

IN THE MATTER OF RAPHAEL OLISA OSILI and [*SECOND RESPONDENT*] – NAME
REDACTED, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)
Mr R J C Potter
Mrs V Murray-Chandra

Date of Hearing: 6th December 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Iain George Miller, solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF on 18th July 2005 that Raphael Olisa Osili and [*SECOND RESPONDENT*], solicitors of Lords Solicitors, Lords House, 26 St John Street, Newport Pagnell, MK16 8HJ and [*SECOND RESPONDENT*] of Hiace Solicitors, 24 Barclay Road, Croydon, Surrey, CR0 1JN might be required to answer the allegations contained in the statement that accompanied the application and that such order might be made as the Tribunal should think right. The allegations made against the Respondents were as follows:-

The allegations made against both the Respondents:-

- 1.1 They withdrew money from client account in excess of the sum held for the client concerned contrary to Rule 22(5) of the Solicitors Accounts Rules 1998 ("the SAR");
- 1.2 They held client money otherwise than in a client account contrary to Rule 14 of the SAR;
- 1.3 They failed to remedy Accounts Rules breaches on discovery contrary to Rule 7 of the SAR;

The allegations made against Raphael Osili are that he is guilty of conduct unbefitting a solicitor in that he:-

- 2.1 Used client money for his own benefit;
- 2.2 Acted in relation to the purchase of a property at Milton Keynes where his interests conflicted with those of both his clients, Mr and Mrs I and his lender client, TMB;
- 2.3 Misrepresented his income in an application for a loan;
- 2.4 Entered into an impermissible fee agreement in respect of litigation.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Mr Miller appeared as the Applicant: Mr Osili appeared in person and the *[SECOND RESPONDENT]* was represented by Mr Chima Umezurike.

The evidence before the Tribunal included Mr Osili's admissions of allegations 1.1, 1.2 and 1.3. He denied 2.1 (in relation to the interpretation of the facts) and he denied allegations 2.2, 2.3 and 2.4 *[SECOND RESPONDENT]* admitted allegations 1.1, 1.2 and 1.3 on the basis of liability as a partner but not on the basis of culpability.

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

The Tribunal Orders that the Second Respondent of Hiace Solicitors, 24 Barclay Road, Croydon, Surrey, CR0 1JN, solicitor, be reprimanded and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.

The Tribunal Orders that the Respondent, Raphael Olisa Osili of Lords Solicitors Lords House, 26 St John Street, Newport Pagnell, MK16 8HJ, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.

The Respondents' Backgrounds

1. Mr Osili, born in 1966, was admitted as a solicitor in January 2000. Previously he had been admitted to the Nigerian Bar. At all material times he practised under the name of Lords solicitors at Lords House, 26 St John Street, Newport Pagnell, MK16 8HJ. *[SECOND RESPONDENT]*, born in 1962, was admitted as a solicitor in 1998. He also had previously been admitted to the Nigerian Bar. Between 8th February 2002 and November 2004 *[SECOND RESPONDENT]* was a partner in Lords (or was held out as a partner). At all material times *[SECOND RESPONDENT]* was also a partner in Hiace solicitors in Croydon, where he continued to practise.
2. There was a factual dispute between *[SECOND RESPONDENT]* and Mr Osili as to when *[SECOND RESPONDENT]* ceased to be a partner in Lords. *[SECOND RESPONDENT]* stated that this was on 5th August 2002 (ie prior to the events giving rise to the allegations save for allegation 1.2). Mr Osili stated that the partnership continued until 18th November 2004. *[SECOND RESPONDENT]* had come to accept that he was held out as a partner until that date.

Allegations 1.1, 1.2 and 1.3

3. These allegations arose from a Report by a Forensic Investigation Officer of the Law Society ("the FIO") dated 30th April 2004. The Report was before the Tribunal.

