No. 8750/2003

IN THE MATTER OF BRUNO HENRY GRUNFELD and
RICHARD GEORGE CLARK THORNTON, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr P Haworth
Ms A Arya

Date of Hearing: 1st 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 Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors of 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on 29th January 2002 that Bruno Henry Grunfeld of Cedar Drive, London, N2 solicitor and Richard George Clark Thornton of care of Bruton Charles Chartered Accountants, The Coach House, Greys Green Business Centre, Rotherfield Greys, Henley-on-Thames, Oxfordshire, RG9 4QC solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think fit.

The allegations against the First Respondent were that he had been guilty of conduct unbefitting a solicitor in each, any or all of the following circumstances, namely:-

(1) That he had provided a money transmission service.

(2) Contrary to Rule 32 of the Solicitors Accounts Rules 1998 he had failed to keep properly written up accounting records and failed to prepare a reconciliation statement at least once every four weeks.

(3) Contrary to Rule 22 of the Solicitors Accounts Rules 1998 he improperly withdrew money from a client account.

(4) Contrary to Rule 16 of the Solicitors Accounts Rules 1998 he withheld money from client account without written instructions from the client.

(5) Contrary to Rule 19 of the Solicitors Accounts Rules 1998 he failed properly to account for monies received.

(6) Contrary to Rule 15 of the Solicitors Accounts Rules 1998 he failed properly to hold money in a client account.

(7) Contrary to Rule 7 of the Solicitors Accounts Rules 1998 he failed to remedy promptly a breach and/or breaches of the aforesaid Rules by allowing and maintaining a cash shortage on client account.

(8) Contrary to Section 41 of the Solicitors Act 1974 he failed to comply with the conditions subject to which an employee's employment was approved.

(9) That in order to employ a struck off solicitor as a clerk he made a misleading application under Section 41 of the Solicitors Act 1974.

(10) That he employed a struck off solicitor from August 2000 without the Law Society's permission to do so. [Amended during the hearing with the consent of the Tribunal to insert the word "knowingly" between the words "he" and "employed"].

The allegations against the Second Respondent were that he had been guilty of conduct unbefitting a solicitor in each, any or all of the following circumstances, namely:-

(1) That he failed to notify the Law Society promptly or at all of his inability directly to supervise a struck off solicitor.

[Three further allegations against the Second Respondent were withdrawn at the hearing with the consent of the Tribunal].

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 1st July 2003 when Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors of 342 Lytham Road, Blackpool, Lancashire, FY4 1DW appeared as the Applicant, the First Respondent appeared in person and the Second Respondent was represented by Jolyon Holden, solicitor and partner in the firm of Holden & Co of Liberty Buildings, 32-33 Robertson Street, The America Ground, Hastings, East Sussex, TN34 1HT.

The evidence before the Tribunal included the admissions of the First Respondent to allegations (2) to (8) and to allegation (10) prior to its amendment during the hearing. Following that amendment the First Respondent denied allegation (10). The Second Respondent admitted the allegation against him. The First Respondent gave oral evidence.

At the conclusion of the hearing the Tribunal ordered that the First Respondent Bruno Henry Grunfeld of Cedar Drive, London, N2 OPS solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of July 2003 and they further ordered

him to pay the costs of and incidental to the application and enquiry fixed in the sum of £4,000.

The Tribunal ordered that the Second Respondent Richard George Clark Thornton of care of Bruton Charles Chartered Accountants, The Coach House, Greys Green Business Centre, Rotherfield Greys, Henley-on-Thames, Oxfordshire, RG9 4QC solicitor be reprimanded and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £500.

The facts are set out in paragraphs 1 to 31 hereunder: -

1. The First Respondent, born in 1947, was admitted as a solicitor in 1974 and his name remained on the Roll of Solicitors. The Second Respondent, born in 1944, was admitted as a solicitor in 1972 and his name remained on the Roll of Solicitors.

