No. 9465-2006

IN THE MATTER OF *[FIRST RESPONDENT]* AND
KENNETH BENTLEY VAN EMDEN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)
Mr J R C Clitheroe
Mr M C Baughan

Date of Hearing: 20th and 21st June 2007

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 of Jonathan Goodwin Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 28th April 2006 that *[FIRST RESPONDENT]* of 12 Peterborough Road, Harrow, Middlesex, HA1 2BB and Kenneth Bentley Van Emden of 12 Peterborough Road, Harrow, Middlesex, HA1 2BB might be required to answer the allegations set out in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

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

Allegations against both Respondents

(i) that contrary to Rule 7 of the Solicitors Accounts Rules 1998 (hereinafter referred to as "the Rules") they failed to rectify breaches to the Accounts Rules promptly upon discovery;

(ii) that they withdrew money from client account contrary to Rule 19(2) and/or Rule 22 of the Solicitors Accounts Rules 1998;

(iii) that they withdrew money from client account in excess of money held on behalf of a client(s) contrary to Rule 22(5) of the Rules;

(iv) that they utilised clients funds for their own benefit.

Allegations against Mr Van Emden alone

(v) that he acted in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor in that by letter dated 24th January 2003 he made representations to his client (Mrs J) which were misleading (for the avoidance of doubt this is an allegation of dishonesty);

(vi) that he acted in a way which was fraudulent, deceitful and otherwise contrary to his position as a solicitor in that by letter dated 5th March 2003 to Harold Benjamin Solicitors he made representations which were misleading (for the avoidance of doubt this is an allegation of dishonesty);

(vii) that he made a claim for costs which he knew, or ought to have known, he could not justify, in that he made a claim for attending the funeral of a client contrary to Rule 1 of the Solicitors Practice Rules 1990;

(viii) that he failed to prepare and submit final distribution accounts to the residuary beneficiaries in the estate of B;

(ix) that he misappropriated clients funds (for the avoidance of doubt this is an allegation of dishonesty.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 20th and 21st June when Jonathan Richard Goodwin appeared as the Applicant, *[FIRST RESPONDENT]* was represented by Gerald Malcolm Lynch, solicitor and consultant with Drysdales, Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, SS2 6HZ and Mr Van Emden appeared in person.

The evidence before the Tribunal included the oral evidence of Mr Parmar. A bundle of references and a letter from Mrs Bynoe were handed up on behalf of *[FIRST RESPONDENT]* and Mr Van Emden handed up two copy letters addressed to Harold Benjamin.

Both Respondents admitted allegations (i)-(iv). Mr Van Emden admitted allegations (vii) and (viii) but denied allegations (v),(vi) and (ix) and in particular denied that he had been dishonest.

Mr Van Emden's application in relation to delay on the part of The Law Society

1. The Law Society had addressed letters to the Respondents and they had made detailed written responses.

2. The Law Society accepted that there had been an unexplained delay on its part in progressing this matter. It was accepted in particular that there had been a delay of eleven months until September 2005.

3. At the conclusion of the Applicants case, Mr Van Emden invited the Tribunal to consider serious delays on the part of The Law Society. He accepted that the Tribunal had made a ruling about the effect of The Law Society's delays following a hearing on 18th January 2007, however it was Mr Van Emden's submission that the Tribunal had not attached enough importance to the case of Dyer v Watson (2002) 3WLR and had not taken that case into account in its reasons.

4. The Applicant pointed out that Mr Van Emden had been represented by Counsel who was an expert in the field of the effect of delay in bringing cases to trial. The Tribunal had found and had ruled upon submissions about delay at the hearing on 18th January 2007. It remained open to the division of the Tribunal hearing the substantive case to take delay into account when making its decisions at the conclusion of the substantive hearing. Reference had been made to this discretion in the Memorandum prepared by the earlier division of the Tribunal dated 22nd February 2007.

5. It was said on behalf of *[FIRST RESPONDENT]* that he supported The Law Society's position and any delay should properly be reflected in the sanction imposed.

The Tribunal's decision on the delay application

6. The Tribunal was satisfied that the matter of delay had been properly and fully argued at the hearing on 18th January 2007. The Tribunal was not prepared to reopen those issues. The Tribunal had read the Memorandum prepared by the division of the Tribunal hearing on 18th January application, in particular paragraph 98 which stated:

> "It was open to the division of the Tribunal dealing with the substantive matters to take into account any submissions made on the Respondents' behalf in connection with delays in the prosecution."