Allegation 1.1

4. The FIO reported upon an overpayment from the client account of £28,780.10 (and two subsequent further overpayments on the same matter totalling £1,936.89) in respect of the purchase of a property at Milton Keynes by Mr Osili and his wife. This allegation also related to further incorrect transfers from client to office account totalling £1,193.
5. Mr Osili acted for himself and his wife in their purchase of the Milton Keynes property. The relevant account in the clients' ledger showed that a client account payment of £123,950 had been made on 30th December 2002 when only £95,169.90 stood to the credit of that account, thereby creating a debit balance of £28,780.10 at that date.
6. Two further client account payments increased the debit balance, and corresponding cash shortage, to £30,716.99 as at 3rd January 2003. Several subsequent receipts and payments between 6th January 2003 and 29th August 2003 reduced the overdrawn balance to £11,500 at the latter date. This remained the position until January 2004.
7. Mr Osili told the FIO that the cash shortage of £11,500 was replaced by transfers from office to client bank account of £8,500 and £3,000 on 2nd and 9th February 2004. The earlier transfer was dated 31st January 2004 on the ledger account: the bank transfer was actually made on 2nd February 2004. The shortage had remained in existence for thirteen months.
8. During the period 22nd July 2003 to 17th January 2004 incorrect transfers varying in amount from £38 to £1,000 and totalling £1,193 were made on account of three client matters. The largest of these is exemplified below.

Mr K H - £1,000

9. The firm (Mr Osili) acted for his client in connection with a litigation matter. The relevant account in the clients' ledger showed on 2nd December 2003 a transfer of £1,882 from client to office bank account when only £882 was properly available, thereby creating a debit balance of £1,000 on the account at that date.
10. A subsequent client account payment of £235 on 12th December 2003 in respect of Counsel's fees increased the debit balance and corresponding cash shortage to £1,235 at that date, which remained the position at 31st January 2004.
11. The ledger account also showed a lodgement in office bank account on 26th January 2004 in the sum of £9,100, which Mr Osili said was in respect of the firm's costs and disbursements. Mr Osili said, however, that this sum included Counsel's fees of £662.08, which remained unpaid as at 31st January 2004.

12. Mr Osili agreed accordingly that a cash shortage of £1,897.08 (£1,235.00 + £662.08) existed on client account at 31st January 2004 in respect of this matter. He said that this had been replaced in full by transfers from office to client bank account of £1,235 and £662.08 on 9th February 2004 and 20th February 2004 respectively, but most of the cash shortage, £1,235, had remained in existence for two months.

Allegation 1.2

13. As at 31st January 2004 client funds totaling £738.08 held on account of three separate client matters were incorrectly retained in office bank account as follows:-

Client name Amount

Mr H	£662.08
Ms N O	61.00
Mr P	<u>15.00</u>
	£738.08

Ms N O - £61

14. Mr Osili acted for Ms O, his sister, in her purchase of a house, completion of which took place on 26th January 2001. The relevant account in the clients' ledger showed on 12th February 2001 two client account payments totalling £1,184 when only £1,045 was properly available, leaving a debit balance on the ledger account of £139 at that date.
15. A further payment of £200 on 2nd August 2001 increased the debit balance and corresponding cash shortage to £339 at that date. On 26th October 2001 the sum of £400 was received from the client but this was incorrectly lodged in office bank account. The debit balance on client account of £339 was eliminated on 22nd August 2003 by a transfer of that amount from office to client bank account but the balance of £61 (£400 - £339) remained incorrectly held in office bank account.
16. Mr Osili acknowledged that the sum of £61 was due to his client as at 31st January 2004 and that this amount had been incorrectly retained in office bank account. He said that the corresponding cash shortage was replaced on 20th February 2004 by a transfer of £61 from office to client bank account. A cash shortage remained in existence on this account for a period of three years, from 12th February 2001 to 18th February 2004.

Allegation 1.3

17. The Solicitors Accounts Rules breaches subsisted for a substantial period of time. For example, the overpayment of £28,780.10 occurred on 30th December 2002. Some repayment took place between 6th July 2003 and 29th August 2003. However, the client account remained £11,500 overdrawn in respect of this transaction until the start of the FIO's inspection in February 2004.

Allegations 2.1 and 2.2 - Use by Mr Osili of client money for his own benefit and acting in a conflict of interest

