No. 8420/2001

IN THE MATTER OF CHRISTOPHER CHAMBERS, ROGER ALAN DINES, GRAEME CHARLES HARRIS, HENRY DAVID WEINBERG, *RESPONDENT 4, RESPONDENT 5. AND RESPONDENT 6,* solicitors

- AND –

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H B Holmes (in the chair)
Mr. A N Spooner
Dame Simone Prendergast

Date of Hearing: 29th January 2002

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Geoffrey Williams, solicitor advocate of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF1 4DW on the 2nd July 2001 that Christopher Chambers of 31 Carson Road, London, SE21 8HT, Roger Alan Dines formerly of Upminster, Essex SE21 subsequently of Upminster, Essex, Graeme Charles Harris of Eltham, London SE9, Henry David Weignberg of Hendon, London NW4; *RESPONDENT 4* of Clapham, London SW9, *RESPONDENT 5* of London N8 and *RESPONDENT 6* of London W4.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Geoffrey Williams, solicitor advocate of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF1 4DW appeared as the Applicant. Mr Chambers was represented by Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, Essex SS2 6HZ; Mr Dines was represented by David Morgan solicitor of 9 Gray's Inn Square, London WC1R 5JF; Mr Harris was represented by Gregory Chambers of Counsel instructed by Messrs Sharpe & Co of Sherbourne House, 23/25 Northolt Road, Harrow, Middlesex HA2 OLH; Mr Weinberg was represented by Lionel Swift of Queen's

Counsel; *RESPONDENT 4* was represented by Michael Simmons solicitor of Finers Stephens Innocent of 179 Portland Street, London W1W 5LS and *RESPONDENT 5* and *RESPONDENT 6* were both represented by Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool L2 5RH.

The evidence before the Tribunal included the admission of the facts and the allegations by all Respondents. Mr Chambers, Mr Dines, Mr Harris, Mr Weinberg and *RESPONDENT 4* denied that they had been dishonest. Mr Dines gave oral evidence. Further testimonials on behalf of Mr Dines and a bundle of testimonials on behalf of Mr Weinberg were handed up at the hearing.

At the opening of the hearing the Applicant sought to withdraw two allegations. The Respondent concerned agreed and the Tribunal consented. The allegations are set out below with the omission of those allegations that were withdrawn.

The allegations against the Respondents Christopher Chambers, Roger Alan Dines, Graeme Charles Harris, Henry David Weinberg and *RESPONDENT 4* were that they had been guilty of conduct unbefitting solicitors in each of the following respects namely:-

(a) that they had effected transfers from the ledger accounts of clients to those of other clients contrary to Rule 10 of the Solicitors Accounts Rules 1991;

(b) that they had drawn monies from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules.

The allegations against *RESPONDENTS 5 & 6* were that:-

(c) they had effected transfers from the ledger accounts of clients to those of other clients contrary to Rule 10 of the Solicitors Accounts Rules 1991;

(d) drawn monies from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules.

<u>Mr Chambers alone</u>

(e) and (f) withdrawn.

(g) that he had breached the terms of a professional undertaking.

<u>Mr Weinberg alone</u>

The Respondent Henry David Weinberg had been guilty of conduct unbefitting a solicitor in the following further respect namely:-

(h) that he had breached the terms of a professional undertaking.

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

The Tribunal order that the Respondent Christopher Chambers of 31 Carson Road, London SE21 8HT solicitor, be struck off the Roll of Solicitors and they further order that he do pay

one quarter of the balance of the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed.

The Tribunal order that the Respondent Roger Alan Dines of Upminster, Essex SE21 solicitor, be struck off the Roll of Solicitors and they further order that he do pay one quarter of the balance of the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed.

The Tribunal order that the Respondent Graeme Charles Harris of Eltham, London SE9, solicitor, be struck off the Roll of Solicitors and they further order that he do pay one quarter of the balance of the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed.

The Tribunal order that the Respondent Henry David Weinberg of, Hendon, London NW4, solicitor, be struck off the Roll of Solicitors and they further order that he do pay one quarter of the balance of the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed.

The Tribunal order that the respondent, *RESPONDENT 4* of Clapham, London SW9 solicitor, do pay a fine of £8,000, such penalty to be forfeit to Her Majesty the Queen, and they further order that she do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £2,000.

The Tribunal order that the respondent, RESPONDENT 5 of, London N8 solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal order that the respondent, RESPONDENT 6 of, London W4 solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen.

The facts are set out in paragraphs 1 to 59 hereunder: -

1. The names of all Respondents remained on the Roll of Solicitors. Their respective dates of admission and dates of birth were as follows:-

Respondent	Date of Admission to the Roll	Date of Birth
Mr Chambers	01.02.65	30.10.1936
Mr Dines	01.06.72	21.01.1947
Mr Harris	01.03.60	27.09.1936
Mr Weinberg	01.11.71	26.08.1945
RESPONDENT 4	15.04.89	06.08.1962
RESPONDENT 5	15.06.78	23.07.1937
RESPONDENT 6	16.09.96	05.01.1951

2. At all times material to the application the Respondents carried on practice as solicitors in partnership under the style of Loxleys at Bishopsgate House, 5-7 Folgate Street, London E1 6BX. Such practice ceased on or about 24th April 2001 upon intervention by The Law Society.

3. *RESPONDENT 4* was a salaried partner until November 1999. She then became an equity partner. She retired from the equity partnership on 6th February 2001, remaining at the firm for a period of time as a consultant.

4. *RESPONDENT 5* and *RESPONDENT 6* were appointed salaried partners in August 2000 and ceased to be partners on or about 20th February 2001.

5. Upon notice duly given to the Respondents an inspection of their books of account was carried out by the Forensic Investigation Unit of the OSS. The Report prepared upon the said inspection was dated 15th March 2001 and was before the Tribunal.

6. The Forensic Investigation Unit's Report revealed the following matters, details of which are set out in paragraphs 7 to 59 hereunder.

7. On 6th February 2001 following a request made by the Forensic Investigator ("FI") for copies of certain ledgers, Mr Chambers and Mr Weinberg produced a letter dated 6th February 2001 from Ambrose Appelbe solicitors who had been instructed by the equity partners which stated, inter alia, that there had been certain difficulties with the accounts including breaches or possible breaches of the Solicitors Accounts Rules. The letter listed three categories of potential difficulty in the following terms:-

> "First, certain matters have had bills rendered and either before delivery or before the client has paid, funds have been taken from the client account on the basis of a transfer from another client or matter ledger. There was not always a connection between such matters or between such clients and prior authority for such transfers had not been obtained.
>
> A second category is that in some ongoing matters client funds were transferred before bills were delivered. There are a few matters in which the client had subsequently disputed the amount of the bill.
>
> A third category is matters where bills have been prepared on an interim basis on work that had been done or for anticipated future work. On some occasions the actual future work transpired to be less than the anticipated work and there would be a reversal of the excess amount billed."

8. The letter also stated that, as at 6th February 2001, there was a shortfall on the client account and that the four equity partners were depositing an amount of £60,000 with Class Law Solicitors which was to be held on client account and applied exclusively in satisfaction of any shortfall on Loxleys' client account.

9. Later on 6th February 2001 the FI requested from Mr Chambers a list of matters where transfers had been made between unconnected clients. The following day a list of 60 matters was produced. Examination of the relevant accounts in the clients' ledger, together with those for certain other matters not included on the list, revealed numerous transfers between matters, many of which did not appear to be connected.

10. In view of these matters the FI considered that no reliance could be placed upon the veracity of the balances shown in the clients' ledger and therefore no opinion could be expressed as to the firm's liabilities to clients.

11. During the inspection, at their own instigation, the equity partners introduced amounts of £71,805.20 and £4,863.70 into client bank account on 13th and 14th February 2001 respectively from the bank account of Class Law Solicitors. Additional amounts totalling £13,790.90 were transferred from the partners' office account to client bank account on 19th and 26th February 2001.

12. Details in respect of these amounts were provided by the four equity partners and a review of some of the related matter files indicated that the firm has misused client funds.

13. The FI dealt in detail with three examples of the misuse of clients' funds relating to the clients QI Ltd, N deceased and P Ltd.

(a) QI Ltd

14. The matter file indicated that Mr Chambers and *RESPONDENT 6* had conduct of this matter relating to a lease.

15. The relevant account in the clients' ledger showed that amounts of £27,000 and £8,900 were lodged in client bank account on 6th October 1999 and 1st November 1999 respectively. The ledger also showed that these amounts were transferred to a designated deposit account on behalf of QI Ltd on 6th October 1999 and 2nd November 1999 respectively.

16. The file showed that the firm received these sums from H Plc, a tenant of QI Ltd and that in total they represented a half year rent deposit.

17. The rent deposit deed stated, inter alia, that the sum should be paid into a deposit account and that the landlord would be entitled to make withdrawals from this account in order to make good any non-payment or delay in payment of any sum due to the landlord under the lease or any loss or damage suffered by the landlords as a result of a breach by the tenant of any covenant, or condition in the lease. Clause 7 of the deed stated that "subject to the rights of the landlord contained in this deed, the deposit sum shall remain the property of the tenant."

18. On examination of the matter file, no evidence was found to suggest that the tenant had failed to pay rent or breached any terms of the tenancy.

