No. 8827/2003

IN THE MATTER OF ADEWOLE ADENLE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr I R Woolfe (in the chair)
Miss T Cullen
Mrs C Pickering

Date of Hearing: 16th March 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors (the "OSS") by Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea SS2 6HZ on 17th June 2003 that Adewole Adenle solicitor whose address was notified in the application to be Tower Gardens Road, London, N17 but was subsequently notified to be Cumbrian Gardens, London, NW2 might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 25th September 2003 the applicant made a supplementary statement containing a further allegation. On 27th November 2003 the applicant made a second supplementary statement containing a further allegation. The allegations set out below are those contained in the original Rule Four Statement and the two supplementary statements.

The allegations were:-

(1) In his practice as a solicitor he has acted dishonestly in that:-

(a) he has knowingly utilised clients' monies for the benefit of clients other than those entitled thereto;

(b) he has sought to conceal the existence of a shortage on clients account by inter-client transfers other than in accordance with the Solicitors Accounts Rules;

(c) he has sought to deliberately mislead Officers of the Forensic Investigation Department of the Law Society as to alleged repayment of a shortage demonstrated to exist on client account.

(2) Has acted in breach of the Solicitors Accounts Rules 1998 in that:-

(a) contrary to the provisions of Rule 22 thereof he has withdrawn from clients account monies other than in accordance with the provisions thereof.

(b) has acted contrary to the provisions of Rule 30 of the said Rules relating to transfers between clients account of monies held

(3) Has acted contrary to the provisions of Principle 15/04 of the Guide to the Professional Conduct of Solicitors 8th edition (1999) in that he has acted where his own interests conflicted with the interest of the client or potential client in that he has acted in a conveyancing transaction involving the loan of monies to a client and in respect of which transaction he professed to have a personal interest whilst failing to ensure that the client concerned took independent legal advice.

(4) In respect of each and all of the aforementioned has been guilty of conduct unbefitting a solicitor.

(5) He has failed to observe or unreasonably delayed in the observation of an undertaking [dated 20th May 2002] given by him in the course of his practice as a solicitor and that accordingly he has been guilty of conduct unbefitting a solicitor.

(6) He has failed to observe or has unreasonably delayed in the observation of an undertaking [dated 21st May 2002] given by him in the course of his practice as a solicitor and that accordingly he has been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Gerald Malcolm Lynch appeared for the applicant and the Respondent was represented by Mr Chima Umezurike of Counsel instructed by Vincent Doherty & Co. Solicitors.

The evidence before the Tribunal included the oral evidence of Mr Becconsall, Mr Briggs, Mrs Soord and the Respondent.

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

The Tribunal order that the Respondent, Adewole Adenle of Cumbrian Gardens, London, NW2, solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry (to include the costs of the Law

Society's Investigating Accountant) to be subject to a detailed assessment if not agreed between the parties.

Preliminary Matter

The Respondent's Submissions

1. An application was made on behalf of the Respondent that the notes made by Mr Briggs, a Law Society's Investigation Officer, of the interview which took place between Mr Becconsall, a Law Society Investigation Officer, and the Respondent on 27th February 2003 should be excluded.

2. The application was made pursuant to Article 6 of the European Convention on Human Rights and Fundamental Freedoms 1950 on the basis that the admission of those notes into evidence would be a breach of the Respondent's fundamental right to a fair trial.

3. The Respondent's civil rights began with the Law Society's formal investigation and that investigation had to be concluded fairly and in a manner which was not in breach of Article 6. The allegations of dishonesty made against the Respondent were based on what had been recorded. Dishonesty was a very serious allegation.

4. The interview had been conducted unfairly. The Respondent had not been given a fair opportunity of dealing with the matters asked of him during the interview. It would have been reasonable for the OSS to write a letter setting out the nature of any complaint and thereafter give the Respondent an opportunity to look at the relevant file and respond within a set period of, for example, seven days.

5. The Investigation Officer's visit to the office had been unannounced. The Respondent had not been given notice of the interview. He did not have the benefit of any caution nor was anyone present to represent him and look after his interests.

6. The Respondent had complained of being tired at the time of the interview.

7. The Respondent had not been given the opportunity to deal with individual client files.

8. The Respondent had not been given the opportunity to comment on the accuracy of the interview notes.

9. The first time the Respondent had seen the interview notes was when he was served with Mr Briggs's witness statement.

10. If the Respondent had been facing a criminal charge he would not have been interviewed unless a solicitor was present or, indeed, unless he had been told what the charges were and he would have been entitled to remain silent. If the Respondent had been the director of a company and was being examined by the Serious Fraud Office he would have been able to exercise his right to remain silent.

11. For the Applicant to be allowed to rely on Mr Briggs' notes was unfair and their admission would lead to the inevitability of an unfair trial.

12. The Tribunal was reminded that the standard of proof in disciplinary proceedings was a very high one.

The Applicant's Submissions

13. The Applicant said that the original substantive hearing had been fixed some time ago. The Respondent had been represented and had been given every opportunity to respond. Indeed there had been a great deal of correspondence passing between the OSS and those representing the Respondent.

14. Issues of credibility and truth were identified by the Investigating Officer of the Law Society's original report. There had been no previous objection to the admissibility of the notes.

15. With regard to any suggestion that a fair trial would not be conducted pursuant to the requirements of Article 6 where there was an assertion that the Investigation Officer's report or notes taken at the interview with the Respondent were inaccurate it was essential that the Tribunal had before it all relevant evidence of what happened at the 27th February 2003 interview. The only available written evidence was the note prepared by Mr Briggs.

16. The Applicant accepted that the Respondent had not been given an opportunity to challenge those notes at the time they were made.

17. However if those notes were excluded that would be an exclusion of the only written evidence of what had taken place at the interview.

