

IN THE MATTER OF TIMOTHY JOHN SIMPSON HARDACRE, solicitor and  
[*SECOND RESPONDENT*], solicitor's clerk  
[NAME REDACTED]

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J N Barnecutt (in the chair)  
Miss J Devonish  
Ms A Arya

Date of Hearing: 14th June 2007

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill, 72-74 Fore Street, Hertford, SG14 1BY on 19th May 2006 that Timothy John Simpson Hardacre, solicitor of 19 Gerrard Street, London, W1D 6JG should appear before the Solicitors Disciplinary Tribunal to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thought fit.

An application was duly made on 19th May 2006 on behalf of the Law Society by the said Stephen John Battersby that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor [*SECOND RESPONDENT*] of Watford, Hertfordshire, WD19, a person who was or had been a clerk to a solicitor, or that such other order might be made as the Tribunal should think right.

The allegations against Mr Hardacre (“the First Respondent”) were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

In relation to the firm of Hillyard Simpson Hardacre:-

- (i) That he failed to keep accounting records properly written up;
- (ii) That he made withdrawals from client account other than as permitted by the Solicitors Accounts Rules;
- (iii) That he made improper use of a suspense account;
- (iv) That he failed to file Accountant’s Reports by the due dates.

In relation to the firm of Fuller Thomas:-

- (v) That he failed to provide books of account for inspection upon request by an officer of the Law Society;
- (vi) That he being a sole principal failed to exercise proper supervision over his practice and an unadmitted immigration caseworker;
- (vii) That he failed to deal properly with monies received from clients;
- (viii) That he failed to ensure the provision of proper information to clients at the outset of acting;
- (ix) [withdrawn with the consent of the Tribunal]
- (x) That he was involved in an arrangement with an unadmitted immigration caseworker which allowed that person to provide immigration advice and services other than as permitted by the Immigration and Asylum Act 1999.

The allegation against (“the Second Respondent”) was that he had in the opinion of the Law Society occasioned or been a party to, with the connivance of the solicitor by whom he was employed or remunerated, acts and/or defaults in connection with that solicitor’s practice which involved conduct on his part of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice.

By a supplementary statement of Stephen John Battersby dated 8th January 2007 it was further alleged against the First Respondent in relation to the firm of Hillyard, Simpson Hardacre:-

- (xi) That contrary to Rule 32 of the Solicitors Accounts Rules 1998, he failed to keep accounts properly written up;
- (xii) That contrary to Rule 19 of the Solicitors Accounts Rules 1998, he retained monies representing costs without sending his client a bill or other written notification thereof;

- (xiii) That contrary to Solicitors Practice Rule 1, he conducted himself in a manner which compromised or impaired, or was likely to compromise or impair:-
- (a) His own independence or integrity;
  - (c) His duty to act in the best interest of his client;
  - (d) His own good repute and that of the profession;
  - (e) His proper standard of work.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 14th June 2007 when Stephen John Battersby appeared as the Applicant, the First Respondent was represented by Mr Alliott of Counsel and the Second Respondent was represented by Mr Adrian Berry of Counsel.

The evidence before the Tribunal included the admissions of the First Respondent to allegations (i) to (iv) and (xi) to (xiii).

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

The Tribunal Orders that the Respondent Timothy John Simpson Hardacre of 19 Gerrard Street, London, W1D 6JG, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 14th day of June 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,352.11.

**The facts are set out in paragraphs 1 to 29 hereunder:-**

1. The First Respondent, born in 1938, was admitted to the Roll of Solicitors in 1961. His name remained on the Roll of Solicitors.
2. At the material times the First Respondent was the sole principal of Hillyard Simpson Hardacre, which ceased to trade on 30th April 2004 when most of its client matters were taken over by W B Solicitors. He was also sole principal of Fuller Thomas which, like Hillyard Simpson Hardacre, operated from 19 Gerrard Street, London, W1D 6JD with another address at Administration Centre, PO Box 479, Watford, Hertfordshire, WD19 9QD. The firm of Fuller Thomas was acquired on 17th January 2005 by WB following the bankruptcy of the First Respondent. The Second Respondent worked as an immigration caseworker for the firm of Fuller Thomas and was described on the firm's notepaper thus "Consultant RE Brickley, Immigration Specialist - non solicitor".

Allegations (i) to (iv)

3. On 22nd July 2004 an Investigation Officer of the Law Society commenced an inspection of the books of account and other documents of Hillyard Simpson Hardacre, which had ceased trading on 30th April 2004. A copy of the resulting Report dated 9th September 2004 was before the Tribunal.
4. The Investigation Officer discovered that there had been a failure to keep accounts properly written up in that client bank account transactions had not been posted since

9th January 2004 and no accounting records had been maintained in connection with the firm's dealings with office monies in relation to client matters.

