

IN THE MATTER OF [*RESPONDENT 1 - NAME REDACTED*]
AND CATHERINE BONG, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr E Richards
Mrs V Murray-Chandra

Date of Hearing: 26th February 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by David Elwyn Barton, Solicitor, of 5 Romney Place, Maidstone, Kent, ME15 6LE on 12th September 2006 that *RESPONDENT 1*, Solicitor, of Grosvenor House, 98 London Road, Leicester, LE2 0QS 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 3rd August 2007 Jonathan Goodwin, Solicitor, Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT made a supplementary statement containing further allegations against *RESPONDENT 1*.

On 5th December 2007 Jonathan Goodwin made a second supplementary statement containing further allegations against *RESPONDENT 1*.

On behalf of The Law Society Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor, Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, CH1 6LT on 3rd August 2007 made application that Catherine Bong, Solicitor, of Warwickshire, CV23 might be required to

answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The applications against *RESPONDENT 1* and Mrs Bong had been consolidated and were heard together before the Tribunal on 26th February 2008.

The allegations against *RESPONDENT 1* were:-

1. He has acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 22(1) he has drawn from client account monies other than in accordance with the said Rules and utilised the same for his own benefit.
2. He has acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 22(5) he has drawn from client account for the benefit of a client an amount which exceeded the money held on behalf of that client.
3. He has acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 32 he has failed to keep accounting records properly written up at all times to show his dealings with client money received and office money relating to client matters.
4. He has acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 7 he has failed to remedy breaches promptly upon discovery.
5. That he has been guilty of conduct unbecoming a solicitor having transferred costs in the sum of £6,690.06 from a Receivership account to office account without having first had such costs assessed by the Supreme Court Taxing Office in accordance with an Order of the Court of Protection dated 7th September 2004.

RESPONDENT 1 had further been guilty of conduct unbecoming a solicitor in that:-

6. He provided misleading and/or inaccurate costs information contrary to Rule 1 and/or Rule 15 of the Solicitors Practice Rules 1990.
7. He failed to disclose material information to his lender client.
8. He completed a Certificate of Title which was misleading and/or inaccurate.
9. He failed to ensure that a proposal form submitted in respect of professional indemnity insurance on behalf of the firm contained correct and accurate information.

Further allegations against *RESPONDENT 1* were that he had been guilty of conduct unbecoming a solicitor in that:-

10. In relation to B & W Solicitors, he failed to deliver an Accountant's Report for the period ending 31st March 2006, (due for delivery on or before 30th September 2006), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.

11. In relation to B & W Solicitors, he failed to deliver a Cease to Hold Accountant's Report for the period 1st April 2006 to 15th September 2006 (due for delivery on or before 15th November 2006), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
12. In relation to B & W Law LLP, he failed to deliver an Accountant's Report for the period 7th April 2006 to 6th October 2006 (due for delivery on or before 6th December 2006), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
13. In relation to B & W Law LLP, he failed to deliver a Cease to Hold Accountant's Report for the period 7th October 2006 to 15th November 2006 (due for delivery on or before 15th January 2007), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
14. He failed to comply with an expectation and/or direction of an Adjudicator dated 29th June 2007, relating to the delivery of the Accountant's Report referred to in allegations 10-13 above.
15. In relation to ADW Solicitors, he failed to deliver an Accountant's Report for the period ending 14th May 2007 (due for delivery on or before 14th July 2007), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
16. He failed to reply to correspondence from The Law Society.
17. He has failed to comply with the directions of an Adjudicator dated 10th July 2007, in relation to the matter of Mrs G.
18. That he has failed to comply with the directions of an Adjudicator dated 7th August 2007, in relation to the matter of Mr M.

In relation to allegations 17 and 18 the Applicant also applied for an Order pursuant to paragraph 5(2) of Schedule 1A to the Solicitors Act 1974 (as amended) that the directions(s) of the Adjudicator dated 10th July 2007 (in relation to the matter of Mrs G) and 7th August 2007 (in relation to the matter of Mr M) arising out of inadequate professional service, be treated for the purposes of enforcement as if they were contained in an Order made by the High Court.

The allegations against Mrs Bong were that she had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

1. She provided misleading and/or inaccurate costs information contrary to Rule 1 and/or Rule 15 of the Solicitors Practice Rules 1990.
2. She failed to ensure that a proposal form submitted in respect of professional indemnity insurance on behalf of the firm contained correct and accurate information.

The applications were heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 26th February 2008 when Jonathan Richard Goodwin appeared as the Applicant and both Respondents appeared in person.

The evidence before the Tribunal included the oral evidence of Miss Norton and Mr Sage, Investigating Officers of The Law Society. *RESPONDENT 1* denied allegations 1, 9 and 16 and Mrs Bong denied both allegations against her which were the same as allegations 6 and 9 made against *RESPONDENT 1*.