18. If the Respondent wished to challenge the veracity or accuracy of the notes he could do so. Mr Briggs was to be called as a witness and he could be cross examined.

19. With regard to the suggestion that the Respondent had been prejudiced by not being formally cautioned, the Respondent was a solicitor and any solicitor is under an obligation to co-operate with the Law Society, his own professional body. The interview was part of the inspection carried out by the OSS. The fact was that disciplinary proceedings may or may not ensue. No charges or allegations had been formulated at that stage.

The Decision of the Tribunal in the Preliminary Matter

20. The Tribunal assured the Respondent that it would take care to ensure that his right to a fair trial was properly protected. The contemporaneous note made by Mr Briggs clearly was admissible in evidence. The Respondent had not been put to any real disadvantage by not being supplied with that note at an earlier stage. He had not attended the meeting and the allegations had been known to him for some time. The Tribunal would ensure that the Respondent had every opportunity to challenge the contents of the note and to cross examine the author of it at the hearing.

21. The Tribunal ruled that the notes taken by Mr Briggs at the meeting on 27th February 2003 should not be excluded.

22. The matter proceeded to the substantive hearing.

The Agreed Facts

23. The Respondent, born in 1972, was admitted as a solicitor in August 1998. Until 28th February 2003 the Respondent practised in partnership with Malcolm Davis under the style of Samuel Davis at 2 Dorset Square, London NW1 and 25 West Cottages, West Hampstead. The Law Society intervened into the Respondent's practice on 11th March 2003. Although there was a partnership with two offices, in effect the operation was that of two separate firms. Malcolm Davis operated an office at 36 Watford Way NW4 and maintained his own separate bank accounts and internal accounting system. Mr Davis continued to run his practice at the Watford Way address and his practice was not involved in the intervention.

24. Pursuant to notice duly given an Investigation Officer, Mr Becconsall, from the Forensic Investigation Department of the Law Society inspected the books of account of the Respondent and of Malcolm Davis. The inspection began on 26th February 2003. The Investigation Officer prepared a report dated 3rd March 2003, a copy of which was before the Tribunal. The Investigation Officer found that the separate books of account of Malcolm Davis were in compliance with the Solicitors Accounts Rules in all material respects. The Investigating Officer reported a number of breaches and concerns relating to the Respondent's part of the firm.

25. Mr Davis and the Respondent had been in partnership since the 1st November 2001. The Respondent had responsibility for the supervision of the offices at Dorset Square and West Hampstead. He conducted an immigration and conveyancing practice assisted by a staff of thirteen including three assistant solicitors and an unqualified assistant, Alexander Bush.

The Evidence before the Tribunal

26. The Investigation Officer found that the books of account for the Dorset Square and West Hampstead offices were not in compliance with the Solicitors Accounts Rules.

27. The list of client ledger balances produced as at 31st September 2002 recorded one hundred and nine client debit balances totalling £396,243.83. Those debit balances were no longer recorded as at 31st October 2002. The Respondent had arranged for a series of what appeared to be inter-ledger transfers to be made which had the effect of eliminating the debit balances as at 31st October 2002, the end of his financial year.

28. It appeared to the Investigation Accountant that the inter ledger transfers had been made between unconnected clients for the sole purpose of concealing a client account shortage. In his oral evidence Mr Becconsall said that he believed he had stumbled upon an example of "teeming and lading".

29. In addition to the client account debit balances there was a further shortage of £232,000 which had arisen in relation to a conveyancing transaction involving Alexander Bush in which the Investigation Officer believed the Respondent had a personal interest.

30. In view of the Investigation Officer's findings and concerns he did not consider it practical to attempt to compute the Respondent's firm's liabilities to clients. He reported that the Respondent admitted that there was a minimum client account shortage of £416,615.70 as at 31st October 2002.

31. During the meeting between the Respondent Mr Becconsall and Mr Briggs on 22nd February 2003 the Respondent said that he had replaced the minimum cash shortage of £416,615.70. It was Mr Briggs's evidence that he had finished another inspection in London on that day and had been asked by Mr Becconsall to attend to assist with the interview of the Respondent. He had not taken any part in the interview save that he kept notes. His handwritten notes were before the Tribunal and he had arranged for them to be transcribed. He confirmed that the notes were taken contemporaneously in the presence of the Respondent. He said it would have been obvious to the Respondent that he was taking notes as he had placed his notepad on the Respondent's desk and would clearly have been writing in the course of the interview. Mr Briggs said that his notes were not a verbatim record. He accepted that he might not have recorded everything that was said but equally it was inconceivable that he would have recorded something as being said that was not said.

32. At the interview initially the Respondent said that £80,000 had been replaced. He subsequently said that £30,000 and £60,000 had been transferred from his own account to the client bank account.

33. When the Respondent was asked by Mr Becconsall to confirm the dates and the amounts of the replacements the Respondent had telephoned the Royal Bank of Scotland asking the bank to give him details of the credits to client bank account since the 1st February 2002. The Respondent identified two credits on 18th February 2003 which he said related to his efforts to replace the client account shortage. The first credit was a transfer of £60,000 which he said had been paid from his father's account. The second credit was a payment into client bank account of £124,615.70 some of which money the Respondent said he had borrowed from friends.

34. The Respondent had explained that the minimum cash shortage had arisen because funds had been paid out of client bank account when insufficient funds stood to the credit of the clients concerned.

35. The shortage was made up of two categories of deficiency. The first category related to the £232,000 in the matter relating to Alexander Bush. The second category related to client overpayments existing at the end of October 2002 amounting to £184,615.70. The Respondent told the investigating Officer that he had calculated that figure from a list provided to him by his cashier but he did not produce the calculation during the inspection.

36. The Respondent told the Investigation Officer that there were client account debit balances which he had not corrected because they related to clients of whose matters his fee earners had conduct. The Respondent had asked all the fee earners to contact those clients who had been overpaid so that the firm could be repaid and the shortages so caused rectified. The Respondent was not able to confirm the amount of the additional shortage represented by these matters.

