No. 8757-2003

IN THE MATTER OF PETER BARNETT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J C Chesterton (in the chair)
Mr A Gaynor-Smith
Mrs V Murray-Chandra

Date of Hearing: 20th - 24th November and 7th December 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by George Marriott, solicitor and partner in the firm of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 14 February 2003 that Peter Barnett, solicitor c/o of Needleman Treon of Meridien House, 42 Upper Berkeley Street, London W1H 5QH might be required to answer the allegations set out in the statement which accompanied the application (as amended) and that such order might be made as the Tribunal should think right.

The allegations against the Respondent (as amended) were that he was guilty of conduct unbefitting a solicitor in that:-

1. In the period 1995 to 1998 he acted as a so-called "escrow agent" in about 38 dishonest transactions under which people sold worthless documents for a large fee (referred to as "bank advice transactions").

2. He acted as a so-called escrow agent in circumstances where there were conflicts between:

   2.1 his financial interest in the outcome of the "transaction";

   2.2 his duty to his client (one party to the transaction);

2.3 his duty to act impartially as between both parties to the transaction.

3. He deceitfully represented to prospective purchasers that the "bank advices" were commercially valuable when he knew or suspected that they were not.

4. He made deceitful representations to third parties calculated to lend credibility to the transactions and to encourage the prospective purchaser to enter into them.

5. He made deceitful misrepresentations to third parties in order to assist a company owned by Mr Imdad Ullah to obtain a loan.

6. He acted in connection with the purchase of a property in circumstances where he knew or suspected monies used to pay the deposit represented the proceeds of fraud.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 20th - 24th November and 7th December 2006 when Timothy Dutton QC and Richard Coleman of Counsel represented the Applicant. The Respondent appeared and was represented by David Corker of Corker & Binning Solicitors in respect of an application to stay the proceedings. The Respondent otherwise represented himself.

Application to stay the proceedings

1. Mr Corker for the Respondent and Mr Dutton for the Law Society had prepared written skeleton arguments which were before the Tribunal.

2. There was much argument as to whether the Tribunal had at an earlier hearing already determined the issue which the Respondent now sought to raise, namely, whether the absence of legal assistance and representation at this hearing, because of the Respondent's lack of funds, gave rise to unfairness sufficient to breach his rights under Article 6 of the Human Rights Act. The Tribunal found it unnecessary to decide this point because Mr Dutton for the Law Society did not oppose this issue being heard afresh. The Tribunal accordingly did so.

3. The issue is whether the Respondent can have a fair trial notwithstanding the absence of legal assistance and representation. Both parties accepted that such a situation could arise. Would it arise in the Respondent's case? Mr Corker for the Respondent submitted, and Mr Dutton for the Law Society did not contend otherwise, that the matters to be considered in answering this question were:

   (a) are the facts to be tried complex as well as detailed?

   (b) does the solicitor understand the issues to be tried and have knowledge of them?

   (c) is the Law Society represented by solicitor or by Leading and Junior Counsel?

   (d) what is the nature of the allegation being made against the solicitor?

4. The Tribunal decided that:

(a) The proceedings did not involve questions of law as such and the facts to be tried were not complex albeit the material before it was detailed. The Law Society had honed its allegations so that only four transactions in which the Respondent had participated were in issue. This was in sharp contrast to the 80 or more allegations in what was to have been the criminal trial involving the Respondent. The latter had foundered for procedural reasons and a letter dated 15th August 2000 from Mr GM Lynch of the then prosecution team, produced to the Tribunal by the Respondent, in which it is said "the matter is extremely complicated" related to a period prior to the reduction of allegations to four transactions. Moreover, it seemed to the Tribunal from its perusal of the papers before it that the facts themselves substantially were undisputed. The central issue for it would be whether the Respondent had acted with conscious impropriety.

(b) The Respondent is a solicitor of more than 20 years' standing and has specialised in commercial matters including the transactions at the heart of these proceedings. He is currently head of the commercial and property department of a London firm. The Tribunal concludes that he is well able to understand the issues to be tried and indeed has a very sound knowledge of them. He has had the benefit of Counsel's advice and representation in the criminal proceedings and has had some seven years in which to prepare for these proceedings given that they were adjourned pending the outcome of the criminal trial.

