No. 9531-2006

IN THE MATTER OF STEPHEN WILBERT DERMONT SAM
AND *[SECOND RESPONDENT]*, solicitors
[NAME REDACTED]

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr N Pearson
Mrs V Murray-Chandra

Date of Hearing: 6th 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 Ian Ryan, solicitor and partner in the firm of Bankside Law, Solicitors, Thames House, 58 Southwark Bridge Road, London, SE1 OAS on 20th July 2006 that Stephen Wilbert Dermont Sam of Streatham, London, SW16, solicitor, and *[SECOND RESPONDENT]* of Sutton, Surrey, SM1, solicitor, 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 fit.

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

In respect of the First Respondent alone:

(i) that he acted in a situation where his interests conflicted with those of his clients;

In respect of the First and Second Respondents:

(ii) [withdrawn with the consent of the Tribunal]

(iii) that they permitted monies to be withdrawn from client account in breach of Rule 22(8) of the 1998 Rules;
[as amended with the consent of the Tribunal];

(iv) that they improperly utilised clients' monies for the purposes of other clients;

(v) that they improperly utilised clients' monies for their own purposes;

(vi) that they failed to remedy breaches of the 1998 Rules promptly as required by Rule 7 of those Rules;

(vii) that they failed to deliver promptly or at all an Accountant's Report for the period ending 31st March 2005 as required by Section 34 of the Solicitors Act 1974 and the Rules made thereunder.

In respect of the Second Respondent alone:

(viii) that he failed to deliver promptly or at all an Accountant's Report for the period ending 30th September 2005 as required by Section 34 of the Solicitors Act 1974 and the Rules made thereunder.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 6th June 2007 when Ian Ryan appeared as the Applicant and the Respondents appeared in person.

The evidence before the Tribunal included the admission of the Respondents to allegation (vii) and the admission of the First Respondent to allegation (vi). Mr Naqvi, Mr Hair and the Respondents gave oral evidence.

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

The Tribunal Orders that the Respondent, Stephen Wilbert Dermont Sam of Streatham, London, SW16, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £40,000.

The Tribunal Orders that the Respondent of, Sutton, Surrey, SM1 solicitor, be Reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.

The facts are set out in paragraphs 1-52 hereunder:

1. Mr. Sam, born in 1965, was admitted as a solicitor in 1993 and his name remained on the Roll of Solicitors. Currently he held a practising certificate subject to conditions and was working in employment approved by The Law Society.

2. *[FIRST RESPONDENT]*, born in 1963, was admitted as a solicitor in 1992 and his name remained on the Roll of Solicitors. The Second Respondent currently had a practising certificate subject to conditions and was working in employment approved by The Law Society.

3. At all material times the Respondents carried on practice in partnership under the style of Sam Moseley & Co ("the firm") of 146 Strand, London, WC2R 1JA with a further office at 17 High Street, Thornton Heath, Surrey, CR7 8RU. The First Respondent left the partnership on 1st September 2004. The firm no longer practised as it was the subject of a winding up order in the High Court of Justice on 14th December 2005. The firm was intervened on 14th July 2006 on the basis of the Second Respondent's bankruptcy. Both Respondents remain bankrupt.

4. Upon due notice to the Respondents, an Investigation Officer of the Law Society carried out three inspections into the Respondents' books of accounts and produced Reports dated 28th July 2004 ("the first Report"), 28th April 2005 ("the second Report") and 20th March 2006 ("the third Report").

Allegation (i) - the First Respondent

5. The Investigation Officer discovered and noted in the first Report that the First Respondent acted for AGMS Bridging Finance Limited ("AGMS"), a company in which he also had a 25% shareholding and of which he was company secretary. AGMS had loaned monies to clients of the firm in relation to property transactions in which the First Respondent was the acting solicitor. The Report noted that typically customers of AGMS would give the Respondent or one of the company directors general powers of attorney. Details of some of the loans were set out in the Report. The Investigation Officer asked the First Respondent if there was a conflict of interest with regard to certain of his clients due to his links with AGMS and the First Respondent replied that there was not.

6. The First Respondent said that he always gave his clients the names of two or three bridging finance companies normally including AGMS. AGMS normally offered preferential rates and therefore secured the loan contract. He said he always advised his clients to take independent legal advice but acknowledged that he still acted for clients if they chose not to do so.

7. The First Respondent said that he always told his clients that he also acted for AGMS but acknowledged that he did not tell his clients of his beneficial interests in that company.

8. The First Respondent said that he was not aware of the guidance given in chapter 15 of the Guide to Professional Conduct of Solicitors on "conflicts of interests" and accepted that he had not followed that guidance.

Allegations (iii) - (vi) - Both Respondents

9. The first Report identified a number of serious deficiencies with the books of account. In the light of these deficiencies, the Investigation Officer was unable to express an opinion as to the firm's liabilities to clients but he did calculate that a minimum cash shortage of £237,056.55 existed at 29th February 2004. The First Respondent did not agree part of the minimum cash shortage in the sum of £57,798 but the Respondents accepted that a minimum cash shortage of £179,258.55 existed as at 29th February 2004.

10. The first Report noted that the books of account were not in compliance with the Solicitors Accounts Rules for the following reasons:

- Clients' money had been withdrawn from client bank account in excess of monies held on behalf of clients resulting in shortages on client bank account;

- Shortages were eliminated by transfers instigated by the First Respondent between unconnected client ledgers without the required prior written authority from both clients;

11. The First Respondent stated that shortages arose due to overpayments on client ledgers which he then cleared by inter-ledger transfers. He then went on to explain that when a shortage arose he would try and get monies back from the client in the first instance but if he was unsuccessful he would use other client monies, with, he said, their general written or verbal authority. He said that the inter-client loans were short-term, made with the client's authority, no clients suffered any loss and he did not realise that he was doing anything wrong. He said that his Reporting Accountant had advised him that he could make inter-client loans if he had a general written authority.

12. When asked how the shortages had arisen the First Respondent said that overpayments had arisen because the client accounting records, which he maintained, were not up to date. The Second Respondent said that he should have helped the First Respondent with the bookkeeping but that they had both been busy building the firm; however the introduction of new procedures and the appointment of a full-time bookkeeper would address the situation.

13. The Investigation Officer met with the First Respondent on 29th June 2004 when the First Respondent said that he had made client inter-ledger transfers to cover an historic shortage on the client matter AGMS. He said that there was no money in AGMS at that time but when cash became available it was earmarked for a client, Ms C, whose funds had been utilised by transfers to AGMS. The First Respondent also said that monies due from a Mr W which had caused the shortfall on the AGMS client ledger, would be applied to the Ms C client ledger when received. The First Respondent acknowledged that he had not complied with the Solicitors Accounts Rules, however he said that he had not stolen any money and that none of his clients had lost out. He added that his office bank account was tens of thousands of pounds overdrawn and commented that "it did not look good".

