

IN THE MATTER OF ALEXANDER DAVID HAMILTON, Solicitor
and *RESPONDENT 2*, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R.B. Bamford (in the chair)
Miss T. Cullen
Lady L Bonham Carter

Date of Hearing: 24th September 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 George Marriott, solicitor and partner in the firm of Messrs Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 29th January 2002 that Alexander David Hamilton, Solicitor of Altrincham, WA15 (whose address was subsequently notified to be Hyde, Cheshire, SK14 and *RESPONDENT 2* – *NAME REDACTED*, Solicitor of Prescott, Merseyside, L34 might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to withdraw some of the allegations made against the Respondents. The Tribunal consented and a note of those allegations withdrawn is made below.

The allegations against the First Respondent, Mr Hamilton, were that he had been guilty of conduct unbecoming a solicitor in that he:-

- (i) failed to operate a complaints handling procedure contrary to Rule 15 Solicitors Practice Rules 1990;
- (ii) failed to ensure that Hamilton Ward (the firm) of which he was a partner was properly supervised in accordance with the minimum standards required contrary to Rule 13 of the Solicitors Practice Rules 1990;
- (iii) failed to deal promptly or substantively with correspondence from the OSS;
- (iv) failed to deal promptly with communications from clients or former clients;
- (v) failed to honour undertakings given by the firm on 16th April 1999 and 6th October 2000;
- (vi) attempted to preclude his client from continuing to report his conduct to the OSS by bringing improper pressure to bear on him;
- (vii) drew monies out of client account contrary to Rule 8 of the Solicitors Accounts Rules 1991 otherwise than as permitted by Rule 7 of the Rules;
- (viii) [withdrawn];
- (ix) took unfair advantage of a client by overcharging for work done;
- (x) [withdrawn];
- (xi) following the termination of a retainer failed to deliver to the client's order all papers and property;
- (xii) rendered to a legally aided client an invoice for work done contrary to Regulation 64 of the Civil Legal Aid (General) Regulations 1989;
- (xiii) provided a statement to a client that breached Rule 10 of the Solicitors Practice Rules 1990;
- (xiv) sent misleading client care letters;
- (xv) by reason of the above compromised and impaired his independence and integrity; a person's freedom to instruct a solicitor of his or her own choice; his duty to act in the best interest of his clients; his and the profession's good repute; his and the firm's proper standard of work; contrary to Rule 1 of the Solicitors Practice Rules 1990.

On the 17th May 2002 the Applicant made a supplementary statement containing further allegations against Mr Hamilton. Those allegations were that he had been guilty of conduct unbecoming a solicitor in that he:-

- (xvi) acted for seller and buyer without the written consent of both parties and where there was a conflict of interest between the seller and the buyer and contrary to Rule 6 of the Solicitors Practice Rules 1990;

- (xvii) acted for both the lender and borrower on the grant of a private mortgage and where a conflict of interest existed between the lender and the borrower and contrary to Rule 6 of the Solicitors Practice Rules 1990;
- (xviii) preferred the interests of his clients Mr C and/or Broadhill Properties Ltd to those of his client Mr S;
- (xix) took advantage of Mr S on behalf of himself and Broadhill Properties Ltd;
- (xx) withheld price information from an institutional lender;
- (xxi) ignored the Green Card on mortgage fraud (7th edition).

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

- (i) failed to operate a complaints handling procedure contrary to Rule 15 Solicitors Practice Rules 1990;
- (ii) failed to ensure that Hamilton Ward (the firm) of which he was a partner was properly supervised in accordance with the minimum standards required contrary to Rule 13 of the Solicitors Practice Rules 1990;
- (iii) [withdrawn];
- (iv) [withdrawn];
- (v) failed to honour undertakings given by the firm on 16th April 1999 and 6th October 2000;
- (vi) [withdrawn];
- (vii) drew monies out of client account contrary to Rule 8 of the Solicitors Accounts Rules 1991 otherwise than as permitted by Rule 7 of the Rules;
- (viii) [withdrawn];
- (ix) taken unfair advantage of a client by overcharging for work done;
- (x) [withdrawn];
- (xi) [withdrawn];
- (xii) [withdrawn];
- (xiii) provided a statement to a client that breached Rule 10 of the Solicitors Practice Rules 1990;
- (xiv) sent misleading client care letters;

(xv) [withdrawn].

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 24th September 2002 when George Marriott, solicitor and partner in the firm of Messrs Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the Applicant, the First Respondent, Mr Hamilton, did not appear and was not represented and the Second Respondent was represented by David Morgan, solicitor of 9 Gray's Inn Square, London, WC1R 5JF.

Mr Hamilton had addressed a letter to the Applicant dated the 10th July 2002 in which he said:-

“This letter is to put you on notice:-

1. I am not participating nor appearing in these matters. I shall be providing an explanation – as a courtesy to the Tribunal – in writing by the 24th September 2002.
2. Any future communication by you to any address other than the above shall be treated as not received.
3. Do not acknowledge receipt of this communication.”

Mr Hamilton had also addressed a letter to the Clerk to the Tribunal dated the 23rd September 2002. The Tribunal has recorded the relevant parts of that letter under the heading “The submissions of Mr Hamilton”.

In his letter of the 23rd September 2002, Mr Hamilton raised the issue of the representation of the Law Society by Mr Marriott. Mr Hamilton said:

“Even if I had been able to commit the time to defend the allegations I would have found the appointment of Mr Marriott as solicitor for the Law Society would have made a defence wholly impossible.

The practice of Mr Marriott employed the main residential conveyancer for a period of 5 years and according to her trained and “supervised her”.

Mr Marriott would of course have been called by me as an essential vital witness in my defence. His role as solicitor for the Law Society is inexcusable and serious misconduct.

For the Law Society to select a solicitor from a small town to represent them against a solicitor from the same small town which had both practised over 25 years together in the same town is appalling conduct both malicious and/or recklessly negligent. The practice of Hamilton Ward had been housed in Great ... Stockport since 1978, practically next door to Gorvin Smith Fort solicitors.”

Mr Marriott, as a preliminary matter, addressed the Tribunal on this matter about which Mr Hamilton had raised complaint. Mr Marriott said that his practice was in Stockport and Mr Hamilton's main office had been in Hyde, some six miles away. They were very independent

towns. Mr Marriott said he had never met Mr Hamilton and had met *RESPONDENT 2* only on the day of the hearing.

The Law Society had instructed Mr Marriott in the matter as there had been a large number of witnesses in the locality. The purpose was to save both time and cost.

Mr Marriott had considered that there might be some crossing between his firm and that of the Respondents' firm. Mr Marriott had written about this to both of the Respondents. He made reference to the fact that in the matter of T, Mr Marriott's firm had had a small involvement, although Mr Marriott himself had had no personal involvement. Mr Marriott considered it right to draw such matter to the attention of the Respondents at an early stage. *RESPONDENT 2* telephoned Mr Marriott to say that he had no problem. Mr Hamilton did not reply.

