account and would only be utilised for authorised expenditure subject to the clients' approval.

8. In a letter dated and faxed to the Respondent on 18th January 1996 Mr A wrote:-

> "Thank you for your letter of today's date. This will confirm that we are satisfied with the document entitled "Procedure for the Expenses Account" provided by our client. Accordingly, we are immediately forwarding the sum of US$20,000 to your designated account, and agree that the expense disbursements may be made, in accordance with the said "Procedure for the Expense Account", from these funds. Please accept the foregoing as our instructions to you".

9. The Respondent confirmed that the "bank co-ordinates" given by him to Mr A in his letter of undertaking dated 18th January 1996 were not those of his client bank account but were those of Mr C's private Abbey National account in Cheltenham. The Respondent's letter gave the bank account details but made no mention of the account holder.

10. The deal had fallen through and despite repeated requests from Mr A, from as early as 26th July 1996, for the return of US$20,000, he had not repaid CHA Inc.

11. CHA Inc had instructed Hunt & Coombs, solicitors of Peterborough, to act on their behalf and issue proceedings.

12. On taking Counsel's opinion prior to Christmas 1997 the Respondent had been advised that he had to comply with the undertaking and return the US$20,000.

13. The matter had been settled by consent on 20th February 1998 with an order for John Martlew & Co to pay US$20,000 plus costs and interest.

14. The Respondent had agreed with the ICO that as the funds had not been paid into client bank account, contrary to Mr A's belief, and that, as the undertaking remained undischarged as at 30th April 1998, a resultant cash shortage on client bank account of US$20,000 existed as at the inspection date.

15. The Respondent had explained to the ICO that Mr C's business was that of a private and international banking consultant and that he had acted for him for approximately ten years in that connection.

16. The Respondent confirmed that he had acted for Mr C in connection with proceedings issued in the Bristol District Registry of the High Court. Mr C had sought a

declaration from a Dr H regarding the rightful beneficiary of bankers' acceptances (bills of exchange) with a face value of US$7,000,000.

17. The Respondent confirmed that by a joint participation agreement dated 4th April 1996, Mr C and Dr H agreed to share their profits on a 50:50 basis in connection with trading in bank instruments.

18. Dr H had proposed a project to Mr C whereby a loan of US$35,000,000 would be raised for the purchase of a licence for mining in Russia.

19. US$7,000,000 was to be invested in the U.S Treasury bond market and the US$35,000,000 loan was to be an advance of profits in respect of a twelve-month investment programme.

20. By a faxed communication dated 31st May 1996 Mr S, president of the board of directors of DMC, a Russian company, granted Power of Attorney to the Respondent to receive two certificates of deposit totalling US$7,000,000 as a means of collateral and to utilise such funds for the purposes of project financing.

21. By a letter dated 31st May 1996 the Respondent wrote to Mr S:-

> "I acknowledge your instruction to receive the certificates of deposit and your request to act on your behalf in this matter. My understanding is that the certificates are to be received in an account in New York under my care to arrange funding against said instruments to create project finance to the amount of 35M USD. It is my understanding should the project not be achieved within 15 banking days to arrange for the return of the said certificates to the respective banks of issue".

22. DMC did not provide certificates of deposit but, in their stead, a Dr H (on behalf of DMC) provided seven bills of exchange with a face value of US$7,000,000 to produce discounted funds for investment in connection with the raising of the proposed US$35,000,000 loan.

23. Because the funds were not provided in the form of certificates of deposit but as bills of exchange, and as they did not emanate from DMC, Mr C had issued proceedings for directions regarding the rightful beneficiary of the funds.

24. In a letter dated 2nd July 1996, Mr FC, Mr C's US attorney, confirmed that the bills of exchange had been received and that the proceeds therefrom would shortly be paid into his client bank account in the USA.

25. The Respondent agreed that the funds placed in Mr FC's client account were those of DMC.

26. The ICO was able to summarise the transactions relating to these funds held by Mr FC as follows:-

	US$

Proceeds of bills of exchange		6,125,000.00
Payments –		
Mr Dutton	80,000.00	
Mr M	30,000.00	
Mr C	30,000.00	
Trust Deposit	5,000.00	
Cash	10,000.00	
Sub Total of Disbursements		155,000.00
Net on Account		5,970,000.00

27. In a letter prepared in Mr FC's office in the USA dated 19th July 1996 the Respondent had instructed Mr FC to pay US$80,000 to Mr C's Abbey National account in Cheltenham and to take Mr C's instructions with regard to the disposition and investment of the remaining funds.

28. The Respondent told the ICO that he had acted on Dr H's instructions as a director of DMC and his own Power of Attorney to give instructions to Mr FC to take instructions from Mr C regarding the disbursement of the funds.

29. When asked by the ICO what instructions he had received from DMC allowing him to give his approval to disburse the proceeds of the discounted bills of exchange, the Respondent said that Mr S had written to him on 20th June 1996 telling him to take instructions from Dr H and that there would be a letter on file.

30. The relevant letter dated 20th June 1996 to the Respondent from Mr S stated:-

> "We hereby instruct you to work together with Dr H on all matters relating to the finance of USD 35 million based on bankers acceptance certificates of USD 7 million that have been entrusted in your care for this purpose".

