

IN THE MATTER OF HARDIAL SINGH & [*RESPONDENT 2 – NAME REDACTED*],  
solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J. R. C. Clitheroe (in the chair)  
Mrs H Baucher  
Mr. J. Jackson

Date of Hearing: 7<sup>th</sup> and 8<sup>th</sup> February 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 22<sup>nd</sup> June 2005 that Hardial Singh of Heston Law Chambers 345 Vicarage Farm Road, Heston, Middlesex, TW5 0DZ and *RESPONDENT 2* of, London, W1H might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

Allegations against both Respondents

- (i) That they failed to rectify breaches to the Solicitors Accounts Rules 1998 promptly as required by Rule 7 of the Solicitors Accounts Rules 1998 (hereinafter referred to as the “1998 Rules”).

- (ii) That they failed to pay client money into client account as required by Rule 15 of the 1998 Rules.
- (iii) That they withdrew money from client account in breach of Rule 22(1) of the 1998 Rules.
- (iv) That they withdrew money from client account not properly required for costs contrary to Rule 22 (3) of the 1998 Rules.
- (v) That they withdrew money from client account in excess of money held on behalf of a client(s) in breach of Rule 22 (5) of the 1998 Rules.
- (vi) That they failed to keep accounts properly written up on accordance with Rule 32 of the 1998 Rules.

Allegations against the First Respondent Hardial Singh alone

- (vii) He failed to ensure compliance with an undertaking to pay costs, such undertaking being dated 3<sup>rd</sup> September 2004 and given by an un-admitted fee earner, Mr Kumar.
- (viii) That he failed to comply with the terms of an undertaking dated 10<sup>th</sup> July 2003.
- (ix) That he failed to reply to correspondence from his lender client.
- (x) That he failed to comply with the terms of an undertaking dated 29<sup>th</sup> April 2003.
- (xi) That he withdrew money from client account in excess of money held on behalf of a client(s) in breach of Rule 22 (5) of the 1998 Rules.
- (xii) That he failed to keep accounts properly written up in accordance with Rule 32 of the 1998 Rules.
- (xiii) That he failed to carry out reconciliations as required by Rule 32 (7) of the 1998 Rules.
- (xiv) That he failed to deliver an Accountant's Report for the period ending 31<sup>st</sup> October 2003 (due for delivery on or before 30<sup>th</sup> April 2004) in connection with his practice of Heston Law Chambers Solicitors.

By a supplemental Statement of Jonathan Richard Goodwin dated 19<sup>th</sup> December 2005 it was further alleged against the First Respondent that he had been guilty of conduct unbecoming a solicitor in that:-

- (xv) He failed to deliver an Accountant's Report for the period ending 31<sup>st</sup> October 2004 (due for delivery on or before 30<sup>th</sup> April 2005) in connection with his practice of Heston Law Chambers Solicitors.
- (xvi) That he failed to reply to correspondence from The Law Society.

By a second supplemental Statement of Jonathan Richard Goodwin dated 26<sup>th</sup> January 2006 it was further alleged against the First Respondent that he had been guilty of conduct unbecoming a solicitor in that:-

- (xvii) He failed to keep accounts properly written up in accordance with Rule 32 of the 1998 Rules

The application was heard at the Court Room 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 7<sup>th</sup> and 8<sup>th</sup> February 2006 when Jonathan Goodwin Solicitor Advocate appeared as the Applicant, the First Respondent was represented by Mr Riza of Queen's Counsel and the Second Respondent was represented by Mr Christensen of Counsel. The matter was listed for 10.00 am on 7<sup>th</sup> February 2006 but in the absence of Mr Riza QC and the First Respondent the hearing was adjourned until 2.00 pm on that date.

The evidence before the Tribunal included the admissions of the Respondents, the First Respondent having changed his plea at the end of the first day's hearing. The Tribunal heard oral evidence from Mr Mercer and Mr Davies of the Forensic Investigation Unit of The Law Society, the First Respondent and Mr Syed.

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

The Tribunal Order that the First Respondent, Hardial Singh of Heston Law Chambers, 345 Vicarage Farm Road, Heston Middlesex, TW5 0DZ, solicitor, be Struck Off the Roll of Solicitors and it further Orders that:-

- (i) the Applicant's costs of the 7<sup>th</sup> February 2006 be paid by the First Respondent;
- (ii) the Second Respondent's costs of the 7<sup>th</sup> February 2006 be paid by the First Respondent;
- (iii) the First Respondent be jointly and severally liable with the Second Respondent to pay the costs of the Investigation Accountant of The Law Society in relation to the inspection of the books of account of Dhama Douglas Solicitors;
- (iv) the First Respondent do pay the costs of the Investigation Accountants of The Law Society in relation to the inspections of the books of account of Hardial Singh and Co. Solicitors and of Heston Law Chambers, Solicitors;
- (v) the First Respondent do pay two thirds of the remaining costs of the Applicant;
- (vi) all of the above costs be subject to a detailed assessment unless agreed between the parties.

The Tribunal Order that the Second Respondent, *RESPONDENT 2* of London NW1, solicitor do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that:-

- (i) the Second Respondent be jointly and severally liable with the First Respondent to pay the costs of the Investigation Accountant of The Law Society in relation to the inspection of the books of account of Dhama Douglas Solicitors;

- (ii) the First Respondent having been ordered to pay the Applicant's costs of the 7<sup>th</sup> February 2006 the Second Respondent do pay one third of the remaining costs of the Applicant;
- (iii) all of the above costs be subject to a detailed assessment unless agreed between the parties.

**The facts are set out in paragraphs 1 to 26 hereunder:-**

1. The First Respondent born in 1936 was admitted as a solicitor in 1996. The Second Respondent born in 1937 was admitted as a solicitor in 1996. The names of both Respondents remained on the Roll of Solicitors.
2. At the material times the Respondents carried on practice in partnership under the style of Dhama Douglas Solicitors of 44 Seymour Place, London, W1H 2NA. The First Respondent also practised on his own account under the style of Hardial Singh & Co and subsequently as Heston Law Chambers Solicitors of 345 Vicarage Farm Road, Heston, Middlesex, TW5 0DZ.

