No. 8145/2000

IN THE MATTER OF ALEX RONNEY BEVAN PEREIRA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr A G Ground
Mr G Fisher

Date of Hearing: 23rd and 24th April 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 Katrina Elizabeth Wingfield, solicitor and formerly a partner in the firm of Messrs Walker Martineau but at the time of the hearing a partner in the firm of Messrs Penningtons of Bucklersbury House, 83 Cannon Street, London EC4N 8PE on 7th April 2000 that Alex Ronney Bevan Pereira of Leigham Court Road, London, SW16, solicitor 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 allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he had:-

(1) made claims to the Legal Aid Board in respect of immigration work which were fraudulent in that they:

(a) did not represent an accurate account of the time expended on individual matters;

(b) purported to show that both interpreters and the firm's representatives had been engaged on clients' affairs simultaneously when only one such person was so engaged;

(c) disclosed that interpreters were engaged where it was not necessary to do so because the client spoke English or alternatively the firm's representative was able to converse in the client's language;

(d) purported to reflect work done which had not been done or alternatively had not been done to a proper standard.

(2) Failed to supervise properly, or at all, non-qualified individuals engaged on the Respondent's business in relation to immigration work in breach of Practice Rule 13 of the Solicitors Practice Rules 1990 and Regulation 20 of the Legal Advice and Assistance Regulations 1989.

(3) Failed to notify the Immigration Appellate Authority of changes to the information supplied about cases in forms entitled "Certificate by Representative of Readiness to Proceed" until 9th February 1999, the day before the date set aside for oral hearings in these cases.

(4) Acted and committed others to act on his behalf in a way which compromised or impaired or was likely to compromise or impair the solicitor's duty to act in the best interests of his client; the good repute of the solicitor or of the solicitors' profession; the solicitor's proper standard of work and the solicitor's duty to the court.

(5) By virtue of the aforementioned the Respondent had brought the solicitors' profession into disrepute and had been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 23rd and 24th April 2003 when Katrina Elizabeth Wingfield appeared as the Applicant and the Respondent was represented by James Pyke of James Pyke & Co. 159 Herne Hill, London, SE24 9LR.

The evidence before the Tribunal included the oral evidence of Ms Meyer, Mr D J Middleton and of the Respondent. At the hearing the Respondent handed up a copy letter addressed by James Pyke & Co to the Applicant dated 18th September 2002 and a copy of the Judgment in Twinsectra Ltd v Yardley and Others.

The Respondent admitted allegation (3) and admitted allegation (2) on the basis that he had not given adequate supervision to non-qualified individuals engaged on the Respondent's business in relation to immigration work in breach of Regulation 20 of the Legal Advice and Assistance Regulations 1989.

At the conclusion of the hearing the Tribunal ordered that the Respondent Alex Ronney Bevan Pereira of Leigham Court Road, London, SW16 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 fixed in the sum of £14,205.07.

The facts relating to the admitted allegations are set out in paragraphs 1 to 10 hereunder: -

1. The Respondent, born in 1963, was admitted as a solicitor in 1992. At the material times the Respondent practised on his own account under the style of Bevan Pereira & Co at 133 Stockwell Road, London, SW9 9TN.

2. The Respondent was almost exclusively involved in the field of immigration law and most of that work was funded by the Legal Aid Advice and Assistance Scheme (the Green Form scheme).

3. Between October 1995 and September 1996 the Legal Aid Board made payments to the Respondent for immigration advice and assistance in the sum of £157,984. From October 1996 to September 1997 payments in the sum of £255,103 were made. From October 1997 to September 1998 payments amounted to £475,576. The total payments from the Legal Aid Fund between October 1995 and September 1998 (all of which related to immigration assistance and advice) amounted to £888,663.

4. As a result of what it considered to be a significant increase in payments made by the Legal Aid Board to the Respondent, the Legal Aid Board began an investigation. The Legal Aid Board wrote to the Respondent on 2nd December 1998 expressing concerns.

5. The Legal Aid Board's concerns related to the Respondent's arrangements for the supervision of unqualified staff. The Respondent provided the Legal Aid Area office with ninety-three case files on which claims for payments were being made. On 20th January 1999 two Legal Aid Board officers interviewed the Respondent at his professional address.

6. Following a more detailed consideration of the ninety-three case files, the Legal Aid Board made findings which were communicated to the Respondent and to the OSS. The findings may be summarised as follows:-

   (i) The Respondent purported to delegate supervisory responsibilities to trainee solicitors;

   (ii) There was no evidence to show that the Respondent had exercised proper supervision over unqualified staff;

   (iii) The ratio of 'live' cases to numbers of staff made adequate supervision by the Respondent impracticable;

   (iv) Attendance notes were normally brief, illegible, repetitious and lacking in particularity. There was no evidence on the attendance notes to support the time actually recorded on case files;

   (v) The case files did not disclose any evidence of advice directed at the client's individual requirements;

   (vi) Political asylum questionnaires issued by the Home Office had been inadequately completed;

(vii) The case files did not disclose any evidence of records completed in relation to substantive interviews with the immigration services;

(viii) The case files disclosed little evidence of case outcomes or follow-up advice;

(ix) Claims were made for the costs of interpreters where no interpreter was required or the interpreter was acting in the capacity of a representative of the Respondent rather than as an interpreter.

