No. 8869/2003

IN THE MATTER OF IAN WILFRED DODD, solicitor

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Mrs H Baucher
Mr M C Baughan

Date of Hearing: 28th and 29th January 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 Jonathan Richard Goodwin of Jonathan Goodwin solicitor advocate 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 11th August 2003 that Ian Wilfred Dodd of Portslade, Brighton & Hove, East Sussex, 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.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

(i) That he improperly assisted and/or encouraged clients and/or third parties to invest funds in a financial scheme(s) which he either knew or ought to have known was, or had the hallmarks of an advance fee fraud;

(ii) That he acted in a manner that was fraudulent, deceitful or otherwise contrary to his position as a solicitor;

(iii) that he used his position as a solicitor to take unfair advantage for himself and/or other persons;

(iv) that he failed to properly protect and/or have due regard to certain funds as were paid into and out of his client account;

(v) that he failed to make sufficient enquiry as to the financial scheme(s) referred to in allegation (i) above, and in so doing disregarded the guidance that had been issued;

(vi) that he acted and/or continued to act in circumstances in which his own interests conflicted with the interest of a client(s);

(vii) that he acted and/or continued to act when there was a conflict, in the alternative a significant risk of a conflict, of interest between two or more clients.

(viii) that by virtue of the matters set out in the report of the Forensic Investigation Unit dated 31st October 2002, his conduct was contrary to Rule 1 of the Solicitors' Practice Rules 1990 in that it compromised or impaired or was likely to compromise or impair any of the following namely his independence or integrity as a solicitor, his duty to act in the best interests of a client or clients, his good repute or that of the solicitors' profession and his proper standard of work.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jonathan Richard Goodwin appeared as the Applicant and the Respondent was represented by Andrew Post of Counsel instructed by Messrs Murdochs solicitors of Wanstead.

The evidence before the Tribunal included the Respondent's admissions as to the facts and his admissions of allegations (i), (iv), (v), (vi) and (vii).

Allegation (i) was admitted on the basis that he did assist or encourage clients and/or third parties to invest funds in financial schemes but he did not do so improperly and he did not know that such schemes were or had the hallmarks of an advance fee fraud.

The Respondent admitted allegation (v) on the basis that he did not make sufficient enquiry as to the financial schemes referred to in allegation (i). He did not accept that he had not made any enquiry.

With regard to allegation (viii) it was said that such allegation added nothing and in reality amounted to a repetition of the other allegations.

Allegations (ii) and (iii) were denied. The Respondent strenuously denied that he had acted dishonestly.

Mr Cotter, the Law Society's Investigation Accountant, the Respondent, Mr Finnerty, Mr Cockburn, Mrs Page and Mrs Shearer gave oral evidence.

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

The Tribunal ORDER that the Respondent, IAN WILFRED DODD of Portslade, Brighton & Hove, East Sussex, 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 fixed in the sum of £20,000.

The facts are set out in paragraphs 1 to 57 hereunder:-

1. The Respondent, born in 1942, was admitted as a solicitor in 1966. At the material times the Respondent practised on his own account under the style of Reynolds & Dodd from offices at 61 Church Road, Hove, East Sussex and 30 Brunswick Road, Shoreham by Sea, West Sussex. A decision was made to intervene into the Respondent's practice on 9th December 2002.

2. The Respondent was approved by the Financial Services Authority for the purposes of providing financial services.

3. The Forensic Investigation Unit of the Law Society had carried out an inspection of the Respondent's books of account. The inspection began on 13th August 2002. An interim report had been prepared dated 5th September 2002 and a full report had been prepared dated 31st October 2002. Both reports were before the Tribunal.

4. The reports revealed that the firm's books of account were in compliance with the Solicitors Accounts Rules in all material respects.

5. On 23rd and 24th July 2002 Mr Robinson from the Practice Standards Unit of the Law Society had attended the Respondent's practice and had ascertained that the Respondent had invested in excess of £200,000 in a scheme to assist the son of a deposed leader of an African state to recover monies from a frozen bank account in Switzerland. The funds invested were a mixture of funds from clients, staff members of the Respondent's practice and the Respondent's own personal funds.

6. Following Mr Robinson's visit the matter had been referred to the Forensic Investigation Unit and Mr Cotter, the Investigation Officer, was instructed to carry out an inspection of the Respondent's practice. The Respondent had been reluctant to produce the relevant matter files. The Law Society obtained an Order of the High Court dated 19th September 2002 requiring production of the relevant files.

7. Mr Finnerty had been known to the Respondent for a great many years. Mr Finnerty had been a client of the Respondent and they had known each other socially, Mr Dodd having "baby sat" for Mr Finnerty's children when they were young. Mr Finnerty had been employed in the financial world but had retired. Mr Finnerty and the Respondent had shared an interest in assisting a local charitable organisation.

8. Mr Finnerty had moved away from the Brighton area and he and the Respondent had not been in contact for a number of years, until in about May 2000 Mr Finnerty telephoned the Respondent to arrange a meeting. At the meeting Mr Finnerty informed the Respondent that his stepfather wished to give his house at Reigate to Mr Finnerty. The Respondent had advised Mr Finnerty that to do so was not tax efficient for inheritance tax purposes. Mr Finnerty then advised the Respondent that he needed cash in any event. The Respondent had advised that an effective way for the

stepfather to make a gift to Mr Finnerty would be for the stepfather to borrow against his property. The Respondent had made it clear that he could not advise or act for the stepfather who should seek independent advice from another solicitor.