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

The Tribunal Orders that the First Respondent c/o Mr Gerald Lynch, Messrs Drysdales, Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, SS2 6HZ solicitor, be Reprimanded 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 £2,000.00 inclusive.

The Tribunal Orders that the Respondent, Kenneth Bentley Van Emden of 12 Peterborough Road, Harrow, HA1 2BB, solicitor, be Struck Off the Roll of Solicitors 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 £18,000.00 inclusive.

The facts are set out in paragraphs 7 to 29 hereunder:

7. The *[FIRST RESPONDENT]*, 56 years of age, was admitted as a solicitor in 1976. His name remained on the Roll of Solicitors. Mr Van Emden, 56 years of age, was admitted as a solicitor in 1976 and his name remained on the Roll of Solicitors.

8. At the material times the Respondents carried on in practice together in partnership under the style of Blackman Van Emden from offices at 12 Peterborough Road, Harrow, Middlesex.

9. Upon due notice an Investigation Officer of The Law Society ("the IO") carried out an inspection of the Respondents' books of account. He produced a Report dated 30th June 2004 which was before the Tribunal.

10. The books of account were not in compliance with the Solicitors Accounts Rules. There was a minimum cash shortage of clients' funds of £8,730.23 as at 30th April 2003. On 29th May 2003 the shortage was partly rectified by an office to client bank transfer of £6,916.71. The balance of the cash shortage (£1,813.52) was rectified between 20th January 2004 and 5th April 2004 by offsetting various amounts against costs transferred into office bank account, and by way of payment to the clients concerned.

11. The minimum cash shortage was caused by an overpayment of £6,916.71 and improper client to office bank account transfers totalling £1,813.52.

The evidence in relation to the disputed allegations (v) and (vi) against Mr Van Emden

12. Mr Van Emden acted in the administration of the estate of J deceased. The original file was forwarded to the personal representative's solicitors, Messrs Harold Benjamin, between December 2002 and January 2003.

13. A review of the relevant account in the client ledger showed that between 4th April 2002 and 19th February 2003 a total of £26,017.19 had been credited representing the realised assets.

14. An analysis of the entries on the client ledger revealed that sums totalling £12,456.40 had been transferred from client to office bank account ostensibly in settlement of three bills of costs and a disbursement.

15. By letter dated 24th January 2003 Mr Van Emden wrote to the personal representative stating, inter alia, that all papers had been handed over to Messrs Harold Benjamin and that he was holding £13,558.56 after deduction of his firm's costs. He had prepared and enclosed a financial statement with his letter which showed that the total amount held was £19,042.28 against which costs of £5,483.72 had been deducted, leaving a balance of £13,558.56. Whilst the balance on the client ledger at 24th January 2003 was £13,558.56, costs of £12,456.40 had already been transferred to office bank account.

16. By letter dated 18th February 2003 Messrs Harold Benjamin wrote to Mr Van Emden stating that their calculations indicated a difference of some £6,000 in the amounts stated to have been received by Blackman Van Emden.

17. By letter dated 5th March 2003 Mr Van Emden replied (inter alia):

> "We believe an error arose in that monies were credited to a different ledger bearing the same name. The sum payable excluding interest is £6,873.75. We received the payment on 31st July. Allowing for seven and a half months interest which is slightly longer than we have held the money the interest is £42.96.

> In addition thereto there is a further £2.23 interest earned on the monies which we previously sent to you. There is, therefore, due the sum of £6,918.94 and we are enclosing our clients account cheque for this sum."

18. The IO ascertained that the figure of £6,873.75 equated to the total of the bills dated 15th August 2002 and 29th October 2002 (£4,406.25 and £2,467.50) in respect of which costs had already been transferred from client to office bank account.

19. As at 19th February 2003 the balance on the relevant account in the client's ledger was £2.23. On 6th March 2003 client bank account was charged with the payment of £6,918.94 to Messrs Harold Benjamin, giving rise to a debit balance of £6,916.71 on the client's ledger.

20. There was no evidence to show that the bills of costs raised or any other written intimation had been delivered to the personal representative. Mr Van Emden told the IO that the August and October bills had been delivered some time in January 2003. He accepted that there was a resultant shortage on client bank account. The personal representative confirmed to the IO that she had not received any bills of costs while Mr Van Emden was acting for her.