(c) The Law Society is represented by Leading and Junior Counsel. The Respondent however has also at times had the benefit of Senior Counsel in preparing for the hearing of these proceedings. The Respondent is himself competent in litigation as his past experience bears witness.

(d) The Law Society's case is that the Respondent acted with conscious impropriety. In other words, he has been dishonest. Mr Corker sought to distinguish the case of Pine in this respect. The allegations found proved against Mr Pine included an allegation that he had sworn a misleading affidavit annexing a misleading exhibit. The Court of Appeal described what Mr Pine had done as "an obvious falsehood". The case was clearly one of conscious impropriety. Notwithstanding this, the Court did not consider it was unfair to Mr Pine not to provide him with legal advice or representation. Thus this factor is not in itself conclusive.

5. A welter of paper has been generated by the many applications made to this Tribunal and indeed to other courts in the course of these proceedings and it is the volume of paper that gives an appearance of complexity in this case. It is right to say, as Mr Dutton does, that "equality of arms" does not translate in Article 6 terms to "equality of legal teams". The case of Pine makes this clear. Mr Dutton said that Counsel are conscious of their professional duty to prosecute allegations fairly. It can safely be said, from hindsight at the close of this hearing, that Mr Dutton and his junior did just that. The Respondent called upon them frequently throughout the hearing to assist him in finding documents, page references, and providing him with photocopies and case law throughout, and both Mr Dutton and Mr Coleman responded with alacrity to these requests. Moreover, the Tribunal itself afforded the Respondent frequent short adjournments in order to marshal his papers and the like.

6. The application was refused.

The Substantive Hearing

7. The evidence before the Tribunal included the oral testimony of the Respondent, Mr Michael Calvert and Mr David Gibbens and the written statements of Messrs AHL Needleman and AG Bain. The Respondent during the course of the hearing put various documents before the Tribunal including his Defence Statement to the criminal proceedings and a number of witness statements prepared for the purpose of those proceedings. Mr V's statement was withdrawn by the Applicant at the close of the second day of the hearing.

8. **At the conclusion of the hearing the Tribunal made the following Order**:-

The Tribunal Orders that the Respondent Peter Barnett of 212 Birchang er Lane, Birchanger, Bishops Stortford, Hertfordshire, CM23 5QH, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society. An interim payment of £10,000 is to be made by the Respondent.

The facts are set out in paragraphs 9 to 25 hereunder:

9. The Respondent, aged 47, was admitted as a solicitor in 1982. From 1985 he practised alone under the style of Rhodes Barlow at Falcon House, 86-90 New Barnett Road, New Barnett, Hertfordshire.

Allegations 1 - 4: the escrow agency transactions

10. In 1995 the Respondent began to act for a Peter Gibbins. Mr Gibbins introduced the Respondent to Imdad Ullah for whom the Respondent then also acted. Mr Gibbins and Mr Ullah each operated through a number of companies including, respectively, one named Tidal Services Inc (a BVI company) ("Tidal") and Clipperton Intertrade Limited (registered in the Bahamas) ("Clipperton").

11. In July 1996 the then Office for the Supervision of Solicitors ("OSS") carried out an inspection of the Respondent's books of account under Rule 27 of the Solicitors Accounts Rules. The Investigating Accountant told the Respondent that he was of the view that the Respondent had become involved in fraudulent transactions. The Respondent had acted as an "escrow agent" in relation to transactions under which companies such as Tidal and Clipperton sold "bank advices" and other similarly described documents for large "arrangement" fees. The purpose of the transactions was purportedly to invest in "high yield investment programmes". These companies represented to the purchaser that the bank advices were commercially valuable. A typical bank advice was a statement from a bank that funds existed in a given account and that the bank would exchange the funds for a "demand guarantee" if instructed to do so by the account holder. The bank advice did not give the purchaser a contractual entitlement to the money to which it referred. The Respondent's part in the transaction was as "escrow agent" was to hold the purchaser's arrangement fee in his client account, to verify that the bank advice complied with the terms agreed between

purchaser and the company selling it and, if it did, to release the arrangement fee to the order of the vendor.

