No. 8772-2003

IN THE MATTER OF MICHAEL WILSON-SMITH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr K Duncan
Lady Bonham Carter

Date of Hearing: 6th November 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 Solicitors, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 6th March 2003 that Michael Wilson-Smith, solicitor of Danehill, Sussex, might be required to answer the allegations contained in the statement which accompanied the application and that the Tribunal might make such order as it thought right.

The Tribunal had considered the matter at a number of interim hearings on 5th June 2003, 17th June 2004, 16th December 2004, 18th February 2005, 17th May 2005, 27th September 2005, 21st March 2006 and 28th September 2006.

The Applicant had prepared a revised statement dated 31st May 2005 which had been the subject of further amendment on or about 10th June 2005.

The allegations contained in the revised statement made pursuant to Rule 4(2) of the Solicitors (Disciplinary Proceedings) Rules 1994 were that the Respondent, Michael Wilson-Smith, had been guilty of conduct unbefitting a solicitor in that:-

1.1 In the period 1995 to March 1999 he acted as "escrow agent" in about 50 dishonest transactions in which people sold worthless documents for a large fee (referred to as "bank advice transactions").

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

(a) his financial interest in the outcome of the "transaction";

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

(c) his duty to act impartially as between both parties to the transaction.

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

1.4 He allowed money to pass through his client account in circumstances where he suspected or should have suspected there was a real danger that he was facilitating money laundering.

With regard to allegation 1.1 the Tribunal had noted in its Memorandum (dated 6th October 2006, relating to the interim hearing on 28th September 2006) that the Law Society having stated that it would rely on five transactions it had selected to support its allegations had confirmed that it would not make reference to any other transactions and that material relating to such other transactions would be irrelevant. The Law Society would not introduce such material and any material concerning the Respondent's conduct in other transactions, whether similar to or different from that concerning the five transactions before the Tribunal, would have no bearing on the case concerning the five transactions. The Law Society's case would stand or fall on the evidence to be adduced in relation to the five selected transactions.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 6th November 2006 when Timothy Dutton of Queen's Counsel and Richard Coleman of Counsel appeared on behalf of the Applicant and the Respondent was represented by Mr Christopher Wilson-Smith of Queen's Counsel (Mr Wilson-Smith of Queen's Counsel explained to the Tribunal that he was speaking for the Respondent, his brother, and was not representing him in the full professional sense).

Preliminary issue

1. At the opening of the hearing a joint application was made on behalf of the Applicant and the Respondent that the Tribunal approve a compromise which the parties had reached.

2. The compromise in written form was passed to the Tribunal and was as follows:-

"MWS [the Respondent] admits:-

1. In July 1997 he received the yellow card warning and in October 1996 he received a Warning Letter from the Law Society relating to bank instrument fraud transactions.

2. He acted in Megacash as a solicitor and escrow agent in the Kim, Young and M Toro Ltd transactions.

3. He admits that he should have known or suspected that these were not viable commercial transactions as they provided no genuine commercial benefits to those who applied for access to funds. Instead applicants for funds received either nothing or worthless documents, and the substantial fees which they had paid for such worthless documents were then distributed amongst those concerned in the introduction of the transaction. As a solicitor he should not have been involved with them.

4. He further admits in relation to Kim, Young, Toro Ltd and Megacash that he acted in circumstances where there was a conflict between his financial interest in the transaction and his duties to the parties.

5. To the extent set out in paragraphs 1 to 4 above Mr Wilson-Smith admits that he has been guilty of conduct unbefitting a solicitor in the respects alleged in paragraphs 1.1 and 1.2 of the Amended Rule 4(2) statement.

6. In all the circumstances, he also admits that he acted in a way that compromised his integrity, his good repute and that of the solicitor's profession and his proper standards of work and accepts that his name should be struck off the Roll. He further accepts that he will not seek readmission to the Roll.

7. He should pay the costs of the Law Society's application and investigation to be assessed if not agreed. On the basis that Mr Wilson-Smith has no means to meet such order, it is not to be enforced without the agreement of the parties or the permission of the SDT.

<u>Agreement for stay</u>

8. In the light of the foregoing the Law Society will agree to there being a stay of all further allegations in the Rule 4(2) proceedings, such allegations not to be proceeded with without the permission of the SDT.

Signed [Christopher Wilson-Smith]
For Michael Wilson-Smith

Signed [Timothy Dutton QC]
For the Law Society"

3. The parties invited the Tribunal to rule that the public interest would be served by the Respondent's admissions and his acceptance of a striking off order as the appropriate sanction.

