No. 8599/2002

IN THE MATTER OF MICHAEL JOHN HARVEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mrs E Stanley
Lady Bonham Carter

Date of Hearing: 1st and 2nd July 2003

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 Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke, Potter & Chapman (subsequently known as Russell Cooke) of 8 Bedford Row, London, WC1R 4BX on 10th May 2002 that Michael John Harvey solicitor of George Street, Luton, Bedfordshire, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 26th February 2003 the Applicant made a supplementary statement containing further allegations.

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

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

(i) that he acted in breach of Practice Rule 1(a), (c) and (d) by allowing his firm and his firm's client account to be used in circumstances which he knew or ought to have known were improper and unjustified;

(ii) that he acted in breach of Practice Rule 1(a), (b), (c), (d) and (e) by accepting instructions when there was a clear conflict, or risk of conflict of interest, between clients;

(iii) that he failed to provide adequate supervision of staff;

(iv) that he failed to keep full and adequate records by improperly allowing original files and records to be sent outside the jurisdiction;

(v) that he improperly failed to act in accordance with professional undertakings;

(vi) that he provided an undertaking as to the genuineness of a promissory note in circumstances where he could not properly have given such an undertaking.

(vii) that he swore affidavits that he knew or ought to have known were untrue and/or inaccurate;

(viii) that he prepared or was involved in the preparation of an affidavit that he knew or ought to have known was untrue and/or inaccurate;

(ix) that he sent letters, the contents of which he knew or ought to have known were untrue or inaccurate;

(x) that he wrote a letter suggesting an improper course of action;

(xi) that he improperly retained funds in his client account and improperly refused to release them;

(xii) that he improperly released funds from client account.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Peter Harland Cadman appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the oral evidence of Mr Cotter and of the Respondent.

The following documents were handed up at the hearing:-

1. A chronology by the Applicant.

2. A core bundle of documents proposed by the Respondent.

3. Photocopy of letter from Messrs Harveys to Mr Porter and Mr Finlayson. dated 29th August 1997.

4. Brochure of the Imperial Consolidated Group.

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

The Tribunal Order that the Respondent, Michael John Harvey of George Street, Luton, Bedfordshire 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 fixed in the sum of £14, 724.43p inclusive.

The Evidence before the Tribunal

The Respondent's personal background

1. The Respondent was born in 1960 in Luton and had lived in or around the town for the whole of his life save for three years at university and one year at The College of Law. The Respondent was married in 1985 but divorced in 1994. He had two teenaged children. His mother, widowed in 1997, was elderly and in poor health.

2. After leaving The College of Law in 1982 the Respondent immediately found a trainee position with a local firm of solicitors. He worked for five firms over a period of 13 years before fulfilling his ambition to set up his own practice in June of 1995.

3. The Respondent set up his own firm on a modest scale and enjoyed some success. In 1996 the firm moved to a prestigious town centre office at 74 George Street, Luton. The Respondent had remained a sole practitioner. The Respondent undertook in the main litigation work. He was able to conduct conveyancing but considered it better if conveyancing work was dealt with on a full time basis.

4. The Law Society intervened into the Respondent's practice on 17th December 2001. On 2nd January 2002 the Respondent issued proceedings to contest The Law Society's intervention. On 21st March 2003 judgment was given in favour of The Law Society.

The subject matter of the allegations

5. The allegations made against the Respondent all related to the work which he undertook for the Imperial Consolidated Group of Companies and its employees.

6. The Group Structure set out on the following page is that contained in a copy of a brochure issued by Imperial Consolidated Group which stated that all information was correct at the time of going to press on 4th August 1998.

7. Dramatis Personae

DW	A clerk employed by the Respondent.
Mr F	See above for position in Imperial Consolidated Group (client of the Respondent.
Mr B	See above for position in Imperial Consolidated Group (client of the Respondent).
PL Corp Ltd	Company through which Mr F and Mr B managed an hotel (part of the Imperial Group).
Mr H	See list of Directors' and Officers of the Group.
Mr W	- ditto -
FBCL	A Company within the Imperial Consolidated Group.
Mr P	Owner of D Limited and purported donor of money to a member of the Imperial Consolidated Group.
Mr M	An American who had entered a high yield investment contract.
A Trust Co Ltd	Mr M's Company
Mr S	Lender of money to PL Corp Limited
ZWK	American Law Firm in Zurich.
Mr K	Managing Partner of ZWK.
Mr G and Mr L	Investors in FBCL.
Mr Pr and Mr Fy	Australian Brokers.
R Syndicate	A syndicate of investors formed by Mr FY.

8. Chronology

1994	Respondent introduced to Mr B and Mr F.
12 June 1995	Respondent opens his own practice.
11 November 1995	First funds received by Respondent in connection with FBCL transactions.
10 January 1996	Mr F adjudged bankrupt.

April 1996	Mr K informs the Respondent that he has been elected associate counsel of ZWK.
April 1996	Lancashire police confirm theft allegations made by Mr S have not resulted in criminal charges against Mr F or Mr B.
21 May 1996	Respondent accepts invitation to join ZWK.
30 June 1996	Respondent's firm's accounts for the year ending 30 June 1996 show total billings of £30,927 and overheads of £37,041 leading to a net loss of £6,114.
July 1996	The Respondent first meets Mr P at Binbrook.
August 1996	The Respondent meets Mr P at Park Lane Hotel in London.
5 August	Imperial CH Ltd terminates relationship with Mr K.
9 August 1996	Mr B writes to Mr P.
15 August 1996	Joint Venture agreement between Imp CH Ltd and Mr P.
12 September 1996	Commencement of The Law Society's Investigation Accountant's inspection of Respondent's firm.
26 October 1996	The Law Society sends first warning letter to Respondent.
30 December 1996	Respondent referred The Law Society's Investigation Accountant to prime bank instrument frauds by Commercial Crime Bureau.
January 1997	Respondent receives letter from Lloyds Bank advising that their international department had received a communication which caused them concern.
1st March 1997	The Respondent instructed to act in relation to A Trust & Co Ltd's recovery of funds.
10th March 1997	Meeting between C (UK) Limited and the Respondent re A Trust Co Ltd.
17 March 1997	C (UK) Ltd advise the Respondent that they have found the A Trust Co Ltd's money in Barclays Bank, Piccadilly.
1 April 1997	Imp CH Ltd inform Mr P that in the light of their dispute they have placed the matter in the hands of the Respondent.
2 April 1997	A Trust Co Ltd write to C (UK) Ltd agreeing to split any damages recovered above $2.7million on a 50/50 basis between them.
3 April 1997	Letter of complaint from MP to the Respondent "If you have

	accepted to represent Mr Brook I wish you pay me back my retainer as soon as possible please."
3 April 1997	Respondent sends fax to Mr P denying retainer.
11 April 1997	C (UK) Ltd provide report on Credit A transaction addressed to A Trust Co. Ltd.
22 May 1997	Statement of Claim served in P v B and others.
29 May 1997	Order 14 hearing on A Trust Co Ltd v Credit A adjourned.
21 July 1997	The Respondent writes to Barclays Bank re A Trust Co Ltd's judgment stating "We undertake to utilise the said funds to discharge your customer's liability under paragraph 1 of the Order of 15 July 1997 to our client, A Trust Co Ltd."
28 July 1997	Barclays remits £1,576,797.80 to the Respondent in respect of A Trust Co Ltd's matter.
29 August 1997	The Respondent provides undertaking in the Rusaust matter.
January 1998	Second Law Society Investigation Accountant inspection of the Respondent's firm begins.
3 February 1998	Respondent writes to Imperial CS SA stating that "We are prepared to accept potential customers of your business as clients of this firm."
20 February 1998	First funds received by the Respondent in connection with Managed Fund [M2F].
23 April 1998	Proceedings brought by SEC against City (UK) Ltd in Tennessee.
1 May 1998	The Law Society sends second warning letter to the Respondent.
31 July 1998	City (UK) Ltd sends second draft affidavit for SEC to the Respondent for advice.
2 August 1998	Judgment obtained against City (UK) Ltd by SEC in Tennessee.
6 January 1999	Last funds received by the Respondent in connection with M2F fund.
September 2000	Respondent fined by Solicitors Disciplinary Tribunal in connection with Mr Mendoza.
25th October 2000	Respondent notified of third Law Society Investigation Accountant inspection.

19 July 2001	Mr F and Mr B disqualified as directors.
31 October 2001	Third Law Society's Investigation Accountant's report issued.
17 December 2001	The Law Society intervenes into Respondent's practice.
18 December 2001	Judgment in Imperial Consolidated Group plc and Imperial Consolidated Securities SA -v- David Stewart.
2 January 2002	Proceedings to contest The Law Society's intervention issued by the Respondent.
10 June 2002	Imperial Consolidated Inc, Imperial Consolidated Financiers Ltd and Imperial Phoenix Finance Ltd placed in administration.
21 March 2003	Judgment of the Honourable Mr Justice Patten in Michael John Harvey and The Law Society (the contested intervention proceedings).

How the Respondent met Mr F and Mr B in 1992 and 1994 while the Respondent was working as an assistant solicitor in a solicitor's firm and the events which followed

9. A longstanding client of the Respondent had recommended Mr B and Mr F to him. Both gentlemen were entrepreneurs in their twenties. Both came from reputable family backgrounds.

10. When the Respondent was introduced to these two gentlemen they had already exchanged contracts to buy an hotel with the assistance of a mortgage. They had a mortgage offer which was subject to survey and the completion date was set for about one year ahead or sooner by agreement. The vendor of the hotel, Mr Wh, allowed Mr B and Mr F to manage the hotel which they did as a limited company, PL Corp Limited.

11. The Respondent's instructions were that Mr Wh remained in residence and was disruptive. He surrounded himself with bodyguards, one of whom was Mr S.

12. Mr B and Mr F told the Respondent that they were being subjected to threats by Mr Wh's bodyguards and they wished to complete the purchase and secure vacant possession as soon as possible. The proposed mortgagees' surveyor reported that the hotel was suffering from subsidence and the offer of advance contained the requirement for a large retention to be made. That effectively frustrated the purchase. When the Respondent reported the position to Mr Wh's solicitors the parties fell out. Mr Wh ordered his bodyguards to evict Mr B and Mr F from the hotel but they left of their own accord before the bodyguards arrived. Mr Wh caused an article to be printed in the local press alleging that Mr B and Mr F had fled the hotel, leaving him "high and dry."

13. During the course of acting for Mr B and Mr F the Respondent had become aware that they had lost a large sum of money after investing in what turned out to be an advance

fee fraud in an attempt to obtain a commercial line of credit from an overseas bank. The Respondent's recollection was that the sum involved had been £45,000, part of which had been raised by way of a loan from Mr S.

14. After the failure to complete the purchase of the hotel, PL Corp Limited ceased to trade. Mr F had personally guaranteed a debt to a company, HP Limited which presented a petition to wind up PL Corp Limited and, after the Winding Up Order had been made in September 1995, filed a bankruptcy petition against Mr F in October 1995. The Respondent had been instructed in relation to both matters which were based on statutory demands, not upon judgments. Mr Fraser sought to resist the bankruptcy petition on four grounds:-

    i) the personal guarantee was signed under duress;

    ii) HP had signed a confidentiality agreement which it had broken;

    iii) the personal guarantee had been conditional upon HP Limited not taking proceedings against PL Corp Limited; and

    iv) Mr F was personally solvent.

15. All of progressive Leisure Corporation's creditors were later repaid in full with interest and costs.

16. On 11th October 1995 Messrs Yates and Barnes solicitors sent to the Respondent a copy of a bankruptcy petition that had been represented to the Court by HP Limited on 9th October 1995 for hearing on 28th November 1995. On 25th October 1995 the Respondent received a fax from Mr F's father with a copy of a "Pre-Legal Notice" from a firm of debt collectors on behalf of Leeds Permanent Building Society. The notice had been addressed to Mr F at the hotel and re-addressed to a Lincoln address.

17. On 16th November 1995 the Official Receiver wrote to Mr F complaining that he was not making himself available to the petitioning creditor for service of the petition. A copy of that letter was sent to the Respondent. On 20th November 1995 Mr F faxed the Respondent to instruct him to contact the Official Receiver to ensure that all correspondence should go through the Respondent in order to protect Mr F from threats from creditors.

18. The Respondent told the Tribunal that after the presentation of the bankruptcy petition in October 1995 Mr F's whereabouts had not been known to the Respondent for several weeks thereafter. The Respondent experienced difficulty in obtaining instructions.

19. On 9th January 1996 the Respondent swore an affidavit in which he asserted:-

> "On 12th December 1995 I received at my office a copy of a bankruptcy petition hearing and a copy of the Order of 24th November 1995. Both were in a sealed envelope addressed to Mr F for me to pass on to him. I am informed and believe that until Mr F heard from me at this time he was unaware that

> bankruptcy proceedings had been issued against him. He does not reside at the address in the petition"

20. The Respondent said that the Official Receiver of PL Corp Limited wrote to Mr F's father's home on 16th November 1995 complaining that Mr F was not making himself available for service of documents relating to PL Corp Limited. The letter did not refer to a bankruptcy petition. An Official Receiver did not become concerned with bankruptcy matters until an Order had been made. Mr F's father opened the letter and faxed it to the Respondent. The Respondent thought he probably also made his son aware of it because the Respondent had at some point received a fax from Mr F asking him to accept correspondence from the Official Receiver concerning PL Corp Limited.

21. The Respondent said that Mr F had not made his whereabouts readily known because he had received threats of physical harm from Mr Wh, Mr S and others.

22. On 10th January 1996 Mr F was adjudicated bankrupt on a petition presented by HP Limited. The Respondent represented Mr F at the hearing. Mr F remained an undischarged bankrupt until 7th November 1997.

23. On 6th February 1996 the Respondent (acting both for Mr B and Mr F) wrote to Mr S, who was threatening bankruptcy proceedings against both of them:-

> "In order to present a petition against either of our clients you will have to serve a sworn affidavit deposing to that insolvency. Our clients are both solvent."

24. At the time of writing that letter Mr F was an undischarged bankrupt.

25. The Respondent said that there had been bad publicity concerning the case. Mr B and Mr F had been referred to by an Usher at the Court as "Those people who ran away from the hotel." The District Judge would not hear the Respondent's submissions and made a Bankruptcy Order. There had been no enquiry into Mr F's means. The Respondent had been instructed to file an appeal which he did. In the meantime Mr F had to resign from his (UK) management positions within the Imperial Group, although he remained an employee.

26. The Respondent said that Mr S had taken legal advice. He was aware that Mr F had appealed against the making of the bankruptcy order.

27. Mr F and Mr B had felt intimidated by Mr S. Mr S had made a loan either to Mr B and Mr F personally or had made a loan to their company which they had personally guaranteed. Notwithstanding that Mr F was bankrupt, Mr S personally served a statutory demand upon him and upon Mr B for a sum far in excess of the loan. It was the Respondent's view that he had not done so with a view to making them bankrupt but to secure favourable lending terms from another company within the Imperial Group and to spoil Mr F's prospects of a successful appeal against the existing Bankruptcy Order if he did not ensure that the required loan was made. Mr S also reported the outstanding loan to the police. On 6th February 1996 the Respondent was instructed to write to Mr S and his letter was as follows:-

"We refer to your telephone discussion with our Mr Harvey on 25th January 1996 and we are disappointed that you did not forward a copy of the loan agreement between yourself and, inter alia, Mr F and Mr B as promised.

We have now received a copy of the agreement from the Lancashire Police and have prepared an application to set aside your two statutory demands.

As we mentioned at the telephone, service of the demands was irregular having taken place within the building at the Crown Court in Preston.

Until our clients' applications are determined they propose retaining the monies so far collected on your behalf from the third parties to whom they were paid by way of security for their legal costs.

You would be well advised to appraise yourself properly of the consequences of the bankruptcy procedure (the necessary consequence of a statutory demand) before threatening or embarking on this course. Bankruptcy procedures are only available where an individual is insolvent. In order to present a petition against either of our clients you will have to serve a sworn affidavit deposing to that insolvency. Our clients are both solvent. You cannot infer insolvency from the non-payment of a debt. Accordingly you are on notice that the supporting affidavit will be false. The procedure would be an abuse of process.

You may not be aware that abuse of process is a tort, the commission of which would entitle our clients to substantial damages. It is also the basis upon which the court will injunct the prosecution of bankruptcy proceedings and make an order for indemnity costs.

We respectfully suggest that you also appraise yourself of the numerous authorities which state categorically that you are required to use the normal county court litigation procedures in cases of this kind. Bankruptcy procedures, and complaints to the police, although we accept what you say about not having made a statement, are not there to be used for debt collection.

In summary, the moment a bankruptcy petition is served upon either of our clients we shall seek injunctive relief against you. We are already preparing the necessary papers and will present them at court and obtain ex-parte relief without further notice to you.

Notification to any third party, including our clients' staff, bankers or bailiffs of any allegation of insolvency will constitute the tort of defamation. In the circumstances any such communication could only be actuated by legal malice and you would have no defence to a defamation action.

Obviously, your inquiry as to the 'availability of FBCL's funding cannot be taken any further until these matters are laid to rest.

