This is the Judgment of the Tribunal's rehearing of the allegations against Mr Thaker on 27 February to 2 March 2012, following an appeal by Mr Thaker on 22 March 2011 which was allowed by Lord Justice Jackson and Mr Justice Sweeney. The case was remitted to the Tribunal for rehearing. Thaker v Solicitors Regulation Authority [2011] EWHC 660 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 9697-2007

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BIMAL BHUPENDRA THAKER Respondent

Before:

Miss N Lucking (in the chair)
Mrs E Stanley
Mr D Gilbertson

Date of Hearing: 27th February – 2nd March 2012

Appearances

Timothy Dutton QC and Chloe Carpenter, Counsel of Fountain Court Chambers instructed by Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London. EC4Y 7RF on behalf of the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent were:

1.1 That he has withdrawn sums from client account in circumstances other than those permitted by Rule 22 of the Solicitors Accounts Rules 1998 and thereby created a cash shortage.

1.2 That he failed to remedy the breaches promptly upon discovery contrary to Rule 7 of the Solicitors Accounts Rules 1998.

1.3 That he has acted contrary to the provisions of Rule 1 of the Solicitors' Practice Rules 1990 in that he has compromised or impaired, or was likely to compromise or impair, his independence or integrity and/or his good repute or that of the solicitors' profession by:-

1.3.1 permitting money to pass into and out of his client account when there was no underlying legal transaction or the provision of legal services and where he was merely acting as a conduit to receive and pass on or return monies to clients or third parties; and/or

1.3.2 failing to be alert to the very substantial sums of money passing through client account and circumstances relating to their receipt and disbursement which should have put him on inquiry as to their authenticity or legitimacy; and/or

1.3.3 failing to investigate or to adequately consider the possibility that his firm was being utilised to facilitate money laundering or other illegal activity; and/or

1.3.4 failing to have any or any proper regard to the warnings issued to the solicitors' profession by the Law Society on money laundering, in particular the "Blue Card" warning first issued to the profession in March 1994, and revised in December 1995, February 1999 and September 2002 and the guidance issued by the Law Society on money laundering to the profession in March 1994, February 1995, August 1995, 26/27 July 2000, February 2002 and September 2002; and/or

1.3.5 paying £30,000 in cash to Dr Chiluba (who was not a client) on 13 November 2001 which the Respondent withdrew from his client account. That money represented part of a payment sent to the Respondent from the Office of the President of Zambia and was Zambian money. He withdrew it and paid it to Dr Chiluba on the instructions of Faustin Kabwe of Access Financial Services Limited ("AFSL").

1.3.6 disbursing money to Irene Kabwe, to the children of Dr Chiluba and to the children of Xavier Franklin Chungu after 25 June 2002, when he knew of the "Matrix of Plunder" allegations in the Zambian press, which money belonged to the Zambian Treasury.

Further, in relation to allegations 1.3.1 to 1.3.4, the Respondent was grossly reckless. In relation to allegations 1.3.5 and 1.3.6 the Respondent was dishonest, or alternatively grossly reckless.

1.4 Contrary to Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 (which rules were adopted by the Respondent from 1 January 2000) he failed to exercise caution when asked to provide banking facilities through his client account.

Documents

2. The Tribunal reviewed all the documentation submitted by the Applicant and the Respondent which included:-

Applicant:

- Core Bundles
- Documents Bundles
- Applicant's Witness Statements Bundle
- Respondent's Witness Statements Bundle
- Authorities Bundle
- Applicant's Skeleton Argument
- Applicant's Chronology and "Dramatis Personae" table
- Applicant's Table of Money Laundering documents
- Applicant's Trace Chart
- Applicant's Skeleton Argument in opposition to adjournment application
- Applicant's Submissions on admissibility of Grant Thornton Report
- Applicant's Closing Submissions

Respondent:

- Respondent's Opening Submissions
- Respondent's Submissions and Further Submissions on adjournment application
- Respondent's Submissions on admissibility of Grant Thornton Report
- Respondent's Closing Submissions

Preliminary Matter (1)

3. The Respondent made an application to the Tribunal for the proceedings to be adjourned. He told the Tribunal that his application was based on the Tribunal's own Practice Note relating to adjournments and in particular, he referred the Tribunal to paragraph 9 of the Note. He also asked the Tribunal to consider his written submissions in relation to his application to adjourn. The Respondent stated that this was an exceptional case and must be considered as such.

4. The Respondent told the Tribunal that he was currently on medication. The Tribunal noted that a Statement of Fitness for Work had been filed by the Respondent. This was very brief and did not contain any information in relation to the Respondent's current medical condition or provide details of his medication. In answer to a question from the Panel, the Respondent confirmed that he did not have any other evidence to submit in relation to his state of health.

5. The Tribunal was told that the proceedings had been ongoing since 2007 and that a number of amendments had been made to the Rule 4 Statement filed by the Applicant. There had already been a trial followed by a successful appeal and the matter was now before the Tribunal for re-hearing. The Respondent claimed that the matter was complex due to the number of amendments that had been made to the Rule 4 Statement and because of the time taken to deal with the proceedings. He stated that the Applicant's case was based on the High Court proceedings which had also been complicated and had involved a long trial. He told the Tribunal that the High Court Judgment had been discredited on appeal in relation to one of his co-defendants. He stated that although his own appeal had been compromised, the criticisms that had been made in relation to the High Court action should apply to his own case as well. He submitted that his right to representation in the current proceedings could not be dispensed with.

6. The Respondent told the Tribunal that he had been represented until recently but could no longer afford to pay for representation. He had obtained an order for costs following the successful appeal hearing and had tried to agree costs with the Applicant but this had not been possible. He claimed that the Applicant had delayed in dealing with his application for costs due to a failure to expedite a request for a transcript of the hearing. This meant that the assessment hearing had still not taken place and he was waiting to receive the balance of his costs.

7. In addition, the Respondent claimed that the Applicant had now changed its case by raising new issues and he was unable to defend himself fully. He told the Tribunal that it was now alleged that he had been part of a conspiracy which had not been raised before. He told the Tribunal that a further allegation had also been made against him in relation to the "circular" movement of monies which had not been referred to before either. The Respondent claimed that there had been a delay in the Applicant serving its latest Rule 4 Statement and he submitted that this had only been filed because he had made an application to strike out the proceedings.

8. Mr Dutton QC, on behalf of the Applicant, told the Tribunal that the Respondent had been asked to file a proper medical report but had failed to do so. Whilst acknowledging that the Respondent may be under stress, Mr Dutton QC stated that there was no reason to adjourn the proceedings. He suggested that in order to ensure fairness, the Respondent could be accommodated with regular breaks and adjusted sitting times if necessary in order to assist him in dealing with the proceedings. He submitted that the Respondent was fit enough to attend at the hearing and take a full part.

9. The Tribunal was referred to the Applicant's skeleton argument in relation to the application for adjournment. Mr Dutton QC stated that although the case contained a lot of factual detail, it could not properly be described as complex. He reminded the

Tribunal that the Respondent had been involved with the events in question throughout. It was the Applicant who had been the "outsider" and who had been required to investigate matters. Mr Dutton QC pointed out that the Respondent had been represented until only a few weeks ago and he had been able to provide a detailed response to the latest Rule 4 Statement. He told the Tribunal that the Respondent had no difficulty in expressing himself orally and in writing. Furthermore, the Respondent was unusually familiar with the facts of the case as he had already gone through the High Court proceedings and a previous hearing at the Tribunal.

10. Mr Dutton QC told the Tribunal that there had been no criticism in relation to the findings of fact in the High Court proceedings upon which the Applicant would rely. He stated that a suggested motive had been put forward to explain the Respondent's conduct but denied that there were any new allegations in the case.

11. The Tribunal was told that the Applicant had already paid the sum of £41,000 to the Respondent in respect of his costs. Mr Dutton QC submitted that the Applicant's liability for costs would not be higher than the amount already paid. He told the Tribunal that the costs would be offset against the amount that would be paid by the Respondent following his unsuccessful application for Judicial Review. He explained that the Applicant had challenged the Respondent's costs on a number of grounds. He told the Tribunal that notwithstanding this, the Respondent could have dealt with the assessment of his costs rather more expeditiously than he had done. In reply, the Respondent stated that the delay had been caused by his need to raise the necessary funds for the required court fee.

Tribunal's Determination of Preliminary Matter (1)

12. The Respondent's application for an adjournment was based on two grounds. The first related to a lack of funding for legal representation. This was not generally regarded by the Tribunal as a valid reason for an adjournment, although the Respondent had been correct to state that every case had to be considered on its merits.

13. The Respondent had maintained that this was a complex case and it was essential that he should have legal representation. The Tribunal, having read all the papers, were of the view that whilst the history of the case was unusual, the principles that it involved were not complicated. The Respondent was very familiar with all of the facts. There were no obscure points of law involved. The Respondent, as an experienced solicitor, should be able to represent himself.

14. The Respondent had claimed that two new issues had been raised in the Applicant's skeleton argument. The Tribunal accepted Mr Dutton QC's argument that these were not new allegations but were merely ancillary to the existing allegations. In view of the Respondent's long-standing knowledge of the facts in this case, the Tribunal did not consider that these matters would cause him any particular difficulty.

15. The second ground of the Respondent's application for an adjournment was based upon medical grounds. This was not an issue that he had raised previously. He had produced a Statement of Fitness for Work Certificate dated 21 February 2012. It

appeared to have been provided by a GP. It did not contain any detail and did not give the Tribunal the evidence that it would need to allow an adjournment on this ground.

16. The Tribunal was always mindful of the need to ensure scrupulous fairness in any proceedings, particularly when a Respondent was unrepresented and the Tribunal took its role in this regard very seriously. The Tribunal was satisfied that the hearing could be conducted fairly and so should proceed. In its deliberations, the Tribunal had given due regard to the public interest in progressing the matter without further delay.

Preliminary Matter (2)

17. The Respondent referred the Tribunal to his written submissions in relation to the admissibility of the Grant Thornton report and to the "ring fencing" order in the High Court proceedings. Mr Dutton QC told the Tribunal that the report had been agreed within these proceedings in January 2010. He stated that the Respondent now appeared to be saying that the report could not be produced without the expert's permission or a further order of the High Court. He suggested that this was an attempt by the Respondent to remove material which he had previously agreed.

18. Mr Dutton QC told the Tribunal that the report had been included in the disclosure order made by the High Court on 12 July 2007. He stated that there had been an opportunity for all interested parties to make representations and the Respondent had filed written submissions. He stated that the report could be used because the permission of the High Court had been obtained for its disclosure. The report could be referred to in open proceedings as the High Court order was now in the public domain. He reminded the Tribunal that the Respondent had agreed to the use of the report in January 2010 and submitted that he could not withdraw his agreement now.

19. It was the Applicant's case that the report would be relied upon to show where money was coming from and where it was going to and the Tribunal would be asked to infer that the monies were Zambian State funds. However, since the date of the report, the Respondent had admitted the actual money movements. Mr Dutton QC told the Tribunal that a witness summons had now been served on Ms Pincott, who was the author of the report and she would be attending to give evidence. He submitted that the Applicant was entitled to rely on the report and had approached the matter entirely properly.

20. The Respondent claimed that he had made it clear from the outset of the re-amended proceedings that he did not accept that the Applicant was entitled to rely on the report. He submitted that the report was subject to the "ring-fencing" Order within the High Court proceedings which had survived the publication of the High Court Judgment. In his view the report was not in the public domain. He claimed that the Applicant was attempting to rely on the report to show that the source of funds originated from the Zambian State. He told the Tribunal that this was an issue that had never been within the remit of the report. He referred the Tribunal to a letter from Grant Thornton which he claimed supported his assertion that the report could only be disclosed to the defendants within the High Court proceedings and could not, therefore, be put before the Tribunal.

21. In reply, Mr Dutton QC told the Tribunal that the Respondent had contacted Grant Thornton without informing them of the terms of the disclosure Order of 12 July 2007. Subsequently, Grant Thornton had been informed of the terms of the disclosure order and to the fact that the Respondent had previously consented to the report being placed before the Tribunal as agreed expert evidence.

Tribunal's Determination of Preliminary Matter (2)

22. The Tribunal considered that the arguments put forward by Mr Dutton QC on behalf of the Applicant were overwhelming and directed that the Grant Thornton report was admissible within the current proceedings.

Factual Background

23. The Respondent was born on 20 December 1961 and admitted as a solicitor on 2 October 1989. His name remained on the Roll of Solicitors. In 1994, the Respondent purchased the firm of Kehimkar and Co and practised there as a sole practitioner. On 1 June 1996, he changed the name of the firm to Cave Malik and practised as such from 297 Hale Lane, Edgware, Middlesex, HA8 7AX. On 24 November 2006, the Respondent's conduct was referred to the Solicitors Disciplinary Tribunal.

24. The allegations arose from an investigation of the firm's books of accounts and other records by Mr Michael Davies, a Senior Forensic Investigation Officer ("FIO") on behalf of the Solicitors Regulation Authority ("SRA"). The investigation commenced on 29 March 2006 and resulted in the production of a Forensic Investigation Report ("the FI Report") dated 28 April 2006.

25. The material available for inspection was limited. The Respondent told the FIO that following the closure of Access Financial Services Limited (AFSL) in October or November 2004, he had been required to deliver all AFSL files to a third party firm of solicitors in accordance with a Preservation Application obtained by the Regulator in Zambia in early 2005. The FIO was able to inspect six ledger cards relating to AFSL and Mr Kaunda.

26. During the inspection, the Respondent told the FIO that High Court proceedings had been brought by the Attorney General of Zambia against various defendants, including Cave Malik as the second defendant and against the Respondent personally as eighth defendant ("the High Court proceedings"). In the High Court proceedings, the Attorney General of Zambia alleged that Dr Chiluba (the former President of Zambia), Xavier Franklin Chungu (the former Permanent Secretary of the Office of the President of Zambia Special Division, also known as Zambian Security Intelligence Services ("ZSIS") and Director General of ZSIS), Faustin Kabwe (the former Chief Executive Officer of AFSL), Irene Kabwe (his wife and a shareholder of AFSL), Francis Kaunda (shareholder in and former director and chairman of AFSL), and Aaron Chungu (shareholder in and former executive director of AFSL) had, during Dr Chiluba's time as President and subsequently, stolen approximately US$60 million from Zambia pursuant to a conspiracy.

27. It had been alleged in the High Court proceedings that the Respondent and his firm were a party to the conspiracy, or alternatively were liable as a constructive trustee for

dishonest assistance in respect of funds which the Respondent had received into his client account. At the time of inspection, the High Court proceedings had not yet gone to trial. Subsequent to the inspection and following the trial (which took place in private between 31 October 2006 and 27 February 2007) the SRA obtained copies of documents in relation to the High Court proceedings namely (i) copies of witness statements adduced by the Respondent in the High Court proceedings, (ii) copies of the transcripts of the Respondent's cross-examination in the High Court proceedings, (iii) copies of the expert reports of Grant Thornton the joint expert instructed by the Attorney General of Zambia and the Respondent/Cave Malik (iv) certain underlying documents, (v) the judgment of Peter Smith J dated 4 May 2007 and (vi) the judgment of the Court of Appeal in respect of an appeal brought by a Mr Meer and a Mr Desai, who were other Defendants, overturning the judge's finding that they were liable. The SRA understood that the Respondent and Cave Malik appealed against the judgment of Peter Smith J and the appeal was compromised with the Attorney General of Zambia on confidential terms not known to the SRA.

Allegations 1.1 and 1.2

28. The FI Report showed a cash shortage on client account in the sum of £6,343.10 as at 28 February 2006. The Respondent rectified this on 24 March 2006, shortly before the commencement of the inspection. The cash shortage arose as follows:

- Two debit balances totalling £1,720.16 which arose from overpayments of £1,253.85 and £466.75 which had been made in respect of two clients. The overpayment in the sum of £1,253.85 related to the clients Mr D and Mrs MD. The ledger showed that as at 5 July 2005, there was a debit balance of £16,253.85. The Respondent was aware of this debit balance in July 2005. It was partially rectified on 22 December 2005 by a credit from the client totalling £15,000. A debit balance of £16,253.85 existed for over five months from 5 July 2005 to 22 December 2005. The debit balance was reduced to £1,253.85 which remained for a total period of over 8 months from 5 July 2005 to 24 March 2006;
- An unallocated transfer from client to office account of £3,300 on 6 December 2005. This was rectified on 24 March 2006;
- A duplicated costs transfer of £736.76 and;
- A payment from client account in error of £585.74.