14. The First Respondent said at a meeting on 15th July 2004 that he always had his clients' authority to make the transfers from individual client ledgers. He said that he held written general client authorities for some of his clients but that mostly clients gave their verbal authority for the transfers to be made from their ledgers.

15. The Report set out by way of example three matters where there were client account shortages, two of which are summarised below, and also set out the further matter summarised below illustrating how the First Respondent cleared client account shortages.

T Property Investments Limited

16. The First Respondent acted for the above company in respect of the purchase of a property which was at the time of the inspection the current office premises of Sam Moseley & Co. A debit balance of £190,306.62 arose on this matter when completion monies in that amount were remitted to the vendor's solicitors on 14th November 2003 when no funds were held on behalf of the client. This debit balance was cleared 14 days later by a transfer of £30,300.62 from the matter of Mr C and £160,000 from the AGMS ledger.

17. The mortgage advance was received on 16th December 2003 in the sum of £167,000 and on that date £160,000 was transferred back to AGMS. No transfer had been made back to the matter of Mr C by the time of the inspection.

18. The First Respondent was able to show that AGMS had consented to the transfer but although he said Mr C had given prior verbal authority he was not able to provide any evidence that Mr C had so consented nor produce either his file or provide his correspondence address.

19. On 15th July 2004 the First Respondent acknowledged to the Investigation Officer that he had not had sufficient funds to complete the purchase of his office premises on 14th November 2003. He accepted that client monies had been used in the purchase but indicated that this was not his intention.

Mr DB

20. A debit balance arose on this matter in the sum of £27,252.65 when a mortgage in the sum of £159,303.28 was redeemed when only £132,050.63 was available on Mr DB's client ledger. The debit balance was cleared by a transfer of £27,252.65 from the ledger of Mr A (on the same date as the redemption of the mortgage - 11th February 2004). The First Respondent provided a written authority from Mr A permitting this transfer. However the monies were returned to Mr A's ledger on 5th April 2004 and replaced on 30th April 2004 by a further loan in the same amount from the ledger of Mr CC. The First Respondent could not provide a written authority authorising that transfer. The loan from Mr CC was transferred back on 18th May 2004 and replaced on 28th May by a loan from the ledger of Mr TB. TB confirmed to The Law Society that he had given verbal authority for this.

Mr D

21. The First Respondent acted for Mr D in a remortgage. No shortage was attributed to the ledger but the matter was exemplified in the first Report as at the final interview on 15th July 2004 the First Respondent agreed that transfers on this ledger were typical of how he dealt with shortages on his client account.

22. The relevant client ledger showed that re-mortgage monies were received on 28th November 2003 in the sum of £250,225. On the same day, 15 individual transfers totalling £141,997.93 were made to unconnected client ledgers, which had debit balances. The largest single transfer was in the sum of £85,919.75 to the ledger of AGMS.

23. The existing mortgage in the sum of £249,514.41 was redeemed on 1st December 2003 and 15 transfers in the sum of £141,997.93 were reversed on the same day in order to provide the funds necessary to redeem the mortgage.

24. Mr D wrote to The Law Society on 14th July 2004 stating that he had not given his authority for his re-mortgage monies to be used in this way. At the final interview on 15th July 2004 the First Respondent acknowledged that he did not have prior written authority for these transfers but he was adamant that he did have Mr D's verbal authority.

Allegation (v) - both Respondents
O Property Limited

25. On this client ledger, the First Respondent made an unauthorised transfer from client to office bank account in the sum of £57,798. It appears that these moneys were utilised to pay outstanding tax liabilities for the firm to the Inland Revenue as there were insufficient funds in the firm's office bank account.

26. The Investigation Officer noted instances where standing orders had been stopped and cheques had been returned when the office overdraft limit had been exceeded.

27. Mr Naqvi, a director of O Property Limited, wrote in response to a letter from the Investigation Officer that he had not given authority for the above transfer.

28. The First Respondent told the Investigation Officer that O Property Limited owed money to AGMS and that the client had agreed that out of the sale proceeds a repayment should be made to AGMS to reduce the company's indebtedness. He went on to say that AGMS had agreed to loan monies to Sam Moseley & Co and that the transfer from the ledger of O Property Limited should have been made to the AGMS ledger from where the monies should have been transferred to office account. The First Respondent did not agree that the transfer represented a shortage on his client account as he believed the monies were properly due to AGMS.

29. Copies of correspondence from the Respondents providing their explanations were before the Tribunal.

Oral evidence of Mr Naqvi

30. Mr Naqvi confirmed the truth of his statement dated 25th May 2007.

31. Mr Naqvi had been the managing director of O Property Limited between 2002 and January 2007 and JF was his co-director and joint shareholder. The First Respondent was their solicitor. The First Respondent had acted on the acquisition of the company. To complete the acquisition they had borrowed £300,000 from an organisation introduced to them by the First Respondent. Mr Naqvi did not dispute signing for the loan. The First Respondent, his solicitor and friend, had said that the First Respondent had read the documentation and that Mr. Naqvi was borrowing from a good source. The First Respondent told him to sign quickly. Mr Naqvi had had no reason not to trust the First Respondent. The First Respondent had never declared

that he was the company secretary of AGMS. Mr Naqvi had believed in the First Respondent's professional advice and ethical judgement.

32. Despite requests the First Respondent had not provided any documentation regarding the loan which Mr Naqvi had believed was with AGMS.

33. Subsequently the company started to receive documentation from Cavendish Financial Services whose director was a Mr MN. Mr Naqvi had had no dealings with Mr MN until well after the loan was taken.

34. Mr Naqvi did not dispute his signature on the loan agreement and accepted that although he believed the loan was with AGMS he may have signed documentation relating to Cavendish without realising.

35. Mr Naqvi did not authorise the transfer of £57,798 from the client account of O Property Limited to the firm's office bank account. Mr Naqvi also denied that RD, a colleague, or JF had given instructions for the transfer.

36. The company had reluctantly paid back about £160,000 of the loan which did not include the £57,000.

37. Mr Naqvi confirmed that none of the companies involving the First Respondent had made a profit.

38. Over a period of years the First Respondent had done most of Mr. Naqvi's legal work. O Property Limited was one of his companies which had three properties in it. The firm had done some 10 -12 transactions in total.

39. The First Respondent had dealt with the company. Mr Naqvi had never spoken to the Second Respondent until after these events. Mr Naqvi confirmed that the Second Respondent had tried to facilitate discussions in 2005.

40. Mr Naqvi confirmed that he was absolutely sure that authority had not been given for the transfer. He had not given the authority and JF and RD had been unaware of the transaction.

Oral evidence of Mr Hair

41. Mr Hair, an Investigation Officer with The Law Society, confirmed the truth of his Reports dated 28th July 2004 and 28th April 2005 and confirmed the accuracy of the transcript of the digitally recorded interviews.

