No. 8264/2000

IN THE MATTER OF ADRIAN EDWARD SCHEPS, solicitor

- AND –

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. A. Gaynor-Smith (in the chair)
Mr. J. P. Davies
Lady Bonham-Carter

Date of Hearing: 26th March 2002

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors (OSS) by Philip Sycamore solicitor and partner in the firm of Lonsdales Solicitors of 5 Fishergate Court, Fishergate, Preston, Lancashire, PR1 8QF (as he then was) on the 15th November 2000 that Adrian Edward Scheps of Park View Road, Pinner, Middlesex, a 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.

On the 18th February 2002 John Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool, L2 5RH, the successor to Mr Sycamore, made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements. The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in the following respects:-

A He has acted in breach of the provisions of the Solicitors Accounts Rules 1991 in the following particulars:-

i) He has drawn from Clients Account monies other than in accordance with the provisions of Rules 7 and 8 of the aforesaid Rules and has improperly utilised the same for his own benefit or alternatively for the benefit of other persons not entitled thereto

ii) He has acted in breach of Rule 6 of the aforesaid Rules in that he has paid into Client Account monies other than monies which under the aforesaid Rules he was required or permitted to pay into Client Account

B The Respondent has breached Practice Rule 1 in that his professional behaviour in the course of practising as a solicitor compromised or impaired or was likely to compromise or impair any of the following:-

i) His independence or integrity

ii) A person's freedom to instruct a solicitor of his or her choice

iii) His duty to act in the best interests of a client or clients

iv) His good repute or the good repute of the solicitors' profession

v) His proper standard of work

C The Respondent has continued to act in circumstance in which his interests conflicted with the interests of a client or potential client

D The Respondent has used his position as a solicitor to take unfair advantage for himself or other persons

E The Respondent has acted in a manner which was fraudulent or deceitful towards another firm of solicitors

F (i) the allegations set out at (B), (C), (D) and (E) above were repeated in respect of transactions referred to in the documents attached to the supplementary statement dated 18th February 2002;
(ii) the Respondent made a representation to the Investigation & Compliance Officer that was misleading and/or inaccurate during interview on the 12 January 2000, or in the alternative failed to disclose material information to him;
(iii) he has failed and or delayed in the filing of an Accountant's Report for the period ending 31st March 2000;

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when John Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool, L2 5RH, appeared as the Applicant and the Respondent was represented by David Morgan solicitor of 9 Grays Inn Square, London WC1R 5JF.

The evidence before the Tribunal included certain admissions both as to the facts and as to the allegations on the part of the Respondent. The Respondent admitted allegation A(i) and (ii): allegation B: allegation C: He admitted allegation F(i) in so far as allegations B and C above were repeated in respect of new facts: He admitted allegation F(ii) on the basis that he had not intentionally mislead the Investigation and Compliance Officer (otherwise known as the Monitoring and Investigation Unit Officer) and had not in that respect been guilty of deceit. The Respondent admitted allegation F(iii). The Respondent denied allegations D and E and also denied that part of allegation F(i) which repeated allegations D and E with regard to different transactions attached to the Applicant's supplementary statement made pursuant to Rule 4 of the Solicitors Disciplinary Proceedings Rules 1994. The Respondent denied that he had been dishonest. The Respondent gave oral evidence. The Tribunal received the oral evidence of Mr Duerden and Mr Middleton Cassini. Documents "AES1" and "AES2" were handed up at the hearing being respectively a bundle of bills prepared by the Respondent and a letter instructing his Israeli Bankers to make certain payments from client account in accordance with a schedule attached thereto.

At the conclusion of the hearing the Tribunal ordered that the Respondent Adrian Edward Scheps of Park View Road, Pinner, Middlesex, solicitor be struck off the Roll of Solicitors they further ordered him to pay the costs of and incidental to the application and enquiry (to include the costs of the Law Society's Investigation Accountant) to be subject to a detailed assessment if not agreed between the parties.

At the hearing the Respondent notified the Tribunal that his address had changed to Meadow Road, Pinner, Middlesex.

The facts are set out in paragraphs 1 to 83 hereunder:-

1. The Respondent, born in 1946, was admitted as a solicitor in 1974. At all material times he carried on in practice as a solicitor on his own account under the style of Scheps & Co at 19-20 Grovener Street, Mayfair, London, W1X 9FD. The Law Society intervened into the Respondent's practice on the 12th May 2000.

2. Pursuant to notice duly given the Monitoring and Investigation Unit (MIU) of the Law Society inspected the books of account of the Respondent. The inspection began on the 27th October 1999.

3. The MIU Officer's report dated 30th March 2000 was before the Tribunal. The MIU Officer gave oral evidence supported by his notes made at his interview with the Respondent on 12th January 2000. Extracts from that Report are set out below.

4. Dr Scheps had conducted a commercial practice since 1997. He was a sole principal assisted by a secretary.

5. The following bank accounts, which Dr. Scheps alone might operate, were maintained at Bank of Ireland, 20 Berkeley Square, London, and the credit balances shown were those appearing on the bank statements at 30th November 1999.

Client Current Account	£46,665.58
Office Current Account	£3,558.60
Solicitors Client Account	$268,790.62

Fifteen Client Designated Deposit Accounts totalling	$2,904.69
Client Account	EUR 154,847.26

6. Dr Scheps's books of account were not in compliance with the Solicitors' Accounts Rules.

7. Lists of liabilities to clients as at 30th November, 1999, in respect of client ledgers expressed in three different currencies, were produced for inspection and totalled, after adjustment, £51,534.44, $311,694.48 and EUROS 154,534.54. The items on the lists were in agreement with the balances shown in the clients' ledgers and a comparison of their totals with cash held on client bank accounts, at that date, after allowance for uncleared items, showed the following position-

	£	$	EUROS
Liabilities to Clients	51,534.44	311,694.48	154,534.54
Cash Available	46,665.58	271,695.31	154,847.25
Cash Shortage/(Surplus)	£4,868.86	$39,999.17	EUR(312.71)

8. At a meeting on 12th January 2000, Dr. Scheps indicated that his accountants had not made him aware of the shortages and that he would have to investigate the matters brought to his attention by the MIU Officer. Dr. Scheps stated, "whatever the shortfall, it will have to be made good".

9. The cash shortages arose in the following way:-

		£	$
(i)	Debit Balances	5,849.36	40,318.37
(ii)	Office Monies Lodged in Client Bank Account	(980.50)	(319.20)
		4,868.86	39,999.17

10. During the period 25th June 1998 and 26th October 1999 debit balances, varying in amounts between £7.98 and $3.50, and £3,003.03 and $38,409.44, totalling £5,849.36 and $40,318.37 had arisen on account of eighteen individual clients' ledgers.

