No. 9054-2004

IN THE MATTER OF IAN GRAHAM HUTCHINSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr P Haworth
Mr D E Marlow

Date of Hearing: 9th December 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jonathan Richard Goodwin of Jonathan Goodwin solicitor of 17e Telford Court, Dunkirk Lee, Chester Gates, Chester CH1 6LT on 22nd June 2004 that Ian Graham Hutchinson of Trinity Road, London, N2, might be required to answer the allegations set out in the Statement which accompanied the Application and that such Order might be made as the Tribunal should think right.

The allegations were:-

(i) That he made representations to third parties that he knew or ought to have known were misleading and/or inaccurate.

(ii) That he has acted in his professional capacity towards a third party in a way which was deceitful, misleading or otherwise contrary to his position as a Solicitor.

(iii) That having accepted instructions on behalf of a client he failed to carry out those instructions with diligence and the exercise of reasonable care skill.

(iv) That he acted contrary to and/or without his clients' instructions in relation to the disbursement of monies.

(v) That he acted in breach of Practice Rule 1 of the Solicitors Practice Rules 1990 in that he has been guilty of conduct which has compromised or impaired or is likely to compromise or impair his independence and integrity, the good repute of himself and of the Solicitors profession.

The Application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when Jonathan Richard Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

Preliminary Matter

The Respondent had been in correspondence with the Tribunal's Clerk and the Applicant. In his letter addressed to the Applicant dated 1st August 2004 the Respondent confirmed that the documents referred to by the Applicant and supplied by him were true copies of originals and the statements made were admissible to prove the facts. He did not issue a Civil Evidence Act Counter Notice in order to minimize the costs involved.

He said that he admitted the facts in order that the matter might be dealt with as expeditiously and economically as possible. He confirmed that he would not seek representation nor did he intend to appear at the hearing for both personal and health reasons.

He made submissions which are referred to later in this Findings. He went on to say that he wished to draw to the Tribunal's notice that as far as he was aware no allegation of dishonesty had been made against him.

In reply the Applicant noted that the Respondent admitted the facts and the allegations. He went on to say "For the avoidance of any doubt and out of an abundance of fairness to you, I confirm that dishonesty is alleged and I will open the case to the SDT on that basis.

I should be obliged if you would kindly confirm your position in the light of that which is said herein."

The Respondent's reply to Mr Goodwin to the Applicant dated 18th August 2004 said, "It comes as great surprise to me that you are interpreting the allegation against me as dishonest. This is the first time in the long saga of this matter that any such allegation with this severity has been made against me and I reject your interpretation entirely.

In the light of what you say I propose to attend the hearing and defend those allegations of dishonesty, subject to my doctor's opinion on the matter. I will now have to see him to discuss."

The Respondent wrote to the Tribunal on 7th September 2004 enclosing his General Practitioner's letter concerning the Respondent's state of health. The General Practitioner's letter addressed "To whom it may concern" said, "Due to health issues relating to chronic anxiety and depression it would be against medical advice for Mr Hutchinson to attend the planned meeting for 10th September 2004. If forced to do so it may seriously precipitate his precarious mental state. It is my opinion that meetings which may generate grief and anxiety should be avoided for the time being in order to prevent serious mental harm to the patient".

In his letter of 7th September 2004 the Respondent went on to say:-

> "I have made it clear that whilst I am prepared to accept that the basis of the facts as set out are not disputed. I deny very strongly his (the Applicant's) interpretation that they demonstrate dishonesty on my part… Mr Goodwin alleged some sort of dishonesty in a letter to me only very recently and that came as a complete shock and surprise to me. This was the first time any such suggestion has ever been made."

The Applicant told the Tribunal that the Respondent had been requested to provide a Medical Report which included a diagnosis and a prognosis. The Applicant adopted a neutral view to the Respondent's Application for an Adjournment.

The Applicant was concerned about proceeding as he intended to make a clear allegation of dishonesty. If the Tribunal were minded to adjourn the substantive hearing he requested it to direct that the Respondent file a detailed medical report from a specialist, including a diagnosis and a prognosis.