> You will be very well advised to think extremely carefully before taking any further action to obtain money from our clients using the methods you have adopted. Our clients exceptional resolve to respond vigorously to such matters should not be doubted.
>
> Yours faithfully,
>
> Harveys"

28. The Respondent said that if Mr S's statutory demands had been served with a serious view to obtaining a bankruptcy order he would have been instructed to prepare an application to set them aside, referring to the fact that the loan was not yet repayable and that Mr F was bankrupt but appealing inter alia on the basis that he was solvent.

29. The Respondent had known that Mr S would not present a further bankruptcy petition and Mr S confirmed that when they spoke. Mr S indicated that if he needed to he could obtain his money by other means but in the event after further intimidation Mr S was repaid with interest.

30. It was the Applicant's case that the Respondent was in possession of £10,000 belonging to Mr S. The Respondent prepared a draft statement for the police indicating that:-

> "On 18th December 1995 I received a sum of money from FBCL which apparently includes £10,000 of Mr S's money…. I am instructed to pursue the setting aside of the statutory demands in the County Court and to retain Mr S's £10,000 in the meantime as security for my clients' legal fees which they expect to recover."

31. The Respondent did obtain the £10,000 but it was improper for him to do so on the basis of a possible Court Order with regard to legal costs in the future. In the absence of any Court Order the funds should have been returned to Mr S without delay. The Respondent said that he received funds from FBCL and could not release them without instructions so to do from FBCL. He had not received such instructions.

32. If he had paid the monies to Mr S without such instructions he would then improperly have released the money.

Imperial Consolidated Group

33. The Respondent went on the explain that in the course of seeking a credit line and falling victim to an advance fee fraud Mr B and Mr F came across other victims of such frauds and other people who wanted to raise capital for commercial ventures of their own. A company within the Group, "FBCL", set about collating information and syndicating groups of people to pursue a commercial line of credit.

34. In time FBCL accrued a number of clients throughout the (UK) who wished to avail themselves of loans from FBCL should the company successfully secure a line of credit. Those clients, who came to be known as "investors", were invariably people who could not obtain credit elsewhere. They were asked to pay a relatively modest

non-returnable "underwriting fee" to FBCL and to place "drawdown deposits" into the Respondent's firm's account in readiness for completion of the line of credit, at which point the deposits would have to be released to the appropriate institution. Some investors asked for undertakings for the money to be held to their order. Others did not.

35. On 30th November 1995 Mr F and Mr B were arrested in connection with Mr S's complaint, their offices were searched and FBCL's documents were removed. The Respondent immediately went from Luton to Gainsborough police station with his FBCL file. He did not see Mr B or Mr F but spoke with the officers and after he had left for Luton, Mr B and Mr F were released without being charged but they were bailed to return to the police station on a specified date. In February 1996 the Respondent prepared the draft statement for the police but as no action was taken the statement was not needed. It was never signed.

36. The Respondent went on to say that the quest for a credit line was inexorable but eventually led them to the offices of an American law firm in Zurich, Switzerland, ZWK In early 1996 the Respondent accompanied Mr F to meet the managing partner of the firm, Mr K.

37. The meeting took place in a Zurich hotel. Mr K, who was knowledgeable about the law, gave the Respondent some details of investment schemes in which he had been involved. He mentioned a close association with "bank traders" who handled large sums of money for his clients. Mr K mentioned that the minimum investment for his most profitable schemes was $1million. The Respondent had asked why the same high interest returns could not be achieved if smaller sums were invested and whether groups of small investors could be syndicated. The Respondent had been delighted to make this valuable professional contact, but he felt the need to carry out checks including seeing the firm's offices and checking with the American Bar Association that Mr K was who he said he was.

38. As far as the Respondent was aware FBCL did not have $1million of investors' money at its disposal.

39. Mr F then continued to deal with Mr K direct. Without seeking the Respondent's advice FBCL then placed either $100,000 or £100,000 with ZWK to be held to the Respondent's order.

40. A few weeks later the Respondent was contacted separately by Mr K and Mr F both of whom informed him that Mr K was about to go into hospital in Zurich for about three months to undergo a double hip-replacement operation. Mr K asked if the Respondent would act as his locum for this period. For reasons of due diligence, communication and the monitoring of progress Mr F was keen for him to accept this invitation. The Respondent explained that he would have to work alternate weeks in Zurich and appoint a locum for his own office in Luton. Mr K agreed to pay £15,000 for six weeks' work (over three months) out of which the Respondent had to pay for his flights and accommodation. The Respondent was told that a Swiss work permit would be arranged for him. It was later agreed that during the periods when the Respondent could not work in Zurich, Mr B would act as Mr K's 'runner', taking

messages and documents between him and his staff and clients. This was felt desirable from FBCL's point of view. Mr B was also paid for this.

41. At any time during the period when Mr K's firm was holding money for FBCL either the Respondent or Mr B or Mr F was in Zurich.

42. In total the Respondent made six trips to Zurich, each visit lasting from one to four days. The visits had not been on a regular basis due to the Respondent's commitments in Luton. When he first arrived Mr K was already in hospital. Mr K's wife took him to the firm's bank and had his name added to the list of account signatories. He was also given Power of Attorney over Mr K's affairs and the original undertaking from his firm to hold any FBCL monies strictly to the Respondent's order. The Respondent visited Mr K daily, taking messages between him, his staff and his clients. Mr K asked the Respondent to prepare documents using his precedents.

43. The Respondent took back to England a copy of the ZWK's professional indemnity insurance policy.

44. Whilst the Respondent was back in England, Mr K wrote to him offering him the position of Associate with his firm. The Respondent accepted after speaking with him and making it known that he would not relinquish his firm in England.

45. The Respondent went on to explain that as FBCL's dealings with ZWK progressed, FBCL's (UK) investor clients and their solicitors were kept informed as to progress. Some rang on a daily basis. Others were more patient. Matters moved to a point where FBCL joined a syndicate of ZWK's clients and an agreement was reached whereby ZWK would obtain the credit line and the syndicate members would then borrow from the firm. To that end, and with the investors' knowledge, the Respondent moved a further $250,000 into ZWK's client account over which he had control, again with a suitable undertaking from the firm. At that point the Respondent believed that they were on the brink of completion.

46. The Respondent would not authorise the release of the funds unconditionally to ZWK until the credit line was in place. The Respondent also retained funds in his client account in Luton.

47. On 27th March 1996 the Respondent wrote the following letter to Messrs Stephen Crossick & Co, the solicitors to one of the investors:-

> "We write to confirm that we have recently transferred US$250,000 to the institutions funding your client's borrowing and that drawdown is expected to take place in the very near future."

48. It was the Applicant's case that the money had not been transferred to the institution funding the borrowing and that the money had been transferred to an account in Switzerland over which the Respondent had no control. There was no legitimate reason for the money to be transferred to an account in Switzerland in accordance with the terms of the borrowing and the undertakings given to the lenders.

49. The Respondent explained that Imperial Consolidated produced a brochure to present to banks in its search for lines of credit. The Respondent had seen a copy of it in Zurich. It contained a business plan, a cash flow forecast and details of numerous projects upon which the FBCL investor clients were hoping to embark. He had been asked by Imperial to prepare a letter confirming the balance of funds held in his client account which was to be included in the brochure. On 15th February 1996 the Respondent wrote the following letter addressed:-

"To Whom it May Concern":-

> "Imperial Consolidated
>
> I write to confirm that I am holding a total of £370,451.68 (as at today's date) in my firm's accounts on behalf of Imperial Consolidated."

That letter was handed to Mr B.

50. On 17th May 1996 the Respondent was contacted by two of FBCL's investor clients Mr G and Mr L. He said there was an air of excitement because it appeared that major progress had been made towards completion of the FBCL loans. They relayed information which had been given to them by Mr F who in turn had received it from either Mr K, who by then had been discharged from hospital, or a member of his staff. The Respondent sent a fax to Mr B in which he said:-

> "Dear J
>
> <u>L and G Investments</u>
>
> Mr L and Mr G have been on to me first thing this morning.
>
> (Mr F) has apparently told both that Egyptian-Saudi Bank have sent $20million to Lloyds Bank and it is being routed to us through Midland Bank. Both have asked for a faxed letter this morning from Midland Bank by way of confirmation that the funds are on their way.
>
> All I can suggest is that you compose a letter on ZWK paper, as Attorneys for the Trader, setting out the position, assuming no funds are available this morning!
>
> Can you assist?
>
> Mr L's fax number is ……. and Mr G's is ……
>
> Yours sincerely,
>
> M J Harvey"

51. The Respondent received the following fax from Mr K as follows:-

"Mike

Letter from ZWK.

Please use – but take off the address and tel. No's."

together with a letter from ZWK in the following terms:-

"Dear Mr Harvey,

IC Credit Lines

We refer to our recent correspondence and confirm the status as International Counsel for our mutual client company.

As we are all aware, we have established now four credit lines with our clients against their funding of projects already reviewed. The credit lines are at varying stages and I list them below:-

1. Cyprus to Egypt
We are still waiting for the funds to be routed to the final receiving account of Lloyds in London – for onward disbursement to Imperial Consolidated Inc. and other parties. The delays are unprecedented but the Egyptian bank has control, not its New York correspondents or our beneficiary account Lloyds. We are therefore in the hands of the Egyptian Bank, communication with which is difficult at the best of times. Having two major setbacks due to the collapse of the Turkish and New York correspondents of 9 weeks ago because of Toba Co-ordinators pressuring the issuing bank for the instrument prematurely, we are very wary of permitting excessive pressure upon the banks in case the same occurs again. Such an occurrence would make an already difficult position for our client worse. I can only advise patience and I will advise when the funds finally move to London.

2. Turkey-Deutsche–Midland, London
As you are aware, the Bank Guarantee from Deutsche was prepared for the credit line to be raised in London last Monday. However, Wednesday the bank for reasons unknown set co-ordinates and windows to send the instrument pre-advice to Turkey.

We are at a loss at to why. Zirrat have written to the parties advising that the Bank Guarantee should go directly to London, where the trader will fund the Bank Guarantee in 24 hours and funds again to our client in one day. Assuming this matter is corrected by Monday, funding would occur on Wednesday. As counsel we can only advice on an informed basis, we understand that the transaction is now corrected but, errors of this nature can cause the transaction to terminate.

3. Kuwait and India
The guarantees are to be issued on Tuesday/Wednesday next week, with funding in London within 48 hours. The available facility exceeds $100M, again on receipt of funds in London, our client will receive their transfer for onward disbursement to their clients.

We sympathise with our clients for the lengthy delays over the last several weeks regarding these credit lines and can only give assurance that we are making every effort as are all parties to expedite the funds clearing into London, but the application of pressure on any of the banks whether Western Europe or the East almost always results in the transaction being terminated and months of work lost which has been evidenced already by the pressure applied via Toba 2 months ago.

We understand the immense pressure being applied to FBCL (Imperial Consolidated Inc.'s underwriting company) by clients in the United Kingdom and therefore the frustrated reactions of the board of Imperial Consolidated Inc. I must stress that we can not apply the same level of pressure on the institutions and banks without serious danger of terminating transactions.

We therefore request instruction from Imperial Consolidated Inc. as to their wishes at this point, regarding application of further pressure or to wait for the transactions to close in due course.

I look forward to your reply.

Yours sincerely

PJK"

52. When the Respondent made his final visit to Zurich, Mr K was in his office. No tangible progress had been made towards the realisation of the project funding which FBCL was seeking. The Respondent had been concerned to learn that Mr K and one or two of his partners had decided to form a breakaway firm and wanted the Respondent to join them in a proposed partnership named HKS. The Respondent said he could not reconcile this with the apparent success and profitability of Mr K's existing firm.

53. On the day of his final flight to Zurich, the Respondent received a telephone call from the Prudential Insurance Company in New York advising that the ZWK professional indemnity insurance policy was bogus. That evening when the Respondent advised Mr B of this at their Zurich hotel, Mr B instructed him to call back the money held for his company by Mr K's firm. The Respondent did so and decided to end his involvement with Mr K.

54. The Respondent said that all of the FBCL investor clients received their drawdown deposits back, either from the Respondent or FBCL. They also received interest. FBCL returned all of their underwriting fees with interest. FBCL paid further out of

pocket expenses and costs including legal fees to most of the investors. There had been no financial loss to any investor.

55. Imperial Consolidated Group had acquired the lease of a former RAF base at Binbrook, Lincolnshire and ran its operation from there.

56. In late July 1996 the Respondent was introduced to a Mr P at Imperial Consolidated's office in Binbrook. Mr P had at first spoken of investing vast sums of money. The Respondent was told that Mr P was going to make a gift of $1,000,000 to Imperial Consolidated and then that he had done so with promises of much more to come. Some of the money was used immediately to refurbish some offices on the Binbrook site whilst Mr P was staying in the area and attending meetings every day. The Respondent said he was not a party to Imperial Consolidated's discussions with Mr P prior to the payment of the US$1million. The Respondent had expressed his concern that the money might not belong to Mr P.

57. At the request of Imperial Consolidated the Respondent opened two specially designated client accounts in the name of Mr P's company, D Limited. The Respondent said no monies were ever paid into the accounts and he received no instructions directly from Mr P. In his affidavit of 7th July 1997, prepared in connection with the Mr P v Mr B, Mr F and Imperial Consolidated Inc litigation, the Respondent said that he had opened sub-accounts at Lloyds Bank for Mr P, at his request.

58. Mr P subsequently caused two fraudulent documents to be sent to Lloyds Bank which spoiled the Respondent's relationship with his Bank Manager.

59. Mr P brought proceedings against Mr B, Mr F and Imperial Consolidated Inc for the return of US$1million.

60. Mr Harvey provided an affidavit supporting the defendants in which he stated that he had been told by the defendants that the US$1million had been a gift. It was the Applicant's contention that it was improper of the Respondent to swear such an affidavit as Mr P had been (and remained) the Respondent's client in relation to the matters about which he gave evidence. There was clear conflict of interest between clients.

61. The Respondent said that he had been told at the time that the US$1million was a gift by Mr P. The Respondent had on his file documents showing that the money was to be paid over as part of a commercial venture and would be returned to Mr P on seven days' notice.

62. The Respondent was aware of a previous affidavit (June 1997) sworn by Mr B in which Mr B had provided a different account, namely that the US$1million had been paid pursuant to a joint venture agreement and Mr P had then said the money need not be repaid.

63. On the Respondent's file there was an invoice dated 27th March 1997 whereby Imperial raised charges amounting to £790,000 (approximately US$1million). The

Respondent knew from that that Imperial had also sought to justify non payment, not just because of a gift but because of a counter-claim of about US$1million.

64. The Respondent said he did not prepare the June 1997 affidavit of Mr B. If that document was inconsistent with his own affidavit, that did not alter the fact that he was told that the money was a gift.

65. The Respondent said he was not instructed by Imperial and its directors in relation to Mr P after their relationship with him turned sour and he did not act for Imperial Consolidated Inc. in the litigation which followed other than to file an Acknowledgement of Service form to prevent judgment being entered in default while other solicitors were instructed. Mr P had not appeared at the hearing of the case and his claim was later dismissed with costs. The Respondent had not seen Mr B's affidavit or the invoice of Imperial Consolidated until after his affidavit of 7th July had been sworn.

66. The Respondent did not consider that Mr P was a client of his firm. Even if he had been, he waived any obligation to confidentiality by trying to use the Respondent's bank account for fraudulent purposes.

67. The Respondent had written the following letter to Mr P on 3rd April 1997:-

> "Dear Mr P,
>
> Thank you for your fax this morning.
>
> My instructions are that the personal guarantee by no means explains the full situation. The initial agreement evidenced by the guarantee, which I note is not dated, was subsequently varied as you well know. I have seen a copy of my client's fax to you dated 27th March 1997 to which there appears to have been no adequate response. I am also aware that my clients prevented you from sending a large sum of money to a third party which, we now know, would have been lost.
>
> For my own part the return of any fees is inappropriate. I have not been retained by you and my fees have been paid by ICI albeit on occasions in connection with work which may have concerned you.
>
> I must also add that I have suffered great damage to the relationship with my two banks as a result of untested telexes which you and/or your associates have been sending to them. How do you propose to compensate me for that?
>
> I have instructions to accept service of any proceedings which you may decide to issue but you should note that such proceedings will be rigorously defended."
>
> Yours sincerely
>
> M J Harvey

68. Mr P had written a letter to the Respondent of 4th April in the following terms:-

TELEFAX

April 4, 1997

Mr M J Henry
United Kingdom

"My Dear Harvey,

Thanks for your fax of yesterday.

A. I gave One million US$ to Brook and Lincoln, for their program. They have guaranteed the principle, personally and corporately. This money I want back and I shall collect it.

B. I gave you 7,500 pounds in good faith and you now…. Tell me I, ……. and other Brazilians, sent to my account, untested…. telexes, why in heaven sake will I do that.

Brazilians…. Have sent (??) without my request, and your bank had previously some experiences…. with other clients….

You my dear man, have arranged another bank for us…. At no time suggested that I have to pay something …. nor have invoiced me for services rendered, but now, sweet man…. you tell me a story about damages…. and how nice you are.

