No 9193-2005
No 9198-2005

IN THE MATTER OF STUART SAMUEL GARCIA AND JOHN MARTIN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr K Duncan
Ms N Chavda

Date of Hearing: 21st & 22nd May 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Ian Ryan, solicitor of Bankside Law, Thames House, 58 Southwark Bridge Road, London, SE1 0AS on 10th February 2005 that Stuart Samuel Garcia, solicitor of 40 Manchester Street, Marylebone, London, W1U 7LL might be required to answer the allegations contained in the statement which accompanied the application and that the Tribunal might make such order as it thought right.

AND

An application was duly made on behalf of the Law Society by Ian Ryan of Bankside Law, Thames House, 58 Southwark Bridge Road, London, SE1 0AS on 17th February 2005 that Stuart Samuel Garcia and John Martin, both solicitors, both of 40 Manchester Street, London, W1U 7LL 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 Applicant made a supplementary statement dated 24th November 2005 containing further allegations against Stuart Samuel Garcia and John Martin.

The allegations set out below are those contained in the two statements and the supplementary statement referred to above with amendments agreed during the course of the hearing. The allegations against Mr Garcia alone were those to which case number 9193-2005 had been allocated and the allegations against Mr Garcia and Mr Martin together had been allocated the case number 9198-2005. The two cases were heard together.

The allegations were:-

1. Against Mr Garcia alone

That he had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

(i) That he failed to deliver promptly or at all an Accountant's Report for the year ending 25th March 2002 as required by section 34 of the Solicitors Act 1974 and the Rules made thereunder;

(ii) That he failed to deliver promptly or at all a Final Report as required by Rule 26(5) of the Solicitors Accounts Rules 1998.

2. Allegations against Mr Garcia and Mr Martin

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

(i) That they failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);

(ii) That they paid client monies into office account in breach of Rule 15 of the 1998 Rules;

(iii) That they improperly operated a suspense account in breach of Rule 32(16) of the 1998 Rules;

(iv) That they withdrew money from client account in breach of Rule 22 of the 1998 Rules;

(v) That they failed to send clients written notification of costs in breach of Rule 19(2) of the 1998 Rules;

(vi) That they failed to remedy breaches of the Solicitors Accounts Rules promptly upon discovery in breach of Rule 7 of the 1998 Rules;

(vii) That they deliberately and improperly utilised clients' funds for their own benefit.

The Applicant alleged that in relation to allegations 2(i) - (vii) the Respondents behaved dishonestly.

3. In respect of Mr Garcia alone

(viii) That he utilised clients' monies for the purposes of another client, namely his wife.

The Applicant did not allege dishonesty in relation to this allegation.

4. Against both Mr Garcia and Martin

That they had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

> That they acted in such a way as to compromise or impair, or which was likely to compromise or impair, the following:-
>
> (i) Their good repute or that of the solicitors' profession [*non-payment of Counsel's fees*] [withdrawn against Mr Martin];
>
> (ii) That they failed to comply with a condition on their respective Practising Certificates for the practice year 2004-2005.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 21st and 22nd May 2007 when Ian Ryan appeared as the Applicant and both Respondents appeared in person.

The evidence before the Tribunal included the admissions of the Respondents to all of the allegations save that Mr Garcia did not admit allegation 2(v). During the course of the hearing the Applicant withdrew that part of his case relating to the non-payment of Counsel's fees against Mr Martin. In making the admissions that they did, the Respondents denied that they had been dishonest. The Tribunal heard oral evidence from Mr Uddin, Mr Shafran and Mr Harden.

At the conclusion of the substantive hearing the Tribunal made the following Orders:-

The Tribunal Orders that the Respondent Stuart Samuel Garcia of Heath Street, Hampstead, London, NW3 (formerly of 40 Manchester Street, Marylebone, London, W1U 7LL), solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay a contribution of £22,000 (inclusive of VAT) towards the costs of and incidental to this application and enquiry.

The Tribunal Orders that the Respondent John Martin of Rusthall Avenue, London, W4, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay a contribution of £22,000 (inclusive of VAT) towards the costs of and incidental to this application and enquiry.

The Orders that the Respondents each pay £22,000 towards the said costs were made on the basis that the Respondents should pay such sum jointly and severally.

Having made these orders the Tribunal agreed that the allegations against Mr Martin (case number 9233-2005) do lie on the file to be proceeded with only with the consent of the Tribunal.

Preliminary matters raised by Mr Garcia

1. At the opening of the hearing Mr Garcia indicated that he wished to make an application that the Respondents had been subject to an abuse of process and that the allegation that they had been dishonest should be withdrawn. It was Mr Garcia's

position that neither the Law Society nor in particular its Forensic Investigation Officer (the FIO) had indicated that dishonesty was to be alleged against the Respondents. The Law Society had intervened into the Respondents' practice but the intervention had not been resolved upon on the ground of suspected dishonesty.

2. Mr Garcia referred the Tribunal to a skeleton argument and submission which he had prepared for a case management hearing in February 2006. It was his case that the proceedings resulted in the main from an inspection of the accounts of the firm Garcia Martin in December 2003 and March 2004. A decision had been taken not to intervene into the firm in about May 2004. A decision to bring disciplinary proceedings had been taken in about September 2004. Papers were served on the Respondents in about March 2005.

3. A hearing fixed for 1st February 2006 was moved, Mr Garcia believed at the request of Mr Ryan but without reference to Mr Garcia. The hearing was moved to 1st March 2006.

4. Late in the afternoon of 9th February 2006 Mr Garcia received a three volume lever arch file containing almost 1,000 pages of important documents.

5. Mr Garcia had had insufficient time to prepare his case. The papers served on him shortly before the hearing were the papers central to the case and should have been served on him much earlier.

6. Mr Garcia had requested from Mr Ryan exact details of his allegations of dishonesty.

7. An allegation of dishonesty against a solicitor was of the utmost seriousness.

8. The Applicant had served documents later than he had been directed by the Tribunal. Mr Garcia recognised that he had agreed to one extension of time but the documents nevertheless had been late.

9. Mr Garcia received a statement from the Applicant in March 2007, three years after the event, in which Mr Ryan put his case as one of dishonesty on the part of Mr Garcia because of unpresented client account cheques at a time when the firm was close to the overdraft limit imposed by its bank. That was new. That was the first time Mr Garcia had been told that that was how the Applicant put his case.

10. It was Mr Garcia's position that to allege dishonesty four years after the event did amount to an abuse of process.

11. Mr Garcia was not in a position to handle or deal with an allegation of dishonesty three or four years after the event. The delays caused prejudice to Mr Garcia.

12. Mr Martin played no part in this application.

13. In the Applicant's submission there had been no culpable delay. The Law Society had referred the matter for disciplinary proceedings in 2004 and the Applicant had been instructed in August of that year. The matter was relatively complex and the disciplinary proceedings were issued in February of 2005.

14. It was right that Mr Ryan had requested that the hearing date be moved because his partner was having a baby. The date to which the matter had been transferred proved not to be effective. All parties had agreed to an adjournment. Directions had been agreed.

15. The Tribunal had not been able to fix a date in view of the fact that it was expected that four days of the Tribunal's time would be required. It was necessary to convene a specially constituted Tribunal and that took some time to arrange.

16. Mr Ryan had considered that it would be fruitless to prepare an opening note without having a date of the hearing. It was inappropriate to run up costs in that way.

17. When the Applicant had heard that the hearing had been fixed to commence on 21st May 2007 he prepared and served his opening note two months before the hearing.

18. Paragraph 8 of the Applicant's Rule 4 statement contained clear and specific allegations. The FIO's Reports and the Applicant's statement clearly and concisely set out what allegations the Respondents had to answer. Mr Ryan's opening note expanded the detail contained in his originating statement and contained no changes. A draft of the opening note had been delivered to the Respondents in March 2007 and they had had plenty of time to consider it.

19. The first time the allegation of dishonesty had been made against both Respondents in relation to allegations 2(i) - (vii) had been in Mr Ryan's Rule 4 statement dated 17th February 2005..

20. During the course of his visits to the Respondent's firm the FIO had been carrying out an investigation and it was his duty to report facts and not to offer any opinion as to the Respondents' motivation. He could not have been expected to suggest that the Respondents had been guilty of dishonesty.

21. Mr Ryan considered that his opening note would assist the Respondents and it did not contain any new material. He noted that neither of them had written to him to say that they did not understand the Applicant's case and they had not sought any further documents.

The Tribunal's Decision

22. The allegation of dishonesty against the Respondents had been confirmed and particularised in the Applicant's Rule 4 Statement of 17th February 2005. The Respondents had not been taken by surprise. The matter was one of some complexity and had been clarified when there had been interim hearings before the Tribunal. The Tribunal did not consider that there had been inordinate delay in bringing the matter to a substantive hearing.

23. Dishonesty had been referred to in Mr Ryan's said Rule 4 Statement. The allegations had each clearly been cross-referenced to documents annexed to that statement. Allegation 2(vii) referred to a deliberate and improper utilisation of clients' funds. Paragraph 6 of the Statement contained a submission that both Respondents deliberately and improperly operated the client account in breach of the Solicitors Accounts Rules 1998 for their own benefit. Paragraph 7 contained a submission that the Respondents' continued failure to comply with the Solicitors Accounts Rules

1998 was deliberate and systematic and designed to ensure that the firm kept within its overdraft limit when the firm had cashflow difficulties and problems with meeting its liabilities. Paragraph 8 stated plainly that it was the Applicant's submission that both Respondents behaved dishonestly in relation to allegations 2(i) to (vii).

24. A large number of documents had been produced and had been placed in the Respondents' hands early last year. Mr Garcia had addressed a letter to the Law Society's FIO dated 2nd June 2004 referring to what he described as "an implication of dishonesty" made by the FIO. It had to be said that the Law Society's FIO was there to make findings of fact and was not there to formulate the allegations or take any view of the Respondents' motives.

25. The Tribunal recognised that there had been a delay on the part of the Applicant in complying with directions made by the Tribunal in February 2006. He had not served his opening note until two months before the current hearing. It was the Tribunal's view that neither of the Respondents had been put in a disadvantageous position by the receipt of the Applicant's opening note some two months before the substantive hearing, although it did not accept the Applicant's suggestion that compliance with the Tribunal's direction would have meant a premature delivery of the opening note.

26. The Tribunal further recognised that a high standard of proof would have to be met for it to make a finding that the Respondents, or either of them, had been dishonest. For that reason and because the Tribunal was satisfied that the Respondents had been aware for a long period of time that an allegation of dishonesty had been made against them, the Tribunal would not order that the allegation of dishonesty be withdrawn.

