No. 9342-2005

IN THE MATTER OF LLOYD CHUKWUMA DILLON ANEKE,
RESPONDENT 2 – NAME REDACTED and
RESPONDENT 3 – NAME REDACTED, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Miss T Cullen
Mrs V Murray-Chandra

Date of Hearing: 19th June 2006 and 14th August 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 Jonathan Richard Goodwin, solicitor advocate and partner in the firm of Jonathan Goodwin Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 9th September 2005 that Lloyd Chukwuma Dillon Aneke of Stanmore, Middlesex, HA7, RESPONDENT 2 of Bushey, Watford, Herts, WD23 and RESPONDENT 3 of London, N1 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 against the Respondents were that they had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:

(a) Allegations against the First Respondent

(i) Contrary to Rule 6 of the Solicitors Accounts Rules 1998 ('The Rules'), he failed to ensure compliance with the Rules.

(ii) Contrary to Rule 7 of 'The Rules' he failed to remedy breaches promptly upon discovery.

(iii) That he withdrew monies from client account other than as permitted by Rule 22 (1) of 'The Rules'.

(iv) [withdrawn with the consent of the Tribunal]

(v) That he utilised clients' funds for the benefit of other clients.

(vi) That he utilised clients' funds for his own purpose.

(vii) That he failed to keep accounts properly written up in accordance with Rule 32(1) and (4) of 'The Rules'.

(viii) That contrary to Rule 32 (7) of 'The Rules' he failed to carry out the required reconciliations.

(ix) That he misappropriated clients' funds, which for the avoidance of doubt was an allegation of dishonesty.

(x) Failed to make any adequate enquiries as to the provenance of substantial sums of money paid into his client bank account.

(xi) Failed to obtain satisfactory evidence of identity in respect of a client, for whom his firm was acting, contrary to the Money Laundering Regulations 2003.

(b) <u>Allegations against the Second Respondent</u>

(i) Contrary to Rule 6 of the Solicitors Accounts Rules 1998 ('The Rules'), he failed to ensure compliance with the Rules.

(ii) Contrary to Rule 7 of 'The Rules' he failed to remedy breaches promptly upon discovery.

(iii) That he withdrew monies from client account other than as permitted by Rule 22 (1) of 'The Rules'.

(iv) [withdrawn with the consent of the Tribunal]

(v) That he utilised clients' funds for the benefit of other clients.

(vi) That he utilised clients' funds for his own purpose.

(vii) That he failed to keep accounts properly written up in accordance with Rule 32 (1) and (4) of 'The Rules'.

(viii) That contrary to Rule 32 (7) of 'The Rules' he failed to carry out the required reconciliations.

(ix) Failed to make any adequate enquiries as to the provenance of substantial sums of money paid into his client bank account.

(x) Failed to obtain satisfactory evidence of identity in respect of a client, for whom his firm was acting, contrary to the Money Laundering Regulations 2003.

(c) Allegation against the Third Respondent

(i) That contrary to Rule 7 of 'The Rules' he failed to remedy breaches promptly upon discovery.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th June and 14th August 2006 when Jonathan Richard Goodwin appeared as the Applicant and the First Respondent was represented by Mr Knight of Counsel, the Second Respondent appeared in person and the Third Respondent was represented by Mr Hyde of Counsel.

The evidence before the Tribunal included the admissions of the First Respondent to allegations (a) (i), (ii), (iii), (vii) and (viii). On the basis of the First Respondent's admission to allegation (a) (iii) the Applicant agreed, with the consent of the Tribunal, not to proceed with allegation (a) (iv) so that in relation to (a) (iii) the Applicant would rely additionally on paragraphs 14 to 15, 20 to 21 and 25 to 26 of the Investigation Report. The Tribunal heard oral evidence from Mr Brumwell and from the three Respondents. A bundle of documents relating to bank transfers was handed to the Tribunal during the hearing on behalf of the First Respondent ("LCDA1"). A bundle of bank statements was handed to the Tribunal during the hearing on behalf of the Third Respondent ("OCI").

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

The Tribunal Orders that the Respondent, Lloyd Chukwuma Dillon Aneke of Stanmore, Middlesex, HA7, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay a contribution to the costs of and incidental to this application and enquiry fixed in the sum of £19,800.

The Tribunal Orders that RESPONDENT 2, of Bushey, Watford, Herts, WD23, solicitor, do pay a fine of £5,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £2,200.

The Facts are set out in paragraphs 1 to 10 hereunder:

1. The First Respondent, born in 1961 was admitted as a solicitor in 1997. The Second Respondent, born in 1935 was admitted as a solicitor in 1960. The Third Respondent, born in 1961 was admitted as a solicitor in 2000. The names of all three Respondents remained on The Roll of Solicitors.

2. The allegations related to the practice under the style of Dillons & Co at 18 Harrow Road, Wembley, Middlesex, HA9 6PG where the First Respondent had practised on his own account until the Second Respondent became a partner on 1st October 2004, previously having been employed by the First Respondent as an assistant solicitor in the period 3rd March 2003 to 30th September 2004. It was alleged that the Third

Respondent, who had his own practice, was briefly a partner in Dillons & Co of Wembley, which the Third Respondent denied.

3. On 6th June 2005 the Adjudication Panel of The Law Society resolved to intervene into Dillons & Co and to refer the conduct of the Respondents to the Tribunal.

Accounts Rules breaches

4. The Forensic Investigation Unit of The Law Society carried out an inspection of the books of account of Dillons & Co, commencing 14th February 2005 and produced a Report dated 27th April 2005. The Report noted the matters set out below.

5. The books of account did not comply with the Solicitors Accounts Rules 1998 and there was a cash shortage in the sum of £178,997.22 as at 31st January 2005. The shortage arose as a consequence of:

(i)	Debit balances – overpayment	£78,464.87
(ii)	Unallocated payments out of client bank account	£39,642.02
(iii)	Incorrect transfers from client to office bank account	£38,129.70
(iv)	Book difference - shortage	£23,818.18
(v)	Unallocated receipt in client bank account	£1,057.55
		£178,997.22

6. The First Respondent agreed the cash shortage in the above mentioned sum which was partially rectified by receipt of £9,100.00 on 18th February 2005 from the seller of a property who had been overpaid. The balance of the cash shortage in the sum of £169,897.22 remained outstanding.

7. The First Respondent alone was mandated to operate the bank accounts. In addition to the overpayments particularised in the Report the Investigation Officer ascertained that in the period 15th January 2004 to 5th January 2005, twenty payments had been made from client bank account, varying in amounts between £2.50 and £7,84048, totalling £39,642.02, which had not been allocated to any client ledger account in the client ledger. The details on the cheque stubs were considered insufficient for the client matter to be identified, and it was of concern that no further efforts were made to allocate the payments correctly. At the time the First Respondent offered no explanation as to why the above mentioned payments had not been identified. The payments were particularised in a schedule exhibited at Appendix 2 of to the Report.