C. You have received from Mr B money as my …..retaining you… a letter to that effect you have…. why should I send you money… for what reason…. It was Mr B's idea and I paid.

D. My Attorneys in the USA will do what is necessary to collect, since ICI is a registered company there, too.

My Attorneys in England, barristers and good solicitors will handle matters here.

We shall bring to Court many people that have had experiences with Mr B and all the faxes and letters received from him are being arranged for Court presentation.

I sent to L and B 180,000 dollars to complete the PO.RTIGEES package, porto wine… and this money he will return also to me.

Best we all meet in Court and than let English law decide. Also will have things come from the USA hopefully shortly.

> No one will defraud me of so much money…. Nor force me to accept Russian bank guarantees that mature… in five months, that according to Mr B are with you. About 80 m. USD worth…"
>
> Regards,
>
> P

69. The Respondent had been paid £7,500 to attend a second meeting with Mr P in London.

70. In a letter of 15th August 1996, Mr B wrote to Mr P:-

> "Dear Mr P,
>
> Thank you for your wire transfer of £15,000 for retainer.
>
> On receipt of funds to our account, I shall forward Mr Harvey's solicitors £7,500 as agreed.
>
> Yours sincerely,
>
> Mr B"

71. The Securities and Exchange Commission (SEC) brought proceedings against City (UK). The Respondent explained that as Imperial gathered data on fraudulent "high yield investment programmes" it came into contact with numerous victims of such schemes from all over the world. Whilst Imperial concentrated on advising its clients on where and with whom not to invest, it recognised a need for a service to recover lost funds and City (UK) Limited was established for that purpose. The Respondent had been initially appointed as the Company's litigation solicitor. This involved his co-ordinating proceedings in other jurisdictions and conducting litigation in England against fraudsters using Mareva injunctions and other similar remedies. City (UK) had quite a high success rate.

72. City (UK) had been approached by an American, Mr M, who had entered a high yield investment contract. Initially he told the Company that he personally had paid monies through his Company A Trust Company Limited and then through his attorney to a Company name Credit AF Limited with a PO Box address in Eire which was run by some Frenchmen who operated from hotel foyers around the world using mobile telephones.

73. The Respondent said that the circumstances, including the incredible rates of return under the contract, were classic signs of a fraud and the monies had been lost. City (UK) agreed a recovery fee with Mr M and then began its work.

74. City (UK) then established that the monies did not belong to Mr M but had been paid to him by various other people in the USA.

75. City (UK) re-negotiated its fee because additional work would be involved in establishing to whom the funds belonged.

76. City (UK) located a bank account operated by Credit A and instructed the Respondent to apply for a Mareva injunction, which he did.

77. The monies were eventually paid into the Respondent's client account.

78. It later emerged that those who had paid the monies to Mr M were either not the owners of the monies at all or were syndicates. Mr M and/or his attorney did not have authority to release the funds to the fraudsters. Mr CH, City (UK)'s legal affairs Director, who later worked for the Respondent, contacted the SEC for advice and discovered that Mr M was already known to the SEC.

79. Mr CH and his co-Director JW travelled to the USA and met directly with SEC. It was decided that as the origin of the investment monies was unclear, the funds recovered, less City (UK)'s fees, should be paid into Court in the USA so the true owners of the funds could come forward and make their claims. To do this SEC had to issue proceedings and, as in the USA at the time in order to pay the monies into Court and be absolved from any further liability, City (UK) had to be named as a party. The Respondent explained that in the USA such a party was known as a "Relief Defendant". That did not mean that City (UK) had committed any tort or breach of contract and had been sued by the SEC, it was simply consenting to any order for the payment of monies into Court in order to secure a release from its own liability.

80. The Respondent assisted Mr CH to prepare an affidavit for Mr B. The Respondent did not recall whether he prepared the first draft, which Mr CH then amended, or whether Mr CH prepared the first draft which the Respondent then amended. When the Respondent last saw it, the affidavit had a front sheet and was prepared ready for City (UK)'s invoice to be exhibited but the exhibit itself was not attached. The Respondent did not file the affidavit nor place himself on the Court record in the USA. He did not wish to have any obligations to the Court there. He acknowledged that City (UK)'s fee was substantial. The Respondent had no input into its calculation.

81. It was the Applicant's position that the Respondent knew that the original agreement between City (UK) and A Trust was that City (UK) would charge US$20,000 and 10% of any sums recovered and no more than 50% of any excess above US$2.6million. The Respondent had a copy of these agreements on his file.

82. The affidavit that the Respondent helped Mr B to prepare was untrue and/or inaccurate in the following respects. The relevant agreements between A Trust and City (UK) concerning fees were not exhibited to the affidavit. Mr B instead deposed to the fact that A Trust had agreed to a revised fee figure of up to 50% of the total recovery. The Respondent had been aware that there was no such agreement. He had a document on his file which showed that a 50% charge only arose in respect of sums received above US$2.6million.

83. Mr B asserted in his affidavit:-

> "We were led to believe that Mr M and/or his company were the lawful owners of the missing funds and the fee was agreed with Mr M for us to undertake initial instructions to initiate recovery proceedings. The agreement was that City (UK) would receive initial retention fee of US$20,000 and upon successful recovery you would be entitled to deduct 10% of the total amount recovered before remitting a balance to Mr M or A Trust. At no time during these negotiations were we made aware that the monies forwarded under the high yield investment scheme were not in fact the property of Mr M or A Trust."

84. It was the Appellant's position that this was misleading because the Respondent on 10th March 1997 knew that there was a syndicate behind A Trust.

85. In evidence in the contested intervention proceedings the Respondent stated that City (UK) had formed the initial impression that a syndicate was behind the A Trust before his involvement on 10th March.

86. Prior to preparing the affidavits, Mr CH wrote to the Respondent and drew his attention to invoice number 167 from City (UK) to A Trust dated 29th October 1997 for £822,000.15. Mr CH stated that he had "not included this as an exhibit to the affidavit again. I look to you for advice at your discretion". The Respondent caused the invoice to be exhibited in the final affidavit when he knew the invoice was untrue and/or inaccurate.

87. The Respondent said that he had advised Mr B that if he wished to charge he would have to exhibit an invoice to the affidavit so that the US Court, the SEC and all interested parties could see it. He had seen many different invoices from City (UK) – he left the task of deciding which was the appropriate invoice to be attached to the deponent. The Respondent had seen the affidavit with the backsheet prepared for the invoice, but not the invoice itself.

88. The High Court proceedings were resolved at a final hearing on 7th October 1996 at which the Respondent instructed Counsel. The Respondent reported the day's events, on the same day, to Mr M by letter in the following terms:-

> "Dear Mr M,
>
> I duly attended the High Court with Counsel today.
>
> I enclose a copy of Crédit Austerlitz's 'skeleton argument' which was served upon me yesterday. You can see what is said about the $870,000 profits letter.
>
> Unfortunately, we could not take the claim for profits any further today because there were no witnesses to give evidence on the issue. The Judge was however willing to deal with the money standing in Crédit Austerlitz"s solicitor's account (which stands at £123,000).

As you know, this money arose because of the currency exchange rates when the Mareva injunction was served last year and the funds were converted from dollars to pounds.

The law supports Crédit Austerlitz's claim to the money and I enclose a copy of a page from a text book showing the relevant extract.

However, the Court was persuaded that, in the absence of any evidence today that you had received a payment of $100,000 from Crédit Austerlitz, then that sum should be taken out first.

After much tapping of calculators it was decided that the Stirling equivalent with interest is approximately £75,000 so that is the sum which Crédit Austerlitz's solicitors must pay out to me once the order has been drawn, sealed and served.

The balance will be eaten up with Crédit Austerlitz's solicitor's bill.

Meanwhile, the action is stayed until we decide to resurrect the profits claim with the appropriate evidence.

I gained the impression today that Crédit Austerlitz is no longer in business and had no further funds on which we could enforce a further judgment but I will have City (UK) verify this fact. Certainly it would appear that it is now very difficult for the opposing solicitor to obtain any instructions from his client.

I spoke to City (UK) about the SEC last week. I also have some London lawyers instructed by W Associates in touch with me. If I can write any letters from here which may assist you in the United States please let me know.

Yours sincerely

M J Harvey"

89. The Applicant pointed out that on 7th October 1996 the litigation brought by A Trust & Co Limited was settled by consent. The Order stated that all further proceedings in the action be stayed. The matter occupied the time of the Court for two minutes.

90. On 21st July 1997 the Respondent received £1.576million into his client account. From that money on 30th July 1997 he paid out the sum of £1.55million to City (UK).

91. It was the Applicant's position that at the time of receipt of the money the Respondent was trustee of it and the beneficiaries were the syndicate members of A Trust Co Limited. Paying the money to City (UK) was wrong as A Trust had given specific instructions to the Respondent to retain the money in client account. He did not have any instructions from Mr M or the underlying investors to pay the money to City (UK). A Trust Co Limited was the Respondent's client.

92. The Respondent said that he had been aware of the involvement of the SEC from the time they first became involved. He had been given written instructions from Mr M to pay any funds recovered to City (UK). Just prior to releasing the monies the Respondent was instructed by Mr M to return the funds to him. After giving the matter some thought, he paid the monies to City (UK). The Respondent believed that to have been the correct course to adopt in the circumstances.

93. Upon due notice to the Respondent, the Forensic Investigation Unit (FIU) of The Law Society inspected the Respondent's books of account. The inspection commenced on 1st November 2001. The FIU Report dated 31st October 2001 was before the Tribunal. In that Report the FIU Officer reported that on 3rd February 1998, the Respondent wrote to Imperial Consolidated Securities SA. The letter notified Imperial that Harveys were prepared to accept referrals from Imperial of potential investors in Imperial and to act for those investors as clients of Harveys. Harveys made it clear that they would be acting for the investors as clients and not for Imperial.

94. The facility offered by Harveys to the investors was detailed in documents attached to the letter. The documents headed "Information Note and Terms of Business" included the following, "For clients wishing to engage contracts M2F and MCF of Imperial Consolidated Securities".

95. The Respondent said that the hand-written page inserted between page 3 and 4 would have been typed and included in any document sent to client investors but that he did not have a typed copy available.

96. The Terms of Business stated (inter alia) that:-

    (i) Harveys will act for the investor clients to receive funds from them and to pass these funds on to Imperial where they would be held in a one-year fixed deposit account.

    (ii) Harveys will receive audit evidence via PKF on a quarterly basis that all the funds forwarded to Imperial by Harveys on behalf of its investor clients were properly received and held in a one-year fixed deposit account and have this information available to investment clients.

    (iii) Harveys will report to investors if there is any change or irregularity.

    (iv) Funds from the one-year fixed deposit account could only be remitted by Imperial to Harveys.

    (v) Harveys would act in the best interests of the investor client and do not act for Imperial in the investment so no conflict of interest occurs.

    (vi) Liability of Harveys to the investor client ends once the investor client instructs Harveys to release the funds to Imperial or any other third party.

(vii) Harveys fees are £250 for acceptance of investor client instructions, receipt of funds and onward remittance and £150 for receipt of returned funds from Imperial and onward remittance to the investor client.

(viii) Harveys is a regulated practice of The Law Society of England and Wales and as such carried an indemnity of £1,000,000 per client per transaction and have further independent indemnity insurance of £5,000,000.

(ix) Harveys would complete diligence (to include Money Laundering checks) after which they would supply an undertaking to the client to receive funds and remit them on to Imperial in accordance with instructions given by the client which would include Imperial's bank co-ordinates.

97. The FIU Officer described the process to be followed to be as follows:-

(a) "An investor client would be referred through Imperial's offices worldwide and would instruct Harveys to act for them using the template letter on page 6 of Appendix F.

(b) Work to confirm the clients' identity and the source of the potential investment funds would be carried out by the referring Imperial office and sent to Harveys.

(c) If the client was accepted a form of undertaking using the template at page 5 of Appendix F would be sent to the client.

(d) The client would then remit funds to Harveys client bank account.

(e) Harveys would remit the funds on to Imperial."

98. A sample contract and related available documents are attached to the FIU Report. The contract is for the client investors Mr and Mrs G and was the only copy contract available from the files produced to the FIU Officer by the Respondent. The wording of the contract contained the following phrases:-

"(i) Funds which are good, clean cleared and not subject to any conditions or restrictions;

(ii) The client shall remit their funds……into a one year term deposit account in the name of the principal in a major world bank;

(iii) Cover note in favour of the client covering the funds from theft and negligence by Harveys solicitors;

(iv) The client shall also receive a one hundred percent (100%) guarantee from the principal in respect of the funds received;

(v) The major world bank in which the term deposit is held may only transfer funds to Harveys solicitors;

(vi) Yields are market indicative notwithstanding a minimum expected yield of 1.3% month on month and a monthly target yield of 2.4% month on month;

(vii) This agreement shall be governed and construed in accordance with the laws of the Bahamas;

(viii) The parties agree not to contact or communicate in any manner with the other party's bank(s) and/or bank officers for any reason whatsoever.

(ix) This agreement shall be subject to the force majeure and hardship provisions of the latest ICC Publication/Revision;

(x) The parties warrant that they are fully and legally empowered;

(xi) By their signatures below the parties bind their respective heirs, successors, assigns, officers, directors, stockholders and legal representatives."

99. The FIU Officer considered that these phrases were similar in nature to those that the Law Society's Warning Card indicated a solicitor should look for in relation to Banking Instrument Fraud.

100. The Respondent said he did not draft that Agreement. The Respondent set a further condition that whilst investment funds were in his possession he wanted the investors to be able to recall their money from the Respondent. He devised an undertaking to cover the period when the funds were under his control. He was expressly not advising investors on the wisdom of their proposed contracts.

101. The Respondent explained that Imperial's clients were invariably sophisticated investors. They tended to be wealthy, professional and knowledgeable people with wide experience of the investment industry. They fully understood when their capital was at risk but sometimes actually appeared to enjoy taking calculated risks. Actual conflicts of interest did not arise. The Respondent did not recommend Imperial's products, indeed he was unfamiliar with most of them.

102. The advice that the Respondent most frequently gave to investors was "If your capital is at risk do not proceed unless you can afford to lose it" and "If in any doubt do not go ahead". He often urged investors to take independent legal advice on the contracts they were entering but many of them were investment experts themselves and did not feel there was a need to do so. Imperial and its investors had a common goal. Until an actual conflict arose the Respondent did not feel that he was in a professional difficulty.

103. The arrangement was that the capital funds would be invested via the Respondent's account. Interest and profits would be either compounded or paid directly to the investor. Upon the expiry of each contract the capital would be returned to the investor via the Respondent's account if the investor so elected.

104. The Respondent set up US Dollar and Japanese Yen accounts at his firm's Barclays Bank in Luton.

105. The contracts between the investor clients and Imperial and Harveys Terms of Business sent to the investor clients, both provided for Harveys' fees at £150 per undertaking issued and £150 on receipt of and payment on to Imperial of the investment capital. This was a total of £300 per client investor introduced. In the period from 1st January to 30th July 1998 Harveys received investment capital from 24 investors which was paid on to Imperial. The fee income due to Harveys for the 24 investors would have been be £7,200 (24 x £300).

106. The Respondent said the arrangement worked very well to begin with. The Respondent spoke with DW, an unadmitted clerk employed by the Respondent who worked from Binbrook, on a daily basis and he continued to visit Binbrook weekly. The Respondent met some of the investors personally, some in the Bahamas and some in Japan.

107. The Respondent's firm's records were often duplicated. Both DW and the Respondent kept copies of bank statements, bank transfer advices, letters to and from investors and so on. They had direct access to Imperial's records. They knew that Imperial was honouring its obligations to investors not only because they saw evidence of this for themselves but they were told by the investors that they were content with the manner in which the contracts were being managed.

108. As time went by a 'human element' was introduced. Investors often communicated directly with Imperial's staff around the world and changes were agreed to their contracts without the knowledge of DW and the Respondent. At first such changes were notified but with the increasing volume of investment funds and clients that was not always so. For example, a particular investor who had placed funds through the Respondent's account might then add additional funds by paying them directly to Imperial. Some clients withdrew some of their capital and were repaid by Imperial without the Respondent's knowledge. Some clients invested through the Respondent's firm without any form of contract. What had started out as a straightforward arrangement became increasingly difficult to manage.

109. The Respondent could not increase the time he was spending on this work because of his other work commitments.

110. In essence the Respondent gave investor clients two important undertakings; one to receive their money and pay it into one of M2F's fixed term deposit accounts and secondly, if the investor wished, to receive and pay back to them their capital at the end of the contractual term. Clients were contractually committed to keeping their investment funds in the account for a minimum of twelve months. It was the fixed term deposit account that enabled Imperial to secure lines of credit. There was a flexibility in that an investor who wished to withdraw could be replaced by another investor.