5. There were overdrawn balances totalling £3,642.95 in respect of six client matters.
6. The Investigation Officer also noted the presence of a ledger account headed 'Suspense Account' which had an overdrawn balance of £11,952.84.
7. No client bank statements later than 27th June 2003 nor any client files were produced by the First Respondent. As a result the Investigation Officer was unable to verify the overdrawn client balances. The First Respondent never provided a satisfactory explanation for the use of the suspense account.
8. The First Respondent had not delivered any Accountant's Reports since he commenced the practice in May 2002 despite being subject to a requirement to produce half-yearly Reports. The Report for the period ending 15th November 2003 was due by 15th May 2004 and that for the period ending 15th May 2004 by 15th July 2004. Neither Report had been delivered.
9. The Law Society wrote to the First Respondent on 5th October 2004 and asked him to give his explanation of the problems identified by the Investigation Officer in relation to Hillyard Simpson Hardacre. In his response of 12th October 2004 the Respondent disagreed with much that the Investigation Officer had stated in his Report but did say that he had a problem with his bookkeeping. He said that this had initially been undertaken by accountants who had not carried it out properly. When he became aware of the problem the First Respondent had instructed another external accountant. The First Respondent maintained that there had been no problems with any clients' funds and that no client had any reason to be concerned. He said that the firm ceased to trade in May 2004 and that live files had then been transferred to WB. He said that the new accountants would be able to satisfy the concerns of the Law Society.
10. The First Respondent's solicitor wrote on his behalf on 19th November 2004 and said that the accountants were making good progress with the work and he hoped to be in a position to revert to the Law Society on the completion of the audit in about two weeks' time. This never happened.

Allegations (v) to (viii) and (x)

11. On 28th October 2003 an Investigation Officer of the Law Society commenced an inspection of the books of account and other documents of the practice of Fuller Thomas. A copy of his Report dated 9th September 2004 was before the Tribunal.
12. There were two office bank accounts but no client account. The First Respondent said that the reason for this was that clients were charged on a fixed fee basis and therefore there was no need for the firm to maintain a client account as fixed fees could be paid straight in to office account. The firm's initial letter and terms of business however stated that the fees were capable of being moved up or down.
13. Although the Investigation Officer briefly had access to the books of account of Fuller Thomas on his first visit, when he returned on 19th November 2003 no books of account were available and the inspection could not be resumed. There were

difficulties over organising a mutually convenient date but eventually the First Respondent agreed to make the books available on 8th June 2004. They were not in fact made available on that date. When the Investigation Officer commenced his inspection of Hillyard Simpson Hardacre on 22nd July 2004 the First Respondent told him that he would provide the books of account for Fuller Thomas on 29th July. Again they were not available on that date and the Investigation Officer never saw them. Accordingly he was unable to express any opinion on the compliance of the First Respondent with the Solicitors Accounts Rules in respect of the practice of Fuller Thomas.

14. The Investigation Officer's Report set out the enormous problems the Investigation Officer had in establishing and maintaining contact with the First Respondent. While there were difficulties due to a bereavement in the First Respondent's family and also due to a period of ill-health of the Investigation Officer, the problems in contacting the First Respondent were due on many occasions to the First Respondent's absence on business outside the country.
15. In an interview with the Investigation Officer the First Respondent said that the Second Respondent and two secretaries were based in Watford and all the books of account were kept there. (The First Respondent has subsequently corrected his comment in relation to the books of account as set out at paragraph 51 below.) The First Respondent did not state the physical address of the Watford office and the Law Society records held no details in respect of it.
16. The Second Respondent carried out all his casework from his home address in Watford. The Second Respondent told the Investigation Officer that he met with the First Respondent once a week. The Second Respondent also stated that he opened all the post addressed to the PO box number in Watford and added that he dealt with day-to-day matters.
17. The Immigration and Asylum Act 1999 required any person who wished to provide immigration advice and services after 1st May 2001 to apply for registration with the Office of the Immigration Services Commissioner ("OISC") unless the provider was a solicitor or was a person working under the supervision of a solicitor. The Second Respondent was not registered with the OISC.
18. On 4th October 2004 the Law Society wrote to the First Respondent with regard to the Investigation Officer's Report into the firm of Fuller Thomas. He was asked to give an explanation in respect of the problems identified.
19. In his letter of response of 11th October 2004 the First Respondent did not agree that there was any lack of supervision as far as the Second Respondent was concerned, nor did he accept the sequence of events as described by the Investigation Officer. His view was that there was no need for a client account given the way in which the firm operated.
20. On 29th October 2004 the First Respondent's solicitor wrote to the Law Society on his behalf and suggested that the First Respondent would be perfectly happy to have a further meeting with the Investigation Officer. In a further letter dated 19th November 2004 the First Respondent's solicitor stated that his client had believed that the fees charged to clients in immigration matters were fixed fees and that he had