27. The Tribunal ordered that the matter proceed to the substantive hearing.

The substantive hearing

The facts are set out in paragraphs 28 to 123 hereunder:-

<u>The Respondents' background</u>

28. Mr Garcia was born in 1944 and was admitted as a solicitor in 1977. Mr Martin was born in 1955 and admitted as a solicitor in 1981. At the times material to the subject matter of allegations 1(i) and (ii), Mr Garcia was in partnership under the style of Rich Garcia Solicitors of 40 Manchester Street, Marylebone, London, W1U 7LL.

29. The partnership of Rich Garcia ceased on 13th June 2002 and since that date Mr Garcia and Mr Martin practised from the same address under the style of Garcia Martin until the Law Society intervened into the Respondents' practice following a resolution made by the Law Society on 9th September 2005. The intervention was effected on 14th September 2005.

<u>Allegations 1(i) and 1(ii) (against Mr Garcia alone)</u>

30. Rich Garcia Solicitors closed on 30th June 2002. The Law Society had been unclear as to the period which the Accountant's Reports were to cover. An Accountant's Report for the firm's financial period ending on 25th March 2002 had not been filed with the Law Society. A number of extensions of the time for filing had been granted. The client account was finally closed on 27th February 2003. An Accountant's

Report for the year ending 25th March 2002 had not been delivered to the Law Society. A final or "cease to hold" Report had not been filed with the Law Society.

Allegations 2(i) to (vii) (Against Mr Garcia and Mr Martin)

31. At the times material to these allegations the Respondents carried on practice under the style of Garcia Martin Solicitors at 40 Manchester Street, London, W1U 7LL and with a branch office called GM Law at New Malden, Surrey. Mr Garcia was a litigator and practised in the field of criminal law, Mr Martin undertook conveyancing and had conduct of large scale matters. The Respondents employed a bookkeeper, Mr G.

32. Upon due notice to the Respondents, an Investigation Officer of the Law Society (the IO) carried out two inspections of the Respondents' books of account. The first inspection started on 10th December 2003 and the second inspection started on 1st April 2004. The IO produced reports dated 21st January 2004 and 11th June 2004, which were before the Tribunal.

33. On 21st January 2004 the IO's report noted material breaches of the Solicitors Accounts Rules including a cash shortage of clients' funds at 30th September 2003 of £181,472.78, of which £70,849.95 remained to be replaced.

34. Separate books of account were maintained for each of the firm's two branches.

35. When the IO, on 10th December 2003, requested the books of account for both branches up to 30th November 2003, Mr G said that the books of account were not up to date because he worked part-time and there was "too much paperwork". The Respondents said that they would try to have the books written up to 30th November 2003 by the end of January 2004.

36. On 10th December 2003 the IO was provided with books of account for Garcia Martin written up to 30th September 2003 and GM Law written up to 31st October 2003. On 12th January 2004 he was provided with books of account written up to 31st October 2003 for Garcia Martin.

37. Lists of liabilities to clients as at 30th September 2003 and 31st October 2003 were produced for inspection. The items on the lists were in agreement with the balances shown in the clients' ledgers and after adjustments the lists totalled £2,139,845.02. The lists did not include further liabilities to the clients of the Garcia Martin branch totalling £181,480.78 as at 30th September 2003. Comparison of the total liabilities, including those not shown by the books, with cash held on client bank accounts, at those dates, after allowances for uncleared items, showed the following position:-

	Garcia Martin 30.09.03	GM Law 31.10.03
Liabilities to clients	2,139,845.02	133,289.39
Liabilities not shown by the books	181,480.78	0.00
	2,321,32.80	133,289.39
Cash available	2,139,853.02	133,289.39
Cash shortage	181,472.78	0.00

38. The Respondents told the IO that by 12th January 2004 a total of £110,622.83 had been replaced to reduce the cash shortage. A shortage of £70,849.95 remained at the date of the IO's Report. The Respondents notified the IO that they would raise and introduce money and arrange for payment of costs due to the firm to eliminate the remaining shortage.

39. The cash shortage had arisen as follows:-

(i)	Overpayments from client account	£60,652.47
(ii)	Incorrect transfers from client to office bank account:-	
	(a) Duplicated costs transfers from client to office bank account	£15,699.51
	(b) Other incorrect transfers from client to office bank account	£8,388.81
(iii)	Client monies incorrectly lodged in office bank account	£32,807.55
(iv)	Various other	£63,932.44
(v)	Book difference - surplus	(£8.00)
		£181,472.78

40. The Tribunal had before it the IO's analysis of the shortages. The IO exemplified the following nine matters.

(i) McE & D - shortage £56,908.17

41. Mr Garcia acted for McE & D (a company) on a number of matters. As at 30th September 2003 one client ledger account recorded a debit balance of £55,345.67 and another client ledger account showed a debit balance of £1,562.50.

42. Mr Garcia had explained to the IO that in June 2003 the client had told him he should expect to receive approximately £180,000. On 3rd July 2003 an amount of £140,000 had been received by the firm and Mr Garcia had incorrectly assumed that this was part of the £180,000 that he was expecting. In fact the monies were in respect of an unrelated client. Mr Garcia had utilised the monies received on 3rd July 2003 for McE & D at a time when the books were not written up to date.

43. Mr G had addressed a memorandum to Mr Martin pointing out that as at 15th August 2003 there was a shortfall of £79,850.81 in respect of McE & D. An email from Mr Garcia dated 27th August 2003 evidenced that he had by that date realised that the £140,000 was not for this client. He wrote to McE & D on 22nd October 2003 explaining the nature of cause of the shortfall and requiring them to make it good. Mr Garcia also acknowledged the existence of the shortfall and made reference to it in an internal memorandum sent in December 2003.

44. Whilst a shortage existed in respect of this client, the firm took the following costs by transfers from client to office bank account. These transfers contributed to the overall shortage of £56,908.17 as at 30th September 2003.

4 Jul 03	2918	£940.00
1 Aug 03	2918	£3,231.25
12 Aug 03	3394	£200.00
30 Sep 03	3394	£1,175.00
20 Oct 03	From "statement"	£5,875.00
22 Oct 03	From "statement"	£3,525.00
		£14,946.25

45. On 12th January 2004, Mr Garcia said that the shortage had been replaced in full by the client.

46. Since 30th September 2003, there had been many receipts and payments in respect of this client. In the absence of up to date ledgers, the IO had been unable to assess the overall position of this client's account as at the inspection date, but Mr Garcia had reported that there was no shortage in respect of this client at the end of December 2003.

47. Mr Garcia explained that the clients were millionaires and he genuinely expected the monies to come in from them.

(ii) Mr B - shortage £45,000

48. Mr Garcia acted for this client in a bankruptcy matter. On 22nd September 2003 the client ledger account showed a credit balance of £30,000 when it was charged with a client account payment of £75,000 in favour of "S & Company Clients A/C", thereby giving rise to a debit balance of £45,000 at the inspection date.

49. Mr Garcia told the IO that "the error did not come to light until two months later when the bookkeeper identified that the cheque [£75,000] had been encashed". On 13th November 2003, £55,000 was telegraphically transferred into the firm's client bank account on behalf of the client to replace the shortage.

(iii) Mr S - shortage £8,500

50. The firm (Mr L) acted for Mr S in the purchase of a property in London. The ledger account recorded that on 15th April 2003 an amount of £30,000 received from the client was incorrectly lodged into office bank account. Between 31st May 2003 and 27th August 2003 amounts totalling £20,331.26 were transferred from office into client bank account in part replacement of the shortage. The client ledger account recorded a payment of £8,250 made from client bank account to discharge the stamp duty liability and £250 described as "cash to client". As a result, on 27th August 2003 the client ledger account recorded a debit balance of £8,500.

51. The Respondents explained that the £30,000 had not been transferred in full from office to client bank account when the error had occurred because of a "failure in systems". The Respondents did not know why Mr L caused monies to be transferred from office to client bank account in "bits and pieces". They accepted that it followed that they had received a "benefit" while the monies remained in office bank account. There was no evidence that the shortage had been replaced.

Allegation (iv) Mr B - shortage of £1,206.51

52. The firm (Mr L) acted for Mr B in the remortgage of a property in London.

53. The ledger account showed that on 29th July 2003 £172,234.71 was paid to "iGroup Servicing Ltd" when £171,104.20 stood to the credit of the client, resulting in a debit balance of £1,130.51. On 14th August 2003 the ledger account was charged with £70 paid to "HM Land Registry" thereby increasing the debit balance to £1,200.51.

54. The firm transferred costs from client into office bank account on 24th and 25th July 2003 in the amounts of £1,206.51 and £1,222 respectively, however, the completion statement showed that costs amounted to only £1,222. The Respondents agreed that there had been an incorrect transfer of £1,206.51 from client to office bank account. The Respondents attributed the duplication of the costs transfer to "a breakdown in systems of billing". There was no evidence that the shortage had been replaced.

(v) Costs transfers control account - shortage £3,119.79

55. Mr G on 16th December 2003 said to the IO that this ledger account represented cost transfers where no information was available to him in respect of the ledgers to which the costs related. The ledger account showed that between 31st March and 10th April 2003 amounts totalling £18,970.71 were transferred from client to office bank account under the narrative "Costs Transferred" and allocated to the control account, resulting in a debit balance of £18,970.71. The Respondents said that they would need to identify the ledgers to which these costs related and would send copies of the bills to the IO.

56. On 29th April 2003, amounts totalling £17,406.52 transferred back from office to client bank account were credited to the client's ledger account under the narrative of "Costs Transferred", thereby reducing the client balance to £1,564.19. Mr Martin said that Mr G had told him that £17,406.52 needed to be transferred from office to client bank account and he duly authorised the transfer without investigating the underlying reason.

57. Between 7th May and 17th July 2003 the client ledger account was charged with further sums totalling £11,445.50 transferred from client to office bank account, thereby increasing the debit balance to £13,009.69. The Respondents said that they would need to identify the ledgers to which these costs related and thereafter they would forward copies of the bills to the IO.

58. On 27th August 2003 the client ledger account was credited with £11,209.90 transferred from office to client bank account under the narrative "Client Shortfall rectified by John Martin", reducing the debit balance to £1,799.79. Mr Martin said that Mr G had told him that the firm had a "problem" and that the partners needed to put into client account £11,209.90. Mr Martin added that he followed Mr G's instructions without investigating the underlying reason.

