No. 8374-2001

IN THE MATTER OF CARRON-ANN RUSSELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr P Haworth
Mr M C Baughan

Date of Hearing: 11th August 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by George Marriott, solicitor and partner in the firm of Gorvins solicitors (formerly Gorvin Smith Fort) formerly of Stockport, Cheshire but latterly of 4 Davey Avenue, Knowlhill, Milton Keynes, MK5 8NL on 8th May 2001 that Carron-Ann Russell of Norbury, 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.

On 1st September 2003 the Applicant made a supplementary statement containing further allegations.

At the opening of the hearing the Applicant sought to withdraw certain allegations. The Respondent agreed and the Tribunal consented to them being withdrawn.

The allegations in the original and supplementary statements are set out below.

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

1. She failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;

2. [Withdrawn];

3. Improperly and/ or dishonestly used clients' funds for her own benefit.

4. Supplied to The Law Society misleading information concerning the identity of her partners.

5. Practised as a solicitor whilst a registered foreign lawyer without having as a partner a Solicitor of the Supreme Court of England and Wales.

6. [Withdrawn]

7. [Withdrawn]

8. [Withdrawn]

9. Made an application to the Legal Aid Board for sums in excess of work that had been done under the Certificates.

10. [Withdrawn]

11. By reason of the matters set out above, compromised and impaired her independence and integrity, her duty to act in the best interests of her client, her good repute or that of the solicitors profession, and her proper standard of work contrary to Practice Rule 1(a)(c)(d) and (e) of the Solicitors Practice Rules 1990.

12. Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (the Rules) she failed to ensure compliance with the Rules by all principals and by everyone else working within the practice with the result that:-

    one principal and/ or other employee(s) withdrew monies from client account contrary to Rule 22 of the Rules; and
    one principal and/ or other employee(s) destroyed client account records contrary to Rule 32 of the Rules.

13. Contrary to Rule 7 of the Rules failed to remedy the accounts breaches.

14. Contrary to Rule 32 failed to keep and retain accounting records for a period of at least six years.

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 11th August 2005 when George Marriott appeared as the Applicant and the Respondent was represented by Mr Altaras of Counsel.

The evidence before the Tribunal included the Respondent's admission of allegations 1, 9, 12, 13 and 14. The Respondent accepted that if allegation 4 was found to be substantiated then the substantiation of allegation 5 would follow. In particular the Respondent denied the allegations of dishonesty made in allegations 3 and 4. Allegations 12, 13 and 14 were admitted on the basis that the Respondent was at the material time a salaried partner. The

Respondent gave oral evidence. Michael Alexander Reid and David Brian Rippon gave oral evidence.

The Tribunal noted that the substantive hearing had not taken place until August 2005 owing to the fact that the Respondent had since the application first was made, suffered serious ill health.

Other Respondents' cases had been severed from that of the Respondent and dealt with by the Tribunal on an earlier occasion. The allegations against other Respondents related only to allegations 12, 13 and 14.

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

The Tribunal ORDERS that the respondent, CARRON-ANN RUSSELL of c/o Northcote Road, Croydon, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00

The Respondent's professional history

1. The Respondent, born in 1954, became a registered foreign lawyer on 9th January 1998 and was admitted as a solicitor on 17th January 2000. She had previously been a barrister having been called to the Bar by the Honourable Society of the Middle Temple in 1986. From 1989 to 1997 the Respondent had been employed as a senior lecturer at the Inns of Court Law School.

2. The Respondent carried on practice under the style of Russell Henry & Co from 114 Acre Lane, Brixton, London SW2 5RA.

3. An investigation accountant of The Law Society had attended the offices of Russell Henry & Co to inspect the firm's books of account and other matters. The inspection began on 31st July 1998. The investigation accountant's report dated 5th October 1998 was before the Tribunal. That report raised concerns about the supervision of the practice.

4. At a meeting on 14th September 1998 the Respondent confirmed to the investigation accountant that as a registered foreign lawyer she was not able to supervise litigation or sign legal aid forms. To enable such work to be conducted by the practice she told the investigation accountant that she had ensured that at all times she practised in partnership with a suitably qualified solicitor. She explained that five different solicitors had been her partners since the establishment of the practice on 12th January 1998, the most recent being Mr Rippon who she stated ceased to be a partner on 1st September 1998. Since that date the Respondent had restricted the practice to immigration and employment matters but was at the date of the interview actively negotiating with a new prospective partner.

5. The Respondent provided to The Law Society the following chronology of partnership details of Russell Henry & Co. This was as follows:

27th December 1997	Practice started
12th January 1998	Opened for trade on At its inception the partners of Russell Henry & Co were as follows: Dexter Henry, Erwin Adams, Carron-Ann Russell
27th February 1998	Mr Michael Reid and Ms Monica Sinclair joined the firm
27th February 1998	Mr Erwin Adams left the partnership on the same date
6th March 1998	Mr Dexter Henry becomes an Associate Solicitor
7th April 1998	Michael Reid left the partnership
16th April 1998	Monica Sinclair left the partnership
16th April 1998	Mr Erwin Adams rejoined the partnership
26th April 1998	David Rippon agreed to cover the practice as a partner for the purposes to enable the firm to carry on as a Solicitor's practice
9th June 1998	David Rippon leaves the partnership
11th August 1998	Mr David Rippon rejoined the partnership
12th August 1998	Mr Erwin Adams left the partnership
2nd September 1998	Mr David Rippon left the partnership
3rd September and 13th September	Russell Henry & Co operated as a Legal Consultancy, after taking advice from the Ethics department and therefore all signs and advertisements relating to the solicitor's practice are removed temporarily
14th September 1998	John Ross joined the partnership
Please note that there is an error in the records in that David Rippon did not start to cover the practice until April 1998. We have written to The Law Society advising them of this error, and asking them to amend their records.	