19. The ledger showed that between 13th April 2000 and 18th January 2001 ten client account transfers varying between £858.10 and £12,000 and totalling £43,468.24 had been made from this ledger to four other ledgers, two of which did not appear to be connected with QI Ltd thereby reducing the client balance on the QI Ltd ledger to £193.55 as at 18th January 2001. Included in the sums transferred, as noted above, was the rent deposit of £35,900.

20. Of the £43,468.24 transferred from this ledger, transfers totalling £41,485.43 were then made from client to office bank account on the same date as the original transfers from the QI Ltd ledger. In each case these transfers to office bank account were recorded as costs taken on the ledgers of the four unrelated matters and they appeared to be used in the main to settle bills of costs entered on the four ledgers and for which insufficient funds had been received from the unrelated clients concerned.

21. On 13th February 2001 an amount of £71,805.20 was credited to client bank account from Class Law Solicitors on behalf of the four remaining equity partners. The four remaining equity partners informed the FI that this included an amount of £35,900 in respect of the QI Ltd matter.

22. Nothing was found on the QI Ltd matter file to indicate that the Respondents' firm had authority from the tenant to utilise the rent deposit.

(b) N deceased

23. The firm of Borm-Reid & Co solicitors, incorporated into Loxleys, acted in the estate with Mr H having conduct of the matter.

24. Examination of the matter file showed that Mr N died on 30th January 1993, that letters of administration were granted on 21st April 1993 and that Mr DN, son of the deceased, was appointed as sole personal representative.

25. The matter file contained a letter dated 10th August 1995 from Mr H to Miss SJF, daughter of the deceased, explaining that an amount of £10,000 was being retained by the firm to cover any tax requirements. Nothing found on the file indicated that this would be used for any other purpose.

26. The most recent correspondence found on the file was a letter from Mr H to Mr N dated 14th September 1995 which enclosed a bill from Borm-Reid for £446.50 (£380 gross of VAT) dated 14th September 1995 rendered in connection with Mr N's estate to cover the period to 31st May 1995.

27. The relevant account in the clients' ledger showed than an amount of £10,000 was transferred from client account to a client deposit account on 31st August 1995 and that between 1st January 1996 and 20th October 2000 interest totalling £1,654.23 was credited to this account. The transfer to the deposit account of £10,000 together with subsequent payments from this ledger reduced the balance held on current account for the estate to £742.29 as at 15th September 1995. The ledger also showed that the following transfers of clients' funds were made to office bank account, purportedly in respect of costs:-

Date	Amount £
11 March 1998	705.00
17 July 1998	1,175.00
26 June 2000	587.50
16 October 2000	587.50
17 October 2000	1,762.00
8 November 2000	1,175.50
14 November 2000	1,175.00
	£7,167.50

28. Copy bills in respect of the five most recent transfers were obtained. In each instance they were hand written bills which were not addressed and which included only pro-forma narrative for the work conducted. No reference to those bills nor any indication that they had been sent to the client was found on the matter file.

29. The ledger also showed that between 27th November 2000 and 3rd January 2001 seven transfers totalling £9,060.02 were made to seven matters which appeared to be unconnected with the N estate reducing the client balance on this ledger, including amounts previously held on deposit, to nil as at 3rd January 2001. Of these seven matters, five related to the administration of estates and the ledgers for all seven matters indicated that Mr Dines was the partner having conduct of the matters.

30. Of the £9,060.02 transferred from the N deceased ledger, amounts totalling £6,710.02 were transferred from client to office bank account on the same date as the original transfers from the N deceased ledger. In each case these transfers to office bank account were recorded as costs taken on the ledgers of the six unconnected matters and they appeared to be used in the main to settle bills of costs on the six ledgers where insufficient funds had been received from the clients (unconnected with N deceased) concerned.

31. Between 28th November 2000 and 7th December 2000 amounts totalling £3,831 were credited to the N deceased ledger being transfers back from certain of the above unconnected client ledgers.

32. On 13th February 2001 an amount of £71,805.20 was credited to client bank account from Class Law Solicitors on behalf of the four remaining equity partners. The partners informed the FI that this included an amount of £5,229.02 in respect of this matter (£9,060.02 less £3,831).

33. On 19th February 2001 a transfer of £11,205.90 was made from office to client bank account. Mr Chambers informed the FI that this included an amount of £4,879.67 in respect of a credit note raised on this matter by the firm.

(c) P Ltd

34. Mr Dines had conduct of this conveyancing matter.

35. The relevant account in the clients' ledger showed that an amount of £24,888 was lodged in client bank account on 19th July 2000. The matter file showed that this sum was received from the client in respect of Stamp Duty, Land Registry fees and legal costs for the transfer of the property. Nothing found on the file indicated that this sum could be used for any other purposes.

36. Between 4th August 2000 and 11th August 2000 eighteen transfers totalling £21,234.61 were made from the P Ltd account to eighteen ledgers which were not connected with this P Ltd. Of those eighteen ledgers, six related to matters which had a reference in the name of *RESPONDENT 4*, four in the name of Mr Chambers, three in the name of Mr Dines, three in the name of Mr Harris and two in the name of Mr Weinberg.

37. The full amount of the £21,234.61 transferred from the P Ltd ledger was transferred from client to office account on the same date as the original transfers from the P Ltd ledger. In each case these transfers were recorded as costs taken on the ledgers of the eighteen unrelated matters and they appeared to be used in the main to settle bills of costs on the eighteen ledgers where insufficient funds had been received from the unrelated clients concerned.

38. Between 7th August 2000 and 24th October 2000 amounts totalling £20,162.86 were credited to the P Ltd ledger, being transfers back from certain of the unrelated matters referred to above.

39. The P Ltd ledger showed that Stamp Duty of £22,390 had been paid from client bank account on 3rd November 2000. The ledger also showed that the firm paid a penalty of £255 to the Inland Revenue from office bank account on 31st October 2000 and that on 3rd November 2000 a transfer in the amount of £1,301.85 was made from office to client bank account to enable the payment of the Stamp Duty to be made.

40. On 13th February 2001 an amount of £71,805.20 was credited to client bank account from Class Law Solicitors on behalf of the four equity partners. The partners informed the FI that this included an amount of £1,071.75 in respect of this matter (£21,234.61 less £20,162.86).

HP Ltd: Breach of Undertaking

41. Mr Weinberg acted on behalf of H Ltd in the sale of flats to Mr and Mrs X at a price of £1,195,000. By an agreement for sale dated the 29th June 1999 it was agreed that H Ltd would carry out certain "works" and "essential building works" to the property. It was further agreed under clause 17.3 that on completion Loxleys would retain the sum of £7,500 in respect of snagging works and £7,500 in respect of any post completion defects.

42. Under the terms of the June agreement, Mr and Mrs X could call for extra works to be carried out by H Ltd, the cost being agreed in accordance with the agreement and paid as an addition to the purchase price. Extra works were requested but the cost thereof could not be agreed prior to completion. By a supplemental agreement dated 16th December 1999 it was agreed that, to facilitate completion, notwithstanding the failure to pay the sum of £69,379.22 in respect of extra works, the sum of £15,000 would be paid to the sellers on account of the extra works.

43. On 21st December 1999 the firm (Mr Chambers) gave an undertaking to Charles Russell, the solicitors acting for the purchasers in the following form:-

> "Dear Ms M
>
> Flats 1 and 2 E Road and Garages A&B, A Road, London, NW3
>
> In consideration of completion of the sale of Flats 1 and 2 E Road ("the Property") and Garages A&B, A Road ("the Garages") London NW3 taking place tomorrow 22 December 1999, pursuant to the terms of the Agreement for sale of the Property and Garages by H Properties Limited ("the Seller") To [X] and [Mrs X] ("the Buyers") dated 29 June 1999 as amended by a supplemental agreement dated 16 December 1999 we hereby undertake
>
> To retain from "the Purchase Price" as defined in the Agreement for Sale £7,500 for the Snagging Works and £7,500 for the "Post Completion Defects" as defined in and in accordance with clause 17.3 of the Agreement for Sale.
>
> To retain from the said Purchase Price £4,000 on account of the "Works" and "Essential Building Works" as defined in the Agreement for Sale.

> To retain from the said Purchase Price £600 or such lesser amount as may tomorrow be found to be due on account of any arrears of payment by the Seller of ground rent and contributions due to the Landlord under the leases of the Garages.
>
> Please note that under the supplemental agreement referred to above, the amount payable on completion is increased by £15,000 to take account of additional works. I have been unable to see from the file whether this has been so far taken into account in the amount due on completion.
>
> Yours sincerely,
>
> C. Chambers
> Loxleys"

44. The sale was completed on 22nd December 1999. Examination of the client ledger showed that the Respondent's firm held only the sum of £13,297.66 on that date.

45. The ledger showed that between 28th January 2000 and 9th June 2000 the sum of £13,297.66 was transferred to other ledgers and to the firm's office account, reducing the client balance on the H Ltd ledger to nil as at 9th June 2000. The transfers were to ledgers said to be connected to H Ltd.

46. On 15th August 2000 Charles Russell asked Mr Weinberg to confirm that the firm still held the sum of £19,600 in accordance with Mr Chambers' undertaking. No response was evident on the file. On that date no client funds were held on the ledger.

47. On the 8th September 2000 Charles Russell confirmed in writing an agreement reached between the clients, inter alia, that on receipt of guarantee documents for the conservatory and the sum of £188.98 Loxleys would be authorised to release the sum of £19,600 held by them pursuant to Mr Chambers' undertaking. On that date no client funds were held on the ledger.