37. The evidence before the Tribunal relating to the Alexander Bush matter included the Respondent's explanation given to the Investigation Officer that Alexander Bush had been a colleague who worked in the Respondent's office but was not a fee earner. Mr Bush was buying a property but did not have sufficient funds to complete. The Respondent said that he agreed to lend Mr Bush £232,000, the sum required to complete the purchase. This sum was shown as a credit to the ledger on 2nd December 2002 at the time the credit was made the client ledger recorded a debit balance of £232,660. The Respondent said he had paid an amount into client account after re-mortgaging his property. He also said that he had raised the money with a bridging loan.

38. At the interview when asked to produce the relevant file the Respondent could not locate it. The Respondent indicated at the time that at the time of the interview he had a personal interest in the property.

39. In his affidavit of 19th January 2004 the Respondent said that Alexander Bush was a "consultant fee earner" in his conveyancing department. The Respondent had confidence in his ability and integrity and did not exercise close supervision of him.

40. On or about October 2002 Mr Bush informed the Respondent that he was buying a property. Mr Bush told the Respondent that funds had been paid into client account and presented the Respondent with a completion statement and internal payment slips. The Respondent had not sought to verify the receipt of the payment but had no reason to doubt that the monies had been received. Early in the following January the firm's book keeper had brought it to the attention of the Respondent that there was a shortage of £232,660 originating from Mr Bush's transaction. The Respondent had immediately contacted Mr Bush who at first had acted as if he knew nothing about it but who later informed the Respondent that unbeknown to him the cheque he had paid in had not been honoured by his bank because there were insufficient funds in his account.

41. The Respondent requested Mr Bush immediately to return the monies but he did not do so. The Respondent immediately dismissed Mr Bush and arranged to obtain a loan from his bank secured on his own property to resolve the cash shortage. That sum was paid in on 12th February 2002. The Respondent went on to say that he had no personal interest in Mr Bush's property although he did intend to take a charge on the property to secure the monies provided by the Respondent to meet the shortfall on client account.

42. The Respondent said he had not at first been aware that Mr Bush's cheque paid into client account had not been honoured. The Respondent had approved the release of funds in connection with the completion of Mr Bush's purchase only later to discover that the money was not available.

43. In his affidavit of 26th January 2004 the Respondent said he had been told in about October 2002 by Mr Bush that he was buying a property and that the firm would be acting on his behalf. He said he had opened a file and would be dealing with the conveyancing. Mr Bush was both a client and a fee earner. In the past the firm had acted for him in the purchase of his properties and Mr Bush had acted as the fee earner. The firm used the Internet banking system (ROY Line) and the Respondent had verified that the sum of £210,000 had been credited to client account. Mr Bush's partner, EJ, had some funds in the Respondent's client account representing proceeds of sale from

her property. EJ authorised the Respondent to transfer about £40,000 from the money due to her into Mr Bush's account for his own use and benefit. The Respondent issued a cheque for £232,660 from client account to Mr Bush's vendor believing that the £210,000 together with the £40,000 would be more than enough to meet that payment. It was after the Respondent's firm's cheque cleared that the Respondent realised that Mr Bush's cheque for £210,000 had been dishonoured.

44. The Respondent said he had no personal interest in Mr Bush's purchase of his property. It was after he had used his own funds (which he had borrowed) to replace the funds that were used in paying for Mr Bush's property that the Respondent indicated to Mr Bush that he would be placing a charge on his property by means of a charging order. The Respondent intended to do that in order to recover the money from Mr Bush. Before the Respondent had been able to give any serious thought to that course of action the Law Society had intervened into his firm. In his affidavit of 12th March 2004 the Respondent said that he knew he was partly responsible for the shortfall relating to Mr Bush's matter because he had relied on the word of Mr Bush who until that time had not given the Respondent any cause to distrust him. The shortfall had arisen as a result of the Respondent's error of judgement.

45. The Respondent said that he did not have any interest in Mr Bush's purchase or the property he had purchased. The only interest the Respondent had was the remedy of the breach of the rules which occurred as a result of the Respondent authorising a withdrawal against monies paid in by cheque and then subsequently discovering that the cheque had been dishonoured. The Respondent had not changed his version as to how the shortage was corrected.

46. At the interview with the Investigation Officer when the Respondent was asked to confirm that the figure of £232,000 represented a client account shortage as at 31st October 2002 he said that it did not because the money had come in and that he had transferred it to a savings account. When asked to produce the passbook the Respondent said that it was held in a separate client designated account at the Royal Bank of Scotland. When pressed further on the matter the Respondent said that it had not been held at the firm and that he had used other clients' monies to complete the transaction.

47. The Respondent said that he did not mention a bridging loan but he referred to a loan from his bank which was secured on his property. The Respondent had not been able to find Mr Bush's file as Mr Bush had taken it with him when he had been dismissed from the practice. The Respondent said that he did not say that he had a personal interest in the property, but he said that he intended to take a charge on the property if Mr Bush did not return the monies the Respondent had had to pay. He had not taken that charge as the result of the intervention.

48. In his oral evidence the Respondent explained that he had known Mr Bush from another firm of solicitors and had known him for some time. He confirmed that at the date of the hearing Mr Bush still owed £232,000 to the Respondent.

49. With regard to the second category of shortfall, the Respondent agreed with the Investigation Officer that there had been a series of debit balances on client account totalling £184,615.70 which existed as at 31st October 20002. At the interview the Respondent said that the debit balances had been concealed by book transfers from

ledgers of unconnected clients. He also said that he thought that some of the transfers might have been made to correct mispostings and situations where a client had more than one ledger and credit balances on one ledger could offset a simultaneous debit balance on another ledger. In his report the Investigation Officer said that an examination of the transfers revealed that the majority appeared to have been made between unrelated clients.