6. On 22nd January 1998 the Respondent wrote to The Law Society's records department confirming that the firm Russell Henry & Co was a new practice consisting of three partners, the Respondent, a registered foreign lawyer, Mr Dexter Henry and Mr Erwin Adams. The firm was a multi-national practice in association with Heslop Bennett Allen & Co of Kingston, Jamaica. On 4th March 1998 the Respondent wrote to the records department of The Law Society stating that Erwin Adams was no longer with the firm of Russell Henry & Co and that Monica Sinclair and Michael Reid joined as partners as from 27th February 1998.

7. On 6th March 1998 the Respondent informed the Records department of The Law Society that Dexter Henry was no longer a partner in the firm. On 16th April 1998 the Respondent wrote to The Law Society's records department advising that Monica Sinclair was no longer a member of the firm's staff and advising that Mr Erwin Adams had become a member of the firm.

8. When The Law Society gave notice of the investigation accountant's inspection of Russell Henry & Co notice was sent also to Mr Rippon as according to The Law Society's records he was a partner in the firm. Mr Rippon replied by letter to The Law Society dated 1st September 1998 and stated that he was not and never had been

a partner in the firm of Russell Henry & Co. The limit of his involvement with Russell Henry & Co was to act as a locum in May 1998 whilst the Respondent was in Jamaica. He pointed out that The Law Society's records recorded that he had been a partner since February 1998. He had not met the Respondent until 1st May 1998.

9. Ms Sinclair had written to the The Law Society by a letter dated 2nd November 1999 stating that she had never been a principal at Russell Henry & Co. The Respondent had written a letter to The Law Society on 4th March 1998 that both Ms Sinclair and Mr Reid joined the practice on 27th February 1998 but that was untrue. Ms Sinclair said they were negotiating early in March 1998 to join the practice as partners but that did not materialise. In a statement dated 8th April 2005 Ms Sinclair confirmed the contents of her earlier letter.

10. Mr Reid gave oral evidence. Mr Reid had written to The Law Society on 3rd November 1999 confirming, that whilst it was true that he had, during March 1998, together with Ms Sinclair entered into negotiation with Ms Russell with a view to joining her firm as partners, concrete terms had not been agreed, the negotiations were discontinued and the proposed partnership failed to crystallise. He confirmed that the Respondent's letter to The Law Society dated 4th March 1998 indicating that Mr Reid and Ms Sinclair had joined the practice as partners was not true.

11. Mr Reid accepted that some meetings which he had had with the Respondent had been minuted under the heading "partners or partnership meeting". This did not indicate it was a meeting of existing partners. The meetings were about partnership proposals and planning. In the event Mr Reid had found the Respondent's terms to be unacceptable and he had withdrawn from the negotiations. He had at no time been a partner.

12. Mr Rippon gave oral evidence. He had made a statutory declaration dated 23rd October 1998 in which he confirmed that he had been introducd to the Respondent for the first time on 30th April 1998. He could particularly recall that date as it was a Thursday before the May bank holiday. At the time Mr Rippon had been an adviser to a local law centre whilst also a partner in a West End firm. The Respondent had told him that she was due to go for a short visit to the West Indies and asked if he would supervise her practice in her absence. He had been advised by the Respondent that the usual supervisor of her firm (who he believed to be a solicitor from North London) was unavailable for that particular period. In order to assist her Mr Rippon had agreed that he would call in at lunch time to deal with any queries. He did not request any payment for his services as they were to be of a limited nature only.

13. Upon her return from the West Indies, the Respondent had asked Mr Rippon if he would be interested in joining her firm as a partner. He was interested but required to inspect accounts and be given other information before he could make a decision. He would also have to discuss the matter with his other partners. He had never received any documents. Mr Rippon in evidence said that he understood the Respondent and others had arrived at his home in East Sussex when he was not there. His wife had reported this to him.

14. When in June Mr Rippon found that his name appeared on Russell Henry & Co's paper as a partner, he immediately faxed a letter to the Respondent expressing his

annoyance and requesting her to desist from that practice. His name was promptly deleted from the paper although he never received any response to his letter or any explanation.

15. Mr Rippon confirmed that he had arranged to see the Respondent about an unfair dismissal hearing in the Industrial Tribunal concerning a former employee of the local law centre who had subsequently been employed by Russell Henry & Co. That was on 19th August 1998. At the meeting the Respondent had again raised the question of a partnership and Mr Rippon reiterated the detailed investigations that he would wish to make. In connection with this matter the Respondent had prepared a statement in the following terms:

16. " Statement of CARRON-ANN RUSSELL

Mrs B v Brixton Community Law Centre Ltd
Industrial Tribunal

I have been made aware of allegations made in these proceedings that Mr David B Rippon, solicitor is an active partner of this firm, and is actively involved in casework for my firm and was instrumental in ensuring the cessation of Mrs B's employment with this firm.

Mrs B commenced employment here in April Receptionist/ Secretary.

I came to know Mr Rippon through Mrs B; who recommended him as a supervisor. It is my view that Mrs B ensnared Mr Rippon to this firm for her own purposes. At no time did Mrs B advise me of any impending legal action between them, upon that fact I challenged Mrs B with the information. She walked out of our offices.

Mrs B then returned for a 1 month period, and at the end of the month, Mrs B walked out of our employment, at the end of June. Had she not left she would have been dismissed for gross misconduct.