Mr Hamilton had been fairly consistent in his non-response. The proceedings were returned by Mr Hamilton. Mr Marriott had to arrange for personal service upon Mr Hamilton by way of a process server. The only response from Mr Hamilton had been the letter of the 10th July 2002 (referred to above).

On behalf of *RESPONDENT 2*, Mr Morgan said that he had some sympathy for the embarrassing position in which Mr Marriott had found himself. He agreed that Mr Hamilton's letter of the 23rd September, dated the day before the hearing, was the first time that he had raised any objection. Both *RESPONDENT 2* and Mr Morgan wished completely to disassociate themselves from what they considered to be Mr Hamilton's scandalous approach. They regarded Mr Hamilton's allegations as totally without foundation.

The Tribunal considered that in its view both the Law Society and Mr Marriott had behaved with the utmost propriety. The Tribunal were content that the substantive hearing could continue.

The evidence before the Tribunal included the admissions of *RESPONDENT 2* as to the allegations made against him numbered (i), (ii), (v), (vii) (ix) and (xiv). *RESPONDENT 2* and Miss Collette Smith gave oral evidence.

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

- (1) that the First Respondent Alexander David Hamilton, solicitor of Altrincham, WA15 (whose address was subsequently notified to be Hyde, Cheshire, SK14) be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £12,114 (the order was sent to the new address notified by Mr Hamilton referred to above); and
- (2) that the Second Respondent, solicitor of, Prescott, Merseyside, L34 do pay a fine of £5,000, such penalty to be forfeit to Her Majesty the Queen and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £1,500.

The facts are set out in paragraphs 1 to 93 hereunder.

1. The First Respondent, Mr Hamilton, was born in 1948 and was admitted as a solicitor in 1979. Until 30th October 2002 he was a partner in and practised under the style of Hamilton Ward & Co (the firm) from six addresses in Oldham, Prescott, Altrincham, Hyde, Stockport and Moston.
2. The Second Respondent, *RESPONDENT 2*, was born in 1955 and was admitted as a solicitor in 1979. He was a partner in the firm with Mr Hamilton.
3. The firm ceased to operate with effect from 31st October 2000. *RESPONDENT 2* left the firm on 31st August 2000.
4. By letter to Mr Hamilton dated 6th May 1999, the OSS expressed concern that there were then eighteen complaints outstanding against the firm. The OSS sought Mr Hamilton's assurances that he would resolve them all within three months without further involvement from the OSS and that he would take effective action to reduce the number of complaints received by the OSS in the future.
5. Mr Hamilton replied by letter dated 14th May 1999 saying that the firm expected to deal with all of the complaints within the three month period; the accumulation of complaints was of an administrative rather than a service nature and he had discussed the matter with *RESPONDENT 2*.
6. The OSS wrote again on 10th August 1999 notifying that only six of the eighteen matters had been closed. The OSS asked what changes the firm had made to prevent problems in the future and requested a copy of the firm's complaints procedure. The OSS received no reply and further reminders were sent on 26th August and 6th September 1999. It was pointed out that ten of the original matters were extant and eight more complaints had arisen.
7. By letter dated 10th September 1999 Mr Hamilton apologised for failing to deal with the complaints and asserted that by the 24th September 1999 he would present the OSS with a "portfolio" showing how the complaints had been dealt with. Nothing further was heard by the OSS and it took over the handling of the complaints.
8. By letter dated 1st February 2001 the OSS wrote to both Respondents detailing thirteen outstanding complaints against the firm. Six related to conveyancing matters, four related to matrimonial litigation and three related to personal injury litigation.
9. *RESPONDENT 2* replied by letter dated 8th February 2001. He admitted that he was a partner in the firm from January 1987 to August 2002 and he was the partner in charge of the Altrincham, Prescott and Moston offices, but that he had no direct responsibility for any of the other offices. All of the complaints arose from matters dealt with at other offices of the firm. *RESPONDENT 2* was not responsible for supervising work of Mr L (a solicitor with 3 years post qualification experience or Ms D (a trainee until December 1999) who were to report ultimately to Mr Hamilton. Mr Hamilton was the compliance officer and managing partner.
10. By letter dated 9th February 2001 the OSS wrote to Mr Hamilton and the *RESPONDENT 2* together with Mr G, who was at the material time a partner, to

enquire as to the measures put in force by the firm to deal with complaints since May 1999.

11. The *RESPONDENT 2* replied saying that he first became aware of the problems in June 2000 when Mr Hamilton told him about them. None of the problems arose from work undertaken at the offices for which the *RESPONDENT 2* was responsible. He repeated that Mr Hamilton was both the managing partner and the compliance officer. If complaints had been made to any office for which he was responsible they would have been dealt with in accordance with the firm's complaints procedure.
12. Mr G replied by letter dated 20th February 2001 explaining that he was only a salaried partner from 1997 and had no responsibility for supervision save for supervision of the Oldham office. He said the fee earners of the firm were expected to deal with vast caseloads. Until he received the 9th February letter, he had been unaware of the complaints.
13. Mr Hamilton wrote to the OSS a letter dated 5th March 2001 which explained that:-
 - (a) the firm had lost staff across the board in 1999 which resulted in more complaints because of increased pressure on existing staff;
 - (b) upon his retirement on 31st October 2000 the firm closed;
 - (c) it was his responsibility to manage, investigate and deal with complaints;
 - (d) the complaints were reduced by a reduction in the volume of new work and the removal of inadequate employees;
 - (e) there was no pattern of failure to respond promptly or substantively to correspondence from the OSS.
14. Of the original eighteen complaints brought to Mr Hamilton's attention by the OSS letter in May 1999, four were still outstanding at the beginning of 2000 and of the thirteen complaints drawn to the attention of the Tribunal, six were received in 1999 and seven in the year 2000.
15. In a forty six page letter with fifty six pages of exhibits dated 12th July 2001 Mr Hamilton accepted some allegations that the firm had been negligent. He blamed others and denied that there was anything more amiss.

16. *RESPONDENT 2* had also responded in various letters which repeated in more detail what his precise position in the firm had been. The Tribunal had before it summaries of the cases in which complaint had arisen. It notes below the salient features.

Case A. Offices: Hyde and Stockport. Complaint to OSS 28th July 1998

17. A client instructed the Respondents' firm to represent her in divorce proceedings in 1989. In 1992 a Court Order was made concerning ancillary relief. Under the terms of the Order the client's home was to be transferred into her sole name and a second mortgage used to secure £100,000 business debts of the client's former husband. In 1997 the client received correspondence from the second mortgagee indicating that

the second mortgage was still in place and the amount owed was in excess of £100,000. Surprised and worried by this, she contacted the firm who offered no assistance. The client then instructed new solicitors who sought the file from the firm. When the file was released, it was incomplete and the conveyancing file was not released. After further enquiries, Mr Hamilton wrote on 20th January 1998 acknowledging that the conveyancing file had been located and asserting that the only error made by the firm was the failure to submit the cancellation form to HM Land Charges Registry. When these were produced to the second mortgagee, the second mortgagee agreed to cancel the second mortgage.

