No. 9505-2006

IN THE MATTER OF WISHWA ELLEPOLA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr D Glass
Mr P Wyatt

Date of Hearing: 28th 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 Michael Robin Havard, solicitor and partner in the firm of Morgan Cole of Bradley Court, Park Place, Cardiff, CF10 3DP on 13th June 2006 that the Respondent 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.

On 24th May 2007 the Applicant made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor and/or where stipulated, in breach of the Solicitor's Practice Rules 1990 and the Solicitor's Accounts Rules 1990 in each of the following respects namely that:

1. He had drawn monies out of client account otherwise than is permitted by Rule 22 of the Solicitors Accounts Rules 1998, leading to a cash shortage;

2. He had failed to comply with Rule 32 of the Solicitors Accounts Rules 1998;

3. He had employed a person who had already been struck from the Roll of Solicitors within his practice without the written permission of The Law Society contrary to Rule 1(d) of the Solicitors Practice Rules 1990;

4. He had employed and/or remunerated in connection with his practice a person who, to his knowledge, was disqualified from practising as a solicitor by reason of having been struck from the Roll of Solicitors, contrary to Section 41 of the Solicitors Act 1974;

5. He had acted in a deceitful way contrary to his position as a solicitor;

6. As between 14th November and 8th March 2004 he had failed to comply with Section 2 of the Solicitors Introduction and Referral Code 1990 contrary to Rule 3 of the Solicitors Practice Rules 1990;

7. As between 9th March 2004 and August 2004, he had failed to comply with Section 2A of the Solicitors Introduction and Referral Code 1990 contrary to Rule 3 of the Solicitors Practice Rules 1990;

8. He had failed to prepare reconciliation statements in breach of Rule 32(7) of the Solicitors Accounts Rules 1998;

9. He had failed to record on the office side of client ledger accounts all dealings with office money in breach of Rule 32(4) of the Solicitors Accounts Rule 1998;

10. He acted in a way which had compromised and impaired his integrity contrary to Rule 1(a) of the Solicitors Practice Rules 1990;

11. He had failed to act in the best interests of his client namely Abbey National Plc contrary to Rule 1(b) of the Solicitors Practice Rules 1990;

12. He failed to supervise adequately or at all work undertaken by a solicitor in his employment;

13. He had provided misleading information to his professional indemnity insurers, St Paul's Insurers;

14. He had acted dishonestly.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 28th June 2007 when Robin Havard appeared as the Applicant and the Respondent was represented by Mr Alan Jenkins of Counsel instructed by Murdochs Solicitors.

The Respondent admitted all allegations save for allegations 3, 4, 5 and 14.

The evidence before the Tribunal included the oral evidence of the Respondent, the oral evidence of Mr Shields and Mr Jeyarwardina. The following documents were handed up at

the hearing; bundle of documents re C Limited and RW, extracts from the Abbey National Guidance and the letter of January 2005 written by The Law Society to the Respondent about the impending investigation.

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

The Tribunal Orders that the Respondent, Wishwa Ellepola of Elle & Selve, Fitzgerald House, 285 Fore Street, London, N9 0PD, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 23 hereunder:

1. The Respondent, born in 1951, was admitted as a solicitor in March 1998. At the time of The Law Society's Forensic Investigation Unit inspection he practised as a sole practitioner. Subsequently the Respondent practised as one of two partners in the firm of Elle & Selve of Fitzgerald House, 285 Fore Street, London, N9 OPD.

2. The Forensic Investigation Officer ("the FIO") of The Law Society attended the offices of the Respondent on 26th January 2005 in order to commence an inspection of the firm's books of account, authorisation having previously been given. The FIO's Report dated 12th July 2005 was before the Tribunal.

3. The FIO's Report revealed a list of liabilities to clients as at 31st December 2004 totalling £152,757.03. The list did not include additional liabilities to clients totalling £1,736.71.