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

The Tribunal Orders that Respondent 1 of, Leicester LE2, solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,000.00.

AND

The Tribunal Directs that the directions made by the Adjudicator of The Law Society respectively dated 10th July 2007 (client Mrs G) and 7th August 2007 (client Mr M) be treated for the purposes of enforcement as if they were Orders of the High Court. As from 26th April 2008 the Tribunal further Orders that the Respondent shall not be permitted to practise as a solicitor save in employment and in a capacity which has first been approved by The Law Society.

The Tribunal approves and endorses the indefinite suspension passed on the Respondent Catherine Bong of, Rugby CV23 on the 17th day of October 2006 and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00 inclusive.

The facts relating to the Respondents' backgrounds

1. *RESPONDENT 1*, born in 1961, was admitted as a solicitor in 1997. His name remained on the Roll of Solicitors.
2. Mrs Bong, born in 1943, was admitted as a solicitor in 1998. Her name remained on the Roll of Solicitors.
3. Between 1st October 2004 and 31st March 2005 *RESPONDENT 1* carried on practice in partnership as Dews Witcomb incorporating B & W Solicitors. From 1st April 2005 until 6th April 2006 he practised on his own account as B & W Solicitors. From 7th April 2006 until 17th November 2006 *RESPONDENT 1* and Mrs Bong practised as the two members of B & W Law LLP, being the successor practice to the former firms of B & W Solicitors and CB Law in which *RESPONDENT 1* had previously practised alone.

The facts relating to the allegations admitted by *RESPONDENT 1*

4. An Investigation Officer of The Law Society (The IO) began an inspection of *RESPONDENT 1*'s books of account commencing on 20th March 2006. The IO's report dated 3rd May 2006 was before the Tribunal.
5. *RESPONDENT 1* explained that when he went into partnership in October 2004 he had retained his firm's client and office bank accounts in order to "run off" client

monies as matters from his firm were finalised. Between 1st October 2004 and 31st March 2005 no accounting records of transactions in relation to these bank accounts were maintained.

6. During February 2006 the firm's computer server had "crashed". It transpired that regular back ups had not been performed correctly. The firm's practice management system largely was recovered but the firm's accounting records from 1st April 2005 onwards were lost. *RESPONDENT 1* had spent the weekend of 18th and 19th March 2006 with his accountant writing up the accounting records from 1st October 2004 onwards in order to establish an opening position for the firm's client ledger balances and also to rewrite the client account records lost in the computer crash. That work had not been completed. Transactions had been written up only until the end of December 2005. The records were inaccurate as he had found some errors and no office account records were available.
7. *RESPONDENT 1* told the IO that he had made unallocated transfers from client to office bank account from 1st April 2005 to the date of the inspection and he needed to do further work with his accountant to be able to allocate the amounts in question.
8. *RESPONDENT 1* further said that in August 2005 he had made an overpayment in error of about £10,000 from client bank account and that had come to light only during the work undertaken at the weekend in March 2006.
9. In view of *RESPONDENT 1*'s report of his current situation the IO did not consider it practicable to attempt to calculate whether *RESPONDENT 1* held sufficient monies in client bank account to meet his total client liabilities.
10. The IO was able to calculate the existence of a minimum cash shortage of £25,261.08. This was made up of unallocated transfers from client to office bank account of £13,195 and an overpayment to a client of £12,066.08.
11. The unallocated transfers were made up of eight round sum transfers varying in amount between £1,000 and £2,500 made in the period from 26th May 2005 to 24th February 2006. *RESPONDENT 1* accepted that the funds transferred had been used for his benefit as the transfers had been made from client to office bank account and had been used to meet his drawings, wages and other office expenses. He also accepted that a transfer of £1,520.00 on 14th December 2005 had been utilised in the payment of his practising certificate fee. *RESPONDENT 1* had accepted that he was in breach of the Solicitors Accounts Rules.
12. It was *RESPONDENT 1*'s position that he had transferred amounts that were all due to the firm as costs. It had been his practice to review files to determine what costs could be taken from monies received on account before he made the transfers. He could not produce any bills against which those costs could be allocated.
13. An overpayment of £12,066.08 had been made in respect of clients Mr and Mrs K. *RESPONDENT 1* had reviewed a completion statement on the clients' conveyancing files which appeared to show that Mr and Mrs K were owed a further sum of £11,934.42. *RESPONDENT 1* calculated that interest on that sum was payable of £131.66. He paid a client account cheque to the clients for £12,066.08 which cleared

on 31st August 2005. After writing up the books of account during the weekend in March 2006 Mr and Mrs K's client ledger recorded a debit balance. *RESPONDENT 1* then became aware that the payment of £12,066.08 represented an overpayment from client bank account. *RESPONDENT 1* told the IO that he had met with the clients on 23rd March 2006 in order to discuss repayment and they had agreed to repay the monies within two to three weeks. At the hearing *RESPONDENT 1* confirmed that the clients had repaid that money.