59. On 15th September 2003 the client ledger account was further charged with an amount of £1,320 transferred from client to office bank account. This increased the debit balance on the client side of the ledger to £3,119.79, whilst a credit balance of the exact amount stood on the office side of the ledger.

60. Mr Martin presumed that Mr G did not know to which files these costs transfers related because Mr G had not received the copy bills in the first instance.

61. The Respondents said that the bills were sent to the clients. The IO could not verify this.

62. The Respondents explained that there was a delay in replacing the shortage because Mr G had not previously brought the shortage to their attention.

(iv) Office payments debited to client account - shortage £152.73

63. On 16th December 2003 Mr G told the IO that debits (in payment of office and personal expenditure) had been incorrectly paid from client bank account.

64. A ledger account showed that between 29th May and 4th July 2003 four direct debit payments totalling £297.08 were paid out to "Admiral Insurance" (Mr Garcia's car insurance). The ledger account also showed that these payments were replaced to client account on 4th July 2003.

65. The ledger account further showed that on 11th July 2003 three direct debit payments totalling £217.50 were paid out to "Siemens Financial Services" (lease payments for the firm's franking machine). The ledger account showed that these payments were also replaced on 17th September 2003.

66. The ledger account showed that on 14th August 2003 and 4th September 2003, two direct debit payments totalling £152.73 were paid out to "Swiss Life" (Mr Garcia's life assurance) resulting in a debit balance of £152.73.

67. The Respondents had said that the shortage should have been "cleared up the second it happened". The IO asked the Respondents if it was a "coincidence" that the client bank account details had been incorrectly provided in respect of direct debit instructions on three separate occasions. The Respondents' position was that it could have been either a bank error or an error on their part.

(vii) "July Costs Transfers Suspense Account" - shortage £1,526.75

68. On 16th December 2003 Mr G said to the IO that this ledger represented costs transfers where there was "no paperwork" and where he did not know the client matters to which costs related.

69. The ledger account showed a transfer from client to office bank account on 4th July 2003 in the amount of £1,526.75 when no funds were available, resulting in a debit balance of £1,526.75.

70. The Respondents said that they would need to identify the bill and the client. They confirmed that the bill would have been sent to the client. The IO had not been able to verify this. The Respondents agreed that in the absence of being able to produce a copy bill, a shortage of £1,526.75 existed.

(viii) "Costs Transfer Cheques Suspense Account" - shortage £26,330.18

71. Mr G told the IO that on 16th June 2003 the firm issued an office account cheque for £26,049.31 in favour of client account to replace debit balances on 34 separate client ledger accounts caused generally by duplicated cost transfers and overpayments.

72. On 11th July 2003 the bank did not meet the cheque on presentation so that the debit balances continued in existence.

73. The Respondents told the IO that they "should have dealt with it", that they thought they had rectified it and that their bookkeeper had not kept them informed about the matter. The Respondents accepted that they did not have sufficient monies at the

bank at the relevant time. They said that the bank "played ball" and that they had not "followed it" and thereafter they were "in a bit of a muddle". It had been "an accident in banking and the bank would not allow us to correct it".

74. The Respondents said that the duplicated cost transfers occurred because there was "no proper system in place for cost transfers".

75. The IO reviewed and discussed the 34 ledger accounts with the Respondents who agreed that there was a shortage of £26,330.18 in respect of them.

(ix) "Client Account Suspense Account" and H Ltd - shortage £24,307.55

76. Client account suspense account was charged on 3rd July 2003 with a payment of £24,307.55 to "C & J Kennedy" made for the benefit of the firm's client, H Ltd. That account also recorded that on 19th August 2003 £939.66 had been paid "to cover" office debts of Adrian Sam & Co (a former practice of Mr Martin). On the same day, the same ledger account was charged with a further amount of £872.22 "to cover office debts" of the firm.

77. On 27th August 2003, client account suspense account was charged with 17 inter-ledger transfers totalling £21,113 which Mr G said had been made "to correct debit balances". On 28th August 2003 the same account was charged with £5,000 paid as "Cash to Client" (Mr M) and £20,000 paid to "JM" (Mr Martin). At this point, that ledger account recorded a debit balance of £23,969.60.

78. Mr Martin said that the £24,307.55 debit on the client account suspense account ledger on 3rd July 2003 should have been charged to the client ledger account for H Ltd. Reallocation of this amount to the H Ltd ledger account would have resulted in a debit balance on that ledger in the amount of £24,307.55.

79. Mr Martin explained that this shortage arose because a telegraphic transfer of £24,307.55 received from "RR & Co" was incorrectly lodged into office bank account, whilst the payment to "C & JK" in the same amount had been made on client account.

80. The Respondents agreed that a shortage of £24,307.55 existed on the H Ltd client ledger.

Post 30th September 2003 shortages

81. The IO identified further shortages, which the Respondents agreed, totalling £7,226.33. Of those, £3,033.83 had been replaced but a balance of £4,192.50 remained outstanding. In large part the shortages arose as the result of unspecified costs transfers in October 2003 leading to a shortage of £4,112.50. The ledger account showed that on 2nd October 2003 £4,112.50 was transferred from client to office bank account when no funds were available, resulting in a debit balance of £4,112.50.

82. The Respondents agreed this shortage and Mr Garcia explained that "these are total of transfers from client to office account to rectify office account debits". He added that he had the list of client ledger accounts to which these related and said that he would provide the list to the IO.

83. The list of liabilities as at 31st October 2003 provided by Mr G on 12th December 2003 showed that more debit balances existed at 31st October 2003. The IO referred to the following matters, but he had not examined them.

2437	Trustees AA PS	Sale of property	£16,101.20
3398	PP	Purchase of property	£13,884.63
3322	CC	Purchase of property	£11,210.00
3518	GB	Re a property	£7,244.50
2908	WMW	Sale of property	£5,596.50
3230	AR	Purchase of property	£2,350.00
			£56,386.83

84. The Respondents had corresponded with the IO at some length after the conclusion of his inspection.

85. As at 30th September 2003 the overdraft limit on the Respondents' office bank account was £50,000. The office bank reconciliation showed that on 30th September 2003 the "reconciled" office account bank balance, after allowing for uncleared receipts and payments, was £95,904.85 in debit. The balance shown at that date on the bank statement was £62,608.66 in debit.

86. The firm had a loan account which was £97,246.80 in debit as at 30th September 2003. The Respondents explained that this loan consolidated £50,000 they paid for Mr Feldman's practice and £45,000 paid to Mr Feldman as salary.

87. There was also an office car loan account which was £6,745.19 in debit on 30th September 2003 and a GM Law business loan account which was £15,504.94 in debit.

88. The Garcia Martin office bank account reconciliation as at 30th September 2003 showed unpresented cheques totalling £37,333.68. These included:-

Date	Cheque No.	Amount (£)	Payable to	
18 Feb 03	700533	4,067.97	Inland Revenue	PAYE & NIC
19 Mar 03	700609	4,140.79	Inland Revenue	PAYE & NIC
17 Apr 03	700730	6,642.56	HM Customs & Excise	VAT
22 Apr 03	700655	4,407.67	Inland Revenue	PAYE & NIC
11 Aug 03	700860	3,192.37	Inland Revenue	PAYE & NIC
26 Sep 03	700929	3,000.00	HM Customs & Excise	VAT
		25,451.36		

89. Mr Garcia confirmed that the cheques had not been despatched. He had instructed Mr G to cancel the cheques but he had not done so. Mr Garcia had required the cheques to be cancelled so that he could control the cashflow, and he had held back cheques until he had sufficient funds in office bank account to honour them. The above cheques made out to Inland Revenue and HM Customs & Excise had been raised and posted to the books of account by Mr G alone: the Respondents had not signed those cheques.

90. The Respondents confirmed that for the "first eighteen months" (July 2002 to December 2003) of the firm things had been "difficult" due to the high level of cost and overheads.

91. The IO reviewed the firm's bank statements from 27th November to 12th December 2003, just over two weeks, which showed that a large number of cheques, direct debits, and standing orders had not been met by the bank. The value of those unpaid items was £26,497.05.

92. On 4th June 2003, Mr G had sent to the Respondents a memorandum attaching printouts of balances, with postings to 12th May 2003, highlighting the debit balances on clients' ledger accounts and unallocated balances on office account. He said, "In any practice errors always occur where cost transfers are inadvertently duplicated or cheques drawn in error on the wrong account, but the rules are explicit in stating that these errors must be corrected within 24 hours of being spotted". The Respondents did not fully replace all the shortages showing on client ledgers.

93. The IO had returned to the Respondents' offices to make a further inspection commencing on 1st April 2004. His report of 11th June 2004 made reference to his earlier inspection and report and went on to record that on 2nd June 2004 Mr Garcia had written to him stating "My accountant knows full well that I had deliberately refrained from making proper transfers from client to office account because I wanted to be absolutely sure that the account was in order before making such transfers. Some of those bills cover work which I had been carrying out as a locum since 1996/1997 and were therefore substantial … I have also asked the former accountants, SB, to give me written confirmation of their advice that it was in order to make the appropriate transfers".

94. On 9th June 2004, Mr Garcia confirmed that he had not to date received such written confirmation. Mr Garcia explained that his accountant was "slow" and that Mr L, a previous fee earner in the practice, had possession of the relevant client files.

95. The IO had been unable to verify whether or not the monies held on client ledger 2936 belonged to Mr Garcia personally or not. Mr Garcia said that Mr B (of a firm of chartered accountants) would confirm that the money did belong to Mr Garcia.

96. The client ledger account showed that on 27th February 2003 it had been credited with two amounts received to client bank account totalling £35,351.50. Mr Garcia said this came from his previous practice of Rich Garcia. Thereafter, the ledger was debited with various payments. In particular, on 3rd March 2003, the account was debited with a client bank account payment of £9,900 for stamp duty.

97. On 1st January 2004 the cheque was credited to suspense ledger account 3850 which was described "Out of Date Cheques Written Back".

98. On 10th May 2004 the Respondents wrote to the IO stating, "the partners find it extraordinary that the bookkeeper failed to refer the non-encashment of the cheque to the partner/fee earner concerned. We need to speak to Mr B (of the chartered accountants) after Mr Garcia has considered the file which is presently in possession of [Mr] L/BBW Solicitors".