therefore been in order paying them into the office account. He further stated that there had been an earlier finding by an adjudicator who had found the First Respondent's supervision of the Second Respondent to be satisfactory.

21. The Second Respondent in his written responses drew attention to his expertise in the field of immigration law and on 21st March 2005 produced letters from third parties in support.

Allegations (xi) to (xiii)

22. On 13th December 2004 a former client of the First Respondent, Mr M, made a complaint to the Law Society about the way in which the First Respondent had handled his case. A consultant caseworker of the Law Society's then Consumer Complaints Service commenced an investigation into the complaint. Her initial Report of 23rd March 2006 and her supplementary Report of 2nd June 2006 were before the Tribunal.
23. The background to the complaint was that in May 2002 the complainant, Mr M, was the proprietor of a hotel in Wiltshire. He entered into a contract dated 21st May 2002 with Mr VM, a vocal performer of some renown, for him to play a concert at the hotel on 3rd August 2002 for a flat fee of £20,000 plus VAT. Mr M sold 2,000 tickets for the concert and made many preliminary arrangements. On 1st July 2002 Mr VM pulled out of the concert alleging breach of contract.
24. Mr M instructed the First Respondent to commence proceedings against Mr VM and his promotion company for damages to compensate him for his losses. Although Mr M eventually succeeded in the case, he ended up badly out of pocket. He provided the Law Society with a list of payments made to the First Respondent totalling £53,430 in a letter dated 20th April 2006. In addition to the monies he had paid to the First Respondent, the First Respondent had obtained a charge on the property owned by Mr M in the sum of £130,000.
25. Mr M complained that although he had paid monies to the First Respondent, he had not received any bills. The Law Society requested the relevant file from the First Respondent. Although the First Respondent delivered some papers to the Law Society on or about 5th September 2005 these consisted mainly of trial bundles and there was no correspondence or bills. This was pointed out to him by the Law Society in a letter of 16th December 2005. By the time the caseworker produced her first Report in March 2006 the First Respondent had still not provided her with copies of any bills. Eventually she was supplied with two invoices, one dated 3rd July 2002 in the sum of £1,468.75 and a second dated 3rd March 2003 in the sum of £11,128.75. The Law Society was also provided with a fee note from Counsel dated 6th January 2003 in the sum of £2,144.40 including VAT. The total monies accounted for by the two invoices and Counsel's fee note were £14,741.90, considerably less than the total paid to the First Respondent by Mr M.
26. Another source of concern for the Law Society was the lack of financial information in the papers supplied by the First Respondent. There had been considerable movement of monies in connection with the matter, all of which ought to have been recorded in compliance with the Solicitors Accounts Rules. The only ledger which the First Respondent was able to supply to the Law Society was deficient. For

example, AXA Insurance made two payments to the First Respondent's firm on behalf of Mr M, the first of £4,948.61 on 6th June 2003 and the second of £1,525.00 on 17th June 2003. Neither of these amounts, totalling £20,198.61, was recorded on the ledger supplied by the First Respondent. Confirmation of the payments was contained in a fax from AXA dated 21st April 2006. The ledger did not confirm receipt of all the monies which Mr M set out in his letter. Another payment which the Respondent received was from a remortgage of a property owned by the complainant. From the monies obtained £15,000 was deducted and paid to his firm. The date when this deduction was made was not set out on the completion statement.

27. The papers supplied to the Law Society by the First Respondent did not include any correspondence after June 2003. Mr M complained that he was not kept properly informed of developments in the case and that a number of communications sent to him by the First Respondent were simply not answered, thus adding to his anxiety. These were on 16th July 2003, 6th August 2003, 22nd August 2003, 18th November 2003, 26th November 2003 and 11th February 2004. In addition to this, the First Respondent failed to deal with the resolution form which Mr M sent him on 24th November 2004.
28. In explanations given to the Law Society, the First Respondent claimed that his client was kept fully informed of the progress of this case throughout, although evidence of this was limited because of the loss of papers from 10th June 2003 onwards. He also claimed that bills were sent to Mr M to cover the monies taken for costs, although only the two invoices referred to above had been supplied.
29. The First Respondent appealed out of time against the decision of the Adjudication Panel on 11th July 2006 to refer his conduct to the Tribunal. He was allowed to appeal and the Appeal Panel considered the matter on 8th November 2006 and upheld the original decision to refer the matter to the Tribunal.