14. The IO went on to report upon an instance where the Respondent had taken costs in his capacity as a Court of Protection Receiver when he had not been authorised so to do. The Court of Protection order provided "The Receiver is authorised subject to assessment to be paid solicitors' costs in respect of the work done by her [sic] as Receiver". On 15th November 2005 *RESPONDENT 1* transferred £6,690.06 from the Receivership bank account to office bank account in respect of costs. *RESPONDENT 1* agreed that his bill had not been assessed but he did not agree that he was in breach of the Court of Protection order. He said he had telephoned the Public Guardianship Office when completing the annual accounts return and had been advised that he could transfer his costs. *RESPONDENT 1* said that the Public Guardianship Office were aware of the position. It had been his first year of Receivership and he had to telephone to ask for guidance. He had not appreciated that his bill had to be assessed by the Supreme Court Taxing Office. No note of such telephone conversations had been retained on the file.
15. Another IO carried out an inspection of the books of account of B & W Law LLP of which *RESPONDENT 1* and Mrs Bong were members. The inspection began on 1st August 2006. The IO produced a report dated 22nd August 2006 a copy of which was before the Tribunal.
16. The IO examined twelve client matters where the information provided to the clients about the firm's costs and disbursements were misleading or inaccurate.
17. At the start of a matter, the client was usually provided with an indication of the likely costs and disbursements and, in the case of conveyancing matters, a schedule of charges. Under the heading "Disbursements" the firm included "Telegraphic Transfer/CHAPS fee" of £40 and "Land Transaction Return", £50. These items were not disbursements but the firm's charges. The firm's bank charged £20.00 for making a telegraphic transfer.
18. In most of the matters examined, the firm's bills and completion statements also contained items incorrectly described as "disbursements". Clients were charged for "petty expenses", said to be postage, photocopying and telephone, and "mortgage legal fees" which Mrs Bong said were the firm's profit costs (when acting for the lender). The latter had been shown on the bill separately from "our charges".
19. *RESPONDENT 1* had acted for Mr and Mrs S in connection with their purchase of a property from builders at the price of £157,500.00. The completion statement from the vendor's solicitors showed that the purchase price was reduced to £144,112.50 by incentives or allowances of £13,387.50.

20. The buyers were assisted in their purchase by a net mortgage advance of £145,688.00 from Mortgages plc for whom *RESPONDENT 1* also acted. The certificate of title, signed by *RESPONDENT 1* dated 6th June 2006 referred to a gross mortgage advance of £148,393.00 and the transfer price of £157,500.00. The lender had not been notified of the reduction in the purchase price brought about by the vendor's allowance.
21. The purchase had been completed on 9th June 2006 and as at 31st July 2006 the stamp duty had not been paid. It had been anticipated that stamp duty would be £1,575.00, based on the price of £157,500.00. The IO expressed concern that the seller's solicitors and *RESPONDENT 1* were content to allow registration of the transfer containing an incorrect purchase price.
22. *RESPONDENT 1* ceased to hold client money as B & W Solicitors on 15th September 2006. He began to hold client money as B & W Law LLP on 7th April 2006. He ceased to hold client money as B & W Law LLP on 15th November 2006. The Accountant's Report relating to B & W Solicitors for the period ending 31st March 2006, and the "cease to hold" Report to 15th September 2006 had not been filed with The Law Society.
23. An Accountant's Report relating to B & W Law LLP from 7th April 2006 to 6th October 2006 had not been filed with The Law Society, nor had a "cease to hold" Report up to 15th November 2006.
24. By letter dated 7th December 2006 the Solicitors Regulation Authority (SRA) wrote to *RESPONDENT 1* asking him to explain why the Accountant's Reports were outstanding. He did not reply.
25. It was necessary for the SRA to write again on 4th January 2007 requesting a response.
26. By email dated 15th January 2007 *RESPONDENT 1* apologised for the delay and explained that he had recovered from illness. *RESPONDENT 1* indicated that the delay in submission of the Report for B & W solicitors was because his accountant needed to make a thorough check of the accounts following the computer crash in February 2006. *RESPONDENT 1* also explained that there had been difficulties between himself and his accountants. He had attempted to instruct new accountants in connection with which there had been further difficulties. *RESPONDENT 1* indicated that his new accountants hoped to be able to start work on the Reports by the end of February 2007.
27. By letter dated 24th April 2007 the SRA wrote to *RESPONDENT 1* requesting his explanation as to why the Accountant's Reports for B & W Law LLP had not been filed.
28. By letter dated 8th May 2007 *RESPONDENT 1* replied and confirmed that he had had meetings with his accountants to discuss the outstanding Reports and the accountants had been to his offices to inspect a number of files. *RESPONDENT 1* advised that his accountants had almost completed the Report for B & W Solicitors and had commenced work on the Report for B & W LLP. *RESPONDENT 1* indicated that he

was expecting his accountants to advise what information they required to be able to finalise the Reports later that week. Nothing further had been heard from *RESPONDENT 1*.