42. During his initial conversation with the First Respondent about the nature of the firm's clients, the First Respondent had said that he acted for a number of property dealers and mentioned holding some general authorities in respect of these clients for inter-ledger client to client transfers. Mr Hair had requested a sample of client ledgers to find the reasons for these transfers. It became clear that quite a number of ledgers were in debit and Mr Hair had aimed to establish why. It had been difficult to ascertain in some cases as there had been a sequence of transfers. These were typical patterns for teeming and lading and were done at the month end. Mr Hair had

attempted to find out why the shortages had arisen but it became clear that this would have been a very time consuming exercise and he had requested details from the First Respondent as to why the transfers were required.

43. Mr Hair had also attempted to agree a minimum shortage figure based on the First Respondent's figures. At the final interview a minimum shortage was agreed in the sum of £179,258 made up of overpayments identified by the First Respondent and others identified by Mr Hair and agreed by the First Respondent. A certain element relating to the transfer from O Property Limited was disputed. That transfer made part of the total shortfall identified by Mr Hair of £230,000.

44. The shortage meant that the First Respondent held insufficient funds to meet his liabilities and if clients had wanted their money back there would have been a significant shortfall although the precise amount could not be established.

45. The First Respondent had said that O Property Limited was in dispute with the firm. Mr Hair had asked for the O Property Limited files and ledgers and had noted the transfer of £57,798 referred to at paragraph 25 above which he had discussed with the First Respondent.

46. Mr Hair had spent a total of 15 days in the firm and had dealt entirely with the First Respondent seeing the Second Respondent only briefly in passing until the final interview. He had not spoken to the bookkeeper who in any event was not on site as the First Respondent had said at the initial meeting that he recorded and posted all transactions on client bank account. A little later he said that this referred to the majority of postings. It seemed logical that the First Respondent was the first port of call.

47. Mr Hair had written to four or five clients and four had responded. Mr N and Mr D had indicated that they had not given authority to use their funds.

48. A solicitor could provide bridging finance to a client within certain parameters.

49. Mr Hair had spent considerable time analysing the information, finding the shortfall and preparing the Report.

50. Mr Hair assumed that the First Respondent would have been faced with debit balances at the month end and would have needed to find money from somewhere to remove those debit balances hence the transfers between ledgers. He confirmed that it was correct that even on a detailed look at the figures at the month end it would not have been obvious that teeming and lading was taking place.

51. Mr Hair had returned for his second inspection in April 2005 to report on progress in rectifying the shortage. He recollected that there had been confusion in correspondence and the notice had gone to an incorrect address so that his inspection had been unannounced. He was able to report that at that time the shortage had been rectified in full. His remit for that visit had been very narrow and he had not made notes on any new systems in the firm although he had had discussions with the new cashier.

52. He understood that at the third inspection Mr S, Senior Investigation Officer, had reported a shortage of £3,400 relating to an unpaid disbursement for Counsel.

The Submissions of the Applicant

Allegation (i)

53. The First Respondent's interests had seriously conflicted with those of his clients. He had a 25% holding in AGMS. The Tribunal was referred to the details of some of the loans set out in the first Report and to the Guide to the Professional Conduct of Solicitors, Eighth Edition, chapter 15 which stated:

> "A solicitor must not act where the solicitor's own interests conflict with the client's…
>
> The prohibition against the solicitor acting where his or her personal interests actually conflict with those of a client is absolute. Too often a solicitor believes that merely informing the client that independent advice should be sought is sufficient to discharge his or her duties to the client. This is not normally the case and, in most instances, if the client will not get independent advice, the solicitor must not proceed with the transaction."

54. The Tribunal was referred to the First Respondent's comment regarding conflict of interest set out at paragraph 5 above. The Tribunal was also referred to the Respondent's letter to a client, Mr DB, dated 10th February 2004. This was a typical letter from the First Respondent to a client and it stated:

> "You agreed to borrow the sum of £16,000 from AGMS Bridging Finance Ltd. I notified you that this firm also represented AGMS and that you are required to obtain independent legal advice. You have approached and obtained advice from Ness & Co, solicitors.
>
> You are happy for this firm to represent AGMS Bridging Finance Ltd and indeed you have signed a Power of Attorney in favour of our Mr Sam on behalf of AGMS.
>
> You are aware of the potential conflict of interest and have consented to this firm representing AGMS instead of you and shall not raise any issue regarding conflict or potential conflict of interest."

The Power of Attorney compounded the conflict. The letter to the client was silent as to the First Respondent's personal interests in AGMS. The Tribunal was referred to the First Respondent's comments on the guidance in the Guide set out at paragraph 8 above.

55. The First Respondent was completely compromised in dealing with clients due to his beneficial interests in AGMS when making loans to clients of the firm. The Accounts Rules breaches arose directly from this.

Allegations (iii) - (v)

56. The First Respondent in particular had disputed £57,798 of the cash shortage. The fact was however that a cash shortage existed in differing amounts at different times and the First Respondent made client to client transfers to disguise this shortage. This was very serious and the First Respondent himself had acknowledged that it did not "look good" (paragraph 13 above). While an exact figure could not be put on a shortfall it had arisen from AGMS.

57. Transfers had been made on occasions without the consent of the person making the transfer or receiving it or both.

58. In the matter of T Property Investments Limited there had been insufficient funds on the client ledger but there had been funds on the C ledger. The First Respondent must have known that there were insufficient funds to purchase the office premises. The First Respondent had been prepared improperly to use other clients' money. The matter had been completed when funds were not available.

59. In the matter of DB there had been a considerable shortfall and while there had been consent from Mr A to make the transfer there was no evidence that DB had consented to receive the loan. This was a breach of Rule 30(2) of the Solicitors Accounts Rules 1998. The further loan from Mr TB had taken place prior to the written consent of Mr TB. The loans in this matter had been at the month end and the Tribunal was asked to consider whether this was to balance the books.

60. The Tribunal was referred to the ledger in the matter of Mr D which was a critical ledger. Mr D had indicated to Mr Hair that he had not known that 16 transfers had been made from his ledger and had not given authority for that. He could not in any event have given such authority as the monies had come from a mortgage company and had been received from the lender on a certain basis. Interestingly some of the monies had been used for AGMS and the Tribunal was referred to its ledger which was another key document. The loan from Mr D rectified the debit balance which had arisen because of the transfer to complete the purchase of the office premises. There had been a very serious misuses of clients' money.

61. The need for written authority from both the paying and receiving client was not just a technicality. Such transfers had to be done with the knowledge and authority of both clients, not as a means of using another client's money to rectify a shortfall. It was possible that a client would not know that there was a shortage on his ledger. There had been teeming and lading to disguise debit balances.

62. In the matter of O Property Limited the transfer of £57,798 from the O Property Limited ledger on 20th June 2003 had been described as a client to office loan. The cheque to the Inland Revenue had been paid out on the same day. The office account overdraft limit would otherwise have been exceeded. There was no dispute that the payment related to PAYE. The Tribunal had heard the evidence of Mr Naqvi. There was clear evidence that the First Respondent had improperly utilised clients' funds for the benefit of the firm.