### **The Submissions of the Applicant**

30. The First Respondent had admitted allegations (i) to (iv) and (xi) to (xiii). The Applicant would seek to prove allegations (v) to (viii) and allegation (x). The Applicant sought leave to withdraw allegation (ix) and the Tribunal agreed.
31. Allegations (vi) to (viii) and (x) arose out of the same circumstances, namely the employment of the Second Respondent without proper supervision by the First Respondent.
32. It was right to say that the Second Respondent's current employment was approved as a proper arrangement by the Solicitors Regulation Authority. Under the current arrangements all post went to the employing firm who also had instant access to all electronic information.
33. It would be said on behalf of the Second Respondent that as the current situation had been satisfactory for some 2½ years there was no need to seek an order under Section 43 of the Solicitors Act. It was submitted however that the arrangement that was in place at Fuller Thomas had not been satisfactory. The Second Respondent at that time had effectively run his own practice. Were he to leave his present firm the Law Society would wish to control his employment.

34. If the Tribunal were to make the order under Section 43 it would be appropriate for it to be delayed to give time for arrangements to be made for the Second Respondent's present employment to continue. The Applicant was not seeking to say in any way that the Second Respondent was inadequate as an immigration adviser, indeed he was clearly highly accomplished. Nevertheless the arrangements at the time material to the allegations had not been sufficient to comply with either professional Rules or the Immigration and Asylum Act.
35. The Second Respondent had been based at Watford and dealt with incoming and outgoing post. The Tribunal was entitled to ask whether the First Respondent was in a position to provide effective supervision. The First Respondent was involved as a sole principal in Hillyard Simpson Hardacre as well as Fuller Thomas and Fuller Thomas had other business addresses. Further, the First Respondent had been suffering from a psychiatric illness. The muddle his work was in could be seen from the case of Mr M. These were all factors which the Tribunal could bear in mind.
36. It was accepted that it was not a disciplinary offence for a clerk to fail to be supervised. It was submitted however that the arrangement at Fuller Thomas was such that the Second Respondent could effectively run his own practice. As an experienced caseworker he should have realised that such an arrangement was not proper. The way in which the Second Respondent was allowed by the First Respondent to provide immigration advice and services was such as to circumvent the provisions of the Immigration and Asylum Act. It was significant that the Second Respondent was not based at the same address as the First Respondent, carried out his casework from his address in Watford and, dealt with the post. The First Respondent had said that the accounts for Fuller Thomas were kept at Watford, the Investigation Officer experienced grave difficulty after his first visit in gaining access to those accounts and experienced grave difficulty in establishing contact with the First Respondent on many occasions because of his absences from the office.
37. While the First Respondent's solicitor had referred the Law Society to an earlier finding by an Adjudicator that the First Respondent's supervision of the Second Respondent was satisfactory, it was submitted that had the Adjudicator been aware of the Investigation Officer's findings rather than relying on submissions by the Respondents his decision could have been different. However great the expertise and reputation of the Second Respondent, as a person not registered with the OISC he should have been subject to proper supervision.
38. The First Respondent had admitted the allegations relating to Hillyard Simpson Hardacre. No dishonesty was alleged against the First Respondent in relation to these offences or indeed any offences. There had been muddle rather than dishonesty.
39. The First Respondent had failed to keep his accounting records properly written up. The client bank account transactions had not been posted for six months.
40. A suspense account should only be used when justified, for example receipt of an unidentified payment.
41. In relation to allegation (vii) while the First Respondent had said that all cases were on a fixed fee basis, correspondence showed that the fees were capable of being



changed. It was accepted that there had been a misunderstanding of the Rules by the First Respondent who now accepted that he had been mistaken.

42. In relation to allegation (viii) the Investigation Officer had been unable to find evidence that clients had been given proper information at the outset in all cases.
43. In relation to the matter of Mr M and allegation (xi), if the First Respondent had kept proper accounting records all receipts and payments out would have been recorded. During the course of the hearing Counsel for the First Respondent had shown the Applicant a paying-in slip regarding monies received from the insurance company which were not referred to on the handwritten ledger. While the document showed that the monies had been received, clearly the accounting records had been inadequate.
44. There had been numerous letters received from the client without response.
45. The Respondent had failed properly to safeguard the file, a large part of which had simply gone missing.
46. Overall there had been shortcomings in the way the First Respondent had carried out the work.

