No. 9896-2008

IN THE MATTER OF DEREK JOHN LEONARD, *[RESPONDENT 2]*, solicitors, AND *[RESPONDENT 3]*, solicitors' clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A. G. Gibson (in the chair)
Mr. K. W. Duncan
Lady Maxwell-Hyslop

Date of Hearing: 13th November 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Jonathan Richard Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lee, Chester Gates, Chester, CH1 6LT, on 6th February 2008 that Derek John Leonard of Romford Road, London, E7, and *[Respondent 2]* of Stepney Way, London, E1, may be required to answer the allegations set out in the statement which accompanies this application and that such Order may be made as the Tribunal shall think right.

The allegations against the First and Second Respondents were that they had been guilty of conduct unbefitting a solicitor and/or breach of relevant rules in that:-

Allegations against the First Respondent, Derek John Leonard:

(1) He failed and/or delayed in the filing of an Accountant's Report for the year ending 1st September 2004, due for delivery on or before 1st May 2005;

(2) He failed to comply with the expectation of an Adjudicator dated 30th August 2005 as to the delivery of the outstanding Accountant's Report;

(3) He failed to keep accounts properly written up in accordance with Rule 32 of the Solicitors Accounts Rules 1998;

(4) He failed to carry out reconciliations as required by Rule 32 (7) of the Solicitors Accounts Rules 1998;

(5) He facilitated, permitted or acquiesced in an un-admitted person, *[Respondent 2]*, being authorised to make withdrawals from client bank account contrary to Rule 23 of the Solicitors Accounts Rules 1998;

(6) He failed to rectify breaches to the Solicitors Accounts Rules promptly as required by Rule 7 of the Solicitors Accounts Rules 1998;

(7) He purported to practise in partnership with a non-practising barrister and facilitated, permitted or acquiesced in the sharing of fees contrary to Rule 1 and/or Rule 7 of the Solicitors Practice Rules 1990;

(8) He withdrew money from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998;

(9) He facilitated, permitted or acquiesced in the payment of commission or otherwise to introducers of work, contrary to Section 2(3) of the Solicitors Introduction and Referral Code 1990 and/or Section 2A of the Code as amended.

(10) He failed to ensure the prompt return of mortgage funds to a lender client contrary to Rule 1(c) of the Solicitors Practice Rules 1990;

(11) He made a secret profit contrary to Rule 1 and/or Rule 15 of the Solicitors Practice Rules 1990;

(12) He failed to disclose material information to lender clients;

(13) He failed to act in the best interests of lender clients contrary to Rule 1(a) and (e) of the Solicitors Practice Rules 1990;

(14) He failed to exercise any or adequate supervision of employees contrary to Rule 13 of the Solicitors Practice Rules 1990;

(15) He failed to comply with an undertaking dated 3rd April 2006;

(16) He failed to comply with an undertaking dated 28th June 2006;

(17) He failed to comply with an undertaking dated 13th November 2006;

(18) He failed to keep the recipients of the undertaking informed as to reasons for the delay in discharge;

(19) He made representations to Shanaz & Partners which were misleading and/or were inaccurate. In all the circumstances his conduct was dishonest, or in the alternative reckless;

(20) He failed to deal promptly and substantively with correspondence received from the Law Society and/or Solicitors Regulation Authority;

(21) He failed to advise the Solicitors Regulation Authority of the fact of his bankruptcy contrary to Rule 1(e) of the Solicitors Practice Rules 1990 and Rule 1 and/or 20.03 of the Solicitors Code of Conduct 2007;

Allegations against the Second Respondent, *[Respondent 2]*

(22) He facilitated, permitted or acquiesced in a breach of Rule 23 of the Solicitors Accounts Rules 1998;

(23) He purported to practise in partnership with the First Respondent when he was not permitted to do so, given the status of the Second Respondent at the time;

(24) He failed to disclose material information to lender clients;

(25) He failed to act in the best interests of lender clients contrary to Rule 1(a) and (c) of the Solicitors Practice Rules 1990;

(26) He provided a false and misleading representation to the Law Society on his application for admission as a solicitor dated 18th September 2006 (for the avoidance of doubt this is an allegation of dishonesty).

The application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London, EC4M 7NS when Jonathan Goodwin appeared as the Applicant, the First Respondent did not appear and was not represented and the Second Respondent did appear and was represented by Mr Grant Crawford of Counsel.

The case against *[Respondent 3]* was severed and adjourned.

The evidence before the Tribunal included the financial statements for the First Respondent for the period 1st September 2003 to 31st March 2004, written submissions on behalf of the Second Respondent, a contract dated 3rd March 2006, and various additional documents submitted in evidence.

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

The Tribunal Orders that the First Respondent Derek John Leonard of Romford Road, London, E7, solicitor, be Struck Off the Roll of Solicitors.

The Tribunal Orders that the Second Respondent *[Respondent 2]* of Stepney Way, London, E1, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal further Orders that Mr Leonard and *[Respondent 2]* be jointly and severally liable for costs up to and including the costs of 13th November 2008 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society, *[Respondent 2]*'s contribution to be capped at 35% of the total costs up to and including 13th November 2008. The proportion of *[Respondent 3]*'s

contribution, if any, to costs up to and including 13th November 2008 is to be determined at the next substantive hearing.

The facts are set out in paragraphs 1 - 33 hereunder:-

1. The First Respondent, Derek John Leonard, was born in 1956 and was admitted as a solicitor on 1st February 1983. He was adjudicated bankrupt on 25th May 2007 and the Solicitors Regulation Authority resolved to intervene into his practice on 9th August 2007.

2. The Second Respondent, *[Respondent 2]*, was born in 1965 and was admitted as a solicitor on 15th March 2007.

3. The First Respondent carried on practice under the style of Leonard & Co from 1st Floor, 22 Osborne Street, Oldgate East, London, E1 6TD. By a letter dated 30th May 2007 the First Respondent wrote to the Solicitors Regulation Authority indicating that he ceased to practise as Leonard & Co from 23rd May 2007.

4. The last known address of the First Respondent is Romford Road, London, E7. The last known address of the Second Respondent is Stepney Way, London, E1.

5. The First Respondent failed and/or delayed in the filing of an Accountant's Report for the period ending 1st September 2004 which was originally due to be delivered on or before 1st March 2005, but was subsequently due by an agreed extension to be filed on or before 1st May 2005. It is understood that the Report was eventually filed on 12th January 2006.

6. On 14th September 2005 an inspection commenced of the First Respondent's books of accounts and other documents of Leonard & Co. It was ascertained that the accounts were not in compliance with the Solicitors Accounts Rules as the following had not been maintained:-

    - Ledger accounts in respect of numerous client account transactions;
    - Client cash account;
    - Office cash account in respect of dealing with office money relating to any client matter;
    - Listings of the balances shown by the client ledger accounts compared in total with balances and client cash account;
    - Bank reconciliations;

7. As a consequence it was not possible for the Investigation Officer to express an opinion as to whether or not sufficient funds were held in client bank account to meet the total liabilities to clients as at 31st August 2005. Such represents a breach of Rule 32 (2), (4) and (7) of the Solicitors Accounts Rule 1998.

8. Further, the First Respondent failed promptly to rectify the breaches referred to above contrary to Rule 7 of the Solicitors Accounts Rules 1998;

9. A breach of Rule 23 of the Accounts Rules was also identified relating to the Second Respondent being authorised to make withdrawals.

10. The First Respondent was described on the firm's notepaper as a Sole Practitioner. The Second Respondent was at the relevant time a non-practising barrister described as such on the firm's notepaper, as "Barrister (N.P.)"

11. Leonard & Co. was established on 1st September 2003 and the Investigation Officer noted the following matters:-

- In the period 1st April 2005 to 12th September 2005 the First Respondent's drawings totalled £4,690 whilst the Second Respondent's drawings totalled £23,300 in addition to which he received £29,150 by way of commission;
- The Second Respondent dealt with payments to the firm's staff;
- The First Respondent was apparently unaware of the sums received by the Second Respondent by way of drawings/commission;
- The Second Respondent was arranging with accountants for outstanding monies relating to tax and national insurance for the firm's employees to be paid;
- In respect of both the First and Second Respondents, it was said "whatever income you bring in, we will contribute to office costs and that is your income";
- That their respective drawings were to be 50/50, with the First Respondent stating "I understood it to be on an equal basis as a partnership";
- Given the Second Respondent's status it was inappropriate for the First Respondent to share his fees and/or purport to practise in partnership with a non-practising barrister;

12. Due to all of the above matters, there was a failure on the part of the First Respondent to operate effective systems for supervision and management contrary to Rule 13 of the Solicitors Practice Rules.

13. On 14th March 2006 an inspection commenced of the First Respondent's books of accounts. The books were not in compliance with the Solicitors Accounts Rules. A list of liabilities to clients as at 28th February 2006 showed a cash shortage of £17,340.17 on client account.

14. Furthermore, notwithstanding the breach of Rule 23 of the Solicitors Accounts Rules 1998 being highlighted to the First Respondent as a consequence of the first inspection in September 2005, it was ascertained that the Second Respondent remained a signatory to both the client and office bank account. During the second

inspection in March 2006, this was pointed out again to the First Respondent, whereupon he arranged for the cancellation of the Second Respondent's mandate on client bank account.