21. The IO had suggested to Mr Van Emden that there was, in fact, no error because £6,873.75 had been taken as costs. He also reported Mr Van Emden's agreement that he had concocted a story to conceal his activity and had misled Harold Benjamin.

22. Mr Van Emden told the Tribunal that there had been another ledger account for the client. He had not deliberately sought to mislead. Mr Van Emden said that there were a number of files and he had sent all of them to Harold Benjamin. He had retained only some copy documents. He had not had the complete files before him when he made his calculations. He accepted that he should have taken greater care and should have sought access to the files before making his calculations.

<u>The evidence in relation to Allegation (ix) -misappropriation of funds-Mr Van Emden</u>

23. Between 30th October 2001 and 5th March 2003 eighteen transfers from client to office bank account totalling £1,813.52 and varying in amount from £23.38 to £238.25, had been made in settlement of bills of costs. Residual credit balances on client's ledger accounts had been reduced to nil by the posting of bills of costs. The bills had not been sent to the clients concerned. The residual balances included interest due to clients, refunds of disbursements, rent payable on completion and client monies which should have been paid back to the client(s). In each of the matters reviewed by the IO, costs had been paid in respect of the work undertaken and completed and no further work had been undertaken after the completion of the client matter.

24. The IO had asked Mr Van Emden if he had deliberately raised bills with no intention of delivering them and transferred monies to office account where there had been little, if any, activity on the matter for some time. The IO said that Mr Van Emden accepted that he had "billed off" the monies and accepted that the costs had been taken in circumstances where they should not have been. A particular example was where there had been a refund of a Land Registry fee that was payable to the client.

Another had been where an insurance premium intended to be used for insurance against abortive conveyancing fees.

25. Mr Van Emden did not accept the IO's recollection of their discussion. He would not have used the expression "billed off". He told the Tribunal that some of the matters under review had been conducted by another member of the firm. In one case the client had agreed with the transfer retrospectively. In a number of cases the bill had been entirely justified.

26. On 16th April 2004 Mr Van Emden had written to The Law Society and provided details of the correction of the improper transfers.

The evidence in relation to Allegations (vii) and (viii) against Mr Van Emden: Miss B

27. Mr Van Emden had acted on behalf of Miss B as a co-attorney under an Enduring Power. He was also one of Miss B's executors. Miss H was his co-attorney and joint executor. Miss B died on 30th January 2001. Mr Van Emden acted in the administration of her estate. A review of the relevant account in the clients' ledger showed that between 23rd December 1998 and 30th January 2001, twenty eight bills had been raised and costs transferred to office bank account totalling £49,634.43. The bills were in general for round sum amounts in excess of £1,000. The bills were generated on a monthly basis. They did not contain a detailed breakdown of the time spent. There was no evidence on the client matter file to show that the bills had been delivered either to the client or to Mrs H. Mr Van Emden said that he gave the bills to Miss B when he went to visit her at the nursing home where she resided. He accepted that he should have sent the bills to Miss H.

28. When she became aware of them Miss H questioned Mr Van Emden's charges of some £2,000 per month when Miss B was under the care of the nursing home. Miss H was certain that Miss B had not received the bills. Following Miss B's death on 30th January 2001 a grant of probate was issued on 2nd March 2001. The residue of Miss B's estate was left to five beneficiaries, including Miss H and a charity. The majority of the assets of the estate had been realised and distributed by 13th December 2001. Six bills of costs had been raised totalling £21,970.45 and funds transferred from client to office bank account in settlement. In one of the bills dated 16th March 2001 a charge had been made for "attending the funeral". Mr Van Emden accepted that he should not have made a charge for attending the funeral. He told the Tribunal that Miss B had been Jewish and it had been essential that her funeral took place immediately as was required by her religion. There had been no-one else to make the necessary arrangements and he had done so. He had agreed with all of the beneficiaries, save one who was in Australia, that they would have a meeting at the cemetery immediately after the funeral. He had expended the time for which he had charged but it was wrong to state in the bill's narrative that his charges had included the attendance at the funeral. He regretted that he had done so.

29. The IO found no evidence on the file that distribution accounts had been prepared and submitted to the five residuary beneficiaries for approval. Mr Van Emden accepted that distribution accounts had not been prepared as they should have been.