#### **Oral evidence of Mr Dhanda**

47. Mr Dhanda, an Investigation Officer with the Law Society, had carried out two investigations and he confirmed the truth of his Reports.
48. In relation to Fuller Thomas, Mr Dhanda had been told that the Second Respondent was at the Watford office. This office was on the firm's letterhead with a post office box address and Mr Dhanda had not realised that it was the Second Respondent's home.
49. Mr Dhanda had attempted to visit the Watford office. He had been unable to contact either Respondent on their mobiles so had telephoned the landline number for Watford and spoken to a secretary having failed to obtain access to the Gerrard Street office. The secretary had said she would speak to the Second Respondent. This had not been a prearranged visit. The visit to Gerrard Street had been prearranged but had not happened, hence the unsuccessful attempt to visit Watford.
50. Mr Dhanda had met the First Respondent initially on 28th October 2003. He had never seen the books of Fuller Thomas after that initial visit. It had been very difficult to contact the First Respondent. Mr Dhanda had given him every opportunity to produce the books and records. Mr Dhanda had been unable to prepare a full Report. Mr Dhanda had set out in his Report the various unsuccessful attempts to meet the First Respondent.
51. The First Respondent had told Mr Dhanda that the books of account of Fuller Thomas were kept in Watford. Mr Dhanda accepted that in his written statement dated 17th January 2007 the First Respondent had confirmed that the Second Respondent had no access to the firm's bank accounts and dealt only with casework matters and that in the light of the First Respondent's statement that:-

“I was not frank with him as I should have been about Hillyard Simpson Hardacre and I should have told him of that problem and made sure that he was able to complete the Fuller Thomas inspection. I did ‘put him off’ by claiming records were at other offices, such as Watford. This was because I needed time to correct the Hillyard Simpson Hardacre accounts.”

It appeared that the accounts had not been kept in Watford.

52. Mr Dhanda also accepted that not dealing properly with clients’ money could not be laid at the Second Respondent’s door.
53. Mr Dhanda accepted that in relation to the initial letter to clients some information was provided about the complaints procedure and the likely overall cost. Mr Dhanda was referred to the Second Respondent’s witness statement dated 22nd January 2007 in which he said:-

“I also assisted in the preparation of a draft ‘Client Information Pack’ intended to accompany letters to be sent to clients on receipt of initial instructions that Mr Hardacre sent to counsel for approval.”

In the light of that evidence Mr Dhanda accepted that any deficiencies in initial information given to clients should not fall at the feet of the Second Respondent.

54. Mr Dhanda was referred to Rule 13 of the Solicitors Practice Rules 1990. He confirmed that there was no criticism of the nature of the individual services provided by the Second Respondent. He also confirmed that the First Respondent, the principal of the firm, was a solicitor qualified to supervise. He said that the key provision of Rule 13 which had been in his mind was that every office of a practice must have at least one solicitor qualified to supervise for whom that office was his or her normal place of work.
55. Mr Dhanda accepted that the First Respondent had stated in a letter dated 11th October 2004 to the Law Society that the Home Office was notoriously inefficient concerning changes of address, hence the reason for keeping the post office box address used by the Second Respondent previously, that the post office address was a correspondence address and not a place which clients could visit and that the Respondents met frequently and spoke at length every day including most weekends.
56. Mr Dhanda confirmed that there had been no problem about the production of the books of account of Hillyard Simpson Hardacre and indeed the Fuller Thomas books had been made available on the first visit.
57. Mr Dhanda confirmed that thereafter the appointments made had been cancelled in advance by the First Respondent’s secretary and that Mr Dhanda had himself had to cancel on a couple of occasions.
58. Mr Dhanda confirmed that if there had been no flexibility in the fixed fees there would be no need for a client account.