18. The client's new solicitors by letter dated 17th April 2000 asserted that the Respondent's firm had offered no assistance to put the problem right; the delay in obtaining the file amounted to some nine weeks; there was no undertaking in the file with regard to discharging the second mortgage and that the Respondents' firm should pay for one half of the client's costs (the other half being paid by the second mortgagee).
19. The complaint was raised with the firm by letter to Mr Hamilton dated 19th June 2000. After a reminder he replied by letter dated 31st July 2000 in which he said former colleagues within the firm were negligent; he had made some attempt to deal with the matter; there was no service problem; there was some negligence and that the firm would be prepared to make a contribution to the client's costs.
20. The client's conveyancing file was still not released to her new solicitors and Mr Hamilton acknowledged that the conveyancing file was mislaid, recovered and subsequently mislaid, that the cancellation forms were left on the file and that he was prepared to pay £200 plus VAT by way of compensation.
21. Mr Hamilton by letter dated 21st December 2000 confirmed that he was the partner responsible for the supervision of unadmitted staff at the Stockport office.
22. *RESPONDENT 2* asserted through statements from previous employees of the firm and a letter of 3rd September 2001 that whilst he was an equity partner in the firm, he had no management responsibilities within the firm.

Case B – Office Hyde. Complaint to OSS 7th May 1999

23. A solicitor complained to the OSS about a number of matters including unreasonable delay in dispatching a contract signed by the Respondents' firm's client following exchange of contracts by telephone. The OSS sought an explanation from Mr Hamilton for the breach of undertaking given on exchange of contracts by the Law Society's Formula B. The contract was not released until the date of completion, 30th April 1999, even though contracts had been exchanged on 16th April 1999.
24. Mr Hamilton by letter dated 26th May 2000 admitted the breach of undertaking. He put it down to an oversight by a former colleague.
25. In a further explanation by letter of 14th July 2000, Mr Hamilton confirmed that the person responsible for the oversight was a conveyancer who had left the firm after a trial period, that the conveyancer's work was supervised by a Fellow of the Institute of Legal Executives and the conveyancing manager of the Hyde office of the firm.

Case C – Office: Hyde. Complaint to OSS 8th August 2002

26. His Trustee in Bankruptcy was advised by the firm's client at the end of 1998 that the firm was instructed to sell the home he owned jointly with his ex wife. Contracts were exchanged at the end of 1998. The Trustee received a completion statement on 21st December 1998. The completion statement showed that £9,961.67 was due to the estate.
27. In June 1999 Mr Hamilton sent only £8,834.27 to the Trustee explaining that two deductions had been made from the settlement in respect of a bill for post-completion services and a retention pending the resolution of a dispute.
28. By letter of 24th June 1999 the Trustee asked why no interest had been paid; why post-completion work had been billed even though the firm had not been instructed and why there was a retention when the bankrupt's ex-wife had been the sole occupant of the property.
29. The Trustee sent reminders in August and September and eventually received by letter dated 8th November 1999 a cheque totalling £836.25. No explanation was given. The Trustee wrote further letters dated November 1999, and April and May 2000 to the firm seeking a detailed explanation. When no explanation was given the Trustee complained to the OSS. The OSS sought Mr Hamilton's explanation. After a reminder, Mr Hamilton wrote to the OSS a letter dated 16th November 2000 which explained the failure to reply on the archiving of the file and the loss of the firm's archivist.
30. Mr Hamilton wrote directly to the Trustee implying that if he wished to receive any further instructions from Mr Hamilton, he should withdraw his complaint. In December 2000 Mr Hamilton explained that the sum of money dispatched in November 1999 represented interest and a refund of the post-completion charges. The bill had been incorrectly raised by a secretary.
31. The amount of the post-completion bill had been transferred from client account to office account on 17th June 1999. The office account was debited by the same sum on 16th November 1999. Interest had been credited on 5th November 1999 and the sum of interest plus the retention was dispatched to the Trustee on 9th November 1999.
32. The OSS requested further explanation of Mr Hamilton's conduct by several letters. In letters to the OSS, Mr Hamilton confirmed that the firm did not deal with the Trustee's request for five months and the Trustee was not notified of the dispute relating to the retention. Mr Hamilton could not produce any authority in respect of issuing a bill of costs for the post-retention dispute. The file had been managed by his secretary although the letters were written in his name. He said the monies were withheld on the instructions of the Trustee. There was a failure to account to the Trustee for £374.91 which remained in client account until October 1999. He offered no explanation for the delay in paying interest to the Trustee. He said that the authority given by the Trustee at the start of the conveyancing transaction covered post-completion work and a letter from the Trustee dated 24th June 1999 amounted to authority to deduct his firm's fees and the retention. The failure to pay interest was an error by Mr Hamilton's secretary. He corrected the error when he became aware of it.

33. Mr Hamilton also confirmed that as supervising partner, he saw all incoming and outgoing post. The file had been mislaid. He said that he had corresponded personally with the Trustee. He considered that it was inappropriate to make an offer of compensation to the Trustee.

Case D – Office: Hyde. Complaint to OSS 15th November 2000

34. On the completion of a property sale on 9th October 2000 the firm undertook to “answer all requisitions sent by the Land Registry without delay and upon receipt of the duplicate Land Certificate shall forward the same without delay.....”. By the middle of November 2000 the purchaser’s solicitors complained to the OSS that the undertaking had not been complied with. The OSS raised the matter with Mr Hamilton by letter dated 29th November 2000 . In his response dated 6th December 2000, Mr Hamilton said that a conveyancing executive was responsible for the matter and she had released the proceeds of sale to the clients of the firm without first ensuring she had a signed transfer in her possession. Mr Hamilton had obtained a duplicate Transfer from his clients and forwarded this to the purchaser’s solicitors. The building society mortgage had been redeemed. The Land Registry had been notified. The land certificate was missing but he was attempting to obtain a duplicate. Mr Hamilton said he had kept the purchaser’s solicitors fully apprised of progress.
35. The conveyancing executive’s work was supervised by Mr Hamilton. On 9th January 2001 the OSS asked what procedures were in place for the supervision of unqualified members of staff and in particular what steps were taken to ensure that completions undertaken by unqualified members of staff were carried out in accordance with the Law Society’s Code.
36. Mr Hamilton replied by letter dated 17th January 2001. He ignored the request from the OSS and asked how supervision of the executive’s work could have prevented the matters complained of in view of the executive’s ineptitude. Because of the breaches of undertaking, the purchaser’s solicitors advised the OSS that their clients had incurred an interest penalty of £55.