15. Prior to the commencement of the second inspection, the Investigation Officers identified a cash shortage which had been identified by the First Respondent's accountants who assisted in rectification of this.

16. Both the First and Second Respondents acted in breach of the Solicitors Introduction and Referral Code 1990 in that they facilitated, permitted or acquiesced in the acceptance of referrals from a Mr R in his personal capacity, not being a solicitor, and made payments for those referrals contrary to Section 2(3) of the Referral Code and Section 2A of the Code as amended.

17. The Second Respondent admitted in an interview on 6th April 2006 that he had personally paid Mr R upon completion of individual conveyancing transactions amounts varying between £60 and £300 per transaction. The Second Respondent indicated the money was paid in cash from his personal resources and no records of the payment were kept.

18. On a review of the firm's bills of costs, it was ascertained that it was standard practise in all conveyancing transactions to bill each client an amount of £50 exclusive of VAT, for a disbursement described as "indemnity insurance contribution". The contributions received from clients during the period 2nd December 2005 to 28th February 2006 totalled £6,150. It was also noted that during the same period the indemnity insurance totalled £3,696. Accordingly, there was a secret profit of £2,454 for that period.

19. It was ascertained that the Respondents failed to report incentives/discounts/direct deposits to lender clients in cases where the mortgage advance exceeded the purchase price of the property contrary to Rule 1(a) and/or (c) of the Solicitors Practice Rules 1990 and disregarded the warnings issued by the Law Society on property fraud. The Tribunal were referred to a number of files where the mortgage advance was based on the valuation of the property and not on the purchase price. The mortgage was treated as a re-mortgage and no reference was made to the purchase price on the certificate of title. Incentives that were given to the purchaser were not reported to the lender clients.

20. On 3rd April 2006 the First Respondent gave an undertaking to S & Partners Solicitors "to hand over immediately on completion the following documents:-

    (a) Original statutory declaration of NI with a certified copy of counterpart lease;

    (b) Executed TR1, Executed Assignment of Goodwill, plan signed by the seller and landlord".

21. The First Respondent telephoned S & Partners Solicitors on 3rd May 2006 to complete the transaction and when asked if he was holding all of the relevant documents, the First Respondent confirmed he was holding various documents to include the signed plan and the Certified Copy of Counterpart Lease, when he was not.

22. Following completion, the First Respondent sent various documents to S & Partners Solicitors, however two documents were missing. The Certified Copy of the Counterpart Lease was delivered approximately 8 weeks after completion, and whilst the plan was also delivered it was considered to be defective. A rectified plan was received by S & Partners Solicitors 16 weeks after completion, however, even then it had not been signed by the seller as well as the Landlord as required by the undertaking.

23. The First Respondent was unable to give any explanation for the delay and failed to provide an explanation as to why he had made a representation on 3rd May 2006 that he was holding the plan and the Certified Counterpart Lease when he was not.

24. By a letter dated 28th June 2006, the First Respondent wrote to A Solicitors and undertook to "provide you with the Land Transaction Return Certificate within five days of receipt of the same together with a duly completed AP1 Application form".

25. By a letter dated 29th January 2007 the First Respondent explained the undertaking had been complied with and the Land Transaction Return Certificate and AP1 Form had been sent on 13th December 2006. The undertaking was time specific meaning that the documents should have been sent within 5 days of receipt but the documents were not sent until 13th December 2006.

26. On 13th November 2006 the First Respondent gave an undertaking to L Solicitors as follows:

> "Please accept this letter as our undertaking to pay your reasonable costs up to £200 + VAT, and the costs of the Surveyors Report of £176.25, making a total of £411.25".

L Solicitors complained to the Solicitors Regulation Authority on 4th April 2007 that the First Respondent had failed to comply with this undertaking. The undertaking remained unfulfilled at the date of the hearing.

27. On 26th July 2007 the Regulation Unit received a faxed letter from the Insolvency Service confirming that a Bankruptcy Order was made against the First Respondent in the High Court on 25th May 2007 and attaching a copy of the Bankruptcy Order. The First Respondent failed to advise the SRA as to the fact of his bankruptcy.

28. The Second Respondent was admitted as a solicitor on 15th March 2007 and prior to his admission, he worked at Leonard & Co which firm had been the subject of two investigations. The Second Respondent was interviewed by Investigation Officers in relation to a number of matters that were the subject of the two investigations. On 26th October 2005 the Law Society sent a copy of the Forensic Investigations Report to the Second Respondent and he provided responses to the Law Society dated 30th November 2005, 9th December 2005 and 9th January 2006.

29. On 15th March 2006 an Adjudication Panel resolved to refer the conduct of the Second Respondent to the Solicitors Disciplinary Tribunal. At this time the Second Respondent was not admitted as a solicitor. The Second Respondent was notified of this decision by a letter dated 27th March 2006.

30. On 14th March 2006 the second inspection commenced at Leonard & Co and again the Second Respondent was interviewed in relation to matters.

31. On 18th September 2006 the Second Respondent completed a form "Application for Admission as a Solicitor and for a Practising Certificate". Section 2(3) of the form entitled "Character and Suitability for Admission" required the Second Respondent to answer, among others, the following question:-

> "Have you ever been subject to an investigation about alleged misconduct or malpractice in connection with a business activity?"

The Second Respondent answered "no".

32. The Second Respondent was also asked to answer a question:

> "Are there any other factors, such as bankruptcy, a County Court Judgment or any other matter relating to your character and suitability to become a solicitor which should be considered?"

The Second Respondent answered "no".

33. The Second Respondent completed and signed the form which contained a declaration:

> "I declare that the facts set out by me in support of this application are true. I also understand that I must bring to the Law Society's attention any other matter which questions my character and suitability to become a Solicitor of the Supreme Court".

The Submissions of the Applicant

34. The Applicant confirmed that the First Respondent had been served by substituted service in accordance with the Order of the Tribunal dated 24th June 2008. However, the First Respondent had still not responded and therefore it was assumed the allegations were denied.

35. The Applicant submitted that the First Respondent had delayed filing his Accountant's Report for the period ending 1st September 2004. This was originally due to be delivered by 1st March 2005 but an extension was granted to 1st May 2005. However, the report was not filed until 12th January 2006.

36. The Respondent, by a letter dated 7th July 2005 had indicated the delay was due to the fact that a number of files had been passed over to the Respondent's practice from a practice that previously practised at that address and this had created more work than anticipated. The bookkeeper was not as efficient as he had hoped and left to go on holiday before finishing the work which had necessitated a further bookkeeper to be hired on a full time basis. On 30th August 2005 an Adjudicator required the First Respondent to deliver the outstanding Accountant's Report within 28 days, however the First Respondent failed to do so.

37. On 14th September 2005 an inspection commenced of the First Respondent's books of accounts and other documents. The Forensic Investigation Report dated 29th September 2005 ascertained that the accounts were not in compliance with the Solicitors Accounts Rules and that the following deficiencies existed:-

- Ledger accounts in respect of numerous client account transactions had not been maintained.
- No cash client account;
- No office cash account had been maintained in respect of dealing with office money relating to any client matter;
- No listings of the balances shown by the client ledger accounts had been prepared or compared in total with balances and client cash accounts;
- No reconciliations had been prepared;

38. As a result of this, it had not been possible for the Investigation Officer to express an opinion as to whether or not there were sufficient funds held in client bank account to meet the total liabilities to clients as at 31st August 2005. It was also established that the Second Respondent was a signatory on the client account and had signed client account cheques when he was not authorised to do so, as he was a non-practising barrister.

39. The firm's notepaper described the First Respondent as a sole practitioner, and the Second Respondent as a non-practising barrister. It was noted that in the period 1st April 2005 to 12th September 2005 the First Respondent's drawings totalled £4,690 whilst the Second Respondent's drawings totalled £23,300, in addition to which he received £29,150 by way of commission. Furthermore, there were other areas of concern as follows:-

- The Second Respondent dealt with payments to the firm's staff;
- The First Respondent was apparently unaware of the sums received by the Second Respondent by way of drawings/commission;
- The Second Respondent was arranging with accountants for outstanding money relating to tax and national insurance for the firm's employees to be paid;
- In respect of both the First and Second Respondents, it was said "whatever income you bring in, we will contribute to office costs and that is your income";
- That their respective drawings were to be 50/50 with the First Respondent stating "I understood it to be on an equal basis as a partnership";

40. The Applicant submitted that given the Second Respondent's status, it was inappropriate for the First Respondent to share his fees and/or purport to practise in partnership with a non-practising barrister. The First Respondent had indicated in a

letter to the Law Society dated 9th December 2005 that the Second Respondent's duties were as office manager under the First Respondent's supervision. The Tribunal were referred to this letter in which the First Respondent had indicated the figures in the report created a misleading impression and that the Second Respondent introduced £12,000 to the business by way of loan which was repaid on 15th February 2005. The First Respondent confirmed the Second Respondent received 50% of the gross fees from files for which he was responsible, but that no profit or overheads were shared.