Allegations against both Respondents

3. Upon due notice the Investigation Officer of The Law Society (Mr Mercer) carried out an inspection of the books of account of Dhama Douglas Solicitors and produced a report dated 25<sup>th</sup> March 2003. A number of breaches of the Solicitors Accounts Rules 1998 were identified in the Report.
4. The Investigation Officer ascertained that the books of account were not in compliance with the Solicitors Accounts Rules for the reasons set out within the Report and ascertained that there was a minimum cash shortage on clients' funds in the sum of £24,657.41. The Second Respondent agreed the existence of the cash shortage which was replaced in full between 29<sup>th</sup> October 2002 and 10<sup>th</sup> March 2003. The cause of the cash shortage was set out at paragraph 7 of the Report.
5. On 15<sup>th</sup> May 2003 The Law Society wrote to both the Respondents seeking their explanation in relation to the Report. The Second Respondent replied by letter dated 27<sup>th</sup> June 2003.
6. On 20<sup>th</sup> November 2003 an Adjudicator resolved to refer the conduct of both Respondents to the Tribunal and the Second Respondent requested a review of that decision by letter dated 1<sup>st</sup> December 2003. The Second Respondent's review was dismissed on 16<sup>th</sup> February 2004. The First Respondent also requested a review by letter dated 1<sup>st</sup> December 2003 but this letter was not received until 21<sup>st</sup> January 2004. The First Respondent's application for a review was dismissed on 11<sup>th</sup> November 2004.
7. By letter dated 17<sup>th</sup> November 2004 the First Respondent wrote to The Law Society on Heston Law Chambers note paper indicating that he was not connected with the practice of Dhama Douglas.

Allegations against the First Respondent alone

8. By letter dated 29<sup>th</sup> November 2004 Ananhall Advisory Consultancy Services Limited made complaint to The Law Society concerning Heston Law Chambers. The complaint was that the First Respondent's practice had agreed to indemnify the costs arising from a property transaction. Ananhall enclosed copy correspondence which included a faxed letter dated 3<sup>rd</sup> September 2004 from a Mr Kumar of Heston Law Chambers to Ananhall which read, "we shall pay your costs of £450 plus VAT".
9. By letter dated 14<sup>th</sup> January 2005 The Law Society wrote to the First Respondent seeking his explanation. He replied by letter dated 27<sup>th</sup> January 2005 in which he indicated that the undertaking given to Ananhall was to pay their costs of removing the covenant from lot 6 which they failed to do.
10. By letter dated 10<sup>th</sup> February 2005 Ananhall provided further representation to the Society in response suggesting that the undertaking was given in unambiguous terms to the effect that, "We shall pay your costs of £450 plus VAT", without qualification.
11. By letter dated 20<sup>th</sup> December 2004 HSBC made complaint to The Law Society concerning the conduct of Hardial Singh & Co in relation to a property in Slough. The complaint was that the First Respondent signed a Certificate of Title dated 10<sup>th</sup> July 2003 which contained an undertaking to the effect that, "We the conveyancers named above, give the Certificate of Title set out in the Appendix to Rule 6 (3) of the Solicitor Practice Rules 1990 as if same were set out in full, subject to the limitations contained in it". The undertaking included a requirement to register the charge at Companies House. The Bank had written to the First Respondent by letters dated 19<sup>th</sup> January 2004, 11<sup>th</sup> March 2004, 17<sup>th</sup> May 2004 and 26<sup>th</sup> August 2004 seeking an update as to the position as regards registration of the security at Companies House to which the Respondent failed to reply.
12. The Law Society wrote to the First Respondent on 30<sup>th</sup> December 2004 seeking his explanation but he failed to reply. The Law Society wrote again on 13<sup>th</sup> January 2005. On 10<sup>th</sup> January 2005 HSBC provided further representations to The Law Society.
13. The First Respondent's signature appeared on the Certificate of Title containing the undertaking. On 18<sup>th</sup> January 2005 the First Respondent replied to The Law Society indicating that he had not personally given the undertaking to the Bank. He stated that he had since made application to register the charge with Companies House out of time. On 9<sup>th</sup> February 2005 The Law Society wrote to the First Respondent enquiring as to the outcome of the application but the First Respondent did not reply. HSBC made further representations for The Law Society on 11<sup>th</sup> February and 24<sup>th</sup> February 2005. HSBC indicated that whilst the Bank had tried to take a replacement charge with the intention that it be registered with Companies House within the period specified the replacement charge had not been signed.
14. By letter dated 18<sup>th</sup> March 2004 HSBC made complaint to The Law Society in respect of the conduct of the Respondent's practice. The complaint was that the Respondent had been instructed by the Bank to perfect security being taken by K Associates Limited over property at Wembley Park and that the First Respondent had signed a

Certificate of Title dated 29<sup>th</sup> April 2003 containing an undertaking to the effect that, “We the conveyancers named above give the Certificate of Title set out in the Appendix to Rule 6 (3) of the Solicitor Practice Rules 1990 as if the same were set out in full subject to the limitations contained in it”. The Bank had written to the Respondent by letter dated 12<sup>th</sup> February 2004 to which there had been no reply. The Bank was concerned that contrary to the firm’s undertaking the Respondent had failed to register the Bank’s charge at Companies House.