David Rippon did assist my firm from the period May 10th – May 28th while I was in West Indies by providing the necessary supervision of my office and attending for a short period each weekday. I was very grateful for this support, which enabled the office to remain open. At no time has David Rippon taken on any casework.

My decision to terminate Mrs B's services had nothing to do with David Rippon. "

17. Mr Rippon denied that he dictated this statement, made by the Respondent in the Industrial Tribunal proceedings, to her. The statement itself was correct where it indicated that he was not at that time a partner.

18. Mr Rippon accepted that he had signed some Legal Aid Green Forms outside the period of his agreed aupervision while the Respondent was in the West Indies. He explained that they had been hand delivered to him by a member of the Respondent's staff and he had been told that they related to the period of time during which he was supervising Russell Henry. He acknowledged that on the copies of the forms placed before him the signatures were his. However, the dates had not been inserted by him

and were in another person's handwriting. He said it was entirely possible that a date other than that on which he had written his signature had been added to the Green Form.

19. It was the Respondent's case that she had been informed by The Law Society that she needed a practising solicitor of over 3 years post-qualification to supervise her as a registered foreign lawyer. The Respondent's former Chambers' clerk put her in touch with Erwin Adams and Dexter Henry.

20. They met and got on well. Mr Adams had a sole practice in North London. Dexter Henry lived locally and was anxious to set up his own practice but had no funds. He was a year short of qualification to supervise the practice. The Respondent funded the setting up of the practice from the redundancy payment she received from the Inns of Court Law School. The practice got off to a good start.

21. It transpired that Mr Henry was not as experienced as the Respondent had believed and it became apparent that the practice needed the assistance of more experienced people. Mr Adams suggested Monica Sinclair and Michael Reid. She contacted them. Both expressed an interest in joining Russell Henry & Co.

22. Both Michael Reid and Monica Sinclair knew the significance of having a properly qualified person in the practice. Both agreed to becme partners with their names on the letterhead, whilst partnership details were being finalised. In the interim, Monica Sinclair resigned from her former firm and started working at Russell Henry. She transferred all her mental health files. Ms Sinclair and Mr Reid had both required amendments to their listed qualifications on the letterhead – where they were shown to be partners. Michael Reid started to transfer his criminal files. He visited the firm regularly.

24. The Respondent relied upon written agendas of partnership meetings dated 21st February 1998, 12th March 1998 and 19th March 1998, to demonstrate that Ms Sinclair and Mr Reid were partners in the firm.

25. She had already referred to the letters of 10th March 1998 and 27th March 1998. The Respondent had written to Mr Reid and Ms Sinclair. Their names had been shown on the letterhead on which these letters had been written as partners in the firm of Russell Henry.

26. There was also contemporarneous correspondence to third parties in which the Respondent referred to "partner" by which she clearly meant to include Mr Reid and Ms Sinclair . There was a letter to Mr Henry dated 6th March 1998 and a letter to DP dated 25th March 1998.

27. At a partners' meeting in March 1998, it was agreed that the lease of the firm's offices would be changed to evidence the fact that all parties involved were to be responsible for the lease payments. The Respondent had written to the landlord asking for the lease to be amended.

28. Mr Reid and Ms Sinclair were registered at The Law Society as partners in Russell Henry.

29. The Respondent had not been sure what transpired between Ms Sinclair, Mr Reid and Mr Henry but shortly after a partners' meeting in March, all three left the practice and within a short time set up in practice together. No allegations of impropriety had been made against the firm for the period during which Ms Sinclair or Mr Henry were associated with it as partners. The Respondent did not understand why they were reluctant to accept that they had been in partnership.

30. On the departure of Mr Reid and Ms Sinclair the Respondent approached Mr Rippon and the situation had been explained to him. The Respondent, with two members of staff, visited him at his invitation at his home in East Sussex about April 1998 to discuss partnership matters. Then and there, he agreed to cover the firm pending further discussions, when other partnerships matters would be agreed. Mr Rippon represented to the Respondent that he could hold himself out to be a partner to the outside world until formalities of partnership had been completed. She had explained to him her situation. He knew she could not practise without partners. The meaning and intent of the conversation between the Respondent and Mr Rippon had been that whilst supervising the practice and giving cover he would hold himself out to be a partner of the practice to the outside world and The Law Society in order to enable the firm to carry on. Mr Rippon requested the Respondent to remove him as a partner in June. When he rejoined in August he remained in his post until another solicitor came.

31. Mr Rippon visited the firm regularly. He signed Legal Aid applications and the Green Form applications, which could only be signed by the supervising solicitor on the letterhead. Mr Rippon had signed a number of Legal Aid Green Forms on dates between 25th April 1998 and 26th August 1998.

32. The Statement made by the Respondent in the Ms B. Industrial Tribunal matter, had been dictated to her by Mr Rippon and sent at his request. The letter had been written just after The Law Society's inspection and under the threat that if she did not write it then Mr Rippon would take his name "off the practice". The Respondent accepted that it was disingenuous and that it might be taken as an attempt to mislead, it did not actually say that Mr Rippon was not a partner. He rejoined the partnership on 11th/ 12th August 1998. The Respondent had come to believe that Mr Rippon wanted her to write this letter because at the time he was the principal solicitor at Brixton Law Centre and did not want them to know that he had a partnership or quality position at the same time that he was employed by them.

The facts relating to allegation 3 (denied) and allegation 9 (admitted) are set out in paragraphs 33 to 51 hereunder:

33. At a meeting with The Law Society's Investigation Accountant on 14th September 1998, the Respondent stated that it was her policy to obtain a signature on a Legal Aid Green Form for any new client who was either unemployed or whose eligibility for Legal Aid was uncertain, with the Green Form being discarded should the client prove to be ineligible, in which case the client would be billed.