9. The stepfather proceeded to apply for a mortgage but Mr Finnerty had indicated to the Respondent that the process would be too slow.

10. Mr Finnerty went on to explain that he was assisting someone to enable the release of funds due to him and to donate money to charity. Mr Finnerty had mentioned that the person he wished to assist was the son of an African leader but did not at that stage give full details to the Respondent.

11. The Respondent agreed that he would approach a friend to assist with a loan and the Respondent himself would make a loan. He told Mr Finnerty that the loans would have to be secured and Mr Finnerty agreed that charges upon his home could be taken as security.

12. In evidence Mr Finnerty said he had received a letter inviting him to assist Bahir Mobutu in gaining access to sums of money, alleged to be millions of United States Dollars. Mr Bahir Mobutu was a son of the former president Mobutu Sese Seko of the former Zaire, subsequently the Democratic Republic of the Congo. Mr Finnerty said he had not retained the letter. He had visited Africa and had met the gentleman concerned. He had no reason to suspect that the schemes were anything other than genuine.

13. The two "Mobutu" schemes for which funding was sought were:-

    a. The conversion of chemically defaced US dollar bills and
    b. The retrieval of funds frozen in a Swiss bank account.

a. The conversion of Chemically Defaced US Dollar Bills scheme

14. The Law Society's Investigation Officer ascertained that there were file notes relating to chemicals, a chemist, money and Morocco. The Respondent indicated that the file notes related to what Mr Finnerty had told him, namely that there were chemically defaced US Dollar Bills in a vault in Morocco that belonged to Mr B Mobutu. The dollar bills had been defaced, to protect them from theft. Mr Finnerty said that both the expertise and the chemicals that could be used to reinstate the bills to make them negotiable could be purchased.

15. The file notes demonstrated that Mr Finnerty required funding to enable the purchase of the chemicals, to provide the services of a chemist to treat the bills and then to remove the bills from Morocco. By way of example the attendance note dated 20th November 2000 recorded 'We looked at various options of getting the man to Morocco with these chemicals and the money out'

16. The Respondent said that he knew from his experience in third world countries that the process of defacing dollar bills in this way was commonplace.

17. The Respondent said that he understood that the notes were of a value of 5.5 million US dollars. It had been his intention to import the notes into the UK and to store them in his firm's strongroom where they would be treated with the appropriate chemicals. He had intended that an appropriate official should be present while the process was carried out. He said those dollar notes could be carried in two suitcases.

b. The Retrieval of funds frozen in a Swiss Bank Account

18. This scheme required for funds to be advanced to Mr Finnerty (or others on his instruction) to assist Mr B Mobutu to access funds said to be frozen in a Swiss bank account. The initial funds were required by Mr B Mobutu in order for him to charter a private plane from Morocco, where it was said that Mr B Mobutu resided, to Zurich. Once in Zurich Mr B Mobutu would present himself with proof of his identity and his father's death certificate, in order to comply with the Court Order that would then allow him access to the funds held frozen in a Swiss bank account. It was said that the frozen funds were paid into the bank account by the then Zairean President, Mobuto Sese Seko, and frozen when he was deposed by Mr Laurent Kabila who formed and became President of the Democratic Republic of the Congo. Mr Joseph Kabila, the son of Mr L Kabila, succeeded his father as president of the DRC in early 2001, soon after his father's assassination.

19. The Investigation Officer reported that there had been a series of file notes made by the Respondent relating to delays in Mr B Mobutu's progress to Zurich, whether due to his ill health, engineering difficulties with the plane or some technical or other difficulty that prevented him from flying.

20. The Respondent, at the hearing, told the Tribunal that it had been reported to him by Mr Finnerty that Mr B Mobutu had reached Zurich on the morning of the last day of the hearing. In his evidence Mr Finnerty said that he had not spoken to the Respondent save to say "good morning". He had telephoned the Respondent's number during the previous week when he had spoken to the Respondent's partner, M.

21. In his oral evidence, Mr Finnerty said that Mr B Mobuto had been in Zurich for some time. Mr Mobuto had travelled to Zurich from Paris some four weeks earlier.

22. Mr Finnerty said he had not seen the Court Order. Mr Mobutu had telephoned Mr Finnerty and said that he was waiting for his President, Joseph Kabila, to join him.

23. Mr Finnerty did not know how much money was in the Swiss bank. He thought the return he might enjoy could be as much as 30 million US dollars. It was for Mr Finnerty and Mr B Mobuto to decide how much was to be made available to charity. That sum could have been between 15 to 17 million US dollars. Mr Finnerty said he had asked Mr B Mobuto to make a handsome contribution to charity. None of the charities concerned were anticipating such payment.

24. Mr Finnerty said he was to have control of the 30 million US dollars and approximately one half was to go to charity, the remainder was to be paid to the Respondent and Mr Finnerty.

25. Mr Finnerty said that he saw the matter as an "adventure" in his retirement, although his family disapproved of his involvement. He believed in the genuiness of the scheme. He had visited Ghana about four years previously where he had met Mr B Mobutu at a bungalow on the outskirts of Accra. He had taken Mr B Mobutu at face value: he had not required evidence of Mr B Mobutu's identity.