63. Allegation (v) was supported by numerous examples in all three Reports and in particular the cash shortage of at least £179,258.55 identified in the first Report on the First Respondent's figures.

64. In his response to The Law Society dated 28th July 2004 the First Respondent had said:

> "It is agreed that O Property Ltd did not give authority for the transfer of monies from client to office; however they did provide authority for transfer of funds from their account to AGMS Bridging Finance Ltd account."

No such authority had been seen and the Tribunal had heard Mr Naqvi's evidence.

65. The First Respondent had further written on 2nd September 2004:

> "I note your view that the shortage is £154,671.18 and confirm I disagree with your view. It cannot be a shortage. It is accepted that the funds were posted erroneously as coming from client to office from O, instead of AGMS. However the position was rectified in our accounting records."

That was not accepted.

66. The Applicant referred the Tribunal to correspondence from the First Respondent. In a response to the Law Society dated 12th May 2005 the First Respondent had written:

> "It is correct that Mr N did not give authority for transfer from O account - and looking at the ledger the writer of the report could see that amendments - contra entries were made to that account rectifying that error which the writer clearly chose to ignore."

There was an entry but some two and a half months later. The First Respondent further wrote:

> "I have breached the rules as regards my interest in AGMS - however it should be noted that the general public was not at risk - my clients who made use of AGMS services are individuals, who regularly as part of their business make use of bridging facility……. Unfortunately I was of the opinion that I could continue to act where they stated clearly that they wished me to continue to so do in the circumstances."

The Tribunal might think that this was an admission.

> "Clients were made aware that I had an interest in AGMS - it is not the situation that they were unaware that I was involved in that company."

There was no evidence of this.

> "As we operated a small firm it was necessary for division of labour and it would be unfair and indeed unjust to penalise *[FIRST RESPONDENT]*……. I did not carry out my responsibility to *[FIRST RESPONDENT]* and he should

not be punished - he was not involved in the management of the accounts - that was my sole responsibility."

67. The Tribunal was referred to the interview transcript of 15th July 2004 and the comments of the First Respondent set out below:

> "The shortfall arose for different reasons and [unclear] which resulted in shortfalls in a couple of accounts. So what I did, I tried to get monies from the client in time. Now usually there's an ongoing transaction for some reason, but we're trying to obtain monies and they haven't been forthcoming. What I have done is they're clients that have funds in their accounts so I have requested from them and can use their monies to allow me to put on to other client accounts so that I can effectively close down my accounts to the end of the month. So I would borrow from one client, put it to another client account and then repay it back subsequently so at no stage has any client suffered any loss and I would usually try and ensure that my clients give authority. There aren't any written authorities except for the ones which we have already and most of times would be in terms of telephone conversations with my clients saying "with regard to this would you be happy with it?" and they would say "yes" and I would do it.
>
> Well I've sort of taken the view of borrowing from one client to use for that purpose and pay it back to the client so loans in the formal sense that they were paid interest for it, no, they weren't paid any interest on those loans, it was just to assist me so, yes, in the strict sense of monies being given and interest being paid back on it, if that's the definition of a loan then no, but in the sense that it was loaned to the clients and then paid back into their accounts, then yes.
>
> …my understanding was when this was first brought to my attention by my accountant was that I needed to have a general authority by the client because for the frequency of transactions, the nature of the clients that I had the view that I was given was that provided I had a general authority by the client and I then verified that there shouldn't be a problem thus I took the procedure of getting the clients to give me a general authority on the file for cash transfers and for interledger transfers and that I thought dealt with the issues provided my clients were happy with the transfers.
>
> I certainly wouldn't have prior written authority for the clients receiving the loans."

This appeared to have been an admission.

68. The interview continued:-

"GH (Mr Hair)	You said that the inter client loans have been, you've put these in place to cover shortfalls on certain ledgers. Why didn't you use your office account to cover these shortfalls given that they were [are] mistakes by your staff in the firm?

SS (The First Respondent)	Well no doubt you will have looked at my office account and you will see that the office account doesn't have sufficient funds most of the time to do that.
GH	Have you ever used your office account to clear shortfalls on client ledgers?
SS	I think, yes we have.
GH	So when a situation arises, you've got a shortfall. What do you do first?
SS	Call client how to solve problem.
GH	Do you check office account and see whether there's money in there?
SS	I know pretty day and day what positions in the office account so I would know. In fact I wouldn't even check because I would know what the position is.
GH	So is there a decision process whereby if money's available, you clear shortfall from office, if money isn't available, you arrange an inter-client loan. Is that a fair picture?
SS	I think that would be a pretty fair picture, yes.
GH	And the majority are being cleared by inter client loans?
SS	Yes."

69. In his interview the Second Respondent indicated that he had only recently become aware that the First Respondent was putting the transfers through.

70. The Applicant referred the Tribunal to correspondence from the Second Respondent. The Second Respondent had written on 25th August 2004:

> "In the meantime I can only respond to the majority of the points raised in your forensic report by stating that I played no part in the taking of those actions which have led to the shortfalls occurring."

On 27th August 2004 the Second Respondent wrote:

> "In light of the matters revealed by the recent investigation and the breakdown in communication between Stephen Sam and myself we have decided that he must resign from the partnership."
>
> …….

> I, like Stephen, have not faced the reality of the situation. I did not wish to accept that my partner's errors were anything more than minor blips which could be easily corrected by fees generated by the firm and possibly, if absolutely necessary, the sale of properties owned by the partnership.
>
> …….
>
> I am of course shocked and disappointed that it has come to this. I do not envisage Stephen taking any further role in the management decisions or management of clients' funds and will, come 1st September 2004 have in place a new management structure and systems in place to avoid the errors of the past.
>
> .....
>
> I accept that the errors that have occurred do not place my abilities in the best light. Clearly I have been too trusting of Stephen's abilities. I do not and will not believe he has been dishonest in dealing with clients' funds. How he has dealt with me, however is a different question. I have assurances from Stephen that he will continue to concentrate all efforts to the reduction and clearance of those shortfalls on the ledgers and as his (former) partner I am obliged and willing to work to ensure no-one suffers loss as a result of his actions or my oversight."

The Second Respondent wrote on 12th January 2005:

> "I accept that until recently I have not adequately discharged my duties as a partner in Sam Moseley & Co. Although I have suffered bouts of serious ill health requiring hospitalisation in the recent past this should have caused me to shoulder more of the burden on my return. I did not do so and the added burden in a small practice had to be taken up by someone and it is regrettable that I was unable or unfit to take back the required share of tasks from my former partner.
>
> ……..
>
> I fully accept my share of the blame for allowing that state of affairs to occur.
>
> .....
>
> Concerning myself I can only state that I continue to remain jointly responsible for the shortfalls together with Mr Sam. I have been able with the assistance of Ms C and latterly with Mr Sam to put procedures in place to avoid further breaches and keep our accounting records up-to-date on a daily basis."
>
> …….
>
> "I accept that the shortages arose whilst I was jointly charged with the care and conduct of clients' funds. I acknowledge liability for those shortages. I

> have been assured that the clients affected were and remain close friends of Mr Sam and they continue to show support to him and also the firm"

71. In relation to allegation (vii) and (viii) the Applicant relied on the documentation. These were not the most serious of the allegations made against the Respondents.

