No. 9742/2007

IN THE MATTER OF MICHAEL ADEWALE OLASEINDE
and ANNE MARIE HEMMING, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J. N. Barnecutt (in the chair)
Mr. J. P. Davies
Mr. P. Wyatt

Date of Hearing: 17th April 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society (subsequently the Solicitors Regulation Authority) by Robert Simon Roscoe solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman of 70 Marylebone Lane, London W1U 2PQ that Michael Adewale Olaseinde of Cuffley, Potters Bar, Hertfordshire solicitor and Mrs Anne Marie Hemming of Cuffley, Potters Bar, Hertfordshire might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

1. The allegations against Mr Olaseinde were that he has been guilty of conduct unbefitting solicitor in each of the following particulars, namely:-

   (a) That he allowed his client account to be used to provide clients with banking services in breach of Rules 1(d) and (e) of the Solicitors Practice Rules 1990 and Rule 15 of the Solicitors Accounts Rules 1998.

(b) That he failed to notify the Bank of Scotland of the actual price of properties, in two unconnected conveyancing transactions, in which he was acting for both the purchasers and the Bank of Scotland as mortgagee in breach of Rules 1 and 6 Solicitors Practice Rules 1990.

(c) That he improperly withdrew or allowed to be withdrawn client money from his client account in breach of Rules 22(1) and (5) of the Solicitors Accounts Rules. 1998

(d) That he failed upon discovery to remedy a shortage of money in clients account in breach of Rule 7(1) of the Solicitors Accounts Rules 1998.

(e) That he failed to maintain his client account in accordance with Rule 32 of the Solicitors Accounts Rules 1998.

2. The further allegation against Mr Olaseinde was that he has been guilty of conduct unbefitting a solicitor in that:-

(a) During the course of The Law Society's inspection of the firm Mr Olaseinde created a false document for the express purpose of misleading The Law Society's investigator in breach of Rule 1 of the Solicitors Practice Rules 1990.

3. The further allegations against Mr Olaseinde and against Mrs Hemming were that they have been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

(a) [Withdrawn with the agreement of the Respondents and the consent of the Tribunal]

(b) That they failed to notify their clients of relevant information in accordance with the instructions given to them and in breach of Rules 1 and 6 of the Solicitors Practice Rules 1990.

(c) That they failed to comply with their professional undertaking in breach of Rule 1 of the Solicitors Practice Rules 1990 [This allegation was proceeded with against Mr Olaseinde alone with the consent of the Tribunal].

(d) That they improperly withdrew or allowed to be withdrawn client money from their client account in breach of Rule 22 of the Solicitors Accounts Rules 1998.

(e) That they failed upon discovery to remedy a shortage of money in clients account in breach of Rule 7(1) of the Solicitors Accounts Rules 1998.

(f) That they failed to maintain their client account in accordance with Rule 32 of the Solicitors Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Robert Simon Roscoe appeared as the Applicant and both Respondents were represented by Mr H Rees of Counsel.

The Evidence before the Tribunal

The evidence before the Tribunal included the admissions of both Respondents. Handed up on behalf of the Respondents was a letter from the Respondents' accountants and a letter addressed to the Solicitors Regulation Authority in connection with a proposal to place conditions on the Respondents' practising certificates. Mr Olaseinde gave oral evidence.

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

The Tribunal Orders that the Respondent Michael Adewale Olaseinde of East Cuffley, Potters Bar, Hertfordshire, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00 inclusive on a joint and several basis.

The Tribunal Orders that the Respondent, Anne Marie Hemming of Cuffley, Potters Bar, Hertfordshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 17th day of April 2008 and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00 inclusive on a joint and several basis.

The facts are set out in paragraphs 1 to 43 hereunder:-

1. Mr Olaseinde, born in 1960, was admitted as a solicitor in 2002. Mrs Hemming, born in 1966, was admitted as a solicitor in 2003. Both of the Respondents' names remained on the Roll of Solicitors.