48. On 6th October 2000 Mr Weinberg wrote to Charles Russell saying (of the guarantees) "our clients hope to receive these by the end of this month." Examination of the file revealed an attendance note dated 1st February 2001 where Mr Weinberg was informed by his client that the guarantees had been released by BAC (which, the file suggested was either the manufacturer of the conservatory or a guarantee/warranty company) to the purchasers 6-8 weeks earlier.

49. The client ledger showed that amounts of £8,388.75 and £4,863.70 were lodged in client bank account on 13th February 2001 and 14th February 2001 in respect of this matter from Class Law. The ledger also showed that on 16th February 2001 the sum of £17,951.20 was sent to H Ltd from client account.

50. There was no evidence found on the file to suggest that the Respondent's firm had been released from the undertaking dated 21st December 1999 nor that the documents and sums required by the agreement confirmed on 8th September 2000 had been provided to the satisfaction of Charles Russell.

51. In a meeting with Mr Chambers and Mr Weinberg on 23rd February 2001 Mr Weinberg was asked by the FI whether there was a letter on the file releasing the firm from the undertaking. Mr Weinberg replied "As far as I am aware there is no letter on file. The client told me there were two guarantees and the purchasers had obtained these direct from BAC. There was no further correspondence, it's gone dead." He continued "I did not get a release but I assumed having spoken to the client that we were released, because of the circumstances."

52. Mr Weinberg confirmed that he had not heard from Charles Russell after 8th September 2000 and he said "I acknowledge I should have obtained a release." Mr Chambers considered the file of papers and referred to the letter from Mr Weinberg to Charles Russell dated 6th October 2000. Mr Weinberg said that he had not seen this when giving his earlier answers.

53. Included in the transfers totalling £13,297.66 noted in paragraph 62 above was an amount of £6,512.50 to "W" on 28th January 2000. The FI asked Mr Weinberg why he had transferred this sum to W who were said to be connected to H Ltd bearing in mind the undertaking given on 21st December 1999. Mr Weinberg said that this had been done with the consent of his client, although he accepted that he had not notified Charles Russell of the payment.

AL & Co Ltd - Breach of Undertaking

54. Examination of the file of papers by the FI revealed that the Respondents' firm (Mr Chambers) acted for Mr B in a number of attempts to raise finance on the security of shares in a company quoted on the Luxembourg Stock Exchange ("the Company"). Those shares were held electronically by the Respondents' firm's bank. Mr Chambers was seeking to arrange a loan of £500,000 from AL & Co Ltd.

55. On 17th May 1996 Mr Chambers wrote to AL & Co Ltd as follows:-

> "I understand you intend to advance £150,000 (the "Interim Advance") to Mr B in advance of your bank deciding whether or not to sanction 2 advances of £250,000 each to Mr B (the "Main Advances"). In the event either or both of the Main Advances proceed to Completion, the Interim Advance will be absorbed in the Main Advances.
>
> 1. In consideration of your permitting drawdown of the Interim Advance Loxleys hereby give our irrevocable undertaking to pay you the sum of £150,000 in respect of the Interim Advance, plus interest thereon at the agreed lending rate or failing agreement, five percent per annum above Lloyds Bank Base Rate, not later than one year from today's date subject to the following provisos:
>
>   (a) this undertaking will be released upon the completion of the Main Advances, provided that the Main Advances are for an aggregate amount equal to or greater than the Interim Advance…."

56. AL & Co Ltd confirmed the facility by a letter dated 20th May 1996 on the security of the Respondents' firm's undertaking and the monies were advanced. There was no evidence on the file of papers that the Main Advances proceeded to completion.

57. On 11th July 1996 AL & Co Ltd called upon the Respondent's firm to honour its undertaking and asked for repayment of the sum of £150,000 plus interest.

58. On 12th February 1997 the Respondent's firm wrote to AL & Co Ltd asking for confirmation of the amount of the debt and asking what steps were being taken to pursue Mr B for the debt. On 10th April 1997 the Respondent's firm (following a meeting with a representative of the Solicitors Indemnity Fund) confirmed in writing the circumstances surrounding the giving of the undertaking.

59. In a meeting with the FI on 1st February 2001 Mr Chambers confirmed that the Solicitors Indemnity Fund had met AL & Co's claim. Mr Chambers said "When the undertaking was given I was holding (the Company) shares B had acquired. I thought they were valuable but they were not worth anything. I should not have given the undertaking, it was a mistake." Mr Chambers confirmed that his original files were with Barlow Lyde & Gilbert, the solicitors appointed by the Solicitors Indemnity Fund: he was able to produce copy documents.

The Submissions of the Applicant

60. Conduct unbefitting a solicitor had not been alleged against *RESPONDENT 5* and *RESPONDENT 6*, the salaried partners. No allegation of dishonesty had been made against them.

61. It was the Applicant's submission that Mr Chambers and Mr Dines had been blatantly dishonest the latter with regard to the handling of client funds. The Applicant accepted that dishonesty was not so clear cut in the case of Mr Harris, Mr Weinberg and *RESPONDENT 4*. However it was available to the Tribunal to make a finding of dishonesty against those three further Respondents.

62. The Applicant accepted that he had to prove his case to the criminal standard. It was his submission that the test for dishonesty was not however based on the test employed in the criminal courts but rather the appropriate test was that set out in Royal Brunei Airlines -v- Tan (Privy Council 1994). The Tribunal was in particular referred to the judgment of Lord Nicholls of Birkenhead when he said:-

> "….honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an option 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.
>
> In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not

> participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. Nor does an honest person in such a case deliberately close his eyes and ears or deliberately not ask questions lest he learns something he would rather not know and then proceed regardless."

63. The Tribunal was invited to recall that a finding in the High Court had confirmed that the test in Royal Brunei Airlines -v- Tan was the appropriate test to be employed by the Tribunal provided that:-
    (i) the Tribunal made it plain that it was applying such test; and
    (ii) the Tribunal takes that into account when imposing any sanction.

64. In considering the position of the three equity partners who were not in the opinion of the Applicant blatantly dishonest it was the submission of the Applicant that the case of M A Weston -v- The Law Society was pertinent. The Applicant relied upon The Times newspaper report appearing on 15th July 1998. In his judgment Lord Bingham of Cornhill, who was then Lord Chief Justice, said:-

> "….the Tribunal had been at pains to make the point, which was a good one, that the Solicitors' Accounts Rules existed to afford the pubic maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those Rules were observed.
>
> That was a duty which bound solicitors, quite apart from the duty to act honestly. Recognition of that principle did not mean that, in any case where one solicitor was dishonest and as a result both he and a partner committed breaches of the Accounts Rules, both must automatically be struck off even though the second partner was guilty of no dishonesty.
>
> That would be to lay down much too inflexible a principle. The striking off of any solicitor found to have acted dishonestly in relation to clients' moneys had now to be seen as all but automatic. The position of a partner guilty of non-compliance with the Accounts Rules but without dishonesty would depend on all the circumstances of the case.
>
> Here the Tribunal had been entitled to bear in mind that the firm was, to Mr Weston's knowledge, in a parlous financial state: that he knew of a debt to the Customs and Excise of £60,000 and signed a cheque to meet it.
>
> In fact, as was subsequently known, the payment was made out of funds dishonestly transferred. That was not known by Mr Weston at the time but if he had performed his duty under the Accounts Rules it was something of which he would have been aware and which he would have been able to prevent"

65. In his judgment Lord Bingham of Cornhill referred to Bolton -v- The Law Society (1994) 1WLR 512 in which he had said:-

> "If a member of the public sells his house…. And entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to

> expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question.
>
> Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

66. The Lord Chief Justice in the Weston matter went on to say:-

> "It was important to appreciate that in speaking of "trustworthiness" in that passage the court had in mind of course honesty but also the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. That was violated if one solicitor with a duty to see that the rules were observed failed to do so.
>
> The tribunal was entitled to take the view that the situation in the firm was one which called for the close personal attention of Mr Weston as senior partner and to conclude that it was not in all the circumstances enough for him to say that the firm's finances were managed by Mr North and could therefore be left to him."

67. Mr Weston had signed a cheque to pay his firm's VAT to discharge his firm's VAT liability knowing that his firm's finances were in a parlous state. He should have closely supervised the position and taken a close interest in the firm's financial affairs.

68. The Respondents had adopted a scheme against a background of exceptional financial difficulties. In short the Respondents' firm had been "up against it." It had been in severe debt. In reality the Respondent's firm had been funded by the transfer of money from client account to office account and if such transfers had not been made then the firm would not have been able to continue.

69. The scheme involved the transfer of moneys from the ledger of one client to another unconnected client in breach of Rule 10 of the Solicitors Accounts Rules. The purpose of that transfer had been to set up what came next, namely a transfer made on the same day from the ledger of the receiving (unconnected) client to office account in cases where the unconnected client had not paid the costs due from him to the firm. That second stage was a breach of Rules 7 and 8 of the Solicitors Accounts Rules.

70. The payments had been made back the other way. That was to say payments had been made back to the initial client ledger from which money had been transferred to the paying client ledger as that initial client ledger had been deprived of funds.