The Submissions of the Applicant

30. The Respondents admitted the allegations relating to breaches of the Solicitors Accounts Rules and accepted that as a result they had utilised clients' funds for their own benefit. It was accepted that that was an inadvertent use of clients' money and arose as a result of the accounts breaches. Allegations (i) - (iv) were not put as matters involving dishonesty.

31. The allegations made against Mr Van Emden alone, allegations (v), (vi) and (ix) were put as matters involving dishonesty on his part.

32. In the matter of the late Mr J, the financial statement prepared by the Respondent and submitted to Harold Benjamin failed to disclose the true value of the assets realised by the time he prepared it.

33. Mr Van Emden had admitted to the IO that he had deliberately misled his former client, the personal representative of the late Mr J, and her new solicitors as to the true position. It was the Applicant's case that Mr Van Emden had known that what he was doing was wrong and he had acted with conscious impropriety or in other words dishonesty, at the material time.

34. With regard to the "billing off" of modest credit balances in individual client ledgers, Mr Van Emden had in each of those cases taken monies to which he was not entitled and that amounted to conscious impropriety. Mr Van Emden knew that what he was doing was wrong but he proceeded regardless. It was not necessary to demonstrate that Mr Van Emden intended permanently to deprive his clients of the funds, the dishonest conduct was the taking of the money in circumstances where Mr Van Emden knew that what he was doing was wrong and that he was not entitled to those funds.

35. The test to be applied in determining whether or not Mr Van Emden's conduct had been dishonest was that in Twinsectra v Yardley and Others [2002] UKHL 12.

The Submissions of *[FIRST RESPONDENT]*

36. *[FIRST RESPONDENT]* accepted that he had been in breach of the Solicitors Accounts Rules by reason of his liability for breaches in his capacity as a partner of Mr Van Emden. *[FIRST RESPONDENT]* had no knowledge of the matters complained of.

37. *[FIRST RESPONDENT]* accepted that by virtue of the breaches of which he had no knowledge benefit must have accrued to the firm. He had taken no action at any time deliberately to utilise clients' monies and any such utilisation was entirely outside his knowledge. As soon as the matters became known to *[FIRST RESPONDENT]* he had taken immediate action to correct the position and no client had suffered loss.

38. *[FIRST RESPONDENT]* had taken an active interest in the firm's accounting procedures and had made regular visits to the firm's accounts department. The matters complained of could not have been and were not apparent to *[FIRST RESPONDENT]* despite his close involvement with accounting matters.

39. Upon hearing of the IO's concerns *[FIRST RESPONDENT]* had immediately sought to improve the cross-checking procedures within the firm's accounts department.

40. With regard to the overall shortfall caused by the transfer for costs of modest credit balances, all fee earners in the firm were responsible for their own billing and the transfers had been made over a period of some 18 months and would not have triggered any suspicion requiring *[FIRST RESPONDENT]* to make enquiry. The firm's billing was in the order of £1,000,000 per annum and the bills for small amounts would not have been significant.

41. The accounts department had been fully and adequately run with two full time bookkeepers, one of whom was qualified with some 30 years experience in dealing with solicitors' accounts. She was a person in whom *[FIRST RESPONDENT]* could reasonably place his trust.

42. Both *[FIRST RESPONDENT]* and Mr Van Emden were involved in the financial management of the firm and they met virtually every day to discuss any outstanding financial matters or points of law which required to be dealt with. They did not, however, discuss each other's caseloads.

43. On Friday of each week Mr Van Emden and *[FIRST RESPONDENT]* would receive from the accounts department a report on financial matters with relevant figures. None of these reports indicated any problems arising from Mr Van Emden's cases.

44. The firm had agreed overdraft facilities with the bank and at all times the firm was operating well below the maximum permitted overdraft.

45. *[FIRST RESPONDENT]* and Mr Van Emden enjoyed a trusting relationship. They had known each other for some time and trusted each other's integrity and trustworthiness. Both had sat as Deputy District Judges.

46. Approximately five years prior to the IO's inspection the firm had undergone a routine Law Society check and nothing had been raised as a result.

