No. 8546/2002

The Respondent Kevin Alphonsus Dooley appealed against the decision of the Tribunal and by judgment dated 20 February 2003 his appeal was dismissed.
Dooley v Law Society [2003] All ER (D) 285 (Feb)

IN THE MATTER OF KEVIN ALPHONSUS DOOLEY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H Isaacs (in the chair)
Mr. A G Ground
Mr. M C Baughan

Date of Hearing: 29th July - 2nd August 2002 and 10th September 2002

Following the filing after the hearing of written closing submissions by the Applicant and the Respondent the Members of the Tribunal met on 7th August to reach their Findings. On 10th September 2002 the Tribunal announced its Findings in public heard mitigation on behalf of the Respondent and the submissions of the parties as to costs and made and pronounced its Order on that day.

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 Iain Wright solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF on 1st February 2002 that Kevin Alphonsus Dooley of Kirkby, Merseyside, L32 (a solicitor) might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondent were that:-

(i) the Respondent had been guilty of conduct unbefitting a solicitor in that in the course of his practice as a solicitor he became involved in dubious or fraudulent transactions that he accepts "bear a number of the hallmarks of Bank Instrument Schemes" nothwithstanding:-

(a) warnings that he should not participate in such transactions by the OSS and his bankers;
(b) his previous experience of such transactions, each of which failed and/or led to payments to intermediaries but not to investors;
(c) his knowledge after [12th February 1998] that Mr John Silver who referred many such transactions to him was wanted by the police for a series of offences of dishonesty involving a gross breach of trust and that his guilt was not in dispute;
(d) the fact that each such transaction was highly unusual and not one in which a solicitor should properly involve himself.

and by virtue of (a) to (d) above and each of them his involvement in such transactions was as a knowing participant.

(ii) that he had been guilty of conduct unbefitting a solicitor in that he failed to take adequate and reasonable steps to protect funds under his control held on behalf of clients and/or third parties;
(iii) that he had been guilty of conduct unbefitting a solicitor in that he acted in circumstances of conflicts of interest;
(iv) that he had been guilty of conduct unbefitting a solicitor in that he encouraged a Mr McD to invest in a scheme without disclosing that he would receive a secret profit;
(v) that he had been guilty of conduct unbefitting a solicitor in that he deducted US$50,000 from funds provided by Taipan Assest Management for the purpose of an investment without its authority and paid that money to Mr Silver.

By a supplemental statement dated 20th June 2002 the Applicant made further allegations as follows:-
(vi) on 8th January 1998 the Respondent transferred into his client account office money in the amount of £78,250.65 in breach of Rule 4 of the Solicitors Accounts Rules 1991 and he paid out of his client account to Swepstone Walsh moneys held on behalf of clients, Mr Moreno and Mr Song in breach of Rule 7 of the Solicitors Accounts Rules 1991 and that such conduct is conduct unbefitting a solicitor.
(vii) that receipt by the Respondent of a letter dated 8th January 1998 from Mr Silver to Mr Moreno claiming that Contrast Finance had transferred US$150,000 (when in fact the funds had been provided by the Respondent) should have constituted a further warning to the Respondent as to honesty of Mr Silver and that he continued to be involved in dubious and fraudulent transactions notwithstanding such warnings and that such conduct is conduct unbefitting a solicitor and/or a breach of Practice Rule 1(a) and (d);
(viii) that on 3rd June 1997 the Respondent provided a reference in respect of Margaret Silver in the circumstances where he had not met her and it was not appropriate for him to provide such a reference and that such conduct is conduct unbefitting a solicitor and/or a breach of Practice Rule 1(a) and (d).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS from 29th July 2002 to 2nd August 2002 when Timothy Dutton QC instructed by Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF solicitors appeared for the Applicant and Alan Newman QC appeared for the Respondent. On 10th September Mr Alan Newman QC appeared for the Respondent and Mr I Miller for the Applicant.

The Respondent denied all the allegations.

The evidence before the Tribunal included eight files of documentation served by the Applicant on the Respondent pursuant to the Civil Evidence Act and three files served out of time by the Respondent on the Applicant. The files included a number of witness statements made in connection with the other proceedings in which facts relevant to those proceedings were also relevant to proceedings before the Tribunal. The Respondent's files also included a further witness statement made by the Respondent. Written Witness Statements and oral evidence was given by the following witnesses:-

Day 1	Mr P Chadwick of Midland Bank Mr Sapsford QC - a character witness
Day 2	Mr J S Song – an investor M. Calvert – The Law Society's Head of the OSS' Investigation Unit
Day 3	Mr D. Shaw – OSS Investigator Mr K A Dooley – the Respondent
Day 4	Mr K A Dooley Mr David Bayley of Vanborough Investments
Day 5	Mr F Taylor of Maincrest Investments Ltd Mr W Sutton – an intermediary Mr C R Lincoln – an Investment Broker Mr R H Cass – a Director of Contrast Finance Ltd Mr Radford – a person employed by Mr Dooley

Written Witness Statements were admitted from Mr McD, Ms W, Mr R, Mr M, Mr N, Mr Sm, Mr F and Mr Sh.

Copies of certain documents relating to the various programmes, schemes or transactions were before the Tribunal.

Following the consideration of written submissions after the conclusion of the hearing, the Tribunal found allegations (i), (ii), (iii), (v), (vi) and (vii) found proved and allegations (iv) and (viii) were not found proved to the requisite standard of proof. On 10th September 2002 following submissions in mitigation the Tribunal made the following Order.

> "that the Respondent, Kevin Alphonsus Dooley of Kirkby, Merseyside, L32 solicitor be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry (to include the costs of the Investigation Accountant of The Law Society) to be subject to a detailed assessment if not agreed between the parties."

The Evidence before the Tribunal

Background

1. The Respondent, born in 1941, was admitted as a solicitor in 1978,

2. At all material times the Respondent practised on his own account under the style of Dooley & Co with offices at Kirkby, Cheshire and a second office in Liverpool (with a 10% partner).

3. Following a Report by the Monitoring & Investigation Unit (MIU) of the OSS, on 21st June 2000 The Law Society intervened into the practice of Dooley & Co on the grounds of the Respondent's suspected dishonesty. The Respondent challenged the intervention in proceedings in the High Court in September 2000 ("The Intervention proceedings") and some of the evidence in those proceedings and the judgment of Mr Justice Neuberger were before the Tribunal. The challenge to the intervention was not successful.

4. The allegations (with the exception of allegation (viii)) all related to the Respondent's alleged involvement in transactions described by the Applicant as dubious or fraudulent. The documentation before the Tribunal included documents relating to 19 transactions which the Applicant asserted were dubious or bore the hallmarks of fraud.

5. The Law Society had issued warnings to the Profession of the risks of becoming involved in or associated with transactions which had certain characteristics some of which involved so called "Prime Bank Instruments." Transactions having some or all of these characteristics were referred to as Prime Bank Instrument Frauds or Bank Instrument Schemes.

6. On the occasion of an inspection of the Respondent's books of account in 1996, the Inspecting Officer, Mr Shaw, noted that the Respondent had become involved in a transaction which appeared to be a Prime Bank Instrument Fraud. Mr Shaw had drawn to the Respondent's notice the dubious nature of the transaction and the Respondent had agreed that the transaction was suspect. The Law Society had administered a formal written warning to the Respondent and all solicitors had had drawn to their specific attention in the autumn of 1997 the general warning issued by The Law Society and known as the Yellow Card. The text of this is to be found in The Law Society's Guide to Professional Conduct 1999 Edition at pages 258-261.

7. In June 2000 a further inspection of the Respondent's books was carried out by Mr Shaw of the Monitoring and Investigation Unit of the OSS. His Report dated 7th June 2000 ("the MIU Report") was before the Tribunal and showed continuing and substantial involvement by the Respondent in numerous transactions regarded by Mr Shaw as dubious and as having similar characteristics to those about which the Respondent had been warned following the 1996 inspection and in the Yellow Card. The MIU Report also drew attention to a misapplication (which the Respondent disputed) of US$50,000 which caused the Respondent's books of account not to be in compliance with the Solicitors' Accounts Rules.

8. In the Intervention proceedings it was accepted on behalf of the Respondent that the transactions in which he had been involved were redolent of fraud but he denied dishonesty on the basis that he had no such understanding at the time. In his second Witness Statement in the Intervention proceedings dated 3rd July 2000 the Respondent stated:-

> …Having now re-read my files in detail, I accept that I should have recognised that the transactions relied upon by The Law Society do indeed bear a number of hallmarks of Bank Instrument Schemes about which I was warned in 1996 and about which The Law Society sent out its Warning Card in 1997."

9. Before the Tribunal the Respondent in his Witness Statement and in oral evidence seemed to some extent to qualify his admission saying it had been made at a stressful time following the intervention into his practice.

10. Before the Tribunal in the Respondent's Witness Statement dated 17th July 2002 he said:-

> "In accordance with the Statute my application to set aside the intervention had to be made within a specified period (The Law Society kindly extended same for a short period of time). It was not physically possible to read and fully understand matters relating to years previously and state everything with precision and accuracy, even without the added problems of my own physical and mental condition at the time. Consequently in my view, despite my signing the statements which were drafted by leading counsel (Elizabeth Jones QC), the statements contained a number of comments by me which I now believe ought not to have been stated and/or were stated in circumstances which were not conducive to my having a clear understanding of past events and were made solely for having my application to set aside the intervention successfully concluded. As time has passed and further events unfolded it is patently clear that many of my recollection of events at the time were not particularly accurate, but now after having fully read and considered matters I have been able to correctly describe matter and the part played by me in such matters."