41. The Applicant submitted there was a failure on the part of the First Respondent to operate effective systems for supervision and management. The Tribunal were referred to the Investigation Officers interview with the First Respondent in which he admitted he was unaware of the sums paid to staff.

42. On 15th March 2006 an Adjudication Panel resolved to refer the conduct of the First Respondent to the Solicitors Disciplinary Tribunal and also resolved that an application should be made pursuant to Section 43 (1) (b) of the Solicitors Act 1974 (as amended) in relation to the Second Respondent, given his status at the time as a clerk. However, since that date, the Second Respondent had been admitted as a solicitor on 15th March 2007 and the Adjudicators made a further decision on 21st August 2007 referring the Second Respondents conduct to the Tribunal. However, the Applicant submitted that in relation to the Second Respondent, conduct which occurred prior to his admission could still be referred to the Tribunal to assess whether he should be subject to disciplinary sanctions, having regard to the principles of acceptable practice and in particular to the public interest and the importance of maintaining the reputation of the profession.

43. On 14th March 2006 a second inspection commenced of the First Respondent's books of accounts. The Tribunal were referred to the Forensic Investigation Report dated 11th July 2006. It was ascertained that at this time the Second Respondent remained a signatory to both the client and office bank accounts despite the First Respondent being notified of the breach at the time of the first inspection.

44. It was ascertained that a cash shortage existed on client account as at 28th February 2006 in the sum of £17,340.17. The First Respondent's accountants assisted in rectification of this after the Investigation Officers identified it. The Applicant submitted this represented a breach of Rule 22 of the Solicitors Accounts Rules 1998 and a failure on the part of the First Respondent to rectify the same promptly contrary to Rule 7 of the 1998 Rules.

45. The Applicant submitted that the First and Second Respondents acted in breach of the Solicitors Introduction and Referral Code 1990 as they facilitated, permitted or acquiesced in the acceptance of referrals from a Mr R in his personal capacity, not being a solicitor and they made payments for those referrals contrary to Section 2 (3) of the Referral Code and Section 2(a) of the Code as amended. The Second Respondent admitted during an interview with the Forensic Investigator on 6th April 2006 that he had personally paid Mr R amounts varying between £60 and £300 per transaction upon completion of individual conveyancing transaction amounts. The Second Respondent indicated the money was paid in cash from his personal resources and no records of payment had been kept. There was no evidence of clients being aware of these payments.

46. The Applicant submitted that whilst he did not assert dishonesty on all the allegations, the matters were very serious. The transactions referred to had hallmarks of mortgage fraud and the First and Second Respondents had allowed themselves to be involved on a significant scale. The Applicant submitted that the First Respondent had abdicated his responsibility to comply with rules and obligations and had shown a widespread disregard for the regulations. Even if dishonesty was not proved, these were still very serious matters.

47. Regarding the Second Respondent, the Applicant submitted the Law Society had written to the Second Respondent on 29th October 2005, and he had replied on 30th November 2005. It was very clear from the Law Society's letter, and the Second Respondent could have been in no doubt, that his own conduct was being called into question. On 9th December 2005 the Second Respondent sent a letter to the Law Society dealing with issues regarding his conduct and, when the Adjudication Panel made a decision on 15th March 2006 to refer the conduct of the Second Respondent to the Tribunal, a copy of the decision was sent to the Second Respondent.

48. The Applicant submitted that the Second Respondent had signed and dated the Application for Admission as a Solicitor knowing full well that it was not true. He knew of the previous investigations, he had been interviewed during those investigations and these all pre-dated the date of the Application Form for Admission.

49. The Second Respondent had said he believed the enquiry related to Leonard & Co Solicitors rather than him personally. However, the Applicant submitted the Second Respondent was then a barrister, he was now a qualified solicitor and the question on the form is very clear and not ambiguous at all. The Applicant submitted that the Second Respondent was an intelligent man and that the way that the form had been filled in was incorrect. The Applicant referred the Tribunal to the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and, in particular, referred to the test of dishonesty contained in Twinsectra which the Tribunal had to take into account. The test was a two stage test and the Tribunal was asked to consider whether a reasonable and honest man, or a reasonable honest and ordinary member of the profession would take the view that the Respondent's conduct was dishonest, and further whether the Respondent would take the view or not care that fellow solicitors would regard his conduct as dishonest. The Applicant submitted that if the Tribunal did not find the Second Respondent to be dishonest, the allegations still stood. The Applicant submitted that the way in which the form was filled in established dishonesty as the Second Respondent clearly knew from the earlier investigation that he had been subject to an investigation previously. The Applicant submitted that the question on the form was very clear and as the Second Respondent was aware of the enquiry at Leonard & Co Solicitors but had not declared it, he had taken a conscious decision which amounted to dishonesty. He was aware that his character and suitability would be considered as a result of any declarations made on the form.

50. The Applicant indicated that the accuracy of the transcript of the interviews carried out and referred to in the Forensic Investigators Report were disputed and he therefore proposed to call witness evidence to support his submissions.

The Oral Evidence of Mr Mohnish Dhanda

51. Mr Dhanda confirmed that he was an Investigation Officer and that he had prepared the Forensic Report dated 29th September 2005 and that the contents of that report were true to the best of his knowledge and belief. He also confirmed that the transcript of the interviews contained within the report were accurate.

52. Mr Dhanda confirmed it appeared that the Second Respondent had a lot of responsibility for running the practice even though he was not a partner on the letterhead and various queries had been raised about this. He had been told the profits were shared 50/50 between the First and Second Respondents and that they had shared expenses as well.

53. Mr Dhanda confirmed that the interview had not been taped and that contemporaneous hand-written notes had been made at the time. However, he also confirmed that Mr S Hill (another Investigation Officer) had been present along with the First and Second Respondent. He confirmed that whilst he could not remember whether the conversation was quick or sedate, or how much time was left between each question and answer, he did state there was an adequate period after each question for Mr Hill to write the question and answer in full.

54. Mr Dhanda was referred to page 12 of his report (page 38 of the Tribunal bundle) which recorded the question "So do you have specific arrangements with people you know in respect of commission?" and the answer recorded was "The anticipation is that this is our own investment, once we have created our links with all the developers I will stop spending money on the dinners. Derek knows it very well - he comes to the dinners, we create an image, show our expertise, whenever the developers find their solicitors are delaying they transfer to us. We will not need to do it for long. We are panel solicitors for Saville Finance. I buy expensive gifts, three weeks ago I gave a very expensive gift to Mr R on his wedding. I gave very expensive jewellery". Mr Dhanda accepted that the answer did not answer the question asked but he maintained that that was what was said by the Second Respondent at the time. Again, in response to another question on that page "So he provides contacts?", the answer given was "Professional dinners and drinks" was accepted not to be an answer to the question but Mr Dhanda maintained that was what was said at the time.

55. Mr Dhanda confirmed the Second Respondent referred to signing "lots and lots" of cheques and he confirmed this referred only to the cheques that had been provided. He accepted that it was possible lots and lots of cheques could refer to cheques over a two year period.

56. On the question of fee sharing, Mr Dhanda said that in order to generate commission of 30%, the Second Respondent would have generated over £100,000 worth of fees. He confirmed that he only had the records available over a period of six months and the information was taken from cheque book stubs and bank statements. He felt that six months of documents were enough in order to form an opinion. He agreed he could have requested further documents but said he could not look at everything.

57. Mr Dhanda was referred to the figures contained in the Forensic Investigation Report and to a letter dated 26th October 2005 from Mr Penson at The Law Society to the

First Respondent. He was asked to confirm whether the actual sums paid were different from the sums he had referred to in his report but he was unable to comment on this as he said he had not had the chance to view the figures.

58. Mr Dhanda was referred to page 5 of his report and the transcript on page 8 of his report, in which he had interviewed the First Respondent about drawings of £4,690 by the First Respondent over a period of nearly six months and drawings of £23,300 over the same period by the Second Respondent. He had also said in his report that there was an additional commission of £29,150 to the Second Respondent which the First Respondent was not aware of. Mr Dhanda had concluded in his report that the Second Respondent must have generated over £100,000 in fees in order to receive commissions and payments in these amounts. The First Respondent had said "I never get to see, I didn't know how much *[Respondent 2]* was taking and he said he'd lent some money to the company. I thought it was a small amount. To be honest I didn't think we had that amount." Mr Dhanda was referred to a letter dated 9th December 2005 from the First Respondent to the Law Society which stated "Those figures give a misleading impression. In the period 1st September 2003 to 12th September 2005, I withdrew a total of £79,758 of which £31,758 was by way of payments to myself and £48,000 was paid by way of five cheques drawn between July and September 2005 to Abraham Nursing Homes Ltd……. I am a 75% shareholder and Director of that company. The Care Home is not yet open. During the same period cheques totalling £70,038.00 were paid to *[Respondent 2]* by way of commission and 12 cheques totalling £32,350 were paid to him by way of reimbursement for expenses incurred in gifts and entertaining .....". Mr Dhanda was unable to comment on the figures as he had not had chance to view them and said that the figure of £48,000 was mentioned in interview. Mr Dhanda accepted that a loan had been made by the First Respondent to a company and that the sum of £48,000 had been used for this loan. However, he said that the First Respondent had not mentioned the loan of £48,000 was part of his drawings and the First Respondent was not aware of a lot of payments being made by the Second Respondent.