Case E – Office: Hyde. Complaint to OSS 29th July 1999

37. M wished to sell his property to F. F had instructed mortgage brokers and the brokers referred both F and M to the firm. M expressed his concerns to the OSS that the same firm acted for both seller and buyer; his choice of a solicitor was restricted; he had received no information concerning costs; and he had been told by the mortgage brokers that he would not be responsible for costs. When he attempted to transfer his instructions to a new firm of solicitors the firm produced a bill for £387.50 and refused to release the file until it was paid. Eventually he negotiated a reduced fee of £250 plus VAT. The firm had failed to respond to correspondence from his new solicitors between December 1998 and February 1999. Subsequently M wrote to the OSS to complain about the extent of the charges and in particular that there was an exaggeration over the number of letters and fabrication of the hours of attendance.
38. In August 1999 the OSS forwarded correspondence from M to the firm and asked them to deal with the matter pursuant to Rule 15. The OSS received no response and a reminder was sent in September 1999. Mr Hamilton replied on the 20th January

2000. The firm did not release the file as it was exercising a lien on the file against unpaid costs.

39. In March 2002 M told the OSS that F would have had no difficulty obtaining a mortgage and the mortgage broker had insisted that M (as the seller) should pay a 10% deposit in order that F could complete the purchase more quickly. Accordingly a more detailed explanation was requested from Mr Hamilton by the OSS by letter dated 31st March 2000 in particular why the firm acted for both seller and purchaser on an arm's length transaction at one branch of the firm. Did the firm have an arrangement with a mortgage broker restricting the person's choice of solicitor? Did the firm provide any costs information to M? Was M put under pressure to reduce the sale price by the amount of the deposit (10%)? Was M overcharged? Was M informed of the progress of the sale to F? Was there any unreasonable delay in concluding the matter? The OSS asked why M's title deeds were not acknowledged, why there was a delay in sending them to new solicitors and why the firm failed to reply to correspondence from the new solicitors representing M. Did the firm provide adequate supervision of unadmitted staff?
40. By reply dated 2nd June 2000 Mr Hamilton did not properly address all of the questions but explained that the firm had charged the client for reviewing the file which ought not to have happened and that M should be refunded the fees.
41. In response to a letter from the OSS of 19th June 2000 Mr Hamilton stated that a mortgage broker had recommended M to the firm and that the arrangements for supervision were in accordance with Law Society guidance. He also acknowledged that F instructed the firm. Because the questions raised by the OSS were not answered, Mr Hamilton was asked to release his file to the OSS, which he agreed to do.
42. After inspecting the file, by letter of 17th August 2002 the OSS again asked Mr Hamilton to explain why the firm had acted for both buyer and seller and to provide details of the arrangements for referrals by the mortgage broker. A reply was received from Mr Hamilton in October 2000. His explanation was unsatisfactory. The OSS made a further request to which Mr Hamilton replied by letter dated 27th November 2000. His explanation was that because the transaction did not proceed to exchange of contracts it was unnecessary to obtain consent to act for both buyer and seller. He asserted that M was free to instruct a solicitor of his own choice and was unable to explain the term "gift element" which appeared on the mortgage broker's "vendors registration form". The file revealed a mortgage broker's form referring to a commission charge of £170 plus VAT payable to NPW Associates and a "gifting fund element" of £5,100 which was to be "funded solely from the equity in the property".

Case F – Office: Hyde. Complaint to OSS 7th August 2002

43. O instructed the firm in February 1998 to deal with the settlement of property matters between him and his ex-partner, H. Frustrated by delay, he ultimately transferred his instructions to a new firm in November 1999.
44. O wrote to the OSS to complain about the services provided by the Respondents' firm in August 2000. There had been an agreement between him and H in November 1998 but despite many visits and telephone calls to the firm the matter had not been

formalised. The firm had failed to return the Land Certificate to him despite frequent requests.

45. The OSS wrote to Mr Hamilton in August 2000 asking why the firm had failed to draw up an agreement; why the firm had failed to return the land certificate and why the firm had failed to deal with O's complaints pursuant to Rule 15.
46. Mr Hamilton replied on 31st August asserting that a final agreement could not be drawn up because there was no agreement, apologising for mislaying the land certificate and stating that he would try to put matters right as quickly as possible.
47. The OSS requested further information from Mr Hamilton in September, received no reply, reminded him in October and then received a reply by the end of October enclosing correspondence seeking to demonstrate that action had been taken by the firm between June 1999 and August 2000. Mr Hamilton stated that he was in the process of applying for a duplicate Land Certificate.
48. By letter dated the 21st December 2000 Mr Hamilton stated that he supervised the fee earner who had conduct of O's matter between November 1999 and April 2000 when she left the firm.

Case G - Office: Hyde. Complaint to OSS 29th July 1996 and 27th April 1999

49. T instructed the firm at the beginning of 1989 in respect of a matrimonial dispute. She received no client care letter. She was legally aided throughout. In 1990 a court order transferred the matrimonial home into the sole name of T in exchange for a payment of £2,500 to her former husband. In 1990 Legal Aid was extended to cover an application for an attachment of earnings order. The matrimonial home was transferred into T's name in August 1994. The firm invoiced her in 1994 for £120 plus VAT despite her Legal Aid Certificate.
50. At the time her bill of costs for the matrimonial matter was to be taxed by the court. T made representations about the lack of service provided by the firm. The firm stated to the Legal Aid Board that T had not recovered or transferred any property and therefore the statutory charge did not apply. The Legal Aid Board disagreed and attached the statutory charge to the equity in the home to the value of £10,000. T was first advised about the Legal Aid statutory charge on the 3rd March 1995.
51. Following the intervention of the OSS, fees in respect of the transfer of equity were refunded to T. Later interest was added and sent to T.
52. T complained to the OSS about the service provided by the firm. Mr Hamilton acknowledged that the firm did not advise on the effect of the statutory charge between 1989 and 1993, nor was a client care letter sent to T.

Case H – Office: Hyde. Complaint to OSS 19th January 2000

53. H instructed the firm in respect of divorce proceedings in 1991. She wrote to the OSS in January 2000 complaining about delay. She had written a letter of complaint to Mr Hamilton to which he had not replied. Initially the OSS wrote to Mr Hamilton asking him to resolve the matter but as he did not report back, the OSS investigated the matter.