18. Mr Osili was instructed by a Mr and Mrs I in July 2002 in connection with the purchase of a property, H.T. House, and the sale the Milton Keynes property (bought by Mr and Mrs Osili). Mr and Mrs I were described in the FIO's Report as "cousins" of Mr Osili, however they were not related but there had been a pre-existing relationship between them through a local church.
19. The purchase price for H.T. House was £1million. This was to be financed by a mortgage of £800,000 from Cheltenham & Gloucester Building Society. Contracts were exchanged on 3rd October 2002. A deposit of £50,000 was paid. The completion date was 31st October 2002.
20. Mr and Mrs I were reliant upon the proceeds of sale from the Milton Keynes property to complete their purchase. Mr Osili and his wife became interested in purchasing the Milton Keynes property in late September 2002. It was subject to an existing charge in favour of Barclays Bank to secure £300,000. Barclays sent the title deeds to Lords on 19th September 2002.
21. On 31st October 2002 Mr and Mrs I were unable to complete their purchase. Notice to complete was served by the vendor's solicitor on that day. On 4th November 2002 Mr and Mrs Osili applied for a mortgage from TMB. On 27th November 2002 TMB made an offer in respect of the Milton Keynes property of an advance of £415,000. The expected purchase price was £500,000. On 29th November 2002, £415,000 was paid into the client account of Lords by TMB. Completion of the purchase of Mr and Mrs I's property took place the same day, facilitated by the use of £148,004.63 from the money advanced by TMB.
22. Also on 29th November 2002 contracts were exchanged between Mr and Mrs I and Mr and Mrs Osili in respect of the Milton Keynes property. The contractual price was £500,000, with a deposit of £85,000.
23. Between 29th November 2002 and 3rd January 2003 the following further payments were made from the balance of the £415,000 received from TMB:-
 - (i) on 29th November 2002, £12,270.47 in connection with Mr Osili's tax liabilities;
 - (ii) a series of payments relating to the purchase by Mr and Mrs Osili of two properties at Newport Pagnell. The total of these payments was £190,506 which covered the purchase prices and conveyancing disbursements;
 - (iii) a further payment of £52,000 to Mr and Mrs I on 2nd December 2002 which Mr Osili said was a repayment of the deposit on their new property;
 - (iv) a payment of £40,000 on 16th December 2002 in respect of the stamp duty on Mr and Mrs I's new property.

The effect of these payments, together with some other payments, was to cause the client ledger to become overdrawn.

24. The FIO expressed concern about irregularities in the property transactions and a conflict of interest.
25. Mr Osili acted for Mr and Mrs I in connection with their sale of the Milton Keynes property and the purchase of their new property at the price of £1million, with the assistance of a mortgage advance of £800,000 from Cheltenham & Gloucester plc, for whom Mr Osili also acted. Contracts were exchanged on 3rd October 2002 when a deposit of £50,000 was paid with completion due on 31st October 2002.
26. Mr Osili said that he and his wife had agreed to buy the Milton Keynes property from Mr and Mrs I but that no contract had been prepared in respect of the sale of that property. Mr and Mrs I and Mr Osili had enjoyed an earlier relationship through their church. Mr Osili told the FIO that neither party thought that a formal contract was necessary.
27. Solicitors to the sellers of Mr and Mrs I's new property issued notice to complete on 31st October 2002 and after some negotiation the purchase was finally completed on 29th November 2002. The balance of the completion monies, £950,000, was funded by utilising the mortgage advance of £800,000 and a payment from Mr and Mrs Osili of approximately £200,000. The source of this latter payment was the TMB mortgage advance to Mr and Mrs Osili.
28. Mr Osili said that the sale of the Milton Keynes property was completed on 29th November 2002, although the full sale proceeds were not received by that date. Mr and Mrs I's outstanding mortgage with Barclays Bank plc on that property was not redeemed until July 2003. The sum required to redeem the mortgage was approximately £300,000. Mr Osili held the title deeds on behalf of Barclays Bank from September 2002 until the mortgage was redeemed in July 2003.
29. Mr Osili said that Mr I had advised Barclays Bank that the redemption of their mortgage might be delayed and he understood that they had accepted this position. He said that he had not contacted Barclays Bank himself but had instead relied on what Mr I had told him. He said that Mr and Mrs I continued to pay the mortgage repayments to Barclays Bank in addition to those for their new mortgage.
30. Mr Osili acted for himself and his wife in their purchase of the Milton Keynes property from Mr and Mrs I.
31. Mr Osili explained to the FIO that when Mr and Mrs I had been unable to complete their purchase on 31st October 2002 they were faced with the prospect of losing their deposit. Mr Osili and his wife had agreed, in July 2002, to purchase the Milton Keynes property from Mr and Mrs I at the price of £500,000 although that agreement was never evidenced in writing. The FIO pointed out that the property had been offered for sale at a price of £475,000. Mr Osili explained that it had subsequently been revalued. Mr Osili said that Mr and Mrs I and other members of their church had put considerable pressure on him to assist Mr and Mrs I and that he believed this was what God wanted him to do.
32. At the same time Mr Osili was negotiating to purchase two other properties at Newport Pagnell. One had become the firm's office premises and the other was a shop with a two bedroom flat above which was bought with a view to the obtaining of consent to use the shop as offices.