99. On 25th May 2004 Mr Garcia wrote to the IO saying that the payment of £9,900 "was believed lost at the Land Registry; a suggestion was made that the transfer had never been sent or stamped and so, because this matter had originated at Rich Garcia and although the transaction completed in June 2002, and although we purchased Anthony Feldman & Co [in] July 2002, it was more logical for the funds to be paid out of Rich Garcia. In the event there had been an error and the document not stamped, I put funds into a suspense account and a cheque was submitted to the Stamp Office. In the event, the stamped transfer was traced and found so that the cheque purportedly sent by Garcia Martin was never encashed. It is beyond my belief that the bookkeeper, instead of reporting to me on the matter simply left the money on a suspense account".

100. The IO could not identify the Rich Garcia client ledger account from which the original payment for stamp duty had been made, nor could he see where Mr Garcia had put his own funds specifically in a suspense account to cover this stamp duty payment.

101. Ledger account 2936 showed a further payment of £20,336.30 to "C BVS ASS" which Mr Garcia said was a limited company belonging to him and he added that he was simply directing monies to himself.

102. The G ledger account further showed inter-ledger transfers to ledger 3856 (Mrs J Garcia, wife of Mr Garcia - Purchase of a property).

103. Ledger account 3856 showed that Mr Garcia acted for his wife in the purchase of property. The ledger account showed that on 30th October 2003 £18,250 was paid as a deposit when no funds were available, resulting in a debit balance of £18,250. On 31st October 2003 the ledger account was credited with a receipt of £13,000 from Mr S and Mrs J Garcia and an inter-ledger transfer from ledger account 2936 (G) for £5,250 which together cleared the debit balance.

104. On 28th January 2004 ledger account 3586 recorded a further receipt of £5,429 from Mr & Mrs Garcia and this was immediately transferred to ledger account 2936 (G).

105. On 6th February 2004 ledger account 3586 (Garcia) showed a debit balance of £1,376.35 and a transfer from ledger account 2936 (G) to 3586 (Garcia) was made in the amount of £5,429 which cleared the debit balance.

106. On 25th February 2004 an amount of £5,429 was credited to ledger 2936 (G) by a transfer made from office bank account.

107. Mr Garcia explained that the books of account were not up to date and he had therefore transferred monies to replace what he thought were shortfalls.

108. On 28th May 2004 Mr Garcia wrote to the IO saying that he had sent the papers in respect of the G matter to Mr B and that Mr B would write with explanations the following week. The explanations had not been received.

109. In his previous report the IO had recorded that there were a large number of unpresented office bank account cheques drawn in favour of the Inland Revenue and HM Customs & Excise.

110. As at 31st March 2004 the office bank reconciliations showed unpresented cheques totalling £40,205.09 of which, inter alia, £12,000 was in respect of the partners' drawings and £22,760.18 was in respect of the firm's own liabilities to the Inland Revenue and HM Customs & Excise as follows:-

Date	Cheque No.	Amount (£)	Payable to
11 Aug 03	700860	3,192.37	Inland Revenue
26 Sep 03	700929	3,000.00	HM Customs & Excise
10 Nov 03	701004	5,000.00	HM Customs & Excise
24 Dec 03	701203	2,500.00	Inland Revenue
2 Feb 04	000946	9,067.81	HM Customs & Excise
		£22,760.18	

111. The IO had asked the Respondents if the firm was in financial difficulty and they replied that they "were coping". The Respondents then told the IO that HM Customs & Excise had issued a statutory demand and that they had been negotiating a settlement but HM Customs & Excise had taken no further action.

112. On 7th April 2004 Mr Garcia informed a caseworker at the Law Society that the firm of GM Law was in the process of transferring its operation to other solicitors. On 9th June 2004, the Respondents confirmed that this transfer had not been completed.

113. The IO concluded his second report by saying that in light of the unreplaced shortages, outstanding queries, unidentified client ledgers in respect of costs transfers, absence of bills for costs transfers, absence of explanations on suspense ledger entries and absence of evidence that bills had been sent prior to the transfer of costs, he could not conclude that the books of account of Garcia Martin and GM Law were in accordance with the Solicitors Accounts Rules.

Allegations 3(i) and (ii)

Allegation 3(i)

114. On 4th April 2005 Garcia Martin's name was placed on the Bar's Withdrawal of Credit Scheme list following a number of complaints about non-payment of Counsels' fees.

115. The matter was raised with the Respondents by the Law Society in a letter dated 10th May 2005. Mr Garcia replied on behalf of both Respondents. Counsel's fees concerned had arisen in connection with client matters of which Mr Garcia had conduct.

Allegation 3(ii)

116. On 18th August 2004 an Adjudicator of the Law Society made a decision to grant the Respondents' Practising Certificates for the practice year 2003/2004 subject to the condition, inter alia, that they should practise only in approved employment or partnership and that that condition should become effective within three months of the date of the letters notifying them of the decision.

117. Both Respondents applied for a review of that decision and the review was dismissed on 8th December 2004. The Respondents were notified of that refusal by letters dated 13th December 2004 and those letters gave them a further three months to comply with the decision.

118. The deadline for compliance with the Practising Certificate conditions expired on 13th March 2005. Mr Garcia made application on 1st March 2005 for approval of his then current partnership with Mr Martin. The Law Society notified both Respondents by letter dated 4th March 2005 that their continuing to practise together as Garcia Martin would be in breach of the conditions on their Practising Certificates.

119. The Respondents continued to practise in partnership.

120. The Respondents' Practising Certificates for the practice year 2004/2005 were granted by an Adjudicator on 10th May 2005 subject again, inter alia, to the condition that they both practise in employment or partnership approved by the Law Society.

121. Since the imposition of the conditions, Mr Garcia had made applications for approved employment/partnership as follows:-

(i) to be a partner in the firm of Sam & Co Solicitors. This was refused on the grounds that Mr Sam would not be able to provide sufficient monitoring or supervision;

(ii) to be a partner in the firm of Jacksons Solicitors. This was approved on 11th May 2005 although Mr Garcia actually became a partner in the firm of Metro Law, apparently a trading name for Jacksons Solicitors. Formal approval for this partnership had not been sought but was unlikely to be recorded as a further breach;

(iii) Mr Martin made an application for approval to be a consultant at the firm of Jacksons Solicitors. This application was approved until 1st October 2005, subject to specific conditions. An appeal against certain of those conditions was dismissed on 3rd October 2005. According to Law Society records Mr Martin was no longer practising at Jacksons Solicitors.

122. Further correspondence took place between the Law Society and Mr Garcia in relation to his practice at Metro Law, and between the Law Society and Mr Martin and his solicitor with regard to the continued operation of Garcia Martin Solicitors, the breach of the Practising Certificate conditions and the possibility of an intervention.

123. On 9th September 2005 a resolution was made by the Law Society, inter alia, to intervene into the Respondents' practice and to refer their conduct to the Tribunal. The intervention was effected on 14th September 2005.

The submissions of the Applicant

124. Mr Garcia admitted the allegations against him alone, namely allegations 1(i) and (ii) relating to his failure to file Accountant's Reports with the Law Society in respect of his practice, Garcia Rich.

125. The Applicant had withdrawn allegation 4(i) against Mr Martin, relating to non-payment of Counsels' fees and the placing of the name of Garcia Martin on the Bar's Withdrawal of Credit List. Mr Garcia had admitted this allegation.

126. Allegations 2(i) to (vii) against both Respondents were admitted by both Respondents save that Mr Garcia did not admit allegation 2(v). Those allegations and allegation 2(viii) against Mr Garcia alone related to breaches of the Solicitors Accounts Rules and improper utilisation of clients' funds. Both Respondents had been guilty of serious professional misconduct in the operation of their firm's accounts.

127. Both Respondents behaved dishonestly in relation to allegations 2(i) to (vii) within the meaning of the test in Twinsectra -v- Yardley and others [2002] UKHL 12.

128. The Applicant did not submit that Mr Garcia behaved dishonestly in relation to allegation 2(viii).

129. Both Respondents had admitted the breaches of the Solicitors Accounts Rules save Mr Garcia's non-admission of allegation 2(v). The question of dishonesty had to be addressed.

130. The financial situation of the firm of Garcia Martin had to be taken into account. Both Respondents had knowledge and joint control of the firm's accounts throughout the relevant period and were at all times aware of the firm's parlous financial situation.

131. The Respondents' actions should be viewed in the context of their firm's financial situation and in particular that their office overdraft facility was agreed at £50,000; the firm was near or over that limit at all relevant times; an office bank account reconciliation as at 30th September 2003 revealed unpresented cheques totalling £37,333.68. If those cheques had been presented, the office account bank overdraft would have been even greater than recorded on the bank statements. A further office bank reconciliation as at 31st March 2004 revealed additional unpresented cheques totalling £16,567.81 and had those cheques been presented, the office bank account overdraft would again have been greater than the figure shown on the relevant bank statement.

132. An examination of the firm's bank statements from 27th November 2003 to 12th December 2003 revealed a large number of cheques, direct debits, and standing orders totalling £26,497.05 which the bank had declined to pay. The fact that these were not met by the bank was illustrative of the firm's financial situation.

133. An office account cheque for £26,049.31 drawn on 16th June 2003 to replace debit balances on 34 separate client ledger accounts was not honoured by the bank. The shortage made up of the debit balances remained in existence until its discovery by the IO in January 2004.

134. The Respondents had informed the IO that HM Customs and Excise had issued a statutory demand in respect of unpaid VAT; subsequently Revenue and Customs presented a petition for unpaid VAT claiming £267,061.50 on 14th July 2006 and a winding up order was made on 20th September 2006.

135. It was the Law Society's case that the Respondents' books did not reflect the true picture; improper transfers had been made that should not have been made; shortages were not replaced; suspense accounts were used in respect of unallocated costs transfers; bills were not sent prior to the transfer of costs or at all; clients' monies were paid directly into office account; and firm's expenses were met from client account.

136. Both Respondents deliberately manipulated the accounts for their own benefit and to ensure that money that should have been in client account was improperly in office account (in a variety of different ways) with the intention, inter alia, that the firm be kept within its overdraft limit.

137. It was significant that the breaches of the Solicitors Accounts Rules and the deficiencies in the firm's books of account always resulted in money that should have been in client account being in office account, rather than the reverse.

138. The IO identified that between 29th May 2003 and 4th September 2003 a number of direct debit payments that should have been made from office account had been made from client account, although it was accepted that the amounts involved were modest.

139. The IO had discussed this matter with the Respondents during his first inspection, but when he returned to the firm in April 2004 he noted that further personal or firm direct debit payments had been made from client account in February, March and April 2004. Indeed, an examination of the client ledger confirmed that payments had been made from client account monthly from the end of May 2003 until April 2004, i.e. over an 11 month period.

