No. 9306-2005

IN THE MATTER OF *[RESPONDENT 2 – NAME REDACTED]* and
TIMOTHY CLEMENT JOHN PAYNTER, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Mr A N Spooner
Lady Maxwell-Hyslop

Date of Hearing: 23rd March 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 Iain George Miller solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF that Timothy Clement John Paynter, Hertfordshire, SG6 solicitor and RESPONDENT 2 of Harrogate, Peterborough, PE7 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 against both Respondents were:-

1. that they withdrew money from the firm's client account contrary to Rule 22 of the Solicitors Accounts Rules 1998 ("SARs");

2. that they are guilty of conduct unbefitting a solicitor in that they applied client money for the benefit of third parties and/or other clients without their clients' consent;

3. that they withdrew money from a client account in respect of costs without delivery of a bill or a written intimation of costs contrary to Rule 19(2) of the SARs;

4. that they are guilty of conduct unbefitting a solicitor in that they failed to inform lender clients of material facts in relation to property transactions.

Further allegations were made against Timothy Clement John Paynter alone were that he had been guilty of conduct unbefitting a solicitor in that:-

5. he allowed a Mr Max Kingsley who was the subject of a Section 43 Order by the Tribunal to conduct immigration cases and Judicial Reviews in the firm's name;

6. he allowed the issue of a number of hopeless Judicial Review applications in his firm's name in respect of immigration cases which resulted in wasted costs orders against the firm.

The application was heard at the Court Room 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Iain George Miller appeared as the Applicant, Mr Paynter did not appear and was not represented. RESPONDENT 2 was represented by Mr James Counsell of Counsel instructed by Messrs Murdochs Solicitors.

The evidence before the Tribunal included certain admissions made by both Respondents. Mr Paynter had submitted a statement dated 7th March 2006 in which it was not clear that he did indeed admit all of the allegations. He specified that he particularly did not admit that he had been dishonest. RESPONDENT 2 also denied that he had been dishonest. The Applicant confirmed that the allegations of dishonesty were made against both Respondents in connection with allegation 4 above. Appropriate notices to admit had been served upon the Respondents by the Applicant and he relied upon the documents placed before the Tribunal.

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

The Tribunal Orders that the Respondent, Timothy Clement John Paynter of Hertfordshire, SG6, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,500.00.

The Tribunal Orders that the Respondent, RESPONDENT 2 of Harrogate, Peterborough, PE7, solicitor do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00.

The facts are set out in paragraphs 1 to 24 hereunder:-

1. Mr Paynter, born in 1952, was admitted as a solicitor in 1978. *RESPONDENT 2*, born in 1947, was admitted as a solicitor in 1977. The Respondents practised together since the 1st October 2001 under the name Kings. Mr Paynter was the sole principal of the firm and *RESPONDENT 2* was a salaried partner. The practice of Kings was conducted from two offices, one in Hitchin and the other in Letchworth. Mr Paynter worked from the Hitchin office and *RESPONDENT 2* worked from the Letchworth office. On 3rd November 2004 the Law Society resolved to intervene into the practice of Kings.

2. A Forensic Investigation Officer (the FIO) of the Law Society carried out two inspections at Kings which began respectively on 13th September 2004 and 18th February 2005 (after the intervention) and his Reports dated 11th October 2004 and 18th March 2004 were before the Tribunal.

Allegations 1 and 2

3. The FIO described three similar conveyancing transactions where reports on title had been submitted to the lender client a considerable time before completion was due to take place, causing funds to be advanced by the lender. Prior to completion money held on behalf of the lender client to be utilised to secure the purchaser client's property was used for other purposes and, in particular, was disbursed to third parties.

4. In the case of Mr and Mrs R's purchase of an apartment £144,645.00 was received on 26th January 2004 from Birmingham Midshires. £136,320.00 was paid out to unconnected third parties between the 8th April 2004 and 10th May 2004. When completion of the purchase took place on 16th July 2004 only £8,375.50 stood to credit of the relevant account on the client's ledger. In order to fund completion transfers were made from other unrelated client ledger accounts of another of the firm's clients, Mr J

Allegation 3

5. There were twelve instances where residual credit balances on client ledgers had been transferred to office account against bills of costs which had not been delivered to the client concerned. In one case a refund of stamp duty of £751.49 due to the client was taken by way of costs. The client had paid his costs some four months earlier on completion of his conveyancing matter.

Allegation 4

6. The FIO identified 27 property transactions in which Kings acted for a purchaser and a mortgage lender where the purchase price actually paid was substantially lower than the purchase price notified to the lender and contained in the contract and transfer documents. In all but four cases the amount advanced by the lender exceeded the actual purchase price and the only money to pass on completion was the mortgage advance. In none of those cases was the lender informed of the fact that the actual purchase price was lower than that anticipated by the lender.

7. Mr Paynter, although he claimed to be a litigator and did not have knowledge of conveyancing, was as the sole principal of the practice responsible for the supervision of matters conducted by Miss Q in relation to the client, Mr J.