29. The matter was considered by an Adjudicator of The Law Society on 29th June 2007 who resolved:-

“I expect**, within 28 days of the date of the letter notifying him of this decision, to deliver the above Accountant’s Reports, failing which I direct that the conduct of **be referred to the Solicitors Regulation Authorities Intervention & Disciplinary Unit, without further notice for disciplinary proceedings to be taken against him in the Solicitors Disciplinary Tribunal.

If **complies with decision 2 above, then I decide to reprimand ** severely for his breach of Section 34 of the Solicitors Act 1974 (as amended).”

30. *RESPONDENT 1* was notified of the Adjudicator’s decision by letter dated 9th July 2007. He was required to comply on or before 6th August 2007. He did not do so.
31. The first Accountant’s Report in relation to ADW Solicitors, for the 6 month period ending 14th May 2007, was due for delivery on or before 14th July 2007. After the due date for delivery had expired *RESPONDENT 1*’s accountants wrote to the SRA on 19th July 2007 to seek an extension of time for the filing of the Report. The SRA by letter dated 30th July 2007 pointed out that as the request for an extension was received after the due date for delivery of the Report an extension could not be granted.
32. By letters dated 7th and 20th August 2007 the SRA wrote to the Respondent about the outstanding Accountant’s Report. He did not respond.
33. An inadequate professional service award had been made to Mrs G, one of *RESPONDENT 1*’s conveyancing clients. The solicitors acting for Mrs G’s lender requested additional information from *RESPONDENT 1*’s firm to enable them to request the funds required for completion. Mrs G had complained that *RESPONDENT 1*’s conduct had delayed the matter. She further complained that the completion statement contained errors and charges of which she was not aware. Mrs G had attempted to take the matter up with *RESPONDENT 1* who did not respond. After an exchange of correspondence between the SRA and/or the solicitors representing it, an Adjudicator of The Law Society considered the matter and resolved that the service provided by B & W Law LLP was inadequate. Following representations by *RESPONDENT 1* the Adjudicator reconsidered the matter on 10th July 2007 and found that as *RESPONDENT 1* became the sole principal of ADW Solicitors on 15th November 2006 it would be appropriate for the decision to be made in relation to him personally.
34. The Adjudicator having found *RESPONDENT 1* to have provided an inadequate professional service said:-

“I direct that ** pay Mrs [G] the sum of £620.00 compensation.

I direct that the fees of ** are limited to those set out in the client care letter of 24th August 2005 and the sum of £430.75 is refunded to Mrs [G].

I direct that no further account is to be rendered in relation to this matter.

** must carry out my directions within 7 days”.

35. *RESPONDENT 1* was notified of the Adjudicator’s decision by letter dated 19th July 2007. He was required to make payment by 27th July 2007. He did not despite reminder letters that were sent to him.

The evidence relating to the disputed allegations

36. *RESPONDENT 1* denied that he had acted in breach of the Solicitors Accounts Rules 1998 in that contrary to the provisions of Rule 22 (1) he had drawn from client account monies other than in accordance with the said Rules and utilised the same for his own benefit. It was his case that transfers that he had made from client to office account related to costs that were due to his firm. The problems relating to the allocation of those costs to individual client ledgers had been caused by the computer crash already described. He had only transferred monies which he had known were due to him.
37. *RESPONDENT 1* denied that he had acted in breach of the Solicitors Accounts Rules 1998 in that contrary to the provisions of Rule 32 he had failed to keep accounting records properly written up at all times to show his dealings with client money received and office money relating to client matters. He had explained about the disastrous computer crash which he had suffered. He had not failed to keep accounting records properly written up, but those records which he had kept had been destroyed.
38. *RESPONDENT 1* denied that he had failed to reply to correspondence addressed to him by The Law Society or those representing it. He said that he had replied.
39. During the course of addressing the Tribunal the Respondent indicated that he did not consider that he had been in breach of the award for inadequate professional service made to the client Mr M because B & W Law LLP had been directed to pay compensation and waive their costs fees and disbursements, *RESPONDENT 1* personally had not been directed to make such payments.
40. Mr M had instructed B & W Law LLP to act for him in conveyancing matters. He instructed the firm in about June 2006 but withdrew his instructions on 9th September 2006. Mr M had complained to The Law Society that *RESPONDENT 1* had failed to respond to his telephone calls, emails and communications from third parties including other solicitors and estate agents involved in the conveyancing transactions.
41. The Legal Complaints Service wrote to *RESPONDENT 1* on 19th February 2007 to seek his explanation but he did not reply. The Legal Complaints Service wrote a further letter on 12th March 2007 and another letter on 19th March 2007. The Respondent did not reply. *RESPONDENT 1* was required to deliver up the client’s papers pursuant to Section 44B of the Solicitors Act 1974.