47. The Tribunal was invited to distinguish this matter from that of the "Weston case". Mr Weston had taken little or no interest in the accounting procedures or financial arrangements of his firm and he was aware of outstanding partnership financial difficulties and in particular a substantial liability for VAT. There had never been any question of this firm being in a parlous financial position. Monies had always been available to meet obligations and payments had been made promptly. *[FIRST RESPONDENT]* had at all times involved himself closely in the management of the firm and its accounts. It was not suggested that *[FIRST RESPONDENT]* had been a party to or had knowledge of the matters subject to complaint and allegations of dishonesty. No allegation to that effect or of dishonesty had been made against *[FIRST RESPONDENT]*.

The Submissions of Mr Van Emden

48. Mr Van Emden had always been a solicitor of integrity. He maintained integrity and trustworthiness both in his private and professional life.

49. Mr Van Emden considered that he had taken on too much work and errors that he had made had been the result of great pressure. The firm had been successful in generating a substantial fee income and operating at all times well below the overdraft limit agreed with the firm's bankers. Things with the firm had been looking good and there was no reason from a financial point of view why Mr Van Emden should have done anything that was not right and proper.

50. Mr Van Emden accepted the allegations of breaches of the Solicitors Accounts Rules. They occurred as the result of error and had not been deliberate.

51. With regard to the allegations which had been put as disclosing dishonesty against Mr Van Emden, Mr Van Emden strenuously denied that he had been dishonest.

52. With regard to the "clearing off" of modest client balances he accepted that he had not adopted an appropriate procedure. He had spoken to the fee earners concerned but he accepted that he should have made further enquiries before authorising transfers in some of the matters. Mr Van Emden accepted that both in those matters and in the matter of the figures supplied to Harold Benjamin and the late Mr J's personal representative he had been careless. He agreed that such carelessness was unacceptable but it did not amount to dishonesty.

53. Mrs B had been completely alert mentally when she entered the nursing home. Mr Van Emden had paid that lady frequent visits.

54. Mr Van Emden had come to realise that details about the amounts available for distribution should have been sent to each beneficiary and he was sorry for his omission. There had never been any intention to mislead the beneficiaries.

55. With regard to Mr Van Emden's letter written to Harold Benjamin in the matter of J deceased, Mr Van Emden had explained to Harold Benjamin that the discrepancy might have arisen as a result of monies being credited to a different ledger bearing the same name. There had been other designated deposit accounts in the name of Mr J but no such monies had been credited. Mr Van Emden accepted that with hindsight he should have made more detailed enquiries. Again, he had been careless but he had not been dishonest. Again, he accepted that the information given to Harold Benjamin had been factually inaccurate but there had been no dishonest intent. Mr Van Emden accepted that he had not been as careful as he should have been.

56. Mr Van Emden had in none of his dealings displayed any hint of dishonest intent. He would not do anything as stupid as that as his ability to practise could have been put at stake.

The Findings of the Tribunal

57. The Tribunal found all of the allegations to have been substantiated and in respect of allegations (v), (vi) and (ix) against Mr Van Emden alone they found that he had been dishonest.

58. The Tribunal was mindful of the test of dishonesty set out in Twinsectra v Yardley and concluded that in preparing financial statements in the case of Mrs J he neither knew nor cared about their accuracy when the inaccuracy operated to his benefit, and

he conveyed misleading information to Mrs J and her new solicitors; Mr Van Emden had drawn bills and made transfers where work had not been undertaken, where they had not been delivered to the clients and where the amount of the bill equalled the credit balance held on client account in a number of matters. In all of those circumstances Mr Van Emden's conduct was dishonest by the standards of reasonable and honest people and having heard and seen Mr Van Emden's explanations the Tribunal was satisfied so that it was sure that Mr Van Emden did not have an honest belief that his conduct was anything other than conscious impropriety and therefore that he knew that what he was doing was dishonest by those same standards, in particular because Mr Van Emden was a solicitor of many years experience.

59. The Tribunal referred to the test in Twinsectra v Yardley but had noted the decision of the Privy Council in the case of Barlow Clowes [2006] in which the Privy Council had indicated that the appropriate test was that set out in Royal Brunei Airlines v Tan, namely that acting dishonestly means simply not acting as an honest person would in the circumstances. That was an objective standard even though honesty did have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew.

60. The Tribunal considers that it was required to assess an individual's conduct by reference to the objective standards of honesty of the ordinary and reasonable man but in doing so should take into account what the Respondent knew, his intelligence and experience and his reasons for acting as he did.