8. Mr Paynter had signed two reports on title to a mortgage lender in relation to Mr J. *RESPONDENT 2* had also signed reports on title without being fully conversant with the particular conveyancing matter concerned.

Allegations 5 and 6 against Mr Paynter alone

9. These allegations related to the involvement of Mr Paynter with Max Kingsley. Mr Kingsley was the subject of a Section 43 Order made by the Tribunal on 4th June 1996 following his involvement in fraudulent activity. The Tribunal's findings were:-

"The Tribunal take the view that [Mr Kingsley's] dishonesty was very grave indeed and had no hesitation in making the order sought and awarding costs in a fixed sum".

10. At some later stage, Mr Kingsley set up in practice as an immigration advisor under the name of National & International Law Advisory & Co and in April 2001 he applied to the Immigration Services Commission ("the ISC") for registration as an immigration practitioner. Section 84(1) of the Immigration & Asylum Act 1999 provided that no person might provide immigration advice or immigration service unless he was a qualified person. By virtue of Section 84(2) of the Act a person is a qualified person if he is registered with the ISC. The purpose of the section was to ensure that those who provided immigration advice or services were fit and competent to do so.

11. Mr Kingsley's application for registration was rejected by the ISC in October 2001 in part because of the Section 43 Order.

12. On 11th October 2001 Mr Kingsley sought the advice of Mr Paynter who made a note of his telephone conversation with Mr Kingsley. The note included:-

"I have (apparently) The Law Society decision. It happened over 10 years ago and he was neither present nor represented at the hearing, he did not even know that it was (sic). There appears to be a letter on the file somewhere".

13. Mr Kingsley instructed Mr Paynter to appeal against the decision of the ISC. This appeal was made on 24th October 2001.

14. On 30th October 2001 Mr Paynter wrote to Mr Kingsley in the following terms:-

"I remind you that the effect of the refusal, is to say that you cannot practise immigration law until a successful appeal has gone through".

15. Mr Paynter was unsuccessful in his attempt to lift Mr Kingsley's suspension pending a substantive hearing. The appeal was heard on 8th March 2002. When Mr Paynter represented Mr Kingsley. The appeal was refused on the basis that the cumulative effect of all matters taken into account established that Mr Kingsley was not fit or competent to provide immigration advice or immigration services.

16. Mr Paynter was clearly aware of the Section 43 Order and the upholding of the ISC decision in respect of Mr Kingsley, but Mr Paynter allowed Mr Kingsley to continue to conduct his immigration practice through and in the name of Kings.

17. In particular there was an attendance note of a meeting between Mr Kingsley and a Mr Z (who was seeking asylum) on 12th April 2002, only eight days after Mr Kingsley's appeal had been dismissed on the basis that he was not a fit and proper person to carry out immigration work.

18. Mr Z consulted Mr Kingsley on his immigration matter as he had been dissatisfied with his previous solicitors. At the end of an attendance note he made, Mr Kingsley recorded:-

"We agree our costs will be £4,000.00 which he paid. I spoke to Mr Kishore [Counsel] about this case and we agreed to pass him the papers for judicial review. His costs will be £3,200.00 and I have to pass this through Kings for which they will charge £100".

19. There was also a letter on the file dated 5th May 2002 apparently from Mr Kingsley to Mr Z which began:-

"I have agreed to work for you for no charge. This means I will not charge you for the work I undertake".

20. A brief to Counsel in the name of Kings included the statement:-

"We enclose correspondence received from my client's previous solicitors, but should you require any further assistance you can speak to Professor Kingsley of National & International Law & Co on 020 7724 3888".

21. There is evidence on the file (and another file in the name of ZD) that thereafter correspondence with the client and Counsel was conducted in the name of Kingsley, but correspondence with third parties including the Court was conducted in the name of Kings Solicitors, often under the reference MK.

22. There was a letter on the Z matter file dated 9th September 2002 which stated:-

"Enclosed is form N215, which has been signed by Mr Tim Paynter. Can you please complete the same and forward it to the Court. Should you require any assistance please phone Professor Kingsley of National & International Law Advisory & Co Telephone number 020 7724 3888".

23. Claim forms in four Judicial Review proceedings in respect of immigration matters had been completed in a similar format whereby claim forms were handwritten, often claiming pro forma relief. Each was signed by Mr Paynter.

24. All four cases came before Mr Justice Henriques on 24th January 2003 upon an application by the Secretary of State for the Home Department for a wasted costs order against Kings Solicitors. In each case Kings were represented by Mr Kishore of Counsel. The Judge made a wasted costs order in respect of all four matters.

The Submissions of the Applicant

Submissions on the question of Dishonesty

25. The Tribunal was reminded of the test to be applied in establishing whether or not a person had been dishonest. The case of Twinsectra -v- Yardley as was further defined in the Court of Appeal decision in relation to Mr Bultitude, a solicitor who had been struck off the Roll by the Tribunal.