7. The Respondent accepted that the level of supervision given to his staff did not meet the requirements of Regulation 20 of the Legal Advice and Assistance Regulations 1989.

8. The immigration and asylum work was carried out by the Respondent's firm principally by unqualified/unadmitted members of staff and a number of "self-employed outdoor clerks". It would have been impossible adequately to supervise the numbers of individuals concerned to any satisfactory standard.

9. With regard to allegation (3), the Respondent failed to notify the Immigration Appellate Authority of substantial changes in relation to oral hearings listed until the day before those hearings were scheduled to take place. A complaint in relation to that matter had been received by the OSS from an immigration adjudicator with regard to four appeal hearings which were due to be heard on 10th February 1999. The Respondent's firm had certified that each client had adequate private funds to pay for representation at an oral hearing, the presence of an official interpreter had been requested. On the day before the hearing the Respondent's firm wrote to the Immigration Appellate Authority asking that the matters not be dealt with by way of an oral hearing but that they be determined on paper. Neither the appellants, who were the Respondent's clients, nor any representative from the Respondent's firm appeared on 10th February 1999 to conduct those hearings. No explanation for the change was provided.

10. In evidence, the Respondent explained that the clients who had agreed to pay for representation initially had indicated that they no longer intended to make such payment. The Law Society's guidelines for immigration practitioners at paragraph 4 stated:-

> "Practitioners should ascertain whether the client can pay for representation at the hearing. If not, adequate arrangements must be made either for the provision of such representation on a pro bono basis (by the solicitor or by, for example, the Free Representation Unit), or for the timely transfer of the case to the Immigration Advisory Service or to the Refugee Legal Centre, or another provider of free representation, as appropriate…. if a practitioner has not been put in funds, it is unacceptable for the solicitor to terminate the retainer so soon before the date of the hearing as to prevent the client finding alternative representation, or to hinder the Court or the Immigration Appellate Authorities in adequately disposing of matters pending".

During the course of the hearing the Respondent came to accept that this allegation would be substantiated against him and he accordingly made an admission.

The evidence relating to the disputed allegations is set out in paragraphs 11 to 56 below:-

11. Following the submission of ninety-three case files to the Legal Aid Board Area Office the Respondent was interviewed on 20th January 1999 by two Legal Aid Board officers.

12. Six case files were chosen at random from the ninety-three and were considered in detail. They all related to nationals from the People's Republic of China: HLH, MCC, GZC, YC, JYC and SYL.

13. The Legal Aid Board, in addition to the above mentioned supervisory failures, found that:-

    (a) The Respondent purported to delegate supervisory responsibilities to trainee solicitors;

    (b) Attendance notes were normally brief, illegible, repetitious and lacking in particularity. There was no evidence on the attendance notes to support the time actually recorded on case files;

    (c) The case files did not disclose any evidence of advice directed at the client's individual requirements;

    (d) Political asylum questionnaires issued by the Home Office had been inadequately completed;

    (e) The case files did not disclose any evidence of records completed in relation to substantive interviews with the immigration services;

    (f) The case files disclosed little evidence of case outcomes or follow-up advice;

    (g) Claims were made for the costs of interpreters where no interpreter was required or the interpreter was acting in the capacity of a representative of the Respondent rather than as an interpreter.

14. A member of the OSS had himself examined case files on 25th and 26th February 1999. In addition to his view that there was a lack of proper supervision by the Respondent of his staff, he ascertained that there were standardised attendance notes. An example quoted by him was:

> "Attending to client and taking initial instructions. Advising about asylum procedure and Home Office new files. Advising about interview he will need to attend. 1 hour".

15. In the main file considered by the OSS representative (GZC), there was a claim for 41 telephone calls. Of these 20 recorded no more than the date, the name of the client and the word "asylum". Two of the notes indicated the call had been made to an interpreter.

16. He also said that a question had arisen where the representative of the Respondent's firm attending a Home Office interview with a client could speak the client's language but a claim had been made to the Legal Aid Board for a representative and an interpreter. There were other interviews where the firm's representative and the interpreter had submitted claims for attendances where the periods of time claimed were different.

17. The Law Society had considered that there was a reasonable suspicion of dishonesty on the part of the Respondent and had intervened into his practice following the resolution of the Compliance & Supervision Committee on 18th March 1999. The resolution caused The Law Society's Investigation and Compliance Officer to terminate the inspection of the Respondent's books of account which he began on 3rd March 1999.