4. The background to the suggested compromise included the facts that the Law Society had intervened into the Respondent's firm (in which he was a sole practitioner) and his Practising Certificate had been suspended since the date of the intervention; the Respondent had been the subject, with others, of an investigation and prosecution by the Serious Fraud Office over a period of some three years culminating in 2004 when because of a mistaken disclosure to the defence the criminal proceedings against the Respondent were not pursued and the Respondent was 61 years of age and his health had suffered as a result of the disciplinary proceedings brought against him. The Respondent did not intend to practise as a solicitor again.

5. It was proposed that the Applicant would invite the Tribunal to consider the details of three transactions and would indicate its view that the fourth transaction was similar in its nature.

6. The Respondent had unsuccessfully contested the Law Society's decision to intervene into his practice and had become liable for substantial costs in that regard. The Respondent was without means. The Law Society had agreed not to seek to enforce those costs unless the Respondent came into means. It was intended that that position should also be reflected in the Tribunal's order for costs against the Respondent.

7. In deciding how to proceed with this matter the Tribunal was invited to consider the case of In Re Carecraft Construction Company Limited Chancery Division (WLR 11th February 1994) and The Secretary of State for Trade and Industry -v- Rogers (Court of Appeal) WLR 13th December 1996, both of which related to the disqualification of company directors.

8. In Carecraft, it was held that, although in an application for a disqualification order (under the Companies Act 1986) it was impermissible for the parties merely to seek a consent order, the Court had jurisdiction to deal with such an application by a summary procedure where it was satisfied that the undisputed evidence was sufficient to establish unfitness if the potential impact of any disputed evidence would not substantially affect the seriousness of that unfitness and it was appropriate to deal with the case summarily.

9. In the case of Rogers it was said that where a "Carecraft" procedure is employed, an agreed statement of facts is placed before the Court and the Court is informed of the bracket into which the parties agree the disqualification period should fall. The function of the Court in directors' disqualification proceedings is adversarial but if an agreed statement of facts is placed before the Court it is not for the Court to insist that other allegations be pursued. It is the function of the Judge to deal with the case that is put before the Court by the parties. There is no impropriety in directors' disqualification cases - or in any other civil proceedings - in placing before the Court an agreed statement of facts and inviting the Court to deal with the case on that basis. Sir Richard Scott pointed out that he had in previous cases expressed the belief that it would be very sensible in a case where the Secretary of State and the director agree that the director's conduct warrants, and the public interest would be satisfied by, a disqualification for a specified period if the disqualification could be dealt with by way of undertaking - but a statutory amendment would be necessary for this provision.

10. The Carecraft procedure could effectively and without the Judge's consent limit the facts on which the Judge can base his judgement as to the order that should be made, but it cannot oblige the Judge to make the agreed order.

11. It was recognised that the Judge, and in this case the Tribunal, would be assisted by being able to read the case in advance of the hearing. The Tribunal had done so on this occasion and had read all of the documents relating to the four transactions referred to above.

The Law Society's case on the agreed basis

The Respondent's background

12. The Respondent was admitted as a solicitor on 1st December 1970. He had practised alone since 1995 under the style and title of Wilson-Smith & Co at 55 St James's Street, London, SW1A 1LA. His name remained on the Roll of Solicitors. On 22nd March 1999 the Law Society intervened into the Respondent's practice on the grounds that it had reason to suspect dishonesty in connection with his practice as a solicitor. Mr Wilson-Smith commenced proceedings to have the intervention notice withdrawn but on 21st February 2000 those proceedings were dismissed.

Warnings given to the Respondent by the Law Society

13. On 4th October 1996, following an inspection, the Respondent was given a specific warning about his involvement in bogus bank instrument transactions.

14. In October 1997 the Respondent was sent the "yellow card warning" about bank instrument transactions. His involvement in such transactions continued despite these warnings.

15. The warnings were straightforward and pointed out that if the profits from an asserted transaction appeared to be "too good to be true" that was likely to be the case. Words and phrases commonly used by fraudsters were listed. A solicitor targeted by such persons should ask "why involve me as a solicitor?" The Respondent had been in discussion with a Senior Investigation Officer of the Law Society following a warning by that Officer.

