No. 8907-2003

IN THE MATTER OF PETER EDWARD KRIVINSKAS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr R J C Potter
Mr D Gilbertson

Date of Hearing: 16th November 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of the Law Society by David Elwyn Barton, solicitor advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE on 20th October 2003 that Peter Edward Krivinskas, solicitor of Albert Square, Manchester, might be required to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thought right. On 15th June 2004 Mr Barton, the Applicant, made a supplementary statement containing further allegations.

At the opening of the hearing the Applicant sought to amend one allegation. The Respondent agreed and the Tribunal consented thereto.

The allegations set out below are those contained in the original and supplementary statements as amended. The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following respects:-

(a) He has breached Rule 22(5) of the Solicitors Accounts Rules 1998 in that he has withdrawn from client account monies that exceeded the balance held on behalf of those clients in relation to whom the withdrawals were made;

(b) He withdrew from client account monies in respect of costs without having first sent a bill or other written intimation of costs to his client or the paying party, contrary to Rule 19 of the said Rules;

(c) He has acted with conspicuous impropriety and lack of probity such as was likely to bring him and the solicitors' profession into disrepute;

(d) Having received funds in circumstances where he was in effect a trustee of those funds, he failed to take proper steps to secure those funds from misappropriation by himself or another;

(e) Disposed of funds in breach of an obligation which he had assumed to the provider of those funds as to the circumstances in which the funds could be released;

(f) He failed to comply with the terms of an undertaking given to Mr T in writing on 1st September 1999;

(g) He acted or continued to act in circumstances where there existed a conflict of interest;

(h) That through his involvement in a financial transaction he compromised or impaired his independence and/or his integrity, and his good repute and that of the solicitors' profession, contrary to Rule 1 of the Solicitors Practice Rules 1990;

(i) He attempted to mislead an officer of the Law Society during the course of an inspection of his books of account and other documents.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when David Elwyn Barton appeared as the Applicant and the Respondent was represented by Geoffrey Williams of Queen's Counsel of 2 Churchill Way, Cardiff, CF10 2DW, instructed by Jonathan Goodwin, solicitor advocate of 17e Chester Gates, Dunkirk Lea, Chester Gates, Chester, CH1 6LT.

The evidence before the Tribunal included the oral evidence of the following witnesses: Mr S Hankin, Mr RAG Loxham, the Respondent, Mr L Smith and Mr DH Phillips. It was accepted during the course of the hearing that allegation (c) described the nature of the Respondent's behaviour and did not in itself amount to an allegation.

The Respondent admitted allegations (a), (b), (e) (in respect of Mr T only), and (f). The Respondent denied allegation (d) (but accepted that he did have the status of a trustee). He denied allegations (g), (h) and (i).

The Tribunal accepted that allegation (c) was descriptive of behaviour but did not treat it as a separate allegation before it.

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

The Tribunal Order that the Respondent, Peter Edward Krivinskas of Albert Square, Manchester, 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 be subject to a detailed

assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The evidence before the Tribunal relating to allegations (a), (b), (d), (f) and (g)

1. The Respondent, born in 1952, was admitted as a solicitor in 1979.

2. The Respondent formed his practice of Krivinskas & Co in December 1992. His main areas of work were personal injury together with fraud and general litigation cases.

3. Following authority duly given, a Senior Investigation Officer (SIO) of the Law Society commenced an inspection at the Respondent's offices in Manchester on 22nd January 2002. The SIO completed a Report dated 30th April 2002 which was before the Tribunal.

4. The firm's books of account were not in compliance with the Solicitors Accounts Rules.

5. A list of liabilities to clients as at 31st January 2002 was produced for inspection. The items on the list were in agreement with the balances shown in the clients' ledger. A comparison of the total of the list with cash held in client bank accounts at that date after allowance for uncleared items revealed a book difference, a surplus of £411.13.

6. The Respondent agreed that a cash shortage of £107,352.71 had existed at 31st December 2001. It had been replaced by transfers from office to client bank account during January 2002.

7. The December 2001 cash shortage had been caused by incorrect payments from client bank account in the matter of Mr T of £70,672.53 and incorrect payments from client bank account in matters relating to clients introduced by an accident management company of £36,680.18..

8. The Respondent's firm had acted for Mrs T in the sale of a business. The balance of purchase price of £70,672.53 received on 11th December 2001 had been lodged in error in office bank account and payments totalling the same amount, being a redemption of mortgage and costs and VAT, had been made from client account. The Respondent explained that this had happened as a result of a bank error. It came to light when he received his bank statements and he had taken the appropriate corrective action at that time.

9. During the period from 15th October to 21st December 2001 the firm had made incorrect payments from client bank account on behalf of 29 clients ranging from £795 to £1,995 and totalling £36,680.18. All of these matters related to clients who had been referred to the firm by the accident management company. At the start of each of these cases the firm received a lump sum in order to fund disbursements. The overpayments related to instances where the firm had been informed that funding was due but no funds had been received. The Respondent told the SIO that new procedures had been put in place whereby the firm checked with its bank that funds

had been received rather than relying solely on written confirmation received from the accident management company.

10. The SIO went on to make reference to another matter. During the inspection, the SIO was provided with a client ledger account entitled "EN - Financial Transacts" and this showed, inter alia, the following transactions:-

Transaction 1

Date	Details	Debit	Credit	Balance
13/04/99	Len Smith		£30,000.00	£30,000.00
28/04/99	Mr DB	£25,026.58		4,973.42
07/05/99	Costs	1,812.50		3,160.92
21/07/99	Costs	3,160.92		0.00

Transaction 2

Date	Details	Debit	Credit	Balance
15/09/99	Balance Mr T		£20.00	£20.00
13/09/99	From Mr T		£61,324.92	61,344.92
25/10/99	Transfer	£45,634.31		15,710.61
03/03/00	To Mr T	16,015.38		-304.77
28/03/00	Costs		304.77	0.00

11. The Respondent produced a copy of the client file in respect of this ledger. The Metropolitan Police Fraud Squad was holding the original file. Correspondence indicated that the matter had been referred to the Metropolitan Police Fraud Squad by Mr T after he had suffered losses when the Respondent had been unable to secure the return of the funds which had been paid out from client bank account on 25th October 1999 (£45,634.31).

12. The first transaction took place between 13th April and 21st July 1999. The Respondent said it fell through before it got off the ground. Someone wanted funding/bank securities and he had been given various monies on account to cover costs.

13. The SIO gave consideration to the following correspondence:-

8th April 1999 letter from AW at EBN, London to the Respondent:-

> "I was pleased to meet you with our mutual acquaintance LS. This letter is to confirm the arrangements I made with you whereby you agreed to open a file in your clients account to receive funds.

A solicitor will write to you outlining the arrangements made to pay him from the funds you will be holding. Send me a copy of that letter and I will send you back the authority to make that payment. I will also instruct you as to the distribution of the residue, and naturally, pay your fees."

14. 12th April 1999 letter from AW at EBN, London to the Respondent:-

"I am writing with regard to the Letter of Credit for $500,000 (Five hundred thousand US dollars) at a cost of 8%. Please contact the insurers solicitor;-

Mr A J de Brus …
London …

Kindly instruct him that you are holding sufficient funds for a 90 Day Letter of Credit issued by Hong Kong Shanghai Banking Corporation (Midland Bank) London to the order of your client - Colin Youell."