15. On 5<sup>th</sup> October 2004 The Law Society wrote to the First Respondent seeking his explanation. On 8<sup>th</sup> October 2004 the Respondent replied enclosing certain documentation and suggesting that the matter was completed with HM Land Registry in June 2003. The outstanding matter to the Bank however related to failure and/or delay in registering the security at Companies House.
16. Upon due notice to the First Respondent a Senior Investigation Officer of The Law Society carried out an inspection of the First Respondent’s books of account in relation to his practice of Hardial Singh & Co and produced a Report dated 29<sup>th</sup> March 2004. It was ascertained as at 28<sup>th</sup> February 2004 that a cash shortage in clients’ funds existed in the sum of £37,213.69. The shortage was rectified on 16<sup>th</sup> March 2004 by four amounts being lodged in client bank account totalling £36,310.00, said by Mr Singh’s accountant to be funds introduced by Mr Singh personally and the sum of £903.69 being office monies retained in client bank account. The cause of the cash shortage arose entirely in respect of debit balances which had arisen in the period 28<sup>th</sup> January 2003 – 19<sup>th</sup> December 2003. £17,373.27 of the shortage arose from a personal transaction of the First Respondent. £19,840.42 of the shortage arose from general transactions two of which were set out in the Report by way of example.
17. It was ascertained that the cash book was only written up to 30<sup>th</sup> September 2003 and that had only been reconciled to bank statements at 31<sup>st</sup> August 2003. Further no client ledger accounts were available.
18. On 8<sup>th</sup> April 2004 The Law Society wrote to the First Respondent seeking his explanation. An extension of time was given to him to 10<sup>th</sup> May but he failed to reply. The Law Society wrote again on 11<sup>th</sup> May 2004 and the Respondent replied on 18<sup>th</sup> May stating:-  

“I admit that, during the absence of Mr Shah, accounting books were not kept one hundred percent up-to-date, which, with hindsight, I understand contributed to the temporary shortfall in the ledger accounts referred to in the Report”.
19. The First Respondent’s Accountants Report in respect of Heston Law Chambers for the year ending 31<sup>st</sup> October 2003 was due for delivery on or before 30<sup>th</sup> April 2004. The Law Society wrote to the Respondent on 9<sup>th</sup> July 2004 requesting an explanation and the Report was filed late in July 2004.
20. The First Respondent did not file an Accountant’s Report in respect of Heston Law Chambers for the year ending 31<sup>st</sup> October 2004 due for delivery on or before 30<sup>th</sup> April 2005. The Report remained outstanding.

21. The Law Society wrote to the First Respondent seeking his explanation. The First Respondent failed to reply. The Law Society wrote again on 5<sup>th</sup> August 2005 and the First Respondent again failed to reply.
22. Upon due notice the Investigation Officer of The Law Society carried out an inspection of the First Respondent's books of account practising under the style of Heston Law Chambers solicitors, and produced a Report dated 1<sup>st</sup> September 2005.
23. A review of the books of account identified that client ledgers were incomplete, dealings with office money relating to any client matter were not being recorded on the office side of the appropriate client ledger, listings of client balances required for reconciliation purposes had not been produced and a central record of copies of bills of costs raised was not maintained.
24. The firm was given additional time to bring their books of account up to date. After a request for a further extension the Investigation Officer returned on 22<sup>nd</sup> August 2005. Whilst she did find that some progress had been made in updating the books of account, client ledgers remained incomplete, a list of client balances had not been produced for reconciliation purposes and a central record of copies of bills of costs raised was still not being maintained.
25. The First Respondent was unable to explain why the books of account were not up-to-date other than suggesting that his accountant was not being co-operative and that their book-keeper had been on holiday. In view of the inadequacy of the records it was not possible to express an opinion as to whether or not funds held on the client bank account were sufficient to meet the firm's liabilities to clients as at 31<sup>st</sup> May 2005.
26. The Law Society wrote to the First Respondent on 29<sup>th</sup> September 2005 seeking his explanation. He replied on 20<sup>th</sup> October 2005 requesting further time. The Law Society wrote again on 21<sup>st</sup> November 2005 indicating that evidence was required by 13<sup>th</sup> December 2005 to show that the books of account had been written up and that any cash shortages identified had been rectified. The Respondent did not reply and did not produce the required evidence.

### **The Submissions of the Applicant**

27. The Applicant had served the appropriate Notices to Admit and Civil Evidence Act Notices in relation to the Rule 4 Statement and the first Supplemental Statement but not the second Supplemental Statement. The Applicant accepted that the second Supplemental Statement had not been served on the First Respondent 30 days before the hearing but the First Respondent had indicated that he was content for it to be included in the proceedings.
28. In relation to allegations (i) – (vi) the Second Respondent admitted the allegations and the First Respondent denied them and said that he had never been a partner in the firm of Dhama Douglas. The First Respondent also denied allegations (vii) – (xvii). The Applicant had received no Counter Notices from either defendant. The First Respondent had denied the allegations in his pre-listing questionnaire and the Applicant had written to him inviting him to set out his position but without response.

29. In relation to the First Respondent and allegations (i) – (vi) paragraph 2 of the Investigation Officer’s Report of 25<sup>th</sup> March 2003 stated that partners had given Mr Mercer details of their professional histories and had said that they had practised in partnership since 2000. Further on 18<sup>th</sup> November 2002 the First Respondent had signed a professional history of partnership saying that he became a partner in Dhama Douglas in December 1999.
30. Following the identification of the cash shortage in Dhama Douglas the First Respondent had introduced £9,000.00 (paragraph 20 of the Report). In the submission of the Applicant it would be inconsistent with the First Respondent’s stated position now to introduce £9,000.00 by way of rectification if he was not responsible. The First Respondent was responsible because he was a partner.
31. A letter to The Law Society from the Second Respondent dated 27<sup>th</sup> June 2003 included the name of the First Respondent on the note paper and the First Respondent was there therefore being held out as a partner in the practice.
32. In a letter to The Law Society dated 1<sup>st</sup> December 2003 on Dhama Douglas note paper signed by the First Respondent, the First Respondent had written:-

“Relating to the breaches under the Solicitors Accounts Rules, I have explained that the breaches were not intentional and more a matter of omission. Subsequently on the visiting accountant’s advice I have taken steps to ensure that such breaches do not arise. I trust that the panel will accept my assurance”.

It was surprising that the Respondent did not say at that point that he had not been a partner in the practice.

33. After the dismissal of the First Respondent’s application for review of the adjudicator’s decision the First Respondent had written in a letter dated 17<sup>th</sup> November 2004:-

“Kindly note that I am in no way connected with the practice of Dhama Douglas mentioned above”.