42. In a letter of 1st August 2007 *RESPONDENT 1* indicated that the sale file had been handed to Mr and Mrs M and that had hampered him in dealing with the complaint. The agent appointed to recover the file under Section 44B had been able to recover the purchase file, which was incomplete, but had not recovered the sale file.
43. On 7th August 2007 an Adjudicator resolved that the service provide by B & W Law LLP was inadequate and made the following direction:-

“I therefore direct B & W Law LLP to 5.1 pay compensation of £800 by way of compensation to Mr [M]; and 5.2 to refund to Mr [M] the £256.39 and £200 deposit which he paid to them during the course of the retainer; and 5.3 to waive all their costs, fees and disbursements in this matter; and 5.4 to return to Mr [M] his marriage certificate (if they have not done this already), or alternatively to refund to Mr [M] the fee incurred by him in obtaining a replacement marriage certificate, upon production by Mr [M] to the solicitors of a receipt for the same.

The solicitors must carry out my directions within 7 days”.

44. *RESPONDENT 1* was notified of the Adjudicator’s decision by letter of 15th August 2007. *RESPONDENT 1* had not complied.
45. Mrs Bong denied allegation 6, namely that she had provided misleading and or inaccurate costs information to clients. It was her case that when the IO pointed out that it was wrong to refer to the charge made for a telegraphic transfer and the completion of a stamp duty land tax form as a “disbursement”, the firm had taken that on board and had amended the costs information given to clients as was demonstrated by the firm’s list of conveyancing charges which appeared at page 32 of the bundle attached to the Applicant’s statement. In that list of conveyancing charges the telegraphic transfer/CHAPS fee and the land transaction return charges respectively of £40 and £50 had been described as “Vatable disbursements”. Office copies of the register entries, personal local search (estimated), Land Registry OS search and bankruptcy search fees and land charges search fee in relation to unregistered property had all been described as “non-Vatable disbursements”.
46. Both Respondents denied that they had made representations within a proposal form for professional indemnity insurance which were misleading and/or inaccurate.
47. The firm’s proposal form for Professional Indemnity Insurance, submitted to AON Professional Risks contained the following questions to which Mrs Bong, who had completed the form, had answered “No” :-
- “B. Has the current practice become a successor to any other practice in the last five years by takeover, merger, employment of principals or staff of such a practice or absorption of a significant proportion of the clients of that practice?
- C. Has the practice or any prior practice been the subject of an OSS investigation which has been upheld or any investigation or

intervention by any Regulatory Department of The Law Society in the last five years?

- E. Has any principal, consultant or employee of the current practice or any prior practice ever been refused a practising certificate or granted a conditional practising certificate or been the subject of a costs or penalty order or reprimand by the Disciplinary Tribunal?"
48. Both of the former practices had been the subject of a Law Society investigation in the previous five years and Mrs Bong currently held a conditional practising certificate for the year 2005-2006. Mrs Bong had been advised on 11th January 2006 of the decision to impose a condition which became effective on 11th April 2006.
49. It was Mrs Bong's case that AON Professional Risks had been aware that the firm was a successor practice and also that she held a conditional practising certificate. In fact insurance cover had not been taken up with AON but with PYV Legal. PYV Legal had been made aware of the previous investigations by The Law Society and also of the condition imposed on Mrs Bong's practising certificate.
50. *RESPONDENT 1* said that he had not been aware of the AON form and had not seen the way in which Mrs Bong had completed it.

The Findings of the Tribunal

51. The Tribunal found the allegations which had not been denied to have been substantiated. With regard to the allegations that were contested the Tribunal found allegation 1 to have been substantiated against *RESPONDENT 1*. Allegation 3 was also substantiated against *RESPONDENT 1*. The Tribunal found allegation 9 not to have been substantiated against *RESPONDENT 1*. The Tribunal found allegation 16 to have been substantiated against *RESPONDENT 1*.
52. The Tribunal found allegations 6 and 9 to have been substantiated against Mrs Bong.
53. With regard to allegation 1 round sum transfers for costs could not be acceptable. Costs can only be transferred from client to office account in precise figures against bills of costs relating to specific clients. Any deviation from this clear Rule is dangerous and puts a solicitor in danger of taking money from client account to which he is not entitled.
54. Despite *RESPONDENT 1*'s explanations and the serious computer crash which he suffered, he was nevertheless guilty of failing to keep his accounting records properly written up at all times. The Tribunal was concerned that *RESPONDENT 1* had not taken all appropriate steps to retrieve the situation when disaster befell him when his computerised records were destroyed.
55. With regard to allegation 9 the Tribunal was satisfied that *RESPONDENT 1* had no knowledge of the way in which Mrs Bong had completed the application for professional indemnity cover to be provided by AON. He could not therefore be considered to be culpable for any inaccuracies therein.