The four transactions

16. Mr Sobey and Mr Sanchez were individuals who had introduced transactions to the Respondent. Mr Sanchez had been a client. Mr Gibbons had been in a similar position through his company "Tidal" which was an offshore company. They had introduced transactions and they and their associates shared in transactions in which large fees were charged for them to produce "bank advices" which stated that large funds were held in bank accounts by third parties and how access to such funds might be obtained. Applicants for access to such funds paid arrangement fees and got an advice document but no access to those funds. The fees charged were distributed to individuals and their companies.

17. The Respondent acted in the Bradwell/Kim, Young, M Toro Limited and Megacash transactions. The Respondent accepted that he should have known or suspected that the transactions were not viable as they provided no genuine commercial benefit to those who applied for access to funds. Applicants received either nothing or worthless documents and the substantial fees which they had paid were then distributed amongst those concerned in the introduction of the transaction.

18. The Respondent further accepted that in relation to Kim, Young, M Toro Limited and Megacash he acted in circumstances where there was a conflict between his financial interest in the transaction and his duties to the parties.

Transaction 1 - Bradwell/Kim

19. The Respondent's client was Bradwell Commercial Enterprises Limited, a company said to have been registered in the British Virgin Islands. Mr Sanchez was the man behind Bradwell. He had been prosecuted by the Securities Exchange Commission in connection with bank instrument fraud. On 4th August 1998 the Respondent received US$2million into his client account from Mr Kim. Mr Kim was seeking to raise funds for "projects" by investing the money into a "funding advice" which would give him access to a "private placement investment facility".

20. By an agreement dated 28th August 1998 Bradwell agreed to provide Mr Kim with two "funding advices" each in respect of $50million issued by Security Services Network Inc ("SSN") in return for an arrangement fee of US$1.9million.

21. The "funding advices" issued under the agreement stated that $50million was held in an account in the name of Mr Kim. If that money existed it would have been of no use to Mr Kim as under the agreement he was not allowed to "draw down charge transfer or encumber any of the funds the subject of the funding advices".

22. The Respondent's role under the agreement was to "verify" that the "funding advice" issued by SSN conformed to the agreement and to release the arrangement fee to Bradwell if it did. The agreement described his duties as "administrative in nature". The agreement provided that Bradwell would be entitled to the arrangement fee even if Mr Kim was not able to make use of the "funding advice". That inevitably would be the case.

23. On 28th August 1998 the Respondent transferred the sum of US$1,899,038.30 from client account into a "stakeholder account". On the same day that sum was transferred back to client account and credited to Bradwells ledger. The Respondent disbursed the arrangement fee on 1st September 1998 to a number of entities most of which had no apparent connection with the transaction. The Respondent was paid US$100,000 for his role as "escrow agent".

24. Mr Kim had been unable to put the "funding letters" to any commercial use.

Young and M Toro Limited

25. By an agreement made on 3rd September 1998, Tidal agreed to supply to Mr Young a "bank advice" issued by the Royal Bank of Canada and other documentation in exchange for an arrangement fee of US$400,000. The Respondent agreed to act as so-called "escrow agent".

26. The letter from the Royal Bank of Canada and other documentation supplied were commercially worthless.

27. Clause 3.5 of the agreement contemplated that Mr Young would be able to exchange the money referred to in the "bank advice" for vaguely defined "negotiable bank instruments" within the "validity period" (15 days from the date of "issue" of the bank advice). The agreement did not give Mr Young any legal entitlement to the money referred to in the "bank advice".

28. On 11th September 1998, the Respondent wrote to Mr Combs, the introducing agent, confirming that he had "verified" the "bank advice" supplied under the agreement.

29. The Respondent disbursed the arrangement fee to a wide circle of individuals and entities most of whom had no apparent connection with the transaction. US$10,000 was paid to "Legals Wilson-Smith".

M Toro Ltd

30. The Respondent acted for Tidal (Mr Gibbins) as "escrow agent" in these bank advice transactions. Although the Young and M Toro Limited transactions were separate each of those applicants had been represented by Mr Combs. Mr Martin Halley brought proceedings against the Law Society in which Mr Halley claimed that money in the Respondent's client account at the time of intervention represented his commission on the transactions. Mr Halley and Mr Gibbins had given evidence in support of that claim. The Court also heard evidence from Mr Morrow on behalf of M Toro Limited. In his Judgment dated 1st February 2002 the Honourable Mr Justice Lloyd found that the bank advices and other documents supplied under the agreements were commercially worthless and that the agreements had been induced by a deceitful implied representation by Mr Gibbins and Mr Halley that they believed that there was a prospect that the applicant could obtain access to the money referred to in the bank advices, whereas they knew in reality they could not. The implied representation was founded on the fact that Gibbins and Halley were involved in putting together the agreements.

