No. 8669/2002

IN THE MATTER OF MICHAEL WILLIAM ROBERT WOOD & ALAN BURDETT

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R J C Potter (in the chair)
Mr. L Gilford
Mr. G Fisher

Date of Hearing: 21st October 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 (the OSS) by Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea SS2 6HZ on 27th August 2002 that Michael William Robert Wood and Alan Burdett c/o Messrs Michael Wood & Co, 25 Garstang Road, Preston PR1 1LA 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 19th November 2002 the Applicant made a supplementary statement containing further allegations.

On 24th July 2003 the Applicant made a second supplementary statement giving notice that he would not proceed with allegation vi) in the original Rule 4 Statement and making a further allegation.

At the hearing the Applicant agreed to amend allegation viii). The Tribunal consented thereto.

The allegations set out below are in the agreed amended form and are those contained in all three of the statements made by the Applicant.
The allegations were:-

Against both Respondents

i) The Respondents have acted in breach of the provisions of Rules 7 and 8 of the Solicitors Accounts Rules 1991 in that they have drawn or permitted to be drawn from Client Account monies other than in accordance with the provisions thereof and utilised the same for their own benefit alternatively for the benefit of other persons not entitled thereto;

ii) Have failed to act in accordance with the provisions of the Solicitors Accounts Rules 1991 Rule 11in that they have failed adequately to maintain accounts in respect of their practice as Solicitors as by the said Rule required;

iii) Have failed to exercise adequate supervision over staff in the form of a book keeper relating to the keeping and preparation of their accounts as solicitors;

iv) Acted in breach of Principle 29/02 of the Guide to Professional Conduct of Solicitors 1999 in failing to deliver to the Solicitors Indemnity Fund a Gross Fees Certificate in respect of practice. Further, pursuant to Principle 29/06 aforesaid have failed to make or cause to be made contributions in respect of the relevant indemnity period and with consequential breach of the relevant Solicitors Indemnity Rules.

v) Acted in breach of Principle 29/02 of the Solicitors Accounts Rules 1998 in the following particulars:-

(a) Rule 6 - requiring all principals in a practice to ensure compliance with the Rules.

(b) Rule 7 - imposing a duty to remedy any breach of the Rules promptly upon discovery including replacement of any money improperly withheld or withdrawn from Client Account. This duty extends to all principals in the practice.

(c) Rule 17 - as to client money to be properly withheld from a Client Account.

(d) Rule 19 - as to payment where monies received include unpaid professional disbursements.

vi) Withdrawn, but proceeded with on the basis that the cashing of cheques amounted to a breach of Practice Rule 1.

vii) Have acted or continued to act where a conflict of interest had arisen between clients of the firm.

viii) Have acted in breach of Principle 17/01 of the 7th and 8th editions of the Guide whereby Solicitors must not act in their professional capacity or otherwise towards anyone in a way which is otherwise contrary to their position as Solicitors or to take unfair advantage.

ix) In respect of a further accounting period have acted in breach of the provisions of the Solicitors Accounts Rules 1998 in that they have drawn or permitted to be drawn from Client Account monies other than in accordance with the provisions thereof and utilised

the same for their own benefit alternatively for the benefit of other persons not entitled thereto;

x) In respect of a further accounting period have failed to act in accordance with the provisions of the Solicitors Accounts Rules 1998 Rule 32 in that they have failed adequately to maintain accounts in respect of their practice as solicitors by the said Rules required.

xi) Have acted in breach of the Solicitors Accounts Rules 1998 in the following particulars:-

(a) Rule 6 requiring all principals in a practice to ensure compliance with the Solicitors Disciplinary Proceedings Rules 1994;

(b) Rule 7 imposing a duty to remedy any breach of the Rules promptly upon discovery including replacement of any money improperly withheld or withdrawn from Clients Account;

(c) Rules 19 and 22 as to payment where monies received include unpaid professional disbursements.

xii) Have acted in breach of Practice Rule 1 of the Solicitors Practice Rules 1990 in that they have acted in breach of the good repute of themselves as Solicitors or of the Solicitors' profession and in further to breach of the Solicitors Accounts Rules 1998, Rule 1.

Against Michael William Robert Wood

xiii) Has acted in breach of Practice Rule 1 of the Solicitors Practice Rules 1990 in that he has failed to maintain the good repute of himself and/or the Solicitors' profession in making a false alternatively misleading application for mortgage facilities thereby leading to the deception of the mortgage lender involved and as hereinafter appears.

Against Both Respondents

xiv) By virtue of each and all of the aforementioned the Respondents have been guilty of conduct unbefitting a Solicitor.

The application was heard at the Court Room Number 2, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Gerald Malcolm Lynch appeared as the Applicant, Mr Wood did not appear and was not represented, Mr Burdett was represented by Jonathan Goodwin Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT.

The evidence before the Tribunal included some admissions made by the Respondents and the oral evidence of James Lane, formerly an Investigation Officer of the Law Society, currently an Investigation Manager at the Law Society.

The admissions by the Respondents were as follows.

Both Respondents admitted allegations i), ii), iii), iv) and v). Allegation vi) was withdrawn in its original form and replaced by an allegation that there had been a breach of Practice

Rule 1. The Respondents had come to accept that such a breach had occurred but it did not amount to conduct unbefitting a solicitor. With regard to allegation vii) Mr Burdett denied that allegation. Mr Wood accepted the allegation in part - Mr Wood's position is dealt with under the heading "The submissions of Mr Wood". Mr Burdett denied allegation vii). With regard to allegation viii) Mr Wood admitted that allegation. Allegations ix), x) and xi) were admitted by both Respondents. The Respondents contested allegation xii).

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

The Tribunal ordered that the Respondent Michael William Robert Wood of Walton Park, Preston (formerly c/o Messrs Michael Wood & Co, 25 Garstang Road, Preston PR1 1LA) solicitor, be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to this application and enquiry (to include the costs of The Law Society's Investigation Accountant) to be subject to a detailed assessment if not agreed between the parties.

The Tribunal ordered that the Respondent Alan Burdett of Lathom Cottage, 174 Liverpool Road South, Lathom, Ormskirk L40 7RF (formerly c/o Messrs Michael Wood & Co, 25 Garstang Road, Preston PR1 1LA) solicitor, be suspended from practice as a solicitor for the period of twelve months to commence on 21st October 2003 and they further ordered that he do pay the costs of and incidental to this application and enquiry (to include the costs of the Investigation Accountant of The Law Society) to be subject to a detailed assessment if not agreed between the parties.