140. During his first inspection the IO identified that on 14th April 2003 £30,000 received from a client was incorrectly lodged into office bank account. Thereafter, between 31st May 2003 and 27th August 2003 amounts totalling £20,331.26 were transferred from office to client bank account in part replacement of the shortage, illustrating that the Respondents were aware that the funds should not have been in office account.

141. The full amount was not transferred back to client account and as a result a payment of £8,250 made from the client ledger in relation to stamp duty resulted in a debit balance of £8,500 on the client ledger.

142. Mr Martin had admitted to the IO that there had been another occasion when a significant amount of client money (£24,307.55) was incorrectly paid into office bank account, resulting in a further shortage.

143. During the inspection, the IO had questioned whether a number of bills had been sent to clients prior to transfers of costs having been made. Confirmation had been requested from Mr Garcia that the bills in question had been properly delivered to the clients prior to the transfer of costs. Such confirmation had not been received. Such bills that had been provided post-dated or pre-dated by a long time the costs transfers. Mr Garcia's submission that the costs information or estimates supplied by the firm when a matter began amounted to a written notification to the client of costs that were to be transferred was to be rejected.

144. It was clear from the two IO reports that the Respondents made extensive and improper use of suspense accounts for a variety of reasons but fundamentally to make unallocated costs transfers that on the face of it they were not entitled to make.

145. Rule 32(16) of the Solicitors Accounts Rules states that "suspense client ledger accounts may be used only when the solicitor can justify their use; for instance, for temporary use on receipt of an unidentified payment, if time is needed to establish the nature of the payment or the identity of the client".

146. The Respondents' protracted use and abuse of suspense accounts was incomprehensible unless those accounts were deliberately utilised to conceal cash shortages and debit balances, and to make unallocated and unauthorised transfers of costs from client to office account.

147. It was clear that the Respondents were aware of the "problems" with the books of account, not least because of a memorandum from their bookkeeper dated 4th June 2003, which particularly highlighted the correct procedure for the transfer of costs.

148. Notwithstanding this warning, and the IO's concerns at the first inspection, the Respondents remained in serious breach of the Solicitors Accounts Rules as at 1st April 2004 when the second IO's inspection began.

149. It was also clear from the IO's conversations with the Respondents that they were fully aware of the situation with regard to their books of account; in addition, Mr Martin had made capital payments to rectify shortages on client account on a number of occasions.

150. The only explanation for the Respondents' continued and serious breach of the Solicitors Accounts Rules was that they were acting dishonestly as defined in the test in Twinsectra -v- Yardley and others. However, a finding that the Respondents had not been dishonest was not fatal to the Law Society's case. If they were not acting dishonestly it was clear that the Respondents' attitude to compliance with the Solicitors Accounts Rules and to rectifying serious breaches and replacing shortages of clients' money was grossly reckless and they failed totally to exercise a proper stewardship of clients' funds.

The submissions of Mr Garcia

151. Mr Shafran was called by Mr Garcia to give oral evidence. Mr Shafran, an accountant, had seen the ledger sheets described as suspense accounts. He had understood them to be control accounts. Such accounts traditionally were used to control purchase ledgers and sales ledgers. He was of the view that the bookkeeper Mr G had not been aware of what certain transactions were and instead of making an educated guess he had put those transactions in a suspense account with the intention of going back later to sort it out. It would be the intention of an accountant to identify what has gone into a suspense account and move it to its proper place as quickly as possible.

152. Mr Shafran described Mr G as being isolated from the Respondents, working in a room at the top of the building. It appeared that he was perpetually in dispute with the Respondents. He regarded accountants as "persona non grata" and was very disdainful of other people. Mr G was very certain of his own great ability and had

told Mr Shafran on one occasion that he had acted as a consultant to the Law Society on questions of bookkeeping. Mr Shafran recounted one occasion when some accounts information was required by Mr Garcia to deal with his personal financial matters, Mr G had not provided it and it was provided only upon Mr Shafran's insistence, and he recalled that it had taken a very long time to procure the necessary computer printout. Mr Shafran said that there was hostility and personal animosity between Mr Garcia and Mr G.

153. Mr Shafran had understood that Mr G enjoyed a somewhat strange lifestyle. He had a residence in Cambridge but lived close to the Respondents' office. He had told Mr Shafran that the firm was providing him with living accommodation and, taking that into account, Mr G's salary and benefits came to a "staggering sum" for a bookkeeper.

154. Mr Shafran said that when acting for Mr Garcia in connection with his personal affairs, although not acting on behalf of the firm, he had seen no sign of either of the Respondents deriving any financial benefit from the bookkeeping errors. Mr Shafran considered that it would be an accountant's duty to bring matters into the open if something dishonest had been going on.

155. Mr Shafran went on to say that in his experience solicitors were not good with figures. He believed that Mr Garcia became involved in clients' affairs and overlooked his monitoring responsibilities. He believed that Mr Garcia felt that he could rely on the person, the bookkeeper, to whom he paid a great deal of money. Mr Shafran said there was always a backlog of bookkeeping work and Mr Garcia was never supplied by his bookkeeper with current information.

156. Mr Shafran had always thought that Mr Garcia maintained a good relationship with clients and other professionals.

157. Mr Shafran understood that Mr G had a medical condition: he was not a healthy person and the Respondents had been very reluctant to put him out of the office.

158. It was Mr Garcia's position that transfers of costs from client to office bank account had not been made where a bill or a written intimation had not been delivered to the client concerned. Mr Garcia drew to the attention of the Tribunal letters which had been sent to clients at the beginning of their matters. In conveyancing transactions the sums to be deducted for costs and disbursements upon completion were set out. The clients had therefore been notified of the costs that would in due course be transferred. In litigation matters full details of the hourly rates of the fee earners having conduct of the case were supplied.

159. Mr Garcia said that all of the firm's bills had been numbered sequentially. The copy bills before the Tribunal did not bear that sequential number on the bottom left-hand corner. When Mr Garcia had printed off bills for the IO they all bore the same date and that had been how the computer had produced them.

160. Mr Garcia had admitted the allegations. At no time had he taken clients' monies. He had placed reliance on Mr G. He had not been dishonest.

Mr Martin's submissions

161. Mr Martin called Mr Harden, a chartered accountant who had experience of solicitors' accounts and the preparation of annual Accountant's Reports. Mr Harden told the Tribunal that he had known Mr Martin since the late 1980s and they were friends. Mr Harden had not acted for Mr Martin's practice but he had acted for him in connection with his other unrelated business interests.

162. Mr Harden had previously known Mr G. Mr Harden's partner had been killed in a motoring accident in 1993 and Mr G had on that occasion acted as a forensic accountant when Mr Harden had employed him to sort out certain of his late partner's affairs. He described him as being dogged in the work he did at the time and that pension companies with whom Mr Harden had encountered difficulty had given in at the end due to Mr G's persistence.

163. Mr Harden had been surprised to find Mr G in the offices of Garcia Martin.

164. Mr G by his own admission had been swamped by the amount of work. He had always been surrounded by piles of paper. It had been his habit to work during evenings and weekends.

165. There had been some occasions when clients of the firm had not been satisfied that monies due to them had been fully accounted for. Mr Harden had analysed the files and the financial transactions and had been able to satisfy the clients that no monies were owed to them by the firm. One aspect of those matters had been that the accounts and/or records prepared and kept by Mr G had not been understood by the clients.

166. Mr G had made extensive use of transfers and the basis of them had been difficult to understand.

167. The bookkeeping system was indistinguishable from Mr G himself. He was in control of the system. Mr Harden said if he had been in charge he would have replaced that system. Mr G had been trying to sell his system to others.

168. Mr Harden confirmed that he had read through all of the written evidence that was before the Tribunal. He felt that the IO's reports were comprehensive and the IO had done a thorough job. The IO had understood the system that was being used. He thought the chances were that the IO had discovered everything that there was to be discovered.

169. In the matter of MacE and D, Mr G had told Mr Garcia that the clients' money had arrived. It was only later discovered that the money related to a different client.

170. The main reason for the shortage on client account resulted from overpayments made to clients or third parties rather than transfers of money from client to office account.

171. The shortfall had reduced over a period of time.

172. Where it was said that there was a duplication of the transfer of costs, Mr Harden understood that fees properly chargeable had been transferred twice. He suspected that Mr G's office had been "full of bits of paper" and he had dealt with posting some six weeks after the relevant transaction. Mr Harden believed that Mr G had simply

dealt with a piece of paper twice. He confirmed that there was always a "mountain of paper" in Mr G's office.

173. Mr Harden said that the direct debits paid from client account had represented only modest payments. He accepted that they should have been dealt with but because they were only small payments he thought it was likely that they did not "get to the top of the pile". More important issues had been given priority. Garcia Martin had acted for Mr Harden's son in the purchase of a property and the transaction had been completed without his raising any complaint.

174. Mr Harden explained that those accounts which had been described as suspense accounts had not necessarily been correctly identified or named in that way. For example, one was headed "Costs Transfers Control Account". He understood that Mr G had a habit of making a lot of transfers and journal entries. He completed transfers which resulted in debits and then made correlating credit entries. Mr Harden explained that a control account should always go back to zero. The account in question went back to zero after 10 weeks. The IO had repeatedly asked for an explanation of the transactions recorded in the "suspense" accounts and the Respondents had been able to explain that that had been because the entries had been created by Mr G to assist him with his work. He had created control accounts to balance his work.

175. Mr Harden had pointed out that one suspense account entitled "July Costs Transfers Suspense Account" had been created simply to deal with transactions during the month of July. It was not a proper suspense account. Mr Harden pointed out that the majority of the suspense accounts contained only one item and the so-called suspense account had been created simply for the purpose of that item. Mr Harden believed those accounts had been created to highlight areas where Mr G could not complete his work.

176. What Mr G should have done was to deal with items in such accounts promptly after creating the account. Mr Harden felt that those accounts probably had been set up some six or eight weeks after the transaction had taken place and it had then become difficult to establish what transactions related to.

177. Mr Harden said that if he had been required to audit the firm's accounts or complete an annual Accountant's Report with those suspense accounts in existence, he would have insisted that they be resolved and all entries contained therein had been allocated to the correct ledger. He believed that if matters had not been resolved speedily he would have been required to report the situation to the Law Society.

178. Mr G had represented himself as an expert. He did have a high degree of control of the firm's books. It was reasonable that the Respondents should have greater expectations of the capabilities of an expert solicitor's bookkeeper.