Allegations 1.3.1 to 1.3.4 and 1.4

29. Allegations 1.3.1 to 1.3.4 arose out of the documents relating to the High Court proceedings.

30. On 28 and 29 March 1994, The Law Society sent guidance notes on money laundering together with a Blue Card Warning on money laundering to all senior partners in every firm in England and Wales. The Blue Card warning stated:

> "Could you spot a money-laundering transaction?
>
> The signs to watch for:

1. **UNUSUAL SETTLEMENT REQUESTS**- Settlement by cash of any large transaction involving the purchase of property or other investment should give rise to caution. Payment by way of third party cheque or money transfer where there is a variation between the account holder, the signatory and a prospective investor should give rise to the need for additional enquiries.

2. **UNUSUAL INSTRUCTIONS** - Care should always be taken when dealing with a client who has no discernible reason for using the firm's service e.g. clients with distant addresses who could find the same service nearer their home-base; or clients whose requirements do not fit into the normal pattern of the firm's business and could be more easily serviced elsewhere.

3. **LARGE SUMS OF CASH** - Always be cautious when requested to hold large sums of cash in your client account, either pending further instructions from the client or for no other purpose than for onward transmission to a third party.

4. **THE SECRETIVE CLIENT**- A personal client who is reluctant to provide details of his identity. Be particularly cautious about the client that you do not meet in person…"

31. In February 1995, The Law Society Professional Standards Bulletin No 12 was published and circulated to every solicitor who held a current practising certificate. This included The Law Society's money laundering guidance which stated:

> "2.1. The phrase "money laundering" means the process by which the identity of "dirty money", that is the proceeds of crime, and the true ownership of those proceeds, is changed so that the proceeds appear to originate from a legitimate source. It is important that solicitors and their employees take steps to ensure that they are not used by those seeking to legitimise the proceeds of crime. Solicitors must be aware that they may be involved in the money laundering process…
>
> 3.1. The law, in relation to money laundering, is contained in a number of different Acts…
>
> 3.2. It is important for solicitors to recognise that the substantive law applies to all solicitors in their business capacity and not simply to those who are conducting investment business under the Financial Services Act 1986…"

32. In August 1995, Bulletin number 14 was published by the Professional Standards Development Directorate of The Law Society and circulated to every solicitor who held a current practising certificate. The document contained questions and answers on the Money Laundering Legislation and Rules.

33. In about 1995, the Respondent was first instructed by AFSL. At all material times;

- Faustin Kabwe was the Chief Executive Officer of AFSL.
- Aaron Chungu was an executive director and shareholder of AFSL.
- Francis Kaunda was a director, Chairman and a shareholder of AFSL.
- Irene Kabwe was a shareholder of AFSL.

34. In 1995, the Respondent opened a US dollar client account with Habib Bank AG Zurich ("Habib Bank") for his dealings with AFSL. He also opened up a US dollar ledger 1156 for AFSL which was operated as a "running account" in the name of "FM Kabwe Access Financial Services". He also held a sterling client account with Habib Bank.

35. In December 1995, The Law Society revised the Blue Warning card. The revised card appeared in the 7th edition of the Guide to the Professional Conduct of Solicitors (1996 edition) and stated:

> "Could you be involved?
>
> Could you or your firm be unwittingly assisting in the laundering of proceeds of crime? The Criminal Justice Act 1993… and the Money Laundering Regulations 1993… mark an important step in the fight against serious crime, in particular against the drugs trade. All solicitors should be aware of the money-laundering provisions in the Criminal Justice Act 1993. **Additionally,** solicitors who engage in investment business within the meaning of the Financial Services Act 1986 are subject to the Money Laundering Regulations 1993, and must take the steps required by the Regulations to ensure that they and their firms cannot be used by money launderers.
>
> **Might YOU commit a criminal offence?**
>
> If solicitors do not take steps to learn of the provisions of the Criminal Justice Act 1993, then they may commit criminal offences, by assisting someone known or suspected to be laundering money generated by any serious crime, by telling clients or anyone else that they are under investigation for an offence of money laundering, or by failing to Report a suspicion of money laundering in the case of drug trafficking or terrorism, unless certain exceptions apply. **Additionally,** solicitors who engage in investment business within the meaning of the Financial Services Act 1986 will commit criminal offences unless they take the steps required by the Money Laundering Regulations 1993. The Regulations may also apply in other circumstances- see **3.16**, p 61 in the Guide.
>
> As well as the Money Laundering Regulations 1993, the law relating to money laundering in England and Wales is contained in several different Acts:
>
> - the Drug Trafficking Offences Act 1986
> - the Criminal Justice Act 1998
> - the Prevention of Terrorism (Temporary Provisions) Act 1989
> - the Criminal Justice (International Co-operation) Act 1990
> - the Drug Trafficking Act 1994

The Criminal Justice Act 1993 amended parts of these Acts.

Guidance on these Acts and their effect on solicitors can be found in **16.07,** p 292 and Annex 16C, p 301 in the Guide. Remember - the Criminal Justice Act 1993 in some cases affected the client's right to confidentiality.

Could you spot a money-laundering transaction?

The signs to watch for:

1. **UNUSUAL SETTLEMENT REQUESTS** - Settlement by cash of any large transaction involving the purchase of property or other investment should give rise to caution. Payment by way of third party cheque or money transfer where there is a variation between the account holder, the signatory and a prospective investor should give rise to additional enquiries.

2. **UNUSUAL INSTRUCTIONS** - Care should always be taken when dealing with a client who has no discernible reason for using the firm's services, e.g. clients with distant addresses who could find the same service nearer their home base; or clients whose requirements do not fit into the normal pattern of the firm's business and could be more easily serviced elsewhere.

3. **LARGE SUMS OF CASH** - Always be cautious when requested to hold large sums of cash in your client account, either pending further instructions from the client or for no other purpose than onward transmission to a third party.

4. **THE SECRETIVE CLIENT** - A personal client who is reluctant to provide details of his or her identity. Be particularly cautious about the client you do not meet in person…".

36. Between 1996 and 2001, a total of $43,279,816 of Zambian government monies were transferred from the Zambian Ministry of Finance's accounts at the Bank of Zambia's Head Office in Lusaka to a US$ account ("the Zamtrop account") held by the Zambian Government in the name of ZSIS at the London branch of the Zambian National Commercial Bank ("ZANACO").

37. The sum of $2,127,822 traceable from the Zamtrop account was received into the Respondent's London client account with Habib Bank. Most of these receipts were credited to the FM Kabwe Access Financial Services ledger (the "AFSL ledger"). The total amount of $2,127,822 was broken down by Grant Thornton into ten separate "traces", namely traces 2, 22, 27, 33, 36, 37, 42, 43, 49 and 52.

<u>Trace 2 Part 1</u>

38. On 20 March 1996, the Respondent's firm Kehimkar and Co received $99,995 from the Zamtrop account into the firm's US dollar client account held with Habib Bank. There was no written record of any instructions to receive this money. The receipt

was credited to the "AFSL–1156 ledger". The ledger did not identify the provider of the funds. The Respondent's client account bank statement recorded the credit with the narrative "BO Zamtrop RF TEBC O".

39. On 21 March 1996, the Respondent arranged for $4000 traceable from the $99,995 credit to be paid in cash to Mr Kabwe. On 28 March 1996, the Respondent transferred $15,045, which could be traced from the $99,995 credit to Chabala Kaunda who was the son of Francis Kaunda. On 23 April 1996, the Respondent transferred $85,076.50 traceable from the $99,995 credit to Africa Direct, a company owned by Mr Kabwe.

40. In the High Court proceedings, the Respondent's evidence was:

> "The assistance that I provided with regard to the transfer of funds in currency transactions was not part and parcel of giving simple legal advice such that lies at the centre of the ordinary practice of law of a solicitor. However, it was an extension thereto, namely that I offered broader commercial assistance in and about the business affairs of my clients. I considered that it was important for my relationship with my clients to assist them wherever possible. Given that AFSL were a respected financial institution, licensed by the BoZ, I did not see any difficulty with assisting in this way from time to time in order to maintain good client relationships".

Trace 2 Part 2

41. On 22 March 1996, the Respondent's firm Kehimkar and Co received £48,198 from Redcliffe Limited into the firm's sterling client account held with Habib Bank. The firm's bank statement recorded the receipt with the narrative "B/O Redcliffe Limited Ld". On 22 March 1996, the Respondent's firm credited the receipt to a ledger in the name of "Redcliffe Limited-Shansonga" under the heading "receipt".

42. On 26 March 1996, on the instructions of Mr Shansonga, the Respondent transferred £7,200 traceable from the receipt to an account held by Mr Shansonga at Barclays Bank. This payment was recorded on the ledger with the narrative "TFR".

43. On 2 April 1996, on the instructions of Mr Shansonga, the Respondent obtained a bank draft of £15,500 in favour of Powell Motors which was traceable from the receipt. This payment was recorded in the ledger with the narrative "Powell".

44. On 9 April 1996, on the instructions of Mr Shansonga, the Respondent transferred £3,550 which could be traced from the receipt to Concord Logistics. The payment was recorded in the ledger with the narrative "FVG Concord".

45. On 17 April 1996, on the instructions of Mr Shansonga, the Respondent arranged for £2,500 which could be traced from the receipt to be paid in cash to Mr Shansonga. This payment was recorded in the ledger with the narrative "Cash paid".

46. On 10 May 1996, the sum of £3,672 which could be traced from the receipt was paid out and recorded in the ledger with the narrative "Video Prince". On 13 May 2006,

the sum of £425 which could be traced from the receipt was paid out and recorded in the ledger with the narrative "David Hunt".

47. On 31 May 1996, sum of £5,000 which could be traced from the receipt was paid out and recorded in the ledger with the narrative "Cash". On 3 June 1996, the sum of £10,000 which could be traced from the receipt was paid out and recorded in the ledger with the narrative "Chaps Baxit".

48. The Respondent did not have any documentation which showed that Mr Shansonga had any authority to act on behalf of Redcliffe Limited. Mr Shansonga was not a director or a shareholder of Redcliffe Limited. Redcliffe Limited had its own bank account at ZANACO from 15 August 1995. Mr Shansonga had a personal bank account at Barclays Bank from 25 November 1984 at the latest.

Trace 22

49. On 1 May 1998, a cheque for $120,000 from Meer Care and Desai, a London firm of solicitors, was credited to Cave Malik's US dollar client account held with Habib Bank under the description "Proceeds of Chq Recvd" (less $30 which the SRA understood was deducted as a bank fee). The receipt was credited to the "AFSL-1156" ledger with the description "Proceed of Chq Recd". The firm Meer Care and Desai had received the sum from the Zamtrop account.

50. The receipt was then transferred to a ledger in the name of "C Kaunda: Epakor A/C 1" which was a ledger operated in respect of the Respondent's client Epakor Investments SA ("Epakor"). This was a company registered in Panama and beneficially owned by Francis Kaunda.

Trace 27

51. On 12 August 1998, the Respondent's firm Cave Malik received $9,612 from AFSL into the firm's US dollar account with Habib Bank. The sum was traceable from the Zamtrop account.

52. The Respondent's bank statements recorded the receipt with the narrative "BO Access Financial". The Respondent's firm credited this receipt to the ledger in the name of "C Kaunda: Epakor A/c 2" with the reference "Access Financial Ltd".

Trace 49

53. On or about 13 October 1998, the Respondent's firm Cave Malik received $799,995 from the Zamtrop account into the firm's US dollar account held with Habib Bank. The receipt was credited to the "AFSL 1156" ledger on 18 October 1998. The Respondent's client account bank statements recorded the credit with the narrative "B/O Zamtrop Lusaka". The ledger recorded the credit with the narrative "Zamtrop – Lusaka".

54. On 15 October 1998, the Respondent wrote to Habib Bank stating that "the funds received are on behalf of established clients for the purposes in investment in Zambia". On 21 October 1998, the Respondent sent $500,000 traceable from the

$799,995 to the Barclays Bank Liverpool account of John Holt Group Ltd which was a Liverpool company. The ledger recorded the payment with the narrative "Barclays – Liverpool – remit".

55. In November and December 1998 other monies traceable from the $799,995 receipt were distributed. The ledger recorded these payments as $500 which was described as "Chq No 0053-cash-Bimal" on 28 October 1998, $12,000 which was described as "TFD to office a/c-bills-fees@1.6550" on the 6 November 1998, $15,050 which was described as "Access Financial Services" on 25 November 1998 and $10,000 which was described as "Meghrat Bank (10??) Ltd – Cave Malik" on 6 December 1998.

Trace 33

56. In February 1999, the Law Society revised the Blue Card warning on money laundering. The revised Blue Card appeared in the eighth edition of the Guide the Professional Conduct of Solicitors (1999 edition).

57. On 8 March 1999, the Respondent's firm Cave Malik received $299,995 from Meer Care and Desai into the firm's US dollar client account held with Habib Bank. The firm of Meer Care and Desai had received the sum from the Zamtrop account.

58. The Respondent's bank statement recorded the receipt with the narrative "Reference 7-1-1-78/2 Mar 08 1999 BO Meer Care and Desai". On 8 March 1999, the firm credited this receipt to the "AFSL-1156" ledger with the narrative "Meer Care and Desai".

59. The ledger recorded a payment of $400,000 to Lonrho Properties on 10 March 1999, a $25,000 "cash withdrawal chq. 54" on 9 April 1999, a payment of $12,000 to "M. Subastian/National Bank Chicago" on 12 April 1999, a $5,000 "Fee/TFD to office A/C" on 12 April 1999, a payment of $9,200 to "Queze Bont" on 5 May 1999, a payment of $20,000 to "Hotel Edinburgh" on 16 June 1999 and $15,000 to "Dunlop (Z) Ltd" on 31 August 1999.

Trace 37

60. On 21 June 1999, the Respondent's firm Cave Malik received £14,473.68 from Mr Shansonga into the firm's sterling client account held with Habib Bank. Mr Shansonga had received the sum from the Zamtrop account. The firm's bank statement recorded the receipt with the narrative "Reference 7-1-1-386/3 June 21 1999 B/O Shansonga". On 21 June 1999, the receipt was credited to the "AFSL A11" ledger with the description "BO C18". On 21 July 1999, the Respondent paid £20,000 traceable from the receipt to AFSL. The payment was described as "Payment C26" on the "AFSL A11" ledger.

Trace 42

61. On 1 November 1999, the Respondent's firm Cave Malik received $129,995 from Meer Care and Desai into the firm's US dollar account held with Habib Bank. Meer Care and Desai had received the sum from the Zamtrop account. The firm's bank statement recorded the receipt with the narrative "Reference 7-1-1-167/2 Nov 01 1999

TT IN/B/O Meer Care and Desai". On 1 November 1999, the sum was credited to the "AFSL-1156" ledger with the narrative "Meer Care and Desai".

62. On 10 November 1999, the Respondent sent $135,080 to the account of Cave Malik Ndola with Indo-Zambia to fund the purchase of a property in Zambia known as Monkey Fountain Property. The ledger identified the payment as "Bank Zambia".

Trace 52

63. On 26/27 July 2000, the second edition of "Money Laundering Legislation: Guidance for Solicitors" was circulated by the Law Society to every senior partner of firms of solicitors in England and Wales. The guidance stated:

> "Guidance for the money laundering Reporting officer - Reporting responsibilities and suspicious transactions":
>
> "…Typical areas of cause for concern
>
> (i) Unusual settlement requests:
>
> It may be that unusually large amounts of cash are offered or cash is being sent by persons who are not your clients or that the source of funds or the way that settlement is to take place is unusual.
>
> (ii) Unusual instructions:
>
> Solicitors should be particularly wary of clients seeking to use the firm for an unusual niche practice area of work not covered by the firm about which the client purports to be an expert. The solicitor's professional judgement should be such that he familiarises himself with the transaction proposed so that he knows whether it is unusual or not. Alternatively, in accordance with good business practice, the solicitor should send the client to a firm which specialises in such a niche market.
>
> (iii) Large sums of cash:
>
> In certain circumstances "cleared funds" will be essential and clients can be confused with terminology such as "cash purchase". The initial client care letter can set out the firm's policy in relation to cash to avoid last minute difficulties. Solicitors should be alert to any proposals which are an attempt to use the solicitor's firm for nothing more than banking services.
>
> (iv) The secretive client:
>
> Although face-to-face contact is not always necessary or possible, there will be circumstances where clients appear evasive or unwilling to provide information. Identity checks and verification of letterheads and further enquiries of the client can help to allay a solicitor's cause for concern, as well as meeting the client, where possible…".

The Guidance also stated:

"Protection for your firm and the reputation of your partners and the profession

Cause for concern and the money laundering Reporting officer…

Cause for concern is likely to arise where; –

...