71. It was the Applicant's position that Mr Chambers and Mr Weinberg had been directly involved in the scheme.

72. The Tribunal was invited to consider whether the other three equity partners knew about the scheme. If they did then they plainly had acted with dishonesty. If these three equity partners had not known of the scheme, then as solicitors and equity partners they should have known given the length of time that the situation was allowed to continue. The Tribunal would note that these three equity partners had acted for clients receiving money from unconnected client ledgers. They would have

known that the clients for whom they acted had not paid their bills. As equity partners they had full access to the financial documents of the firm in which the improper transfers were fully recorded.

73. The Applicant referred the Tribunal to the copy transfer authorities set out in the bundle of documents. He pointed out that each bore the initials of one of the five equity partners. He was not in a position to say who had written the initials on those transfers.

74. In summary the Applicant's submissions were as follows:-
(i) the equity partners had formulated a thoroughly dishonest scheme which involved the use of money belonging to client A to pay the costs of client B.
(ii) the transfers made to office account or the (or authorities therefor) made no reference to the true paying clients.

75. As a result of these actions there had been a direct benefit to the equity partners who, at the time, had been in severe financial difficulty.

76. The misuse of client funds had been wilful and deliberate.

77. The Applicant accepted that repayment to client account had been made in the sum of about £90,000 after the forensic inspection.

78. The Tribunal was invited to conclude that Mr Chambers and Mr Dines were central players. The culpability of the other Respondents was a matter for the Tribunal to consider. All of the equity partners were well aware of the dire financial position of the firm. It was noted that *RESPONDENT 4* had said that she had not been so aware in 1999 when she accepted an equity partnership. The partners had taken her in as an equity partner in order to enhance the firm's ability to borrow. There was no doubt that all of the equity partners were aware of the firm's financial plight. The question which had to be addressed was to what extent each of the equity partners was aware of the dishonest scheme.

79. *RESPONDENT 4* had said that in August 2000 P Ltd money had been used to pay a bill raised by her in connection with another unconnected client matter. She said she had been shocked. Mr Dines had assured her that all had been well but *RESPONDENT 4* appeared to have remained sceptical. She had been aware that something was going on. If she had taken the trouble to look at the P Ltd ledger it would have revealed to her a disturbing state of affairs.

80. There had been two clear breaches of undertaking. The Applicant had made the allegation of a breach of undertaking against the individual solicitors giving the undertakings. A breach of a solicitor's professional undertaking served to damage the good reputation of the solicitors' profession.

81. The Applicant sought such orders as the Tribunal deemed it right to make including an order for costs. He invited the Tribunal to order that any order for costs should include the costs of the forensic investigation. He asked that the costs be subject to a detailed assessment if not agreed between the parties.

The Submissions of Mr Chambers

82. Mr Chambers formally admitted the allegations made against him.

83. Mr Chambers had fully cooperated with The Law Society and the investigation. He had written lengthy letters of explanation, copies of which had been placed before the Tribunal.

84. Mr Chambers had served articles in the firm of which his father had been the senior partner becoming a partner when the firm amalgamated with Loxley & Preston, the firm after an amalgamation with another became "Loxleys." It moved to Folgate Street, London E1 where it traded until closed by intervention in April 2001.

85. Throughout Mr Chambers had been involved in the financial side of the practice. The financial dealings adopted by the firm were within the knowledge and consent always of the equity partners. The firm's financial management had been entirely adequate until its most recent amalgamation in 1982 when the firm changed over to deficit finance on a much larger scale. This involved the partners taking on loans secured on their own properties.

86. In 1994 the recession occurred. Turnover did not keep up with expenditure and arrears of rent came about. There had been a huge increase on rent review.

87. The firm had to find each day sufficient cash to keep within Barclays Bank's very narrow overdraft limit. The move to Folgate Street had been with a view to reducing commitments.

88. The firm changed its bankers to Allied Irish Bank in 1998. The overdraft facilities and mortgages over the four equity partners' homes meant that the ability to raise further money in that way was extremely limited, bearing in mind the interests of the partners' wives. Professional indemnity premiums had doubled, which necessitated an unsecured loan payable over five years from outside financiers to meet arrears. Further unsecured finance was arranged to repay rent outstanding from the previous premises and to meet commitments which, by virtue of the recession, were not being met out of cashflow.

89. Mr Chambers was unable to explain exactly how the practice identified in the forensic investigation started. He accepted that he was party to it. The other equity partners were fully aware. Mr Chambers accepted that what was done was entirely wrong and contrary to the requirements of the Solicitors Accounts Rules. Mr Chambers cooperated with the Forensic Investigator.

90. Neither Mr Chambers nor the other partners appreciated the seriousness of the position at the time. They were led by a feeling of impotence and despair at the financial position. There was money sitting unused on client account and the temporary utilisation of that money seemed to offer the only way out of the impossible financial situation they were in. It could not be emphasised too strongly that there was never at any time an intention permanently to deprive clients of their money. It was to be "borrowed" until further clients' funds came in to regularise the position. There was no reason to suppose that such money would not be coming in

and the firm frequently received money and then paid it in to the clients account appropriate to correct the earlier "borrowing."

91. The QI Ltd matter was extremely heavy and there were bills of costs outstanding. The client's answer was always that the firm would have to wait until the sale completed. The strain on cashflow was almost impossible.

92. The partners did not derive real personal benefit from the scheme. None of the partners ever drew more than £550 per week, a low level of drawings which was barely enough to service outgoings. There was no profligacy in the partners' activity. Out of these drawings there had to be serviced capital and interest payments on loans of £3,000 each. It was conceded that there was a benefit in that clients' money was utilised to reduce the overdraft, but there was no direct benefit to the individual partners as such.

93. The question of repayment was not something which only arose after receipt of notice of the inspection of the accounts. Questions of repayment had arisen before then.

94. At the height of the pressure upon the firm there were almost daily meetings between the equity partners when the office overdraft needed to be brought within limits where each partner indicated where clients' funds were available to pay costs. The vast majority of the transfers made were in not in breach of the Solicitors Accounts Rules but some had been. The firm enjoyed a substantial annual gross fee turnover and the improper transfer represented that one per cent of the turnover figure which served to emphasise that the impropriety was an emergency measure only.

95. In relation to breach of undertaking, Mr Chambers accepted that there had been a breach. He genuinely at all times believed that there was security in the shares that were held and it only transpired very much later, well after the undertaking was given, that there was a lack of value in the shares held for security. Mr Chambers knew, for instance, that $1 million had been paid into the company at the time the undertaking had been given. Mr Chambers had come to accept with hindsight that what he should have done, was to give a conditional undertaking.

96. As a result of what happened and the intervention which took place (primarily because, although the firm was in negotiation for a take-over, this did not proceed), the equity partners had all entered into IVAs. The individual liabilities were in different amounts but there were partnership debts of in excess of £1 million. Those debts did not involve any monies due to clients.

97. Initially, Mr Chambers continued to make a living following the intervention by undertaking locum work. Illness had intervened. Despite receiving treatment for serious illness, Mr Chambers had been able to work. He had the prospect of employment with a firm of solicitors which could lead to a permanent position. Mr Chambers hoped he would be offered the opportunity of continuing to earn a living as a solicitor. The earlier breaches would not recur.

98. Mr Chambers had served his profession for a great many years with distinction and with clients' full satisfaction. He believed he still had something to offer to the profession and to the public.

99. Mr Chambers had found the whole affair to have been a terrible nightmare. He apologised to the Tribunal and to the solicitors' profession for his actions.

The Submissions of Mr Dines

100. Mr Dines admitted the breaches alleged against him.

101. The facts placed before the Tribunal were admitted. There had been no attempt by the partners to withhold information. There had been a number of improper transfers about which complaint had been made and Mr Dines accepted that he had authorised the greater number of them.

102. The QI Ltd matter was dealt with on a day to day basis by Mr Chambers and *RESPONDENT 6*, though Mr Dines dealt with the authorisation of some of the transfers of funds from the deposit account, in particular while Mr Chambers was on holiday. Mr Dines had discussed the matters with Mr Chambers on the telephone while he was away; *RESPONDENT 6* was dealing with the matter in an administrative capacity only and was not involved in the authorisation of the transfers complained of. Neither *RESPONDENT 5* nor *RESPONDENT 6* were aware of or had any involvement in the matters which were the subject of the allegations.

103. In the matter of N deceased the funds held on deposit were so held to meet any liability to tax which might arise. Mr H had asked Mr Dines to complete the necessary work to establish the Capital Gaines Tax position soon after his old firm of Borm-Reid & Co had amalgamated with Loxleys.

104. On several occasions from that time Mr Dines set out to do that work but never actually succeeded in doing it, in the early years because of other pressures upon him and at the end because his health failed.

105. The firm's accounting system changed in late 1999 and when Mr Dines made the transfers in October and November 2000 he had forgotten that the transfers in March and July 1998 had been made.

106. Mr Dines had ascertained from the file that no proper bill for the administration of the estate had ever been rendered and he authorised the transfers in October and November 2000 partly because he could not see that a proper bill for the administration had been rendered and on account of the work that he anticipated he would have to do in connection with the Capital Gains Tax return.

107. Mr Dines accepted that the sum of £9,060.02 was taken as costs against bills on other accounts where funds had not been provided by the other clients at that time. The money was to have been repaid to this initial account when funds were provided by the billed client.

108. With regard to P Ltd, that was an overseas company administered by Barclays Bank Trust Company in Guernsey, the shareholders being brothers who were Indian and resident in Kenya. Mr JS dealt with matters for them in England and Mr Dines usually acted on his authority.