2. At all material times the First Respondent carried on practice in partnership in the firm of Grunfeld Davies & Co of 36 Watford Way, Hendon, London, NW4 3AL and since August 2000 on his own account and in partnership in the firm of Grunfelds of 1 Catton Street, London, WC1R 4AB.

3. At all material times the Second Respondent carried on practice in partnership in the firm of Harvey Thornton & Co of Brownlow Street, London WC1V 6JD and as an employed consultant at Grunfeld Davies & Co of 36 Watford Way, Hendon, London, NW4 3AL.

4. An inspection of the accounts of Grunfeld Solicitors was carried out by an Investigation and Compliance Officer of the OSS (the Officer) commencing on 26th January 2001. A copy of the resulting report dated 21st May 2001 was before the Tribunal.

5. The First Respondent told the Officer that he had practised in partnership with another solicitor as Grunfeld Davis from premises in Hendon and that in October 1998 Grunfeld Davis had taken over the live files and some of the staff at Harvey Thornton & Co, retaining the former partner (the Second Respondent) as a consultant and JH, a struck off solicitor, as a clerk. The First Respondent had since August 2000 practised alone assisted by JH, another consultant and a secretary.

6. The Officer found that the books of account were not in compliance with the Solicitors Accounts Rules. The Report noted the following matters:-

   <u>Designated deposit accounts - (Allegations (1) and (2))</u>

7. As at 26th January 2001 none of the designated deposit accounts held by the First Respondent's firm had been reconciled since the firm commenced in August 2000. No individual client ledger accounts were maintained in respect of those designated funds.

8. In respect of two of the accounts with a total balance of £37,268.63 as at 31 December 2000 no records were held at all. The First Respondent told the Officer that these were opened on the instructions of an immigration consultant in order to receive funds

to which two clients were entitled in the form of liquidated dividends from BCCI in France. The First Respondent also confirmed that he had only met one of the two clients concerned once when he had delivered a cheque for £3,000 drawn from one of the accounts to her home.

9. A copy of a letter signed by the clients involved and dated 23rd June 2003 confirming the First Respondent's explanation was before the Tribunal.

10. In respect of another designated deposit account with a balance of £144,879.02 at 31 December 2000, the First Respondent had no records to show how the balance on the account had reduced from £570,000 in September 1998 to the current balance. The First Respondent explained that the monies had been used in the purchase of a property for around £350,000 and for a motor car for around £100,000. The client account ledgers from the First Respondent's former firm written up to 15th January 2001 did not fully explain the movements on the accounts.

11. A copy of a letter dated 24th June 2003 from the client concerned confirming the First Respondent's explanation was before the Tribunal.

Harvey Thornton & Co - (Allegation (2))

12. Despite having taken over Harvey Thornton & Co in 1998 there were no client ledger records at all at the First Respondent's firm detailing the history of the client account balances transferred from Harvey Thornton & Co to Grunfeld Davis and then to Grunfelds.

Cash withdrawals from Client Bank Account - (Allegations (3) and (4))

13. On 29th November 2000 the First Respondent made two cash withdrawals from client bank account in the sum of £1,300 and £1,377.95 for which there were no receipts and for which there were no written instructions from the two clients concerned.

14. In respect of the withdrawal of £1,300, the First Respondent told the Officer that he was approached by JH who was a friend of the client and was told by JH that the client would like some money. The First Respondent saw no reason to maintain the balance on client account and therefore withdrew the cash and gave it to JH, it not occurring to him to ask for a receipt.

15. In respect of the withdrawal of £1,377.95, the First Respondent produced a memorandum from JH setting out the reason why the cash was required. When the Officer first discussed this matter with the First Respondent, the cash was still held in an envelope in the First Respondent's desk drawer. The money was paid back into client account on that day.