26. In the case of *RESPONDENT 2* the Tribunal had to decide whether *RESPONDENT 2* crossed the line from being guilty of negligent omission whether his act was one of a wilful ignoring of the relevant facts, which had been described by the Courts as "Nelsonian blindness". The case put against Mr Paynter was that he was the sole principal and responsible for everything that went on in the firm. Mr Paynter had admitted some of the allegations in the statement which he had posted to the Tribunal. The allegation of dishonesty against *RESPONDENT 2* and Mr Paynter was in respect of allegation 4 only. Mr Paynter's behaviour had been so serious that he had clearly abdicated all responsibility as a solicitor, had supported and allowed Max Kingsley to continue to act for vulnerable immigration clients even though he was subject to a Section 43 Order by the Tribunal and had been refused recognition by the OISC.

27. The allegations against the Respondents fell into three areas. First there was the misuse of clients' money, secondly there was the failure to disclose material facts to lenders and thirdly there was the improper relationship with Max Kingsley. The third area related only to Mr Paynter. It was very clear that Max Kingsley was a dubious character. The Tribunal was reminded of an attendance note in which Max Kingsley recorded "I have to pass this through Kings." It was obvious that Kings was permitted to be used as a front to allow Max Kingsley to continue to practise, giving what was an illegal practice apparent legitimacy. It appeared that Kings was in receipt of payment for allowing its name to be used in that way. Instructions sent to Counsel apparently from Kings had invited Counsel to raise any queries with Max Kingsley direct. There was no clear picture as to how clients' money was handled and who had control of it.

28. The only proper construction to be placed on the documents was that Mr Paynter allowed Max Kingsley to use the firm to continue his immigration practice. That was a shocking dereliction on the part of Mr Paynter of his duty as a solicitor. It was difficult to formulate any explanation other than that Mr Paynter knew he was acting improperly in allowing Max Kingsley to act in the manner in which he did.

29. There were four matters where a wasted costs order had been made against Kings. All involved Max Kingsley who had made hopeless applications for Judicial Review in immigration matters. The purpose of requiring immigration practitioners to be registered with the OISC was to try to prevent such things from happening. The fact that Mr Paynter had allowed such applications to proceed served only to diminish the good reputation of the solicitors' profession.

30. With regard to the allegations relating to misuse of client money, two different situations arose. The first was where credit balances on client account were removed by billing the client concerned in an amount to bring the balance on that client's ledger to nil. The bills were drawn solely for that purpose and did not represent work undertaken. Perhaps the worst example was the case where over £700 of stamp duty due to be refunded to the client had been taken.

31. The second situation was where mortgage advances had been misused. Money had arrived prior to completion and then used for entirely other purposes. A shortfall of some £300,000 had been established by the FIO. There had been an extremely serious breach of the Solicitors Accounts Rules breaches. Both Respondents accepted responsibility for the Solicitors Accounts Rules, *RESPONDENT 2* in his position as a salaried partner and Mr Paynter in his position as a sole equity partner.

32. In fact there was no real control over client money. Both Respondents denied direct involvement in the purchases concerned. It was however because of lax controls within the firm of Kings that the situation had arisen and in practice there was no direct evidence who authorised these improper transfers. Separate bank accounts for each office of the firm were maintained. Each of the Respondents had access to a computer terminal through which accounting transactions were carried out. The firm's cashier also had such access. The transfers were signed off but the cashier was not able to recall who told her to make the transfers or whether she had decided to make them herself. Both Respondents had been guilty of an abdication of their responsibility to control client money. It was accepted that the more serious level of culpability lay with Mr Paynter who was the sole principal in the practice. *RESPONDENT 2* was a salaried partner, but a solicitor with considerable experience of conveyancing.

33. It was difficult to accept that Mr Paynter had not been aware of the systems in place that allowed the misuse of client money. Even if he was not actively aware there could be no doubt that he turned a blind eye to what was going on. That alone could give rise to a finding of dishonesty. In the case of Bultitude in the Court of Appeal dishonesty was established where a solicitor did not care how client money was being dealt with.

34. It appeared that there were only two possibilities, the first that members of staff concealed their actions from Mr Paynter or secondly that he knew and/or did not care what was going on.

35. If a solicitor is aware of his Solicitors Accounts Rules obligations and as a sole principal allows people to run amok in his office, then that made a case for dishonesty in the sense of Nelsonian blindness.

36. With regard to failures to inform institutional lenders of material facts affecting their decision to lend to purchasing clients, the firm had been involved in a number of transactions where the actual purchase price paid for properties was less than the mortgage advance. The lenders had not been informed of this. This did not happen in one isolated case but was a widespread situation. Most of the work concerned had been carried out by the trainee solicitor, Miss Q. The failure to notify lending clients that properties were being purchased for less than the price anticipated, which would of course have an impact upon the decision to lend, had not been well hidden and it was fairly obvious what was going on. It would have been extremely odd if neither Respondent knew what was going on.