54. In April 2000 a formal letter was sent to Mr Hamilton asking him for an explanation for the delay; why the firm failed to keep the client informed of developments in her case and why the firm failed to take sufficient action to ensure that the client obtained payment of her share of the equity in the matrimonial home. He was also asked why the firm failed to keep the file up to date as it had been dealt with by eight different fee earners and why the firm had failed to give an adequate response to the client's complaint.
55. The OSS expressed particular concern about the delays of nine months between January and September 1993, five months between September 1993 and February 1994 and three years and nine months between September 1994 and June 1998. Mr Hamilton was also asked what advice on costs had been given to the client and why no consent order had been drawn up following the terms of settlement in 1993. The OSS did not receive a reply and a reminder was sent in July 2000.
56. Mr Hamilton sent a reply to the OSS on the 18th July 2000. He stated that the firm had taken action on the client's file and the reasons for the apparent delay were set out in an attendance note dated June 1998. He did not accept that the firm was responsible for any delay in pursuing H's case. The OSS asked for documentary evidence in support of Mr Hamilton's contention by letter dated 31st July 2000. Reminders were sent in August, September, October and November 2000. No substantive reply was received. In December 2000 Mr Hamilton advised that the documents could be obtained from H's new solicitor. The file showed that the firm issued a VAT invoice for £50 inclusive of VAT in October 1998 while H was a legally aided client and sent details of their private fee rates in a client care letter dated 1998.

Case J – Office: Moston. Complaint to OSS 3rd May 2002

57. The client instructed the firm in November 1998 to handle his divorce. In April 2000 he wrote to the OSS to complain about the delay in bringing the matter to a conclusion and the level of service. The client had written a letter to the firm complaining about the delay and level of service to which he had received no reply. The client indicated in February 2000 that he telephoned the firm on eight occasions to speak to the individual concerned with his case, but none of the calls had been returned. The OSS wrote to Mr Hamilton in May 2002 enclosing a copy of the complaint. Mr Hamilton's reply informed the OSS that his family law department had closed down and all files had been transferred to another firm of solicitors. In October 2000 he wrote to the OSS saying that there had been a delay of six to eight weeks in transferring the Legal Aid Certificate: the client had been pleased by the progress made by the firm: the change in fee earner was notified to and acknowledged by the client: some issues raised by the client were not dealt with and there was a delay in concluding the divorce: the family law department had closed down and he had apologised to the client for any inconvenience caused. He conceded that no partner directly supervised the unadmitted member of staff's work.

Case K – Office: Moston. Complaint to OSS 20th June 2000

58. The client instructed the firm in October 1997. The firm raised invoices and sent them to the client on 2nd June and 3rd March 1999. Those bills totalled £652.72 and were paid from monies transferred from client account to office account. Without the

client's knowledge, two further bills each for £100 inclusive and dated 5th and 30th October 1998 respectively were paid by the firm by transfers from client to office account seven days and one day respectively after the bills were raised. On 12th November 1998 and 24th June 1999 £25.90 and £12 respectively were transferred from client account in respect of expenses of the fee earner concerned and Land Registry fees. No notification of the sums transferred was given to the client.

59. The client was sent notification of charges up to and including the 14th April by letter of even date. Those charges totalled £2,469 and covered the two disbursements referred to above and amounted to excessive charging in view of the work undertaken by the firm.
60. The client wrote to the OSS in the absence of any substantive reply to her complaint to the firm. The OSS wrote to Mr Hamilton by letter dated 25th July 2000. After a variety of reminders and holding responses from the firm, Mr Hamilton responded by letter dated 29th September. He had been asked to deal with why he had failed to provide adequate costs information and keep the client informed as to the progress of her case. Why he had misled the client with regard to the progress of her divorce proceedings. Why he had overcharged her. Why he had closed the firm's matrimonial department without giving notice to the client. Mr Hamilton dealt with these questions by saying that he regretted that there was no Rule 15 letter or information on the file regarding costs. The delays were caused by the Court rejecting the divorce documents on five occasions meaning a delay between May 1998 and February 2000 before the proceedings were issued. He accepted the client should not have been charged for the errors committed by the firm. He agreed that the family department had been closed down and the majority of files had been transferred to another firm. He also agreed that the client had paid a sum in excess of the billings (the difference between £1,032.25 and £765.75) and that he would pay compensation to the client in respect of outstanding counsel's fees totalling £205.63.
61. The OSS went on to ask further questions about the supervision of fee earners within the office. Mr Hamilton asserted that a Mr L, who had three or four years post-qualification experience, was not supervised. Mrs B who took over the file in late April 1999 remained unadmitted until summer 1999 (in fact it was December 1999) but that she was supervised by a solicitor of six or seven years admission. However that solicitor confirmed that he did not exercise any supervision over subordinate staff whilst employed by Mr Hamilton and that he understood that Mrs B ran the office under the direct supervision of Mr Hamilton and *RESPONDENT 2*.
62. A letter dated 26th October 2000 was written by Mr Hamilton to Mrs B's new employers saying that the Moston office was not to be closed until work had been brought up to date, that he had visited the office in March/April 1999 and had sought Mrs B's assurance that everything was up to date and that she had audited every file.

Case L. Office: Hyde. Complaint to OSS 23rd November 1999

63. The client had been involved in two road traffic accidents in February and March 1998. A hire car company referred the matters to the firm. With regard to the first accident, the firm sent the client a client care letter and statement. The salient parts of the document are as follows:

“Mr H, the litigation manager, would carry out most of the work personally although he was unadmitted;

The charge out rate for 1997 was £75 per hour with a mark up of at least 50% (thereby making an hourly rate of £112.50 which would be increased every January at the rate of 5% per year);

The firm could profit from commission received”.

64. With regard to the second accident, the client care letter and statement provided a number of matters, the salient points of which are as follows:-

“The fee earner was the same Mr H.
The charge out rate was the same and the firm could profit from commission received”.
65. Both client care letters referred to Mr R as a person to contact if Mr H should be unavailable. (Mr R was also unadmitted).
66. Following dissatisfaction with the conduct of his cases, the client instructed a new firm of solicitors who wrote to the firm a letter dated 8th September in which they enclosed an authority for the release of papers; gave an undertaking in respect of outstanding costs and requested a copy of the client care letter for each matter. They sought a detailed breakdown of the firm’s figures for costs.
67. A copy of the client care letter and statement and a breakdown of the costs were supplied by the firm with a letter dated 15th October 1999. The client care letter and statement were different from the two already received by the client. In the letter supplied it was said that work was to be carried out by Mr L supervised by Mr P; the charge out rate for Mr L was £100 and £125 for his supervisor with a six monthly review for charges; the document did not mention commissions; provision was made for payment of disbursements; the fees were capped at £500 and provision was made for a lien.
68. There was with the statement a schedule of costs which set out a charging rate of £112.50 per hour.
69. The firm did not respond to the new solicitors’ letters querying the differences in the client care statement. Many reminders were sent and eventually the new solicitors complained to the OSS by letter dated 23rd November 1999.
70. The OSS wrote to Mr Hamilton in April 2000 asking for a detailed explanation, in particular, why Mr Hamilton had not released the file; why he had failed to account to the client for an interim payment; why he had produced a significantly different client care letter and why he had failed to reply to correspondence from the client’s new solicitors?
71. After reminder, Mr Hamilton’s reply on 14th July 2000 made complaint that the new solicitor was bombarding his practice with correspondence; he was maintaining a lien over the file until the costs were paid and payment received was in respect of a repair invoice which had been settled directly by the firm.