The Decision of the Tribunal and its Reasons

The Tribunal did not consider that the medical report supplied was sufficient to enable it to agree to an adjournment of the substantive hearing . Any solicitor facing a disciplinary hearing before his professional disciplinary tribunal is likely to suffer from anxiety and possibly depression. The Report does not indicate that the Respondent is suffering from clinical depression or what medication has been prescribed. The general practitioner refers to the Tribunal hearing as a "meeting" and the Tribunal considers such report to be of minimal value when the general practitioner does not have a full knowledge of the fact that the Respondent faces a substantive hearing to answer allegations of professional misconduct.

The Tribunal has to weigh the position of the individual Respondent against its duties to protect the public and maintain the good reputation of the solicitors' profession. The Tribunal notes that the Respondent has been in correspondence both with the Applicant and the Tribunal and from that correspondence appears to have a good grasp of what is going on.

The Respondent has indicated that he has no intention of attending the hearing in any event. Taking into account all of these matters the Tribunal concluded that it would be right to proceed to the substantive hearing.

With regard to the question of the allegation of dishonesty, the Tribunal notes that the Applicant made it entirely clear to the Respondent in the letter addressed to him dated 10th August 2004 that he would open the case as one involving dishonesty. The Respondent had, therefore, some four months notice that the case put against him was one that he had been dishonest.

Further, allegation (i) was put on the basis that he made representations to third parties that he knew or ought to have known were misleading or inaccurate and allegation (ii) was that the Respondent had acted towards a third party in a way which was deceitful, misleading or otherwise contrary to his position as a solicitor. It was the Tribunal's view that the allegation of dishonesty was inherent in allegations (i) and (ii) and the Respondent must have been aware of the nature of the allegations against him when the formal Application and

supporting statement were served upon him following the Applicant's Application made at the end of June 2004.

The Tribunal noted that the Respondent resisted the allegation of dishonesty and would take his denial into account when reaching its final conclusions.

The Tribunal required that the matter should proceed to a full substantive hearing .

The Tribunal expressed concern that the Applicant's Rule 4 Statement did not on its face, include a formal submission that the Respondent's conduct did amount to dishonest conduct and pointed out that a clear and unequivocal statement to this effect would obviate the need for the Tribunal to make a ruling even though, in this case, there could be no doubt that the allegations as drawn clearly alleged dishonesty from the outset.

The Evidence before the Tribunal

The Respondent admitted the facts but denied that he had been dishonest.

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

The Tribunal orders that the Respondent, Ian Graham Hutchinson of Trinity Road, London, N2, solicitor, be struck off the Roll of Solicitors and it further orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of The Law Society.

The facts are set out in paragraphs 1 to 32 hereunder:-

1 The Respondent, born in 1948, was admitted as a solicitor in 1977 and his name remained on the Roll of Solicitors. At the material times the Respondent practised in partnership under the style of Tamosius & Hutchinson from offices at Leckingfield House, Curzon Street, London W1. The Partnership ended on 31st January 1997.

2. Upon due notice an officer of the Forensic Investigation Unit Of The Law Society (the FIS) carried out an inspection of the books of account of the Respondent's firm. The inspection began on 7th September 1999 at the Respondent's home. The FIS Report dated 23rd November 2001 was before the Tribunal. The Report revealed the following matters which had caused concern to the investigating officer (the IO).

3. The Respondent received instructions from Chartavia Group of Companies ("Chartavia"), which was engaged in raising finance for the purchase of aircraft; the conversion of aircraft for freight use and onward leasing of those aircraft to secondary airline operators.

4. The Respondent was instructed to approach a number of airline operators with a view to Chartavia purchasing aircraft from them. The Respondent was sent draft letters by the client which he was asked to send to the airline operators on his firm's printed letterhead.

5. On 3rd June 1996 the Respondent wrote to the receiver for Fokker Aviation in order to secure an opportunity to make a purchase from the insolvent company. The letter had been drafted by Mr Mahy, a representative of Chartavia. The letter stated, "We act for a substantial group of companies in the aviation world."