72. Solicitors accounts, especially client account, should be clear and accurate. Many transfers were not only a breach of the Accounts Rules but were also teeming and lading. In the absence of proper documentation and client consents it was submitted that this was merely an attempt to disguise cash shortages and debit balances.

73. Both Respondents were guilty of serious professional misconduct regarding the accounts, the First Respondent by manipulating the accounts and the Second Respondent by his failure to oversee the situation.

74. As set out in correspondence to the Tribunal dishonesty was no longer alleged against the Second Respondent. There was no evidence that he had deliberately closed his eyes to the situation. The case was put on the basis however that he should have known what was happening. The Tribunal was referred to the 1998 case of Weston v Law Society in which The Lord Chief Justice had said:

> "They were at pains to make the point, which is in my judgment a good point, that the Accounts Rules exist to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording this protection and assuring the public that such protection is afforded, an onerous obligation is placed on solicitors to ensure that the Accounts Rules are observed.
>
> …….
>
> The court……. also had in mind the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. That is violated if one solicitor with a duty to see that the rules are observed fails to do so……. It was not in all the circumstances enough for him [Mr Weston] to say that the firm's finances were managed by Mr North and could therefore be left to him."

The Second Respondent could not say the same in respect of the First Respondent although The Law Society accepted that it was the First Respondent who was guilty of manipulation and misuse.

75. It was submitted that the First Respondent had been dishonest within the meaning of the test set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL. The test must be met to the criminal or the higher civil standard of beyond reasonable doubt. In relation to the case of Barlow Clowes v Eurotrust International Ltd [2006] 1 Lloyds Rep. 225 it was submitted that in this case there was little difference from the test set out in Twinsectra v Yardley.

76. The First Respondent had been the solicitor acting for AGMS and for other clients. The AGMS ledger was for a finance company which lent money to clients of the firm. The Tribunal was referred to the AGMS ledger and the entry on 9th April 2003 of a

loan to H of £13,000 which resulted in a debit balance of £13,000. AGMS was therefore lending money to the First Respondent's client when the money was not there. It was therefore not AGMS lending the money but other clients. It was likely that the loan attracted interest which would have been paid and the First Respondent would have benefited. The Tribunal might think if other clients' money was being used this was not right. Although this was not an allegation it was a matter which could be taken into account when the Tribunal was considering dishonesty. It was a salient factor that the ledger showed that when AGMS was lending money the account was almost always in debit.

77. If the Tribunal found no dishonesty on the part of the First Respondent it was not fatal to The Law Society's case. The attitude of both Respondents towards compliance and rectification of breaches was grossly reckless. They had totally failed in their stewardship of clients' funds, the First Respondent by his actions and the Second Respondent by inaction.

78. All the documents had been served on both Respondents pursuant to the usual Notices and no Counternotices had been received. The Applicant sought to rely on the documents.

79. The First Respondent was contesting allegations (i), (iii), (iv) and (v). It was submitted that the Tribunal had heard sufficient evidence to show that the First Respondent was guilty of the allegations and the Tribunal might conclude that he had previously made admissions. In respect of dishonesty it was submitted that this was systematic teeming and lading arising from his wrongful decision to act for AGMS as well as other clients. The Tribunal could be satisfied of this especially in respect of Mr D, O Property Limited and T Property Investments Ltd.

80. The Second Respondent contested allegations (iii) - (vi) and (viii). In relation to allegation (vi) a solicitor was under a duty to remedy matters promptly which the Second Respondent had not done. In respect of the other matters the Second Respondent was jointly and severally liable for the breaches carried out by the First Respondent. His level of culpability was different but there was sufficient evidence for him to be guilty on that basis or else it would make a mockery of the Solicitors Accounts Rules. In respect of allegation (viii) the Applicant relied on the papers.

<u>The oral evidence of the First Respondent</u>

81. The First Respondent made no challenge to most of the Applicant's documentation and took full responsibility for what did and did not happen. The Second Respondent had not been involved. Solicitors had to have trust in their partners and the First Respondent apologised to the Second Respondent for the stress, inconvenience and pain caused as the result of the First Respondent's failures.

82. The First Respondent had aimed to set up the largest black firm in the country. He had worked for many property dealers in South London. He had transferred moneys across between clients. His accountants had said he needed a general authority which he had obtained. He accepted however that the Applicant was correct and that the Rules said that both parties involved must sign their consent. The Respondent had breached the Rules but unintentionally. It was correct that he borrowed money from

some clients to repay debit balances on other clients' ledgers, that on some occasions he had borrowed without the prior written authority of the person lending the money and that on a number of occasions the receiver of the money had not provided authority. The Rule in relation to receiving parties was nonsensical. He accepted that he had been in breach of Rule 30 of the Solicitors Accounts Rules in respect of the receiving party but stated that in relation to the paying party he had written authority from everyone except Mr D who had given verbal authority.

83. In respect of O Property Limited and Mr Naqvi and the transfer of £57,000, the First Respondent had not been intending to charge any fees. Mr Naqvi had been correct when he said he had not given authority. Mr RD had made decisions as Mr Naqvi was frequently out of the country. Mr RD had been a de facto director. Mr Naqvi had never given instructions until he quarrelled with RD. Prior to that RD had found the properties and the First Respondent had sorted the finance and made sure the deals worked. The First Respondent had needed money for the Inland Revenue. He had spoken to "the boys at" AGMS who had said that he could use the money owed to them by O Property Limited. The First Respondent had an interest in O Property Limited and in AGMS. He had been a solicitor to AGMS but also part of "the team".

84. The bookkeeper had asked the First Respondent for the paperwork and said that he had done it incorrectly so contra postings were done to cancel out the entries. This was done in about September. The First Respondent refuted entirely that he had taken the £57,000 without consent. He had had the consent of the parties whose money it was. O Property Limited was paying back money to AGMS in tranches. One had been paid. When money came in from the disposal of properties a proportion was to be paid back.

85. The First Respondent clarified that Mr MN [paragraph 33 above] was part of both Cavendish and AGMS. The original money had been his. The loan was made by Cavendish to O Property Limited but was supposed to be administered by AGMS. The First Respondent had given clients Mr MN's number and they had made the deal themselves. It was only in the matter of O Property Limited where the First Respondent was involved and he had said he would sort out the loan and did.