The evidence relating to the contested allegations (vii) the Respondents acted or continued to act where a conflict of interest had arisen between clients and the firm

1. Following notice duly given a Senior Investigation Officer in the Forensic Investigation Unit of the Law Society (the IO) conducted an inspection of the Respondent's Books of Account. The inspection began in March 2000. The IO's report dated 20th July 2002 was before the Tribunal. The report dealt with the following matters:-

   i) The Respondents' firm's main source of fee income was derived from litigation work arising from claims referred to it via accident management companies.

   ii) The environment for all firms involved in that type of work had been volatile in recent years owing to the adverse ruling in the Dimond v Lovell case, which called into question the enforceability of many Credit Hire Agreements which were typically entered into by victims of accidents and accident management companies for a loan car to be made available to the accident victim while his own was repaired or a replacement vehicle purchased.

   iii) On two of the accident files reviewed by the IO it was noted that there were witness statements which appeared to have the effect of relinquishing the clients' right to avoid a potentially unenforceable hire agreement.

   iv) The clause in the witness statement, which was identical in both cases, was as follows:-

> "I entered into the Hire Agreement on the basis that the hire charges would be payable to A1 Car Care Limited within 30 days after completion of the hire. The period of hire was limited to a period not exceeding three months. I am advised by my Solicitors that these clauses prevent the Hire Agreement being a regulated Agreement under the Consumer Credit Act but to the extent that the amount is due from me now and to the extent that this Agreement may be deemed to be a Consumer Credit Agreement under the Consumer Credit Act 1974 and to the extent that the Agreement may offend against the rules of formality so that it is rendered unenforceable against me unless by Order of the Court I wish to waive those defaults if they exist and I confirm that so far as I am concerned that the Hire Agreement is enforceable against me as has been explained to me by the Hire Company and I therefore seek an indemnity from the Defendant in relation to these hire charges."

v) The witness statements had been drafted by an assistant solicitor, in the employ of the Respondents.

vi) The IO took the view that it could not be in the best interest of the accident victim client to be advised to waive their rights to avoid unenforceable credit hire agreements.

2. The Tribunal had been notified by Mr Wood that he had been suffering from Multiple Sclerosis and would not be able to travel to London for the purposes of a disciplinary hearing. The Tribunal had agreed to sit in Manchester in order to accommodate his disability. Subsequently Mr Wood notified the Tribunal that he would not be attending the hearing and would submit a written statement. The Tribunal received a written statement on 3rd October 2003 although the statement on its face was dated 30th October 2003.

3. In correspondence between Mr Wood and the Law Society, Mr Wood explained that he involved himself only with cases that were capable of amicable settlement with a third party and insurance companies. He said that in disputed matters the files were transferred to the assistant solicitor who worked "hand in hand" with Mr Burdett. Mr Wood had not been able to confirm whether or not clients had been advised of the effect of Dimond v Lovell. He confirmed that accident management companies arranged car hire on behalf of the firm's clients and he appreciated that there could have been a conflict of interest. Mr Burdett was the person responsible for supervision in respect of the personal injury work carried out by the firm. Mr Burdett worked in an upstairs room which was unaccessible to Mr Wood owing to his inability to ascend or descend stairs because of a debilitating illness.

4. In the letter addressed by Mr Burdett to The Law Society dated 16th October 2001 Mr Burdett did not agree that the Witness Statements wholly had the effect of relinquishing the client's right to avoid an indebtedness in relation to hire charges incurred. He went on to say:-

> "As a solicitor in an individual case (and each one must invariably be judged on its own methods as they are all, in one form or another, different), do you take a view that a particular hire account, based on the facts within a particular case, will be unenforceable against your client and advise him not to proceed with that part of the claim? You may think that there is nothing wrong with that. It would make no different to us. We do not profit from the returns to

the car hire companies and there is not a single shred of evidence that we share, as a Firm, in their profits or their turnover.

There is, however, a potential downside to our client. If we choose to advise the client that the contract is most likely unenforceable but if the garage disagree with our viewpoint, do bear in mind that this is a contract that exists between the hiring garage and the client, for which the hiring garage has a minimum period of at least 6 years from the contract date to seek enforcement against its former hirer. In blunt terms, if our advice was in any way inaccurate, we could have hundreds of clients coming out of the woodwork in 4 or 5 years time to say that they have received a summons from the garage from which they hired a vehicle so many years earlier, the hire account of which we advised was unenforceable but, for whatever reason, the hiring garage have chosen to enforce issue proceedings on it or, worse still, a District Judge has decided that it is, in fact enforceable and our advice must have been negligent.

Conversely, and bearing in mind that it is the client who has firstly made and taken the decision to take on this indebtedness, why shouldn't the Defendant have to convince the District Judge, in any proceedings, that the agreement is unenforceable as this both protects our client who has had the matter tested at law and, in turn, protects the client's solicitors from a potential claim in negligence.

The contents of the statements themselves do not relinquish the client's right to avoid an agreement. We have had many cases where, because the client has been more than happy with the services provided by a hire company, they are quite happy to confirm that they are indebted to that hire company. When considering this point, it is worth repeating and remembering that there is no single shred of evidence within any of the files here that we, as a Firm or any individuals in the Firm, have acted or encouraged clients to take on indebtedness in relation to replacement vehicles. Almost invariably, these matters come to us after the client has agreed to take on an indebtedness for a replacement hired vehicle as, unfortunately in my view, the bulk of accident victims still prefer to speak to an insurance broker or an accident management company before they first come to see a solicitor.

[The accident solicitor] has explained the origin of the paragraph quoted within this paragraph of the report. For the reasons explained above, it would seem preferable to our client to have the matter tested at law and to seek an indemnity from the Defendant, rather than to be exposed to a claim by the original car hire company for many years later.

Again, the point I feel I have made earlier and I made to [the IO] at the time of his report, is that in all cases I am absolutely and unequivocally clear that all members of staff, when dealing with issues such as these, have the interests of the clients paramount in their minds. There is not a single shred of evidence that we ever place the interests of a third party or of a car hire company or accident management company above those of the clients."

<u>Allegation of encashment of clients' cheques - alleged breach of Solicitors Practice Rules Rule 1 and Solicitors Accounts Rules 1998 Rule 1 (allegation vi))</u>

5. The IO reported on what he described as "inappropriate use of client bank account". Client ledger accounts existed where the entries on the client's ledger did not appear to be associated with any underlying transaction in respect of which the Respondent's firm was acting. The total value of the monies paid in and paid out of the firm's client account was £2,247,298.50.

6. The IO noted the existence of several client ledger accounts where the entries on the relevant client's ledger account did not appear to be associated with an underlying transaction in respect of which the firm was acting other than the transmission of the money itself.

7. Mr Burdett said that the clients were "all 'Scousers' introduced to the firm as clients by me". He went on to add that "post introduction [of the clients] to the firm I made a decision to broaden my business interests and have entered into business arrangements for property developments. I have an interest in [developments with] P M, A McD and K G".

8. Mr Burdett explained that the firm had exempted their client account from the provisions of the Cheques Act and that this enabled them to present any cheque to their bank for payment regardless of the payee. Mr Burdett explained, in general terms, that the facility was used to enable clients and third parties to 'cash' cheques against which payments would be made to the party concerned, or at the direction of the party concerned, by way of cash or bank transfer. This had the benefit for the client or third party of allowing cleared funds to be immediately available.

9. The IO's report included the table below which summarised the activity on these ledger accounts:-

Ledger Ref	Name	No of Credits Entries	Value (£)	No of Debit Entries	Value (£)	Period of Activity (Days)
10555	P M	63	618,173.50	103	618,173.50	224
11339	PDM C	11	121,517.62	11	121,517.62	96
11749	PDM C	15	159,056.71	14	158,869.31	232
11717	W H Ltd	26	302,044.15	31	301,334.19	244
10938	W H Ltd	11	187,000.00	13	187,000.00	380
10934	A McD	10	149,980.90	12	149,980.90	79
12097	K G	18	184,709.75	29	183,550.00	61
11554	K G	6	117,586.75	8	92,070.00	307
11020	S H	18	284,647.90	33	284,647.70	158
11021	'M A'	7	122,581.49	18	122,581.49	158

10. Mr Lane asked Mr Burdett to explain the nature and purpose of the movements shown on the above ledgers. Mr Burdett said that "we were asked to do so [clear the cheques and make the payments] and didn't think it improper. No impropriety was considered or expected and the [bank] transactions were carried out."