37. Mr Paynter referred to the fact that he had appeared before the Tribunal some three years earlier. The allegations substantiated against him had related to breaches of the Solicitors Accounts Rules where he and another Respondent had accepted that they should have taken more active steps to investigate the accounts of Van King & Co (a predecessor of Kings) rather than rely on verbal assurances by another of the Respondents. They said they had unwittingly inherited Accounts Rules breaches. Mr Paynter could not in such circumstances fail to be fully aware of his duties properly to handle clients' money and comply fully with the provisions of the Solicitors Accounts Rules. He was on the earlier occasion reprimanded and that must have been a chastening experience. The first Respondent in that case had been struck off the Roll

of Solicitors for his involvement with client money and that could not have failed to have been a matter of concern to Mr Paynter. He must have had information that would have caused him to understand that the Solicitors Accounts Rules were being breached in his practice. He knew about the fate of Mr Hastings and had had general warnings from the Law Society as well as that inherent in the Tribunal's earlier decision. The Tribunal had to consider whether Mr Paynter's behaviour entered the territory of conscious impropriety and whether he had crossed the boundary from negligence to a wilful refusal to take full responsibility for compliance with the Solicitors Accounts Rules.

The Submissions of Mr Paynter

38. Mr Paynter accepted that as principal of the firm Kings he was ultimately responsible for the firm.

39. Mr Paynter apologised for not attending the hearing. He intended no disrespect to the Tribunal. He was suffering from poor health.

40. Mr Paynter had little practical experience of conveyancing. In 1999 he had entered into partnership with a solicitor experienced in non-contentious work.

41. In early 2000 that partner expressed an interest in acquiring the practice of Van King, which undertook only non-contentious work. The acquisition of that practice led to the earlier disciplinary proceedings. The partner retired in October 2001.

42. *RESPONDENT 2* was appointed as a salaried partner working from Letchworth with the responsibility for running the conveyancing and non-contentious departments of Kings.

43. In October 2002 Miss Q arrived as a trainee solicitor. She was articled to *RESPONDENT 2*. Miss Q commenced articles at the Hitchin office where she was to learn litigation. Mr Paynter had stressed the importance of keeping notes on files and to think before doing any act. Miss Q began to do conveyancing after about six months.

44. At this point Mr Paynter felt that he was surrounded by people who knew about conveyancing and his views were simply based on ignorance and reticence because he felt that everyone knew more about the subject than he did. Miss Q had recently sat her finals. The Letchworth office was staffed with people who had been doing conveyancing for a substantial period of time. Everyone in the firm had a better knowledge of the subject than Mr Paynter. It was only on new matters that he could introduce procedures with any confidence. One such matter was the introduction and implementation of the Money Laundering Procedures, which was done well before it became compulsory to do so.

45. Mr Paynter relied on *RESPONDENT 2* to manage the conveyancing department and the Letchworth office completely. Matters were not helped when in July 2003 Mr Paynter suffered his first stroke. He attended the offices the day after and had no time off, save to go and see specialists on two occasions. He felt that "bad news" and "problems" were hidden from him. On one occasion he discovered court documents in a drawer that had not been brought to Mr Paynter's attention. Mr Paynter sought

advice from the Professional Purposes Department of the Law Society on this matter, but felt that the advice he was given was of the "yes and no" variety, and no clear guidance had been issued.

46. Mr Paynter was aware that *RESPONDENT 2* supervised the opening of the post in Letchworth but became concerned with the lack of management that was being shown. He thought most of the outgoing post was checked, but found that two members of staff did not have their post or work checked. Mr Paynter had taken this up with *RESPONDENT 2*.

47. Miss Q was sent to Letchworth in about April 2003. This was partly because she wished to do conveyancing and it was beyond Mr Paynter to extend her knowledge and *RESPONDENT 2* could continue to train her, and partly because the firm was just beginning to receive instructions in large conveyancing transactions which Mr Paynter thought could be handled better from Letchworth.

48. Mr Paynter had come to learn that he had been wrong. He heard rumours, but no one would be specific, that Miss Q caused discontent there. At first Mr Paynter put it down to her personal skills. On his periodical inspection of her office he found that she seemed organised. He had requested that "master files" of the various transactions had been opened and completed to an adequate standard. These files were to set out the rationale of various transactions. Mr Paynter checked that Miss Q had the "Council of Mortgage Lenders" web site listed as a "favourite" on her computer and she regularly pointed out changes to the guide. However, her personal skills did not seem to improve. Mr Paynter had sent a warning to Miss Q highlighting the immediate problems, but he had come to discover as a result of the FIO's inspection that there had been greater problems about which he knew nothing.

49. At first the major matter that concerned Mr Paynter was the costs levels generated by the Letchworth office. He made various suggestions to *RESPONDENT 2* but he did not receive substantial replies. Mr Paynter was subsidising the office from funds generated in Hitchin. This in turn drove Mr Paynter to work harder. Up to July 2003 he was working some 18 hours for a six day week. Apart from that strain he encountered another, namely that the practice that started with an annual turnover of about £50,000 had grown to have a turnover in 2003 of nearly £500,000. The size of the expansion caused Mr Paynter to be concerned with the rapid growth particularly as the majority of that came from conveyancing transactions, a specialisation about which he knew little.