6. When asked by the IO what knowledge he had of the company's previous dealings and their track record, the Respondent indicated that he relied upon what his client had told him and had taken them "at their word". He said he had "never found out the true depth of their experience."

7. In response to The Law Society's request for an explanation by letter dated 22nd February 2002, the Respondent said by letter dated 15th March 2002:-

> "We allowed the letters to be drafted in the first instance by the client in order that the client could express its interest in the proposals and business opportunities that presented themselves. We deny that we permitted any such letters to be either misleading or persuasive insofar as our role was concerned in representing the client. We were assured of the personal expertise of the principals and their contacts and we deny that we did not check the "bona fides" of the client before allowing the letters to be sent".

7. The IO ascertained that the client files contained a draft letter dated 3rd July 1996 to International Air Leases, in Florida, USA relating to the proposed purchase of two aircraft. The letter read:-

> "We are able to confirm that we also act for our client's broker in other transactions and are personally aware that they have successfully completed similar transactions in the past."

When the IO asked the Respondent about this he said:-

> "It was probably just that their client was asking us to suggest that they had successfully done transactions before … in hindsight I would not have said so".

On 10th July 1996 Chartavia International faxed a letter to the Respondent's firm addressed to the Respondent's former partner, attaching a draft text for a letter to a Mr Walker of International Air Lease. The file gave the appearance that the letter had been sent the same day. In response to a question from the IO as to whether it was his practice to allow clients to draft letters for him to send out on the firm's headed paper, the Respondent replied:-

> "We said to Chartavia that if they were letters just seeking to find out who was selling we would do so."

8. In response to questions from The Law Society on the matter, the Respondent replied:-

"I do not accept that my letters of introduction to the banks and the Financial Commission amounted to representations upon which the recipient would rely in deciding whether or not to accept Chartavia as a potential customer. I was assured of Chartavia's bona fides in that I saw no evidence to suggest that he principals behind Chartavia were not capable through their previous expertise and their current business connections to complete the series of contractual commitments which would fulfil the business objectives they were seeking."

9. The Respondent had been instructed to form a company in Guernsey to be named Chartavia Holdings Limited. The files showed that Abacus Advisers Limited, company formation agents, wrote to the Respondent on 30th September 1996 asking for details of the occupation of the beneficial owner. The beneficial owner was to be David Mahy. There was a handwritten note on the file which gave the impression that Mr Mahy had been bankrupt and could not therefore be an owner. The Respondent, by letter dated 8th October 1996 wrote to Ozannes, advocates instructed by Chartavia in Guernsey, stating:-

> "the beneficial owner is known in a professional capacity to Mr Hutchison and Mr Tamosius of this firm.
>
> In addition Mr Mahy is known personally to Mr Hutchinson and on his instructions we can say that we have found Mr Mahy both trustworthy and of good character and upstanding amongst his friends and colleagues".

10. When asked by the IO whether he thought Mr Mahy's bankruptcy was relevant to Ozannes's consideration of the matter, the Respondent replied:-

> "I didn't make any references to his financial ability. I said he was trustworthy and of good character. I didn't discuss his bankruptcy; he had been discharged."

11. Following enquiry from Ozannes as to the reason for the change of the beneficial owner to Mr Mahy, the Respondent replied by letter dated 10th October 1996 and said:-

> "I can confirm that Mr Hamilton-Walker is not involved with Chartavia Holdings Limited and that David Mahy is a sole beneficial owner. There is no change of ownership, the original instruction was given in error and we apologise for the mistake and the confusion."

12. Mr Hamilton-Walker was clearly involved with Chartavia Group and the Respondent was asked by the IO how he could state in his letter that he was not. The Respondent replied, "It was from a legal point of view."