11. In order to demonstrate the nature of the bank transactions recorded in the table above, a copy of the P M ledger (Ledger Reference 10555) had been attached to the IO's report.

ARC, C (P) Ltd and C (P 2000) Ltd

12. The firm's accounting records included three client ledger accounts in the names of the above. Each of these ledgers received numerous credit entries and, in the majority of cases, a contemporaneous debit entry. The narrative against most of these entries was recorded simply as 'Generals'.

13. The IO Report contained the table below which summarises the activity on these ledger accounts:-

Ledger Ref	Name	No of Credits Entries	Value (£)	No of Debit Entries	Value	Period of Activity (Days)
10138	ARC	151	337,488.21	154	337,488.21	799
08026	C (P) Ltd	100	162,706.38	101	162,706.38	519
11716	C (P 2000) Ltd	32	36,185.33	32	36,185.33	245

14. When asked what the purpose and nature of these transactions was, Mr Wood explained that the firm offered this facility for the convenience of their clients. He added that the companies involved referred work to the firm.

15. Mr Lane asked the partners to confirm that the payments out of client account were in the form of cash. Mr Wood said that that was "certainly the case for ARC". Mr Burdett added that the presumption would be that the majority would be in the form of cash.

16. In response to the question of why the transactions did not go through the companies' own books of account, Mr Burdett stated that it was a matter of "commercial efficiency". He added "in the real world they want the money now".

17. The IO suggested to the Respondents that there was the possibility that they might be assisting the companies in defrauding creditors and evading income tax and VAT. Mr Burdett responded by saying "unequivocally, no". He added that he had no reason to be suspicious of the transactions.

18. In relation to the firm's practice of allowing clients and third parties to clear cheques through the firm's client bank account and obtain cash, when interviewed on 22nd February 2001, Mr Burdett said that until that issue was resolved they would stop doing this with immediate effect.

19. The IO mentioned that C (P 2000) Ltd was the subject of a compulsory liquidation order dated 25th October 2000. The relevant account within the clients' ledger records demonstrated that the firm continued to cash cheques until the end of January 2001.

20. The IO noted the existence of two client ledger accounts, respectively in the names of G D and M Business Services. G D was retained by the firm as a self-employed bookkeeper. G D had been declared bankrupt on 7th April 1999 and had not been discharged from the bankruptcy when the IO made his report.

21. The Respondents confirmed that the transactions shown on these ledgers related to Mr G D's own business rather than the firm of Michael Wood & Co. Mr Burdett said "the purpose from G D's point of view [was that] he's used client account as a bank account for his own benefit." Mr Wood said that he was not aware that G D held accounts with the firm. He added "to the best my knowledge I was not aware of the transactions [relating to G D] on client account".

22. Analysis of the two ledger accounts revealed that the Ledger entitled 'G D' covered a period from 14th January 1996 to 21st April 1999. It contained 78 credit entries totalling £34,233.34 and was balanced by 99 debit entries. The nature of the transactions recorded on the ledger was a combination of monies received in respect of G D's fees for the provision of accountancy and taxation services and G D's clients' income tax refunds which were subsequently paid to the clients concerned after the deduction of any fees due to G D.

23. The first entry on the ledger entitled 'M Business Services' was dated 10th February 1999 and this ledger remained active as at 19th February 2001. It contained 47 credit entries totally £22,506.61 and was balanced by 49 debit entries. The nature of the transactions recorded on this ledger were initially similar in nature to those noted on the G D ledger. Since October 2000 the majority of the credit entries related to B Energy with an equivalent sum then being paid out in cash.

24. G D explained that the credit entries relating to B Energy, which totalled £19,982.52, were cheques received by acquaintances of his, known to him through his local pub, who received payments for door-to-door canvassing which he cashed through the firm's client bank account. G D deducted and retained 3% of the value of the cheques cashed by way of commission for the service he was providing.

25. When asked, Mr Burdett considered that it was appropriate to have allowed the firm's client account to be used in that way. Mr Wood reaffirmed that he knew nothing about it.

26. A ledger account existed in the name of E L, an assistant solicitor with the firm, which again appeared to contain numerous transactions of a personal nature.

27. The ledger entitled "Mr E L" covered a period from 3rd May 2000 to 14th February 2001. It contained 25 credit entries totalling £80,520.77 and was balanced by 88 debit entries.

28. E L explained that the monies paid into the account related, principally, to an amount of £30,731.51 from the sale of an investment property and £33,000.00 that he was owed. Additionally, Mr E L said that other smaller amounts which had been credited to the account were "odds and ends" of profit costs from his old practice.

29. When asked why these sums had been paid into the Michael Wood & Co client bank account, E L explained that he was "in difficulty with his bank" and, therefore, he utilised the Michael Wood & Co client bank account. The majority of withdrawals from the account had been made by way of cheques drawn to cash.

30. When asked to explain the nature and purpose of the transactions appearing on the E L ledger, Mr Burdett responded "having received a credit it was beneficial for the

person named on the ledger to receive those monies with immediate effect". Mr Wood confirmed that he knew "E L was operating the client account".

31. When asked why E L had been allowed to use the client account in that way, Mr Burdett said "we've taken an honest belief that there is no impropriety and allowed it to happen".

32. When asked if he knew that E L was in financial difficulty and that was the reason why he did not wish those monies to go into his personal bank account, Mr Burdett said that he did not know about E L's financial position. In answer to the IO's question as to whether it was appropriate to allow the client account to be used in this way, Mr Burdett answered "Unequivocally, absolutely".

33. In his statement Mr Wood said that the accounting difficulties related in the main to acquaintances of Mr Burdett who appeared to be putting their business through the firm's accounts. He believed Mr Burdett would say that that was for convenience and expediency. Mr Wood said he was of the opinion that they were entering into the realms of money laundering and in accordance with Law Society regulations Mr Wood reported the matter to the National Crime Intelligence Squad.

34. Mr Burdett had entered into correspondence with the applicant concerning these matters.

<u>The Submissions of the Applicant in respect of allegation vii)</u>

35. The Applicant had referred Mr Burdett to the Tribunal's decision in Wayne. He suggested the relevance of that case was in relation to prime bank instrument fraud or money laundering. The relevant paragraphs of the Tribunal's decision in that case were:-

> 71. Members of the solicitors' profession had been warned about the dangers of becoming involved in prime bank instrument fraud or money laundering. The matter in which the Respondent had become involved demonstrated many of the notified hallmarks of fraud; it was entirely clear that the Respondent himself had no understanding of the investment scheme and had simply done what he was told and allowed his client account to be a repository for a huge sum of money.
>
> 72. The Tribunal has had cause in the past to make the observation which it again makes. A solicitor is not a bank. A solicitor can have no business simply in receiving and paying out money with no purpose attached to it.
>
> 73. If a solicitor is not more knowledgeable about the subject matter of the cases of which he has conduct than his clients then he should not be handling such cases. A solicitor's stock-in-trade is his knowledge and expertise. If his clients are not utilising such knowledge and expertise it is likely that the solicitor is being involved in order that a spurious scheme be given a cloak of respectability. The Tribunal regard the Respondent's involvement in this scheme, bearing in mind his previous history, as a serious matter.