In the matter of client LA

34. The Respondent confirmed that the client first attended the firm's offices on 11th March 1998, when she signed a Green Form. On 24th March 1998 this Green Form was part of a consolidated claim for fees which was met and paid into the firm's office bank account on 27th April 1998. £93.00 related to this matter.

35. On 13th March 1998 LA provided £500.00 on account of costs, which was credited to the client bank account and from which £244.00 was transferred to office bank account on 26th March 1998 as costs.

36. A further £160.00 was transferred from client to office bank account on 3rd April 1998 and a further £160.00 was received from the client on account of costs on 6th April 1998 and credited to client bank account.

37. On 14th April 1998 the client wrote to the firm requesting a refund of the £660.00 paid as she had been advised by the Legal Aid Board that once a Green Form had been signed, she should not pay the solicitor to act on a private basis.

38. £660.00 was returned to the client on 5th May 1998 by a cheque drawn on office bank account.

39. The Respondent explained to the Investigation Accountant that this matter had been dealt with in line with her previously stated policy and that she believed that the client's eligibility was still unclear, but had reimbursed the client in the interests of good relations.

40. It was the Respondent's case that the Legal Aid and Green Form schemes were different. The case file had not related to the Legal Aid matter. It was an employment matter and Legal Aid was not available for matters of that type.

41. The Legal Advice and Assistance Scheme (the Green Form Scheme) had been open to all clients in all matters.

42. LA had been seen under the Green Form scheme as she was eligible for the initial advice under that scheme.

43. She had been suspended from work and fell into the earning criteria for Green Form assistance.

44. The matter then proceeded to a stage that representation or negotiation was to be required at an internal hearing with her employer and as no form of assistance was available the client had been required to pay.

45. No Legal Aid certificate had been applied for or granted in the case. Any application would have been refused as it was well established that employment matters were not eligible for Legal Aid.

46. LA had been asked for £660.00 on account of Counsel's fees to attend the hearing. LA had managed to find the funds for Counsel's fees but in the event she was having financial difficulty and the Respondent had returned the funds to her. She had taken that step in the interest of maintaining a good client relationship.

47. The Respondent had eventually carried out the work on behalf of LA on a pro bono basis.

48. The Respondent confirmed to the Investigation Accountsnt that the client, RJ, first signed a Green Form on 11th January 1998 which, after extensions, formed part of a consolidated claim for fees dated 27th July 1998. The claim was met and credited to the firm's office bank acount on 12th August 1998. The composite payment included £537.50 in respect of RJ's matter.

49. On 18th February 1998 the client paid £235.00 to the firm which was credited to client bank account, from which £100.00 was transferred to office bank account on 7th April 1998.

50. The Respondent told the Investigation Accountant that this matter had been under the control of her former partner, Mr Henry, who had left in April 1998 and had the file. She said that although she believed that the £100.00 transferred represented Counsel's fees paid by the firm, Mr Henry would need to be consulted for confirmation.

51. In her statement the Respondent said that the Legal Advice and Assistance Scheme did not cover Counsel's fees for visiting the client in prison. In the circumstances the request from Mr Henry for money to cover the cost of Counsel doing so appeared to be legitimate. The Respondent surmised that when Counsel's clerk had been approached he indicated that Counsel's fees would be £200 + VAT equalling £235. When Counsel's fee note was delivered it showed £235 + VAT. The sum of £235, paid by the client's friends or relations, had been paid to Counsel and Russell Henry & Co had absorbed the VAT element.

The facts relating to Allegation 1 (admitted)

52. A further inspection of the Respondent's premises and books of account by investigation and compliance officer of The Law Society commenced on the 23rd June 1999. The Report of the investigation and compliance officer (the ICO) was dated 31st Janaury 2000 and was before the Tribunal.

53. The ICOs established that the books of account for the firm of Russell Henry & Co did not comply with the Solicitors Accounts Rules as they were incomplete and client and cash account balances had not been reconciled properly either to the bank statements or the client ledger since 31st August 1998. Following requests by the ICOs, the firm's books of account had been brought properly up to date.

54. The reconciliations as at the 31st August 1998 and 3rd December 1998 showed liabilities to clients and cash available respectively to be £5,246.80 and £5,293.91. The Annual Accountant's Report by the firm's reporting accountant showed liabilities at those dates in different sums. He had not qualified his Report by making reference to the absence of reconciliations because he considered the breach to be trivial.

Application to the Legal Aid Board for sums in excess of work undertaken under Legal Aid Certificates (admitted)

55. The ICOs' Report included references to a matter where the firm acted for sixteen persons (the defendants) in relation to High Court possession proceedings. The hearing was held on 7th December 1998. The clients were squatters originating from Italy, Spain and Portugal who had taken up residenece in a property in South London.

56. The sixteen clients had walked into the Brixton office shortly before the date on which the proceedings were due to be heard; each had been served with an originating summons. The Respondent said that a former employed solicitor, with the assistance of other staff members, carried out individual assessments for each of the clients through a process that involved interviewing each of them with an interpreter present, explaining the application of relevant laws and instructing Counsel. Judgment had been given in favour of the plaintiff in all cases. Counsel advised against appeal.

57. Claims for costs were submitted to the Legal Aid Board at various times over the ensuing months. Included within these were claims for interpreters' fees in a minimum amount of £250.00 in each case. A minimum of £4,000.00 had been claimed as disbursements for interpreters' fees from the Legal Aid Board. The Respondent said that interpreters' fees were paid at the rate of £15.00 per hour. When asked, the Respondent had not been able to prove that £4000 had been spent on interpreters' fees. She explained that such fees had been met in cash from a personal account of hers, rather than from office bank account.