Costs retained in Client Bank Account - (Allegations (5) and (6))

16. On 16th January 2001 the First Respondent made a cash withdrawal of £1,900 from client account on account of costs in respect of a personal injury matter where costs totalling £33,000 had been received by the First Respondent's firm in June and August 1999. The First Respondent did not know whether the bill raised in respect of the

withdrawal of the £1,900 had been delivered to the client. The First Respondent had paid the cash to JH. The First Respondent had retained in client bank account the costs due to the firm as a means of recording amounts due to the Second Respondent under a Cost Apportionment Agreement entered into when the First Respondent's firm took over the Second Respondent's firm's matter. Bills were raised against these monies whenever the First Respondent needed money.

17. In respect of the damages due to the client, the First Respondent acknowledged that the client had received £2,500 less than shown in the Court Consent Order. The First Respondent maintained that the client had accepted this reduction despite there being no evidence of this acceptance on the file.

Liabilities to Clients - (Allegations (2) and (7))

18. The Officer was unable to express an opinion as to whether or not funds held on client bank accounts were sufficient to meet the firm's liabilities to clients as at 31st December 2000. She was able to establish that a minimum client account shortage of £1,022.25 existed at that date in respect of unpaid disbursements held in office account in respect of one client matter alone. This related to unpaid Counsel's fees. On 29th August 2000 and 4th October 2000 bills totalling £3,901.23 were raised including Counsel's fees of £1,022.25 inclusive of VAT. On 1st September 2000 and 6th October 2000 the sums £2,000 and £3,000 respectively were transferred from client to office bank account in respect of those bills creating a credit balance on the office side of the client ledger of £1,098.77 as at 6th October 2000. The First Respondent agreed that Counsel's fees of £1,022.25 remained unpaid as at 31st December 2000 and that a shortage in respect of this amount existed until 14th February 2001 when the First Respondent paid that amount into client bank account.

Employment of Mr JH – (Allegations (8) (9) and the allegation against the Second Respondent)

19. Mr JH had been struck off the Roll of Solicitors in 1983. He had been granted approval to work as a Clerk in the Second Respondent's firm, Harvey Thornton & Co. Following the acquisition of their live files in October 1998, the First Respondent applied for approval to employ JH in his firm Grunfeld Davis. In the application submitted signed by the First Respondent and dated 28th October 1998, the First Respondent stated that JH's proposed employment would be as a 'full-time litigation assistant in general, civil and criminal litigation and advocacy in chambers'. His proposed remuneration was to be a basic pay of £16,500 per annum.

20. In March 1999 the First Respondent's firm received approval to continue to employ JH subject to conditions. These conditions were:-

(i) That JH worked at the firm's office at 18 Princetown Street, Red Lion Square, London and that his work was directly supervised by the Second Respondent.

(ii) That JH dealt with litigation matters only.

(iii) That JH had no access to clients' money and was not a signatory to any office or client account cheques.

(iv) That JH made full disclosure to his employers of his previous history with the OSS.

(v) That this approval was reviewable at the discretion of the OSS.

21. The First Respondent told the Officer that since the Spring 1999 the Second Respondent had not been at the firm. It was acknowledged by the First Respondent that the Second Respondent had not been able directly to supervise JH since then. The First Respondent had from around February 1999 until August 2000 attended JH's office two to three times a week and had asked another consultant to "keep and eye on" JH.

22. Since August 2000 the First Respondent had seen JH nearly every day because he was based at 1 Catton Street, London. The offices at Princeton Street were rented offices and the First Respondent did not have a key to access the premises and if JH was not there he would have no reason to visit those offices.

23. The First Respondent explained that JH effectively operated as a self-employed consultant being paid a percentage of any amounts billed on his matters. JH had never been paid a salary by Grunfelds or Grunfelds Davis. A salary was never contemplated despite the First Respondent completing a questionnaire when applying for permission to employ JH stating that he was to be paid a basic salary of £16,500 per annum.

24. The First Respondent was unaware of the conditions of JH's employment and had made no effort to establish what they were.

25. The First Respondent had not sought further approval to employ JH on the cessation of Grunfeld Davis and the formation of Grunfelds in August 2000.

26. The First Respondent had allowed JH to work on conveyancing matters contrary to the condition of employment in litigation matters only.