The ICO did not understand how that letter could have authorised the Respondent to authorise personal payments to himself.

31. It had been the Respondent's position that the US$80,000 had been paid by Mr FC to Mr C and then to himself through Mr C's Abbey National account in Cheltenham. The payment had not been in respect of this transaction alone but in respect of other work and moneys disbursed on behalf of Mr C over a number of years.

32. The Respondent had been handed US$10,000 in cash by Mr FC.

33. The Respondent contended to the ICO that he had followed the instructions of Dr H to give authority to Mr FC to take instructions from Mr C. He added that Mr C then issued the instructions with regard to the disbursements totalling US$155,000.

34. In an affidavit dated 28th October 1997 Dr H stated that he was led to believe that Mr C would not have had direct access to the funds and that all proceeds were to pass through Mr FC's client account.

35. When questioned by the ICO the Respondent gave no adequate explanation as to how his receipt of US$90,000 reconciled with his duty of care due to his client DMC.

36. The Respondent said that, to his knowledge, Mr C had not provided a proper account to DMC in connection with the bills of exchange with a face value of US$7,000,000. Profits or capital had not been returned to them.

The admitted allegation (ix) that the Respondent practised in breach of the condition applying to his Practising Certificate that he may act as a solicitor only in employment which is approved by the OSS and that he had practised in breach of Practice Rule 1

37. On 20th October 1998 the Compliance and Supervision Committee of the OSS considered the ICO's Report relating to the Respondent's former firm of John Martlew & Co. An immediate condition pursuant to Section 13A of the Solicitors Act 1974 (as amended) was imposed on the Respondent's Practising Certificate then currently in force. The condition was that he might act as a solicitor only in employment which was approved by the OSS. By that time the Respondent had established his firm of Dutton & Co. and was writing to the OSS using appropriately headed paper. The Respondent appealed against the first instance decision but on 10th February 1999 the Appeals Committee dismissed his appeal.

38. The OSS wrote to the Respondent on 24th March 1999 following his unsuccessful appeal. He raised the question whether he might practise in an approved partnership and was informed that he could only properly practise in employment which was approved by the OSS.

39. On 22nd April 1999 he wrote to the OSS to the effect that arrangements had been made to dispose of Dutton & Co. to a firm of solicitors in Cheltenham.

40. In June 1999 the Respondent sought permission to act in the capacity of a consultant to RA Eggleton & Co. undertaking purely advocacy in the Magistrates' Courts. On 16th August 1999 the OSS wrote to him confirming that such permission was given. He commenced that employment. On 24th February 2000 RA Eggleton & Co. terminated the Respondent's association with them with immediate effect.

41. The Monitoring and Investigation Unit of the OSS inspected the books of account of Dutton & Co. An "on site" certificate was issued but it was found that on a small scale the Respondent had been operating a client account, in contravention of the condition on his Practising Certificate, and had been dealing with client matters and had been operating a legal aid account number.

The facts relating to the disputed allegations:- (ii) Misleading third party, (iv) Failure to carry out instructions with diligence and (viii) Utilisation of clients' funds

42. The facts relied upon in support of the admitted allegations are repeated here.

43. The Respondent did not agree that he had misled Mr A into believing that he was transmitting US$20,000 to the John Martlew & Co. client bank account when in fact the bank account details given were those of Mr C's private account. However the Respondent agreed that the documentary evidence made it appear so. The Respondent had informed Mr A by telephone that the funds would be paid to Mr C. There had been no intention to mislead. The Respondent had not made attendance notes of his telephone conversation.

44. In his affidavit dated 20th January 1998 (such affidavit made in connection with proceedings issued by CHA Inc against John Martlew & Co) Mr A said that the advance fee of US$20,000 was to be paid by CHA Inc at the outset and was to be lodged in a UK solicitor's client account. The lodgement with a UK law firm was little comfort if the funds could be released against mere submission of an invoice.

45. It was in response to that concern that SJI Foundation came up with the document entitled "Procedure for the Expenses Account". That document made it clear that:-

(1) the fund would be deposited with a UK solicitor;
(2) the funds would be held in a client account;
(3) no part of the fund would be released without prior approval by CHA Inc;
(4) the balance at the end of the transaction would be returned with full accounting.

46. Mr A said that he drew comfort from the fact that the money would be held by a solicitor and that no part of it could be disbursed by the solicitor without the express consent of CHA Inc. It was in those circumstances that he gave approval for the transaction to proceed.

46. The Respondent had introduced himself to Mr A as the solicitor acting for the SJI Foundation on the telephone. Mr A said that he was content to remit US$20,000 to the Respondent to be dealt with in accordance with the procedure for the Expenses Account document. The Respondent said he would be writing to Mr A to confirm that he would perform the role of the solicitor in relation to that document. Shortly afterwards a fax from the Respondent dated 18th January 1996 arrived in the following terms:-

> "In consideration of your forwarding the sum of $20,000.00 to the account details shown below I hereby undertake to ensure with full personal liability that these monies are utilised only for authorised expenditure in connection with the proposed business transaction and to provide you on demand with an account of the expenses incurred".

An account number (but not an account name) was specified at the conclusion of the letter.

48. Mr A believed, and contended that he was meant to believe, that the money would be held by the Respondent in an account under his direct control and that no payments

out would be made without the express consent of CHA Inc. If the transaction fell through then the money would be returned to Mr A's company.