### **Oral evidence of the Second Respondent**

59. The Second Respondent confirmed the truth of his witness statement dated 22nd January 2007 and adopted it as his evidence.
60. The Second Respondent explained that he had used a post office box number rather than his address as when supervised by his former employer Mr G the latter had been anxious that clients could not call at the Watford office. The Second Respondent had thought that supervision applied only to offices where clients could visit so he was also anxious to prevent clients from coming to Watford. At all three of the solicitors' firms where the Second Respondent had been employed he had worked from home.
61. The Second Respondent was surprised that his secretary had never told him that she had received a telephone call from Mr Dhanda of the Law Society. She was however expert at not letting clients come to Watford, and may have confused Mr Dhanda with a client. Had the Second Respondent been aware that Mr Dhanda had telephoned he would have telephoned the First Respondent.
62. The Second Respondent was referred to the First Respondent's witness statement in which he said that he had a rule that the Respondents should meet at least once a week to discuss work and go through matters. The Second Respondent said that this was observed more often than not.
63. The Second Respondent did not recall the First Respondent being abroad as much as the evidence suggested. The Respondents had spoken virtually every day by telephone. When the First Respondent was abroad they spoke by mobile telephone and the Second Respondent sometimes accompanied the First Respondent. If the Second Respondent spoke to the First Respondent by mobile telephone he would not necessarily know where the First Respondent was. The First Respondent did not take holidays.
64. The details of the regular meetings between the Respondents set out in the First Respondent's statement were also correct, as was the fact that the Second Respondent had an extremely experienced secretary who was fully conversant with all client matters and files.
65. The Second Respondent had been well aware of the Immigration and Asylum Act. He had intended to register with the OISC but then realised that he could not have done his High Court work or other higher level work.
66. The Second Respondent's arrangement with his former employer Mr G coincided with the implementation of the Act. At one time the First Respondent and Mr G had worked together and in 2002 there had been a crossover by the Second Respondent to work for the First Respondent. Because of a delay in Fuller Thomas being formed the Second Respondent was initially supervised by Hillyard Simpson Hardacre and the Law Society was informed.
67. The First Respondent only had half a dozen matters in Hillyard Simpson Hardacre. Most of his matters were in Fuller Thomas.
68. The Second Respondent had not been aware of the First Respondent's health problems. The First Respondent had been very impressive in meetings.

69. The Second Respondent confirmed that post had gone to the Watford post office box address as the Home Office was notorious for not recording changes of addresses. Sometimes however clients sent or delivered their post to the London addresses. One day a week the Second Respondent would meet clients at the Harley Street office.
70. The firm had had some complaints all but one of which had been rejected on investigation. The one complaint upheld was due to the First Respondent's failure to give information and that client continued to instruct the Second Respondent.
71. The Second Respondent continued to work from his Watford address with his current employer. He saw his current senior partner less than he saw the First Respondent but they spoke frequently. There were many solicitors in his present firm and the arrangements were different so there was greater interaction. The Solicitors Regulation Authority had approved the current arrangements. All incoming post went through the firm and was scanned and the hard copy was then sent on to the Second Respondent. Outgoing post could be seen electronically by the Second Respondent's supervisor. It was right to say however that the Second Respondent had had more discussions with the First Respondent than with his current supervising partner. More advanced technology had changed the position although overall the Second Respondent did not feel that the supervision was dramatically different.
72. Due to a shortage of immigration workers and the high proportion of cases going to appeal the Second Respondent was now working much longer hours than he had when employed by the First Respondent.

#### **Evidence of the First Respondent**

73. The First Respondent was not present due to ill-health and Counsel referred the Tribunal to the medical report. The First Respondent's evidence was before the Tribunal in written form.

#### **The submissions on behalf of the Second Respondent**

74. The Tribunal had before it written submissions on behalf of the Second Respondent. Counsel made the following oral submissions.
75. In considering whether there had been infractions by the Second Respondent, the Tribunal had to consider his current practice and his previous practice under Mr G.
76. What fell to the Second Respondent was comparatively narrow and did not justify finding any breach by the Second Respondent or the making of an order under Section 43.
77. The Tribunal was invited to consider the allegations against the First Respondent. In relation to allegations (i) to (iv) the Second Respondent had not been involved with the firm Hillyard Simpson Hardacre.
78. Allegation (v) did not apply to the Second Respondent.

79. In relation to allegation (vi) a failure to supervise could not be put against the Second Respondent.
80. The Second Respondent had no control of or access to the accounts and allegation (vii) did not fall to him. Allegation (viii) primarily fell within the purview of the employing solicitor rather than the clerk.
81. In relation to allegation (x) the Second Respondent had given evidence that he had thought that supervision was required at an office which was open to the public. This had in fact been the position under the old Rule 13 but not under the new Rule 13 which had been in force at the relevant time.
82. The Tribunal was asked to note that the Second Respondent had brought himself within the Law Society's structure originally under Mr G and then under the First Respondent by making arrangements to be supervised.
83. The First Respondent had been candid about the arrangements in correspondence and there had been no attempt to hide those arrangements.
84. The Law Society had been investigating in the context of financial issues.
85. Having heard the Second Respondent's evidence and seen his correspondence with the OISC it was clear that the Second Respondent was not trying to avoid regulation. The Second Respondent had taken steps to ensure that he was regulated. It was the First Respondent's responsibility to make sure that there was compliance with supervision requirements. Even though there might have been a breach of the letter of Rule 13 this was not a sham arrangement.