33. Mr and Mrs Osili's own mortgage advance of £415,000 from TMB had been utilised when a transfer on the same date of £148,004.63 was made to the ledger account relating to Mr and Mrs I's purchase. That latter amount was the sum required to enable to completion money of £950,000 to be paid on behalf of Mr and Mrs I.
34. The TMB mortgage advance was again utilised to make a payment of £52,000 to Mrs I on 2nd December 2002 and to pay £40,000 on 16th December 2002.
35. The remainder of the TMB mortgage advance was utilised to make various personal payments on behalf of Mr and Mrs Osili, including the payment of income tax of £12,270.47 and other payments in relation to their purchase of the two other properties which exceeded the amount standing to their credit. There were debit balances of varying amounts between 30th December 2002 and 9th February 2004.
36. It was unclear to the FIO when the Osilis' purchase of the Milton Keynes property was completed. Mr Osili explained to the FIO that when the mortgage advance from TMB had been received and was being spent, he considered that he owned the property as he held the title deeds. The sellers' existing mortgage with Barclays Bank had not been redeemed.
37. Mr Osili agreed that, at that time, the full purchase price had not been paid to the sellers. He and his wife had paid approximately £240,000 to Mr and Mrs I, who had agreed that the payment of the balance could be deferred.
38. Mr Osili said that a loan agreement had been drawn up, with interest to be paid at 4% on the outstanding balance. Two loan agreements both dated 19th December 2002 were provided. Mr Osili told the FIO that Mr and Mrs I had obtained independent legal advice in relation to the loan agreements. Mr Osili produced a letter dated 19th October 2005 addressed "to whom it may concern" and signed by Mr and Mrs I. That letter was in the following terms:-

"Dear Sirs

Re: Raphael Osili

We wish to confirm that we took independent legal advice in regards to the loan agreements we entered into with Raphael. We spoke to our family solicitor of Tayo Arojowolu Solicitors and another solicitor friend of the family before entering into the agreements.

We also consulted them before appointing Raphael to act for us and for the bank in his purchase of the house."

Yours faithfully
[signed]
Mr and Mrs I"

39. The loan agreements provided for two short-term bridging loans of £130,000 and £57,000, from Mr and Mrs I to Mr and Mrs Osili. In clause 3 of each agreement, both loans were said to be payable by the firm “from the sum of £145,000 standing to their credit in the solicitors client account”. Mr Osili agreed that £145,000 represented the unpaid balance of the purchase price for the Milton Keynes property and that this sum was included in the balance on the ledger account of Mr and Mrs Osili at that date.
40. The sum of the two loans, £187,000, exceeded the £145,000. Mr Osili said that the two loans were to have been made on different dates and that Mr and Mrs I were endeavouring to remortgage their new property in order to provide the additional funding required, but the remortgage was not obtained. Mr Osili agreed that overpayments had, accordingly, been made on his and his wife’s account resulting in the debit balance of £28,780.10 reducing to £11,500. Mr Osili said that he and Mrs I had been given independent advice about these loans, but had not provided any written evidence of this. Mr Osili told the Tribunal that Mr and Mrs I had taken advice and provided a letter from Mr and Mrs I dated 9th November 2005 in the following terms:-

“As you know you have not provided sufficient funds to discharge the mortgage charge of Barclays Bank on the above property following exchange and completion on 29th November 2004 [sic]. We know that you are expecting further funds to discharge the mortgage within the week. Unfortunately we have to serve you a notice to complete.

The consequences are quite serious and we urge that you let us have enough funds to discharge the Barclays Bank charge over the property as soon as possible. Please be aware that you are liable for the mortgage repayments until the mortgage is redeemed ...”