27. In one conveyancing matter JH acted for both borrower and lender in the purchase of a property, the purported purchase price being £215,000. On completion £28,000 less than the balance of the purchase price was paid to the seller's solicitor as £28,000 was purported to have been paid by the purchaser direct to the seller. JH had not contacted his clients to verify the direct payment and did not to enquire why it had been paid direct rather than through the firm's client account. The mortgage advance received from the lender was £182,212.50 based on a stated purchase price of £220,000. The only payment made was the sum of £182,750 to complete the purchase. JH had not informed the lender in writing of the reduction in price from £220,000 to £215,000 nor had he informed the bank of monies paid direct. The First Respondent was unaware of the direct payment although he found it unusual.

28. On the 22nd June 2001 the OSS wrote to the First Respondent with a copy of the Forensic Investigation Unit Report raising a number of questions arising from the findings of that Report. The First Respondent replied on the 26th July 2001.

29. On 8th March 2002 the OSS wrote again to the First Respondent requiring further clarification of matters raised in the Forensic Accountant's Report. The First Respondent replied on the 5th April 2002. A further letter was sent by the First Respondent to the OSS on 21st June 2002 prior to the papers being put before the Adjudication Panel.

30. The Second Respondent received a letter sent on 20th June 2001 by the OSS. The Second Respondent's Power of Attorney replied on 19th July 2001. On 8th March 2002 the OSS wrote again to the Second Respondent through his Power of Attorney. On 27th March 2002 the Second Respondent's Power of Attorney replied.

31. On 26th June 2002 the Compliance Board Adjudication Panel considered the Forensic Investigation Report dated 21st May 2001 in respect of Grunfelds of London formerly Grunfeld & Davis, Grunfeld Davis & Co and Grunfeld Davis & Co incorporating Harvey Thornton & Co and resolved, amongst other things, to intervene into the practice of the First Respondent and to refer his conduct to the Solicitors Disciplinary Tribunal. The Panel also resolved to intervene into the remainder of the practice of Harvey Thornton & Co and to refer the Second Respondent's conduct to the Solicitors Disciplinary Tribunal.

The Submissions of the Applicant

Allegation against the Second Respondent

32. The First Respondent's firm of Grunfeld Davis had taken over the Second Respondent's firm of Harvey Thornton & Co in October 1998. The Second Respondent had become ill at around that time and had taken no part in the firm since then. There was perhaps a period in 1999 when the Second Respondent was well enough to inform The Law Society that he could not deal with the supervision of the struck off solicitor but the Second Respondent had not done so.

Allegations against the First Respondent

33. The First Respondent had admitted all the allegations except for allegations (1) and (9). Following the Findings of the Tribunal in relation to allegations (1) and (9), and following an indication from the Tribunal, the Applicant, with the consent of the Tribunal, amended allegation (10) to include the word "knowingly". [The First Respondent denied allegation (10) in its amended form].

34. All the allegations against the First Respondent resulted from the inspection visit.

35. In relation to allegation (1), money was coming to the First Respondent's client account from a French bank but no legal services were being offered. Simple banking services were one of the indicators in the Blue Card Warning. The First Respondent had now produced a statement from the clients involved.

36. In relation to the other designated deposit account, the First Respondent had today provided a letter from the client dated 24th June 2003.

37. The Applicant submitted, however, that both were examples of money transmission services. The clients could have opened their own accounts. The Applicant, however, to some extent accepted the veracity of the letters now submitted by the First Respondent.

38. In relation to allegation (9), the Tribunal was referred to the questionnaire in support of an application to the OSS to employ the struck off solicitor, JH, which was dated 28th October 1998 and signed by the First Respondent. A letter to the Second Respondent dated 1999 from the OSS set out the conditions upon which the approval was granted. The Tribunal was referred to the agreement dated 8th October 1998 signed by both Respondents which clearly set out at paragraph 3(1) that the Second Respondent was to remunerate JH. On 28th October 1998 the First Respondent had signed an application saying that JH was employed by his practice at a basic remuneration of £16,500.