11. The largest debit balance related to Mr R B who was the UK representative of A-ME Limited and I-N B M Limited, companies incorporated in Niue, an island in the Pacific Ocean which introduced various "High Yield Investment Schemes" to other clients of Scheps & Co. Substantial funds had been invested in those schemes.

12. On 19th November 1998 the relevant account in the client US dollar bank account was credited, inter alia, with $18,345.84 being monies purportedly received on behalf of A-M E Limited. The following payments, totalling $69,532.14 were also charged to the account resulting in a debit balance of $51,186.30.

18/11/98	A/C Tfr.-Commission due to A-M E Ltd	$5,935.04
18/11/98	GBP Draft – Commission paid to client	7,134.54
18/11/98	Commission 3rd party	1,900.00
20/11/98	Commission paid to R H	1,500.00

27/11/98	Account transfer	7,800.00
19/11/98	Account transfer loan	2,600.00
25/03/99	Account transfer loan repaid	2,662.56
06/10/99	Tfr. To office account	40,000.00
		$69,532.14

13. During the inspection, Dr. Scheps informed the MIU Officer that the debit balance of $51,186.30 could be offset by monies held by the firm on account of both Mr R B and I-N B M Limited in the sums of $12,347.55 and $429.31 respectively. A letter received by fax from JEM apparently on I-N B M Limited letterhead authorised the offset of monies of Mr R B and I-N B M Limited against the debit balance on A-M E Limited.

14. Dr. Scheps expressed surprise at the resultant cash shortage of $38,409.44 ($51,186.30 - $12,347.55 - $429.31) and he said that he was "mystified" and that he would have to look into the matter further. He said that the $40,000.00 transferred to his office bank account on 6th October 1999 represented monies which had been "loaned" to his firm by A-M E Limited.

15. Dr. Scheps had confirmed to the MIU Officer, and he confirmed when giving oral evidence to the Tribunal, that he had at all material times been aware of the Law Society's Blue "Card" warning about money laundering and its "Yellow Card" warning about banking frauds.

B UK Investments – Financial Transactions & Alleged Forged Cheque

16. During the inspection the MIU Officer inspected the matter file of a client B UK Investments. Scheps & Co had in two separate transactions, been used as a "bank" by the firm's client. The partners in B. UK Investments were Mr S, Dr P and Mr T.

17. It was said that B UK Investments were trading in oil contracts, where Dr. Scheps was to receive 2 ½%, rising to 5%, of the profits thereon. In fact no profits from traded oil contracts were received.

18. The MIU office reported the details of two transactions relating to B UK Limited. The first transaction is set out in paragraphs 19 to 26 and the second transaction is set out in paragraphs 27 to 30.

19. On 27th September 1999 the sterling client bank account and the B UK Investment account in the clients' ledger were credited with an amount of £123,305.13 being the sterling equivalent of $202,000.00. At the meeting with the MIU Officer on 12th January 2000, Dr. Scheps stated that he believed that the monies credited to his client bank account represented monies that were properly due to his client in respect of consultancy work. The matter file contained no information as to where, or from whom, those monies had originated.

20. During the period from 27th September 1999 to 11th October 1999 the relevant account in the sterling clients' ledger was debited with the following payments, totalling £123,804.90, which resulted in a debit balance of £499.77 as at 30th November 1999:-

27/09/99	Mr S – repayment	£20,809.00
27/09/99	A. W	3,200.00
27/09/99	Mr S	4,500.00
27/09/99	P	4,000.00
27/09/99	M-Y	2,000.00
27/09/99	McG	6,300.00
27/09/99	University of Westminster	3,850.00
27/09/99	House of Frazer	2,000.00
27/09/99	Harrods Card Services	1,500.00
27/09/99	Harrods Card Services	500.00
27/09/99	MBNA International	6,000.00
27/09/99	Barclays Bank	1,337.68
27/09/99	Stephens Innocent	1,069.25
27/09/99	Jeffrey Green Russell	20,000.00
27/09/99	O	8,772.29
27/09/99	K	2,000.00
27/09/99	T. A UK	6,400.00
27/09/99	P	2,000.00
27/09/99	Mrs P	3,000.00
27/09/99	Transfer to office account re costs	6,168.75
27/09/99	Draft re. B	634.77
27/09/99	Draft re. T.T.	325.38
27/09/99	Draft re. G	139.75
29/09/99	Draft re. S	138.94
29/09/99	DD re. M	6,201.05
08/10/99	C	4,500.00
11/10/99	Mr S	6,300.00
		123,646.86
	Sundry TT/bank charges	158.04
		£123,804.90

21. With regard to the payment on 27th September 1999 to Jeffrey Green Russell of £20,000.00, the matter file showed that that payment had been made to the solicitors acting for American Express Europe Limited which had instigated bankruptcy proceedings against Dr P. The sum claimed was £176,913.22.

22. The costs transferred to the office bank account on 27th September 1999 were split as follows:-

A/152	Charges re. the receiving of funds and disbursements thereof (inc. VAT)	£4,112.50
A/151	Charges re. Advice on various matters	2,056.25
		£6,168.75

23. On a further review of the client matter file the MIU Officer noted that it contained an "Affidavit of Forgery", sworn on 26th October 1999 in which Mr Gregory J Gorgone, Vice-President of American Management Systems, alleged that the $202,000.00 cheque banked in Scheps & Co's client bank account had been drawn on a Citibank

Delaware account. The payee on the face of the cheque had been altered to Scheps & Co. Solicitors from "American Management Systems Inc.". Mr Gorgone denied having signed, endorsed or altered the cheque in any way.

24. At the meeting on 12th January 2000 the MIU Officer asked Dr Scheps if he agreed that his firm was simply being used as a banker by his clients B UK Investment and its partners, to which Dr. Scheps replied, "absolutely". Dr. Scheps further stated that he believed that Mr S was subject to an Individual Voluntary Arrangement and that the arrangement suited him because Mr S's creditors "would not see the money".

25. When asked by the MIU Officer if prior to the banking of the cheque, Dr Scheps had been concerned that the cheque payee had been altered, he replied that he had not seen the cheque as the clients had paid the monies into client bank account after Dr. Scheps had supplied the client with the relevant bank and account details.

26. Dr Scheps indicated that the alleged cheque forgery had changed his view of his client. Dr. Scheps stated that the matter had been reported to the UK police and to the Solicitors Indemnity Fund.

27. On 20th July 1999 the second transaction took place when the sterling client bank account and the B UK Investment account in the clients' ledger were credited, with an amount of £41,000.00, the narrative on the ledger card being "Funds from client".

28. The account in the sterling client ledger showed that on that date, a payment of £13,000.00 had been made to Mr S and that on 21st July 1999 a further payment of £27,737.60 had been made, to Mr S. Dr.Scheps confirmed that both payments had been drawn to cash, following instructions received from the client.