#### **Submissions on behalf of the First Respondent**

86. The allegations had to be substantiated to the criminal standard of proof. There was a two stage process, firstly the proving of the factual allegations and then whether or not they amounted to conduct unbefitting a solicitor. The First Respondent was not admitting allegations (v) to (viii) and (x).
87. The books had been produced on an initial visit to Fuller Thomas and had been produced without problem in respect of Hillyard Simpson Hardacre. Other appointments were made, files were brought from Watford and were made available for Mr Dhanda for some time. In November 2003 and February 2004 appointments had been cancelled by Mr Dhanda due to his ill-health.
88. The Tribunal was invited to consider that allegation (vii) was a technical breach. These were fixed charges. While there was scope for increase this never happened in practice.
89. In relation to allegation (viii) the likely overall costs and the complaints process were set out. The fee earner was going to be the Second Respondent, who had met the client.
90. It was submitted that the fact that the Second Respondent was not based at the same address as the First Respondent and carried out the casework from Watford dealing

with incoming and outgoing post did not point to a lack of supervision. The lines of contact between the First and Second Respondents were very strong. There was genuine supervision of a qualitative nature.

91. After the Tribunal's findings in relation to liability further submissions were made on behalf of the First Respondent in mitigation.
92. The Tribunal would have in mind the circumstances in which the misconduct arose. No dishonesty was alleged in respect of any of the issues. There was also no lack of client care. Two potential aggravating features relating to public protection were therefore not present.
93. There had been no concealment. The First Respondent was not seeking to hide the situation. There had been incompetence and muddle.
94. There had been significant delay in this matter being dealt with and events had moved on.
95. The First Respondent's medical condition provided an explanation for his poor performance. In his statement the First Respondent had made a frank apology and accepted that he was to blame. There had been some misunderstanding of the Rules, for example in relation to the fixed fee issue.
96. In relation to Mr M, this was a piece of litigation which had gone wrong. The costs had not followed the event in its entirety, with disastrous effect. Mr M and the First Respondent had become bankrupt. The First Respondent had lost a substantial amount of money as a result of failure to have his costs paid on that matter. It would have cost him even more money to get his accounts into the order they should have been in in the first place and he was not going to pour good money after bad. This was the context in which those matters of misconduct arose.
97. The First Respondent continued to do occasional work and wished to continue. The Tribunal was invited not to strike him of the Roll or suspend him but to allow him to retain his Practising Certificate. The First Respondent recognised that that could not be without stringent conditions.
98. The First Respondent was existing on a state pension only and had no assets. He was in no condition to pay a fine.
99. The Tribunal was referred to the First Respondent's detailed witness statement. The Tribunal was also referred to three character references in support of the First Respondent.

#### **Submissions as to costs**

100. The Applicant sought his costs in accordance with the schedules submitted. The first schedule related to costs against the First Respondent only. The second schedule related to joint costs involving both Respondents. In relation to the hearing on 23rd January 2007 it was right to say that having agreed to an abridgement of time for service of the supplementary statement the First Respondent had then quite properly wanted more time.

101. On behalf of the First Respondent Mr Alliott said that the First Respondent was in no condition to pay costs. His financial position was parlous. The costs of the Law Society in relation to the abortive hearing on 23rd January 2007 should not be recovered. While it was accepted that the First Respondent's statement had been late the costs had been wasted in part because of the late service of the Applicant's supplementary statement.
102. On behalf of the Second Respondent Mr Berry said that in relation to the 23rd January hearing costs should lie where they fell as all parties had been late in the service of documents. In relation to the substantive hearing costs should follow the event. The Law Society had properly investigated but they took a risk in doing so in the regulatory interest. The Second Respondent had responded in the regulatory interest. The Second Respondent should not have to pay the Law Society's costs. The Tribunal had unfettered discretion in relation to costs. The Second Respondent had been cooperative. It was also noted that in the schedules all correspondences and attendances were placed against the Fuller Thomas costs when a lot of the correspondence related to Hillyard Simpson Hardacre. It was submitted that the Second Respondent was entitled to his costs on the basis of natural justice, notwithstanding the public interest in regulatory proceedings. The Second Respondent had lost £40,000 in earnings in this matter. The First Respondent's ability to pay was not the issue.