74. The Tribunal concluded that it was right to suspend the Respondent from practice for a period of six months to commence on 17th February 2003. The Tribunal further ordered that the Respondent should pay the costs of and incidental to the application and enquiry in the agreed fixed sum of £2,500.

The Submissions of Mr Burdett in respect of allegation vi) (breach of Practice Rule 1)

36. It was said on behalf of Mr Burdett that there was no Rule of Conduct that Solicitors cannot operate their client account in the way described by the IO. The "cashing" of cheques on behalf of clients may not be part of the service that solicitors habitually provide, but that is far from suggesting that it is in some way disreputable.

37. Whilst criticism was made of the Respondents that the practice of cashing cheques continued after the first IO Report dated 20th July 2001, such criticism was unjustified as was evidenced by a subsequent IO Report.

38. Mr Burdett had been interviewed by the IO on 20th February 2001, at the time of the first inspection. Mr Burdett said that he did not believe that they were doing anything wrong, but said that if they were, they would stop immediately (i.e. cashing cheques). The IO noted Mr Burdett's response as being:-

"The IO explained that he was not comfortable with what they were doing, but at the same time could not say it was wrong and they should stop. The IO said that he would be reporting on this action in a factual manner but would leave others better qualified to do so to decide if there were any conduct points arising."

39. The IO was in a senior and experienced position, he was capable of forming an opinion as to matters of Conduct and Solicitors Account Rules breaches. He was a person well able to form a view as to whether was being done or in breach of any Rule. He made it clear to Mr Burdett that he was unable to say that it was wrong and that they should stop. Mr Burdett reasonably, in reliance upon that observation, formed the view that he was entitled to continue doing that which had previously been done. It was for that reason that it was viewed as entirely unfair for the IO to report that the firm had continued to offer such a facility to clients.

40. With regard to the cashing of cheques, Mr Burdett accepted that upon reflection, whilst not amounting to conduct unbefitting a solicitor and in the absence of a specific Rule, the system adopted might amount to a breach of Practice Rule 1. No question of money laundering or other maladies had arisen.

Disputed allegation in respect of Mr Wood alone that he made a false or misleading application for a mortgage advance (allegation xiii))

41. Mr and Mrs Wood had made an application for a mortgage. The application had been signed by Mr Wood and dated 27th May 2001. The application had been made to The Mortgage Business for an advance of £200,000. The Mortgage Business issued an offer of mortgage on 19th June 2001 for an advance of £189,000. The mortgage offer had not been taken up by Mr and Mrs Wood. However the application form had not been accurate.

42. Mr Wood's share of the net profit from the partnership for the financial years ended 1999 and 2000 were stated in the mortgage application form to be £90,000 and £93,000. The firm's draft accounts for the years ended 31st October 1999 and 2000 revealed that Mr Wood's share of the net profit was respectively £41,679 and £50,847.

43. Mr Wood had offered by way of explanation a letter from his Mortgage Advisor which stated the following:-

> "The income was £93,000 p.a. being made up of Net Profit of approximately £40,000 p.a., Drawings of approximately £40,000 p.a., and Rental Income of approximately £13,000 p.a. As the income multiplier with The Mortgage Business is 3.5 times the main earner then the income shown was more than needed to service the intende [sic] remortgage."

44. The inclusion of net profit and drawings had resulted in double counting of Mr Wood's income, as the drawings were made out of the net profit. Even if rental income was included, Section 13 of the mortgage application form specifically required Mr Wood to provide only details of his share of the firm's net profit.

45. The completed mortgage application form showed Mrs Wood as having been employed by the partnership for more than five years and earning a salary of £3,000.

46. Mr Burdett, in his letter of 28th November 2001, said that whilst Mrs Wood had provided holiday cover in the past, she was "not a permanent member of the staff of Michael Wood & Co. and never has been a permanent member of its staff".

47. Mr Wood's Mortgage Advisor wrote:-

> "It would appear that I was confused regarding the income for Mrs Wood. I know Mrs Wood was employed as a secretary at your firm and I assumed that was still the position at the time of completing the application form. The income quoted had no bearing on the amount of the loan requested".

48. On the completed mortgage application form the purpose of the loan was stated as being "to purchase another buy to let" whereas the true purpose of the loan was to clear Mr Wood's indebtedness to the Inland Revenue which had commenced bankruptcy proceedings against him.

49. Under Section 16 of the mortgage application form Mr Wood was required to answer the following question "Have you ever been in arrears by more than 1 month on a loan agreement or mortgage, been declared bankrupt, had a court order for debt registered against you, made arrangements with creditors or had a property repossessed?". Mr Wood responded to this question by ticking the "No" box on the mortgage application form.

50. Mr Wood failed to disclose his substantial indebtedness to the Inland Revenue in respect of which he said that the Inland Revenue obtained a judgement at Preston County Court against him on 29th November 2000.

51. In his letter of 10th December 2001 to The Law Society, Mr Wood said:-

> "I was not required to disclose any indebtedness to the Revenue and Mr B will confirm that the Mortgage Business will specifically lend against property to pay monies owed to the Inland Revenue".

The Submission of the Applicant (re allegation xiii))

52. The mortgage application made by Mr and Mrs Wood was on its face misleading and contained information that was untrue. The mortgage lender was induced, by the false information, to make an offer of a mortgage advance.

The Submission of Mr Wood (re allegation xiii))

53. In his statement Mr Wood referred to the correspondence passing between him and The Law Society and the statement of his Mortgage Advisor. The mortgage application was incorrectly completed but Mr Wood never had any intention to defraud.

The decision of the Tribunal on the Disputed Allegations

54. With regard to allegation vii), where a conflict of interest was alleged, the Tribunal found that the facts to support that allegation had not been proved to the appropriate standard. The Tribunal therefore found that allegation vii) had not been substantiated.

55. With regard to allegation vi), namely that the Respondents acted in breach of Practice Rule 1 and Rule 1 of the Solicitors Accounts Rules 1998 relating to the use of client account as a banking facility for clients, associates and/or members of staff, it was conceded by the Applicant that there was no specific Practice or Accounts Rule which had been breached. The Tribunal noted that the practice of allowing payment in and encashment of cheques had been adopted in respect of a number of clients and two members of staff and involved very substantial amounts of money.

56. The Tribunal found that even though there had been no breach of any specific rule the Respondents had acted in breach of their own good reputation and the good reputation of the solicitors' profession in allowing their client account to be used in this way.

57. The Tribunal reiterated its findings in the case of Wayne. It was not a proper use of a solicitor's client account to allow it to be used by clients and/or members of staff as a bare banking facility. The proper use of a solicitor's client account was to hold money and disburse it as required in connection with a client matter of which the solicitor has conduct on behalf of that client.

58. Whilst it was accepted in this case that no question of prime bank instrument fraud or money laundering arose, the facility which the Respondents made available to their clients and others could have been utilised by an unscrupulous person as a vehicle for money laundering without the knowledge of the Respondents and that was a mischief which solicitors should actively seek to obstruct. The Tribunal did find allegation xii) to have been substantiated.

59. With regard to the allegation xiii) made against Mr Wood, that he had made a misleading application for a mortgage advance. It was noted that Mr Wood admitted that allegation in part insofar as he accepted that his mortgage application had contained information that was not entirely accurate, but he had formulated no

intention to defraud the prospective mortgage lender. The Tribunal found that Mr Wood had completed a misleading application which did cause the mortgage lender to be deceived. In particular the Tribunal found serious misleading in that the Respondent had not disclosed to the prospective lender that a court judgement had been made against him, nor did he disclose the true purpose of the loan.