59. Mr Dhanda confirmed the First Respondent had been able to look at all the financial records from 2003 but that Mr Dhanda had not done so and he had extracted information from the records available. Mr Dhanda said that the First Respondent had looked at previous records and changed his view. He accepted that during the period of the interview and inspection, the First Respondent did not have the opportunity to look at all his financial records and neither had Mr Dhanda. Mr Dhanda's views had been based on whatever documents he had been given access to. There were no client ledgers and only cheque stubs and bank statements. Mr Dhanda did not accept his report was inaccurate but said it was based on what he saw. He confirmed he had only been given one financial statement for the First Respondent, trading as Leonard & Co, and that was for the period 1st September 2003 to 31st March 2004. Mr Dhanda had requested all statements but that was the latest copy available and that was given to them. When Mr Dhanda was asked to confirm that the accounts showed no proof of a partnership at all, and there was no evidence that the Second Respondent had any expenses, Mr Dhanda said he was unable to tell from the financial statement but confirmed that at interview the Second Respondent had said costs and profits were shared 50/50. It was put to him that the Second Respondent had not said this, but he maintained he did as that was what was recorded. He confirmed that he was unable to go through all the documents relating to expenses such as bills, stationery etc. It was

not for The Law Society to prove that expenses were shared but during interview both the First and Second Respondents had talked about sharing expenses and profits and they would not have mentioned this if it was not true.

60. Mr Dhanda confirmed that the lease for the office premises was in the Second Respondent's name and that his inference of partnership had been derived from the Second Respondent and Mr R taking more money out of the practice than the First Respondent. He confirmed he had got the distinct impression that the Second Respondent knew more about the practice and the running of the practice than the First Respondent. There had been a number of questions that he had asked the First Respondent and the First Respondent had said that the questions would need to be put to the Second Respondent as he did not know the answers, for example on fee sharing. Mr Dhanda confirmed that at the first interview the Second Respondent had not been present and he was only asked to be present as he was the one who could answer the questions.

61. Mr Dhanda confirmed that both the First and Second Respondents had been given the opportunity to tell Mr Dhanda that there was no assumed partnership and they did not do so. Mr Dhanda was referred to a number of cheque stubs that had written upon them "drawings". He was also referred to a number of cheque book stubs which had the word "commissions". He was asked to confirm whether it would be reasonable for money being paid by the Second Respondent to himself to be described differently. Mr Dhanda confirmed that normally this would be drawings to a partner and these words had been written in the Second Respondent's handwriting.

62. On re-examination, Mr Dhanda confirmed that the First Respondent at interview had said the Second Respondent would normally sign cheques if the First Respondent was away. It had been explained to the First Respondent that the Second Respondent needed specific authority to sign such cheques to which the First Respondent had said "It is very rare, I will give him specific authority then, is that specific authority for every cheque?" Mr Dhanda had replied "yes" to which the First Respondent had said "I didn't realise, if you are aware it is very difficult".

63. Mr Dhanda was referred to a letter from the First Respondent dated 9th December 2005 in which he had said "When *[Respondent 2]* draws a cheque on client account (which he will do once or twice a week in connection with conveyancing transactions) I will give specific authority to do so, usually when I review the outgoing mail enclosing the cheque". Mr Dhanda confirmed that if the First Respondent was reviewing outgoing mail, he could sign the cheque at the same time and there was no need for the Second Respondent to sign it.

<u>The Oral Evidence of Mr David Bailey</u>

64. Mr Bailey confirmed his occupation as Investigation Officer and confirmed that the contents of the Forensic Investigation Report dated 11th July 2006, which he had prepared, were correct.

65. He indicated that he had initially been dealing with the matter alone but, having realised there was a considerable element of mortgage fraud, he had asked a Senior

Investigator, Mr Middleton-Cassini to assist him as he had considerable experience in mortgage fraud.

66. Mr Bailey referred to three tables which were contained within his report and which referred to 65 separate cases from 106 matters in total. 52 of those matters did not have any ledgers, and 6 of those were not conveyancing matters. The various tables gave details of instructions the firm had received from lenders in each case requiring the firm to act in accordance with those instructions and to act pursuant to the requirements set out in the Council of Mortgage Lenders Handbook for England and Wales (Second Edition). The tables showed that in most of those 65 cases the mortgage advance was based on the valuation of the property and not on the purchase price, and that typically the mortgage was treated as a re-mortgage and there was no reference made to the purchase price on the certificate of title. In numerous instances incentives were given to the purchaser either in the form of a discount on the purchase price or a deal would be struck where the vendor would pay the stamp duty land tax, mortgage brokers fees and conveyancing fees on behalf of the purchaser. There had been no evidence on the client files of the mortgagee being advised of the purchase price or of the mortgagee being informed of incentives granted. Mr Bailey confirmed that he formed the view that this was a fraud on the lender.

67. Mr Bailey also confirmed that the interviews referred to in his report with the First and Second Respondents was recorded, and the transcript had been prepared from the recording. The Second Respondent had been given a CD of the full recording.

68. Mr Bailey was referred to one particular matter which was the case of D and which was discussed with the Second Respondent at interview. In this case the loan value was 109% and a discount of £86,000 had been given to the purchaser. There was no evidence of the lender being advised of the discount and Mr Bailey's view was that this was clearly a mortgage, and not a re-mortgage, as there had been no previous mortgage in place and no evidence of a bridging loan or other monies, solicitors or lenders involved.

69. A completion statement relating to that matter was produced from which the Tribunal noted that there was a sum of approximately £18,000 showing as a credit balance on client account but not identified on the completion statement. The amount seemed to have been absorbed in disbursements. Mr Bailey said that it was clear that this was a purchaser buying from a developer.

70. On cross examination Mr Bailey confirmed that the correct number of files was in fact 126 files and not 106 files as he had initially said. However he said that he was sure the Second Respondent had signed more than one Certificate of Title. Mr Bailey was asked to produce the Certificate of Title relating to the purchase of Mr D but indicated this had been an oversight and had not been included although he accepted it would have been wise to include it. He confirmed he had not gone through all the documents on the file relating to instructions from the mortgage lender but did have a copy of the mortgage offer to Mr D. He was unable to locate the letter of instruction from the lender to Leonard & Co Solicitors on that particular occasion but said that it was standard practice that there would be a letter although he could not find it at that moment.

71. The Second Respondent produced a copy of a mortgage offer on another case in which the same lender had been involved making a mortgage offer on another property and he was asked whether these were the sort of details that would have been sent to Leonard & Co Solicitors on the mortgage offer relating to Mr D. Mr Bailey confirmed that it was indeed a standard letter and accepted that the standard letter referred to a "re-mortgage". A copy of the mortgage offer to Mr D was also produced and this also referred to a "re-mortgage". Mr Bailey accepted that on a re-mortgage, it would be consistent that no price would be stated on the Transfer but in this case, Mr Bailey maintained this was a mortgage. He could see no bridging finance involved, no other mortgage on the property and no other charge so he was satisfied that a mortgage had been used to purchase the property and therefore there was a duty on the solicitor to disclose any incentives or discount to the lender.

72. Mr Bailey was asked how could he say that there was a duty on the Respondents to disclose to the lenders when the standard form of instructions from the lender clearly stated this was a re-mortgage and had been referred to as a re-mortgage by the lender. Furthermore, the Council for Mortgage Lenders Handbook indicates that as no purchase price had been given in the instructions from the lender, paragraph 6.3.1 of the Council for Mortgage Lenders Handbook was not applicable to this transaction. Mr Bailey accepted that the lender believed this was a re-mortgage and that that was what Leonard & Co had been told. He accepted Leonard & Co had been instructed at a later stage and that no letter of complaint had been made by the lender, but he maintained his view that even though the lender considered this to be a re-mortgage, it was not a re-mortgage as there was no bridging finance, no loan, no charge prior to the purchase so the lenders funds had been used to purchase the property. Mr Bailey was asked if he had spoken to the lender to clarify the nature of the transaction with them but said he could not recall if this matter had been discussed.

73. At this point the Applicant challenged the manner in which the cross-examination was taking place and reminded the Tribunal that a Civil Evidence Act Notice had been served in February 2008 and had not been challenged at all. The Applicant felt that he had not been obliged to ask Mr Bailey to give evidence and could have simply relied on the document served. He felt that Mr Bailey was now being questioned on facts which had not been challenged before today's date. At this point, the Tribunal reminded the Second Respondent's representative that he could not go beyond the facts and could only deal with inferences to be drawn from the report.

74. Mr Bailey was then referred to the completion statement for the transaction of Mr D, which had been produced by the Second Respondent, in which there was reference to "SPF Mortgage Arrangement Fees £2,454.34". He was asked to confirm whether it appeared from that completion statement that there was any surplus paid to the borrower. Mr Bailey confirmed that there did not appear to be any surplus and the mortgage arrangement fees appeared to have been paid to a mortgage broker. However Mr Bailey said there was nothing on the file to show that there had been any bridging finance in this case apart from that one entry on the completion statement referring to Mortgage Arrangement Fees.