4. The cause of the cash shortage of £1,736.71 centred around a conveyancing transaction where the Respondent acted on behalf of Mr Y in the purchase of a property when, on 1st August 2004, £1,700 was paid from client account in respect of stamp duty, at a time when only £30 was available to Mr Y, leaving a debit balance of £1,670. This was the position as at 25th January 2005. The Respondent told the FIO:

> "there is office money for other clients in their clients account the sum of which more than covers the debit on this one. I agree there is a shortage on this one, but office money is there, I will make transfer today."

5. The shortage was rectified in February 2005.

Allegation 2

It was common practice for the Respondent not to record dealings with office money on the office side of the client ledger account. It had been the Respondent's position that he was familiar with the Rules, but did not think that was very important.

Allegations 6 and 7

In the period 14th November 2003 to 8th March 2004, referrals had been received by the Respondent's firm from a Mr R for which the Respondent had paid to Mr R the sum of £2,724.23.

6. A new Introduction and Referral Code came into effect on 9th March 2004 which provided that solicitors were entitled to make payments for referrals of work if specific conditions were met, namely that upon receiving the referral and before accepting instructions to act, the solicitor must provide the client with all relevant information concerning the referral and, in particular, the amount of any payment.

7. Following 9th March 2004 there were three referrals and amounts totalling £750 had been paid by the practice. The Respondent explained that the details of the referral and the amount of any payment had not been confirmed in writing but that information had been given to the client at the outset.

8. Further FIO Reports dated 8th January 2007 and 17th April 2007 had been prepared and were before the Tribunal.

9. An inspection begun on 12th July 2006. The FIO requested documents and the reconciliation for the inspection dated 30th June 2006. The Respondent produced them 21 weeks after the inspection began on 7th December 2006. The most up to date reconciliation available when the inspection began was that to 30th April 2006. The Respondent explained that his bookkeeper had been abroad for several weeks visiting a sick relative. The Respondent did not produce reconciliations until 7th December 2006.

10. The FIO was handed a number of client ledger accounts covering the period 2005 to 2006 where the office side of the client ledgers had not been maintained.

11. As a consequence the FIO was unable to reach any firm conclusions about the financial status of the practice.

Conveyancing transactions - allegations 10, 11, 12

12. The FIO's Report dated 8th January 2007 reported upon a number of conveyancing transactions of which a solicitor AS, employed by the Respondent, had conduct.

13. It was accepted by the Respondent that he was responsible for the supervision of AS. The Respondent had signed documents in the course of the conveyancing transactions.

14. In each case the Respondent's firm acted for the purchaser and the purchaser's lenders, Abbey National Plc.

15. In its instructions to the Respondent's firm Abbey National Plc stipulated that any incentives involving a cash payment of 5% or less of the purchase price need not be reported to them. In all other cases the incentive had to be reported.

16. The conveyancing transactions related to plots in two separate developments.

17. In one case the purchase price was £188,000. Abbey National provided a mortgage advance of £178,570. The completion statement recorded an incentive (described a s an "agreed allowance") of £18,800, 10% of the purchase price.

18. Abbey National had not been aware of the allowances. It was the Respondent's assertion that Abbey National had been informed.

19. In another plot purchase the purchase price was £189,600, and Abbey National provided a mortgage advance. The completion statement demonstrated that allowances of £20,856 had been deducted from the purchase price.

20. Abbey National denied having been informed. It was the Respondent's assertion that Abbey National had been notified.

21. The FIO's Report dealt with the purchase of four plots where large incentives to purchasers had not been reported to Abbey National, the mortgage lenders, according to the relevant client matter files.

Allegations 10 and 13

22. In the proposal form for professional indemnity insurance submitted to St Paul's Insurers and signed by the Respondent on 21st July 2005, in answer to the question whether "any principal, partner, director, consultant, employee or LLP member of the firm or any prior practice has ever been subject to disciplinary procedures or investigation by The Law Society", the Respondent stated "No". The Respondent had not considered the FIO's inspection to have been a disclosable investigation. The letter of 9th January 2005 notifying the Respondent of the FIO's impending visit was headed, "Investigation of Elle & Selve Partners Solicitors", and the inspection had commenced on 26th January 2005.

23. The Respondent denied to the FIO that he had been in default in paying his professional indemnity insurance premiums. The Respondent had defaulted in such payments in the period January to June 2006.

