No. 9282-2005

IN THE MATTER OF CHRISTOPHER RICHARD DARKE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr I R Woolfe
Mr G Fisher

Date of Hearing: 14th November 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Geoffrey Williams QC, partner in the firm of Geoffrey Williams & Christopher Green of 2A Churchill Way, Cardiff, CF10 2DW on 7th June 2005 that Christopher Richard Darke of Beech Hill, Headley Down, Hampshire, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

(a) acted in commercial matters which exhibited characteristics of fraudulent transactions;

(b) permitted his client bank account to be utilised for the purpose of transactions which exhibited the characteristics of fraudulent transactions;

(c) paid funds out of his client bank account for other than the express purpose for which those funds were received;

(d) operated his client bank account at the direction of parties who were not his clients;

(e) failed to make any adequate inquiries as to the provenance of substantial sums of money being paid into his client bank account;

(f) improperly acted as a stakeholder in transactions which bore the characteristics of fraudulent transactions;

(g) wrote misleading letters;

(h) improperly paid away funds which he held in his client bank account in the capacity as stakeholder;

(i) failed to disclose material information to parties to whom a duty of disclosure was owed;

(j) acted improperly in a conflict of interest situation;

(k) held himself out as being a solicitor whilst he did not hold a Practising Certificate;

(l) breached the terms of Rule 8 of the Solicitors Indemnity Insurance Rules 2003.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 14th November 2006 when Mr Williams appeared as the Applicant. The Respondent did not appear and was not represented.

The evidence before the Tribunal included the Respondent's response to the Rule 4 statement dated 25th January 2006, the Report of the Law Society's Forensic Investigation Unit ("FIU") dated 15th May 2002 and oral testimony from Mr Dhanda of the FIU.

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

The Tribunal Orders that the Respondent Christopher Richard Darke of Beech Hill, Headley Down, Hampshire, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 20 hereunder:-

1. The Respondent, born in 1947, was admitted as a solicitor in 1972. At all material times, the Respondent practised on his own account under the style of Chris Darke Solicitor of Whistlers Corner, Tilehouse Road, Guildford, GU4 8AP. The Respondent had specialised in commercial law.

Allegations (a) to (j) - the Investment Schemes

2. The Respondent acted for Anglo American Metals Inc ("Anglo"), a company incorporated in Texas USA in 1996. Anglo was a chemical engineering company and its business was the production of gold from "uneconomic ore materials". Its chief executive officer was a Mr Paul de Rome, for whom the Respondent had previously acted while a partner with another firm. Anglo's other directors included one Harriet E Blum and one Malcolm Bradley.

3. Anglo obtained funding from Maincrest Investments Limited ("Maincrest") and London & General Finance (UK) Limited ("L&G"), both run by a Mr Fred Taylor. These companies in turn obtained their funding from individual investors. Anglo obtained further funding from share sale schemes in respect of companies connected with Mr de Rome.

Maincrest and L&G

4. The scheme was that L&G/Maincrest would invest monies in Anglo to set up the ore refining facility by which gold would be produced and, from the monies arising from the sale of the gold, repayment would be made to the investor companies. L&G/Maincrest would then repay their own investors according to the terms of an Agency Agreement between the investor company and the individual investor. The Agency Agreement always provided for a rate of return to the investor which was so high as to be unreal. Its terms made reference to "good clean cleared funds of non-criminal origin" and it was silent as to the nature of the investment scheme to which the funds were to be applied. It also provided that a faxed copy of the Agency Agreement was to be treated as the original.

5. The Respondent was aware of the content of the Agency Agreement and he was also aware of the content of written Warnings issued in 1994 and 1995 by the Law Society to the profession in respect of money laundering. These warnings referred to terminology found in the Agency Agreement and stated that such terminology should alert a solicitor to the likelihood of money laundering.

6. L&G and Maincrest sought and received very substantial sums from individual investors and advanced loans to Anglo. The loan transactions were made under an Investment Agreement, a document drafted by the Respondent for completion between the parties. It provided, inter alia, that Anglo required working capital to cover the cost of equipment to commence bullion production and that the loan was to be used as working capital.

7. The Respondent acted for Anglo in relation to 36 Investment Agreements between it and Maincrest and L&G. The funds thus loaned to Anglo were received into and paid out of the Respondent's client bank accounts. In all, some US $9.5million was received into and paid out of the Respondent's client account.

