No. 9093-2004

IN THE MATTER OF SUKVINDER SINGH BAMRAH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr S N Jones
Mr D Gilbertson

Date of Hearing: 28th and 29th June 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by David Elwyn Barton of 5 Romney Place, Maidstone, Kent, solicitor, on 16th August 2004 that Sukvinder Singh Bamrah solicitor of Norwood Green, Southall, Middlesex, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

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

(a) he practised as a solicitor without there being in force a certificate issued by The Law Society in accordance with the provisions of Part 1 of the Solicitors Act 1974, contrary to Section 1(A) of the said Act;

(b) overall his conduct was contrary to Rule 1 of the Solicitors Practice Rules 1990 in that he compromised his independence, his integrity and his good repute as well as that of the solicitors' profession by virtue of his involvement in the matters described in a report of the Forensic Investigations Unit of the Office for the Supervision of Solicitors dated 21st February 2002.

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 Mr Sisley of Counsel.

The evidence before the Tribunal included the admission by the Respondent that allegation (a) amounted to a "technical breach". The Respondent denied allegation (b). The Tribunal heard the oral evidence of the Respondent, Mr Cotter and Mrs Warner (formerly Miss Bennion).

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

The Tribunal Orders that the Respondent, Sukvinder Singh Bamrah of Norwood Green, Southall, Middlesex, 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 fixed in the sum of £12,000.00 inclusive.

The evidence before the Tribunal

1. The Respondent, born in 1957, was admitted as a solicitor in 1982. The practising certificate last held by the Respondent was terminated by The Law Society on 7th May 1997.

2. In about March 1999 the Respondent applied to The Law Society to have his name removed from the Roll of Solicitors voluntarily. The Law Society refused the application and notified the Respondent by letter dated 17th March 1999.

3. The Respondent had his own practice, and in about the autumn of 1995 he disposed of the goodwill of that practice to St Johns Solicitors at Hounslow.

4. It was The Law Society's case that the Respondent had practised as a consultant at that firm and had provided legal services whilst not holding a current practising certificate. He had done so throughout the period from 8th May 1997 to at least the date of the inspection of St Johns carried out by The Law Society's Forensic Investigation Officer.

5. A partner at the firm of St Johns, Mr V, indicated to The Law Society that the Respondent had been engaged as a consultant since November or December of 1997 and that St Johns had described him as such on its letterhead for several months.

6. In a witness statement made by the Respondent in connection with High Court proceedings dated 22nd February 2001 the Respondent stated that in the autumn of 1995, as a result of financial pressures, he disposed of the goodwill of his former practice to St Johns Solicitors and since that date he had been employed by St Johns as a consultant. The Respondent made a revised statement on the same date in connection with the same High Court proceedings. In the subsequent version of that witness statement the Respondent described himself as a conveyancing clerk.

7. It was the Respondent's case that he had indeed worked as a conveyancing clerk under supervision. He had used the offices at St Johns for work connected with other business. It was after he received a letter from The Law Society's record office

confirming that if he did not make the required payment to enable his name to be retained on the Roll it would be removed that in about June or July 2000 he started assisting St Johns in a very limited manner. He did not have conduct of any files or work and only about 15 or 20 per cent of his time was spent at St Johns and of that less than one half was spent in assisting with clerical work, closing files and dealing with internal office administration. He spent not more than four or five hours a week in the St Johns office. He had taken instructions only from friends or a handful of established close clients who were fully aware of the Respondent's position. The Respondent had, since January of 2000, a separate independent office in the same building at St Johns which he occupied for his project work. It was the Respondent's position that had he wished to return to the practice of the law he would have applied for a practising certificate or if he had sought to work as a conveyancing clerk then he would have made sure that his name had been removed from the Roll.

8. The Respondent had been deeply involved at the material time with a new monastery, and he had also been involved in a business project involving the invention and anticipated production of fire proofing products. The Respondent had also provided assistance to members of a Middle Eastern Royal Family which had taken up a considerable amount of his time in the Middle Eastern country.

9. It was The Law Society's case that the Respondent had acted for Mr C whilst at St Johns in connection with the purchase of a property at Southall. The Tribunal had before it documents extracted from the conveyancing file. A bill dated 11th September 2000 had been addressed to Mr C and had been marked "received with thanks" and signed by the Respondent. A letter dated 11th September 2000 addressed to Mr C enclosed a completion statement, confirmed that the estate agents commission had been met and the outstanding mortgage redeemed. A cheque for the balance was enclosed and the letter's final paragraph was:

> "May I take this opportunity of thanking you again for your kind instructions and congratulating you on your successful sale. If I can be of any further assistance please do not hesitate to contact me."

The letter had been signed by the Respondent.

10. The Report of the Forensic Investigating Office ("FIO") confirmed that the Respondent had acted for Mr and Mrs Cr in connection with the purchase of a property. Of the purchase price of £75,000, £40,400 was provided by Mr Cr in nine separate cash payments varying in amount between £500 and £10,000 during the period from the 24th November 1998 to 19th February 1999. These amounts were provided by Mr Cr in the form of building society cheques.

11. The FIO Officer made a Report dated 21st February 2002. The Report was prepared by Mr Cotter and Mrs Warner (nee Bennion) following their inspection of the books of account and other documents at St Johns.

12. The Report dealt with the concerns of the FIO Officers concerning high yield investment programmes in respect of which it was The Law Society's case the Respondent undertook most of the work, although said to be under the supervision of a partner of St Johns.

13. The concerns expressed by the FIO Officers were as follows.

High Yield Investment Programme (NYIP)
CI Corporation

14. CI Corporation was a pre-incorporated company acquired by the Respondent on behalf of his client Dr K in the Republic of Seychelles on 4th September 1998. Dr K was the sole director from 10th August 1999 until his death on 26th December 2000. The Respondent set up a US Dollar bank account in the name of CI Corporation at HSBC plc, Jersey. The Respondent was a signatory to this account.