179. Mr Harden told the Tribunal that he had gone to the office to see Mr Martin because Mrs Martin had been in receipt of an inheritance. He had advised her that she should not apply part of her inheritance to sorting out the firm's problems. He said that he could not advise her to put funds into the firm unless all of the bookkeeping anomalies had been sorted out. Mr Harden told the Tribunal that the money was available and Mrs Martin would have been willing to put it into the firm.

180. Mr Harden had noted the overdraft limit granted to the Respondents by their bankers which the bank had not strictly observed. He pointed out that banks would usually have an authorised overdraft limit and an unauthorised overdraft limit; the second would be run in accordance with an individual bank manager's discretion. He noted that the Respondents' bank had allowed the firm's overdraft to go far beyond the authorised limit of £50,000.

181. Mr Harden pointed out that the Solicitors Accounts Rules required errors to be corrected within 24 hours. He was aware that the Respondents' financial difficulties did not allow them to correct errors as speedily as they should have done. He considered that there could be no defence to such non-compliance.

182. It was Mr Harden's view that the Respondents had placed too much trust in Mr G. Mr G had been allowed to get behind with his bookkeeping. The Respondent's practice had been a very busy one. Mr G found there had been too much paperwork and he had failed to keep the bookkeeping records up to date. It was Mr Harden's belief that if the bookkeeping had been kept up to date then the issues which had arisen could have been resolved without delay.

183. Mr Harden was unaware of any occasion when the Respondents had intentionally benefited from banking or bookkeeping errors. He had been aware that Mr Martin and Mr Garcia had not drawn salary from the firm for some time. Mr Martin ran a cheap motor car. Neither of them indulged in expensive holidays.

184. Mr Harden had concluded that Mr G, the bookkeeper, was not up to the job. He had discussed the situation with Mr Martin, pointing out that it was serious. Mr Martin's reaction had been that Mr G was living in Cambridge and that he should be supplied with accommodation so that he was closer to the office and could give more time to the job. In this way Mr Martin had recognised that the situation had to be dealt with.

185. Mr Martin had placed reliance on Mr G, an expert bookkeeper. Mr Martin was aware of bookkeeping deficiencies and had taken steps to put matters right. He had not taken clients' money. He had not been dishonest.

The Tribunal's Finding on the allegation of dishonesty

186. Having heard the Applicant's case, and having considered the papers and the evidence before it, the Tribunal concluded that it was not satisfied that either of the Respondents had been guilty of dishonesty.

187. In reaching this conclusion the Tribunal applied the civil standard of proof but applied it at a level that was so high that it would be indistinguishable from the criminal standard. The Tribunal applied the tests set out in Twinsectra -v- Yardley, namely:-

(a) The Tribunal has applied the purely objective standard whereby a person acts dishonestly if his conduct is dishonest by the ordinary standards of reasonable and honest people even if he does not realise this.

(b) The Tribunal has also applied the standard which combines an objective test and a subjective test and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest

by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.

188. The Tribunal accepted that the Respondents had made a considerable investment in the employment and accommodation of a bookkeeper whom they understood was something of an expert in the field of the maintenance of solicitors' accounts. They placed a great deal of trust in him. The Tribunal accepts that the Respondents had a busy practice and they gave priority to their clients' affairs. There can be little doubt from the evidence before the Tribunal that the financial affairs of the clients and the bookkeeping records were in a great muddle. The resulting muddle undoubtedly carried in its wake the admitted improprieties in relation to the stewardship of clients' money set out in allegations 2(i) - (vii), improper stewardship that was wholly unacceptable. However in this case failure of stewardship and gross dereliction of duty did not in the opinion of the Tribunal result from acts of dishonesty.

189. The Tribunal having carefully reviewed the evidence is not satisfied that the failures of stewardship resulted from dishonest intent. The Respondents were certain in their own minds that they had not at any time taken clients' money to which they were not entitled and were equally certain that their books of account could and would be brought up to date. Neither of the Respondents had taken drawings from the firm and Mr Martin had introduced money from time to time to cover, he believed, shortages on client account which had been identified.

190. The Tribunal has concluded that the Respondents in relying upon Mr G to bring the bookkeeping records up to date and believing that they had, save for some errors which they recognised and had rectified, done their best to handle clients' money entirely properly, genuinely held the belief that they were not acting dishonestly.

191. The Tribunal finds that the Respondents honestly believed that there were no real shortages of client money, no clients had or would suffer loss and that all problems would be resolved when the bookkeeping had been brought up to date. The Tribunal finds that for both of the Respondents that was a genuinely held belief as was their trust and belief in the capabilities of Mr G, whom they fully expected to be capable of and would complete that task.

192. The Tribunal has dealt here only with the question of dishonesty and would deal later with the breaches of the Solicitors Accounts Rules and the misapplication of client funds which flowed therefrom when making its final decision.

193. The Tribunal informed the parties prior to hearing mitigation in relation to the admitted allegations that it was not satisfied that the allegation of dishonesty had been proved. Also prior to hearing mitigation the Tribunal noted previous Findings of the Tribunal.

Previous Findings

194. Following a hearing on 21st April 1994 the Tribunal found the following allegations to have been substantiated against Mr Garcia. The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following circumstances namely:-

(i) that he had been responsible for excessive and unreasonable delay in submitting bills and papers for taxation in legal aid cases resulting in counsel not receiving their fees within a reasonable time after submission of their fee notes,

(ii) that he had failed to comply with a decision of the Conduct Committee of the Adjudication and Appeals Committee of the Solicitors Complaints Bureau.

195. In its Findings dated 24th June 1994 the Tribunal said:-

"The Tribunal found the allegations to have been substantiated, indeed they were not contested. They accepted that the Respondent had not been guilty of dishonesty. In the Tribunal's view he had been inefficient. The Respondent's position appeared to be that certain fee notes remained unpaid but he was doing nothing to put matters right. He gave no indication to the Tribunal that it was his intention to put matters right. The Respondent was in receipt of an income from his freelance work but his main problem was an inability to "see the wood for the trees".

After announcing its order following the conclusion of the hearing the Tribunal made it plain that it expected the Respondent to make the first report required by the Conduct Committee of the Adjudication and Appeals Committee of the Solicitors Complaints Bureau within one month of the date of the hearing and that he should continue to submit such reports in accordance with the Conduct Committee's decision. In the event of the Respondent being again before the Tribunal because of the continuing breach, then the Tribunal expressed itself unlikely again to treat the Respondent with such leniency."

196. Following a hearing on 22nd June 2000 the Tribunal found the following allegations to have been substantiated against Mr Martin and Nicholas John Downie. The allegations were that the two Respondents had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

1) they had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991.

2) that contrary to Rule 8 of the Solicitors Accounts Rules 1991 they drew money out of client account other than as permitted by Rule 7 of the said Rules.

3) that they had utilised clients' funds for the purposes of other clients.

4) that they had utilised clients' funds for their own benefits.

197. In its Findings dated 6th September 2000 the Tribunal said:-

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

The Tribunal noted that there had been no dishonesty on the part of the Respondents and that they had co-operated fully and had rectified the shortage as soon as it was brought to their attention. The Tribunal accepted the Respondent's explanation as to how the breaches had arisen.

The Tribunal also noted the letters of reference in support of the Respondents.

The Tribunal ordered that the Respondent Nicholas John Downie of 155 Chiswick High Road, Chiswick, London W4 2EB solicitor be reprimanded and they further ordered him to pay one half of the costs of and incidental to the application and enquiry. The Tribunal ordered that the Respondent John Martin of 155 Chiswick High Road, Chiswick, London W4 2EB solicitor be reprimanded and they further ordered him to pay one half of the costs of and incidental to the application and enquiry."

Mr Garcia's submissions in mitigation

198. Mr Garcia had been relieved and grateful to receive the Tribunal's conclusion that he had not been dishonest.

199. Mr Garcia accepted that the matters alleged against him were very serious. He accepted that the Tribunal might well consider it necessary to strike him off the Roll of Solicitors.

200. Mr Garcia told the Tribunal that he had suffered severe mental turmoil and he had become obsessed with the allegation of dishonesty made against him.

201. Mr Garcia had designed a simplified letter of engagement on the advice of a Legal Aid consultant.

202. Mr Martin had undertaken commercial work and estate conveyancing on a fairly large scale.

203. Mr Garcia was the training partner. He considered himself to be good at delegating and supervising.

204. All of the firm's clients knew what they would be charged. In conveyancing matters it was the firm's practice to send a completion statement together with a bill of costs.

205. There had been some 17 cases where the firm's bookkeeper had been under the impression that clients had not been notified of the firm's fees. All clients received a letter of engagement and were told, for example, what their mortgage costs would be. The firm's costs were modest for a central London firm. It was a nonsense to say that clients of the firm did not know what the firm's fees would be.

206. Mr Garcia had handled litigation and had mainly been a Legal Aid lawyer. He did not charge high fees. It had been his practice to set out in advance what the anticipated costs would be and in the case of Mrs M he had kept asking for money as the case went on. It was absurd to say that she had not known. She had known to the penny what the money was for. Mr Garcia acknowledged that there might have been a deficiency in communication between himself and his secretary.

207. Mr Garcia was skilled with the computer and often created bills himself. His secretary would then send the bill to the client. It was possible that some three months later the bookkeeper did not have a copy of that bill. Mr Garcia and Mr

Martin had not been guilty of the really serious offence of taking from trust funds. Other clients were fully aware of what the firm's costs would be.

208. Mr Garcia had in the past been involved in law centres and had acted as a duty solicitor. He had run a website giving people free advice.

209. Mr Garcia had prosecuted for the Police and had been trusted with serious cases. In the year 2000 the Respondent did not have a single individual client from whom he would receive payment: he was either paid by the Government or the Crown Prosecution Service.

210. Mr Martin was a property lawyer and was a good man. Mr Garcia was happy to be a partner with him.

212. Mr Garcia had felt that he was not fully playing his part in the practice and that led him to purchase Mr Feldman's practice. He had borrowed £50,000 to meet the purchase price and had borrowed another £40,000 from the bank for working capital. Mr Feldman had then claimed money for payments that he had made in advance and changed his requirement for a payment of £500 for working three days a week to £10,000 a month because he had so much work. It was only subsequently that the Respondents learned that Mr Feldman had been charged with money laundering offences and had been struck off the Roll.

213. The firm's computers had cost in the region of £98,000. Mr Feldman had told the Respondents that his office was "networked" but that proved not to be good enough.