31. The Court did not hear evidence from the Respondent and made no findings in relation to his involvement.

32. The transaction was summarised by the learned Judge as follows:-

"The agreements are not dated, but they seem to have been signed on 13th November 1998. There are two agreements, a Principal Agreement, between Tidal and Toro, and an Escrow Agreement between those two parties and Mr Wilson-Smith. … Toro is referred to as "the Client" but I will use the label "the Applicant" for the party in this position. Mr Wilson-Smith was the Escrow Agent, and that is the appropriate term to describe him. There is another entity referred to in the agreements, though not a party, sometimes called the funder, but whom I will call the Account Holder. Two banks also feature in the agreements, first the Issuing Bank, which was in all of these cases to be the Royal Bank of Canada, and would be a bank at which the Account Holder had an account. The other bank is called the Receiving Bank, whose identity was to be notified by the Applicant to the Escrow Agent.

The Toro contract may be summarised as follows, starting with the Principal Agreement.

(i) First, the Applicant was to pay to the Escrow Agent an Arrangement Fee, in this case $750,000, which was to be held and dealt with in accordance with the Escrow Agreement.

(ii) Tidal was then to procure the issue by the Issuing Bank of three Bank Advices; these were three letters addressed to the Account Holder each evidencing the sum of $10million, in the form set out in Appendix A. The form there set out was in fact to be addressed to Mr Combs, an agent acting on behalf of the Applicant. The definition of Funds in the agreement makes it clear, if that were needed, that the three Bank Advices are to relate to three separate sums of $10million.

(iii) Next Tidal was to see to the issue by the Account Holder of what was defined as the Corporate Documents. These were also to conform with forms set out in Appendices. One was a Board resolution and the other a letter of appointment. I will come to their details later. There was to be one of each in relation to each of the three Bank Advices.

(iv) The Bank Advices and the Corporate Documents were to be delivered to the Escrow Agent, who was then to verify that the Bank Advices were duly issued by the Issuing Bank. Having done that he was to deliver the Bank Advices to the receiving Bank and the Corporate Documents to Mr Combs or the Applicant.

(v) These steps were to be completed within seven banking days, save that delivery to the Receiving Bank had to await notification by the Applicant of the identity of that bank. It had to be a Western European Bank rated no less than AA- by Standard & Poors or Moody's and acceptable to the Issuing Bank.

(vi) Under the terms of the Escrow Agreement (more specific in this respect than the Principal Agreement) if the Bank Advices were issued by the Issuing Bank

within seven banking days after the date of the signature of the Escrow Agreement and payment of the Arrangement Fee, and conformed in all material respects to the text set out in Schedule A to the Principal Agreement, and if they were verified by the Escrow Agent as having been issued by the Issuing Bank, then the Escrow Agent was to release the Arrangement Fee to Tidal. If those conditions were not satisfied, then the Arrangement Fee was to be repaid to the Applicant.

(vii) According to the Principal Agreement, the Bank Advices would be effective and valid for use by the Applicant for the Validity Period, which was 15 international banking days from and including the date of issue of the Bank Advices. The use which could be made of them, as set out in clause 3.6, was that the Applicant is to be entitled to exchange the funds represented by the Bank Advices for Negotiable Instruments, conforming with the description in the Principal Agreement, in the principal amount of those funds.

(viii) Negotiable Instruments were defined as meaning unconditional negotiable bank instruments to be issued by a Western European or American Bank rated no less than AA- by Standard & Poors or Moody's, each in the Principal Sum of $10million, acceptable to the Issuing Bank and payable within not less than one year from the date of delivery thereof to the Issuing Bank pursuant to the agreement and each carrying interest at 8% per annum.

(ix) The Principal Agreement contains a number of other provisions to which I should refer. By clause 3.7 Tidal is stated to have no interest in the transactions or business of the Applicant for or in connection with which the Bank Advices are to be issued, otherwise than in connection with the acquisition by the Account Holder of any Negotiable instruments delivered in exchange for the Funds. By clause 3.8 the Applicant accepts that it is not entitled to receive the original or any copy of any Bank Advice, nor to see the originals before delivery to the Receiving Bank except upon request in writing to the Escrow Agent at his office. By clause 4, all communications with the Issuing Bank are to be solely from an officer of the Receiving Bank and in writing, and any attempt by or on behalf of the Applicant to communicate otherwise with the Issuing Bank renders the agreement null and void at once and terminates the Validity Period. The terms of the agreement are also said to be confidential. Clause 5 makes time of the essence of all dates or periods, requires that any amendment or variation of the agreement be in writing and signed by both parties, and includes an entire agreement provision and an acknowledgement that neither party has entered into the agreement in reliance on any representation warranty or understanding by the other except as expressly set out in the agreement.