13. The Respondent agreed with the IO that his instructions mostly came from Mr Hamilton-Walker.

14. On 14th October 1996 Chartavia International wrote to the Respondent putting forward Mrs E M Redburn as the new beneficial owner. By letter dated 15th October 1996 the Respondent wrote to Ozannes referring to Mrs Redburn as a "separate, distinct and non-related beneficial owner". He also wrote:-

> "Please accept this letter as an assurance by Mr Hutchinson of this firm, who has known Mrs Redburn for about three years, and that he has found Mrs Redburn to be trustworthy and of good character and in his opinion Mrs Redburn would not enter into any arrangement including a company incorporation and management agreement with you, which she could not conduct and fulfil in an exemplary manner."

15. The Respondent agreed with the IO in connection with Mrs Redburn:-

> "I had no dealings previously. Three years is an exaggeration I agree. I agree its not appropriate to write this, in hindsight".

16. The IO ascertained that Chartavia sought to open a bank account with Kleinwort Benson in Guernsey for Chartavia Holdings Limited. By letter dated 1st November 1996 the Respondent wrote to Kleinwort Benson, making reference to his clients having agreed to lease two Boeing 737 aircraft to Sahara India Airlines. The Respondent had not seen Chartavia complete the purchase and lease of a passenger aircraft. The Respondent wrote to Kleinwort Benson on 8th November 1996 enclosing a cheque for £5,952.38 from Royal Nepal Airlines for deposit in the account. The Respondent had had no involvement with Royal Nepal Airlines.

17. By letter dated 11th November 1996 a Mr Goddard at Kleinwort Benton wrote to the Respondent indicating:-

> "… my understanding of Sahara Indian Airways is that it is a small carrier, has had its operations suspended for long periods due to "mishaps", … from a due diligence point of view it would be sensible to have sight of the relevant Government approval for SIA to enter into a lease agreement for such aircraft."

18. When asked by the IO if this raised any concerns about the validity of the agreement, the Respondent replied, "I wouldn't necessarily read that into it".

The Respondent's written explanation to The Law Society was:-

> "I had been assured that Mr Walker and Mr Conway Hyde had completed transactions in the purchase and sale of commercial aircraft within organizations with which they had been previously connected and on their own account. I do not accept here or at any time that my letters amounted to an inducement for banks to enter into a business relationship nor do I accept that I could have been instrumental in creating that relationship which I believe could only be about trading accounts and credit references:" and, "I

> read into the response of Mr Goddard that he was doubting the commercial viability of SIA (and in particular to it satisfying the financial covenants behind his proposal) rather than the bona fides of the application."

19. The IO ascertained that at some stage prior to 29th August 1996, Chartavia had commenced negotiations for the purchase of an aircraft from PC1 Air Management Partners based in the USA. The negotiations related to the purchase of two aircraft for a total consideration of US$11 million. The initial deposit of US$550,000 had been paid directly by a Mr Abdul Rahman who was President and Chief Executive Officer in Global Aero Designs Limited of Singapore. Chartavia failed to make payment or comply with the amended conditions.

20. The IO expressed concern about a loan from Mr Boka, who was represented by a Mr Salerno of Salpik & Co Solicitors under a Power of Attorney. An attendance note dated 3rd December 1996 showed that Chartavia had commenced negotiations for a loan from Mr Boka of Zimbabwe of £US$1million.

21. A meeting took place on 3rd December 1996 at which the Respondent, Mr Salerno, Mr Rahman, Mr Hamilton-Walker, Mr Mahy and others were present. The Respondent prepared a handwritten note of the meeting. The IO put it to the Respondent that by the time of the meeting on 3rd December 1996 Chartavia had already defaulted on the payment to PCI (on 15th November 1996) and that PCI had sought to forfeit the deposit by Chartavia. The Respondent indicated he did not know if Mr Salerno had been told about the dispute and he conceded that the interest of US$100,000 per month on Mr Boka's loan to Chartavia was "highly excessive" – if it was interest.

22. The IO saw two loan agreements dated 2nd December 1996 and 3rd December 1996. By letter dated 6th December 1996 Salpik & Co wrote to the Respondent in respect of the US$1 million Boka loan. The letter set out a number of guarantees and undertakings that were required including an undertaking in the name of the Respondent's firm to send a Bentley Turbo 1996 to Mr Boka in Harare, Zimbabwe on or before 17th December 1996". The Respondent said:-

> "It was odd, very strange. I wouldn't have given an undertaking anyway. The client was fine about this, he did buy and sell cars as well. He was willing to provide one."