75. Mr Bailey was referred to a fax from Ranson UK dated 26th January 2005 to the solicitors that had previously dealt with this conveyancing transaction before it was aborted and then taken over by Leonard & Co. The fax referred to Ranson UK's fees

being settled from surplus funds from the remortgage. Mr Bailey confirmed that on his review of the file, there was no evidence of any bridging finance but there was reference to bridging finance fees although he did not know what they were.

Oral Evidence of Mr Stephen Middleton-Cassini

76. Mr Middleton-Cassini confirmed he was an Investigation Officer and that the Investigation Report dated 11th July 2006 was correct. He also confirmed he had a great deal of experience using recording equipment and had therefore been involved in recording these particular interviews. He confirmed that the transcript of the interviews contained within the report were accurate from his recollection although the passages had not been referred to in chronological order.

77. Mr Middleton-Cassini indicated that he believed the matter of Mr D was a mortgage. If it had been a re-mortgage, he would have expected to see a previous mortgage in place or for the mortgagor to be the registered proprietor of the property. This particular case of Mr D did not fit the criteria and was therefore a standard mortgage. He accepted that the nature of the transaction would dictate whether the matter was a mortgage or a re-mortgage but that in this particular case the criteria did not fit the criteria of a re-mortgage.

78. Mr Middleton-Cassini was then referred to an exchange which took place between the Second Respondent and himself concerning the case of Mr D, recorded at page 45 of his report, as follows:

(Mr Bailey)

DB: "….Under those circumstances, especially in view of the fact that there are letters on both files from Persimmon, stating that the buyer should advise the mortgagee of any incentives, the failure on the part of this firm to advise the mortgagees' of any incentives is a contravention of the Mortgage Lenders Handbook, and constitutes in this particular instance mortgage fraud, and your firm has become party to mortgage fraud. That is the bottom line.

(*[Respondent 2]*)

[R2]: I totally disagree you are failing to take into account…. that property bought by the middle buyer, long time ago at a low price, and then they assign the property to the end buyer.

(Mr Middleton-Cassini)

SM: You use the word "buy", he hasn't bought it at all has he. He's not the registered proprietor….. He's just paid a reservation fee.
[R2]: No, he had to ……

SM: Is he the registered proprietor?

[R2]: He bought it, but he didn't register. Before he registered he sold it to the end buyer.

SM: So you say he bought it two years previously?

[R2]: No, that's when the contract was exchanged between the developer and the middle buyer.

SM: So is he the registered proprietor……. ?

[R2]: If the property is not completed by the developer, how can he register?

SM: So he hasn't bought it yet has he?

[R2]: At that time he has only a contract which allows for a sub sale or an assignment. They exercise their power to do so.

DB: But in this particular instance the middle man is falling out because remember Ranson's fax to R which says "there is no real need for your involvement on these purchases as the buyer will purchase directly from the developer in cash my fees will be settled from the surplus funds from the re-mortgage."

79. Mr Middleton-Cassini was asked to confirm whether he had mistaken the position to which he responded his questions were based on information from the file. He was unable to recall whether the intermediate buyer was ever identified, but maintained there were material facts which should have been disclosed to the lender.

80. The Applicant then produced a copy of the contract between Mr D and Persimmon Homes Ltd, to assist the Tribunal. Mr Middleton-Cassini confirmed Ranson were not a party to the contract, and the property involved was a leasehold property.

81. Mr Middleton-Cassini was referred to the completion statement relating to Mr D and he indicated that there were a number of entries on that completion statement that he would not expect to see on a re-mortgage completion, for example estate agent's fees. He would also have expected to see a redemption figure on a re-mortgage completion statement and there was no such figure on this particular statement. He further indicated that it would be unusual for a buyer to pay an estate agent's fee unless there was a finder's fee payable, which was quite rare.

82. Mr Middleton-Cassini was unable to say whether the developer could also have been the landlord although he accepted the property concerned was a leasehold flat. He confirmed the matter related to a new development and it had been quite popular for many years for people to buy off plan. Mr Middleton-Cassini also confirmed it was normal to obtain a discount if purchasing in bulk and often the purchase price would not be payable until a Completion Notice was served. He accepted that by the time a Completion Notice was served, the price of the property might go up if there was a rising market, and the property might have been sold on to another purchaser.

83. Mr Middleton-Cassini accepted that he had seen lots of examples of such schemes but these schemes did cause problems where there was a failure to disclose incentives and in his experience, such schemes were tainted with mortgage fraud. He indicated that the solicitor must go through all the steps required to ensure the mortgage company was not misled, as failure to adhere to the rules would cause problems later. He did

not accept he had a jaundiced view of the matter but simply said he had reported the facts and had tried to be as objective as possible. It was put to Mr Middleton-Cassini that in this case it was possible that Ranson had bought the property from the developer having paid part of the price, the price had then gone up by completion and Mr D was a purchaser who had purchased from Ranson who could then sell at a profit. It was put to him that Ranson could buy the property without paying anything themselves and there was nothing wrong with that as they only actually needed to finance the purchase when a Completion Notice was served. Mr Middleton-Cassini indicated this had been a back to back transaction where there had been a sub sale and whilst there was nothing wrong with that, problems were caused about whether this should have been disclosed to the lender. The lender should have been informed of the sub sale and it would then be up to them to decide whether they wanted to lend.

84. It was put to Mr Middleton-Cassini that it would be up to the lender to decide what they wanted to be disclosed to them and in this particular case, the lender had intended to lend £325,250 by re-mortgage on 85% of the value of the property. The Second Respondent submitted in this case it had not been necessary to disclose the purchase price as the lender did not want to know. Mr Middleton-Cassini accepted this but maintained that under the CML Handbook, the lender should have been informed of the discount/incentive.

The Submissions of the Second Respondent

The Oral Evidence of the Second Respondent

85. The Second Respondent confirmed he was a non-practising barrister and that he had been involved in a Nursing Home that his family owned. He indicated that when he had made reference to signing "lots and lots of cheques" during the first investigation, he had meant the total number of cheques he had signed from the beginning of the practice which was roughly only about one or two cheques a week.

86. The Second Respondent explained that after the First Respondent opened the practice, the First Respondent had approached Barclays Bank to open bank accounts there, as the previous solicitors who had been practising from the same premises had had their bank accounts with Barclays Bank. The bank manager came to see the First Respondent with various forms and the First Respondent had called the Second Respondent into the meeting and told him that the manager said he had to be on the mandate. The Second Respondent had advised the manager that he was not a solicitor and therefore could not be on the mandate to which the manager had responded he would open the account with the First Respondent as the signatory and he would check the position with the Law Society. Accordingly, for four weeks the First Respondent signed all the cheques and then the bank manager rang the First Respondent and advised him that he had spoken to the Law Society and that a non-practising barrister could be on the mandate. He then sent some forms for the Second Respondent to sign which he did.

87. The Second Respondent confirmed that as the First Respondent was in court on many landlord and tenant matters regularly, he had asked the Second Respondent to cover him if he was not in the office and needed to send out urgent cheques. This had been of particular concern to the First Respondent as he wanted to make sure stamp duty

was paid in time otherwise, if it was not paid within 28 days, there would be a penalty to pay. There were also Land Registry fees to pay which needed to be done quickly and this was the main thing on the First Respondent's mind. The Second Respondent confirmed that the only cheques he signed were those to the Land Registry or for payment of stamp duty.

88. The Second Respondent confirmed that during the late afternoon, the First Respondent would go through all the outgoing mail and sort out the DX and post and check everything. There would be particular days when he was not in the office on a day when stamp duty and Land Registry fees needed to be paid and that was when he would rely on the Second Respondent to sign cheques. The Second Respondent confirmed he was not aware of any SRA provisions indicating that non-solicitors could not withdraw money from client account without the authority of a solicitor. He only became aware of this when it was raised by Mr Dhanda and Mr Bailey. Shortly after this he sat the Qualified Lawyers test and the Solicitors Accounts test which he passed. After being notified by Mr Dhanda and Mr Bailey of the situation, the Second Respondent wanted to withdraw his name as signatory on the mandate but the First Respondent said it would cause problems. Instead from then on the Second Respondent filled in a very detailed form with all the information on it which would be signed by the First Respondent authorising the Second Respondent to sign each individual cheque if he was not there to do so. He always gave authority on the form for such cheques to be signed after that.

89. The Second Respondent confirmed that he received 40% of all the income profit costs from his files. After the first few weeks, the First Respondent asked the Second Respondent to take an administrative role in the office and said that if he agreed to do this he would then be able to take 50% of the profit costs income and the remaining 50% would be paid to the First Respondent. The Second Respondent confirmed he did not pay any office expenses although he was the lessee of their office premises and that the rent was paid by the First Respondent. The Second Respondent explained that previously the lease had been in the name of G as the tenant and had been a long lease. However G became ill and discussed the matter with the landlord, as he wanted to transfer the lease. The Second Respondent knew G quite well and was aware that the landlord needed a reference from the new lessee. The First Respondent had no bank reference and there was no bank account in place at that time so he could not provide the reference required by the landlord. Accordingly, because the Second Respondent had a good bank reference, he became the lessee and took over the lease.