49 The Respondent placed before the Tribunal a letter written by Mr A dated 9th February 2003 saying:-

> "It was not, at the relevant time, or at any time since, our opinion that Andrew Dutton had acted towards CHA Inc in a deliberately misleading manner. It was, and remains, our opinion that Andrew Dutton attempted, at all times, to act in a straightforward and honest manner towards us; but he found his position irretrievably compromised by his client, Mr C".

50. The Respondent had not disclosed the matter to his partners. His partners became aware of the matter when they received a notice of impending proceedings to be brought against them in respect of breach of undertaking. It had been as a result of that discovery that the Respondent had left the practice of John Martlew & Co on the 7th May 1998.

51. Of the monies paid out, the Respondent accepted that he himself had received $10,000 in cash which had not been shown in the books of account of John Martlew & Co. The money had been paid from Mr C's account at Abbey National Building Society.

52. Mr C had provided the money to redeem the Respondent's mortgage on his former residence in a sum approaching £26,000. A further payment of £17,000 had been made to National Westminster Bank Plc in partial repayment of the Respondent's overdraft. The funds had come from Mr C's Abbey National account in Cheltenham where US$80,000 and US$20,000 had been received. The ICO had reported that Mr C had provided funds for the Respondent to settle sums owing on his credit cards. The Respondent had agreed that he had received such funds but he could not speak for the amount. About £4,000 had been paid to the Respondent's wife by Mr C for the settlement of the Respondent's children's school fees.

The Submissions of the Applicant

53. The Respondent had admitted that he did not adequately oversee the way funds provided to him were disbursed.

54. With regard to the allegation that the Respondent had breached the terms of a professional undertaking, the Respondent denied that allegation. The facts before the Tribunal demonstrated that the Respondent had been guilty of intentional misleading and that did amount to dishonesty.

55. The Respondent had acted deceitfully and had misled Mr A into believing that the advance payment of fees of $20,000 would be paid into the Respondent's firm's client account when that was not the case. The money was to be paid into Mr C's personal account at Abbey National in Cheltenham. The destination of this payment had been disguised by the fact that bank details had been included in the letter written by the Respondent to Mr A but the name of the account had not been disclosed. Those

monies were disbursed from Mr C's account without the authority of Mr A or his company which Mr A had been led to believe was what was to happen.

56. The second transaction referred to in the ICO's report, the discounting of bills of exchange valued at US$ 7 million involving DMC which appeared to be a trading company of some sort, on the face of it bore the hallmarks of prime bank instrument fraud. It appeared that none of the schemes introduced by Mr C had succeeded in producing the promised returns for the investors. In connection with this transaction, funds had been placed in Mr FC's client account, Mr FC being Mr C's United States attorney. The Respondent had accepted that he had received $10,000 in cash from Mr -FC and this sum had not been shown in the books of account of John Martlew & Co. There was no documentary evidence of entitlement by way of bills or other accounting records. The Respondent had accepted that he had received a personal benefit from the proceeds, but he did not agree that he had misused clients' funds.

57. The Respondent had said that his understanding had been that the certificates were to be received in an account in New York under his care. It was clear that responsibility for the certificates lay with the Respondent. In the submission of the Applicant there had been a change in the mechanism but dishonesty had been demonstrated in connection with allegation (vii), namely that the Respondent had utilised clients' funds for his own benefit and/or for the benefit of another.

58. It was clear that there was a financially close relationship in existence between the Respondent and Mr C. That close relationship was an aggravating feature where the Respondent had been acting in a situation of conflict of interest which he himself had admitted.

59. £25,000 had been paid to the firm of John Martlew & Co. and lodged in office account. No bill had been rendered until April 1998. The cash shortage which had arisen in that respect had been in existence for about eighteen months. The Respondent had admitted that allegation.

60. With regard to the Respondent's breach of the condition on his Practising Certificate, the Tribunal was invited to bear in mind a number of key dates.

61. On 20th October 1998 an OSS Committee imposed the condition on the Respondent's Practising Certificate that he could practise only in approved employment. The Respondent had not appealed that decision. The Respondent had been in correspondence with The Law Society about various proposals for his working arrangements. In fact he had been operating a client account in respect of his practice on his own account as was demonstrated by entries in July and August 1999 clearly contrary to the condition on his Practising Certificate. There appeared to have been some fifty-eight individual matters which the Respondent was handling on his own account. It was the Applicant's submission that the Respondent had continued to trade as Dutton & Co. when there was a condition on his Practising Certificate which prevented him from practising as a sole principal.

62. The Respondent's behaviour in connection with the client, Mr A, had been unbelievable. Mr A had been seriously misled and money which the Respondent

undertook to hold safely and to disburse only with appropriate authority had been paid to a third party and disbursed without authority.

The Submissions of the Respondent

63. For many years the Respondent had acted for Mr C, who had become a friend. Mr C had at some time worked in New York as part of the Irish Government's delegation to the United Nations. During that period he had obtained knowledge of funding for large projects and the workings of the international money markets. He had developed a number of contacts in the world of international finance. He had decided to offer himself as a consultant in such matters.