109. One of the brothers had fallen out with his siblings and claimed his share of the company. That situation was to be dealt with by transferring the freehold of a property at Romford to a company called HTI Ltd which was controlled by the brother who had claimed his share of P Ltd and as it was transferred, a mortgage was to be taken on the security of the property from Allied Irish Bank. Mr Dines was to act for HTI Ltd and Mr Harris was to act for Allied Irish Bank.

110. The sum of £24,888 in respect of Stamp Duty, Land Registry fees and legal costs was received. The transfers to 18 different ledgers had been made. The recipients were not connected with P Ltd.

111. Mr Dines had genuinely believed that, if asked, Mr JS would have consented to the transfer.

112. Mr Dines had practised as a solicitor for nearly 30 years before the events which were the subject of the disciplinary proceedings and during that time had always tried to uphold the highest standards and to serve the community to the best of his ability.

113. His conduct was only explicable in terms of the very difficult position in which he found himself and the pressure he was under from commitments from which he found it impossible to escape.

114. Mr Dines originally had been a partner in the firm of Loxley Sanderson & Morgan. That firm financed itself out of undrawn profits and had only a modest overdraft. In 1982 there were negotiations to merge with a firm called Alan Isaacs & Co. That firm had always financed itself by borrowing and despite Mr Dines's protests that on the terms of the merger the borrowing would get out of hand, it was agreed that they would merge and finance the firm in future by borrowing. In retrospect Mr Dines considered he should have resigned at that point. He did not want to be disloyal and he did not quit easily and accordingly he followed the majority view.

115. Due to the recession and cashflow problems over an extended period leading up to the period during which the matters raised in the Forensic Investigator's Report took place, the firm was under extreme financial pressure.

116. The financial position deteriorated further because two negligence claims against the firm which were each settled in sums totalling approximately £2 million and that caused the SIF contribution almost to double to £167,000.

117. By then, in order for the bank to continue to provide finance, the partners had given a joint and several guarantee secured in Mr Dines's case on his home.

118. In 1998 the partners again refinanced the business with AIB Bank and after careful consideration were satisfied that they could achieve what was required in order to satisfy that bank's requirements and, in particular, to service the new loan.

119. In order to secure the loan the then four equity partners were required to remortgage their homes. This also involved obtaining the consent of the wives of the married partners.

120. Mr Dines had already invested more capital in the firm than any other partner and being unmarried was master of his own destiny in so far as he had money available and could remortgage his house without having to get anyone's consent other than the bank. However the funds which he could provide would only be enough to pay off the bank and not to provide sufficient further working capital to allow the firm to continue efficiently.

121. Mr Dines had taken the view that to allow the firm to collapse would be disastrous from all points of view: the staff, the clients, the other partners and Mr Dines himself. Because at that time no further finance was available, Mr Dines allowed himself to breach the Solicitors Accounts Rules in order to provide finance for the firm. Further he persuaded himself that there was nothing wrong with that position provided that he had enough net assets to cover the deficit. He had found himself unable to turn to his family and friends for help.

122. How Mr Dines had allowed himself to be persuaded to breach the Rules and that there was nothing wrong with his position was beyond him. He had been faced with two alternatives both of which he found highly undesirable: either to let the firm go bankrupt or to breach the Rules by making improper transfers from client to office account (subsequently these would be replaced by transfers from other clients or, in some cases, from office account). Knowing that he could limit the amount of the withdrawals from client account to a sum less than his personal net assets, he chose the latter alternative, reasoning that that at least allowed the firm to continue for a further period. He believed from previous experience that his partners would eventually make further finance available, as indeed they eventually did. In addition to the money Mr Dines had paid into the firm prior to February 2001, all the four main equity partners during the period February to April 2001 made further funds available. Mr Dines's contribution was £155,000 which exceeded the contribution of any other of the partners. The shortfall on client account was made up equally from the funds provided by all the four partners.

123. From 1994 the day to day finances of the firm had been run by Mr Chambers and Mr Dines partly because they probably had a better grasp of finance than their other partners but also because no-one else was prepared to take on the responsibility and work that it entailed in addition to their own professional work. *RESPONDENT 4*, to her credit, seeing the effect of the strain upon Mr Chambers and Mr Dines did try to take it on but found it impossible after one week. Mr Harris had helped on occasion. Mr Dines had been the person mainly looking after the day to day cashflow, which entailed finding sufficient cash each day to ensure the firm stayed within the overdraft limit while at the same time ensuring that proper priority was given to payments to creditors in order of importance to the firm's survival.

124. While the firm was banking at B Bank it became increasingly difficult to meet their commitments. Mr Dines arranged for £23,000 to be provided to the firm by his parents and he also pledged an insurance policy of a value then in excess of £20,000 to that bank to procure the extension of further overdraft facilities to the firm. All the decisions taken by Mr Chambers and Mr Dines (as the people in charge of cashflow from day to day and also, as happened from 1998 onwards, in their capacity as seekers of unsecured finance and hire agreements facilities) were reported to the other partners before any final decision was taken. However Mr Chambers and Mr

Dines were the people exposed to the day to day stress of facing the bank and unsecured and trade creditors: they had been "fire fighting" day in and day out.

125. Inevitably Mr Dines's health had suffered as a result of the continuous strain. Things became worse in the period following the transfer of the banking to AI Bank. The wives of the married partners had become very concerned at the ever-increasing level of the firm's borrowing and, under separate legal advice, had made it a condition of agreeing to the mortgaging of their matrimonial homes that AI Bank should not increase its facilities without reference to them. For this reason AI Bank would, quite rightly, not allow any flexibility on the overdraft limit. Eventually in the Spring of 2000, when the firm's accountants had reported to the bank and the appointment of a practice manager had been agreed, the bank, with the consent of the wives, increased the overdraft limit to £65,000 on the strict understanding that the cash would be injected into the firm without resort to further borrowing. However, by this time there had been the resort to breaches of the Accounting Rules to keep the firm afloat. Each transfer was openly recorded in the client's ledger. There was no personal profit to any partner and in most cases the position was rectified before the receipt of notice of the OSS investigation. In all cases of which they were aware, the shortfall had been rectified by payments voluntarily made after the investigation had started. The breaches had been disclosed to the investigator.

126. Owing to pressure Mr Dines's health had deteriorated but the pressure prevented him from taking time off.

127. Mr Dines had to cope with the additional pressure of two elderly parents suffering from problems with their own health and care.

128. In September 1998 Mr Dines's sister was diagnosed as suffering from a serious illness requiring debilitating treatment. That was a cause for concern and meant that she could not assist Mr Dines with the care of their parents.

129. In addition Mr Dines had been Vice-Chairman of a Board handling financial affairs for the Church of England as a result of which Mr Dines was subjected to further pressure.

130. The combination of all these pressures was intolerable and contributed considerably to the deterioration in Mr Dines's health and directly affected his ability to take rational decisions.

131. Mr Dines had come to appreciate the seriousness of what he did and in future he would not allow pressures of any kind to interfere with his doing what was right. He would never allow such breaches to recur. Mr Dines had gained employment with the consent and approval of The Law Society as a consultant to a firm where he was not a signatory on any account nor responsible for any administrative matters. That firm wished to continue to employ Mr Dines and it was hoped that the Tribunal would allow such employment to continue.

The Submissions of Mr Harris

132. Mr Harris became an assistant solicitor with Loxleys in May 1960 and became a partner in 1965. He undertook liquor licensing work and commercial property work particularly relating to licensed premises.

133. Mr Harris had taken on the specialist liquor licensing work of the firm in the early 1970s and undertook almost exclusively liquor licensing work and its related property work from the early 1990s, the nature of his work meant that a considerable amount of his time was spent out of the office at Courts throughout the country and visiting clients and premises and as such he had very little dealings with the day-to-day management affairs of the firm.

134. It was common practice for monies received to be sent directly to the accounts department.

135. In 1998 a formal management structure was laid down, effectively confirming the functions the individual partners had been undertaking for some time. Mr Harris's role was as partner dealing with complaints.

136. Mr Harris was named in the firm's brochure as the "Senior Partner" and was the first named on the letterhead. That was because he was the eldest of the partners: it did not imply that he was the "Managing Partner", nor had any other responsibilities within the management structure.

137. For some fifteen years, it had become common practice for partners to be given accounts computer printouts of their own matters at meetings. Each individual partner would be given and look through their own lists to see if there were any monies that they could transfer across against their own bills and would complete where they could the necessary transfer authorities.

138. Mr Harris had been aware of the financial situation of the firm and the need to concentrate on improving the firm's cash flow. This led to more regular meetings at which the partners went through their own individual lists to see if any monies could be transferred against their own bills.

139. Mr Harris would only transfer monies in his matters if it was proper to do so. There would have been indication on the list of his client matters produced at these meetings that there had been any unauthorised transfers relating to Mr Harris's clients and his matters. He never saw anything unexpected on his list or things that caused him concern. If anything were to have caused him concern he would have investigated it immediately. If there were unauthorised transfers, they would only have been revealed in looking at the individual ledgers. Mr Harris would only have looked at the individual ledgers if there was a specific query on a particular matter. If he had any queries on looking at a ledger, he would have investigated it immediately.

140. Mr Harris had no reason to suspect that any of his partners whom he had known for up to thirty years were acting otherwise than correctly. No questions had been raised by the firm's accountants and the Section 34 Accountant's Certificate had not revealed any problems.