18. The Legal Aid Board has issued proceedings against the Respondent. That action had been disposed of by a Consent Order dated 18th February 2002 on the basis that the Respondent pay the sum of £30,000 and withdrew his appeals against the Board's nil assessments in the ninety-three files referred to above.

19. The Respondent accepted that unqualified members of staff carried out the immigration work and that time spent by interpreters did not reflect the time actually spent on interpretation. This occurred because interpreters would attend at the Home Office to deal with several different clients. The interpreters charged on an hourly basis without apportioning the time to each individual client. The Respondent said that this was a genuine error and any such claim had been unintentional.

20. The Respondent also acknowledged that his firm prepared the interpreters' invoices. They were not signed by the interpreters nor did they contain the address of the individual. They were not dated: no tax point appeared thereon; they were not receipted. The Respondent said that the interpreters were sole practitioners. His firm prepared the invoices for the interpreters from information they gave. The interpreters checked and approved the invoices. A copy of the invoice would be sent with the case file to the Legal Aid Board when seeking payment. The Legal Aid Board had accepted that form of invoice notwithstanding that they were not dated, did not state the address of the interpreter and they were not signed by the interpreter. The Legal Aid Board had not raised any objection to this practice. Interpreters were vital to run an immigration practice. Interpreters were not prepared to wait for payment until the Legal Aid Board paid the solicitor and would cease to be available if not promptly paid. To avoid this difficulty the Respondent had paid interpreters from his own resources.

21. Neither the Respondent nor the other legal representatives in his firm could speak the Mandarin, Albanian or Kosovan languages. Whenever non-English speaking clients attended the office it was necessary to telephone one of the interpreters to find out when he or she could go to the office. The firm would not have been able to function without interpreters.

22. The same individuals appeared both as representatives of the firm and interpreters and on occasions appeared to have fulfilled both roles. Claims had been made for an

interpreter in Mandarin when the firm's representative was a Mandarin speaker [the cases of HLH and YC].

23. The interpreter's invoice claimed that a Mr W (a Mandarin speaker) attended on Mr HLH at the Home Office on 23rd September 1998 and that Ms FY, a Mandarin speaker, also attended the Home Office. In fact Ms FY attended. Mr W did not according to the interview record. Mr W's interpreter invoice claims for attending on Mr YC at Terminal 3 on 28th October 1998. Mr W was described in the interview record as "passenger's rep". A claim was made to the Legal Aid Board for the attendance of both an interpreter and a representative even though only one person attended.

24. There were other duplications. Mr W, in addition to claiming to attend the Home Office in relation to the HLH matter on 23rd September 1998, also attended at the Respondent's office for a meeting with JY. It appeared clear that he did not in fact attend the Home Office and only Ms JY did.

25. Ms S, an interpreter, attended the Respondent's office regarding JYC and SYL on 12th May 1998 when she claimed for travel and waiting in both cases (and the time so claimed differed by 30 minutes). Telephone calls were recorded as having been made to her on the JYC file and in the SYL file. The figures on the telephone attendance notes appeared to relate to those on the invoices.

26. Ms Y, an interpreter, attended the office regarding MCC on 30th July 1998 and regarding YC. There were claims on both matters for travel and waiting. There were standardised notes of telephone calls.

27. The Respondent said that he did not usually charge twice for interviews when his firm's representative and the interpreter were the same person. This was not the usual case. If the interpreter attended an interview outside the office and there was also another client there, the interpreter was requested to attend to that client without payment, the Respondent then claimed for one client only. Sometimes the firm might have had six clients of different nationalities. In such an instance the firm's clerk might have acted as the firm's representative on one case, and in the case of another client he could have acted as an interpreter as there could be another clerk acting as the legal representative who could not speak the relevant language. It would be right to supply an interpreter for the client even if a Home Office interpreter was present. Their rates were not the same. The Respondent's interpreter might be needed to interpret a solicitor and own client conversation to which the Home Office's interpreter should not be privy.

28. An examination of notes of attendances of interpreters regarding fees showed agreement about fees including travel time. Travel times claimed appeared to be standard despite the address of individual interpreters; for example Mr W lived in SW2 which was in close proximity to the Respondent's office address. There were claims for travelling to the Respondent's office and waiting time. The Respondent pointed out that the interpreters and a number of "outside" clerks used by him worked also for other firms of solicitors and travel to his office could have been from any other part of London – not necessarily from the interpreter's home.

29. In relation to the client MCC, there were claims for two interpreters for 30th July 1998 namely Ms Y and Mr W. There was an attendance claimed although there was no attendance note, for that date for 1 hour 15 minutes whereas Ms Y claimed for 1 hour and Mr W for 1 hour 30 minutes. The Respondent said in evidence that some of the interpreters were experienced legal representatives who worked on a "freelance" basis for firms of solicitors.