58. The ICO expressed concern that claims of total hours expended might, on a collective basis, have been overstated. Work undertaken by a costs draftsman instructed by the firm to look to the matters had highlighted errors in the compilation of claim forms resulting, inter alia, in an over claim to the Legal Aid Board in relation to interpreters' fees of at least £2,960.00. An interpreter's invoice had been photocopied and used in several cases with the relevant client's name being written onto the invoice in each instance. £1,040.00 had been disbursed for the fees through cash withdrawals made by the Respondent from her own building society account. The work carried out by the costs draftsman disclosed a net under claim on the Legal Aid Board for the work the firm had carried out.

59. The ICOs did not agree as they noted that hours claimed for some of the fee earners on 2nd, 3rd and 4th December 1998 were very substantially in excess of those that could possibly have been incurred.

60. The Respondent and the supervising solicitor checked fee earners' timesheets. She might not have noticed discrepancies owing to pressures of work.

61. On each claim for costs it was stated, "I certify on behalf of the payee, that the information provided is correct….". The certification in eleven of the cases was signed by way of a rubber stamp, bearing the signature of Mr Ross, which was held by the Respondent.

62. The ICOs examination of remittances from the Legal Aid Board revealed that, in a number of cases, the firm appeared either to have received amounts in excess of those due in respect of profit costs or costs for cases that were not recognised by the firm.

Admitted allegations 12, 13 and 14 (the Respondent's connection with Dixit Shah)

63. On 31st March 2000 the Respondent sold Russell Henry & Co to Dixit Shah, a solicitor, and became a salaried partner in the firm of Russell Henry. Dixit Shah advised her to close down the Balham office but to keep the firm's Brixton office. The terms of the agreement had been that Russell Henry would stay as it was except that if the staff were needed elsewhere, flexibility would be necessary. Dixit Shah would become a partner in Russell Henry and the firm would trade under the name of Russell Henry B. J. Brandon. The Respondent was not to be a partner in any of the other BJ Brandon firms.

64. On 11th September 2000 a forensic investigation officer (the FIO) employed by The Law Society attended at the offices of B. J. Brandon & Co at Edgeware Road. She was supplied with a list of the Brandons Group offices and was told that the records for all the offices were maintained at the Hayes office.

65. The FIO attended the Hayes office was told by a non-solicitor that no accounting records were maintained there as they were dealt with at each individual office. In view of the conflicting information supplied, the partners listed on the letterhead were invited to attend a meeting on 18th September 2000. At the meeting it become apparent that all the records should have been held at the Hayes office.

66. The FIO attended the Hayes office on 19th September 2000 and discovered that the computer records for the various client accounts had been deleted and the bank statements had been removed. The Respondent together with other partners was invited to prepare a list of clients' funds the firms should have been holding as at the close of business on 15th September 2000. This list established a minimum cash shortage of £4,770,161.00. An attempt was made to contact Dixit Shah but he had moved to Mumbai, India. (Dixit Shah then a solicitor was struck off the Roll in connection with an unrelated matter on 5th February 2002.)

67. The Law Society intervened into Brandons. As at 4th February 2002 The Law Society's Compensation Fund had paid out in excess of £10million with claims lodged in excess of £12million.

68. There were mandates for the appointments of bankers for the Brandons Group or constituent firms within the Group signed by the Respondent and others.

69. The Respondent was a partner in one or more of the constituent parts of the Brandons Group.

70. Rule 4 of The Solicitors Accounts Rules 1998 stated that the Rules applied to sole practitioners, partners in the practice or held out as a partner (including salaried and associate partners), solicitors, associates, consultants and others.

71. Rule 6 of the Rules stated that all the principals in the practice must ensure compliance with the Rules by the principals themselves and by everyone else working within the practice. Principals include partners in constituent parts of the Brandons Group whether equity, salaried or associate.

72. The accounting records for each part of the Brandons Group had been destroyed and the Respondent was unable to remedy any of the breaches.

The Submissions of the Applicant

73. The Respondent was well aware that as a registered foreign lawyer she was not able to supervise litigation and sign legal aid forms and to enable such work to be conducted by her practice. It was necessary for her to ensure that she was in partnership with a suitably qualified solicitor all the time. From the date of her beginning to practise on 12th January 1998 until she responded to a letter addressed to her by The Law Society on 20th November 1998 she had had 5 partners. She maintained that Mr Rippon, Mr Reid and Ms Sinclair had all been partners in the firm. They themselves denied that. Mr Rippon and Mr Reid had given oral evidence. Ms Sinclair had been ill on the date of the hearing and had not given oral evidence. The Tribunal was invited to find that none of these three solicitors had been in partnership with the Respondent which meant that from the 6th March to 16th April, from 24th April to 10th June and from 12th August to 3rd September 1998 the Respondent had been practising as a registered foreign lawyer without a qualifying supervising solicitor. The Respondent had indicated to The Law Society that she had been in partnership with a qualifying solicitor at all times and that was not true. The Respondent had misled The Law Society and in doing so had been dishonest.

74. In deciding as to whether the Respondent had been dishonest or not, the Tribunal was invited to apply the test in Twinsectra v Yardley [2002] UKHL 12. The Applicant accepted that in connection with such a serious allegation the Tribunal would be required to apply a very high standard of proof.

75. Where the Respondent had accepted money from legally aided clients and utilised the same she had done so where the acceptance of money for costs and disbursements from legally aided clients was absolutely prohibited and that in one case amounted to dishonesty on the part of the Respondent. A legally aided client cannot be billed privately as well. Monies were received from both clients into client account and transferred into office account. By the transfer into office account the Respondent benefitted from the monies which was improper and in the case of LA the matter was one put as one involving dishonesty as the Respondent herself had conduct of that particular matter.