The Submissions of the Applicant relating to the admitted allegations

24. The Respondent had admitted a number of allegations. These included breaches of the Solicitors Accounts Rules and a breach of the Solicitors Introduction and Referral Code.

25. It was noteworthy that when the FIO made a subsequent visit to the Respondent's office his earlier failure to keep the office side of the client ledger written up had continued.

26. The Respondent's bookkeeping failures had led to the FIO not being able to reach any firm conclusion with regard to the financial status of the Respondent's practice.

27. The Respondent had accepted that he was responsible for the work undertaken by an employed solicitor Ms AS in conveyancing transactions involving Abbey National plc as a mortgage lender. The failures to notify Abbey National of substantial incentives

offered by vendors to purchasers occurred in circumstances where he himself had signed reports on title. This information was required by Abbey National to enable it to make an informed decision as to whether or not to advance monies by way of a mortgage loan secured by the individual properties concerned. The Respondent had not in these circumstances acted in the best interests of his client, Abbey National. There had been no evidence of any system of supervision of the work of Ms AS.

28. The Respondent had indicated that he had not himself completed the proposal form for his professional indemnity insurance but he did accept that he would have reviewed the form when he signed it. The cash shortage of £1,736.71 which existed as at 31st December 2004 had been rectified by a transfer from office to client bank account in February 2005. The cash shortage arose when over-payments had occurred on two client matters.

29. It had been the Respondent's practice to check completion statements and bills on all conveyancing matters. This double check with figures had been designed to avoid any mistakes. He accepted what he had been told by those dealing with conveyancing transactions in the matters where overpayments had been made and an error in the payment of stamp duty had been traced and the refund of stamp duty due had not arrived as quickly as had been expected.

30. The Respondent accepted that the shortfalls should have been put right more quickly by him.

31. The Respondent had intended to convey to the FIO that he did have sufficient funds to rectify the shortfall when responding to his question about that.

32. The office side of client ledgers had not been completed because the only entries to be made would have been made after the submission of a bill. All payments in connection with conveyancing transactions were made from client account save for Land Charges searches and Land Registry searches and so on. Those disbursements formed part of the bill and would not be posted to the ledger until the bill had been prepared and submitted.

33. With regard to the breach of the Introduction and Referral Code, the Respondent had an innocent and genuine belief that he was following the correct guidance. He genuinely believed that he could pay referral fees to other professionals.

34. Many solicitors had fallen foul of the Code because of the varying guidance provided by The Law Society from time to time. The Respondent made the last payment in April 2004, only a month after the revised guidance was issued by The Law Society on 9th March 2004. That payment was to settle then outstanding obligations.

35. The Respondent resolved after the new guidance was provided not to pay referral fees.

36. The Respondent had not deliberately breached the Code. He apologised for his error. The total amount of fees paid in contravention amounted to less than £3,000.

37. With regard to the allegation that the Respondent had been in breach of Rule 32(7) at the time of the FIO's inspection, his client account reconciliation had been completed

for the period to 30th April 2006. The later reconciliations were not produced until December 2006 because the Respondent's bookkeeper had been absent from the office between 14th July and 18th August 2006. On his return reconciliations were provided for the whole period up to December 2006. The Respondent did, however, accept that the earlier reconciliations had not been maintained in compliance with the requirements of the Solicitors Accounts Rules.

38. The Respondent also accepted that in a number of client ledgers the office side had not been maintained as it should have been.

39. The Respondent had suffered problems with his bookkeepers and the systems that he had employed. At the time of the hearing he had engaged a new bookkeeper and had installed a computerised accounts system. He was at the time of the hearing able to produce reconciled accounts to the period to end of May 2007. He produced a letter from his reporting accountants certifying that such reconciliations had been completed.

40. With regard to the conveyancing transactions where it was alleged that substantial incentives had not been reported to Abbey National, the Respondent was not a competent conveyancer and had been advised that he should not have been supervising conveyancing files. In that matter in particular the Respondent recognised that he had fallen well below the standard expected of a solicitor. The Respondent might have been naïve but he had not acted dishonestly in connection with those matters.