30. When he provided details of his staff to the Law Society's Investigation and Compliance Officer the Respondent indicated that some individuals were employed as interpreters and as "fee earners". The Respondent had also indicated that some "self-employed outdoor clerks" including Mr W and Ms Y also worked in the office. The Respondent indicated that it was his practice to send the most experienced representative available at the time to represent a client. This might have been a "freelance" person or someone who was an employee of the Respondent's firm. Some of these people spoke a relevant language and were able to act as interpreters on some occasions.

31. In the main, attendance notes of telephone or personal attendances were standardised and showed no detail of the work carried out or the advice given. Some telephone attendances were blank. The Tribunal examined a number of examples on the SYL file where there were a number of blank/almost blank attendance notes ostensibly recording calls from or to the client. A similar position obtained on the JYC, YC, HLH, MCC and GGC files.

32. In addition there appeared from the claims on the files to be a number of attendances upon the clients within a short time frame but no evidence on the files to show why that was necessary. The attendance notes were either inadequate and/or illegible and many were in the standardised form referred to above. The Tribunal considered a number of examples in the files of HLH, MCC, GZC, YC, JYC and SYL.

33. The Respondent said that most of his clients did not co-operate to fill the "PAQ" Form. Whole sections remained unanswered because the clients did not want to give full answers. They wanted to consider their answers or were waiting for supporting documents from their country. Sometimes they did not understand. It took time to get a simple answer. Most immigration/asylum clients did not speak English. Many of the Chinese clients were illiterate. It was difficult to explain even though an interpreter was involved because most of the Chinese, Albanian and Kosovan clients came from rural areas and were uneducated. Clients sometimes made further representations after completing the PAQ Form. When attending the full asylum interview the representative could only attend as an observer. The representative could not interfere with the questions. The role of the representative was limited to reading the interview notes and asking for the correction of any mistakes. Interview notes were provided and the firm had to attend upon the client and correct any mistakes.

34. In the case of YC, the Respondent said that the file note clearly stated that a relative was interviewed as the client was in a detention centre. Discussion had taken place about a bail application as well as other issues. The attendance on the client was at Heathrow Airport on the same day. The Respondent did not know why it took 3 hours 30 minutes. The Respondent's claim was for 3 hours 50 minutes return. There

was a full interview at Heathrow Airport by the immigration officer. It was through no fault of the Respondent's that the representative was kept waiting for such a long time or that the interview and follow up took so much time. The claim for an interpreter on 30th June 1998 was for the office interview of the relative. No claim was made for an interpreter at Heathrow as an interpreter would have been provided there. The Respondent would not have taken an interpreter just in case the client could not speak English.

35. The Respondent accepted that the claim for an interpreter on 28th October 1998 was an error on the Respondent's part because the firm's representative, Mr W, could speak Mandarin. It had been an error and had not been a deliberate action.

36. In respect of the time recording for the interview at Heathrow on 28th October 1998, the attendance recorded in the representative's note stated 1 hour 10 minutes. In the interpreter's invoice the attendance was shown as 30 minutes. The Respondent was unable to explain the difference.

37. The Respondent's practice was to draft grounds in general terms. That had never been criticised. It was also the practice of the Respondent to place a standard letter on the file following a criticism by an immigration adjudicator as to whether or not the client knew about the payment he would have to make for representation by Counsel. This letter would have been interpreted to the client.

38. The Respondent said in the case of MCC it was wrong to suggest that false claims were made for interviews on 15th, 16th, 21st, 22nd and 30th July 1998 because there were no attendance notes.

39. With regard to the Home Office visit on 16th September 1998, the Respondent noted the time recording after the firm's representative reported back to him. The representative at the Home Office meeting was Mr W who did not require an interpreter. When the Respondent saw the client at the office he needed an interpreter and Mr W was the interpreter for that interview.

40. In relation to the SYL matter, there was also confusion as to the role played by Miss S, who was a Mandarin interpreter and also a fee earner and outdoor clerk. Claims had been made both for her attendance as interpreter and for another fee earner. That appeared unnecessary as she could both translate and act as the representative. On 1st May 1998 there were claims for the attendance of an unnamed fee earner. This was also the case on 12th May 1998, 28th May 1998, 10th June 1998 and 25th August 1998.

41. The Respondent said that Ms SYL was a minor and needed special attention. The firm's attendance at the Home Office was vital as the representative would be the "approved adult". Because the client was a minor there were more attendances on her. The attendance note for the interview at the office was on 1st May 1998. An interpreter was required. There was no claim for an interpreter on the same day for the interview at the Home Office. The Respondent thought it likely that this was an error on his part to obtain an invoice and make the claim for payment. Because the client could not speak English it took time to fill the form and obtain her statement which then had to be read out to her before she signed it.

42. In relation to HLH, there were two attendance notes for 2nd February 1998, each in different handwriting both covering a visit to the Home Office. There were further attendance notes on that day. Attendances on 10th and 22nd September appeared to cover the same advice. There were two attendance notes in different handwriting for the attendance at the asylum interview on 23rd September 1998.