23. On 11th December 1996 the Respondent's firm received a bank transfer of US$1 million which was lodged in the firm's US Dollar client bank account with Guinness Mahon & Co Limited. Mr Boka, through Mr Salerno, had provided the funds. The Respondent confirmed receipt of those funds to Salpik & Co on the same day. It was ascertained that the relevant account in the client's ledger headed "Global Aviation Services", recorded the transactions in respect of the disbursement of the loan of US$1 million together with interest earned of US$783.23. The Respondent was asked how instructions were received for the disbursement of the loan. His response was:-

> " I sent Salerno an agreement as to the payment of the monies. I can't recall where in the proceedings I wrote to get approval from Salerno on the disbursement of the one million. I can't recall – there was an attachment to

> the letter, which sets out the payments. I set it all out and sent it to Salerno and Salerno signed it and removed, after payment of the monies, the third paragraph, which I was extremely angry about. Instructions were taken as per Chartavia and Salerno. I spoke to Salerno and he told me he had signed it. After the event it came back with the deletion. He didn't say anything to me. I found out about an agreement between Boka, Salerno and Rahman that some would be used to repay Rahman's loan to Chartavia. This was news to me that's why I wanted it all set out."

In his letter of 11 December 1996 to Salpik & Co, the Respondent said that the funds were to be used to purchase aircraft. That did not happen.

24. On 11th December 1996 US$250,000 had been sent to Mr Richman. The loan had been fully disbursed, save for a balance of US%8,301.00, by 18th December 1996. On 31st December 1996 PCI Air Management Partners confirmed that they had still not been paid further monies under the Aircraft Purchase Agreements and a final deadline of 10th January 1997 was set by PCI, but payment was not made by that date. PCI informed Chartavia by letter of the same day that they were ceasing all further discussions on the sale of the aircraft.

25. Chartavia failed to make the first US$100,000.00 payment of interest due to Mr Boka on 11th January 1997. Chartavia did make a payment of US$45,000, the Respondent indicated that Mr Rahman was liable for the other US$55,000.00. Under the terms of the agreement Chartavia was liable for the full US$100,000.00 interest payment. No further payments were made to Mr Boka with the result that he made a claim against the Respondent's firm on the basis that the fund had not been used for the stated purpose and had been disbursed without his authority. The matter was referred to the Solicitors Indemnity Fund (SIF). The Respondent accepted that he needed Mr Salerno's consent to disburse the monies.

26. When asked by the IO why he had disbursed the funds without Mr Salerno's consent the Respondent replied,

> "I considered I had the consent – on the basis of the telephone conversation and the basis of a signature. I had no conversation with Salerno either about his decision to take a paragraph out but it was incumbent on him to say at that point. I suppose the reason for taking it out was he didn't want to disclose to Boka. He didn't want Boka to see it – to keep it confidential."

27. The Respondent suggested to SIF that the third paragraph was missing from his letter of 11th December 1996 to Salpik & Co.

28. In his letter of explanation dated 15th March 2002 to The Law Society, the Respondent said:-

> "Mr Salerno gave his consent to the disbursement of money as per the counter signature to the appendix of my letter. I did not see the deletion or amendment to paragraph 3 until after the disbursements had been made, but had been assured by Mahy at the time and following a phone call to Mahy by Salerno

> that the letter had been counter signed but without mention of the deletion… When I took that up with him in April and May later Mr Salerno advised me that such deletion had been made because it revealed his participation which he wanted to keep private for his own purposes".

29. Chartavia offered to transfer a proportion of shares in a private company in Sweden to the value of the loan from Mr Boka, thereby redeeming his loan in full. The IO asked the Respondent how Chartavia Holdings Limited could offer shares in Air Ops International AB, to redeem the US$1million, when Chartavia Holdings Limited did not own the shares. The Respondent replied that a Mr Johansson was a shareholder and his share certificates were on deposit with Mr Hamilton-Walker. The Respondent said he did not know whether he knew at the time of Mr Johansson's impending bankruptcy. The Respondent had written to Salpik & Co on Chartavia Holdings Limited letterhead. A number of other letters were on the client files written on Chartavia Holdings headed paper and signed by the Respondent. The Respondent told the IO:-

> "I was only on the very edge of the company. I did write on their letterhead, I did sign on their behalf. I was just an adviser in the loosest sense."