41. With regard to the allegation relating to information provided to his professional indemnity insurers the Respondent made an error. He had not regarded the FIO's visit to his firm of 26th January 2005 to be a disciplinary investigation.

42. The Respondent had not himself completed the form but he did read it and misunderstood the wording of the question, honestly believing that he was being asked to verify that he was not the subject of any disciplinary action at the time. It had never been the Respondent's intention to mislead his insurers and he did not act dishonestly. He had come to accept that he should have informed his insurers of the FIO's investigation. The following year, when the Respondent was fully aware that he was the subject of a disciplinary enquiry, he informed his insurers of that fact.

43. When the FIO had asked the Respondent about the payment of his indemnity insurance premiums, he had forgotten that his insurance was paid in advance by Close Premium Finance. It was true that some of the direct debit payments in January to June 2006 had been returned but they were due to be collected by Close Premium Finance to whom the Respondent was indebted - although the reference on his bank statements showed payments falling due to St Paul.

<u>The evidence relating to the disputed allegations 3, 4, 5 and 14</u>

44. The FIO's Report dated 12th July 2005 reported upon the Respondent's employment of a struck off solicitor, DW. DW had been struck off the Roll on 26th September 1995. Subsequently, the Respondent applied for permission of The Law Society to employ DW at Elle & Selve, although this was later withdrawn.

45. A letter from the Respondent to The Law Society dated 22nd July 2003 confirmed that such application had been made and then withdrawn and that DW "…has never been employed or remunerated by us".

46. In the course of his inspection the FIO noticed a payment from the practice's office account to a person called "David". There were also further payments.

47. DW was involved in a conveyancing transaction on behalf of clients. Those dealing with the Respondent's firm were corresponding, in particular, with DW.

48. The Respondent had informed the FIO that when DW had worked for mortgage advisors in the offices located above his practice, he had introduced C Limited to the Respondent. The Respondent could only surmise that DW must have given the impression that he worked for the Respondent's practice. The Respondent stated that any reference to "David", who had received payments from him, was a broker based some one to two hours away and was not DW.

49. When the FIO spoke with the Respondent on 4th April 2005 the Respondent stated that the "David" referred to on the cheques was a property dealer called David B.

50. The Respondent provided copies of the cheques (other than a cheque dated 6th January 2005) and all were made payable to DW.

51. It was the Respondent's evidence that DW was an employee of the firm of mortgage brokers who were based on the upper floor of the premises where the offices of Elle & Selve were situated. There was regular contact between the staff of Elle & Selve and DW's company as they did a lot of business together.

52. The Respondent had become aware that DW had considerable knowledge of conveyancing matters but at that stage did not know he had been a solicitor nor that he had been struck off the Roll. There came a situation where the Respondent proposed to employ DW and when discussing those matters with him the Respondent became aware that DW had been a solicitor but had been struck off the Roll. In accordance with Section 41 of the Solicitors Act 1974 the Respondent made an application to The Law Society to employ DW. DW then decided that he did not want to be employed with Elle & Selve and for that reason the application was never progressed.

53. The payments made by cheque to DW were payments for the purchase of computer equipment from F Mortgage Consultants, the then employer of DW. The cheques as to payee had been left blank as the Respondent was uncertain which of Mr R's companies was to be the recipient of the cheques. There was a letter from Mr R, the proprietor of F Mortgage Consultants, evidencing that position. The payments were not by way of salary to Mr DW.

54. At an interview with the FIO the Respondent, when asked, advised the FIO that the "David" referred to was a property dealer called David B. At the time of the interview the Respondent believed these facts to be true. It was only after subsequent investigation that it transpired that none of those cheques was for the benefit of David B. The Respondent gave those answers as the result of an honest mistake.

55. The FIO referred to a letter from Boulter Company Solicitors marked for the attention of DW addressed to the Respondent's firm. Reference was also made to a letter dated 25th August 2004 from a firm of architects (C Limited) marked for the attention of DW.

56. At the time the Respondent was already acting for the client. DW assisted with the finding of an architect. This came about after DW had overheard a conversation between the Respondent and surveyors who worked on an upper floor of the building where the Respondent had offices. DW suggested C Limited, a firm of architects that was known to him. DW telephoned the architects to make the introduction.