76. Again it was recognised the standard of proof to be met was high and the Tribunal should apply the test in Twinsectra v Yardley.

77. The fact that the Respondent had returned the money received from her client indicated that she agreed that she should not have taken the client's private money. The Respondent had changed her position from which the Tribunal could make an adverse inference. It appeared she had accepted that her impropriety had been discovered and she had returned the money. She later said she returned the money

inorder to maintain a good relationship. If the client's eligibility for legal aid was unclear, she should never have asked to complete a Green Form and a claim in respect of the Green Form should not have been made. If the situation had been clear the Respondent's proper course would have been to return the money to the Legal Aid Board.

The Submissions of the Respondent in connection with allegations 3 and 4

78. The Respondent denied that she improperly and/ or dishonestly used clients' funds for her own benefit. Her books of account balanced once they had been reconciled.

79. The Respondent denied that she supplied misleading information to The Law Society concerning the identity of persons who held themselves out to be partners of the firm. Each person notified to The Law Society as being the Respondent's partner was in fact and in law her partner at the material time.

80. The Respondent agreed that there had been no formal written partnership agreements but that was not a prerequisite to a partnership being in existence. The Respondent and those persons who were her partners were carrying on the profession of a solicitor with a view to profit. The Respondent relied upon the evidence which she had given in support of her contention together with the fact that she had given due and proper notification of any changes in partnership arrangements to The Law Society in writing.

Respondent's Submission that there was no case to answer

81. At this stage the Tribunal was invited to consider that there was no case to answer. Upon the Tribunal's return after retiring the Tribunal found in respect of allegation 3 where dishonesty was alleged against the Respondent in relation to the matter of the client LA, that that case had not been made out. It might well be that a client initially has the benefit of Legal Aid in a case. If a client's Legal Aid is limited to take that client to a certain stage in the case or is limited only to initial advice there is a point at which the client ceases to be legally aided. It could not be right that because a client has been in receipt of legal aid at an initial stage in a case the client is prohibited from pursuing his case privately thereafter. This appeared to have been the position. The Tribunal found therefore that the Respondent had not behaved dishonestly in respect of allegation 3. With regard to the rest of the matters before the Tribunal, it was of the view that the evidence before it demonstrated that there was a case which the Respondent should answer.

The Submissions of the Respondent in connection with disputed allegations 4 and 5

82. Where a finding of dishonesty is made by the Tribunal it must be satisfied to a high standard of proof.

83. Ms Sinclair had not been called to give oral evidence. There was not sufficient evidence before the Tribunal to establish that Ms Sinclair was not a partner during the period that the Respondent believed that she was. The Tribunal agreed that the Respondent should concentrate her efforts on the periods of time relating to Mr Reid's

and Mr Rippon's partnership. The Respondent honestly believed that Mr Rippon and Mr Reid had been partners from and until the dates notified to The Law Society.

84. The Tribunal was invited to adopt the approach of asking whether or not on the basis of the facts, even in the absence of a partnership deed, in the case of Mr Reid and Mr Rippon the Respondent had carried on the profession of a solicitor with either of those gentlemen with a view to profit. The terms of the profit share had been agreed and Mr Reid and Mr Rippon both undertook some sort of work in connection with that profession under the title of Russell Henry even though all of the terms of the new partnership had not been agreed. Legally the definition of partnership meant that these two gentlemen were partners.

85. Mr Reid had taken an active role in the firm. It could not be right that he had attended partnership meetings without knowing that that was the nature of the meeting that he attended. Decisions at those meetings had been made about staff, the way forward and the type of work that the firm was to take on. Mr Reid involved himself in the affairs of the firm and his agreement as to his share of the profits rendered him a partner. There were a number of documents before the Tribunal that indicated that Mr Reid regarded himself as a partner in the firm.

86. The Tribunal was invited to question the credibility of Mr Rippon. He said that his first meeeting with the Respondent had been on Maundy Thursday and at some stage a group of strangers had arrived at his home in East Sussex. The question had to be asked how did they know where he lived, why did he give his address to them, why did they arrive without an invitation. If they had not arrived by invitation then what was the purpose of their visit and what was to be discussed? There must have been active discussion about the partnership prior to their visit.

87. Mr Rippon said that upon receiving information that his name appeared on Russell Henry's letterhead he had been furious and asked for his name to be removed. He had however asked the Respondent to write the statement in the Industrial Tribunal matter.

88. Mr Rippon had signed many documents outside the dates when, it was his case, he was purely giving brief assistance to the firm. Mr Rippon had agreed to be a partner. His share of the profits had been agreed. He himself had allowed his name to go forward as the supervising partner of the Respondent, his presence at the firm fell squarely within the supervision requirements.

The Tribunal's decision in connection with allegations 4 & 5 – partnership matters and dishonesty

89. The Applicant alleged that the Respondent had provided misleading information concerning the identity of her partners to The Law Society.

90. His case is in effect that over the course of three periods in 1998 the Respondent misled her regulatory body into believing that she was in partnership with named individuals when in fact she was not. Because at the time the Respondent was a registered foreign lawyer, it followed that if she did not have as a partner an

appropriately qualified solicitor of the Supreme Court, she would be in breach of the regulations relating to the practice of registered foreign lawyers.

91. The Applicant had not been able to call oral evidence from Monica Sinclair, one alleged "partner". The Tribunal accepted that as a consequence in respect of the first period of asserted partnership there was insufficient evidence to satisfy the Tribunal to the requisite standard that the Respondent failed to have a duly qualified solicitor as a partner as was required.