90. With regard to the loan of £12,000 which was introduced by the Second Respondent, he explained that the First Respondent had wanted to refurbish the first floor of the office to make them into cubicles. The Second Respondent had agreed to lend the First Respondent £12,000 and the First Respondent had paid this money back to the Second Respondent. The Second Respondent had borrowed the money through a bank account and it was paid back into that account by the First Respondent. The First Respondent also paid the interest on the loan as well.

91. With regard to Mr R, the Second Respondent confirmed that he received 33% commission on his files and the First Respondent had subsequently reduced this to 30% which Mr R had agreed.

92. The Second Respondent was then referred to his interview with Mr Dhanda during the first inspection and asked about the reference to a "50/50" share. The Second Respondent asserted that he had not said there was a 50/50 share. He said he had had a long conversation with Mr Dhanda in which he had said he received 40% with his previous employers A and K solicitors on commission and he had subsequently said give me 50% and you can keep the rest. The Second Respondent confirmed he had been self employed and he did not say he would contribute to office costs. He had made it clear to the First Respondent that any office expenses would be paid from the 50% that the First Respondent kept from the income on the Second Respondent's files.

93. The Second Respondent confirmed that on the cheque stubs, he had used the words "drawings" for payments to himself as he drew "commission" for third parties and wanted to distinguish between the cheques that were written as commission for third parties and money that was paid to him on his own files so that the First Respondent would be clear about what the money was for. The word "commission" was for payments to third parties. This included payments such as payments to Mr R. The Second Respondent confirmed that he was not drawing more money than the First Respondent.

94. The Second Respondent confirmed that he had signed Certificates of Title when he was not the fee earner on the relevant files. He confirmed the Third Respondent was the relevant fee earner and the Second Respondent had simply signed the Certificates of Title as *[Respondent 3]* (a Clerk) was not qualified to sign. The Second Respondent could sign them as long as he stated he was a non-practising barrister as this was acceptable.

95. The Second Respondent accepted that he did not have knowledge of Mr D's transactions until these were brought up by Mr Bailey. He had signed the Certificate of Title to confirm that all the searches had been done, the valuation report was correct and procedural matters had been adequately dealt with. The Second Respondent confirmed *[Respondent 3]* would fill in the Certificate of Title and ask the Second Respondent to sign it. The Second Respondent would trust *[Respondent 3]* and ask him "Have you seen the valuation report?" To which he would say "Yes".

96. The Second Respondent confirmed he had not been aware of the Green Card on Money Laundering until after Mr Middleton-Cassini had given him a copy. He had then sat his Professional Conduct and Accounts exams and passed them.

97. The Second Respondent was then referred to the Certificate of Title relating to Mr D's matter. He again confirmed that one of *[Respondent 3]*'s assistants would fill in the Certificate of Title and that the Second Respondent would then sign it. He also confirmed that on a re-mortgage the purchase price stated in the Transfer would remain blank as it wasn't a purchase. The Second Respondent confirmed that he personally did not deal with new development matters but dealt mainly with Asian restaurants and Right to Buy housing matters.

98. In relation to the Application for Admission as a Solicitor, the Second Respondent confirmed that when he had read the application form, his honest understanding was that this referred to a business activity. The Second Respondent said he had discussed

the application form with the First Respondent and the First Respondent had been of the same view. The Second Respondent had also spoken to a couple of barrister colleagues that he knew and they had also agreed with his interpretation. They all felt that the question was asking about business activity and as the Second Respondent sincerely believed that Leonard & Co Solicitors was not his practice, he felt that this question did not relate to him.

99. On cross-examination, the Second Respondent accepted that it had been explained to him by Mr Dhanda who the classes of persons were who could authorise withdrawal from client bank accounts as provided by Rule 23 of the Solicitors Accounts Rules 1998. He accepted that the First Respondent had confirmed the Second Respondent was not qualified by Rule 23 to authorise withdrawals from client bank accounts but the Second Respondent maintained that he did not accept he had breached the rules. He had not wanted to be on the mandate and the First Respondent had asked him to be on the mandate even though he was unhappy about it. It was only after the bank manager had confirmed he would be able to be on the mandate that he had agreed to do so.

100. The Second Respondent said he was not aware of the specific rule but had heard that non-solicitors could not be a signatory on solicitors accounts. That was why he was unhappy to be on the account. The Second Respondent confirmed that they had taken Counsel's advice on the matter and were told that as long as the First Respondent authorised the Second Respondent to sign cheques, this would be acceptable. In any event, the Second Respondent said he rarely signed cheques unless it was the last day to pay and only then would he sign cheques. The First Respondent checked everything anyway. When Mr Dhanda had told them that the Second Respondent should not be signing cheques, he had not said that the Second Respondent must withdraw from the mandate. However on the second inspection Mr Middleton-Cassini had told the Second Respondent that he should withdraw from the bank mandate. In any event the Second Respondent could not recollect signing any cheques after he had been informed by Mr Dhanda that he should not do so and that if the cheque stubs from September 2005 were checked, they would see that there were no cheques signed by the Second Respondent

101. The Second Respondent indicated he had been told that if the First Respondent authorised the signing of individual cheques by him, he would be able to sign them and a system had been put in place to make sure specific authority would be given for each individual cheque signed. The Second Respondent confirmed that after the issue had been raised by Mr Dhanda he had read the Solicitors Accounts Rules.

102. The Second Respondent confirmed that he and the First Respondent had both been working at A & K Solicitors when the First Respondent approached the Second Respondent as he wanted to set up his own practice. It had been agreed that the Second Respondent would receive 50% of the profit costs on his own files and the remaining 50% were to be used by the First Respondent towards his office expenses. The Second Respondent did not accept that this was a partnership as this had been the same arrangement he had had with the previous solicitors, A & K Solicitors and this would have made him a partner in their practice which he was not.

103. The Second Respondent explained that he had taken on the 7 year lease of the premises as the First Respondent could not take on the lease and the First Respondent had agreed to indemnify the Second Respondent for rent.

104. The Second Respondent had trusted the First Respondent and helped him and this had been honest sincere help. The First Respondent had paid all the rent from his personal account. He had used part of the £12,000 that the Second Respondent had lent him to pay the rent and they had also taken over 200 files from A & K Solicitors so they had an income coming in. There had been no agreement to pay A & K Solicitors anything, they just gave the files to the First and Second Respondents.

105. The Second Respondent confirmed the First Respondent had introduced capital of maybe £3,000 or £4,000 but he did not know where the money had come from although he did know that the First Respondent held an account with his mother. The Second Respondent confirmed that the loan of £12,000 which was given to the First Respondent was used partly to refurbish the first floor and partly for start up costs. As they had taken over an existing office, there were lots of things that they did not have to buy. There was no gap between A & K Solicitors ceasing practice and Leonard & Co Solicitors starting practice. There may have been a day or two in between when they had to write to all the clients to obtain their consent to transfer the files and during that time most clients had chosen to remain with Leonard & Co Solicitors.

106. It was put to the Second Respondent that the reality was that he had wanted to qualify as a solicitor and he had agreed with the First Respondent that when he qualified, he would become a partner in the practice. The Second Respondent disagreed and said that the loan of £12,000 was a pure loan to the First Respondent and it was paid back. He did intend to qualify but he could not have been a partner straight away as he needed another three years of qualification and needed to pass exams before any of this could happen.

107. When the Second Respondent was asked what he received in return for the lease and the £12,000 loan he confirmed he had not received anything. The Second Respondent said he did not believe in interest, and that the First Respondent had paid all the bank's interest for him. The Second Respondent had simply had a facility at the bank which he had used and passed on to the First Respondent including the interest element. There had been no profit to the Second Respondent and he had always been a self-employed person as a non-practising barrister.

108. The Second Respondent accepted that he received "drawings" but that this word should have said "commission" and that he had simply used these words as he wanted to ensure the First Respondent would have a clear picture. The First Respondent had asked the Second Respondent to pay salary to staff and to pay bills from the office account which was simply an administrative role. This enabled the Second Respondent's commission to increase to 50%.

109. The Second Respondent confirmed that the First Respondent was in the office every day and even when he was in court, he would always come back to the office. He would then stay in the office until 6:30-7 pm. He would sign the client account cheques but he asked the Second Respondent to sign the office account cheques. The Second Respondent would then check all the invoices and pay them which was

simply office administration. The First Respondent also asked the Second Respondent to write the First Respondent's drawings cheques.

110. The Second Respondent confirmed that when he had discussed matters with the Investigation Officers not all of the conversation had been recorded in their Reports. He had made it clear that 50% was payable to him and the 50% payable to the First Respondent was for office expenses.

111. He said that 50% of the fees from his files were his and 50% of the fees belonged to the First Respondent. This was the same arrangement he had had with A & K Solicitors previously and as he had done all the work, he did not see how 50% of his fees could be fees for Mr Leonard.