15. At some time in 1998 meetings were held involving Mr V, Miss V (partners at St Johns), the Respondent and Dr K. Not all of them were necessarily present at each meeting. The meetings were to discuss a HYIP for which St Johns would act for client investors introduced to them by CI Corporation. Mr V indicated that the Respondent undertook most of the work in this connection for St Johns under his supervision. HSBC plc Jersey could not operate individual client trust accounts in the way St Johns wanted and all the client investor funds remitted by St Johns to CI Corporation were transferred to the Jersey bank account.

16. Each client investor received a client care letter from St Johns signed by either Mr V or Miss V. The scope of St Johns work for each client was very similar and was summarised by the FIO as:

    (i) assisting the client in contractual matters between the client and CI Corporation;

    (ii) providing a banking service for the investment funds; and

    (iii) informing the client on matters regarding the investment.

17. The client care letter stated that St Johns would not be giving investment advice to the clients. A letter from Mr SGW dated 14th October 1999 to St John's indicated that CI Corporation were to pay St Johns fees.

18. The files provided by St Johns in relation to the client investors contained a number of documents relating to the identity of the client investors and declarations as to the source and provenance of the funds that were to be invested. St Johns were to check these documents before sending any client funds to CI Corporation. In addition each client provided a copy of a "Fiduciary Asset Management Agreement" (FAMA) to St Johns. The FAMA's were similar for each investor and took the following form:

"Private Placement
Fiduciary Asset Management Agreement
Reference No. DB-LUX-C

This agreement made and entered on this Tuesday, 23rd May 2000 by and between:

1. M. E. Mooney Limited – Cassar & Co, Norfolk House, Annex 11, Market & Fredrick Street, Nassau, Bahamas represented by its duly authorised signature Leila Susan Gray Holding USA passport # …….. hereinafter named the "Principal" on the first part; and

2. Carrington Investment Corporation, represented by its duly authorised signature Stanley Ihechere Holding UK passport # ……. residing at PO Box 17532, Jebel Ali Free Zone, UAE, hereinafter named the "Fiduciary" on the first part;

Witnesses the following:
Whereas the principal has clean, cleared, legally acquired and freely transferable investable assets certifiable as such by his solicitors; and

Whereas the Principal, is a sophisticated investor, and represents that he is not governed by any of the laws of United States of America; and with full knowledge, understanding and unsolicited intention has expressed his desire to place these assets under the management of the Fiduciary for his participation in a Fiduciary asset management situation available to the latter with regular income after a start-up period; and

Whereas the Fiduciary has satisfied himself with the representations of the Principal and has agreed to manage the assets of the latter in an ongoing private placement situation available to him:

Now that both parties having satisfied with their mutual covenants and representations this agreement is being made setting out the terms, conditions and procedures of the asset management by the Fiduciary as under:

Article 1 – Term of the Agreement

1. This agreement is over a period of four hundred (400) calendar days from the date of its commencement with renewals and extensions subject to additional documentation.

Article II – Commencement

2. The commencement of this agreement is from the day and date funds are received by the bankers of the Fiduciary after which the said bankers will confirm return of the funds at the end of the period to the account for which such funds were remitted inward. It is agreed that in the event the bankers of the Fiduciary do not receive such funds by May 26 2000, this agreement becomes null and void.

Article II – Procedures

3.1 Proof of Assets: The investable assets of the Principal is established by way of a statement from his solicitor.

3.2 Letter of Request: A representation by the solicitor representing the Principal is considered adequate as the letter of request of the Principal for his participation in the private portfolio of the Fiduciary.

3.3 Required Authority: The Principal covenants to provide the Fiduciary with requisite authority to manage his assets in such a manner that funds do not have to move out of the account; and in the event such movement is warranted, funds can only be moved out to the account from which such funds were remitted in the first place.

Article IV – Security and Income

4.1 Security of assets: The Fiduciary shall manage the account of the Principal on a non-depletion basis throughout the investment period.

4.2 Non-performance: The Fiduciary retains the option of rejecting the participation of the Principal with three (3) working days prior written notice to the Principal, within a period of ten (10) working days from commencement of this agreement, and this shall not constitute non-performance on the part of the Fiduciary. Otherwise the Fiduciary shall be liable for non-performance if income described in the following paragraph is not received by the bankers of the solicitor of the Fiduciary within six weeks after receipt of funds at the bank of the Fiduciary. The Principal shall have option to recall his funds citing reasonable ground within ten working (10) days of receipt of his funds at the bank of the Fiduciary. In any event, of return of funds bank charges shall be to the account of the Principal.

4.3 Income: The Fiduciary shall retain management of the assets of the Principal under his private portfolio for the term of this agreement and cause one single payment commitment instrument delivered after factorising the entire income spread over the investment period within twenty (20) international banking days after commencement of the agreement. The income envisaged is a minimum One hundred and Fifty percent (150%) of the invested assets secured by a bank pay order with payment at regular intervals over a period of four hundred days.

Article V – General

5.1 Associated Services: The parties recognise and agree that only each shall be responsible for the legal fees, brokerages, charges, commissions and expenses on his side. Each party hereby indemnifies and renders harmless the other party against any and all other claims, demands or expenses or liabilities, however arising. This is not an agreement of partnership.

5.2 Taxation: The parties, individually and separately, accepted liability for taxes, imposts, levies, duties or charges that may be applicable on the distributed income derived.

5.3 Non-Circumvention & Non-Disclosure: The parties hereto agree not to circumvent, or attempt to circumvent any of the parties within the agreement and to abide by the non-circumvention, non-disclosure and good faith provisions as provided for in the International Chamber of Commerce (ICC) with its latest edition and amendments and this shall apply to all aspects of this agreement and shall apply to all parties for a period of five (5) calendar years from the date of this agreement herein and bind the parties, their employees, associates, attorneys, accountants, transfers, executors, successors, assigns and/or designees, the Principal has attested and warranted deterrent measures to avoid unwarranted disclosure and dissemination of privileged information availed by him as a result of this agreement.