12. By letter dated 17th October 1996 the OSS formally warned the Respondent that he had represented clients in relation to a type of transaction that was invariably fraudulent. The Respondent replied by letter dated 14th January 1997 that, while he was aware of advance fee frauds involving the purchase of bank instruments, he did not believe the transactions in which he was involved were fraudulent. The Respondent said that the business was lucrative and growing and he asked for a meeting to discuss the nature of the transactions.

13. On 29th January 1997 Mr Calvert, the Law Society's Senior Forensic Investigation Officer met the Respondent to discuss the bank advice transactions. The Respondent recorded in an attendance note of the same date that Mr Calvert advised him that the purpose of the transactions was to launder money or to defraud and that he could face intervention and disciplinary proceedings if he continued. Mr Calvert also told the Respondent that Peter Gibbins was a name known to the Law Society in connection with an investment fraud.

14. The Respondent during the course of 1996 had already become aware that Mr Gibbins' honesty was seriously in question:

    a) In January 1996 National Westminster Bank ("NatWest") had included Mr Gibbins' name on a list of people alleged to act fraudulently and the Respondent had been alerted to this by another firm of solicitors. The Respondent wrote to NatWest on behalf of Mr Gibbins rejecting the allegation.

    b) In September 1996 the Respondent received a copy of a letter written by Peter Ensor of Atlanta Trust Limited alleging that Mr Gibbins had provided fraudulent documents for a fee stating that "the scam works through attorney's trust accounts". On 30th September 1996 the Respondent drafted a response to Mr Ensor's letter on behalf of Mr Gibbins refuting the allegation.

    c) On 1st October 1996 articles appeared in the press, copies of which were on the Respondent's files, linking Mr Gibbins to a fraud in which the Salvation Army lost money in bogus investments. The Respondent accepted that he had read these articles.

    d) The Respondent in evidence to the Tribunal said of Mr Gibbins, "It's a high risk business. Martin Gibbins accepted in this business he was liable to arrest from time to time – the Salvation Army, Ensor … – he understood he was dealing in an area that was controversial and that went with the job."

15. Furthermore, the Respondent had both knowledge and understanding of bank instrument fraud. In March 1994 the Respondent had received the Law Society's Blue Card warning on money laundering. The Respondent was aware of its content and, in September 1995, he had read and kept for reference a copy of an article in the Legal Times which warned lawyers against unwitting involvement in various types of advance fee fraud. In September 1997 the Law Society issued a Yellow Card warning concerning bank instrument fraud. The Respondent accepted that he had read this

too. He had moreover received a number of warnings from banks and other third parties which had been unwittingly involved, or had been invited to become involved, in such transactions. For example, in February 1996 the Respondent had received from the purchaser of a bank advice in July 1995, whose arrangement fee had been paid into the Respondent's client account, a copy of a letter from the London branch of a Turkish bank stating that a letter, purportedly from it and in which a guarantee of "bank debenture instrument" transaction was given, was a forgery and that the document itself fraudulent. The purchaser also told the Respondent that it had been unable to obtain the funds in question and asked the Respondent for the return of the arrangement fee.

16. A further Law Society inspection of the Respondent's books of account took place in October1998. This revealed that in the period 1995 to 1998 the Respondent had received in excess of US$40million and £300,000 into his client account in connection with 38 bank advice transactions and had himself received profit costs in respect of these transactions in the sum of £141,159.37. It was found that, following his meeting with Mr Calvert and notwithstanding the express warnings given by the OSS, the Respondent had on the instructions of Mr Gibbins and Mr Ullah written to more than a dozen people/companies (Messrs AQ, CS, HM and GJ to name but a few) who were considering buying bank advices to tell them that he had acted as escrow agent in such transactions and that Messrs Gibbins and Ullah had successfully fulfilled the contracts. He had moreover acted as escrow agent in four such transactions, one involving Clipperton (Mr Gibbins' company) and three involving Tidal (Mr Ullah's company).