111. It was expedient to use the replacement investor's money to pay back the withdrawing investor.

112. By the end of 1998 funds were being directed to different accounts from the Respondent's accounts to match corresponding receipts and payments made to and from Imperial's accounts. The Respondent had access to Imperial's records and the Respondent and Mr DW were speaking with investors so they were satisfied that the adjustments were appropriate. The necessary checks and enquiries were time consuming and as payments out of the Respondent's account were delayed until the necessary verification had been completed this caused one or two difficulties in terms of speed. As the Respondent was unable to take any shortcuts he spoke with the various officers at Imperial and voiced his concerns. Eventually, at the end of 1998 it was agreed between the Respondent and the senior staff at Imperial that his firm's involvement would come to an end.

113. Mr DW was then employed by Imperial direct. During the period of winding down, the Respondent continued to have an input in the anti money-laundering work but by early 1999 he had stopped receiving investment funds. The Respondent's files remained at Binbrook for auditing purposes and to enable Imperial's staff to have access to information in them.

114. The FIU Report went on to record that the Respondent confirmed by going through his bill file, that in the period from 1st January to 30th July 1998 he received £4,000 gross (£3,404.23 net) per month from Imperial as a retainer. The Respondent said that prior to this, and afterwards, he billed them according to hours worked. The total net amount paid by Imperial to the Respondent in the period from 1st January to 30th July 1998 was £23,829.61 (7 x £3,404.23) and was over three times the amount of £7,200 payable to him in total on a transaction basis. The Respondent said that his retainer also covered the legal work he did for the employees of Imperial when he attended their offices in Market Rasen but he was unable to produce any client files or other documentary evidence relating to this work.

115. The Respondent said that he did not receive any fee income direct from his investor clients.

116. In the years ended 30th June 1998 and 30th June 1999 the annual fee income of Harveys per the financial statements produced to the FIU Officer by the Respondent were £77,000 and £69,000 respectively. That was an average of just over £6,000 per month for the 24 month period. In the period over which the retainer was being received Imperial accounted for 56% of Harveys' average monthly fee income.

117. In the period from 20th February 1998 to 13th May 1999, Harveys received funds from investment clients totalling US$8,663,917.61. In addition, funds totalling US$925,264.84 were received from Imperial in the same period. These funds were all paid into a US$ client call account (in the name of the firm) opened for the purpose of receiving these funds. In the same period interest totalling US$3,531.04 was credited to client call account. The funds were dealt with as follows:-

	US$
Investment funds received	8,663,917.61
Funds from Imperial	925,264.84
Interest credited	3,531.04
	$9,592,713.49
Funds remitted to Imperial	(8,539,094.30)
Funds remitted to third parties	(1,050,488.47)
Funds remitted to insurers	(1,620.00
Cash given to Mr B.	(707.24)
Balance on the account as at 30 July 1999	US$803.48

(A spreadsheet showing the individual movements on this account was appended to the FIU Report).

118. In the period from 1st September 1998 to 17th September 1998, Harveys received funds from investment clients totalling Japanese Yen 19,997,283. These funds were all paid into Harveys' Japanese Yen client call account opened for the purpose of receiving these funds. In the same period the funds were remitted in full to Imperial. (A spreadsheet showing the individual movements on this account was appended to the FIU Report).

119. The detailed client files in respect of these transactions were not available for inspection. The Respondent said that he shared the files with Imperial rather than having his own separate files and that the shared files were kept at Imperial's office in Binbrook. When the FIU Officer requested that these files were made available for inspection, the Respondent contacted Imperial who said that the files had been required for audit purposes and had been sent out to Imperial's offices in the Bahamas. Despite repeated requests by the Respondent to Imperial, these files were never made available. The Respondent did, however, make available four lever arch files containing copy correspondence, bank debit and credit advices and some limited copy information in respect of the investor clients. The Respondent agreed that these files did not constitute a complete set of client records. He said that he did not know that his files had gone abroad and that he "should have kept separate records for both Solicitors' Practice Rules and retention of records for money laundering."

120. From the files reviewed it was apparent to the FIU Officer that Mr DW was signing undertakings sent to clients. The Respondent said that Mr DW performed most of the work carried out in collating the information relating to the identity of investors and the source of the investment funds. The Respondent said that the letter of undertaking was on Mr DW's computer and that Mr DW would have signed the majority of undertakings that went out to the investor clients. The Respondent also confirmed that he would make transfers of client funds to Imperial at the request of Mr DW as Mr DW was managing the day to day activities of the client investors and Imperial. The Respondent said that sometime around June 1998 Mr DW took up a full time position with Imperial.

121. The FIU Report went on to record that it was apparent that the due diligence on money laundering was carried out by Imperial at their overseas offices and copies of identifying documents were faxed by Imperial's agents abroad. The Respondent said

that he knew the people in the offices abroad and that he spoke to them to satisfy himself that the due diligence had been properly performed. The Respondent also said that he had met some of the investor clients in the Bahamas when he was there doing work for City (UK) and had met some investor clients when he attended the opening of Imperial's office in Japan.

122. In a letter dated 3rd February 1998 from Imperial to Harveys the Board of Directors of Imperial resolved that funds from a one year fixed deposit account at Hill Samuel in Jersey could only be remitted to Harveys' client bank account at Barclays Bank plc. That was the client bank account that was opened by Harveys to receive investment funds.

123. In the period from 3rd March 1998 to 17th April 1998, Harveys transferred US$1,300,268.68 from its US Dollar client bank account at Barclays Bank plc to the Hill Samuel account in Jersey noted above. The Respondent agreed that no funds were ever remitted from the Hill Samuel account by Imperial to his firm. He said that the investor clients would have been directly reimbursed by Imperial or had reinvested their funds in other Imperial products.

124. The sample contract (attached at Appendix G to the FIU Report) stated in paragraph 5.2 on page three that:-

> "Upon termination the client's funds shall be remitted to the bank co-ordinates of Harveys solicitors for further transmission to the bank co-ordinates as specified..".

The Respondent agreed that the reason funds were to be reimbursed in this way was to ensure that the investment proceeds were remitted back to their originating source to prevent money laundering. He also agreed that no investment proceeds were remitted in this way.

125. The US$8,539,094.30 of investment client funds that was paid by Harveys to Imperial as noted was remitted to the following banks:-

Destination Account in the name of Imperial	Amount remitted US$
Hill Samuel, Jersey	1,300,268.68
Citibank, Geneva	6,146,400.82
Merrill Lynch, London	590,195.01
Citibank, Zurich	299,989.95
Lloyds, Douglas, Isle of Man	120,239.84
Lloyds, Lancaster, UK	82,000.00
	US$8,539,094.30

126. The Respondent said that the changes in destination bank accounts were made at the request of Imperial. He said that he would have known at the time whether or not the accounts were fixed term deposit accounts but was unable to provide documentary evidence to support this contention.

127. The following were extracts from the Information Note and Terms of Business provided by Harveys to the investor clients:-.

Page 1, paragraph 7b)

The account used by Imperial Consolidated Securities SA to receive funds is a one year fixed deposit account, locked for that period.

Page 1, paragraph 7 c)

Funds can only be remitted from that account to this practice.

Page 2, first new paragraph

We understand the above facts to be correct at the time of you receiving this document. If there should be any material change and you are a client of this practice we will notify you immediately.

128. The Respondent confirmed that no funds from any of these accounts were ever remitted to his practice and he said that he relied on the Audit of Pannell Kerr Forster (PKF) to confirm that the accounts of Imperial were fixed term deposit accounts,

129. Both the client contract and the Information Note and Terms of Business state that PKF, International Chartered Accountants, were to perform a review of Harveys solicitors', client account and Imperial's term deposit account every quarter ending 31st March, 30th June, 30th September and 5th January. The review was effectively to confirm that the investor funds held in the term deposit account matched the total funds for which Harveys had given an undertaking to investors. This confirmation was to be available to investors on request from Harveys 14 days after the above quarter dates.

130. The PKF Audit Report had been made available to the FIU Officer the Report stated:-

> "As at 27th April 1998 the total of undertakings as listed by Harveys Solicitors was reconciled to the total amount of the ICS deposits. Differences noted related to cases where undertakings may have been issued by Harveys but funds had not yet been received from the investors."

131. The Report was not to the quarter end, which would have been 31st March 1998 and was dated 28th August 1998, four months after the quarter end. The Respondent did not notify his investor clients of the delay and the Report gave no comfort on any accounts used by Imperial after 27th April 1998.

132. Attached as an Appendix to the FIU Report was a copy letter dated 17th August 1998 from Imperial to the Respondent attaching a fax dated 13th August 1998 on Imperial letterhead but from PKF to Harveys. The fax enquired as to the difference on a total value of undertaking in force at 27th April 1998 of US$10,642,508.66 and the cash held on deposit of US$10,562,872.83. The amount of funds collected from investor clients and remitted to Imperial by Harveys as at 27th April 1998 was US$1,330,268.68, a difference of over US$9million. The Respondent confirmed that

he had no other US Dollar bank accounts but he was not asked to explain the US$9million difference.

133. US$1,050,488.47 of the investment funds received by Harveys was paid to third parties and not to Imperial. The third parties paid were as follows:-

Date	Recipient	US$
24.08.98	James C Yeakey	49,988.47
27.08.98	Eurocorp Investment Co Ltd	150,000.00
13.10.98	Tsutomi Adachi	50,000.00
26.10.98	Venessa Lawson	25,250.00
29.10.98	Hereford Holdings Ltd	50,000.00
03.11.98	Giancario Venneri	100,000.00
27.11.98	Tsutomu Adachi	100,000.00
04.12.98	Mondial Management	25,250.00
04.12.98	Masaaki Iwazawa	100,000.00
04.12.98	Bayard Ltd	1000,000.00
04.12.98	RW & KL Walker	300,000.00
		US$1,050,488.47

134. In the Respondent's letter of undertaking to his investor clients, he agreed to "undertake to ensure that the whole amount received by us from you be remitted to Imperial Consolidated SA in accordance with your instruction". The payments made by the Respondent and noted above were made from funds held by him on behalf of investor clients and paid by him to third parties instead of to Imperial in breach of these undertaking.

135. The Respondent said that he paid the funds to the above third parties on the instructions of Imperial. He said that either he or Mr DW would have ensured that the third party recipients of the funds had paid an equivalent sum into Imperial accounts abroad so that the funds paid out were covered. The Respondent said that he could not produce any records to support this as his files had been removed abroad by Imperial.

136. The Respondent stated that he had had no complaint from any investor and that as far as he was aware all investors had been paid by Imperial or had chosen to roll their funds over into another period of investment."

137. In September 1997 The Law Society issued its warning to the profession in respect of Bank Instrument Fraud and in October 1995 The Law Society issued its warning to the profession in respect of money laundering. These Warning Cards were sent direct to practising solicitors and were the subject of publication, in particular in The Law Society's Gazette. On 1st May 1988, the Respondent received a warning letter from The Law Society in respect of Prime Bank Instrument Fraud after an earlier inspection of his firm.

138. In April 1994 (and revised in February 1999) The Law Society issued a warning to the profession in respect of giving undertakings.

139. At the FIU inspection in November 2000 the Respondent had confirmed that he had been aware of the subject matter of the general warnings.

140. The Respondent said that between 1996 and 1998 Imperial grew rapidly both in terms of its expertise and its profitability. The elusive credit lines which Mr F and Mr B had pursued for years beforehand finally materialised. Offices were opened up around the world, some of which the Respondent visited personally. Imperial set up successful investment arrangements for itself and its clients and took pride in the diversity of its products from share dealings on Wall Street to currency trading in emerging markets such as Russia, where an office was also established. By 1997 its investment portfolios ran into hundreds of millions of pounds and relationships with large financial institutions, accountants and even the Russian Government were established. The Imperial workload was too great for the Respondent to handle on his own so he became one of a panel of solicitors within the UK. The panel included a number of reputable firms of solicitors in the UK. There were also numerous overseas lawyers. From time to time the Respondent instructed lawyer agents in foreign countries. Imperial's board included a legal affairs director.

141. Imperial ran its central administration from its offices in Binbrook, Lincolnshire where 200 people were employed in 1998 (later rising to 270). The Respondent's duties included regularly visiting the Binbrook office to advise staff on a range of personal legal problems in addition to dealing with some of the Group's affairs. Initially he invoiced the company for such work on a pro rata basis but later he received a monthly retainer. He was also provided with a motor vehicle.

142. When the Respondent employed Mr DW on 28th January 1998, his place of work was not at the offices of the Respondent in Luton but at the (UK) headquarters of Imperial, some 150 miles away from the Respondent's office.

143. The Respondent already had a room in Imperial's office for himself which was not open to the public but which could be used for the storage of files. In fact the monitoring of funds became so intense and time consuming that Mr DW was situated at a desk in the office of Imperial's accountant and he and the Respondent spoke on the telephone up to six times each day, beginning with an early morning call. When the Respondent was not in Binbrook, he and Mr DW exchanged any relevant documents by fax. There was hardly ever any hard copy incoming mail to deal with. If Mr DW wished to send outgoing mail he would fax it to the Respondent for approval beforehand. Although he was not a signatory to the Respondent's bank account, the Respondent authorised his bank to deal with enquiries from DW concerning the movement of monies. Mr DW did not interview clients, investors or otherwise. The Respondent's office stationery did not show a Binbrook office.

144. The Respondent attended at Binbrook once or twice a fortnight and had daily contact by phone via several telephone calls each day. The Applicant said that such supervision was not adequate in respect of an unqualified and inexperienced member of staff working at the offices of a major client of a practice in such circumstances.

145. The Respondent said he gave advice to Imperial's staff on a wide range of matters including conveyancing, Wills, previous employment disputes, matrimonial problems, consumer affairs and housing matters. This involved his attending at Imperial's

offices and seeing people face to face, thereafter corresponding with them and attending them by telephone.

146. Sometimes he referred staff to other solicitors but often he was able to carry out the necessary work himself. The Respondent also spent a good deal of time discussing City (UK) matters. Some weeks he spent two or three days at Imperial's office, some weeks he was unable to go there at all. On average the Respondent estimated that he spent one day each week there. This arrangement lasted for about four years. The retainer agreement had been in place for approximately one year.

147. The FIU Officer requested that the Respondent contact Banque Alliance and request that they provide him with copies of correspondence between them and any other information that would support his authentication of promissory notes.

148. The Respondent said that in Zurich and subsequently he gained experience in the authentication of bank instruments, such as promissory notes and letters of credit. After Zurich he continued to work in the investigation of investment schemes and the authentication of bank documents. The vast majority of the instruments he was asked to check were bogus. His banking contacts included two branches of Banque Alliance in the Bahamas and in Geneva, where Imperial had accounts, each of which he had personally visited. He also dealt with various law firms in London who carried out such work. He often needed to turn to his banking contacts in the (UK) and overseas for assistance and on such occasions and whenever they could help him, they did. Many Swiss banks had a significant knowledge and understanding of the Russian banking world. Of all of the many documents which were sent to the Respondent for authentication over the years there were only ever three occasions that he could recall when the documentation was genuine. In each case these were from Russian banks. Mr B also became an expert on bank documents. He had been asked by the police to give evidence in a Crown Court trial as an expert witness.

149. Imperial had a relationship with the Russian Government. Prior to receiving the promissory notes the Respondent met the Russian Minister of Finance for the St Petersburg region who was trying to seek investment in Russia after the fall of the Berlin wall. The Russian Government owned a 24% stake in Sakhacreditbank (a bank from which the Respondent had previously received genuine documentation).

150. In May 1997 the Respondent was sent a series of 20 promissory notes issued by Sakhacreditbank directly to his bankers. Banque Alliance in Geneva, who confirmed to him that they were authentic. The covering letter read:-

> "The enclosed are the only certified copies of the above notes as issued by our bank.
>
> These certified copies will be honoured for payment by our bank and should be presented for payment not later than seven days prior to maturity."
>
> We hereby confirm that the certified copies enclosed herewith are the only documents valid for presentation and payment…."

> We further confirm that we will authenticate these notes by any additional method you require or request."

151. Having met them in 1996 the Respondent knew two Brisbane brokers named Mr Pr and Mr Fy. Their company was known as Financial Solutions Proprietary Limited. Mr Pr had unfortunately since died. Mr Fy later joined Imperial as a director and manager of its Australian office. Some of Mr Fy's investor clients formed syndicates each of which was given a different name. One of Mr Fy's syndicates came to be known as the Rusaust Syndicate. These were apparently Australians intent on investing in Russia. When these prospective purchasers came along they wished to extend the maturity of the notes and appropriate arrangements were then made to do so through Imperial's office. Insurance with Lloyds through First City Insurance Brokers Limited against any loss arising from the purchase of the notes was arranged. Early 1997 had been a buoyant year for the Russian market but as the year moved on confidence in the country began to decrease and at the crucial time Imperial advised the Rusaust investors not to proceed. The Respondent's undertaking did not become effective. He returned the notes to Sakhacreditbank.

152. By letter dated 29th August 1997 the Respondent wrote to Mr R and Mr FY:-

> "I Michael John Harvey, Solicitor of the Supreme Court of England and Wales hereby confirm that two authentic Promissory Notes of US$1,000,000 each in face value, issued and guaranteed by Sakbacredit Bank of Yakutsk, Russian Federation, issue numbers C4 and C5, issued on 3rd February 1997 and maturing on 4th March 1999, with a total on maturity of US$2,000,000 are being held by me in my account, number 75802 at Banque SCS Alliance SA, Geneva, Switzerland for the specific purpose of providing security for the Rusaust Syndicate."