2. During the period relevant to allegation 1 against Mr Olaseinde, he was in partnership at the firm of Ian Guyster & Co. Solicitors at Cuffley, Hertfordshire.

3. From 1st April of 2005 Mr Olaseinde and Mrs Hemming were in partnership in practice as Michaels & Co. at Cuffley, Hertfordshire.

4. It had been intended that Mr Olaseinde's former partner, Mr Guyster, also answer allegations before the Tribunal. The Law Society had been notified in February 2007 that Mr Guyster had died.

5. Allegations 2 and 3 related to the time when the Respondents were in partnership together.

6. When Mr Olaseinde was in partnership with Mr Guyster, the firm's name was Ian Guyster & Co. Solicitors. Mr Guyster ran the office at Belsize Village London which transferred to Enfield, Middlesex and Mr Olaseinde ran the firm's Cuffley office. The partnership between Mr Olaseinde and Mr Guyster was dissolved early in 2005, the date not being certain, when Mr Olaseinde remained in sole practice at the Cuffley office under the style of Michael and Co. until Mrs Hemming joined him in partnership.

7. Prior to the dissolution of the partnership between Mr Guyster and Mr Olaseinde an Investigation Officer of The Law Society, the IO, carried out an inspection of the books of account and other documents of Ian Guyster and Co. Solicitors.

8. The IO produced a report dated 3rd June 2005 which was before the Tribunal.

9. The IO reported that the firm's books of account were not in compliance with the Solicitors Accounts Rules. They were not fully written up.

Allegation 1

10. A minimum cash shortage of £43,923.26 existed in the client account at 31st January 2005 which increased to £46,423.26 on 3rd February 2005. The minimum cash shortage of £43,923.36 arose as the result of overpayments made in respect of the client, Mr H. The shortage was increased by a further payment of £2,500.00. Mr Olaseinde told the IO, and explained in his oral evidence, that he had made an overpayment to Mr H who had not paid the money back when requested. It had been necessary to pursue Mr H for the money through the Courts. Eventually Mr H had repaid the money to Mr Olaseinde's firm and the shortage had been rectified.

11. The IO ascertained that the firm apeared to have been used as a bank by Mr H. Mr Olaseinde had acted for Mr H in the sale of a company incorporated in Switzerland. The firm received part of the sale proceeds into its HSBC client account. Payments totalling £698,950.05 were made from client bank account to Mr H, members of his family and others between 5th August 2003 and 8th February 2005.

12. The IO had expressed the concern that the transaction conducted by Mr Olaseinde on behalf of Mr H bore the hallmarks of money laundering . Under an agreement dated 27th July 2003 made between Mr H (the seller) and Mr B (the buyer) Mr B had agreed to acquire the entire issued share capital of the company for US$ 3,000.000.00. US$100,000.00 was to be paid to the seller, US$1,000.000.00 was to be transferred to the seller's solicitor in exchange for 40% of the shares and US$100,000.00 were to be returned to the buyer from the seller. The firm's client account had been credited with the stirling equivalent of US$100,000.00 on 31st July 2003 and with the stirling equivalent of US$900,000.00 on 13th August 2003. Between 5th August 2003 and 8th February 2005 that account had been credited with a transfer of £33,554.09 from another ledger account in the name of Mr H and debited with 43 payments totalling £698,950.05 which gave rise to the overpayment of £46,423.26. The payments included seven totalling £94,500.00 to Mr H and fourteen totalling £320,000.00 to Ms D, described by Mr Olaseinde as Mr H's wife.

13. Mr Olaseinde had agreed with the IO that his client account had been used as a bank. In his oral evidence Mr Olaseinde confirmed his acceptance of that fact but explained that Mr H had conducted business and spent a great deal of his time in Switzerland and did not have a UK bank account. Despite having to take legal action to secure the return of monies overpaid to Mr H, Mr Olaseinde and Mr H had remained on good terms. Mr Olaseinde had introduced Mr H to his own bankers and Mr H had opened a bank account with them. Mr Olaseinde had not been in a position to replace the shortage caused by the overpayment from his own resources.