17. <u>Transaction between Clipperton and Mr V</u>

a) By an Agreement dated 5 June 1997 Clipperton undertook to provide Mr V with a "funding commitment" of US$10m from CIC Bank or Credit du Nord Bank for an arrangement fee of $500,000. The funding was stated to be obtainable by Mr V on his provision of a bank guarantee and the commitment was to be valid for a period of 20 banking days. The Agreement made reference to "good clean funds of non-criminal origin", terms which the Law Society's Yellow card had highlighted as suspicious in the money laundering context. The Agreement provided that the Respondent was to be escrow agent.

b) There was no letter from CIC or Credit du Nord Bank confirming the funding commitment and in July 1997 the Respondent attempted to obtain a letter confirming availability of funding from Barclays Bank's Regional office in Exeter. An attendance note dated 9 September 1997 made by an assistant solicitor of the Respondent's firm recorded that she was told by a senior corporate consultant at Barclays Bank that the transaction seemed "doubtful and not genuine". Barclays Bank refused to be involved.

c) The letter confirming the funding commitment was provided by First Merchant Bank ("FMB") of Northern Cyprus. The Respondent had been told by Mr Calvert at their meeting in January 1997 that this bank was outside regulatory control and a "front" for money laundering activities. The Respondent nevertheless verified to Mr V on 23 July 1997 that FMB's "Letter

of Confirmation of Availability of Funds" was genuine and that it complied with the Agreement between Mr V and Clipperton. The Respondent then distributed Mr V's arrangement fee to a number of people, including $117,000 to FMB and $10,500 to himself. Mr V subsequently complained to the Respondent that FMB was not acceptable and was "on an FED red list". The Respondent in reply expressed surprise at Mr V's concerns and reiterated that FMB's letter complied with the Agreement between Mr V and Clipperton.

d) The Respondent was aware that Mr V was unable to obtain the funds to which FMB's letter referred.

e) Very shortly afterwards, by letter dated 20 August 1997 from a company called Projohn Ltd the Respondent was informed that "…FMB is blacklisted from the National Bank of Cyprus and therefore …most international banks in Europe do not accept anything from them".

18. Transaction between Tidal and Kokkel Trading and Finance SARL ("Kokkel")

a) In April 1998 the Respondent wrote to Kokkel to say that he had in the past two years acted as escrow agent in more than 15 bank funding advice transactions "…which have been in the form of Letters of Availability of Funds for the purchase on one year Bank Guarantees at 108% in sums of US 10 million dollars to US 100 million dollars ….and we have collected personally such letters, and inspected such letters, and inspected tested telexes, at banks in Northern Cyprus, Turkey, France and here in London".

b) By an Agreement dated 8 May 1998 Tidal agreed to sell to Kokkel three "funding advices", each in the sum of $150m and at a total price of $4m. The Agreement again made reference to "good clean funds of non-criminal origin". The funding was obtainable by the purchaser on provision of a " demand guarantee for equal value plus 8% interest" or a "bank responsible commitment and/or certified bank invoice". The Respondent was to be escrow agent and release the fee if satisfied that the funding advice was genuine.

c) Confirmation of the funding advices was initially said to be coming from Banco do Brasil but in fact a letter of confirmation dated 8 May 1998 in respect of the first payment of US$150m again came from FMB of Northern Cyprus. The Respondent on 15 May 1998 represented to Kokkel that the funding advice from FMB was genuine He made reference to the fact that he had attended at FMB's offices in Northern Cyprus in order to satisfy himself as to authenticity of the issue of the bank advice. The Respondent had engaged an enquiry agent, a former police officer called Alfred Bain, to travel with him to FMB offices in Northern Cyprus to "investigate, report on and authenticate, if possible, the Bank Funding Advice…" However, the Respondent' s and Mr Bain's investigations (which extended also to bank advices provided by the Royal Bank of Canada –paras 19 and 20 below) did not address the inherent lack of commerciality in the transactions.

d) On 21 May 1998 the Respondent advised Kokkel that FMB had issued the second funding advice and that it too was genuine.

e) On 1 June 1998 the Respondent distributed US$2.5m of the arrangement fee and on 12 June 1998 he distributed a further US$1m. Some $875,000 was distributed to FMB.

f) The Respondent was aware that Kokkel was unable to obtain the funds to which FMB's letters referred. In December 1998 the Respondent returned to Kokkel the balance of US$500,000.