11. The MIU Report stated that a list of liabilities to clients as at 29th February 2000 relating to the Sterling client accounts was produced for inspection. The items were in agreement with the balances shown in the clients' ledger and totalled £802,393.96. An equivalent amount was held in client bank accounts at that date after allowance for uncleared items.

12. A list of liabilities to clients as at 29th February 2000 relating to the US Dollar client accounts was produced for inspection. The items were in agreement with the balances shown in the clients' ledger and totalled $409,651.24. However the list did not include a further liability to a client of $50,000 which was not shown by the books resulting in a cash shortage of this sum.

13. The Respondent did not agree the existence of a cash shortage of $50,000 on client bank account as at 29th February 2000. According to the MIU Report the shortage had arisen as a result of the Respondent improperly paying a total of $50,000 from the funds of Taipan Asset Management.

Warnings in relation to involvement in dubious transactions

14. The allegations against the Respondent need to be considered in the light of certain warnings given to the Profession and specifically to the Respondent about the potentially fraudulent nature of certain so called investment schemes.

15. In September 1994 The Law Society circulated to all solicitors on the Roll a warning regarding money laundering. The Profession was specifically warned against unusual instructions and large sums of cash being deposited in a solicitor's client account.

16. With the issue of a Practising Certificate in the autumn of 1997 each solicitor was provided with a printed Warning Card in connection with banking instrument fraud. The warning was headed "Fraud Intelligence Office. Warning: Banking Instrument Frauds." It stated:-

> "Fraudulent investment schemes are on the increase. Prime Bank Guarantees, "Prime Bank Letters of Credit" and "Zero Coupon letters of Credit" are not issued by the legitimate banking communities. The legitimacy of such investments must always be questioned."

17. The Warning Card then went on to give examples of such schemes, the common characteristics of banking fraud and gave examples of wording frequently employed in relevant documents.

18. The OSS had carried out an inspection of Dooley & Co in August and September 1996. During the course of that inspection the MIU Officer came across the file relating to a transaction involving Mrs W and Mrs Y. He raised this with the Respondent at a meeting on 28th and 29th August 1996. The MIU Officer informed the Respondent that invariably such schemes have a fraudulent nature. The Respondent agreed that that had been what he thought. The scheme, in any event, appeared impossible to complete as outlandish (unachievable) returns had been offered. The Respondent confirmed to the MIU Officer that none of the schemes had worked and that he considered that none could.

19. Because the Respondent's involvement appeared to be at an embryonic stage and because he appeared to agree wholeheartedly with the MIU Officer's view that such schemes invariably proved to be fraudulent in nature, the MIU Office decided to issue the Respondent with a warning letter. The warning letter was dated 22nd October 1996. It stated that the sort of transaction in which the Respondent had been involved was invariably fraudulent. The letter went on to state that :-

> "Where a solicitor is suspected of being an accessory to such a fraud or has derived a benefit from involvement in it, the Compliance & Supervision Committee may decide that they have reason thereby to suspect dishonesty on the part of a solicitor in authorising an intervention in his or her firm under paragraph 1(1)(a) of the First Schedule to the Solicitors Act 1974."

20. The Respondent reacted angrily to this letter. His reply dated 25th October 1996 did not mention that the Mrs W or Mrs Y transaction was not the only similar transaction in which he had been or was then involved. The Respondent spoke to Mr Calvert (then Head of the Investigation Unit at the OSS) on 1st November 1966. Mr Calvert

gave evidence (which the Respondent did not dispute and which the Tribunal accepts) that in this conversation he had taken the opportunity to ensure that the warning was brought home to the Respondent.

21. The transaction involving Mrs W and Mrs Y had been introduced to the Respondent by Mr John Silver. His involvement with the Respondent is considered in greater detail below, but for the purpose of this section of the Tribunal's findings regarding warnings given to the Respondent, the Tribunal had regard to the following evidence given by Mr Chadwick and the Respondent.

22. When the Respondent first became involved in the Mrs W and Mrs Y transaction he spoke with his Bank Manager, Mr Chadwick of Midland Bank on or about 4th July 1995. The Respondent agreed in evidence that the following handwritten notes of his discussions with Mr Chadwick were made contemporaneously and were made following the Respondent's disclosure to Mr Chadwick that the Respondent was proposing to act for Mr Silver and for clients introduced by him.

> "[Undated]
> Query reason to believe it is a spurious (sic) transaction.
> Funds already received.
> Constructive trusteeship
> No way to prolong information.
> Do not meet Silver.
>
> 1. Do not mention any claim
> 2. Do not know what is back of transaction
> 3. Mafia based
> 4. Least contact
> 5.
> 6.
> 7."
>
> "[Undated]
>
> Westbay
> Information linking Silver to Westbay who are under investigation by fraud office."
>
> "[Undated]
>
> Trafalgar House
> John Silver
> Christopher Heron
>
> Midland internal fraud office
> Christopher Heron"
> Numerous potential large transactions on back [on?] many forged bank instruments."

"[Undated]

JS trying to produce fraudulent document and get Midland Bank to authenticate it."

"[Undated]

Westbay
Met Fraud Office would like to speak.
Trafalgar House Securities had an office in Glasgow."

"Dated 4.7.95

Major Problems
Strength of information
Do not become involved at all
John Silver
Christopher Heron
Both known to Midland."

Mr Chadwick thought all these conversations were on the same day.

23. The Tribunal accepted the evidence given by Mr Chadwick of Midland Bank that he had informed the Respondent that there was "every reason to believe that the [Ms W and Ms Y transaction] is a spurious transaction." On behalf of the Bank he had told the Respondent not to be involved at all and that John Silver was "known" to Midland. Mr Chadwick in evidence said he had to be circumspect about disclosing confidential information within the Bank but he had said to the Respondent that there was information linking Mr Silver to an investigation by Midland Bank's Fraud Office and that he believed John Silver had been involved in trying to produce fraudulent documents and getting Midland Bank to authenticate them. In evidence the Respondent said the discussion which he had had with Mr Chadwick did not constitute a warning, though the discussion with Mr Chadwick was later described by the Respondent as a gypsy's warning.

The Respondent's involvement with Mr John Silver

24. The Respondent had been introduced to Mr Silver by mutual acquaintances on the Island of Rhodes. The Respondent had been told that Mr Silver had encountered difficulty in collecting business debts and his services as a solicitor might prove helpful.

25. The Respondent and Mr Silver had a professional and personal relationship dating from about 1995. This involved acting for Mr Silver, his wife Mrs Margaret Elizabeth Silver and a number of companies used by Mr Silver namely:-
(i) Contrast Finance Ltd
(ii) Westminster Financial Services Ltd
(iii) Wexford Financial Services Ltd
(iv) Chiswick Financial Services Ltd
(v) Trafalgar House Securities Ltd

26. The evidence before the Tribunal showed that Mr Silver had moved his residence from Rhodes to Germany to Spain and then to Eire and he made infrequent visits to the United Kingdom. The Respondent regarded Mr Silver as the controlling mind of the various companies which he or his wife appeared to own though he was not known by the Respondent to have been a director. Mrs Silver was said to have been at times seriously ill and certain letters of instruction to the Respondent were signed by her as a director though, it appeared, at the motivation of Mr Silver.

27. From July 1995, the Respondent knew that Midland Bank regarded Mr Silver as suspected of involvement in fraud and from February 1998, the Respondent knew that Mr Silver had been charged with embezzlement and was wanted by the police so that he could stand trial. In addition Mr Silver admitted to the Respondent that he had defrauded his former employers. Mr Silver was ultimately arrested and sentenced in 2001 to a term of imprisonment. The Respondent in evidence before the Tribunal stated that notwithstanding the above facts which he did not dispute he had not at the relevant times regarded Mr Silver as a dishonest man and even now did not consider he should have regarded him with suspicion. The Respondent had continued to deal with Mr Silver both before and after February 1998 on the footing that he and the companies he appeared to control and the transactions he or they introduced were honest and respectable. The Tribunal regards the Respondent's behaviour in this respect as recklessly obtuse.

28. There was documentary evidence before the Tribunal which established that Mr Silver and his various companies made reference to the Respondent and his practice address in connection with various transactions and correspondence was addressed to Mr Silver or his companies care of the Respondent's firm. Mr Silver had an accommodation address in the same building as the Respondent's Kirkby office (a building owned by the Respondent). The Tribunal find that Mr Silver was perceived as being closely associated with the Respondent so that those having dealings with Mr Silver could well have assumed that the Respondent's involvement gave some credibility to Mr Silver and the transactions he was seeking to promote.

The underlying transactions

29. Documentary evidence relating to all the transactions regarded by The Law Society as dubious – nineteen in number – were before the Tribunal. Oral evidence concentrated on the transactions noted below at paragraphs 30 to 125.

Mrs W and MrsY

30. In 1995 the Respondent had been approached by Mr Silver in connection with a proposed investment by Mrs W and Mrs Y.

31. The Respondent agreed to act for Mr Silver who promoted the "investment" scheme through a company called Trafalgar House Securities Limited (THS). Mrs W and Mrs Y had paid US$500,000 to a solicitor, Charles Smith. The funds were said to be “blocked” in Charles Smith’s client account and were intended to be used in a “leveraged trading programme "for the purchase of “bank purchase orders” in the sum of US$100 million. The Respondent also acted for Mrs W and Mrs Y who were resident in the USA.