8. Further, the Investigation Officer ascertained that in the period from 15th January 2004 to 28th January 2005, thirty two transfers had been made from client to office bank account, varying in amount between £129.83 and £4,000 totalling £38,129.70 which had not been allocated to any client ledger account in the client ledger. The First Respondent offered no explanation as to why the transfers had not been identified and correctly accounted for in the client ledger. The transfers were particularised in a schedule exhibited at Appendix 3 to the Report.

9. By letter dated 12th May 2005 The Law Society wrote to the Respondents enclosing a copy of the Investigating Officer's Report and seeking their explanation. The First Respondent replied by letter dated 20th May 2005 stating that his response was made on behalf of all Respondents. The First Respondent indicated that in July 2004 the firm's offices had been flooded and the computers had been damaged as evidenced by water stains on the manual ledgers. The First Respondent said that all printed reconciliations and cashbooks had been lost and the bookkeeper had had to reconstruct all the ledgers starting from the balances on the last report. The Investigation Officer had been shown the water stained manual ledgers. The First Respondent provided further representations by letter dated 2nd June 2005. The Third Respondent replied on 1st June 2005 stating that he knew nothing about the issues raised, that he had resigned his partnership of the practice with immediate effect and that he had had no knowledge of the investigation or the issues investigated. The Second Respondent replied by letter dated 12th June 2005, after the matter had been considered by the Adjudication Panel on 6th June 2005. The Second Respondent stated that he had been a junior salaried partner at Dillons & Co and had never been responsible for the system of accounting in any way or at any time.

Allegations (a) (x) & (xi) and (b) (ix) & (x)

10. The Report stated that the Second Respondent acted for D S in the sale of a property which completed on 3rd February 2005. The Second Respondent has denied that this was his matter. On the 27th January £120,000 was received into the firm's client bank account from A D Law in full and final settlement of the sale of the property. The file contained no details or note as to who the purchaser was, there was no sale agreement or copy of one on the file, and no identity check had been done on the client. The Title Deeds to the property were found in the file, despite the transaction being the sale of the said property. The Investigation Officer asked the First Respondent if he considered the lack of details on the file as strange or unusual to which he replied that he believed there was nothing illegal about the transaction. He added that he had worked closely with Messrs A D Law on other matters and that the price had been agreed. The Investigation Officer asked the First Respondent if he had met DS to which he replied that DS had come to the firm a couple of times but he had not met him personally.

The Submissions of the Applicant

11. In accordance with the Tribunal's directions of 20th April 2006 the Applicant had served the intervening solicitors' Best List of documents and had extended an invitation to the First Respondent to inspect them. The Applicant submitted he had complied with the disclosure directions.

12. The Intervention Agent had identified shortages currently totalling £196,636.13. This information had been served in accordance with the Tribunal's directions but the Applicant did not place reliance on it rather he relied on the Forensic Investigation Unit Report. Similarly the Applicant had supplied copied of claims on the Compensation Fund in respect of each individual Respondent but did not seek to place reliance on them.

13. The Applicant submitted that on 21st February 2005 the Third Respondent was a partner in the existing practice of Dillons & Co. The Third Respondent denied this and it was a matter for determination by the Tribunal.

14. The Tribunal was referred to the letter from The Law Society dated 12th May 2005 which clearly showed that The Law Society had information that the Third Respondent had joined the partnership with the First and Second Respondents on 21st February 2005. On the First Respondent's letter to The Law Society of 20th May 2005 the Third Respondent was shown on the letterhead as a partner with the First and Second Respondents. In the documentation accompanying that letter, prepared by the First Respondent, it was said that:

> "On February 21st 2005 Dillons & Co Solicitors formed a new three solicitor partnership".

In his letter of 1st June 2005 the Third Respondent referred to having resigned his partnership. It was not possible to resign from a partnership if one was not a partner in the first place. It was accepted that the Third Respondent was not a partner at the time the breaches occurred but once he became a partner he had an obligation to take corrective action regarding identified breaches. The Third Respondent should have satisfied himself as to the accounting position before becoming a partner. The Third Respondent had written to the Applicant on 24th February 2006 stating that he was not disputing whether a shortfall existed or not.

15. All partners were responsible for ensuring compliance with the Accounts Rules. If the Tribunal was satisfied that the Third Respondent had been a partner in the firm for a limited time then the Third Respondent's obligation to rectify breaches of the Accounts Rules arose. The Applicant referred the Tribunal to his letter of response to the Third Respondent dated 8th March 2006 and to Rules 6 and 7 of the Solicitors Accounts Rules 1998.

16. The Applicant accepted that only the First Respondent was mandated to operate the bank account but submitted that the Second and Third Respondent still had obligations.

17. The unallocated payments from client bank account were one of the reasons for the allegation of dishonesty against the First Respondent. The Tribunal would need to be satisfied so as to be sure of that dishonesty applying the combined objective and subjective tests set out in the case of Twinsectra-v-Yardley. In the submission of the Applicant the Tribunal could be satisfied in respect of both aspects of the test. The Tribunal was referred to the case of Bolton-v-The Law Society and the requirements that solicitors act with trustworthiness. The Rules were there to ensure the separation of solicitor and client account and to ensure the integrity of the client account. Solicitors were under a heavy burden even in the absence of dishonesty to comply with the Accounts Rules and the Tribunal was referred in that context to the case of Weston-v-The Law Society.

18. If it were to be said on behalf of the First Respondent that there had been no intent permanently to deprive then the Applicant submitted that disciplinary proceedings were not criminal proceedings. This had been raised as a specific point in the case of

Bultitude-v-The Law Society [2004]EWCA Civ 1853 when Kennedy L J had rejected the argument that there had been no intention permanently to deprive.

19. The Second Respondent was not a signatory to the accounts and could not have effected the transfers. The Tribunal was referred to the Second Respondent's letter to the Applicant of 18th January 2006 in which he wrote:

> "I reiterate that at the date of the intervention, namely 10th June 2005, I was not a partner in the true sense of the word. I was made a partner in name only so that Mr Aneke could put my name on the notepaper to ensure that there were two or more partners in the firm and thereby he would not lose the mortgage business and building society work together with more business. I had no authority within the firm whatsoever."

With partnership came responsibility. If the Second Respondent had only become a partner to help the First Respondent maintain membership of panels, that might be a matter of concern to the Tribunal, but whatever his reason for becoming a partner the Second Respondent had obligations in that role.

20. In relation to allegation (a) (xi) and (b) (x) it was incumbent on the First and Second Respondents to carry out identity checks. In view of the lack of documentation the receipt of £120,000.00 should have given rise to concern.

The submissions on behalf of the Third Respondent in relation to disclosure

21. It was submitted on behalf of the Third Respondent that the Tribunal's directions in respect of disclosure had not been complied with. The Third Respondent in response to the Applicant's invitation had attended the intervening solicitors to inspect and was told that they had no post intervention documentation. The list of documents in the intervening solicitors' Best List were not the documents contained in the Tribunal's order. The Third Respondent needed to know the real position regarding items owed to the Compensation Fund and debit balances. The Third Respondent was not applying for an adjournment in view of the First Respondent's admissions but it was submitted that the disclosure was inadequate to establish the real position.