The facts relating to the admitted allegations

60. At all material times, the Respondents practised in partnership under the style of Michael Wood & Co at 25 Garstang Road, Preston PR1 1LA. Mr Wood was 43 years of age. He was admitted as a solicitor in 1986. Mr Burdett was 45 years of age and was admitted as a solicitor in 1995.

61. Following notice duly given, an IO of the then Monitoring & Investigation Unit of the OSS inspected the Respondents' books of account. His report dated 28th June 1999 was before the Tribunal.

62. The report revealed that the firm's office account was substantially in debit and there was a net cash shortage on client account in the sum of £1,773.09 caused principally in respect of overpayments from client account but including also an over-transfer from client to office bank account. The actual shortage was in the sum of £3,232.34 but credit was given for non-client funds held in client bank account in the sum of £1,459.25. The shortage had been extant for in excess of one year.

63. The Respondents had relied upon their bookkeeper in relation to their accounts and the bookkeeper had not approached them for provision to replace the shortage, of which the bookkeeper was aware.

64. There were ten over-transfers from client to office bank account.

65. A further shortage on client account of £2,114.86 arose after the inspection date made up of £1,438.51 over-transfers from client to office bank account and £706.35 overpayments.

66. On 20th July 1999 the OSS wrote to the Respondents for explanation of the above matters. On 5th August 1999 the Respondents replied acknowledging breach of the Solicitors Accounts Rules and the shortages which they ascribed to inadequate checking and error. There had been insufficient supervision of the bookkeeper. The matters were not at the higher end of the scale.

67. It had been ascertained from the Solicitors Indemnity Fund that the Respondents were in default with the payments required by the Solicitors Indemnity Rules and the provisions of Section 10 of the Solicitors Act 1974. On 16th August 2000, the Regulation Department of The Law Society wrote to Mr Burdett advising him that the matter should be resolved. Further letters were sent on 16th August 2000, 3rd January 2001 (referring the matter to the OSS) and on 5th February 2001 the OSS wrote. The letters from the OSS were sent to both Respondents. On 12th February 2001 Mr Burdett replied acknowledging failure to deliver a Gross Fee Certificate for the period ending Year 2000 and referring to a payment of account. Further correspondence included a letter of 28th February from Mr Wood in relation to his position and his serious illness.

68. In a letter of 19th March 2001 Mr Burdett referred to difficulties encountered in the light of the substantial increase of indemnity premium.

69. Following further notice given, a Senior IO in the Forensic Investigation Unit of The Law Society conducted an inspection of the Respondents' books of account commencing in March 2000 and reporting on 20 July 2001. A copy of the report was before the Tribunal. As well as the matters dealt with above as contested matters the following relevant matters emerged from the report:-

a) There was a minimum cash shortage on client account of £10,882.50 caused by clients' money being held in office bank account to meet professional disbursements in respect of which cheques had been raised but not despatched. Although this was described as a minimum cash shortage , a further seventy eight office bank account cheques raised on or before 31st May 2000 remained unpaid as at 30th June 2000 and which may have given rise to an additional shortage. Mr Burdett told the IO that may have given rise to an additional shortage. Mr Burdett told the IO that he would take action to replace the shortage.

b) The books of account were not in compliance with the Solicitors Accounts Rules 1991 and/or 1998 because of the existence of these unpresented office account cheques which had remained unpresented for more than six months at the date of the reconciliation. Mr Burdett said that there was no system in place to hold back cheques destined for payment of professional disbursements other than occasional "batching".

c) Mr Wood in April 2001 gave the IO a ring binder containing seventy four original office account cheques dated between 1st May 1998 and 20th October 2000, sixty eight of which gave rise to the above mentioned cash shortage on client account. Moneys in respect of the professional disbursements had in all cases been lodged in office bank account. The ring binder contained a memorandum dated 26th March 2001 from the firm's cashier, G D , to Mr Burdett, suggesting that Mr Burdett was aware of the ring binder and its contents. The memorandum was dated the same day as the ledger printouts and a letter from Mr Burdett to the IO.

d) Mr Burdett had not wished the IO to speak to G D until he had himself spoken. G D said he was not aware of the existence of the cheques and was not the author of the memorandum. The cheques had in all cases been signed by Mr Burdett.

e) The Report went on to deal with the entries on the client ledger which did not appear to be associated with any underlying transaction in respect of which the firm was acting.

70. Further notice having been given, an officer of the Forensic Investigation Department of The Law Society (the IO) undertook a further inspection of the books of account of the Respondents commencing on 13th November 2001 and reporting on 31st May 2002. A copy of the report was before the Tribunal.

71. The report disclosed that the firm's books of account were not in compliance with the Solicitors Accounts Rules as examination of client bank account statements and the

firm's accounting records revealed several receipts and payments transacted through the firm's client bank account which had not been recorded.

72. The posting of transactions in the firm's books of account was not up to date. As at 15th November 2001, the firm's bookkeeper had confirmed that the firm's books of account contained no entries for October and November, and that the entries for September were not complete.

73. No bank reconciliation had been prepared in respect of the firm's office bank account since July of 2000.

74. There was a shortage on client account in the sum of £53,402.90. The cash shortage had arisen in the following way: A list of liabilities to clients as at 3rd August 2001 was produced for inspection and totalled, after adjustments, £525,193.14. The items on the list were in agreement with the balances shown in the clients' ledgers, but the list did not include further liabilities to clients of £4,184.38 which were not shown by the books. A comparison of the total liabilities, including the liabilities not shown by the books with cash held on client bank accounts, at that date, after allowance for uncleared items, showed the following position:-

Liabilities to Clients Shown by the Books	£525,193.14
Add: Additional Liabilities to Clients not Shown by the Books	4,184.38
529,377.52	
Cash Available	475,974.62
Cash Shortage	£53,402.90

75. Of the total cash shortage of £53,402.90, the sum of £48,985.04 was replaced on 13th August 2001 by the introduction of funds from a client in replacement of cheques that had been dishonoured on presentation. At the date of the report, no evidence had been provided by the partners to show that the remaining cash shortage of £4,417.86 had been rectified. Mr Burdett had in correspondence confirmed that the unpaid professional disbursements giving rise to the cash shortage of £4,184.38 had been paid.

76. The cash shortage of £53,402.90 arose as follows:-

i)	Overpayments	£48,985.04
ii)	Incorrect Transfers from client to Office bank account	4,184.38
iii)	Book Difference - Shortage	233.48
		£53,402.90

Examples of overpayments were set out in the report.

77. On 7th June 2001 a cheque in the sum of £22,000.00 was lodged in the firm's client bank account and a payment of this sum was made in favour of 'C L' on 8th June 2001 by way of telegraphic transfer. Neither the receipt nor the payment were recorded within the client accounting records.

78. Subsequently the cheque which had been lodged in the firm's client bank account on 7th June 2001 was dishonoured on presentation with the result that other clients' money was utilised to make the payment to C L. When presented for payment on two further occasions during June 2001 the cheque was dishonoured.

79. On 29th June 2001 an amount of £62,752.00 was lodged in the firm's client bank account. Included within this amount was a cheque for £30,552.00. These monies were credited to an account within the clients' ledger in the name of Mr McD and related to the purchase of property.

80. On 2nd July 2001 this client ledger account was charged with a cheque payment in the sum of £60,000.00 in favour of J M. As at 3rd August 2001 the balance standing to the credit of this client ledger account, following a small number of other transactions, was £4,036.96.