14. The deficit caused by the overpayment to Mr H was rectified on or about 11th August 2005.

15. At a subsequent inspection of Mr Olaseinde's books of account, an IO ascertained that in May 2004 Mr Olaseinde had utilised £24,202.00 of client money to pay for his personal purchase of property. The property was bought with a mortgage advance from the Bank of Scotland. There was insufficient money in client account from which the balance of purchase price was paid on 17th August 2004 and this created a deficit in the client account of £24,202.00. There was no subsequent payment made into client account by the Respondent. The IO reported that there was an entry in the client ledger, with the narrative "mikes bal w/off to office". There was no evidence that £24,202.00 was ever paid back into client account. The firm's auditors' reconciliation (dated 13th June 2005) showed the sum as remaining outstanding. Mr Olaseinde explained that he had expected or intended the £24,202.00 to have been covered by interest earned on the firm's accounts.

16. The IO recorded that the firm had acted for two unconnected clients in their purchases of residential property in the same development both with mortgage advances from the Bank of Scotland, which also instructed the firm.

17. In each transaction, the relevant client file indicated that the agreed purchase price was £455,000.00. This was the figure confirmed to the Bank of Scotland. In each case there had been a 'cash back' allowed to the purchaser of £107,500.00. This reduction in purchase price had not been disclosed to the lender client in the first transaction. In the second transaction from correspondence on the file the Respondent appeared to have notified the lender of the cash back allowance, but there was no confirmation from the Bank of Scotland that it had agreed to the arrangement.

18. Mr Olaseinde provided the IO with a post-completion letter dated 7th March 2005 sent to the lender seeking acknowledgement of a letter sent to it by the firm on 29th November 2004 and seeking the lender's post-completion approval of the allowance given to its borrowers. In his oral evidence Mr Olaseinde explained that there had been ten properties where the allowance had been given by the selling developer to the purchasers. The Bank of Scotland had been the mortgage lender in each case and was fully aware of the allowance given to each of the purchasers to whom that Bank was making a mortgage advance.

19. On 14th June 2006 an IO carried out a subsequent inspection of the Respondents' books of account and other documents.

20. The Second IO's Report dated 24th November 2006, was before the Tribunal. The IO confirmed that the Respondents held client monies and maintained a client bank account. The books of account were not in compliance with the Solicitors Accounts Rules.

21. The Respondents maintained a client suspense ledger account. Since 31st August 2004 various payments had been posted to it, which at the date of the inspection totalled £96,491.37. That was an improper use of a suspense account. It had not been properly reconciled since 31st August 2004.

22. The Respondents maintained what they described as a "bridging loan account", opened on 30th January 2006. Mr Olaseinde said that it was a private account held separate from the practice. The IO reported that the account was used as a conduit for client monies and transactions and accounting records and reconciliations should have been kept in accordance with the Solicitors Accounts Rules 1998. No such accounting records were maintained in respect of this account. One of the transactions passing through this account had been Mr Olaseinde's own purchase of property referred to in paragraph 14 above.

23. The IO reported that a minimum cash shortage of £116,842.93 existed on the Respondents' client account. That shortage arose from debit balances arising from various overpayments totalling £83,093.94 and from personal payments made to or on behalf of Mr Olaseinde totalling £50,952.00 which, after adjusting for amounts properly due or available to the partners, amounted to a net deficit of £33,199.70.

24. In Mr Olaseinde's personal purchase of property referred to in paragraphs 14 and 21 above, Mrs Hemming had provided his mortgagees with a certificate of title. The mortgagee had not been notified of Mr Olaseinde's position in the firm.

25. In or about December 2005 the Respondents jointly purchased a leasehold property. On 19th December 2005 £26,750.00 was electronically sent from the firm's client account. There was no client ledger account bearing the details of the Respondents. The deficit in client account had been debited to the suspense client ledger account. In respect of this particular deficit Mr Olaseinde denied that he and Mrs Hemming had deliberately used client money without arranging for a prior credit of money, but accepted that the position had not been checked and that a mistake had occurred.