Funds Received and paid in respect of the schemes

26. The FIU Report indicated that during the period 23rd May 2000 - 12th September 2002 the Respondent paid from client bank account funds totalling £315,286.49 in respect of the two schemes. The funds were made up as follows:-

- A consortium of clients, employees and others - £159,689.28
- Mr T Finnerty, the stepfather of Mr Colin Finnerty £95,000.00
- The Respondent personally £60,597.21

27. It was relevant to note that the Respondent and a Ms H were repaid investment amounts although none of the other investors were.

28. Paragraph 13 of the FIU Report detailed that the return to the investors by way of capital repayments, interest on the advances, special bonus and ex-gratia payments was to be significant. The Investigation Officer prepared an analysis of a handwritten spreadsheet prepared by the Respondent a copy of which was exhibited to the Report. The spreadsheet appeared to be a calculation of capital repayment plus interest and bonus that would be payable to the investors in the scheme as at 31st July 2001. The Respondent's figure indicated that a global return of £1,080,347.12 as at 31st July 2001 was expected on advances of £209,953. That would represent a return of capital plus 430% in a period of no more that ten months.

29. A further spreadsheet prepared by the Respondent as at 30th January 2002 detailed the bank accounts that were to be utilised to receive the proceeds of the schemes, in the event that they were successful, and which showed the total of the 'amounts £ sterling' column to have risen to over £14 million.

30. The Respondent had been approached in or around May 2000 by Mr Finnerty with a view to the firm assisting him in obtaining a loan secured on his matrimonial home which Mr Finnerty then occupied with his wife.

31. The Investigation Officer had sight of an undated hand written file note which indicated that Mr Finnerty required £41,611. for seven to twenty eight days. The note indicated that Mr Finnerty was prepared to repay the advance plus a bonus of £10,000 making a total of £51,611 plus interest at 10% for one month and thereafter at 6% above the Royal Bank of Scotland's base rate.

32. Mr Finnerty did not in fact raise any finance on his home but rather the Respondent raised an initial sum of £45,000 from a Ms Jenny Salter (subsequently Jenny Page)

33. By letter dated 18th May 2000 the Respondent wrote to Mr Finnerty and said 'You have asked for a facility to be made available through clients of this firm to the extent

of US$62,000 'matching' your contribution of US$100,000 (evidence of which you will provide…)'. There was no evidence that Mr Finnerty had made a contribution of US$100,000 and such figure did not pass through the client bank account of the Respondent's practice.

34. The Respondent indicated that he approached persons known to him to see if they would advance funds to Mr Finnerty. By letter dated 22nd May 2000 he wrote to Ms Jenny Salter, a client of the practice, in the following terms: 'I refer to our conversations of Friday and since I have put this idea to you, not as a matter of advice, but as 'an opportunity' to invest circa £45,000 as an advance to a contact of mine who requires that sum for a joint venture where he has put US$100,000 in himself. This person is well known to me'.

35. The Respondent then set out the basis of the advance, the same as the details set out in the letter of the 18th May 2000 to Mr Finnerty, save for the fact that the bonus that Mr Finnerty was to pay to Ms Salter in respect of the advance was to be £4,000 and not the original £10,000 bonus that was stated in the letter of 18th May 2000 from the Respondent to Mr Finnerty.

36. The Tribunal had before it a copy of an analysis of the receipts and payments made through the Respondent's client bank account in the period 23rd May 2000 – 12th September 2002 in relation to the scheme (prepared by the Investigation Officer). He prepared a further analysis to show a summary of the net position as at 12th September 2002, together with a breakdown of the amount advanced by individuals and the security taken against the advances which was also before the Tribunal.

37. A consortium of client employees of the Respondent's former practice and friends, advanced a net sum of £159,689.28 through the firm. Mr Finnerty's stepfather advanced £95,000 and the Respondent himself advanced a net sum of £60,597.21. The total sum of £315,286.49 was used in the main to make payments totalling £305,048.48 to Mr Finnerty directly or to third parties on his behalf. The schedule showed the net position, because Mr Finnerty introduced funds as well as received them, and the Respondent was repaid some of the funds he advanced as were Ms Salter and Ms H, two of the consortium members.

38. By 12th September 2002 Mr Finnerty had introduced funds totalling £220,212.33 but was paid funds totalling £277,785.31 giving him a net receipt of £57,572.98.

39. The Respondent had himself introduced funds totalling £112,097.21 but was repaid funds totalling £51,500 making him a net introducer of £60,597.21.

40. One member of the consortium was Jennian Group, itself a consortium of investors one of whom was the Respondent.

41. The analysis prepared by the Investigation Officer showed that Ms Salter made an initial advance of £45,000 on the 23rd May 2000. The Respondent paid that sum to Mr Finnerty on the same day by two bankers drafts, one for £25,000 and one for £20,000.

42. On 13th September 2000 Ms Salter was paid the sum of £50,240.24 representing a repayment of capital and £5,240.24 in respect of interest and £4,000 bonus.

43. The repayment to Ms Salter had been from funds raised by way of mortgage advance by Mr Finnerty's stepfather. The Respondent's practice acted for Mr Finnerty's stepfather, the mortgagee, Northern Rock, and accounted to Mr Finnerty on the instructions of his father for the proceeds of the mortgage.