15. 14th April 1999 letter from AW at EBN, London to the Respondent:-

"On behalf of our client G Development Ltd, please advise the Solicitor A BRUCE that you are holding sufficient funds to pay him 8% of $500,00 (Five hundred thousand US Dollars) ie $40,000 (Forty thousand US Dollars) to issue a SLC [Standby Letter of Credit] in favour of G DEVELOPMENT LTD.

Upon receipt of the Solicitors reply please advise me and I will furnish you with further instructions."

16. On 7th May 1999 the firm issued a Bill of Costs (for £1,812.50 comprising costs of £1,500, disbursements of £50 and VAT of £262.50). The narrative was:-

"Re: G Development Ltd

To our professional charges in assisting you with obtaining a letter of credit; receiving form of fiduciary appointment and contract and completing the same on your behalf; arranging for $40,000 US to be transferred to Mr de Brus and advising you throughout. To include postage, telephone calls and incidental expenses."

17. The Respondent had not been able to produce a copy of a further bill dated 21st July 1999 totalling £2,160.92. The SIO reported the following conversation between himself and the Respondent on 3rd April 2002:-

The Respondent:	… [I was] told that monies we had we could just bill.
The SIO:	Who told you that?
R:	Trying to think of name.
SIO:	LS?
R:	No - he introduced us. A while ago I had some exposure to these schemes but had never seen one work and so they came along and said we could do them.
SIO:	AW?

R: Yes - that's it. He was a bank manager with Barclays and knew how these things worked so I said "fair enough - I hear what you say". What they wanted me to do was act as intermediary - to stand in the middle.
SIO: Any letter/written intimation for you to be able to take the costs?
R: Bill should be in bill book. When I had done first bill I had miscalculated what I had left. Second bill was done for balance.
SIO: What I'm getting at is was there a letter for your to get authority to bill the balance?
R: No - telephone call.

…

SIO: But you've taken money on telephone call, but requires written intimation.
R: Within hindsight should have got something in writing. They were looking to do further deals so would be swings and roundabouts.
SIO: Can you get retrospective written authority?
R: Yes, can do.

18. On 25th April 2002 the Respondent provided the SIO with a retrospective authority from AW.

19. Following that exchange, also on 3rd April 2002, about the level of fees this further conversation was recorded:-

SIO: Earned £4,973.42 in costs including VAT. What legal work did you do to justify those fees?
R: Two to three meetings. Looked at various documents which I handed back to them because I didn't need them. That's it basically. A few telephone conversations for two to three hours each and whatever time I spent in [the] office looking at documents faxed over to me. Did it over period of time.
SIO: Seems quite a lot?
R: Complicated sort of thing. If bill on hourly basis charging rate would have been higher. Client was happy for me to keep money.

20. The client ledger account records the second transaction having taken place between 15th September 1999 and 28th March 2000.

21. The Respondent told the SIO that he was not sure who his client was. Mr AW had sent a fax to the Respondent on 30th July 1999 from which it appeared that he introduced a Mr T to the firm:-

> "Further to your telephone conversation with Mr AW, we wish to inform you that you will receive approximately 75,000 US Dollars Sterling equivalent into your client account.
>
> …

> These funds to be received from Credit Suisse Bank on behalf of the Beaumont Trust. These funds are to be used for the issuing of a Bank Guarantee. Mr AW will give you further instructions as to where to send the funds on Monday."

22. The Respondent said that Mr T had been convinced that he was going to be able to obtain a banking instrument which he could buy cheaply, discount and then make a profit.

23. By a letter of 22nd September 1999 the Respondent wrote to Mr T stating:-

> "Re: Provision of Bank Guarantee
>
> I thought it was would be appropriate to clarify the nature of the bank guarantee that you are obtaining. Clearly the bank guarantee is in the sum of $500,000.00 could not be purchased for the sum of $100,000.00 on the basis that the guarantee could be immediately traded or discounted and monies obtained for it. If that were the case, there would be a large queue of people all wishing to take up the spectacular opportunities to make large sums of money for a relatively small investment.
>
> What the guarantee is is a document which can be used by way of collateral security. In other words, in the event that you require to raise funding for a project and needed to provide security in the sum of $500,000.00 then this guarantee issued by a bank would usually be acceptable to enable the funding to be considered. However, the guarantee is not a document that could be drawn down upon and monies raised in the event there was a default. It is there as a vehicle to allow funding to be provided in circumstances where the providers of the funds are wishing to fund a project but require security in connection with the project. It is for the funding institution to do its due diligence in connection with the bank guarantee. You have provided to EB Network the wording that you would like on the bank guarantee and that has been approved. We are instructed that the bank guarantee will be issued by one of the major banks…"

24. Mr T Responded to the letter on 4th October 1999 stating:-

> "… It seems to me that if there is any chance at all of this clear and unencumbered bank guarantee being available, then it must be worth applying for it, provided of course all the usual safeguards are put in place in respect of the protection of my US$100,000. Perhaps you would be so kind as to so apply, and at the same time provide me with the promised menu of banks for my approval…"

25. By a letter of 20th October 1999 to the Respondent, Mr T stated:-

> "… It must be a condition of the transfer [of $100,000.00 from Krivinskas & Co client account] that United European Bank delivers to <u>your bank</u> a bank guarantee, issued by one of the top 25 European banks, guaranteeing to pay me or to my order, the sum of $500,000 as per the attached draft wording …

> Such guarantee should mature one year and one day from the date of issue. Furthermore, United European Bank should be required to undertake to return the $100,000 to your bank in the event that they are unable to supply the guarantee within a reasonable time of say 10 banking days.
>
> Prior to sending the Conditional Swift, would you please request that your bank telephones Madame L, to obtain her confirmation that she is in a position to accept the Conditional Swift. I think that is essential."

26. By a letter of 21st October 1999 to the Respondent, Mr T altered his instructions and requested that the Respondent send $75,000 instead of the $100,000 originally planned. He stated that these funds should be sent by 'conditional swift' transfer.

27. The sum of US$74,917.82 (sterling equivalent after fees of $45,634.31) was sent to Messrs Neuflithz Wisenthall and Schlumberger from Krivinskas & Co client account on 25th October 1999.

28. By a letter of 3rd November 1999, Mr T wrote to Krivinskas & Co stating:-

> "Further to my letters of 20th and 21st October last, I have still not received from you a copy of the conditional swiftwire sent by your bank to United European Bank in Luxembourg, although today I have received by fax a copy of your letter to Allied Irish Bank giving them instructions, and dated 22nd October 1999.
>
> I was most concerned to see your letter to your bank, because there is no mention of the guarantee being issued by a top 25 European Bank, or is there a separate instruction I have not yet seen?"

29. On 23rd November 1999 the Respondent wrote to Mr Paul da Costa-Dias at Messrs Neuflithz Wisenthall and Schlumberger in the following terms:-

> "Re: Bank Guarantee - EB Network - Mr T
>
> Mr T is becoming increasingly concerned as to the delay in returning the monies which were sent to your account by way of swift transfer. Unless either a guarantee is issued or monies are returned within 24 hours, we understand that Mr T will be informing the Fraud Squad to investigate the matter …"

30. On 4th January 2000 Mr T wrote to the Respondent saying:-

> "… As you may now be aware, just before Christmas, when you were away from your office, a form of guarantee arrived at Allied Irish Bank [Krivinskas & Co's bankers], which has been issued by some obscure and unknown bank in Russia, and is of course totally unacceptable. In my view, there is no way that this document can be discounted or for that matter, honoured on maturity …"

31. Despite instructions from Mr AW at EB Network to the contrary the Respondent refunded the sum of £16,015.38 to Mr T on 3rd March 2000.