The submissions of the Applicant in response

22. The List of documents had been lodged in early May and had been prepared by the Intervening Agent. The Applicant had earlier made reference to the Best List. The Agent's Report showed that the deficiency might have been higher than showed by the inspection but the Applicant had stated that he did not rely on that. There was nothing to show that any steps had been taken to pay the shortage. Nothing had been paid beyond the £9,000.00 (paragraph 6 above). Once the Intervening Agents had achieved all they could the papers had been sent to the post-interventions archives.

The decision of the Tribunal in relation to disclosure

23. Having considered the documents lodged by the Applicant and the submissions, the Tribunal was satisfied that the Applicant had complied with the earlier directions of the Tribunal in relation to disclosure.

Oral evidence of Mr James Brumwell

24. Mr Brumwell, a chartered accountant employed by The Law Society, said that the contents of his report were to true to the best of his knowledge and belief.

25. The books had not been in compliance with the Rules. The total liabilities shown on client matter listings exceeded the cash available to meet them.

26. Mr Brumwell's best attempt to identify the unallocated payments was contained in the appendices. The First Respondent had been unable to tell Mr Brumwell to what the unallocated payments related. The First Respondent and his accountant had made no reference to a flood. Mr Brumwell accepted however that he could have forgotten if the flood was mentioned. It was correct that the First Respondent had showed him documents with water marks.

27. The First Respondent had had no explanation for the incorrect transfers from client account.

28. In relation to the matter of DS nothing on the file or ledger sheet said that the Second Respondent had dealt with the matter but it was possible that the bank transfer was in the Second Respondent's writing. It had not been possible clearly to identify the fee earner as the file was very sparse. There were no details of the price or purchaser. The only entries on the ledger card were the receipt of £120,000.00. There was no evidence of identity checks having been carried out by the firm, no client care letter or attendance notes. Mr Brumwell had not spoken to any employees about the DS file.

29. Mr Brumwell had been totally unaware of the existence of the Third Respondent during the inspection. There was no record as to whether the Third Respondent was taking out any profit. It was after the inspection that someone had informed Mr Brumwell that the Third Respondent was registered as a partner in The Law Society's Registration Department.

30. Mr Brumwell had been given to believe that the Second Respondent was a salaried partner.

31. Asked to consider the bank statements which were handed to the Tribunal on behalf of the Third Respondent Mr Brumwell confirmed that the first set was addressed to the Third Respondent at an address Mr Brumwell had been unaware of. During the investigation there had been nothing to suggest that there was another bank account at the firm being inspected. All of the accounts seen by Mr Brumwell were operated from the firm's address known to him. He had also seen no headed paper bearing the Third Respondent's name. The first date on the bank account shown to Mr Brumwell indicated that the client account had been opened on 7th March 2005 and the office account on 4th March 2005 both with nil balances. Mr Brumwell's final interview in

the inspection had been on 5th April 2005 at the Harrow Road, Wembley, office so the accounts in the name of the Third Respondent must have been in existence at the time.

32. The only accounts drawn to his attention at the time of the inspection were those listed at paragraph 3 of his report.

Oral evidence of the First Respondent

33. The First Respondent was a senior partner at Dillons & Co between February 2002 and June 2005. The chronology of the partnership was as set out in the First Respondent's statement. At around Christmas 2004 there had been discussions with the Third Respondent regarding the starting of a brand new partnership. This had come to fruition in February 2005.

34. The bank accounts referred to in the Report referred to Dillons & Co, 18 Harrow Road, as requested up to 31st March 2005. As at that date the only practice was 18 Harrow Road. The new bank statements handed to the Tribunal in referred only to the new practice. The Third Respondent had not been a partner at 18 Harrow Road. The Third Respondent had been a signatory on the new partnership not on the old.

35. On 21st February 2005 the First Respondent had been winding down the old Dillons & Co and doing all work from the new practice.

36. Only the First Respondent could sign cheques in the old practice. For the sake of completeness as this was a conveyancing practice it was right to say that even before he became a partner the Second Respondent could move funds by bank transfer.

37. It was right that in his conversations with Mr Brumwell the First Respondent had not offered an explanation for what had occurred. The client account shortages pertaining to overpayments arose from incorrect completion statements. Some of these had been dealt with by the First Respondent but not all.

38. In respect of the unallocated payments (paragraph 30 of the Report), payments from client account to office account were done mostly by asking the bank to make the transfer by means of faxed requests on a daily basis.

39. Another method was used in respect of, for example, VAT, when sometimes a cheque might be paid directly from client account to Customs and Excise. This would appear as a bald figure but the VAT could pertain to 40 clients whose cases had completed. As a bookkeeping exercise it was dealt with individually. The Third Respondent and the First Respondent had spent a great deal of time dealing with this in the new practice and had opened a specific account for VAT.

40. With the leave of the Tribunal documents relating to the faxed transfer letters to the bank and the VAT forms and other relevant documentation was handed to the Tribunal.

41. The First Respondent said that this was the method in every case by which funds were transferred from client account in respect of costs following completion. The Tribunal had perhaps five percent of the letters and the rest were with the Intervening Agent.

42. The First Respondent had with him his 2004 diary with all completions. Once the matter was completed the fax was sent to the bank. This was the method from August 2000 to 2005. After this the practice had moved to computerised transfers. There was no doubt that the faxes were written on the date stated and faxed within the office. The firm would have the originals and the bank would have the faxed copies. The firm would not have kept the fax confirmations because of the cost and because these were not required. Every effort was made at transfer to ensure that the figures had names by them. At times, by mistake, the transfer requests would be sent without the names of clients and this would need to be rectified by detective work. The omission of names was due to pressure of time. The First Respondent would have referred to his diary for completions on the relevant date, would have looked at bank account statements and would have looked at files completed at that period to establish the missing names.

43. This had not been raised with Mr Brumwell as the discussions with Mr Brumwell had centred around responding to particular questions. It was only on receipt of the Report and the itemised figures that it became clear. All the relevant documents were stored for the accountants to go through and if there were any problems they were to ask a member of staff.

44. The First Respondent had done the VAT personally. The money had come out of client account because it was easier to ensure that the funds were there. If the funds had been transferred to office account they might have been used for other matters. Following each transaction the First Respondent would remove the costs but would leave the VAT in client account for each client and every quarter would collect the VAT in a lump sum.

45. Where money had been used for costs or VAT but not allocated it appeared as a shortfall. Unallocated monies from client account arose when the names had not been put by the figures when the fax was sent to the bank. Part of the problem had been reconciling the accounts following the problems with the flood. The flood had made the ledgers unreadable and they had to be reconstituted. The flood had also damaged some of the computers. That was the reason that most of the work was being done at the premises of the bookkeeper when Mr Brumwell first came.

46. Money from client account was not used for personal benefit. Each transaction was referable and could be referred to a client.

47. The First Respondent was positive that the Second Respondent had not dealt with the DS case on a day by day basis. It was possible that he had done a financial transaction to help out. The First Respondent must have handled the matter. The First Respondent had not seen the DS file for over a year but the very fact that financial transactions were made suggested from whom, to whom and why. DS had telephoned the office on a number of occasions. The First Respondent had not seen him in person. For a private sale with all the funds coming from the transaction and being used to redeem a mortgage the information was adequate. DS did not take funds from the mortgage lender. After the Report the First Respondent had telephoned The Law Society's Ethics Department. They had been more concerned about the Office Copy Entries. The funds had not been going to DS but had come straight from the purchaser to redeem the mortgage. The Money Laundering Regulations had been fully complied

with in the DS transaction. The First Respondent had been satisfied as to the source and usage of the money. The First Respondent had not made checks on the purchaser as he was acting only for the seller.