44. The mortgage advance of £95,000 was received from Northern Rock on 21st August 2000 and transferred from the client ledger of Mr Finnerty's stepfather to the client ledger of Mr Finnerty in two tranches of £48,419.57 and £46,580.43. On 29th August that money was used in part to repay the Respondent the sum of £35,000 that he had advanced to Mr Finnerty on 24th July 2000 together with costs and disbursements of £2,930.88 and interest of £488.69.

45. There had been a considerable disparity in the bonuses to be paid to investors in the Respondent's calculations. A payment due to Ms Salter which was very much larger than any paid to any other investor was initially unexplained. However, the Respondent later admitted that there had been an agreement between the Respondent and Ms Salter that she would hold a substantial sum of money for the Respondent so that it would not be apparent to his former wife at a time when divorce proceedings were extant. The Respondent confirmed in his oral evidence that he had in fact made full disclosure to the Court in his matrimonial proceedings.

46. During the course of his oral evidence the Respondent said that the investors were not his clients. They were persons known to him. He had passed their money through his firm's client account in order to ensure that full, honest and transparent records were kept. He said that he had made file notes of conversations because he was an inveterate note taker – not for any time recording purpose. When asked why he had on some file notes recorded the time he had spent on the matter, the Respondent later admitted that he anticipated billing Mr B Mobutu in the future.

The evidence of Investors

47. The Tribunal heard the oral evidence of three investors, Mrs Page (formerly Ms Salter), Mr Cockburn, and Mrs Shearer.

48. Ms Salter confirmed that the Respondent was well known to her and she considered him to be a very honourable man. She had inherited some money from her parents. Mr Dodd, through his firm's investment company, had managed a share portfolio for her. They had worked together in connection with charitable projects. The Respondent had told her that he thought the scheme was bona fide. Ms Salter said that when she had been told that the scheme might come to fruition her reaction had been "Pigs might fly". Ms Salter had not received back all of the money she had invested but she did have security for her money. Ms Salter accepted that by making the investment it was hoped that substantial sums of money would be made available to charity.

49. Mr Cockburn had been involved in investment management, merchant or investment banking and stock broking for over forty years. He had never been a client of the Respondent but had known the Respondent in various capacities mainly to do with charitable fund raising projects or work through his position as a charity administrator.

50. Mr Cockburn said he was happy to be invited to join a consortium financing a foreign person with access to substantial blocked funds. He considered the potential rewards to be commensurate with the obvious risks. He had known Mr Finnerty personally.

51. Some of the advances made by Mr Cockburn had been secured on Mr Finnerty's property. As Mr Finnerty had sold his property, Mr Cockburn's secured advances had been repaid.

52. Mr Cockburn understood that it was not an uncommon practice in India and African countries for currency to be defaced with a secret chemical compound to make the notes worthless if stolen and it was not surprising that some fraudsters might have used that fact as a method of obtaining money from gullible persons.

53. Mr Cockburn had been a director of the Nigerian Electricity Supply Corporation for seventeen years and had experience of Nigerian business practices. He had been aware that the Nigerian Government had offered a deal whereby 15% of funds recovered from assets salted away by a former President of Nigeria would be made available. He did not consider that a 400% return justified acute suspicion as to the bona fides of the transaction. He pointed out that from 1996 through to 1999 there were many occasions when during the Stock Exchange boom shares appreciated by 400% in a matter of weeks.

54. Mr Cockburn said it remained to be seen whether the investors had been "gulled" or whether they would lose their money.

55. Mr Cockburn believed that the Respondent had acted throughout properly and with the best of intentions. He believed that Mr Finnerty was a man of integrity.

56. Mrs. Shearer had been the Respondent's legal cashier. She said she had invested two amounts of £8,000. She confirmed that all of those whose advances had been secured had been repaid. She said she had on occasions been called in to the Respondent's room when Mr Finnerty had been there and Mr Finnerty had told her where money was to be transferred. The money had been paid into a client ledger under Mr Finnerty's name. Sometimes the money was to be changed into dollars before being dispatched.

57. Mrs Shearer believed Mr Finnerty and the Respondent to be highly reputable people. When they said they needed funds she had been prepared to put up some of her own money. The Respondent had told her that she might not get the money back. She had not been told the details but understood that there was a possibility that she would get a huge bonus. Mrs Shearer had not intended to donate any part of her bonus to charity. Mrs Shearer confirmed that the money which she had invested had been repaid when Mr Finnerty's house had been sold.

The Submissions of the Applicant

58. The Respondent had made some admissions but dishonesty was the central issue in the case.

59. Allegation (i) represented the nub of the matters alleged against the Respondent. In the submissions of the applicant the Respondent's behaviour had been very blatant and did amount to dishonesty as defined by the House of Lords in the case of Twinsectra -v- Yardley [2002] UKHL 12.

60. In the submission of the Applicant it had been demonstrated that an honest solicitor would not have become involved in the way in which the Respondent became involved and the Respondent did know that what he was doing was wrong. The question had to be asked, did the Respondent deliberately not ask questions or enquire about the B Mobutu scheme. When considering this question the Tribunal was invited to bear in mind the warnings given to the Respondent.

61. With regard to allegation (iii) there were some individuals, including the Respondent, who were repaid all of the monies they invested; others lost all of their money.

62. The Applicant did not accept the basis upon which the Respondent admitted allegations (i) and (v). It was the Applicant's position that he did not have to prove that the Respondent "improperly" assisted and/or encouraged clients or third parties to invest funds. It was the Applicant's case that a solicitor had been engaged to take part in the scheme in order to give the spurious scheme a cloak of respectability.

