

IN THE MATTER OF CONN FINNIAN FARRELL and [*RESPONDENT 2*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr N Pearson (in the chair)
Mr R B Bamford
Mr D E Marlow

Date of Hearing: 29th January 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made by Margaret Eleanor Bromley solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ on 24 April 2008 that Conn Finnian Farrell, solicitor, of Effingham, Leatherhead, Surrey and [*Respondent 2*], solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondents were that:-

Allegation 1

They failed to comply with the Solicitors Accounts Rules (SAR) 1998 in that:-

- 1.1 They withdrew money from client account other than in accordance with Rule 22.
- 1.2 They withdrew money from client account in excess of funds held for the client concerned in breach of Rule 22(5).

- 1.3 They transferred money in respect of costs from client to office account without first sending the client a bill of costs or other written notification of the costs in breach of Rule 19(2).
- 1.4 They have failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7.

Allegation 2

They failed to file an Accountant's Report for the year ended 31 October 2006 with The Law Society by 30 April 2007 in breach of Section 34 of the Solicitors Act 1974 and rule 35 of the SAR.

The allegations against the First Respondent alone were that:-

Allegation 3

Contrary to the Solicitors Practice Rules 1990, Rule 1 he did something in the course of acting as a solicitor which compromised or impaired or was likely to compromise or impair his independence or integrity; his good repute or that of the solicitors' profession; his duty to act in the best interests of his clients namely:-

- 3.1 He used client monies for his own purposes; for the avoidance of doubt this was an allegation of dishonesty.
- 3.2 He borrowed money from a client, Mr S, without advising Mr S to obtain independent advice, thereby acting when his interest conflicted with those of Mr S.
- 3.3 He took advantage of a vulnerable client, Mr S.
- 3.4 He failed to respond promptly and substantively and/or at all to correspondence from the Law Society in breach of Rule 20.03 of the Solicitors Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 29 January 2009 when Margaret Eleanor Bromley appeared as the Applicant, the First Respondent did not appear and was not represented and the Second Respondent was represented by David Morgan solicitor and consultant of the firm of RadcliffesLeBrasseur of 5 Great College Street, Westminster, London SW1P 3SJ.

The evidence before the Tribunal included the admissions of the Respondents to allegations 1 and 2 and the admission of the First Respondent to allegations 3.1 and 3.2 save that he denied dishonesty. The Second Respondent gave oral evidence. A bundle of references in support of the Second Respondent was handed up to the Tribunal at the hearing.

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

The Tribunal Orders that the Respondent, Conn Finnian Farrell of The Shireburn, Effingham Common Road, Effingham, Leatherhead, Surrey, KT24 5JG, solicitor, be Struck Off the Roll of Solicitors and a fixed sum of £1000 of the costs of the application and enquiry having been ordered to be paid by the Second Respondent, the Tribunal Orders that the First Respondent do pay the balance of the costs to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Officer of the Law Society. The Tribunal further Orders that the First Respondent pay an interim sum towards such costs of £7,500.00.

The Tribunal Order that the Respondent, [*Respondent 2*], solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

The facts are set out in paragraphs 1 - 47 hereunder:

1. The First Respondent born in 1952 was admitted as a solicitor in 1980. The Second Respondent born in 1953 was admitted as a solicitor in 1978. The names of both Respondents remained on the Roll of Solicitors. The Second Respondent was currently employed as an assistant solicitor in employment approved by The Solicitors Regulation Authority.
2. At all material times the Respondents practised in partnership under the name of Farrell Martin & Nee at 158-160 Battersea Park Road, London SW11 4ND. The Solicitors Regulation Authority resolved to intervene into the practice on 18 July 2007.
3. On 5 July 2007 an inspection of the books of accounts and other documents of the Respondents was commenced by an officer of the Forensic Investigation Unit of the Solicitors Regulation Authority (SRA), Mr D. The resulting report dated 13 July 2007 noted the matters set out below.