(iii) a well-established wealthy client proposes that your firm be involved in a new venture whereby sums will be held on account for the client. Upon probing and considering the details, the underlying cause for concern is that there do not seem to be any legal services being performed or required as would be expected in the normal course of the solicitor's practice.

(iv) A client well known to a partner wishes to deposit in cash or transfer to the firm a lump sum pending the proposed purchase of a house/boat/ artwork in the UK. The transaction never occurs or subsequently falls through and the client requests the onward transmission of the money to a third party or parties…

In instances (iii), (iv)...the MLRO may conclude that "it seems our firm is being or has been used as a bank rather than a provider of legal services…

Prevention is better than cure

- Adopt a policy within the firm that cash or cash above a certain limit will not be accepted.
- ...
- Specifically prohibit cash deposits or the onward transmission of your client account details to parties outside the solicitor/client relationship.
- ...
- Appoint a money laundering Reporting officer (this will be mandatory if you conduct relevant financial business)…"

64. On 1 February 2001, the Respondent's firm Cave Malik received $455,213.75 from the Zamtrop account into the firm's US dollar client account held with Habib Bank. The firm credited the receipt to the "AFSL-1156" ledger with the narrative "Zamtrop". The Respondent's client account bank statements recorded the credit with the narrative "Reference 7-1-1-262/2 Feb 01 2001 REF TEBC of 01.01.31 B/O Zamtrop"."

65. The payment cleared a debit balance on the ledger and put the ledger balance into credit by the sum of $305,840. The credit balance was transferred away by transfers of $100,000 each to various people, described on the ledger as "Mareus C C", "Mr Mohammed Patel" and "Ndola Weaing Textile LTD" between 9 March and 15 March 2001.

Allegations.1.3.5 and 1.4

66. On 16 May 2001, the Zambian press had made allegations that Dr Chiluba's government was a government "led by a crook, for crooks and by crooks". It reported that Dr Chiluba's government was plagued by continued scams and scandals and questioned how senior government officers like the then Director of External Resource Mobilisation and the Permanent Secretary and the Ministry of Finance, who were named in irregular procurement and payments, had no disciplinary action taken against them. In or about May 2001, the Respondent had become aware of these allegations.

67. On 10 July 2001, Cave Malik had received $200,000 into its client account. The narrative on the bank statement was "B/O Office of the President". The receipt was credited to the "AFSL-1156" ledger with the narrative "Office of the President".

68. On 16 July 2001, the Zambian press made further allegations against Dr Chiluba and accused him of being a thief. The Respondent was aware of this allegation. In August 2001, the Attorney General of the Zambian state brought criminal libel proceedings against the journalists and others involved in the allegations which by October 2001 had received very substantial publicity.

69. On 6 November 2001, the Office of the President transferred a further sum of $399,995 into Cave Malik's client account. The narrative on the bank statement was "B/O Office of the President". The firm credited the receipt to the "AFSL-1156" ledger with the narrative "Office of the President".

70. On 12 December 2001, the Respondent met with Dr Chiluba in London and Dr Chiluba asked for a cash payment of £30,000. Following this meeting, the Respondent had a conversation with Mr Kabwe and Mr Kabwe instructed the Respondent to make the payment.

71. On 13 November 2001, the Respondent wrote to Habib Bank stating:

"**EXTREMELY URGENT**

Re: US Dollar Client Account No****

I write further to our telephone conversation of this morning.

As you are aware, substantial dollar receipt was paid into my client account from the Office of The President of Zambia. Last night I was with the President who has requested an amount of the funds held in the client account, in sterling, in cash for today. The sum he requested is £30,000 (thirty thousand pounds only). Would you kindly confirm that I may call upon the Bank to draw this sum which is required by him as he will be in London for the next few days with members of his entourage. As I am seeing the President at 5.00p.m. today, I wonder if it is possible to pick up from your Baker Street branch the said cash at 4:30 p.m. I shall be attending in person and can produce my driving license.

> Please treat this matter as urgent and let me know by telephone that all is in order for me to collect the funds.
>
> Yours sincerely
>
> MS (Mrs)
>
> CAVE MALIK & CO
>
> Dictated by B Thaker and signed in his absence".

72. Later on 13 November 2001, the Respondent collected £30,000 in cash from Habib Bank. The Respondent took the cash to Dr Chiluba and debited the funds with the narrative "$43,824 cash" from the "AFSL-1156" ledger.

Allegations 1.3.6 and 1.4

73. Between 18 and 20 February 2002, the Law Society circulated a letter headed "Money Laundering – Solicitors as Gatekeepers" to every firm of solicitors in England and Wales marked for the attention of the Senior Partner. The letter stated:

> "All professionals who deal with clients' money and property could be targets for criminals wishing to launder money. Professionals are now seen as "gatekeepers" who can facilitate or block the entry of "dirty money" into the system. In the UK and Europe, new legislation will increase the responsibilities of solicitors to act as barriers to suspicious transactions…
>
> The purpose of this letter is to highlight the recent and proposed legislative changes which affect solicitors. As solicitors' responsibilities are changing, the enclosed note provides an update to the Law Society's current guidance on money laundering…
>
> Please read the attached update and let all relevant members of your firm know about it…
>
> **What should you do now?**
>
> It would be unwise to wait for the legislative changes to be implemented before adjusting your firm's systems. Given the potential wide- ranging effect of the changes and the fact that the current law is likely to be vigorously applied, the Law Society would strongly suggest that you begin to address these issues now. I cannot emphasize too strongly the message that vigilance **before** accepting new instructions is the best way to comply with both the current and proposed new laws, and provides you and your staff with the best protection.
>
> The Law Society suggests that, even if your firm is not currently required to have a Money Laundering Reporting Officer (MLRO), you should now appoint someone to help prepare your firm for the changes to come…"

74. A document called "Money Laundering Legislation: Guidance for Solicitors Update February 2002" was attached to the letter. This stated:

> "… **2. New guidance on the use of client account**

2.1 Solicitors' client accounts are very attractive to money laundering in the "layering" process. It is undoubtedly best practice to institute procedures in your firm which prevents you receiving monies into your client account until you have completed basic "know your client" procedures. Avoid using your client account except in cases where there is a genuine underlying legal transaction or some other valid reason for you to hold client's money. The Solicitors Disciplinary Tribunal recently commented that a solicitor's receipt of funds into his client account when he had not been instructed in any underlying transaction was "very unwise and verged on being exceedingly foolish".

2.2 Allowing your client account to be used simply to transmit funds without any underlying transaction could give the Law Society and other law enforcement agencies a suspicion that you may be dishonestly involved in money laundering. This could lead to the Society intervening in your firm. Both the High Court and the Solicitors Disciplinary Tribunal have accepted that allowing your client account to be used in this way can legitimately give rise to suspicions of dishonesty…"

75. On 25 June 2002, an article under the headline "The Matrix of Plunder" appeared in the Post newspaper in Zambia. The article alleged:-

- That Dr Chiluba, Xavier Chungu, Mr Kabwe, Mr Kaunda, Aaron Chungu and AFSL had been stealing millions of dollars from Zambian government monies since 1995 and placing such funds into the Zamtrop account from which they laundered the stolen funds through the London client account of the Respondent at Cave Malik and the London client account of the firm Meer Care and Desai. This was described as a "matrix of plunder".

- That the money would first be credited to a ZSIS account called Permace-General at ZANACO in Lusaka and an account known as Zamtrop at ZANACO in London.

- That the "inner circle of players in this game are found together at [AFSL]. The chairman, Francis Kaunda, Aaron Chungu and the mastermind, chief executive Faustin Kabwe... AFSL is deeply tied into the Chiluba money matrix, as well as the OP. Sources at the Ministry of Finance disclose that over $14 million of public resources has passed through [AFSL] and their cohorts…",

- "The next set of players is another law firm, Cave Malik… Over the years, Cave Malik was paid over US $2 million through the Zamtrop account. The key partner is Bimal Thacker... Some of Cave Malik's money (over $2 million) paid from the OP_Permace-General account (ZANACO) was transferred to Habib Bank in Geneva…",

- That the stolen monies were used to pay for personal expenses of Dr Chiluba and his family and associates, including cash payments to Dr Chiluba's children Helen and Fred Chiluba, as well as payments for school fees in expensive establishments in Europe.

76. The article attracted international attention. The Respondent saw the article in late June 2002 on the internet.

77. On or about 28th June 2002, the Respondent received $10,000 into his client account. The bank statements did not identify the source of the funds. The sum of $9,970 (being $10,000 less the bank's fee) was allocated to the Cave Malik general $ ledger with the narrative "Xavier Chungu".

78. On 29 June 2002, Mr Kabwe was arrested in Zambia. He was released on 4 July 2002. From about 29 June 2002, the Respondent advised Mr Kabwe on the criminal matters. In July 2002, Mr Kabwe was removed as a director of AFSL. On or about 11 July 2002, the Respondent received $60,000 into his client account and the sum of $57,995 was allocated to the Cave Malik general $ ledger under the narrative "Kabwe".

79. On 11 July 2002, the new President of Zambia, President Mwanawasa, addressed the Zambian parliament and stated that there were allegations that Dr Chiluba had embezzled State funds through AFSL and Mr Kabwe in a plunder inflicted on the Zambian people. He moved Parliament to remove Dr Chiluba's immunity from prosecution. Subsequently, the criminal libel proceedings which had been brought by the Attorney General of Zambia against the journalists and others were abandoned.

80. In September 2002, a letter headed "Money Laundering – Solicitors as Gatekeepers" was circulated to every firm of solicitors marked for the attention of the Senior Partner. The letter stated:

> "On 24 July the Proceeds of Crime Act received Royal Assent. My last letter to you (in February of this year) included an interim update alerting you to the fact that the new Act would consolidate and change the money laundering offences…
>
> … I enclose a second interim update to the existing booklet entitled Money Laundering Legislation: Guidance for Solicitors…
>
> An updated warning card about money laundering is also enclosed. Please read this and circulate it to all your staff as it will serve as a useful reminder to remain vigilant…"
>
> Solicitors must approach the subject with care in order to ensure that they are not unwittingly used by money launderers, but can play their part in the fight against money laundering and organised crime"

81. Attached to the letter was a document entitled "Money Laundering Legislation: Guidance for Solicitors Update September 2002" and updated blue warning card on money laundering. The updated blue warning, stated:

"WARNING TO ALL SOLICITORS

MONEY LAUNDERING

Be on your guard

Your firm, whatever its size or nature of practice, could be a target for criminals wishing to launder the proceeds of crime through legal transactions. You might commit a criminal offence if you help them by missing the warning signs.

The Proceeds of Crime Act 2002 means that if you fail to Report to the National Criminal Intelligence Service you will be judged by the standard of whether a reasonable solicitor should have been suspicious in all the surrounding circumstances. Learning to spot warning signals is more important than ever before…

Causes for concern can include the following:

Unusual settlement requests

Anything that is unusual or unpredictable or otherwise gives cause for concern should lead you to **ask more questions** about the source of the funds. Remember, proceeds of crime can arrive through the banking system as well.

Think carefully if the following are proposed or occur;

- Settlements by cash
- Surprise payments by way of third party cheque
- Money transfers where there is a variation between the account holder or the signatory
- Requests to make regular payments out of client account
- Settlements which are reached too easily

Unusual instructions

- Why has the client chosen your firm? Could the client find the same service nearer their own home?
- Are you being asked to do something that does not fit in with the normal pattern of your business?
- Be cautious if instructions change without reasonable explanation
- Be cautious about transactions which take an unusual turn

Use of your client account

- Using solicitors' client accounts to transmit money is useful to money launderers
- Do not provide a banking facility if you do not undertake any related legal work
- Be cautious if you are instructed to do legal work, receive funds into your client account, but then the instructions are cancelled and you are asked to return the money either to your client or a third party

Suspect territory

- Take care if funds are being routed into and out of the UK without a logical explanation…"

82. On 8 September 2002, Xavier Chungu tried, unsuccessfully, to flee Zambia. The Respondent was aware of this in September 2002. The Respondent disbursed monies in his client account to Dr Chiluba's children, Mr Xavier Chungu's children and to Mrs Kabwe on the instructions of Mr Kabwe. In particular:

- On 18 September 2002, the Respondent paid £7,000 to Helen Chiluba from the "AFSL A001001" £ ledger;
- On 18 September 2002, the Respondent paid £2,000 to Kaindu Chiluba from the "AFSL A001001" £ ledger;
- On 18 September 2002, the Respondent paid £2,000 to Hortensia Chiluba from the "AFSL A001001" £ ledger;
- On 18 September 2002, the Respondent paid £2,000 to Haldan Chiluba from the "AFSL A001001" £ ledger;
- On 18 September 2002, the Respondent paid £9,690 to the University of Kent regarding the university fees of Huldah from the "AFSL A001001" £ ledger;

These payments placed the ledger into a debit balance of £19,685.69.

- On 28 October 2002, the Respondent paid $40,000 to Irene Kabwe from the AFSL $ ledger. This payment placed the ledger into a debit balance of -$66,438.44. The debit balance was cleared by a transfer from the Cave Malik general ledger on the 31 October 2002;
- On 30 October 2002, the Respondent paid £7,500 to Chawda Chungu from the "C-001-Cave & Malik" General ledger;
- On 12 November 2002, Meer Care and Desai transferred $75,000 to Cave Malik which Cave Malik used to pay the school fees of Dr Chiluba's children.
- On 21 November 2002, the Respondent received a fax from Helen Chiluba, who was Dr Chiluba's daughter stating that she might be excluded from school due to non-payment of fees and stating "In light of this your urgent kindness would be appreciated". Following this, the Respondent paid Helen Chiluba's school fees;

- On 5 December 2002, the Respondent paid £8,739.80 to St Christopher School from the "C-001-Cave & Malik" general ledger regarding the school fees of one of the Chungu children. This placed the ledger into a debit balance of £5,876.61.
- On 10 March 2003, the Respondent paid $343.88 to American Express for the benefit of A Chungu from the AFSL $ ledger;
- On 7 April 2003, the Respondent paid $10,000 to Irene Kabwe;
- On 28 April 2003, the Respondent paid £2,400 to J Odedra re Chungu from the "C001-Cave & Malik" general ledger. This placed the ledger into debit balance of £10,369.06.
- On 28 April 2003, the Respondent paid £1,800 to Mr C Chungu from the "C001-Cave & Malik" general ledger. This increased the debit balance on the ledger to £12,169.06.

Witnesses

The Respondent

83. The Respondent gave oral evidence and confirmed that the content of his third Witness Statement was true and accurate subject to a small amendment where he had incorrectly referred to Mr Kaunda as the Chief Executive of ZCCM. He was cross-examined by Mr Dutton QC. His evidence is referred to below.

Mr Michael Davies

84. Mr Michael Davies, a former Senior Investigation Officer employed by the SRA gave evidence. He confirmed the date upon which the inspection had started and told the Tribunal that the firm had been advised that the inspection was going to take place in a letter dated 22 March 2009. He had identified a cash shortage of £6,343.10 which had been rectified between the date of the letter and the start of the inspection. His FI Report had identified two debit balances which formed part of the cash shortage. These related to overpayments that had been made on behalf of two clients. The shortage had remained in existence for over ten months. He told the Tribunal that his Report had also included details of an unallocated transfer which had formed part of the shortage and which had remained uncorrected for three months. He confirmed that, in his view, there had been a shortage on client account.

85. In evidence, Mr Davies confirmed that the Respondent had completed a professional history form that provided details of his professional history. The form identified that the Respondent held a Power of Attorney for Epakor Investments. In addition, the Respondent had confirmed that he was familiar with The Law Society guidelines in relation to money laundering and other matters. Mr Davies told the Tribunal that during interview, the Respondent had confirmed that he was the Money Laundering Reporting Officer for the firm and had overall responsibility for the firm's accounting records. He had also confirmed that he was aware of a problem with the Kaunda ledger.

86. Mr Davies told the Tribunal that the Respondent had advised him that he was involved in proceedings being brought by the Republic of Zambia. The Respondent had told him that he represented AFSL who were a "banking outfit". Mr. Davies confirmed that the schedule of third party payments contained within his FI Report were the payments which were shown on the ledger cards that he had inspected during the visit. He had concluded that there appeared to be no genuine legal transactions in relation to these payments.

87. In cross-examination, Mr Davies accepted that the preparation of the accounts had been in compliance with the Solicitors' Accounts Rules. He told the Tribunal that the inspection had lasted four days. He acknowledged that his inspection file appeared to have been opened in 2004 and had included reference to the 1999 "walk in" visit. He told the Tribunal that a "walk in" inspection would normally take place when a serious issue had been identified which needed to be investigated straight away. He confirmed that he had signed the letter authorising the 1999 inspection but he could not recall the reason that had been given to authorise the visit. He acknowledged that the documentation relating to the 1999 visit had referred to a dishonest solicitor. He could not recall if he had been aware of this at the time. He told the Tribunal that reference to a dishonest solicitor was a serious matter but he could not say if the allegation of dishonesty had related to the Respondent or to someone else at the firm.