32. On 11th July 2001 Mr T wrote to the Respondent and asked him to notify his indemnity insurers of a potential claim. In this letter Mr T said that the Respondent had only partially followed his instructions and that this had contributed to his losing his money. Mr T asserted that the Respondent had failed to:-

> "1. Telephone Madame L to obtain confirmation that she could accept a conditional swift on behalf of UEB [United European Bank].
>
> 2. Obtain from UEB an undertaking that they would return the money to you if the guarantee (in the agreed format, and by a top 25 European bank) was not produced within 10 working days"

33. The SIO discussed the matter with the Respondent on 3rd April 2002 and the following notes of exchanges between the Respondent and the SIO were as follows:-

> "SIO: Talked about conditional swift and bank would hold funds on other conditions. You were unable to do those things. Why did you still send the money out?
> R: I said to T in telephone call that the only way to send money out was by TT [telegraphic transfer]. If you're confident then must do it. He said to proceed.
> SIO: Note of telephone conversation?
> R: Should have been. Can't remember.
> SIO: I couldn't see one on file?
> R: File I sent to police didn't have everything on it when it came back. May have been on original one. I would have made a note.
> SIO: Presumably T would argue that you didn't consult with him as result of his recent letters?
> R: He would say that. It's the only way he can get his money back. Wasn't as if it was a quarter of a million pounds. Was relatively modest. Rewards were large enough to allow him to risk it. He was happy to proceed. He was chartered accountant. Should know better. Was not exactly his life savings therefore was worth a gamble.
> SIO: That would be a key issue if there was a SIF [Solicitors Indemnity Fund] claim
> R: Yes - hasn't been so far. Question must be asked of him. There is no such thing as a conditional swift - will you go ahead? He wanted to go ahead with it. Clear about that. He wanted to risk it."

34. The following further exchanges from this meeting were recorded:-

> SIO: Who was the client?
> R: Good question. Don't really know. Advised T not to do it. Don't know who was responsible for fees. Something I should have sorted out at start. I was piggy in the middle. Didn't really have a client on that one.
> SIO: You had received warning card prior to either of these transactions re Prime Bank Instruments (PBIs) and Money Laundering?
> R: Yes - would have done.
> SIO: Didn't these look like PBIs?

R: Dressed up in different ways and in different things. Reason for me agreeing to look at it was to try and prevent T doing something that perhaps he shouldn't do.
SIO: But T wasn't your client?
R: But neither was W. Nothing would have made me happier [than] for T to drop out at the start but he was convinced that this would work. He was a professional, an accountant and convinced he would get his money. Had it been Granny Smith it may have been different.
SIO: You looking after T's interests?
R: Yes, being his conscience in a way.
SIO: How did you gain your expertise in being able to look after him?
R: Many years ago I would look at these things and advise clients against them entering into contracts. These people were all small businessmen with not much money but were being taken advantage of.
SIO: With hindsight?
R: Wouldn't have got involved at all. AW when he described T said he was an accountant with his own business who was intelligent with financial expertise. Would have made a difference if someone was not as knowledgeable as T.
SIO: He was putting conditions into contracts etc?
R: Yes - I was only told when it was a done deal. I told him it was too good to be true.
SIO: When you got documentation/instructions didn't you think of warning [card] and just decide to leave it alone?
R: Part of me thought if I stepped down he'd do it anyway so I needed to hold him back. Other part of me said he knows what he was doing and I was just there to facilitate transfer of monies.
SIO: What legal work did you do?
R: Advice, looking at whole thing and telling him not to get involved.
SIO: No engagement letter?
R: No. Had it gone through I would have approached both parties and then discussed fees but never got to that point.
SIO: Right to say that T has lost out?
R: He's lost his £45,000 and I lost out due to exchange rate difference as [he] wanted [his money] back in dollars.
…
If the same situation presented itself today then wouldn't even open a file.

35. In his oral evidence Mr L Smith, a retired man of considerable business experience, said that business opportunities were referred to him from time to time and he had referred them immediately to the Respondent. The Respondent had on a number of occasions advised him that the proposed transactions were "too good to be true" and as a result Mr Smith had rejected them.

36. In his oral evidence Mr Phillips, a solicitor, confirmed that the firm of the Respondent and his own had merged on 1st August 2003. All of the partners in Mr Phillips's firm were aware of the disciplinary proceedings faced by the Respondent. The Respondent was supported by all of the partners. Mr Phillips had known the Respondent since 1981 and considered him to be an upright and honest person who was hard working and had the best interests of his clients at heart. All of the Respondent's books of account had proved to be in good order.

37. The Respondent did not, as a sole principal, have others to whom he could turn. He had gained partners with whom he could discuss matters. He was a salaried partner. He would not give the same wrong advice and similar matters to those complained of would not again occur.

38. The Law Society had issued a Practising Certificate to the Respondent that was subject to a number of conditions, one of which was that he could practise only in employed partnership or as an office holder in an incorporated solicitors' practice with the approval of the Law Society. The Law Society had approved the Respondent's association with Mr Phillips's firm.

The submissions of the Applicant

39. The Respondent admitted allegations (a), (b), (e) (in relation to Mr T only) and (f).

40. The Respondent's explanation for the improper withdrawals from client account was a combination of errors, but the size and number of the withdrawals and the period of time over which they were made presented a serious state of affairs.

41. The Respondent admitted his failure to comply with an undertaking given to Mr T. The Respondent undertook to use Mr T's funds for the purpose of obtaining the guarantee that was the subject of the transaction. He did not do so.

The submissions of the Applicant with regard to the disputed allegations

42. Allegation (g) was based on the Respondent's admitted position as "middle man" between two parties whose interests conflicted. The parties were Mr T and EB Network/Mr AW.

43. Principle 3.16 in the most up to date edition of the Law Society's Guide to the Professional Conduct of Solicitors requires principals in private practice to consider what procedures should be instituted to ensure compliance with the Money Laundering Regulations 1993. The Law Society's "Blue Warning Card" related to money laundering and offered guidance to the solicitors' profession to assist in identification of circumstances in which a solicitor might be involved in money laundering. In particular solicitors were warned to be cautious when asked to hold large sums of cash in client account either pending further instructions or for no purpose other than onwards transmission to a third party.

44. The Law Society's "Yellow Warning Card" on banking instrument fraud offered guidance on transactions that had the characteristics of such frauds.

45. The Law Society's "Yellow Warning Card" on banking instrument fraud offered guidance on transactions that have the characteristics of such frauds. Solicitors and their client accounts are frequently used to enable such frauds to be perpetrated. Both warning cards had received wide publicity within the solicitors' profession. The Respondent acknowledged that he had received the warning cards advice.