19. Transaction between Tidal and Mr UB

a) By Agreement dated 22 May 1998 Tidal agreed to sell to a Mr UB for $412,000 a "funding advice" in the sum of $11m from the Royal Bank of Canada. The money was to be made available against "the delivery of an acceptable one year irrevocable and unconditional bank guarantee securing 106% of the transferred amount". The Respondent was to act as escrow agent.

b) A letter dated 5 June 1998 from the Royal Bank of Canada addressed to a company called Chaynemac Financial Inc ("Chaynemac") confirmed the availability of US $11m "free and clear of all encumbrances" and that "these funds are available at your first call."

c) On 5 June 1998 US$412,000 was paid into the Respondent's client account on behalf of Mr UB.

d) By letter dated 29 June 1988, a copy of which was sent to the Respondent, Chaynemac wrote to Tidal that the release of funds would, in effect, be subject to its consent. The content of the letter from Chaynemac overall made little sense.

e) On 30 June 1998 Tidal instructed the Respondent to distribute the arrangement fee and the Respondent duly did so. The Respondent was aware that Mr UB was unable to obtain the funds to which the bank advice referred.

20. Transaction between Tidal and Abacus International Financial Network ("Abacus")

a) By an Agreement dated 26 August 1998 Tidal agreed to sell to Abacus for $140,000 a bank advice in the sum of US$1m from the Royal Bank of Canada. It was provided that the Respondent would be escrow agent.

b) On 27 August 1998 the Chaynemac Board of Directors resolved to make US$1m available against delivery of a 108% bank guarantee acceptable to the Board.

c) A letter dated 1 September 1998 from the Royal Bank of Canada, again addressed to Chaynemac Financial Inc, confirmed the availability of US $1m "free and clear of all encumbrances" and that "these funds are available at your first call".

d) On or shortly after 1 September 1998 the Respondent's firm verified the bank advice and the Board Resolution to Abacus.

e) On 8 September the Respondent wrote to Abacus, which had expressed concerns over the transaction, "This Firm's role as Escrow agent to both parties is restricted to the terms of the Escrow Agreement which you entered into and in particular confirms that we have not advised you in respect of the Agreement and that you have had opportunity of seeking your own legal advice in connection therewith. Further, upon our satisfying ourselves that the Bank Funding Advice issued is a genuine Bank Funding Advice, we are authorised to release the Escrow Funds to the order of Tidal Services Inc, which has now been done."

f) The Respondent was aware that Abacus was unable to use the bank advice.

21. In each of the above transactions, the purchaser had no contractual entitlement to the funding described in the bank advice. Furthermore, while each of the Agreements stated that the funding could be obtained in exchange for a bank guarantee, none of the purchasers was able to provide such a guarantee or otherwise obtain the funds and the Respondent knew this to be the case.

Allegations 5 - 6: transactions concerning Mr Imdad Ullah

22. On 5th November 1997 Mr Ullah was charged with conspiracy to defraud in connection with a bank advice transaction. By early 1998 the Respondent knew this.

23. In September 1998 the Respondent received instructions from one of Mr Ullah's Bahamian-registered companies, St John Property Limited ("St Johns"), to act on its behalf in the purchase of a property in London for £1.75m. On 7th October 1998 the Respondent paid $305,000 received from St John's as deposit on the property into Barclays Bank. On 27th October 1998 the Respondent sent Barclays Bank various documents in compliance with the bank's controls against money laundering, including a reference for Mr Ullah from Habib Bank AG Zurich which read "He [Mr Ullah] is a respectable, trustworthy person and considered suitable for normal business". The Respondent made no mention of the fact, known to him, that Mr Ullah was awaiting trial on criminal charges of fraud.