30. In his letter to The Law Society the Respondent said that he ceased to be involved with Chartavia in April or May 1997.

31. Mr Tamosius, the Respondent's partner, in his letter to Mr S of 19th March 2002, said:-

> "I am surprised that the Report does not refer to the fact that soon after January 1997 Mr Hutchinson was appointed a Director of the UK Chartavia company … During the course of my own investigations whilst preparing for the 1999 litigation, I learned that Mr Hutchinson's wife was employed as a secretary by the UK company and also that when he was still a Partner of Tamosius & Hutchinson he was offered shares in one of the offshore Chartavia companies for services rendered, a fact which he never disclosed during our partnership."

32. The Law Society 's enquiries at Companies House revealed that the Respondent was appointed a Director of Charwell Aviation Limited on 26th November 1996. He resigned on 17th July 1997.

The Submissions of the Applicant

33. The Applicant did put his case as one involving dishonesty on the part of the Respondent.

34. The Applicant accepted that the case he would have to prove would be one that met the combined test in the case of Twinsectra Ltd -v- Yardley and Others [2002] UKHL 12. First he would have to prove that the Respondent's actions had been

dishonest and would have been regarded as such by any member of the public, knowing all the facts and secondly, he would have to show that the Respondent knew that what he was doing was wrong, although it was not open to him to set his own standard of honesty. In the submission of the Applicant both parts of that two part test had been met.

35. The area of work undertaken by the Respondent was one in which he had no previous experience. He had written letters that were misleading and/or inaccurate and the Respondent ought to have known that that was the case. He had written letters which had been drafted by clients regardless of the veracity of the content. The letter written by the Respondent concerning Mrs Redburn was untrue.

36. It was required that members of the solicitors' profession act with integrity, probity and trustworthiness. For a solicitor to write a letter which he knew to be untrue in anticipation of a third party placing reliance on it was a very serious matter.

37. It was regretted that the original letters could not be produced but Mr Briggs, the IO, could give evidence that he had seen them. The files in which the letters were contained had been mislaid.

38. The Applicant recognized that he had to prove his case to the highest standard. The Tribunal was invited to find that the Respondent had behaved dishonestly but a finding of dishonesty per se was not essential. It was open to the Tribunal to find the allegations to have been substantiated on a basis different from dishonesty, for example, on the basis that the Respondent had been reckless. It remained however, the Applicant's position that the Respondent had acted dishonestly.

The Submissions of the Respondent

39. The Respondent played no part in the Proceedings but in the interest of fairness the Tribunal summarises below the Respondent's letter addressed to The Law Society dated 15th March 2002.

The Respondent's Letter

40. The Respondent had not previously acted for a client who was engaged in the business of raising finance for the purchase, conversion and leasing of aircraft. His partner had such experience and had contacts.

41. The Respondent and his partner met with Mr Hamilton Walker at the commencement of the instruction to act on behalf of Chartavia. At the initial meeting Mr Hamilton Walker outlined his areas of personal expertise and set out the business that he and Mr Conway-Hyde were both previously and currently engaged in. The request for advice to Tamosius & Hutchinson (T&H) was not specific as to areas of company and commercial law upon which they might have been asked to comment and assist but he and Mr Conway-Hyde explained what they were seeking in broad terms. The Respondent and his partner said they knew very little about that business and the way in which it would negotiate with its contacts to achieve its business objectives. The Respondent and his partner's remit was to assist with whatever areas of law they required and upon which they felt competent to advise.