8. In respect of each transaction for Anglo, the Respondent wrote on his firm's notepaper to the individual investor to explain that he held that investor's money in his client account as stakeholder pending issue of a bank guarantee as security. To some, the Respondent wrote:

> "I confirm that the sum you have wired to my client account will remain in my client account held to your order until I physically hold the actual Security. It is only then that I will release the monies to or to the order of [the investor company]. The Security will be for an aggregate amount equivalent to the amount of your investment plus an additional 5%. … I will send you a certified copy of the actual Security following their receipt by me."

To this letter, the Respondent then added a postscript:

> "Since dictating this letter, I understand that it has been agreed that it will be sufficient for me to receive a faxed copy of the Security with confirmation that the original is being sent to me by international courier for the release of funds … to proceed."

To others, he wrote:

> "[The] monies will be held by me to your order pending receipt by me of an appropriate bank certificate of deposit. Once the bank CD is in my possession, my responsibility will be to hold the bank CD in accordance with the terms of the Investment Agreement. At the end of the term of investment, when you have received payment of everything due to you, I will release the bank CD to the fund manager."

And to yet others, the Respondent wrote that he had "acted as stakeholder on a number of other similar transactions arranged by Mr Taylor over the past six months. So far as I am aware, there has been no default by Maincrest in respect of any payment due from it under these transactions" or words to this effect.

9. There was wholesale failure of this investment scheme. The Respondent ceased to act for Anglo on 18th March 1999 and at the end of that month police officers took possession of the Respondent's files. Inspection by the Law Society's FIU began in September 1999 and led to the Report dated 15th May 2002.

10. The FIU found that:

a) of the 36 transactions in respect of which the Respondent had acted for Anglo, repayment under the terms of the Agency Agreements of principal sums and of interest was outstanding in excess of US $6million and US $16million respectively.
b) the Security to which the Respondent had referred in his stakeholder letters emanated from banks such as the Panacea Bank of Nauru in the South Pacific and all were worthless. The Respondent admitted that he had made no checks as to their worth.
c) Anglo had failed to produce gold of any commercial worth and the insurance element of the Security was also worthless. Again, the Respondent had made no checks.
d) funds from investors, held by the Respondent in the name of Anglo, were from the outset applied at the direction of Maincrest/L&G very largely to make

repayments to companies in respect of unconnected loans or to earlier investors rather than as working capital for Anglo.

11. The Respondent was aware of the above matters as found by the FIU and of other significant problems with the investment scheme. It was he who immediately paid away loans received in his client account other than to Anglo and without the promised security in place. Soon after the scheme began, the Respondent wrote to Mr de Rome by letter dated 31st July 1996 to point out that Anglo was short of funds, there had already been one default on a loan and there was no evidence of gold production and that Maincrest had a "history of failed promises". On 7th August 1996, the Respondent wrote to Mr Ian Whittock, an associate of Mr Fred Taylor, that he needed information from him in order to comply with Money Laundering Regulations. The in formation was not forthcoming and the Respondent took no steps to obtain it. The Respondent subsequently drafted a further letter dated 22nd November 1996 to Mr Whittock (which he did not send) in which he expressed concern that the way in which funds were being applied represented "playing with fire" and he wondered whether "the wool was being pulled over [his] eyes". He said he had investigated two matters and had been "staggered" by what he had found, namely "apparent deceitfulness".

Foureyes Holdings Inc

12. In October 1997 the Respondent wrote to a Mr DG-S with a view to the latter providing further investment monies to Anglo by way of the purchase of shares in another American company, Foureyes Holdings Inc ("Foureyes").

13. The Respondent was president and a director of Foureyes. Other directors of Anglo, Harriet E Blum and Malcolm Bradley, were also directors of Foureyes. The same broker was involved in both Foureyes and the Anglo investment scheme. Mr de Rome was also involved. From the outset, the Respondent failed to disclose to Mr DG-S his personal involvement.

14. Mr DG-S invested and the investment failed. The envisaged return had again been unreal at 89% and again the Security element of the transaction, against which Mr DG-S had sought to claim, was worthless.