63. The Applicant continued to allege that there had been a breach of Practice Rule 1 and that the Respondent's behaviour had not only damaged his own good reputation but had damaged that of the solicitors' profession.

64. The two branches of the scheme, namely the defaced dollar bills and the monies frozen in a Swiss bank account, both had all the hallmarks of what the Applicant described as "classic advance fee fraud". In particular there was the apparent need for secrecy, contact taking place by fax and the difficulty in identifying African nationals who were said to have access to large sums of money.

65. The Respondent was a solicitor of some thirty years experience. He could not fail to be aware of warnings given to solicitors.

66. In or around October 1997 the Law Society distributed to all solicitors on the Roll a warning card in respect of Banking Instrument Fraud: the 'Yellow Card'.

Warnings

67. Warnings were provided to the profession as follows:-

(a) 'Fraud Concern' – notice in the Law Society Gazette dated 14th October 1998

(b) 'Top US Judges are latest to be taken in by Nigerian scam letters' – notice in Law Society Gazette dated 24th March 1999.

(c) The Respondent was put on specific notice by one of the consortium members, Mr Cockburn, who sent to the Respondent a copy of an article in the Financial Times dated 9th March 2002 headed 'Nigerian Fraudsters change their line of attack'. Mr Cockburn attached a compliment slip to the article with a hand written note, "just in case you missed it!…sounds familiar". The Respondent added his own hand written note to the document stating 'Followed up. Agreed not same'. This was surprising given the last paragraph of the first column of the article which specifically made reference to 'Even chemicals to clean dirty cash'.

(d) The Investigating Officer, Mr Cotter, put the Respondent on notice on the 13th August 2002 that the schemes bore the hallmarks of the 'Nigerian 419' scams.

(e) Notwithstanding the warnings the Respondent continued his involvement in the schemes.

68. The Respondent involved persons known to him in schemes that were based on the retrieval of funds on behalf of the son of a deposed leader of a state in obvious turmoil and in addition that Mr B Mobutu (who was said to be one of sixteen sons of ex President Mobuto Sese Seko), had produced no conclusive evidence to the Respondent that would prove who he actually was and that he was legally entitled to any funds. All correspondence with Mr B Mobutu had been through Mr Finnerty or by telephone, fax or email. The Respondent conceded that he had not met Mr B Mobutu in person but asserted that Mr Finnerty had met him more than once. No evidence was produced by the Respondent to prove the existence of any Court Order that would give Mr B Mobutu access to any funds held in a Swiss Bank Account. The Respondent indicated that the reason for this was that the Order was not publicly available due to the need for secrecy and for the security of those involved.

69. In the mortgage loan raised by Mr Finnerty's stepfather the Respondent had acted for the stepfather in raising advance monies that were subsequently used by Mr Finnerty to repay the Respondent. The Respondent acted in a situation where there was a potential if not an actual conflict between his own interests and those of the client. Even in the light of the Respondent's dispute that Mr Finnerty was not a client of the firm at that stage the Law Society's Investigation Officer had sight of the "matter opening form" and a bill in the sum of £2,731.88 dated 30th August 2000 addressed to Mr Finnerty charging Mr Finnerty generally. The matter opening form named Mr Finnerty as the client.

70. The Respondent acted where there was a conflict or a significant risk of a conflict between the interests of his clients Mr Finnerty and Mr Finnerty's stepfather together with Northern Rock Building Society. The Respondent also acted where there was a significant risk of a conflict between the interests of himself and those of Mr Finnerty's stepfather in that the Respondent was repaid £35,000 out of the mortgage advance from the Northern Rock. The Respondent had advised the stepfather to seek independent legal advice. The stepfather confirmed that he had spoken only to a close personal friend and a member of a golf club who was a solicitor. Other than the documentation referred to in the FIU Report and exhibited thereto, no further loan agreements in relation to the remaining funds advanced were seen on the files

supplied by the Respondent pursuant to the Court Order. It would seem that the remaining funds were advanced on oral instructions received from the consortium member to the Respondent and then paid out on Mr Finnerty's instructions.

71. The Investigation officer prepared an analysis of the individual investors' payments and receipts together with a summary of how the funds raised by the Respondent were disbursed. It was relevant to note that one of the consortium members, the Jennian Group was itself a group of investors. The Respondent was one of the group. He was unable to say what the individual contributions to the £17,000 advanced by the group were.

72. It was of concern that the Respondent should have involved himself, and encouraged others to invest in the scheme(s) and continued in his involvement notwithstanding warnings regarding the possible fraudulent nature of same. This was particularly so given the Respondent's areas of specialism including business affairs and financial services. The Respondent either knew or ought to have known and/or been alerted to the possibility that the schemes could be fraudulent and had the hallmarks of an advanced fee fraud. Notwithstanding warnings, the Respondent continued his involvement in the schemes in the apparent (but unlikely) belief that they would be successful.

73. The Respondent's position was that he was not seeking to provide legal advice, which raised a concern as to why the Respondent, as a solicitor needed to become involved in the scheme(s) at all. There had to be concern that the participation of a solicitor would add a degree of credibility to the scheme.