92. The issue which the Tribunal had to reach a decision upon was whether during the two remaining periods the Respondent was genuinely in partnership as she maintained with the partners held out by her so to be.

93. The Tribunal heard evidence from two of the partners namely, Michael Reid and David Rippon. The Tribunal had also heard the oral evidence of the Respondent.

94. The Tribunal was impressed by the evidence of Mr Rippon who was adamant that he was never a partner of the Respondent although he did agree to supervise her practice for a short period during 1998 while she was abroad.

95. Mr Rippon accepted signing a number of Legal Aid Green Forms dated before, during and after his period of supervision, but the Tribunal did not view that as evidence to support the contention that he was in partnership with the Respondent at any time. Indeed, such written evidence as exists indicated that Mr Rippon was entirely accurate in his assertion that he had never been a partner of the Respondent.

96. The Tribunal was also impressed by the oral evidence of Mr Reid. He accepted going to meetings about partnership at the material time. It was his evidence that these meetings were on a preliminary basis prior to a partnership coming into existence. He said the Respondent could point to no formal document being signed by him which would show that he had ever accepted the responsibilities and liabilities of being a partner.

97. The Respondent's evidence was diametrically opposed to that of Mr Rippon and Mr Reid. It was her assertion that she was in partnership at the material times and explains her contrary statement of 10th August 1997 (in respect of Mr Rippon) as being untrue and said that it was produced at the instigation of Mr Rippon.

98. The Tribunal was of the view that the Respondent had undermined her own credibility by being prepared to make a statement, that on her own evidence was untrue, to be used in the course of proceedings before the employment Tribunal. Further, it was the Respondent's evidence that both Mr Reid and Mr Rippon had agreed to become partners even though the basis of their partnership with her had not been finalised.

99. In the Tribunal's judgment the allegations against the Respondent had been made out in respect of both allegations 4 and 5. The Tribunal was of the view that the Respondent did mislead the regulatory body and had been dishonest in so doing.

100. The Tribunal rejected the view that the Respondent could have been mistaken in any way as to her relationship either with Mr Reid or Mr Rippon during the periods of time in question.

101. The Tribunal noted that it would have been of particular importance to the Respondent at the material time to hold out "partners" as being in place – she could not have practised at all without a partner who was an appropriately qualified solicitor.

102. In reaching the conclusion that the Respondent had been dishonest the Tribunal applied the test in Twinsectra v Yardley. The Tribunal found itself in no doubt that the Respondent knew that an ordinary solicitor, indeed an ordinary lay member of the public, would consider that what she was doing was dishonest and she herself could not have failed to realise that ordinary solicitors and members of the public would hold that view.

103. The Tribunal noted that the balance of the allegations were admitted by the Respondent.

The Respondent's mitigation

104. The Respondent had been born in 1954 in Jamaica. She held a BA (Hons) degree from the University of Sussex and a postgraduate Certificate in Education from St Anne's College, Oxford University. She had also achieved an LLB (Hons) from the University of the West Indies and an LLM in Commercial and Corporate Law from Kings College, University of London. She had qualified as a barrister having been called to the Bar in 1986. She had been non-practising since 1998. The Respondent was admitted to the Roll of Solicitors in January 2000. She had made application to The Law Society for her name voluntarily to be removed from the Roll of Solicitors and was a door tenant at 7 New Square Lincoln's Inn. At the time of the hearing the Respondent was living and working in Grand Cayman.

105. From 1989 to 1997 the Respondent was employed as a senior lecturer at the Inns of Court School of Law. Between 1997 and 1998 the Respondent was a director of the Citizen's Advice Bureau at Croydon. 1n 1996 the Respondent became an accredited advocacy tutor for The Law Society. Between 1998 and 2001 the Respondent sat as a member of the Board of Visitors at Her Majesty's Prison, Brixton. Between 1998 and 2002 she sat as a member on a mental health review tribunal.

106. The Respondent was the author of a popular student text, "Opinion writing and drafting in Contract Law".

107. The Respondent had taken redundancy from her employment as a senior lecturer at the Inns of Court School of Law and thereafter decided to qualify as a solicitor. After making enquiry the Respondent learned that she could practise as a registered foreign lawyer and the allegations related to the period of time when she had done so.

108. The Respondent admitted that she had been in breach of the Solicitors Accounts Rules by not having her books of account readily up to date when The Law Society's investigation officer made a visit. The Respondent employed a book keeper who had

maintained a manual card system as a backup whilst the practice accounts were transferred to computer. At the time of the inspection the accounts could not be reproduced because of the failure on the computer system. The Respondent's reporting accountants had not understood the significance of the apparent lack of reconciliations even though he had held himself out as an expert in the Solicitors Accounts Rules.

109. The Respondent's book keeper was able to recreate the entire reconciliation in a short space of time and the books were re-inspected after a weekend. Any defects were cured very quickly. The investigation officer agreed that the books were then correct and there was no discrepancy on funds missing from client account.

110. With regard to the cases of the sixteen squatters no one in the firm had been sure how to handle the action which was not a class action. Each and every client had an individual claim albeit each exactly the same as the other. A trainee solicitor was instructed to contact the Legal Aid Board to obtain advice on how to handle the matter. She had been advised that a new file had to be opened for each client and every aspect of each of the cases was to be treated individually. Sixteen applications to the Legal Aid Board had to be made and sixteen briefs had to be prepared.

111. Members of staff had reproduced the interpreter's invoice. Interpreters were certainly needed. The Respondent had withdrawn cash from her own Halifax bank account to pay the interpreters. She accepted there were errors in processing the Legal Aid claim forms. Certain Green Form costs had been abandoned. The Respondent could not recall how interpreters came to be overpaid, if indeed they were.