No party shall wilfully or otherwise disclose any part of the whole of this agreement except as may be required by a court of competent jurisdiction.

This is a confidential document and circulation of this in any form will invite cessation of the agreement forthwith inviting damages in favour of the aggrieved party payable by the other.

5.4 Transmission of Notice: Any notice given under the provisions of this agreement by all of the parties hereto shall be in English language and shall be given by facsimile followed by hard copies by registered mail. Such notices shall be sent to whom it is to be given at the address set forth in this paragraph or such other address as the parties hereto may direct by notice given in writing in accordance with the provisions of this article.

Address for communications to Principal:

1500 Argyle Drive., Ft. Lauderdale
Florida, 33312, USA

001.954.522.6065

Address for communications to Fiduciary:

Carrington Investment Corporation
PO Box 17632
Jebel Ali Free Zone, UAE
Tel: +44 870 122 8933; Fax + 44 870 130 1539

5.5. Presentation Conventions: Headings are for convenience only and shall not be deemed to affect in any way the language or intent of the provisions to which they refer, no particular inference shall be ascribed to size, normal bold, underlined, upper or lower case English words.

Article VI – Rights and Remedies

6.1 Rights and Remedies: No failure to exercise nor any delay n exercising on the part of any party hereto of any rights or remedies hereunder shall operate as a waiver thereto nor shall any single or partial exercise of any other rights or remedy provided by law.

6.2 Enforceability: In the event that any of the terms of this agreement are in conflict with any rule of law or statutory provisions for the time in force, or otherwise are unenforceable under the laws and regulations of any government or sub-division thereof having sufficient jurisdiction, such terms shall be deemed stricken from this agreement, but such invalidity or un-enforceability shall not invalidate any of the other terms of this agreement and this agreement shall continue in force.

6.3 Arbitration Provisions: The parties making this agreement agree that the applicable law shall be that of the Canton of Geneva, Switzerland. If there is a dispute among the parties, it shall be resolved amicably by binding arbitration, with the parties jointly selecting the arbitrators. The prevailing party shall be entitled to reimbursement by the other of all costs, including reasonable attorney and expert fees, at arbitration, at trial or on appeal. Venue shall be in United Kingdom. Notices to either party shall be by facsimile (with verification of receipt) or by certified mail with return receipt requested.

The undersigned parties herewith attest, warrant and affirm that the statements made herein are true and accurate; and each has the requisite legal and proper authority to engage and bind the party he represents in this agreement. Facsimile copies shall be binding till original documents are exchanged.

This agreement constitutes the entire understanding between the parties and supersedes any and all prior arrangements, agreements and negotiations whether oral or written with respect to the transaction. The parties hereto have made no agreement, representations or warranties except as expressly set forth herein.

In Witness whereof both parties have hereto put their hands on the day and date herein above mentioned at the place and date specified hereunder:

Principal	Fiduciary
(Signed)	Signed
Name: Leila Susan Gray	Name: Stanley Ihechere
Designation: Authorised Signatory	Designation: Authorised Signatory
Place: Ft Lauderdale	Place: London
Date: May 24, 2000	Date:

19. The FAMA's were signed by Dr K or by Mr SI on behalf of CI Corporation. When asked neither Mr V nor Miss V knew who Mr SI was or what his connection with CI Corporation was. No documents have been produced to show that Mr SI had the authority to sign on behalf of CI Corporation.

20. Mr Cotter asked both partners in St Johns whether they thought this document was well constructed. Mr V did not answer this question but Miss V agreed that paragraph 6 on page one commencing "Now that both parties having satisfied with their mutual covenants…" did not make grammatical sense and she agreed that St Johns should have advised the clients that this was not a good document.

21. Mr Cotter asked the partners whether they thought the phrase "clean, cleared, legally acquired" at paragraph 3 on page one of the FAMA was similar to the phrase mentioned on The Law Society Warning Card on banking instrument fraud. They both agreed it was.

22. Mr Cotter asked the partners why the investors should not be governed by the laws of The United States of America (paragraph 4 of page one of the FAMA). Neither partner could answer this, though they agreed that they were aware that a number of the investors held American passports and resided in The United States of America.

23. On 4th July 2000 St Johns wrote to all of the client investors saying:

> …the funds will move to the trading vehicle – Parinter Carrington Investment Corporation AG with the depository bank being Credit Agricole Bank Luxembourg…".

The partners agreed that paragraph 3.3 on page one of the FAMA meant that no funds should move from the investment account of CI Corporation unless they were to be moved back to St Johns US Dollar account at Barclays, the source account.

24. Paragraph 4.3 on page 2 of the FAMA envisages a minimum of 150% income in a 400 day period (Article 1, page 1). Mr Cotter asked the partners if they thought that this was achievable. Neither partner was able to answer this question, as they had no detailed understanding of what the intended investment programme could be.

25. On 23rd August 1999 St Johns received two separate amounts of $499,990 and paid $999,000 on to CI Corporation on 2nd September 1999. No client file had been available to the FIO.

26. By 31 May 2000 St Johns had received a further $7,295,344.94 on behalf of 22 client investors. Details of names, dates, amounts and movements of money were before the Tribunal. The $7,295,344.94 was split into two separate groups of client investors:

(i) funds from five investors who did not go on to invest in CI Corp	$4,718,992.72
(ii) funds from 18 investors who did go on to invest in CI Corp	$2,576,365.22
	$7,295,344.94

27. One investor was included in both categories as his original investment was returned to him but he later sent it back to St Johns for investment in the CI Corporation programme.