46. The Respondent was involved in two transactions each of which was separately described in the SIO's report. It appears from the ledger for EN Financial Transactions. Both appeared to have been purely financial transactions with no underlying legal work involved. In each case large sums of money were paid into and then out of the Respondent's client account. Parties were not properly identified, the client was not identified at all in the second transaction, and the source of the money was not identified.

47. The documents inspected by the SIO revealed that the Respondent had been requested to open a ledger to receive money. The request was made by a Mr AW. On 13th April 1999 the Respondent received into his client account the sum of £30,000. On 28th April the Respondent paid out the sum of £25,026.58, leaving a balance of £4,973.42. That balance was taken by the Respondent in respect of costs on 7th May and 21st July 1999. This was all that was done on the instructions of Mr AW with whom the Respondent had not previously dealt. The Respondent said he did not regard Mr AW or EB Network as his client.

48. This transaction did not fall within one of the categories of work normally undertaken by the Respondent.

49. The Respondent did not take any steps to identify the source or provenance of the money. He was used as a banker, and there were no underlying legal transactions relating to the movements of money.

50. The financial entries in the ledger from 15th September 1999 to 28th March 2000 related to the second transaction. The Respondent's involvement in that transaction supported allegation (d).

51. The Respondent was not sure who his client was. He was only sure that Mr T and Mr AW were not clients. The Respondent was in his own words "a middleman, facilitating a transaction". The steps he took to be sure of the identity of Mr T were on an objective assessment inadequate. He never met him, and relied on telephone conversations and notepaper in his assessment of Mr T's status as an accountant. He was informed that he would be receiving money into his client account and that he would be receiving instructions as to what to do with it. This is one of the situations about which the solicitors' profession is warned in the warning cards. The Respondent should have been alerted to the need to identify his client and the source and ownership of any money coming into his client account. Only in that way could he be sure he was not disposing of funds contrary to any obligations he may have assumed in relation to that money. He was a trustee of any money in client account.

52. The transaction did not fall within the Respondent's usual areas of work.

53. By 15th September 1999 the Respondent had received £61,344.92 into his client account from Mr T.

54. On 20th October 1999 MR T requested the Respondent to send $100,000 to the account specified in the letter, but subject to certain conditions. Mr T requested a

reduction of the sum to be sent to $75,000, and on 25th October 1999 £45,634.31 was sent by the Respondent to the account specified.

55. The instructions from Mr T of 20th October 1999 made reference to the sending of money by "Conditional Swift". SWIFT stands for "Society for Worldwide Inter-bank Financial Telecommunications", and is the principal payment mechanism for international transfers of funds between banks. Once the payment is electronically keyed into the transfer system, it becomes unconditional, and so the expression "conditional swift" is a meaningless contradiction. The Respondent ought to have been alerted by the unusual nature of the instructions, combined also with the fact that Mr T was not the client. The Respondent was under a duty to exercise good stewardship of the money in his client account, but did not do so.

56. The exchange with the SIO showed that the Respondent thought the money should not have been sent, but nevertheless he proceeded to do so. There was an element of recklessness in his approach.

57. All the communications from Mr AW strongly suggested that there was a bank instrument fraud being perpetrated. The Respondent allowed himself to be drawn into this through the use of his client account. One particular feature of this was that the Respondent took specific instructions from Mr AW as to the wording of the letters to Mr T.

58. Although he had not in the Rule 4 Statement alleged that the Respondent had been dishonest, the Applicant had later considered that dishonesty should be alleged against the Respondent. This aspect of the Applicant's case had been dealt with in correspondence between the parties and it could not be said that the Respondent was unaware of the Applicant's case or had been taken by surprise.

The Respondent's submissions with regard to allegations (a), (b), (e) and (f)

59. The Respondent admitted allegations (a) and (b) which related to breaches of the Solicitors Accounts Rules. The breaches were the result of errors and the shortages had been fully replaced. It had been accepted that allegation (c) did not really amount to an allegation but rather was a description of a type of behaviour.

60. It was accepted that in receiving certain funds into his client account in the capacity of stakeholder, the Respondent was in a situation analogous to that of a trustee. However there was no evidence to the effect that the funds in question in the first transaction were misappropriated by anyone and certainly in neither transaction was it suggested that funds were misappropriated by the Respondent. Accordingly the allegation (d) was denied. Allegation (e) should be considered together with allegation (d). The Respondent admitted allegation (e) with regard to Transaction 2 (that of Mr T). The Respondent disposed of the funds in question in the second transaction genuinely believing that he was acting in accordance with instructions from Mr T, the owner of the funds, and accordingly he was entitled to act as he did. However given the nature of the prior correspondence, he accepted that he failed in his duty but not in a wilful manner. In Transaction 1 the Respondent acted properly and in accordance with instructions.

61. Allegation (f) was admitted. The breach of the undertaking was not wilful.

62. Allegation (g) was denied. At the material times the Respondent never acted for more than one party. After the payment out of the funds in question the aggrieved party, Mr T, instructed the Respondent to act on his behalf in connection with their recovery.

63. No allegation of dishonesty had been made in the original Rule 4 Statement. Subsequent to the service of the Supplementary Statement, the Applicant did notify his intention to change tack and allege dishonesty in place of "an element of recklessness".

64. The allegation of dishonesty was resisted.

65. The Tribunal was invited to take note that there had been no client complaint and no funds had been lost.

66. The Respondent's fees had not been the subject of any allegation of unreasonable or improper charging. The fees were authorised, albeit after the event.

67. With regard to Transaction 2 the Respondent held the funds in question as stakeholder. He advised the provider of the funds, Mr T, as to the difficulties of the envisaged transaction. When the funds were paid out by the Respondent he genuinely believed (on the basis of discussions with Mr T) that he was acting on instructions. The Respondent repaid the balance of the funds held to Mr T. The remainder was the subject of a negligence claim against the Respondent which was met by the Solicitors Indemnity Fund. It was never suggested that indemnity was to be declined on the basis of dishonesty. No Indemnity Conference took place. The Law Society did not consider intervention on the basis of even suspected dishonesty.

The findings of the Tribunal

68. The Tribunal found the admitted allegations (a), (b), (e) and (f) to have been substantiated.

69. The Tribunal also found allegation (d) to have been substantiated. It recognised that allegations (d) and (e) to were supported by the same facts and has not treated allegation (e) as a separate allegation. The Tribunal did not make a finding of dishonesty in this respect. The Respondent did not exercise the proper care over funds which he held in the capacity of a trustee.

70. The Tribunal found allegation (g) to have been substantiated. The Tribunal noted that the Respondent had described himself as a "middleman". He was a solicitor and not an impartial negotiator between parties with differing interests. He had a responsibility to represent one client and serve that client's best interests. He did act where there was a conflict of interest between Mr T and EB Network (or Mr AW of that firm). It is not the role of a solicitor to be a middleman. There was not clarity as to who was the Respondent's client at the material time and the Tribunal concluded that he sought to act for both parties.

The evidence relating to allegations (h) and (i)

71. These allegations arose out of the Respondent's dealings with two persons, namely Mr S and Mr L. The Respondent and Mr L gave oral evidence at the hearing.

72. The Respondent had acted for Mr S during the period October 1999 to at least 24th July 2003 as was demonstrated by the existence of two client ledger accounts in Mr S's name. In particular Mr S instructed the Respondent in criminal proceedings in 1999. Mr S was being prosecuted by the Serious Fraud Office for conducting fraudulent financial transactions which had the characteristics of advance fee frauds.