39. In the submission of the Applicant this was a misleading application and the Applicant alleged dishonesty against the First Respondent.

40. In relation to allegation (10), the Applicant submitted that the Respondent had knowingly employed JH without the permission of The Law Society. The Respondent had left one firm and set up another firm taking the struck off solicitor with him and he should have applied for permission for a second time in 2000.

41. Allegations (2) to (8) were admitted and the Tribunal was referred to the documentation.

42. It was worrying that the First Respondent had retained costs on client bank account in order to keep a record of amounts due to the Second Respondent.

43. In relation to allegation (8), the approval from The Law Society regarding the employment of JH indicated that JH was to be under the direct supervision of the Second Respondent. This supervision took place at best for only three or four weeks and at worst not at all.

44. Further, it was clear from the matters set out in the Inspection Report that JH had done some conveyancing work.

The Submissions on behalf of the Second Respondent

45. The Tribunal was given details of the Second Respondent's professional background.

46. The Second Respondent was required by The Law Society only to work in approved employment and had therefore entered into an agreement with Grunfeld Davis.

47. The Tribunal was referred to medical reports prepared in 1998 for a complex litigation matter involving the Second Respondent and fifteen others. Dr B had given oral evidence in that case and had subsequently written a report.

48. Nothing had come of the case but this had placed an enormous strain on the Second Respondent who had also been responsible for relocating the firm's office. He had

been admitted to hospital in November 1998. The partnership he had arranged with the First Respondent had come into operation in October 1998. He had therefore been involved in the new firm for only four or five weeks.

49. The Second Respondent had effectively not worked as a practising solicitor since that time. He had left hospital in December 1998 and had been treated three times a week until March 1999. He had been unable to formulate his affairs.

50. The Second Respondent had not given notice to the First Respondent as he had been unsure of the prognosis. He had been unable to deal with his own or his clients' matters.

51. The Tribunal was referred to the further medical reports from 2001.

52. In 2001 the Second Respondent was alleged to have been involved in a high profile money laundering matter. All the defendants had been acquitted but in the course of the proceedings the Second Respondent had been re-admitted to hospital.

53. The Tribunal was referred to the most recent medical report of 16th June 2003. In reality there was little prospect of the Second Respondent returning to practice.

54. JH had been working for the Second Respondent with the consent of The Law Society. The Second Respondent had known that a fresh application would be needed when Grunfeld Davis took over the Second Respondent's firm. The Second Respondent was not, however, responsible for that application and took no part in it. The reply had come in March 1999 by which time the Second Respondent had been out of the picture.

55. The Second Respondent accepted, however, that when his illness had been somewhat in remission in 1999 he ought to have realised that he should have notified The Law Society that it was no longer possible for him to supervise JH.

56. Dr B thought that the Second Respondent had probably been ill earlier in 1998, although the illness had only manifested itself later in the year. This mitigated strongly against the Second Respondent's state of knowledge regarding JH.

57. The Second Respondent had agreed to pay 10% of the Applicant's costs in the sum of £500 which, for the Second Respondent in his present circumstances, was a princely sum. It was submitted that justice could be served by imposing a penalty of a reprimand.

Oral Evidence of the First Respondent

58. The First Respondent had been in practice since 1974 but until the matters now before the Tribunal had never been involved in practice administration or accounts or anything to do with The Law Society.

59. The First Respondent had always practised in the West End but Grunfeld Davis had then moved out to Hendon. When in September 1998 the First Respondent had been

approached in relation to Harvey Thornton & Co he had seen the opportunity to take over a small practice in Central London.

60. The First Respondent had been totally naïve and ill-equipped to do this. He had been told that JH had to be supervised but had not been informed that he was a struck off solicitor.

61. The whole application form in respect of JH had been dictated to him by members of Harvey Thornton but he could not recall whether or not the Second Respondent had been present.