26. The IO further reported that on 30th January 2006 a client ledger account held in the name of Mr NA had been debited with the sum of £168,000.00 and the funds utilised to assist another client, Mr AB, in the purchase of his property. The debit balance was cleared following the reciept of mortgage advance monies from Mortgage Express on 31st January 2006. There was no documentation on either client matter file authorising the transfer of funds. Mr Olaseinde had accepted that an error had occurred.

27. The IO further reported that in March 2004 Mr Olaseinde had acted for Mr HD in his purchase of a leasehold residential property sold by a developer with a mortgage advance from the Bank of Scotland, which also instructed Mr Olaseinde on 5th April 2004. The vendors provided a "cash-back" allowance of £85,000.00.

28. There was on the file a letter dated 6th April 2004 which notified the Bank of Scotland of the cash-back arrangement. The Bank of Scotland had not acknowledged this letter. The IO establised that the letter had been created on 26th June 2006, a date after the commencement of the IO's inspection. In evidence Mr Olaseinde said that he had notified his lender client of the allowance to be granted to the purchaser orally and there had been no objection raised. He had sought to make a record of this but was unable to explain why he had made such record in the form of a letter which on its face appeared to have been addressed to the lender client on 6th April 2004 when such a letter had been neither written nor sent.

29. The IO ascertained that on a number of other purchase files in the period June 2004 to November 2004, cash-back payments had been made or allowed but there had been either no indication to the mortgagees which had instructed Mr Olaseinde or, where a file did contain a letter of notification, there was no acknowledgement of it from the lender client.

30. In his oral evidence Mr Olaseinde said that the lenders had been aware of the position. Even if the lenders had not been notified of allowances granted to purchasers, they protected themselves by having a professional valuation carried out upon which they placed reliance.

31. In one matter stamp duty of £24,800.00 had been paid in January 2006 but no funds had been available for such payment causing a deficit on client account. Mr Olaseinde advised the IO that the seller had agreed to make good the deficit by a loan from monies retained on account in respect of other conveyancing transactions in which the firm had acted on that seller's instrucions. There was no evidence on the file to show that the purchaser client had been aware of the arrangement for such loan or of the risk of a conflict of interest arising from the firm's representation of the seller on other matters.

32. In February 2004 Mr Olaseinde purchased a leasehold property with a mortgage advance from Kensington Mortgages, which instructed the firm to act for it. The transaction was brokered by Property International, which company contributed £41,109.10 to the purchase price. There was nothing on the file to show that the mortgagee had been notified that a third party had contributed to the purchase price. Mr Olaseinde accepted that he had not made such notification. The certificate of title had been signed by Mrs Hemming, then an assistant solicitor employed by the firm.

33. The IO had reviewed the purchase file of Mr WQ. The purchase price was £274,000.00. A "buy to let" mortgage was provided by Mortgage Express, which also instructed the firm. Mortgage Express understood that the purchase price was £330,000.00. The mortgage advance was £280,500.00.

34. On exchange of contracts on 20th March 2006, the contract recorded that the firm held a deposit of £27,400.00 to "order". At the date of exchange no monies had been received from Mr WQ. The certificate of title was signed by Mr Olaseinde and dated 20th March 2006. No indication had been given of the reduction in purchase price. The purchase was described as a "re-mortgage".

35. On 24th March 2006 Mr Olaseinde paid the purchase price of £274,000.00 to the seller's solicitors from his bridging account. On the same day he received into client account the mortgage monies of £280,500.00. Mr WQ was charged an agreed fee of £2,000.00 for the provision of the bridging loan service. The arrangement enabled Mr WQ to purchase the property without making any personal financial contribution and the mortgagee providing an advance in excess of the purchase price.