29. Mr S had again paid in £41,000 directly into the firm's client bank account. Dr Scheps said he understood that the monies had come from Mr S's account with Nationwide Building Society. Mr S had needed cash to purchase parts for a car company in which he had an interest, the cash eliciting higher discounts from the suppliers of the parts.

30. At their meeting on 12th January 2000 the MIU Officer asked Dr. Scheps why his client had not arranged with the Building Society to pay the monies out directly in cash. Dr Scheps thought the Building Society would not allow it.

31. Following the intervention by the Law Society an inspection of his files had been undertaken. It was discovered that there had been a telephone conversation between a representative of Nationwide Building Society and Dr. Scheps. An attendance note dated 20th December 1999 had been made. An extract follows.

"20th December 1999
3.30pm

Attending on the telephone S D of Nationwide Building Society, in, I believe. Tottenham.

It appeared that a cheque which has been paid into my account on behalf of B UK I (presumably by Mr S) in early July was a forgery.

The true beneficiary had been a Mr D R. The matter has been reported to the Tottenham CID.

I expressed my willingness to help in every way.

I said that she should pass my name and telephone number to Tottenham CID and hoped that they would get in touch with me as I believe that I had information which was relevant to their investigation. ……."

Dr. Scheps went on to record two telephone conversations with the police.

32. Dr. Scheps had made no mention of these conversations which had taken place three weeks earlier to the MIU Officer at the interview of 12th January 2000.

33. The Respondent's explanation was that he had been anxious, upset and tired having lost sleep over the enquiry and he had forgotten to report being told of the forgery. The MIU Officer in evidence told the Tribunal that the interview of 12th January 2000 had lasted for about five hours. There had been "comfort" breaks. Dr. Scheps had been questioned about matters relating to the sum of £41,000 paid directly into his client bank account by Mr S. about one hour after the interview began. In the MIU Officer's opinion, Dr. Scheps had not appeared to be tired.

<u>High Yield Investment Schemes</u>

34. Dr. Scheps had received substantial sums of money on behalf of investor clients. The money had been sent to various scheme "facilitators", with a view to the receipt of exceptional rates of interest.

35. Dr. Scheps had first heard about High Yield Investment Schemes as early as 1990, when he had reported the details to the police as he "didn't like" the schemes. Dr Scheps explained that in 1995 a client of his brought another scheme to him and that an Irish contact had said the scheme was "okay".

36. Dr. Scheps confirmed that he had not seen a scheme work in the two years that he had been involved with such schemes.

37. The High Yield Investment Schemes involved the various companies incorporated in Niue of which Mr R B was the "UK representative". Those companies were administered in the Channel Islands. Dr. Scheps told the MIU Officer that he had known Mr R B for approximately two years and that Mr R B set up deals and introduced investors.

38. The MIU Officer inspected a number of files relating to High Yield Investment Schemes. None of the schemes had produced the promised returns. Dr. Scheps agreed, saying that the schemes were "time consuming and problematical". The documents made no provision for Dr. Scheps to be paid. He said that it was

understood between the various parties that if a profit were made, Dr Scheps would be remunerated accordingly.

39. The MIU Officer set out details of two such "High Yield Investment Schemes" in his report. Those details were as follows:-

Mr P - $220,000.00

40. On 9th April 1998 and 28th may 1998 the firm's dollar client bank account was credited with amounts of $209,584.61 and $20,372.98 respectively, being monies received from Mr P a German national, for investment in a "Trading Programme". Under instruction from Mr P, the sum of $5,041.39 was transferred to an account in the name of Gorham, Padkin & Associates in Cape Town, South Africa.

41. From the remaining monies, an amount of $220,000.00 together with funds totalling $595,084.92 held on behalf of other clients, was remitted to USH LLC, a company which was represented by Mr Jeffrey A Matz, a US resident lawyer, and who was referred to in the "Programme Contract" as the "signatory and paymaster".

42. The "Programme Contract" covering this investment stated that USH LLC was to provide a "structured asset enhancement program" in which investors were to receive a return of 18% per month, based on the total investment remitted by Scheps & Co. The term of the "Program Contract" was to be for "one year and one month" with the parties to the contract agreeing to a "Non-Circumvention/Non-Disclosure" clause. Dr Scheps signed the "Program Contract" in his capacity as "participant" to the Contract.

43. Monies were remitted, on receipt by Mr Matz, to an account in the name of Smith Barney Inc. at Chase Manhattan Bank, New York. At this juncture senior officials at Smith Barney Inc. realised the involvement of Mr Matz in the transaction and they ordered the monies to be frozen pending investigation of the transaction, initially by themselves, and later by the Arizona Attorney General's Office. Following representations by Dr. Scheps, agreement was reached whereby the funds would be returned to Scheps & Co. by Smith Barney Inc. on the receipt of confirmations from the individual investors as to the origins of the monies. Mr P's monies were returned by Smith Barney Inc on 28th October 1998. That was about two months after the monies left Scheps & Co's dollar client bank account.

44. On 6th November 1998, Mr P's monies ($220,000.00) were again sent to Mr Matz and USH LLC by the Respondent under a new "Program Contract", again with monies from other clients, totalling $736,091.77, and at the same quoted return as the original investment.

45. Under the new "Program Contract" the investors' monies were to remain at all times in an account in the name of Mr Matz, but with the additional signatures of Dr. Scheps and the investor. The investors' monies were also to be secured by a Promissory Note for the total amount invested , and by the retention by a securities firm of T-Bills, with the participant receiving a "CUSIP" registration. At their meeting, Dr Scheps told the MIU Officer that the CUSIP registration was probably not bona-fide as he understood that whilst the Treasury Bills did exist, they had not been assigned to Mr Matz.

46. As an additional "comfort", Dr. Scheps was provided with copies of USH LLC's insurance policy with National Union Fire Insurance Company of Pittsburgh PA. That the policy included the following provisions:-

> "CRIME GENERAL PROVISIONS
> A. GENERAL EXLUSIONS
> We will not pay for loss as specified below:
>
> 1. Acts committed by you or your partners: Loss resulting from and dishonest or criminal act committed by you or any of your partners whether acting alone or in collusion with other persons."

Furthermore, as an endorsement it the policy was the following-
"PROVISIONS

We will not pay for loss resulting directly or indirectly from trading, whether in your name or in a genuine or fictitious account".