153. He also stated that he had been instructed by Imperial Consolidated Holdings Inc to collect the value of the notes at maturity and remit to each syndicate member of Rusaust the value that they had invested in the Rusaust scheme.

154. When the FIU Officer interviewed the Respondent on 19th December 2000 he answered the following questions put to him in the following way:-

> "Q What do you know about 'Rusaust' investment, Australians investing in Russian products?
>
> A. What do I know about it, just about nothing at all.
>
> Q You would have nothing to do with writing guarantees regarding promissory notes on a Russian bank?
>
> A No, the only promissory notes that I have come across regarding Russian banks was when I was working for City (UK).
>
> Q My investigations (David Marchant of Offshore Business News & Research had contacted the OSS with information relating to Imperial

and Harveys solicitors) have led to the possibility that regarding 'Rusaust' you have guaranteed S2m of promissory notes?

A. This is definitely not the case."

155. When the FIU Officer interviewed the Respondent again on 6th August 2001 he answered questions put to him as follows:-

Q Other than the US$ and Yen accounts did you do any other monetary business for ICL (Imperial)?

A. Not that I recall, I have had some work going through the client account ledger.

Q In particular did you have any dealings with them and what they called the Rusaust fund?

A. No. The only time I heard that phrase before was I recall about 2-3 years ago either Hill Samuel or PKF had dealings with it. I have never seen any paper work or had any detail.

156. The FIU Officer then showed him the letter of 29th August 1997 regarding the promissory notes and Rusaust. The Respondent said that he remembered the letter and that it was the "stuff" that either PKF or Hill Samuel dealt with. The Respondent agreed it was a letter signed by him and he said that he had not related it to Rusaust in earlier interviews as he remembered it in connection with Mr Pr and Mr Fy rather than Rusaust. Mr Harvey continued to answer questions put to him as follows:-

"Q Why did you write this letter?

A I was instructed by Imperial to write it.

Q Who in Imperial?

A Probably Mr B.

Q on what basis?

A Imperial had dealings with the Russian banks and had a lot of dealings with Russian Government at the time. These notes would have been made available and I would deposit them in my bank in Geneva, Banque Alliance. I came across the manager of this bank in the Bahamas. I had the notes physically given to me at Imperial's office by, I think, Mr B and then sent them to Banque Alliance by, I think, DHL.

Q Do you have a copy of these notes?

A Not here, if they were anywhere they would be at Imperial.

Q What happened?

A These notes went to maturity but were purchased before this by, I think, PKF or Hill Samuel. The funds from the purchase were not dealt with by me.

Q. Is this the only letter of this type you signed?

A Yes, Mr Pr and Mr FY later joined Imperial.

Q This letter was used to attract investors?

A Yes.

Q You knew that this letter would be shown to potential investors to show that the investment in Rusaust was backed by S2m of security?

A Yes.

Q And you were happy about that?

A Yes.

Q That it could be shown to Mr and Mrs S in Australia to attract them to the investment?

A It didn't happen like that as the notes were bought by PKF or Hill Samuel instead and no investors arose.

Q. How did you authenticate the notes?

A With the bank in Russia.

Q Could you take me through that?

A Myself, Mr B and probably Mr F met. The initial introduction was through the Russian Finance Minister who came to London. We had correspondence with him prior to the meeting and did our own checks and enquiries. The Russians were looking to drum up investment in the West and the Finance Minister was meeting with a number of Finance Houses and brokers.

Following that Mr F, Mr B, DP and CB of Imperial went to Russia. A combination of these people went to Russia, talked to a number of officials and set up an office in Saint Petersburg. The promissory notes, two lots of them were underwritten by the Russian Government.

Q Why do you not have any paperwork?

A It was kept at Imperial. I had full access to these papers in the Imperial files and in other offices at Imperial at Market Rasen. My office at Market Rasen is now occupied by someone else and the Imperial files were sent to PKF in the Bahamas for audit."

157. When the FIU Officer interviewed the Respondent again on 7th September 2001 he answered questions put to him as follows:-

Q How did you feel confident that you could say that the notes were authentic?

A My bank, Banque Alliance, JMW at the bank and DS at the bank. I was asked by City (UK) who had been asked by clients to investigate authenticity on notes and 108 guarantees. As my education broadened I was asked to authenticate promissory notes some genuine and some not. Other than promissory notes all other bank instruments have proven fraudulent. Banque Alliance have a great deal of experience in Russian markets…. I think I couriered these notes and my people at the bank authenticated them. I never saw the original documents again but copies of the documents and associated paperwork was kept at Binbrook….

Q Who asked you to authenticate the notes?

A Not anyone in Australia. I am guessing but it was probably Mr B.

Q Why didn't we produce the bank letter for authentication? Why a solicitor's letter if they had authenticated it?

A My relationship with the bank I thought was very special. I would have been reluctant to send their letterhead.

Use of Client Account

158. The Respondent said that in early 1998 he had been approached by Mr B concerning a particular group of investment products which the group were going to offer in relation to its ability to obtain lines of credit from major banks. This involved locking money into a fixed term deposit account. Mr B had recently attended meetings with Pannell Kerr Forster (PKF) and Imperial's insurance brokers. PKF and the brokers had recommended that a lawyer or accountant be instructed to set up foreign currency accounts for the receipt and distribution of monies. The Respondent had been invited to perform this function and as the Solicitors' Conduct Rules did not prohibit the handling of investment monies, he accepted.

159. It was proposed that PKF would audit the investment funds quarterly and Imperial would safeguard capital with a corporate guarantee backed by insurance against losses. The product was be known as the "Managed 2 Fund" ("MF2").

160. The promised yield on capital was higher than most funds of its type but nowhere near the returns. The Respondent had come across when investigating fraudulent schemes around the world.

161. The Respondent said this was not simply a bank account through which investors' money would pass. For good commercial reasons Imperial did not want investors to know the identity of the banks in which their business was transacted, the investors might deal direct with the bank and Imperial would lose business. Yet investors needed to be sure that their money would be invested in funds of the sort they anticipated. The use of a solicitor to make the investment (and to receive back funds in due course) ensured for investors that their funds were being utilised as they believed.

162. The Respondent said that he had previously carried out some anti money laundering diligence for Imperial. Mr B's proposal that the Respondent should oversee such diligence for M2F. It was beneficial to Imperial for the Respondent to decline those investors who refused or failed to cooperate with such requirements. The Respondent's firm's money laundering checks went beyond those imposed by statute at the time. The Money Laundering Regulations 1993 were in force but applied only to firms who conducted investment business. Although the Respondent did not consider that they were conducting investment business, his client was doing so and he therefore paid attention to the Regulations. The Respondent's firm's policy was that unless an investor was already known to Imperial (in which case evidence of identity was not required) each investor would have to produce evidence of his or her identity and if they could not the Respondent did not give them client account details. The Respondent said he was able to provide a high standard of assurance that money laundering was not taking place.

163. The Respondent explained that the regulations provided that if payment into his client account was to be debited from an account held in the investor's name at a mainstream British bank or building society or a European institution then that alone would constitute sufficient evidence of identity. However due to the locations of Imperial's most successful offices, the Respondent anticipated that most of the investors would be from Asia, Australia and America and therefore that provision would often not apply. In any event it became his practice to ask for evidence of where the investment funds were held because in his dealings with City (UK) he had encountered other cases where investment funds had been syndicated and he wanted to be sure that Imperial's investment clients were indeed the beneficial owners of those funds. Each investor file contained a checklist, the first item on which was the verification of the identity of the investor.

Shared papers/records

164. During the FIU inspection the Respondent was asked to provide client files with regard to client transactions. The Respondent was unable to provide records and gave the following reasons:-

(i) the Respondent did not keep his own set of papers but relied on a shared set of papers with the client, Imperial;

(ii) the papers had been sent abroad for auditing.

165. The Respondent said that PKF's office in the Bahamas was engaged to carry out the M2F audits and Imperial's audits generally. It was therefore necessary that the Respondent's files were made available to PKF's staff there. The files related to an international investment under the scrutiny of an international firm of accountant. The files related to an international investment under the scrutiny of an international firm of accountants. The Respondent said it was not improper for his files to be sent overseas.

The Submissions of the Applicant

166. The Applicant put the case before the Tribunal on the basis that the Respondent had been dishonest.

167. Mr F had been adjudicated bankrupt on the 10th January 1996 and discharged from that bankruptcy on 7th November 1997. Mr B had been convicted of fraud in February 1996.

168. The Respondent had been aware of the bankruptcy proceedings.

169. In the contested intervention proceedings the Respondent had made three answers. The first was that at the material time the bankruptcy order was under appeal, secondly that Mr F had been in a position to pay the debt due to Mr S and thirdly that Mr F had been aware of the bankruptcy order. It was the Applicant's submission that if Mr F had been aware then a letter in the terms complained of would not have been written.

170. It was the Respondent's position that £10,000 belonging to Mr S was held by the Respondent. The Respondent had suggested in the High Court proceedings that it was proper for him to retain that sum against legal fees his client was going to recover. There was no justification for that. The money should have been returned to Mr S on demand.

171. The "To whom it may concern letter" had been handed to Mr B who was a convicted fraudster. The Respondent had been aware that Mr B had been convicted. The letter could only have been given to give the impression that he held money for Imperial when in fact it was held for investors.

172. The letter to Crossick & Co of 27th March 1996 was untrue in that the institution was not funding the borrowing and that the money released to an account in Switzerland was one over which the Respondent had no control.

173. The letter written by the Respondent on 17th May 1996 made a dishonest suggestion. There could be no reason why Mr B should write a letter on ZWK letterhead. The suggestion itself was dishonest.

174. The Respondent accepted that he was paid £7,500 for attending the meeting for Mr P on 9th August 1996. Mr B had written to Mr P stating that he had spoken to the

Respondent who had agreed to act for Mr P. On 4th April 1997 Mr P wrote to the Respondent:-

"You have received money from Mr B and you have a letter re my retainer"

175. The evidence was clear that there was a solicitor/client relationship between the Respondent and Mr P. The Respondent should never have been involved in litigation between two of his own clients.

176. The affidavit prepared by the Respondent in this litigation supported the contention that the money from Mr P was a gift. The Respondent had in his file documents showing that the money had been paid over as part of a commercial venture.

177. The affidavit was both untrue and misleading and should never have been provided by a solicitor for one client against another client. The Respondent received £1.576million into his client account on 21st July 1997. The Respondent was trustee for the payees of that money. He should not have paid it over to City (UK) Limited.

178. In August 1998 the Respondent had assisted Mr B to prepare an affidavit. The relevant agreements between the companies had not been exhibited to the affidavit and the Respondent knew that the affidavit was not true.

179. The Respondent's letter to Mr M of the 7th October 1998 gave a wholly false impression. He indicated that the proceedings were stayed whereas the reality was they had been brought to a conclusion.

180. The FIU Officer's Report dealt with investment schemes which in the submission of the Applicant were fraudulent.

181. The FBCL scheme promised much but delivered nothing. The reality was that FBCL never had any money to lend. The position had been that deposits were collected and then paid to borrowers. This had all the hallmarks of a fraudulent scheme.

182. With regard to the A Trust Company Limited matter, the Respondent promised to authenticate promissory notes in the Rusaust matter when he could not honestly have done so. The bank in Geneva had said that it had seen certified copies and what the Respondent had said was inconsistent with that.

183. The M2F scheme also was in the submission of the Applicant dishonest. It bore all the hallmarks of fraud. There was a contract which contained a number of meaningless terms. A number of which were very similar to those set out on The Law Society's Warning Card as being terms which should alert a solicitor to the fact that he was not acting in a legitimate and honest transaction. When the Respondent acted for investors in the scheme he was paid a retainer of £4,000 per month from Imperial. He preferred one client over the other.

184. The Respondent did not comply with undertakings.

185. In his judgment of 21st March 2003 the Honourable Mr Justice Pattern (following the conclusion of the contested intervention proceedings, said:-

> "Not withstanding the bankruptcy of Mr F he [the Respondent] felt able to write to Mr S on 6th February 1996 stating that both his clients were solvent and threatening Mr S with an injunction. Mr F's bankruptcy order was not annulled until November 1997 but no mention of the bankruptcy order was made in the letter. When this was put to the Respondent in cross-examination he made three points:-
>
> (i) that the order was under appeal (the appeal was in fact dismissed in August 1996 by His Honour Judge Maddox);
>
> (ii) that Mr F was in a position to pay the debt; and
>
> (iii) that Mr S was aware of the bankruptcy order.
>
> None of these provides a satisfactory explanation to the letter.".

186. Further in his judgment the Honourable Mr Justice Patten said there were a number of aspects of the matter of FBCL which he found deeply disturbing and which at the lowest cast serious doubt on the Respondent's honesty. It was an essential part of the arrangements with the Applicants that the deposit should be held in the Respondent's client account and be refundable in the event that the loan did not proceed. That made it impossible for FBCL to utilise the funds as they wished without the express consent of the borrower Applicants. The Respondent allowed client monies to be sent to Mr K in Switzerland. The restrictions on the proper use of the deposits were relevant also to the Respondent's conduct in relation to the banks who might have been persuaded to provide the funding sought by FBCL.

187. The Respondent had provided a letter dated 15th February 1996 to assist Mr B confirming that as of that date he held £370,451.68 "in my firm's client account on behalf of Imperial Consolidated." Those monies represented the deposit held for would be borrowers.

188. It was the Learned Judge's view that for whatever reason the Respondent allowed himself to be manipulated by Mr F and Mr B to provide whatever assurances were necessary in order to allow their scheme to proceed regardless of the truth of what was being stated or the terms upon which the deposits were held as between the Respondent and his borrower clients.

189. The Learned Judge described Mr K's schemes as being palpably dishonest and simply incredible.

190. With regard to the affidavit prepared for Mr B the Learned Judge said:-

> "I regard Mr B's affidavit as having all the appearances of a thoroughly dishonest but successful attempt to retain the $1million from the Austria Trust recoveries which [the Respondent] was willing to assist."

191. The fact that Mr F and Mr B had apparently attempted to make a counter-claim ought to have put the Respondent on notice that Mr F and Mr B were both greedy and unscrupulous. The Respondent had been prepared to assist in such conduct.

192. It was the submission of the Applicant that M2F was a dishonest scheme. It carried all the hallmarks of prime bank instrument fraud. The agreement drawn in connection with this scheme contained a number of provisions which included phrases similar to those referred to in the Yellow Card Warning. The Respondent had been put forward as the solicitor for the investors. The Respondent knew that the scheme was dishonest. Very high rates of interest were promised and the language in terms of the documents were suspicious.

193. The M2F scheme had been presented by the Respondent as an honest investment scheme run by honest people. The documentation contained suspicious and unintelligible terms which he was prepared to endorse by becoming involved in the scheme. In fact the Respondent has received £1.05million from investors which he had used to make payments to third parties. He did not get written instructions so to do. A shortfall of £1.3million had been established as having passed through the Respondent's account prior to 27th August 1998. On 13th August Imperial said the total value of undertakings was £10.6million. There were a number of high value undertakings that were not retained on the Respondent's files.

194. It was the Applicant's view that the Respondent allowed his firm and his firm's client account to be used in circumstances which were substantially similar to the circumstances covered by The Law Society's warnings.

195. It was the Applicant's case that the Respondent accepted instructions from clients wishing to invest in Imperial at a time when Imperial was a source of over 50% of the fee income of the Respondent's firm. The Respondent's ability to represent the interests of the individual clients was thereby substantially impaired.

196. In the A Trust matter there had been a judgment by consent against Credit Austerlitz for US$2.6million with interest plus costs. The US$2.6million was to be paid in seven days to Harveys and the interest within 14 days. The Respondent sent a copy of the Order to Mr M and asked for instructions about the distribution of the fund. On 21st July the Respondent asked Credit Austerlitz and Barclays Bank to pay the US$2.6million into his client account. By then it appeared that Mr M had become involved in a dispute with City (UK). On 21st July Mr M sent a fax to Mr F asking for City (UK)'s invoice and saying that the Respondent had been instructed to keep the US$2.6million in his account. Mr F replied on the same day that the monies should be remitted to City (UK) for its costs to be deducted. When the US$2.6million was remitted to the Respondent's client account he transferred most of that sum to City (UK). When Mr M wrote to the Respondent to ask what had been done with the money, on 1st August the Respondent wrote to him saying that City (UK) had been instructed by members of the A Trust Syndicate that they wanted the funds transferred direct to them rather than through Mr M.

197. It was the Applicant's position that the Respondent had a professional duty to keep a full and separate record himself. He should not have allowed the only set of papers to be sent abroad for auditing.

Submissions of the Respondent

198. The allegations all related to the Respondent's work for the Imperial Consolidated Group of Companies and its employees.

199. In the early stages of their relationship the Respondent had carried out some conveyancing work for Mr B and Mr F and during the course of their discussions he had become aware that they had lost a large sum of money after investing in what turned out to be an advanced fee fraud in an attempt to obtain a commercial line of credit from an overseas bank. The scheme had been perpetrated by a former solicitor working in the Midlands.