43. The Respondent said that he split the total time of 1 hour 55 minutes into three parts as shown in Form GF1 and 2 and Form GF3. In Form GF1 the Respondent claimed £52 for 1 hour 20 minutes interview.

44. With reference to the visit to the Home Office, there were two interview notes, one by the firm's representative and the other by the interpreter. One claim for costs was made.

45. The appointment on 30th April 1998 related to a further screening unit interview at which a representative was always required.

46. The attendance notes for 30th April 1998 were made by the interpreter and the representative. Timings for travel would be different because each would have had different travelling arrangements. The representative stated that the waiting and attendance times totalled 4 hours and the Respondent claimed accordingly. The notes relating to the meeting of 23rd September 1998 were taken by the firm's representative and by the interpreter. The Respondent believed that on that date the firm's representative was Ms A and the interpreter was Mr W. They were later replaced by Ms FY as the firm's representative; she did not require an interpreter. That was confirmed by the time recording that day. Mr W stated that the total time for his travelling and waiting for two and a half hours whilst the representative noted that the waiting period was 2 hours 40 minutes.

47. The Respondent accepted that the appeal notice appeared to be in a standard form but that did not mean that the client had not been interviewed or that time had not been taken to explain the procedure.

48. In the case of JYC, the initial attendance note for 29th April 1998 gave no indication that an interpreter attended and yet a claim was made for Ms S for that occasion. The attendance note was timed at 45 minutes but the interpreter claimed 1 hour 30 minutes plus travel. There was a further attendance note for the same date covering a trip to the Home Office but no claim for an interpreter.

49. The Respondent himself interviewed the client on 29th April 1998 and the attendance note was his. A Mandarin interpreter was required. The Home Office interview on 29th April 1998 was a screening unit interview and a representative attended. The note of the attendance was in the Respondent's handwriting. The representative would have been called back to the office and the Respondent would have made a note. No claim for an interpreter was made for this interview. The Respondent said that must have been because his clerk who spoke Mandarin attended.

50. The Respondent said that his firm's charge-out rates had been as follows:

£46.50 per hour attendance for fee earners
£34.50 per hour travel and waiting for fee earners
£15.00 per hour interpreter's fees for attendance
£12.00 per hour interpreter's fees for travel and waiting

The Respondent said that where a fee earner (representative) was also the interpreter he did not charge an interpreter's fee but instead charged the 'higher' attendance fees for fee earners etc. and paid the interpreter's fees out of these monies.

51. Appeal notices appeared to be standardised in the cases of YC and HLH.

52. The Applicant drew to the attention of the Tribunal the written analysis of the file prepared by the OSS employee, Mr Middleton, which highlighted a number of inconsistencies and inaccuracies in the time recorded and claimed for interpreters and the firm's representatives. In particular, the records were very confused. There was a claim for an interpreter of 1 hour. There was a note of an attendance on the client showing only 25 minutes. In his analysis Mr Middleton added a further attendance note relating to 15 minutes, making a total of 40 minutes. In fact the 15 minute "attendance" was for perusal. The interpreter claim for 1 hour was excessive because the attendance note on the client referred to 25 minutes. The firm also claimed an attendance of 50 minutes on the Claim 10 form. There was no attendance note to support that claim.

53. On 24th February 1998 the interpreter claim was for a total of 2 hours. The firm's claim was for a total of 1 hour 5 minutes. On 26th February 1998 there was an interpreter's claim for 1 hour and two attendances of 50 minutes and 20 minutes respectively. The firm's claim was for 20 minutes. On 10th March 1998 the interpreter claim was for two hours but the firm's attendance note referred to 1 hour 20 minutes. On 11th March 1998 the interpreter claim was for 1 hour 30 minutes. The firm's attendance notes were for 25 minutes and 20 minutes, a total of 55 minutes. On 18th March 1998 in his analysis Mr Middleton noted that the firm claimed attendance of 2 hours 20 minutes in total whilst the interpreter claim was for 1 hour 30 minutes. One of the firm's claimed attendances appeared to have been for perusal. No interpreter would have been required. The firm claimed to have attended the client for 1 hour 10 minutes but the interpreter claim was for 1 hour 30 minutes. On 12th May 1998 the interpreter claim was for 1 hour. The firm's attendance note recorded 30 minutes. Mr Middleton pointed out similar discrepancies in the case of HLH, in particular on 30th April 1998 and 23rd September 1998. His summary of attendance notes on the HLH file points out a lack of advice specific to the individual client's requirements. That was the case in other files as well.

54. The political asylum questionnaire on the SYL file was inadequately completed. Claims for advice and the completion of the form totalled 2 hours 50 minutes.