42. Mr Hamilton Walker wished to reply to enquiries received from aircraft operators in terms that demonstrated that he was represented by a firm of registered foreign lawyers. Whilst Chartavia was a new entity, Mr Hamilton Walker was, the Respondent believed, a person with considerable experience in this area of aviation business and who was capable of bringing to fruition a number of aircraft purchase and leasing ventures. The Respondent allowed the letters to be drafted in the first instance by the client in order that the client could express its interest in the proposals and business opportunities that presented themselves. It was denied that the Respondent permitted any such letters to be misleading or persuasive in so far as his firm's role was concerned in representing the client. The Respondent was assured of the personal expertise of the principals and their contacts. The Respondent denied that he did not check the "bona fides" of the client before allowing the letters to be sent out.

43. At the Chartavia offices the Respondent was on the initial and subsequent occasions able to see the correspondence files between Chartavia and its clients and business contacts. These coupled with the mass of aviation books, aircraft manuals and manuscripts supported their contentions of their extensive contacts in the aircraft business.

44. Any business contract between the client and a third party would be based on that third party's due diligence which would be more extensive than any representation the depot would or could make on the client's behalf.

45. The Respondent had met Mr Mahy socially when both he and wife lived in Winchester.

46. Mr Mahy had always appeared to the Respondent to be honest and hardworking. He had undergone a difficult time with his previous business but the Respondent had no reason to doubt his integrity and his keenness to succeed in this his new position with Mr Hamilton –Walker. The Respondent did not believe that he gave a false or misleading reference based on his own knowledge of him at the time. He would not and could not give a financial reference for him but would leave all such further references and credit checks to those banks and company incorporation agents who would make their own enquiries.

47. The Respondent did not seek any explanation when financial institutions refused involvement as he believed he would be given one.

48. The Respondent met Mrs Redman at the Hyde Park Street offices of Mr Hamilton-Walker as a friend of some long standing. Mrs Redman brought with her on either the first occasion or immediately thereafter two substantial references, one of which was from a senior retired naval officer.

49. It was some time after that the Respondent realized that Mrs Redman was connected to Mr Hamilton-Walker as a companion, and occasional housekeeper although he was not certain whether Mrs Redman lived or stayed at Mr Hamilton-Walker's house. The Respondent did not accept that his words to Ozannes amounted to something which would have been misleading to Ozannes. They would take up their own references and credit checks.

50. The Respondent had been assured that Mr Hamilton-Walker and Mr Conway Hyde had completed transactions in the purchase and sale of commercial aircraft.

51. With regard to the response of Mr Goddard of Kleinwort Benson, the Respondent read into it that he was doubting the commercial viability of SIA (and in particular to its satisfying the financial covenants behind its proposal) rather than the bona fides of the application.

52. The Respondent did enquire with Mr Mahy and Mr Hamilton-Walker the possible reasons for the bank's refusal to entertain the account. He suspected that there was something in its research that failed to satisfy the bank as to Chartavia's credentials.

53. There were other possibilities. Aircraft purchase, conversion and leasing require both financial strength and very sound binding contracts with companies which have the resources to cover the financial exposure. A refusal by a bank to associate with a fledgling organisation in such a high risk venture was not surprising.

54. The Boka loan agreements were drafted within the offices of Chartavia between Mr Hamilton-Walker and Mr Boka.

55. Mr Boka negotiated with Mr Hamilton Walker for the acquisition of a Bentley. That was based on Mr Hamilton-Walker's connections within the motor trade. The Respondent believed it was commonplace for wealthy Zimbabwe nationals to conduct business in such a way.

56. Mr Salerno advised the Respondent that the deletion from a relevant letter had been made because it revealed his participation which he wanted to keep private. When the Respondent explained the need for his confirmation of disbursement he signed a letter of indemnity in favour of both the Respondent and his partner. That letter of indemnity was produced to the IO.

57. The Respondent did not accept that his letters of introduction to banks and financial institutions amounted to representations upon which the recipient would rely in deciding whether or not to accept Chartavia as a potential customer. He had been assured of Chartavia's bona fides in that he saw no evidence to suggest that the principals behind Chartavia were not capable through their previous expertise and their current business connections to complete the series of contractual commitments which would fulfil the business objectives they were seeking. He did not accept that his letter amounted to a representation about Chartavia's financial credentials.