64. Mr C discussed plans with the Respondent who had no knowledge or understanding of these areas. Mr C valued the Respondent's business sense and his negotiating ability. Mr C assured the Respondent that his role would be to record matters agreed with other parties, accompanying Mr C to meetings both to give credibility to his delegation and also to give an opinion on the legitimacy of those with those with whom he intended to do business. The Respondent lent Mr C the money to pay for international trips, a car and a mobile phone.

65. The first major matter involved a German industrialist who wished to raise finance for a private housing project. The Respondent spent some time with Mr C and the representative of a Swiss Bank in Weimar when Mr C and the Respondent spent much time in Switzerland attending meetings. John Martlew & Co received no fees for this. It was agreed that the Respondent would make up the time with the firm and that Mr C would pay him independently from the partnership when (and if) he was able.

66. At this time, the profession was being made aware of money laundering schemes and the practices of fraudsters. The Respondent asked himself a hundred times whether he was just being used to give credence to potentially fraudulent schemes. He discussed it openly with his partner. Both trusted Mr C, noting for instance that clients had been referred to Mr C by a partner of Ernst & Young.

67. During January 1996 the Respondent was asked by Mr C to attend a meeting with him when he was introduced to Mr W. In connection with the CHA Inc matter, Mr C had indicated that he would not attend a meeting in New York unless his expenses were met. He put his expenses at a limit of $20,000. He wanted payment "upfront".

68. CHA had agreed in principle to meeting these expenses, but were concerned to ensure that any money paid was used for proper and authorised expenses. Mr W had proposed that the money should be deposited in a solicitor's client account, and only released when agreed by CHA. Mr W had prepared a document, 'Procedures for the Expenses Account' to this effect.

69. When asked whether he would be prepared to accept this money into his client account, the Respondent expressed reservations and concerns and refused. He had no knowledge of CHA or the source of the monies. It would be a breach of the money laundering guidelines to take such an amount from an unknown source. As Mr C had indicated that he would wish the Respondent to accompany him to New York, the

Respondent could have been placed in a position of conflict if he held the money. He did not consider this a proper use for his client account, and was not prepared to act as 'banker' in a transaction he knew little about.

70. The solution proposed by the Respondent was that on the instruction of Mr C he should provide his professional undertaking that the monies would only be used for authorised expenses. He was able to do so as his firm held the unencumbered deeds to Mr C's property, and also because the Respondent was aware that Mr C had monies deposited with his US attorney. Mr C agreed that some of these monies would be placed in an account over which the Respondent had control when they reached the U.S. Over and above this the Respondent had absolute trust in Mr C at that time.

71. It was agreed that the Respondent should telephone Mr A the following morning to obtain his agreement. Before doing so the Respondent asked Mr FC whether a scheme of leasing US Treasury notes was known and possible in the US. He said that it was.

72. The Respondent telephoned Mr A. He told him that he was prepared to give his professional undertaking that the monies requested of CHA Inc would only be used for those expenses authorised by CHA Inc as set out in the 'Procedures' document. He said that seemed satisfactory and asked for the undertaking to be sent in order that he could fax it to the US for approval. Mr A was anxious for there to be no delay.

73. After speaking to Mr A, the Respondent immediately prepared and sent to him the letter of undertaking dated 18th January 1996. The following day Mr C confirmed that he had received into his account the equivalent sum of US$20,000.

74. The Respondent and Mr C went to New York where they met with Mr FC. Discussions took place concerning the procedures for leasing treasury bonds. There were other meetings.

75. During the course of the following months, the Respondent had spasmodic contact with Mr A. He considered that he had done everything possible, and that leased treasury bonds were simply not available to CHA Inc as they had insufficient standing.

76. In due course Mr A wrote to the Respondent asking for the return of the US$20,000 paid. Having spoken to Mr C he replied to the effect that these monies were for Mr C's expenses and that, in accordance with his undertaking, they had been properly utilised on authorised travel and subsistence in the US. The demand was renewed when solicitors were instructed by CHA Inc and eventually court proceedings were issued.

77. By this time the Respondent's trust in Mr C and his relationship with him had cooled as a consequence of his concerns over the DMC investment. The Respondent had asked Mr C for details and receipts for the money spent as expenses on behalf of CHA Inc. They had not been provided. CHA Inc sued for the return of the money. The Respondent sought Counsel's advice and was advised to consent to judgment. The

Respondent accepted he had been wrong to keep the matter from his partner. The money had been paid direct to Mr C and had been outside the Respondent's control.

78. It was also the case that in accordance with the undertaking, admittedly reluctantly and after proceedings, the amount had been repaid. There has been no loss to CHA Inc.

79. Mr A had been pressing for Mr C's and the Respondent's immediate departure to New York and it had been implied in this that the costs of this trip were specifically authorised.

DMC

80. The Respondent had been introduced by Mr C to Mr T, a Japanese gentleman, who explained that he spent much of his time in Moscow, and had important business interests in the former Soviet Union. Amongst these was the development of a quartz mine that was owned by a company, of which he was a director, called DMC Inc. Dr H had recently been invited to join the board.