141. Mr Harris neither expressly nor implicitly agreed to or suggested that there should be breaches of the Accounts Rules to assist the firm's cash flow situation. If he had had any reason to suspect, or if it had come to his attention that there was any possibility there were or could have been any transfers in breach of the Solicitors Accounts Rules Mr Harris would immediately have spoken to those concerned. Mr Harris spoke immediately to Mr Dines when he was alerted by *RESPONDENT 4* to her concerns over the P Ltd matter. Mr Harris would not have tolerated or agreed to any transfers which were in breach of the Solicitors Accounts Rules.

142. Mr Harris's work generated the highest fee income within the firm. He was very aware of the need to improve and maintain cashflow to the firm. It was vital that fee income was generated. Mr Harris concentrated all his efforts on his fee earning work to ensure that the highest levels of fee income from his work continued to come into the firm.

143. Mr Harris had been shocked when in February 2001 he was alerted to the breaches of the Accounts Rules.

144. Mr Harris had been away for the week of 26th March 2001. He was only made aware of the OSS's letter dated 23rd March with the Report of the 15th March 2001 as a result of a telephone call from the office on the afternoon of the 28th March 2001. It was not possible for Mr Harris to return to London until late on 30th March. He requested that a copy be sent to him by special postal delivery and it arrived on the morning of Thursday 29th March. Mr Harris also requested that a copy also be sent to his solicitors, Messrs Sharpe & Co, who had pressed for a copy as a deadline of 4.30 p.m. on the next day had been imposed by the OSS for response. Mr Harris had not seen the letters sent by his partners until his return to London.

145. Mr Harris had accepted a position with Pullig & Co as a consultant with the approval of the OSS and began there on 13th June 2001. A substantial number of clients had followed Mr Harris to Pullig & Co.

146. Mr Harris would only have been alerted to discrepancies in the matters of which he had conduct if he had reason to look on the individual ledgers. He had no reason to look at these ledgers.

147. Mr Harris recalled that some time during the Summer of 2000 he had been approached by *RESPONDENT 4* with her concerns about certain transfers relating to P Ltd. Mr Harris recalled speaking to Mr Dines and had been assured that all was in order and there was not a problem. Mr Harris had no reason to doubt what he had been told. Mr Harris had acted for the AI Bank. He had been advised that the monies had been received by the firm to complete the mortgage. Mr Harris had no further dealings with this matter.

148. In the matter of Q Ltd, Mr Harris's position was the same as that of Mr Weinberg and *RESPONDENT 4*. Mr Harris had first become aware of this matter when Mr Chambers was concerned that he had to agree a reduction in the costs and was worried as to how this repayment should be financed. Mr Harris had no knowledge as to how these costs had been paid in the first place. The refund was made from part of the funds received as a result of the firm's refinancing.

149. Mr Harris had not been a party to the breaches of the accounts rules. He did not sign any of the transfer slips giving rise to the transfers. None of the money came out of any accounts for which he was primarily responsible.

150. As soon as he was alerted to the breaches as a result of the Investigating Auditors attendance Mr Harris appreciated the seriousness of the situation generally and particularly to the clients affected and the firm. He made immediate arrangements with his partners to amend the accounting procedures to ensure that the breaches could not recur.

151. Mr Harris wished to draw to the Tribunal's attention the fact that he was then requested by his former partners to be a signatory on all client account cheques and all transfers to be sure that the Solicitors Accounts Rules were being complied with properly in future.

152. As a matter of utmost priority Mr Harris also made immediate arrangements with his partners to rectify the shortfall in the firm's client account so that no client suffered loss and to deal with the recapitalisation of the firm.

153. Mr Harris had to accept that under the terms of the Solicitors Accounts Rules as a partner in Loxleys he was liable for the breaches of the Accounts Rules.

154. The matters before the Tribunal had come as a total and devastating shock to Mr Harris. He had never had any proceedings issued against him alleging negligence and had not had a complaint made against him to The Law Society in respect of any matter for which he had been primarily responsible in 47 years of working in a solicitors office, 42 of which were as a solicitor.

155. After the irregularities came to light, Mr Harris, with the help of his wife, paid a substantial sum of money into the firm to protect the clients affected and the firm as a result of which all his savings had gone.

156. Mr Harris also had to enter into an Individual Voluntary Arrangement under which he was having to raise £100,000 from his immediate family to satisfy the creditors of the firm.

157. Mr Harris planned to prepare for retirement on reaching 65 in September 2001. His plan had been cancelled as a result of what has happened.

158. Mr Harris was the Chairman of the London Brewery Solicitors Association and a member of and one time committee member of the Unity Club (a club for professionals advising the brewery trade). He was a Freeman of the City of London, a member of the Guild of Freeman and a City Ward Club.

159. In considering the position of Mr Harris, the Tribunal was invited to give due weight to the testimonials written in his support.

The Submissions of Mr Weinberg

160. Mr Weinberg admitted that he signed for two transfers from client account. The total amount involved was £3,525 (£1,762.50 each) on the 9th January 2001.

161. It was intended that each of these sums would be repaid to the account in a short time, as in fact occurred, one on the 29th January and the other in February.

162. With regard to the P Ltd matters, none of the transfers were made by or known to Mr Weinberg. Mr Weinberg had no knowledge of any other wrongful transfers. Although Mr Weinberg's initials had been placed on some of the transfer authorities, they had not been written by Mr Weinberg and he had not personally authorised such transfers: the initials had been written by a cashier.

163. It was strongly denied that the Respondent had been dishonest. A finding of dishonesty should not be made in his case on the material before the Tribunal.

164. With regard to the test to be applied by the Tribunal, in the submission of Mr Weinberg there was a subjective element to be considered as it was said in the Royal Brunei Airlines case:-

> "Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated."
>
> Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party, such as his experience and intelligence, and the reason why he acted as he did."

165. Mr Weinberg believed his position could be distinguished from the decision in Weston -v- The Law Society. In the Weston case there had been only two equity partners and Mr Weston had submitted to the Tribunal that he had taken little or no interest in the accounting procedures or financial management of the firm. He had accepted liability as an equity partner but not as being himself culpable as he was in ignorance of the serious breaches of the Solicitors Accounts Rules and the dishonest misuse of clients' money. Mr Weinberg accepted that the Solicitors Accounts Rules were in place to afford the public maximum protection against the improper and unauthorised use of their money and reminded the Tribunal that the Lord Chief Justice had said that where one solicitor was dishonest and as a result both he and a partner committed breaches of the Solicitors Accounts Rules,it did not mean that the second party who was not guilty of dishonesty would also be struck off the Roll. It was said that that would be to lay down much too inflexible a principle.

166. The Tribunal was invited to give due weight to the surrounding circumstances. Mr Weinberg was a solicitor of exemplary character and professional record and his conduct was to be judged in the context of Mr Weinberg's record and character.

167. The Tribunal would pay close attention to the amounts involved and the number of occasions.

168. There had been no concealment and there was the existence of the audit trail making the movement of the money in question in the face of the accounts' records.

169. There had been no intention of permanently to deprive any client of his money. The repayment, relevant in itself but importantly was evidence of the intention throughout to pay back.

170. The existence of fees due but not billed does not excuse the breach but would point the Tribunal away from a finding of dishonesty.

171. Moneys transferred to the office account had been properly due and payable to the firm.

172. Breaches of the Solicitors Accounts Rules were not of themselves evidence of dishonesty and could and did occur in the absence of dishonesty.

173. Mr Weinberg made a full open response to the Investigation Unit of The Law Society and its enquiries.

174. Until he was informed, Mr Weinberg had been unaware of any deficit on client account.

175. With regard to the undertaking provided to Charles Russell on the 21st December 1999, the Respondent had not provided the undertaking.

176. Subsequent to its being given, Mr Weinberg became aware of it and after that learned that without his knowledge or authority relevant sums had not been retained.

177. Mr Weinberg had been had been informed by his clients that the guarantees in relation to the conservatory had been issued directly to the purchaser. Charles Russell had received from their clients the sum of £54,379.22 and had agreed to hold this sum pursuant to a Supplemental Agreement of 16th December 1999 pending resolution of the building dispute. Charles Russell never obtained any release of those monies from the firm but must be assumed to have released those funds to their clients.

178. There was no loss as a result of the breach of the undertaking.

179. It was respectfully submitted there was in fact an absence of risk since at all material times the party on whose behalf the undertaking had been given was a successful company with a turnover in excess of £7 million.

180. Mr Weinberg was 56. He had been in practice since 1971. He has not been the subject of any disciplinary proceedings before.

181. At the time of the events leading to the allegations, Mr Weinberg had clearly been in bad health.

182. All the monies were fully and promptly repaid into the clients' accounts and there had been no loss to any client. There never was any loss arising from the undertaking and it was submitted there never was any risk of a potential loss in that regard.

183. The Tribunal was invited to have regard to the written references offered in support of Mr Weinberg all of which indicated that his professional standards had hitherto been of the highest.

184. Since 2001 Mr Weinberg had been permitted to practise subject to conditions. He had done so at Murdochs. The conditions on his practising certificate had been scrupulously observed. Murdochs wished to continue to employ Mr Weinberg on the same terms. In all the circumstances it is submitted that the Tribunal should deal with the matter to enable that course to continue.