47. Following the re-investment with Mr Matz and USH LLC, no information was forthcoming with regard to the performance of the Program. This fact prompted correspondence between Dr. Scheps and Mr Matz. In a letter dated 26th January 1999 Mr Matz attributed the failure to invest the monies in the Program to a "moratorium on trading activity form (sic) and after November 10, 1998", caused by the introduction of the Euro. To placate investors, Mr Matz offered additional 2.5% profits on arrears, in exchange for a further thirty days "within which to bring there accounts current" (sic). Mr Matz further requested, as a condition of the additional profit, that "everyone agrees to abate the daily telephone calls to my office, requesting updated information".

48. After much prevarication on Mr Matz's part, and following the further submission of proof of origin of the investment funds, the monies were returned directly to Scheps & Co on 13th May 1999.

49. At their meeting on 12th January 2000 the MIU Officer put it to Dr. Scheps that the "due diligence" work carried out by Dr. Scheps on behalf of his clients, was flawed. In particular, the insurance policy was being represented as covering these transactions when there were apparently exclusions which would not cover the investment transactions. Dr. Scheps's response had been that there was "no trading as such and no losses in theory".

50. Dr. Scheps agreed that, as Mr Matz had been able to move monies out of the "joint" account, that the controls envisaged by the joint signatory were not effective.

51. Dr. Scheps's view had been that he had exercised "due diligence" and was happy he had "done enough" to satisfy himself. De Scheps understood that his returns were to be obtained by the "leveraged" trading in Treasury Bills.

<u>Mr A S & Ms W G - $1,005,000, $200,000 and $500,000</u>

52. On 26th April 1999 Scheps & Co's dollar client bank account was credited with an amount of $1,005,000.00 received from Mr S and Ms G, who were UK passport holders and resident in Singapore. Dr Scheps told the MIU Officer that his clients had been introduced through an intermediary and that although he was unaware of the origins of this money and another two amounts, it had all come from major banks.

53. On 30th April 1999 an amount of $1,000,000.00 was remitted to a bank account at Carter Allen (Jersey) Limited in the name of VIC Limited, the funds being managed by Hemery Trust and Corporate Services Limited. VIC's role in the transaction was that of "trustee". The Program Manager was Mr P G.

54. Under an "Agreement – Asset Holding Trust", the monies invested by Mr S and Ms G were to be retained within the account managed by Hemery Trust and Corporate Services Limited for the "development and growth of the Funds through third party bank trading opportunities" by a trade in "AAA Bank debentures". The individual client funds were to be grouped together with other investors' monies "…. in order to achieve a minimum trading amount of One Hundred Million Dollars ($100,000,000.00)". The agreement provided for 80% of the scheme profits to be paid to the investor, with the remaining 20% being paid into a bank account in the name of Oxford Trading Group LLC at Wells Fargo Bank, Carson City, USA.

55. In a letter to Mr AS dated 5th may 1999, Dr. Scheps stated

> "Whilst I am sure that you and Wendy must be extremely disappointed that the programme as described to us does not exist, you cannot imagine my chagrin and fury at the misrepresentations which have repeatedly been made to RB and myself over many many weeks, from people from whom we had previously had good reason to trust".

56. The monies invested by Mr AS and Ms WG were subsequently returned directly to them and at the meeting on 12th January 2000 Dr Scheps stated that a reputable bank had been holding his clients' monies and that therefore the monies were never exposed to risk.

57. On 30th June 1999 and 12th October 1999 further amounts of $199,985.00 ($200,000.00 less charges of $15.00) and $499,984.00 ($500,000.00 less charges of $16.00) respectively, were lodged within the firm's dollar client bank and forwarded for investment on 27th August 1999 and 20th October 1999.

58. With regard to the investment of $199,985.00 on 27th August 1999 by Mr A S and Ms WG, this amount was included in a payment of $975,000.00 to Messrs Hustwick Wetsch Moffat & McCrae, Barristers and Solicitors in Edmonton, Canada, in respect of an Investment Scheme.

59. Mr A S and Ms W G's investment in this scheme was increased by the further payment of the $499,984.00 on 20th October 1999 to the legal firm in Canada.

60. Dr. Scheps told the MIU Officer at their meeting on 12th January 2000 that there was no investment programme and that he had no documentation relating to the investments through the Canadian legal firm. He added that he was merely required

to transfer the funds to Canada. When asked what steps Dr. Scheps had taken to validate the investments' authenticity, he replied that he had undertaken no investigations into the investment scheme as Hustwick Wetsch Moffat & McCrae were a respectable firm and that they had indemnity insurance to cover those investments.

61. The MIU Officer asked Dr Scheps why, according to Dr Scheps' letter of 7th October 1999 to Mr AS, his client was strictly forbidden to approach either the contact or any other person at the Canadian law firm who were holding his monies. Dr Scheps had replied that this was because there was "sensitive trading in Treasury Bills", although he agreed this stipulation was "odd", but if his client's were happy with that arrangement, then so was he.

62. Dr. Scheps said he would have negotiated a fee if the transaction had been successful.

63. On 6th October 1999 the firm's dollar client bank account was credited with an amount of $172,241.63, being monies received from Y I Limited, another firm of which Mr RB was a representative. That company was registered in the Republic of Seychelles with its "Administration Office" stated as being in Guernsey. In addition, the letterhead also stated that the company's "Legal Counsel" was Scheps & Co. of the $172,241.63, an amount of $33,600.00 was transferred to the account of Mr AS and described on the client ledger card as being "profit on investment".

64. On 12th January 2000 the MIU Officer asked Dr. Scheps to explain why, if these monies were the profits on the investments in Canada, did these monies come through Y I Limited when the profits were being earned in Canada. Dr Scheps said that he was unaware of the reason and that he was simply given a list of profit payments to make. He further stated that he has not at any state seen any workings as to how these profit payments had been calculated.

Loans to Scheps & Co

65. Dr. Scheps's firm had been financed from the receipt of substantial loans taken from the investment monies under Dr. Scheps's control, and from monies provided by Mr R B and the companies of which he was the representative.

Loans made to the Respondent

66. During his inspection, the MIU Officer became aware that the firm had received substantial sums of money by way of loan from various clients. In particular it was noted that interest free loans had been received from the companies of which Mr R B was a UK representative, namely A-ME Limited, I-NBM Limited and YI Limited. Dr Scheps stated that Mr R B "sets up deals" and that he had known him "for a couple of years".

67. It was further noted, that loans received from Mr H, Mr D and Mr DR , clients of the firm, were extinguished following the receipt of $82,274.91 on 22nd November 1999 from RMP C Limited, a company registered in Niue but having an address in Guernsey. At their meeting of 12th January 2000 Dr Scheps stated that this sum had nothing to do with his practice as a solicitor and that RMP C Limited was not a client.

Dr Scheps conceded that the company had the same Chairman, Mr JM, as the other companies mentioned above.