32. In the event the “transaction” did not happen and the funds were returned to Mrs W and Mrs Y. Mr Silver (or THS) charged Mrs W and Mrs Y a fee of $25,000 which

was not refundable even though the transaction failed. This payment was made through the Respondent's client account.

33. The Respondent had previously lent Mr Silver £5,000 who repaid this a loan after he received the US$25,000 from the Mrs W and Mrs Y transaction.

34. The Respondent had not complied with the request to disclose all of the papers relating to this transaction to The Law Society. The Respondent had agreed with Mr Shaw, the MIU Officer in August 1996 that this transaction was fraudulent. Mr Shaw in evidence before the Tribunal confirmed the accuracy of his Report to this effect which had prompted the official warning to the Respondent and the discussion with Mr Calvert as mentioned in paragraph 20 above.

Mr and Mrs S

35. After the intervention further documents came into the hands of The Law Society. In April 1996 the Respondent acted for Mr Silver (using a company called Westminster Financial Services (LLC) Limited) in advising on an investment of $100,000 by Mr and Mrs S said to be wealthy Americans. The investment (which involved another company, Maincrest Investments Limited) was summarised in a number of documents considered by the Respondent which were before the Tribunal. They indicated that the investors, Mr and Mrs S, could expect a guaranteed return on their investment of 2½ per cent net per week for each of 40 weeks over a 57 week period i.e. 100% return in about a year. The documents contained numerous references to an unspecified "Trader" and to "pay orders." It was not disclosed how this profit could be achieved and it was not possible to make enquiries because of confidentiality agreements.

36. Evidence given by Mr Taylor of Maincrest did nothing to encourage the Tribunal to think that any honest and competent solicitor would have had any difficulty in concluding that the transaction was commercially implausible and likely therefore to be highly suspect or a fraud. Mr Taylor admitted in his letter to Mr and Mrs S of 21st April 1997 (found in the Respondent's file) that the persons involved were "operating a scam affecting dozens of small clients", though his letter of 12th April 1996 had assured Mr Silver that he "had dealt with the "Trust" for two or three years, that it held a banking licence as a private bank in Spain and he had conducted diligence on the Trust and that he would not have done business with them unless "we were comfortable." The Tribunal formed the view that anyone who accepted at face value the assurances given by Mr Taylor would have been naïve and gullible. The Respondent is neither.

37. The Respondent's advice to Mr Silver "was that he must be very aware" and should not believe that the contract had any worth. When it appeared that Mr and Mrs S went ahead with the transaction which continued to have Mr Silver's involvement the Respondent did nothing to warn them of risks. Mr Silver claimed to be a joint venture partner though it was not suggested he put up any money for investment. The transaction inevitably went wrong. During August and September 1996 the Respondent acted for Mr and Mrs S and Mr Silver in unsuccessfully attempting to recover the US$100,000.

38. The Respondent did not know the terms of the contract between Mr and Mrs S and Mr Silver but he received in connection with this transaction $7,500 which was paid to Mr Silver from the Respondent's designated client account. There was no evidence

that the Respondent had any authority which indicated that these funds were properly payable to Mr Silver.

39. Mr Taylor a director of Maincrest Investments Limited in evidence said he thought Mr and Mrs S had also been paid $7,500. The Respondent said in evidence that he thought Mr and Mrs S must have had "the other half" i.e. that they had also been paid $7,500.

Vanborough Investments Ltd ("Vanborough")

40. In April 1997 the Respondent agreed to receive and "block" US$3.6 million in his client account. Dooley & Co's fee was to be 50% of the interest received on the money. The transaction was introduced to the Respondent by Mr Silver

41. Mr Silver was involved as an investment broker through his company Westminster Financial Services. The Respondent said that Tidewater Investment Corporation was the promoter of the investment scheme.

42. The Respondent agreed that, except for the receipt of $3.6 million on 22nd April 1997 and the payment of interest, the relevant account in the clients' ledger showed no other movements of funds until 23rd September 1997 when the following payments were made:-

Payee	Receiving Bank	Amount
Vanborough Investments Ltd	Barclays Bank plc, London	$1,610,00.00
[not stated]	United Overseas Bank, Geneva	1,500,00.00
P International Ltd	Banque National de Paris, Hong Kong	177,000.00
Brigadier L	Standard Chartered Bank, Sultanate of Oman	377,922.01

43. In connection with this "investment" the Respondent received instructions from Mr (or Major) Bayley who held power of attorney to act on behalf of Brigadier L and a company owned by him, Vanborough.

44. Funds were transferred to the Respondent's client account on 21st April 1997. On 22nd April 1997 the Respondent undertook to hold the funds to the order of Tidewater. The profits on the "trading" failed to materialise and on 18th September 1997 the Respondent transferred the funds to various accounts at the request of Mr Bayley. There was no evidence that the Respondent had heeded the warnings about the receipt of substantial sums which were then to be paid to accounts other than the account from which such funds were derived.

45. The documents relating to the "investment" were sent to the Respondent (the principal document is described as a Memorandum of Understanding) with a request that he consider them. The Respondent wrote a letter dated 17th April 1997 containing the following advice:-

> "17 April 1997
>
> We also confirm that we have written to Westminster Finance in the manner referred to in our telephone conversation.

> Finally referring to yours of the 15th April, we have perused the Memorandum of Understanding. As we indicated to you there appears not to be any contractual guarantee which would allow your goodselves to issue proceedings for non delivery of profits within the jurisdiction of the UK, although as we stated, matters could be somewhat different under the laws of the United States of America, but we are unable to comment in relation thereto. If necessary, we could instruct an American lawyer to let us have an opinion if you require same."

46. This letter implicitly gave encouragement to the continued participation of Vanborough in a transaction which was (as the Respondent later acknowledged) redolent of fraud. It had some similar characteristics to the documentation employed in the Mrs W and Mrs Y transaction about which the Respondent had been specifically warned. The Respondent deliberately ignored the warning. By holding the funds ostensibly to the order of Tidewater, the Respondent might well have been facilitating a fraud. The funds were never intended to leave Dooley's client account.

47. In a witness statement in the Intervention proceedings dated 27th April 2000 the Respondent did not agree that the matter in hand represented the utilisation of $3.6 million in connection with what is generically called a Bank Instrument Trading Programme.However, in the Judgment of Mr Justice Neuberger in the Intervention proceedings the Respondent was said "very properly to have accepted that the document was redolent of Bank Instrument Fraud." In his evidence before the Tribunal the Respondent said that he had given Vanborough some kind of warning but there was no evidence before the Tribunal that he had done so.

48. Mr Bayley in evidence confirmed that the Respondent had not parted with Vanborough's money, had paid it back when requested to accounts requested by Mr Bayley and that neither Vanborough nor Brigadier L nor Mr Bayley had any complaint about the Respondent's actions.

Mr Song and Global/Servicios/Moreno

49. In August to September 1997 the Respondent was approached by and became involved in the "investment" by Mr Jen-Shen Song and by a company known as Servicios de Acesoria Global S.A ("Global"). Global was said to have acted through a representative, Mr Hector Moreno.

50. Mr Song was introduced to the Respondent by Mr Sutton who had some connection with Mr Cass (a director of Contrast Finance) and Mr Silver who recommended Mr Song to approach the Respondent. Mr Song and Mr Sutton travelled to Liverpool where a designated client account in the name of Contrast Finance was opened by the Respondent into which Mr Song deposited US$1 million. A similar amount was made available by Global.

51. Both Mr Song and Global wanted to place investments with an entity known as the Grosvenor Trust. The "brokers" involved in placing these investments with the Grosvenor Trust were various entities (Cass West Associates, Westminster Financial Services and Contrast Finance Limited) all of which were associated with Mr Silver.

52. Mr Song in evidence confirmed he had travelled to Liverpool, that he had met the Respondent on 3rd September 1997, that the Respondent had telephoned Mr Silver

during that meeting and that the Respondent had accompanied Mr Song to Midland Bank to arrange for a Banker's Draft for $1 million to be paid into the US dollar client account. The Respondent had shown Mr Song the certificate of his own indemnity cover which Mr Song said gave him an assurance that he could safely entrust so a large sum of money to the Respondent.

53. Mr Sutton gave evidence that he had met Mr Song in a London hotel; that he (Mr Sutton) was seeking to recover from a business failure and that he had secured an appointment as an intermediary in relation to a possible investment by Mr Song. Mr Sutton admitted he had no experience or understanding of the intended financial transaction but he hoped commission or fees he would earn from the transaction would put him back on his feet.

Grosvenor Trust

54. The investment with the Grosvenor Trust was to be made by transferring moneys to Grosvenor Trust's solicitors (Swepstone Walsh). The Respondent was actively involved in negotiating the basis of this transfer and effecting it.

55. The essence of the Grosvenor transaction was summarised in a document headed Term Sheet which promised the investor a return of 100 per cent per month for 40 weeks.

56. The Respondent confirmed that during the period 25th November 1997 to 8th January 1998 three amounts totalling $1.8 million were paid out of funds held in the US dollar bank account to the firm Swepstone Walsh, solicitors of London in respect of the following investors:-

Investor		Amount Paid
Mr H Moreno	$750,000.00	
Mr J S Song	750,000.00	$1,500,000
Mr J S Song		150,000
The Respondent		150,000
		$1,800,000

57. In a letter dated 20th November 1997 the Respondent wrote to Mr Moreno as follows:-

> "I acknowledge receipt of your letter….
>
> The documents which you have forwarded to me appear to be legally correct. I have spoken to Mr Silver who is presently satisfyng himself with the appropriate diligence enquiry. The investment itself appears to be a good investment, subject of course to the satisfactory diligence enquiries carried out by Mr Silver.
>
> For your further information, I can confirm that your co-investor, Mr Jen Shenn Song has indicated his willingness to proceed with the investment…."