81. By 1997 Mr C was working largely abroad. The Respondent was not kept in touch with Mr C's business affairs. The Respondent and his wife had some involvement in attending Mr C with personal matters. When Dr H, on behalf of DMC, was pressing for payment of the investment, or at least a statement of the monies accumulated, the Respondent advised Mr C that they were entitled to this, but he refused to have any contact with them until they could prove that the monies invested were legitimate and belonged to DMC. The Respondent was instructed to bring High Court proceedings for a declaration as to the true ownership of the monies.

82. In the early months of 1998 the Respondent's relationship with Mr C finally broke down. Mr C had failed to put the Respondent in funds to meet his liability to CHA Inc, and he could not get proper instructions from him in connection with DMC. He had failed to comply with directions given by the Court, as a consequence of which penal orders were made against him. During February the Respondent told Mr C that he was not longer prepared to act for him.

83. The Respondent's marriage broke down and his problems were aggravated by financial difficulties.

84. The firm was suffering financial difficulties. The formation of a partnership with another solicitor was agreed to take over a firm of solicitors in Bristol which was about to be the subject of an intervention by The Law Society.

85. The Respondent worked at the Bristol firm. In early May the Respondent was asked to resign from the partnership. The Respondent refused to resign, but did agree to the firm being wound up and that a purchaser be sought. The Respondent was told he would be expelled from the partnership.

86. He left and sought legal advice. Proceedings were commenced including an injunction to preserve his interest in the firm. The Respondent had to concentrate on

his matrimonial affairs, in which he was acting for himself, and the action against his former partner, in which he was legally aided. The Respondent became a recluse and he seldom went out.

87. In June the Respondent realised the need to get back to work. His particular expertise had been matrimonial work, but in his state of his mind he could not face even looking at a matrimonial file. Almost since qualifying he had been a police station duty solicitor. That was easy, uncomplicated work and the unsociable hours would not bother him. He enjoyed criminal court advocacy. He decided to concentrate on this area.

88. The Respondent's 'home' courts and police stations were Cheltenham and Gloucester where he was well known and respected.

89. A criminal practice reliant on the duty scheme had low set up costs. The Respondent could practise from home. He obtained a £10,000 bank overdraft, which was invested largely in computer equipment and software. From mid June the Respondent practised as Dutton & Co dealing with police station duty solicitor work and court advocacy from instructions received following attendance at the police station.

90. The claim for damages, winding up and his share of the net assets of his former partnership proceeded. The Respondent had informed the Legal Aid Board that he now had an income. On his application for legal aid the Respondent had disclosed money held in an American Bank in the names of Mr C and himself. This amounted to some US$50,000 and had been deposited from the account of Mr C's US attorney to cover business trips which did not materialise. It required joint signatures for withdrawal. The Respondent looked upon it as Mr C's money. The Respondent's control over it was one of the reasons he had been able to give the CHA Inc undertaking.

91. The Respondent's legal aid certificate was revoked and the Legal Aid Board looked to the Respondent for repayment of legal costs up to the revocation, which were taxed at some £14,000. The Respondent filed notice of acting in person.

92. The Respondent had co-operated fully with The Law Society's ICO at the time of the inspection of the books of account of John Martlew & Co. When a condition had been placed in the Respondent's Practising Certificate, he had taken advice. To appeal to the Master of the Rolls would have been prohibitively expensive. He decided to practise in compliance with the condition and began to seek an employer.

93. The Respondent had come to realise that by this time he should have sought medical help. He had changed dramatically. He had always enjoyed life, was outgoing and could deal with any challenge. He had become increasingly introverted. He was living by himself and had cut himself off from those around him. He could not sleep and would be afraid to answer the telephone. He was fearful of anyone coming to the house. He was too proud to tell anyone of these difficulties but at one time mentioned them to his doctor who prescribed medication which he took for a short period.

94. The Respondent had approached Roger Eggleton and went to see him the same day. He left him the file to read concerning his position with the OSS. Mr Eggleton knew of the Respondent and his history and offered him employment, which the Respondent accepted subject to approval by the OSS. Such approval was subsequently granted. It was agreed that the Respondent would work primarily from home. Employment began in July 1999.

95. Between October 1998 and July 1999 the Respondent continued to undertake duty solicitor police station calls on his own account and to claim payment in the name of his own firm. At the time he thought it was permissible to continue working on his own account whilst the appeal was being considered and for a reasonable time thereafter whilst the OSS were considering applications for employment. To have stopped work would have disrupted the rota of duty solicitors and jeopardised the position of clients for whom he was acting. No complaint was received from any client during this period.

96. The Respondent had declined an invitation by RA Eggleton's crime department at Quedgley because of the restriction on his Practising Certificate.

97. It was Friday 28th January 2000 when the Respondent attended upon Mr A at Cheltenham Police Station. Mr A had been charged with murder and attempted murder.

98. Mr A had a total mistrust of the establishment and in particular solicitors and the courts. Before Mr A would confide in the Respondent he asked for his history, background and beliefs. The Respondent answered very fully, explaining also his professional difficulties and his position at that time as an employed solicitor with Messrs Eggletons. He advised Mr A that it was open to him to instruct any solicitor of his choice, but that if he instructed the Respondent he would give total commitment to his case. He was also able to tell Mr A that in the past the Respondent had acted for defendants charged with murder and in other complex cases attracting much media attention. Mr A had been very keen to retain the Respondent as his solicitor.