68. The MIU Officer expressed his view that, given the role that these companies played within the High Yield Investment Schemes, they and Mr RB were in a position unduly to exert their influence over Dr. Scheps and his firm. In reply Dr Scheps said that he didn't believe this was the case and that there was no conflict of interest between him acting for clients investing in these schemes and receiving substantial loans from the introducers to these schemes.

69. In the eight months ending on 31st August 1999, the firm had received £40,127.32 in respect of profit costs and disbursements and had paid out £33,876.66 (net) in respect of drawings, £10,215.22 in respect of SIF premiums and £13,405.77 in respect of salaries. When it was suggested to Dr Scheps that the survival of his practice was dependent upon these loans from clients, Dr Scheps replied that this was "probably true".

70. With regard to a loan received from YI limited of $25,005.00 on 6th October 1999 the MIU Officer ascertained that this loan was received into client bank account on the same day as a payment had been made from the sterling client bank account, in breach of the Solicitors' Accounts Rules, of an equivalent sterling amount of £15,000.00. On investigation, it was found that the payment had been made to Boodle Hatfield, a firm of solicitors acting for the firm's landlords, in respect of rent arrears.

71. At their meeting of 12th January 2000 Dr Scheps agreed that the payment to Boodle Hatfield represented a breach of the Solicitors' Accounts Rules. Boodle Hatfield, believed that Scheps & Co were acting for a client and therefore requested a client account cheque in payment of the arrears. Furthermore, Dr. Scheps stated that the loan from YI Limited was in recognition of the important work done by Dr. Scheps for that company. In evidence Dr. Scheps said that Boodle Hatfield had acted for the landlord in the grant of the new lease and they were well aware that Dr. Scheps himself was the tenant. It was a mistake on the part of Boodle Hatfield to request a client account cheque and Dr Scheps complied with that request. He accepted that it would have been sensible to remind Boodle Hatfield of the true situation – namely that he could not hold his own money in client account.

72. After a number of Dr. Scheps's files had come into the hands of the Law Society and claims had been made upon the Law Society's Compensation Fund, further investigations revealed that Dr Scheps had been involved in other "High Yield Investment Scheme" transactions. The Tribunal had before it details of these transactions. They were contained in the bundle annexed to the Applicant's Supplemental Statement made pursuant to Rule 4(2) Solicitors (Disciplinary Proceedings) Rules 1994 and dated 18th February 2002. The Tribunal does not consider it necessary to summarise these transactions here. They involved Jeffery A Matz and companies that participated in the transactions summarised above and took a similar form.

73. Those investigating on behalf of the Law Society had concluded that Dr Scheps had been engaged on such work to the almost total exclusion of any other work. Dr Scheps told the Tribunal that he undertook a great deal of other unconnected work for

unconnected clients. A major client had required its matter files to be passed to another firm of solicitors and those files had not come into the hands of the Law Society. At the hearing Dr Scheps produced a bundle of bills delivered over a period of approximately three years to demonstrate that he had indeed undertaken a volume of varied client work.

74. Claims had been made on the Law Society's Compensation Fund. Some had been met. It was Dr Scheps evidence that he had paid back to clients all monies that were due to them. He produced a bundle at the hearing ("AES2") being a copy of a letter addressed to his bankers in Israel dated 26th July 2000 requiring payments to be made in accordance with a schedule enclosed. The schedule required 18 payments to be made which totalled over US$31/2 million – any balance to be sent to a specified bank for Y I Ltd in Guernsey. In evidence Dr Scheps told the Tribunal that he had a client account at the Bank in Israel. He said that he had sold his house and endowment policies to recoup funds. No client had suffered any financial loss. He had not been aware that it was a breach of the Solicitors' Accounts Rules to place client monies in a bank account that was not at a branch (or head office) of a bank in England and Wales.

The Relevant Rules and Law Society Guidance

75. Solicitors' Practice Rules

Rule 1 of the Solicitors' Practice Rules 1990 states:-

"A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:-

(a) the solicitor's independence or integrity; ……..
(c) the solicitor's duty to act in the best interests of the client;
(d) the good repute of the solicitor or of the solicitors' profession;
(e) the solicitor's proper standard of work; ……"

76. Warning Card – Money Laundering (Blue Card)

In April 1994 (revised December 1995) the Law Society issued a Warning Card to all solicitors regarding Money Laundering. That warning in particular pointed out the possibility that a solicitor might be committing a criminal offence by assisting someone known or suspected to be laundering money generated by any serious crime, by telling clients or anyone else that they are under investigation for an offence of money laundering or by failing to report a suspicion of money laundering in the case of drug trafficking or terrorism unless certain exceptions apply. The Warning pointed out that solicitors should watch out for

1. unusual settlement requests (e.g. settlement by cash of any large transaction involving the purchase of property or other investment);

2. unusual instructions – care should always be taken when dealing with a client who has no discernible reason for using the firm's services;

3. …….– a solicitor should always be cautious when requested to hold large sums of cash in client account either pending further instructions from the client or for no other purpose than for onward transmission to a third party;

4. The secretive client – a personal client who is reluctant to provide details of his or her identity. Be particularly cautious about the client you do not meet in person;

5. Suspect territory - caution should be exercised whenever a client is introduced by an oversees bank, other investor or third party based in countries where production of drugs or drug trafficking may be prevalent.

77. Warning Card – Banking Instrument Fraud (Yellow Card)

Included within the Warning Card, issued to solicitors by the Law Society was the following -

"Request for Details of Client Account.

……..

Beware of any scheme which requires you to send details of your bank, client account or blank letterheads. Such information may be used to make unauthorised payments from your client account."

Principles of Professional Conduct

78. Principle 11.01 of the Guide to the Professional Conduct of Solicitors 1996 states the following:-

"It is fundamental to the relationship which exists between solicitor and client that a solicitor should be able to give impartial and frank advice to the client, free from any external or adverse pressures or interest which would destroy or weaken the solicitor's professional independence, the fiduciary relationship with the client or the client's freedom of choice".

79. Principle 12.01 of the Guide to the Professional Conduct of Solicitors 1996 states the following:-

> "A solicitor is generally free to decide whether to accept instructions from any particular client".

The commentary states that a solicitor must not accept instructions which would involve the solicitor in a breach of the law or the rules or principle of professional conduct.

80. Principle 12.02 of the Guide to the Professional Conduct of Solicitors 1996 states the following:-

> "A solicitor must not act, or continue to act, where the client cannot be represented with competence or diligence".

81. Principle 17.01 of the Guide to the Professional Conduct of Solicitors 1996 states the following:-

> "Solicitors must not act, whether in their professional capacity or otherwise, towards anyone in a way which is fraudulent, deceitful or otherwise contrary to their position as solicitors. Nor must solicitors use their position as solicitor's to take unfair advantage either for themselves or another person."