58. The Respondent said that he had not been aware how the investment schemes had worked and went on to say "I did not get involved except my bank account was used to transfer the money."

59. The Respondent said that all of the funds sent to Swepstone Walsh were returned to him in early 1998 together with interest accrued and were lodged in his firm's United States dollar account designated Contrast Finance.

60. In Mr Justice Neuberger's judgment he records the Respondent's agreement that "Once again, as he now accepts they [i.e. the documents which the Respondent had seen and marked] are plainly redolent of Banking Instrument Fraud."

61. Early in January 1998, it was claimed by Mr Silver that an additional $300,000 was needed to bring the funds for investment in the Grosvenor transaction up to $21 million. Mr Song and Mr Moreno were each invited to do so and Mr Song in a letter dated 7th January instructed the Respondent to pay the additional funds to Contrast. Mr Moreno could not be contacted. The Respondent said that in order to "save" the deal he put up $150,000 of his own money. In fact he utilised (as the Tribunal found) some funds belonging to Mr Song and Mr Moreno. Within a short period Mr Moreno had provided the necessary $150,000. The Respondent acknowledged a breach as alleged in allegation (vi) but said it was minor. The Tribunal does not so regard it.

62. The fact that Mr Moreno was said to be late in producing the extra $150,000 was used by Mr Silver to put pressure on Mr Moreno and he wrote to Mr Moreno on 8th January 1998 with a copy to the Respondent in the following terms.-

> "Message from John Silver
>
> 8th Jan 98
> Hector Moreno
>
> Dear Mr Moreno,
>
> We were faced this afternoon with a crisis. As Dooley had not received your written instruction to transfer $150,000. Contrast Finance was obliged to transfer other funds in order to meet the deadline; as a consequence our collective investment now stands as follows:
>
> | Jen Shenn Song | Hector Moreno | Contrast Finance | Total |
> |---|---|---|---|
> | $900,000 | $750,000 | $150,000 | $1,8000 |
>
> Profits will be distributed accordingly.
>
> Kind regards
> John Silver
>
> [In manuscript] KEVIN FYI"

63. Two days earlier, Mr Silver had written to Mr Moreno and Mr Song as follows:-
"Message from John Silver

> "6th Jan 98
>
> Hector Moreno and Jen Shenn Song
> Most Urgent

> We have received confirmation that the Grosvenor Trust is to commence the trade this week they have changed the transaction bank to Credit Suisse. The total fund at the moment is $20,700,000 they have asked us if we want to provide the $300,000 to make it up to 21 millions. The 106 and pay orders will be discounted and re-entered five times.
>
> If you agree to each providing 150,000 please instruct Dooley immediately. If you do not want to, its is OK, we will provide it from another client. Please let me know.
>
> Best regards
> John Silver"

64. Mr Justice Neuberger found that the letter of 8th January 1998 was a dishonest letter. The Tribunal is of the same view. Mr Silver knew and the Respondent knew that Contrast had put up no money. The Respondent knew that he had provided money and that he had utilised funds held on his client account for Mr Song and Mr Moreno. He sought to justify this by claiming he was owed costs by Mr Song and Mr Moreno but no bill had been rendered. The Respondent sought to explain his conduct by continuing to deny that he knew or should have known of Mr Silver's dishonesty and by later asserting that he did not regard Mr Moreno or Global as his client. The Tribunal rejects both propositions and considers neither could have been honestly held by the Respondent. Even though positive proof of Mr Silver's dishonesty was not received by the Respondent until 12th February 1998, there was overwhelming evidence available to the Respondent that Mr Silver was not to be trusted. Apart from the warnings given by The Law Society and Mr Chadwick, and the manifestly suspect nature of the various schemes Mr Silver was propounding, the letter written by Mr Silver was known to the Respondent not to be true. The Tribunal found the Respondent's attitude to Mr Silver not capable of an explanation other than that he had wilfully ignored the evidence that Mr Silver was untrustworthy.

65. The Tribunal finds that the Respondent's assertion that Global and Mr Moreno were not his clients is put forward to rebut the Applicant's claim that in a number of circumstances the Respondent's duties to his various clients were in sharp conflict. There is no doubt that Global appointed the Respondent's firm to act for it and that Mr Moreno represented Global. A letter from Global dated 21st October 1997 and a letter from Mr Moreno dated 14th November 1997 were in the following terms:-

> "21 October 1997
>
> We would like to retain your services in representing Servicios De Asesona Global C.A in completing a financial transaction. The amount involved is One-Million US Dollars ($1,000,000 USD) as evidenced by the enclosed Proof of Funds from Pinebank.
>
> We would like to wire transfer these funds into your Client Trust Account in order that you can help us expedite the completion of a financial transaction. Please provide us a Letter of Acceptance to provide your services and the Banking Coordinates for your Client Trust Account in order that we can transfer the funds.

Thank you for your consideration in this matter. We await your reply."

"14 November 1997
Mr K A Dooley

I have not yet received any information from Mr Silver regarding his meetings in London; hope to hear from him today.

I need from you to please write some kind of document to Servicios de Asesoria Global, C.A; a company register (sic) in Caracas, Venezuela, whereas you explain that the funds that were transfer (sic) to your solicitors Scrow (sic) account of US$1,000,000 designated account: Hector R Moreno Perez, belong to the above mentioned company. Please submit such document to our fax number in Miami 1-954-3850724 but address it as follows:

Servicios de Asesoria Global, C.A.
Av. Francisco de Miranda, Parque Cristal
Piso No 5, Torre Oeste, Ofic.5-
Los Palos Grandes – Caracs
Venezuela

Att: Mr Miguel A

If you need any further information please let me know.

Best regards
Hector R Moreno"

66. There can be no question that Mr Moreno looked to the Respondent to protect his interests and by implication those of Global. On 17th November 1997 he wrote:-

> "Remember you are my attorney in England. I will not make any decision whatsoever before getting your legal approval. Please excuse that I am too insistent with phone calls. I do not want to make any move that I might later regret."

67. The Respondent in evidence said that as a result of his later discussions with Mr Miller he came to the view that Mr Moreno had defrauded Mr Miller. He later undertook to help Mr Miller recover funds which were paid by Mr Moreno to the CITCO scheme and lost. The Respondent considered this justified his assertion that he owed no duties to Mr Moreno and that he was entitled in Mr Moreno's name to seek to recover the CITCO investment for the probable benefit of Mr Miller. Mr Moreno was not informed by the Respondent of the position but the Respondent told Mr Miller in a letter of 14th September 1999 that Mr Moreno was no longer his client. The Tribunal rejects these arguments and does not consider they could be advanced by a solicitor who was acting honestly and competently and with integrity. The Tribunal found that at the relevant time Global and Mr Moreno were properly to be regarded as the Respondent's clients, that he owed duties towards them and that such duties were in conflict with those he owed to other clients. The Tribunal regard as

serious the Respondent's failure to recognise conflicts of which the Global/Moreno circumstance is an example.

CITCO

68. The Respondent denied any involvement in the CITCO investment apart from paying money away on the instructions of his respective clients Taipan, Global (or Mr Moreno) and Mr Song. He denied being present at the meeting held in London on 20th January 1998 when, according to Mr Lincoln's evidence the decision was taken to go for the CITCO scheme. There was disagreement as to whether the Respondent was present on the previous day when the failure of the Grosvenor Scheme was discussed. Mr Moreno in a letter dated 8th January 1998 expected the Respondent to be present and Mr Song in oral evidence said he was as he had handed over two watches purchased in Hong Kong. The Respondent said he might have put in an appearance on the 19th January but not on 20th January when all decisions were taken to invest CITCO.

69. Taipan was not a participant in the Grosvenor transaction but before that scheme collapsed, Mr Roe of Taipan was in touch with the Respondent. Taipan had signed an agreement with Contrast on 9th January 1998 which was sent to the Respondent and money for the investment into the CITCO scheme was sent to the Respondent on 9th January 1998.

70. The Respondent's files thus revealed that the Respondent received documents about a proposed new investment scheme some time before the money was returned to him by Swepstone Walsh and before money was paid out of the Respondent's client account to CITCO.

71. The documents demonstrated that the Respondent knew that there was another programme being developed.

72. The letter of intent dated 20th January 1998 was signed on behalf of two intermediaries who had introduced the transaction, Crompton (Mr Bond) and Delverton (Mr Lincoln) and by Mr Silver on behalf of Contrast. The letter employs numerous words and phrases mentioned in the Yellow Card warning as indicative of a fraudulent transaction e.g. Financial Institution Responsible Pay Order; major world financial institution. The letter e.g. of intent stated:-

> "The funds are to be held in Escrow by the above Citco/Golconda for the procurement of a non-negotiable World Bank Financial Institution Responsible Pay Order issued in the name of Contrast Finance Ltd."

It was said that the Percentage Return on Applied Capital would be 719.67%.

73. The Respondent had received the contract and the letter of intent before he paid Taipan's money to CITCO on 22nd January and Mr Song/Global's money out on 30th January 1998.

74. During the period 28th January to 3rd February 1998 three amounts totalling $1.525 million were paid from the Respondent's US dollar client account to CITCO Banking Corporation of New York in respect of the following investors:-

Investor		Amount Paid
Taipan (Mr Roe)		$610,000
Mr Moreno	$152,500	
Mr JS Song	152,500	305,000
Mr JS Song		610,000
		$1,525,000

75. The Respondent said the $1.525 million had been lost but he did not have any control over the funds once he had transferred them in accordance with his clients' instructions.