50. In particular reference was made to a ledger for Mr Pascal Omigie. The Respondent said the firm had acted for that client in relation to the sale of a property which was being threatened with repossession by the mortgagee.

51. The ledger recorded that during the month of October 2002 there were eighty two transfers from the Omigie client ledger varying in amount between £3.97 and £80,340.00 and totalling £163,495.62. The Respondent said that the book transfers were made to correct client account debit balances on other clients' ledgers. The Respondent had not been able to locate the Omigie file when the Investigating Officer requested it.

52. At interview the Respondent was asked if there had been an attempt to cover up debit balances because 31st October was the firm's year end and his Reporting Accountant might well examine the balances at that date for the purposes of the Respondent's Annual Accountant's Report to the Law Society. In response to this question the Respondent said "Yes".

53. The Respondent said that he informed the Investigation Officer that Mrs Soord, a bookkeeper, had initially used the ledger of Mr Pascal Omigie as a suspense account for all monies received the source of which could not be identified. It was after the account had been fully reconciled that the ledger was renamed Pascal Omigie as the entries that remained on the ledger related to that client matter.

54. The Respondent denied that he said, "Yes" when asked if there had been an attempt to cover up debit balances because 31st October was the firm's year end.

55. The Respondent denied that he had admitted that the debit balances of 31st October 2002 had been concealed by book transfers from ledgers of unconnected clients and at no time during the interview did he reply "Yes" to the allegation that he attempted to cover up debit balances which occurred as at 31st October 2002 or at any other time.

56. The Respondent said that he had been introduced to Malcolm Davis at a time when he, Mr Davis, was contemplating retirement from practice. He was looking for a solicitor to buy him out of his practice. Following discussions they agreed to practise together as Samuel Davis Solicitors until Mr Davis was ready to retire and agree the terms of sale of his practice. In order to facilitate the transition Mr Davis insisted that Mrs Soord, his book keeper, should keep the Respondent's books of account and deal with all of the accounting procedures including book keeping, PAYE and National Insurance.

57. It was the Respondent's case that it was a result of the insistence by Mr Davis that Mrs Soord should handle his accounts that he ran into several difficulties.

58. As a result of a change in software from Ihirosoft to Solace Accounting Software (the system preferred by Mrs Soord), the file numbering which fee earners had used under Samuels Solicitors (the Respondent's firm) had to change and while some fee-earners adopted the new file numbering system some had difficulties doing so and this led to errors in the posting of monies received from or paid to or on behalf of clients.

59. Mrs Soord also had difficulties with the names of Nigerian, Chinese and Arabic clients, which formed the majority of the Respondent's clientele. This often led to her making errors in her postings entries. Mrs Soord also often made the mistake of assuming that clients with the same or similar surnames were one and the same and made posting errors as a result. This occurred frequently. Under the Ihirosoft system, John Smith would have reference number 100, this would be changed to 200 under the new Solace System. The fee-earner would deal with Mr Smith under 100 and Mrs Soord would enter monies received on his behalf under 200. This happened on many occasions until the Respondent noticed the errors.

60. The Respondent also experienced problems with conveyancing fee earners' completion statements where mistakes were made in calculations or there were omissions to charge adequate fees for Stamp Duty and Registration fees. This was further compounded by the fact that Mrs Soord could only attend to the bookkeeping once or twice a week because she was not a permanent member of staff and had other commitments elsewhere. She was also often behind with the entries and the Respondent had to rely on the fee-earner's completion statement without being able to confirm the receipt of the actual funds on the accounting system because this was not up to date. Even when it was up to date the Respondent was shut out of the accounting system as only Mrs Soord had the password. Mrs Soord informed the Respondent that that was the way Mr Davis wanted it.

61. Initially the Respondent had not been aware of the problems with the accounts as he was preoccupied with supervising the immigration and crime departments to the standard required by the Legal Services Commission (LSC). The Respondent was the supervisor in charge of the immigration franchise. As at August 2001 the Respondent had over a thousand active immigration files with just three fee earners to assist him.

62. In October 2002 whilst preparing the year end accounts, Mrs Soord brought the errors in the accounts entries to the Respondent's notice. Between October and November 2002 the Respondent went through each account with her and was able to identify the pattern of errors. He corrected all errors that had been noted. Where an error had caused a shortage in another client ledger, the Respondent transferred monies from the office account to client account to rectify this.

63. The Respondent did accept that when Mrs Soord had no record of a client account number she normally would draw that to the Respondent's attention. There were however instances when she would go ahead with posting only for an error later to be discovered and corrected by the Respondent.

64. Because admission to the system was password protected and Mrs Soord retained the password for her own use the Respondent had relied solely on the ledger printouts which Mrs Soord provided to him. Those printouts were out of date because the accounts themselves were not kept up to date.

65. The Respondent accepted that he was rarely at the office when Mrs Soord came in to do the accounts. It had been her practice just to leave printouts on the Respondent's desk where there was matter with which she wanted him to deal. The Respondent accepted there had been instances where office expenses had mistakenly been paid out of client account. Those errors were promptly corrected. The Respondent had never encountered any cash flow difficulties.

66. It had been Mrs Soord's practice to leave notes whenever she thought there were issues with which the Respondent should deal. The Respondent could not recall Mrs Soord ever leaving a note which raised any concerns about breaches of the Rules and neither Mrs Soord nor Mr Davis discussed any concerns either of them had in that regard.

67. Mrs Soord agreed that she kept the accounts jealously and did not want anyone to have access to them as they might make errors on the system. Mrs Soord was adamant that she did not make posting errors. She recorded receipts and payments in accordance with the "chits" provided to her by fee-earners.