88. Mr Davies told the Tribunal that he had been unaware that the 1999 inspection file had been destroyed but he had assumed that files were only retained for a certain period of time. He explained that he would not necessarily have requested the file from a previous visit but he may have wanted to see a copy of any earlier report. He was not able to say how long the 1999 inspection had lasted or whether it had generated much documentation. He could not comment on the state of the books at that time. He was not able to comment as to whether the 1999 visit had been carried out in the same way as the 2006 inspection.

89. In continuing cross-examination, the witness confirmed that he had asked the Respondent about the existence of any underlying legal transactions and he had been told about a sale of some flats by AFSL in 1998. Mr Davies told the Tribunal that this was the only information that he had been given by the Respondent in relation to any underlying transactions and he pointed out that he had been investigating payments that had been made in 2006. He acknowledged that some of the files had not been in the Respondent's possession at the time of the visit and confirmed that there had never been any allegation that the Respondent had failed to provide documentation.

90. In answer to a question from the Panel, Mr Davies confirmed that it would have been possible to inspect the files but that he had not felt the need to do so. He had formed the impression that the payments did not relate to underlying transactions because of the nature of the figures involved. He told the Tribunal that odd amounts had come in to the client account every now and again and funds had then been disbursed. The ledgers had looked more like bank statements than a record of client files. He confirmed that his role had been to investigate matters at the firm and produce a factual report based on his findings. He did not make any decision as to whether any rule had been breached.

Ms Antoinette Pincott

91. Ms Antoinette Pincott, a chartered accountant and former partner at Grant Thornton UK LLP gave evidence. She confirmed that she had been a jointly instructed expert in the High Court proceedings and had prepared three reports. She had been asked to establish the flow of funds from the Zambian Ministry of Finance bank accounts to three entities including Zamtrop. She described the methodology that had been used for this and which had included matching receipts and payments to establish a link. She had personally reviewed the work carried out by her team and had spent time setting the methodology and checking each transaction. She explained that each payment from the Ministry of Finance accounts that had been traced to Zamtrop had been allocated a unique code that was called a "trace" reference.

92. The witness was referred to the trace charts that she had prepared and which had formed part of her reports. She confirmed the accuracy of each trace chart which showed the flow of monies from the Ministry of Finance accounts via Zamtrop. She told the Tribunal that in some cases, she had seen evidence of the payment only and not the receipt but the payment had been verified by both the bank statements and ledgers. She confirmed that this had been painstaking work which had involved a considerable amount of time and a number of people.

93. In cross-examination, Ms Pincott confirmed that she had not been asked to consider the beneficial ownership of the funds in question. She confirmed that the Ministry of Finance funds had been held in Kwacha and told the Tribunal that "backward" traces had also been carried out in order to make sure that nothing had been missed. She confirmed that she had not investigated the untraced money.

94. In re-examination, Ms Pincott confirmed that it had never been suggested that the Zamtrop account was anything other than an account held by ZSIS. In answer to a question from the Panel, she stated that she had not assumed that the monies in the Zamtrop account were stolen. She confirmed that she had been aware of the conspiracy allegation.

Findings of Fact and Law

95. The Tribunal determined all the allegations by reference to its usual standard of proof, that is, beyond reasonable doubt.

96. **Allegation 1.1: That he has withdrawn sums from client account in circumstances other than those permitted by Rule 22 of the Solicitors Accounts Rules 1998 and thereby created a cash shortage.**

Allegation 1.2: That he failed to remedy the breaches promptly upon discovery contrary to Rule 7 of the Solicitors Accounts Rules 1998.

96.1 Mr Dutton QC told the Tribunal that these allegations had been found proved by the Tribunal in 2010 and the Respondent had not appealed those findings. His primary submission was that those two breaches remained established and the Tribunal would need to decide on the appropriate sanction having regard to all the findings in the case. He stated that in the event that the findings had been overturned by the appeal

process, then he would rely on the evidence of the FIO to establish the breaches. He was not aware of the Respondent having put forward any defence to these allegations.

96.2 The Respondent told the Tribunal that these allegations were not before the Tribunal. He referred the Tribunal to the decision following his application for Judicial Review in April 2010. He submitted that at the Judicial Review hearing, the Applicant had agreed to limit its case to the allegations as they had then appeared. He stated that the Applicant had then attempted to resile from the concessions that had been agreed during that hearing and this had formed the basis of his successful appeal. He stated that these allegations had not been referred back to the Tribunal for rehearing and submitted that due to the concessions made earlier by the Applicant, these allegations had been withdrawn against him.

96.3 In reply, Mr Dutton QC, told the Tribunal that the application for Judicial Review had nothing to do with these allegations which was apparent from the terms of the Order. He told the Tribunal that the findings in relation to these allegations had not been quashed on appeal and suggested that the Respondent was attempting to advance an ingenious argument in relation to this matter which did not reflect the reality of what had happened.

96.4 These allegations had both been found proved by the Tribunal which had dealt with matters previously. The Respondent had not appealed that Tribunal's findings in relation to these two allegations but now submitted that all of the previous findings had been erased as a consequence of his subsequent appeal. The Tribunal was satisfied that the Respondent's submission in this regard was incorrect and the findings of the previous Tribunal in relation to these two allegations still stood. However, for the avoidance of doubt, the Tribunal had considered the allegations again and found that both had been substantiated on the facts and documents before it. The breaches were at the lower end of the scale of seriousness.

97. **Allegation 1.3: That he has acted contrary to the provisions of Rule 1 of the Solicitors' Practice Rules 1990 in that he has compromised or impaired, or was likely to compromise or impair, his independence or integrity and/or his good repute or that of the solicitors' profession by:-**

1.3.1 permitting money to pass into and out of his client account when there was no underlying legal transaction or the provision of legal services and where he was merely acting as a conduit to receive and pass on or return monies to clients or third parties; and/or

1.3.2 failing to be alert to the very substantial sums of money passing through client account and circumstances relating to their receipt and disbursement which should have put him on inquiry as to their authenticity or legitimacy; and/or

1.3.3 failing to investigate or to adequately consider the possibility that his firm was being utilised to facilitate money-laundering or other illegal activity; and/or

1.3.4 failing to have any or any proper regard to the warnings issued to the solicitors' profession by the Law Society on money-laundering, in particular the "Blue Card" warning first issued to the profession in March 1994, and revised in December 1995, February 1999 and September 2002 and the guidance issued by the Law Society on money-laundering to the profession in March 1994, February 1995, August 1995, 26/27 July 2000, February 2002 and September 2002; and/or

1.3.5 paying £30,000 to Dr C (who was not a client) on 13 Number 2001 which the Respondent withdrew from his client account. That money represented part of a payment sent to the Respondent from the Office of the President of Zambia and was Zambian money. He withdrew it and paid it to Dr C on the instructions of FK of AFS Ltd ("AFSL").

1.3.6 disbursing money to IK, to the children of Dr C and the children of XFC after 25 June 2002, when he knew of the "Matrix of Plunder" allegations in the Zambian press, which money belonged to the Zambian Treasury.

Further, in relation to allegations 1.3.1 to 1.3.4, the Respondent was grossly reckless. In relation to allegations 1.3.5 and 1.3.6 the Respondent was dishonest, or alternatively grossly reckless.

Allegation 1.4: Contrary to Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 (which rules were adopted by the Respondent from 1 January 2000) he failed to exercise caution when asked to provide banking facilities through his client account.

Submissions of the Applicant

97.1 Mr Dutton QC provided the Tribunal with a general overview of the case. He referred to his Skeleton Argument on which he wished to rely. He told the Tribunal that these allegations related to events between 1996 and 2003. The Respondent had acquired the firm of Kehimkar & Co in 1994 and had thereafter changed its name to Cave Malik. Mr Dutton QC claimed that it was significant that Cave Malik had been a small firm as the Respondent would have been aware of money coming in and going out of his client account.

97.2 The Tribunal was told that the key players in this case were Mr Faustin Kabwe who had been the director of AFSL and his wife, Irene who had been a shareholder of the company. The other individuals who had particularly featured in this case were Mr Xavier Chungu who had been a director of ZSIS and Dr Chiluba who had served two terms as President of Zambia. In addition a businessman Mr Atan Shansonga, had taken a room within the Respondent's office and featured in some of the money movements.

97.3 As a result of the High Court proceedings, it had been established that about $43,000,000 had been stolen from the Zambian State and placed into the Zamtrop account. From there, the monies had gone to various individuals including the Respondent and his firm. The sum of $2,127,822 had found its way into the Cave Malik client account. The Tribunal was told that the Applicant would rely on eight

money traces that could be traced back to the Zamtrop account. Mr Dutton QC told the Tribunal that the Respondent had operated an account for AFSL which was, in effect, a "running account". The money would be paid in from a third party, for example Zamtrop or Meer Care and Desai, and then disbursed through the AFSL ledger and paid to individuals or other entities.

The Zamtrop Account

97.4 Mr Dutton QC told the Tribunal that the Applicant relied on the various "traces" of monies, whether directly or indirectly, from the Zamtrop account into the Respondent's client account. The Zamtrop account had operated as a means of extracting money from the Treasury. The movements of monies had been evidenced by documents, including the Respondent's ledgers. In the High Court proceedings, Grant Thornton had been able to establish a firm trace in relation to ten matters and the Applicant relied on eight of those traces. The Tribunal was asked to note that the High Court had concluded that the traced monies were Zambian Government monies and the Applicant would rely on that finding. Mr Dutton QC explained that sometimes the payment out of a trace was in a greater sum than the payment in. This was because the funds may have been mingled with other monies. However, Grant Thornton had adopted a methodology whereby an amount was treated as traceable if all or some of the amount could be traced back to the Ministry of Finance Accounts.

Nature of AFSL

97.5 Mr Dutton QC told the Tribunal that it was not accepted that the Respondent had properly acted for AFSL in dispersing monies. He asked the Tribunal to note that AFSL had been a relatively new company which was a non-bank financial services company regulated by the Bank of Zambia. It was not an established merchant bank as the Respondent claimed. He stated that even on the Respondent's own case, AFSL had only been incorporated in 1993 as a "shell" company. It was not a reputable or established concern as it was dependent on a trade finance facility from Epakor which was renewed from time to time.

The 1999 Inspection

97.6 Mr Dutton QC told the Tribunal that Cave Malik had been subject to a previous "walk-in" inspection by an Investigator, Mr Gibbens in September 1999. The inspection file had been destroyed save for three items of documentation that had been retained electronically and which included the "on-site" certificate that had been issued at the end of the inspection. He denied the Respondent's claim that he had been prejudiced by the loss of the inspection file.

The Money Laundering Guidance

97.7 The Tribunal was told that the 1994 Money Laundering Guidance was a simple and straightforward document. Mr Dutton QC reminded the Tribunal that the Respondent had accepted that he knew the "gist" of the Money Laundering Guidance and he asserted that, in view of this admission, the Respondent should have understood the warning signs identified in the guidance document. The Tribunal was referred to the later versions of the guidance which followed a similar form to the 1994 warning. Mr

Dutton QC submitted that the Respondent would have understood the warning signs identified in the guidance documentation and this should have prevented him from embarking on these transactions.

Underlying Legal Services

97.8 Mr Dutton QC asked the Tribunal to consider whether the Respondent had been providing legal services in relation to the particular receipts in and payments out of his client account. If he had not been doing so, then Mr Dutton QC submitted that he should not have been receiving and dispersing any funds at all. If he had been providing such services then the Tribunal would need to decide whether it had been appropriate to receive monies into his client account and pay them out in the particular circumstances.

97.9 The Tribunal was told that the Respondent claimed that it had only recently become clear that a solicitor may breach Rule 1 if he allowed money to be transmitted into and out of his client account without providing any underlying legal services. Mr Dutton QC told the Tribunal that the Respondent's argument was not accepted. He stated that from the date of the first set of Money Laundering Regulations and the issue of the first Blue Warning Card, it had been clear that solicitors should be cautious when dealing with large sums of cash held in client account pending further instructions from the client or for no other purpose than the onward transmission to a third party. In particular, he referred the Tribunal to Holy v The Law Society [2006] EWHC 1034 where the court had held that a "failure to comply with [the guidance in the Blue Card] is liable to infringe Rule 1 of the [SPRs], particularly if the failure is a serious one, either wilful or reckless".

97.10 The Tribunal was also referred to previous decisions of the Tribunal in Wayne [Case No. 8189/2000] Braunstein [Case No. 8314/2001 and 8437/2001] and Wood & Burdett [Case No. 8669/2002]. These decisions had all related to circumstances where solicitors had allowed their client accounts to be used as a banking facility where there had been no underlying legal transactions on which the solicitor had been providing legal advice. In Wood & Burdett, the Tribunal had found that the Respondents had acted "in breach of their own good reputation and the good reputation of the solicitors' profession in allowing their client account to be used in this way"

Note (ix) to Rule 15 of the Solicitors' Accounts Rules 1998

97.11 In relation to trace 52 and allegations 1.3.5 and 1.3.6, the Applicant claimed that the Respondent had breached note (xi) of the Rules. At the relevant time, the note had provided that:

> "Solicitors may need to exercise caution if asked to provide banking facilities through a client account. There are criminal sanctions against assisting money launderers".

The Respondent had claimed that the note was only introduced by an amendment to the Rules in 2004 and was therefore not applicable to his case as his conduct

pre-dated 2004. Mr Dutton QC told the Tribunal that this was not correct and the Applicant relied on the wording in force at the relevant time.

Dishonesty

97.12 In relation to the allegation of dishonesty, Mr Dutton QC referred the Tribunal to the test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 as interpreted in Bryant v The Law Society [2009] 1WLR 163. Firstly the Tribunal must consider whether the Respondent's conduct had been dishonest by the standards of reasonable and honest people. Secondly, the Tribunal must go on to decide whether the Respondent knew by those standards that what he was doing was dishonest. He told the Tribunal that the Respondent was well educated and had qualified in 1989. He referred the Tribunal to an extract from a letter sent by the Respondent to Mr Kabwe in 1996 in which the Respondent had claimed a high level of experience and expertise. In particular, the Respondent had stated that he had:

> "...comprehensive knowledge of the law in both [English and Zambian] jurisdictions, having practised in Zambia in 1990. This has allowed me to capture what I regard as a niche market, particularly with the various Zambian corporations that have offices in both countries."

Mr Dutton submitted that a solicitor with this level of experience would have easily concluded that he should not have become involved in these transactions. He stated that it was clear that the Respondent had acted dishonestly.

Recklessness

97.13 Mr Dutton QC told the Tribunal that a solicitor acted recklessly if he acted in reckless disregard of his professional obligations and he referred the Tribunal to the case of Holy v The Law Society and to the Judgment of Lord Hoffman in the case of Twinsectra.

Motive

97.14 Mr Dutton QC suggested that a possible motive to explain the Respondent's conduct was the fact that he had been working for Zambian Consolidated Copper Mines ("ZCCM") on a monthly retainer throughout most of the period in question. The Tribunal was told that Francis Kaunda was the Chairman and Chief Executive of ZCCM as well as the Director and Chairman of AFSL. Mr Dutton QC claimed that the Respondent wished to comply with all instructions received from AFSL in order to maintain the goodwill of Mr Kaunda and the lucrative ZCCM retainer.

The Traces

Trace 2, Part 1

97.15 Mr Dutton QC suggested that it was beyond belief that the Respondent would not have known that the money came from Zamtrop. His bank account statement had recorded the credit as "By Order of Zamtrop" and he had confirmed during the High Court proceedings that he had spoken to his bank on the date of receipt. If he had not

known where the money had come from then he should have made enquiries. The money had been credited to the AFSL ledger and Mr Dutton QC reminded the Tribunal that the Respondent had admitted to operating the ledger as a "running account" during the High Court proceedings.

97.16 The Tribunal was told that the Respondent had made three payments out to third parties where there was no underlying legal transaction. Mr Dutton submitted that it was inconceivable that the Respondent would make such payments without having background knowledge as to where the money had come from. He disputed the Respondent's claim that there had been an underlying foreign exchange transaction involved, namely that AFSL had bought $100,000 of Zambian currency and the money that had been sent to Africa Direct was payment for the currency. Mr Dutton QC told the Tribunal that if currency had been purchased by AFSL then there would be documentary evidence to support this assertion. Instead, this was simply the channelling of money out of the Zamtrop account with no underlying legal transaction and in disregard of the Blue Card Warning.