24. In December 1998 Mr Ullah was convicted of conspiracy to defraud in relation to bank advice transactions and sentenced to 15 months imprisonment. The Respondent knew this but nevertheless on 15th February 1999 wrote to Charles Russell, solicitors acting for the Bank of Ireland in relation to a loan to St John's in connection with the property purchase, that it was within his knowledge that the balance of the funds provided by Mr Ullah for the purchase were the accumulated business profits from commercial transactions undertaken by Mr Ullah and enclosing a copy of the Habib Bank reference.

25. On 8th September 1999 the Law Society intervened into the Respondent's practice as a consequence of the above transactions. The Respondent, to whom a conditional practising certificate was granted in 2000, took up employment with Needleman Treon as head of its commercial property department. Criminal proceedings against the Respondent ended in 2004 on a not guilty verdict being entered by the trial judge.

The Applicant's submissions

26. The Respondent's evidence to the Tribunal that he was not consciously involved in wrongdoing or dishonesty was not credible. An honest solicitor would not have acted as an escrow agent in such transactions or would not have continued to do so after so many warnings. The Respondent was well aware that the four transactions (at paras 17-20 above) were not proper or genuine commercial transactions.

27. The Respondent's dishonesty was further demonstrated in relation to the mortgage application for Mr Ullah. This was deliberate deception. The Respondent had sought in evidence to account for this, and for continuing to act for Mr Ullah in relation to bank advice transactions, by saying that despite the criminal charge, he believed Mr Ullah to be honest. The Respondent's assertion that he continued to believe Mr Ullah to be honest even after conviction of the criminal charges beggared belief.

28. The Respondent's explanation that he had no doubts about the propriety of his involvement in the bank advice transactions was inherently implausible given:

    (a) authoritative warnings of the Law Society, banks and others;

    (b) the allegations of fraud surrounding the transactions themselves and Messrs Gibbins and Ullah; and

    (c) the fact that no one ever obtained the bank advice funds.

29. The Tribunal should apply the test in Twinsectra -v- Yardley [2002] 2AC 164 in determining whether the Respondent's involvement in the bank advice transactions had been dishonest. That is, was his involvement, against the background of all the facts and circumstances known to the Respondent, dishonest by the ordinary standards of reasonable and honest people? And secondly, was the Respondent aware that, by those standards, he was acting dishonestly? It was submitted that the answer to both questions was "yes".

30. Even if the Respondent had not acted dishonestly, he had still acted in a manner likely to compromise or impair his integrity and good repute and that of the profession.

The Respondent's submissions

31. The Respondent said that he had made all his books of account and files available to the Law Society's inspectors. No shortage had been found in his client account. Mr Calvert, at their meeting in January 1997, had been unable to point to any one document and explain to him in what manner that document was fraudulent. The Respondent submitted that, if his involvement in the transactions had been dishonest, he would not have invited Mr Calvert to meet him nor made available to the inspectors papers relating to the bank advice transactions.

32. The Respondent acknowleged that there had been many warning bells sounding in relation to the transactions and that, with hindsight, he should have passed on these warnings to those purchasing the bank advices. However, he had believed that both Mr Gibbins and Mr Ullah were honest men, notwithstanding Mr Gibbin's involvement in the Salvation Army fraud and Mr Ullah's conviction for fraud.

33. The Respondent accepted that letters he had written to those interested in bank advices (at para. 16 above) amounted to inducements to enter into such transactions. He had no recollection of sending some of them which must have gone out while he was on holiday. The Respondent also acknowledged, following explanation from Mr Corker, that as he stood to gain fees as escrow agent each time her verified a bank advice, he thereby had a personal interest which conflicted with his duty to act impartially between both parties to the transaction.

34. The Respondent had not personally dealt with the loan application for St Johns on behalf of Mr Ullah. It had been dealt with by his assistant while he had been on holiday and he believed she had misunderstood his instructions.

35. The Respondent concluded that he had not been completely blameless in what he had done but that at no time had he been intentionally dishonest.