86. With regard to Mr D the Applicant had said that Mr D could not use the monies. Mr D had however remortgaged the property. It was not the Abbey National's money. Mr D had given verbal authority. He had just come out of prison and did not want to put it in writing. The First Respondent accepted that that was a breach of the Rules as the consent should have been in writing. He had used the re-mortgage moneys to redeem the mortgage but before doing so had sent it to others. He had given Abbey National the first charge so they were protected. Mr D was then liable for the money and had said it was fine to use it for a couple of days. The First Respondent accepted that he should not have so used it. He did not tell Abbey National that he had done so.

87. The First Respondent accepted that the last of the inter-ledger transfers on the AGMS ledger was in the sum of £85,919.75 which was the exact amount by which the ledger was overdrawn. He had therefore used Mr D's money to rectify the AGMS ledger. He denied that this was due to his transfer of £160,000 from AGMS to T Property for the purchase of the office premises. The £160,000 had equated to monies which came

in and moneys which went out. Mr D had consented and the First Respondent had not acted dishonestly. He did not accept that he had been dishonestly teeming and lading to conceal a debit balance which had arisen because of his misuse of client monies.

88. In relation to the office premises T Property had agreed to buy the building. The monies from the bank were coming in late. They were buying from a trustee in bankruptcy who said "put up or walk away". The First Respondent had borrowed £160,000 from AGMS. He had also borrowed from Mr C. He did not have his written authority at the time. The First Respondent had written to Mr C to ask for confirmation of his verbal authority but Mr C had gone to Ghana and not returned.

89. In the matter of Mr DB there had been a genuine mistake. The firm had been selling his property but the redemption statement had come in late. The monies had come in and the First Respondent had said the mortgage should be paid but there was no redemption statement. Money had been transferred back in excess of what had been paid in, in error. There had been panic.

90. The Rules said that the matter should be rectified at once. The First Respondent was married with two children and he did not tell his wife at the time. He thought there was a potential solution when the client would have sold another property and the money would have come in. It had been a rushed scenario. In the end the First Respondent had had to sell his house. Until then no monies were available so in that sense the First Respondent had acted promptly.

91. Mr DB had written to Mr Hair and said that he had given consent but he had forgotten the dates. Mr DB had agreed that the First Respondent could use his money.

92. With regard to conflict of interest the situation would be different if the First Respondent had been dealing with ordinary buyers and sellers. His clients were people who bought property day in and day out. They were long established clients who had known each other a long time. The First Respondent would have lost within the small community if he had "stitched up" a client. The firm had not advertised. All their work had come through word of mouth and networking.

93. The First Respondent had not put his clients at risk. He did not believe there had been a conflict and denied allegation (i). It had been in clients' interests that they did not lose the bulk of the money they had put into a property. The First Respondent had not benefited financially except for legal fees. Most of his clients obtained independent legal advice. They needed funds quickly. Most of them put in writing that they did not want to go elsewhere. The First Respondent now realised that the Rules involved strict liability and that he had not followed the Rules. He was not guilty of allegation (i) however because his actual interest did not conflict with that of his clients. He did not consider that his position as a shareholder in AGMS lending money to his clients for conveyancing matters in which he was acting was a conflict. Conflict depended on the circumstances.

94. Although his company was lending money the clients could go to any other lender they chose. The First Respondent had not been involved in the decision making to lend the money and had not been aware of what agreements had been made therefore there could not have been an automatic conflict of interest. There would only be a

conflict if he was also running the company. If there had been a dispute between AGMS and the lay client he would have had to step down.

95. The problem with AGMS stemmed from one tiny mistake when £13,000 went to Mr and Mrs H. This should have been on the back of £20,000 that came in but in error the £20,000 had been transferred back to AGMS. The First Respondent could not say why he had done that, possibly due to being busy and stressed. In terms of steps to rectify it, money was coming in and out all the time so while the Investigation Officer saw a constant shortfall in reality what had happened was that monies came in for a particular transaction and would be used. The First Respondent did not seek to deny that technically this breached the Rules.

96. The Respondents had started and grown the firm. What they had failed to do was to separate management from client work. The Second Respondent was meant to deal with staff but was not always available so the First Respondent had handled everything as well as doing mental health, conveyancing and general litigation work. He had thought he was doing a good job with the accounts but with hindsight had not been. He had never intended to be dishonest and never was and he had a major problem with the allegation of dishonesty. Had dishonesty not been alleged he would have admitted the allegations. He did not think he had done anything very wrong. He had not complied with the Rules but that had to be seen in the context of the circumstances at the time.

97. The First Respondent had mostly left cheques to the bookkeeper to post while he dealt with the CHAPS transfers. The bookkeeper was ACA qualified and had extensive experience with solicitor's accounts. He had picked up the posting error on O Property Limited while looking at the bank statement. The First Respondent usually signed off the month end reports but sometimes this was done by the Second Respondent.

98. The First Respondent confirmed that their Accountants, W&W, had had a lien over the firm's accounting papers and refused to release these until they were paid.

99. The First Respondent denied that he had breached Practice Rule 1 and the solicitor's duty of independence and integrity and duty to act in the best interests of clients.

100. The First Respondent accepted that there had been a shortfall at certain times especially in the matter of B and that he was therefore guilty of allegation (iii).

101. He did not accept allegation (iv). He had borrowed money from clients and used it to cover the shortfall where clients owed money. Teeming and lading in contrast implied taking money without authority from one client and "bunging" it into another client's account dishonestly seeking to hide the shortfall. The First Respondent had borrowed from people who had money to cover the shortfall for people who owed him money.

102. The First Respondent accepted that he did not and could not have rectified the shortfall from his office account. He looked to client account and clients to rectify the shortfall on a rolling basis. Firstly he would look to the client who owed the money and then to his own resources. If he did not have the money he would borrow it from

someone who did be it client or friend. The First Respondent considered that the impression being given by The Law Society was not correct. Each time a transaction was done he knew where the monies were coming from. It was not systematic teeming and lading. Money had to come in before it could go out.

103. The First Respondent denied that his approach to the stewardship of clients' accounts was cavalier. He said his approach was optimistic in that people who owed money were constantly doing transactions and he hoped they would sell a property and pay him back quickly.

104. The shortfall had not originally arisen in respect of AGMS as some shortfall pre-existed AGMS. The main problem had however been the matter of B during the AGMS time.

105. The First Respondent confirmed that the firm had submitted at least eight sets of accounts to auditors previously and there had been nothing to imply teeming and lading or dishonesty or anything suspicious. He had been told to rectify the position by getting clients to give a general authority and had had to send copies of these to the Accountants to show that he had complied. There had been no queries from The Law Society regarding the audited Reports. The First Respondent had just been doing the job which had to be done.

106. There was a difficulty in that the relationship between the Respondents became dysfunctional. The Second Respondent however had nothing to do with the accounts which were the First Respondent's responsibility. The First Respondent would take any punishment considered necessary. He had however taken advice and if he had been told that consent was required from both sides he would have obtained this.

107. He had wanted his firm to be the biggest and best and would not have put that at risk. He could have obtained consent from the receiving parties.