Allegations 1.1 and 1.2

4. During the initial interview with Mr D, the First Respondent indicated that there was a current shortfall on client account of between £350,000 and £400,000. Mr D reviewed 15 matters. Mr D identified that in respect of those 15 matters a minimum shortage existed on client account of £234,689.36.
5. Mr D also looked at 12 files where there were debit balances on client account. In each case funds were withdrawn from client account in excess of the money held on behalf of the particular client. In the matter of London Mortgage, payments made from client account included payments made to Millfield and Royal Grammar School in respect of school fees.
6. The Respondents acted for Mrs L in connection with a number of matters including the sale of land at Balmoral Drive. Mrs L had confirmed that the only invoice she received in respect of this matter was that dated 16th February 2006 for £499.38 which

she paid. The ledger for this matter showed the following transfers from client to office account allegedly in respect of costs.

16 May 2006	£2,056.25
1 June 2006	£11,750.00
30 June 2006	£29,375.00

7. The following invoices were posted to the office side of the ledger:

17 February 2006	£499.38
16 May 2006	£940.00
16 May 2006	£2,056.25

8. Mrs L had confirmed that she did not receive the two invoices dated 16th May 2006 although the total of these two invoices (£2,996.25) was referred to on Schedule of Funds sent to her sometime after December 2006. Mrs L further confirmed that she knew nothing about the further sums transferred allegedly in respect of costs.
9. The Respondents also acted for Mrs L in connection with various assets in Ireland which formed part of her late husband's estate. The ledger showed the following invoices posted to the office side of the ledger.

20 April 2006	£3,316.43
16 May 2006	£2,291.25
31 May 2006	£1,198.50
17 August 2006	£4,347.50
31 October 2006	£25,086.25
31 October 2006	£23,500.00
3 January 2007	£7,005.94
11 April 2007	£587.50

10. Transfers were made from the client account to the office account in respect of all of the above invoices either on the date of the invoice or shortly thereafter. Mrs L had confirmed that the only costs of which she had any knowledge were in the sum of £7,005.94 and these were referred to on the Schedule of Funds sent to her.
11. The copy of the ledger in respect of the Balmoral Drive matter (number A06033) found on the client file and printed on 1st June 2007 also showed the following transactions:

Client Account

20 June 2006	Transfer to Account No. A03440 – Mr A Howard	£14,000.00
2 August 2006	To J Svoboda	£5,000.00
4 August 2006	To Broadbridge Grimes	£59,915.99
4 August 2006	Received from Broadbridge Grimes	£250,000.00
7 August 2006	To B E Wood & Partners	£250,000.00
1 September 2006	Rent due to B E Wood & Partners	£4,000.00
27 November 2006	Rent due to B E Wood & Partners	£4,000.00

12. Mrs L had confirmed that she knows nothing about the above transactions, that the various names meant nothing to her and that she did not authorise those payments.
13. Although those transactions were shown on that copy of the ledger, a copy of the ledger printed on 17th March 2008 by the Intervention Agents did not include the last 4 entries, namely the receipt and payment of the £250,000 and the 2 payments of £4,000 to B E Wood & Partners.
14. The ledger card for Mortgage Express (A07039) printed on 7th November 2007 showed a payment from client account to B E Wood & Partners for £4,000 on 1st September 2006.
15. Proceedings had been commenced against the First Respondent in the High Court and he had served a Defence dated 19th September 2007 and Replies to a Request for Further Information and clarification of his Defence. Copies of the Particulars of Claim, the Defence and the Replies were before the Tribunal. In his Defence the First Respondent (the Defendant) admitted that the payments made in respect of the client matters of (A04349) and (A05061) referred to in the Report had been made and confirmed that the client ledger account had been reimbursed by the Defendant.
16. In respect of the matters of L (A06033) and L (A06076) the First Respondent admitted “that the shortfall in this client ledger account must be repaid by the Defendant” and in his clarification the First Respondent stated “It is admitted by the Defendant that there is an apparent shortfall on this client ledger account of £122,045.86” and made the same admission in respect of the amount of £49,458.38.
17. The First Respondent also admitted in the proceedings that he had misapplied client funds by using client funds for purposes other than for which they were entrusted to him.