55. When he answered questions by the Legal Aid Board about the qualifications, experience and expertise of representatives employed by him the Respondent said, in particular in a letter of 7th December 1998 addressed to the Legal Aid Board, that the only qualified solicitors with current practising certificates dealing with immigration matters and currently employed by his firm were himself and Mr B. He said that Mr IP and Ms B had both been working for the firm but had recently left. Mr B was

not a solicitor but was a registered foreign lawyer. In evidence the Respondent agreed that Ms B had left his firm towards the end of 1998 when she had been qualified for about one month. Mr IP had joined the Respondent's firm in 1995 and had left in January 1997. In evidence the Respondent said he did not think that his letter was misleading. At the time he wrote his letter the Respondent was the only qualified solicitor in the firm.

56. The Respondent said that he himself had completed and signed all Green Form claims made to the Legal Aid Board. He had himself checked the relevant files and the files upon which he made claims were sent with the claim to the Legal Aid Board. No query had been received on any file sent to the Legal Aid Board.

The Submissions of the Applicant

57. The Respondent's office allowed a chaotic situation where members of the staff and/or interpreters attended at various locations with clients. Attendance notes and interpreter invoices had been made up with little regard to the truth of what had actually happened.

58. The records and attendance notes were created in a standardised form in order to obtain maximum costs from the Legal Aid Board.

59. In the submission of the Applicant a number of the documents which appeared on the Respondent's client files were dishonest documents. Attendance notes made in relation to fees for interpreters purported to record negotiated fees whereas in fact the Respondent agreed that he had paid the interpreters different amounts. The Respondent had admitted that in an interview with The Law Society's Investigation and Compliance Officer.

60. In the submission of the Applicant the interpreter invoices were a sham. The Respondent produced them himself and they did not reflect the amount actually paid. Additionally they were inconsistent with attendance notes and travel items appeared to be standardised. Further it appeared that claims had been made where a legal representative, being a fee earner for the Respondent's firm, had been able to speak the language of the client and an interpreter was not necessary. It was inappropriate to claim both for travel and waiting at the firm's office.

61. In the submission of the Applicant there was an abundance of evidence and the documents placed before the Tribunal for it to conclude that the Respondent had acted dishonestly.

62. The Respondent was the sole principal of the practice. For the greater part of the relevant period he had no qualified staff working for him.

63. Dishonesty had been said to require "knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct" (Twinsectra Ltd v Yardley and Others [2002] UKHL 12 – Lord

Hutton). Lord Hoffmann in his judgment cited Lord Nicholls's judgment in the case of Royal Brunei Airlines v. Tan [1995] 2 AC 378, namely:

> "that an honest person does not deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know and then proceed regardless."

64. The Applicant invited the Tribunal to find all of the non-admitted allegations to have been substantiated and to make a finding that the Respondent had, by the conduct represented by those allegations, been dishonest.

The Submissions on behalf of the Respondent

65. The Respondent was born in 1963 in Sri Lanka. He studied at Sri Lanka Law College and passed out as attorney-at-law in 1987. He came to England as an asylum seeker in 1991. He qualified as a solicitor on 1st May 1992.

66. In 1997 the Home Office granted the Respondent indefinite leave to remain in the United Kingdom on the basis of his marriage to a British citizen. The Respondent and his wife have a son aged four and a half.

67. After employment as an assistant solicitor the Respondent set up the firm of Bevan Pereira & Co in 1995 with two other solicitors.

68. The Respondent worked very hard to set up his immigration practice. Between 1995 and 1997 the Respondent personally attended interviews outside the office. He used to attend detention centres and airports even in the evenings and at weekends. In 1998 he reduced this type of weekend work and began to work mostly at the office. He had to engage more clerks as a result of this.

69. The Respondent moved to larger premises at 133 Stockwell Road, London, SW9 and he and his wife lived above the office. It was easy to work in the office for long hours. The Respondent and his wife moved to their Streatham house (still close to the office) in January 1998.

70. The Respondent had undertaken immigration work since 1991.

71. The Respondent was interviewed by the Legal Services Commission (formerly the Legal Aid Board) in January 1999 when he had about 200-400 active files at any one time.

72. From February 1995 until August 1998 the Respondent submitted Green Form claims together with the relevant files to the Legal Aid Board. All the forms and files were similar in form and content. In about August 1998 the Legal Services Commission informed the Respondent that it no longer required his firm to submit files along with the claim forms where the claims did not exceed £1,000. From about August 1998 until January 1999 only files where the amount of the individual claim exceeded £1,000 were submitted by the Respondent. Payments were made to the Respondent by the Commission in the full knowledge of the contents of the files.

73. The Commission paid either the full amount of the claim or disallowed some of the work or disbursements and paid a reduced amount.

74. At no stage had the Commission questioned the quality of work carried out by the Respondent's firm or suggested that a claim was fraudulent or the subject of misrepresentation. The Respondent believed that sums paid to his firm had been properly assessed and were lawfully due. Upon receipt of payment the Respondent paid out substantial disbursements to interpreters and paid wages, taxes and VAT. Until the intervention into his practice by the Law Society on 19th March 1999, the Respondent received no complaints as to the quality and nature of the firm's work or the manner in which it had been carried out.