61. The Tribunal applied a standard of proof which, whilst recognising that these are civil proceedings, set a level so high as to render it indistinguishable from the standard that applied in criminal cases. On that basis the Tribunal was sure that Mr Van Emden acted dishonestly.

The mitigation of *[FIRST RESPONDENT]*

62. *[FIRST RESPONDENT]* was admitted as a solicitor after serving five years articles. The whole of his practice had been with the firm of Blackman & Blackman or its successors. The firm of Blackman Van Emden came into existence on 1st September 1995.

63. As a result of the matters before the Tribunal conditions had been placed on the Respondents' practising certificates which in particular meant that they could not continue to practise together in partnership. The firm had an offer to take it over from Messrs Khilkoff Boulding and they took over the firm on 1st June 2005. Both Respondents remained as consultants. In April 2006 Mr Khilkoff Boulding entered into an insolvency voluntary arrangement and was threatened with bankruptcy. He owed money to the Revenue and the firm ceased trading. Another Harrow firm, Caplans, took over the files and work in progress and asked *[FIRST RESPONDENT]* and Mr Van Emden to continue as consultants with them.

64. The Respondents had suffered considerable loss as a result of the takeover of Blackman Van Emden by Khilkoff Boulding. *[FIRST RESPONDENT]* had received no benefit from the sum paid by Khilkoff Boulding in respect of his 35 years goodwill in the law. Additionally the Respondents had become liable for outstanding liabilities.

65. *[FIRST RESPONDENT]* had principally worked as a civil litigator. He had considerable specialisation in work on media contracts. He worked extensively with professional ballroom and Latin American dancers and believed himself to be the only solicitor specialising in such work apart from another solicitor who practised in Vancouver. Mr Van Emden did not involve himself in contentious work but dealt with residential conveyancing, some commercial conveyancing and non-contentious probate.

66. *[FIRST RESPONDENT]* had been Chairman of the Jazz Development Trust and served 25 years with a theatre in Milton Keynes directed towards musical education. He had been a director of the National Youth Jazz Orchestra, a past Chairman of London Music Hall Trust and for nine years he was on the board of the Young Vic Theatre. He was an active fundraiser for the NSPCC running two events a year. He was a trustee of the Old Sessions House Trust supporting the former Assizes Court for London in Clerkenwell which had become the London Masonic Centre. He has past service as a trustee and honorary solicitor to the Bud Flanagan Leukaemia Fund and currently was Secretary General to the International Dance Sports Council.

67. In between 2002 - 2003 *[FIRST RESPONDENT]* had been subjected to considerable stress as a result of his mother's illness. He had to be responsible for and supervise her nursing by paid carers at home which continued until her death which occurred during The Law Society's investigation.

68. *[FIRST RESPONDENT]* had hoped to retire from practice as a solicitor in 2005 but events before the Tribunal had prevented that. He now intended to retire on 30th June 2007 but until 31st October 2007 and the expiry of his current practising certificate, he would be working two days a week to enable a takeover of his matters. He was anxious that he might be permitted to remain on the Roll of Solicitors so that he would be able to resume practice if and when the occasion arose. *[FIRST RESPONDENT]* was a single man with no debts. He had a lady friend with two children and he paid their school fees. He had assets and currently an income although that would come to an end when he retired.

69. *[FIRST RESPONDENT]* apologised and offered his regret to the Tribunal and to the solicitors' profession for the circumstances which led to his appearance before the Tribunal. He did ask the Tribunal to accept that his involvement had been wholly on the basis of his liability as a partner and he had no personal culpability. No matter of complaint had been made about him or any part of his practice; no client had suffered loss and *[FIRST RESPONDENT]*'s reaction to the discovery of the problems had been to take immediate positive action to prevent repetition.

70. The Tribunal was, in deciding upon the sanction and any costs to be imposed upon *[FIRST RESPONDENT]*, invited to bear in mind the culpable delay on the part of The Law Society in the prosecution of this matter and he invited the Tribunal to note the decision of the earlier division of the Tribunal that the current division of the Tribunal could take into account the clear and unexplained delay on the part of The Law Society in bringing these matters before the Tribunal.

The Submissions of Mr Van Emden

71. At the hearing Mr Van Emden did not make any submissions in mitigation after the pronouncement of the Tribunal's findings. However he had made reference to mitigating factors during his address to the Tribunal which the Tribunal notes below.