Trace 2, Part 2

97.17 Mr Dutton QC told the Tribunal that there was no documentary evidence to show that Mr Shansonga had any authority to act on behalf of Redcliffe. The Respondent had claimed that at the time he thought that Redcliffe did not have a bank account but this was not the case. Mr Dutton QC stated that the Respondent had allowed money to be transferred into and out of his client account when he was not providing an underlying legal service.

97.18 Mr Dutton QC disputed the Respondent's latest suggestion that he had received instructions from Mr Shansonga to prepare a contract for the sale purchase of sugar which Redcliffe was proposing to finance. He told the Tribunal that the documentation which the Respondent had produced to support this assertion were simply drafts which had not been completed and did not indicate that the money had anything to do with a sugar contract. Instead, the Respondent had allowed his client account to be used as a banking facility for the benefit of Mr Shansonga and his associates in disregard of the Blue Card Warning.

Trace 22

97.19 The Tribunal was told that the Respondent claimed that the money received was part payment of a loan made by Epakor to AFSL in the sum of $250,000. Mr Dutton QC explained that in fact, only $150,000 had been advanced by Epakor to AFSL under a loan facility and $130,000 of the loan had already been repaid. This meant that only $20,000 was outstanding at the time of the inter-ledger transfer. In any event, the money had been received from Meer Care and Desai who were not the Respondent's clients. The Respondent had allowed the AFSL ledger to be improperly operated as a "running account" and had permitted his client account to be used as a banking facility in disregard of the Blue Card Warning. Mr Dutton QC conceded that some underlying legal services had been provided but stated that this transfer of money did not appear to relate to the loan transaction.

Trace 27

97.20 Mr Dutton QC suggested that the Respondent had not provided a credible explanation for this payment when he had claimed that it had been the payment of interest following the renewal of the loan agreement between AFSL and Epakor. Mr Dutton QC stated that the money could have been paid direct. There had been no underlying legal work and the Respondent had disregarded the Blue Card Warning.

Trace 49

97.21 The Respondent had claimed that the funds were to be used for Zambian Investments on behalf of his client. Mr Dutton QC reminded the Tribunal that in the High Court proceedings, the Respondent had stated that the Cave Malik's Ndola office would be carrying out the transaction. This begged the question as to why the Respondent, who was in London, had been involved in the matter. There was no documentation to support his case that the London office was dealing with the transaction.

97.22 Mr Dutton QC told the Tribunal that the Respondent must have known that the money came from the Zamtrop account due to the entry on his client account bank statement and the narrative on the ledger. In addition he had spoken to the bank about the receipt. In fact, monies had been distributed to various third parties where there was no underlying legal work. Mr Dutton QC stated that the Respondent had not been acting on a proper retainer for the purchase of property in Zambia. Instead he was allowing his client account to be utilised for a banking facility and disbursing money in breach of the Money Laundering Guidance and the Blue Warning Card.

Trace 33

97.23 The Tribunal was told that during the High Court proceedings, the Respondent had denied knowing that the money had been received from Meer Care and Desai. He had later accepted that he had known that the money had come from them but now appeared to have resurrected his denial. He was now claiming that he had believed that the money was from AFSL. Mr Dutton QC asked the Tribunal to consider why the Respondent was receiving money from Meer Care and Desai if AFSL was the client. He told the Tribunal that the Respondent was not acting in any underlying transaction. It was particularly noticeable that there had been a cash withdrawal in the sum of $25,000 and he stated that the Blue Card Warnings were "all over" this transaction. He suggested that the Respondent had allowed his client account to be used in this way in order to process "ill gotten gains" from Zambia.

Trace 37

97.24 The Tribunal was reminded that in the High Court proceedings, the Respondent had stated that this money related to sums received from the recipients of goods supplied by Redcliffe. However, the Respondent was now claiming that the receipt of the money and the payment of £20,000 to AFSL related to the purchase by Mr Shansonga of the assets of a company by the name of Polypackers Ltd. Mr Dutton QC told the Tribunal that there was no documentation to support this new explanation. The attendance note and letter produced by the Respondent were dated almost four months after the receipt of the money and did not refer to the payment of the deposit by Mr

Shansonga. This explanation also contradicted evidence that the Respondent had given during the High Court proceedings when he had stated that he had acted briefly for AFSL (not Mr Shansonga) in relation to the Polypackers transaction in late September/early October 1999.

Trace 42

97.25 Mr Dutton QC reminded the Tribunal that the Respondent now admitted that he knew that the money had been received from Meer Care and Desai but had previously denied this during the High Court proceedings. The Tribunal was told that Meer Care and Desai had received the sum from the Zamtrop account. Mr Dutton QC stated that there was no reason for the Respondent to have received the money into his London client account. There was no underlying legal transaction. It was the Respondent's father's firm who had received instructions regarding a property transaction in Zambia. He told that the Tribunal that the Respondent was plainly wrong to state that it would have been unprofessional to question Meer Care and Desai about the source of the money. He submitted that the Respondent had simply allowed those who were involved in wrongdoing to route money through his firm in clear breach of the Blue Card Warning.

Trace 52

97.26 Mr Dutton QC told the Tribunal that the Respondent must have known that the money was from Zamtrop due to the entry on his bank statement and the fact that the narrative on the ledger had recorded the entry as "Zamtrop". He disputed the Respondent's explanation that the money came from ZANACO in repayment of a loan. He stated that no such loan had been provided by ASFL. The money had been paid from Zamtrop and not from ZANACO. The monies had derived from an account held at Barclays Bank in Jersey and administered by Caversham Trustees and not from AFSL. The Respondent knew this as he had given the instruction to Caversham Trustees to send the funds and he had admitted this in the High Court proceedings. Mr Dutton QC stated that the Respondent's version of events did not match the facts. Instead he had allowed his client account to be used to move money in breach of the Blue Card Warning and other guidance.

Payment to Dr Chiluba

97.27 Mr Dutton QC told the Tribunal that during the High Court proceedings, the Respondent had acknowledged that the money had come from the Office of the President and was therefore Government money. His bank statements had recorded both payments with the narrative "B/O Office of the President". He stated that the Respondent's denial that he had received government money could not be sustained. The Respondent's letter to his bank had been marked "Extremely Urgent" and had specifically referred to the receipt from the Office of the President of Zambia. The payment had been made in cash to a third party whom the Respondent had met only the day before the payment was made. It did not relate to any underlying legal transaction. During the High Court proceedings, the Respondent had admitted to having failed to comply with the Blue Card Warning in relation to transactions since 2000. This payment post-dated 2000 and so the Respondent had admitted to having failed to comply with the Blue Card Warning in relation to this payment.

97.28 Mr Dutton QC reminded the Tribunal that the press Reports from mid 2001 should have indicated to the Respondent that there were serious accusations against Dr Chiluba. He told the Tribunal that a solicitor with independence, integrity and good repute would not have embarked on this transaction. The Respondent had failed to ask for any evidence that Dr Chiluba had a genuine legal entitlement to the money. He had been aware that the money had come from the Zambian Government and that there was a serious risk that Dr Chiluba had stolen Government money. The Respondent's concerns about the payment had appeared to relate more to his own personal safety, in carrying such a large amount of money, than to anything else.

Post-Matrix Payments

97.29 Mr Dutton QC reminded the Tribunal that Cave Malik had been identified in the "The Matrix of Plunder" article and the Respondent had accepted during the High Court proceedings that he had seen this article in June 2002. He had also been aware of the fact that Mr Kabwe had been arrested and subsequently released and that he had been removed as a director of AFSL. Mr Dutton QC told the Tribunal that the evidence produced by the Respondent did not support his assertion that Mr Kabwe had been reinstated. Despite the Respondent's knowledge of these matters, he had disbursed funds to the children of Dr Chiluba, the Chungu children and to Irene Kabwe.

97.30 The Tribunal was told that during the High Court proceedings, the Respondent had accepted that the payment of $60,000 into his client account had come from Mr Faustin Kabwe but he was now claiming that the money had come from Mrs Irene Kabwe instead. He had produced two faxes as evidence of this. Mr Dutton QC asked the Tribunal to note that although the faxes were signed by Mrs Kabwe, the money was to be remitted from the US Dollar account of Mr Faustin Kabwe and so the Respondent's explanation was simply not credible.

97.31 The payments had all been evidenced in the Respondent's ledgers. Mr Dutton QC told the Tribunal that the Respondent had admitted that these payments had been made on the instructions of Mr Kabwe. The Respondent had contended that the payments to Mrs Kabwe had been made on her instructions but Mr Dutton QC stated that it was clear from the evidence that the instructions had come from Mr Kabwe. The Tribunal was told that the Respondent also claimed that he had received instructions from Xavier Chungu in respect of a proposed property transaction in South Africa. This had subsequently fallen through and had left funds in the firm's client account. The Respondent's case was that he had disbursed money to the Chungu children on the instruction of Xavier Chungu. Mr Dutton QC stated that none of the documentation produced by the Respondent to evidence this transaction showed who the client was. There was nothing to show that Mr Chungu had provided the instructions. Mr Dutton QC told the Tribunal that the payments had not related to the proposed transaction in any way and that this was one of the "classic" Blue Card warning signs. He stated that if the transaction had fallen through then the monies should have been returned to the beneficial owner and not used to make unrelated third party payments.

97.32 The Tribunal was reminded that in the High Court proceedings, the Respondent had stated that he was acting for AFSL and not Xavier Chungu in relation to this matter. He had told the FIO that the payments to the Chungu children were made from funds

held for AFSL. The Respondent had also claimed that two of the payments had been made on the instruction of Mr Francis Kaunda. Mr Dutton QC told the Tribunal that the monies had been paid from the AFSL ledger. At the time of the payments, the Respondent had known that the Bank of Zambia had taken possession of AFSL and he had failed to make any enquiries as to the reason for making those payments.

97.33 In conclusion, Mr Dutton QC stated that the payments had been made in clear breach of the Respondent's Rule 1 duties and contrary to Note (ix) to Rule 15 of the SAR. None of the payees had been clients of the Respondent and none of the payments related to any underlying transaction on which the Respondent was giving legal advice. During the High Court proceedings, the Respondent had admitted that the payments did not relate to any underlying transactions. He had conceded that he had operated the AFSL and Cave Malik general ledgers as "running accounts". He had also admitted to having failed to comply with the Blue Card Warning in relation to transactions since 2000. These payments post-dated 2000 and so the Respondent had admitted to having failed to comply with the Blue Card Warning with regard to these payments.

Submissions of the Respondent

97.34 The Respondent referred the Tribunal to all the written documentation that he had submitted, and upon which he wished to rely. He told the Tribunal that he challenged the Applicant's reliance on the High Court Judgment as showing that the Zamtop account was Government money. He asked the Tribunal to consider the Affidavit of Dr Chiluba which referred to the payment of private money into the Zamtrop account and which stated that a reconciliation of the Zamtrop account for 2002/03 had not revealed any evidence of wrong doing. He also referred the Tribunal to the Statement of Justice Ngulube which he claimed made the same point regarding the existence of private money in the Zamtrop account.

97.35 The Respondent claimed that the court in Zambia had found that there were private monies in the Zamtrop account and this was the reason for Dr Chiluba's acquittal and for the fact that the Zambian courts had not recognized the High Court's findings. He did not have a copy of the relevant Judgment to show to the Tribunal. He stated that AFSL had not been a party to the litigation in the High Court proceedings and he told the Tribunal that he wished to rely on the banking law principle that money held by a bank was a debt to the customer. In view of this, he said, the money held for AFSL belonged to the company.

97.36 The Tribunal was referred to statements filed in the High Court proceedings from an AFSL employee and from the Chief Accountant of the Office of President. The Respondent stated that these documents showed that he had no reason to distrust Mr Kaunda or Mr Kabwe. He stated that Mr Kabwe was respectable and held a high position. The Respondent also relied on documentation that he had produced from, inter alia, the Bank of Zambia which set out the various monitoring requirements for commercial banks and financial institutions. He submitted that the Bank of Zambia had issued directives regarding identification requirements which applied to AFSL and which were similar to the guidance issued in this country. He told the Tribunal that the documentation that he had produced from Government officials raised doubt as to whether the Zamtrop account was a Government account at all. He claimed that

if the Government had not known about the Zamtrop account then he could not have known about it either.

97.37 The Respondent told the Tribunal that the Attorney General of Zambia had brought the proceedings in the High Court and in order to establish its case, needed to prove that the Zamtrop funds were Government money. He asked the Tribunal to note that Grant Thornton had found that there were funds which could not be traced back to the Ministry of Finance accounts and that Ms Pincott had acknowledged in her evidence that she had not been asked to trace these particular funds. Furthermore, the Respondent stated that the Ministry of Finance funds had been held in Kwacha and the Ministry did not deal in foreign exchange. He submitted that the eight transfers to the Zamtrop account could not be traced back to Government funds.

97.38 The Respondent submitted that there had been a delay in this matter as the Applicant had first opened its file in 2004 but had done nothing until the inspection in 2006. The proceedings had been brought in 2007. It was now some eight years since the file had first been opened and the transactions dated back to 1996. He told the Tribunal that that there was no reason for the 1999 inspection file to have been destroyed. He claimed that the file had contained relevant information. He stated that Dr Chiluba would have attended at the hearing but he had died. In addition, he was unable to call his bookkeeper to give evidence as he was in poor health. His father was also unwell and could not give evidence on his behalf either.

Respondent's Evidence

97.39 In cross-examination by Mr Dutton QC, the Respondent confirmed that he was aware of the duty to maintain his own reputation and that of the profession generally. He acknowledged the need to retain his independence and integrity. He told the Tribunal that he may have seen one of his functions as operating a bank account for a client but this would have depended on what was required and in any event would have been in connection with a matter on which he had been retained.

97.40 The Respondent stated that his knowledge of the Blue Card Warning had been restricted to the "Know Your Client" provisions. He had not been aware of the publication of the various editions of the Card. He denied that his knowledge of the "gist" of the Card had come from reading it and claimed that this had come from his practising experience instead. He confirmed that he had undertaken commercial work and he had always understood the distinction between legal "personalities", for example, the difference between the directors and shareholders of a company.

97.41 The Respondent acknowledged that AFSL had been formed as a "shell" company in 1993 and so was still a young company at the time that he had first met Mr Kabwe in 1994. He understood that Mr Kabwe owed a fiduciary duty to AFSL as Chief Executive of the company and he appreciated that Mr Kabwe could not simply take cash out of the company and place it into his own personal account without a legitimate reason for doing so. He told the Tribunal that he was aware that Mr Kaunda, in his capacity as Chairman, had been under a duty to obtain the best value for shareholders when ZCCM was privatised. He also acknowledged that Xavier Chungu had been a Director of ZSIS which operated under the auspices of the Office of the President. The Respondent was referred to his letter to Mr Chungu dated 20

October 2000 and he acknowledged that he had been aware that in his dealings with Mr Chungu, he would in effect be dealing with the Zambian State.

97.42 In continuing cross-examination, the Respondent acknowledged that he had been formally retained by the Office of the President through Mr Chungu from November 2001. Mr Dutton QC suggested to the Respondent that he would have known that a receipt of $99,950 and described as "B/O of Chungu X" was, in fact, funds from the Office of the President. The Respondent denied any knowledge of having received any money from the Zambian state and claimed that the money had been the personal funds of Mr Chungu. He told the Tribunal that he had already been instructed in relation to other matters by Mr Chungu. He denied any knowledge of a connection between the money that he had received and the Office of the President.

97.43 The Respondent told the Tribunal that Mr Shansonga was a Finance Director and he acknowledged that Mr Shansonga would therefore owe fiduciary duties to the company as a director. He confirmed that he had first met Dr Chiluba in November 2001 and that Dr Chiluba had never been a client.

97.44 The Respondent told the Tribunal that Dr Chiluba had been concerned about the enforcement of the High Court Judgment if he had travelled to London to attend the previous Tribunal hearing in May 2010. He stated that he had not thought to ask Dr Chiluba or his lawyers to provide documentary evidence to support the assertions made in his Affidavit. He had not believed that the Zambians would have helped him any further. He told the Tribunal that he had no knowledge of any connection between Dr Chiluba and AFSL prior to November 2001. He acknowledged that he would not have known whether any of Dr Chiluba's private money had found its way into his client account. He told the Tribunal that all of the money that he had received had come from AFSL and he had no knowledge as to its origins. He had acted on the instructions of ASFL who were a regulated institution.