This was surprising and inconsistent with the First Respondent’s letter of 1<sup>st</sup> December 2003. It was also entirely inconsistent with all the other evidence which existed.

34. Mr Mercer’s handwritten notes of an interview with both Respondents on 8<sup>th</sup> November 2002 said:-

“Mr Singh confirms the partnership is going to continue”.

35. In a letter from the First Respondent to The Law Society dated 27<sup>th</sup> August 2004 the First Respondent said that he had resigned from the partnership of Dhama Douglas as from 28<sup>th</sup> April 2004 and in a further letter to The Law Society dated 8<sup>th</sup> September 2004 the First Respondent had written that he was no longer a partner at Dhama Douglas as from 28<sup>th</sup> April 2004. A letter of resignation would be unexpected if the First Respondent had nothing to resign from. No explanation had been given to the Applicant by the First Respondent in this regard.



36. The First Report demonstrated serious breaches of the Solicitors Accounts Rules and the failure to keep the books of account properly written up in respect of both client and office monies. The Applicant did not allege dishonesty against either Respondent in respect of the Accounts Rules breaches but they were especially serious in respect of the First Respondent given the number of breaches. Relying on the cases of *Bolton v The Law Society* [1994] 1 WLR 512 and *Weston v The Law Society* [The Times 15<sup>th</sup> July 1998] the Applicant submitted that even in the absence of dishonesty careful keeping of accounts was fundamental to the profession.

Allegation (vii)

37. The Applicant referred the Tribunal to chapter 18 of the Guide to the Professional Conduct of Solicitors 8<sup>th</sup> Edition and the relevant definitions relating to undertakings including paragraph 18.01, 18.02, 18.10, 18.11 and 18.15.
38. The undertaking to Ananhall of 3<sup>rd</sup> September 2004 sent by Mr Kumar was an unequivocal declaration of intention with clear wording and there was an obligation on the First Respondent to ensure compliance.
39. In the First Respondent's letter to The Law Society of 27<sup>th</sup> January 2005 the First Respondent had accepted that an undertaking had been given and stated:-

“I have supervised this file and all correspondence was made with my authorisation”.

The only issue according to the First Respondent at that time was whether or not the undertaking was conditional. The Applicant submitted that the undertaking was not conditional and that had also been the understanding of Ananhall who had made a payment of costs to a third party relying on the undertaking.

40. The First Respondent had offered to pay half of the costs but this had been rejected by Ananhall. (Counsel for the First Respondent confirmed that Ananhall's costs had not been paid at the date of the hearing).

Allegations (viii) and (ix)

41. The Certificate on Title sent to HSBC was signed by the First Respondent and the undertaking was above his signature. The Tribunal was referred to the appendix to Rule 6 (3) of the Solicitors Practise Rules. The undertaking given under that appendix included an undertaking to effect any other registrations necessary to protect the lender's interest as mortgagee. In the case which was the subject of allegations (viii) and (ix) this included an obligation to register the charge at Companies House. The Tribunal was referred to HSBC's letters to the First Respondent at pages 51 – 54 of “JRG1” and dated between January and August 2004 some considerable time after the completion.
42. It was curious that the First Respondent had written to The Law Society on 18<sup>th</sup> January 2005 that he had not personally given the undertaking when his signature appeared on the Certificate of Title containing the undertaking. Difficulties had been caused for the Bank due to the First Respondent's failure to comply with the undertaking.

43. Allegation (x) related to a similar complaint from HSBC. The Tribunal was referred to the Bank's letter to The Law Society of 24<sup>th</sup> February 2005 (pages 70 & 71 of "JRG1").

Allegations (xi) – (xiii)

44. The Tribunal was referred to paragraph 17 of Mr Davies' Investigation Report dated 29<sup>th</sup> March 2004 which set out a table of the ledgers relating to the First Respondent's personal transaction which was one of the causes of the cash shortage identified in the Report. The Report noted that the First Respondent's accountant in the presence of the First Respondent said that a mistake had been made but the figures showed that shortages existed for the period April 17<sup>th</sup> 2003 – May 8<sup>th</sup>, May 9<sup>th</sup> – May 14<sup>th</sup>, May 15<sup>th</sup> – September 18<sup>th</sup> and September 25<sup>th</sup> – March 16<sup>th</sup> 2004. The Report set out similar tables in relation to general ledgers set out by way of further example of the cash shortage.
45. On any view the Report demonstrated that money had been withdrawn from the client bank account in excess of the money held on that client's ledger which was a breach of Rule 22 of the Solicitors Accounts Rules 1998.
46. Failures in respect of keeping the books up-to-date (paragraph 17 above) was a breach of Rule 32.
47. The First Respondent's letter to The Law Society of 18<sup>th</sup> May 2004 (page 110 of "JRG1") referring to the temporary shortfall in the ledger accounts was contradicted by his current denial of the allegations. In the submissions of the Applicant Mr Davies' Report was entirely straight forward and set out the breaches of the Accounts Rules.

Allegations (xiv) and (xv)

48. The Tribunal was asked to note that the Accountant's Report referred to in allegation (xiv) had been filed late and the Report referred to in allegation (xv) remained due.

Allegation (xvi)

49. The First Respondent had failed to reply to Law Society correspondence relating to the outstanding Accountant's Report.

Allegation (xvii)

50. The Applicant submitted that the Report dated 1<sup>st</sup> September 2005 had identified a serious breach of Rule 32. The First Respondent's comments to the Investigation Officer that he was not aware of Mr Davies' earlier Report was surprising in the light of his reply to The Law Society in respect of that Report referred to at paragraph 47 above.

**Oral evidence of Mr John Mercer**

51. Mr Mercer gave details of his professional experience and confirmed that his Report dated 25<sup>th</sup> March 2003 was true to the best of his knowledge and belief.