28. The amount of $4,718,992.72 received in respect of the five client investors who decided not to go ahead:

Funds received	$4,718,992.72
Add: Interest credited by St Johns	31,702.94
Less: Bank charges debited by St Johns	(89.20)
Less: Funds returned to the client investors by 27th June 2000	(4,749,354.60)
Balance retained by St Johns	$1,251.86

29. The amount of $2,576,352.22 received in respect of the 18 client investors who proceeded with the CI Corporation investment programme was dealt with as follows:

Funds received	$2,576,352.22
Add: Notional interest credited by St Johns	173.08
Less: Funds retained by St Johns	(525.30)
Funds sent to CI Corporation for investment programme by 11th October 2000	$2,576,000.00

30. By 24th April 2001 nine months after St Johns had sent $2,576,000 to CI Corporation, $2,300,994.44 had been returned to them by CI Corporation. Since that date St Johns received no further funds. CI Corporation should still have been holding at least $274,996.36 of client investor funds thus:

Funds sent to CI Corporation	$2,576,000.00
Less: Funds returned by CI Corporation	(2,300,994.44)
Difference	$275,005.56

31. Mr V told the FIO that the £2,300,994.44 received from CI Corporation was returned to St Johns by the Respondent using his signing authority on the CI Corporation HSBC Jersey US Dollar account.

32. The funds returned by CI Corporation to St Johns were dealt with by 24th December 2001 as follows:

Funds returned by CI Corporation to St Johns	$2,300,994.44
Add: Funds retained by St Johns (client investor 20)	525.30
Add: Total interest credited by St Johns	10,695.65
Less: Notional interest credited to funds sent to CI Corporation	(173.08)
Less: Bank charges	(369.30)
Less: Balance retained by St Johns	(4,999.76)
Funds returned to client investors by St Johns	$2,306,673.25

33. The paragraph headed "Article II – Commencement" on page 1 of the FAMA stated the start date of the agreement was 26th May 2000. A series of four letters from CI Corporation sent to the client investors in the period 19th June 2000 to 16th March 2001. These letters required the signed agreement of the client investors and served progressively to extend the start date of the programme whilst at the same time increasing the income envisaged from 150% to 200% as follows:

Letter of 19th June 2000

"Section II of agreement is amended and extended herewith to June 21st 2000."

Letter dated 30th August 2000

"…the commencement of your investment has been delayed."

"…for the past four weeks we have been negotiating to get you extra income on account of this delays (sic) which is due to no apparent fault of yours or ours."

"The extra income is envisaged at a minimum of 10%... up to a maximum of 25%."

Letter dated 30th September 2000

"The assets are to be moved to the investment vehicle in the week beginning October 16th 2000."

"The capital…will carry bonus interest of 36%..."

Letter dated 16th March 2001

"The return to the "owners of funds" is 200%."

34. In the period from 4th July 2000 to 24th July 2001 a series of eight letters were sent from St Johns to the client investors. A partner in St Johns told the FIO that these letters would have been prepared by the Respondent and that it was probable that the first four letters dated 4th July 2000, 20th September 2000, 4th January 2001 and 20th February 2001 had been signed by the Respondent.

35. The letter dated 4th January 2001 informed the client investors:

> "…with regret and sadness that the principal behind Carrington Investment Corporation was taken into hospital during the X'mas (sic) period…and later died in hospital…"

The letter also said that they understood that the funds "are safe". Miss V, a partner in St Johns agreed that there was an appearance of a conflict of interest in St Johns acting for the investor clients.

36. In a letter to The Law Society of 28th March 2001 the Respondent said:

> "…I was also involved in humanitarian projects with one Dr K who worked with the United Nations…we arranged for supplies from the Middle East…Sadly Dr K from whom I had learnt a lot died from a brain haemorrhage over Christmas last year."

Mr SGW/T Holdings Ltd

37. One of the client investors in the CI Corporation HYIP was T Holdings Ltd, a company registered in the Bahamas. Mr SGW, a US citizen, represented himself as "Attorney-in-Fact" and authorised signatory for T Holdings Ltd.

38. A letter of 4th August 2001 was sent to Mr SGW by fax stating that St Johns had the sum of $1,100,000 available to T Holdings Ltd for a private placement being promoted by T Holdings Ltd. Attached to the faxed letter was a copy of a credit advice to St Johns HSBC US Dollar account which showed that St Johns had received $2,000,000 on 2nd July 2001.

Standby Letters of Credit (SBLC) and/or Bank Guarantees

39. In addition to the CI Corporation HYIP, St Johns used their US Dollar account for other clients of the firm. A review of these other matters revealed that St Johns was involved in the process of providing SBLCs. The FIOs asked to review all files relating to these transactions. Five files were provided relating to SBLC and/or Bank Guarantees. The nature of the transactions was that a party requiring a bank credit line (that they could not get through the normal routes), agreed to pay a "facilitator" a commission fee for establishing the credit line with an "acceptable bank" or "provider". The fee became payable usually when the party received notification that the credit line had been established. The facilitator in four of the five matters was a company known as BEL in Hong Kong.

40. Mr V confirmed that these matters had been introduced to the firm by the Respondent. Both Mr V and the Respondent were working on these matters and that Mr V was supervising the Respondent in the conduct of these matters.

41. The client matter files did not contain sufficient information to enable the FIOs fully to investigate the nature of St Johns involvement in the transactions. From the information available the FIOs reported on the matter of Mr WKC and of Mr KH.