76. On 27th April 2000 the MIU Officer asked the Respondent if he agreed that the matters in hand had been the utilisation of a total of $3.325 million in connection with what were generically called "Bank Instrument Trading Programmes." The Respondent's response had been "Pointless me discussing this. I do not think they are from what I know of them."

77. The MIU Officer explained that both he and another MIU Officer had examined the papers provided by the Respondent and that they could only conclude that the matters were most definitely Bank Instrument Trading Programmes. The Respondent did not agree.

78. When the MIU Officer asked the Respondent to confirm that the proposed investment was the $1.5 million paid to Swepstone Walsh on 25th November 1997, in which Mr Moreno and Mr Song has invested $750,000 each, he responded by saying "Can only assume that it was."

79. The MIU Officer had considered a document entitled "Term Sheet" attached to that letter in respect of the $1.5 million Swepstone Walsh Investment.

80. The Respondent wrote to his client Mr Moreno on 25th November 1997 "The investment itself appears to be a good investment…"

81. The "Term Sheet" stated that in return for the investment of $1.5 million the investors were promised a return of $45 million over a 40 week period.

82. The Respondent did not agree that the form of the document indicated a Bank Instrument Trading Programme and said that he did not necessarily have the "Term Sheet" when he wrote the letter and that he could not remember the circumstances. He added that the schedule might have been received after the letter was drawn. It was the MIU's view that as the letter and the Term Sheet were stapled together in the original file of papers provided by the Respondent, the inference was that the letter had been prepared in conjunction with the Term Sheet.

83. The Tribunal found that the Term Sheet and the documentation sent to the Respondent (including a letter of Intent, Joint Venture Agreement and Non Circumvention Agreement/Non Dissemination/Non Disclosure and Declaration as to Source of Funds Agreement all dated 20th January 1998) to all of which Mr Silver was a party, would if compared to the Yellow Card Warning issued in the autumn of 1997 have been readily seen to be, in all probability, indicative of a fraudulent transaction.

84. Mr Lincoln claimed that his role had been that of an "introducer" of the transaction. He had signed a "joint venture agreement" on behalf of Crompton and Delverton in which he had agreed "to procure… a bank pay order" within 35 days of the money being deposited at CITCO. No such Bank Instruments exist in the legitimate financial world. He had committed his valueless British Virgin Islands Company to procure non-existent bank instruments to secure the moneys deposited in Golconda's account with CITCO, despite his evidence that his role was that of an introducer.

85. Mr Lincoln in evidence sought to persuade the Tribunal that because he claimed CITCO was a substantial Swedish banking group (in fact incorporated in Curacao in the West Indies) it was reasonable to regard the transaction as credible and legitimate. The documentation however makes clear CITCO itself had no role other than to receive money for the account of a company called Golconda Partners Ltd which itself was said later in evidence to be a subsidiary of The Woodborough Corporation Limited an Isle of Man company said to be controlled by a Mr Julian Horwood. The Tribunal regarded Mr Lincoln's evidence as of little probative value. Mr Lincoln professed no financial knowledge which qualified him to be authoritative with regard to the financial transaction he claimed to have introduced.

86. The Applicant alleged that the Respondent had written letters which were untrue after the failure of the CITCO transaction. An example was the Respondent's assertion that he did not act for Global or Mr Moreno in correspondence with Clyde & Co solicitors instructed by them following the loss of their money. The Tribunal regard the correspondence between the Respondent and the solicitors appointed by his former clients to investigate matters on their behalf as inappropriate and unhelpful.

87. All of the money invested in the CITCO scheme – some $1.5 million - was lost. There was a subsequent extensive and convoluted correspondence with various parties in attempts to recover the money which were unsuccessful. Both Global and Mr Song have instructed solicitors to attempt to recover their money. Mr Song has made a substantial claim on The Law Society's Compensation Fund.

Allegation (iv) – Jacobs Minet

88. The allegation arose from a transaction introduced to the Respondent by an intermediary. The proposal was that a firm of solicitors, Jacobs Minet, would borrow £315,000 on terms that it would repay £350,000 six weeks later. The repayment would be secured by a cheque drawn but post-dated on Jacobs Minet's client account. There was evidence that the Respondent regarded this as an exceptional investment opportunity. He decided to interest his old friend Mr McD in the proposal and it was alleged that he did not disclose an arrangement by which he would receive a commission of £10,000. Mr McD's Witness Statement confirmed that he was fully aware that the Respondent "had spoken to a party and had been promised a commission of £10,000 if proceeded with over the matter. We agreed that in the event that I did proceed with same that the commission would be split equally between us both."

89. The Respondent had proceeded on his own account with the loan which was not repaid.

90. Mr McD was unable to attend to give oral evidence and whilst there was some evidence to suggest that Mr McD's recollection was incorrect, the Tribunal was not satisfied that this allegation was made out to the requisite standard of proof.

Allegation (v) – shortage on client account

91. On 13th January 1998, an amount of $660,000 was received from Taipan Asset Management Ltd (Taipan) and lodged by the Respondent in a designated client dollar bank account in the name of Contrast Finance Limited. On 28th January 1998, an amount of $610,000 was paid from this account to CITCO Banking Corporation of New York in connection with a Bank Instrument Trading Programme.

92. The Respondent agreed that the remaining $50,000 together with interest accrued of $2,258.55 had been expended as follows:-

Date	Payee and Details	Amount
27.01.98	Mrs Silver – Banco Atlantico, Marbella	$12,500.00
03.02.98	Fiscal Hire Limited (A company owned by the Respondent's wife and daughter)	21,480.00
05.02.98	Mr Silver	2,000.00
12.03.98	Mr Silver in cash	4,944.60
07.04.98	Mr Silver in cash	11,333.95
		$52,258.55

The MIU Report recorded the Respondent's comments as follows.

93. The MIU Officer referred the Respondent to three faxes addressed to him dated September 1998 in which Mr Roe clearly indicated that he believed that the initial investment in the Bank Instrument Trading Programme was $660,000. Mr Shaw asked the Respondent to clarify the position and on 27th April 2000 the Respondent said "I have not got a clue, don't know. I will get you some clarification in due course."

94. When further questioned the Respondent stated that he believed that the amount of $50,000 was in respect of Mr Silver's fees which were payable by Mr Roe and that he would get confirmation from Mr Roe. The MIU Officer found no such evidence within the client's matter file that had been produced to him by the Respondent.

95. The MIU Officer pointed out to the Respondent that should he be unable to obtain from Mr Roe confirmation that the $50,000 was for Mr Silver's fees then he would allege that a shortage of $50,000 existed at 29th February 2000.

96. On 22nd May 2000 the MIU Officer wrote to the Respondent stating that the Respondent had not provided the further evidence as promised and that a deadline of seven days was given for him to reply. The Respondent responded immediately and the MIU Officer replied with a further letter dated 24th May 2000. These letters were attached as Appendix I of the MIU Report.

97. The MIU Report alleged an overpayment made to Mr Song of $16,238.50 from funds provided by Taipan.

98. The Respondent agreed that two payments of $15,000 and $13,000 (totalling $28,000) had been made to Mr Song on 1st September 1998 and 19th October 1998 respectively

when only $11,761.50 was available thereby resulting in an overpayment of $16,238.50.

99. The Respondent confirmed that the overpayment of $16,238.50 had been allocated against transactions headed "Fiscal Hire Ltd" as shown on the reconciliation of client United States dollar accounts as at 29th February 2000 prepared on or about 5th April 2000 by the firm's bookkeeper and attached as Appendix II of the Report.

100. The Respondent agreed that the payments were made to Mr Song in response to what could only be described as "begging letters" faxed by Mr Song to the Respondent in which Mr Song pleaded for funds because of his dire financial circumstances as a result of the failure of the CITCO Bank Instrument Trading Programme in which Mr Song had invested $762,5000 and which had apparently been lost.

101. The Respondent confirmed that the funds standing to the credit of Fiscal Hire Limited's account, which were ultimately used to pay Mr Song, included in the main the amount of $21,480 taken from Taipan.

102. The MIU Officer asked the Respondent if he agreed that he had in effect used the funds of Taipan for the benefit of Mr Song. The Respondent said that it depended on whether the $50,000 was due to Mr Silver from Taipan. He added that if the money was due to Mr Silver then he did not agree and that if the money was not due to Mr Silver then he did agree.

103. The Tribunal finds that the evidence that Taipan owed Mr Silver $50,000 was inconclusive. The Tribunal finds that at the time payment was made the Respondent had received no instruction from Taipan to make such a payment.

104. Written evidence before the Tribunal from Mr Roe indicated that in a letter of 23rd June 2000 Mr Roe had confirmed Contrast Finances' entitlement to the $50,000. Later he retracted this statement. Mr Roe was involved in a transaction which, in the Tribunal's view, bore the hallmarks of fraud and his contradictory evidence is not to be relied on. Nevertheless the Respondent provided no evidence that at the time $50,000 was transferred he had any authority from the company which had provided money for investment. Moneys paid into a designated client account for a specific purpose cannot be utilised except in accordance with the instructions of the persons entitled to those moneys. Contrast was merely an intermediary. Without express instructions those moneys could not properly be used to pay fees or commission to Contrast or anyone else. The Tribunal accordingly found that the payment of $50,000 out of the money paid to the Respondent's firm for investment was in breach of the Solicitors Accounts Rules and constituted a shortage on client account.