200. With regard to the allegation that the Respondent had sworn affidavits that he knew or ought to have known were untrue, the Respondent said that paragraph 13 of his affidavit of 9th January 1996 was not untrue. The Official Receiver of Progressive Leisure Corporation Limited had written to Mr F's father's home on 16th November 1995 complaining that Mr F was not making himself available for service of documents relating to Progressive Leisure Corporation Limited. The letter did not refer to a bankruptcy petition. An Official Receiver would not become concerned with bankruptcy procedures until an Order had been made. Mr F's father opened the letter and faxed it to the Respondent.

201. With regard to the letter written to Mr S, the Respondent had been instructed to write to Mr S. That letter was dated 6th February 1996. If Mr S's statutory demands had been served with a serious view to obtaining a bankruptcy order, the Respondent would have been instructed to prepare an application to set them aside, referring to the fact that the loan was not yet repayable and that Mr F was bankrupt but appealing inter alia on the basis that he was solvent. The Respondent had known that Mr S would not present a further bankruptcy petition and when the Respondent spoke to him Mr S confirmed that.

202. With regard to Allegation 11 the Respondent said that £10,000 was paid into his client account by a third party in readiness for a possible settlement with Mr S. He had not been instructed by the third party to release the funds. If he had paid the monies to Mr S without such instructions the Respondent said he would have been prosecuted for improperly releasing the money.

203. With regard to the further allegation that the Respondent sent letters, the contents of which he knew or ought to have known were untrue or inaccurate, related to the letter of 27th March 1996 which the Respondent wrote to an investor's solicitor Stephen Crossick & Co confirming that he had transferred £250,000. The Respondent said that that letter was neither untrue nor inaccurate.

204. When Mr G and Mr L, two of FBCL's investor clients, contacted the Respondent he tried to speak to Mr F but was informed that he was in a meeting which would last most of the day. The Respondent did not want to disturb Mr B or Mr K with a telephone call because he knew that the work of the Zurich office was often intense and it was usually more convenient, more time efficient and less costly to send a fax. The Respondent therefore sent the fax to Mr B in which he effectively asked for Mr B

to provide information on the current position to his companies two clients. The Respondent's letter had not been a request for a false letter to be produced.

205. Mr L's telephone calls were invariably long. The Respondent understood the reason for the request in Mr B's coversheet – if the work in Zurich had reached a critical stage the last thing he or Mr K would have wanted was to take a long telephone call or calls from Mr L or any other FBCL clients or their brokers. The course of action which the Respondent was seeking with his letter of 17th May was not improper. It was to extract current information on the status of the transactions.

206. The Respondent had been briefly introduced to Mr P at Imperial Consolidated's offices in Binbrook. That had been I July 1996. The Respondent's second meeting with Mr P was shortly after that in August 1996 at The Park Lane Hotel in London. The Respondent had been paid £7,500 to attend the meeting. The Respondent said that his bank had received meaningless and/or fraudulent documents in connection with Mr P. The Respondent had never received any funds from Mr P. The Respondent said that it would have been wholly improper for him to swear an affidavit stating a belief that the money paid by Mr P to Consolidated was anything other than a gift. Even if there had been documents on the Respondent's file which were inconsistent with the money being a gift it did not alter the fact that he had been told that it was a gift. The Respondent had not seen Mr P's affidavit or the invoice from Imperial Consolidated until after he had sworn his own affidavit on 7th July.

207. The Respondent did not believe that Mr P was a client of his firm.

208. As Imperial gathered data on fraudulent high yield investment schemes it came into contact with numerous victims of such schemes from all over the world. City (UK) was established to recover lost funds. There had been instances when fraudsters with stolen monies made enquiries at Imperial's offices with a view to investing those funds themselves. It had emerged only later that those who paid the monies to Mr M were either not the owners of the monies at all or were syndicates. The Respondent had also come to learn that Mr M was the business associate of another American whom City (UK) were investigating in relation to another fraud. The picture had been constantly changing and involved City (UK) in additional work so that they and Mr M had repeatedly discussed and renegotiated the recovery fee agreement.

209. The Respondent had no part in the discussions between City (UK) and Mr M concerning fees. He did however assist Mr H to prepare an affidavit for Mr B. The Respondent had not seen the invoice which was said to be exhibited to that affidavit. The Respondent had left the deponent to affix the appropriate invoice.

210. The Respondent's firm had not been the only firm in the UK undertaking work on behalf of Imperial. The Respondent had in his statement listed other firms who had been other reputable English firms that had been instructed.

211. The Respondent said that the undertaking that he provided as to the genuineness of a promissory note had been explained in evidence. He had received a letter from his bank confirming that the promissory notes were authentic. The Respondent said that his undertaking had not become effective and he had been informed that the notes had been purchased by clients of PKF and later redeemed at a profit. The Respondent did

not expect to have any documents to substantiate that information but had no reason to doubt it.

212. In response to the allegation that the Respondent had allowed his firm and his firm's client account to be used in circumstances which he knew or ought to have known were improper and unjustified, the Respondent pointed out that there had been involvement with PKF and Imperial's insurance brokers. The brokers had recommended that a lawyer or accountant be instructed to set up foreign currency accounts for the receipt and distribution of monies. The Respondent had been invited to perform that function. The bank account had not simply been one through which investors' money would pass. It was for good commercial reasons that Imperial did not want investors to know the identity of the banks through which they transacted their own business. The use of a solicitor to make the investment (and to receive back funds in due course) ensured for investors that their funds were being utilised as they believed.

213. The Respondent could see no impropriety in allowing original files and records to be sent outside the jurisdiction as the auditing of Consolidated Imperial's accounts took place at PKF's office in the Bahamas.

214. The Respondent had explained in evidence the supervision he provided to DW.

215. In dealing with the alleged conflict or risk of conflict of interest between the clients, the Respondent pointed out that Imperial's clients were invariably sophisticated investors who were not people placing their life's savings into Imperial's products. Imperial and its investors had a common goal in much the same way that a mortgagor and mortgagee do. If at any stage an actual conflict had arisen the Respondent would have declined to act.

216. The conflict of interest rules had been the subject of a detailed study "Serving Two Masters: Conflicts of Interest in the Modern Law Firm" by a Bristol University lecturer who found them to be "irrelevant and unworkable." More than two thirds of the firms she studied, which were all free from Law Society inspection by virtue of the fact they were large, brazenly flouted the Rules which were currently under review by The Law Society in any event. Because the Respondent and his employee saw correspondence and documents relating to Imperial they knew that Imperial was honouring its obligations to investors and there was no conflict of interest.

217. It transpired that as investors began more frequently to communicate direct with Imperial's staff, changes to the contracts were agreed without reference to the Respondent and what started out as a straightforward arrangement had become increasingly difficult to manage. The Respondent had become aware but by the time the first quarterly audit was produced by PKF, the second one was due. That was a matter entirely beyond the Respondent's control. He later learned that the whole picture had changed so much that by the time the second quarterly audit by PKF was due to take place, the auditing arrangements had been considerably altered. It appeared that investors were not interested in PKF's reports and Imperial included the M2F audit as part of the annual audit of the whole group's affairs.

218. With regard to the allegation that the Respondent had failed to act in accordance with professional undertakings, the Respondent said he had given investor clients two important undertakings, (i) to receive their money and pay it into a fixed termed deposit account and (ii) to receive and pay back to them their capital at the end of the contractual term. Sometimes due to unforeseen circumstances a client indicated that withdrawal of funds before the end of the fixed term was necessary. Imperial had not wished to lose the goodwill of such people and as it had other investors waiting to join the M2F fund they simply carried out the exercise of replacing one client in a particular group with another. For example, investor A might be midway through his 12 months investment having paid monies into the fixed termed deposit account via the Respondent's client account when investor B might be ready to join M2F and have his money in the Respondent's client account. Investor A might then need to recall his capital. Rather than trying to withdraw it prematurely from the fixed term account, it was more convenient, efficient and cost effective for the Respondent to repay investor A with investor B's funds and to allocate investor A's money in the fixed term account. In the event no investors asked for their monies (either capital or income) to be returned to them through the Respondent.

219. A Law Society accounts inspection of the Respondent's books of account had taken place in the summer of 1996 after the Respondent's dealings with Mr K's firm had ended. The Respondent had shown the Investigation Accountant his FBCL file and they had had discussions which the Respondent said were constructive, supportive and helpful. The Respondent had been sent a "warning letter" by The Law Society, which he read as advisory. That letter had alluded to prime bank instruments, standby letters of credit and various bonds. Those phrases were in the documents that the Respondent had been investigating on behalf of FBCL but by the time he received the letter he had already learned for himself that "prime banks" do not exist and it followed that documents purporting to be "prime bank instruments" could not be authentic.

220. The Respondent said that there was however a market in "secondary bank instruments" such as promissory notes and letters of credit.

221. There were of course "prime lenders" in the mortgage market. Letters of credit and standby letters of credit did exist, but most commonly in the world of shipping where goods exporters were at risk of non-payment after making a delivery and therefore took security from the importer's bank.

222. There were many types of bonds in the international money markets. The use of the word "bond" was in itself not redolent of fraud.

223. The Respondent shared his own knowledge with that of the Investigation Accountant and believed it would be fair to say that he had gained most of it from practical experience.

224. The following month the Respondent received a letter from The Law Society confirming that his firm's accounts were in order in all material respects.

225. The Respondent had been the subject of proceedings before the Disciplinary Tribunal (dealing with his employment of a Mr Mendoza) and they were concluded in

September 2000). Shortly after the conclusion of the disciplinary proceedings the Respondent received a visit from the FIU Officer of The Law Society.

226. The Respondent said that neither the Investigation Accountant who had first visited him or the FIU Officer had any professional qualifications. The FIU Officer at the second visit was aggressive from the outset.

227. The FIU Officer had looked at two conveyancing files where clients had sold properties and left the proceeds of sale with the Respondent for sometime afterwards, drawing monies whenever they needed them. The FIU Officer referred to that as money laundering.

228. At the end of each visit the FIU Officer asked the Respondent to produce documents for him on the next occasion but when those documents were produced he expressed no interest in them. He asked to look at the Imperial files and the Respondent made a request for them to be returned from his room at Binbrook. The majority of the files were indeed returned. One file which had been exclusively that of the Respondent, was missing. Imperial objected to the release of the Respondent's money laundering diligence files on the basis that documents in them were shared and they had a continuing need for them.

229. After two or three short visits the FIU Officer explained that he had been seconded to the Serious Fraud Office and his investigation had to be suspended in December 2000. The Respondent had not heard from him for many months. In the meantime he continued to probe Imperial for information.

230. When the FIU Officer returned in August 2001 the Respondent continued to give him his full cooperation. He allowed him to see draft letters from the Respondent to his former clients calling for information and he allowed him to edit such letters before they were sent. He also corresponded with the FIU Officer.

231. When the Respondent asked the FIU Officer what experience he had of investment business, he said he had once been on a course.

232. The FIU Officer had indicated that he had come under pressure to file his Report as almost exactly one year had passed since the first meeting. He asked whether the Respondent had obtained any further documents for him to include in his Report. The Respondent said that he was waiting for the Report so he could see which documents to track down. Contrary to the Respondent's expectations the FIU Officer wrote to his superior recommending that the Respondent's firm be intervened immediately and without notice.

233. The Respondent did not receive the FIU's Officer's Report until the day after the intervention. The Law Society's covering Agenda Note for its Adjudication Panel, which set out the allegations against the Respondent was not sent to him until six months later in May 2002. He filed an application to the High Court to overturn the intervention within the statutory eight day time limit and therefore without the Agenda Note.

234. One of the things referred to in the FIU Report and in the Agenda Note was The Law Society's Yellow Warning Card on bank instrument fraud, of September 1997. It was sent to most solicitors with their 1997-98 practising certificates. Due to a computer malfunction The Law Society did not send out the first of the practising certificates (and therefore the Warning Cards) until January 1998. The Respondent received his late in the summer of 1998, when his dealings with Imperial were almost over.

235. The M2F Fund did not involve bank instruments.

236. The card was poorly written, evidently by someone with less experience of investigating bank instruments than that of the Respondent. It was not evidence of fraud that words or phrases found in Imperial's documentation might also have appeared in the Yellow Card. It was not surprising that fraudsters used phrases which appeared genuine but it was not evidence that the genuine use of such language was fraudulent as the Agenda Note implied.

237. The Respondent had not been in breach of The Law Society's Warning Card on money laundering.

238. The reasons given in the Agenda Note for not disclosing the FIU Report to the Respondent for comment before taking the drastic step of intervention were that "information held…. may be at risk." If the Respondent had notice of the matter and "the seriousness of the apparent dishonesty also means that this matter should be adjudicated urgently." The Respondent questioned the good faith of either purported justification. The FIU Officer had been under pressure to produce a Report as one year had elapsed since he began his investigation and it might have been that the speed of the decision making process had far more to do with that pressure than either reason put forward in the Note.

239. There was nothing in the written FIU Report of which the Respondent was unaware and therefore nothing in that Report would have given him any fresh cause (over and above what he already knew) to destroy evidence. The suggestion that the matter was urgent could not be squared with the time taken over the investigation or the fact that the events under investigation were already some years old.

240. The part of the FIU Report beginning with Section 8 was headed "High Yield Investment Referral Programme" which was misleading. That phrase did not appear on the documentation issued by Imperial but often did appear in fraudulent schemes.

241. The FIU Officer sought to demonstrate a similarity between Imperial's scheme and those about which the Respondent was later warned in the Applicant's Yellow Warning Card on bank instruments. If the Warning Card was read as a whole it could be seen that there was very little in common with Imperial's work. Even though the Respondent did not have the Warning Card, he did not breach the guidance which was later contained within it.

242. The Respondent knew the people with whom he was working. He did not give them unrestricted use of his firm's stationery or bank account and did not endorse the scheme. The auditors of the scheme were a reputable firm of accountants and clear auditing procedures were agreed at the outset.

243. The only feature of Imperial's scheme which bore any resemblance to the matters referred to on the Warning Card was the provision that investors should not contact Imperial's bankers. However in the contract for Imperial's scheme (unlike in fraudulent schemes) this was a reciprocal agreement; Imperial agreed not to contact investors' banks either. The logic behind that provision was first, that neither party wished to have its bank inundated with enquiries, and secondly that it was in Imperial's commercial interests to keep its investors away from its bank, otherwise the investors could set up their own arrangements with Imperial's bankers direct. Imperial's investors tended to be experienced, sophisticated and wealthy people. Many of them knew each other and often recommended Imperial to one another and it would not have been difficult for them to form syndicates.

244. The Imperial documentation made available to the FIU Officer confirmed that it was Imperial who would pay the Respondent's fees, not the investors. When the Respondent negotiated the terms of his involvement with Imperial, it had been agreed that rather than having the administrative burden of issuing a separate small invoice to Imperial for each investor, the Respondent would charge a global retainer fee of £4,000 per month (inclusive of VAT) in respect of all of the work he carried out for the Group inclusive of the individual fees charged to each investor. The Respondent found this an attractive arrangement because he would be paying regular visits to Imperial's offices whether there was one investor per month or more than that. The retainer agreement ended with the end of the Respondent's involvement with the investment scheme.

245. The Respondent attended Imperial's offices, inter alia, to see staff on a range of matters. The offices were located in the countryside and many miles from the nearest law firms. It was advantageous to Imperial and its employees for the staff not to have to take time off work to travel several miles for legal advice.

246. The most important of the Respondent's files relating to Imperial's investment work including sections on individual investors, were made available to the FIU Officer without hesitation and he photocopied them. The papers which were not available during the inspection were a file of copy documents which the Respondent had taken from Imperial's records and a file relating to the authentication of bank instruments. The former file contained copies of documents which belonged to Imperial. As the papers grew in size five files (as they became) were sent to PKF. The Respondent's firm (Mr DW in particular) maintained copies of the Respondent's firm's files when the originals left his possession but he did not feel it was necessary to retain further photocopies of Imperial's papers, which had already been photocopied.

247. On the last occasion that all five files left the Respondent's possession to go to PKF in the Bahamas, one file was not returned. He assumed that it was held at his room within Imperial's office but when he enquired it transpired that it was still with PKF. The Respondent did not say that he knew that the papers had gone abroad. He did not know that one file had not been returned. That file appeared at Imperial's office in Brisbane. It had Imperial's corporate logo on the spine so although its journey was somewhat inconvenient to the Respondent it had not been a great surprise particularly as there was a strong connection between the Australian office of PKF and Imperial Consolidated in Brisbane.

248. There was nothing surprising about the Respondent's firm not receiving investment proceeds. The firm's standard letter of undertaking clearly stated that the firm would receive funds as and when such funds were remitted. In other words the investors could and in fact did waive the facility to have their money returned through the Respondent's firm. It became apparent that the investors were changing the terms of their dealings with Imperial. Many had dealt directly with the company beforehand and did so afterwards.

249. The clients made their own arrangements with Imperial which were beyond the Respondent's control. That had been another factor in the Respondent bringing his involvement to an end. That should be acknowledged and the Respondent given credit for it.