52. This had been a walk in inspection and neither partner was present when Mr Mercer first arrived. Mrs S (office manager) had told Mr Mercer that the First Respondent was still a partner in the firm.
53. Mr Mercer had met both the Respondents together on 8<sup>th</sup> November 2002 and Mr Mercer's handwritten notes said that the First Respondent confirmed that the partnership was still to continue. It had been clear to Mr Mercer that the Respondents had been partners. There had been some question as to whether the partnership would continue but the position at the dates relevant for the purpose of the Report was that the Respondents remained partners.
54. The written professional history of partnership was dated 18<sup>th</sup> November 2002, eleven days after the inspection had started. Mr Mercer could only speculate that the document was handed to him. It was not in his handwriting.
55. Mr Mercer had discussed the shortfall with both partners. Mr Mercer had believed that Mrs S had later told Mr Mercer that the First Respondent had made a payment of £9,000.00 by way of rectification. As the First Respondent was now saying he was not a partner that was not in accordance with the facts as Mr Mercer had seen them. His notes said that the First Respondent had confirmed to him that the partnership was to continue. Mr Mercer had specifically asked the First Respondent as he knew there had been an issue about the partnership.
56. Mr Mercer had formed the impression that the First Respondent was not a very active partner. The Second Respondent had said the First Respondent would attend sometimes to assist and he would reciprocate. Mr Mercer had encountered such partnerships where one partner was relatively inactive compared to others. That was sometimes the situation in conveyancing practices where lenders required a firm to have two partners.
57. The differences in the figures between paragraphs 3 and 5 of his Report was due to the latter taking account of cheques drawn.
58. Mr Mercer had not reported anything identifying the First Respondent as the cause of a breach but as a partner he was equally responsible. An inactive partner retained responsibility for the Accounts Rules and a non signatory partner remained liable for any breaches which might occur.
59. The defects had been sorted out promptly and to Mr Mercer's satisfaction although the final correction was not until 10<sup>th</sup> March 2003. That related to money which had been incorrectly transferred between clients but the account to which it had been transferred had been charged twice with the firm's costs.
60. Mr Mercer could not recall whether he had given specific advice for the operation of the accounts in the future. He had said that he did not believe that anyone had deliberately paid out too much money. He had recorded at paragraph 19 of his Report that in the matter of Ms H the overpayment had arisen as a result of an error. He had the completion statement on file and had noted the typing error.

### **Oral evidence of Mr Michael Davies**

61. Mr Davies gave evidence of his professional experience and confirmed that the contents of his Report dated 29<sup>th</sup> March 2004 were true to the best of his knowledge and belief. Mr Davies met the Second Respondent only on the 19<sup>th</sup> February 2004. The First Respondent had been present on the 18<sup>th</sup> and 19<sup>th</sup> March.
62. The information in the tables in his Report had come from the ledgers.
63. The information relating to the partnership had come from the Second Respondent. Mr Davies had not named the Second Respondent as a partner at the head of his Report. Mr Davies had not been aware that the Second Respondent had become a partner in the firm at the beginning of his inspection. The breaches identified in the Report however occurred before the Second Respondent became a partner. The Second Respondent had indicated that there was no financial or partnership agreement between himself and the First Respondent. The appendix to the Report, comprised a letter from Dhama Douglas Solicitors dated 18<sup>th</sup> February 2004 to The Law Society, stating Hardial Singh & Co was merged with Dhama Douglas Solicitors with effect from 12<sup>th</sup> February 2004. The matters covered in his Report therefore did not relate to the Second Respondent.
64. Mr Davies had come across similar partnerships before. If a solicitor was held out as a partner he was a partner.
65. The shortfall had been indicated to Mr Davies when he returned for the second part of his inspection. It had been rectified a couple of days before his return and the books had been written up in the interval. Because the books had not been up-to-date on Mr Davies' first visit he had returned later to allow for the books to be written up. During the interval the shortfall had been found and corrected.
66. The First Respondent had been present on the second visit and had sat in for discussions but had not said anything. Everything was channelled through his accountant.
67. Mr Davies had been satisfied regarding the figures.

### **The Submissions on behalf of the First Respondent**

68. No point was taken in relation to the late service of the second Supplementary Statement.
69. The First Respondent denied the allegations. Allegations (i) – (vi) were denied on the basis the First Respondent had not been a partner in the Dhama Douglas and had not been in charge of accounts. The denial of the allegations was based on the First Respondent's understanding of partnership law.

### **The Oral evidence of the First Respondent**

70. The First Respondent gave details of his practice of Heston Law Chambers.
71. The First Respondent qualified as a solicitor in 1996 and before that had academic qualifications in law.

72. The First Respondent said that he had never been in partnership with the Second Respondent. He used to instruct the Second Respondent as Counsel and the Second Respondent was a friend.
73. The Second Respondent had converted from the Bar to become a solicitor in 1996 and used to ask the First Respondent for help with conveyancing. The First Respondent used to go to the Second Respondent's office but had no formal arrangement. The Second Respondent had not asked the First Respondent before putting his name on the headed paper of Dhama Douglas. The First Respondent had never consented to be a partner nor signed any documents.
73. The First Respondent accepted that the signature on the professional history of partnership dated 18<sup>th</sup> November 2002 was his. He said that the Investigation Officer had asked him questions, the Investigation Officer had written a document and the First Respondent had signed it. He had not seen the entry about being a partner.

#### **Further oral evidence of Mr Mercer**

74. The Applicant having submitted that he had served a notice to Admit and Civil Evidence Act Notice in respect of the documentation including the history of partnership, the Applicant recalled Mr Mercer. Mr Mercer said there was a copy of the professional history of partnership on his file. As he had said in his earlier evidence he did not know whose handwriting was on the document but it was not his. The document had been signed several days after the inspection but it may have been given through Mrs S. Mr Mercer speculated that it had been returned to him on 18<sup>th</sup> November but there was nothing on his file to assist. He did not recall asking the First Respondent to sign it.