36. In March 2006 the firm acted for Mr JN and Ms VO-A in their purchase of a freehold property. The purchase price was £292,850.00. Northern Rock agreed to provide a mortgage advance of £248,727.00 and instructed the firm.

37. On 28th March 2006 Mrs Hemming submitted the certificate of title to Northern Rock. On 31st March 2006 the vendor's solicitors sent the Respondents £56,441.33. This was deposited in the Respondents' bridging loan account. Such sum, less £600.00 retained by the Respondents, was then transferred to the Respondents' client account. On the same day the mortgage advance from Northern Rock was received into client account and the balance required to complete paid to the vendor's solicitors. The payment by the vendor's solicitor was a "cash-back" payment that the Respondents should have notified to the mortgagee client but did not.

38. In March 2006 whilst acting on behalf of Mrs JM, who was selling a property following a divorce settlement, without obtaining from her written confirmation that he should accept instructions from her former husband, Mr SM, Mr Olaseinde accepted Mr SM's instructions to make a cash-back payment of £81,043.62 following the completion of the sale of the property. Having advanced £81,043.62 from his bridging loan account in resect of the above payment, Mr Olaseinde charged Mrs JM, a fee of £4,000.00 described as 'loan interest' in respect of the payment without either recording the arrangement on his client file or elsewhere, and without obtaining written confirmation from Mrs SM of her agreement to such fee arrangement and without having advised his client to seek independent advice.

39. There was no authority from Mrs JM for either the repayment or the loan fee on the file. Mr Olaseinde told the IO that he had met Mrs JM but he had accepted all instructions from Mr SM, despite being aware that they were involved in divorce proceedings at the time and without ensuring that Mrs JM had been notified of what was occurring or ensuring that she understood and sanctioned the arrangements.

40. The IO reported that on property sales conducted through the bridging loan account, a proportion of the sale price would be paid via the bridging loan account to the purchasers' solicitors.

41. On 19th December 2005, acting on the instrucions of a client, Mr YA, the Respondents gave a professional undertaking to A. R. F. Co. Ltd., to pay £25,080.00 by close of business on 31st January 2007. The undertaking was provided to assist Mr YA, following the provision to the Respondents of £22,000.00 in respect of a loan made to Mr YA, by A. R. F. Co. Ltd. The Respondents reiterated that undertaking in their letter to A. R. F. Co. Ltd., dated 5th January 2006 which was as follows:-

    "Dear Sirs

    RE: YONTER ASIM, FLAT 15 LUDGROVE HALL

    Please treat this letter as our undertaking to forward you the sum of £25,080 from the proceeds of sale of the above mentioned property after discharge of the mortgage in respect of the advance of £22,000 paid to our client.

    We look forward to hearing from you.

    Yours faithfully

    MICHAELS & CO"

42. The Respondents had been instructed in the sale of a property by Mr YA. The Respondents did not discharge their undertaking and, on 21st February 2006 A. R. F. Co. Ltd., notifed the Respondents that interest charges had accrued since 31st January 2006 (at £250 per day) which meant that the repayment due was £30,830.00.

43. On 7th March 2006 the Respondent wrote to A. R. F. Co. Ltd., to advise them that the sale of Mr YA's property had not been completed and that because their undertaking was subject to such completion there was no breach. Unknown to the Respondents, Mr YA had instructed other solicitors to complete the sale of his property.

The Submissions of the Applicant

44. Both of the Respondents admitted all of the allegations.

45. Allegations 1(a) to 1(e) all arose as a result of the first IO's inspection. Allegations 3(a) to 3(f) against both of the Respondents arose from the second IO's inspection.

46. The Applicant had not alleged dishonesty against either of the Respondents however the Tribunal was invited to take the view that the cumulative effect of the allegations presented a serious picture although it was accepted that client money had not been placed at risk. The allegation relating to the mishandling of client money arose from the conduct of the late Mr Guyster, Mr Olaseinde's former senior partner. Mr Guyster would have been brought before the Tribunal had he still been alive. A number of the allegations arose when Mr Olaseinde perpetuated some of Mr Guyster's established practices. It was accepted that Mr Olaseinde had run the Cuffley office of Ian Guyster and Co. and did so as best he could without being a party to the breaches at the Belsize or Enfield Offices.