112. It was put to the Second Respondent that the client is a client of Leonard & Co Solicitors, and therefore any fees due are due to Leonard & Co Solicitors which he accepted. It was also put to him that if the First Respondent paid him 50% of these fees, he had shared fees with the Second Respondent. The Second Respondent said that he needed something to live on and those were his fees. He was simply earning money on the files that he was working on.

113. Regarding signing the Certificates of Title, the Second Respondent confirmed that he did sign Certificates of Title and sometimes without checking them in detail. In most cases, he would ask *[Respondent 3]* questions and rely on his answers.

114. The Second Respondent confirmed that he had received all his training from the First Respondent and that he always read mortgage instructions and underlined the relevant sections carefully. He would do this on all his files. He did see that there was an incorrect reference to mortgage instructions being a "mortgage" and in these cases the First Respondent would write to the lender and say it was a "re-mortgage". If the Second Respondent had conduct of a file, he would write to the lenders himself. He accepted the importance of providing lenders all information and said if he had conduct of a file, he would ensure this was done.

115. It was put to the Second Respondent that in a number of transactions he had failed to disclose material information to the lender such as discounts. The Second Respondent indicated that his training from the First Respondent was that such disclosure was not required on re-mortgage transactions. He had trusted *[Respondent 3]* and relied on him to do what needed to be done. The Second Respondent confirmed it was impossible for him to check every single Certificate of Title before signing it, as it would take at least half an hour on each Certificate and he simply trusted *[Respondent 3]* to do what was necessary to be done. He would always ask *[Respondent 3]* "Is everything OK?" which was basically asking him "Is it a mortgage or a re-mortgage, have the relevant searches been done, etc."

116. In the case of Mr D, the Second Respondent accepted he did not know of the £86,000 discount. He accepted that if he had checked the file, he would have been aware of this but maintained that it wasn't a discount in any event as property prices had gone up since the O bid and in this case there had been bridging finance by R UK Ltd.

117. The Second Respondent was referred to a faxed letter from R UK Ltd to the previous solicitors who had dealt with the aborted transaction dated 26th January 2005. This stated "There is no real need for your involvement on these purchases as the buyer will purchase directly from the developer in cash". It was put to the Second Respondent that this was a purchase involving a mortgage to which the Second Respondent replied it was not, it was a re-mortgage. The Second Respondent pointed out that the completion statement referred to bridging finance fees. However, the Applicant pointed out the Contract dated 3rd March 2006 did not support the completion statement as it clearly said "The seller will sell and the buyer will buy the property for the sale price" and so confirmed this transaction was a purchase not a remortgage. The Second Respondent simply said he could not comment on the contract without the full file, although he accepted that the contract did not support his argument. It was put to the Second Respondent that he had been signing a Certificate of Title blind which he accepted was true.

118. The Second Respondent accepted he had been interviewed by Mr Dhanda on 14th and 15th of September 2005 and that lots of questions had been put to him about his status within the practice. He also accepted he had received letters from the Law Society dated 26th October 2005, to which he had provided explanations and that he knew he was being recommended for a Section 43 Order as an individual and understood what this meant. The Second Respondent also accepted that during the investigation, his own conduct had been looked into as well as the conduct of the First Respondent.

119. He also accepted that the Adjudicator's decision had been made relating to him personally rather than relating to Leonard & Co Solicitors.

120. However, when asked why he signed the Application Form for Admission as a Solicitor indicating he had not been under investigation, the Second Respondent maintained that this form was from the Law Society and was going back to exactly the same organisation that were investigating Leonard & Co Solicitors so the Second Respondent would not have tried to hide any information from them. He was still employed within the same organisation and he believed he had done the right thing. He re-iterated again he had discussed the matter with the First Respondent and the First Respondent had said the investigation relates to Leonard & Co Solicitors and does not relate to you personally. The Second Respondent did not think to clarify the situation with the Law Society but maintained it was his honest and sincere belief that he had done the right thing.

121. He also pointed out that although he accepted his conduct was being referred for a Section 43 Order, this was not in his capacity as a solicitor. He said that he was an honest person, hardworking, there had been no dishonesty even when he was on the bank mandate and he believed what he had written on the application form to be true. The Second Respondent said that he had had a good job in Bangladesh but couldn't stand all the corruption out there which is why he came to England because he wanted to work in an honest environment. He had not thought it was necessary to tick the "yes" box and he genuinely thought he had given the right answer on the application form.

122. The Second Respondent did not accept that he thought he would not be admitted if he ticked "yes". He said again that as he was working with the same organisation that was being investigated, he did not believe this could have been hidden from the Law Society. He stressed again that he was a person of good character, that he did not think the investigation was relevant to his application form for admission as a solicitor. He believed his answers to be correct.

123. When asked about the final declaration on the application for admission, again the Second Respondent said he believed he had answered the question correctly, honestly and sincerely. He believed he had been an asset to the profession and he honestly believed that the business of Leonard & Co Solicitors did not belong to him and matters relating to it did not apply to him.

124. It was put to the Second Respondent that he had answered the questions on the form dishonestly in order to mislead the Law Society. The Respondent disagreed with this and said he would never do that, he would never mislead anyone. He did not accept there was anything wrong in the way he had completed the form or that he had been reckless, and he maintained he was a person of good character and still believed this even now.

The Submissions of the Second Respondent

125. The Tribunal were referred to the written representations that had been submitted on behalf of the Second Respondent.

126. In respect of payments made from client account for Stamp Duty and Land Registry fees, this had been a technical breach of the rules made by the First Respondent and should not weigh heavily against the Second Respondent. He had not been admitted as a solicitor at that time, he was not familiar with the Solicitors Accounts Rules and it would be unjust to put the errors of the First Respondent on the Second Respondent.

127. The Second Respondent was now faced with an application against him as an admitted solicitor for matters that had taken place before he was admitted, although it was accepted that one of those matters was on the verge of him being admitted. The Tribunal were reminded that a Section 43 Order was only concerned with a person who is not a solicitor and therefore was not now relevant to the Second Respondent. The Second Respondent could not be liable for the conduct occasioned by the First Respondent as this conduct was the First Respondent's breach alone and once the breach was brought up during the first investigation, it did not happen again.

128. The Tribunal were referred to Lindley & Banks on Partnership (2002) for the definition of a partnership and the rules that needed to be looked at for determining whether there was an existence of a partnership in this case. The Second Respondent submitted that in this case there was no partnership but simply a sharing of gross returns. The provision of a loan or taking the lease of the premises did not enable, in the Second Respondent's submission, the Tribunal to reach a contrary decision. In this case, the Second Respondent submitted there was no partnership.

129. In relation to the possibility of sharing professional fees with a bona fide employee, the Tribunal were referred to the Solicitors Conduct Rules which allowed professionals to share fees with bona fide employees.

130. In relation to allegations 24 and 25, the Second Respondent submitted that these were duties imposed on solicitors and at the relevant time, the Second Respondent had not been a solicitor. In fact Leonard & Co Solicitors had been in breach of their duty to lenders on a number of transactions but only one of these transactions was alleged in relation to the Second Respondent. The mortgage lender had bought no action and the documents indicated that any such action would face difficulties. It was clear from the documents in this case that the lender did not want to know about any reduction in the purchase price and was simply concerned about the value of the property, and on this basis was prepared to lend 85% of the value of the property which is what they did. This was not a prima facie case of negligence by Leonard & Co Solicitors through the Second Respondent, and it was inappropriate to seek to establish negligence by the back door through a disciplinary hearing for a hopeless claim that would not succeed and had not been pursued by the lender. The Second Respondent submitted that his conduct had not been conduct unbefitting a solicitor.

131. The Second Respondent submitted that it was very difficult for the Tribunal to accept any claim that a person who was not a solicitor at the material time, had failed to adhere to Rules that did not apply to him when the breaches took place. The Adjudicator had tried to get around this basic issue in his decision dated 21st August 2007, by referring to the cases of Jideofo v the Law Society (No. 6 of 2006), Evans v the Solicitors Regulation Authority (No. 1 of 2007) and Begum v Solicitors Regulation Authority (No. 11 of 2007). The Second Respondent submitted that all three cases referred to people who had been refused admission as student members of the Law Society or they had had their applications to be admitted rejected. One case was withdrawn on appeal and the two other cases were totally different from the matters in this case. Mrs Begum was a case where the student was convicted of a number of dishonesty offences. She pleaded guilty to seven counts of theft and disclosed her convictions after completing her training contract. A criminal conviction involving dishonesty could be taken into account when deciding if conduct was unbefitting a solicitor. The other case of Evans involved a number of convictions for drunken and disorderly behaviour which again were not relevant in this case.

132. Dealing finally with the statement on the Application Form for Admission as a Solicitor, the Tribunal were asked to take into account the eloquent evidence given by the Second Respondent and the Tribunal were asked to look at question 4 of the application form in particular, as any conduct would fall into that question which states "Have you ever been subject to an investigation about alleged misconduct or malpractice in connection with a business activity?" It was submitted that question 7, "Are there any other factors, such as bankruptcy, county court judgments or any other matter relating to your career and suitability to become a solicitor which should be considered?" was simply a sweeping up statement and did not add anything further. It dealt with matters not dealt with elsewhere on the form.