50. Mr Paynter first met Max Kingsley through his erstwhile partner. They had been neighbours in a suite of offices in London. Mr Paynter had been keen to foster the relationship as Mr Kingsley introduced clients to the firm in connection with general litigation with which Mr Kingsley was unable to deal. Mr Paynter was aware that Mr Kingsley was dealing in immigration law and he seemed well versed in the subject. In addition to this he spoke a number of middle eastern languages and his staff spoke a variety of Slavonic languages. Mr Paynter became interested in immigration law, not so much as a subject but the chance to broaden his education by reading the Amnesty International and other reports.

51. Mr Paynter had been aware that when Max Kingsley's application to join OISC was turned down it meant that he could no longer practise immigration law. Mr Paynter

made that matter quite clear to him. Nevertheless Mr Paynter agreed to finish off those files that he had started without charge. Mr Paynter attended Mr Kingsley's offices every Saturday to work on those files in conjunction with his staff who translated for him. So far as the wasted costs orders were concerned, Mr Paynter misunderstood the law. In Judicial Review applications the court did have a discretion to allow the application out of time. It was not made clear to Mr Paynter that that discretion was rarely exercised. A wasted costs order was made against him and for that he apologised and was ashamed. The references to Mr Kingsley were simply a recognition of the fact that he was more aware of the background of the cases. He was not authorised to instruct Counsel.

52. So far as the involvement of Peter Hastings was concerned, after he was suspended he was authorised to work at the Hitchin office under Mr Paynter's supervision. He was not paid by Kings and he did not attend the office on a regular basis. He was looking to start up other businesses and his time was devoted to that end. In particular he gave lectures on "buy to rent" schemes. Mr Paynter was at a loss to understand how mortgage instructions came, on one occasion, to the firm in Mr Hastings's name. Mr Hastings did introduce much work to the firm from the work generated by his lectures. He became part of various syndicates, typically a mortgage broker, a property finder and himself. Mr Paynter could only speculate that the instructions came because the mortgage broker in the syndicate became confused with the names. When Mr Hastings was struck off, he no longer attended the offices save to give instructions on the matters he introduced.

53. At the time of making his statement Mr Paynter was an undischarged bankrupt. He was not working.

The Submissions of *RESPONDENT 2*

54. *RESPONDENT 2* admitted the allegations including the failure to inform lender clients of material facts in relation to property transactions. *RESPONDENT 2* had been responsible by virtue of his position as a principal within the practice, as a salaried partner, but he had not been culpable in any deliberate or wilful deceit of any of the lenders.

55. *RESPONDENT 2* had a wealth of experience in non-contentious matters, including conveyancing having practised with a number of firms from 1975 until March 2005 and from then until the date of the hearing he had been employed as a locum solicitor in local government.

56. *RESPONDENT 2* had served his local community. He had undertaken work for the Citizens Advice Bureau. He had been both clerk to a parish council and a local authority councillor including being deputy mayor and mayor between 1993 and 1995. He had also been a school governor and chairman and treasurer of a charity.

57. In 2001 *RESPONDENT 2* had been employed in a firm in Leeds which he described as a "conveyancing machine" offering very little job satisfaction. An employment agency introduced *RESPONDENT 2* to Kings. There were then two partners, one of whom was Mr Paynter.

58. *RESPONDENT 2* was offered employment in a letter dated 22nd August 2001 and a contract of employment dated 1st October 2001. The offer of employment was on the express understanding that *RESPONDENT 2* accepted salaried partnership status so as to fulfil the requirements of lenders who would not instruct a sole principal. Acceptance of the offer enabled *RESPONDENT 2* to achieve a change in employment, a decision he had come to regret. His decision to join Kings was based on an understanding of trust and good faith between himself and Mr Paynter. *RESPONDENT 2* was given no indication of any problems within the firm. *RESPONDENT 2* suspected no wrongdoing and was comforted by a clear s. 34 Accountant's Report shortly after his employment commenced. He had been introduced to Kings through a reputable agency. He accepted that he could have made more careful enquiries.

59. Although he was a salaried partner *RESPONDENT 2* believed that he was merely an employee. He was comforted by the fact that he would not have actual responsibility for matters such as accounts and the day to day running of the practice.

60. Miss Q in due course worked at the Letchworth office. Mr Paynter employed a team of young people to assist her with work being introduced by Peter Hastings, one of whom was related to Mr Hastings. *RESPONDENT 2* advised against this arrangement and had urged Mr Paynter to employ an experienced conveyancer to work alongside Miss Q.

61. *RESPONDENT 2* found working with Miss Q extremely difficult. She was abusive, often used offensive language and on many occasions, with the support of Mr Paynter, dictated office practice. Effectively *RESPONDENT 2* had no control over Miss Q and any authority he might have had was completely undermined. After a while *RESPONDENT 2* realised that Miss Q's files were problematic in that, for example, she had not been notifying lender clients of discounts and incentives. *RESPONDENT 2* insisted that these matters were of paramount importance and advised Mr Paynter of his concerns. Mr Paynter said that Miss Q had changed her practice and these errors had been rectified.