74. The Respondent failed to take any steps independently to verify the identity of Mr B Mobutu, the existence of funds to which he claimed to be entitled and/or to own, or the existence of any Court Order which would allow Mr Mobutu to claim those funds held frozen in a Swiss bank account. The Respondent also failed to take steps to verify that Mr Finnerty had made a contribution of US$100,000 which was to be matched with monies provided via the Respondent.

The Submissions of the Respondent

75. In 1996 the Respondent created a new firm with his then stepdaughter, initially operating from Shoreham and later adding a branch at Hove. The firm had expanded over five years to a workforce of twenty-three. The Respondent was the Principal of the firm when the Law Society intervened on 10th December 2002, since when he had acted as part-time administrator to three charities and conducted some private work.

76. The Respondent's wide-ranging charitable work was the driving force for all that he did. He had led a very public life and had held himself open to scrutiny and remained accountable for everything that he did. He had also given freely of his time and experience to a number of areas of concern to the legal profession.

77. The Respondent had known Mr Finnerty since the early 1960's through working together in the Scout Association. They had not been in contact for about twenty-five

years when in about May 2000 Mr Finnerty telephoned about the possible gift to him of his stepfather's house.

78. There was nothing in this to put the Respondent on alert. A long-standing acquaintance that the Respondent had no reason to mistrust, who needed to borrow money, had consulted him. Mr Finnerty's information fitted in with what the Respondent knew of Africa. He also knew that Mr Finnerty had considerable knowledge of business matters and that he would not enter into any financial scheme at his cost without due and proper consideration.

79. The Respondent knew Jenny Salter from their time in India working on charitable projects. He approached her by telephone because he knew her personally and because of their joint charitable interests. He believed that money made through the scheme could be forthcoming and used to benefit charities.

80. The Respondent advised Jenny Salter of Mr Finnerty's offer to pay interest, bonus and a charitable contribution but warned her that she should take some form of security. Ms Salter agreed and a member of the Respondent's firm prepared the legal documents.

81. The Respondent advised Ms Salter to take independent legal advice. At that time she was married to a solicitor in the City of London working in the field of commercial/foreign loans and agreements, the Respondent understood she took his advice.

82. Following Jenny Salter's loan on 23rd May 2000 but before it had been repaid, Mr Finnerty said he needed to borrow more money. He had an insurance policy due to mature but needed to borrow in advance. Mr Finnerty, an experienced businessman, had always been honest in all his dealings with the Respondent and he trusted him.

83. The Respondent made some enquiries about Mr Finnerty. He checked with a local senior manager of Nat West and a former director of Barclays and other persons who knew about those prominent in the local business and private communities. No adverse information came to light.

84. The Respondent visited the houses of Mr Finnerty and his stepfather. He was comforted by the knowledge that they were high value properties and was aware that substantial equity was retained.

85. The Respondent decided to invest money himself without taking security. By the time others started to contribute he thought it was a gamble and made sure that he advised them so, but at the same time he fully believed that he and they would be repaid and that money for charity would be generated. He would certainly not have had anything to do with the matter if he had believed it to be underhand in any way.

86. Mr Finnerty's stepfather had requested Northern Rock to pay advance moneys direct into the Respondent's client account. The Respondent had not been acting for the stepfather. The money was received by the Respondent as it was being gifted to Mr Finnerty. The Respondent's loan had been repaid from this money and the balance had been paid to Mr Finnerty.

87. The Respondent had advised the stepfather to take independent legal advice and he had assured the Respondent that he had done so.

88. On 13th September 2000 the second part of the mortgage loan from the Northern Rock came through in the sum of £46,580.43 and was together with the funds remaining from the first part of the advance used to repay Jenny Salter.

89. Thereafter Mr Finnerty said more money was required for his investment to succeed. The money was required for Mr B Mobutu's expenses in trying to get his inheritance released to him and any money paid out towards the project would be repaid with a large charitable donation, interest and promised individual bonuses.

90. From that point the Respondent regarded his involvement as something outside the ambit of his work as a solicitor and outside the firm of Reynolds & Dodd. The Respondent had dealt "informally" with investors who were personally known to him rather than clients.

91. The Respondent understood that Mr Finnerty had invested £1million of his own money in the scheme.

92. Mrs Shearer was the Respondent's chief cashier. He had previously known her as a friend. Mrs Shearer's contribution had been secured against the stepfather's house. She was repaid in full with interest by Mr Finnerty on the sale of his home. In addition Mrs Shearer contributed £500 towards the "Jennian Group's" contribution. The name Jennian was made up from "Jenny" as in Jenny Salter and "Ian", the Respondent's name. The purpose of the group was the investment of money received from the scheme partly for charity and partly for the investors. It came about following a specific and urgent request for funds from Mr Finnerty, the money being required by Mr B Mobutu. The Respondent was able to identify all members of the Jennian Group. Their investments had not been secured and they had not been repaid.

93. Mr Cockburn and the Applicant attended the same school. The Respondent put Mr Cockburn in touch with Mr Finnerty. Mr Cockburn made his own enquiries and dealt with Mr Finnerty direct. Mr Cockburn decided to invest a large amount of money into the scheme. In addition, he contributed £5,000 as part of the Jennian Group's contribution.

94. On 20th December 2000 Ms G and her daughter Miss G contributed £35,125 and £6,000 respectively. The Respondent had known Mrs & Miss G since September 1967 as friends and as clients. Both had substantial interest in charitable causes. Almost all of the moneys invested by the Gs were secured against the stepfather's home and had been repaid with interest.