The Submissions of the First Respondent

108. The firm had started small and had grown. The Respondents should have separated the finances from the work. They were not functioning as a team. The First Respondent had however been responsible and had not done the finances properly. He took responsibility. He did not believe that the situation had affected the clients adversely.

<u>The oral evidence of the Second Respondent</u>

109. The firm had had a system in place which had seemed to have worked for eight or nine years prior to the investigation. There had been an extensive audit every year in accordance with The Law Society's regulations which supported the First Respondent's work on the accounts and that of the bookkeeper who took a major role in respect of the end of year accounts and signed off each month end.

110. There had been a missed opportunity in that Mr Hair had been unaware of the bookkeeper's involvement. He had had more extensive knowledge than the First Respondent. The Second Respondent had relied on the expertise and professionalism

of the bookkeeper and his duty to report both to his governing body and to both employers if there were any irregularities.

111. It was not the case that the Second Respondent had done nothing. Many times he had been in the office at the weekends trying to get to the final VAT figures. In the early days the Second Respondent had run the bank accounts. He had however become very busy with his criminal department and the staff and had a very heavy workload.

112. The First Respondent's work had a high profile. The Second Respondent was not a conveyancer and his work did not fit with running conveyancing files or client funds on a daily basis. All he had been able to do was put systems in place including the qualified, highly recommended, knowledgeable and experienced bookkeeper to whom the Second Respondent had spoken regularly. The Second Respondent had also signed off the accounts.

113. When the First Respondent left, the firm was devastated. The conveyancing department was lost and the fact that the Second Respondent had to take charge of administration reduced the criminal work.

114. The Second Respondent had put a cashier in place and the accounts were up-to-date every day. He had had to learn the intricacies of accounts.

115. Previously he had not felt that he had to do that as when looking at the accounts as part of a team there had been nothing which would have given him suspicion that the First Respondent had suddenly changed or that the Second Respondent needed to double check or asked for signed authorities. He had had no suspicion of major or even minor difficulties until the investigation.

116. His initial replies to the investigation were on the assumption that there were minor problems and the First Respondent was overworked.

117. It had taken Mr Hair 15 days to establish the position and the bookkeeper had not been aware of it. The Second Respondent did not know therefore how he could have been aware. There was nothing to suggest that he needed to spend more time or resources.

118. The First Respondent was now accepting that he had not been fully aware of the Rules but the bookkeeper would have identified any difficulties and indeed the Second Respondent wondered why the bookkeeper had not informed him.

119. When the Second Respondent took over he went on an accounts course. In July 2006 the Second Respondent had been able to produce a full set of accounts up-to-date with a paper trail for everything.

120. The Second Respondent had been unable to provide an Accountant’s Report to The Law Society as his previous accountant had a lien on the papers.

121. The Second Respondent could not have been expected to be involved on a daily or two daily basis during the partnership. He had been available weekly when the bookkeeper came in and he had seen the monthly accounts.

122. The Respondents had tried to ensure that the client shortfall was made good. In his correspondence to the Adjudicator the Second Respondent had said he was at fault by which he meant that he was accepting liability. He was not saying that he had not supervised the First Respondent at all. Even today the First Respondent was saying that there was no conflict and what he had done was right. If the Second Respondent had looked deeper that is what he would have heard.

123. The Second Respondent had negotiated with the bank to prevent the firm being shut down which would have meant no clients got any money. He had eventually been able to operate without an overdraft which had given a breathing space to start repaying clients.

124. In relation to allegation (iii) there was nothing further the Second Respondent could have done. He had told the First Respondent to leave and said matters could be sorted out later.

125. Allegation (iv) was linked to allegation (iii). The Second Respondent had been aware that the firm had clients who were friends of the First Respondent and in the offices a lot. They were happy with the First Respondent's way of working. The Second Respondent had not known the scale of inter-client transfers. He had been aware that there were some as they had been mentioned by the Accountant. It was not unusual for clients to lend to each other but the correct procedures had to be followed. These matters had not been brought to his attention. He had not however turned a blind eye as he would not have discovered anything even if he had made further enquiries.

126. In relation to allegation (v) the only example was that of Mr Naqvi and the Second Respondent had not been aware of this matter.

127. In relation to allegation (vi) the Second Respondent had tried to rectify as soon as reasonable and practicable. It had taken some four to five months. He had managed to obtain assistance and had restructured. It had taken the Second Respondent a lot of time to get his head around the first Report and the alleged shortfall. This had been a shock to him. He did not consider that he had been in breach as alleged by allegation (vi). He had lost his house and his good name. He could not have rectified the matter faster than he did.

128. The Second Respondent considered that he had complied with Rule 6 of the Solicitors Accounts Rules regarding the responsibility of principals for compliance providing account was taken of reality. He did not say that he was not responsible for the breaches but there was nothing he could have done to prevent them. He had taken custodianship of client funds very seriously.

129. The Second Respondent had been aware that PAYE had been paid but had not known that it had come from O Property Limited. He believed that AGMS were lending the money in an arm's length transaction with interest paid. He knew of the First Respondent's interest in AGMS. The First Respondent had dealt with PAYE, etc.

130. The Second Respondent was not aware that AGMS was lending money to clients until the investigation.

131. The Second Respondent looked at bank statements twice a month using the internet banking system. He was aware of the overdraft arrangements which he was not happy about. He had not looked at individual client ledgers. He would not have been able to see the transfers going back and forth. There were no overdrawn ledgers because of the teeming and lading.

The Submissions of the Second Respondent

132. The Second Respondent's position could be distinguished from that of Weston in the case Weston v The Law Society CA 15th July 1998 who had accepted that he had played no role whatsoever in the accounts. The Second Respondent believed that he had in place systems which would prevent what had in fact occurred. There was no suggestion of anything further he could have done except in hindsight.

133. Even when the relationship between the Respondents had been breaking down they had continued to discuss the firm.

134. If a solicitor had procedures and employees in place this was supposed to stop rogue solicitors. The Second Respondent could not have done his job, the First Respondent's job and the bookkeeper's job.

135. After the Tribunal's findings as to liability the Second Respondent made further submissions in mitigation.

136. He said that he had already been penalised financially and had severe restrictions on his practising certificate. He had lost his reputation, his firm and his home.

137. In hindsight he did not feel he could have done more. He had not shied away from his responsibility to his clients and to ensure that they did not suffer loss.

138. He had had to close the firm and eleven staff had lost their jobs but they had all been paid up-to-date and received redundancy pay. Over the previous two years the Second Respondent had continually paid out funds. He was now bankrupt.

139. He accepted in hindsight that he had been at fault.

Further Submissions of the Applicant

140. The Applicant had heard today for the first time that the Second Respondent had been unable to file an Accountant's Report as he had no papers because of the lien of the firm's accountant [paragraphs 98 and 120 above]. The Applicant would therefore not pursue allegation (viii) against the Second Respondent and asked leave of the Tribunal, which was given, for this allegation to lie on file.