Other moneys handled by the Respondent

105. During the course of the final interview held by the MIU Officer with the Respondent on 27th April 2000 the Respondent could not explain the nature of the underlying transactions requiring his involvement as a solicitor in connection with the receipt and payment of substantial sums of money, the examples of which referred to in the MIU Report are set out below.

(i) Taipan - $300,000

Financial Transactions

106. The Respondent agreed that the following sums had been credited to a designated deposit account in the name of Taipan.

Payee	Paying Bank	Date	Amount
Taipan Assset Management	Wells Fargo Bank, San Francisco	19.06.98	$100,000
Harry E.Livingstone	Corestates Bank NA, Philadelphia	16.07.98	200,000
		Total	$300,000

107. During the period 24th July 1998 to 16th September 1999 a total of $295,000 was paid as follows:-

Payee	Receiving Bank	Amount
Taipan Asset Management	Wells Fargo Bank, Carson Plaza	$70,000
David Nunenkamp	River City Bank, Sacramento, California	75,0000
Southern Asset Management	PNC Bank, Erie, Pennysylvania	100,000
ALFM Limited Partnership	AEN Bank, North Seattle, Washington	50,000
		$295,000

108. The Respondent said he had followed his client's instructions in making the payments and that "I will get Mr Roe to explain all this."

(ii) Mr Moreno - $1 million

Financial Transactions

109. On 11th November 1997, an amount of $1 million dollars was received by the firm and lodged in a United States dollar client designated account in the name of Mr Moreno. The Respondent confirmed that from the $1 million an amount of $700,000 was returned to the same source as that from which it had been received.

110. The Respondent agreed that the balance of $300,000 was utilised to fund the undernoted payments:-

CITCO Banking Corporation for Investment (see paragraph 68)	$152,500.00
Mr Moreno's personal account at Popular Bank of Florida	136,133.85
Dooley & Co client account in respect of costs	10,000.00
Mr Moreno's personal account in Merseyside	10,000.00

111. The Respondent told the MIU Officer that he could not remember if he asked Mr Moreno for a reason for the transmission of funds but he had reported the matter to NCIS.

(iii) Mr JS Song - $1 million

Financial Transactions

112. On 3rd September 1997 an amount of $1 million dollars was lodged in a client designated deposit account in the name of Mr Song. The Respondent agreed that this was paid to the firm by a Banker's Draft drawn on the Chase Manhattan Bank, New

York, in favour of Mr Song. The $1 million was utilised to fund the undernoted payments:-

CITCO Banking Corporation for Investment (see paragraph 68)	$762,500.00
WK Inc, HSBC, Hong Kong	130,000.00
Mr Song's personal account in Taipei	70,000.00
Mr Song in Cash and Travellers Cheques	30,499.69
Dooley & Co client account in respect of costs	10,000.00
Glenna Song	8,000.00

113. In response to the MIU Officer's question as to whether Mr Song had given any reasons for requesting the payments other than the moneys invested in the CITCO Banking Corporation investment programme and the firm's costs, the Respondent said "I knew he was short of money – he needed the money." The Respondent said he did not remember if he had asked Mr Song for an explanation and went on to say "I might have done."

114. The Tribunal find these transactions were carried out without proper regard for the warnings given concerning the risks of involvement in money laundering.

Other attempted transactions

115. The Tribunal had before it documents relating to a number of other transactions and received oral evidence in relation to certain of them. Many of these transactions never got beyond a very preliminary stage but the common features were:-
(a) that the documents were all found in the Respondent's offices;
(b) that the documents in all cases were of the kind that would at once have been recognised as being suspect as containing many of the characteristics listed in paragraphs (a) to (o) of the Yellow Card under the heading "Common Charactistics of Banking Instrument Fraud." The documents also contained many of the typical phrases listed in the Yellow Card;
(c) Mr Silver was involved in almost all the transactions as an intermediary;
(d) the Respondent was involved in the transactions as a solicitor or moneys were to be paid to his client account (of which details were given);
(e) In some cases the Respondent conducted correspondence in relation to these transactions.

116. The Tribunal finds that all these transactions were dubious or fraudulent and that the Respondent's involvement in them gave them credibility.

Submissions

117. The Tribunal received closing submissions in writing on behalf of the Applicant and Respondent. So as to avoid overburdening these Findings, these submissions are not set out at length. On the issue of whether the Respondent acted with conscious impropriety the Applicant submitted:-

118. "The Society submits that the evidence is overwhelming that Mr Dooley was involved in conscious impropriety. The Tribunal's conclusion will depend upon the Tribunal's view of the Respondent's conduct, in the light of his intelligence, his experience, his knowledge, and the detailed information he

had during the course of these retainers. The Tribunal will also form a view of his honesty."

119. "The Respondent was central to each scheme and to the provision of a cloak of respectability to each. An honest solicitor would have issued written warnings and ceased to act in these sorts of transactions after the Y and W transaction which not only failed but had warnings of fraud all over it. There is no written warning to Silver nor to any of the clients whom Silver was introduced (there is evidence that he warned Silver in relation to Mr S in a conversation) that the transactions relied upon by the Society were frauds (let alone obvious frauds) and that he was not prepared to allow his client account to be used in them. An honest solicitor would have given the clearest written warnings to both Silver and prospective clients, refused to allow his client account to become a vehicle for the transfers of money into and out of these schemes and refused to act."

120. The submissions on behalf of the Respondent include the following:-

121. "The Respondent submits that in the light of all of the evidence given to the Tribunal at the substantive hearing:-
(i) there can be no finding of dishonesty on the part of the Respondent; and
(ii) the Respondent had not been guilty of conduct unbefitting a solicitor."

122. "The Respondent submits that an honest solicitor, with his attributes (22 years qualified and extremely experienced) and placed in the circumstances in which he found himself between 1996 and 2000 would have acted in precisely the same way that he did i.e. protecting his clients' interests and recovering clients' moneys."

123. "In relation to Bank Instruments Frauds the Warning Card advised:-

> "Exercise caution in communicating with potential fraudsters. Never send them anything – fax – letter – memo."

124. "The Respondent did not communicate with the senders of unsolicited mail in respect of such investment schemes. The Respondent considered the card as a warning to be very careful and not as a prohibition."

125. "It is abundantly clear from his letter dated 25th October 1996 that the Respondent understood the "warning letter" to be a warning to be extremely careful but not an absolute prohibition/bar against involvement of any kind i.e. protecting his clients' interests and/or recovering clients' moneys. Furthermore he confirmed that such was his understanding in his evidence before the Tribunal."

126. "Mr Chadwick's evidence was that he did not warn the Respondent about either bank instrument transactions or about Mr Silver. He said that he recommended to the Respondent that he be extremely careful in getting involved in such transactions and that the bank's recommendation would be not to get involved – "the gypsy's warning."

127. "Until that date [12th February 1998] the Respondent had no reason to suspect Mr Silver's dishonesty."

128. "In order for the Respondent to be guilty of conduct unbefitting a solicitor his involvement in the various transactions in question must be a dishonest involvement i.e. he must have knowingly facilitating a fraud and/or been an accessory to such a fraud or has derived a benefit from involvement in it. Although the various transactions in question could, in hindsight, "bear a number of the hallmarks of Bank Instrument Schemes" it clearly does not follow that the Respondent's involvement on behalf of his clients was either a dishonest involvement or conduct unbefitting a solicitor."

129. "It is clear that the Respondent's behaviour has not been culpable. The Applicant cannot substantiate any of the allegations made against the Respondent apart from allegation 1(v), the technical breach, and accordingly the remaining allegations should be found not proven and thereby dismissed."

130. The Tribunal concluded the hearing of the evidence before them on 2nd August 2002. With the agreement of the parties, the Tribunal directed that both parties lodge written submissions with the Tribunal by close of business on Tuesday, 6th August 2002. The members of the Tribunal met to consider the evidence and the submissions on Wednesday, 7th August.

The Findings of the Tribunal

131. The principal allegations in this case charged the Respondent with conduct unbefitting a solicitor by reason of his involvement in dubious or fraudulent transactions. Such involvement could be said to breach the fundamental rule of conduct contained in Practice Rule 1. The Rule is of crucial importance in preserving the profession's reputation for honesty, trustworthiness and integrity. Without these attributes the confidence of the public will be seriously eroded and the profession's reputation destroyed. Actions which compromise the professional reputation of solicitors may be the result of deliberate behaviour by a solicitor perhaps even negligent or careless behaviour. The Tribunal does not regard dishonesty as an essential ingredient of an allegation of conduct unbefitting which either has caused or is likely to cause the profession's good reputation to be compromised.

132. The Applicant alleges deliberate actions taken by the Respondent amount to conduct unbefitting and in addition says that the Respondent's behaviour was dishonest or, as might be said in the context of professional conduct, involved conscious impropriety.

133. The principal allegation concerning alleged involvement in dubious or fraudulent transactions also alleges two further matters. First that the Respondent "accepts" that these transactions "bear the hallmarks of Bank Instrument Schemes"; and second that because of warnings to the Respondent, and other factors including his knowledge and experience at the relevant time, his involvement in the transactions was as a "knowing participant." With regard to the first matter, whether or not the Respondent does, or does not, now "accept" this is not strictly relevant to assessment of the Respondent's conduct at the time of his alleged involvement in the transactions. However it is relevant to, though not determinative of, the nature of the transactions

themselves that it was accepted by the Respondent in the course of the hearing, as stated in paragraph 128, that in hindsight the various transactions could "bear a number of the hallmarks of Bank Instrument Schemes." The Tribunal also noted that as noted in paragraph 8 above, the Respondent had admitted to the High Court in his challenge to the intervention that "Having re-read my files in detail I accept that the transactions relied on by the Law Society do indeed bear a number of the hallmarks of Bank Instrument Schemes about which I was warned in 1996 and about which the Law Society sent out its warning card in 1997." As to the second matter, as the Applicant rightly said, the respondent's conduct needs to be judged in the light of what he knew at the time. The Tribunal's assessment of this matter, and the nature of the transactions themselves, is set out below.