62. The basis of the remuneration to be paid to JH was that he would be paid out of the remuneration paid to the Second Respondent. The First Respondent had been told that there would be a turnover of £100,000 to £150,000 per year which would mean a minimum payment to JH of £16,500.

63. The First Respondent was also told that JH would be supervised as before. The First Respondent accepted that it sounded idiotic for him not to have realised the difference between a salary paid by Grunfeld Davis and remuneration paid by Harvey Thornton but he had not seen the distinction at the time as Grunfeld Davis was incorporating Harvey Thornton.

64. There had been no intention on the part of the First Respondent to be dishonest. If the application form had been dictated to him differently then he would have written it differently.

65. The existing supervision of JH by the Second Respondent was to continue with the Second Respondent's firm being under the umbrella of Grunfeld Davis. The First Respondent had had no reason to think that the description of the remuneration would affect the permission. Further, the First Respondent had specifically been told that the matter had already been agreed with The Law Society and that the questionnaire was merely a formality.

66. As the First Respondent had never dealt with matters of this nature, the significance of the formulation had not been occurred to him. He had made a mistake but he had not been dishonest.

67. The First Respondent had indicated in the questionnaire that he had seen the Findings of the Tribunal in respect of JH. In fact the First Respondent thought that what he had seen was a document showing that JH could work under the supervision of the Second Respondent. He believed that he had only seen the Tribunal document later.

68. Wrongly and stupidly the First Respondent had gone through the form very quickly. He had not been referring to the Tribunal Findings and had not known that JH was struck off. He had confused the Findings with the other document.

69. The First Respondent did not address allegation (1) in his oral evidence having received an indication from the Tribunal that he need not do so.

70. **In cross examination** the First Respondent accepted that in retrospect he had given less priority to the questionnaire than he should have done. He now realised that it was more than a mere formality. At the time he had thought that JH would be under the supervision of the Second Respondent and had been told that permission had already been sought.

71. The First Respondent had to accept responsibility for what he had written and apologised if the form was misleading. He had not appreciated the situation was any different than previously. He accepted that the words "basic pay" were a mistake and misleading but he had had no reason to contemplate the difference if the pay was formulated exactly as set out in the agreement.

72. There had been no element of dishonesty in the First Respondent's conduct. This was the first time the First Respondent had ever been accused of dishonesty.

73. It was not a case of the First Respondent wanting to employ JH at any cost. JH had not been doing the First Respondent's work and had no connection with him. JH had been introduced to the First Respondent as a person working for the Second Respondent.

74. If the First Respondent had known at the time half of what he now knew he would not have proceeded.

The Submissions of the First Respondent in relation to allegation (10)

75. Following the amendment of allegation (10), the following submissions were made on behalf of the First Respondent.

76. The First Respondent denied that he had employed JH without the permission of The Law Society knowingly.

77. The First Respondent was now aware that splitting from Grunfeld Davis established a different firm. He had not been aware at the time of any need to re-do everything and had genuinely not been aware of any requirement to re-apply for permission. The First Respondent had at that time been trying to get rid of the Harvey Thornton problem.

78. The First Respondent had kept the same bookkeeper and had already had the address.

79. The phrase used in the First Respondent's letter to the OSS on 5th April 2002 that the possible requirement of a further application in respect of JH had "escaped my mind" was not at variance with the First Respondent's submissions. It was a matter of terminology written one and a half years after the event. The First Respondent had meant simply that he had not known of the requirement. His focus had been to get rid of Harvey Thornton. The Second Respondent had been ill and JH had wound up four or five matters.

Submissions of the First Respondent in mitigation in relation to allegations (2) to (8)

80. The Tribunal was referred to the First Respondent's notes on the admitted matters sent to the Applicant on 26th March 2003.

81. With regard to the reduction in the client's damages, the Tribunal was referred to the statement of JH faxed to the First Respondent the day before the hearing. The First Respondent had been unable to take the matter any further.

82. In relation to the accounts breaches, the First Respondent had never previously been responsible for accounts but was fully aware that this was no excuse. There had been no reports of problems with accounts while Harvey Thornton was still part of the Grunfeld Davis firm.