73. Mr L described himself as a self employed projects manager trading as Asset Resources Limited. He had extensive contact with the Respondent during the course of a financial transaction upon which the Law Society's Senior Investigation Officer reported in his written report dated 6th April 2004 that was before the Tribunal.

74. Mr S had been arrested on 16th June 1999 and together with co-defendants was charged with conspiracy to defraud during the period 1st January 1996 and 16th June 1999. On 23rd June 2003 Mr S was convicted and sentenced to six years imprisonment.

75. Mr S had operated a company which offered commercial loans for ventures outside the UK (loan deals). Applicants for such loans were charged a "due diligence" fee (an "advance fee") by Mr S during the formative stages of the loan application process. At a later stage applicants were required to make a further advance payment to Mr S, said to be for the purchase of a "collateral bond" as loan security. Typically this was 40% of the loan they were seeking. The transaction would not proceed without such payment, with the consequence that the Applicant would lose the "due diligence" fees. Mr S admitted that no applicant had ever received a loan during the period covered by the criminal charge, and that during the same period he received approximately $3.8million in "due diligence" fees.

76. During a period of time after his arrest and before his conviction Mr S was involved in another loan deal, that involving Mr L.

77. The Respondent said that he had received a telephone call from Mr L "out of the blue" when he was extremely busy with Mr S's case. No attendance note had been made, but the Respondent said that he recalled the telephone call when Mr L had asked if he, the Respondent, knew of any source of loan monies. The Respondent had given him Mr S's details, but offered no advice.

78. The Respondent said that his contact with Mr L was limited to another telephone call received from Mr L early in March 2002, when Mr L was advised to approach a merchant bank and his own accountants.

79. On 8th March 2002 Mr L wrote the following letter to the Respondent:-

> "Dear Mr Krivinskas
>
> **Global Holding AS Istanbul**
>
> I enclose a copy of a letter I have just sent to Mr S at P Finance. I consider it proper to advise you of the difficulties we are having and the direction in which Mr S has attempted to heap all, be it unconfirmed blame for his apparent lack of progress!
>
> Mr S has no grounds for complaint, either with the money he has received to act in this matter or the respect, which has been paid to him by my Turkish colleagues and myself. You may not be able to alter the course of the proceedings however you should be aware of them as these matters impact you by association.
>
> Yours sincerely
>
> [signed]
>
> Mr L
> For Global Holding AS"

80. The Respondent replied as follows:-

> "Dear Mr L
>
> **Re: Global Holdings AS Istanbul**
>
> I thank you for your letter of the 8th March 2002.
>
> When you first approached me in this matter I said that I did not wish to become involved but I did know someone who may be in a position to facilitate the financing needs that you required.
>
> I informed you at the time this person normally works on the basis that the loans are interest only and that because of this, and because the loan needed to be repaid at the end of its period at say, ten years, that this person would insist on an assignable collateral bond which at the end of the ten year period would be sufficient to pay back the amount advanced. You assured me at the time that that would not be a problem. It was only on that basis I introduced you to Mr S and because of your comments, he felt confident that he would be in a position to raise the funding on the strength of the assignable collateral bond.
>
> I now understand that your client is not in a position to provide this bond. Various questions, therefore, need to be answered. The main question is that at the end of the ten year period, in the event of the loan being an interest only loan, how would your clients wish to repay the capital sum? They are not able

to rely on the land that they occupy as security because they continue to require that for the purpose of their business. Consequently, another satisfactory method needs to be found to repay the capital which will guarantee the lender that at the end of the loan period, his capital monies will be repaid.

If the land itself has sufficient value, then it may be possible to obtain a bond using the land as collateral. However, there also needs to be sufficient equity left to act as security for the repayment of interest on the loan in the event of the loan defaulting.

I set out the parameters as I understood them but it may well be that matters have moved on since then.

According to Mr S, the security arrangements now being proposed by you are substantially different from that he understood would be offered when he first agreed to deal with the matter.

You will need to appreciate that no lender will lend substantial sums of money without being satisfied that at the end of the loan period he will recover not only capital but also interest. Mr S does have connections and is able to facilitate the loan providing that the security requirements are met.

I have stressed both to you and to Mr S that I was happy to facilitate introduction but that, thereafter, each party must take the other on its own merits and either proceed or not to proceed according to what they find.

Yours sincerely

[signed]"

81. The Respondent recalled that he received another brief telephone call from Mr L followed up with a letter from Mr L dated 23rd April 2002, the terms of which were:-

"Dear Mr Krivinskas

Global Holding AS Istanbul

Further to our brief conversation on the subject of providing finance for my Turkish colleagues I am negotiating with a bank for them to hold the deeds and to issue a financial instrument for Global Holding AS over the medium term. There is general agreement on this issue however I must provide documentation to them to complete their work.

Mr S holds this original information and I require either original documents or copy for the Bank to process. Perhaps you would be so kind as to ask Mr S for the information I require, mentioning the progress that has been made. He tells me by fax that his Bank is ready to proceed (see copy attached). I must point out that I have had to lower the value of the instrument to suit the circumstances of the issuing Bank and the valuation.

> Your assistance is appreciated in helping resolve the issue with Mr S.
> Yours sincerely
>
> [signed]
>
> Mr L
> For Global Holding AS"

82. The Respondent agreed that he had been present at a meeting between Mr L and Mr S at the Respondent's office on 10th May 2002, at which the Respondent took little or no part.

83. Paragraphs 77 to 82 above set out the level of involvement which the Respondent accepts he had with the loan deal between Mr S.

84. In his oral evidence the Respondent said that he might have received copies of letters. He had no file upon which to keep such communications and he might well had discarded them. He could not remember anything about them.

85. The Law Society's SIO inspected a file of papers which included the following.

86. Fax of 14th September 2001 from Mr S to the Respondent:-

> "Re: P C F (Europe) Limited
>
> I would be grateful, if you have time this afternoon, if you could have a quick look over the draft contract as I have two clients that are anxious to proceed with their loan applications and asking if I will be issuing the agreement to them over the weekend.
>
> I realise that we have yet to draft the definitions clause but wondered whether you thought that the agreement was OK to use in the meantime."

87. Letter from Mr L to Mr S (copied to the Respondent):-

> "Mr Krivinskas kindly made your contact co-ordinates available to me, and I am pleased to enclose with this letter, two documentary binders containing relevant valuation and ownership information in respect of:
>
> Platan resident Blocks B1 and B2 Istanbul
> Platan Club and Hotel, Marmaris
> I trust this information, in conjunction with that which was sent via Mr Krivinskas, provides a firm basis for decisions you will have to make regarding the property mortgages."

88. Letter of 26th April 2002 from the Serious Fraud Office to the Respondent:-

> "I thank you for your letter dated 17th April [2002].
>
> … The reference in your letter to Mr S travelling abroad and generating substantial sums of money inevitably gave rise to the suspicion that he is continuing with the activities for which he has been indicted and I will therefore pass a copy of your letter to the Police. Obviously it would allay their fears if you could provide an assurance that this is not a continuation of those activities for which he has been indicted and I look forward to hearing from you on that point."