68. The Respondent said there had been a meeting on 24th July 2002 between Mr S and Mr K, accountants, in preparation for the filing of the year end report. The issue of overdrawn ledgers had been raised at the meeting and it was resolved that there had been posting errors which had to be corrected immediately. Mrs Soord had been advised of the outcome of the meeting and had been questioned by Mr K about the posting errors. The Respondent, following the advice of the accountants, had instructed Mrs Soord promptly to correct outstanding posting errors.

The Evidence of Mrs Soord

69. Mrs Soord's evidence was that she was a freelance bookkeeper with over thirty years experience of solicitors accounts. Since 1995 she had been employed by Mr Davis to maintain his accounting records. At the time of the merger between Mr Davis and the Respondent she had been asked by Mr Davis to attend at the Respondent's office at 25 West Cottages, Hampstead, NW6 to assist with his accounting records.

70. Mrs Soord said she preferred and was experienced in the use of Solace software. On Saturday, 17th November 2001 at 9.30am she attended the offices at 25 West Cottages and with the assistance of the Respondent she set up the client names and matters on Solace. The Respondent sat with her and spelt out the names and read out the matters for each client and the fee earner dealing with each case whiles she inputted the information. The Respondent chose to start the numbering with 1. Mrs Soord told him that any existing reference for the files could also be inserted for each client if it was easier to identify the matters, but he decided it was not necessary. When Mrs Soord had completed opening the ledgers, she printed out matter listings by fee earner for each fee earner and gave them to the Respondent to give to the respective fee earners with a request that they write the new matter number on their files. She printed out a complete matter listing in numerical order and asked the Respondent to give it to the receptionist to copy into the file number book so that as new files were opened the fee earner could simply use the next number and write in the client details which Mrs Soord could then use to input new clients and matters into the computer when money transactions took place.

71. Mrs Soord said she did not have difficulties with the client names and she did not assume that clients with a similar name were one and the same. Postings on the Solace accounts package were not made by names but by numbers and these were taken from blue and pink slips completed by the fee earners. If Mrs Soord received a slip which did not show a client account number she took it back to the fee earner or left it for the Respondent to obtain the correct number.

72. At first the Respondent requested Mrs Soord's attendance once a week because there was not a lot of work and she had to share the receptionist's workstation. The books were behind so Mrs Soord insisted on going in more often and arranged to go in on Saturdays.

73. Initially anybody could look at the accounts, they were not password protected but as time passed Mrs Soord become concerned that anyone could access the accounts and input data in her absence. The nominal accounts she had kept private.

74. Mrs Soord was available to the Respondent on the telephone. Mrs Soord always gave the Respondent a print-out of overdrawn balances and either told him or left notes about problems as they arose as well as at the end of each month. The Respondent was rarely in the office when Mrs Soord was there.

75. Mrs Soord brought matters to the Respondent's attention a long time before October 2002. On 24th July 2002 Mr Davis arranged for his accountant, Mr S, to attend the Respondent's office to investigate Mrs Soord's concerns about breaches of the Rules. Mr S and Mr K (the Respondent's accountant) went through the over overdrawn ledgers with the Respondent. The Respondent had not had cause to and did not reprimand Mrs Soord for mistakes. She had not made any.

76. It was Mrs Soord's evidence that the Respondent did seek to cover up a shortage by inter client transfers. He instructed Mrs Soord to use the ledger of Pascal Omigie for this purpose. The ledger of Pascal Omigie was never used as a suspense ledger and then renamed. There was always a suspense ledger – unidentified receipts/payments (temporary) numbered 50/1 which could have been used but this would have been too obvious. The transfers were not made to rectify posting errors. Mrs Soord told the Respondent at the time that he should not transfer monies from one client ledger to another client ledger without the client's permission. He did not listen and told her to do it because his accountant had told him to do it that way. Mrs Soord had done what she was told – she had not made any mistake.

77. At the time of Mr Becconsall's inspection Mrs Soord was not at the firm because the Respondent had telephoned her to tell her not to come to the office because the Law Society was present and she might be asked questions. On 3rd March 2003 after Mrs Soord had left the firm the Respondent again contacted her for the password and asked her if she would go into the office to show a bookkeeper he knew how to use the accounts software, because this bookkeeper "knew how to "fudge" the accounts". Mrs Soord had given him the password, but told him he would have to contact Solace about how to use the system.

78. The Respondent said that the record made of the interview with Mr Becconsall in February 2003 was not accurate. It did not record what he had said. In particular he did not agree that the debit balances had been concealed by book transfers from ledgers

of unrelated clients. He had answered "Yes" when asked if there had been an attempt to cover up the debit balances because 31st October was the firm's year end. His "yes" was to indicate that that date represented the firm's year end. The Respondent had not sought to conceal the existence of shortages by inter client transfers. The transfers had been carried out to rectify incorrect client account postings made by Mrs Soord. There was no shortage on client account as was evidenced by the fact that claims made upon the Law Society's Compensation Fund was the equivalent of monies held by the Respondent in client account at the time of the intervention. No client had claimed that there was any money due to him which had not been paid.

79. Whilst with the firm of Samuel Davis where he was a partner the Respondent had conduct of conveyancing relating to a property sale. On 20th May 2002 the Respondent gave an undertaking that all outstanding service charges in relation to the property would be discharged on completion. The undertaking was given to Messrs Milne & Lyall. Following correspondence between Milne & Lyall and the Respondent and eventually correspondence with the OSS the Respondent said that he had written to the client concerned who had contested the amount charged. It had been difficult to contact the client. In a letter of 3rd March 2003 the Respondent wrote "In the circumstances we are still unable to make contact with the client but as it would appear that we may be in breach of an undertaking we enclose herewith cheque for £599.38 being the amount due to remedy the breach of the terms of the lease." As a result of the Law Society's intervention into the Respondent's firm the cheque had not been honoured. The sum remained outstanding.