### **The Findings of the Tribunal**

#### The First Respondent

103. Allegations (i) to (iv) and (xi) to (xiii) were admitted and the Tribunal found them to have been substantiated.
104. The Tribunal had before it two witness statements of the First Respondent and had heard submissions on his behalf by Counsel. The Tribunal also considered the correspondence from the First Respondent and his solicitor contained in the Applicant's bundles.
105. The Tribunal found allegation (v) to have been substantiated. The First Respondent had failed to produce the books of accounts in relation to the firm Fuller Thomas apart from a very brief time at the beginning of the inspection and had admitted in his statement that he had not been frank with Mr Dhanda and had tried to put Mr Dhanda off by claiming records were elsewhere including at Watford.
106. Allegations (vi) and (x) were linked together and the Tribunal found them to be substantiated. Although the Tribunal accepted the evidence of the Respondents that they had talked regularly, the post for the Second Respondent's work had gone straight to his home in Watford unseen by the First Respondent, who would therefore not have been independently aware if any problems or complaints had arisen. Further, the First Respondent was the sole principal of two practices and was frequently abroad. Allegations (vi) and (x) were substantiated.
107. Allegation (vii) related to the matter of the fixed fees. The Tribunal accepted that the First Respondent had misunderstood the Rules in relating to fixed fees when he

described them as being able to increase or decrease. The First Respondent's evidence was that they had in practice never exceeded the stated amount. Allegation (vii) was substantiated but was not at the top end of the scale.

108. The Tribunal had carefully considered allegation (viii) by reference to the documentation before it and was not satisfied that the allegation was substantiated. The documentation provided to clients recorded most of the required information.
109. The admitted and substantiated allegations against the first Respondent were conduct unbecoming a solicitor and were serious. There had clearly been muddle and confusion at the relevant time. The Tribunal had read the psychiatric report in relation to the First Respondent which gave details of a serious medical condition. The medical evidence was that the First Respondent was not fit to attend the proceedings and while able to instruct Counsel would be unable to speak for himself or follow the course of a trial due to his difficulties in concentrating. The prognosis was that in relation to part of the diagnosis the First Respondent's ill-health was irreversible and would continue to deteriorate. The report said that the First Respondent was unlikely to enjoy any significant improvement. The Tribunal had considered carefully the mitigation put forward on behalf of the First Respondent and the character references. The Tribunal had noted the First Respondent's wish to continue in practice to some degree, albeit under strict conditions. The Tribunal however had a duty to protect the public, and given the seriousness of the matters substantiated against the First Respondent and sadly given his very serious ill-health the Tribunal considered that the public would be at risk if the First Respondent was allowed to practise even if supervised. The appropriate order was to suspend the First Respondent from practice for an indefinite period.

#### The Second Respondent

110. The Tribunal was of the view that the supervision provided by the First Respondent during the Second Respondent's employment with him had been inadequate for the reasons referred to at paragraph 106 above. The arrangement between the Respondents was not however a sham arrangement and the Second Respondent had considered that he was being adequately supervised in that he thought that the supervision requirements set out in Rule 13 related only to offices open to the public. The Second Respondent was clearly doing valuable work. The supervision arrangements at his current firm had been closely examined by the Solicitors Regulation Authority and had been approved. The Second Respondent had brought himself within the regulation of the Law Society and now clearly understood the supervision arrangements required. In all the circumstances there was no need for the Tribunal to make an order under Section 43 of the Solicitors Act 1974 and the application for such an order was refused.
111. In relation to costs the Tribunal had not been asked to order a detailed assessment of costs. The first schedule related to the First Respondent alone and the Tribunal would order that the fixed sum sought by the Applicant in that schedule be paid. The First Respondent would be ordered to pay a contribution of £10,000 to the remaining Law Society costs. The First Respondent would therefore pay a total of £14,352.11. The Tribunal had noted the submissions made in relation to the First Respondent's finances and appreciated that enforcement of the costs was a different matter. It was right however that the order be made.



112. In relation to the Second Respondent, the Law Society had been right to investigate the matter and bring the proceedings as there had clearly been insufficient supervision of the Second Respondent's work by the First Respondent. The Tribunal would not order the Law Society to pay the Second Respondent's costs. No order had been made against the Second Respondent however and he would not be required to pay any of the costs of the Law Society.
113. The Tribunal ordered that the Respondent Timothy John Simpson Hardacre of 19 Gerrard Street, London, W1D 6JG, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 14th day of June 2007 and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,352.11.

DATED this 14<sup>th</sup> day of September 2007  
on behalf of the Tribunal

J N Barnecutt  
Chairman