83. When the Respondent had started his own practice of Grunfelds he had asked the Grunfeld Davis bookkeeper to do his books and she had done so. The First Respondent had started manual accounts.

84. In relation to the lack of reconciliations on the designated deposit accounts, this was the First Respondent's fault but there had been absolutely no movement on the accounts. The First Respondent accepted that he should have insisted that the banks sent monthly statements.

85. The First Respondent had admitted retaining costs in client account. This had not been done with any malicious or dishonest intent. He had simply been unable to get any information from the Second Respondent or others because of the Second Respondent's absence and inability. There had been no one to deal with expenses at the Harvey Thornton office and so the First Respondent had paid them out of costs. The First Respondent was now aware that this should not have happened.

86. There had sometimes been very slight discrepancies in the payments of Counsels' fees but as soon as the First Respondent had been made aware by the bookkeeper of any slight errors they had all been rectified.

87. In relation to the withdrawal of £1,300 in cash, the client had been a personal friend of JH and the First Respondent had known her husband. She had wanted the rest of her money and the First Respondent had had no reason not to arrange it.

88. In relation to the other cash withdrawal, this was an old matter and the First Respondent had received a note stating that the client would be coming in at Christmas and would want his money in cash. The First Respondent had kept it in his desk, locked and marked. The First Respondent would only have handed the money over if the client had been able to identify himself. In the event, nothing had happened but the First Respondent accepted that he had probably been silly and naïve.

89. During the time that the First Respondent had been in practice he was not aware that any client had lost money or complained.

90. When the First Respondent had taken over the Harvey Thornton accounts from the bookkeeper who was a retired Law Society accountant, the First Respondent had not known that he needed to take the ledger cards. He had been given an audited balance.

The First Respondent was now aware that he should have demanded much more information including the ledger cards.

91. The First Respondent had received a list of client balances from the intervention agent and these were identical to the balances at the time of the intervention.

92. In taking over Harvey Thornton the First Respondent had taken over more than he could manage but there had been no bad faith on his part. Even though nothing had gone missing, he would not in the future wish to deal with accounts.

93. The First Respondent had found the intervention at times harsh. He had suffered serious ill health and wanted to retire or semi-retire. He had now been suspended for a year. He was desperate to be able to return to practice as a consultant and had friends who would offer him such work. He was aware that the Tribunal might wish to impose conditions.

94. The matter had come as a complete shock to the First Respondent who was now getting himself together. He submitted that he deserved to keep his status as a solicitor. No client of his had ever lost money.

Submissions as to Costs

95. The Applicant sought his costs in a total of £5,000. While he had not been successful in relation to three allegations against the First Respondent, there had been seven admitted allegations and he had felt it right to proceed with the other three.

96. The First Respondent had agreed with the Second Respondent the 90%/10% split.

The Findings of the Tribunal

97. The Tribunal found the one remaining allegation against the Second Respondent to have been substantiated, indeed it was not contested.

Previous Appearance of the Second Respondent before the Tribunal on 15th February 1995

98. On 15th February 1995 two allegations had been substantiated against the Second Respondent, namely that he had:

(a) failed to comply with the Solicitors Accounts Rules 1991 in that he notwithstanding the provisions of Rule 8 of the said Rules drew out of a client account money other than that permitted by Rule 7 of the said Rules;

(b) been guilty of conduct unbefitting a solicitor in that he utilised money held and received by the firm on behalf of a certain client or certain clients for his own purposes.

99. The Tribunal on that occasion felt that the Respondent's conduct was indicative of foolishness and lack of judgement rather than dishonesty. The Tribunal accepted that

the Second Respondent had learned a lesson and had taken steps to ensure that there would be no re-occurrence in the future of breaches of the Accounts Rules or wrongful utilisation of clients' money. The Tribunal imposed a penalty of £2,500 together with costs.