80. Whilst with the firm of Samuel Davis the Respondent acted for the vendor in a conveyancing transaction. Alan Budd & Co. solicitors of Luton acted for the purchaser. On 21st May 2002 the Respondent undertook to discharge the charges registered in favour of Abbey National plc and forward the sealed forms DS1 as soon as received. One of the DS1 forms had not been received by the purchaser's solicitor. The purchaser's solicitors had been notified by the Inland Registry that their application to register their client's title would be cancelled if the DS1 form was not submitted.

81. The Respondent explained that it was the usual practice for the mortgagee, Abbey National, to supply a single redemption statement where more than one charge related to the property. On 26th March 2002 Abbey National provided the Respondent's firm with a redemption statement and he used the figure thereon to redeem the mortgage. On 24th May 2002 the Respondent became aware that there was a further outstanding amount which had not been disclosed on the original redemption statement. Enquiries revealed Abbey National had in fact made a mistake as a result of which there had been an underpayment of the sum required to redeem the charges. The Respondent had not deliberately breached the undertaking given and was of the view that if it was found that he continued to be liable for the breach of undertaking the best course of action would be for payment from the Solicitors Indemnity Fund.

The Submissions of the Applicant

82. The Applicant told the Tribunal that he did put allegations 1 to 3 on the basis that the Respondent had acted dishonestly. He invited the Tribunal to apply the test in Twinsectra -v- Yardley which would lead the Tribunal to conclude that there was no doubt that the Respondent's actions had indeed been dishonest. The Respondent had

sought to conceal a shortfall on client account by making inter client ledger transfers. The Respondent had deliberately attempted to mislead the Law Society's Investigation Officer.

83. The Respondent had denied all of the allegations although he had accepted that there were shortages on client account. A breach of the Solicitors Accounts Rules was an absolute offence and did not require any "mens rea" on the part of the Respondent.

84. The Tribunal was referred to page 317 of the current Law Society's Guide to the Conduct of Solicitors at Principle 15.04 relating to conflict of interest. In particular there was a conflict or a potential conflict of interest where a solicitor inter alia lends money to his own client. Mr Bush had acted in his own conveyancing transaction and the Respondent did advance money to him. Mr Bush should have been separately represented when the Respondent effected what was in reality a loan to Mr Bush.

85. The Respondent had been in breach of two undertakings given to purchasers' solicitors in conveyancing transactions. In reality the Respondent had admitted that those breaches had taken place subject to the mitigating circumstances.

86. The Respondent had been represented by solicitors and the Tribunal was invited to take note of the representations made by those solicitors in correspondence with the OSS.

The Submissions of the Respondent

87. The practices of the Respondent and Mr Davis were in all essential respects separate.

88. The Respondent was thirty one years of age, was married with a son and awaited the birth of his second child in April. Since the intervention of the Law Society into his practice the Respondent had not found alternative employment to support his family.

89. The Respondent graduated from Obafemi Awolowo University Ife Nigeria in 1992 and was called to the Nigerian Bar in 1993. He practised as a barrister and solicitor of the Supreme Court of Nigeria until 1995. That same year he studied for a Masters Degree in Law at the University of Dundee, Scotland and then sat for the qualified lawyers transfer test in 1998 and was enrolled as a solicitor of the Supreme Court of England and Wales that same year.

90. The Respondent began to practise in England as a fee earner with Messrs Salfiti & Co. solicitors in 1997 and by 1999 he had become a partner. The Respondent ended that partnership in August 2001 and established his own practice at 25 West Cottages, London NW6. His firm's name was Samuels Solicitors.

91. On or about September 2001 the Respondent had been introduced to Malcolm Davis and after discussions they agreed to practise together as Samuel Davis Solicitors until Mr Davis's retirement. Mr Davis had insisted that the Respondent should engage Mrs Soord as his bookkeeper.

92. The Respondent denied that he had acted dishonestly.

93. The monies in the Alexander Bush transaction related to a matter of which a fee earner had conduct. The firm had received a cheque for £232,000 from Alexander Bush in relation to the purchase of his property. Unbeknown to the Respondent the cheque was not honoured by the bank and was returned unpaid. In the meantime the Respondent had approved the release of funds only later to discover the error.

94. The Respondent did not seek to conceal the existence of the shortage by inter client transfers. The transfers were carried out to rectify initial client account posting errors made by the bookkeeper, Mrs Soord.

95. The Respondent did not at anytime mislead officers of the Forensic Investigation Department of the Law Society as to the alleged repayment of the shortages. The shortage was indeed repaid, as the report of the Law Society's Compensation Fund demonstrated.

96. The Respondent did not deliberately act contrary to the provisions of Rule 22 of the Solicitors Accounts Rules. When the money was withdrawn from the client account he believed he was making the withdrawal in line with the provisions of Rule 22 (1)(a), which provides that client money may be withdrawn when it is properly required for a payment to or on behalf of the client. At the material time when the withdrawal was made he believed that he was making a payment on behalf of his client who was purchasing a property. He also believed, quite erroneously as it turned out, that he held the same amount of money on behalf of the client, in the client account. It was not the Respondent's intention at any time to withdraw monies from client account in breach of the Rules. As soon as the matters were brought to his attention he remedied the breach as recommended by Rule 7 of the Solicitors Accounts Rules and paid money back into the client account.

97. The Respondent did not act contrary to the provisions of Rule 30 of the Solicitors Accounts Rules relating to transfers between client accounts in that the transfers, which were paper transfers only, were made in accordance with the provisions of Rule 22(1)(g) which provides that monies may be withdrawn which had been paid into the account in breach of the Rules. The transfers in question were made to rectify legitimate errors in the initial posting made by Mrs Soord. The Respondent's actions were actually in accordance with Rule 30, which provided that inter ledger transfers could be made where it would have been permissible to withdraw the sum from the account under Rule 22(1).