250. The Law Society, despite the considerable passage of time, had still not received any complaints from investors, even though Imperial went into Administrative Receivership in April 2002, four months after the intervention.

251. Despite being hampered by a lack of documents, the Respondent brought an action to challenge The Law Society's intervention, including a challenge to the compliance of interventions with the various elements of the Human Rights Act 1998. Two days before the trial began the Court of Appeal handed down a judgment in a similar case which (in summary) stated that interventions were compliant. The other solicitor had since filed a petition with the House of Lords.

252. During the week before the trial the Respondent's solicitors were bombarded with additional evidence by The Law Society's solicitors. That was a common tactic. That evidence consisted of files containing the documents which made up the Applicant's bundle before the Tribunal. Those matters were not dealt with in the Respondent's evidence in chief but nevertheless the Applicant's advocate was allowed to cross-examine the Respondent for several days on this material notwithstanding that he had not seen it himself for several years and therefore found difficulty in the witness box recollecting the details of it.

253. The Honourable Mr Justice Patten found strongly against the Respondent and dismissed his application. Much of the evidence the Respondent had put before the Court in his witness statements, but which was not covered in cross-examination, was not referred to in the judgment.

254. The Learned Judge attributed the delay in hearing the Respondent's case solely to him. The Tribunal was invited to bear in mind the Respondent's evidence before it.

255. The Learned Judge had been in error when he stated:-

> "For a period of about four years from 1995 to 1999 [the Respondent] was involved in various dishonest investment schemes run by Mr F and Mr B….".

That was not so.

256. The Honourable Justice Patten stated that Mr F and Mr B:-

> "…. continued to persist in cooperating with Mr K, who is accepted to have been a fraudster.".

In fact they did not persist with Mr K after they had discovered that he was a fraudster.

257. Through Mr K, Mr F and Mr B hoped to obtain a credit line but were also investigating Mr K's own investment schemes. The Learned Judge said "Clearly they could not do both." At one point they were looking at doing both and there was no logical reason why they could not do so.

258. His Honour Judge Patten appeared to be under the impression that CGC's deposit had been sent to Switzerland. That was because a member of FBCL's staff held this mistaken belief. In fact it had been paid out of the Respondent's client account back to CGCT. After learning of this Mr F wrote to the company inviting it to pay it back into his account.

259. The Learned Judge recognised that FBCL could not utilise their clients' deposits in a fixed term deposit account without the investor clients' consent. As the Respondent and Mr F and Mr B had not come across a bank at that time which was willing to offer a line of credit, they did not get as far as asking the investor clients for such consent. Had they done so then of course their consent would have been needed.

260. The Respondent's letter dated 15th February 1996 was part of a larger document, indeed a brochure and his letter should only be read in the context of reading the other material with it. The Respondent knew its intended purpose when he wrote it. He could not have named the investor clients or lost control of their money without their express consent.

261. At paragraph 37 of his judgment Patten J referred to a letter from Mr B to the Respondent. He did not write the letter. Insofar as it referred to "deposits held by Harveys" the Respondent does not accept that this must mean that they must be still held as deposits. They were still held by the Respondent but not all of them were as deposits any longer because FBCL had returned some deposits direct. The Respondent not feel it would be fair to criticise Mr B for writing such a letter. He and the Respondent both knew what he was referring to. Deposits were initially paid to the Respondent whether or not FBCL had since repaid them. The Respondent did not accept that the return of deposits by FBCL when the monies were still held by him was in any sense improper and neither did the investors, none of whom protested at receiving their money back from FBCL rather than the Respondent. The Respondent did not accept that FBCL was entitled to deal with deposits held by him for those clients who had not bee repaid by FBCL.

262. The Learned Judge appeared to be under the impression that City (UK) had investigated investment schemes before the Respondent's involvement with Mr K. That was not so. Mr K came first and then came City (UK). The Respondent had little experience of investigating investment schemes and bank instruments before coming across Mr K.

263. The Respondent's letter (requesting a letter from ZWK) referred to in paragraph 40 of the judgment simply asked Mr B to report the latest position to his clients (or to ask Mr K to do so). There was nothing sinister or dishonest in this or in the removal of the telephone number. The Respondent was not assisting in telling lies.

264. The Learned Judge alluded to the re-routing of M2F funds back through the Respondent's client account but this provision only related to the contractual period (usually 12 months) and not afterwards.

265. The Respondent had never tried to justify City (UK)'s fees. He regarded it as a matter between City (UK), Mr M and the SEC.

266. The Respondent's involvement with the Sakhacreditbank promissory note was purely for the purpose of authentication.

267. In paragraph 63 of his judgment the then Mr Justice Patten said:-

> "One of the points to support the genuineness of M2F is the apparent lack of complaints from investors. I am not impressed by this. I strongly suspect that much of the money invested in these schemes is from illicit services, and the investors concerned are not best placed to complain. It may also be (as the FIU Officer suggested) that some of the money was rolled forward into other schemes."

268. Paragraph 65 of the judgment the Learned Judge said the intervention had taken place two years earlier, although it had been 15 months before the date of the judgment.

269. The Human Rights Act 1998 required that The Law Society's actions should be proportionate. A full year and a half had passed since the intervention. The Respondent set out the consequences of the intervention to him personally.

270. The Respondent's dealings with Imperial Consolidated ended with the turn of the year 1998-99. His previous appearance before the SDT in respect of Mr Mendoza was in September 2000. After that hearing he was optimistic about the future of his firm.

271. The Respondent's earning capacity had been taken away and his career damaged. Financially that had been disastrous. At the date of the intervention the Respondent was in the middle of a five month fraud trial at Kingston Crown Court following two years' preparation. At the time this was the largest case of its kind. The Respondent stayed at an hotel four nights each week. The average costs figure for other solicitors involved in the case was £37,000. The Respondent's firm's fees would have been of a similar level. The Respondent had numerous other cases of a significant size. In the case of the Kingston matter not only had the Respondent received no fees, but he was substantially out of pocket because of the hotel costs.

272. The Respondent's unbilled fees exceeded £100,000. The intervention agents immediately informed clients that he had been struck off and they handed out files without preserving the Respondent's lien in respect of unpaid costs. The Law Society claimed that information as to the distribution of files was confidential so the Respondent could not pursue lost fees.

273. Large numbers of the Respondent's clients had expressed their loyalty to him, but his reputation within the town of Luton must have been damaged. In midsummer 2002 there was a rumour amongst solicitors in Luton that the Respondent was in prison.

274. The Respondent had been appointed executor in a large number of clients' Wills and also held Power of Attorney for various people. The intervention agents had advised them all to change their Wills appointing the partners in their firm as executors and had advised that the Powers of Attorney in the Respondent's favour be revoked.

275. The Respondent's 83 year old mother had suffered inordinate levels of stress and embarrassment towards the end of her life. There had been unpleasant gossip in her neighbourhood varying from assertions that the Respondent had been struck off to suggestions that he was responsible for the terrorism on 11th September 2001. The Respondent's two teenage children had suffered with him.

276. The top floor of the Respondent's office was his home and each of them had their own bedrooms with desks where they did their homework. They had had to move their belongings out in case the bailiffs arrive. The Respondent's son was a school friend of the intervention agent's son.

277. The Respondent's bank accounts had been frozen so he had been unable to pay any bills. He had spent a considerable amount of time and money refurbishing the offices and converting the top floor into living accommodation. He had been unable to pay any rent since September 2001. He had received a summons from Luton Borough Council for the non-payment of his rates. The gas supply had been disconnected. He had not heard from his landlord so as a precaution against homelessness he rented a two-bedroom house in Luton but even his rent there was in arrears and the landlord was proceeding to evict the Respondent. Soon the Respondent would have nowhere to store the belongings which he had worked hard to acquire. Bumping into clients was painfully embarrassing. The Respondent's life assurance, buildings and contents insurance policies had all lapsed.

278. The very firm which had given out the Respondent's files without recovering his costs had invoiced The Law Society for the costs of the intervention in excess of £50,000. In accordance with its usual policy The Law Society would seek to recover those costs from the Respondent. The Respondent's application for a detailed assessment was being vigorously defended. The Respondent faced bankruptcy if his application to the Court for a detailed assessment proved unsuccessful.

279. Although he could not practice, the Respondent remained liable for indemnity premiums for a period of six years after the closure of his firm under tapering off provisions.

280. The Respondent's credit card and photocopier rental had not been paid as a result of which he had been blacklisted by both. It would be impossible for him to obtain credit. His previous credit history had been faultless.

281. The Respondent's privacy had been adulterated. Personal mail (even greeting cards) had been intercepted by the intervention agents, opened and then sent on to the

Respondent without envelopes, often after a delay of several weeks. The Respondent's telephone lines were diverted to the intervention agent's office.

282. Some of the Respondent's peers now avoided him. He could not afford to socialise. He could no longer do the activities that he wanted to do and used to do with his children.

283. The Respondent had felt depressed, despondent and bitter since December 2001. At the end of May 2003 he was admitted to hospital for one week suffering from a virus which had penetrated his immune system because he was feeling low and run-down through stress. The Respondent derived his self-esteem from his occupation. That had been taken away from him. He used to sleep well but no longer did so, leaving him feeling tired and lethargic during the day.

284. On 17th December 2001 the Respondent was holding approximately £220,000 of client's money. Dozens of his clients who were in the middle of conveyancing transactions or litigation for which he was holding money on account of costs and disbursements have had to go through the long, drawn out process of claiming discretionary 'grants' to recover what is lawfully theirs in the first place. The majority of them had contacted the Respondent for help but it was very difficult to explain the common sense of this scheme when their money is simply sitting on deposit somewhere. Obtaining an application form took anything up to one month. On receipt of each application it had taken The Law Society approximately three months to appoint a caseworker. A further month goes by before the caseworker begins to correspond substantively with the Applicant. After an average of six months the file eventually went to an Adjudicator for a decision. It took a further month for a cheque to come through. Whenever it could, the intervention agents encouraged the Respondent's clients to instruct their firm. In one case they charged over £400 to deal with an application. This was not in keeping with The Law Society's role of protecting the public.

285. There was no proper complaints procedure because The Law Society was self-regulating. The Legal Services Ombudsman cannot get involved, yet The Law Society punishes solicitors who do not have adequate complaints procedures in place. When genuine complaints are made all The Law Society does is to issue an apology. If clients complain about the lack of an independent complaints procedure they simply receive a further apology from someone who is more senior that the author of the first one. At the date of making this statement some of the Respondent's clients still have not received their money. The Law Society informed the Respondent that the intervention agent had written to all of his clients advising them to claim the monies due to them, but this was simply untrue. A number of clients who had not received any such letters. Of the £220,000 in client account at the date it was frozen approximately £160,000 had so far been claimed by clients.

286. On 17th December 2001 The Law Society was holding £16million of clients' money in respect of the firms it had closed. The Compensation Fund faced claims in excess of £30 million. The Respondent had no doubt that some solicitors' firms had considerable shortfalls or had clients who had exaggerated their claims. He suspected that his client account had been used to repay the clients of other closed firms. He asked about the human rights of his clients. The freezing of their money and the

removal of their documents from the place where they had elected for them to be kept to a strange place in a different town was a further disregard for their rights.

287. At the date of the intervention the Respondent employed two trainee solicitors whose contracts had to come to an abrupt end. One finally found alternative employment in September 2002, the other was having to work on a temporary basis outside the profession because she could not find work within it. The Respondent found that to be acutely embarrassing.

288. As a result of the freezing of the Respondent's office account in December 2001, staff pay cheques were dishonoured just before Christmas. After leaving aggressive messages on his mobile telephone answering service on Christmas Eve, the father of the Respondent's young receptionist came to his office during the holiday period threatening to assault him and remove his possessions from the office if he did not replace his daughter's salary cheque with cash. That was very humiliating.

289. The Respondent was aware that another solicitor had lodged an application with the European Court for a declaration that the Tribunal is not human rights compliant. The Respondent also reserved his right in that connection.

290**.** The Respondent made the following submissions as to the nature of the sanction to be imposed by the Tribunal

291. The Tribunal considered the Respondent's submissions on the question of the sanction to be imposed. With regard to the Tribunal's duty to the protection of the public the Respondent pointed out that he had long since stopped acting for Mr F, Mr B and Imperial Consolidated. There remained a proportion of the Respondent's practice and the public clearly wanted him to continue to practise as was evidenced by a number of letters of support.

292. The Law Society had received no complaints at all. The Respondent enjoyed a claims free insurance history. On the question of proportionality the intervention into the Respondent's practice had been catastrophic. That in itself had been an enormous penalty. The Respondent had suffered huge financial loss. At the date of the disciplinary hearing the intervention agent's fees amounted to some £50,000. The Respondent anticipated that he would have to spend the rest of his working life trying to pay off those enormous fees. The Respondent did not want that cost to fall on the rest of the solicitors' profession. He had lost substantial fees that he had earned. The Respondent anticipated that his unclaimed fees were valued in the region of £93,000.

293. The Respondent said that the Tribunal had not just the last 20 years of his working life in its hands but the next 20 years. If the Tribunal were to impose the ultimate sanction upon the Respondent the last 20 years of hard work would count for nothing. The Respondent hoped that the Tribunal would not consider the imposition of the ultimate sanction to be necessary in this case. The Respondent recognised that if he were to be allowed to practice as a solicitor any Practising Certificate issued to him would be subject to strict conditions and he would have to work under the strict control of The Law Society. There was no question of such circumstances that the Respondent could be a danger to the public.

The Findings of the Tribunal

The Findings of Fact

294. The Respondent did receive money from FBCL which included £10,000 owing to Mr S. The Respondent held that money for FBCL and could not pay out the money to Mr S or to anyone else, without FBCL's instructions to do so. The Respondent did not receive such instructions from FBCL.

295. The Tribunal finds that the Respondent did accept instructions from Mr P and charged Mr P for work undertaken on his behalf. Mr P was a client of the Respondent at a time when there was a conflict or a potential conflict of interest between Mr P and Imperial Consolidated.

296. The affidavit which the Respondent helped Mr CH to prepare for Mr B in connection with the USA litigation relating to City (UK) was misleading because the Respondent knew the original agreement between City (UK) and A Trust relating to fees as the Respondent had a copy of the agreements on his file and the affidavit did not accurately reflect the nature of such agreement. The invoice exhibited to the final affidavit was untrue or inaccurate, a fact that was known to the Respondent.

297. The letter written by the Respondent to Mr M dated 7th October 1996 reporting upon the City (UK) matter sent Mr M a copy of a skeleton argument and said that the claim for profits could not be taken further that day as there were no witnesses to give evidence on the issue. He said the Court was persuaded in the absence of any evidence that Mr M should receive a payment of US$100,000 and that the action had been stayed until they decided to resurrect the profits claim. This was untrue as the litigation brought by A Trust & Co Ltd was settled by consent and the Order stated that all further proceedings in the action be stayed. The matter had occupied the time of the Court for two minutes.

298. The Respondent received monies into his client account in circumstances where there was no underlying transaction upon which he himself was giving advice in his capacity as a solicitor.

299. The Respondent acted both for Imperial and/or its related or subsidiary companies and also for prospective investors.

300. The Respondent did not properly supervise Mr DW who worked at the Binbrook offices of Imperial. The Respondent carried out only weekly visits and maintained contact with Mr W by telephone.

301. The Respondent did not keep his own solicitor and client records but relied upon records kept by his client which were then permitted to be sent out of the jurisdiction.

302. The Respondent paid out monies from client account above on eleven different occasions in respect of which he had undertaken to ensure that the whole amount received by his firm was to be remitted to Imperial in accordance with the investors' instructions.

303. The Tribunal find that the circumstances in which the Respondent provided an undertaking as to the genuineness of promissory notes in the Rusaust matter was such that he could properly give such undertaking as he had received confirmation from a bank that the promissory notes were indeed genuine.

304. The Respondent swore an affidavit in the matter of Mr P which supported the contention that the money from Mr P to Imperial was a gift when the Respondent had in his file documents showing that the money had been paid over as part of a commercial venture.

305. The Tribunal finds that the Respondent prepared the affidavit for Mr B giving a different account of events of which the Respondent was aware (from that in a previous affidavit).

306. The Tribunal finds that the Respondent did send a letter indicating that a letter should be written on a firm's letterhead.

307. Where allegations of impropriety or mishandling of clients' money were made, the Tribunal finds as a fact that there was such mishandling and/or impropriety where cited by the Applicant.

The Findings of the Tribunal with regard to the allegations

Allegation (i)

308. The Tribunal found Allegation (i) to have been substantiated because the Respondent allowed his client account to be utilised by Mr P at a time when the Respondent had no idea where that money was coming from. The Respondent also acted for the investors and for Imperial and received and dispatched monies through his client account. He also held or dispatched moneys for FBCL and Mr M and the T Trust. The Tribunal note also that the Respondent allowed his client account to be used in connection with a number of transactions which at best were very suspicious, and in circumstances where he had not been instructed to advise upon any underlying transaction. In reality his client account was used as a conduit for money and no input by him in his capacity as a solicitor had been made or required.

Allegation (ii)

309. The Tribunal finds Allegation (ii) to have been substantiated. The Respondent acted for Mr P, Mr F and Mr B (Imperial). The Respondent acted for investors in Imperial and Imperial, itself.