Mr WKC

42. Of the five matters only Mr WKC appeared to have been provided with a client care letter. The firm was engaged by the client for, amongst other things "…reading and studying papers and documents in your case…"

43. Mr V informed the FIO that St Johns were holding the commission monies on behalf of the client. The firm was not involved in the drafting of any of the documents relating to these transactions. In accordance with an agreement (a draft of which was before the Tribunal) Mr WKC sent $999,991.23 to St Johns client account on 19th October 2000. On 23rd October 2000 St Johns wrote to Mr GH confirming that they held the funds in their client account. The letter stated:

> "We are irrevocably instructed by our client to forward to you to the banking co-ordinates that you provide in writing after of the issue Stand By Letter of Credit from Trican Investment Fund Limited UK…"

44. No good copy of the Stand By Letter of Credit from the bank was provided to the FIO. On 9th November 2000 St Johns arranged for the transfer of $750,000 to Kennedys solicitors who appeared to have been acting on behalf of TIF Limited. Following the payment of the $750,000 St Johns held a credit balance of $249,933.20 in favour of Mr WKC. Mr WKC asked St Johns to transfer the balance, less St Johns' costs and interest, back to him to the bank details he provided. Mr WKC asked for the interest to be forwarded to the religious charity established with the assistance of the Respondent.

45. St Johns transferred $240,000 to the bank, details of it and the account having been provided by Mr WKC on 22nd November 2000. There was no evidence that St Johns carried out any checks to ensure that the moneys were sent back to the same bank from which they were received.

46. St Johns sent Mr WKC a completion statement and a bill of costs and they retained the sum of $5,479.23 "on account". Although interest appeared to have been calculated, there was no evidence that St Johns had made the donation to charity as requested.

Mr KH

47. On 13th July 2001 Mr KH entered into a "Finance Facilitation Agreement" with CP. Their signatures were witnessed by Mr TO and the Respondent respectively. In accordance with the agreement Mr KH was to "…immediately upon the signing hereof deposit the sum of US$120,000…". On 11th July 2001 an amount of $119,991.45 being $120,000 less charges was received by St Johns. The funds were provided "by order of G s/o MH". Mr V did not know who G, MH or CP were.

48. On 16th July 2001 St Johns wrote to Mr SG of B Enterprises Ltd explaining that the funds were being held by them and setting out the terms and conditions on which the funds would be released. On 27th July 2001 B Enterprises wrote to St Johns and asked them to release the funds and asked that the monies be paid to an account in the name of R s/o VKGN".

49. On 28th July 2001 Mr KH appointed Mr TO to act as his "Attorney". On 30th July 2001 Citigold, on behalf of Citibank, purported to sign a letter to Mr V confirming that they had issued an "irrevocable Standby Letter of Credit…". A draft of the Citigold letter was found on the file with certain areas "tippexed" out. On 12th September 2001 Mr TO instructed St Johns to send the funds to "G s/o MH" who appeared to have been the original provider of the funds.

50. St Johns sent $102,011.75 to the account of G s/o MH on 25th September 2001. The remaining $17,979.70 was transferred on to St Johns Sterling account on 27th November 2001. It appeared that funds of £12,000 were paid out to Mr TO in cash in July 2001. St Johns sent a written intimation of their costs of £931.25 on 24th September 2001. Costs had apparently not been transferred. There was a credit balance of £3,826.15 on the client ledger of Mr KH.

Mr MC

51. The partners said that Mr MC had been introduced to the firm by the Respondent who acted for Mr MC in the period between 19th August 1999 and 11th May 2000. Mr MC was the principal beneficiary of the R Trust and of the A Trust, both of which were established by the Respondent under the laws of the Isle of Man. The R Trust owned the shares through BVI trustee companies in R Holdings and D Investments, both Seychelles companies. D Investments owned G Ltd a UK company. The A Trust owned the shares through BVI trustee companies in S Property Corporation, also a Seychelles company. These companies were set up for Mr MC by the Respondent. Mr V confirmed that he was supervising the Respondent during this period, said that he did not know why the trusts and the companies had been set up. The FIO concluded that the trusts and the companies had been set up to hold assets for the benefit of Mr MC.

52. In the period between 19th August 1999 to 11th May 2000 St Johns received $5,163.932.10 on behalf of Mr MC from BB Corporation and CM Corporation. The funds were said to be the earnings of Mr MC for introducing investors to companies in the United States. The funds were transferred into Sterling and disbursed on the instructions of Mr MC. The disbursement included payments to Mr MC (and associates of his), the payment of school fees for Mr MC's children and the purchase of several motor vehicles. The partners said that the Respondent dealt with Mr MC during this period.

53. The firm also acted in the purchase of a residential property and land in the name of RC Holdings Ltd for £1,500,000 and its mortgage and remortgage. It appeared that the purpose of the mortgage of the property and land was to provide funds to pay the debts of BB Corporation. Mr MC was in the process of selling the property and land in order to satisfy another creditor of BB Corporation who was said to have traced funds from BB Corporation via St Johns to Mr MC.

The Submissions of the Applicant

54. The Respondent practised as a solicitor without holding a practising certificate throughout the period from 8th May 1997 to at least the date of the FIO inspection in February 2002. The Tribunal was invited to find the allegation to have been substantiated even if it finds that the Respondent did not undertake prohibited work throughout the entire period.

55. Mr V, a partner in St Johns had said that the Respondent had been engaged as a consultant since November or December 1997 and that the firm had described him as such on their letterhead for several months. Mr V had said that the Respondent did not inform him that he did not hold a practising certificate.

56. The Respondent had stated that he believed his name had been removed from the Roll of Solicitors. It had not.

57. The Respondent had himself in a letter said that he had been employed as a consultant with St Johns from autumn 1995 and continued until the date of his statement namely 22nd February 2001. To be employed as a consultant the Respondent was required to

hold a practising certificate. The activities which the Respondent himself described clearly demonstrated that he was practising as a solicitor. In particular St Johns was involved in high yield investment programmes and the Respondent undertook most of the work connected therewith, although said to be under the supervision of Mr V. Mr V and Miss V confirmed that neither of them had prior experience of HIYP's and a number of documents existed on client matter files about which neither partner knew anything. Certain letters had been prepared by the Respondent and signed by him. There could be no doubt that the Respondent acted in the conveyancing transaction undertaken for Mr MC and also that undertaken for Mr and Mrs Cr.