47. The Applicant did allege that Mr Olaseinde had created a letter that was misleading. He accepted Mr Olaseinde's contention that the letter contained a truthful statement but that it was itself an untruthful document. The Applicant had been content to accept that Mr Olaseinde's action on this occasion would not fall within the established tests for dishonsty in the cases of "Ghosh" or "Twinsectra v Yardley". Mr Olaseinde's action had not been at the serious end of a scale of dishonesty.

48. Conditions had been placed on the practising certificates of both Respondents following the findings of the IO. Mr Olaseinde, because of those conditions, could no longer operate the practice and it had been made over to another solicitor, Mr K. Mrs Hemming had worked for Mr K until she suffered a mental breakdown. The Law Society had refused to consent to Mr Olaseinde being employed by Mr K who continued to run the Cuffley office as part of his firm.

49. In the circumstances it had not been considered necessary to intervene into the Respondents' practice.

50. The Tribunal was invited to recognise that the matters alleged against Mr Olaseinde were serious but should not be thought of as being more serious than they were.

51. Mrs Hemming had not attended the hearing and the Applicant accepted the medical evidence filed on her behalf which confirmed that she continued to suffer from mental ill health.

52. The allegations concerning the handling of client money spoke for themselves.

53. Where the Respondents had not notified their lender clients of arrangements between sellers and the borrowing/purchasing clients there had been a breach of the solicitor's duty to ensure that his lender client was provided with all necessary and relevant information. The lender clients' instructions and conditions of advance were specific as to this requirement and the loans were made in accordance with the provisions of the Counsel of Mortgage Lenders Handbook which also left a solicitor in no doubt that he must make such notification and proceed to complete a mortgage advance only if the lending client is satisfied with the position and instructs him so to do.

54. Some of the Respondents' handling of money would inevitably have caused suspicion. In the case of Mr H a number of the hallmarks of mortgage fraud, about which The Law Society had warned solicitors, were present. Money had been lent from one client to another without formal authority from the clients concerned and without clients being required to take independent advice. In general terms Mrs Hemming appeared to have signed certificates of title without having a proper regard to their contents simply as a matter of form.

55. It would be recognised that Mr Olaseinde and Mrs Hemming had fallen very far short of their duties and responsibilities as solicitors in a number of conveyancing transactions.

56. There had been a breach of undertaking when it transpired that the Respondents' firm had given an undertaking with which it was unable to comply.

57. In the light of the Respondents' full admissions, both had agreed to bear the costs of and incidental to the application and enquiry in an inclusive figure of £30,000.00. That figure had been arrived at in recognition of the part played by Mr Guyster in the matters alleged.

The Submissions of the Respondents

58. Mr Rees represented both of the Respondents. There was no conflict between them as Mr Olaseinde recognised that he bore by far the greater part of the liability and culpability for the admitted matters. Mr Olaseinde and Mrs Hemming had been social as well as professional partners. Mrs Hemming had suffered a mental breakdown and her current poor state of mental health was made clear to the Tribunal by the medical evidence produced to it. She had been advised that she should not attend the Tribunal hearing and she had taken that advice.

59. Mr Olaseinde had enjoyed an academic career before entering private practice. He had a number of academic degrees and had lectured in contract, tort, family and business law at a university at the same time being a visiting lecturer to two other universities. Mr Olaseinde had met Mrs Guyster while she was training to be a legal executive and had been introduced by her to Mr Guyster who invited Mr Olaseinde to

join him as a trainee solicitor. Mr Guyster had been admitted in 1972 and had established his practice in 1976. He had over the years had various partners at his practice in North London. Mr Olaseinde had completed his training contract leading to his admission to the Roll in March 2002. Shortly after that Mr Guyster made him a partner. He was, of course, very clearly the junior partner. Mr Guyster had maintained control of the financial and administratve aspects of the firm. Mr Olaseinde had not been involved in such matters. Unbeknown to Mr Olaseinde the Ian Guyster & Co ledgers were in a mess and that had been a crucial factor in the case against Mr Olaseinde.