48. The First Respondent refuted entirely that he had been dishonest in respect of the client account transfers and payments.

49. In cross-examination the First Respondent said that he agreed that in paying the VAT out of client bank so that he would not be tempted to spend it out of office account he had not complied with the separation of funds. He had however been satisfied that he was entitled to the money and had given evidence that he could identify the clients. There was no evidence that he had used client funds not caring whether or not he was entitled to use them. He had not been able to explain the matter to Mr Brumwell as Mr Brumwell had not given figures and the First Respondent had had no chance to reflect. He had only received the figures in May when he received the Report. He could today say to which client the figures in Appendix 2 of the Report related if he had the files. All the funds taken from client account were identifiable.

50. Similarly he could identify the £5,000.00 from July 2005 with the file and cheque stub. He had in mind three possible files. The time of the inspection Mr Brumwell had not identified the amount. The First Respondent had not identified the files on receipt of the Report as he had only had a few days. Given adequate time however all the figures given would have been allocated to clients. The money was in essence there. The error was in not allocating. He accepted that his accounts had not been good.

51. Some of the figures in Appendix 2 could be costs, for example bulk payments for searches. Given the file he could produce the bill. His response to The Law Society in May had not been dealt with on a blow by blow basis but had rather been an explanation as to how matters had occurred. His main concern had been to respond on time. He was giving the more detailed explanation now.

52. The payment to The Law Society could possibly be in respect of an advertisement. If a client owed the First Respondent costs he might have sent the money directly to The Law Society. It was however nearly two years ago.

53. The papers submitted on behalf of the First Respondent at the hearing had been found in his personal effects in a complaints file in his shed when he was preparing his defence. There had been thousands of such documents. He had found the ones submitted today some three weeks ago.

54. The First Respondent explained that his former partner Mr C had had problems with The Law Society and his former partner Mr O had resigned. He had needed a partner as it was not sensible to be a sole practitioner as cover was sometimes needed and also lenders did not give work to sole practitioners.

55. In relation to the Second Respondent's letter stating that he had been a partner in name only in order to facilitate work from lenders the First Respondent said that the Second Respondent had not been coerced.

56. The First Respondent had known the Third Respondent for many years, they had grown up together and had both been barristers in Nigeria. He had discussed partnership with the Third Respondent for some two years. He had also had discussions with others. He had wanted to comply with regulations including the Money Laundering Regulations.

57. By February 2005 the Third Respondent had had his own practice. They had set out to form a brand new partnership practicing from Downham Road. The First Respondent was seeking to close the office at Harrow Road. New bank accounts had been created. It had never been intended that the Third Respondent would join the old practice. Mr Brumwell had only asked for information up to 31st January 2005. The new practice had been formed from 21st February 2005. Although the final interview with Mr Brumwell had been in April it had pertained only to 18 Harrow Road.

58. The new practice had not been registered for VAT as there as no need to register a practice unless there was income. He had not informed the VAT authorities that the old firm had closed as there were still some matters ongoing.

59. The Third Respondent had been arranging insurance for the new practice. The First Respondent had also received quotations from a number of firms. Insurance had been in place since 21st February. They would not have commenced work without insurance. They had however been overtaken by events when a letter came from The Law Society in May 2005.

60. The fact that the Third Respondent was shown as a partner at the Harrow Road address on the First Respondent's letter to The Law Society dated 20th May 2005 was a grave error. A secretary had used the right address but the wrong list of partners. The firm's paper was produced on computer. It had probably been done in haste. His statement that he had been nominated by the Third Respondent to respond was also a mistake as the Report related only to the First and Second Respondents.

61. The notepaper used by the Third Respondent in his letter to The Law Society of 1st June 2005 (page 33 of the Applicant's bundle), was correct in naming only the First and Second Respondents as the Harrow Road partners. The First Respondent had not been in the jurisdiction at the time the Third Respondent had used the old practice's notepaper and would not have advised its use. The Third Respondent had not been in the Harrow Road premises. The computer which had created the letter had not at that time been at Harrow Road but had been moved to Downham Road. The Harrow Road office had been ceased to exist in May 2005. The First Respondent still retained control of the Harrow Road premises and so received correspondence from The Law Society addressed to Harrow Road. The letter of 20th May 2005 (paragraph 60 above) had been used in a fluid situation. Most of the work was being transacted from the new premises. There had been no sinister intent although the First Respondent might have been naïve in terms of partnership law.

62. As at 21st February the old staff were still at Harrow Road. Some computers remained in operation there until August 2005. The Third Respondent would not have agreed to join the old practice.

63. The First Respondent did not accept that he had utilised clients' funds for his own purposes even in error.

64. In relation to the transfers of profit costs set out in Appendix 3 to the Report the First Respondent said that every client had been billed in his office. The difficulty had been identifying the client to whom the bill related. Errors crept in if this was not stated. He did not accept that he had made transfers at the time and without any idea to which client they were related. Transfers were made pursuant to completion. The figures were obtained from the files and were therefore all different. If he had all the documents which had been taken by the Intervention Agents he would be able after much investigation to find out to which client the transfers related. This did not mean he had not known or cared at the relevant times. He had known precisely at the time but two months later would not be able to say without research. Bills were drafted and sent to clients by the secretaries. They were placed into the bill book on a daily basis. The First Respondent had only been given a seven day time limit to respond to the Report and there was no way he could in that time go through each transaction. Some of the allocations had been done long after completion but he would have been able to identify them with time. At intervention, the Intervention Agents had taken the bill book.

65. Bills were not usually round sum figures. The round sum figures at Appendix 3 were only a fraction of the transactions. The First Respondent had run a practice for five years and cared very much. He had spent many nights working in the practice.

66. The practice had done a purchase for DS sometime previously. A sale of a property however did not require the same rigorous identification check as a purchase. It was necessary only to be sure that there was no breach of the Money Laundering Rules. In relation to the client's identity the client had phoned the office and had brought documents. He had been selling to redeem his mortgage and the firm had had to be sure that it was his property and his mortgage. Identity had to be related to the transaction.

67. The agreement for partnership with the Third Respondent had been that the practice at Harrow Road would carry on until it was wound up. It had never however been intended to have two offices. All profits from the Harrow Road office were the First Respondent's. The Second Respondent was a salaried partner. The profits of the new practice were to be divided fifty-fifty between the First and Third Respondents. The Third Respondent had not been involved with Harrow Road nor held out as a partner of that practice. The transactions in the new bank account statements related to new clients. The intervention had caused the termination of the partnership.

68. Redeployment had not fully taken place although the new practice had a general idea which staff it intended to take. The Third Respondent had been carrying on the new partnership as the First Respondent still had commitments at Harrow Road. The Third Respondent had not done a single transaction at Harrow Road and could not sign cheques.