Allegation (iii)

310. The Respondent employed Mr DW who was based at Imperial's offices at Binbrook. That was some 150 miles distant from the Respondent's professional office at Luton. The Respondent said that he spoke to Mr DW probably six times per day on the telephone and visited the office at Binbrook. The Tribunal noted that the Binbrook office was not open to the public, but even so the Respondent's supervision of Mr DW was not adequate. The reason for adequate supervision was to ensure that clients matters were properly dealt with and that sufficient steps were taken to ensure that an

employee is not given opportunities to misbehave in circumstances where he is not likely to be found out. Clearly it would have been possible for a person in Mr DW's situation to pursue a frolic of his own without the Respondent ever knowing about it. The Tribunal accepts that the Respondent did accept responsibility for Mr DW and did supervise him to some extent.

Allegation (iv)

311. The Tribunal find allegation (iv) to have been substantiated. It is inappropriate for a solicitor to share records with his client. Clearly it is a serious breach for a solicitor to share financial records with a client when he has clear responsibilities to maintain accounts in accordance with the Solicitors Accounts Rules. Should a solicitor and the client with whom he shares records part company, the opportunities for dispute as to which record belong to whom was obvious and the situation clearly was most unsatisfactory.

Allegation (v)

312. The Tribunal found Allegation (v) to have been substantiated in that he agreed "to undertake to ensure that the whole amount received by us from you be remitted to Imperial Consolidated SA in accordance with your instructions". The Respondent made payments held by him on behalf of investor clients and to third parties instead of to Imperial. That was a breach of the undertaking. The Tribunal accepted the Respondent's explanation that he had utilised funds that were destined for Imperial to pay investors who properly wanted their money back when the owner of the funds so utilised was to replace the withdrawing investor. Nevertheless his undertaking was clear and he should have adhered to it.

Allegation (vi)

313. The Tribunal found allegation (vi) that the Respondent provided an undertaking as to the genuineness of a promissory note in circumstances where he could not properly have given such undertaking not to have been substantiated. The Tribunal accepted the Respondent's explanation that the promissory notes were authenticated by his bankers as was evidenced by the letter of the 16th July. Although it was perhaps not the best example of professional behaviour to write a letter without being in possession of fully reliable confirmation of authenticity, the Tribunal accepted that the Respondent did feel able to give the undertaking which he did. In the light of the nature of the transactions it was extremely foolish but it was right that the Respondent should be given the benefit of the doubt in considering whether he had acted improperly.

Allegation (vii)

314. With regard to allegation (vii) the Tribunal found that allegation to have been substantiated. With regard to the affidavit sworn by the Respondent on 9th January 1996, the Respondent had been made aware of the bankruptcy petition issued against Mr F and the date of the hearing which took place in November. It was clear that the Respondent and Mr F had been in communication prior to 12th December 1995 and the Tribunal did not believe that the Respondent had not discussed the bankruptcy situation with Mr F and believed that it was untrue when the Respondent said that

Mr F had been unaware of the bankruptcy proceedings until the Respondent passed a sealed envelope on to Mr F, the Respondent having himself received the envelope on 12th December 1995.

315. With regard to the affidavit made in the proceedings brought by Mr P against Mr B, Mr F and Imperial Consolidated, the Respondent's affidavit was inaccurate when he said that he had been told that at the time of his receipt of it the US$1million had been a gift by Mr P. That might well have been what the Respondent initially had been told. The Respondent did have on his file documents showing that the money was paid over as part of a commercial venture and his affidavit should have made it plain that despite what he first was told, the state of his knowledge had changed.

Allegation (viii)

316. The Tribunal found allegation (viii) to have been substantiated. The Respondent did prepare, or was involved in the preparation, of an affidavit to which Mr B was to attest in connection with proceedings brought by the SEC against City (UK). The Respondent's explanation that he had left it to his client to exhibit the appropriate invoice to the affidavit was less than satisfactory as the Respondent clearly had a duty to ensure that any affidavit prepared by him in connection with Court proceedings was absolutely accurate. The affidavit further was misleading because the Respondent knew that there was a syndicate behind A Trust and it was clearly inaccurate to draft an affidavit in which Mr B asserted that he had been led to believe that Mr M and/or his company were the lawful owners of the missing funds.

Allegation (ix)

317. The Tribunal found allegation (ix) to have been substantiated. The Respondent had sent a letter to Cossick & Co solicitors which was clearly untrue and inaccurate. The letter addressed by the Respondent to Mr S dated 6th day of February 1996 was not true. The letter written to Crossick & Co on the 27th day of March 1996 also was inaccurate.

Allegation (x)

318. The Tribunal found allegation (x) to have been substantiated. The letter addressed to Mr B suggesting that he should arrange for a letter to be prepared on the letterhead belonging to ZWK, a firm of Swiss Attorneys, was wholly improper. The Tribunal rejects the Respondent's submission that he was seeking up to date information. The terms of his letter was unambiguous.

Allegation (xi)

319. The Tribunal found allegation (xi) not to have been substantiated. This allegation related to monies, some £10,000, retained by the Respondent in his client account which the Applicant said were monies due to Mr S. It was accepted that £10,000 might well have been owed by Mr B and Mr F to Mr S but it could not be right that the Respondent was required to pay over money to Mr S when that money had been received from a third party without instructions from that third party. The Tribunal was not satisfied that this money belonged to Mr S or that the Respondent had authority to pay it to Mr S.

Allegation (xii)

320. The Tribunal found allegation (xii) to have been substantiated. Some £1.576million held in the Respondent's client account had been paid to City (UK) instead of to Mr M's A Trust. The Respondent's proper course of action would have been to approach the SEC. If he did not do that it would have been better to do nothing. By the time the Respondent passed the money to City (UK) he knew that there were difficulties with the A Trust. The beneficiaries of that money were members of the syndicate of A Trust and the Respondent had been given clear instructions to retain that money in client account.

321. The Tribunal noted the costs claimed by the Applicant which included the costs of the Forensic Investigation Unit of The Law Society. It considered the Respondent's submission that two of the 12 allegations had not been substantiated and that The Law Society had used a firm to act on its behalf in the intervention into his practice and a different firm to act on its behalf in bringing the matter before the Tribunal. It was the Respondent's view that there had been a duplication of costs and he considered that it would be fair for the Tribunal to order that he pay a contribution towards the costs rather than the whole amount. He should be allowed his costs in relation to the two matters found not to have been substantiated on the basis that the Respondent was a litigant in person.

322. The Tribunal was satisfied by the Applicant's response that the only duplication was a duplication of documents and that if the Respondent had been more cooperative an agreed bundle could have been prepared much earlier. The Applicant pointed out that the Tribunal had a very wide discretion on the question of costs and even had power to award them against the Respondent if it found all of the allegations not to have been substantiated.

323. The Tribunal took into account all of these arguments but in the circumstances found that The Law Society was perfectly entitled to instruct different solicitors in the intervention and in the disciplinary proceedings. The reality was that there was no duplication of work. The conduct of an intervention and the prosecution of disciplinary proceedings were two distinct areas. It was accepted that a duplication of documents to some extent was unavoidable but this would not substantially add to the cost. The level at which the Applicant set his costs was in no small part due to the Respondent's lack of cooperation.

324. Having found the majority of the allegations to have been substantiated the Tribunal learned that the Respondent had had a previous appearance before the Tribunal. On 21st September 2000 the Tribunal found the following allegations to have been substantiated against him when he was co-Respondent with Mr Mendoza. The allegations were:-

(i) that he failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;

(ii) that he drew money from client account other than as permitted by Rule 7 of the said Rules, contrary to Rule 8 of the said Rules;

(iii) that he had been guilty of conduct unbefitting a solicitor, in that he failed to exercise proper supervision of a member of his admitted staff.

325. The Tribunal found all of the allegations to have been substantiated against Mr Harvey and all of the allegations against Mr Mendoza to have been substantiated. The Tribunal said:-

> "Following a hearing on 16th March 1993 when Mr Mendoza had substantiated against him, the allegation that he had failed to keep accounts properly written up in breach of Rule 11 of the Solicitors Accounts Rules 1986, the Tribunal said that his failure represented an abdication of his responsibility as a solicitor and ordered on 18th May 1993 that Mr Mendoza be suspended (from that date) from practice as a solicitor for the period of two years. The Tribunal has been dismayed at the sorry picture which emerged throughout the hearing. Mr Harvey's lack of supervision of an employee whom he apparently believed to be an unadmitted clerk, albeit it one with previous experience as a solicitor, was instrumental in the unfortunate events, details of which unfolded during the course of the hearing.
>
> Mr Harvey deserved credit for the seriousness with which he viewed his position and the assistance and cooperation given to his professional body in the conduct of its investigation. The Tribunal also noted the testimonials written in support of Mr Harvey. On the scale of things the Solicitors Accounts Rules breaches were not perhaps at the most serious end of the scale, but the Tribunal viewed any breach of the Solicitors Accounts Rules as a serious matter because it went to the heart of the requirement that a solicitor exercises a proper stewardship of client monies.
>
> In all of the circumstances, the Tribunal considered it right to impose a financial penalty on Mr Harvey in a global figure relating to all three of the substantiated allegations of £4,000. Having listened to the submissions on costs made by the applicant, the Tribunal considered it right that the costs should be apportioned between the two respondents and ordered that Mr Harvey should pay the Applicant's costs fixed in the sum of £608.90 inclusive, together with the sum of £273.00, representing a proportion of the costs of The Law Society's Investigation Accountant."

326. In 2003 the Tribunal considers that the Respondent has behaved extraordinarily foolishly and it was his initial foolishness which led him to behave in a manner which was dishonest.

327. The Tribunal finds that in particular in writing letters and in making or drafting affidavits in which the Respondent has either been untruthful or has been so economical with the truth as to give a false impression, the Respondent has been guilty of serious professional misconduct. Utilising the test in Royal Brunei Airlines as expanded in the case of Twinsectra, the Tribunal found that an ordinary solicitor would have known that what the Respondent did was wrong and the Tribunal also finds that the Respondent acted fully in the knowledge of what he was doing and could not have failed to recognise that his behaviour was dishonest.

328. The Tribunal finds it extraordinary that a solicitor running a small general practice in Luton should consider it even conceivable that he could become involved in high value international banking transactions. Not only is this most unlikely, but this Respondent was specifically warned by The Law Society in respect of precisely this sort of matter following an inspection of his practice. The Respondent chose to ignore that warning as well as ignoring the clear general warnings given by The Law Society to practising solicitors.

329. The Respondent's involvement was perhaps a measure of the Respondent's arrogance that he considered it acceptable that a sole practitioner of a general practice in a provincial town in England should be suitable to act as a locum in a law practice in Zurich.

330. The Respondent's behaviour, which on the face of it, appeared to the Tribunal to be a bizarre determination to play a part in the matters before them, demonstrated the Respondent's extraordinary lack of judgement which in turn led to his dishonest behaviour.

331. The Tribunal has on earlier occasions when it has had to consider allegations made against solicitors who have become involved in money laundering or prime bank instrument fraud schemes made the point that a solicitor approached to act in such circumstances must ask himself a number of questions. The first perhaps is "Why have these clients chosen me?" If a solicitor does not have knowledge of international banking transactions he cannot advise his clients. If he does not have a knowledge of the law superior to that of his clients, there would be little or no point in them seeking to instruct him. Solicitors must take the utmost care to ensure that their letterhead, their bank accounts, their professional indemnity insurance and their professional body's compensation fund is not simply being utilised by fraudsters to lend a cloak of respectability to nefarious transactions.

332. The Tribunal has been greatly assisted by, and seeks to adopt, the judgment of The Honourable Mr Justice Patten following the contested intervention proceedings.

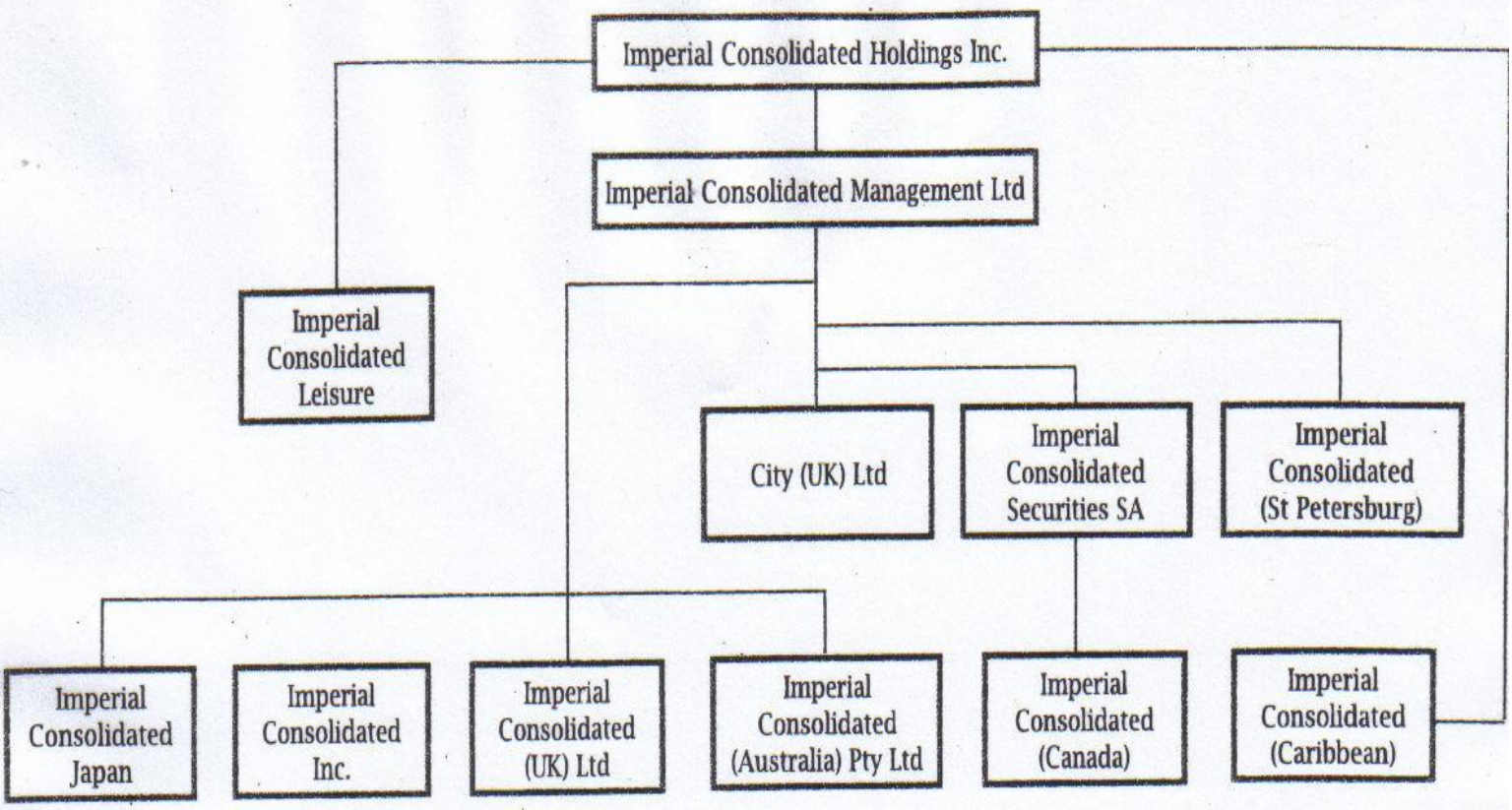
333. The Respondent's behaviour has seriously damaged the good reputation of the solicitors' profession and it is right that the public should be protected from him. The Tribunal considered it right that the Respondent should be struck off the Roll of solicitors. The Tribunal further considered it right that the Respondent should pay the Applicant's costs, to include the costs of the Investigation Accountant of The Law Society, fixed in the sum of £14,724.43.

DATED this 2nd day of October 2003

on behalf of the Tribunal

R B Bamford
Chairman

Group Structure



Directors & Officers of the Group

Imperial Consolidated Holdings Inc.
Chief Executive Officer: Mr. F
President: Mr. B

Imperial Consolidated Management Limited United Kingdom
Chairman & Managing Director: Mr. B
Group Finance Director: Mr. W.
Group Director, Russian Government Affairs: Mr. F.
Group Director, Private Client Services: Mr. G
Legal Affairs Director: Mr. H

Imperial Consolidated Securities S. A.
Managing Director: Mr. G
Director: DC

City (UK) Limited
Managing Director: Mr. H.
Managing Director: Mr. W

Imperial Consolidated (Australia) Pity Limited
Managing Director: Mr. Fy

Imperial Consolidated (Caribbean) Limited
Managing Director: Mr. K

Imperial Consolidated (UK) Limited
Managing Director: Mr. B

Imperial Consolidated Canada
Managing Director: Mr. G

Imperial Consolidated (Russian Federation)
Director General: Mr. Sm
Chief Bookkeeper: Ms I.

Imperial Consolidated Leisure
Managing Director: Mr. H.
Secretary: Mr. W

Imperial Consolidated Japan
Managing Director: Mr. I.
Director: Mr. Ke.