The Tribunal's decision and its reasons

36. The facts in this matter were largely undisputed. The Respondent did not deny his role as escrow agent in transactions for Messrs Gibbins and Ullah. Indeed, he could not do so because the content of his files, which Mr Calvert confirmed were in good order and made available without difficulty for inspection, told the story plainly. The Tribunal accordingly had no difficulty in finding the facts as set out above.

36. The contentious issue for the Tribunal was the Respondent's state of mind. Had he been consciously dishonest in what he had done? The Tribunal reminded itself that this was a very serious charge and that it must be satisfied to a very high standard of proof. The Tribunal found that the evidence overwhelmingly demonstrated dishonesty on the Respondent's part. In the matter of Mr Ullah's loan application alone, it was plain that the Respondent's conduct had been deliberately deceitful. The Respondent had sent documents to the Bank of Ireland's solicitors including a bank reference as to Mr Ullah's trustworthiness and good standing notwithstanding that the Respondent knew at the time of writing that Mr Ullah was serving a prison sentence for a fraud conviction and had lied to the bank as to his then address. The Tribunal did not accept the Respondent's contention that his then assistant solicitor had sent the documents by mistake. The letter of 15 February 1999 bore the Respondent's reference. In any event, the content of the letter was known to him, and known to be misleading, and he made no attempt subsequently to correct it.

37. The Tribunal was unimpressed by the Respondent's explanations as to his part in the bank advice transactions. The Respondent had before the Tribunal "played the innocent". The Tribunal however formed the view that here was an able solicitor who knew exactly what he was doing. The Respondent had run his own firm for some 20 years. He was efficient in so doing and, since the Law Society's intervention in his firm because of these disciplinary matters, he had been employed as head of the commercial department of a London firm. It was abundantly clear that the bank advice transactions lacked both commercial purpose and worth. The bank advices did not give the purchaser a contractual entitlement to the money to which they referred and the Respondent confirmed to the OSS in the course of investigation leading to the Report dated 18 August 1999, and to the Tribunal, that none of the purchasers in the transactions in which he had been involved had been able to use the bank advice to obtain funds. The Respondent had impliedly represented that the bank advices were

of genuine commercial worth when he had known that they were worthless. By lending his name as a solicitor, and that of his firm, to these transactions, the Respondent had facilitated the fraud. He had added credibility to a dishonest business.

38. The Respondent's involvement in this dishonest business had continued despite all manner of warnings. He had known too that Mr Gibbins was heavily involved in matters which were the subject of criminal investigation. He had been determined to continue because, as he said in answer to the Law Society's formal warning in 1997, it was lucrative. He had acknowledged that he knew how very close Mr Gibbins' activities came to criminality when he told the Tribunal that Mr Gibbins "accepted in this business that he was liable to arrest from time to time". The Respondent had done his best to shield himself from the consequences of what he did by engaging the services of Mr Bain to "investigate" for him. Mr Bain however had not been instructed to question the worth of the transactions. The Respondent had sought to imply to the Tribunal when giving his evidence that those matters to which there was no answer, namely the letter in connection with Mr Ullah's property purchase and letters inducing others to enter into bank advice transactions, had been the fault of his assistant solicitors while he had been away from the office on holiday. The Tribunal did not accept this. In each case, his had been the sole reference on the letters in question. Letters written by the Respondent's assistants had borne also the assistant's reference. The Respondent had been unable to explain this and the inference to be drawn was that these, whether or not signed by the Respondent, were the Respondent's letters.

39. The Tribunal at the end of a long hearing had no hesitation in concluding that the Respondent was guilty of knowingly playing a part in a major fraud and, having regard to the test in Twinsectra, it found all the allegations proved. The Respondent had succumbed to the temptation of easy earnings and had thrown his lot in with fraudsters. What he had done struck at the heart of the good standing of the profession. The Tribunal ordered that the Respondent should be struck off the Roll. The Tribunal further ordered that he should bear the costs of this application, to be assessed if not agreed, and that an interim payment in the sum of £10,000 should be made within 28 days from today's date.

DATED this 14th day of March 2007
on behalf of the Tribunal

J. C. Chesterton
Chairman