99. Mr A had not been prepared to sign a legal aid application naming Mr Eggleton as the solicitor he wished to instruct. The alternatives open to the Respondent were to withdraw and tell Mr A he could not act. This seemed unnecessary and a travesty of the legal system and the profession, bearing in mind that he had been sent to represent him and had gained during some 20 hours with him not only his trust but also a unique insight into his case. Alternatively he could have not applied for legal aid, but the result of that would have been that Counsel would not have received payment to which he was entitled. Mr A's defence would have been prejudiced.

100. In the event the Respondent decided to complete the legal aid application form, with his name as the solicitor instructed. It seemed that this would cover the immediate problem. It would not involve any breach of condition as the Respondent had no intention of working other than in employment. It would enable the Respondent to discuss matters further with Mr A and with Mr Eggleton. In the meantime Counsel's fees would be covered and the necessary experts could be instructed.

101. Mr Eggleton was pleased that the case had come to his firm. The Respondent later learned that another solicitor in the firm together with Queens Counsel intended to visit Mr A in prison. A legal aid order nominating RA Eggleton & Co. as Mr A's solicitors had been obtained. Mr A had told Mr Eggleton that he wished the Respondent personally to handle his case.

102. When the Respondent met with Mr A, he was visibly upset. He had gained the impression that some form of conspiracy was underway to deny him proper legal representation.

103. The Respondent had contacted Mr Goatley and told him of his professional difficulties and the position with regard to Mr A. Application was subsequently made to the OSS for approval of employment with Mr Goatley's firm. After an initial refusal, this was reversed on appeal. Once approved the Respondent commenced work for Mr Goatley and introduced him to Mr A. Arrangements were made to transfer the legal aid order to Mr Goatley's firm. Mr Goatley was unable to win Mr A's confidence and after a short period he was dismissed by the client. The court transferred the legal aid order back to the Respondent in his absence on the insistence of Mr A and the Court Clerk. The Respondent's old firm of John Martlew & Co then offered him employment, but approval from the OSS was not forthcoming.

104. The allegations made against the Respondent were serious and concerned an alleged deliberate disregard for his professional body. The Respondent had explained the difficulties which he faced. He had not wished to practise in breach of the condition on his Practising Certificate. It was his position that he was not in breach during any appeal period, or when waiting for a response from the OSS to a request for employment to be approved.

105. With regard to the DMC matters, large sums of money were required for the development of the quartz mine. It was explained that the scheme had full government backing, and that several prominent members of the Russian government were on the board. The capital for the scheme, which was put at an estimated US$35 million, was not available in Russia due to that country's economic position and it had been decided to seek funding in the west. Dr H had been recruited for that purpose and had given Mr C's name as someone who might be able to help.

106. Security was to be provided by Mr FC who would be asked to hold funds in his trust account. Mr T and Dr H agreed to this. The difficulty was ensuring that the funds reached Mr FC for his guarantee when Mr C was adamant that he would not disclose his name or details. The solution decided upon was for the Respondent to act for DMC purely for the purpose of taking control of the funds and transferring them to Mr FC's care. Both parties agreed to this.

107. The Respondent was to arrange with Mr FC for an account to be opened in his name to receive the transfers and he would then forward them on to Mr FC. No advice of the availability of funds for transfer came. Communication was received from both Mr T and DMC advising that the transfer would be made by way of two certificates of deposit issued by a major western bank, details of which were provided. The Respondent received a power of attorney dated 31st May 1996 to expire on 30th June

1996 which empowered him to accept these two certificates of deposit and arrange funding for investment purposes against them.

108. The certificates of deposit had not been forthcoming. On 18th June 1996 the Respondent received a fax message from Swiss Bank Corp in St Gallans, Switzerland to the effect that bills of exchange with a face value of US$7 million were held in a name unknown to the Respondent to his order and available for transfer to a nominated account of his direction. He was very wary and uneasy about this. Bills of exchange were notoriously open to fraud. After a further visit to New York when promises did not materialise the Respondent became increasingly concerned at Mr C's reticence to provide further information. He was concerned that he had inadvertently been drawn into something of concern.

109. The Respondent had attempted to assist DMC in the investigation into the fate of its money.

110. The Respondent agreed to accept instructions to receive funds from an approved source and to transfer them to Mr FC's trust account. He had joint instructions from Mr FC and DMC as part of the procedures mutually agreed. As such, no conflict arose. In the event no funds were passed to the Respondent and he was not required to carry out any work on these instructions.

111. The contrary argument was that the Respondent had agreed to act for DMC in the investment of the monies or throughout to safeguard the monies. Had this been the case, it would have been extraordinary that DMC did not pass the bonds to the Respondent.

112. The event surrounding the loss of DMC's investment had been scrutinised in the greatest detail. The Respondent would have faced criminal charges.

113. The sums of money paid to the Respondent and his firm by Mr C out of the fund held to his order by Mr FC had been the subject of detailed scrutiny. Payments had been made from this fund not only to the Respondent for monies properly owed by Mr C, but also to others. There had not been any suggestion elsewhere that they were improperly made and in particular not by DMC.