214. When the Respondents took over Mr Feldman's firm they started with a practice debt of some £200,000 having initially budgeted for an outlay of only £90,000. They continued to employ an experienced solicitor and an assistant from Feldman & Co and by January 2003 the Respondents were in debt to the tune of £250,000.

215. Mr L should have been struck off some 20 years earlier. He managed to fool the Tribunal and an order was made that he could work only with the permission of the Law Society. He was a charming man and had persuaded Mr Garcia to obtain permission from the Law Society to employ him. Mr Garcia did so. Mr L proved to be a very greedy man. Early on he had not made a great contribution but from January and February of 2003 he started to produce a lot of work. Mr L wanted 80% of the proceeds. The firm's accountant said that that was a ridiculous request and the maximum that should be paid was 40%.

216. The partners agreed to part with Mr L. The matter became acrimonious and the Respondents had to instruct a City firm of solicitors to represent them and resolve the dispute.

217. The Respondents had come to learn that Mr L's work had been satisfactory when he was being supervised but when he knew he was leaving he took disruptive steps with banks and building societies.

218. The debts of the firm were said to be in the region of £1.4million. Mr Garcia did not accept that figure but did accept that they owed PAYE, run-off insurance and VAT. In short, the financial state of the firm of Garcia Martin was not as bad as had been made out.

219. Client money which had been paid into office bank account had been paid into that account in error. The errors had not been corrected because the bank had refused to make the required transfer.

220. Mr Garcia had enjoyed a difficult relationship with the firm's bookkeeper, Mr G. There were times when Mr Garcia had said to Mr Martin that they should dismiss Mr G but they found that a difficult decision to make as Mr G was over 60 years of age and suffered from ill-health. If he had been dismissed he would never again get a job.

221. Mr Garcia accepted that he knew that the firm's bookkeeper was getting behind. At first the firm had paid for the bookkeeper to stay in a hotel one day a week and that became three days. It was then decided to provide him with a flat so that he was near the office and could give the accounts more time. Mr G himself had pointed out that the Respondents were paying a great deal for hotel accommodation and it might well be preferable to provide him with a flat.

222. The Respondents had provided accommodation for Mr G because they considered him to be a very good bookkeeper. He had been speaking to senior members of staff at the Law Society and had been in contact with the Law Society's Chief Investigation Officer on a regular basis.

223. Mr G had had an operation for a cataract and had taken an extra three or four weeks away from work. That had been followed by the Jewish New Year and religious festival.

224. Mr Garcia had been shocked when the IO visited the firm and pointed out all the errors. Contrary to Mr Garcia's expectations he was told that the firm's books were in a mess. The firm's own reporting accountant could have been more helpful but in fact the Respondents received no input from him.

225. Mr Garcia accepted that he was not exercising supervision over the bookkeeper.

226. When the problems were drawn to his attention he made contact with a large firm of accountants for assistance and to that extent was diligently carrying out his duty.

227. The Respondents had tried to arrange amalgamations with other firms of solicitors.

228. As a result of the Law Society's intervention into the practice the Respondents had lost everything.

229. Mr Garcia believed that he had always given a good service to his clients and many people had benefited from his representing them. He was a good lawyer. He accepted that his supervision of the firm's accounts left a lot to be desired. He believed his difficulty had been that he was an advocate and not a person who was particularly comfortable with paperwork.

The submissions of Mr Martin

230. Mr Martin had practised with reputable firms and in the summer of 1983 joined Bruce Weir in Chiswick and became a partner in 1984. That firm became Bruce Weir

Webber and then "with Robsons" and ultimately the Brandon Practice trading as Bruce Weir Webber, but Mr Martin had been only a consultant in that last firm.

231. In 1996 Mr Martin's difficulties commenced when the probate clerk took clients' money and forged a will. This had come as a shock to Mr Martin at a time when he had a young family.

232. The probate clerk's behaviour caused the firm's professional indemnity premium to be substantially increased. The illness suffered by Mr Martin's partner considerably reduced his fee earning capacity. Mr Martin had worked very long hours.

233. At the end of 1999 Mr Martin and his partner came into contact with Mr Dixit Shah who was acquiring legal practices. Mr Martin made enquiries of a solicitor who had sold his practice to Mr Shah who had been satisfied with the arrangements and Mr Martin himself had had an earlier satisfactory professional dealing with Mr Shah.

234. Mr Martin and his partner instructed solicitors to handle the sale of the practice and the sale of the firm to Mr Shah was completed. Mr Martin and his partner became consultants to Mr Shah who traded as Brandons.

235. All went well until June 2000. Mr Shah dealt with administration and the accounts leaving Mr Martin free to devote much more time to his clients during a particularly busy period. Mr Martin then viewed the sale of the practice to have been a success.

236. It transpired that all was not well. An emergency meeting of consultants had been called by one of Mr Shah's partners. Mr Shah had purported to sell the practice to a lady solicitor. A partner of Mr Shah said he had not consented. The Law Society was about to inspect the accounts of the Brandon Group. Mr Martin had been surprised to learn that Mr Shah had apparently deferred the inspection for some nine months. Mr Shah attended the emergency meeting and said that everything would be all right. Mr Martin never saw him again.

237. In September 2000 Mr Shah returned to India taking with him substantial client funds.

238. Mr Martin had left the due diligence in respect of the sale of the practice to Mr Shah to his own solicitor.

239. Thereafter Mr Martin entered into partnership with Adrian Sam and they practised as Adrian Sam & Co from offices at Leicester Square.

240. The partnership with Mr Sam ended on 1st July 2002 because Mr Sam wished to relocate to Southend because his wife was seriously ill. A relocation to Southend did not suit Mr Martin professionally or personally and so they agreed to part company.

241. Mr Martin then agreed with Mr Garcia to purchase Mr Feldman's practice at 40 Manchester Street, Marylebone, London, W1U 7LL which they did on 1st July 2002.

242. Mr Martin did not know that at that time Mr Feldman was under investigation by the Law Society and facing serious criminal charges. He was struck off the Roll on 5th November 2002.

243. During the first half of 2002 Mr Martin was heavily engaged in the disposal of a multi-million pound communications company which took up a great deal of his time.

244. Obviously Mr Martin was talking to Mr Garcia whilst he was undocking from Mr Sam. Because of the disposal of the communications company Mr Martin left the negotiations with Mr Feldman to Mr Garcia.

245. Mr Martin's own pressure of work was increased after March 2005 because Mr Garcia "voted with his feet" and over a period of time left the practice with his staff and returned to his old premises in Leicester Square.

246. Prior to the intervention Mr Martin had notified the Law Society of his intention to retire as a solicitor on 30th September 2005 and that he would not apply for a Practising Certificate from 1st October 2005.

247. With regard to the client bank account, shortages identified by the IO had been corrected. Mr Martin had instructed Mr Harden, an accountant, to provide a report.

248. Since the intervention all documents, books and records were with Messrs Devonshires and that would make Mr Harden's work more difficult.

249. Mr Martin believed that the errors which had been identified were unfortunately the sort of bookkeeping mistakes that occur in a busy "high street" mainly conveyancing practice.

250. With regard to the transfers of costs, there was no suggestion that the work behind the costs had not been carried out.

251. Mr Martin admitted that a suspense account should not have been operated. However, it showed only neglect or just being too busy to see that the individual client accounts were properly kept. Instead, as a short term measure, a suspense account was useful but it did not show dishonesty.

252. Certain direct debits had been wrongly set up but they were not dishonest.

253. In a letter of 7th May 2004 Moores Rowland LLP's letter stated:-

> "It is our opinion that the prime reason for the debit balances arising has been the failure of the firm to keep their books written up to date and the failure to implement and follow proper internal controls."

254. Mr Martin did not comment on the matters that related only to Mr Garcia.

255. It was pressure of work that, regrettably, led Mr Martin not to deal with Mr G's memorandum of 4th June 2003.

256. Mr G had been Mr Feldman's self-employed bookkeeper and was "inherited" by the Respondents. Mr Martin had come to have grave doubts about Mr G's loyalty and his focus on the Respondents' firm.

257. Mr G acted as an independent contractor. His letterhead contained the following narrative:-

> "It should be noted that certain work done by [Mr G] in connection with Solicitors Accounts Rules compliance and observance of the Franchise Guidance of the Law Society of August 2001 is done without the approval of the Law Society, as approval was not requested. However, the Office for the Supervision of Solicitors and the Legal Services Commission are aware of his work."
>
> "Specialist Consultant to Solicitors in connection with:
>
> S.A.R. implications, Bookkeeping, & Computer Consultancy ++ Demise Preparation Consultancy ++ "Back-to-Back" Agreements ++ Management Accounts ++ Forensic Investigations."

258. Mr Martin believed that he was entitled to rely upon Mr G's expertise. Mr G had told Mr Martin that he had connections with the Law Society's head of investigations. Mr G had failed the Respondents.

259. It could not be contended that Mr Martin did nothing following the IO's investigation.

260. Mr Martin recognised that the case presented against him looked bad, but he believed that there were mitigating circumstances in what was an unusual case.

261. As well as the difficulties suffered by Mr Martin, the ineffectiveness of Mr G the bookkeeper inherited from Mr Feldman, led to the allegations. Mr G did not seem capable of keeping the accounts in proper order.

262. Mr Martin recognised that he had made bad choices in his partners and in some of his staff.

263. With regard to Practising Certificate conditions, Mr Martin had tried to comply and had kept the Law Society informed of his position. He had been offered a consultancy which the Law Society had been asked to consider.

264. The Law Society had proceeded with its intervention even though Mr Martin had told it that the intervention was not necessary in his case as he was to retire on 30th September 2005, some 12 working days later. Mr Martin had sought voluntarily to have his name removed from the Roll, but this had not been permitted owing to the outstanding disciplinary proceedings.

265. Mr Martin had thereby been prevented from winding up his practice in an orderly manner by 30th September 2005. That might well have adversely affected former clients and placed a further and unnecessary financial burden at Mr Martin's door.

266. Mr Martin at no time practised either as a partner, consultant or employee in Jacksons Solicitors.

267. The condition placed on Mr Martin's Practising Certificate frustrated his ability to practise. Against the background of the disaster with Mr Feldman, Mr Martin had been reluctant to be forced into a partnership without full and proper due diligence.

268. In proceedings brought against him by the Financial Services Authority (the FSA) Mr Martin had been faced with a High Court Judgment for payment of £101,391 plus £258,000 (plus interest) together with the legal costs of the FSA's solicitors. The overall total approached half a million pounds. The Law Society had informed him that the intervener's costs were over £50,000 and further costs had arisen in this regard.