(x) The Principal Agreement also contains a series of warnings. These are to the following effect.

(a) The Arrangement Fee will become payable to Tidal under the Escrow Agreement notwithstanding that the Applicant may not deliver

acceptable Negotiable Instruments, request the funds to be exchanged or make any other use of the Bank Advices during the Validity Period.

(b) Tidal's only representation is that the Bank Advices will be duly issued by the Issuing Bank and delivered to the Escrow Agent and that the funds will be available "as therein provided".

(c) Tidal has only agreed to seek to arrange for the issue of the Bank Advices and Corporate Documents as specified, and has not given any advice to the Applicant as to the availability or otherwise of any Negotiable Instruments for exchange against the Funds.

(d) Tidal gives no assurance as to whether or not the Bank Advices will be suitable for the needs of the Applicant and has given no advice as to whether or not it is in the Applicant's interest to proceed with the transaction set out in the Principal Agreement or the transaction or investment transaction or project finance or otherwise howsoever proposed by the Applicant as the purpose for which the client has requested the issue of Bank Advice, details of which have not been provided by the Applicant to Tidal.

(e) Tidal has not given and is not qualified to give any investment advice to the Applicant.

(f) The Applicant confirms that it has obtained its own legal and financial advice or that it has had sufficient opportunity to do so before entering into the agreement.

(ix) The Escrow Agreement includes various relevant provisions, besides those setting out the Escrow Agent's duty to dispose of the Arrangement Fee as described above. Thus, the other parties acknowledge that the Escrow Agent is acting as stakeholder only and shall be under no further obligation once he has paid the Arrangement Fee in accordance with the agreement. His duties are only those specifically provided for in the agreement, and he is under no liability to the Applicant or Tidal for any action taken or omitted to be taken except for wilful misconduct or gross negligence (though clearly that would not exempt the Escrow Agent from liability in contract for paying the Arrangement Fee away inconsistently with the terms of the agreement). It is acknowledged that, except as regards the drafting and any amendment of the agreements, the Escrow Agent is not the solicitor for either the Applicant or Tidal, has not advised either on the terms of the agreement and owes neither of them any professional or other duties except those expressed in the Escrow Agreement, nor has either of them entered into the Escrow Agreement or the Principal Agreement in reliance on any representation or advice by the Escrow Agent. There are also similar disclaimers to those in the Principal Agreement set out at paragraphs (x)(d) and (e) above. The Applicant represents that the Arrangement Fee comprises funds which are "clean, clear and of non-criminal origin and freely and legally available to it for the purposes of the Principal Agreement". Clause 8 records that Tidal is to be responsible for the fees of

the Escrow Agent for acting under the Escrow Agreement and all bank charges and the like.

(xii) The form of Bank Advice prescribed by the Principal Agreement and set out in Schedule A was to be addressed, as above mentioned, to Mr Combs. It would state the name of the Account Holder, the number of the account and the account reference. The text would confirm that the "above company", that is to say the Account Holder, "is considered highly respectable and trustworthy and undoubted for its normal business engagements", and that the principal had been a client of the Royal Bank Financial Group for many years. It would confirm specifically that "there is within Royal Bank Financial Group the availability of US$10,000,000 free and clear of all encumbrances".

(xiii) The form of Board resolution was to be in the following terms, apart from formalities:

(a) The corporation will consider participating in a US$10million bank guarantee investment program, subject to the following conditions:

A. Recommendation by the president of the corporation

B. Satisfactory due diligence by the corporation's law firm

C. The guarantee is acceptable to the bankers for the corporation

(b) The president is mandated to enter into such discussions and negotiations and if necessary to appoint an agent to assist in such process.

(c) The funds mentioned at (a) above will be available for a period of 15 international banking days.

(d) The president is to report back to the board within 15 international banking days on the status of any discussions that have taken place.

(xiv) The other Corporate Document was a letter of appointment, implicitly under paragraph (b) of the resolution set out above. The agent to be appointed was Mr Combs. He was appointed as agent for the "sole purpose of negotiating a 108% negotiable bank instrument". That instrument is to be acceptable to the corporation, its bankers and its legal advisers. It is to be issued by a Western European bank rated AA- or better, and the documentation relating to the bank guarantee investment programme is not to incur any financial liability for the corporation other than purchase of the 108% negotiable bank instrument. Any profit generated by Mr Combs through the investment programme he is entitled to keep.