72. As Mr Hamilton had failed to address all the issues, he was asked to supply further information to the OSS in July and did so on the 23rd August 2000, in which letter he alleged that the hire car company was dissatisfied with his firm and had orchestrated the removal of the client's file to a new firm of solicitors.

Case N – Office: Moston. Complaint to OSS 5th April 2000

73. In February 1999 the firm accepted instructions from a client who had been diagnosed with cancer. At the time she would have been entitled to legal aid but the firm did not have a Legal Aid Franchise. The firm submitted an application for legal aid in August 1999 when it was rejected because of the absence of a franchise. The firm then offered to take the case which involved clinical negligence on a “no-win no fee” basis. The client was quoted a premium relating to accidents, not medical negligence claims.
74. The client was dissatisfied and moved to a new firm. That new firm by letter dated 5th April 2000 complained to the OSS because their letters to the firm dated 25th February and 13th and 27th March 2000 received no reply.
75. The OSS sent Mr Hamilton a letter dated 6th September 2000 requesting him to answer the various matters raised by the new firm. After a reminder, Mr Hamilton replied by letter dated 18th October 2000 in which he said that the client was seen by Mrs B, a solicitor, who was not admitted until December 1999. Mrs B had failed to send out a client care letter and had failed to advise on the availability of legal aid. The firm did not have an appropriate Legal Aid Franchise. Mrs B had been supervised by a solicitor of several years standing.
76. More matters were then raised by Mrs B in a letter written on her behalf dated 7th December 2000. It was said that she was a trainee solicitor at the relevant time. The client was not her client. She had been asked to make the visit by the supervising solicitor. Mrs B's work theoretically was supervised but she received no active supervision. Mrs B also indicated that the matter was handled by another unadmitted member of staff, Miss F. Miss F had indicated that any advice was given on the instructions of the qualified solicitor and that she was not formally supervised or trained either by that solicitor or Mr Hamilton.
77. On 22nd March 2001 Mr Hamilton said the qualified solicitor had control and supervised all matters of the Hyde office (and the Moston office from April 1999). He complained about the inadequacy of his staff.
78. When approached by the OSS, *RESPONDENT 2* had at all times made it clear that although he was a partner in the firm, he had not had responsibility for management of the firm. At the hearing, he wished to make it plain that as a partner he accepted responsibility for management matters and he had intended to indicate that he did not have a direct personal knowledge or any input in the matters in which complaint had arisen. He had been unaware of the volume of complaints or Mr Hamilton's lack of response to the OSS. He had not been aware that Mr Hamilton had responded when he did or the terms in which his responses had been couched. Mr Hamilton had been a dominating, autocratic and unapproachable figure. His word in the practice had been “law”.

79. An example of the difficulties encountered by *RESPONDENT 2* was the response to any enquiry he might make to the firm's cashier. The cashier would refer the enquiry to Mr Hamilton who would immediately telephone *RESPONDENT 2* and demand to know why the enquiry had been made, pointing out that Mr Hamilton had sole responsibility for the management of the firm. The routine use of an office account cheque book by *RESPONDENT 2* had come to be denied and he was required to return the office account cheque books to Mr Hamilton.
80. *RESPONDENT 2* had considered Mr Hamilton to be of greater experience and to have greater expertise in management than he and had been content to leave all such matters in the hands of his partner. Mr Hamilton had told *RESPONDENT 2* that complaints had been received from the OSS in June 2000 about litigation matters. *RESPONDENT 2* had offered to help, but had been told that he could not as he had no expertise in litigation and Mr Hamilton had the matters in hand.
81. *RESPONDENT 2* left the partnership in August 2000 when he was made aware of the serious nature of Mr Hamilton's behaviour and the extent of the complaints.
82. From at least 1992 Mr Hamilton had been a director of and majority shareholder in Broadhill Properties Limited. The following facts supported allegations (xvi) to (xxi) made against Mr Hamilton alone and relate to conveyancing transactions. Mr Hamilton was involved in most of the transactions, brief details of which appear below by reference to the property. In most of the cases, Mr C was the seller, Mr S was the buyer, and there was a mortgage in favour of Broadhill Properties Ltd in which the rate of interest payable was 1.75% per month. Institutional lenders were also involved. Mr Hamilton acted for all parties to the transaction.
- 18 A Avenue
83. Mr C bought this property in March 1995 for £16,000. A charge was executed in favour of Broadhill Properties Ltd.
84. In July 1995 Mr C sold the property to Mr S for £40,000. An institutional lender provided mortgage funds of £28,875. The charge in favour of Broadhill Properties Ltd was redeemed by payment of £27,056.36.
- 7-13 H G Road
85. Mr C bought this property for £58,000 in December 1993. The property was then sold by Mr C to Mr S on the same date for £90,000. Mr S borrowed £60,000 secured by a mortgage, from an institutional lender.
86. The completion statement asserted that a £30,000 deposit had been paid by Mr S direct to Mr C and required Mr S to pay Mr C's costs.
87. In November 1994 a second charge on this property (and 1-3 H G Road) in favour of Broadhill Properties Ltd to secure a loan of £21,000 was executed.
- 1-3 H G Road
88. Mr C bought this property for £15,000 in March 1994. In August 1994 a charge in favour of Broadhill Properties Ltd was executed to secure £21,000. In November

1994 Mr C sold to Mr S the property for £30,000. Mr S took a mortgage advance from an institutional lender. The legal charge to Broadhill Properties Ltd was redeemed. Mr S created a second charge in favour of Broadhill Properties Ltd to secure £21,000. Mr Hamilton purported to disclose to Mr S his conflict of interest, but nonetheless continued to act. In May 1996 a further legal charge was executed by Mr S in favour of Broadhill Properties Ltd to secure £7,000.

10 O Road

89. In August 1996 Mr C agreed to acquire this property for £22,000 and nominated Mr Hamilton as his solicitor. By an underlease, Broadhill Properties Ltd acquired this property for £21,500 in December 1996. Broadhill Properties Ltd sold it in April 1997 for £35,000. An institutional lender offered to lend £60,000 to Mr C and Mr S and later to Mr S alone to allow the repayment to Broadhill Properties Ltd of £25,000. It insisted on other properties being offered as further security and a guarantee from Mr C.

105 H Street

90. Mr C agreed to buy this property in October 1996 for £20,000. The vendor sold it in November 1996 for £20,000 to Broadhill Properties Ltd. Mr Hamilton then entered into negotiations to sell it (before having bought it) to Mr C and possibly to Mr S for £28,500 and purported to disclose his conflict of interest. Broadhill Properties Ltd raised £20,000 by charging the property to an institutional lender in February 1997 and then sold the property to a third party who was separately represented for £18,000 in 2001.