#### **Further oral evidence of the First Respondent**

75. The First Respondent said that the Investigation Officer had given him the document and told him to sign it. The Officer had asked for his name and address and he had signed.
76. In relation to the payment of £9,000 by the First Respondent in respect of the shortage the First Respondent said that this was lent to the Second Respondent out of courtesy as he had known him for a long time. The Second Respondent had subsequently repaid the money.
77. In relation to allegation (vii) The First Respondent said that Mr Kumar had told Ananhall that if they removed the covenants from the title the firm would pay them £450. Ananhall had not removed the covenants and so had not been paid. Mr Kumar had been made the firm's Practice Manager.
78. The First Respondent had become aware of the problem when a letter came from The Law Society. The First Respondent had been satisfied with the explanation of Mr Kumar as to why he had not paid.

79. Mr Kumar had said that in order to stop unnecessary correspondence an offer could be made to pay half the money as Ananhall said they had done some work. The offer had only been made to finish the matter.
80. In relation to allegation (viii) the First Respondent said that the purchase of the property had been by his accountant in his accountant's company name. His accountant had given the First Respondent's firm's name to the bank as his solicitors but had not instructed the First Respondent. HSBC had given the money directly to the accountant and had not asked the First Respondent anything.
81. The First Respondent had only come to know of the matter when he received the complaint from The Law Society. The accountant had told the First Respondent that he had registered a charge at the Land Registry but could not register it at Companies House. The accountant had not had access to the First Respondent's headed note paper. The bank released the money to the accountant and he completed the purchase.
82. The First Respondent was referred to the letter to his firm from the bank instructing the firm to act for the banker's mortgagee.

#### **Decision by the Tribunal to adjourn the hearing**

83. The Tribunal expressed concern that giving oral evidence was very stressful for the First Respondent. He did not appear to be familiar with the documentation and needed a proper opportunity to understand the documents. The Tribunal was also concerned about the First Respondent's health as he appeared to have difficulty following the questions although the date for the hearing had been fixed in September 2005 and leading Counsel had been instructed in September/October 2005. The Tribunal was concerned to give the First Respondent a proper opportunity to put his case. The Applicant at the Tribunal's request consented to the First Respondent being permitted to consult his lawyers during an overnight adjournment. Counsel for the Second Respondent who had previously expressed concern about costs asked if the Second Respondent's case could be heard first on the following day given that he had admitted the allegations but the Tribunal refused his request as some of the evidence of the First Respondent impinged on the Second Respondent.
84. After a short adjournment Mr Riza QC on behalf of the First Respondent submitted to the Tribunal that on advice the First Respondent wished to change his plea and admit all allegations. The Tribunal adjourned the hearing to 8<sup>th</sup> February 2006.

#### **Resumed hearing on 8<sup>th</sup> February 2006**

85. At the request of the Tribunal Counsel for the First Respondent confirmed that all allegations were admitted.

#### **Preliminary Matter**

86. Counsel for the First Respondent expressed concern that The Law Society had made allegations (i) to (vi) against the First Respondent jointly with the Second Respondent but allegations (vii) to (xvii) had not been made against the Second Respondent even though the Second Respondent had become a partner in the First Respondent's firm.

87. The Applicant said that this matter had been dealt with in evidence by Mr Davies who had stated that the Second Respondent had not become a partner in the First Respondent's firm of Hardial Singh until 12<sup>th</sup> February 2004, the inspection commencing 19<sup>th</sup> February 2004.
88. The Tribunal noted that the breaches in respect of Hardial Singh identified by Mr Davies had occurred before the Second Respondent joined the partnership and the allegations had therefore been made against the First Respondent alone.

**Submissions in mitigation on behalf of the First Respondent**

89. The First Respondent had nothing to do with allegations (i) to (vi).
90. In relation to allegation (ii) the Respondent did not have power to operate the account and therefore could not have done so even had he wished to. The same applied to allegations (iii) and (iv) although the Respondent accepted his responsibility as a partner. Save in respect of allegations (i) and (vi) the First Respondent had not had the power to do what was alleged.
91. In respect of allegation (vii) it was accepted that there had been a systemic failure regarding the giving of undertakings in that unadmitted staff were authorised to give undertakings. In future only qualified staff would have the power to make undertakings. The Tribunal was also asked to note that there had been an offer to pay Ananhall half the sum due. This was not a case where no thought had been given to the issue. There appeared to have been an issue of fact between the parties as to the nature of the undertaking given. The Tribunal was referred to the letter from The Law Society to the First Respondent dated 14<sup>th</sup> January 2005 which stated:

“You have failed to comply with an undertaking to pay the costs of removing the covenant from Lot 6, Shellwood Manor Estate.”

The contention on behalf of the First Respondent was that this was the matter of dispute between the firm and Ananhall.

92. It was accepted that the undertaking was not conditional. The failure was in the way the practice was run.
93. The Respondent's letter to The Law Society dated 27<sup>th</sup> January 2005 in which he said:

“I have supervised this file and all correspondence is made with my authorisation”

may have related to supervision which had arisen as to the giving of the undertaking by Mr Kumar. The letter did not mean that the undertaking itself had been specifically given with the First Respondent's authority. The wording of the letter was not inconsistent with a general authority to give undertakings. The First Respondent had drawn a distinction in the letter between the undertaking itself and the correspondence afterwards.

94. In relation to allegation (viii) there had also been a systemic failure. There appeared to have been a misunderstanding about what was required by the bank. The letter to the

bank from The Law Society dated 20<sup>th</sup> December 2004 appeared to contain some suggestion that the matter might have been sorted. (The First Respondent then confirmed to the Tribunal through Counsel that the matter had been sorted as the property had been sold.)

95. In relation to allegation (ix) the First Respondent had carried on some correspondence but admitted the allegation.
96. Allegation (x) was similar to allegation (viii) and the same mitigation applied.
97. The First Respondent apologised in respect of breaches relating to accounting matters (allegations (xi) to (xvii)). The Tribunal was asked to note that it was the First Respondent's accountant who informed the Investigating Officer of the shortfall.
98. The First Respondent was aged 69. He had spent many years in the profession initially unqualified and then qualified.
99. He had now engaged two competent solicitors. The First Respondent had a condition on his Practising Certificate that he attends two training courses one of which he had completed.
100. The Applicant clarified that there was also a condition on the First Respondent's Certificate that he could only practise in an approved employment or partnership and the practice with the two solicitors referred to had not been approved by The Law Society, also that there was a condition that he submit half yearly accounts. Counsel on behalf of the First Respondent confirmed these conditions.
101. The Applicant indicated that an application by the First Respondent to practise with the two solicitors had been refused and the First Respondent had been told how to appeal and had said in a letter of 3<sup>rd</sup> February that he would not work at the firm from 27<sup>th</sup> January until permission was granted. Mr Syed, one of the two solicitors referred to above, was called to give oral evidence regarding the practice arrangements.