60. When Mr Olaseinde established the Cuffley office he had inherited that significant problem. He had tried hard to manage it. Mr Olaseinde had established the Cuffley office in May 2004 and had employed a book-keeper in August of that year. She struggled to try to deal with the accounts issues. The book-keeper had been denied details of the clients' opening balances by those at the North London office.

61. Mr Olaseinde had instructed chartered accountants to try to set matters straight before the IO's first inspection began.

62. At considerable expense Mr Olaseinde had instructed chartered accountants and the Tribunal was invited to consider a letter addressed by the accountants to the Regulation Unit of The Law Society dated 6th February 2007 in which it said that it considered it likely that the balance held on the suspense account was equal to the differences identified between the client account and the client ledger. In such circumstances the cash shortage identified by the IO would have been a notional shortage rather than a physical shortage of cash. They said they were not aware of the notional differences between the client account and the client ledger resulting in any physical loss to any client. They said it seemed entirely probable, taking account of the use of the suspense account, that funds were always held in the client account at a level sufficient to cover liabilities to the firm's clients.

63. The shortage in the region of £43,000.00 had occurred because money had been overpaid to the client concerned. There was no question that money had been used otherwise than for the benefit of the client concerned.

64. In his oral evidence Mr Olaseinde explained that he didn't have a proper accountant in place to record transactions. He accepted that ultimately it was his responsibility to keep proper accounting records.

65. In the cases where it appeared that mortgage lenders had not been notified of adjustments to purchase prices Mr Olaseinde explained that the lenders concerned were fully aware of the position where they had been involved with more than one property in a development or had been notified of the financial arrangements between buyer and seller orally. Even if he had not strictly complied with the formal instructions, the Council of Mortgage Lender's Handbook or the requirements imposed upon him by virtue of acting for the lender, the lender was protected by the fact that it had always agreed to make its loan on the basis of a formal valuation of the property which it had itself obtained.

66. Mr Olaseinde accepted that Mrs Hemming had drawn her concern about the failures in the book-keeping and accounting procedures at the firm to his attention. In particular she had been concerned that the book-keeper had not raised queries from time to time whereas in her experience book-keepers frequently had to question fee earners about transactions authorised by them. Mr Olaseinde had believed that the staff he engaged to deal with book-keeping and accounts were very experienced and he had left them to get on with it. One had some twenty years experience with the firm.

67. Chartered accountants had been instructed by the Respondents at considerable cost and Mr Olaseinde had personally paid between £40,000.00 - £50,000.00. At the same time he was having to keep on top of professional work and try to generate more work for the firm. He had not however, shrunk from his responsibilites to his clients. It had never been his intention to ignore any problem and no client had suffered. Client money had never been at risk, although Mr Olaseinde accepted that there had been serious breaches. Those breaches had not been deliberate.

68. With regard to the backdated letter placed on a conveyancing file Mr Olaseinde had been unable to offer any explanation. The IO had required an explanation and had confirmed that in the absence of one he would interview the firm's staff. The staff had been very anxious about their jobs as they were aware that there were problems and Mr Olaseinde had been anxious to avoid their being made more anxious by being interviewed. The notification of the lender of arrangements affecting the purchase price had been properly undertaken in a great many files.

69. Mr Olaseinde had not been able to correct the shortfall caused when Mr H was overpaid because of his lack of personal resources.

70. Since Mr K had taken over the Respondents' firm Mr Olaseinde told the Tribunal that he had taken clients' files to several different firms of solicitors. He attended at those firms to assist with his former clients' cases. In his arrangements with these firms he was not held out as a solicitor and his name did not appear on any of the firms' letterhead. He simply worked on the files and assisted the fee earner having conduct of the work at the firm. He saw the clients only in the presence of that fee earner. He had also been able to introduce new work to those firms.