58. It was clear that the Respondent had practised as a solicitor and had done so largely if not wholly unsupervised. He knew that his name was on the Roll as his removal application had been refused. He knew that he was required to hold a practising certificate to carry out the work he undertook. The Applicant put the case as one involving deliberate conduct over a protracted period of time. The description of the Respondent's activities was sufficient to support the allegation that he did work in breach of the Solicitors Act 1974.

59. The Respondent had been involved in financial transactions. He did not recognise that the HYIP, standby Letters of Credit Scheme, the conveyancing transaction for Mr and Mrs Cr, where this was entirely a cash conveyancing transaction with the cash being paid to the firm in tranches, bore many of the characteristics of fraud and money laundering which had been drawn to the attention of the solicitors' profession by various means including the Warning Cards issued by The Law Society.

60. The circumstances of the making of the deposits and of the withdrawals were such that any competent or alert practitioner would or should have been aware of the existence of the risks highlighted in The Law Society's warnings. A number of high risk factors were present and this should have been obvious to the Respondent. It was the Applicant's submission that the Respondent was so closely involved in the various schemes that he must have known what was going on. Although in his Rule 4 Statement the Applicant indicated his understanding that the Respondent had incorporated CI Corporation in the Republic of Seychelles for Dr K, he came to accept that the company had been one purchased "off the shelf" by the Respondent for Dr K. The Respondent had introduced Dr K to the partners in St Johns.

61. The Respondent had established a US Dollar bank account in the name of CI Corporation at HSBC plc, Jersey. He was a signatory to that account.

62. It had been the Applicant's submission that the Respondent paid a pivotal role in the HYIP matter. The Respondent had progressed the scheme and undertook most of the work for St Johns.

63. The Respondent's expertise lay in the field of conveyancing and he did not have expertise in the type of financial investment transactions placed before the Tribunal.

64. The Applicant invited the Tribunal to consider that the Respondent's acting without a practising certificate amounted to a very serious breach both with regard to the length of time that he had done so and in terms of the flagrance of the breach. In explaining his position the Respondent had not made reference to the fact that he had been

involved with the financial transactions which he had. He had endeavoured to show that he had been involved as a supervised conveyancing clerk acting for clients who had been told of the limited capacity of his work. The Applicant invited the Tribunal to regard that breach as being at the top end of the scale.

65. The Tribunal was also invited to consider the Respondent's involvement in certain financial transactions which on their face bore all the hallmarks of fraud or money laundering pointed out in The Law Society's Warning Cards. The documents involved examples of phraseology which should have alerted any solicitor to the possibility of fraud and/or impropriety. The investors had been offered extremely high levels of return. Indeed those levels were unrealistically high and amounted to a warning in themselves. There had for instance been a promise of a 200 percent return. Further the documents produced in connection with the scheme had been very difficult to understand. The documents on their face were not intelligible and it was clear that they did not form part of a coherent transaction. They purported to deal with very substantial sums of money.

The Submissions of the Respondent

66. The Respondent had been asked straightforward questions about his involvement with these matters by The Law Society but he had not offered any response. The Respondent had been well aware that he was not holding a practising certificate. He had received a letter from The Law Society about his practice as a solicitor and he had informed The Law Society that he wished to remove his name from the Roll.

67. When The Law Society had written to the Respondent he had been travelling and he had not been aware of the fact that his name had not been removed from the Roll. His belief had been that his name had been removed from the Roll. The Respondent accepted that he did to a limited extent undertake legal work. The majority of his time had been spent on other business interests and charitable work. The Respondent's understanding was that even in the circumstances which existed he was able to work as a conveyancing clerk under supervision. He had not called himself a solicitor. The Respondent had altered the statement he made in connection with litigation where he was described as a consultant to being described as a conveyancing clerk following a request by the solicitors preparing the statement that he read it carefully and make any necessary alterations. This accurately reflected is position and the alteration was not fuelled by any other motive.

68. When the Respondent had been working in the office of St Johns he had been undertaking only a very limited amount of work. The client Mr MC had been introduced by a friend. The Respondent had not been working on the client file. It was the Respondent's recollection that the legal secretary who had been about to go on holiday asked the Respondent if he would sign a letter and he did so. Mr and Mrs Cr had been introduced by a respectable and reliable client. In the community in which the firm of St Johns operated it was not at all unusual for family members, for example, to contribute towards the cost of the purchase of a property and for a purchase price to be paid to the solicitors in a number of tranches. The arrangement in the case of Mr and Mrs Cr would not have alerted anyone in St Johns to the possibility that the practice was being used for money laundering purposes.

69. With regard to the financial transactions the Respondent had come across similar transactions in the past and when he looked at the transactions he did not believe that they were genuine and had turned away from them.

70. Dr K had been introduced to the Respondent by a person who had come from the United States of America in about 1998. Mr K had been engaged in humanitarian work involving a large number of charitable activities. Dr K had been looking to raise more funds for his humanitarian projects. It was then that CI Corporation was purchased as an off the shelf "company". Dr K had been the director and the sole shareholder. The Respondent understood that the investments had been found by a gentleman called "Baxter" in the north of England. The Respondent had no involvement in finding clients. The Respondent was aware of The Law Society's warnings and the warning signs for financial transaction fraud. He did not consider that the presence of the so called warning signs would have or should have aroused his suspicion as the Respondent was well aware of Dr K's connections.

71. The Respondent accepted that he had been on the HSBC Jersey bank mandate and confirmed that he had remained a signatory on that account until February/March in the year after Dr K's death.