56. The Tribunal found allegation 16 to have been substantiated against *RESPONDENT 1*. It was clear that there were a number of occasions when The Law Society, or those representing The Law Society, had written to *RESPONDENT 1* and he had not replied. The allegation did not suggest that he had not replied to any letters at all that had been addressed to him by his professional regulatory body but there were a number to which he did not respond.
57. With regard to *RESPONDENT 1*'s suggestion that he was not responsible for compliance with the directions of the Adjudicator of 7th August 2007, relating to the client Mr M, the Tribunal rejected *RESPONDENT 1*'s suggestion that he was not personally responsible when the award had been made against B & W Law LLP rather than *RESPONDENT 1* personally. When Mrs Bong ceased to be a member of that limited liability partnership, *RESPONDENT 1* remained. Clearly it would be unacceptable if a solicitor could avoid responsibility for the payment of an inadequate professional service award to a client by suggesting that he had this technical defence. *RESPONDENT 1* should properly regard such a payment as a professional obligation and might not properly seek to avoid it in the way that he did.
58. The Tribunal found allegation 6 against Mrs Bong to have been substantiated. It was clear that the description of a telegraphic transfer fee that was higher than that charged by the firm's bank as a "disbursement" and the description of the firm's charge for completing the stamp duty land tax form as a "disbursement" were not correct. Neither of these was a disbursement. Both were charges made by the firm and should be described as such. The Tribunal noted Mrs Bong's suggestion that the firm had put matters right when it described these items as "Vatable disbursements". The Tribunal rejected that assertion as, of course, those items remained in part profit costs and could not be described as "disbursements". Those items attracted the charge of VAT precisely because they were profit costs. The amended list of charges supplied to clients remained wholly inaccurate.

Previous Findings in relation to Mrs Bong

59. At a hearing on 17th October 2006 the following allegations were made against Mrs Bong. The allegations were that she had been guilty of conduct unbefitting a solicitor in that she:-
1. Failed to make client bank account reconciliations contrary to Rule 32(7) of the Solicitors Accounts Rules 1998;
 2. Failed to keep up to date accounting records contrary to Rule 32(1)(c) of the Solicitors Accounts Rules 1998;
 3. Failed to record office money relating to client matters on the office side of the appropriate client ledger account contrary to Rule 32(4) of the Solicitors Accounts Rules 1998;
 4. Failed to distinguish on bills between fees, disbursements not yet paid at the date of the bill and paid disbursements contrary to Rule 32(8) of the Solicitors Accounts Rules 1998;

5. Failed to comply with the Solicitors Accounts Rules 1998 contrary to Rule 6;
6. Failed to remedy the breaches of the Solicitors Accounts Rules 1998 contrary to Rule 7;
7. In conveyancing matters failed to advise the lender that she would not have control over all the purchase monies contrary to Rule 6 of the Solicitors Practice Rules 1990;
8. Failed to inform the lender in writing in conveyancing transactions that she was also acting for the seller and the buyer contrary to Rule 6 of the Solicitors Practice Rules 1990;
9. Contrary to CML Handbook and Rules 6 of The Solicitors Practice Rule 1990 wrongly submitted unqualified certificates of title;
10. Dishonestly held the Second Respondent out as a partner in her practice when that was not the case;
11. Entered dishonestly into a sham partnership with the Second Respondent;
12. By holding out the Second Respondent as a partner in her practice breached the Solicitors Publicity Code 2001;
13. When applying for a practising certificate dishonestly made a false statement;
14. [Withdrawn]
15. Understated her gross fees for the purposes of the SIF return;
16. Under declared her VAT liability to HMRC;
17. Took advantage of clients by charging them for a disbursement when no disbursement was incurred.

(Mrs Bong was in this matter a Respondent together with Mr Arshid Mahmood Idris)

The Tribunal found all of the allegations to have been substantiated. Indeed they were not contested. In its Findings dated 27th November 2006 the Tribunal said:-

“The Tribunal accepted that Mrs Bong's level of experience within the solicitors' profession was rather less than might have been usual for a solicitor of her maturity. The Tribunal accepted the arrangement that she proposed to Mr Idris was not intended by her to be a "sham partnership" in order to make either of their firms appear more substantial than was the case or with a view to persuading institutional lenders that they were not sole practitioners. The Tribunal accepted that in the forefront of her mind she had hoped that should she be ill or take a holiday, cover would be available and she would have another solicitor to whom she might turn for advice. On its face that appeared a sensible consideration which would operate in the best interests of her clients. She clearly had not

understood fully the position and perhaps had not given it an appropriate level of thought and had not taken advice. However the Tribunal were mindful that Mrs Bong had experienced a similar "problem" before. The effect of her actions was to indicate to clients and the world at large that she and Mr Idris were in partnership.