Gouda Holdings Limited

15. A further share sale scheme was started subsequent to the L&G/Maincrest transactions with Anglo. The proposal was that Gouda Holdings Limited ("Gouda"), a holding company within the Paul de Rome group, would issue shares to investors. These would be backed by security in the form of a number of promissory notes issued by another Paul de Rome holding company, Sorciere Limited ("Sorciere") and endorsed by insurers. There was also to be reinsurance and additional security in the form of Put options whereby an investor could call upon Sorciere to buy back a proportion of the shares.

16. The Respondent acted for Sorciere and Gouda and he also acted as stakeholder to safeguard the investors' funds pending completion of all the legal documentation. The Respondent by letter dated 9th June 1998 wrote to Mr Eugene McDowell whose

company, Capital Asset Management Corporation ("CAMC"), was the main investor in this scheme, that he would:

(a) apply for the issue of the relevant promissory notes and for confirmation that the relevant insurance guarantee bonds were available subject only to the payment of an appropriate premium;

(b) confirm the identity of the lead insurer;

(c) confirm that he held the promissory notes;

(d) confirm that the promissory notes had each been signed by Sorciere and endorsed by the lead insurer;

(e) confirm that he held a cover/line slip confirming the availability of the relevant insurance guarantee bonds; and

(f) confirm that the lead insurer was reinsured.

17. An investment from CAMC in a sum in excess of US$7million arrived in the Respondent's client account on 15th June 1998 consequent upon a stakeholder letter written by the Respondent on 9th June 1998. The ledger sheet showed that the investment funds were paid away to various parties including a payment made on 13th July 1998 to Foureyes.

18. On 26th June 1998 the Respondent wrote to CAMC that he had assumed the role of "paymaster" and was thus acting also for CAMC. The Respondent took no steps to check the validity of the Security provided. On 28th August 1998 the Respondent wrote to CAMC to say that its risk was covered by insurance. This was not true.

Allegations (k) and (l) - Regulatory Matters

19. The Respondent had not held a Practising Certificate since 31st August 2003. He nevertheless in September 2003 wrote on his firm's notepaper two letters to HM Land Registry in respect of a conveyancing transaction.

20. By 1st September 2003 the Respondent had not arranged for professional indemnity insurance and appropriate run-off cover in the commercial market. In November 2003 a claim had been intimated against the Respondent arising out of the Anglo investment scheme. Being uninsured, the Respondent was under an obligation to submit an application to the Assigned Risks Pool by 1st September 2003. He failed to do so and only secured appropriate cover in March 2004.

The Submissions of the Applicant

21. The Respondent had had before him ample information from which he should have appreciated that the transactions between the investors and the investor companies bore the hallmark of fraudulent transactions and accordingly should not have permitted his client bank account to be used as a conduit for the funds in question. That is:

(a) he was aware of the terms of the relevant written Warnings issued by the Law Society;

(b) he had seen the Agency Agreements which contained suspicious terms and significantly were silent as to the nature of the investment scheme to which very substantial funds were to be applied.

22. It was apparent to the Respondent at an early stage that the substantial funds received from investors were not being used for the purpose intended. It should have been apparent to him that Anglo was "teeming and lading", i.e. borrowing from new investors to repay earlier investors.

23. The Respondent was suspicious of the way in which the investment scheme was being operated as was apparent from correspondence but nevertheless the Respondent continued to act for Anglo until March 1999. In so doing, the Respondent played a pivotal role in the continuing operation of the scheme.

24. By accepting the role of stakeholder the Respondent gave comfort to the investors as to the security of their investment and gave credibility to the scheme itself. Given his awareness of the characteristics of and difficulties with the scheme, the Respondent should not have performed the role of stakeholder. The Respondent should not, as he did, have released the stakeholder funds unless first he had ensured, insofar as he could, that the securities obtained were genuine, issued by bona fide institutions and of proper value. The Respondent made no effective enquiries of his own. The Respondent, particularly given his experience as a solicitor with a background in commercial matters, should have been put on notice of the fact that the Securities were worthless on receipt of the "Security" documents. He had said that he would ensure that funds were safe. He did not do so. He was furthermore under a duty to be wholly frank with the investors in the stakeholder letter and he had failed in this duty.

25. In respect of Mr DG-S, the Respondent should have played no part at all in the funding exercise. He should in any event have given Mr DG-S full disclosure of his personal involvement and likewise of the involvement of Mr de Rome, Mr Bradley and Ms Blum. The Respondent failed to give the required disclosure and again his role was pivotal in attracting the investment.