57. The Respondent was able only to speculate as to what might have happened. As DW spoke to C Limited to make the introduction they might have believed that he was involved in some way in the practice of Elle & Selve. Further, during the transaction C Limited failed to honour their commitment to provide the lease drawings timeously. The Respondent complained to DW to see whether he could influence C Limited. That could have been the only reason why the fax from C Limited was sent for the attention of DW. In fact it ought not to have been sent to him but to Elle & Selve.

58. The building occupied by Elle & Selve was home to several businesses. The landlord provided the telephone. DW had been employed upstairs by F Mortgage Services. There was a lot of common business. Employees of Elle & Selve had an extension facility to DW. Mr R had the Respondent's number as an extension on his telephone. This was explained to the FIO who could have checked during the course of his visit.

59. The FIO's recollection that the Respondent had said DW "was here for approximately one year in total" related to the Respondent's having said that DW had worked for F Mortgage Services for approximately one year. It was not the case that the Respondent had said or meant that DW had worked for Elle & Selve for one year.

The Submissions of the Applicant in relation to allegation 3, 4, 5 and 14 and whether the Respondent had been dishonest

60. With regard to the Respondent's relationship with DW, there was a clear involvement of DW in a Respondent's client matter evidenced by the letter addressed by C Limited to the Respondent's firm marked for the attention of DW. There clearly was a level of activity between DW and the Respondent. The Respondent said that he did not employ DW but there was clear evidence that DW had been remunerated by the Respondent's firm for services he undertook for the firm. The Respondent's evidence had been that cheques in which DW appeared as payee had been passed to Mr R, of F Mortgage Brokers, with the payee left blank. It was noteworthy that at some point the Respondent said he had withdrawn his application to The Law Society to employ DW but DW in correspondence had said that he had withdrawn from the proposed employment. The Tribunal was invited to conclude that in respect of his dealings with DW and his report of the same to the FIO, the Respondent had been dishonest. Further the Respondent had been dishonest when he provided the explanation as to why and how payments to DW had been made.

61. With regard to the Respondent's confirming to his professional indemnity insurers that his firm was not subject to any investigation, this was not true. The Respondent was subject to a Forensic Investigation Unit Investigation and had been told by The Law Society in correspondence that there was an "ongoing investigation". In the

submission of the Applicant the Respondent deliberately misled his insurers by stating that he was not subject to an investigation.

62. It was further the case that the Respondent had misled the FIO with regard to his failure to pay professional indemnity insurance premiums. When the FIO interviewed the Respondent he denied that he was in default. The Respondent had sought to explain that payments were paid by a firm lending money to the Respondent for that purpose. The Respondent should in his response to the FIO have been open and transparent. He should have explained the financial arrangements and any difficulties he might be having with them.

63. The Respondent also had failed to notify his lender client, Abbey National, of large incentives offered by vendors in conveyancing transactions to the Respondent's purchasing and borrowing clients.

64. There had been a deliberate decision to confirm in reports on title that there was no reportable incentive. It was a deliberate action on the part of the Respondent to say "no" when dealing with a question posed by his indemnity insurers as to whether or not his firm had been the subject of any investigation and the Respondent had deliberately not told the truth when asked about his professional indemnity premium payments. In the submission of the Applicant the Respondent had been dishonest. The Tribunal was invited to make a finding of dishonesty on the part of the Respondent and in so doing it was appropriate that it applied the test for dishonesty set out in Twinsectra v Yardley and Others [2002] UKHL 12.

The Submissions of the Respondent as to the disputed allegations and as to the denial of dishonesty

65. With regard to the allegation that the Respondent had employed or remunerated DW, he had not done so. He had explained the relationship of DW with mortgage brokers having offices in the same building. The cheques, to which reference were made, from the Respondent's firm to the payee, DW, had been supplied in blank to the mortgage brokers. Examination of the copy cheques before the Tribunal revealed that the name of DW did not appear on the face of those cheques to have been written at the same time as the rest of the cheques. In addition the payments that were made were not such that would be likely to be salary and the payment dates and the amounts were not regular.