Principle of Professional Conduct

82. Chapter 15.04 to the Guide to the Professional Conduct of Solicitors 1996 states:-

> "A solicitor must not act where his or her own interest conflict with the interests of a client or a potential client.
> Because of the fiduciary relationship which exists between solicitor and client, a solicitor must not take advantage of the client nor act where there is a conflict of interest or potential conflict of interest between the client and the solicitor. In conduct there is a conflict of interest where a solicitor in his or her personal capacity sells to, or purchases from or lends to or borrows from his or her own client. The solicitor should in these cases ensure that the client takes independent legal advice. If the client refuses to do so, the solicitor must not proceed with the transaction. It is generally proper for a solicitor to provide short term bridging finance for a client in a conveyancing transaction".

Solicitors' Introduction and Referral Code 1990

83. "Section 1: The basic principles

(1) Solicitors must always retain their professional independence and their ability to advise their clients fearlessly and objectively. Solicitors should never permit the requirements of an introducer to undermine this independence."

"Section 2: Introduction or referral of business to solicitors

(4) Solicitors should not allow themselves to become so reliant on a limited number of sources of referrals that the interests of an introducer affect the advice given by the solicitor to clients."

The Submissions of the Applicant

84. The Respondent, Dr Scheps, had admitted allegation A (i) and (ii) which dealt with breaches of the Solicitors Accounts Rules. He accepted by admitting allegation b) that he had been in breach of Practice Rule 1.

85. Dr Scheps also admitted allegation C: recognising as he did that he had continued to act in circumstances in which his own interests conflicted with the interests of a client or a potential client.

86. The Respondent clearly had been acting where there was a potential conflict of interest when he accepted loans from his clients/investors.

87. With regard to allegation D Dr Scheps had used his position as a solicitor to take unfair advantage for himself or other persons as was evidenced by the transaction in which he had acted for BUKI and had allowed his client account to be used in circumstances in which he had no control over its use by the client.

88. It was the Applicant's case that in his dealings with Messrs Boodle Hatfield the Respondent had acted fraudulently or deceitfully. He had apparently paid arrears of rent utilising his client account to do so. Such use would be calculated to disguise the fact that the Respondent was in fact the tenant and that the arrears of rent were owing by him personally. The Respondent had wrongly utilised monies in client account for the purpose of discharging the arrears and the Respondent himself had come to accept that he should sensibly have reminded Messrs Boodle Hatfield that the arrears were owing by him personally and not by a client of his firm.

89. The Applicant did put this matter as one in which the Respondent had behaved with dishonesty.

90. The Respondent repeated his submissions in connection with allegations C and D and in connection with allegation F(i).

91. The submission of the Applicant was that the Respondent's failure to disclose to the MIU Officer the fact that he had been notified by Nationwide Building Society on the 20th December 1999 that a cheque apparently issued by Nationwide Building Society in the sum of £41,000 and paid into his firm's client account direct by the client had in fact been a forgery. The Tribunal was invited to reject the Respondent's explanation that he had been tired and he had forgotten to tell the MIU Officer about this matter. It was the Applicant's submission that the Respondent had been dishonest in his failure to make that disclosure.

92. In the submission of the Applicant the appropriate test to be applied by the Tribunal was that in the case of Royal Brunei Airlines v Tann (Privy Council 1994) when considering the question of dishonesty.

93. The Respondent had failed to file with the Law Society the required Accountant's Report for his accounting period ending on the 31st March 2000.

The Submissions of the Respondent

94. The Respondent had made certain admissions but denied that he had been dishonest or had intentionally or deliberately mislead the MIU Officer or anyone else.

95. The bulk of the shortfall on client account arose because of a withdrawal by the Respondent from client account of an amount of US$40,000 on 6th October 1999. This withdrawal was pursuant to a loan agreement with Y I Limited for whose benefit certain funds were held in client account. At that time the Respondent believed that the withdrawal from client account had not resulted in a deficit in respect of the US$

client account. The Respondent would not have withdrawn those funds in that manner if he had believed that such a deficiency would have occurred. The Respondent had wished to comply with the Solicitors Accounts Rules; he had other funds in which he could properly draw although it had transpired that the availability of these funds had been curtailed as a result of extensive litigation of the bank holding those funds.

96. Dr Scheps had been surprised at being told of the deficit. He expected in the normal course that his accountants, who prepared monthly accounts in accordance with the Law Society's requirements, would have alerted him to the problem, but they did not do so. The admitted breach of the Rules had been entirely inadvertent.

97. Dr Scheps had covered the client account deficit by realising funds by the sale of two endowment policies. The early surrender had caused loss to the Respondent. Funds had been placed with Dr Scheps's solicitor, and a payment was made by him on 21st July 2000 to the Law Society's agents which satisfied the deficit in full.

98. The deficit in the Sterling client account of £5,849.36 was primarily the result of Mr Scheps's using this account to pay stamp duty in relation to the transfer of certain shares in a client company called A Plc. The purchaser of the shares were supposed to have placed the Respondent in funds sufficient to pay the stamp duty but they had not done so. The Respondent had not realised this. Other smaller shortfalls were caused by the Respondent's failure to collect funds for third party disbursements such as company searches and company formations.

99. The Respondent denied that he had lost control of his client account. Dr Scheps denied that he had allowed his firm's client account to be used by Mr S with a view to depriving his creditors. Mr S had entered an IVA which was contingent upon BAS making a payment to the licensed insolvency practitioner who was overseeing the IVA. When he began to act for BAS the Respondent agreed that subject to receiving certain funds for the benefit of BAS he would made a payment to the supervisor as required. The relevant funds were not received by the Respondent in due time. The Respondent's bankruptcy search revealed that Mr S was not bankrupt.

100. Dr Scheps denied that he had stated that he believed that the arrangements with Mr S suited Mr S because his creditors would not see the money.

101. The Respondent routinely received and sent monies through the banking system by "CHAPS"; he retained control of his account at all times.

102. With the benefit of hindsight the Respondent had come to accept the High Yield Investment Schemes were bogus. That certainly did not reflect his view at an earlier date. During 1998 and much of 1999 Dr Scheps believed that there was a factual basis for such schemes which would result in considerable profit to his client. He understood he had to take considerable care to avoid fraud. Dr Scheps had been advised by several clients who gave him no cause to doubt that such schemes did in fact exist.

103. During the period of 1998/9 Dr Scheps looked at a number of schemes all of which he rejected because they were either obviously fraudulent or involved moving client

funds to organisations which had either no or insufficient indemnity insurance. Dr Scheps only invested in schemes which appeared to him to involve the movement of funds to respectable law firms and rejected all others.