89. Email of 4th November 2002 from Mr S to the Respondent:-

> "I have incorporated the following definitions into our future offer letters and would be pleased to hear whether you think that the description is sufficiently stated.
>
> [Definitions of 'Authorised Officer of the Company', 'Material Breach', 'Collateral Bond' and 'Maturity'.]"

90. The SIO had been unable to locate any responses from the Respondent to this correspondence, but the following file notes had been made by the Respondent.

91. Krivinskas & Co file note of 15th July 2002:-

> "PEK [Mr Krivinskas] receiving email from Mr S regarding Mr L. PEK telephoning client and advising that although PEK understood that Mr S was wishing to conclude some financial deal prior to his trial in order to demonstrate to the court that these deals were able to be concluded, and although PEK appreciated being provided with copies of documents, these were not transactions that PEK could become involved in and that it was not appropriate for PEK's name to be put forward in any way as being a solicitor instructed on behalf of P Finance. Mr S confirmed that he appreciated that but he had hoped that PEK would attempt to assist him in ensuring that one of the deals that he wished to do went through to completion as this would assist his defence. PEK once again reiterated that although it probably would assist his defence, it was not appropriate for PEK to play any part in this matter and in the event of any of Mr S's clients telephoning PEK, he would have to pass them directly back to Mr S and to advise those clients that he was not in a position to assist them."

92. Krivinskas & Co file note of 21st July 2002:-

> "PEK telephoning Mr S regarding emails received.
>
> Telling him that under no circumstances was PEK nor his firm able to act in any financial transaction, no matter what the fee being offered."

93. Krivinskas & Co file note of 21st July 2002:-

> "PEK receiving email from Mr S. PEK telephoning Mr S who told PEK to disregard the emails. He apologized (sic) for them having been sent. He could anticipate what PEK was about to say to him and that he would attempt to ensure that PEK was not troubled any further."

94. Krivinskas & Co file note of 23rd January 2003:-

> "PEK telephoning Mr S re letter from A R dated 21.1.03 sent by PEK to GS. [Letter not located by the SIO during file reviews].
>
> PEK stated that he could not become involved in the transaction. PEK said that it was wrong of MR S to give Mr L his name. PEK was informed that GS had passed on PEK's telephone number to him and that Mr L might be telephoning him. PEK said that if he did so, PEK could inform him that he was not involved with MR S as his commercial solicitor and that he should deal with Mr S direct."

95. Krivinskas & Co file note of 22nd July 2002:-

> "PEK telephoning Mr S again re his new business deals. Again emphasising that PEK did not wish to become involved in any deals. PEK was his solicitor dealing with his criminal case and was not in a position to mix the two."

96. At a meeting on 10th September 2003 the SIO asked the Respondent about the connection between himself, Mr L and Mr S and specifically how Mr L was introduced to Mr S. The following extracts from the SIO's notes were before the Tribunal:-

"SIO … Letter 21st January 2002 [from] A R.

R (Respondent) The guy connected with these Turkish people.

SIO This says Mr Krivinskas.

R He phoned me - he'd spoken to Mr S. I told him [I am] not involved but told him [what] Mr S's address is. Said please investigate everything. Just ensure you've had professional help [and] advice [and] what have you. I said these are his details. Don't think so [knew Mr L before that]. May have met. People phone up and say remember me from 1990 whatever. I wouldn't know Mr L if I tripped over him.

SIO Looks unusual and why would this guy contact you as Mr S's lawyer?

R Because he'd lost Mr S's details and Mr S was telling everyone I was helping. Quite likely he'd give them my telephone number but I'd never acted for Mr L or AR.

SIO Could Mr L have approached you and said do you know anyone who provides loan funding?

R Don't think so - think telephone call came in - he was reminding me we'd met or whatever and pretty sure he already knew Mr S. Didn't make a note of his call.

SIO Wouldn't have been right for your as a solicitor if anyone rang up and said do you know anyone who can provide funding?

R I wouldn't have generally done that basically bearing in mind he'd been charged with fraud. Pretty certain he knew Mr S in the past. I'm pretty certain I wouldn't have put him onto Mr S.

SIO Looking at this, possibly Mr L contacts you - he's struggling for money and if he asks you…

R I wouldn't have put him onto Mr S. I would have said if you are going to do anything with Mr S make sure you're careful, satisfied with everything. Didn't want to have him think continue with Mr S, take professional advice some sort of pre-warning they have to be careful. Pretty certain I'd have done that but didn't make a file note."

97. Mr S made a statement in September 2003 which was sent to the SIO. The following is an extract from Mr S's statement:-

> "Although it is over twelve months since Mr L made contact with me, I recollect speaking with Mr L by telephone concerning possible business between his Company and mine. During the conversation, I mentioned that my solicitor was Mr Krivinskas and I was surprised when Mr L indicated that he knew Mr Krivinskas.
>
> I heard nothing further from Mr L until I received a letter from him regarding one of his clients in Turkey. I believe he had obtained my address from Mr Krivinskas. I recollect that I had already provided him with my telephone number but he may have misplaced this."

98. Mr L said that he had been introduced to the Respondent by Len Smith, an accountant in Manchester. Mr L explained that he had made a statement to the police in relation to this matter as the clients he had introduced to Mr S had lost US$25,000 in "commissions".

99. In a previous inspection of the Respondent's firm by the Law Society a Mr Len Smith was involved in a 'prime bank instrument' type transaction where funds passed through the client bank account of Krivinskas & Co.

100. Mr L's statement, dated 22nd July 2003, included the following:-

"(i) I must say that no rational person, myself acting as Mr Y's Power of Attorney included, would have paid fees up front to a person who has been charged with an offence such as that.

(ii) In December 2000 I was given the name of Peter Krivinskas by some English people who were working in Hong Kong. Krivinskas was their solicitor and their accountant was called Len Smith. I was told that Krivinskas represented international clients and might be an introducer to potential financiers. He was handling a contract for the people in Hong Kong involving financial banking instruments and was apparently well known with an international client base. I had been told that he had been successful in the acquittal of Azil Nadir in a high profile court case. I was specifically looking for mortgages which would give us a line of credit outside of Turkey and because of what I had been told I thought he might have been able to help me.

I do have a diary entry dated 10th January 2002 which states that 'Krivinskas advises that Mr S is dealing with mortgages and charges and insurance. I am able to say that this note was as a result of a telephone conversation I had with Krivinskas on that date.

(iii) … I do not know, however, if this was my first or second call to Krivinskas. From looking at my file note I remember that he told me Mr S would be able to provide a mortgage, that he would require charges over the property and an insurance bond to pay off the loan at term. During my calls to Krivinskas I had explained to him my requirements. I told Krivinskas that I had a Turkish client who was the owner of commercial properties in Turkey which had been valued at 30 million US dollars. I told him that these properties were unencumbered and that my client was willing to put the deeds of these properties forward as security in order to obtain a mortgage which would release funds to enable him to complete various other projects in Turkey. I asked him if he knew anyone who would be able to introduce me to a provider for such a mortgage.

He told me that he knew a man called Mr S who operated a company called PF who may be able to provide the required funding. He made no mention of why he knew him and I did not ask. He gave me Mr S's telephone number and I contacted him.

(iv) … The only person who had mentioned the word bond was Krivinskas in a way that led me to believe that a bond would be some sort of insurance, this I knew and was quite happy about.