114. The Tribunal had dealt with the original hearing in the absence of the Respondent on 12th October 2000. An adjournment had been refused on the ground that no medical evidence was available. Dr Egger's report had been dated 8th November 2000. It was believed that if the Tribunal had seen the medical report then an adjournment would have been granted. The Respondent had been struck off the Roll of Solicitors in his absence and had therefore been struck off for the best part of two and a half years. The Respondent's Practising Certificate had expired on the 12th May 2000. He had not therefore been able to practise as a solicitor for a period of about three years. That had already amounted to a significant penalty.

115. The Respondent had suffered ill treatment from Mr C whom he had believed to be his friend.

116. Mr A had written a letter in the current proceedings in which he said neither he nor his company wished to make any complaint against the Respondent, describing the Respondent as a "victim".

117. The Tribunal was invited to give the Respondent credit for the admissions which he had made.

118. The Tribunal was invited to note that the Respondent had recovered his mental health.

119. It was hoped that the Tribunal would feel that it would not be appropriate to impose the ultimate sanction.

120. The Respondent had been sued by DMC and currently had the support of Solicitors Indemnity Fund. Bearing in mind the high standard of proof which the Tribunal would apply, a Finding by the Tribunal that the Respondent had been dishonest would not only irretrievably damage the Respondent's good reputation but might well also mean that the Solicitors Indemnity Fund would give consideration to the withdrawal of its indemnity.

Submissions as to Costs

121. The Applicant sought the costs of and incidental to the application and enquiry. Costs should follow the event in the normal way. The Tribunal had found all of the allegations against the Respondent to have been substantiated. In the circumstances it would be right that the Respondent should pay all of the costs of the Applicant in the disciplinary proceedings (including the decision quashed by the High Court and an earlier decision in which the Tribunal made no order as to costs).

122. In the submission of the Respondent the refusal to grant a rehearing which was quashed by the High Court amounted to a nullity. The costs order contained in that decision of the Tribunal had also been quashed and it was not available to the current division of the Tribunal to order that those costs be paid, thus overruling the order of the Court.

123. In the earlier matter in which the Tribunal did not deal with the question of costs, it was clear that the Tribunal had not so dealt because it did not propose to make any order for costs adverse to the Respondent.

The Findings of the Tribunal

124. The Tribunal found all of the allegations to have been substantiated. The Applicant had put allegations (ii) and (vii) as matters in which the Respondent had been dishonest. The Tribunal found that in respect of the matters alleged in these two allegations the Respondent had been dishonest.

125. The Respondent had breached the terms of a professional undertaking. He had admitted that and the Tribunal had accepted his admission on the basis that he had not adequately overseen the way funds provided to him were disbursed.

126. The Tribunal finds with regard to allegation (ii) that the Respondent did mislead Mr A of CHA Inc. He gave that gentleman comfort by giving the clearest indication that money forwarded in respect of expenses was to be retained in the Respondent's client account and would be disbursed only in accordance with a formal document drawn up in that regard when the consent of Mr A or his company had first been obtained.

127. It was clear that the Respondent did not carry out instructions he had received from DMC and he certainly did not carry out their instructions with diligence and the exercise of reasonable care and skill.

128. With regard to allegation (v), there was no doubt that there was a clear conflict between Mr C and DMC. The Respondent should not, as he himself had come to admit, have acted for both parties. The Respondent had in fact preferred the interest of his established client and friend, Mr C, and had done so to the detriment of DMC. The outcome of the conflict of interest had been precisely that which the Rule relating to conflict was designed to avoid.

129. The Tribunal was in no doubt that allegation (vii) was substantiated and that the Respondent had utilised clients' funds for his own benefit and/or for the benefit of another. The Respondent had agreed that the funds placed in Mr FC's client account were those of DMC. US$80,000 of that money had been paid to Mr Dutton and US$30,000 had been paid to each of Mr M and Mr C.

130. The Respondent in July 1996 had instructed Mr FC to pay US$80,000 to Mr C's Abbey National account in Cheltenham and to take Mr C's instructions with regard to the disposition and investment of the remaining funds. The Respondent had given instructions under the power of attorney granted to him. The Respondent had indicated that he believed that he had been given written authority or instructions to act in this way but the letter to which he referred did not in fact give him the authority which he claimed.

131. In addition to this US$80,000, the Respondent had been handed US$10,000 by Mr FC.

132. The Respondent had accepted that he had personally benefited from the proceeds of the discounting of bills of exchange with a face value of US$7 million.

133. The Respondent had not denied that he had received payments from Mr C to redeem his mortgage, to settle his credit card bills and in settlement of his children's school fees.

134. The Tribunal takes the view that the Respondent had in that way knowingly utilised clients' funds for his own benefit and had known that they had been utilised for the benefit of Mr C and his acceptance of the funds in that knowledge did amount to dishonesty.

135. The Respondent accepted that the payment of £25,000 into office account ostensibly in relation to costs when no bills for costs had been drawn was a breach of Rule 3. The Tribunal notes that this was a large sum of money and although any breach of any

Solicitors Accounts Rule is serious it is even more serious when the sum of money involved in considerable.

136. The Respondent had further admitted that he practised in breach of the condition on his Practising Certificate and that in so doing his behaviour compromised or impaired his duty to act in the best interest of his client, the good reputation of the solicitors' profession and the Respondent's duty to the Court.