72. The Respondent said that he had not played a pivotal role in these matters save that he had introduced Dr K to St Johns. The Respondent said he did not have experience in that type of transaction and his role had been limited to the checking of documents and making sure that funds went back to the clients. Neither the Respondent nor the St John practice had drafted any of the documents.

73. The Respondent had assisted The Law Society in its enquiries.

74. The clients had not walked in off the street. They had been respectably introduced to the Respondent and to St Johns. The Respondent had not harboured any suspicion of impropriety or that there had been fraud or attempts to undertake money laundering. He had not considered that there was any reason why he should not purchase off the shelf companies to hold assets for Mr Mc.

75. Although sceptical about matters initially the Respondent had been convinced that the Dr K matters were genuine after travelling to Switzerland and seeing documents in a bank in Switzerland at a private meeting with members of the bank. Huge returns had been offered and his scepticism waned when he met the people at the bank and also he had been impressed by and believed in Dr K. He had considered that it had not made sense to open a Sterling account. The Respondent had gone to Jersey because he thought it was prudent to find out. Dr K had not asked the Respondent to open a Dollar account. He had done that because most of the expected funds were to be received in Dollars. The Respondent did not charge a fee for his input and he considered that he was making sure that the proposals did not amount to a scam.

76. The Respondent and the firm did not have experience of HYIP's or financial matters. The Respondent said it was their role to receive documents in an agreed format to read and check them and make sure they were notarised and then passed them to CI Corporation. They were also to record a note of funds coming in. It was his belief that funds were being put all in one place ready to be placed for investment. The

Respondent or the firm was then to allocate funds when they came in to each client. The Respondent had considered it both a prudent step and in the interest of the investors that there was a "fall back" signatory. The Respondent had indicated his willingness to be a signatory when that had been put to him.

77. The Respondent said that legal services in strict terms had not been provided by him. No legal advice had been given. The firm kept an independent record and money was passed through the firm's client account. With regard to Mr MC the moneys received on his behalf were received into the firm's client account. That gentleman had given an indication when funds were due to arrive. The Respondent had been concerned about the situation but he had spoken to others and Mr MC's entitlement to the funds had been confirmed. The Respondent had met Mr MC. The Respondent had not acted for that gentleman before. He purchased a large domestic property with a great deal of land. Mr MC had been referred to the Respondent by a former client of his, a banker. The Respondent said he would have referred to the fact that he could not act as a solicitor and that the work would be handled by a partner of the firm or someone else. The Respondent accepted that Mr MC's funds had been used to pay school fees and buy motor cars. The Respondent had not considered that to be anything unusual. A partner in the firm had taken over those files. It had not occurred to the Respondent that there had been any possibility of money laundering. If Mr MC had walked in off the street the Respondent would not so readily have accepted that his activities were bona fides.

78. The Respondent denied that he had been dishonest in connection with matters relating to either of the allegations made against him.

The Submissions of the Applicant in connection with his allegation that the Respondent had been dishonest

79. The Applicant did put the case against the Respondent as one involving dishonesty. The Tribunal would apply the test in Twinsectra v Yardley and would ask itself, "was the Respondent dishonest by ordinary standards and did he know that what he was doing would be considered dishonest by ordinary standards?" He might not set his own standards of honesty.

80. The Tribunal was invited to conclude that the Respondent's behaviour had been dishonest by the standards of respectable and honest solicitors and he did know that what he was doing would have been so regarded. This was exemplified by the fact that in writing to The Law Society the Respondent had insisted that he had for only a small part of his time acted as a supervised conveyancing clerk and had not at any time notified his involvement with the HYIP and financial transactions. The Respondent had been dishonest by omission in that he had not told the whole story.

The Submissions of the Respondent

81. The Respondent had not been dishonest. He had genuinely believed that in acting as he had at the firm of St Johns he had not been in breach of any requirement to hold a practising certificate and, indeed, had believed that his name had been removed from the Roll. A question of dishonesty could not arise in such circumstances. With regard to the breach of Practice Rule 1 which related to HYIP and other financial

matters, the Respondent had given those matters considerable thought and had endeavoured to act prudently. He had in the past turned away from transactions which he believed bore all the warning signs of fraud and/or money laundering but in connection with the cases before the Tribunal he had been entirely satisfied that no-one had been pursuing a nefarious purpose.

The Tribunal's Findings

82. On the evidence before it the Tribunal found both of the allegations to have been substantiated. Having applied the combined test in Twinsectra v Yardley in the present case the Tribunal also found that the Respondent had been dishonest. In considering whether "was the Respondent's conduct dishonest by the ordinary standards of reasonable and honest people and did he himself realise that by those standards his conduct was dishonest?", the Tribunal was driven to the conclusion on the evidence presented to it that the Respondent had been dishonest.

Previous Finding

83. At a hearing on 11th December 1997 the Tribunal found the following allegations to have been substantiated against the Respondent.

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

(a) failed to reply to correspondence from other solicitors;

(b) failed to reply to correspondence from the Solicitors Complaints Bureau;

(c) failed to forward papers when properly directed.

(d) been guilty of unreasonable delay in the conduct of professional business;

(e) practised as a solicitor without there being in force a Practising Certificate since his Practising Certificate was terminated on 7th May 1997;

(f) failed to reply promptly or at all to correspondence received from other solicitors and from the Office for the Supervision of Solicitors.

85. In its Findings dated 19th January 1998 the Tribunal made the following remarks:

> "The Tribunal found the allegations to have been substantiated, indeed they were not contested.
>
> The Tribunal have some sympathy for the circumstances in which the Respondent found himself and gave him credit for being a useful and esteemed member of his community.
>
> The Tribunal could not ignore the fact that the Respondent's failures had been considerable and had occurred over a period of time. Although on the face of it to practise as a solicitor without holding a current Practising Certificate was

a most serious matter, the Tribunal accept that the two periods during which that occurred were short and the situation had arisen because of error or lack of judgment on the part of the Respondent rather than a deliberate attempt to flout the requirements of the law.