134. The Respondent in this case has vigorously denied that he was dishonest and the Tribunal therefore carefully considered what this word connotes in the context of a solicitor's misconduct. Cases cited before the Tribunal included Royal Brunei Airlines Snd Bhd v Tan [1995] 2AC378, Mortgage Express Limited –v- Newman & Co. [2000]. Lloyds Rep PN 745 and the recent House of Lords decision in Twinsectra v Yardley and others [2000] UK HL 12. All these cases relate to civil proceedings where the issue before the Court concerned civil fraud, negligence or breach of trust so the various tests of what constituted dishonest or improper conduct in those cases is applicable to a question of professional misconduct by analogy. Clearly this is also the case if consideration is given to the question of dishonesty in criminal proceedings where the test in R v Ghosh [1982] QB 1053 is the leading authority.

135. Although the Tribunal applies the high standard of proof, these proceedings are not criminal in nature. The potential consequences for respondents are however very serious and the Tribunal must therefore be satisfied that the allegations are proved beyond reasonable doubt.

136. Although the principle stated by the majority decisions in the House of Lords in Twinsectra (supra) - a case involving accessory liability for a breach of trust - are applicable to a case of professional misconduct by analogy, the Tribunal in this case has sought to apply those principles.

137. There may come a time when the Tribunal would think it right to consider as dishonest that which an honest and competent solicitor in the position of the Respondent would without doubt not have done. In this case however the Tribunal has had regard to the Judgment of Lord Hoffmann in Twinsectra and it has approached the matter on the footing that the Tribunal should be satisfied that the Respondent "must himself appreciate that what he was doing was dishonest by the standards of honest and reasonable men". It was very apparent that the Respondent in this case vehemently asserted his honesty but this on its own is not sufficient to acquit him of the allegation. It might be so if he "did not know that what he was doing would be regarded as dishonest by honest people". That is consistent with the statement by Lord Nicholls in the Royal Brunei Airlines case supra when he said that "For the most part dishonesty is to be equated with conscious impropriety. However, this subjective characteristic of honesty does not mean that individuals are free to set their own standards of honesty in particular circumstances".

138. The principal arguments advanced by the Applicant were (a) that the Respondent had involved himself (the extent to which he did so was a matter of dispute), in a number of transactions which on their face bore many of the characteristics of fraudulent or improper transactions and (b) that the Respondent had specifically been warned that certain transactions were likely to be fraudulent and that certain individuals had a reputation for involvement in transactions believed to be fraudulent.

139. The Tribunal had before it a large number of documents relating to financial transactions which had suspicious or unusual characteristics. The applicant had cited 19 such transactions although the Respondent contended that in relation to a number of these his involvement was very minor or they had never progressed beyond an initial stage. The Respondent said that in those cases where moneys were received into his client account there were no instances where the involvement of his firm had caused any loss to his client indeed he asserted that his involvement had ensured that no moneys which had passed through his account were lost. This was disputed by the Applicant particularly in relation to the CITCO transaction considered in more detail below. In a number of cases the Respondent accepted that the transactions were, or probably were, fraudulent or in his words a "scam" but he strongly asserted that even in those cases his actions had safeguarded any moneys that came into his hands. There was no evidence before the Tribunal that any of the 19 transactions had been carried out in accordance with their terms so as to generate profits for those who were minded to invest in them. This came as no surprise to the Tribunal since the transactions often promised an investment return which could only be described as incredible. For instance a return of 2½ per cent of the amount invested per week for a period of 40 weeks. In another case a return calculated as somewhere between 1200 and 1600 per cent generated over a relatively short period of time. Although the contracts contained sophisticated wording and were often lengthy and complicated they were obviously deficient in their failure to disclose how these extravagant returns were in fact going to be achieved and who was going to achieve them. The agreement contained phraseology which to any alert professional adviser would appear meaningless or suspicious especially one who had received the specific and general warnings from The Law Society. The agreements often contained confidentiality clauses specifically designed to prevent the "investor" becoming aware of any information which would disclose who was truly involved in the transactions and the "investor" was thus left in a position of relying wholly or to a large extent, on the intermediaries who had introduced the transaction and who, in almost every case were in fact to be the recipients of the moneys which the so called investor was invited to put up. The honesty, good faith and qualifications of the intermediaries was therefore very relevant to protection of clients' interests.

140. The Tribunal received evidence that most if not all of the intermediaries had no qualifications in the field of investment transactions and no authorisation from or registration by any regulatory body. A number of such intermediaries demonstrated ignorance of the transactions they were introducing. Evidence on behalf of the Respondent was given by a number of intermediaries; one a retired jeweller, another a distributor of audio and lighting products and yet another a retired gentleman who had fallen on hard times. None professed any knowledge of how the supposed underlying transactions worked and none was in a position to judge the worth of the transactions they so persuasively promoted. The essential first link in transactions of this kind is to sign up the "investor" to an agreement which makes it impossible for the investor to find out who is behind the scheme. The investor is encouraged in the belief that the

transaction may be beneficial to him by his knowledge of the involvement of a solicitor. It was also a feature of these agreements that the moneys made available by the so called investor were very rarely themselves to be used for generating the profit but more likely were to be used to obtain access by some unexplained "leverage" to significant sums, millions or even billions of (usually) dollars which were then to be traded in some way unspecified and which would then generate a huge profit a high proportion of which went to the provider of the "margin" - for example in one case a return of over 700 per cent in less than a year. It was not apparent why the person said to be capable of achieving these phenomenal profits would be willing to give the provider of the "margin" such a large proportion of them.

Allegation 1(i)
The Respondent's Involvement

141. The extent of the Respondent's involvement in the 19 transactions referred to in the Applicant's Rule 4 statement varied and was the subject of dispute by the Respondent. Five transactions were particularly referred to in the Rule 4 statement and in evidence before the Tribunal. The Tribunal had to decide if the Respondent was involved, if the transactions were dubious or fraudulent and if the Respondent's participation therein was with knowledge. The Tribunal made the following findings of fact:

(a) almost all the transactions involved Mr. Silver who, from at the latest 12th February 1998, was known to the Respondent as a man of bad character – this aspect is considered in more detail below.

(b) in all the transactions involving Mr. Silver, the Respondent or his firm were to the knowledge of the Respondent, held out as, in some way connected with or involved in the transaction either as solicitors to or advisers to Mr. Silver and his various companies.

(c) there were many instances where the Respondent allowed Mr. Silver to use the Respondent's name and the name of his firm and its address as the address at which Mr. Silver and his various companies conducted business.

(d) in a case which did not involve Mr Silver, the participation of an unqualified intermediary (the wife of the Respondent's outdoor clerk) and documentation similar to that used in Bank investment frauds put the Respondent a notice of the dubious nature of the transaction.

(e) in five cases referred to in the Rule 4 statement involving
  (i) Mrs. W and Mrs. Y.
  (ii) Mr. and Mrs. S.
  (iii) Vanborough.
  (iv) Global/Mr. Moreno re Grosvenor and CITCO.
  (v) Mr. Song.
  (vi) Taipan.

the Respondent acted as their solicitors as well as solicitors to Mr Silver and his companies and in the cases of Vanborough, Song, Moreno and Taipan moneys intended for investment passed through the Respondent's client account.

(f) In relation to the Grosvenor Trust transactions involving Mr. Song and Mr. Moreno the Applicant claimed but the Respondent denied that the Respondent acted also for Servicios de Acesoria Global. The Tribunal found that the Respondent had been appointed to act for Global and there was no evidence that its instructions had been withdrawn. The Respondent could not deny that

Mr Moreno was his client in relation to Global's funds. The Tribunal rejected the Respondent's explanation that he was entitled to regard Mr Silver and his company Contrast as his only client in relation to the US$1 million sent to the Respondent by Global on 21st October 1997.

(g) The Tribunal found that the Respondent had allowed his name and that of his firm to be referred to as the address for correspondence relating to the various transactions and in some cases as the address for service of notices or as a Trustee. The Tribunal also found that anyone having access to the documentation would have been entitled to assume (and would have assumed) that the Respondent or his firm had been appointed or were acting in the transaction. The Respondent thus gave the transactions a credibility which they did not deserve.

(h) In relation to the investment of money into the CITCO scheme – all of which was lost – the Tribunal found that these moneys had been paid out of the Respondent's client account albeit on instruction of clients at a time when the Respondent was acting for them in relation to the transaction.

142. In evidence before the Tribunal the Respondent appeared in part to have resiled from his acknowledgement that he knew (or the time when he knew) that the schemes were or were likely to be dubious or fraudulent. The Respondent stated that after Mr. Silver had confessed that he had embezzled money from his previous employer and after he knew a warrant had been issued for Mr. Silver's arrest, he believed Mr. Silver's explanations that he had stolen money to help pay for medical treatment for Mrs. Silver and that he excused Mr. Silver's behaviour. Whilst the Tribunal accepted that Mr. Silver might well have seemed plausible to the Respondent, the Tribunal rejects the Respondent's arguments. As an experienced solicitor who had received certain warnings about Mr. Silver from the Law Society and the Midland Bank and who after 12 February 1998 knew Silver was liable to arrest for fraudulent behaviour, the Tribunal find that the Respondent knew that all the transactions in which he had been or was involved were in all likelihood tainted by their association with Mr Silver and likely to be dubious or fraudulent. The Respondent had acknowledged in his meeting with Mr. Shaw (the Law Society's Inspecting Officer) in that the 1996 transaction involving Mrs. Y and Mrs. W was probably a fraud.