133. The Second Respondent submitted he did not act dishonestly. The question was not very clearly expressed and it could not possibly relate to any business activity at all, and must have some limitation to its ambit. At the time of completing the application

form the Second Respondent was not carrying out a business activity, he was not a partner in Leonard & Co Solicitors and the Tribunal were referred to the Second Respondent's belief that he had not been dishonest, he honestly and reasonably believed he was not answering the question wrongly. It was submitted that the test of dishonesty set out in Twinsectra had not been established and therefore any allegation of dishonesty must be rejected.

134. It was further submitted that the Tribunal should bear in mind that the Second Respondent had not been a solicitor at the time of the alleged conduct.

The Findings of the Tribunal

135. In relation to the First Respondent, the Tribunal found the allegations to have been substantiated. However, in relation to allegation (19), the Tribunal did not believe that sufficient evidence had been provided to make a finding of dishonesty against the First Respondent. The evidence provided was not strong enough to satisfy the test in Twinsectra v Yardley and, without any explanation from the First Respondent, the Tribunal could not find any evidence of dishonesty. The Tribunal referred to a telephone call dated 3rd May 2006 between the First Respondent and S and P Partners Solicitors in which the First Respondent confirmed he was holding various documents. The Tribunal believed it was possible that the First Respondent may have believed he had the documents when he gave the undertaking, and then subsequently realised that he did not have the documents at all. The Tribunal were accordingly not satisfied that there had been a dishonest intent with regard to the First Respondent.

136. Concerning the Second Respondent, the Tribunal felt that whilst the conduct referred to took place when the Second Respondent was not a solicitor, it was open to the Tribunal to look at this conduct as the Rules did not specify when such conduct should take place, and no time limit is placed on the conduct that can be referred to or taken into account. It did not matter that the Second Respondent was not a solicitor at the relevant time, as it would be absurd to disregard any conduct prior to admission if that conduct were to reflect on the reputation of the profession if the person was subsequently admitted. The conduct is the relevant issue, not the time it took place.

137. In relation to allegation (22), the Tribunal found the allegation to have been made out. The Second Respondent had facilitated, permitted or acquiesced in the breach. In his evidence the Second Respondent clearly said he was not happy about being on the bank mandate and had reservations about this. It was a matter he should have checked out himself rather than relying on the bank manager.

138. Concerning allegation (23), again the Tribunal found the allegation to have been proved. The Tribunal had considered the circumstances of the business arrangement and noted that if all the separate strands were put together, such as the 50/50 profit costs arrangement, the provision of the leasehold premises, the fact that the Second Respondent was a signatory on the bank account mandate, the fact that the Second Respondent made a loan of £12,000 to the First Respondent, then the arrangement did appear to become more like a partnership. Lindley & Banks on Partnership, which was referred to by the Second Respondent, states that a "partnership is the relation which subsists between persons carrying on a business in common with a view of profit". There were three conditions that must be satisfied which were, (a) a business,

(b) which is carried on by two or more persons in common and (c) with "a view of profit". In this case, that test appeared to be satisfied and to the outside world, the arrangement would appear to be a partnership. It was also noted by the Tribunal that the Second Respondent's name was on the firm's letterhead even though it did state he was a "barrister". However, the word "barrister" was followed by the words "(N.P)" which could be misleading as it was not clearly stated that these initials referred to "non-practising". The Tribunal particularly noted that a later letter dated 30th May 2007 from Leonard & Co Solicitor to the Solicitors Regulation Authority still referred to the Second Respondent as a "barrister (N.P)" and this letter was written after the Second Respondent had been admitted as a solicitor. He was not referred to on the letterhead as a solicitor and there appeared to be no change in the letterhead at all.

139. In relation to allegations (24) and (25), the Second Respondent had accepted he did sign the Certificate of Title without checking the files in detail and that he had relied completely upon *[Respondent 3]* as to the accuracy of what was required to be certified in the Certificate of Title. The Second Respondent had accepted he had not checked the actual file and he had accepted that he was effectively signing the Certificate of Title blind. In the circumstances, the Tribunal found both of these allegations to have been made out and reminded the Second Respondent that he did not need to have knowledge of matters but could still fail to disclose them. If he wished to sign Certificates of Title, it was his absolute duty to ensure that whatever was certified in the Certificate of Title was accurate and correct. Signing Certificates of Title without checking files is a failure to act in the best interests of clients and is not acceptable conduct.

140. Regarding the final allegation, allegation (26), the Tribunal had considered the test set out in Twinsectra v Yardley and whilst the Tribunal accepted that the objective part of the test had been proved, in that an ordinary member of the profession would take the view that the Respondent's conduct was dishonest, the Tribunal did not accept that the subjective part of that test had been proved. It was quite clear from the Second Respondent's evidence that he did not believe his conduct had been dishonest and indeed, he seemed to have a genuine belief that he had acted sincerely and truthfully. The Tribunal believed that the Second Respondent had been rather naïve but accepted he did believe that what he signed was true. Accordingly the Tribunal did not find dishonesty to be proved. However, the Tribunal did find, apart from the allegation of dishonesty, that the allegation (28) had been substantiated. It was clear from the evidence produced that the Second Respondent should have realised that because he had been investigated in previous investigations, and because his conduct had been referred by the Adjudicator to the Tribunal, he did not complete the form correctly when he should have done so.

The Mitigation of the Second Respondent

141. The Second Respondent submitted that the offences had been relatively menial. There had been no finding of dishonesty so it was not appropriate to strike him off or suspend him. The Second Respondent submitted that it would be sufficient for the Tribunal to Order either a Reprimand or a fine with costs consequences. The Second Respondent submitted this would be sufficiently punitive to justify the findings.

Costs

142. The Applicant submitted that whilst the finding of dishonesty had not been proved, all the other allegations had been substantiated and he therefore requested the Tribunal to make an Order for costs to be assessed, particularly as the First Respondent was not present today. The Applicant also indicated that the Tribunal may wish to apportion costs between the First and Second Respondents.

The Tribunal's Decision

143. In relation to the First Respondent, the Tribunal felt that the totality of the allegations was very severe and indeed, the Tribunal noted that the First Respondent had previously appeared before the Tribunal on 15th March 1994 in relation to allegations concerning failure to deliver his Accountant's Report, breaches of the Solicitors Accounts Rules and failure to deal with correspondence from the Solicitors Complaints Bureau. The Tribunal were very disappointed to note that the First Respondent was again being referred to the Tribunal on similar allegations and that indeed, on the previous occasion, he had been suspended from practising as a solicitor for a period of two years which was a very serious sanction in any event.

144. Having been suspended previously, the First Respondent was again before the Tribunal on 21 allegations which clearly showed he did not appear to have any regard for regulatory matters. All of the allegations had been substantiated against him except the allegation of dishonesty, and the Tribunal felt that the reputation of the profession had been severely damaged. In this case it was right that the First Respondent should not remain a member of the profession. In all the circumstances, the Tribunal decided the appropriate sanction was for the First Respondent to be struck off.

145. Concerning the Second Respondent, given that dishonesty had not been proved against him, the Tribunal did not think this warranted a strike off. It appeared to the Tribunal that the Second Respondent had been unfortunate in that he had not been properly supervised by the First Respondent and had found himself in a number of difficulties due to the First Respondent's conduct. It was right that the Second Respondent should not be punished for the errors of the First Respondent.

146. The Second Respondent had been naive and foolish in failing properly to check the Handbook and regulations concerning the various breaches of which were alleged against him and whilst no complaints had been made by the lenders, such failures could have had very serious consequences and could have damaged the reputation of the profession in the eyes of the public. However, the Tribunal were mindful that there had been no loss to any clients, no complaints had been made against the Second Respondent and that since the breaches took place, the Second Respondent had subsequently been admitted as a solicitor, he had undertaken the proper training required and was now more knowledgeable about the rules and regulations governing solicitors with which it was essential he must comply. In all circumstances, the Tribunal decided that the appropriate sanction was to impose upon the Second Respondent a fine of £5,000.

147. In relation to the matter of costs, the Tribunal Ordered that the First and Second Respondents were to be jointly and severally liable for costs up to and including the costs of today to be assessed if not agreed. However, the Tribunal decided the Second Respondent's contribution to the total costs up to and including today should be capped at 35%.

148. As the case against *[Respondent 3]* was yet to be heard, the proportion of any contribution he may have to make to costs would be determined at the substantive hearing.

149. The Tribunal Ordered that the Respondent Derek John Leonard of Romford Road, London, E7, solicitor, be Struck Off the Roll of Solicitors.

The Tribunal Ordered that the Respondent *[Respondent 2]* of Stepney Way, London, E1, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal further Ordered that Mr Leonard and *[Respondent 2]* be jointly and severally liable for costs up to and including the costs of 13th November 2008 to be subject to a detailed assessment unless agreed between the parties, to include the costs of the Investigation Accountant of the Law Society, *[Respondent 2]*'s contribution to be capped at 35% of the total costs up to and including 13th November 2008. The proportion of *[Respondent 3]*'s contribution, if any, to costs up to and including 13th November 2008 is to be determined at the next substantive hearing.

Dated this 23rd day of February 2009
On behalf of the Tribunal

A G Gibson
Chairman