Allegation 1.3

18. The Second Respondent acted for Mr and Mrs M in the purchase of a property, in Streatham, in about 2003. He was also instructed to act by Mr and Mrs M on the sale of the property. Instructions were given to the Second Respondent in about May 2007 and on 30th May 2007 Mr and Mrs M paid £500 on account of costs.

19. On 19th June 2007 the sum of £488 was transferred from client account to office account re costs. Mr and Mrs M had confirmed that they did not receive an invoice in respect of those costs.
20. As set out above, transfers were made, also allegedly in respect of costs, without the invoices being sent to Mrs L.

Allegation 1.4

21. The table below sets out the amount of the debit in respect of each of the matters identified in the report, the date on which that debit arose and the date on which it was repaid if it had been repaid. Each of the debits on client account remained in existence for several months.

Matter	Amount of Debit	Date Debit Arose	Date Debit Repaid	Part or Full	If in Part, Amount on Payment
The letters in brackets refer to the sections in the FI report					
L Byrne	£4,412.98	21 July to 28 December 2006	19 January 2007	Full	
Sundries	£205,348.87	31 October 2006	Remained in debit	-----	-----
C	£81,750.00	06 September 2006	26 January 2007	Full	-----
G (d)	£117,024.26	23 November 2005	17 May 2007 03 July 2007	Part Full	£2,636.23
G (e)	£244,269.24	23 January 2007	03 July 2007	Full	-----
Misc	£14,687.50	02 November 2004	Remained in debit	-----	-----
M	£40,940.74	01 September 2006 (having built up since 25 April 2006)	26 January 2007	Full	-----
Mortgage Express	£4,000.00 £4,000.00	1 September 2006 16 January 2007	26 January 2007	Full (£8000)	----- -----

London Mortgage	£89,900.79	02 March 2007 (having built up since January 2007)	03 July 2007	Full	----- -----
The S	£108,000.00	1 December 2006 (having built up since 30 June 2006)	19 December 2006 26 January 2007	Part Full	£50,000.00 £58,000.00
L (k)	£22,045.86 <u>£100,000.00</u> £122,045.86	1 December 2006 20 December 2006	Remained in debit		----- -----
L (l)	£49,458.38	01 June 2007 (having built up since 05 September 2006)	Remained in debit	-----	----- -----

Allegation 2

22. The Respondents' Accountants' Report for the period ending 31st October 2006 had to be filed by 30th April 2007.
23. The SRA wrote separately to the First and Second Respondents on 4th May 2007 requesting the Report. Responses were received from the First Respondent on 15th May and 20th June 2007 indicating that there had been some difficulties with the computerised accounts system and that a temporary bookkeeper had recently left, but that he hoped to be able to file the Report, firstly, within four weeks of 15th May 2007, and subsequently, within two weeks of 20th June 2007.
24. The Report was not filed and the SRA wrote separately to each Respondent on 2nd July 2007 requesting an explanation within 14 days. No response was received, and the SRA wrote again on 3rd August 2007, when the Respondents' failure to respond to the SRA's letter of 2nd July was also raised.
25. The Law Society intervened into Farrell Martin & Nee on 20th July 2007 and on 8th August 2007 the Intervention Agents agreed to forward the most recent letters to the Respondents at their home addresses. A response was received from the Second Respondent on 2nd September 2007 requesting a further 14 days to respond. The SRA sent copies of the letters of 2nd July and 3rd August 2007 to the Respondents' home addresses on 17th October 2007. On 21st October 2007 the Second Respondent forwarded a copy of his letter dated 20th September 2007 responding to the allegations against him. No response was received from the First Respondent.
26. The Accountant's Report, due on 30th April 2007, remained outstanding.