69. The Harrow Road practice had used stocks of old fax headings for the transfer letters to the bank. These were not sent out to clients. This was why the 2005 documents included paper showing only one partner and documents showing a consultant who

had not worked in the practice since 2002. The Third Respondent was not mentioned on any of them.

70. The transfer letters had now been obtained from the Intervention Agents although they had been sought previously. The First Respondent had not asked his bank for them as his relationship with the bank was terminated at the intervention and the accounts had been frozen.

71. Between 13th May and 10th June 2005 the practice had tried to marry the clients and the unallocated payments. With sufficient time the shortfall could have been remedied in this way.

The submissions of the Second Respondent

72. The Second Respondent had not dealt with the matter of DS. The Second Respondent's files had been very detailed and in order on correspondence clips. He had been meticulous, indeed the First Respondent had commented on the size of his files.

Oral evidence of the Second Respondent

73. The Second Respondent confirmed the truth of his letters to the Tribunal and to the Applicant.

74. The Second Respondent had been employed by the First Respondent from 1st March 2003 and had become a partner from 1st October 2004.

75. He accepted that he had a responsibility to ensure compliance with the Accounts Rules. He had however only been a partner externally, he had no rights internally. He never saw the accounts. The First Respondent had told him that any previous problems with the accounts or with The Law Society had been resolved. Had the First Respondent not said that, the Second Respondent would not have become a partner. He had become a partner as a safeguard for his employment at the closing years of his professional life. He had left the practice at the intervention.

76. He had not been involved in any discussions regarding the new partnership. The First Respondent had said that he had a good friend who would be joining them.

77. The Second Respondent did not challenge Mr Brumwell's findings and had no reason to doubt if Mr Brumwell said there was a cash shortage.

78. In an attempt to exercise some authority as a partner the Second Respondent had suggested on many occasions that the practice should have a bookkeeper on the premises and the First Respondent had said that he would think about it. The Second Respondent had had no power to do anything or he would have lost his employment.

79. The Second Respondent did not necessarily accept that there was strict liability. He had great regard both for the First Respondent and for the Investigation Officer. His biggest mistake had been to become a partner without checking the status of the firm. He had relied too much on the assertions of the First Respondent.

80. The Second Respondent had never had any paperwork and had assumed that everything was in order with The Law Society. Any attempt to take a greater involvement in the accounts had effectively been turned down. He had only found out the problems when The Law Society wrote directly to him.

81. He had chosen to remain as a partner when rebuffed by the First Respondent in respect of the accounts because he wanted to retire at seventy and wanted a holding operation until then. He accepted that consequences had flowed from that decision.

82. The Second Respondent confirmed that the hand written faxes to the bank were the firm's standard practice on completion. To transfer funds on completion he used bank's forms and obtained the signature of the First Respondent and faxed them through. He had had difficulty with the gadget provided by the bank for the purpose and so the First Respondent would kindly help him. Other than payments on account for searches the funds were generally transferred directly from the client's bank to the firm's bank. The Second Respondent had sent bills but there had been no bookkeeper to check the figures in the office.

83. The Second Respondent had not heard of the Third Respondent until February 2005. The Third Respondent had joined them and they then moved offices for a short period. He had first noticed the third name on the notepaper in May. He was not aware that the Third Respondent had been a partner from 21st February. So far as the Second Respondent could recall he had not known the Third Respondent's name between February and May. The Second Respondent was rarely invited into the First Respondent's confidence.

84. The Second Respondent had only been concerned with receiving his monthly salary until his retirement. The Third Respondent had not been involved in any of the Second Respondent's work at either office and the Second Respondent did not know what the Third Respondent's work was. He had not seen the Third Respondent have any involvement in the First Respondent's work.

85. The Second Respondent had had infinite trust in the First Respondent but had been let down when from January 2005 there had been problems about receiving his salary. On 1st April 2005 he had become part time and had not received any pay. His best chance of obtaining his money had been to stay and see what happened and try to obtain his payslips and P60.

Oral evidence of the Third Respondent

86. The Third Respondent had known the First Respondent for a number of years and there was a family connection. There had been no professional dealings until February 2005, the Third Respondent having been in his own practice at Downham Road.

87. The First and Third Respondents had discussed opening a firm together previously and it had not come to fruition. Two years before the new partnership, discussions had recommenced. The commercial attraction was to save costs and this sounded sensible. The arrangement was to close the former practices of each and start afresh with a new partnership so that neither could claim that they had a greater interest or control than the other. The Third Respondent had had no involvement in the First Respondent's

old practice from which the First Respondent took the profits. Conversely the First Respondent had no role in the Third Respondent's practice. The Third Respondent had only been to the Harrow Road office twice and had only met the Second Respondent on the second visit.

88. The First and Third Respondents had not sat down to iron matters out properly. The First Respondent had sent the letter to The Law Society's Records Department and had informed the Third Respondent afterwards. They had had a meeting with the bank at the Downham Road premises and the bank had requested a letter from the accountant before opening new accounts. All discussions had been at Downham Road.

89. The First Respondent had not put any work into the new practice. The Barclays Bank Statements related to work done by the Third Respondent. Each of them was to wind up their own practice so as the Third Respondent had obtained new clients he had put them into the new Dillons practice.

90. The First Respondent had said he had wound up most of his practice and he moved colleagues over to Downham Road where they worked on the new work generated for the firm. When the Third Respondent had learnt about The Law Society matter he had spoken to the First Respondent and had said that he had assumed the First Respondent had sorted everything out in the old practice. The Third Respondent said he could not start a venture with the First Respondent in these circumstances and that the First Respondent should move back to Harrow Road. The Third Respondent had been very annoyed and had terminated the partnership immediately.

91. At the new practice there had not been sufficient turnover to charge VAT but a VAT account had been opened at the suggestion of the First Respondent.

92. The Second Respondent was to be the third partner in the new practice. He did not know what discussions the First Respondent had had with the Second Respondent. The Third Respondent had never given the First Respondent permission to hold him out as a partner at Harrow Road.

93. The Third Respondent confirmed that the First Respondent had made the approach to him to join him in practice. The First Respondent had been in practice longer.

94. Many things were involved in starting a new practice and these were being sorted out as matters went along. The First Respondent had said he had got a better quote for professional indemnity insurance from his insurers. The Third Respondent had told his reporting accountant that his practice was closing and had discussed setting up a new one which was why the accountant had written to the bank to set up the new accounts. The Third Respondent had been winding down his old practice and had hardly any monies in client account.

95. The Third Respondent had not known that the First Respondent had written the letter to The Law Society purportedly on his behalf on 20th May 2005. When he received a letter from The Law Society the Third Respondent had been angry. The First Respondent had told him that the matter did not concern him and he would sort it out. The Third Respondent's name should not have been on the Harrow Road letterhead.

The Third Respondent had himself written to The Law Society on the Harrow Road letterhead because The Law Society had written to that practice. He had obtained a floppy disk from the First Respondent with that letterhead. Communication from The Law Society had been addressed to Harrow Road. The Third Respondent had been writing to explain that he was nothing to do with that practice.