81. Subsequently the cheque for £30,552.00 which had been lodged in the firm's client bank account on 29th June 2001 was dishonoured. The cheque was presented for payment on five further occasions during July and August 2001. It was not honoured.

82. On 3rd July 2001 a cheque in the sum of £22,470.00, drawn on the account of W H Limited and signed by Mr McD, said by G D to be in replacement of the cheque in the sum of £22,000.00 originally presented on 7th June 2001 was lodged in the firm's client bank account. Upon presentation this cheque was also dishonoured and despite being represented on one further occasion it failed to be cleared. Whilst the original cheque was not credited to an account within the clients' ledger the replacement cheque was credited to the client ledger account relating to the purchase of the property.

83. During the course of the inspection, the IO requested and reviewed the firm's clients matter file relating to the purchase of the property. Documentation on the client matter file showed that the purchase of the property was completed during the year 2000 and the nature and purpose of the financial transactions described above were not evident from the client matter file.

84. Queries relating to the above transactions were documented in the letters sent to the Respondents on 22nd November 2001 by the OSS. In his response, Mr Wood made the following observations:-

> "The cheques to which you refer relate to certainly at least one of Mr Burdett's Liverpool acquaintances, namely Mr McD. I am unable to assist regarding the payment to C L, nor the purpose of the payment of £60,000 to J M. I can only, once again, express my concerns that the client account is clearly not being used in the proper manner and I would be very interested to receive explanations from both Mr Burdett and G D."

85. Mr Burdett had replied at length and a copy was before the Tribunal. Mr Burdett accepted that a shortage existed although he stated that "we are not certain that we can agree the exact correct figure has been calculated", however he also stated that "it is not suggested that other funds were immediately available to offset this shortage".

86. On 11th and 18th June 2001, client account to office account transfers were instigated in relation to matters where profit costs were properly due to the firm. The transfers made also included amounts in respect of unpaid professional disbursements totalling £4,184.38.

87. In the matter of Mr B, the firm acted in relation to a personal injury claim arising as a result of an accident.

88. On 1st June 2001, the relevant account in the clients' ledger was credited with an amount of £10,990.13 representing the settlement of the client's costs and disbursements and on 18th June 2001 client bank account was charged with a transfer to office bank account of £10,990.13 in respect of costs and disbursements in this matter. The following professional disbursements (included in the transfer) were unpaid as at that date and, further, remained unpaid at 3rd August 2001.

	£
Medical Fees	500.00
Counsel's Fees	146.88
GP/Hospital Records	60.00
Cost Draftsman's Fees	450.00
Accountant's Fees	2,702.50
	£3,859.38

89. Mr Burdett had confirmed that the professional disbursements remained unpaid as at 3rd August 2001. In his letter of 15th January 2002, he said "we would argue that the transfer itself was not improperly made". We accept that there is an obligation to settle the disbursements within a reasonable time and if it is the case that, when they are not settled within that reasonable time, the transfer somehow becomes improper we cannot argue with that".

The submissions of the Applicant in respect of the admitted allegations

90. The Respondents had admitted these allegations. The Applicant did not put them as matters involving dishonesty on the part of the Respondents.

91. The Respondents had not delivered Gross Fees Certificates as required by the Solicitors Indemnity Rules. Their accounts had been maintained in a very bad state.

The Submissions of Mr Wood (contained in his written statement expressed to be dated 30th October 2003 but which was received by the Tribunal on 3rd October 2003)

92. Mr Wood said that he had read thoroughly the extensive files prepared by The Law Society, and also the extensive correspondence and witness statements relating to the disciplinary proceedings.

93. Mr Wood hoped that the Tribunal would not be offended by his failure to appear, which was due to the progressive nature of his illness, Multiple Sclerosis. Mr Wood invited the Tribunal to consider the letter dated 17th April 2003 from Professor J D Mitchell, his consultant neurologist. Mr Wood had come to accept that he would not be able to cope physically with the rigours of a two day hearing.

94. In relation to the many accounting irregularities, Mr Wood accepted his responsibilities as senior partner within the firm and pleaded guilty to the considerable lack of paperwork which was only revealed following the attendance of the IO.

95. Mr Wood said that hindsight was a wonderful thing, and looking back over his years as a solicitor he could honestly say that they were enjoyable years during which he

tried to maintain the high standards laid down by The Law Society. Misplaced trust in a friendship lasting over twenty years became his downfall.

96. Mr Burdett entered into partnership with Mr Wood on 1st November 1995. Mr Wood previously practised as a sole practitioner, quite successfully for some seven years. Having just been diagnosed with Multiple Sclerosis it seemed a sensible move to allow a partnership to be formed, thus giving Mr Wood the confidence and reassurance that during his MS relapses, the firm would be left in the capable hands of someone he trusted.

97. Mr Wood considered that was the worst decision he ever made. No negotiations were entered into between Mr Burdett and Mr Wood about the partnership terms.

98. With regard to the accounting irregularities, despite the fact that Mr Wood was senior partner, no information was ever relayed to him about them. Mr Wood found himself in horrendous financial difficulties, as he had understood that his tax affairs were up to date. He had been assured that the firm's accounts were also up to date. It was only following the visit of the IO that the glaring errors and/or lack of entries revealed themselves.

99. The accounting difficulties related in the main to acquaintances of Mr Burdett, who appeared to be putting their business through the firm's accounts. Mr Burdett would say that this was for convenience and expediency. Mr Wood had been of the opinion that they were entering into the realms of money laundering and he reported the matter to the National Crime Intelligence Squad (NCIS).

100. During that period, as well as the alleged money laundering matters, a further problem arose in respect of a critical illness policy, which Mr Wood had taken out for himself prior to the formation of partnership. Initially he asked Mr Burdett if he would progress the file. The file was taken out of Mr Wood's hands and little or nothing happened with it. At that stage Mr Wood had moved to a downstairs office, as he was unable to ascend or descend the stairs safely, due to the progressive nature of his illness. Mrs M, who was working with the firm, took control of the file and with the assistance of an agent from the insurance company, a cheque was issued for £50,000 payable to Michael Wood & Co., re: Michael Wood. Naturally Mr Wood assumed that as the payment related to his medical problems, he was automatically entitled to those monies. Mr Burdett thought otherwise and stopped a telegraphic transfer of the monies. Since that date, tensions ran high. Mr Wood did not communicate with Mr Burdett and the partnership began to go downhill. During this time Mr Burdett was expanding his personal business interests which were not disclosed to Mr Wood. It was only following enquiries made by NCIS that these business interests came to light. Mr Wood did not think that they were entirely legitimate, although Mr Burdett took a contrary view.

101. During that period, Mr Burdett advised Mr Wood that he was seeking to expand their own solicitors' business, and was often away from the office ostensibly seeking referrals from car hire companies in respect of road traffic accident claims, which were the main basis of income for the firm. Indeed, the firm had begun to specialise in this field. It was only some twelve to eighteen months later that it came to light that Mr Burdett had been engaged in a personal matter rather than seeking to expand business. Mr Burdett denied this.

102. Mr Wood's authority had been constantly undermined to the extent that it became non-existent.

103. He was unable to work standard 9 to 5 hours because of his medical condition, but he would often work weekday evenings and weekends.

104. The Law Society were seeking to intervene in the practice of Michael Wood & Co, and it was at that stage that Mr Wood agreed to retire from the partnership, which he did on 1st July 2002. Mr Burdett retired from the partnership some three months later.