66. The Respondent had denied categorically that he employed or remunerated Mr DW with those cheques. There were no circumstances where the Respondent would seek to mislead The Law Society in matters where he knew full well what he said could easily be subject to verification.

67. It was not uncommon for brokers or estate agents to help, as Mr DW had, to identify a suitable firm of architects. That was a far cry from employing or remunerating DW. DW had been trying to "calm troubled waters" by contacting the firm of architects he had introduced.

68. It was unclear why another firm of solicitors should have addressed their letter to DW. That was the only letter addressed to him in the client file. There was no other

indication that DW had dealt with any other aspect of the file save for the intervention with C Limited to facilitate the production of the overdue lease plan. The Respondent said he might have mentioned that C Limited was an associate of DW and by mistake DW's name had been put on the incoming letter.

69. Further, it might have been that Mr DW had contacted the solicitors using his name on their letter to avoid the embarrassment of having to explain to the Respondent that the architects introduced by him had let all parties down and he had contacted the other firm of solicitors to provide reassurance. If DW had done that he had done so without the Respondent's permission. DW did not have any participation in the file save in connection with the matters to which the Respondent had referred.

70. The Respondent accepted that oral exchanges had taken place between himself and the FIO in relation to the file on which the letters marked for the attention of DW were to be found. Copy tapes of the conversations with the FIO had not been made available to the Respondent. It was the Respondent's case that the transcripts provided were inaccurate and misleading.

71. The allegations that were denied relied heavily on the disputed conversations between the Respondent and the FIO. If it was the case that those interviews were not recorded, then the FIO was wholly reliant on his contemporaneous note of the interviews in the preparation of his Report. Great reliance had been placed on the accuracy and integrity of those notes. Those notes had not been shown or read to the Respondent so that he could, at the time, have verified or disputed their accuracy. Without those safeguards they should not be relied on. That was a minimum standard that should be expected of any professional investigation, especially where the consequences of the investigation could result in the loss of a solicitor's livelihood. It was evidenced from the second FIO visit that interviews were by then recorded. That demonstrated that The Law Society recognised that its former method of conducting and recording interviews was flawed.

72. With regard to answers given on his professional indemnity insurance application form, the Respondent made an error in not viewing the visit on 26th January 2005 as a disciplinary investigation.

73. When the Respondent was asked by the FIO about his indemnity insurance the Respondent had forgotten that it was paid in advance by Close Premium Finance. It was true that some of the direct debit payments in January to June 2006 were returned, but these were due to be collected by Close Premium Finance even though the reference on the Respondent's bank statements was to St Paul. The indemnity insurers had confirmed that position by letter.

74. The Tribunal was reminded of the high standard of proof it must apply in disciplinary proceedings of this nature. The burden of proof lay on the Applicant. The Tribunal would take care not to make the burden fall on the Respondent.

75. It was conceded that the subject matter of the admitted allegations might well cause concern to the Tribunal. The Respondent had given his explanations.

76. The Respondent had kept records of office expenditure on individual client matters but he had kept them on the individual client files. The Respondent had been let down by his bookkeeper.

77. It was accepted that the Respondent's apparent relationship with DW might have led to suspicion. It was the Respondent's case that he had not employed or remunerated DW in connection with his practice. It was the Respondent's case that cheques eventually made payable to DW had been intended as payment for computer equipment purchased from Mr R's firm. Those cheques did not demonstrate a relationship between the Respondent and DW particularly as it appeared they had been remitted by Mr R to DW. To find the allegations substantiated in respect of DW the Tribunal would have to be satisfied that the cheques were made payable to DW by the Respondent in connection with DW's services to the Respondent's firm and to be satisfied of the dates when DW was employed or remunerated by the firm. The Tribunal would necessarily have considerable doubt as to the state of the cheques when they were passed to Mr R in view of the differences apparent on the face of the cheques in the writing of the name of the payee and the rest of the cheque. It appeared that a different pen or ink had been used. The original cheques had not been adduced.