95. On 31st August 2001 Madame H, invested £4,000. The Respondent had known Madame H since the late 1960s/early 1970s first as a client but then as a close friend. They were joint trustees of a charity which Madame H wished to benefit.

96. Almost all of the money that Madame H invested was secured against Mr Finnerty's home and she was repaid.

97. There was an element of personal gain for all of those that had a stake in the scheme, but the overriding motive was to raise money for charity. The Respondent had approached only those with charitable interests.

98. The Respondent had made it clear that the investment was no more than a "punt", a "gamble", or a "lottery". He believed that the scheme would come off, but he wanted to make absolutely sure that all who contributed were aware of how easily it could fail.

99. As the Respondent's involvement in the schemes was outside the ambit of the firm, there were no formal files as such. He did write the odd letter to the contributors on other matters and sometimes gave an update.

100. The Respondent tried to obtain security for the third party contributions made. He used client account to receive and send money to record such receipts and payments and thereby lend transparency to the situation.

101. The Respondent had sought an opinion of the scheme from a former senior official of the Overseas Development Agency who had experience of Africa. He had consulted a retired senior director of an international company; his own accountants; an expert at a major firm of accountants; contacts in the City, he paid for advice from a firm of Swiss lawyers; a retired Chief Superintendent of police in Hong Kong who made discreet checks through his own police channels; the firm's bankers, the Royal Bank of Scotland; a retired Director of the World Bank; a member of the Sole Practitioners' Group, who was a member of the Law Society Council; reporters; an internet check and many others. He read too about the Mobutu reign. He never received any negative feedback about the scheme, about Mr B Mobutu's authority or whether such funds were held on his behalf.

102. The Respondent ultimately referred the matter to the Law Society to seek assistance and this in turn led to the intervention into his firm.

103. In all his dealings with Mr Finnerty, there were never any lies. There were problems encountered, but everything added up, calls were traced to the sources alleged. That included a conversation with Mr B Mobutu himself that he traced back to the place he said he was.

104. The Applicant's bundle contained a document which demonstrated that the Respondent did not blindly accept all that went on, but made efforts to obtain documentary evidence and keep a close check on the scheme.

105. The Respondent had voluntarily given a witness statement to the Serious Fraud Office. At no stage had he been arrested nor had any allegations of dishonesty been levied against him.

106. The Respondent had not been dishonest. The contributors had not been clients. There had been no solicitor/client relationship between the Respondent and the contributors.

107. The Respondent did not agree that all the hallmarks of a classic advance fee fraud were present. He had been approached by a reputable and experienced businessman known to him for many years.

108. The Respondent accepted that he should have been aware of the Yellow Card and other warnings published to the profession but he was not. He never associated this scheme with Nigeria as it involved Morocco and Zaire. If he had even an inkling that this was a fraud he would not have invested personally and he would not have approached others. He had regarded the newspaper article sent to him by Mr Cockburn as "a joke".

109. Throughout his life the Respondent had served his profession and the community, locally and internationally, with honesty and integrity.

110. As a result of the Respondent's well intentioned involvement in this scheme he had already suffered greatly. His health had suffered. The Respondent had lost his firm and his income. He could no longer serve clients and community. Given the costs involved he was resigned to losing his home. The stresses were a major contributory factor in his divorce from his wife. The Respondent was likely to face bankruptcy unless an IVA could be agreed.

111. The stigma of the intervention and the disciplinary proceedings gave the Respondent little prospect of finding a job in any area.

112. The Respondent had believed in the scheme but had come sadly to be conscious that the funds of between £1million and £10million that he had hoped to raise for charity were unlikely to bear fruition.

113. The Respondent accepted that he had made a mistake in involving himself in the scheme. It was inequitable that when he called for the Law Society's assistance he had been faced with an accusation of dishonesty or impropriety.

The Decision of the Tribunal

114. The Tribunal were invited to consider the large number of testimonials in the Respondent's bundle before reaching their decision as this would assist the Tribunal in understanding the person before them.

115. The Tribunal find all of the allegations to have been substantiated.

116. The Tribunal finds allegation (i) to have been proved on the basis that the Respondent improperly assisted and/or encouraged clients and/or third parties to invest funds in a financial scheme(s) which he ought to have known was or had the hallmarks of an advance fee fraud. The Tribunal accepts the Respondent's evidence that he did not know that the scheme was fraudulent.

117. The Tribunal finds with regard to allegation (ii) that the Respondent acted in a manner that was deceitful or otherwise contrary to his position as a solicitor. The Tribunal accepts that the Respondent did not act in a manner that was fraudulent in the sense

that he was not complicit in the fraudulent schemes however he ought to have known that the scheme had the hallmarks of an advance fee fraud and in turning a blind eye to the inherent lack of authenticity of the scheme he behaved in a way which was deceitful. Further in offering investment to third parties whether or not they were clients he had acted contrary to his position as a solicitor.

118. The Tribunal found allegation (iii) to have been substantiated as the Respondent used his position as a solicitor to take unfair advantage for himself and/or other persons in the first place by lending his name to the scheme and thereby providing a cloak of respectability and in the second place, by ensuring that some but not all investors had security for the monies they invested and thirdly by being involved in a mortgage advance raised on the property owned by Mr Finnerty's stepfather without making sure that the stepfather had been given formal legal advice and was entirely aware of his own legal position.