(xv) Despite the references to his appointment for the "sole purpose" mentioned above, the letter goes on to authorise him to create, negotiate and sign all documentation appertaining specifically to the investment programme which

> will come into effect only after the exchange of the $10million of corporate funds. The letter of appointment also confirms that the Bank Advice and the letter of appointment are valid for 15 banking days from their date, and that the Account Holder will not change its financial position, which will remain as stated in the Bank Advice, during the period of 15 banking days from that date.

The Principal Agreement and the Escrow Agreement were signed on behalf of M Toro Ltd by Mr Combs, pursuant to an authority issued by the company's director, based in the Bahamas. They were signed on behalf of Tidal by its director, Star Services Inc, also incorporated in the BVI, its stamp being authenticated by an initial in a way which is apparent from several documents in the case. Mr Wilson-Smith signed the Escrow Agreement for himself as Escrow Agent.

The Account Holder in this transaction was to be a company called Lardel Holdings Inc ("Lardel"). It is associated with a Canadian resident, Mr William Deluce. Another of his companies, Chaynemac Financial Inc ("Chaynemac"), was the Account Holder for two other transactions with which I am concerned. The Corporate Documents and Bank Advices were issued on 16th November 1998. The Bank Advices all bear the same account number but they bear different numbers as the account reference, namely 304 909 02, 03 and 04. There was in fact a fourth Bank Advice, corresponding exactly with the other three, but with the account reference 304 909 05; this represented a repeat of the Young contract, though here by reference to Lardel, rather than Chaynemac as on the first occasion. In the course of the evidence, the question was touched on whether these separate Bank Advices showed the existence of separate amounts of $10million or whether they could or did all relate to the same single amount. I will deal with that question later, on which Mr Dutton sought to have further evidence admitted after the close of the trial. On the basis that 16th November was the issue date of the Bank Advices, it seems that the Validity Period of 15 "international banking days" probably expired on 7th December, ignoring weekends and also 25th November as Thanksgiving Day in the USA, but nothing turns on the precise expiry date of that period.

On 18th November 1998 Mr Wilson-Smith wrote to the director of Toro in the Bahamas, and also to Mr Charles Moro, confirming that he had the hard copies of the Bank Advices, that they conformed with the Principal Agreement and that he had verified their issue with the Bank. He confirmed that he would be releasing the Arrangement Fee to Tidal. He awaited the identification of the Receiving Bank to whom the Bank Advices were to be sent, and he held the Corporate Documents to be handed over to Mr Combs, to whom facsimile copies had already been sent. So far as the documents show, no Receiving Bank was ever identified to him, so he presumably never parted with the original Bank Advices.

His files include a single page addressed to him by Tidal, dated 19th November, but faxed to him in the morning of 20th November, giving instructions as to how to deal with the Arrangement Fee on this transaction. The page bears the initialled stamp of Star Services Inc on behalf of Tidal. The payments directed, which left some $6,000 or so unallocated, were as follows:

i) About $134,400 to Mr Martin Gibbins or to his order;

ii) $154,000 to Mr Halley;

iii) $50,000 to Mr Wilson-Smith;

iv) $136,000 to Mr Deluce;

v) $43,500 to a Mr Colin Youell, who had played a part in effecting the introduction of Mr Gibbins to Mr Deluce;

vi) $168,000 to an entity referred to as MCY which according to the evidence is a joint venture of some kind involving Mr Gibbins, Mr Deluce, Mr Wilson-Smith and a Mr Imdad Ullah;

vii) $58,000 to persons whose connection with the transaction is not altogether clear but which may represent payments for the benefit of Mr Ullah.

Mr Wilson-Smith released the Arrangement Fee to Tidal by transferring it from his stakeholder's account to his client account, giving the instruction on 19th November. On 20th November he caused to be made entries in relation to his client account which showed the transfer of $154,000 to the credit of Mr Halley. That is part of the credits which, after several payments out, make up the balance claimed by Mr Halley against the Law Society."

Megacash/Tidal

33. Megacash Network Inc appeared to have been a Panamanian company, with a trustee, Dennis Perrenoud, in Switzerland and an association, the precise nature of which was unclear, with "the Asiatic Investment Trust Gesellschaft" based in Vaduz, Liechtenstein.