105. At the present time, Mr Wood was under the supervision of a Trustee who was conducting an Individual Voluntary Arrangement with his creditors, the main one being the Inland Revenue. Mr Wood had always been assured by G D that his income tax was being paid on a regular basis, and all tax demands were passed to him to be dealt with. These demands were subsequently found unopened in his office. There was also other correspondence and paperwork, which was never brought to Mr Wood's attention. This had been due to the fact that Mr Wood worked irregular hours. He was rarely present when the morning's mail was opened or delivered to addressees. It was only following a lengthy conversation with the IO that the full extent of the accounting problems came to light.

106. Mr Wood had applied to have his name removed from the Roll of Solicitors, only to be told that this could not be done until such time as the disciplinary proceedings had been concluded. Mr Wood sincerely hoped that this will occur at the disciplinary hearing as the ongoing matter had had an adverse effect upon his health.

107. Mr Wood was unhappy about some of the comments made by Mr Burdett, but he did not feel it necessary to deal specifically with any of the comments made as he simply wished this matter to be laid to rest.

108. Mr Wood was in receipt of a modest income from a new partnership . The new partners had been able to purchase Mr Wood's share of the firm in a piecemeal way, as opposed to making a lump sum payment.

109. Mr Wood had no intention of returning to legal practice and asked that the Tribunal take that into consideration when reaching its decision.

110. Mr Wood did not have a bank account. He did not have any savings, and would be unable to make payment of any costs order that might be made against him.

111. Mr Wood had enjoyed his somewhat limited time working as a solicitor, and hoped that the Tribunal would see fit to allow him to retire gracefully. He had never committed any form of fraud, nor had he been dishonest. Mr Wood was proud of the work that he carried out within the community of Preston and begged the Tribunal for leniency in this matter. He respectfully suggested that a severe rebuke would be suitable in all the circumstances which would enable Mr Wood to proceed to remove his name from the Roll.

The Submissions of Mr Burdett

112. Mr Burdett was born in 1958. He was married with a sixteen year old son.

113. Mr Burdett was admitted in 1995 after pursuing other business interests. He was a dedicated solicitor who valued his integrity and reputation as a solicitor greatly. The appearance before the Tribunal was devastating to him.

114. Prior to his qualification, Mr Burdett joined the practice of Michael Wood in or about 1992. It was agreed that if he was able to demonstrate ability and commitment, partnership would follow. The practice grew, not least in part to the considerable effort on the part of Mr Burdett. He developed contacts and attracted work to the practice. The profitability on the practice improved.

115. The case advanced by the Applicant did not go to Mr Burdett's integrity.

116. Eight allegations had been made against Mr Burdett, and he had made admissions in respect of those relating to Breaches of the Solicitors Accounts Rules, inadequacy of supervision of the book-keeper and failure to supply a gross fees certificate.

117. At the IO's inspection in June 1999 a cash shortage of £1,773.09 was identified. The shortage was replaced during the Inspection. The shortage arose as the result of error.

118. The additional shortage identified in the sum of £2,114.86 comprised over-transfers from client to office bank account and debit balances (overpayments). Mr Burdett accepted that there had been insufficient supervision of the book-keeper which contributed to the errors that occurred. The practice was attempting to grow and adapt to a changing environment and increased volumes of work. Such errors that were identified were errors and not the result of any impropriety. Even in the best run firms errors can and do occur and it was understandable that there had been problems, where the firm had to grow and adapt in a competitive and difficult environment. Mr Burdett did not seek to avoid responsibility for the errors that occurred. He accepted that the responsibility for any accounts rules breaches was that of a partner. It had always been his intention that proper standards should be maintained within the practice.

119. The second IO's inspection took place on 20th March 2000. The IO's Report was not produced until 20th July 2001, a delay of approximately sixteen months. The Report identified breaches of the Solicitors Accounts Rules and a shortage in the sum of £10,882.50. The shortage arose as clients' money was held in office bank account to meet professional disbursements in respect of which office account cheques had been raised but not despatched. It was accepted that that amounted to a breach. There was no system in place to hold back cheques other than occasional 'batching' when monies were due to any given individual. The shortage was rectified on 12th October 2001.

120. Reference was made within the papers to the circumstances giving rise to a ring binder containing a number of original office account cheques. It appeared to be alleged that Mr Burdett knew of those matters - that was denied. GD, the firm's cashier, indicated to the IO that he was not aware of the cheques and was not the author of the memorandum said to be attached to the ring binder dated 26th March 2001. Despite requests from Mr Burdett to the Applicant the original memorandum had not been produced. There was no evidence to support the contention, if it be made, that Mr Burdett had knowledge of those cheques and deliberately held them back. Mr Wood was not available for cross examination and the Tribunal was invited

to disregard that aspect. The Tribunal was further invited to give due weight to the written evidence of others as to Mr Burdett's lack of knowledge of these matters. Where there was a conflict of evidence, Mr Burdett's was to preferred ones that of Mr Wood. Mr Wood alone had faced an allegation that brought his integrity into question.

121. Mr Burdett acknowledged the failure to deliver a gross fees certificate for the period ended 2000. By letter dated 12th February 2001, Mr Burdett wrote to the OSS referring to a telephone conversation with SIF and a solution that had been agreed. The contribution requested had increased significantly. Mr Burdett had provided under cover of his letter dated 19th March 2001, contribution calculations for years 1997/1998, 1998/1999 and 1999/2000. Mr Burdett did not deliberately avoid payment. He was being conscious of the need to comply with the Rules and Regulations. Mr Burdett attempted to do what he could to resolve the problem, without success. It was accepted that a breach had occurred, but the Tribunal was invited to have regard to the surrounding circumstances that led to the breach. Mr Burdett made apology for this.

122. Mr Burdett admitted his breaches in his position as an equity partner and collective responsibility.

123. When considering the appropriate sanction the Tribunal was invited to consider the facts giving rise to the allegations and in particular that was not a case involving an allegation of dishonesty against Mr Burdett. The Accounts Rules breaches demonstrated error and mistake. The shortages identified were in large part the result of overpayments and not any impropriety on the part of Mr Burdett. It was accepted that insufficient supervision was given to the bookkeeper. It had always been Mr Burdett's intention to comply with the Rules and that proper standards should be maintained within the practice.

124. Mr Burdett's personal circumstances were relevant. Mr Burdett qualified in the law later on in life. Mr Wood, who had been in sole practice for a number of years prior to Mr Burdett's entering into partnership with him, had been qualified considerably longer and had the greater degree of experience in accounting and regulatory matters.

125. The shortages had substantially, if not totally, been rectified. Mr Burdett had instructed the firm's bank to make further transfers from the partners' capital account to rectify any identified shortages.

126. The Tribunal was invited additionally to note and to take into account the substantial delays before the matter was dealt with substantively by the Tribunal. The chronology was as follows:-

- FIU Report 28th 1999
- Resolution 13th October 1999
- Appeal Dismissed 2nd January 2000
- FIU Report 20th July 2001 (Inspection commenced 24th March 2000 – sixteen month delay in the production of the Report
- FIU Report dated 31st May 2002 (Inspection commenced 13th November 2001 – six month delay in production of the Report)

- Resolution of the Committee to refer the Respondent's conduct to the SDT 15th August 2001.
- Applicant issued proceedings 27th August 2002

127. From the date of the first IO's report dated 28th June 1999, there had been delay of some three years before the commencement of proceedings, and four years in total for the matter to be determined by the Tribunal. The Tribunal was entitled to have regard to such delay when considering sanction.