104. Dr Scheps denied that monies had been invested with attorneys with no (or insufficient) due diligence. Dr Scheps pointed out that in relation to Mr Matz, he took the following steps:

(a) checked his firm's entry in Martindale & Hubble's Law Directory and established that it was a litigation-orientated firm in Los Angeles, California, that Mr Matz has another partner, a Mr Jeffrey A Long and that there were over 30 legally qualified associates.

(b) Established that Mr Matz was a current member of the California Bar and that therefore insurance was available through the California Bar.

(c) reviewed a copy of the insurance policy which had been taken out by Mr Matz's company, United States Holdings which appeared to be satisfactory, and I spoke to the insurance broker in Phoenix, Arizona, through whom the policy had been taken out who confirmed that the policy was in force and up to date and that Dr Scheps's position was protected.

(d) intermediary between Matz an Dr Scheps confirmed that the investor had been paid profits by Matz, was given a copy of his contract with Matz and also copies of a transfer of profits to that investor from Matz's client account which corresponded to the contracted for monthly profit.

(e) most important of all, Dr Scheps spoke on the telephone to an officer of Smith Barney, who has been identified as a bona-fide officer of the Bank.

105. Considerable due diligence was undertaken in relation to Mr Matz.

106. Dr Scheps placed funds with the Hustwick Wetsch firm in Canada having had their confirmation that they had indemnity insurance of US$7 million per claim. The firm had four partners and a number of legally qualified associates. Over the years Dr Scheps had had business dealings with several law firms in Canada and was aware that they did generally have substantial insurance. Furthermore, the firm had confirmed that the funds were held to Dr Scheps's order.

107. In Dr Scheps's submission, the suggested lack of due diligence on his part was based upon a double standard which was unreasonable. In the UK, it was routine for large sums of money to be moved between solicitors' firms for the purpose of conveyancing or corporate transactions. It would have been normal to transmit funds to ostensibly respectable law firms in the United States or Canada in connection with such routine transactions. No "due diligence" question would have been raised.

108. Dr Scheps accepted that he had received substantial loans. The suggestion that his practice "was dependent to a significant extent" upon loans made by clients was unfounded. At the time when the loans were made, there were significant sums available to him. The loans were made after the investments had been made with Matz or funds were moved to Hustwick Wetsch, the Canadian law firm. The loans would not therefore have influenced Dr Scheps' decision to place funds with third parties, as those funds had already been placed.

109. It should be noted that in November 1998 Dr Scheps received a payment of approximately US$35,000 from Mr Matz's client account in relation to an investment which he had made with Mr Matz at the end of September 1998. The payment corresponded with the contracted for amount. No subsequent payments were made by Mr Matz. However the fact that a significant payment had been made resulted in Dr Scheps having a strong belief then, and for some considerable time afterwards, that the schemes had a strong basis in reality.

110. In due course Dr Scheps made complaint to the California Bank about Mr Matz's conduct. Mr Matz had since been convicted of fraud. Dr Scheps had not been aware that Mr Matz had a background of wrong doing. The basis upon which the joint account with Mr Matz had been opened was that no money could be moved from the joint account without the signatures of both Mr Matz and the Respondent. Mr Matz gave Dr Scheps a letter signed by him authorising any transfer that Dr Scheps wished. Effectively therefore the funds were under Dr Scheps absolute control, and he had in fact been able to repatriate monies without let or hindrance.

111. It was not right to say that Dr Scheps had been unaware of the origins of funds. He had been aware that Mr AS had held a senior executive position in the computer industry and the funds came from a major bank of which he was a customer. With regard to Mr G he had a well-established construction company in the UK and the funds came from Lloyds Bank in London. The funds relating to the "Agreement Asset Holding Trust" were transferred to an account operated by Hemery Trust, a well-established financial services company in Jersey which had a first-class reputation and substantial indemnity insurance. The funds were held to Mr Scheps's order and were never at risk.

112. Dr Scheps denied that he made misrepresentation to Boodle Hatfield, that the funds of £15,000 paid to them were in respect of a client for arrears of rent. The payment fell to be made as a result of the fact that during the later part of 1998 and the first few months of 1999 Dr Scheps was in negotiation with the landlords to renew the lease of his business premises. Boodle Hatfield had acted for the landlord on the grant of the new lease and were perfectly well aware that Dr Scheps was the tenant. In retrospect it would have been sensible to remind Boodle Hatfield that Dr Scheps was the tenant and not a client, but he decided, without giving the matter much thought, that he should give them a client account cheque as they were insisting upon this.

113. In the submissions of the Respondent all of his actions in reporting the forged cheque (drawn on Nationwide Building Society) were those of an honest man who was, as was in the case, genuinely shocked at what had occurred.

114. In his supplementary witness statement dated 19th March 2002 Dr Scheps set out in some detail the length of time and how he had known the players in the transactions on which the Law Society reported after they had taken possession of the files.

115. A prominent Dublin solicitor, a former council member of the Dublin Law Society, had advised Dr Scheps that the business of high-yield investment programmes did exist and that a client of his had been successful in it.

116. Dr Scheps had made a payment of £41,000 from the proceeds of the sale of his house to Mr B as he considered it important to make restitution to a client who had suffered a loss because of his errors of judgment. At the same time, he made a payment to Mr M equal to the entire amount of his claim less that amount which he had received from the Compensation Fund. From his personal point of view, rather than make payments to these former clients, it would have been far more sensible to file for bankruptcy, pay all of his creditors pro-rata and be free for the future from all past liabilities. Dr Scheps had chosen not to do this. There were adequate funds held by the Law Society from Dr Scheps former client account to meet all liabilities to clients.

117. With his previous well known and reputable employers and firms, most, if not all, of Dr Scheps clients were very respectable corporations. When he set up his own practice in 1997, he had virtually never come across fraudsters or conmen. Although an experienced corporate practitioner, he was probably not so experienced in the way of judging people's characters and he believed that he was taken in on several occasions where a practitioner with a more "cut and thrust" attitude would perhaps not have been.

118. Dr Scheps had requested a waiver of the requirement to file an Accountant's Report on the grounds that his accountants had, whilst he was in practice and afterwards, conducted monthly reconciliations. His accounts were, after he had remedied the deficiencies, in order and he was not in a financial position to instruct any accountant to prepare Reports as he was wholly without means.

119. Dr Scheps apologised to the Tribunal and to the solicitors' profession for what had happened. He had been out of practice for some time and did not intend to return to practice as a solicitor.

The Findings of the Tribunal

The Tribunal find all of the allegations to have been substantiated. The Tribunal find that the Respondent had been dishonest in connection with allegation E and allegation F(ii).

The Respondent had caused serious breaches of the Solicitors Accounts Rules. A solicitor is required to comply punctiliously with the Solicitors Accounts Rules, to ensure that he exercises a proper stewardship of clients' monies and that those monies are never placed in jeopardy.