185. When considering Mr Weinberg's practising certificate for the practice year 2000-2001 an adjudicator at the OSS had concluded that Mr Weinberg should be granted a practising certificate provided that he:-
(a) was not responsible for the firm's accounting functions;
(b) did not have responsibility for receiving or holding clients' monies;
(c) was not an authorised signatory on an office or client account cheque;
(d) was not responsible for the management of an office.

186. Mr Weinberg and Murdochs had adopted that position and would continue to do so. Mr Weinberg worked under close supervision, in fact his desk was in the same room as the partners of the firm.

187. Mr Weinberg was a competent solicitor of integrity who was held in high regard by the clients and fellow professionals.

188. Mr Weinberg was a married man whose wife's health was some cause for concern. He remained partly responsible for two adult children. He enjoyed a modest salary from his employment.

The Submissions of *RESPONDENT 4*

189. *RESPONDENT 4* admitted the allegations on the basis of the strict liability of a partner. She had not been guilty of dishonesty.

190. *RESPONDENT 4* had been an articled clerk for two years to Loxley solicitors at Folgate Street, London E6 1BX on the recommendation of her father who had been a partner in a prominent firm of solicitors in India who worked closely at the time with Loxley's predecessor firm.

191. Having been admitted in 1989 *RESPONDENT 4* remained with Loxley solicitors as an assistant solicitor, first in the conveyancing department and then the litigation department until 1993 when she accepted an invitation to become a salaried partner.

192. *RESPONDENT 4* had been a salaried partner with the firm until November 1999 when she was asked to become an equity partner. The basis of the request was that the firm urgently required additional funding and that if she became an equity partner and put her name additionally on three loan notes, the firm would be able to borrow additionally £130,000 in order to remove themselves from financial difficulties. The remaining equity partners in the firm gave to *RESPONDENT 4* at the time a full indemnity against all the firm's debts. In addition, *RESPONDENT 4*'s equity partner's drawings had at all times equated to what she previously earned as a salaried partner.

193. As an equity partner *RESPONDENT 4* had full power of signature. She trusted her partners completely. *RESPONDENT 4* accepted that on a number of occasions she may have well signed transfer slips and other accounting documentation relating to the subject of the investigation. However she had only ever signed such documentation on trust and did not call for supporting evidence despite being entitled to do so.

194. *RESPONDENT 4* retired as an equity partner on 6th February 2001 after she became aware of the nature of certain of the complaints against the firm. Since 6th February 2001 *RESPONDENT 4* worked with the firm on a consultancy basis in order to assist with certain litigation files which she had been handling previously. She finally left the firm when The Law Society intervened but was in any event due to leave on 5th May 2001.

195. The client file of QI Ltd was controlled by Mr Chambers. *RESPONDENT 4* had been aware that there was a general problem over the bill in relation to the matter (as well as on other matters). However she had absolutely no detailed information. She did not attempt to find out what the problem was with this client: the information was not volunteered to her.

196. In the matter of N deceased *RESPONDENT 4* had no knowledge. She believed that Mr Dines may well have been the controlling partner. However she did not know any information in relation to the client or any matters which Mr Dines was dealing with on behalf of the client.

197. In the matter of P Ltd, *RESPONDENT 4* explained that the firm had a longstanding client Mr JS. Most partners in the firm dealt with his matters at some time or another, although the controlling partner had always been Mr Dines. Mr JS managed various property companies for himself and for others, namely non-residents and also ran the underlying properties.

198. *RESPONDENT 4* had dealt with litigation for Mr JS and in the past had undertaken conveyancing for him. P Ltd was one of the companies managed by him: *RESPONDENT 4* did not know its beneficial ownership.

199. In about August 2000 *RESPONDENT 4* had been acting in a complex compromise agreement in an employment matter for a client called NH. Part of the agreement was that the costs were to be paid initially by the client, although the former employer company would reimburse the client. The client was supposed to pay initially out of the monies she received from the company but she was very ineffective in that regard. *RESPONDENT 4* agreed to wait and was therefore extremely surprised when she was informed by one of the people in the accounts department that the NH bill had been paid.

200. *RESPONDENT 4* looked at the information on her computer to find that this was so and she had been surprised to see that it had been paid by P Ltd. *RESPONDENT 4* then checked the P Ltd account on the computer and was extremely surprised to see the various payments out. In fact she was shocked.

201. The only partners available were Mr Harris and Mr Chambers and *RESPONDENT 4* expressed her concern to them in some detail. She then spoke to Mr Dines and all of them reassured her that everything was in order and Mr JS had given his consent to the payments. Knowing the character of Mr JS *RESPONDENT 4* was surprised but she accepted these assurances. *RESPONDENT 4* also asked Mr Dines for confirmation that JS had given his consent on a number of occasions and he confirmed the fact categorically.

202. *RESPONDENT 4* still had lingering doubts, especially knowing the character of Mr JS. Her partners, with whom she had worked for some 13 years in varying capacities, were assuring her categorically and completely that everything had been in order and consent had been given.

203. Messrs Harris, Chambers and Dines had been *RESPONDENT 4*'s principals in her training contract years and had been her employers for many years as an assistant solicitor and then a salaried partner. Only recently had they become her partners when she joined the equity, albeit in a restricted form and she still had great respect for their seniority and professional standards. She could not believe that they were dishonest.

204. *RESPONDENT 4* dealt in detail with the transfers to client ledgers relating to matters in her care. The first matter had been a right of way dispute. *RESPONDENT 4* expected her bill to be paid fairly promptly. She only discovered that there was a problem when she put in a second bill which was paid and there was an overpayment. *RESPONDENT 4* gave immediate instructions for the overpayment to be put into client account and the surplus transferred to P Ltd which by then she knew to be the source of payment. By this time *RESPONDENT 4* was totally disenchanted by the way in which the firm was being run and she was having arguments about it with Mr Dines. *RESPONDENT 4* was already considering leaving the firm as she had lost confidence. When she first discovered the P Ltd problem she very nearly walked out of the firm there and then but misguided loyalty prevented her at that time.

205. *RESPONDENT 4* was unable to assist in three matters, but with regard to the fourth matter, *RESPONDENT 4* said that it was an employment matter with which she dealt. It ended in a compromise agreement where the fees were to be paid by the employer and not by the client. There were two transfer slips relating to this, one of which was signed by *RESPONDENT 4*. This was the slip that she completed when she received payment from the employer. Following her usual practice she circled the words "Office Account" at the top left signifying to which account the money was to be paid. Without her knowledge it seemed that the bill had already been paid out of the P Ltd account and hence designation to office account had been crossed out and the money actually put into client account. *RESPONDENT 4* did not know who did this. There was a possibility that *RESPONDENT 4* received a call on the telephone from the accounts department about this. If that was the case, by this time *RESPONDENT 4* would have realised that it was another situation where P Ltd had paid the bill and she would have given immediate instructions for the money to be paid into client account and paid back to P Ltd. The second slip was the transfer from client account back to P Ltd. *RESPONDENT 4*'s reference had been put on the slip but it did not bear her signature.

206. *RESPONDENT 4* accepted that as an equity partner she bore responsibility for what had taken place and the various acts and omissions which form the subject of these complaints. Having said that, she made the point that she became an equity partner only in November 1999 and then on the entreaty of her partners on the basis that additional funds could then be raised for the practice.

207. With the benefit of hindsight, *RESPONDENT 4*'s loyalty to her partners was misguided. As soon as she realised that there were problems in the accounts, she should have left. She failed to do so because of the fact that this was the firm where she had spent her whole legal career and where in general she had been very happy. She felt she could not walk out leaving jobs unfinished and she had a loyalty, not only to her partners, but also to her clients and staff.

208. The breaches of the Solicitors Accounts Rules had to be concealed from *RESPONDENT 4* because she would at no time have condoned any of them.

209. In all the circumstances the Tribunal was asked to exercise its leniency. *RESPONDENT 4* had been employed as a consultant in another law firm where she continued to service many of the clients for whom she acted while at Loxleys. The partners in the new firm were fully aware of the facts and of the disciplinary proceedings. They supported *RESPONDENT 4* completely and would wish to retain her services and would wish *RESPONDENT 4* to join them as a partner.

210. *RESPONDENT 4* was deeply sorry for what had happened: she had learned a valuable lesson for the future. *RESPONDENT 4* had put up substantial funds and made a composition with the creditors of the partnership whereby she was released from further liability but, by doing so, she had incurred substantial debts.

The Submissions of *RESPONDENT 5* and *RESPONDENT 6*

211. *RESPONDENT 5* and *RESPONDENT 6* accepted their liability for compliance with the Solicitors Accounts Rules in their capacity as salaried partners. There had been no allegation made against them that they had been guilty of conduct unbefitting a solicitor nor had there been any allegation of dishonesty made against them.

212. The other Respondents had sought to exonerate the two salaried partners. In reality *RESPONDENT 5* and *RESPONDENT 6* had been victims of the whole affair. It had been unfair for the equity partners to take in salaried partners at a time when the firm was in serious financial difficulties. *RESPONDENT 5* and *RESPONDENT 6* accepted that they must have a disciplinary sanction imposed upon them but it would be fair that such sanction be at the lower end of the scale.

213. The Tribunal was invited to give due weight to the written references submitted in support of these two Respondents.

The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated. In the case of Mr Chambers, Mr Dines, Mr Harris and Mr Weinberg the Tribunal found that each of them had acted dishonestly.