97.45 The Respondent confirmed that he had asked Justice Ngulube to provide a statement. He was unable to explain why Justice Ngulube had believed that he had been acting for a "Head of State" or for the Intelligence Service. He told the Tribunal that he could not make any comment in relation to the contents of Justice Ngulube's statement but submitted that the statement could not be considered in isolation from Justice Ngulube's local knowledge. He pointed out that Justice Ngulube may have believed that he had been working for the Intelligence Service from information in general circulation in Zambia at that time. The Respondent told the Tribunal that he did not know anything about the fact that the High Court had found that Justice Ngulube had received Zamtrop money. He explained that he had acted for Justice Ngulube in a personal matter and had asked him to provide a statement.

AFSL

97.46 In continuing cross-examination, the Respondent maintained that AFSL had been a merchant bank. He told the Tribunal that this was one of the activities covered by its financial services licence. He acknowledged that AFSL had to borrow money from Epakor which was beneficially owned by Mr Kaunda. He told the Tribunal that Epakor had obtained its funds from the sale of a flat in London. He saw nothing unusual about a bank having to borrow money in this way and claimed that as Zambia

operated in a vacuum, it was necessary for AFSL to obtain finance so that it could lend to other institutions.

1999 Inspection

97.47 The Respondent denied that his reliance on the 1999 inspection had grown as the proceedings had developed. He acknowledged that in the High Court proceedings he had referred to Mr Gibbens as having inspected the ledgers and bank statements over a one week period in January 2000. He admitted that he had read and signed the "on-site" certificate. He acknowledged that various accounts' breaches had been identified by Mr Gibbens and confirmed that he had been responsible for the client account and for the management of the AFSL, Kabwe, Kaunda and Shansonga ledgers save in the case of two Shansonga conveyancing matters.

97.48 The Respondent accepted that the AFSL ledger had been before him and Mr Gibbens during the inspection. He told the Tribunal that he would not necessarily have seen the transfer from Zamtrop unless this had been specifically discussed with Mr Gibbens. He told the Tribunal that even if he had known about the transfer, this would not have mattered as he did not know what Zamtrop was. He said that he could not recall reading the AFSL/Kaunda/Epakor ledger cards. He acknowledged that Mr Gibbens had drawn his attention to the debit balance on the AFSL ledger and had asked him to amalgamate the Kaunda/Epakor ledgers.

Disclosure

97.49 The Respondent denied that he had been unwilling to give disclosure during the proceedings or that he was "picking and choosing" which items of documentation to provide. He claimed that he had supplied documentation whenever he had been asked to do so and stated that he had co-operated with the SRA as far as he could. He told the Tribunal that documentation had been disclosed as part of his witness statement in the High Court proceedings and pointed out that although the Applicant had produced a copy of his statement for use in these proceedings, the attached documentation had not been disclosed.

Accounts Rules Breaches

97.50 The Respondent told the Tribunal that there had been a deficit on the ledger but not in the client account. There had been no cash shortage. He explained that a client had delivered a cheque which had been lost and there had been a delay whilst the client provided a new cheque. The Respondent stated that he had not wanted to rectify the ledger until he had received the missing cheque.

The Traces

Trace 2 - Part 1

97.51 The Respondent told the Tribunal that he had not looked at his bank statement which had described the payment as "By Order of Zamtrop". He explained that his bookkeeper would have been able to reconcile the payment to the ledger because he would have been told that funds were expected from AFSL. His bookkeeper had

never raised an issue about the fact that the receipt had been in the name of Zamtrop rather than the client. He had spoken to the bank but did not believe that he had been told that the payment had been from Zamtrop.

97.52 The Respondent acknowledged that a payment of £4,000 had been made to Mr Kabwe and stated that he could not recall whether or not there had been an underlying transaction. He told the Tribunal that he would have had instructions to pay the money to Mr Kabwe and he believed that the instructions would probably have come from Mr Aaron Chungu. He stated that he would have received instructions to make the payment to C Kaunda but acknowledged that there was no legal transaction between AFSL and C Kaunda. He acknowledged that there had been no legal transaction in relation to the payment to Africa Direct. He denied that the payments to these third parties had been in breach of the Blue Warning Card or that he had been suspicious about the transactions. He maintained that the payments had all been made on the instructions of AFSL and denied the allegation that he had been allowing Mr Kabwe to do as he wished with the monies held on the AFSL ledger.

Trace 2 - Part 2

97.53 In continuing cross-examination, the Respondent told the Tribunal that the payments had been made with the authority of Mr Shansonga who had been the authorised officer of Redcliffe Ltd. He stated that there must have been some reason why Redcliffe could not have opened a bank account straightaway. He believed that Mr Shansonga had intended to use his own account to make the payments but he had been unable to do so as he had been travelling. The Respondent was unable to provide the Tribunal with any information in relation to the various payments but stated that there would have been documents to justify the payments. He acknowledged that there had been no underlying legal transaction in relation to the payments. He claimed that he had not mentioned the fact that he had received instructions from Mr Shansonga in relation to a sugar trade contract during the High Court proceedings as he had not considered it to be relevant at that time.

Trace 22

97.54 The Respondent denied that $120,000 of the loan made by Epakor to AFSL had already been repaid. He told the Tribunal that the loan had originally been in the sum of $250,000 and that Epakor had sold a property to fund $100,000 of the loan. He claimed that the money had been received from Meer Care and Desai because they had been acting for AFSL. The money had been sent to him as he had a Power of Attorney for Epakor. He denied that this was a convoluted arrangement carried out to make the transaction appear legitimate.

Trace 27

97.55 The Respondent told the Tribunal that he had been involved in this transaction as he held a Power of Attorney for Epakor. He explained that the client ledger was in the name of "C Kaunda: Epakor a/c 1" because Mr Kaunda was the beneficial owner of Epakor. He denied that the transaction had involved the shifting of money in careless disregard of where it had come from or where it was going to.

Trace 49

97.56 The Respondent told the Tribunal that he would not have checked his bank statement and so would not have noticed that the money had been credited with the narrative "Zamtrop Lusaka". He claimed that his bookkeeper would not have raised this as an issue as he had told him that money was expected from AFSL. He explained to the Tribunal that a company named Hearnville had been created in order to acquire property in Zambia. The beneficial owner of the company had been Mr Kabwe although AFSL money was to be used to fund the purchase. The Respondent claimed that there had been nothing about the transaction which had warned him to proceed with extreme caution. He had not known where the clients had obtained the money from and he had not asked.

97.57 The investment had been delayed and the Respondent claimed that he saw nothing odd in being asked to disburse the monies to third parties. He believed that the cash payment that he had made to himself may have been a reimbursement of money that he had lent to Mr Kabwe previously. He told the Tribunal that he saw nothing untoward about taking the money from the AFSL ledger and claimed that this would have been on instructions. He denied allowing his client account to be used as a banking facility and claimed that there had been underlying transactions in relation to these payments.

Trace 33

97.58 The Respondent confirmed that he had known that the money had come from Meer Care and Desai. He believed that the payment to "M Subastian" had related to a termination payment and acknowledged that this had nothing to do with a property transaction in Zambia. He could not recall what the cash payment had related to. He was asked to confirm that during the High Court proceedings he had acknowledged that it was his father's firm in Zambia which had acted on the underlying property transaction. The Respondent told the Tribunal that he could not recall giving that evidence. He stated that he had been acting in the property transaction throughout. He denied that there had been no logical reason for him to be involved in the transaction.

Trace 37

97.59 The Respondent told the Tribunal that the payment related to the purchase of Polypackers by Mr Shansonga. He maintained that he had received confirmation of these instructions and had acted in the matter later. He denied that his explanation to the High Court had been that the money was for the payment of goods.

Trace 42

97.60 The Respondent denied that there had been a circular movement of money. He claimed that the money may have been received because his father was in London at the time and the payment could have been sent to the London office inadvertently. He denied that the transfer of the money was in clear disregard of the Blue Card Warning and stated that he did not know that the money had originated from the Zamtrop account.

Trace 52

97.61 In continuing cross-examination, the Respondent told the Tribunal that he had been expecting money from the Zambian National Commercial Bank. He claimed that the money was the repayment of a loan from the Zambian National Commercial Bank to AFSL. He denied that he had known that the money came from the Zamtrop account. He had made the payment to "Mareus C C" believing this to be a client of AFSL. He had also made the payment to Mr Patel. He had not known Mr Patel personally. He told the Tribunal that the payment to "Ndola Weaing Textile LTD" had related to Trade Finance, although he conceded that he had not seen any documentation to confirm this. He confirmed that all the payments had been made on the instruction of AFSL.

97.62 The Respondent denied that he had acted in breach of the Blue Card Warning in relation to this transaction. He was reminded that in his evidence to the High Court, he had admitted to having failed to comply with the Blue Card Warning in relation to every transaction since 2000. The Respondent told the Tribunal that he had been truthful in his evidence during the High Court proceedings but he did not accept that as this transaction had taken place after 2000, he must have known that he had not complied with the Blue Card Warning. He maintained that he had acted on the instructions of AFSL throughout and had relied on their status as a regulated institution.

Payment to Dr Chiluba

97.63 The Respondent acknowledged that the payment of the 10 July 2001 had been the first time that monies had been received into his account marked as "By Order of the President". He had been told by AFSL to expect the money and had credited the payment to the AFSL ledger without making any further enquiries. He told the Tribunal that he did not see any need to make such enquiries as he had been acting for AFSL for six years. He acknowledged that by the time that the second payment had been made on 6 November 2001, he had known that the payment was from the Office of the President as Mr Kabwe had told him. However he had understood that the money belonged to AFSL. He acknowledged that Mr Chungu had been instructing him on behalf of the Office of the President but told the Tribunal that he had not thought it necessary to check that the money belonged to AFSL as Mr Kabwe had told him to expect the funds.

97.64 In continuing cross-examination, the Respondent told the Tribunal that he had given the money to Dr Chiluba on the instruction and authority of Mr Kabwe. He explained that he had not been worried about the payment as the money belonged to AFSL and it was AFSL who had given him the instruction to make the payment. He acknowledged that he had been aware of the accusation that Dr Chiluba was a thief. He told the Tribunal that he had still thought it appropriate to hand over the money as the allegation had been made some six months prior to the payment. He acknowledged that Mr Kabwe had nothing to do with the Office of the President and that Dr Chiluba had not been his client although he had discussed making a Will with him. He denied that making the payment had been dishonest and told the Tribunal that he would not have written the letter to his bank requesting the money if he had been dishonest.

Matrix of Plunder

97.65 The Respondent acknowledged that he had seen an internet version of the "Matrix of Plunder" article and was aware of the serious allegations which had been made. He acknowledged that he had reason to be cautious in his dealings with Dr Chiluba and his associates after reading the article. He told the Tribunal that Mr Kaunda had told him that Mr Kabwe had been reinstated as a Director of AFSL and he had accepted Mr Kabwe's instructions on behalf of AFSL on that basis.

97.66 The Respondent acknowledged that the documentation that he had produced in relation to the payment to Irene Kabwe had referred to an account in the name of Faustin Kabwe. He told the Tribunal that he had spoken to Mrs Kabwe and as far as he was concerned, the money had come from her. He stated that the payment had been the return of money transferred to him by Mrs Kabwe in relation to a transaction in which he had been unable to proceed.

97.67 The Respondent told the Tribunal that he had not checked with the regulator in relation to the payments to Mrs Kabwe or to the Chiluba and Chungu children. He had been satisfied that the regulator had allowed AFSL to continue in operation and so he did not have any concerns. He acknowledged that the payments had all been made from the AFSL ledger and told the Tribunal that it was Mr Kaunda who had been the source of the funds for the payments to the children. He stated that Mr Kaunda had put money into AFSL in relation to a property transaction which had subsequently aborted. He denied that this explanation contradicted the evidence that he had given in the High Court proceedings.

97.68 The Respondent denied that he had ever held money for Dr Chiluba and disputed the suggestion that this contradicted the evidence that he had given in the High Court. He claimed that his evidence to the High Court had confirmed that Dr Chiluba had been a customer of AFSL. He told the Tribunal that Dr Chiluba had asked him to draft a will but he had not been a client. He acknowledged that there had been no underlying legal transaction in relation to the payments to the children and he denied that he had been acting as a "post box" for the payments when he knew that both Dr Chiluba and Xavier Chungu were suspected of having committed crimes. He did not accept that he had been dishonest in relation to these payments and claimed, in answer to a question from the Panel, that he had never had any suspicions in relation to the matter.

Applicant's Closing Submissions

97.69 Mr Dutton QC referred the Tribunal to his written submissions on which he intended to rely. He told the Tribunal that Miss Pincott had been an impressive and neutral witness. He submitted that there was no real contention that the monies were disbursed by the Respondent as set out in Ms Pincott's evidence. He also told the Tribunal that it was not disputed that the Respondent had received two payments from the Office of the President in addition to the money from the "traces". The Respondent had not denied making the payment to Dr Chiluba or the payments to Dr Chiluba's children, the Chungu children and Irene Kabwe after he had become aware of the "Matrix of Plunder" article.

97.70 The Tribunal was told that the Respondent had changed his story about the origin of the money involved in the various traces and the payments made after the "Matrix of Plunder" article. It was the Applicant's case that it was unnecessary to establish whether or not the money originated from the Zambian Government in order to prove the allegations. Mr Dutton QC told the Tribunal that on the basis of Ms Pincott's evidence, it was absolutely clear that the monies which she had identified in the traces were Zambian State monies and he claimed that the Respondent had not put forward any cogent evidence to contradict this.

97.71 Mr Dutton QC submitted that the Respondent had failed to produce any evidence to justify the assertion that Dr Chiluba had private funds in the Zamtrop account. He submitted that in any event, the Respondent's conduct was still in breach of Rule 1 even if there had been a mingling of Chiluba monies and State funds as Dr Chiluba had never been the Respondent's client and none of the funds had come in as Chiluba funds. He submitted that although there may have been a differential in the monies derived from the State and the total amount that had gone through the Zamtrop account, it did not follow that Dr Chiluba was a legitimate source of the difference in funds. Mr Dutton QC also told the Tribunal that Mr Justice Ngulube's evidence did not lend any weight to the Respondent's case as he had been found to have been in receipt of funds from the Zamtrop account. In addition, he had apparently believed that the Respondent had been acting for the Head of State which, on the Respondent's own case, was untrue.

97.72 Mr Dutton QC stated that the Respondent's contention that there could be no breach of Rule 1 unless breaches of the Accounts Rules or other rule breaches had been established was simply wrong. He submitted that the duties under Rule 1 were overarching and applied at all times to all solicitors in the course of their practice. He reminded the Tribunal that the Respondent had accepted during cross-examination that a solicitor was bound to act at all times with integrity and objectivity and should maintain his own good repute and that of the profession.

Allegations 1.1 and 1.2

97.73 Mr Dutton QC told the Tribunal that the evidence of the FIO and his Report were clear and the breaches of the Accounts Rules had been established. He submitted that the Respondent could not maintain that these allegations were no longer before the Tribunal. He stated that the breaches had been established at the hearing in May 2010 and had not been appealed. Alternatively, the allegations had been proved again on the evidence of the FIO. He told the Tribunal that there had been no significant dispute about the evidence, save as to whether the shortfall on the client account had arisen as a result of ledger entries as opposed to an actual cash shortage in the bank account. He submitted that in any event, this matter was not determinative of whether or not there had been breaches of the Rules and he claimed that the allegations had been made out.

Allegations 1.3-1.4

97.74 Mr Dutton QC asked the Tribunal to consider the Respondent's state of mind when he had dealt with the monies which had come via the Zamtrop account as well as his state of knowledge in relation to the Blue Card Warning. He submitted that these

issues could be determined by assessing the reliability of the Respondent's denials that he had no idea that the monies that he was dealing with came from the Zamtrop account or that the funds might have been State monies.

97.75 The Tribunal was told that the Respondent was clearly intelligent and was an experienced solicitor at the time of the transactions. He had conducted his own defence during these proceedings with an almost painstaking approach towards the evidence and documentation. Mr Dutton QC suggested that the Respondent would have conducted his practice in the same way. He reminded the Tribunal that the Respondent's own bank statements contained the description "B/O Zamtrop" in some cases and on occasion his own ledgers had done likewise. Mr Dutton QC told the Tribunal that the Respondent's denials that he knew or suspected that the monies had come from Zamtrop or may have been State funds were simply incredible. This would have meant that neither the bank nor any of the Respondent's own bookkeepers had ever mentioned to him that the funds had been received from Zamtrop. In addition the Tribunal would have to believe that Mr Kabwe never mentioned the source of the funds either or that the Respondent never read his own bank statements or ledger cards. The Respondent had accepted in cross-examination that the Kabwe/AFSL ledger would have been before him and Mr Gibbens during the January 2000 inspection.