41. Mr Osili and his wife occupied the Milton Keynes property from 12th December 2002. The purchase price was ultimately reduced to £385,000 and Mr and Mrs I’s mortgage to Barclays Bank plc was redeemed on 1st July 2003. The balance of the purchase price (£385,000 - £240,000) was paid on 1st July 2003 and Mr Osili redeemed Mr and Mrs I’s mortgage with Barclays Bank. Mr and Mrs I had provided a sum of £156,000 which was used to make a partial redemption on 9th June 2003 and the remaining balance of £142,626.57 was paid by Mr Osili.
42. Mr Osili said that he had not advised TMB as to how the mortgage advance had been utilised. He said that he did advise them that the purchase price had been reduced and they were content to allow the mortgage to remain in place as there was already a further credit facility available within the original mortgage agreement. No documentary evidence was seen by the FIO to support Mr Osili’s assertion.
43. Mr and Mrs Osili’s mortgage application, dated 4th November 2002, stated that the purchase price of the property at Milton Keynes was £515,000. The advance sought was £415,000. TMB’s mortgage offer stated that the purchase price was £500,000. Mr Osili explained that the figure of £515,000 was based on a valuation of the property which he had obtained.

44. In the mortgage application form Mr and Mrs Osili's gross income was self-certificated. Mr Osili's income from his self-employment as a solicitor was stated to be £138,300 and his wife's income from her employment by her husband's firm as accounts manager was expressed to be £35,000.
45. Mr Osili's firm's accounts for his year ended 31st August 2002 set out income (turnover) of £50,225 and a net profit after expenses but before income tax of £22,752.
46. Mr Osili told the FIO that the income figure of £138,000 shown on the mortgage application was his estimate of the firm's turnover for the coming year, i.e. the projected turnover for the year ending 31st August 2003. He said that the figure of £35,000 in respect of his wife's income was also an estimate and represented what he had anticipated that the firm would pay her.
47. Mr Osili said that his wife's projected income of £35,000 would have been part of the firm's gross income of £138,000.
48. Mr Osili told the FIO that his firm's accounts for the year ended 31st August 2003 had not yet been prepared but he expected the total gross fees for the year to be in the region of £140,000.
49. In his letter to the Law Society dated 13th December 2004 Mr Osili said:-

“I was owed over £70,000 in unpaid fees which were owed by two solicitor's firms in London and Leicester and I knew they would pay me. I also said that I had two legal aid certificates worth £25,000 and moreover, I was due a percentage of 20% on a no win no fee matter worth £1,000,000. I also said on top of this, I had an assurance of a legal aid franchise in view of our position in Newport Pagnell and the fact that our business was growing rapidly. All this excluded the present business turnover. These were the basis for the income estimate.”

50. At the hearing Mr Osili told the Tribunal that the application form had been completed by Dr T, a broker who had been well known to him. Dr T had inserted the income figures but had made a mistake. A letter dated 19th November 2005 from Dr T was placed before the Tribunal. It said:-

“Dear Raphael

I am sorry for not having written earlier. I have been seriously ill and have been hospitalised for several months now. I am still seriously ill and due to go back to hospital very soon. Before this, I had been abroad on business and so you could not reach me...

I confirm that I made a mistake in completing your application form. I wrote down £138,000 instead of £38,000. I am sorry for the inconvenience that this mistake has cost you. I had asked you for your estimated income not your actual income as your mortgage application was a self-certified income. Besides, the mortgage was a 85% loan to value mortgage and the lenders TMB income requirement was that you have over £20,000 income in the preceding year and since your accounts showed that you earned over £40,000 in that year coupled with your explanation as to the monies you had coming to you, I accepted your estimate as realistic based on the information you

gave me and completed the form accordingly.”

Allegation 2.4 - Impermissible fee agreement

51. Mr Osili entered into a fee agreement with Mr U on 30th July 2002 in respect of proposed litigation against AE Ltd and Mrs M. Paragraph 2 of that Agreement stated:-

“You agree to pay us a sum equivalent to 9% of the claim excluding VAT when we are successful and any money you pay during the lifetime of your matter as our fees would be deducted from the 9% excluding VAT at the conclusion of this matter.”