The Tribunal considers that the breaches of the Solicitors Accounts Rules and the Solicitors Practice Rules were perhaps largely due to her lack of experience but, however, she was a qualified solicitor and was required both to understand and comply with the rules relating to practice as a solicitor.

The Tribunal was in all of the circumstances very concerned about Mrs Bong's ability to practise as a solicitor given the extent and range of the allegations which had been found proved. The Tribunal concluded that in order to protect the public and to protect the good reputation of the solicitors' profession it was both right and proportionate that Mrs Bong be suspended from practice as a solicitor for an indefinite period of time. It would, of course, be open to Mrs Bong to apply to the Tribunal for her suspension to be brought to an end. Whilst this Tribunal does not seek to fetter the powers of any future Tribunal, it considers that it would be helpful to point out that such an application would not be favourably received unless Mrs Bong was able to demonstrate that she had established a greater experience of working in the solicitors' profession by working as an unadmitted clerk in a solicitors' firm with the consent of The Law Society and she could demonstrate that she had carefully studied and understood the Rules relating to professional practice.

With regard to Mr Idris the Tribunal accepted he had entered the arrangement with Mrs Bong, having taken some advice, somewhat reluctantly and against his own better judgement. It was a matter for regret that he had not fully understood the effect of having his name on Mrs Bong's letterhead or having her name on his letterhead. He had come to accept that dealing with the matter in the way that he did led to his being held out as being in partnership with Mrs Bong and he accepted the unfortunate consequences that followed. The Tribunal accepted that Mr Idris was not culpable for the breaches for which Mrs Bong alone was responsible, but he could not avoid liability under the Rules.

The Tribunal gave Mr Idris credit for his acceptance of the position and the testimonials written in his support. The Tribunal found him to be straightforward and honest when he gave evidence. The Tribunal concluded that it would be appropriate and proportionate to impose a fine of £1,000 upon Mr Idris.

With regard to the question of costs, the Tribunal concluded that it would be right to mark Mrs Bong's rather greater culpability than that of Mr Idris by ordering her to pay £16,000 of The Law Society's costs and Mr Idris to pay £2,000 of The Law Society's costs (both Respondents having agreed that The Law Society's costs be fixed in the sum of £18,000)."

RESPONDENT 1's Mitigation

60. When the hard disk drive on his computer system crashed *RESPONDENT 1* was left with no data or other information for over 2 ½ weeks while he waited for someone to

telephone him to let him know whether anything could be recovered from the hard disk drive. That included accounts and clients' details and electronic copies of their files for the letters and documents done. Fortunately some accounts had been recovered. *RESPONDENT 1* had been left with very little in terms of accounts and his accountant reconstructed the accounts and ledgers. The computer backup system was useless and the hard disk had to be sent away for data to be recovered.

61. *RESPONDENT 1* had instructed a new highly reputable and experienced firm of accountants to put matters right and deal with his Accountant's Reports. He had found that they did not conclude matters as expeditiously as he would have wished and had shortly before the disciplinary hearing instructed a different firm.
62. In relation to the transfer of costs in the Receivership matter, *RESPONDENT 1* had been given authority over the telephone to transfer costs. It was his first year as a Receiver and he had sought advice from the Court of Protection on the telephone.
63. In producing the list of charges and costs for clients *RESPONDENT 1* had tried to be transparent and "upfront" with clients. He understood from recent reports of the Tribunal and an article in The Law Society Gazette that this was wrong if the solicitor appeared to be making a secret profit. The Solicitors Regulation Authority acknowledged this to be a widespread problem and that begged the question why they were not dealing with it on a widespread basis with the whole profession and sending leaflets or brochures around to warn solicitors of the error of their ways. *RESPONDENT 1* was not given an opportunity to put the error right. He would have done so. He had repeated the mistakes of many. He had conducted his own market research and found not only was this practice widespread but it was universal. Ironically if he had left his case management system, completion statements and client care letters as they were, and had not bothered to try to be transparent he would not be facing this allegation.
64. *RESPONDENT 1* made a mistake in relation to additional discounts given by builders to first time buyers and as a result incorrectly completed the report on title. The lenders had been aware of the existence of the discounts.
65. An Accountant's Report had been delivered to The Law Society in December 2007 for the period ending 31st March 2007. The balance of the outstanding Accountant's Reports were being prepared but *RESPONDENT 1* was not able to confirm how long it would be before they were filed. *RESPONDENT 1* had had to complain to his former accountants' governing body in order to make sure a deadline was met and his accounts finalised by 27th September, failing which he was potentially at risk of being intervened.
66. *RESPONDENT 1* apologised profusely for any inconvenience the delay may have caused.
67. *RESPONDENT 1* had not deliberately failed to reply to letters that had been addressed to him. He had been doing the best that he could.
68. With regard to the award made to Mr G in connection with inadequate professional service, *RESPONDENT 1* had sent a cheque to settle that.
69. With regard to the inadequate professional service award made in respect of Mr M, the matter had been a complex conveyancing matter during the course of which the client had

gone abroad. The award had been made against B & W Law LLP which had been put into liquidation.