97.76 Mr Dutton QC submitted that the Respondent had shifted his evidence to suit his current case. He now claimed that the "walk-in" inspection of 1999/2000 had been a detailed investigation in which the investigator had looked at the ledgers and bank statements and also the underlying files. The Tribunal was asked to consider that this explanation was in direct contradiction to the Respondent's third witness statement in the High Court proceedings in which he had stated that the inspection was delayed because he was in Zambia, had lasted a week in January 2000 and that Mr Gibbens had only looked at ledgers and bank statements. Mr Dutton QC submitted that it was also contradicted by the "on-site" certificate which had been produced by Mr Gibbens and which had been signed by the Respondent. The certificate had recorded that breaches had been identified and that Mr Gibbens had not undertaken a full audit. The Respondent had agreed that he had read the certificate.

97.77 In addition, Mr Dutton QC stated that if Mr Gibbens had asked the Respondent to "amalgamate" different client ledgers, then the Respondent must have read those legers at the time. He would plainly have been aware of the dealings with client monies on his own accounts. Mr Dutton QC suggested that the Respondent may have believed that he had not been discovered and so had continued with his course of misconduct. He submitted that the Respondent could not rely on the fact that The Law Society had not taken disciplinary action at the time and he referred the Tribunal to the case of FSA v Fox Hayes [2010] EWHC, in which it was stated:

> "Regulators may often find themselves in a somewhat difficult position when they are expressly asked for advice or guidance. It cannot be a legitimate criticism of a regulator that he decides not to give advice or guidance. It is the duty of the authorised person to comply with any relevant rule, not the duty of the regulator to advise whether conduct of a particular kind does or does not constitute compliance with or contravention of a rule. The most that can, in my view, be said, is that if advice or guidance is given and it subsequently

transpired that it was wrong, that may have an effect on the penalty for any transgression. One can only say that it "may" have an effect on penalty because it is likely to be only the authorised person who knows the full factual picture; usually the regulator will not."

97.78 The Tribunal was reminded that during the High Court proceedings, the Respondent had accepted that he did know of the Blue Card Warning by 2000. He had conceded that his dealings in relation to transactions which had occurred after that date were in breach of the Warning. Mr Dutton QC told the Tribunal that the Respondent now wished to distance himself from that acceptance. The Respondent had acknowledged that he knew the "gist" of the Warning Card but had attempted to limit his knowledge in cross-examination to suggest that he would only have been concerned about formal identification requirements.

97.79 Mr Dutton QC stated that in both his evidence to the High Court and in the current case, the Respondent had accepted that he was operating the AFSL account as a "running account", and he had contended that there was no impropriety about this. He had also accepted that in relation to a number of the traces he had not provided any underlying legal services at all. Mr Dutton QC suggested that as the proceedings had progressed, the Respondent had realised that he was in an untenable position professionally and was now suggesting that he had been involved in some form of legal service on behalf of his alleged "client" AFSL. Mr Dutton QC told the Tribunal that there was no credible evidence to support the Respondent's current assertion. He submitted that the Respondent's claim that there had been underlying transactions had been made in order to bolster his case, and this reflected very badly on his credibility. He was an unreliable and untrustworthy witness.

The Traces

Trace 2 Part 1

97.80 Mr Dutton QC stated that the Respondent had treated Mr Kabwe and AFSL as one and the same thing. He appeared to have paid monies at the behest of Mr Kabwe regardless of the fact that his client, on his current case, was AFSL. The Respondent had now changed his position and claimed that the payment to Mr Kabwe had been made on the instruction of Mr Chungu which was in contradiction to the evidence that he had given in the High Court proceedings. Mr Dutton QC stated that the Respondent had simply disbursed monies which had come to him from the Zamtrop account at the behest of Mr Kabwe or Mr Kaunda. He submitted that it was not credible to suggest that the Respondent had not known that he was dealing with monies that had come from the Zamtrop account, or that he may have been dealing with monies which belonged to the Zambian State.

Trace 2 - Part 2

97.81 The Tribunal was told that the Respondent now appeared to accept that his client was Redcliffe Limited and not Mr Shansonga. Mr Dutton QC suggested that the Respondent must have known that Redcliffe was no more than a shell operation as it did not have a bank account. Despite this, and although he knew that his "client" for these purposes was Redcliffe, the Respondent had made payments to third parties

when he had no explanation as to why he should have made those payments. In his evidence to the Tribunal, the Respondent had contended that there "would have been" underlying documents to justify the payments but no such documentation had been produced. He had been asked to provide disclosure by the Applicant but had not responded although he had been able to produce a Zamtrop bank statement when this had suited his purpose. Mr Dutton QC told the Tribunal that the Respondent had been prepared to disburse monies which were held by him for his client Redcliffe without there being any underlying transaction or any justification for the payments.

Trace 22

97.82 Mr Dutton QC submitted that solicitors did not simply receive money from other solicitors without knowing why they were receiving such funds. He suggested that the Respondent's explanation that the transfer of monies constituted repayment by AFSL of a loan made from Epakor did not make sense. There had been only $30,000 left outstanding on the loan and this was clearly an overpayment. He submitted that in reality, these were money transfers between participants in wrong doing which had been facilitated by the Respondent. Further, if AFSL was dependent on loans from Epakor then it was not a substantial operation, and the Respondent's suggestion that it was a reputable merchant bank, was unsustainable. Mr Dutton QC claimed that if there had been a genuine arm's length loan transaction between Epakor and AFSL then there would have been no need at all for the Respondent's London firm to be used for the repayment. Mr Dutton QC told the Tribunal that the Respondent's explanation that he held a Power of Attorney for Epakor made even less sense as a London solicitor would not be using a Power of Attorney for a shell company on behalf of an individual in Zambia unless he was being used to assist in a transfer of monies which could have been the result of wrongdoing.

Trace 27

97.83 Mr Dutton QC told the Tribunal that he made similar submissions to those set out in relation to trace 22. He suggested that the Respondent was being used to pass monies around between individuals who may have obtained those monies unlawfully. He submitted that there was no justification for the involvement of the Respondent's firm in this matter. He was being used as a "posting box" or "running account" transfer facility.

Trace 49

97.84 Mr Dutton QC told the Tribunal that this trace had involved a huge sum of money. He suggested that the Respondent would have been anxious to ensure that his bank was prepared to receive the money and then transfer it in accordance with his instructions. Mr Dutton QC stated that the Respondent's assertion that he had not known that the money had been received from Zamtrop was un-sustainable as the receipt had been described as such in his bank account and on his own ledger. The Respondent had explained that there had been a "delay" in the property transaction but Mr Dutton QC stated that this did not justify the disbursement of monies to third parties for unconnected purposes and in clear breach of the Blue Card Warnings.

97.85 In particular, Mr Dutton QC asked the Tribunal to take account of the fact that the Respondent had claimed to have lent money to Mr Kabwe which had been repaid from funds belonging to AFSL. Mr Dutton QC told the Tribunal that no self-respecting solicitor would ever lend money personally to the Chief Executive of a company and then reimburse himself out of the company's funds when he knew that the funds were intended for a Zambian investment on behalf of a reputable merchant bank. He stated that this was the clearest indication that the Respondent knew or suspected that he was dealing with people who were handling monies unlawfully.

Trace 33

97.86 Mr Dutton QC told the Tribunal that the Respondent had not provided an explanation for the large cash withdrawal or for the other payments to third parties, save for the payment to M Subastian, which he had claimed was a settlement sum for someone who had previously worked for AFSL. Mr Dutton QC stated that there was no documentation to justify this assertion. In addition, he stated that the monies deducted as a fee for the Respondent could not relate to a genuine property transaction in Zambia. He told the Tribunal that Cave Malik Ndola had been used for the purchase and it did not make sense that a London firm should be used in relation to this matter. He stated that although the Respondent's fee note had referred to a property transaction, in reality, this was a round sum fee taken for providing a money transfer facilitation service or "running account" service. He suggested that the payments had been made at the request or direction of Mr Kabwe and/or AFSL and could only be explained as the Respondent operating a money transfer or "running account" facility at the behest of Mr Kabwe and/or his associates.

Trace 37

97.87 Mr Dutton QC reminded the Tribunal that the Respondent had altered his account and now contended that the payment was in respect of a fee for the acquisition of Polypackers. However, the documentation that the Respondent had produced to support this assertion was dated three and a half months later. Mr Dutton QC told the Tribunal that once again, the Respondent had provided a banking or "running account" facility for those who were involved with, or connected with, the unlawful distribution of monies from the Zambian State.

Trace 42

97.88 Mr Dutton QC told the Tribunal that the money had derived from the Zamtrop account. It had gone to Meer Care and Desai and from there to Cave Malik in London and thence to Cave Malik in Ndola. He submitted that there was no justification for the involvement of the Respondent's firm in this circular movement of money.

Trace 52

97.89 Mr Dutton QC told the Tribunal that the Respondent's assertion that he had no idea that these monies had come from the Zamtrop account or that they may have derived from Zambian State funds was unsustainable. It required the Tribunal to believe that no-one had ever mentioned the source of the funds. There had been no documentation to support the payments made from this account and again, the

Respondent had been operating a money transfer or "running account" in circumstances where he knew, or at the very least suspected, that he was dealing with Zamtrop monies and Zambian State funds.

The payment to Dr Chiluba

97.90 Mr Dutton QC told the Tribunal that the Respondent knew that Dr Chiluba had been accused of being a crook and a thief in May and July 2001. He suggested that the letter written by the Respondent to his bank had been necessary to justify the request for cash and was not a defence to dishonesty. He had handed over £30,000 in cash to a person he had met for the first time the day before, and whom he knew was suspected of being a thief. The money had come from the account of a third party. He submitted that the Respondent knew that his conduct was dishonest by the standards of right-minded and reasonable people, and the Respondent's suggestion that he had not acted dishonestly required the Tribunal to believe that he was able to set his own standards of honesty.

The Matrix of Plunder Payments

97.91 The Respondent had admitted that he needed to exercise caution after the article had appeared in the Zambian press. He had claimed that his suspicions were "allayed" when the criminal libel proceedings had started but in cross-examination, had stated that he had never had any suspicions. Mr Dutton QC submitted that a solicitor acting in accordance with his duties would not hand over monies knowing, as he did, that there was a "cloud of suspicion" over Dr Chiluba and Xavier Chungu. He submitted that the Respondent's explanation in relation to the payment to Irene Kabwe was not credible.

97.92 Mr Dutton QC stated that the Respondent had disbursed monies to the families of the alleged "plunderers", knowing full well that he should not be doing so. He claimed that the Respondent's allegiance had been to them and not to his professional obligations. He told the Tribunal that the Respondent's conduct had been dishonest on both the objective and subjective standards in the same way as it had been dishonest in relation to the payment to Dr Chiluba. In conclusion, Mr Dutton QC submitted that each allegation had been established to the required standard.

Respondent's Closing Submissions

97.93 The Respondent repeated his earlier submissions regarding his state of health. He told the Tribunal that these proceedings had been a re-trial of the High Court action but without all of the documentation. He explained that he had been ordered to provide his client files during the High Court proceedings and he had not had access to them since. However, he conceded in answer to a question from the Panel that he could have obtained the documents if necessary. He asked the Tribunal to consider his written closing submissions upon which he intended to rely.

Allegations 1.1 and 1.2

97.94 In his closing submissions, the Respondent claimed that these allegations had been withdrawn due to the concessions made by the Applicant in April 2010. In the

alternative, he claimed that the allegations had not been remitted and had been dealt with by the earlier Tribunal with no separate sanction applied. He submitted that although the sanction had been overturned on appeal, this did not mean that the allegations could be put again. In the further alternative he claimed that even if the allegations had been remitted back to this Tribunal, then any breach was purely technical as there had been no shortfall in the client account.

Allegations 1.3-1.4

97.95 The Respondent claimed that the Court of Appeal had criticised the Findings of the High Court both on fact and law and he asked the Tribunal to take this into account. He stated that under the Tribunal's rules, the High Court Judgment was only *prima facie* evidence of the facts relied upon and could be rebutted by any other admissible evidence.

97.96 In his submissions, the Respondent asked the Tribunal to consider the written evidence of Dr Chiluba and Mr Ngulube. He pointed out that Mr Ngulube had not been a party to the High Court proceedings nor faced any charges in Zambia. He stated that Xavier Chungu had not faced trial in Zambia either. This was relevant as it had been alleged that he had control of the AFSL account as Head of the Security Service. He claimed that the documentation that he had provided from Government officials raised doubt as to whether the Zamtrop account was a Government account at all. He had referred the Tribunal to the copy bank statement in the name of Zamtrop and pointed out that there was nothing to suggest that this was an account in the name of ZSIS. He submitted that the Applicant had been unable to produce any documentation, save for the High Court findings, to establish a connection between the bank account and ZSIS.

97.97 It was the Respondent's assertion that the Grant Thornton report had been produced to establish a "flow of funds". Its purpose had been to prove a conspiracy as alleged in the High Court. He claimed that the report did not assist the Tribunal. He submitted that it was not possible to rely on the payments out from his client account as having a direct connection to the payments in. In his view, the client file and its ledger should be used to investigate matters coming before the Tribunal. He claimed that Miss Pincott had been asked to trace the flow of funds but not to establish the beneficial ownership of the monies. He pointed out that the Ministry of Finance funds had been held in Kwacha and there had been a discrepancy between the traced funds and untraced funds of some $9 million. He stated that Ms Pincott had not been asked to investigate the untraced funds. He claimed that although marked as traced, Ms Pincott could not trace to Government funds eight transfers to the Zamtrop account in relation to traces 2, 22, 33, 37, 47 and 49. He submitted that the Applicant's assertion that these were Government monies must fail.

97.98 In his submissions, the Respondent stated that his method of ledger keeping had not been criticized by either of the two inspectors who had visited his firm. He reminded the Tribunal that the FIO's evidence had confirmed that the firm's ledgers had been properly prepared. He claimed that it would have been obvious that the ledgers dealt with more than one transaction and were therefore a "running account". He did not agree that he had operated a "running account" in order to avoid detection of rule breaches. He told the Tribunal that his witness statement had referred to transactions

underlying the account. He claimed that it was not a breach of the Rules to receive monies into a client account other than from a client and he referred the Tribunal to the definition of client money set out in the 1991 and 1998 versions of the Rules.

97.99 The Respondent claimed that he had no reason to be concerned about money laundering in relation to these transactions. He told the Tribunal that he had been acting and receiving funds for a regulated financial institution and save for Trace 27, all the monies that he had received originated from a bank account held in London. He had been satisfied that he had undertaken the "Know your Client" process and that the funds had been properly received for his client. He maintained that he had no cause to question whether he could be involved in money laundering due to the client checks that he had carried out. He told the Tribunal that Mr Kaunda and Mr Shansonga had been respectable and trustworthy individuals and he had no reason to suspect that they would be involved in money laundering.

97.100 In his submissions, the Respondent disputed the Applicant's claim that the 1999 inspection had been of no relevance. He stated that it was unimaginable that a senior inspector who had attended at an office without notice would not have reviewed files and ledgers in detail. He told the Tribunal that the Applicant now realised the importance of that visit and the fact that the papers arising from the inspection should have been preserved. He stated that as a result of the later inspection which had apparently been for no specific purpose, the FIO had decided by looking at the ledgers alone and without reviewing any files, that there was sufficient evidence to prepare a Report which had led to these proceedings. He submitted that the Applicant's claim that the 1999 visit had no relevance did not stand up to scrutiny in the light of the further inspection. He claimed that the Applicant could not "have it both ways".

97.101 The Respondent's case was that there had been good reason for him to provide the service that he had. He referred to the fact that the firm had been a multi-national practice approved by The Law Society. He denied that there had been any inconsistency in the evidence that he had given to the Tribunal and to the High Court. He stated that there had been a different emphasis in the High Court proceedings which had not been concerned with regulatory matters to any great degree. He denied that he had operated a "bare banking" facility and claimed that there had been "transactional" work.

Traces

Trace 2 Part 1

97.102 In his submissions, the Respondent claimed that the Applicant had not produced any evidence to show that he knew, or ought to have known, that the Zamtrop account was a Government account. He submitted that there had been no breach of the Accounts Rules in relation to this trace, and in view of this he claimed that the alleged breach of Rule 1 "fell away". He maintained that he had not breached the Blue Card Warnings or money laundering Guidance.

Trace 2 Part 2

97.103 The Respondent asked the Tribunal to consider the documentation that he had

produced in relation to the sugar contract. He submitted that the events in relation to this transaction had taken place in 1996 when an understanding of money laundering was just beginning to evolve. He claimed that there had been no regulatory breach or breach of the Accounts Rules.