100. At the hearing on 1st July 2003 the Tribunal had considered the medical evidence which clearly indicated that the offence substantiated against the Second Respondent had occurred over a short period at a time when the Second Respondent must have been extremely ill. In all the circumstances, the appropriate penalty was a reprimand together with the agreed costs of the Applicant in the sum of £500.

Allegations (1), (9) and (10)

101. In relation to allegation (1), the First Respondent had, albeit at a late stage, submitted letters from clients, which were not challenged by the Applicant, which supported his explanations in relation to the designated deposit accounts which were the subject of allegation (1). In the circumstances the allegation that the First Respondent had provided a money transmission service could not be substantiated and the Tribunal found the allegation not proved.

102. In relation to allegation (9), the Tribunal had considered the questionnaire in support of the application signed by the First Respondent and the other documentary evidence. The Tribunal had had the benefit of the First Respondent's evidence on oath. The Tribunal noted the First Respondent's admission that the contents of the application were misleading in material respects and the Tribunal indeed took the view that the contents were misleading. Having considered the First Respondent's explanations and given the high standard which had to be met by the Applicant in order to prove dishonesty, the Tribunal felt able to accept the First Respondent's evidence and concluded that the First Respondent was not dishonest. Allegation (9) had been relied on by the Applicant as an act of dishonesty and the Tribunal therefore found the allegation not substantiated.

103. In relation to allegation (10), the Tribunal had already found that the First Respondent had not acted dishonestly in relation to allegation (9). The Tribunal noted the First Respondent's statement in his letter of 5th April 2002 and accepted the First Respondent's admission that he had simply not been aware of the need to make a further application. The burden on the Applicant to prove that the Respondent had behaved dishonestly was a heavy one and the Tribunal did not find allegation (10) proved.

104. Allegations (2) to (8) had been admitted by the First Respondent and the Tribunal found them to be substantiated.

105. While the Tribunal had not found any allegations of dishonesty substantiated against the First Respondent, there were six admitted matters which had been substantiated. The Tribunal had considered the documents including the Report of the Investigation and Compliance Officer which properly outlined those admitted allegations. The Tribunal had given the First Respondent credit for his admissions and for his previous unblemished record. Nevertheless the First Respondent had committed serious Accounts Rules breaches over a substantial period of time. By failing to comply with

the conditions imposed on the employment of JH the First Respondent had placed the public at continuing and prolonged risk. The First Respondent had been well aware of the conditions as he had written them on the questionnaire supporting the application. It was apparent that he had taken no proper care in relation to the conditions. He had allowed JH to work in areas where conditions imposed by the regulatory body had said he should not be allowed to work and, in particular, the First Respondent had allowed him to work in conveyancing matters. The First Respondent had allowed JH to have access to clients' monies. The First Respondent's failings in this regard were serious. Having taken on the responsibilities of the Harvey Thornton & Co practice, the First Respondent could not simply put his head in the sand. The Tribunal had noted the First Respondent's wish to return to practice as a consultant but given the seriousness of the allegations substantiated against him, the Tribunal considered that the appropriate penalty was an indefinite suspension. This would not prevent the First Respondent from working in the profession as a clerk provided the permission of The Law Society was obtained.

106. The Respondents had agreed that the First Respondent would bear the larger proportion of the costs which the Applicant sought in full. The Tribunal would, however, reduced the costs by £500 to reflect the matters which had not been substantiated.

Orders of the Tribunal

107. The Tribunal ordered that the First Respondent Bruno Henry Grunfeld of Cedar Drive, London, N2 solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of July 2003 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £4,000.

108. The Tribunal ordered that the Second Respondent Richard George Clark Thornton of care of Bruton Charles Chartered Accountants, The Coach House, Greys Green Business Centre, Rotherfield Greys, Henley-on-Thames, Oxfordshire, RG9 4QC solicitor be reprimanded and they further ordered him to pay the agreed costs in the sum of £500.

DATED this 2nd day of August 2003
on behalf of the Tribunal

R J C Potter
Chairman