### **Oral evidence of Mr Syed**

102. Mr Syed who had been admitted as a solicitor in 2002, was an associate solicitor at Heston Law Chambers. Mr Luthra was also a solicitor there. Mr Luthra had qualified in 2003 and would complete his three years' post qualification in about two months.
103. After conditions had been imposed on the First Respondent's Practising Certificate a proposal had been sent to The Law Society that he would work in partnership with Mr Luthra but that the latter would be the Principal Solicitor. This had been refused because Mr Luthra had not completed the three years post qualification.
104. As only two further months or so were required and Mr Luthra was mature person who had practised in India, the First Respondent had decided to apply for a waiver. If this waiver was refused, Mr Syed could become a partner although he had not yet reached a decision on this.
105. Mr Syed had proposed that any undertaking given by the firm should be given only by a qualified solicitor, or a trainee who had completed the LPC and would in any event



be under supervision. No unqualified person however experienced would be able to give an undertaking.

106. The firm was open to business but the First Respondent was not practising there. Mr Syed checked all post.
107. Only the First Respondent was a signatory to the accounts but arrangements were being made to alter this. No cheques had been written recently. As far as Mr Syed was aware there had been no need for cheques during the period since the First Respondent stopped work. If there was a completion Mr Syed would have to speak to the other side. Many things had been happening at the same time.
108. There had been another solicitor, Mr S, working in the firm who resigned at the end of January. He was fully qualified but the firm's accountant had said he would not sign the accounts if Mr S was there following a dispute between Mr S and the accountant.

### **Submissions in mitigation on behalf of the Second Respondent**

109. The Second Respondent had been called to the Bar in 1974 and had qualified as a solicitor in 1996.
110. The Second Respondent's Practising Certificate was subject to the same sanctions as the First Respondent and he was currently not entitled to practise. His erstwhile partner, Mr D, was running the practice.
111. The Second Respondent's partnership with the First Respondent had terminated in 2004 and since then Mr D had been a partner. The First Respondent had asked the Law Society for permission to work for Dhama Douglas as an employee or clerk.
112. The Second Respondent was not practising but was assisting Mr D as he could not just walk out. Steps had been taken to transfer the bank mandates. The Second Respondent was required to attend two courses one of which he had already attended.
113. The Second Respondent had admitted the allegations from the start and had corrected errors as they came to light. He had accepted responsibility for the breaches of the Rules. There was no suggestion of dishonesty, these were human blunders on the part of employees and professional advisors. The Second Respondent however accepted his responsibility and also accepted that he had the day to day running of the practice. The First Respondent was a partner but as between the Respondents the Second Respondent was responsible for the practice although the First Respondent was equally responsible as between himself and The Law Society.
114. The Tribunal was referred to paragraph 9 of Mr Mercers' Report. This related to mistake in bank co-ordinates and it was surprising that it had not been picked up by the accountant employed to check matters on a regular basis.
115. Paragraphs 12 to 15 of the Report related to a double charge which was a book keeping error.
116. Paragraphs 17 to 20 of the Report related to the most serious matter. The client had been paid too much money because of a typing error on a completion statement when 9

had been typed instead of 0 and this had been carried over to the CHAPS transfer. The Second Respondent recognised that the shortage should have been repaid immediately and he apologised. He had instead pursued the client. The moment the Second Respondent had appreciated that his approach was wrong he had repaid the money. The First Respondent had lent £9,000 and the Second Respondent had repaid him. It was very unlikely that such an error would happen again.

117. The personal payment referred to in paragraph 21 of the Report had been made in error. No explanation could be provided by the Second Respondent for the transfer between accounts set out at paragraph 24 to 30. No one seemed to know how it had come about and the Second Respondent was not an accountant. There had been considerable business passing through the firm and there had been other fee earners. The Second Respondent had had to rely on those whom he believed to be competent and professional including an Office Manager with substantial experience and a firm of Chartered Accountants who visited fortnightly to check the accounts. In those circumstances it was not unreasonable for the Second Respondent to believe that the accounts were in good order.
118. The Tribunal would be concerned with the protection of the public and future potential clients but was asked to note that there had been no loss to any client. The shortfall of £24,000 had been substantial but this was on a total turnover in excess of £600,000. Clearly any misuse of client funds was important but there was also a question of proportion.
119. The Second Respondent had already taken steps to minimise any future problems. Requisition slips were now colour coded and the cheque books were properly identified so that they could not be confused. The second Respondent was now also less trusting.
120. The breaches had occurred between November 2001 and September 2002. It was now February 2006 and there had been no substantial breach since that time which suggested that the new procedures were working properly. The Second Respondent had written to The Law Society as long ago as June 2003 setting out the steps he had taken to improve matters.

### **Submissions as to costs**

121. The Applicant sought his costs to be assessed if not agreed including the costs of the Investigation Accountants. He asked the Tribunal to consider apportionment which was not a matter for a Costs Judge.
122. The First Respondent had admitted the allegations late on the previous day. The Second Respondent had denied the allegations in the prelisting questionnaire and the Applicant had understood from correspondence that the allegations would be denied until a telephone conversation on 30<sup>th</sup> January 2006.
123. Counsel for the First Respondent conceded that the First Respondent would be responsible for the costs of the Second Respondent and of The Law Society for the hearing on 7<sup>th</sup> February 2006.
124. Counsel for the Second Respondent said that both Respondents were culpable but if both Respondents had admitted matters the case would have been dealt with more

cheaply. The Applicant had asserted that the Second Respondent had not admitted the allegations but a letter from the Second Respondent in July 2005 had said that he did not propose to defend the allegations. He had accepted the facts and that the Report showed defects. His concern had been to show that he had not personally committed the errors. There may have been a misunderstanding between the Applicant and the Second Respondent but the Second Respondent had intended to set out mitigation. The First Respondent had put in a substantive defence which had been abandoned.