The Tribunal first dealt with the position of the two salaried partners, *RESPONDENT 5* and *RESPONDENT 6*. The Solicitors Accounts Rules provide that salaried partners are strictly liable for breaches of the Solicitors Accounts Rules. There is "cabinet" responsibility on the part of a partnership for compliance with the Solicitors Accounts Rules. Salaried partners are held out to the public as partners and their limited rights and liabilities are circumscribed within the confines of the partnership. It has on many occasions been remarked that salaried partners have all of the responsibilities and none of the benefits of partnership. Solicitors, albeit solicitors who do not enjoy a wealth of experience, are qualified professional lawyers and clearly ought to be aware of the effect of accepting the offer by a firm of a salaried partnership.

The form and nature of salaried partnerships vary enormously from case to case. It is possible that salaried partners have that title but have no rights to attend partnership meetings and have no access to the firm's books of account and are not privy to any of the financial arrangements or problems that the firm might have. Very little has been said in this matter about the rights and responsibilities of *RESPONDENT 5* and *RESPONDENT 6*. In view of this, it has not been an easy task for the Tribunal to reach a conclusion as to their culpability. They have very properly admitted liability. It is clear that the equity partners have been at pains to ensure that *RESPONDENT 5* and *RESPONDENT 6* are exonerated from any allegation of wrongdoing.

The Tribunal has taken into account the admission and acceptance of strict liability. There has been no allegation of conduct unbefitting a solicitor made against either of them. The Tribunal has given due weight to the written testimonials submitted in their support. The Tribunal has also recognised the damage to the careers of these two Respondents. In all of the circumstances the Tribunal considered it right to impose a fine of £1,000 on each of *RESPONDENT 5* and *RESPONDENT 6*. No order was made in either case that they should bear any part of the costs of the application.

The Tribunal turned next to the position of *RESPONDENT 4*. *RESPONDENT 4* had been invited to become an equity partner apparently with the sole purpose of increasing the firm's ability to borrow. In reality *RESPONDENT 4*' s status within the firm did not change to any great degree. *RESPONDENT 4*'s judgement, perhaps, had been clouded by the fact that she had been trained and practised with the firm after admission to the Roll over a period encompassing a number of years. Not unnaturally she held the senior partners in the firm, who had been her principals and whose competence and ability had not been brought into question, in high regard. She was, of course, a solicitor and ought to have known that becoming an equity partner exposed her to risks as well as potential benefits. It could not be described as a wise or prudent move for a solicitor to join a partnership at a time when it is in severe financial straits.

The four senior equity partners have sought to exonerate *RESPONDENT 4*. *RESPONDENT 4* herself accepts that she was aware of two client bills issued by her which had been paid from the resources of another unrelated client. She had made her anxieties known in strong terms upon making those discoveries. She indicated that she had considered leaving the firm but had not done so.

The Tribunal takes the view that real culpability does not lie with *RESPONDENT 4*. She neither perpetrated nor condoned the activities of her senior partners. She did not, however, take the proper robust, albeit difficult, steps when she discovered what

had been going on. The Tribunal have taken into account *RESPONDENT 4*'s good record and the support she has from referees as well as the damage suffered to her finances, her livelihood and her career. In all of the circumstances the Tribunal consider it right that *RESPONDENT 4* should pay a fine of £3,000 in connection with allegation (a) and a fine of £5,000 in connection with allegation (b) making a total fine of £8,000. The Tribunal recognises that the applicant's costs in this matter will be high and it further ordered that *RESPONDENT 4* should pay a proportion of those costs which reflected her degree of culpability. The Tribunal considered it right and further ordered that *RESPONDENT 4* should pay a fixed contribution towards the overall costs (including the costs of the Forensic Investigator of The Law Society (such contribution to be inclusive of value added tax)) of £2,000.

It was clear that the main perpetrators of the "scheme" were Mr Chambers and Mr Dines both of whom orchestrated the scheme and were fully aware of what was going on. It is essential that solicitors in private practice comply punctiliously with the Solicitors Accounts Rules. The philosophy underlying the technical Rules is the complete separation of clients' money from that belonging to a solicitor and the requirement that clients' money should be properly and fairly handled by solicitors. A solicitor is required to maintain a proper stewardship of clients' monies.

In this case, at a time when the firm was under extreme financial pressure, these two Respondents considered it to be a satisfactory course of action to take money belonging to one client to pay a bill delivered to another unrelated client with the ultimate intention of improving the firm's cashflow.

It is right that the transactions were all openly recorded in the books of account. The money was properly due to the firm and the Tribunal accepted that there had been no intention permanently to deprive the paying client of his money.

It is the Tribunal's view that transferring money from client A to the account of client B to pay client B's bill was no better than a straightforward taking of money from client account to keep the firm going. This would be amply illustrated in a case where the proper payer of the bill simply did not pay at all.

The Tribunal rejects Mr Dines's argument that the scheme was not offensive all the time the monies utilised did not exceed the value his personal assets. It was open to Mr Dines to use his personal assets to keep the firm afloat: it was not open to him to use clients' money for that purpose.

The Tribunal find that there was on the part of Mr Chambers and Mr Dines a deliberate blatant and dishonest use of clients' money. Such behaviour would not be tolerated. Additionally the Tribunal also found Mr Chambers to have been in breach of a professional undertaking. Both Mr Chambers and Mr Dines were ordered to be struck off the Roll of Solicitors.

The Tribunal next consider the position of the two remaining equity partners, Mr Harris and Mr Weinberg with great care. Both admitted liability for breaches of the Solicitors Accounts Rules and conduct unbefitting a solicitor. They argued that they had not been guilty of dishonesty.

Mr Harris said he was not a party to the improper transfers and none of the money came from the accounts of his own clients. He took steps to put everything right when he became aware of the true position. Hitherto Mr Harris had no reason to be suspicious: no question had been raised by the firm's accountants and annual accountants' reports had been prepared and filed with The Law Society. Mr Harris accepted that he had been aware of the firm's cashflow problems and addressed them by concentrating on increasing the generation of fee income.

Mr Weinberg's position was broadly the same. He had been unaware of the improper transfers and he strongly denied that he had been dishonest. It was argued that dishonesty had a strong subjective element. Mr Weinberg's submission was that his position had to be viewed in the light of what he knew at the time – not what a reasonable person should have known or appreciated. The Tribunal had also to consider Mr Weinberg's personal attributes and his good character.

It was further argued that Mr Weinberg's position was to be distinguished from that of Mr Weston in the case of Weston -v- The Law Society for a number of reasons, in particular Mr Weston had been a partner in a firm where there had been only two equity partners and he himself had signed a cheque for a substantial amount to settle the firm's value added tax liability at a time when he knew the firm was suffering serious cashflow difficulties. There was no such direct knowledge or involvement on the part of Mr Weinberg.

Having carefully considered the position of Mr Harris and Mr Weinberg the Tribunal concluded that clearly both were fully and completely aware of the firm's parlous financial position. Both should have been pro-active (if not at least should have maintained a fully active interest) in the firm's cashflow and its financial position generally. Neither could absolve himself from that clear responsibility. Each of them had conduct of cases where bills had been paid according to the firm's books but the client concerned had not made payment.

In considering the question of dishonesty on the part of Mr Harris and Mr Weinberg the Tribunal has applied the test set out in Royal Brunei Airlines -v- Tan. The Tribunal finds that both Mr Harris and Mr Weinberg deliberately closed their eyes and ears or deliberately did not ask questions lest they discovered something that they would rather not know. The Tribunal finds that both Mr Harris and Mr Weinberg were dishonest.

Mr Weinberg was also found to have been in breach of a professional undertaking which was a serious breach of professional conduct.

The Tribunal considered that such behaviour served to render these Respondents a danger to the public and to bring the solicitors' profession into serious disrepute and ordered that each of the Respondents, Mr Harris and Mr Weinberg, should be struck off the Roll of Solicitors.

The allegations relating to the breaches of undertakings were substantiated against Mr Chambers and Mr Weinberg. The breach of a professional undertaking by a solicitor is a matter of the utmost seriousness. This Tribunal has pointed out many times in the past that solicitors' undertakings are the bedrock of many financial and conveyancing transactions. The fact that reliance could be placed upon them benefited both clients

and the public at large. They served to expedite transactions and effect considerable savings of cost. If any doubt were to be cast upon the reliability of a solicitor's undertaking or its giver then these benefits would be brought to an end and the good reputation of the solicitors' profession would suffer an irreparable blow.

The Tribunal considered it right that the four senior equity partners should bear the lion's share of the costs. The Tribunal ordered that each of them Mr Chambers, Mr Dines, Mr Harris and Mr Weinberg should pay one quarter of the costs (subject to the contribution by *RESPONDENT 4*) (such costs to include the costs of the Forensic Investigator of The Law Society) such costs to be subject to a detailed assessment if not agreed between the parties. For the avoidance of doubt the Tribunal here confirm that the four Respondents are to be jointly and severally liable for the payment of these costs.

At the conclusion of the hearing the Tribunal considered an application on behalf of Mr Harris that the filing of the Tribunal's order made in respect of him should be stayed. The Tribunal took the view that it had made a finding of dishonesty against Mr Harris and in view of the fact that it was the Tribunal's first duty to protect the public the Tribunal refused to grant the application and ruled that its order should be filed with The Law Society forthwith.

DATED this 29th day of March 2002

on behalf of the Tribunal

A H B Holmes
Chairman