184 M Avenue

91. Broadhill Properties Ltd acquired this property in December 1995 for £25,000. In 1996 Broadhill Properties Ltd transferred it to Mr S for £36,000 financed as to £27,000 by an institutional mortgage lender and a deposit of £9,000. Mr S was represented by other solicitors.

Trust Deed

92. By a Trust Deed dated the 10th May 1996 made between Mr C and Mr S, Mr S agreed to hold all the properties referred to above in equal shares for himself and Mr C. The trust deed was prepared by Mr Hamilton and lodged at HM Land Registry as a restriction on sale to protect Mr C. In 1999 Mr C applied to HM Land Registry to withdraw the restriction on sale. Mr S appointed accountants to investigate his property dealings following an investigation by HM Inspector of Taxes. They made a complaint to the OSS by letter dated 19th March 2001 enclosing a lengthy letter sent to the Inspector of Taxes on behalf of Mr S dated 20th October 2000. Both letters were before the Tribunal. By letter dated 12th October 2001 Mr Hamilton was asked to give an explanation as to his conduct in the above six conveyancing matters. Mr Hamilton did not respond.
93. In the submission of the Applicant in respect of the conveyancing transactions, Mr Hamilton's behaviour had been scandalous. Broadhill Properties Ltd had benefited enormously in the transactions.

The Submissions of the Applicant

94. The Applicant confirmed that in so far as allegations had been put against *RESPONDENT 2*, the position was that *RESPONDENT 2* was a principal in the firm and as such he was responsible for breaches of the Solicitors Practice Rules. *RESPONDENT 2* had admitted the allegations made against him on that basis.
95. Further, more allegations had been made against Mr Hamilton than had been made against *RESPONDENT 2*. Mr Hamilton had personally been guilty of considerable non-response to the OSS and to clients. He had been responsible for a failure to honour undertakings. He had adopted the seriously unprofessional step of attempting to prevent a client from reporting a complaint to the OSS. He had been guilty of mishandling of clients' monies and of overcharging clients. He had not handed over a client's papers when asked to do so. Mr Hamilton had sent misleading client care letters. As a result of his shortcomings, Mr Hamilton had been in breach of Rule 1 of the Solicitors Practice Rules.
96. With regard to the conveyancing transactions, the facts of which supported allegations (xvi) to (xxi) against Mr Hamilton, there was no doubt that those transactions bore all of the hallmarks of mortgage fraud which had not been reported to the institutional lenders involved in those transactions. Not only that, Mr Hamilton had acted for all of the parties in the transactions including a company, of which he was a director and a major shareholder. There was a clear conflict of interest between Mr Hamilton and his clients and indeed between the clients inter se.
97. In the other allegations made against Mr Hamilton, the allegations spoke for themselves. In particular, the Applicant pointed out the breach of Rule 10 of the Practice Rules pointing out that if a solicitor is to receive a commission then he must have the agreement of the client. The client must make that agreement in full knowledge of the surrounding circumstances. It is insufficient to say "I will assume you agree unless I hear from you." The vague reference to commissions in the client care letter was a clear breach of this Rule.
98. The Applicant had sent Civil Evidence Act Notices pursuant to the Solicitors (Disciplinary Proceedings) Rules 1994 to both the Respondents. *RESPONDENT 2* had made admissions, but there had been no response from Mr Hamilton.

The submissions of Mr Hamilton (contained in his before-mentioned letter addressed to the Clerk to the Tribunal dated the 23rd September 2002)

99. The following are extracts:-

"I am unable to attend the Tribunal hearing. I am engaged full-time on the maintenance health and welfare of my partner who is reliant upon me exclusively and who is terminally ill with cancer which is now unfortunately at an advanced stage.

RESPONDENT 2 communicated with me a few days ago and informed me that Mr Marriott had made scandalous suggestions about "disputes" and allegations of misconduct/deception in the case of McC (Case E). Please look at all the notes carefully. I have told *RESPONDENT 2* that this outrageous allegation is a fair sample of the evidence against me. It was in fact my

supervision of my colleagues which prevented Mr McC and his buyer (F) colluding to defraud a lender”.

The submissions of *RESPONDENT 2*

100. *RESPONDENT 2* admitted all of the allegations, save allegation (xiii), recognising his responsibility as a partner and on the basis that he had no personal culpability. He had not admitted the breach of Practice Rule 10. He was fully aware of the provisions of that Practice Rule and would always account to a client for commission as the Rule provides. He certainly was not culpable in this respect and had no knowledge of the provisions relating to commission set out in the letters written by Mr Hamilton. He did not believe he was responsible for those letters.
101. *RESPONDENT 2* had been taken into partnership as a junior partner by Mr Hamilton in 1986. He was then based in the Oldham office of the firm and his share of the profits was at 20% increasing to 25% on 31st December 1990.
102. In 1994 *RESPONDENT 2*'s share of the profits was due to increase to 30% but, in early 1993, Mr Hamilton said that he was not prepared to continue with the terms of the partnership deed and insisted that it be varied so that Mr Hamilton received all the profits of the Hyde and Stockport offices and *RESPONDENT 2* received the profits of the Oldham and Moston offices. In 1996 *RESPONDENT 2* opened a branch of Hamiltons in Prescot, Merseyside.
103. In early 1997, Mr Hamilton was of the opinion that he and *RESPONDENT 2* should "pool resources". A new Partnership Agreement was prepared. *RESPONDENT 2* became a partner in the whole practice. Mr Hamilton made it clear that they were to have defined roles in the practice. *RESPONDENT 2* was to be employed in the fee earning and marketing of the practice and opening further branch offices, dealing with conveyancing only. Mr Hamilton was to handle litigation and have sole responsibility for management and administration. *RESPONDENT 2* accepted his responsibilities as a partner and did not ignore them.
104. In the middle part of 1998, *RESPONDENT 2* began to feel uncomfortable as he was unable to discharge his partnership responsibilities properly and was not able to exercise any control over the running of the practice, in particular he did not have the full co-operation of the cashier's department, which would not supply management information without the authority of Mr Hamilton.
105. Mr Hamilton expected to make decisions in staffing arrangements, ignoring *RESPONDENT 2*'s views and appointing staff who had insufficient experience and deciding at which branch office staff members should work – sometimes countermanding *RESPONDENT 2*'s own arrangement and upsetting staff. He had made a unilateral decision to reduce the salary of a member of staff who worked in one of *RESPONDENT 2*'s offices.
106. *RESPONDENT 2* admitted the allegations in his capacity as a partner. He admitted that he failed to operate a complaints handling procedure but he did give clients at his branches the opportunity of raising complaints with him. *RESPONDENT 2* was not aware of complaints at branches run by Mr Hamilton until well after the event.