96. His reference to resigning from a practice referred to the new practice.

97. The Third Respondent said he would not have set up new accounts if he had been joining the old practice and he would never have become a partner in a practice where he had no control.

Continuation of hearing on 14th August 2006

Submissions on behalf of the First Respondent

98. The First Respondent accepted that there had been breaches of the Rules but disputed that he had acted dishonestly at any time. Further, although payments and transfers were made, the monies were amounts that the First Respondent was entitled to move and there was no appropriation of clients' money. Finally the Respondent disputed that insufficient enquiries were undertaken in relation to the provenance of funds and to the identity of the client in relation to the transaction which was the subject of allegations (a)(x) and (xi).

99. In considering the issue of dishonesty the Tribunal was referred to the cases of Twinsectra Ltd -v- Yardley [2002] UKHL 12 setting out the combined test of dishonesty, Royal Brunei Airlines -v- Tan [1995] 2AC 378 relating to the objective element to the concept of dishonesty and Bultitude -v- The Law Society [2004] EWCA C (iv) 1853.

100. Mr Brumwell's inspection had initially been postponed because the books of account had not been fully written up in part because of the flood that had occurred earlier that year necessitating the reconstruction of all the ledgers.

101. Mr Brumwell had given a verbal report at the time of the inspection. He had asked for information regarding the cash shortages, some of which were rectified but no specific files were requested or identified. The majority of the documentation was away from the premises being kept by the bookkeeper. It was only following receipt of the written Report that the First Respondent was aware of the specific payments and transfers annexed to the Report.

102. The First Respondent was given only seven days to respond to the Forensic Investigation Report. Had he been allowed more time he would have been able to allocate the payments and transfers to the relevant files. Although it was possible to reduce the shortfall there was insufficient time to go through all of the cited files one by one.

103. Further, the firm's bank account was frozen and the First Respondent was not permitted to have access to the documentation. As a result he was unable to obtain the information that would allow him to confirm the payments and to cross reference

bank transfers with his written records. The authority for bank transactions was often given via handwritten notes (on appropriately headed office paper or occasionally outdated letterheads). Confirmation of this was to be found in the papers seized by Russell-Cooke, solicitors, some of which were finally obtained after extensive efforts by the First Respondent on the day of the hearing and faxed to the Tribunal.

104. The cash shortages outlined in the Report which were contested were divided into payments and transfers. At the time of the transactions the First Respondent was entirely aware of the origin of the sums and the reason for the payments but without access to the documentation, it was now almost impossible to allocate each payment to a client. The First Respondent was however entitled to transfer office costs from the client account which accounted for a percentage of the monies paid. Additionally payments for VAT were made from the client account taken as a lump sum comprising the VAT on several transactions altogether. This was subsequently improved with the introduction of a new efficient computer system.

105. In relation to the matter of DS the First Respondent did not fail to make adequate enquiry. There was an element of overlapping in the two allegations (x) and (xi). There was nothing unusual about the instructions received nor any unusual requests made, the First Respondent spoke to the client on the telephone and, although not seen by the First Respondent personally, the client attended the office on two occasions. Relevant documentation was obtained. The advice of The Law Society Ethics Helpline was sought. The client had been introduced by a trusted source and the amount of money received was not unusually large.

106. The principle matter of dispute with the Applicant was that of dishonesty. In the matter of Bultitude it was said that the Appellant had transferred money from client account to office account "without knowing or caring whether he was entitled to the funds". It was submitted that the First Respondent had known what the payments were for and did care. His failure was a lack of proper records. Further in the case of Bultitude the Appellant had sought to create false documents to improve his position which was not the case in relation to the First Respondent who had sought to cooperate despite the difficulties caused by the papers going to Russell-Cooke.

107. Carelessness was not the same as dishonesty. This was not a case of a solicitor choosing not to investigate matters and closing his eyes. The First Respondent had been careless and to some extent reckless but was not dishonest nor had he acted with conscious impropriety.

Submissions of the Second Respondent

108. The Second Respondent submitted that he had been very much an innocent bystander, although he now regretted not asking for his name to be taken off the notepaper at the end of his employment contract in March 2005.

109. The Second Respondent had always intended to retire on his 70th birthday on 24th May 2005 but had stayed on to see how the firm was working out and to secure payment of his salary up to the end of March 2005. He also wanted to secure his place in the market.

110. He accepted that he had been at fault in allowing his name to remain on the notepaper beyond 31st March 2005 and in not investigating the books of accounts more deeply when the "partnership" commenced in 2004.

111. The Second Respondent had been a bare employee with no power to effect changes or rectification to the general administration or the accounts of Dillons & Co. He submitted that he should not have been involved in the proceedings. The letter of renewal of his employment on a part-time basis from March 2005 had never been exchanged or completed and he had never been paid at all since that date. Despite repeated requests by his family and friends he had stayed on to secure his position and the arrears of salary of £5,000 which he could ill afford.

112. The First Respondent had assured the Second Respondent that his previous difficulties with The Law Society prior to October 2004 had all been sorted.

113. The Second Respondent referred to the definition of partnership in Section 1 of The Partnership Act. In his case there had been no share of profit rather he had received a bare salary on a PAYE basis and had had an indemnity provision in his contract. The First Respondent had not encouraged him to become involved in the running of the business.

114. If the Second Respondent had anticipated a partnership in the true sense of the word, he would have checked the accounts. He had remained a salaried employee until the intervention. He had not opened or seen the incoming post and had had no knowledge of further difficulties with The Law Society until interviewed in February 2005.

115. When he had received follow up correspondence he had considered that it had been sent to him as a matter of courtesy because his name was on the notepaper. He had relied on the indemnity clause and the First Respondent's assurances. The Second Respondent had asked the First Respondent to deal with the correspondence as he had no knowledge of the facts and no administration rights. He was not a partner at the date of the intervention and his name should not have been on the notepaper.

116. His position had become worse once he became a partner as until then he had been paid fairly regularly. He had no equity in the firm and was not privy to any books.

117. The Second Respondent's working conditions had not been of the best.

118. All the cases referred to by The Law Society had been dealt with by the First Respondent.

119. The Law Society had excluded the Second Respondent from the costs of the intervention and he submitted that he should not pay costs in the current proceedings. If he was ordered to pay costs he submitted that these should be deducted from his arrears of salary owed by the First Respondent. Further The Law Society had granted him a waiver from submitting accountant's reports.

120. In addition to the salary owed in respect of which the Second Respondent had been given an award by the Employment Tribunal, which he had not enforced while awaiting disciplinary proceedings and which he had continued to hope the First

Respondent would pay, he had also not received his P45, P60 or regular payslips. As a result he was paying excessive tax on his pension and the Inland Revenue had told him that the First Respondent had not replied to their correspondence. His salary had been £29,000 per annum but he had received less net than he should.

121. The additional aggravation and correspondence had not helped in the Second Respondent's hoped for happy retirement. He had not been personally dishonest and sincerely regretted what had happened. In so far as it was deemed to be his responsibility he apologised. He begged the Tribunal to be sympathetic. He blamed himself entirely for not having made full enquiries before the partnership.