269. The subject matter of the FSA proceedings was also the subject matter of further disciplinary proceedings which had yet to be heard.

270. Mr Martin had tried to commence an IVA but that did not receive sufficient support. He had considered filing for his own bankruptcy, but the solicitors for the FSA had served a statutory demand on Mr Martin in January 2006.

271. Mr Martin felt that he had been ill-served by the Law Society's IO when the FSA matters were being investigated. Mr Martin had made an application to have all matters relating to him heard separately from Mr Garcia, it was not simply to have the FSA matter heard separately. The Tribunal's Directions made on 21st February 2006 represented the worst possible result for Mr Martin because it meant not only that the allegations against him were to be heard at the same time as Mr Garcia's but Mr Martin was to be prevented from referring to the FSA matter which was a central and crucial part of his explanation of what occurred when he was Mr Garcia's partner in Garcia Martin. That matter had placed a huge burden on Mr Martin at the material time.

272. Mr Martin had not practised as an advocate. He had had legal assistance prior to the hearing but it was not available at the hearing. He was grateful that Mr Harden had persuaded him to attend.

273. Mr Martin was a married man with two adult children. Since the intervention on 14th September 2005 he had not practised as a solicitor and he had no intention of ever doing so again. Mr Martin had always strenuously resisted the allegation that he had been dishonest and had been relieved that the Tribunal had not made a finding of dishonesty against him.

274. The FSA had served a statutory demand upon Mr Martin and presented a petition on which an order in bankruptcy was made against him. There was no committee of creditors. Mr Martin was cooperating with his trustee.

275. Mr Martin was sad that matters had reached that level. In negotiations the FSA had proved intransigent. Mr Martin had settled the matter on the basis that he had made a mistake in law. A fortune had been spent on lawyers in a situation that Mr Martin described as "dog eat dog".

276. With his trustee's consent Mr Martin worked as an assistant in and for his wife's business which was engaged in the sale of antiquarian books and collectables. He received £6,000 per annum salary. Mr Martin's wife had been immensely supportive.

277. Quite simply, Mr Martin was bankrupt and financially ruined.

The Decision of the Tribunal and its Reasons

278. The Tribunal had already indicated that it did not consider that the Applicant had made out the case for dishonesty against either of the Respondents. The Tribunal's reasons for reaching that conclusion are set out above.

279. The Tribunal found all the allegations to have been proved. All had been admitted save that Mr Garcia had not admitted allegation 2(v). This had been admitted by Mr Martin and the Tribunal were satisfied that the Firm had failed to sent clients written notification of costs. As the Respondents themselves very properly recognised, the allegations, absent dishonesty, were nevertheless very serious and dealt with grave professional misconduct. All of the allegations had been found against them, it being noted that in the case of Mr Martin the allegation that he had been responsible for the non-payment of Counsels' fees and for the firm being placed on the Bar's Withdrawal of Credit List had been withdrawn against him. The Law Society had submitted that even if not acting dishonestly the Respondents' attitude to compliance with the Solicitors Accounts Rules and to rectifying breaches was grossly reckless and they had failed totally in their stewardship of clients' funds. The Tribunal agreed and also agreed, as submitted by the Law Society, that the case was at a most serious level.

280. It is a fundamental principle that solicitors act in the best interests of their clients. A client's best interest is served only if a solicitor exercises a proper and careful stewardship over that client's money and stewardship is clearly demonstrated by a punctilious compliance with the Solicitors Accounts Rules. There could be no doubt that the Respondents had been guilty of a serious failure to comply with the Solicitors Accounts Rules. The position with regard to clients' money was not transparent on the face of the Respondents' books as it should have been.

281. The Tribunal has taken into account the Respondents' reliance upon their bookkeeper, Mr G. The Tribunal accepts their belief that Mr G was a well-qualified and competent bookkeeper. The Tribunal notes that when they became aware that Mr G was falling behind with his work they went to extraordinary lengths, including providing living accommodation for him, to ensure that he could spend a maximum amount of time on his bookkeeping duties.

282. It transpired that Mr G could not keep up with the level of work. Things fell behind and a muddle ensued. Mistakes were made which, partly because of the muddle, were not swiftly corrected and partly because, on at least one occasion, the mistake of paying client money into office account could not be rectified because the Respondents' bank refused to allow that money to be transferred out of office account - a reflection of the firm's parlous financial state.

283. At the time when the Respondents took over Mr Feldman's firm it appeared that they had not taken steps to protect their own position. It also appeared that the Respondents had not grasped the nettle about their misgivings about the capabilities of Mr G because of his age and his ill-health. The Tribunal recognises that solicitors are required sometimes to make difficult decisions when it comes to the engagement of persons to assist in their offices, but they have always to remember that a solicitor's first duty is to his client or clients. The Law Society had given the Respondents an opportunity to put matters right and they had not done so.

284. As a result of the very unsatisfactory state of the Respondents' books of account the Law Society had placed conditions on the Respondents' Practising Certificates. They were not permitted to practise as solicitors except in employment or in a partnership which had been approved by the Law Society. The Law Society made it clear that the existing partnership between Mr Garcia and Mr Martin was not one which it would approve. Nevertheless, the Respondents continued to practise together in partnership as if their Practising Certificates had been unconditional. This amounted to a flagrant breach of a proper requirement made by their own professional regulator. By acting in breach of that condition the Respondents prevented the Law Society from fulfilling its first duty to protect the public.

285. The Respondents told the Tribunal that they had not been able to find employment or a partnership. The Tribunal recognises that that might well have been the case but wishes to point out that in such circumstances the Respondents' proper course of action was not to continue to practise in breach of the conditions on their Practising Certificates but to cease practising as solicitors altogether. The Tribunal takes a most serious view of the Respondents' deliberate breaches of the conditions on their Practising Certificates. It was, of course, that continuing breach which led the Law Society to resolve to intervene into their practice.

286. Mr Garcia additionally had failed to lodge with the Law Society Accountant's Reports relating to his former practice. He had further brought the profession into disrepute by failing to pay Counsels' fees which led to the name of the Respondents' firm being placed on the Bar's Withdrawal of Credit List.

287. Not only have the Respondents been guilty of the serious breaches outlined above, but both of them had appeared before the Tribunal on earlier occasions and appeared not to have heeded the warnings inherent in the Tribunal's earlier rulings.

288. The serious failures of the Respondents in relation to the stewardship of clients' funds over a prolonged period, and to their clear knowledge, amounted to a gross abstention of duty unacceptable in a solicitor. Mindful of its duty to protect the public and its duty to protect the good reputation of the solicitors' profession the Tribunal were of the view that neither of the Respondents was fit to practise as a solicitor and considered that the imposition of the ultimate sanction on each of them was the appropriate and proportionate order.

Costs

289. The Applicant sought the costs of and incidental to the application and enquiry. He handed up a schedule of costs. He sought a figure of £48,597.75 inclusive of the IO's report fees and Value Added Tax. He invited the Tribunal to award the Law Society its costs in a fixed sum. That would be the right approach as, although the Tribunal had found the Respondents not to have been guilty of dishonesty, dishonesty was a matter properly brought and properly aired before the Tribunal. The matter had related to serious misconduct and had been complex and involved considerable work in preparation. The fact that dishonesty was alleged had not added a great deal to the work which had been undertaken. The Applicant's opening would have been broadly the same and would have involved the same documents even if dishonesty had not been alleged.

290. The Applicant recognised that the Respondents had financial difficulties but that was a matter for enforcement rather than a matter that should weigh in the balance of the Tribunal's consideration. The Applicant invited the Tribunal to award the Law Society its costs of and incidental to the application and enquiry, to make a fixed order for costs and to make it against the Respondents on a joint and several basis.

Mr Martin's submissions on costs

291. Mr Martin was bankrupt and the liability for these costs had arisen before he had been adjudicated bankrupt. Mr Martin had offered an option to make the matter very easy, namely that he would apply to have his name removed from the Roll coupled with an undertaking not to apply for restoration. Mr Martin had endured facing and dealing with an allegation of dishonesty and enormous costs had been involved.

292. The matter had been "over-prosecuted" and the Law Society was not entitled to any costs.

Mr Garcia's submissions on costs

293. Mr Garcia told the Tribunal that if he had not been adjudicated bankrupt he would ask for costs against the Law Society. The allegation of dishonesty should never have been brought. If it had genuinely been believed that the Respondents had acted dishonestly that would have been mentioned by the Investigation Officer or the Law Society at an early stage. Mr Garcia had admitted all of the allegations and the hearing had only taken place because there was a contest on the question of dishonesty. The true position was that the Law Society had lost its case and costs would normally follow the event. Mr Garcia had been put to considerable expense over two or three years and in his submission the right order that the Tribunal should make would be no order for costs.

The Tribunal's Decision on costs

294. The Tribunal has already found that the Respondents to have been guilty of a serious abstention of their professional duty. To that extent they were the authors of their own misfortune. It was because of their serious failures to meet their professional duty that the Law Society had brought disciplinary proceedings against them. The Tribunal recognised that the Law Society, in addition to the charge of gross recklessness in failing their stewardship of clients' funds, had also put its case on the basis that the Respondents had been dishonest. Whilst the Tribunal had found against the Law Society in that respect, the Tribunal considered it perfectly proper for the Law Society, in the light of the facts which were not to any material extent denied by the Respondents, to raise the question of dishonesty. The Tribunal would not make any order for costs against the Law Society where in bringing a matter before the Tribunal it had acted properly in its capacity as a regulator.

295. The Law Society had acted entirely properly in this matter and the Tribunal considered that the schedule of costs was reasonable subject to the issue of whether a discount should be allowed in relation to dishonesty not having been found.

296. The Tribunal accepts that the Respondents have expended time, effort and money in successfully defending the dishonesty allegation. The Tribunal considered that it would be appropriate and proportionate to recognise this in any order for costs that it

made. However it also noted the submission of the Law Society that that allegation had not added a great deal to the work undertaken.

297. The Tribunal considered it appropriate to fix costs to save any further expenditure of time and money on a detailed assessment. In all of the circumstances the Tribunal considers an appropriate and proportionate order to be that the Respondents meet a figure a little short of one half of the Applicant's costs. The Tribunal therefore ordered that the Respondents pay a contribution towards the Applicant's costs fixed in the sum of £22,000. That order was made against the Respondents on a joint and several basis.

DATED this 19th day of July 2007
on behalf of the Tribunal

A G Ground
Chairman