62. As a consequence of his concerns *RESPONDENT 2* refused to sanction telegraphic transfers, sign cheques and certificates of title unless he had the file to hand. He believed that he had solved this particular problem but was alerted when no transactions were referred to him. On enquiry of the cashier he discovered that Mr Paynter had taken direct responsibility for those tasks. *RESPONDENT 2* accepted that he should then have been more resolute and ensured there was full compliance in order to protect the interests of the lender client.

63. If it had been within his remit *RESPONDENT 2* would have instituted disciplinary proceedings against Miss Q. He did not believe that her behaviour and standard of work made her a suitable person to be a solicitor. He would not certify her suitability to be a solicitor.

64. The Tribunal's attention was drawn to written communications between *RESPONDENT 2* and Mr Paynter. It was clear that *RESPONDENT 2* had no idea what was happening with particular matters that were being controlled by Miss Q. Owing to the deceit of those he was working with *RESPONDENT 2* was unable to discover the status of a particular transaction.

65. *RESPONDENT 2* was unaware of the breaches of the Solicitors Accounts Rules until 1st October 2004 when a meeting with the FIO took place. *RESPONDENT 2* had not had conduct of the relevant transactions. He did not know who had authorised them. Mr Paynter had been the supervising solicitor.

66. Where bills of costs had been raised in order to extinguish residual balances on individual client ledgers, the fee earners were responsible for dealing fairly and honestly with their individual clients. *RESPONDENT 2* accepted responsibility for the breaches in his capacity as a salaried partner. Of the 12 examples identified, *RESPONDENT 2* acted in only two cases. It had never been *RESPONDENT 2*'s practice to raise a bill of costs in order to extinguish a residual balance. Where monies were due to clients that could not be traced he would normally transfer the balance to the Solicitors Benevolent Fund. In all other cases any residue would be returned to the client in the normal way.

67. *RESPONDENT 2* did not know who authorised or made such transfers.

68. With regard to the failures to provide proper information to mortgage lenders, it was not until February 2004 that *RESPONDENT 2* became aware that Mr Paynter in his supervision of Miss Q was allowing transactions to proceed where incentives were not being reported to the lenders. *RESPONDENT 2* trusted Mr Paynter to make sure that Miss Q was honest in her dealings with lender clients. *RESPONDENT 2* had no direct dealings with any of those matters as far as he could remember. As before *RESPONDENT 2* accepted his liability as a partner, but he was not culpable in the wrongdoing.

69. There were three cases where *RESPONDENT 2* signed certificates of title. He had done so in good faith, trusting that Miss Q had conducted these matters honestly. He acknowledged that he did not make full enquiries about the files to ascertain that the information within those certificates was accurate.

70. In relation to the B/P files, it was correct that Kings acted for vendor, purchaser and lender. *RESPONDENT 2* acted for Mrs B, a solicitor, who was the vendor in this transaction. Mr Paynter at the Hitchin office acted for the purchaser, Mrs P and the lender, Birmingham Midshires. In those circumstances *RESPONDENT 2* relied upon and trusted Mr Paynter to inform Birmingham Midshires that Kings were acting for all parties.

71. It is also true that *RESPONDENT 2* signed a certificate of title showing the purchase price to be £90,000. He must have signed that certificate in much the same way as many others at that time. He would have signed it at the Hitchin office or it was brought over to him at Letchworth, probably whilst Mr Paynter was absent. *RESPONDENT 2* admitted that he signed without paying proper and considered attention to its contents. At that time *RESPONDENT 2* was unaware that Mr Paynter was allowing transactions to proceed without reporting discounts to lenders. *RESPONDENT 2* had written to the Hitchin office in the knowledge that the only funds to be transferred on the purchase represented the redemption figure of Mrs B's existing mortgage to Bristol and West, a figure of £40,960.84. He realised that he should have checked the details within the certificate of title but owing to the lapse of time and the pressure of work he simply did not.

72. *RESPONDENT 2* intended no dishonesty. Had he been aware of the discounted mortgage he would have insisted that the incentive be reported to Birmingham Midshires. He had been under pressure to complete this matter.

73. It was only after he started his employment on 1st October 2001 with Kings that *RESPONDENT 2* discovered the professional history of Mr Hastings, Mr Paynter and the former partner. *RESPONDENT 2* had come to accept that the past events should have put him on notice to be more vigilant in his role of salaried partner. He recognised that his priority was his individual workload and consequently his partnership responsibilities were neglected. He had a large volume of work and was under enormous pressure especially after a conveyancer left the practice in November 2002 without being replaced. *RESPONDENT 2* had always found conveyancing to be extremely stressful and intensive.

74. *RESPONDENT 2*, like other partners, relied on the honesty and integrity of the fee earner who asked for a certificate of title to be signed.

75. In about May 2004 *RESPONDENT 2*'s assistant, who had been with Kings for a number of years, became long-term sick. *RESPONDENT 2* asked Mr Paynter for assistance which was not forthcoming, and he also suggested a locum to assist in clearing the backlog of work from Miss Q's department in respect of the unregistered titles that had accrued. Mr Paynter was probably aware that serious problems were on the horizon, and he had sought to divert responsibility for them.