58. The Respondent did not accept that the service which was requested of him or which was provided amounted to a "letter writing service" for the client. The Respondent and his partner advised on company law.

59. The Respondent did not accept that his conduct had been in any way dishonest or wrong. The disbursement of the loan funds and the supporting paperwork had been the subject of discussion with SIF.

60. It was with hindsight that the Respondent would have preferred not to have been associated with Chartavia and its principals.

The Findings of the Tribunal

61. The Tribunal found all of the allegations to have been substantiated. The Tribunal found that the Respondent had been dishonest.

Previous Findings of the Tribunal

62. Following a hearing on 4th December 2001 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in the following circumstances namely:-

(i) That he had failed to exercise proper supervision over a member of his unadmitted staff;

(ii) that he had breached Rule 15 of the Solicitors' Practice Rules 1990 by not providing to his clients adequate client care information;

(iii) that he had failed to deal promptly and substantively with correspondence from the OSS concerning his professional conduct.

63. The Tribunal's Findings dated 19th February 2001 were as follows:-

"The Tribunal found the allegations to have been substantiated, indeed they were not contested.

It was always unfortunate when a solicitor made his first appearance before the Tribunal. The Tribunal noted that no dishonesty had been alleged against the Respondent and that the period covered by the allegations had been short. Nevertheless the Respondent had had a duty to supervise Mr S who was unadmitted and to ensure that clients received proper information. While the Respondent's failings were not at the highest end of the scale these were still serious matters.

The Tribunal ordered that the Respondent Ian Graham Hutchinson of 34 Summerlee Avenue, London, N2 9QP solicitor do pay a fine of £1,750.00 such penalty to be forfeit to Her Majesty the Queen and they further ordered him to pay the Applicant's agreed costs fixed in the sum of £2,796.56."

The Tribunal's Decision and its Reasons

64. The Tribunal had considered the facts placed before it with particular care as the Respondent was not present.

65. The Tribunal was in no doubt that dishonesty on the part of the Respondent had been proved. It had applied the test of Twinsectra Ltd -v- Yardley and Others [2002] UKHL 12 in making that finding. The Tribunal was in no doubt that any member of the solicitors' profession or any member of the public, being fully apprised of the facts in this case, would consider that the way in which the Respondent behaved was

dishonest, in particular when he made representations to third parties that were misleading and inaccurate and he thereby acted towards a third party in a way which was deceitful and misleading.

66. The Respondent wrote letters which were drafted by his clients without having any input into their content and, indeed, without having any regard for their content. It was wholly improper to give the impression that he had knowledge of the clients and their business and to give assurances when in fact he had no such knowledge at all. Third parties receiving letters from solicitors are entitled to expect the contents of the letters to be honest and true. Indeed, it was apparent from the letters that were written that the Respondent simply did not care whether the letters which he wrote were true or false.

67. It was highly probable that the people with whom the Respondent was dealing were endeavouring to perpetrate fraud of one sort or another. The Tribunal considered that this was the type of case where fraudsters, in order to pursue their nefarious activities, need the cloak of respectability afforded by the use of information contained in a letter written on solicitors' headed paper and there could be little doubt that the involvement of a solicitor who was prepared not to adhere to the fundamental requirements of a member of the profession to act with probity, integrity and trustworthiness, was an essential part of their operation.

68. Solicitors must comply with the highest standards of probity, honesty and integrity and the Respondent had fallen down very badly in not meeting that high standard and further had behaved in a manner that was unacceptable for an Officer of the Court.

69. The Tribunal concluded that it was right in order to protect the public and the good reputation of the solicitor's profession that the Respondent be struck off the Roll of Solicitors. The Tribunal considered that it was right that the Respondent should pay the costs of and incidental to the application and enquiry to include the costs of the Investigation Accountant of The Law Society (referred to above as the IO), such costs to be assessed if they are not agreed.

Dated this 18th day of February 2005
On behalf of the Tribunal

D J Leverton
Chairman