128. Further the Tribunal was invited to bear in mind the following relevant factors.

i) No client has lost money.

ii) Mr Burdett was forced to dispose of his practice to others within the firm against the background of a threatened intervention, which in fact did not occur.

iii) Mr Burdett always attempted to ensure that the highest standards of compliance should apply and lessons have been learnt from this episode.

iv) There was no complaint from any client.

129. It was Mr Burdett's sincere wish to return to practice as a solicitor. He had other business interests, which had occupied his time in the interim. He preferred to allow the disciplinary proceedings to be resolved before returning to practice.

130. Mr Burdett was an extremely conscientious solicitor and a family man. There was no suggestion of dishonesty.

131. The Tribunal was invited to have due regard for those who knew of Mr Burdett and were prepared to speak on his behalf and in his support.

132. Mr Burdett readily acknowledged that errors and breaches had occurred for which the Tribunal must express its disapproval and impose a sanction. In all the circumstances of the case it was respectfully urged upon the Tribunal that a financial penalty was appropriate. That would sufficiently mark the seriousness with which the Tribunal viewed the breaches that had occurred. Mr Burdett had suffered so much in other respects, professionally, personally, and financially that the public interest did not require a more stringent penalty which might affect Mr Burdett's ability to practise.

133. The Tribunal would need to draw a distinction between the position of Mr Burdett and that of Mr Wood given the other allegation(s) raised against Mr Wood alone.

The Findings of the Tribunal

134. The Tribunal found all of the admitted allegations to have been substantiated, save for allegation vii).

135. On 6th April 1995 the Tribunal found the following allegations to have been substantiated against Mr Wood. The allegations were that the Respondent had:-

i) Acted in breach of Rules 7 and 8 of the Solicitors Accounts Rules 1991 in that he drew from client account money other than was permitted to be drawn pursuant to the aforesaid rules;

ii) Acted in breach of Rule 11 of the Solicitors Accounts Rules in that he failed to keep properly written up his books of account;

iii) Failed to respond or alternatively failed to respond with reasonable expedition to correspondence and enquiry addressed by the Solicitors Complaints Bureau;

iv) By virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

On that occasion the Tribunal said:-

> "It was not unusual for the Tribunal to have to point out the great importance for a solicitor to comply meticulously with the Solicitors Accounts Rules and to ensure that his bookkeeping was kept up to date and indeed accurately reflected the position with regard to clients money held by him. Inevitably the failure of a solicitor to respond promptly and fully to letters addressed to him by his own professional body causes inconvenience and concern and ultimately costs the solicitors' profession even more than would have been the case if proper and punctual replies had been received. The Tribunal accepted that it is the applicant's view that the respondent has not been guilty of dishonesty. The Tribunal have noted that the respondent, a young man, had the additional difficulties of being estranged from his wife, having large debts which he must service and was suffering from ill health. The Tribunal also noted, as the respondent indicated to them, that his Practising Certificate was subject to a condition that he file six monthly Accountant's Reports with The Law Society. All in all the Tribunal had some sympathy for this young man, but he has to realise that although practising as a solicitor brings benefits, it also requires him to shoulder a considerable burden of responsibility. He must get things right. The Tribunal Ordered a financial penalty to be imposed upon the respondent and further ordered that he pay the costs of and incidental to the application and enquiry, including the costs of the Law Society's Investigation Accountant. It was the Tribunal's view that the second inspection was perfectly properly carried out in view of the respondent's failure to reply to letters addressed to him by the Bureau."

136. In October 2003 the Tribunal recognised that the Respondents had carried on in practice when what could properly be described as serious breaches of the Solicitors Accounts Rules were taking place. Those breaches had allowed employees and clients of their firm to use the firm's client account as a bank. The breaches included cheques drawn to pay disbursements on more than one occasion being held back, no doubt to improve the firm's cash flow position. These errors were judged by the Tribunal to characterise a poor recognition of the importance of punctilious compliance with the Solicitors Accounts Rules, and the fundamental principles which underlie those rules.

137. The Tribunal carefully considered all of the written material placed before it. There had been substantial documentation which it took into account and the Respondents had been given credit for their admissions.

138. That being said, there had been serious breaches of the Solicitors Accounts Rules. The Tribunal could not fail to note in the case of Mr Wood that he had appeared before the Tribunal on an earlier occasion to answer allegations that he had been in breach of the Solicitors Accounts Rules and had failed to reply to letters addressed to him by his own professional body and had in 1995 been warned of the importance of these matters to a member of the solicitors' profession. Despite that warning and in his position as senior partner of the firm Mr Wood had now had allegations of Solicitors Accounts Rules breaches substantiated against him. He had been warned by the Tribunal that he must raise his standards. He appeared not to have heeded that warning.

139. Not only was that matter taken into account by the Tribunal but the Tribunal had made a finding against Mr Wood that he had misled a lending institution when making an application for a mortgage advance. That was a serious matter which went to the heart of the requirement that a member of the solicitors' profession act at all times in accordance with the highest standards of probity, integrity and trustworthiness. A mortgage offer was made to the Respondent which indicated that the lending institution concerned had acted upon misleading information and it mattered not that the Respondent did not take up the mortgage offer. In all the circumstances it was appropriate that Mr Wood should be struck off the Roll of Solicitors.

140. The Tribunal accepted that there had been no previous findings made against Mr Burdett. There had been no finding made against Mr Burdett that served to impugn his integrity, probity or trustworthiness. Nevertheless the Tribunal considered that Mr Burdett had continued to practise as a solicitor whilst in breach of the Solicitors Accounts Rules and whilst in breach of the Professional Indemnity Rules. In some part the Solicitors Accounts Rules breaches were brought about by the lack of supervision of a member of staff.

141. The Tribunal considered that the way in which Mr Burdett allowed client account to be operated as a bank for the benefit of persons known to him, whether clients or members of staff, was wholly unsatisfactory and whilst not a formal breach of any written rule, to behave in that way, flew in the face of the philosophy that a solicitor maintains client account in order to protect clients' money, that money being held by the solicitor in connection with professional work undertaken by him on behalf of that client.

142. The Tribunal confirmed its earlier decision that a solicitor should not hold money simply because he has been asked to do so without his taking charge of that money and disbursing it in accordance with a client's instructions in connection with professional work undertaken on behalf of that client.

143. It is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties whether they are clients of the firm or not. To operate client account in such a way would be likely sooner or later to be subject to the attentions of the unscrupulous and the solicitor concerned might well find himself laundering money without being aware that he and his banking arrangements were being utilised for such nefarious purpose.

144. In all of the circumstances the Tribunal considered that a somewhat lesser sanction should be imposed upon Mr Burdett than that imposed upon Mr Wood but the

seriousness of his position could be marked only by an order that he be suspended from practice for 12 months commencing on the date of the hearing.

145. It was further ordered that both Respondents should pay the costs of and incidental to the application and enquiry (to include all of the costs of the IO relating to his inspections and the three reports produced in respect thereof), such cost to be subject to a detailed assessment if not agreed between the parties. For the avoidance of doubt the Tribunal here confirms that such costs are to be regarded as a joint and several liability of the Respondents.

DATED this 23rd day of December 2003
on behalf of the Tribunal

R J C Potter
Chairman