98. The Respondent did not act contrary to the provisions of Principle 15/04 of the Guide to the Professional Conduct of Solicitors 8th Edition (1999) in that he acted where his own interest conflicted with the interest of the client (Mr Bush's matter). The only interest the Respondent had in the matter was the remedy of the breach of the Solicitors Accounts Rules, when he replaced a shortage caused by a cheque which had not cleared. That did not amount to a conflict of interest.

99. The Respondent had at no time admitted that there was a shortfall on client account of £416,615.70 as at 31st October 2002. If there was a shortfall at anytime in client account the matter was rectified in accordance with the Solicitors Accounts Rules. Since the Law Society's intervention into his practice none of the Respondent's clients has made a claim in excess of the monies contained in the Respondent's frozen bank

account. No client had made any allegation of dishonest conduct against the Respondent.

100. The Respondent denied the statements attributed to him by Mr Becconsall. He denied specifically that he changed the version of how the shortage was corrected.

101. The Respondent borrowed monies from friends but he confirmed that he said he borrowed money from his father due to accounting shortages which fee earners had caused as a result of errors in calculating their completion statements.

102. The Respondent had not mentioned a bridging loan but referred to a loan from his bank, which was secured on his property.

103. The Respondent did not say he did not want to give details of the Bush property to the Investigation Officer. He could not remember the address. He could not find the file as Mr Bush took it with him when he was dismissed.

104. The Respondent did not say he had a personal interest in the property. He said that he intended to take a charge on the property if Mr Bush could not return the money. This did not happen.

105. The debit balances had not been concealed by book transfers from ledgers of unrelated clients.

106. The ledger of Mr Pascal Omigie was used as a suspense account for all monies received the source of which could not be identified. After the fully reconciled account had been achieved the ledger of Pascal Omigie was renamed to reflect the fact that now the only entries that remained in that ledger related to the Omigie matters.

107. The Respondent said "yes" when asked if the attempt to cover up the debit balances was because 31st October was the firm's year-end. He was agreeing the date of the year-end.

108. With regard to the conveyancing undertakings: On or about the 20th May 2002 the Respondent's firm gave an undertaking to Milne & Lyall Solicitors to discharge all the outstanding service charge in relation to a property which was being sold.

109. A final statement had been requested from the managing agents and this was provided on or about 20th May 2002. The statement related to all outstanding service charges and ground rent in relation to the property. The outstanding amount was subsequently paid in full from the proceeds of the sale and the receipt forwarded to Messrs Milne & Lyall.

110. On 25th October 2002 the Respondent's firm received a copy of the letter received from the managing agents indicating a shortfall on service charges of £599. This amount was alleged to be for an unpaid fee in respect of solicitors costs for a notice of alteration of the lease relating to the property. This fee was however not disclosed on the statement provided by the managing agent.

111. The Respondent's client disputed the alleged fees. All efforts were made by the firm to resolve the matter to no avail.

112. On receipt of the OSS letter of 3rd March 2003 the Respondent attempted to make payment with the firm's office account cheque to settle the amount in dispute.

113. With regard to the second alleged breach of undertaking, during the course of the transaction the firm wrote to Abbey National PLC requesting a redemption statement in relation to their registered charges dated 25th July and 30th November 2000.

114. On or about 26th March 2002 Abbey National provided the firm with a redemption statement and in reliance on the statement the Respondent redeemed the loan from the proceeds of sale. The balance of the proceeds of the sale was paid to the client.

115. The monies paid to redeem the charge did not include a further sum due and the underpayment resulted from an omission on the part of the Abbey National and not a deliberate breach of the undertaking given.

116. The Tribunal was invited to give due weight to the testimonials written in his support, which spoke of his diligence and integrity.

117. The Respondent had never been convicted of a criminal offence or been the subject of any disciplinary tribunal in this country or elsewhere.

118. The Respondent's wife was pregnant and he had an another child to support as well as aged parents and a brother and sister in school.

119. The Respondent had not been able to work since the intervention and his wife could not work because of a difficult pregnancy. The Respondent continued to suffer from shock and anxiety brought about by the intervention.

120. The Respondent did not act dishonestly nor had any intention to mislead the investigator. The Respondent had been unfairly treated by Mr Becconsall.

121. The Respondent had expected the Law Society's Investigation Officer to return to his office for discussions. In the meantime the Respondent had been making efforts to reconcile his accounts.

122. The Respondent very much enjoyed being a solicitor. All his education and career had been in the legal field and at 31 he was too young to be disqualified and too old to start a new profession.

123. The Respondent was under enormous pressures at the time the bookkeeping errors occurred due to the requirements of the Legal Services Commission under the Criminal and Immigration franchises.

124. The Respondent would make every effort to prevent a recurrence of these mistakes if he were to be allowed to continue to practise. The Respondent was willing to attend any courses prescribed by the Law Society.

125. The Respondent suffered significantly and lost the trust, good will and respect of family and friends, his personal possessions and all that he had worked for all his life as a result of the intervention.

126. No client had suffered any loss as a result of the mistakes. The figures produced by the Law Society's Compensation Fund demonstrated that claims made on the Fund were equalled by monies held on client account.

127. The Respondent was the only one to have suffered from this incident. Others, including Mr Bush, had moved on and had not suffered as a result. Not even Mr Davis on whose insistence the Respondent had employed Mrs Soord had suffered. The Respondent had had to borrow money to rectify Mrs Soord's mistakes, which loans he was still liable to repay.

The Respondent's Mitigation

128. The Respondent was a very young man he had been admitted as a solicitor only in 1988 and had been qualified for a period long enough to practise on his own in 2001. He had reached that stage of qualification just before the difficulties brought before the Tribunal had occurred.

129. Although the Tribunal had made a finding of dishonesty it was invited to recognise that its finding had not been made in terms of personal gain. The Respondent had not enjoyed any support from his senior partner. The Respondent felt a sense of injustice that the senior partner dissolved the partnership upon learning of the Respondent's difficulties and nothing had happened to that senior partner.