71. Mr Olaseinde explained that he found himself in a parlous financial position. On 21st April he was to appear in the High Court as the Respondent to proceedings instituted against him by Customs and Revenue with regard to unpaid income tax which Mr Olaseinde accepted was due. He hoped to raise sufficient monies to discharge his income tax debt by selling properties. Mrs Hemming was also being pursued for a substantial sum representing unpaid income tax.

72. Mrs Hemming had only a small involvement with what went on. She had been influenced by Mr Olaseinde who was the dynamo in the practice. Mr Olaseinde readily accepted that the blame substantially should fall on his shoulders.

73. It was hoped that the Tribunal would feel able to deal with both of the Respondents with a degree of leniency and in particular any sanction imposed upon Mrs Hemming should be at a lower level than that imposed on Mr Olaseinde.

The Tribunal's Findings

74. The Tribunal found the allegations to have been substantiated, indeed they were not contested.

75. The Tribunal has had due regard to the detailed facts underlining the allegations and the submissions made by both sides. The Tribunal accepts that Mrs Hemming's culpability is at a considerably lower level than that of Mr Olaseinde and the Tribunal accepts that she has suffered poor mental health and continues to suffer in this way. In her particular circumstances the Tribunal concluded that it would be both appropriate and proportionate, in order to fulfill its duty to protect the public and the good reputation of the solicitors' profession, to order that she be suspended from practice for an indefinite period of time.

76. With regard to Mr Olaseinde, the Tribunal was dismayed by the cumultive effect of the allegations substantiated against him. The Tribunal was deeply concerned at what it regarded as the cavalier approach adopted by Mr Olaseinde towards the handling of clients' money. He appeared to pay little regard to the Solicitors Accounts Rules and in the case of Mr H he had not applied himself to any consideration of the potential for money laundering that the transactions which he undertook might have facilitated.

77. Putting a back-dated letter on a file to make it appear that it had been sent when it had not is unacceptable and might well be fraudulent in some circumstances.

78. Mr Olaseinde appeared not to recognise his personal responsibilities. Where he has caused a shortfall on his client account he is bound to put it right immediately, using his own money if necessary. It is not open to him to use client money to complete his own conveyancing transactions.

79. It is necessary to take very particular care where a solicitor is acting for a lender in connection with his own transaction. It is wholly unacceptable for a solicitor to use money in client account for the purposes of his own property transactions.

80. If a solicitor gives an undertaking with which he cannot comply following the action of his client, the solicitor is nevertheless personally responsible for compliance and the intervening action of the client does not serve to discharge the undertaking. The giving of undertakings is an important part of professional practice. Anyone in receipt of a solicitor's undertaking is entitled to expect that it will be met. Anything less cannot be accepted.

81. Although not alleged against Mr Olaseinde, the Tribunal was deeply concerned to learn that he appeared to consider that it was acceptable for him to use for his own purposes interest generated on money held by him on behalf of clients and also that as a solicitor on the Roll he was entitled to deliver legal services, whilst working at firms with whom he had placed work, without holding a practising certificate.

82. The Tribunal concluded that Mr Olaseinde's failure to grasp the fundamental principles of private practice as a solicitor demonstrated that he was not equipped to practise as a solicitor. Mindful of its duty to protect the public and the good

reputation of the solicitors' profession, the Tribunal concluded that as Mr Olaseinde had not acted with the probity, integrity and trustworthiness required of a solicitor and had not exercised the required proper stewardship over client monies, it was both appropriate and proportionate that he be struck of the Roll of solicitors.

83. The Tribunal noted that both of the Respondents had agreed to pay the Applicant's costs and that the figure of £30,000.00 had been agreed. The Tribunal therefore ordered the Respondents to pay the Applicant's costs in the sum of £30,000.00 on a joint and several basis.

Dated this 23rd day of June 2008
On behalf of the Tribunal

J N Barnecutt
Chairman