70. At the date of the hearing, *RESPONDENT 1* had been practising as a locum solicitor, which work he very much enjoyed.

The Submissions of Mrs Bong in Mitigation

71. Mrs Bong had been compelled to withdraw from the limited liability partnership with *RESPONDENT 1* because she had been suspended from practice by the Tribunal for an indefinite period of time on an earlier occasion.
72. Mrs Bong had not believed that she had done anything wrong. She had believed that the costs and charges notified to clients had been open and transparent and, indeed, when it was pointed out by the IO that they did not take a correct form she had taken steps to put matters right.
73. Whilst on the face of it the form completed in respect of professional indemnity insurance relating to AON had not been accurate, AON had been fully aware of the situation and ultimately AON had not, of course, been placed on risk.
74. Since she had been suspended from practice Mrs Bong had decided to retire from the profession as she had been suffering from ill health.

The Decision and Sanctions

75. The Tribunal had considered all of the matters placed before it with great care. The Tribunal noted that Mrs Bong had already been subject to disciplinary proceedings and further noted that at the time of the disciplinary hearing she was suspended from practice for an indefinite period of time. The Tribunal did not consider that the allegation found to have been substantiated against Mrs Bong on this occasion necessitated the imposition of any more serious sanction. The Tribunal considered it appropriate both to approve and endorse the indefinite suspension already imposed upon Mrs Bong on 17th October 2006 and having taken into account her level of culpability in the current disciplinary proceedings ordered that she pay the costs of and incidental to the application and enquiry fixed in the sum of £4,000 inclusive.
76. With regard to *RESPONDENT 1* the Tribunal again had taken everything placed before it into account and had considered the matter with the utmost care. The Tribunal appreciated *RESPONDENT 1*'s attending the disciplinary hearing and also appreciated that it was not easy for a solicitor to represent himself in these circumstances. No dishonesty had been alleged against *RESPONDENT 1* by the Applicant.
77. The Tribunal was, however, appalled at the chaotic nature of the accounts kept by *RESPONDENT 1* and at his failures to grasp the nettle and put things right without delay. The Tribunal recognised that the loss of computerised data would be devastating, but a solicitor facing such difficulty must realise that he has a high duty to make sure that his records are in order and he would be required to reconstruct client accounting records from information contained on files. It was *RESPONDENT 1*'s own case that the number of files of which he had conduct was not huge.

78. Having taken into account all of the other allegations which the Tribunal has found to have been substantiated the Tribunal gave serious consideration to imposing a sanction that would interfere with *RESPONDENT 1*'s ability to practise. As it was the Tribunal considered that the seriousness of *RESPONDENT 1*'s transgressions would appropriately and proportionately be met by the imposition of a substantial financial sanction and the Tribunal ordered *RESPONDENT 1* to pay a fine of £15,000. The Tribunal further ordered that *RESPONDENT 1* should pay a proportion of the Applicant's costs of and incidental to the application and enquiry which reflected his level of culpability, namely £17,000 inclusive.
79. The Tribunal noted that *RESPONDENT 1* told them that he had sent a cheque to pay the inadequate professional service award made to Mr SG. No receipt had been produced or evidence that the cheque had been cleared. *RESPONDENT 1* accepted that he had not made a payment to Mr M who had also received an inadequate professional service award. Solicitors were required as a matter of professional conduct to comply with directions made by their professional body or those to whom power to make such direction is delegated. The Tribunal rejected *RESPONDENT 1*'s argument that the award made to Mr M had been made against the limited liability partnership. After the suspension of Mrs Bong *RESPONDENT 1* was the only solicitor against whom such award could lie and the Tribunal did not consider it proper of *RESPONDENT 1* to endeavour to avoid his professional responsibility for paying an inadequate professional service award by claiming that the award had not been made against him personally. The Tribunal considered that such conduct brings the profession into disrepute in the eyes of the public. The Tribunal therefore directed that for the purposes of enforcement both of these inadequate professional service awards should be treated for the purposes of enforcement as if they were orders of the High Court.
80. Because of the great concern that the Tribunal had about the way that *RESPONDENT 1* conducted himself the Tribunal concluded that in order to fulfil its duty to protect the public it would impose a restriction upon his ability to practise. The Tribunal considered it reasonable not to impose a condition immediately but ordered that it should come into effect on 26th April 2008 so that *RESPONDENT 1* had an opportunity to put his house in order. The Tribunal therefore ordered that as from 26th April 2008 *RESPONDENT 1* should not be permitted to practise as a solicitor save in employment and in a capacity which had first been approved by The Law Society.

Dated this 9th day of April 2008
On behalf of the Tribunal

W M Hartley
Chairman