26. In general terms, the Respondent had played a pivotal role in attracting investment and he had given comfort to investors when he had no right to do so. He had kept material information from them and he had allowed those for whom he did not act to direct the operation of his client account. The Respondent had from the outset ignored obvious signs of fraud. It was not alleged that the Respondent himself was a fraudster and to this extent dishonesty was not alleged. It was however alleged that he had failed to exhibit the probity, integrity and trustworthiness required of all solicitors.

The Submissions of the Respondent

27. The Tribunal had regard to the content of the Respondent's Response to the Rule 4 statement dated 25th January 2006. It noted that the Respondent denied all the allegations albeit admitting material facts.

28. The Tribunal noted in particular the following of the Respondent's submissions:
    a) He accepted that the Security in each case was worthless but the arrangement for the Security for the individual investors had been made by Fred Taylor..
    b) Anglo had produced gold but such production was not significant in commercial terms. He had at no stage provided, or held himself out as providing, any advice to individual investors in relation to the validity or value of the security or anything else.
    c) All funds received into his client account had been disbursed by him in accordance with the terms of the stakeholder letter. It had not been his responsibility to monitor to what use those funds were subsequently put.
    d) He accepted that he had failed to comply with obligations in respect of money laundering. He did not however consider that his role was pivotal in attracting the investment monies.
    e) He did not accept that the Gouda transaction was similar to the loan transactions between Maincrest/L&G and Anglo and furthermore it was not his responsibility to monitor to what use funds received in his client account were put once the Gouda transaction had been completed. He denied a conflict of interest in acting for CAMC and Gouda/Sorciere.
    f) He had not held himself out as a practising solicitor after 31st August 2003 and his letters on his firm's notepaper to HM Land Registry in September 2003 did not amount to practising. He accepted however that he had not concluded appropriate PII run-off cover by 1st September of that year but had applied for it.

The Tribunal's Findings

29. The Respondent had chosen not to attend the hearing or to give sworn testimony and, while the Tribunal had regard to what he said in his response dated 25th January 2006, it gave greater weight to the record of interview with the Respondent and findings in the FIU report. It was satisfied that Mr Dhanda, who had given sworn evidence before it as to the veracity of the report, was a good witness. Where the FIU's record/finding differed from what the Respondent said in his response, the Tribunal preferred to accept the findings of the FIU as set out in its report and supported by documents before it.

30. The Respondent in any event did not deny many of the material facts. His case, in a nutshell, was that it was not apparent to him that these were fraudulent transactions and, given that he acted for Anglo, it was not for him to monitor the worth of the Security provided or what was happening to the funds obtained under the terms of the Agreements described above and which were passing in huge sums through his client account. The Tribunal could not accept this contention. The Agency Agreements contained the very wording of which the Law Society had given warning. The Respondent knew the content of the Agency Agreement and was aware of the Law Society's warnings on money laundering. The Respondent was moreover a

commercial lawyer and he knew all too well that the rate of return offered was unreal. The transactions had to be a sham.

31. The Tribunal found all the allegations proved save allegation (c). It was not satisfied in relation to the latter that the evidence demonstrated that the Respondent had paid away monies other than for the express purpose for which they had been received by the Respondent because they had been paid to the order of the investor companies. In every other respect, the Applicant's submissions were accepted and the Respondent's submissions rejected.

The Tribunal's Decision and its Reasons

32. The allegations at a) to j) above were in respect of investment schemes which bore all the hallmarks of fraudulent purpose. The Respondent had allowed himself and his client account to be used by fraudsters over a period of two and a half years. He had chosen to close his eyes to all the warning signs of what was an investment scam. The explanations offered in his response dated 25th January 2006 were wholly inadequate. The facts found against him demonstrated a lack of the probity, integrity and trustworthiness to be expected in solicitors, both by the public and the profession itself. Very large sums had been involved and the case could not be said to be one other than of utmost seriousness. The other allegations found proved against the Respondent were, by comparison, of lesser stature but the Tribunal noted that here too the Respondent had demonstrated a wilful determination to ignore professional obligations. The appropriate penalty was that the Respondent should be struck off the Roll of Solicitors.

24. The Tribunal ordered that the Respondent should pay the costs of the application. Such costs were to be assessed if not agreed.

Dated this 22nd day of January 2007
On behalf of the Tribunal

D J Leverton
Chairman