Allegation 3.1

27. The First Respondent admitted to Mr D that there was a shortfall on client account of between £350,000 and £400,000. As set out above payments on the London Mortgage matter were made in respect of school fees.
28. Mr Farrell had admitted in the civil litigation that he had acted in breach of trust by using client funds for purposes other than those for which they were entrusted to him. He had admitted that the misapplication of client funds was in the sum of at least £350,000.
29. As set out above the transactions dealt with for Mrs L included payments made to other clients and to other people who had no connection with Mrs L and were unknown to her.
30. Copies of the relevant pages of the client account bank statements confirmed that these payments were made from client account on the dates recorded in the ledgers.
31. B E Wood & Partners were the landlords for the office premises of Farrell, Martin & Nee. Mr Farrell used money from client account to pay the rent on his office premises.
32. In connection with both Mrs L's transactions monies were taken purportedly in respect of costs without Mrs L's knowledge or consent. Mr H, the fee earner dealing with matter number A06076, queried the transactions in the sum of £25,000 and £23,500. He noted on the file that he had queried these with the First Respondent who stated "they are all being settled today, so hold off on sending final cheque out until tomorrow." They had not been settled.

Allegation 3.2 and 3.3

33. The First Respondent was instructed by Mr S in about February 2007 in connection with the sale of his property for £1,167,500.
34. The sale completed on 20th April 2007 and the completion statement showed a balance due to Mr S, after deductions, of £1,139,453.60. A copy of the financial statement was sent to Mr S on 3rd April 2007.
35. On 27th April 2007 the Respondents sent by CHAPS the sum of £689,453.60 to Mr S leaving a balance from the proceeds of sale of £450,000.
36. On 20th April 2007 (the day of completion) Mr S signed a loan agreement with the First Respondent in which he agreed to lend the First Respondent a sum of £450,000. The First Respondent did not advise Mr S to obtain independent advice before signing the loan agreement.
37. At the time of the transaction Mr S was frail as a result of serious ill health including a stroke and triple bypass surgery. He had given a Power of Attorney to a Mr and Mrs F who had introduced Mr S to the First Respondent. Mr S was unaware of the amount

of the loan taken by the First Respondent. He had difficulty in reading documents and preferred to have them read to him. At the time he signed the loan agreement he was alone with the First Respondent.

38. The Power of Attorney to Mr and Mrs F was subsequently revoked and a new Power of Attorney dated 16th June 2007 was granted to Mrs S, Mr S's former wife. Mrs S had made claim to the Compensation Fund and her letter set out the background including details of Mr S's ill health and vulnerability.
39. Mr S's bank statements showed that two payments of £3750 were made by the First Respondent to Mr S, one on 24th May 2007 and the other on 28th June 2007. No further payments were made and the loan has not been repaid.
40. On 31st August 2007 E P Solicitors complained to the Legal Complaints Service on behalf of Mr S about the loan. The SRA wrote to the First Respondent on 18th October 2007 asking for his explanation.
41. The First Respondent did not reply and on 16th November the SRA wrote again, Although the First Respondents' solicitors acknowledged receipt and requested an extension of time for serving their client's response, no further correspondence was received.
42. Following the intervention into Farrell Martin & Nee a letter dated 7th June 2007 signed by Mr S was found on one of the files. This letter confirmed "the transaction was made in full knowledge and understanding and after taking the advice of my financial adviser."
43. In a statement of Mr S dated 22nd April 2008 Mr S said that the First Respondent did not tell him to take independent advice and he did not take advice from anyone.