107. With regard to supervision of the practice, *RESPONDENT 2* had been obstructed from playing a proper role in supervision as Mr Hamilton had assumed direct responsibility as "senior and managing partner". *RESPONDENT 2* had been intimidated into accepting that position which he had come bitterly to regret. He had regarded Mr Hamilton as the more experienced of the two as partners and he had no reason to believe that fee earners were not being properly supervised. *RESPONDENT 2* did attempt to supervise those under his direct control, although Mr Hamilton did interfere.
108. *RESPONDENT 2* accepted he was, as a partner, liable for undertakings given by the firm. He did not know what the undertakings were until February 2001 when he received a letter from the OSS.
109. *RESPONDENT 2* accepted that he was responsible for a breach of the Solicitors Accounts Rules. The offending transfers made were made without his knowledge and, without close perusal of the ledgers and the accounts, he would have been unaware that any such transfers were in breach of the Rules as they related to matters which were not under his care and conduct.
110. *RESPONDENT 2* had no knowledge of overcharging in matters handled by Mr Hamilton or other solicitors under Mr Hamilton's supervision.
111. If *RESPONDENT 2* had known of the suggestion that the firm was entitled to receive commission, he would have objected strongly and prevented the issue of the letter making that suggestion.
112. *RESPONDENT 2* had been totally oblivious of the misleading nature of the letters concerned and had no knowledge of them. *RESPONDENT 2* had checked with Mr Hamilton that there was a system of client care letters in place to ensure compliance with Rule 15 of the Solicitors Practice Rules and he had assured him that these were in place. Mr Hamilton had drafted the terms of the client care letters, not only for his own offices but also for those where *RESPONDENT 2* had a degree of responsibility.
113. In the autumn of 1999 *RESPONDENT 2* informed Mr Hamilton that he intended to resign from the partnership. He was well aware of his duties and responsibilities as a partner but felt that he was not being allowed to exercise or discharge those responsibilities. It was not possible to leave immediately as the partnership agreement prevented him from practising within ten miles of any existing office in the firm for a three year period.
114. He was not able to supply legal services without the written consent of Mr Hamilton. *RESPONDENT 2* had been anxious to retain the Altrincham and Prescott offices.
115. Negotiations to dissolve the partnership began in the spring of 2000. *RESPONDENT 2* instructed solicitors to act on his behalf in connection with the dissolution of the practice. Agreement was reached, although that was not without difficulty.
116. *RESPONDENT 2* commenced Ward & Company, solicitors, in early September 2000 based at the former Altrincham and Prescott offices of Hamilton Ward & Company.

At about that time, Mr Hamilton decided to retire from active legal work.
RESPONDENT 2 purchased the former Stockport office of Hamilton Ward.

117. *RESPONDENT 2* is the senior partner at Ward & Company. He had learnt many lessons from the failures at Hamilton Ward and his own practice was well run.
118. On 1st September 2000 the Stockport office was sold to meet concerns about the supervision of that practice.
119. With regard to the breaches and failures of Hamilton Ward & Company, *RESPONDENT 2* was an innocent victim and had not been aware of the problems incurred at the central Hyde office (from where he never worked). He did of course accept that as a partner, he must bear some responsibility in respect of the allegations even though he was totally unaware of the breaches complained of.
120. *RESPONDENT 2* had a good record apart from the allegations involving his former partner. He relied on his practice entirely for his income, having a wife and two children to support. He employed eight members of staff within his new practice. He was a solicitor of competence and integrity and played a part in the community. His new firm sponsored child related charities.

The Decision of the Tribunal

121. The Tribunal found all of the allegations made against *RESPONDENT 2* to have been substantiated, indeed the majority were not contested. The Tribunal find that as a partner, *RESPONDENT 2* was responsible for the breach of Practice Rule 10. The letters written about commission were written on behalf of the firm. The Tribunal accepts that *RESPONDENT 2* would not have permitted letters in those terms to be addressed to clients. He was responsible, but not culpable.
122. The Tribunal accept that *RESPONDENT 2*'s liability is in his capacity as a principal in the firm and further accept that he does not have a direct personal culpability in respect of all of the matters alleged against him.
123. The Tribunal accepts *RESPONDENT 2*'s own evidence that as soon as he became aware of Mr Hamilton's behaviour, he resigned from the partnership.
124. *RESPONDENT 2* is to be criticised for apparently having abrogated his responsibility as a principal in a firm of solicitors, and allowing his dominating partner to assume total control of what went on. Although not personally culpable, *RESPONDENT 2* had been content to rely upon his partner to fulfil the onerous duties of management and, in particular, accounts management and complaints handling. It is the Tribunal's view that if *RESPONDENT 2* had demonstrated a greater strength of mind then perhaps a great deal of the mischief before the Tribunal on this occasion might have been avoided. Perhaps it might be said that *RESPONDENT 2* is now paying the price for being weak. There is an expectation that solicitors will always shoulder the responsibilities that being a member of the solicitors' profession and a partner in a solicitors' firm imposes upon them.
125. The Tribunal is deeply concerned at the behaviour of Mr Hamilton. He clearly prevented his partner from taking part in management, supervision, the conduct of

accounting and complaints handling. He used his partner's willingness to rely upon him for all of these functions to enable him to behave in a wholly unacceptable way. The Tribunal find all of the matters alleged against Mr Hamilton to have been substantiated and in particular with regard to the allegations contained in the supplementary statement (allegations (xvi) to (xxi), the Tribunal is in no doubt that Mr Hamilton's behaviour was dishonest, bearing in mind the tests laid down in the cases of Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378 and Twinsectra Ltd v Yardley and Others. Mr Hamilton had not disclosed relevant information to institutional lenders which might have affected their decision to lend. He had acted not only for the individual parties to the transactions, and the institutional lender, but had also acted for a company in which he himself was a director and a majority shareholder which played a part in financing the transactions from which that company derived an extraordinarily high rate of interest.

126. Mr Hamilton's conduct when faced with these disciplinary proceedings underlined the Tribunal's view that Mr Hamilton is a stranger to truth and propriety.
127. Such behaviour on the part of a solicitor will not be tolerated by the solicitors' profession and, in order to protect the public and the good reputation of the solicitors' profession, the Tribunal concludes that it is right to order that Mr Hamilton be struck off the Roll of Solicitors.
128. Recognising as it does *RESPONDENT 2*'s strict liability for the allegations made against him rather than his culpability, the Tribunal considered it right to impose a financial penalty upon *RESPONDENT 2* and in all of the circumstances considered it right that he should pay a fine of £5,000.
129. After hearing the submissions of Mr Marriott and *RESPONDENT 2* as to the question of costs, the Tribunal accepted Mr Marriott's indication that the total inclusive costs amounted to £13,614. In the particular circumstances of this case, the Tribunal considered it right that *RESPONDENT 2* should be ordered to pay a fixed sum of £1,500 inclusive towards the Applicant's costs and that the balance of the costs of and incidental to the application and enquiry should be met by Mr Hamilton in the fixed sum of £12,114.

DATED this 13th day of October 2002
on behalf of the Tribunal

R.B. Bamford
Chairman