75. It had been unclear to the Respondent why two officials of the Legal Services Commission visited him on 20th January 1999. He thought they were making a routine visit. Neither officer explained the nature of their visit. There was no warning that the Legal Services Commission had suspicion of fraud or negligent representation on the part of the Respondent, who believed the Commission had acted in an improper manner. They attempted to extract answers from the Respondent to demonstrate their preconceived belief that he had made dishonest claims. The comments in the officials' notes of interview suggested that the Respondent's answers were not believable and that he had "lost his nerve".

76. The Respondent had signed the interview notes without reading the full text but at that time he did not know that he was under suspicion.

77. The Legal Services Commission had instituted proceedings against the Respondent. The parties were in dispute as to whether the Green Form work had been carried out by competent and responsible representatives who were employed by the Respondent's firm or were otherwise under his immediate supervision.

78. In approximately 1996 Mr B had joined the firm. He also undertook immigration work. He had been a lawyer in Pakistan and had considerable experience in immigration law. He was admitted as a solicitor in England in 1997.

79. Ms B, having passed her Legal Practice Course, joined the firm in February 1997. She was admitted as a solicitor towards the end of 1998. She had undertaken some immigration work under the supervision of the Respondent.

80. The three solicitors carried out the whole of the firm's immigration work with the majority of the work being conducted by the Respondent.

81. When the Respondent took on additional clerks they were either fully experienced in immigration work or they were so trained by him. Some clerks had completed their Legal Practice Course.

82. The initials of the person carrying out the work was included on an attendance sheet or at the front of each file.

83. Unqualified clerks did carry out Green Form work at the Respondent's firm but the Tribunal was invited to note that the Respondent was both fully qualified and had

considerable experience in dealing with immigration work. Four other qualified solicitors were engaged by the firm during the period in question. Every case handled by the firm was supervised by a qualified solicitor or counsel. Unqualified clerks had legal education. All the members of staff had previous immigration work experience prior to joining the firm. Any clerks engaged by the firm were tested to ensure that they had a working knowledge of immigration law and procedure and they were given training, instructions and advice by the Respondent to enable them to advise and assist immigration/asylum applicants. The outdoor clerks would provide the Respondent with details of the instructions given to them by the immigration/asylum clients together with progress reports. The outdoor clerks reported back to the Respondent during the conduct of matters. Each clerk had a mobile phone when he was out of the office.

84. Many of the clerks who worked for the Respondent's firm continued to be employed in similar work with other firms of solicitors.

85. When asked at the interview with officials from the Legal Services Commission on 20th January 1999 "How do you manage to supervise all those people?", the Respondent replied, "The trainee solicitors know the job very well and help supervise because I can delegate supervisory responsibilities to them…". The Respondent had not realised that they were referring to supervision in order to comply with Regulation 20 of the Legal Advice and Assistance Regulations 1998. He accepted that he had not maintained a written record of supervision. The Respondent had come to accept that his level of supervision did not comply with the requirements of Regulation 20, although the supervision of his office did comply with Rule 13 of the Solicitors Practice Rules.

86. 90% of the Respondent's clients were asylum seekers. The advice would be the same to all asylum seekers. The firm gave a standard clear picture of the United Kingdom political asylum procedure.

87. The six case files which had been placed before the Tribunal were picked out of ninety-three case files which the Respondent had submitted with "Claim 10" forms to the Legal Services Commission for payment. The six case files appeared to have been investigated by the Legal Services Commission and assessed. The Legal Services Commission decided to issue a nil assessment in respect of the ninety-three files. The Respondent exercised the right to appeal against the nil assessment. The appeals were pending when the High Court proceedings were compromised by the payment by the Respondent of £30,000 in full and final settlement.

88. The Respondent had sent about forty case files (out of the batch of ninety-three case files) after the interview with the Legal Services Commission officials on 20th January 1999. If the Respondent had a doubt about these he could have made up the case files before submission. He did not do so because he had nothing to hide.

89. The final payment received from the Legal Services Commission was not for work done over one year but over four years.

90. In respect of the complaint by the Immigration Appellate Authority that in four cases due for hearing on 10th February 1999 the Respondent requested oral hearings and

then at the last minute asked that the appeals be determined on the papers, the Respondent's explanation was that those clients were funding the cases privately but failed to put the firm in funds. The Respondent accepted that he had not referred the clients to other bodies for assistance in accordance with The Law Society's Guidelines and to that extent had been guilty of a professional breach.

91. The Respondent denied the allegation that he acted fraudulently. There was no pending criminal investigation or proceedings against him.

92. No evidence had been put before the Tribunal to demonstrate that the Respondent did not act in the best interests of the clients. None of the firm's clients had complained to the OSS or to the Legal Services Commission.