Despite being aware of the Respondent's financial difficulties the Tribunal considered it right to impose a substantial financial penalty upon him in order to mark the seriousness with which they viewed his shortcomings. The Tribunal ordered that the Respondent pay a fine of £5,000 and further ordered him to pay the costs of and incidental to the application and enquiry in a fixed sum."

The Respondent's mitigation

86. While the Respondent was at St Johns he was subject to supervision by qualified solicitors. No indemnity insurance claim and no compensation fund claim arose. The FIO in his Report or in evidence did not make any suggestion that anyone lost anything.

87. The evidence was that the Respondent took steps to protect clients, for example by opening the HSBC Jersey account. By opening that account he might well have forestalled something untoward from happening.

88. The Tribunal had before it details of all client money that was returned to the client. Where the money was not so returned, its retention by St Johns had not occurred during the Respondent's period at the firm.

89. The Respondent had not practised in the law for some time and did not have any plans to return. He intended to continue with his work in the community and in particular with the monastery.

90. The Tribunal was invited to take into account several mitigation letters contained in the Respondent's bundle of documents.

91. The disciplinary proceedings had been going on for a long time and the Respondent had suffered with them hanging over his head.

92. The Respondent had suffered difficult financial circumstances. He had been in an IVA. He had a large number of dependents in his household which enjoyed only a modest income.

The Tribunal's decision and its reasons

93. The Tribunal was dismayed to find that the Respondent had appeared before it on an earlier occasion where one of the allegations was that he had practised as a solicitor without holding a practising certificate. The Tribunal concluded that the Respondent in view of this must have been fully aware of the requirement for a solicitor to hold a practising certificate if he remains on the Roll of Solicitors and is delivering legal services.

94 The Tribunal considered the Respondent's explanation that he had intentionally not sought to take up a practising certificate and that he had believed that his name had been removed from the Roll. It is unsatisfactory for a solicitor to merely assume that what he believes to be an automatic process has taken place. Because of the importance of the matter a solicitor must be expected to take steps to check the position. The evidence before the Tribunal was that on 17th March 1999 the Respondent had been advised by The Law Society that his name remained on the Roll. The Tribunal accepted that evidence. Nonetheless the Respondent appears to have directed himself that it would be in order for him to conduct the work of a conveyancing clerk in a firm of solicitors provided he was supervised without holding a practising certificate. This is however a clear and fundamental breach of the requirement that a solicitor who remains on the Roll and who provides legal services is required to hold a current practising certificate.

95. Supervision is not the principle issue but the delivery of legal services was the fundamental point to be considered. The Tribunal concludes that it would be very difficult indeed for a solicitor on the Roll working in a solicitor's office to establish that he is not delivering legal services. There was clear evidence that the Respondent did introduce clients to the firm and did have contact with those clients. There had been evidence before the Tribunal that the Respondent had signed St Johns letters and bills. This is all consistent with the Respondent having acted as a solicitor. The Tribunal is entirely satisfied that the Respondent while working at St Johns did provide legal services. The Tribunal found it difficult to believe that the letter addressed by The Law Society to the Respondent telling him that he remained on the Roll was not received by the Respondent. Even if that were in fact the case (which the Tribunal does not find) the Respondent could be said to have turned a blind eye to the actual position and the fact that he had not received confirmation that his name had been removed from the Roll. He had made an assumption that suited him rather than being certain of the correct position which did, in the Tribunal's opinion, amount to dishonest behaviour.

96. The Tribunal does find that the Respondent acted contrary to Rule 1 of the Solicitors Practice Rules 1990 in that he played a part in the handling, whether as a solicitor or acting under the umbrella of a solicitor's firm, investment transactions or handling business on the part of clients which on their face appeared to have a number of the features against which solicitors had been warned by The Law Society as being indicators of criminal impropriety whether banking fraud or money laundering.

97. Again despite the very clear indicators the Respondent appeared to have directed himself that all was in order.

98. The Respondent accepted that he himself, and the firm of St Johns, had no input in terms of legal advice and this in the Tribunal's view was the most fundamental indicator of all that the transactions were deeply suspicious.

99. Solicitors or those working in solicitors' firms were frequently targeted by fraudsters who wished to secure the involvement of a solicitor's firm in order to cover their nefarious activities with a cloak of respectability. It was the Respondent's position that no client had suffered loss. However in the case of Mr MC, it might well have been the case that the Respondent and the firm were assisting Mr MC to keep others

out of their money. Equally it might well have been because of the intervention by The Law Society into the practice of St Johns that the HYIP transactions had not been allowed to proceed to the point where a number of people were deprived of large sums of their money. However, loss itself is not a requirement, indeed where there is a scheme of money laundering in operation loss is not a characteristic, as this would draw attention to the attempts to launder money.

100. The Respondent was again found to be dishonest by the Tribunal. He turned a blind eye to the indicators of fraud and/or money laundering that was apparent in the transactions in which he became directly involved.

101. The Tribunal has taken into account the Respondent's difficult financial circumstances and has given him due credit for the high quality of the testimonial letters submitted in his support. However in view of the fact that this is the second appearance of the Respondent before the Tribunal and the seriousness of the allegations substantiated against him as well as a formal finding that he has been dishonest, the Tribunal concluded that it was appropriate in order to protect the public and the good reputation of the solicitors' profession to order that the Respondent be struck off the Roll of Solicitors. The parties indicated to the Tribunal that the Applicant's costs had been agreed in the sum of £12,000 inclusive. The Tribunal therefore ordered the Respondent to pay the Applicant's costs in that agreed fixed sum.

DATED this 16th day of August 2005
on behalf of the Tribunal

W M Hartley
Chairman