The Submissions of the Applicant

52. The letter addressed to Mr and Mrs I by Mr Osili on 5th December 2002 was curious. The letterhead was different from that on other letters written at around the same time. The reference was different from that on another letter on the same file. It was also odd that the date at the end of the first sentence should have been two years later than the date upon which the letter was purported to be written.
53. It is difficult to understand why Mr Osili would have written such a letter at the time. Mr and Mrs I were unable to redeem the Barclays Mortgage because Mr Osili had used the mortgage advance from TMB to purchase two other properties and the payment of his own tax bill. The existence of a conflict of interest could not be more clear than when a solicitor serves a notice to complete on his own clients.
54. With regard to the two separate loan agreements of 19th December 2002 whereby Mr and Mrs I purported to make a “bridging loan” in respect of the purchase of two properties in Newport Pagnell by Mr and Mrs Osili, Mr and Mrs I needed to be separately advised in relation to these “loans”. Mr Osili claimed that they were achieved and had not provided written evidence of this until he produced the letter from Mr and Mrs I of 19th October 2005. The effect of these loan agreements seemed to deal with the fact that Mr Osili had diverted funds to his own use some two weeks earlier. Even then, the funds said to be the source of the loan (£145,000) were exceeded by the amount loaned.
55. It was not until 1st July 2003 that the Barclays charge over the Milton Keynes property was redeemed. It was not entirely clear from the documents (or Mr Osili’s explanation) as to what amount was eventually “paid” for the property, Mr Osili had said:-
- “We took possession of the property from 12th December 2002 to provide physical security for our Lenders and to ensure that completion takes place on time. The purchase price was never reduced. Rather, Mr and Mrs Idowu gave a 7% Vendor paid deposit on the property.”
56. It was submitted that there was no distinction between a reduction of the purchase price and a “vendor paid deposit”. There was no evidence that the deposit of £85,000 was ever paid.
57. The facts in this matter disclosed a stark example of a solicitor using client funds for his own benefit. The advance from TMB was for the purpose of acquiring title to the Milton Keynes property after redeeming the Barclays charge. It was not open to Mr Osili to apply this money to his personal needs. Equally, from the moment that Mr Osili agreed to purchase the Milton Keynes property he was acting in a situation where there was a conflict of

interest between himself and Mr and Mrs I and the lending institutions. Such a conflict was both serious and obvious.

58. It was the Applicant's submission that Mr Osili acted with conscious impropriety and therefore acted dishonestly.
59. Mr Osili had given written explanations and the Applicant understood that his position was that both Barclays and TMB were aware of the situation and that no loss was ultimately suffered. The second point was accepted (although a shortfall did exist until February 2004). No evidence had been provided from either Barclays or TMB to support the assertion that they were informed although an attendance note which purported to be a note of conversations between Mr Osili and both lenders on 30th November 2002 had been produced. It would be odd if the conversations took place on that day as it was a Saturday. In any event, even if both lenders were aware of difficulties in completing they did not seem to have been made aware that the difficulties were caused by Mr Osili diverting funds for his own use.
60. The explanations given by Mr Osili for the level of income declared in the TMB mortgage application were unsatisfactory. The statement of income was not an estimate, it was a statement of actual income for the purposes of satisfying a lender that Mr and Mrs Osili could service the debt.
61. Part of the explanation provided is based upon optimistic views of future business development: "We are in the process of refurbishing the new office which was based in the centre of the town and we expected about 100% new clients and income as a result". Such fanciful projections could not justify an income figure in a mortgage application.
62. Mr Osili claimed that the income figure reflected debts owed to him by other solicitors. Copies of relevant documents demonstrated that the total of these debts was in the region of £55,000 and as a result were insufficient to justify the certificate of income. In any event it appeared that invoices were rendered in relation to these matters prior to 31st August 2002 and would have formed part of the income for the year ending 31st August 2002.
63. In so far as the existence of public funding certificates was relied upon they could not of themselves be income.
64. None of the matters relied upon by Mr Osili was sufficient to show that he could have honestly believed that his income was £138,300 at the time of signing his Mortgage Application form.
65. The "no win no fee" agreement entered into by Mr Osili was unenforceable and it was far from clear as to whether any recovery would have been made.
66. Arrangements whereby a solicitor receives a percentage of the client's damages in litigation are champertous and unlawful (Awwad -v- Geraghty [2001] QB 570). As such they are contrary to Practice Rule 8.