93. The Respondent had not brought the solicitors' profession into disrepute nor had he been guilty of unbefitting conduct.

94. The Respondent had lost his firm and his livelihood. He had had to compromise the proceedings brought by the Legal Services Commission in a substantial sum: he had to meet the costs of The Law Society's intervention into his practice.

95. The Tribunal was invited to take into account the following passages from the judgment in Twinsectra Ltd v Yardley and Others:

> "Mr L may have been naïve or misguided but I accept that the judge after hearing lengthy evidence from Mr L was entitled to conclude that he had not been dishonest".
>
> "They require a dishonest state of mind, that is to say, consciousness that one is transgressing ordinary standards of honest behaviour".
>
> "What I think the judge meant was that he took a blinkered approach to his professional duties as a solicitor, or buried his head in the sand (to invoke two different animal images). But neither of those would be dishonest".
>
> "… accessory liability … is an objective standard."
>
> "…. defendant himself must have realised that what he was doing was dishonest…….. Carelessness is not dishonesty…".
>
> "… accessory liability …the courts should continue to apply that test … regarded as dishonest by honest people …".

<u>The Findings of Fact by the Tribunal</u>

96. The Tribunal was unimpressed by the Respondent's performance in the witness box. There were many occasions when he simply did not give a straight answer to a straight question. On a number of occasions his answer was "It may be" or "I can't remember". The Tribunal concluded that the paperwork, including attendance notes and interpreters' "invoices", had been prepared with scant regard to the true position but rather to provide a voucher to authenticate a claim for payment from the Legal

Services Commission. On a number of occasions when the Respondent was pressed he could not confirm the authenticity of the time or amount claimed nor the record of who had attended upon a particular client. Indeed on a number of occasions the Respondent's response had been prefaced with the words "On the face of it". The Tribunal considered that on a large number of occasions that was precisely the case. On the face of the document, for instance an attendance note, a claim for an appropriate amount was being made whereas the underlying reality did not support that claim.

97. The Tribunal noted that the Respondent had misled the Legal Services Commission when notifying them of qualified staff practising at his firm describing, as he did, Mr IP, solicitor, as having worked for the firm "until recently" in a letter addressed to the Legal Aid Board dated 7th December 1998 when the reality was that Mr IP had left the firm nearly two years earlier. Ms B, also described as having worked for the firm as a solicitor until recently, had left about a month after her qualification. Mr B, also described as a solicitor apparently employed by the firm, was in fact not a solicitor but a registered foreign lawyer. A number of people listed in that letter described by the Respondent as "self-employed outdoor clerks" were in fact interpreters and some of those people were employed in either or both of those capacities. That was not made clear.

98. The Tribunal found that in making claims upon the Legal Aid Fund, the Respondent sought to justify those claims with vouchers that did not accurately and truthfully record the time spent on the clients' affairs, nor the nature of the attendances or advice given..

The Decision of the Tribunal

99. In this case, the Tribunal was tasked with deciding whether or not the Respondent had acted dishonestly.

100. The Applicant put her case on the basis of dishonesty.

101. The Tribunal had had the benefit of considering the oral evidence in this case of Ms Meyer, Mr Middleton and the Respondent himself. It had also considered the substantial documentation in this case which principally covered six of ninety three files submitted by the Respondent to the Legal Aid Board for payment. The Tribunal had also read helpful submissions by the Applicant and the Respondent's affidavit.

102. The Tribunal had been presented with files which were characterised by:-

(i) Standardisation of attendance notes;

(ii) Invoices of interpreters which were generated by the Respondent, were undated and not receipted;

(iii) Attendance notes which did not record what happened or advice given at all, yet were utilised to claim a substantial amount of time spent in assisting the client.

(iv) Claims for attendances of both representatives and interpreters when there was no clear indication who attended and what role they were fulfilling. The Respondent apparently employed interpreters as fee earners and vice versa;

(v) Little or no supervision of staff purporting to advise clients who by the very nature of the work found themselves in an extremely vulnerable position.

103. The Tribunal found that in the material before it there was an abundance of evidence that the Respondent in submitting these claims to the Legal Aid Board acted dishonestly within the meaning of "Twinsectra" and the Tribunal found each of the allegations (a) to (d) in allegation (i) to have been substantiated accordingly.

104. Even if the Tribunal had not found dishonesty within the "Twinsectra test", it would have found that the Respondent's lack of care and his conduct in seeking payment from public funds to be so reckless and inappropriate as to be incompatible with his fundamental duties within Practice Rule 1 and would, in those circumstances, have considered the imposition of the ultimate sanction to be appropriate.

105. At the conclusion of the hearing the Tribunal ordered that the Respondent be struck off the Roll of Solicitors and ordered that he should pay the costs of and incidental to the application and enquiry in an agreed fixed sum.

DATED this 2nd day of June 2003
on behalf of the Tribunal

Mr R J C Potter
Chairman