130. The Tribunal was invited in all of the circumstances in this case to adopt a lenient view and in particular not to impose the ultimate sanction.

The Findings of Fact by the Tribunal

131. The Tribunal having made its findings of fact considered in the main the circumstances surrounding the payment of £232,000 from client account which was used by Mr Bush to purchase a property and the transfers made from the client ledger of Pascal Omigie to other unrelated clients' ledgers.

132. With regard to Mr Bush's property transaction the Tribunal could not avoid the conclusion that the Respondent had given a number of different reasons and versions. The Tribunal accepted the evidence of the Law Society's Investigation Officer, which was supported by a contemporaneous note, that the Respondent had said at interview that he had agreed to lend the money to Mr Bush and that the Respondent had a personal interest in the property. In his affidavit the Respondent said that he received a cheque from Mr Bush and in his affidavit and his oral evidence he said that he had seen the record of a credit on the client ledger, had authorised the payment out of the money learning only some time later that Mr Bush's cheque had not been honoured. The Tribunal noted that the dishonoured cheque had not been mentioned to the Law Society's Investigation Officer. The Respondent had produced no evidence to corroborate his explanation in the form, for instance, of a bank statement and no evidence had been requested from Mr Bush or, indeed, the bank. The inconsistencies in the Respondent's accounts seriously adversely affected his credibility.

133. The conclusion reached by the Tribunal was that the Respondent deliberately took money from client account to help Mr Bush to buy the property. In reaching that conclusion the Tribunal found that the Respondent adopted a deliberate course which involved the utilisation of other clients' money to enable Mr Bush to complete his property purchase. The Respondent was less than frank with the Law Society's Investigation Officer, and did mislead him.

134. With regard to the inter-ledger transfers made from the Pascal Omigie ledger it was Mrs Soord's evidence that the Respondent had instructed her to use that ledger to conceal transfers made to rectify debit balances on unrelated client ledgers. The Respondent denied that that had been the case stating that the Pascal Omigie entitled ledger was in reality a suspense account. Mrs Soord's evidence was that there was a suspense account in existence and there would have been no reason to use the Pascal Omigie ledger as a suspense account. It was the opinion of the Law Society's Investigation Officer that the inter-ledger transfers had been made to conceal debit balances on other unrelated client ledgers.

135. The Respondent told the Tribunal that he derived no personal benefit but had used the Pascal Omigie ledger to correct misposting which arose following errors made by his fee earners and/or Mrs Soord.

136. It was clear that Mrs Soord derived no benefit by lying to the Tribunal. She was an honest and straightforward witness. The Tribunal preferred her evidence to that of the Respondent.

137. The Tribunal concluded that the Respondent had utilised the Pascal Omigie ledger in a deliberate attempt to conceal debit balances on other client ledgers by making transfers to those other client ledgers. That was a dishonest course.

The Tribunal's Findings

138. The Tribunal find allegations 1 (a),(b) and (c) to have been substantiated. The Tribunal finds allegation 2 (a) and (b) to have been substantiated.

139. The Tribunal finds allegation (3) not to have been substantiated as it is satisfied that the Respondent did not have a personal interest in the purchase of Mr Bush's property nor in the property itself. The Tribunal accepts that the Respondent paid money into client account to rectify the shortfall caused when he authorised the use of other clients' money in the completion of Mr Bush's purchase. The Tribunal noted that it had been the Respondent's intention to secure the money which he had provided to replace the deficiency on client account by a charge, but he had been prevented from perfecting that arrangement by the Law Society's intervention into his practice. The Tribunal concluded that the Respondent did not therefore act in circumstances where his own interests conflicted with those of Mr Bush although, of course, he would have done so at the time when he sought to secure his payment into client account as a loan against the property and at that point the Respondent would have been in breach of Practice Rule 15/04 if he had not insisted upon Mr Bush taking independent advice. The Tribunal did not consider that the replacement by a solicitor of a deficiency on a client account immediately put the solicitor into a position of conflict of interest with the client upon whose ledger the deficiency arose or other clients.

140. The Tribunal found allegations 4 and 5 to have been substantiated, indeed during the course of the hearing the Respondent admitted those two allegations which related to breaches of undertakings.

The Tribunal's Reasons and Decision

141. The Tribunal had given all of the evidence and submissions placed before it the most careful consideration. It found this to be a very sad case. The Respondent is a young man who had achieved a great deal. The Tribunal recognises that he had been subjected to enormous pressures. He was running what was effectively a sole practice with a number of staff and was responsible for a great many client matters. He had taken on this heavy burden at a time when he was relatively inexperienced and also had the pressures inevitably which having a young and expanding family brings.

142. The Tribunal acknowledges that it appears ultimately that no client has suffered any loss. The Tribunal also accepts that the Respondent did not derive any personal benefit from his actions.

143. The Tribunal has made a finding that the Respondent's behaviour has been dishonest. The public is entitled to expect that members of the solicitors profession are persons who maintain the highest standards of integrity, probity, and trustworthiness and that any solicitor that a member of the public engages can be trusted to the ends of the earth. It is the Tribunal's duty to protect the good reputation of the solicitors' profession and it is its primary duty to protect the public from solicitors who fall short of the required high standards.

144. The Tribunal concluded that it was right to impose an order upon the Respondent striking him off the Roll of Solicitors.

145. The Applicant sought the costs of and incidental to the application and enquiry and that application was not resisted by the Respondent. The Tribunal therefore further ordered that the Respondent should pay the costs of and incidental to the application and enquiry to include the costs of the Investigating Officer of the Law Society such costs to be subject to a detailed assessment if not agreed between the parties.

Dated this 5th day of May 2004

I R Woolfe
Chairman