The Submissions of Mr Osili

67. Mr Osili asked the Tribunal to look at the facts in context.

68. Mr Osili had been introduced to Mr and Mrs I by the pastor at his Church. At the time M Osili and his wife lived modestly and Mr Osili worked hard as a solicitor assisted by his wife and a conveyancer. He did not advertise and work came to him by recommendation.
69. Mr and Mrs I were professional people who were Christians and assisted the Church. It was Mr Osili's desire to help the Church and to help people.
70. Mr and Mrs I were buying an expensive house. Mr Osili considered that they had worked hard and were entitled to enjoy the fruits of their labours. Mr and Mrs I were older than Mr Osili. It was his culture to respect older people and to accept their wishes and not speak out against them.
71. Mr and Mrs I persuaded Mr Osili that the Lord had wished them to buy their new house and Mr Osili to buy their current house. Mr Osili received many telephone calls asking "Don't you want to obey God?". When Mr Osili told his wife about this he accepted that it sounded bizarre. Mr Osili trusted Mr and Mrs I. They bought and sold properties. When they signed the loan agreements Mr and Mrs I told Mr Osili that they had been separately advised. Mr Osili had not got involved in the question of their independent advice.
72. With regard to the mortgage application form Mr T was a broker who had been known to Mr Osili for 21 years. He was an elderly gentleman. Mr T completed the form at Mr Osili's house. Mr Osili looked through the form but he did not carefully check all of it. Mr T had told Mr Osili that the details provided were alright because the transaction was for the purpose of a "buy to let". Mr Osili trusted Mr T.
73. Mr Osili considered that there was some justification for the income figures stated as he did have income from his practice and rental income and he was owed larger sums, a proportion of which had been paid. Mr Osili's practice income and profit had been on the increase. Mr Osili had spoken with the mortgagees on the telephone to explain that he was himself buying the property and was told that that was not a problem. The mortgagee's interests were protected. With hindsight Mr Osili recognised that he had been foolish and naïve, but he had not been dishonest.
74. With regard to the accounts breaches, Mr Osili accepted that the entries on the ledgers were wrong. He did not fully keep track because of all of the things that were happening. Mr Osili had replaced the cash shortage established by the FIO after selling properties which he owned in Nigeria. There had been incorrect postings. There had been a separate ledger for each property transaction. Mr Osili's wife did the bookkeeping and he accepted he should have kept a closer eye on this. Mr Osili accepted that he had in these matters been naïve and foolish. He had been stupid and should have been more careful.

The Tribunal's Findings

75. The Tribunal found all of the allegations to have been substantiated. The Tribunal found that Mr Osili had been dishonest.

The Submissions of [SECOND RESPONDENT] in Mitigation

76. [SECOND RESPONDENT] did not at first accept that he had been in breach of the Solicitors Accounts Rules as he had ceased to be a partner with Mr Osili at the material time. There

had been a difference of opinion between the Respondents as to the date when *[SECOND RESPONDENT]* retired from the partnership. *[SECOND RESPONDENT]* had come to accept that, although he was not a partner at the material time, he was held out as such. He could not deny liability for compliance with the Solicitors Accounts Rules in such a situation. He therefore admitted allegations 1.1, 1.2 and 1.3 on the basis of his liability as a partner.

77. Mr Osili was *[SECOND RESPONDENT]*'s classmate at the University of Lagos and at the Nigerian Law School, Lagos. When they relocated to England they maintained their friendship. On coming to the UK *[SECOND RESPONDENT]* had been called to the English Bar and had later qualified as a solicitor.
78. *[SECOND RESPONDENT]* established his practice, Hiace Solicitors, in August 2002. In 2002 Mr Osili approached him and proposed that they enter into a partnership as they had known each other for a long time. They reached agreement orally that each would be a partner in the other's firm (Hiace and Lords). If things went well, they proposed to merge the two firms into one in which they would be the only partners. The arrangement began on 8th February 2002. *[SECOND RESPONDENT]* notified the Law Society of the partnership.
79. After the partnership was formed, *[SECOND RESPONDENT]*'s practice at Croydon became busy and he found travelling to Newport Pagnell from Croydon, where he lived, very difficult. Mr Osili also had difficulty travelling to Hiace Solicitors in Croydon from Newport Pagnell.
80. Because of the growing pressure of work at Hiace Solicitors and the increasing difficulty of commuting to Buckinghamshire on *[SECOND RESPONDENT]*'s part and the infrequency of Mr Osili's visits to Hiace Solicitors, Croydon, coupled with the fact that *[SECOND RESPONDENT]* was a single parent, they decided to dissolve the partnerships. It was orally agreed that *[SECOND RESPONDENT]* would notify the Law Society that Mr Osili had ceased to be a partner at Hiace and that Mr Osili would notify the Law Society that *[SECOND RESPONDENT]* had ceased to be a partner at Lords.
81. By a letter dated 5th August 2002 *[SECOND RESPONDENT]* notified the Law Society that Mr Osili had ceased to be a partner at Hiace Solicitors. Mr Osili informed *[SECOND RESPONDENT]*, who believed him, that he also sent a letter to the Law Society informing it that *[SECOND RESPONDENT]* had ceased to be a partner at Lords Solicitors with effect from 5th August 2002.
82. From the correspondence and documents received by *[SECOND RESPONDENT]* in November 2004, he came to realise that subsequent to 5th August 2002 Mr Osili continued to hold him out (unbeknown to *[SECOND RESPONDENT]*) as a partner at Lords.
83. *[SECOND RESPONDENT]* did not receive letters addressed to him at Lords Solicitors by the Law Society.
84. *[SECOND RESPONDENT]* had not applied for a review within the time limit because he was not aware of these matters. Mr Osili asserted in his letter to the Law Society that he was applying for review on *[SECOND RESPONDENT]*'s behalf. *[SECOND RESPONDENT]* did not authorise him to do so and he could not have authorised him as he was not aware of the decision to refer for disciplinary proceedings or the matters giving rise to it.
85. *[SECOND RESPONDENT]* was called to the Nigerian Bar in 1991 and was admitted to the