34. The essence of the agreement in which the Respondent acted as "escrow agent" was that Megacash agreed to buy a $30million bank advice for $900,000. Rhodes Barlow solicitors were initially to have acted as "escrow agent" but the Respondent took their place. The agreement contemplated that the issue of a US$30million bank advice by the Bank of America would be exchanged for a bank instrument. Mr Gibbins later told the Respondent that the Royal Bank of Canada would issue the bank advices. An account or accounts held by Mr Deluce and his companies Chaynemac and Lardel with the Royal Bank of Canada were used in many of the bank advice transactions. This transaction had the elaborate further feature that Chaynemac (Deluce) purported to appoint a Mr Horst Rautenkranz of the Asiatic Development Trust Gesellschaft as agent for the purpose of negotiating a 106% negotiable bank instrument acceptable to the corporation and to create, negotiate and sign all documentation appertaining to an undefined investment programme, purporting to involve "the World Peace Foundation", after the exchange of the money referred to in the advice for the bank guarantee.

35. On receiving the bank advice, by a letter dated 14th August 1998 the Respondent wrote to Megacash confirming that the "funding bank advices" were "genuine".

36. The fees were distributed widely to various people and entities, most of whom had no evident connection with the transaction: $75,000 to Lardel; $75,000 to a Salem Management Company's account with Barclays in the Turks & Caicos Islands; $56,800 to Colin Youell; $85,000 to Imdad Ullah; $35,000 to Mr Shiffrin; £200,000 to MCY which, according to Mr Gibbin's evidence in the Halley proceedings, was an entity in which the Respondent, Mr Gibbins, Imdad Ullah and Mr Deluce had an interest; $203,000 to be held to the order of Kingston; $40,000 to be held to the order of the Respondent, and the remaining balance to be held to the order of Tidal.

The Submissions of the Applicant

37. The Respondent's involvement in the transactions, the subject of the admitted facts and the admitted allegations, even without a finding of dishonesty demonstrated conduct unbefitting a solicitor at such a serious level that the appropriate sanction to be imposed upon the Respondent was that of a striking off order.

The Submissions of the Respondent

38. The Respondent accepted the compromise agreed between the parties and invited the Tribunal to endorse it.

39. The Respondent sought to put that compromise in perspective.

40. The Respondent accepted that his admitted conduct unbefitting a solicitor was of such severity that a striking off order would be the inevitable consequence.

41. With hindsight the Respondent had come to accept that he should have suspected that these transactions were not commercially viable. He had to accept that he himself had been in a position of conflict as outlined by the Applicant.

42. The Respondent did not come from a securities-based background. He was a sole practitioner in private practice. The Respondent had had partners earlier on but he was on his own when dealing with the matters before the Tribunal. Indeed the fact that he was a sole practitioner was probably one of the reasons that he was selected by Mr Gibbins and Mr Sanchez.

43. The Respondent had already suffered a huge penalty for his conduct. His Practising Certificate had been suspended since the Law Society's intervention into his practice. That intervention had taken place a long time ago. It had been a long time for the Respondent to be in professional limbo. He had undergone the ordeal of a criminal investigation, prosecution and future trial. A verdict of not guilty against him had been entered but it was accepted that that verdict had been directed and there had been no contest. The Respondent had been represented and he had contested the charges made against him.

44. The Respondent had paid an enormous price elsewhere. He had been living in hell since the intervention. The situation had been made worse by his arrest. The disciplinary proceedings had been long drawn out. The Respondent had been subjected to immense pressure and as a result his own health and his family had suffered. His finances had suffered. The Respondent had used up such financial resources that he had on legal fees in defence of his position.

45. The purpose of the submissions made on behalf of the Respondent had not been to seek to mitigate the position but had been made in order to achieve a sense of completeness. It had been important to the Respondent that he had not had to face a finding of dishonesty. The Tribunal was invited not to make such a finding.

46. The Tribunal had been invited by the Law Society to make the findings set out in the written compromise document. The Tribunal was invited to take the view that such findings would do justice to the case.

47. The Tribunal was further invited to stay the allegations upon which they were invited not to make a finding and to endorse the proposed order for costs.

The Tribunal's Decision

(a) As to the compromise

48. The Tribunal was aware that initially the Law Society's allegations had been based on a large number of transactions in which the Respondent had become involved which the Law Society asserted were "bogus" and were the types of transactions against which solicitors had been formally warned.

49. During the course of the disciplinary proceedings the Tribunal had endorsed an approach in which the Applicant would seek to rely on only five transactions to establish the allegations made.