72. Mr Van Emden was 56 years of age and was a married man with three children. He had been heavily involved in charitable matters. He served on the Parent/Teacher Association of the school which his two sons attended. He had been both Treasurer and Chairman. He had been instrumental in arranging an evening for elderly people at the school for a number of years. He had supported a children's charity and had undertaken three charity bike rides in order to raise funds. He was a trustee of a local hospice and that work took up much of his time.

73. While dealing with these charities he had been responsible for dealing with and handling money without any impropriety, or allegation of the same, on his part.

74. Mr Van Emden had been a partner in two practices. He had set up as a sole practitioner in 1981 and had continued for 14 years. During the period of his practice as a sole principal he had been the subject of two or three routine Law Society inspections but no problems had ever been raised.

75. *[FIRST RESPONDENT]* and Mr Van Emden had joined forces in 1995. Mr Van Emden had worked hard to build up the practice. The merged practice had found itself overstaffed and the staffing situation had been rationalised. The practice then started to become successful. Mr Van Emden felt that he took on too much work. He was heavily involved with the administration of the firm and also with client work and fee generation. With hindsight he had come to recognise that he should have delegated more. The firm's gross fee income had been increasing as had the partners' net profit. All of the firm's liabilities had been paid on time and without difficulty. There had been no undue financial pressure on the practice. The firm did run on an overdraft but had not approached the maximum agreed overdraft facility at the time when the IO made his inspection. There was no reason for Mr Van Emden to do anything that was not right and proper.

The Tribunal's Orders and its reasons

76. With regard to *[FIRST RESPONDENT]*, the Tribunal gave him credit for his early admissions of the Solicitors Accounts Rules breaches and considered all that had been said upon his behalf. The Tribunal accepted that *[FIRST RESPONDENT]*'s position was to be distinguished from that of Mr Weston in Weston v The Law Society. The Tribunal accepted that the facts supporting all of the allegations had been outside *[FIRST RESPONDENT]*'s knowledge even though he was actively involved in the management and accounts of the firm.

77. The Tribunal had also taken into account the written references supporting *[FIRST RESPONDENT]*, all of which confirmed his integrity and competence. No allegation of dishonesty was made against him.

78. The Tribunal noted that *[FIRST RESPONDENT]* had attended the firm's cashiers' department several times during the day and the cashiers, who were experienced and had been employed by the firm for some time and were trusted by *[FIRST RESPONDENT]*, had not told him of any problems. The Tribunal accepted that it

would have been very difficult for *[FIRST RESPONDENT]* to have discovered the matters upon which the IO had reported.

79. The Tribunal accepted that *[FIRST RESPONDENT]*'s only involvement in these proceedings was by reason of his being an equity partner.

80. Having taken all of that into account, the unusual circumstances of the case and the delay on the part of The Law Society in bringing this matter to the Tribunal, the Tribunal concluded that the appropriate sanction to be imposed upon *[FIRST RESPONDENT]* was that of a reprimand and in all of the circumstances he should pay a contribution towards the costs of the Applicant fixed in the sum of £2,000 inclusive.

81. With regard to Mr Van Emden the Tribunal had found that he had been dishonest in relation to the three allegations where dishonesty had been alleged against him. The Tribunal was of the view that this was a sad case in many ways. Mr Van Emden had enjoyed a 30 year unblemished career within the solicitors' profession. However, for the reasons set out above, the Tribunal has made a finding that he acted dishonestly.

82. Any solicitor who does not act in accordance with the highest standards of integrity, probity and trustworthiness is a danger to the public and damages the good reputation of the solicitors' profession.

83. The Tribunal ordered that Mr Van Emden be struck off the Roll of Solicitors. The Tribunal also Ordered that he should make a contribution towards the Applicant's costs fixed in the sum of £18,000 inclusive.

Costs

84. The Tribunal had been told that the Applicant sought his costs at £40,000. Mr Van Emden and *[FIRST RESPONDENT]* had agreed that the figure represented the work undertaken but had, of course, reminded the Tribunal that it could exercise its discretion having regard to The Law Society's culpable delay.

85. In view of the delay on the part of The Law Society the Tribunal concluded that it would be appropriate and proportionate to award to it one half of the agreed costs. The costs awarded in favour of The Law Society were therefore £20,000 and the contribution ordered to be paid by each of the Respondents reflected their respective levels of culpability.

Dated this 30th day of August 2007
on behalf of The Law Society

A N Spooner
Chairman