137. There were a number of instances in which the Respondent had acted for clients apparently in his capacity as a sole practitioner under a legal aid order. He had not notified the client, the Court, or the Legal Aid Board of the restriction on his Practising Certificate. Such behaviour was wholly unacceptable; not only did the Respondent thereby flout the ruling of his professional and regulatory body but he had not been open and frank with those who had an interest in any qualification upon his Practising Certificate.

138. The Respondent appeared to have taken the view that all the time he was talking about his Practising Certificate with the OSS, or indeed was making appeals or representations about it, he could carry on as if the condition did not exist. This was not so.

139. The Respondent had misdirected himself to a serious and very unreasonable degree. His proper course would have been immediately to have complied with the condition on his Practising Certificate by ceasing to undertake any professional work until either he had commenced approved employment or the condition had been lifted or amended.

140. The situation which the Respondent allowed to arise in connection with Mr A was a matter for very great regret and the Respondent's actions were to be deprecated. Mr A had been caused anxiety and concern. This was a considerable failure on the Respondent's part to put the best interest of the client first. The Tribunal considers the letter of support from Mr A to be somewhat surprising. It has not given it, as unsworn or tested testimony, very great weight.

141. In reaching its Finding that the Respondent has behaved dishonestly, the Tribunal has considered the tests laid down in *Royal Brunei Airlines v. Tann (1995)* and *Twinsectra v. Yardley and Others (2002)*. The Tribunal was in no doubt that the Respondent had acted towards Mr A and CHA Inc in a way that was deceitful, misleading and contrary to his position as a solicitor. The Respondent did not act as an honest solicitor would have acted. The Tribunal finds that the Respondent did know that what he was doing was wrong. It is inconceivable that a solicitor should give assurance that money is to be retained in his client account and then provide details of an account which, on the face of it, appeared to be details of his client account but in fact were the details of the account of a third party. The name of the account was not included in the letter to Mr A. If there had been no intention to deceive then the Respondent would have entered the full details, including the name of the account in that letter.

142. Every solicitor is required strictly to comply with the Solicitors Accounts Rules and is required to exercise a proper stewardship over client funds.

143. The Tribunal finds that the Respondent utilised client funds for his own benefit. The Respondent accepted sums of money either from Mr C or Mr C's American attorney (which he knew came from DMC) without there being any formality, such as the drawing of a formal bill which had been first approved by the client. Sums of money were paid directly to meet the Respondent's personal indebtedness. In this regard, the Respondent did not act in the way that an honest solicitor would have acted. The Tribunal finds that the Respondent himself was aware that the utilisation of clients' money in this way was a dishonest act.

144. In view of its Findings and the serious nature of the allegations made against the Respondent, the Tribunal consider it appropriate to protect the public and the good name of the solicitors' profession to order that the Respondent be struck off the Roll of Solicitors.

145. The Tribunal, having explained how it reached its conclusion that the Respondent's behaviour had been dishonest, wishes here to make it plain that if it had found the allegations substantiated against the Respondent without making also a finding of dishonesty, those allegations were so serious that the Tribunal would in any event, without a finding of dishonesty, have considered it appropriate that the Respondent be struck off the Roll of Solicitors, again in order to protect the public and the good reputation of the solicitors' profession.

146. The Tribunal was invited to give consideration to the question of costs and took note of the submissions made by the parties in this connection. Overall the Tribunal considered that the Respondent's professional misconduct has been at the highest end of the scale. The Tribunal will always take a serious view of a solicitor who allows himself to become involved in questionable transactions that bear all the hallmarks of prime bank instrument fraud and/or money laundering. The Respondent apparently had not told his partners of his breach of undertaking and they became aware of his failings only upon proceedings being issued against the firm.

147. The concerns of The Law Society were so great that they believed it right to impose a condition upon the Respondent's Practising Certificate ensuring that he could work only in approved employment thus ensuring that he would in the future be supervised. The Respondent carried on almost without regard to that condition. He paid lip-service to it and appeared to recognise its existence and take some steps to comply but he never really grasped the nettle and told himself that he could not practise unless he was doing so in an employment of which the OSS had approved.

148. The Respondent did not enjoy a happy personal life, he did not enjoy good relations with a number of his professional colleagues and he had been investigated by the Police and by his own professional body. It was the Respondent's evidence that his health had suffered. Nevertheless the Tribunal could not avoid the conclusion that in allowing himself to be drawn in to international financial transactions involving huge sums of money when he himself was a high street solicitor experienced only in crime and matrimonial law was at best foolish in the extreme and at worst was dishonest.

He had apparently agreed to act as a solicitor in an area in which he had no knowledge or expertise. He had caused a great deal of trouble. He had caused much trouble to his own profession and had cost that profession a great deal of money.

149. In all of the circumstances, the Tribunal was unable to find any reason why the Respondent should not meet the full costs of all of the proceedings which had taken place before the Tribunal which had been incurred by The Law Society together with the costs of the investigation and enquiry carried out by that body including the costs of the Investigation and Compliance Officer. In making such costs order the Tribunal was making a new order for costs and was not to be taken as re-imposing or enforcing any previous order.

150. The Tribunal, therefore, ordered that the Respondent be struck off the Roll of Solicitors and that he should pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment if those costs were not agreed between the parties.

DATED this 22nd day of April 2003
on behalf of the Tribunal

A H B Holmes
Chairman