50. At the commencement of the substantive hearing the Tribunal was asked to accept certain admissions by the Respondent and to consider the detail of only four transactions.

51. The Respondent's admissions included one that he should have known or suspected that the transactions were not viable commercial transactions and that applicants for funds received either nothing or worthless documents, and the substantial fees which they had paid were then distributed amongst those concerned in the introduction of the transaction. As a solicitor he should not have been involved with them. He also acted where he had a conflict between his financial interest in the transaction and his duties to the parties.

52. The Respondent further admitted that he acted in a way that compromised his integrity, his good repute and that of the solicitors' profession.

53. Having considered the facts relating to the four transactions the Tribunal found itself in no doubt that the involvement of a solicitor in only one transaction of this type

would amount to conduct unbefitting a solicitor of such seriousness that the likely outcome would be that of a striking off order. Allowing a transaction of this type to cross the threshold of a solicitor's firm demonstrated, if not dishonesty, such crass stupidity on the part of the solicitor that that alone would render the solicitor unfit to continue as a member of the profession.

54. The Tribunal concluded that the public interest was served by having made available to it details of four transactions and the public interest would not be further served by a plethora of facts relating to other transactions or by finding further additional allegations substantiated against the Respondent. The airing of additional matters would not affect the sanction to be imposed on the Respondent. The public and the good reputation of the solicitors' profession would be protected by the imposition of the ultimate sanction to which the Respondent had agreed to submit.

55. The Tribunal was satisfied that the essence of the matters alleged against the Respondent was contained in the compromise document.

The Tribunal's Findings and its Reasons

56. The Tribunal found the allegations admitted by the Respondent to have been substantiated.

57. It does amount to serious professional misconduct on the part of a solicitor to allow his name or that of his firm to be associated in any way with the type of spurious transactions explained to the Tribunal in this matter.

58. The Respondent's position was aggravated by the fact that he had been given clear warnings that the transactions in which he became involved were fraudulent. It was noteworthy that instead of accepting such advice and refusing to deal further with any such matter, or the people involved in such matters, he sought to justify what he was doing and continued.

59. The documents passing through the Respondent's hands had no commercial meaning, they contained words and phrases recognised as those often employed by fraudsters in pursuit of their nefarious business and those words themselves had no real meaning.

60. Whilst it is probably widely and well known the Tribunal feels it important to reiterate conclusions which it has made on earlier occasions, namely that a solicitor should not permit his client account to be used where there is no underlying transaction save in circumstances where he is absolutely satisfied that he is holding money on behalf of a client for a proper purpose and is disbursing it for a proper purpose. A solicitor should have no role to play in the collection and disbursement of monies in a situation where he is not receiving fees for the benefit of his advice. It is not for a client to explain the nature of a transaction to a solicitor but rather the solicitor's role is to explain the nature of a transaction to the client. It can be described as nothing other than crass stupidity to accept a role as, for example, an "escrow agent" when the solicitor cannot know what that means as, indeed, that expression has no meaning in English law. It is, in any event, serious professional misconduct for a solicitor to accept instructions to undertake work in connection with which he has no knowledge,

expertise or experience and where the only reason for his involvement is to add a "cloak of respectability" and thereby induce the victims of fraud to take part.

61. The Respondent himself accepts that he should have known or suspected that the transactions in which he became involved were not viable commercial transactions and that he acted where there was a conflict between his financial interest in the transaction and his duties to the parties. He accepted that he had been guilty of conduct unbefitting a solicitor and had acted in breach of Practice Rule 1.

62. The Tribunal concluded that in all of the circumstances it could exercise its duties to protect the public and the good reputation of the solicitors' profession only by ordering that the name of the Respondent be struck off the Roll of Solicitors.

63. The Tribunal further ordered that the balance of the allegations in respect of which it had not made any finding be stayed.

64. The Tribunal further ordered that the Respondent do pay the costs of and incidental to the 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) on the basis that this costs order is not to be enforced without the agreement of the parties or the permission of the Tribunal.

65. The Tribunal's formal Order, dated and filed with the Law Society on 6th November 2006 was as follows:-

    The Tribunal Orders that the Respondent Michael Wilson-Smith of Dane Hill, Sussex, (formerly c/o 55 St James Street, London, SW1A 1LA) 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 on the basis that this costs order is not be enforced without the agreement of the parties or the permission of the Tribunal.

Dated this 22nd day of January 2007
On behalf of the Tribunal

R B Bamford
Chairman