119. The Tribunal found allegation (iv) to have been substantiated, indeed it came out in the oral evidence that monies that had been paid into client account were in fact paid out at the direction of Mr Finnerty rather than at the direction of the Respondent. That was a wholly unacceptable state of affairs.

120. The Tribunal finds allegation (v) to have been substantiated on the basis that the Respondent did not make sufficient enquiry. The Respondent appeared not to have paid any regard to formal warnings issued by the Law Society. He appeared to have disregarded the newspaper article sent to him by Mr Cockburn. The Respondent said that he did make enquiry but on his own evidence he appears only to have had informal consultations with persons that he regarded to be significant, although it was noteworthy that a large number of those people had retired from their former positions which he believed qualified them to advise. He did not seek any formal written advice from any agency with the knowledge and authority to give a definitive endorsement or rejection of the scheme or the persons said to be involved. The Respondent said that he accepted that he had perhaps been naïve and had allowed the possibility of the generation of large sums of money for charitable purposes to cloud his judgement. The Tribunal does not accept that a solicitor of over thirty years standing can genuinely operate in that state of mind.

121. The Tribunal finds allegations (vi) and (vii) to have been substantiated. The Respondent appears simply to have ignored his duties as a solicitor. A solicitor may not lend money to a client , Mr Finnerty in this case, without ensuring that the client concerned has taken independent legal advice. The Respondent became involved in a lending consortium with other clients without ensuring that those other clients received independent advice. The mischief which the conflict of interest rule seeks to avoid is where a borrowing client is not fully aware of the obligations and liabilities to which he exposes himself by taking up a loan from his solicitor, and it serves also to ensure that the solicitor is protected from any possible accusations of undue influence. It is, of course, the possibility of undue influence which renders the Respondent's personal involvement in making loans together with other clients a serious matter.

122. The Respondent said that he did not act for Mr Finnerty's stepfather but the Tribunal considers that he did at least to the extent that he received monies to be paid as a gift to Mr Finnerty without ensuring that the stepfather had been in receipt of independent

legal advice. The Respondent apparently had also been involved in preparing documents offering contributors to the scheme security against the stepfather's house. It was further recognised that the Respondent had been involved in preparing documents of security for contributors against Mr Finnerty's house.

123. The Tribunal takes the view that the Respondent had abrogated his duty as a solicitor and his role had really been that of "all things to all people". There was no doubt in the mind of the Tribunal that the Respondent had seriously been in breach of Rule 1 of the Solicitors Practice Rules. He had not maintained his independence or integrity, he had not acted in the best interest of his clients, he had not carried out a proper standard of work and in such circumstances he had compromised and impaired his own good reputation and that of the solicitors' profession. The Tribunal found allegation (viii) to have been substantiated.

124. The Tribunal in making those findings had inevitably reached the conclusion, applying the objective and subjective tests set out in the case of Twinsectra -v- Yardley, that the Respondent had been guilty of dishonesty.

125. The Tribunal had taken into account the fact that the Respondent had lost his good name and lost his practice and his income. The Tribunal had taken into account the wealth of testimonial letters written in support of the Respondent all of which spoke highly of the writer's belief in his integrity and his devotion to good works in his community.

126. The Tribunal has considered all of these factors against the background of a money raising scheme which on its very face was so inherently unlikely that no rational person experienced in commercial affairs would ever entertain an involvement. It was not enough for the Respondent to describe an investment as "a gamble". It was not the place of a solicitor, particularly one in the position of the Respondent who was also recognised as a financial services adviser, to have anything to do with such a scheme let alone encourage others to participate. The proper reaction of a solicitor when confronted by this type of matter is to say "I am a solicitor: I shall have no involvement with such a scheme not even if my clients wish me to act on their behalf in connection with such a scheme". He should refer the matter to the police.

127. It was of particular concern to the members of the Tribunal when, during the course of the hearing when it emerged that no documents could be supplied which could demonstrate how the various bonuses to be paid to various investors were to be calculated, the Respondent gave an explanation but then subsequently retracted the evidence and explained that a very large bonus apparently to be paid to Ms Salter had been created to hide a proportion of the Respondent's wealth from his former wife during matrimonial proceedings. It was a matter of concern that a solicitor should appear before his own professional body and have to retract evidence which had clearly been false.

128. There had been a clear conflict of evidence between the Respondent and Mr Finnerty when the Respondent said that Mr Finnerty had told him on the morning of the hearing that Mr B Mobutu had arrived in Zurich and Mr Finnerty had said that he had not spoken to the Respondent save to say "good morning" and that Mr B Mobuto had been in Zurich for a number of weeks.

129. The Respondent had told the Tribunal that the defaced US Dollars had been in the order of some 5.5 million dollars and he had intended that they were to be brought into his own office. Although the Respondent said that it had been his intention to notify the authorities and to invite the authorities to be present when the defacement was corrected by the application of chemicals. It simply beggared belief that a solicitor with high street offices should countenance such involvement.

130. The Tribunal concluded that in the interests of the public and the preservation of the good reputation of the solicitors' profession it was right that the Respondent should be Struck Off the Roll of Solicitors. The Applicant and the Respondent had reached agreement that the Respondent should pay the Applicant's costs and their quantum. The Tribunal therefore further ordered that the Respondent should pay the Applicant's costs in the agreed fixed sum.

Dated this 2nd day of March 2004
On behalf of the Tribunal

J N Barnecutt
Chairman