122. He had returned his practising certificate as soon as requested.

123. The Tribunal was asked to note that the First Respondent's conduct at an earlier adjourned hearing had not helped to reduce the costs of the disciplinary proceedings.

Submissions on behalf of the Third Respondent

124. There was no allegation against the Third Respondent other than that being a partner he had failed to remedy breaches promptly on discovery. It therefore had to be proved beyond reasonable doubt that the Third Respondent had been a partner in the old practice of Dillons & Co. If the Tribunal found that the Third Respondent had been a partner in that practice, it would be a matter of interpretation of the Rules as to whether or not they applied to someone who was not a partner at the time the breaches arose.

125. The Tribunal was referred to the case of Bass Brewers Ltd -v- Appleby where it was found in relation to a number of insolvency practitioners practising under the same name from different offices that there was no partnership and the Tribunal was referred to the criteria set out at page 170 of that Judgment. The notion of professional practice had become quite protean. It was not unusual to find the same name in firms in different towns in a county. It did not follow that each practice was in partnership with the practices in different towns. This was firmly established by this authority.

126. It was proper for this Tribunal to find that while there was a practice of Dillons & Co carried on by the First Respondent there was also a practice of Dillons & Co carried on by the First and Third Respondents as a different practice.

127. The Tribunal was referred to the legal arguments set out in the written submissions on behalf of the Third Respondent.

128. The Rules did not deal with the temporal issues which could result in rather capricious situations. The central question was what was required to protect the reputation of the profession.

129. It might be argued that solicitors who held themselves out as partners might be relied on by clients. In this case none of the clients giving money to the First Respondent's practice of Dillons & Co relied on the Third Respondent. He was not a partner at the time the deficiencies occurred. Under partnership law he had no liability. It was

difficult to see that the reputation of the profession was diminished in any way by the fact that someone had not accounted for deficiencies of others for which he could not legally be held accountable.

130. The Rules were set out in general principles and required the Tribunal to make the required implications (commentary by Bennion "The Interpretation of Statutes" at page 421). The implications which should be made were "what is necessarily or properly implied" (Chorlton -v- Lings (1868) LR 4CP at 387). It might be improper to find an implication which imposed onerous burdens (Bennion at 428). It would be an onerous obligation to impose burdens on a party to which he had not agreed.

131. The evidence which The Law Society had shown in its claim that the Third Respondent was a partner consisted of one letter. It was not denied that there was a partnership agreement and an intention that the First and Third Respondents should run a joint practice. This did not however establish beyond reasonable doubt that the Third Respondent was a partner in the original Wembley practice of Dillons & Co.

132. There was evidence from all three Respondents to the contrary. It was clear from the First Respondent's evidence that the Third Respondent had no participation in the Wembley practice. The Second Respondent had little knowledge of the Third Respondent's existence. The office move had been aborted when the Third Respondent found out about the investigation. The Third Respondent had contended that a separate practice had been planned and this was supported by the opening of new bank accounts. There was no allegation of deficiencies in those client accounts. The evidence of the Third Respondent corroborated by the evidence of the other two Respondents must have created a cloud of doubt as to whether the Third Respondent was a partner in the original practice. If on the balance of probabilities the evidence was in favour of the Third Respondent, the Tribunal must find for him.

Further submissions of the Applicant in relation to matters of law

133. The Second Respondent had said that he was a mere employee. In his own defence documents, in correspondence with the Applicant and in his letter to The Law Society of 12th June 2005 the Second Respondent had accepted that he was a partner. He might have concluded in his mind that he was something other than a partner but the fact was that he was a partner and as a consequence had obligations under the Rules.

134. In relation to the Third Respondent it was a matter of fact for the Tribunal to decide whether or not he had been a partner in the original practice. If the Tribunal found that he had been a partner then the Applicant disagreed that his obligations were a matter of partnership law, the Tribunal was a court of conduct. Rule 7 of the Solicitors Accounts Rules referred to all principals in a practice. It was accepted that the Third Respondent had not been a partner at the time the breaches occurred but if the Tribunal found he had become a partner even for a limited time, then he had had an obligation to rectify the breaches and he had failed to do so.

The submissions in mitigation and as to costs

135. After the Tribunal had reached its decision on the allegations, the following further submissions were made.

136. On behalf of the First Respondent it was said that the principal concern of the First Respondent had been that dishonesty should not be found against him. He had accepted from the outset that a number of his practices in the firm had not been up to par. This was demonstrated by his admissions on 19th June 2006. He had never sought to act with dishonest intent. Carelessness had led to a knock on effect from one month to the next. The flood had had a serious effect on the firm's records and after that there was always a problem of trying to catch up which made keeping current records more difficult. After the inspection new procedures had been put in. The Tribunal was referred to the earlier Tribunal case of Holy (9096-2004). The ultimate conclusion in that case had been that there was no want of honesty but a fairly lengthy list of breaches of the Rules on a par with the present case. The Tribunal on that occasion had struck off the Respondent but on appeal a suspension had been substituted.

137. The Tribunal was referred to the documentation relating to the First Respondent's character. It was hoped that the Tribunal would see a lot of positive attributes and note the positive contributions the First Respondent had made. The Tribunal was asked to keep any suspension imposed as short as possible. The First Respondent had been very busy in recent years with positive work and had not given enough attention to record keeping in the office.

138. In relation to costs, the costs of the Applicant included the case against all three Respondents although allegations had been substantiated against only two. The First Respondent would agree to pay a proportion of the costs.

139. The Second Respondent submitted that he had known nothing about the shortfalls and that he had not been a principal.

140. The Tribunal had found the allegations substantiated on the mere fact that his name had been on the notepaper. If the Tribunal awarded costs against him, he had no means to pay.

141. An application for costs was made on behalf of the Third Respondent in the sum of £4,649.50. Proceedings had been bought against the Third Respondent, although there was no trace of him at the time of the investigation. The evidence provided by the bank statements showing the new accounts of the separate partnership being with The Law Society throughout the proceedings and clearly indicated the position. It was not right for the prosecution to say that these had suddenly been found out. The prosecution had failed to make proper enquiries and the Third Respondent had been put to expense and distress. There had been a reference to the bank statements in the Intervention Report.

142. The Applicant sought his costs in a figure which had been agreed with the First and Second Respondents in the sum of £22,000. Apportionment was a matter for the Tribunal. The Applicant did not seek an order for costs against the Third Respondent but asked that the Tribunal make no order for costs. The Tribunal was referred to the case of Baxendale-Walker in which the Administrative Court had said that a costs order should not be made against a regulatory body unless there was good reason and good reason meant more than just winning. The Third Respondent had been at some fault. On 19th June 2006 he had produced bank statements which might have been

instrumental in persuading the Tribunal that there was indeed a new partnership. The Applicant had not sought an adjournment at that point. It had not been for The Law Society to seek out such statements. The notepaper, The Law Society records and the Third Respondent's own letter of resignation had suggested that he had been a partner in the original practice. If the Third Respondent had had records which showed that this was not the case, he should have put them forward before 19th June. They had not been produced at an earlier hearing.