Roll of English Solicitors in 1998. He had never been subject to disciplinary proceedings in either jurisdiction. He was a competent solicitor who made every effort to comply with the rules of practice.

86. The Tribunal was invited to give credit to [*SECOND RESPONDENT*] for his admissions. Although not personally involved in the breaches, he recognised his strict liability as a partner which he was, without his authority, held out to be.
87. In all of the circumstances it was hoped that the Tribunal would be able to show leniency and impose the minimum possible sanction.

The Submissions of Mr Osili in Mitigation

88. At the material time Mr Osili was under a great deal of pressure. He had been extremely foolish. He became too close to the matter of which he had conduct and failed “to see the wood for the trees”.
89. The Tribunal was invited to give due weight to the bundle of excellent testimonials put in in support of Mr Osili. They spoke highly of his competence and integrity.
90. The Tribunal was asked to take the view that Mr Osili’s falling from grace was a single isolated incident. There was no pattern of misconduct.
91. Mr Osili could not put the clock back. He felt shame and he had already been punished to a considerable degree. Mr Osili had told the truth before the Tribunal and had accepted his responsibility.

Costs

92. The parties agreed the quantum of the Law Society’s costs, namely £12,000. The Tribunal was invited to consider an appropriate apportionment between the Respondents.

The Tribunal’s Decision and its Reasons

93. The Tribunal recognised that [*SECOND RESPONDENT*] had very properly admitted the allegations made against him, accepting that he had been held out as a partner in Lords. The Tribunal accepted that his level of culpability was low and that he was a competent and trustworthy solicitor. It considered that the low level of his culpability could be met by a Reprimand and that this should also be reflected in the proportion of the Applicant’s costs that he should bear. The Tribunal ordered him to make a contribution of £2,000 towards the Applicant’s costs.
94. The cases put in respect of each of the Respondents were distinct from each other. The allegations made against Mr Osili were more serious and the case put by the Applicant was one that Mr Osili had been dishonest.
95. The Tribunal found the allegations against Mr Osili to have been substantiated and confirmed that it found his behaviour to have been dishonest.

96. The Tribunal applied the test in Twinsectra -v- Yardley and Others [2002] UKHL 12. The Tribunal did not accept that Mr Osili did not himself know that what he was doing was dishonest. No ordinary members of the solicitors' profession, or indeed of the public, would consider the way in which Mr Osili utilised the mortgage advance monies from TMB and his making application for a mortgage advance on the basis of a very inflated annual income figure to be anything other than dishonest.
97. Having made a finding that Mr Osili acted dishonestly the Tribunal concludes that it can fulfil its duties to protect the public and maintain the good reputation of the solicitor's profession only by making an order that Mr Osili be struck off the Roll of Solicitors.
98. The Tribunal considers that Mr Osili's level of culpability was so much greater than that of *[SECOND RESPONDENT]* that Mr Osili should pay a contribution towards the Applicant's costs of £10,000.

Dated this 27th day of January 2006
On behalf of the Tribunal

A N Spooner
Chairman