### **The Findings of the Tribunal**

125. The Respondents had admitted the allegations and the Tribunal found them to have been substantiated.
126. The Tribunal had heard evidence and submissions in relation to the arrangements of the Respondent's current practices and for the avoidance of doubt the Tribunal clarified that there were no allegations before the Tribunal against either Respondent in relation to any current arrangements.
127. This had been a most difficult and indeed sad case for the Tribunal to determine, with two members of the profession late in their professional life appearing before the Tribunal. The Second Respondent had admitted the allegations and late yesterday afternoon the First Respondent had also admitted the allegations in the light of the totality of evidence which had been put before the Tribunal including his own oral evidence. The allegations having been admitted it therefore fell to the Tribunal to determine the appropriate penalty. In reaching its decision as to penalty, the Tribunal had taken careful note of all the matters put before it in mitigation.
128. In relation to the Second Respondent the Tribunal had heard of the steps he had taken to rectify the situation relating to the accountancy breaches as at 30<sup>th</sup> September 2002. The Tribunal was satisfied that the breaches were rectified within a reasonable period and further that the Second Respondent's responsibility was on the basis that he was a partner and not that he had personally manipulated the accounts. There was no allegation of dishonesty against the Second Respondent. The breaches had occurred over three years ago and related to a finite period. There had been no loss to clients and the Tribunal was therefore able to mark the Second Respondent's culpability with a fine of £5,000.
129. In relation to the First Respondent while there was no dishonesty alleged, the situation was very different from that of the Second Respondent. In relation to allegations 1 to 6 the First Respondent's culpability was based upon the fact that he was a partner in name and took no active part in the financial management of the practice. However on his own account, in relation to his own practices, he had failed to correspond with his professional body and his clients, had been in serious breach of Accounting Rules, had failed to deliver Reports on time and was in breach of three undertakings. The Tribunal regarded these matters with a degree of seriousness very different from the matters alleged against the Second Respondent.
130. In relation to the First Respondent's own practices it had been more than adequately demonstrated that he was not capable of controlling the practice in a way which meant members of the public could rely upon the Accounting Rules being observed and

upon his professional conduct. Indeed there were three serious allegations of breaches of undertakings which were the bedrock of the public's ability to trust a solicitor. In addition he appeared to have no insight into complying with the Rules which governed the conduct of solicitors. The Tribunal was also conscious that the breaches had occurred over a substantial period of time and indeed one Accountant's Report was still outstanding and at least one undertaking had still not been complied with. Accountant's Reports were required to enable The Law Society to monitor the profession's handling of client monies in order both to protect the public and to uphold the public confidence in the profession. The Tribunal was not persuaded that the First Respondent had learned from this long period of non-compliance with the profession's regulations. The Tribunal was not satisfied that the public could be properly protected or that the good name of the profession would be upheld if the First Respondent was allowed to continue to practise. Therefore the ultimate sanction would apply and the First Respondent's name be struck off The Roll of Solicitors. On reaching this decision the Tribunal had had regard to the cases of Weston-v-The Law Society and Bolton-v-The Law Society cited by the Applicant (paragraph 36).

131. With regard to the question of costs it was right and was not disputed on behalf of the First Respondent that he should be liable for the wasted costs of the Applicant and the Second Respondent for 7<sup>th</sup> February 2006. The late arrival of the First Respondent and his Counsel had meant it was necessary for the matter to go into a second day.
132. It was right that both Respondents be equally liable as partners at the relevant time in the firm of Dhama Douglas Solicitors to pay the costs relating to Mr Mercer's inspection of the books of account of Dhama Douglas.
133. The costs of the inspections of the books of accounts of Hardial Singh & Co and of Heston Law Chambers would fall to the First Respondent as the sole principal of those firms at the relevant time.
135. In relation to the remaining costs of the Applicant, taking into account both the number of allegations against each Respondent and the very late admissions of the First Respondent, the Tribunal considered it right that the First Respondent pay two thirds of the costs and the Second Respondent pay one third all costs to be subject to a detailed assessment.

**The Tribunal made the following Orders:-**

The Tribunal Order that the first respondent, Hardial Singh of Heston Law Chambers, 345 Vicarage Farm Road, Heston, Middlesex, TW5 0DZ, solicitor, be Struck Off the Roll of Solicitors and it further Orders that

- (i) the applicant's costs of the 7<sup>th</sup> February 2006 be paid by the first respondent;
- (ii) the second respondent's costs of the 7<sup>th</sup> February 2006 be paid by the first respondent;
- (iii) the first respondent be jointly and severally liable with the second respondent to pay the costs of the Investigation Accountant of the Law Society in relation to the inspection of the books of account of Dhama Douglas Solicitors;

- (iv) the first respondent do pay the costs of the Investigation Accountants of the Law Society in relation to the inspections of the books of account of Hardial Singh and Co. Solicitors and of Heston Law Chambers, Solicitors;
- (v) the first respondent do pay two thirds of the remaining costs of the applicant;
- (vi) all of the above costs be subject to a detailed assessment unless agreed between the parties.

The Tribunal Order that the second respondent, *RESPONDENT 2* of London, NW1 solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that

- (i) the second respondent be jointly and severally liable with the first respondent to pay the costs of the Investigation Accountant of the Law Society in relation to the inspection of the books of account of Dharma Douglas Solicitors;
- (ii) the first respondent having been ordered to pay the applicant's costs of the 7<sup>th</sup> February 2006 the second respondent do pay one third of the remaining costs of the applicant;
- (iii) all of the above costs be subject to a detailed assessment unless agreed between the parties.

Dated this        day of        2006  
On behalf of the Tribunal

J R C Clitheroe  
Chairman