…

(x) … I did not know Mr S prior to talking to Krivinskas and would not have used him but for Krivinskas' introduction. I though Krivinskas was a reputable lawyer and took what he told me as advice, ie that Mr S had the ability to

perform but it was up to me if I chose to go with him. He did not make any adverse comment about Mr S.

…

(xii) … Had Mr Krivinskas told me that MR S was on bail for a serious charge of conspiracy to defraud having been charged with this offence on 22nd November 2000 then I would not have entertained trying to do business with him whether he was convicted or not. I feel that Krivinskas had a duty to inform me about Mr S, as he had been charged it was a matter of public record. He also assisted Mr S in the transaction and still did not inform me of the situation. Had I known that Mr S had been charged with this offence I would not have allowed my client to pay him the 25,000 US dollars. I wish to seek compensation in this matter and understand that the fees are at present in the Philippines. …"

101. The Respondent said that he would not have felt able to disclose matters relating to Mr S because of his duty to protect client confidentiality. He accepted that Mr S had been bailed at the date of Mr L's telephoned enquiry.

102. On 23rd December 2003 the Respondent sent by fax a letter to him from Mr S regarding Mr L. The following are extracts:-

"(i) Mr L first approached PF (Europe) Limited after visiting our web site.

(ii) Mr L later indicated to me that he knew of you and, through one of his clients, had had previous dealings with you.

(iii) Mr L presented a commercial financing deal to PF on behalf of his Turkish client.

(iv) Mr L made very serious misrepresentations to me concerning his ability to provide security against the proposed loan."

103. On 12th January 2004 the Law Society was provided with documentation which had been seized by the Serious Fraud Office (SFO) during the criminal investigation in relation to Mr S. From a review of this documentation it was apparent to the SIO that certain correspondence was not contained within Mr S's client files which were supplied by the Respondent during the inspection.

104. From a comparison of the documentation provided by the SFO and correspondence on Mr S's client matter file it was apparent that the following correspondence could not be located on Mr S's client matter file:-

(i) Letter of 28th December 2001 from Mr L to the Respondent enclosing provisional documentation in order for the loan application to processed.

(ii) Letter/fax of 14th January 2002 from Mr L to the Respondent requesting that the Respondent pass certain information to Mr S as Mr L had not yet received Mr S's contact co-ordinates.

(iii) Letter/fax of 8th March 2002 from Mr L to Mr S (copied to the Respondent) stating that Mr L had spoken to the Respondent who "stated the need for your loans to have a capital repayment guarantee as part of the structure."

(iv) Letter/fax of 8th March 2002 from Mr L to the Respondent enclosing a letter Mr L had sent to Mr S.

(v) Letter/fax of 8th March 2002 from Mr S to Mr L (copied to the Respondent). This letter makes references to "Mr Krivinskas and myself" in relation to the provision of funding.

(vi) Letter/fax of 8th March 2002 to Mr L from Mr S (copied to the Respondent).

(vii) Letter/fax of 8th March 2002 from the respondent to Mr L referred to in Mr L's statement.

(viii) Email of 14th March 2002 from Mr S to Mr Y at GH (copied to the Respondent). The following extract is of relevance:-

"It is also worthy of note that even before Mr L was introduced to PF he held discussions with our Manchester solicitor, the Respondent, and the Respondent fully explained to Mr L the requirement of a bond or guarantee instrument. Mr L told the Respondent that he thought that was a good idea and should not represent any problem whatsoever. That was the basis upon which I accepted the application and Mr L was perfectly aware of the requirements from the very outset."

(ix) Letter or 20th March 2002 from Mr S to Mr L (copied to the Respondent). The following is an extract:-

"Mr Krivinskas tells me that he clearly recalls informing you from the outset that a financial instrument would be required in order to secure the loan, and you telling him that should not present any problem. On that basis, Mr Krivinskas agreed to pass on your clients funding application to be dealt with by this office."

(x) Letter from Mr S to Mr L (copied to the Respondent).

(xi) Letter of 23rd April 2002 from Mr L to the Respondent.

(xii) Hand-written fax of 29th April 2002 from the Respondent to Mr S which stated, inter alia, the following:-

"Mr S. I had previously said to Mr L that I would get in touch with him with regard to us meeting on Friday. With everything that happened I forgot to cancel it although I just happened to be there at 6.00 but didn't see Mr L. He

says that he has everything in place for a reduced loan of $10m. Telephone me. Peter."

(xiii) Letter of 11th June 2002 from Mr S to Mr L (copied to the Respondent).

(xiv) Letter of 6th July 2002 from Mr S to Mr L (copied to the Respondent).

(xv) Letter of 6th July 2002 from Mr S to the Respondent.

(xvi) Letter of 15th July 2002 from Mr S to Mr L (copied to the Respondent).

105. In evidence the Respondent said that he had no reason to retain documents copied to him. If he did not have a file where they could be placed he was likely to have thrown them away. It was possible that documents had not been received or had been mis-filed even if they had been retained. He accepted that the documents referred to above could not be produced.

The Applicant's submissions in relation to allegations (h) and (i)

106. Looking at the position of the Respondent as a whole, he was on the clearest possible notice that transactions of the type to which the criminal charges faced by Mr S were fraudulent. The telephone conversation with Mr L took place when the Respondent was heavily engaged in Mr L's defence to the criminal charges. The documents, both those which the Respondent accepts and recalls and those which were discovered by the SIO (in respect of which the Respondent says he had little or no recollection and appeared not to have saved) all postdated Mr S's arrest and charge, although they predated his conviction.

107. The chief issue to be addressed was the nature and extent of the Respondent's involvement in the Mr L loan deal.

108. The case against the Respondent was that Mr L telephoned him on at least one occasion and the Respondent gave Mr L the telephone number and company name of Mr S, describing him as someone who might be able to help with a loan transaction.

109. The Respondent had originally stated that he did not introduce Mr L to Mr S at one stage but subsequently he accepted that he had given Mr L Mr S's details on the telephone.

110. The Respondent's position was that he had not been involved at all in the practicalities of the transaction. Mr L's recollection differed from that of the Respondent. There was evidence of a clear intention on the part of the Respondent to portray the events surrounding the Mr L loan deal in a way that showed that the Respondent had little or nothing to do with it.

111. In the Applicant's submission the Respondent's explanations were not true and he misled the FIO.

112. There had been no explanation why 16 documents (referred to in paragraph 104 above) which were supportive of the case that the Respondent had a significant involvement in the Mr L loan deal had gone missing. On any reasonable assessment those documents were incriminating. The fact that those documents had not been made available by the Respondent could be explained only by a filing error or a deliberate attempt on the part of the Respondent to keep them away from the SIO. It was highly material that every one of them was missing from the file which, in the submission of the Applicant, eliminated error or loss as credible explanation. The SIO would not have been able to examine those documents had they not been seized by the Serious Fraud Office from Mr S's business premises. In the submission of the Applicant the Respondent sought by the concealment of the contents of those documents deliberately to mislead the SIO and that was dishonest.

113. All the missing documents recorded certain aspects of the Mr L loan deal and were either sent to the Respondent, copied to him or written by him. Those received had come from a variety of sources and on different dates. For them all to have been misfiled would have involved filing errors going beyond what is credible.