76. *RESPONDENT 2* had had a number of concerns with Mr Paynter in particular where money had been received from lenders but completions had not taken place and where he had been asked to transfer money but on checking the ledger he had discovered that no money was available.

77. He had spoken with a client on the telephone and she had been astonished that there was no money on client account. She had been buying property in Spain. Her authority to make payments to third parties had been limited to the point at which the balance on her client account was over £300,000. After other transactions had been made *RESPONDENT 2* had felt obliged to advise the client to see another solicitor.

78. That gave some insight into the difficulties *RESPONDENT 2* was facing and the efforts he made after discovering the practices of Mr Paynter and Miss Q.

79. *RESPONDENT 2* had always been an honest, decent, hard working solicitor. The Tribunal was invited to give due weight to a number of testimonials to support that view. *RESPONDENT 2* recognised that he had been naive in the business arrangements that existed between himself and Mr Paynter and the impact that had on his professional responsibilities as a partner.

80. *RESPONDENT 2* recognised that he temporarily fell below the standard that was required of him as a solicitor in partnership. Such an event would never happen again. *RESPONDENT 2* had suffered both professionally (having suffered the distress of intervention, conditions on his Practising Certificate which were unlikely to be lifted and a Tribunal hearing) and personally. He was made bankrupt on 4th January 2006. The indemnity insurers were the petitioning creditors and claimed the

"run off" premium of nearly £150,000. As a result *RESPONDENT 2* and his wife would suffer hardship for years.

81. At the date of the hearing *RESPONDENT 2* was employed by a local authority, but that position was due to terminate at the end of April 2006. It was extremely difficult to find alternative employment. *RESPONDENT 2* was unable to drive owing to his poor eyesight and his age was against him.

82. *RESPONDENT 2* found himself in an unexpected situation. It was unjust that he had had to admit to allegations relating to client monies when those who were truly responsible would not be present at the hearing.

83. *RESPONDENT 2* had always sought to uphold the high principles of the solicitors' profession and very much regretted that he permitted others to diminish the profession's good reputation. The Tribunal was invited to consider the imposition of a financial sanction, bearing in mind *RESPONDENT 2*'s strained financial circumstances.

Previous Findings made against Mr Paynter

84. Following a hearing on 13th February 2003 in which Mr Paynter was one of a number of Respondents, including Peter Daniel Hastings, when an allegation made against him and his former partner that they had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:-

(a) That they practised as solicitors whilst there was a cash shortage on their firm's client account of which they should have been aware;

(b) That they drew monies from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules or alternatively contrary to Rule 22 of the Solicitors Accounts Rules 1998.

The Tribunal in its Findings dated 17th April 2003 said in relation to Mr Paynter and his former partner:-

> "they had accepted that they should have taken more active steps to investigate the accounts of Van King & Co rather than relying on verbal assurances by the First Respondent. This had been a commercial error on the part of the Second and Third Respondents for which they had paid a heavy price. They had accepted their responsibility for the Accounts Rule breaches which they had unwittingly inherited. The Tribunal considered that the error they had made, despite being an omission that no prudent solicitor would have made, was only marginally conduct unbefitting a solicitor and the Tribunal considered that in the case of the Second and Third Respondents the appropriate penalty was a reprimand together with the agreed proportion of costs."

The Findings of the Tribunal

85. The Tribunal found all of the allegations proved against both of the Respondents. The Tribunal further found that, applying the tests set out in Twinsectra -v- Yardley and having regard to the case of Bultitude, the Tribunal was satisfied that in relation to allegation 4 Mr Paynter had been dishonest. He was the sole principal where the activities which were the subject matter of the allegations had been going on. He was either aware of those activities or he turned a blind eye to them. To behave in either of those two ways amounted to dishonesty.

86. So far as *RESPONDENT 2* was concerned, he had admitted the facts and the Tribunal found the allegations substantiated against him. The Tribunal was not, however, satisfied that the Applicant had proved to the necessary high standard that *RESPONDENT 2* acted dishonestly. The Tribunal accepted that he had been foolish and not as robust as perhaps he might have been but it did recognise that he was, although formally a salaried partner, an employee of Mr Paynter and had been placed in a very difficult position by Miss Q and those employed to assist her. He himself had come to regret that he did not take more stringent action than he did but the Tribunal accepted that he trusted his principal and those around him as he expected them to trust him and he had not been aware of the extent of the problems at the firm.

Costs

87. The Applicant indicated that the costs of the Forensic Investigation Officer would be in the region of £6,900 and his own costs, rounded down, would be in the region of £10,000. The Applicant had discussed the question of costs with those representing *RESPONDENT 2* and *RESPONDENT 2* had accepted his liability for costs. The Applicant invited the Tribunal to fix the costs and allocate the sums payable between the two Respondents. The Applicant indicated that he considered that a reasonable apportionment of the total costs of approximately £17,000 would be £12,000 to be paid by Mr Paynter and £5,000 to be paid by *RESPONDENT 2*.