78. The Tribunal was invited to take into account the evidence of Mr Jeyarwardina and the written testimonials which had been handed up, all of which expressed a view that the Respondent was a solicitor of competence and integrity. The Respondent had 8iven straightforward credible evidence. He was not either in his evidence in chief or under cross-examination shifty or evasive.

79. With regard to the statement about payments made to the Respondent's professional indemnity insurers in the application form, the Respondent had received a visit from the FIO at about the time when he completed the form and he was upset and worried. It was in that atmosphere that the Respondent made a mistake about the nature of the investigation being carried out by his professional body.

The Findings of the Tribunal

80. The Tribunal found allegation 1, 2, 6, 7, 8, 9, 10, 11, 12 and 13 to have been substantiated, indeed they were not contested.

81. The Tribunal found allegations 5 and 14, which were denied, to have been substantiated.

82. The Tribunal did not find allegations 3 and 4 to be proved; the evidence was inconclusive.

83. The Respondent accepted that he had provided misleading information to his professional indemnity insurers. The Tribunal finds that the Respondent acted dishonestly when providing information about the payment of his professional indemnity premiums to the FIO.

84. The Respondent had been at best extremely economical with the truth and had made no attempt to explain the financial arrangements in place to assist with payment of his indemnity premiums or that there had been defaults in repaying the loan made for that

purpose. It was incumbent upon the Respondent to make a full and clear disclosure of all such matters to the FIO and he did not do so. That was not honest.

85. Although the Applicant did not put this matter as one involving dishonesty, the Tribunal noted that the Respondent had been prepared to sign reports on title on which Abbey National would rely without knowing or caring whether they were fully accurate.

86. In reaching a conclusion that the Respondent had acted dishonestly, the Tribunal did, as suggested by the Applicant, consider the test set out in Twinsectra v Yardley.

87. The Tribunal found that in not making a full and truthful statement to the FIO and in misleading Abbey National the Respondent's conduct was dishonest by the standards of reasonable and honest people.

88. It was the Tribunal's view that the Respondent had demonstrated a reckless disregard which had negated honest belief.

89. Although the Tribunal has been satisfied of the Respondent's dishonesty having applied the test in Twinsectra v Yardley, the Tribunal was, of course, aware that this was a very high test and following the decision in the Privy Council case of Barlow Clowes (2006) it would now appear appropriate for the Tribunal to assess an individual Respondent's conduct by reference to the objective standards of honesty of the ordinary and reasonable man. In so doing the Tribunal should take into account what the Respondent knew, his intelligence and experience and his reasons for acting as he did.

90. The Respondent was, of course, a qualified solicitor and it is the Tribunal's view that he acted as he did to avoid in the first instance difficulties in obtaining professional indemnity insurance and in the second instance (the Abbey National case) to facilitate completion of property transactions (which might otherwise have been aborted) with the resulting fee benefit.

91. Even if the Tribunal had not made a finding that the Respondent had acted dishonestly, his breaches of the Solicitors Accounts Rules, including the fact that when the FIO paid a second visit to the Respondent's firm the breaches pointed out to him on an earlier occasion had not been rectified and he had continued to keep his accounting records in the same manner, the fact that he could not and indeed had not carried out reconciliations as required by the Solicitors Accounts Rules and the fact that he had apparently allowed an employee to conduct conveyancing where proper information had not been given to an institutional lender client of the firm where the Respondent himself had signed reports on title neither knowing nor caring whether they were accurate and, indeed, as the Respondent himself accepted he was not competent to supervise anyone handling conveyancing transactions amounted to a serious course of conduct without having regard to the other substantiated allegations and the fact that dishonesty has been found against him.

92. In all of the circumstances the Tribunal concluded that it would be both right and proportionate in order to safeguard the interests of the public and the good reputation of the solicitors' profession that the Respondent be struck off the Roll of Solicitors. It was right that he should pay the Applicant's costs of and incidental to the application

and enquiry and the Tribunal Ordered that he should pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation Accountant of The Law Society (the FIO)) to be subject to a detailed assessment unless agreed between the parties.

Dated this 4th day of September 2007
on behalf of the Tribunal

W M Hartley
Chairman