The Findings of the Tribunal

The First Respondent

143. Allegation (a)(iv) had been withdrawn. The First Respondent had admitted allegations (a)(i)-(iii),(v),(vii) and (viii) and the Tribunal found those allegations to have been substantiated. In relation to allegation (a)(vi) the Tribunal was satisfied from the details set out in the Investigation Accountant's Report that this allegation was substantiated. The First Respondent had said in evidence that at the time he would have been able to identify to what the various payments and transfers related but such was the disarray in the accounting records that the Tribunal was satisfied that the position could not have been clearly known at the time and that the Respondent had made the payments and transfers regardless. The Tribunal found allegation (a)(vi) substantiated. In relation to allegation (a)(ix) however the Tribunal was not fully satisfied that the Applicant's evidence met the appropriate test to establish dishonesty. A very high standard of proof was required to substantiate an allegation of dishonesty. The First Respondent's Counsel had conceded that he had been careless and even reckless. Having had the benefit of the First Respondent's oral evidence the Tribunal was not satisfied that he had dishonestly misappropriated clients' funds.

144. In relation to allegations (a)(x) and (xi) the files had to show the necessary checks had been made. The file of DS did not show this and the First Respondent's explanation as to why he had no concerns was no substitute for following the correct procedures. The Tribunal found the allegations to be substantiated.

145. The Tribunal had not found that the First Respondent's conduct had been dishonest. Nevertheless the Tribunal found his accounting methods totally unacceptable. The Tribunal noted that there had been water damage to the records but did not regard this as an excuse for the recklessness shown by the First Respondent in the way he dealt with clients' funds. The First Respondent had said that there was a flood on 23rd April 2004. Some of the unallocated payments and incorrect transfers identified in the Forensic Report predated that date. Further the investigation took place nine months after the damage to records. It was totally unacceptable for a solicitor to operate a client account with records in such disarray. The public had to have confidence in the proper stewardship of their money by solicitors but the First Respondent appeared not to care about maintaining records or about distinguishing between client and office account. The First Respondent's flaunting of the rules had led to a shortage on client account which remained outstanding and had in turn led to claims on the Compensation Fund. The Tribunal had a duty to protect the public from a solicitor who behaved in such a reckless manner and the Tribunal was satisfied that the First Respondent should not be allowed to practise as a solicitor.

146. In relation to costs, it was the actions of the First Respondent which had brought about the present proceedings, the involvement of the Second Respondent being rather more due to a failure to act. It was right that the First Respondent should pay the bulk of the Applicant's costs and the Tribunal would order that he pay 90% of those costs.

The Second Respondent

147. Allegation (b)(iv) had been withdrawn.

148. The Second Respondent had given evidence that he had not had conduct of the file of DS and indeed the First Respondent had confirmed this. The Tribunal therefore found allegations (b)(ix) and (x) not substantiated against the Second Respondent.

149. The remaining allegations relating to accounts having been substantiated against the First Respondent, the Tribunal was satisfied that they were also substantiated against the Second Respondent who had been a partner in the practice since 1st October 2004.

150. The Tribunal accepted the Second Respondent's evidence that he had personally taken no part in the accounting processes but did not accept his description of himself as an innocent bystander. The Second Respondent was an experienced solicitor who had agreed to become a partner for his own financial benefit. Building Societies required two partners' names in a practice before giving instructions because they wanted someone to keep a cross-check on the accounts, something which the Second Respondent had knowingly ignored. Further the Second Respondent had knowingly allowed himself to be held out as a partner to the public by the inclusion of his name on the notepaper and he therefore had duties to the firm's clients including a duty to satisfy himself as to the state of the accounts. While the Tribunal had some sympathy with the Second Respondent in respect of his difficulties in obtaining arrears of salary and employment documentation, this did not diminish the responsibility which he had had as a partner and which he had significantly failed to address. The Tribunal was satisfied that there was no dishonesty on the part of the Second Respondent indeed none had been alleged. Nevertheless it was right that the Tribunal reflect its concern at his failings by the imposition of a fine.

151. The Tribunal noted that in relation to both a potential fine and costs, the Second Respondent had said that he had no means to pay. Nevertheless the question of his means had to be overruled by the need to uphold the perception of the safety of the general public. Solicitors could not simply lend their name to a partnership for their personal financial gain and then abrogate all responsibility for the protection of clients' funds. Further the Tribunal could not take into account the debt which the Second Respondent said was owed to him in respect of arrears of salary by the First Respondent, indeed the Second Respondent had indicated that this was a matter which he had already taken to an Employment Tribunal. The Tribunal was satisfied that the appropriate penalty was a fine of £5,000 together with payment of 10% of the Applicant's costs.

The Third Respondent

152. The allegation against the Third Respondent would only be capable of being substantiated if the Tribunal found that the Third Respondent had at any point after the breaches had occurred been a partner in the original firm of Dillons & Co based in Harrow Road, Wembley. It was not alleged that the Third Respondent had been a partner in that firm at the time the breaches were committed.

153. The evidence which suggested that the Third Respondent had been a partner consisted firstly of the letter to The Law Society written by the First Respondent on 20th May 2005 (paragraph 14 above). The Third Respondent had given evidence which the Tribunal had accepted that he had not been aware that the First Respondent had written that letter. The Third Respondent had however written to The Law Society on 1st June 2005 using notepaper from the old practice at Harrow Road, but without his name as a partner, stating that he had resigned his partnership of the firm with immediate effect. Further in that letter the Third Respondent had said that the Forensic Investigation Report "predates my association with Dillons". This was a letter which the Tribunal considered the Third Respondent had been unwise to write in that it had tipped the balance of risk against him and had been of significance in The Law Society's bringing of the allegation against him. Balanced against that however the Tribunal found the Third Respondent to be a credible witness and was satisfied that in his own mind he was commencing a new partnership.

154. The bank account statements relating to the new partnership had been submitted at a late stage. Counsel for the Third Respondent had said that they had been referred to in the Intervention Report but the Third Respondent had not produced them in evidence until 19th June 2006. They were however persuasive evidence of the intention to create a new partnership particularly when linked to discussions with accountants about the new partnership and negotiations on professional indemnity insurance.

155. The Tribunal was therefore not satisfied that allegation (c)(i) was substantiated against the Third Respondent. Nevertheless for the reasons referred to above the Tribunal considered that the Third Respondent had to a large extent brought this matter on himself by using the old practice's notepaper in replying to The Law Society and by the lack of clarity in the wording of that letter.

156. The Tribunal had considered carefully the submissions on behalf of the Third Respondent in relation to his application for costs but was satisfied that this was not a case where it was right to order costs against the regulatory body. In the light of the evidence which had been available at the time, the allegation had been properly made against the Third Respondent. The Tribunal would therefore make no order for costs in relation to the Third Respondent.

157. The Tribunal Ordered that the Respondent, Lloyd Chukwuma Dillon Aneke of 18 Wetheral Drive, Stanmore, Middlesex, HA7 2HN , solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution to the costs of and incidental to this application and enquiry fixed in the sum of £19,800.

158. The Tribunal Ordered that RESPONDENT 2, of Bushey, Watford, Herts, WD23, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £2,200.00.

DATED this 27th day of September 2006
on behalf of the Tribunal

R B Bamford
Chairman