Trace 22

97.104 The Respondent referred the Tribunal to the High Court Judgment. He stated that the Judgment was evidence of the fact that there had been a loan and that Mr Kaunda had been the beneficial owner. He claimed that he had produced documentation to show that the loan facility was in the sum of $250,000. He told the Tribunal that the loan repayment had been made and claimed that as he held a power of attorney for Epakor, there had been good reason for his firm to receive the money. He stated that there could be nothing wrong in a solicitor making payment to another solicitor when the first solicitor was discharging a client's debt.

Trace 27

97.105 The Respondent claimed that there had been a legitimate reason for the payment to be made to his firm as he had been representing the lender whose facility was being managed through his practice. He referred the Tribunal to documentation setting out the calculation of interest and submitted that there could be nothing wrong with a borrower repaying interest on demand that was due under a loan to the lender's solicitor.

Traces 49 and 33

97.106 In his submissions, the Respondent stated that these traces related to the purchase of a block of flats in Zambia for which he was instructed. He claimed that the documentation that he had disclosed showed that he was in Zambia at the time that he had authorised the payments which had been made.

Trace 37

97.107 The Respondent had claimed that this trace related to the purchase of assets from the liquidator of Polypackers. He acknowledged that his disclosure in relation to this transaction had been incomplete and blamed this on the pressure of dealing with this matter and his health. He claimed that the High Court Judgment had referred to the deposit that was provided.

Trace 42

97.108 The Respondent denied that this trace had involved a circular movement of money. He claimed that the transaction had involved the acquisition of a property carried out by a partner of the firm who also practised in Zambia. He reminded the Tribunal that Cave Malik had been known as a multi-national practice.

Trace 52

97.109 The Respondent stated that this trace related to a loan made by AFSL to the Zambian

National Commercial Bank. He referred to various items of documentation to confirm this.

The payment to Dr Chiluba

97.110 In his submissions, the Respondent denied that he had been dishonest in relation to this transaction. He claimed that there had been transparency throughout and that his client had been a licensed regulated institution. He claimed that six months had elapsed between the date of the article and the meeting with Dr Chiluba. He stated that there had been no accounting breach as alleged and he denied that there had been a "cloud" over AFSL.

The Matrix of Plunder Payments

97.111 The Respondent confirmed that the payment to Irene Kabwe had involved the return of funds. He told the Tribunal that the payments to the Chiluba children had been made on the instruction of AFSL and the source of the funds had been known to him. He claimed that his instructions were properly received and AFSL had continued to trade as a licensed organisation with the support and approval of its regulator. He stated that a considerable period had elapsed between the publication of the article in the Zambian press, describing Dr. Chiluba as "a crook", and the date of the payments. There had been no reason to disguise the payments which were not suspicious and there had been no breach of the Accounts Rules. The Respondent claimed that the payments to the Chungu children had been from funds held for Mr Chungu following an abortive transaction, and he had instructions to make the payments from the client's funds.

97.112 In conclusion, the Respondent submitted that he had been prejudiced by the destruction of the papers from the 1999 inspection and the delay in this matter coming before the Tribunal. He asked the Tribunal to dismiss the allegations against him.

97.113 The Tribunal found that the Respondent had failed to produce any unambiguous evidence of underlying legal transactions save for one payment in relation to Trace 52. The explanation that he had given in cross-examination for some of the receipts of money was inconsistent with the evidence that he had given in the High Court. Having received the money, the Respondent had then dispersed this on his client's instructions to various third parties who were not his clients. These payments had nothing to do with any work that the Respondent was carrying out for clients. Even when the Respondent claimed to have received the money for work that he was carrying out, such as the proposed purchase of property in Zambia, he accepted and acted upon instructions to distribute the money elsewhere and for purposes which he cannot have believed had any connection with any form of legal work. This did not happen in one isolated case but was a course of conduct that took place over some years.

97.114 It was clear, on the Respondent's own evidence, that he had allowed substantial sums of money to be paid into his client account. This had been done without making any proper enquiry as to the source of those funds and ignoring the information already available to him, such as the notification of the receipt of funds from his bank. The Respondent's evidence to the Tribunal was that his clients had advised him when to

expect funds which were very substantial in some cases. When a corresponding amount of money had arrived in his client account, he had not made any enquiries as to the source of those funds. He had chosen to ignore the information provided by his bank and had credited the receipt to the ledger of a client for whom he had expected such a sum. This was despite the fact that even a cursory examination of his bank statement would have revealed that the funds had come from a source which had no apparent or obvious connection whatsoever with the client in question. Again this was a course of conduct which spanned several years.

97.115 The Respondent allowed money to be paid into his client account by third parties who were not his clients. His own evidence to the Tribunal was that he then accepted and acted on instructions from his client to disperse the money to various third parties. The Tribunal was satisfied that whether or not the Respondent had carried out any legal work for those clients, the funds, which were the subject of the Grant Thornton "traces" were not connected, in any meaningful way, to the provision of legal services by the Respondent. He had made no enquiries as to why these large sums of money were coming into and going out of his client account when there was no obvious reason for his client account to be involved in those money transfers at all. Whilst he had offered an explanation in relation to some of the receipts into his client account, such as the repayment of the Epakor loan or the purchase of a property in Zambia, these explanations were incomplete. He claimed that because AFSL was regulated in some way by the Bank of Zambia, there was no onus on him, as a solicitor practising in England, to conduct himself in accordance with the usual rules of the profession and to act with a normal degree of caution in order to protect the integrity of his client account.

97.116 The Respondent was vague in relation to his knowledge of the Blue Card Warnings which had been published by The Law Society from 1994. The frequency with which the Warnings and the money laundering Guidance had been updated and published throughout the profession, made it inconceivable and beyond credibility that the Respondent, as an experienced solicitor, could have remained ignorant of the Warnings throughout his professional life. In any event, knowledge of the contents of the Warning Cards and money laundering Guidance were not optional for a member of the profession and ignorance was no defence to a breach. The Respondent had clearly ignored every single warning sign highlighted in the Blue Card Warnings. He had received money into his client account from non-clients. He had made payments to third parties. He had held money for clients when he was not carrying out any connected work for them and there was no obvious reason for him to handle the money. He had withdrawn money in cash and made cash payments to third parties. His own evidence was that he had never queried the source of the funds held nor the instructions as to its disposal. In particular, he had never questioned why the money was going through his client account at all. In one instance he had maintained that it was because the client did not have his own bank account, although that was untrue. He did not check his bank statements as to the source of the funds received into his client account.

97.117 The Respondent had admitted the facts relating to the payment to Dr Chiluba. He knew the source of the money as he had confirmed this in his letter to the bank. He had also admitted the facts relating to the dispersing of money to Irene Kabwe, and to the children of Dr Chiluba and Xavier Chungu. In his submissions, the Respondent

had claimed that he could not be in breach of Rule 1 of the Solicitors Practice Rules 1990 in the absence of any allegation of a breach of a specific Rule such as the Solicitors Accounts Rules. This argument assumed that Rule 1 was in some way dependent upon a breach of another Rule. This was clearly incorrect. Rule 1 sets out the overarching duty of solicitors and is clear in its terms. It requires a solicitor to be independent and honest and act in such a way as to protect his own good reputation and that of the profession in general. The observance of Rule 1 is fundamental to the relationship between the profession and the public it serves and to the relationship between individual solicitors. It is the very backbone of the profession and a breach of Rule 1 is always a serious allegation.

97.118 The Tribunal found that the conduct set out in allegations 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5 and 1.3.6 collectively amounted to a breach of Rule 1 of the Solicitors Practice Rules 1990 and therefore found allegation 1.3 substantiated. In addition, the Tribunal found that the conduct referred to in allegations 1.3.1 to 1.3.4 had been grossly reckless. Indeed, on the Respondent's own evidence, it was clear that he had exercised no care or caution at all in his acceptance of funds into his client account or in relation to the payments that he had made.

97.119 In relation to the conduct described in allegations 1.3.5 and 1.3.6, the Tribunal had been invited to find that the Respondent had been dishonest. The Tribunal considered the "dual" test for dishonesty as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. On 16 May 2001, the Zambian press had made allegations that Dr Chiluba's Government was dishonest and the Respondent had admitted that he was aware of those allegations. On 10 July 2001, the sum of $200,000 had been received into his client account from the Office of the President and was credited to the AFSL ledger with the narrative "Office of the President". Further allegations were made in the Zambian press on 16 July 2001 and the Respondent had been aware of those allegations as well. On 6 November 2001, a further sum of $399,995 was received into his client account from the Office of the President and was again accredited to the AFSL ledger.

97.120 On 12 November 2001, the Respondent had met Dr Chiluba for the first time. Dr Chiluba had not been a client of the firm, although the Respondent suggested that he had discussed the preparation of a Will with him. At that meeting Dr Chiluba had asked the Respondent to make a payment to him of £30,000 in cash. The Respondent had withdrawn the money from his client account and paid it to Dr Chiluba on 13 November. The payment did not relate to any work that the Respondent was carrying out either for Dr Chiluba or for AFSL. A request to a solicitor for a cash payment from anyone was unusual in itself and could be suspicious. If the person making the request was not a client, and if the solicitor had in fact never met that person before, then the request became more suspicious. If the person making the request, as well as not being the client and not being known to the solicitor, was someone who, to the solicitor's knowledge, was subject to serious allegations of dishonesty, then the request for a large cash payment exceeded suspicious and became sinister. The Respondent had merely obtained confirmation from Mr Kabwe that the payment should be made and handed the money over without a qualm except for a slight concern over his own safety in carrying such a large sum of cash.

97.121 On 25 June 2002, an article entitled."The Matrix of Plunder" appeared in the Post newspaper. It was a detailed article and alleged dishonesty against not just Dr Chiluba and his associates, but also against AFSL and two firms of solicitors in England and their individual partners that included Cave Malik and the Respondent. The Respondent had been aware of the article. With all of his family and business connections in Zambia, he could not have been unaware of it and he had admitted that he knew of the article. He knew that he stood accused of being part of a conspiracy to steal millions of dollars from the Zambian Government. Whilst the Respondent, throughout the proceedings, had maintained that he was not aware that he had received funds from the Zamtrop account, he was aware that he had received money from Meer Care and Desai who were the other firm of solicitors named in the article and he was aware that he had received funds from the Office of the President. The article would have caused any honest solicitor, in the position the Respondent was in, to have very serious concerns about funds which had already passed through his client account and to be even more vigilant as to his future conduct in relation to the clients named in the article.

97.122 Against this background, the Respondent received into his client account a payment of $10,000 in circumstances where the bank statement did not identify the source. The funds were credited to the Cave Malik general ledger with the narrative "Xavier Chungu" and seemingly he was the source of those funds. The Respondent then proceeded to make a payment to the children of Dr Chiluba, the children of Xavier Chungu and to Irene Kabwe. On 29 June 2002 Faustin Kabwe had been arrested and although later released, this event would have rung warning bells which an honest solicitor would have registered. It was clear to the Tribunal that the actions of the Respondent had been dishonest by the standards of right minded and reasonable people and so the objective test as set out in Twinsectra had been met.

97.123 The Respondent submitted that he did not believe that the various allegations in the Zambian press were true. The Respondent had met Dr Chiluba on only two occasions and on the second of which, he had handed him a large sum of money in cash. Those brief meetings could not possibly have enabled the Respondent to make any reasonable appraisal as to the honesty of Dr Chiluba. The payment to Dr Chiluba was made at his request and on the authority of Mr Kabwe who had also been named as dishonest in the Zambian press article.

97.124 The Respondent had denied dishonesty throughout the proceedings. He had claimed not to have known that money had been received into his client account from the account of Zamtrop. He had denied any knowledge of the Zamtrop account despite the evidence on his bank statements and client ledgers. The Tribunal did not believe the Respondent's assertions in this respect. It was beyond all credibility that the Respondent could have received a series of substantial sums into his client account without having made any enquiry about their provenance. Even if he had made no specific enquiries, it was beyond belief that he would have been unaware of the information in his bank statements and which his bookkeeper had faithfully copied on to his ledgers.

97.125 When the Respondent had become aware of the "Matrix of Plunder" article, he must have known that he had cause, at the very least, to be extremely cautious. Nevertheless, he proceeded with payments to the Chiluba children, the Chungu

children and Irene Kabwe. His justification for the payments to Irene Kabwe was that he was returning funds to her which she had transferred to him for a property transaction on which he had subsequently not acted. The evidence given to the Tribunal in relation to that original transfer of funds was ambiguous and on balance indicated that the funds came from Faustin Kabwe. The Respondent's justification for all of the payments was that he had been acting on the instructions of clients who were at best under public suspicion of dishonesty and at worst were in fact dishonest and the Respondent had no way of knowing which.

97.126 The Tribunal considered that honesty, in the same way that awareness of the Blue Card Warnings, Money Laundering Guidance and the Solicitors Accounts Rules was not optional for solicitors, neither was the standard of honesty. A solicitor could not turn a blind eye to the glaringly obvious and claim to be honest as a result. As Lord Hutton stated in Twinsectra:

> "He should not escape a finding of dishonesty because he sets his own standards of dishonesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct."

97.127 Having considered all the evidence presented, the Tribunal concluded that the Respondent knew his actions in relation to the payments referred to in allegations.1.3.5 and 1.3.6 were dishonest by the standards of right-minded and reasonable people and the Tribunal found the allegation of dishonesty substantiated against the Respondent.

97.128 In the light of the Tribunal's findings in relation to the other allegations, it followed that allegation 1.4 had also been substantiated against the Respondent.

Previous Disciplinary Matters

98. None.

Mitigation

99. The Respondent told the Tribunal that he did not have any references or testimonials to submit. He stated that there had been no personal benefit to him in relation to the conduct that had formed the subject matter of the allegations against him. He submitted that the delay and the loss of evidence had prejudiced him and pointed out that he had already been struck off from the Roll for a year following an unfair process.

100. Given the findings against him, the Respondent told the Tribunal that he assumed that he would be struck off the Roll again and he asked for a stay of any Order pending an appeal. He told the Tribunal that he had already provided an Affidavit setting out his means. He had no assets and he referred the Tribunal to a copy of a previous tax return to show that he had a limited income. He asked the Tribunal to consider the cases of D'Souza v The Law Society [2009] EWHC 2193 (Admin) and Merrick v The Law Society [2007] EWHC 2997 (Admin) in the event that the Tribunal was minded to make an Order for costs against him.

Sanction

101. The Tribunal had found all of the allegations substantiated against the Respondent. The allegations were of an extremely serious nature and the Respondent had compromised his independence and integrity together with his good repute and that of the solicitors' profession. He had also been found to have been dishonest. In the circumstances the only appropriate penalty was that the Respondent should not be allowed to practice and accordingly the Tribunal ordered that he should be struck off the Roll of Solicitors. The Tribunal dismissed the Respondent's application for a stay pending an appeal.

Costs

102. Mr Dutton QC told the Tribunal that the Applicant's costs were very substantial and were in excess of £200,000. He did not invite the Tribunal to make a summary assessment of costs but instead made an application that costs should be subject to a detailed assessment if not agreed. He asked that the Respondent be ordered to make a modest contribution of £40,000 now as an interim payment towards costs.

103. The Tribunal was told that the Respondent had failed to provide any satisfactory evidence as to his lack of means and Mr Dutton QC referred the Tribunal to the case of SRA v Davies & McGlinchey [2011] EWHC 232 (Admin). Mr Dutton QC told the Tribunal that the Respondent did have an account with Caversham Trustees. He stated that he would have expected the Respondent to produce details of this account and of any Zambian properties that he may own. He submitted that an interim payment of £40,000 was only a modest proportion of a much larger bill and he believed that even allowing for the Respondent's financial circumstances, he would be ordered to pay such a sum in any subsequent assessment of costs. He pointed out that the interim payment was still less than 50% of the amount that the Respondent had claimed for his own costs and he reminded the Tribunal that the Respondent had fought these proceedings throughout. He submitted that it was incumbent upon the Respondent to set out evidence of his means and he suggested that the Tribunal may wish to make further enquiries as to the Respondent's financial circumstances.

104. The Respondent stated that the Applicant's costs were excessive. He told the Tribunal that the Applicant had chosen to use a new legal team and this had substantially increased costs. He agreed that it would be proper to proceed with a detailed assessment and submitted that his own costs were somewhat modest.

105. The Tribunal did not consider that this was a suitable case for a summary assessment of costs and Ordered that costs should be subject to a detailed assessment if not agreed between the parties. Given the Respondent's apparent impecuniosity, the Tribunal stated that any costs order should not be enforced without leave of the Tribunal.

Statement of Full Order

106. The Tribunal Ordered that the Respondent, Bimal Bhupendra Thaker, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless

agreed between the parties to include the costs of the Investigation Accountant of the Law Society, such costs not to be enforced without leave of the Tribunal.

Dated this 17th day of April 2012
On behalf of the Tribunal

N Lucking
Chairman