112. The firm had written to the Legal Aid Board to advise that mistakes had been made. In turn, the Board had advised that the receipts should have been duplicated on each claim form. The firm invited the Legal Aid Board to confirm on the basis of the figures whether a repayment should be made; in the interim the firm sent a cheque to the Legal Aid Board pending their response. The cheque had been from the firm of Brandon because by that time the firm's account had been transferred to Brandon's head office in Hayes. The Legal Aid Board had confirmed that it would not pursue the retrieval of any overpayments and said the matter would be laid to rest.

113. Under the Legal Aid rules when any file is open other files could be opened if those matters arose out of the initial matter. The firm properly opened up other files for the sixteen "squatters" in relation to welfare benefits and carried out work under them. No claims had been made on those files to the Legal Aid Board. During the inspection the firm engaged the services of a costs draftsman to cost the squatters' files showing the loss incurred by the firm. The costs draftsman produced schedules showing what claims could probably have been made in relation to all matters.

114. The allegations contained in the supplementary statement, allegations 12,13 and 14, related to the Respondent's involvement with Dixit Shah. The allegations arose because it was said that the Respondent was a partner in all or part of the Brandon's Group.

115. Because of the difficulty which the Respondent suffered and following the intervention of The Law Society the Respondent contacted The Law Society's Ethics

department and told them she was having difficulty in finding an appropriate partner and that she was suffering ill health. She had been encouraged to contact Dixit Shah who was then currently purchasing small firms around the M25 who were in trouble. Dixit Shah was described as having a "clean Practising Certificate" and was "very suitable" as he already had a number of firms that were doing well. The Respondent contacted Mr Shah.

116. On 31st March 2000 the Respondent sold Russell Henry to Dixit Shah and became a salaried partner in the firm of Russell Henry. Dixit Shah advised the Respondent to close down the Balham office but keep the Brixton office. Russell Henry would stay as it was, save that if staff were needed elsewhere they would need to be flexible to move to other offices as required.

117. Dixit Shah was to become a partner in Russell Henry and they would trade under the name of Russell Henry B.J. Brandon. The Respondent was not a partner in any of the other Dixit Shah firms. The Respondent had been reluctant to tranfer the accounts to the central location in Hayes, but Dixit Shah had insisted. The Respondent did not transfer the Russell Henry accounts until just before Dixit Shah disappeared. The Respondent believed that there was no complaint with regard to the Russell Henry accounts up to the date of the transfer.

118. A short while after his purchase of her firm Dixit Shah informed the Respondent that all the files and staff had to be transferred to DW Partnership in Edgeware Road. After the move to Edgeware Road Dixit Shah asked the Respondent to buy the firm and act as administrator of the group. The Respondent approached her bankers and obtained an overdraft facility. She signed an agreement. There was then a very adverse reaction to the proposal from the other partners in the group. The Respondent wrote to Dixit Shah and withdrew from the agreement. She stopped her cheque.

119. Pandemonium broke out when the Respondent and her staff arrived at the office and discovered that Dixit Shah had left the country. The Respondent had not been complicit in any of Dixit Shah's nefarious activities. Dixit Shah had run away with client account monies.

120. The Respondent accepted that she might have been foolish, naïve and muddled but she had throughout denied any allegation of dishonesty. She had been a barrister for 19 years previously and she valued her good name.

121. The Tribunal was invited to bear in mind the Respondent's inexperience and ignorance in dealing with a busy solicitor's practice. She had had no previous history of dishonesty. She was in practice in a solicitor's firm for only a very short time. No client money which had been within the Respondent's stewardship had gone missing.

122. The Tribunal was invited to have due regard to the leniency with which the other partners in Brandons had been treated by the Tribunal.

123. The Tribunal was invited to give due weight to the written testimonials in support of the Respondent that spoke highly of her competence and integrity.

The Findings of the Tribunal

124. The Tribunal had found serious allegations against the Respondent (4 and 5) to have been substantiated and had made a finding that she had been dishonest. The Tribunal found the rest of the allegations to have been substantiated save in respect of allegation 9.

The Tribunal's Decision and its Reasons

125. The Tribunal recognised this as a sad case. The Respondent had enjoyed a long career in the law as a barrister, had been a lecturer and had served her community. Not only had this matter been hanging over her head for a long time, but she had suffered serious and worrying ill health. The Tribunal took into account the letters written in support of the Respondent.

126. The Tribunal recognised that, whilst it may be hard on individuals, its first duty is to protect the public and its second duty is to maintain the good reputation of the solicitors' profession.

127. The Tribunal considered that it would not fulfil either of these duties if it did not impose the most serious sanction available to it in the case of a solicitor who has been found dishonest. Any member of the public is entitled to expect a member of the Solicitors' profession to act at all times with the utmost probity, integrity and trustworthiness. A member of the public is entitled to consider that a solicitor is a person who can be trusted to the ends of the earth. In order to ensure that the public's well founded expectation that a member of the Solicitor's profession is a person of irreproachable integrity, the Tribunal considered that the appropriate sanction to impose upon the Respondent was that of a striking off order.

128. The Tribunal gave due consideration to the schedule of costs prepared by the Applicant and his request that the costs be fixed. The Tribunal took into account the fact that a number of allegations made against the Respondent had been withdrawn at the hearing. The Tribunal also took into account the desirability of achieving a speedy and the least costly finality in the matter and decided that the appropriate order to make in respect of costs bearing all of these issues in mind was that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

DATED this 4th day of October 2005
on behalf of the Tribunal

R J C Potter
Chairman