The position with regard to the Law Society's Compensation Fund

88. The Respondents' indemnity insurer had declined cover. Claims from the various lender clients would fall on the Law Society's Compensation Fund. Although it was accepted that there would be monies available in the firm's client account, claims on the Compensation Fund had reached £3.2million. £633,000 had been paid out so far. There was likely to be a substantial loss to the Compensation Fund.

***RESPONDENT 2*'s Mitigation**

89. The effect of working at Kings had proved disastrous for *RESPONDENT 2*. He had been qualified as a solicitor for nearly 30 years and hitherto had enjoyed an unblemished career. He had achieved a great deal both within and outside the law.

90. At the time of the hearing *RESPONDENT 2* was working and held a Practising Certificate subject to the conditions that he be supervised. His current employers spoke highly of him. *RESPONDENT 2* had been entirely open with his employers about his disciplinary position.

91. As a result of what had happened and because he was liable in his capacity as a partner at the firm, *RESPONDENT 2* had been adjudicated bankrupt on 4th January

2006. He had found himself in very considerable debt as a result of the repudiation of the firm's insurers. He considered himself lucky to have employment although his contract would come to an end in April 2006. He hoped that it might be continued.

92. *RESPONDENT 2* was not helped by his physical handicap of having very poor eyesight.

93. The Tribunal was invited to have due regard to the excellent testimonials written in support of *RESPONDENT 2*.

94. The Tribunal was invited to consider that the appropriate sanction to impose upon *RESPONDENT 2* was one of a fine. The Tribunal had found *RESPONDENT 2* not to have been dishonest and there was no need to impose the ultimate sanction nor was there a need to suspend *RESPONDENT 2* from practice.

95. At the time when the subject matter of the allegations arose *RESPONDENT 2* had only recently joined the firm of Kings. He had been deceived by those with whom he worked into thinking that all was well although perhaps he had been too trusting. *RESPONDENT 2* had already paid a very heavy price both in personal and professional terms. He would always have the professional and personal stigma of the disciplinary proceedings with him for the rest of his life.

96. Details of *RESPONDENT 2*'s financial circumstances were handed up at the hearing and the Tribunal was invited to consider three reports of sanctions imposed upon solicitors by the Tribunal set out in the Law Society's Gazette where financial sanctions had been imposed where a solicitor found him or herself in circumstances broadly similar to those of *RESPONDENT 2*.

97. It was hoped that any financial penalty could be kept to a minimum and in particular it was appropriate that a financial sanction should be imposed because *RESPONDENT 2* had not been guilty of any deliberate dishonesty. At the time he had been relatively new to the firm. He was a salaried partner and had no input into the administration of the firm. He had little control of those around him. *RESPONDENT 2* had been deceived by those around him. The Tribunal was invited to give *RESPONDENT 2* credit for the fact that he had co-operated fully with the Law Society's investigation and he had admitted the allegations made against him at the earliest possible opportunity. *RESPONDENT 2* enjoyed a very good reputation both within and outside the solicitors' profession.

98. He accepted that the conduct of which he had been found guilty reflected badly on the solicitors' profession but the Tribunal was invited to give due weight to the fact that much of what *RESPONDENT 2* had done in the past had had the opposite effect and served greatly to enhance the reputation of the profession. The Tribunal was invited also to take into account the devastating effect both on the Respondent's professional and personal life of the intervention into the practice of Kings and the disciplinary proceedings.

The Tribunal's Decision and its Reasons

99. The Tribunal considered that Mr Paynter had abdicated all responsibility as a solicitor. He had encouraged persons, who included Max Kingsley and Peter

Hastings, to maintain connections with the firm. He had allowed clients' money to be used dishonestly and inappropriately, and he had not properly controlled his staff and had failed to ensure that institutional lending clients were properly protected. Mr Paynter's behaviour had been dishonest. Even if he had not been fully aware of all that had been going on, he had turned a blind eye to it. In order to protect the public and to preserve the good reputation of the solicitors' profession the Tribunal concluded that it would be right to order that Mr Paynter be struck off the Roll of Solicitors.

100. The Tribunal accepted the arguments put forward on behalf of *RESPONDENT 2* that in his particular circumstances a financial sanction would be appropriate. The Tribunal did indeed give him credit for all the factors so ably argued in his mitigation but had set against that the fact that he was a solicitor of many years' experience who, although not personally culpable, had not been as robust and careful as he might have been. In all of the circumstances the Tribunal considered that his failures could be met by a fine of £5,000.

100. With regard to the question of costs the Tribunal concluded that it would save time and further expense if it summarily fixed the Applicant's costs, to include the costs of the Forensic Investigation Officer of the Law Society at £15,000. There could be no doubt that Mr Paynter was the prime mover in the whole affair and he should pay by far the greater proportion of the costs. *RESPONDENT 2* had a very much smaller responsibility for what had happened. The Tribunal considered it both right and proportionate that Mr Paynter should bear £12,500 of the fixed costs and *RESPONDENT 2* should bear £2,500 of the fixed costs.

Dated this 25th day of April 2006
On behalf of the Tribunal

J R C Clitheroe
Chairman