Although not alleged against the Respondent, the Tribunal have taken note of the Respondent's own evidence that he held monies in a client account at an Israeli Bank from which he said he had paid monies to his clients. It is a serious breach of the

Solicitors Accounts Rules to keep client monies in a Bank which does not have a branch (or a head office) in England and Wales. The Tribunal cannot fail to note that the existence of that client account was not disclosed to the MIU Officer when he carried out his inspection. The Tribunal is compelled also to note that the authority for payment was given to the Israeli Bank after the date of the Law Society's intervention into the Respondent's practice. This appears to the Tribunal to be a circumvention by the Respondent of the Law Society's authority and the Tribunal condemned such behaviour.

There was no doubt in the light of all of the matters brought before the Tribunal that the Respondent had been in breach of the fundamental Solicitors Practice Rule 1, indeed the Respondent himself made that admission.

The Respondent very properly admitted that he had continued to act in circumstances where his own interest conflicted with that of a client or potential client. In order to protect clients, the Practice Rules relating to the acceptance of loans from clients are strict. It is most improper for a solicitor to take a loan from a client without ensuring that such client has independent legal advice. To accept a loan without making sure that the client is in no way disadvantaged is a failure on the part of a solicitor to act with proper propriety.

The Respondent denied that he had used his position as a solicitor to take unfair advantage for himself or other persons. The Tribunal found that allegation to have been substantiated. The Tribunal was in no doubt that the nature of "High Yield transactions" indicated that they involved banking fraud and or money laundering. In agreeing to act in such matters the Respondent had taken unfair advantage of third parties for himself and other persons by allowing his status as a solicitor to lend authenticity and credence to the transactions.

The Respondent's behaviour towards Boodle Hatfield was extraordinary. It was the Respondent himself who had fallen into arrears of rent. When Boodle Hatfield wrote a letter which was no doubt in a standard form which they employed in those circumstances requesting a client account cheque, he simply settled those arrears by using a client account cheque. Not only was this wholly improper in terms of the Solicitors Accounts Rules as a solicitor should not have his own money mixed with his clients' money in client account but it served to demonstrate that the tenant who had fallen into arrears was a client and not the Respondent himself. The Tribunal accepts that Messrs Boodle Hatfield were acting for the Landlord and knew that the Respondent was the tenant. It was the Tribunal's view that the way in which the Respondent dealt with this particular matter might have caused Boodle Hatfield to overlook that fact. Again the Respondent's behaviour in this matter demonstrated that he was prepared to act in a way which did not demonstrate the probity and integrity required of a solicitor.

The Tribunal find allegation F(i) to have been substantiated. The allegations at B, C, D and E above were repeated in respect of a number of High Yield transactions with which the Respondent had been connected and which had come to light after the Law Society's intervention into his practice and when an inspection of the files taken over by the Law Society had been made by a consultant executive of the Law Society's Compensation Fund. The Tribunal have not considered it necessary to set out the

details of these transactions but believe it is sufficient to say that broadly speaking they involved a number of the same dramatis personae as the two transactions which the Tribunal has set out in some detail above. They involved similar schemes and very substantial sums of money. The Respondent had admitted the allegations of the second tranche of high yield transactions in so far as they replicated allegations B and C above.

The Respondent denied replicated allegations D and E. The Tribunal found the replicated allegation relating to D to have been substantiated for the same reasons as they have set out above. The Tribunal believe that the reference to replicated allegation E is an error as allegation E related to the payment of arrears of rent to Messrs Boodle Hatfield.

The Tribunal found allegation F(ii) to have been substantiated and considered this to be a very serious matter indeed. When the Respondent was interviewed by the MIU Officer on the 12th January 2000 he had been notified only on the 20th December 1999 that a substantial cheque which had been paid into his firm's client account was a forgery. When the MIU Officer asked a question about this payment in, the Respondent neglected to tell the MIU Officer that he had received information that the cheque had been a forgery. It was the Respondent's stance that he had been anxious and tired and had simply forgotten to mention that fact during the course of the interview. The Tribunal accepted the evidence of the MIU Officer that the relevant question had been asked of the Respondent about one hour into the interview which itself was of five hours duration. The Tribunal finds that the Respondent could not have been so tired or distressed that he would have forgotten being told only some three weeks earlier that a cheque paid into his client account representing a substantial sum of money had been a forgery. The Tribunal noted the Respondent's evidence that he had reported the matter to the police and had had conversations with the police about it. It was the Tribunals view that such conversations would have served to cement the event in the Respondent's mind rather than obscure it.

The Tribunal noted that the Respondent accepted that the failure to give the information to the MIU Officer at the interview was misleading and inaccurate and he agreed that he should have given such information. He had not intentionally mislead the MIU Officer, he found himself unable to remember why he did not recount the full position at the time. He agreed that he should have done. In the circumstance he had not been guilty of deceit.

The Tribunal did not accept that explanation.

The Tribunal finds, after applying the test in Royal Brunei Airlines v Tann (Privy Council 1994) and following the words of Lord Nichols of Birkenhead "honesty is not an optional scale with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour…..an honest person [does not] ….. deliberately close his eyes and ears or deliberately not ask questions lest he learn something that he would rather not know and then proceed regardless". The Tribunal does find that the Respondent in respect of allegation F(ii) had been guilty of dishonesty.

The Tribunal further finds that the Respondent has failed to file an Accountant's Report for his accounting period ending on the 31st March 2000. The Respondent had indicated to the Tribunal that he had sought a waiver in respect of this matter but none had been granted. The Respondent would remain in continuing breach either until he filed the relevant report or gained a formal waiver from the Law Society.

Overall the Tribunal has found the Respondent's behaviour to have been extraordinary and inexcusable. The Respondent had enjoyed a glittering academic background and had practised as a solicitor in firms of considerable repute and integrity.

It was said on behalf of the Respondent that he was a highly intelligent individual who was somewhat disorganised.

It is the Tribunal's opinion that the Respondent's behaviour has demonstrated a wholly unacceptable disregard for the rules of professional practice, an unacceptable level of arrogance in entertaining a participation in transactions bearing the hallmarks of fraud or money laundering against which his own professional body had given clear warnings and of which warnings he had been fully aware. The Tribunal had made a finding of dishonesty against the Respondent and in such circumstances it was right in order to protect the public and preserve the good reputation of the solicitors' profession that the Respondent should be struck off the Roll of Solicitors.

The Tribunal made that order and have ordered the Respondent to pay the costs of and incidental to the application and enquiry to include the costs of the Law Society's Investigation Accountant – (in these findings referred to as the MIU Officer) to be subject to a detailed assessment if not agreed between the parties.

DATED this 18th day of June 2002

on behalf of the Tribunal

A. Gaynor-Smith
Chairman