<u>Finding as to dubious and fraudulent nature of transactions</u>

143. The Tribunal finds that the transactions in respect of which documentation was before the Tribunal bore all the hallmarks of (and in all probability were) dubious or fraudulent transactions of the kind sometimes described as Bank Investment Frauds or which bore similar characteristics including:

(i) utilisation of unregulated intermediaries who had no qualifications or who had qualifications which were obviously inadequate.

(ii) apparent concealment of the qualifications or ability of those expected to generate profits for the investor.

(iii) the promise of huge and unrealistic profit e.g. 1200 per cent generated over short period.

(iv) use of documentation which to a lawyer must have seemed incomprehensible and or obscure.

(v) use of documentation designed by its terms to prevent the investor finding out anything about how the transaction could legitimately be effected.

144. The Tribunal found beyond any reasonable doubt that the involvement of the Respondent was, on basis of facts as found sufficient to justify a finding that he had been guilty of conduct unbefitting a solicitor as alleged in paragraph 1(i).

145. The Tribunal had no hesitation in finding that not one of the 19 transactions in respect of which documents were made available to the Tribunal would be regarded by an honest and competent solicitor as other than spurious and in all likelihood fraudulent. Any involvement in such a transaction would in the opinion of the Tribunal give rise to a serious risk of damage to the reputation of the profession. Involvement by a naïve or gullible solicitor would not however necessarily involve a charge of dishonesty or conscious impropriety.

146. In this case however, the Applicant asserts that the Respondent knew that the transactions in which he played some part were or were likely to be improper or fraudulent transactions and it is this which has in the Applicant's view justified an assertion that the Respondent's behaviour was dishonest.

147. The charge of dishonesty or conscious impropriety relies on a claim that the Respondent must have appreciated that this actions were dishonest by the standards of honest and reasonable men. The Tribunal has considered what the Respondent knew in two crucial areas.

148. Did the Respondent know that the transactions in which, as found by the Tribunal, the Respondent was involved, were dubious or fraudulent? In the light of the warnings referred to earlier the Tribunal has come to the clear conclusion that either the Respondent knew the transactions were suspect or he was grossly reckless. He seems to have been wholly unwilling to question the honesty of Mr Silver or the legitimacy of the transactions he involved himself in.

149. Did the Respondent know that he was receiving his instructions from a person with a reputation for dishonesty? As to this the Tribunal found that the Respondent knew but chose to ignore that Mr Silver was dishonest from the time of his discussion with Mr Chadwick in July 1995.

150. The Tribunal is unable to accept the Respondent's evidence that he had believed Mr. Silver was honest and that he had even after 12 February 1998, an honest belief that Mr. Silver had had some reasonable grounds for maintaining his stance as an honest man.

Allegation (ii)

151. Consistently with the Tribunal's finding in relation to the Respondent's duties to his clients the Tribunal considers the Respondent did fail adequately to protect (or at least warn his clients about) investment of funds in the CITCO scheme. The Tribunal found this allegation proved beyond reasonable doubt.

Conflicts of interest Allegation 1(iii)

152. The Rule 4 statement alleged that the Respondent acted in circumstances of conflicts of interest. The Respondent claimed that there was no divergence between the interests of Mr. Silver as intermediary and the potential investor and therefore no conflict. The Applicant drew attention to various circumstances where the

Respondent acted on the instructions of Mr. Silver. The Tribunal have no doubt that an intermediary whose principal interest is securing his fee or commission has a quite different interest to that of the investor. A solicitor advising the investor on the merits of whether or not to make an investment should not be influenced by the interests of another client whose overriding concern is to have the investment made. The Respondent denied any detailed knowledge or involvement in the "investment" transactions though as previously found, the Tribunal did consider he had a material involvement. The Respondent's connection to the transactions at least carried the obligation to say if it was or appeared to be suspicious or a fraud.

153. Such advice as the Respondent did give was wholly inadequate but worse, it gave potential investors encouragement to believe that the transactions were legitimate and capable of producing a level of profit that could only be described as incredible. As The Law Society had warned in the Yellow Card "If it sounds too good to be true, it probably is."

154. The Respondent's letter to Mr Moreno that the investment in the Grosvenor scheme was "A good investment" could not in the light of the warnings given be other than seriously misleading. The CITCO scheme was a fraud and had all the tell tale signs of being so: promises of unbelievable levels of profit and suspect documentation, all being promoted by intermediaries (including Mr Silver) about whom any competent solicitor would have entertained serious doubts.

155. The Respondent acknowledged this letter was unwise and that he was foolish to have written it. It however demonstrates very clearly the conflict. The Tribunal considers that a solicitor could not properly recommend to a client a transaction which should have been recognised as fraudulent whilst also acting for the intermediary whose commission depended on the transaction proceeding.

<u>Mr Moreno, Global, Mr Miller and the CITCO Scheme</u>

156. The Applicant also contended that a conflict of interest had arisen in the case of Mr Moreno. As noted in above the Respondent had received certain moneys from Global for investment in the spurious Grosvenor Trust scheme. These moneys together with moneys provided by Mr Song were sent to another firm of solicitors (Swepstone Walsh) but later returned to the Respondent's client account. The Respondent claimed the Global money had belonged to Mr Moreno or his companies.

157. The Respondent accepted instructions from Mr Miller that he would seek to recover the Moreno "investment" in CITCO and that if he did so he would preserve the funds so as to help Mr Miller to recover them. The Respondent said that a conflict of interest would only have arisen if any money had been recovered but that no conflict arose before that time. The Tribunal disagrees. The Respondent did not inform Mr Moreno of Mr Miller's claimed interest in the moneys, the Respondent was ostensibly seeking to recover on behalf of Mr Moreno. For so long as Mr Moreno remained a client, the Respondent could not properly represent the interests of Mr Miller. The Tribunal rejects the Respondent's arguments based on Practice Rule 16.02.

158. The Tribunal therefore finds that in addition to the conflict which arose between Mr Silver (and his companies) and the "investors" there was a conflict in relation to Mr Miller, Mr Moreno, and Global.

159. The Tribunal has no doubt that conflicts did exist which the Respondent failed to recognise.

The Jacobs Minet matter (allegation (iv))

160. The Tribunal did not find this allegation proved to the necessary standard of proof.

Payment of US$50,000 to Mr. Silver (allegation (v))

161. No contemporaneous evidence was produced that Taipan authorised any part of its "investment" to be paid to Mr. Silver or any company of his. A sum of money received by a solicitor for investment should be applied solely for that purpose; a solicitor should not knowingly allow it to be applied for some other purpose without express instructions. In principle a sum paid by Taipan into Contrast Finance's designated client account with the Respondent for investment could not be applied by Contrast Finance for other purposes (e.g. paying itself commission or repaying a loan from the Respondent to Mr. Silver). In the absence of Taipan's instructions, the Respondent should not have acted on Mr. Silver's instructions. Subsequent (and contradictory) letters from Mr. Roe of Taipan do not alter the Tribunal's view of this allegation which is found proved beyond reasonable doubt.

Allegation (vi)

162. As noted in paragraph 61 the Respondent admitted a breach as alleged.

Allegation (vii)

163. The Tribunal found this allegation proved as stated at paragraph 64.

164. The Tribunal did not find allegation (viii) established to the requisite standard of proof.

The Tribunal received evidence from numerous character references that the Respondent was held in high esteem. He was clearly regarded by those who wrote in his support as a good solicitor who demonstrated high standards of competence and professionalism and who in relation to many parts of his practice was seen to be – and so far as the Tribunal could judge was - a man of honour and integrity. Many of the references were in glowing terms and were provided from a wide spectrum of society including professional colleagues, clients and some whose contact was mainly social. The Tribunal was therefore very saddened to be driven by the evidence to the conclusion that in relation to the matters brought before the Tribunal there was no other explanation but that the Respondent behaved in a consciously improper manner amounting in the Tribunal's view to dishonesty. In Lord Nicholls' formulation of dishonesty in The Royal Brunei Airlines case he said "…For the most part dishonesty is to be equated with conscious impropriety…." Mr Newman submitted that there was a distinction to be drawn between conscious impropriety and dishonesty and he drew attention to a Tribunal decision in the case of Timothy AB Elliot in 1998. The Tribunal regard this as distinguishable on the facts and in the context of the instant case that no distinction could be drawn.

It may be that the Respondent's success in many spheres of his professional and private life combined with justifiable pride in his achievements, which derived from a disadvantaged background, led to an arrogant attitude towards those who gave him the clearest warnings that his involvement with certain kinds of transaction and with Mr Silver were very risky. Further he appeared to have been, as he acknowledged, out of his depth and unable to admit to himself or others that the grandiose transactions in which he was involved were

incomprehensible as legitimate commercial transactions. In behaving as he did in relation to the matters complained of, the Respondent did seem in the Tribunal's view to have "set his own standards of honesty": standards which the Tribunal did not consider any honest and competent solicitor would have set if confronted with the circumstances in which the Respondent found himself. In the light of the findings and despite the strong plea in mitigation advanced by Mr Newman on behalf of the Respondent, the Tribunal considered it must order that the Respondent be struck off the Roll.

DATED this 12th day of September 2002

on behalf of the Tribunal

A H Isaacs
Chairman