114. Those documents demonstrated that the Respondent was involved in the deal to an extent that wholly contradicted the explanations given by him. Those documents did not show that the Respondent was "trying not to get involved".

115. The letter addressed by the Respondent to Mr L of 8th March 2002 amounted to compelling evidence that the Respondent had introduced Mr L to Mr S.

116. The Applicant adopted the analysis of the documents by the SIO in his report which was follows:-

(a) the Respondent had introduced Mr L to Mr S after Mr S's arrest and when the Respondent was representing Mr S in relation to criminal charges laid against him of conspiracy to defraud;

(b) the Respondent did supply Mr L with details of how the loan scheme worked;

(c) the Respondent recognised when he prepared his file note of 27th July 2003 that he should not have become involved at all in this transaction but nonetheless did so;

(d) correspondence and documents that were relevant to the Mr L loan deal were not on the file;

(e) the file note of 22nd July 2003, which should be 2002, contradicted the events tha3t actually took place. That file note was inconsistent with the content of other documents provided to the Law Society by the Serious Fraud Office. On any reasonable assessment the document did not tell the truth;

(f) the Respondent had given an explanation to the SIO and another officer of the Law Society that was factually inaccurate and misleading. He did that over a period of time and on more than one occasion.

117. When the SIO discussed matters which caused him concern with the Respondent on 8th March 2004, the Respondent's explanations were inadequate.

The submissions of the Respondent with regard to allegations (h) and (i)

118. With regard to allegations (h) and (i) where dishonesty was alleged in both, the Tribunal was invited to take account that the Respondent was only "involved" in the financial transaction in question in a peripheral way. He did not "facilitate" it. The Respondent never acted for Mr S in any of his loan transactions. The Respondent accepted that he gave Mr L the contact details of Mr S. He admitted that in the circumstances it was both foolish and wrong to do so and that in so doing he was in breach of Rule 4(d) of the Solicitors Practice Rules 1990 (as amended). He would admit to such an allegation on the basis that it would reflect the extent of his wrongdoing.

119. The extracts from the interview transcripts relied upon by the Applicant would on a careful reading reveal that the Respondent was not categorical in his statements. He was doing his best given his limited recall of events and given the fact that he had not retained all documents.

120. The allegations given their seriousness and the question of dishonesty required proof beyond reasonable doubt. Twinsectra Ltd -v- Yardley and Others [2002] UKHL 12 contained the appropriate test for dishonesty.

121. The Tribunal was invited to find that the documentary evidence established the extent to which the Respondent had actual involvement in the loan deal involving Mr L and Mr S. It was accepted that the Respondent had taken a telephone call from Mr L on 10th January 2002 and that the Respondent gave Mr L the contact details of Mr S. Early in March 2002 Mr L had telephoned the Respondent and was advised to go to a merchant bank and consult his own accountants. The Respondent received Mr L's letter of 8th March 2002 and responded the same day. Mr L had written to the Respondent on 23rd April 2002 but he could not recall replying. The Respondent accepted that he had sent a hand-written fax to Mr S on 29th April 2002 and on 10th May 2002 Mr S and Mr L met at the Respondent's office, but the Respondent played no part in their discussions.

122. The Tribunal was invited to take the view that no reliance could be placed upon any uncorroborated information provided by Mr S. Where it was suggested that copy letters had been sent to the Respondent for information, there was no evidence of actual receipt, and even if they had been received they did not represent actual involvement in any transaction on the part of the Respondent.

The findings of the Tribunal re allegations (h) and (i)

123. The Tribunal did not believe the Respondent's evidence as to his limited involvement in the loan deal involving Mr L and Mr S. The Tribunal did not find it credible that the Respondent had destroyed, lost or mislaid 16 documents which would throw a light on his involvement. The letter addressed by the Respondent to Mr L dated 8th March 2002 provided compelling evidence of the Respondent's involvement in the

scheme. In that letter he discussed the nature of the transaction, offered advice on it, and went on say that he was happy to facilitate introduction but thereafter each party had to take the other on their own merits. The Tribunal did not believe that the Respondent had forgotten that at the time he said he would introduce Mr L to Mr S, Mr S was facing criminal charges for transacting loan deals of the very sort about which Mr L was making enquiry. The Tribunal did find that the Respondent was involved in the financial transaction and did not find, as the Respondent claimed, that the part played by him was insignificant and peripheral.

124. With regard to the allegation that the Respondent attempted to mislead the SIO, the Tribunal noted that the SIO himself in his oral evidence before the Tribunal stated that he did not consider that he was being or had been misled and the Tribunal has paid due regard to that. The Tribunal has concluded that the Respondent did not attempt to mislead the SIO.

The Tribunal's Decision and its Reasons

125. The Tribunal found allegations (a), (b), (d), (e), (f) and (g) to have been substantiated as set out above. The Tribunal also found allegation (h) to have been substantiated.

126. The Respondent had admitted allegations (a), and (b), and taking (d) and (e) together accepted that the Respondent failed to take reasonable steps and disposed of funds in breach of his obligation to preserve client money. The Tribunal made their finding in respect of Mr T only. In respect of that matter the Tribunal did not find that the Respondent had behaved dishonestly. The Tribunal found allegation (f) to have been substantiated, namely that the Respondent failed to comply with an undertaking given to Mr T, which the Respondent also admitted.

127. The Tribunal found allegation (g) to have been substantiated. The Tribunal found that the Respondent was acting for both Mr T and EB Network/Mr AW where their respective interests were in conflict.

128. The Tribunal was invited to conclude that the Respondent had been dishonest in relation to allegations (d) and (e). The Tribunal in considering the question of dishonesty considered the test set out in Twinsectra -v- Yardley and found that the test was not satisfied in this case.

129. The Tribunal also applied the test in Twinsectra -v- Yardley in respect of allegation (h). The Tribunal concluded that in connection with his introduction of Mr L to Mr S the Respondent had acted dishonestly. The fact was that at the time of this introduction the Respondent was embroiled in proposing a defence for Mr S who stood charged and on bail in relation to serious offences relating to fraud. These alleged offences related to similar transactions to that with which Mr L required assistance. The introduction of Mr L to Mr S by the Respondent would have been regarded as dishonest by ordinary members of the solicitors' profession, and the Tribunal considered that the Respondent himself knew that what he was doing was dishonest.

130. The Tribunal regarded the Respondent's behaviour to have been extraordinary. He was aware of the warnings issued by the Law Society in an attempt to assist solicitors and prevent them from unwittingly assisting rogues in their nefarious activities involving prime bank instrument fraud and money laundering and yet was prepared to become involved in transactions which bore the hallmarks of fraud identified in the Law Society's warnings, as illustrated by his introduction of Mr L to Mr S and the other transactions in which the Respondent had acted.

131. With regard to allegation (h) the Tribunal did not believe the evidence of the Respondent and found him to have acted dishonestly. It was right in order to protect the public and the good reputation of the solicitors' profession that the Respondent be struck off the Roll of Solicitors.

133. The Tribunal also ordered the Respondent to pay the costs of and incidental to the application and enquiry, to include the costs of the SIO or Investigation Accountant of the Law Society to be subject to a detailed assessment unless agreed between the parties.

Dated this 11th day of February 2005
On behalf of the Tribunal

A H B Holmes
Chairman