Submissions as to costs

141. The Applicant sought his costs in accordance with the schedule provided in the total sum of £53,662.33. The Applicant had heard nothing from either Respondent until today's hearing so had had to pursue the matters against both of them. The Law Society was entitled to its costs. Both the Respondents were bankrupt which was

relevant to enforcement but not to the making of an order. The Applicant accepted that the Tribunal might wish to allow an element of discount to reflect the withdrawal of an allegation and the withdrawal of the allegation of dishonesty against the Second Respondent.

142. The Second Respondent said that he had no means to pay costs.

The Findings of the Tribunal

The First Respondent

143. The First Respondent had admitted allegations (vi) and (vii). In his oral evidence the First Respondent had indicated that he perhaps had remedied the breaches promptly. The Tribunal was however satisfied that these allegations were substantiated.

144. The First Respondent had denied allegation (iii) but had admitted it in the course of cross-examination accepting that there were debit balances on some ledgers and accepting the allegation particularly in respect of the matter of Mr B. The Tribunal was satisfied that allegation (iii) was substantiated. The breach of Rule 22(8) was clearly shown on the documentation.

145. Allegation (i) was made against the First Respondent alone and he had denied it. He continued to assert that there was no conflict between himself and his clients although he appeared to accept that the situation might have been different if the clients were not experienced businessmen. It appeared to the Tribunal however that the conflict was clear. The First Respondent was a shareholder and company secretary of AGMS. He arranged for his clients to borrow money from AGMS with interest to be paid, an arrangement from which he would benefit through a dividend if one was declared. The First Respondent had said that he gave clients the names of other lenders as well but also said that AGMS offered favourable terms. He did not disclose his personal interest in AGMS to his clients. He acted for the clients in the conveyancing transactions for which they borrowed the money. He did not insist that his clients received independent legal advice. The Tribunal was satisfied that the allegation was substantiated. It was a matter of concern to the Tribunal that the Respondent did not accept the existence of that conflict.

146. Allegation (iv) was clearly substantiated by the inter-client ledger transfers to deal with debit balances. In his evidence the First Respondent had accepted that he did not always have the prior written authority of the person lending and that he did not have the consent of the party receiving, indeed he appeared to see no purpose in the latter. The Tribunal was satisfied that allegation (iv) was substantiated.

147. Allegation (v) related to the transfer of the sum of £57,798 from the O Property Limited ledger to the office account. This money was then used to pay outstanding PAYE liabilities of the firm. The First Respondent said that he had made a posting error in that the money should have been shown as repayment by O Property Limited to AGMS and then a loan from AGMS to the office. The First Respondent said that RD had given authority and then "the boys" at AGMS had agreed the loan to the firm. Mr Naqvi however had given clear oral evidence that no authority had been given either by himself or by RD. The Tribunal found Mr Naqvi's evidence persuasive.

Any solicitor transferring client's money in such unusual circumstances would be expected to take the greatest care to ensure that clients were protected by compliance with the Rules.

148. Dishonesty had been alleged against the First Respondent and had to be substantiated to a high standard.

149. Two clients, Mr Naqvi and Mr D, had written to say that they had not given consent for transfers of their funds. The Tribunal's view of the matter of O Property Limited and Mr Naqvi was set out at paragraph 147 above. The First Respondent had used O Property Limited's money without consent to pay the firm's PAYE. In the matter of Mr D the remortgage money had been used by the First Respondent elsewhere when it had been designated for a particular purpose by the Abbey National. Mr D had said that he had not given consent; but the Tribunal also accepted the submission of the First Respondent that he was not in a position to give consent for that money to be used elsewhere. The charge was not yet in place. Money from the Abbey National had been used to pay the debit balance created by the purchase by T Property Investments Limited of the firm's office premises. It appeared to the Tribunal that in each case the First Respondent had looked for a source of cash and then simply used it. His whole method of working subverted the way in which solicitors were meant to deal with clients' funds. The Tribunal considered carefully the case of Twinsectra v Yardley and Barlow Clowes v Eurotrust International. The Tribunal had had the benefit of the First Respondent's oral evidence and his explanations. The Tribunal also had before it extensive documentation. Having considered all these matters the Tribunal was satisfied to the very high standard required that the First Respondent's conduct had been dishonest.

The Second Respondent

150. The Second Respondent had admitted allegation (vii) and the Tribunal found it to have been substantiated. Allegation (viii) was to be left on file. Allegations (iii) - (vi) were denied by the Second Respondent. The Second Respondent's defence had in effect been that he had done all that he reasonably could. The Second Respondent's oral evidence had been impressive and the Tribunal had sympathy with the fact that he believed he had set up sufficient systems in relation to accounting processes including the employment of an experienced bookkeeper. While this was persuasive mitigation it was not however a defence in these circumstances. The Tribunal accepted that the Second Respondent, who was a criminal practitioner, had relied on the First Respondent, a conveyancer, who had glossed over matters. The Second Respondent however remained liable as a partner for what had occurred and the allegations were substantiated.

151. In relation to penalty the First Respondent had had proved against him allegations in the course of his practice which involved dishonesty on his part. In his oral evidence he had described his approach and attitude to the stewardship of clients' funds as "optimistic" rather than cavalier. The Tribunal however had found dishonesty substantiated and considered that the First Respondent's attitude had been and continued to be cavalier in relation to clients' funds. It was right that his name be struck off the Roll of Solicitors in order to protect the public. His conduct had damaged the reputation of the profession.

152. In relation to the appropriate penalty for the Second Respondent, as stated above the mitigation put forward by the Second Respondent was persuasive. He had had no direct involvement in the misconduct of the First Respondent. Subsequently he had done everything he could to put matters right. He had trusted his partner and that trust had been misplaced. He had suffered severely financially and professionally as a result of his partner's actions. No dishonesty had been alleged against him. The Tribunal considered the references put forward in his support. The Tribunal was satisfied that in the particular circumstances of this case the appropriate penalty was a reprimand.

153. In relation to costs, the sum sought by the Applicant was considerable reflecting the complexity of this matter including three investigations by The Law Society. It was right that the First Respondent pay a large part of the costs and the Tribunal would Order that he pay £40,000. The Tribunal had found that the Second Respondent was liable as a partner rather than personally culpable although, like the First Respondent, he had not put forward his case until the hearing. It was right that he pay a lesser contribution to the costs. The Tribunal noted his submission that he was not in a position to pay any costs but that was a matter for enforcement, not for the Tribunal. The Tribunal would Order that the Second Respondent pay £10,000 towards the Applicant's costs.

154. The Tribunal Ordered that the Respondent, Stephen Wilbert Dermont Sam, Streatham, London, SW16, solicitor, be Struck Off the Roll of Solicitors and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £40,000.00.

155. The Tribunal Ordered that the Respondent of Sutton, Surrey, SM1 solicitor, be Reprimanded and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 10th day of December 2007
On behalf of the Tribunal

R B Bamford
Chairman