Allegation 3.4

44. The contents of the Report were raised with both Respondents separately by way of letters sent to their home addresses on 15th August 2007. The First Respondent failed to respond and a further letter was sent to him on 30th August 2007 requesting a response within 7 days. He failed to reply and a third letter was sent on 25th September by recorded delivery.
45. The First Respondent wrote to the SRA on 12th November 2007 saying that in view of the Intervention it was neither appropriate nor possible to provide a reply save through his solicitors.
46. As referred to above, the First Respondent failed to respond to the SRA's letters dated 2nd July and 3 August 2007, copied again to his home address on 17th October 2007, in relation to allegation 2.
47. The First Respondent also failed to reply to the SRA's letters of 18th October and 16th November 2007.

The Submissions of the Applicant

48. The allegations of breaches of the Accounts Rules had been admitted by both Respondents. These were serious breaches involving substantial sums. The Second Respondent as a salaried partner was strictly liable for breach of the Accounts Rules and he had acknowledged this from the outset.
49. In the matter of Mrs L numerous invoices had been posted to the ledgers and transferred as costs without Mrs L's knowledge and involving substantial sums.
50. The debits on client account had remained in existence for several months and in one case for a period of over four years.
51. Payments which made up the shortfall included some in respect of payments of school fees and rent on office premises.
52. The transactions which were the subject of allegation 3.1 were dishonest transactions intended to remove money from client account for the First Respondent's own purposes.
53. The Applicant was not alleging dishonesty in relation to the loan from Mr S but this was a serious matter. The client had been very frail with significant ill health and was vulnerable. The First Respondent had borrowed a significant sum from the proceeds of the client's sale of his property. Mrs S's letter to the compensation fund made clear that Mr S had been taken advantage of by a number of people. He should have been able to rely on the First Respondent as his solicitor. Instead the First Respondent had abused a vulnerable individual because he needed more money. A substantial sum remained outstanding. The First Respondent in his letter to the Tribunal of 28th January 2009 had written:-

“ I believe that he had received independent advice from an independent financial adviser whom he told me was a former bank manager. I wished to ensure that he was not unduly influenced by any third party and on two separate occasions attended him to go through the documentation with him and I read that documentation to him.”

This showed a total lack of insight into what the problem was with the whole relationship. The First Respondent had had a conflict of interest and yet assured the Tribunal he had taken time to go through the documents with Mr S. The First Respondent should not have been doing this.

54. The First Respondent did not appear. His letter of 28th January had arrived late the previous evening. It's contents were un sworn and could not be tested by cross examination and the Applicant submitted that very little weight should be attached to it.
55. The First Respondent had written:-

“At no stage during the course of the events in question did it occur to me that I was acting dishonestly, nor did I act with any intent to cause loss to a third party.”

It might be thought that the First Respondent was addressing here the second part of the two step test for dishonesty. If however a solicitor could avoid a finding of dishonesty by making a statement in an un sworn letter then the whole attempt to prove dishonesty would be undermined. The Tribunal was referred to the case of Bryant and Bench - v - The Law Society. The Tribunal would need to consider whether the First Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and also whether the First Respondent had been aware that by those standards he was dishonest. In relation to the first issue the Applicant submitted that the answer was an overwhelming yes. The First Respondent had used client money to pay his office rent and had transferred money from one client to unrelated clients. It was clear from Mrs L’s witness statement that she had been left with a significant shortfall, monies having been paid to people of whom she had never heard. In relation to the second test the Applicant submitted that based on an un sworn untested statement it would be shocking to the public if a solicitor could persuade the Tribunal that paying off his expenses out of client account, and abusing client account in the way the First Respondent had done, he had genuinely been aware that these actions were not dishonest. The Applicant submitted that, on the evidence, the Tribunal could be satisfied that the Respondent had been dishonest or at the very least had been closing his eyes.

Oral Evidence of the Second Respondent

56. The Second Respondent had not replied to the SRA’s letter of 2nd July 2007 as he had never seen it. The post would have been opened either by the First Respondent or by the bookkeeper who would have handed the post to the First Respondent.
57. The First Respondent had written in his letter to the Tribunal

“The arrangement was that the accounting function was performed by the firm’s cashier who operated the computerised accounts package. We as, partners, were entitled to access the accounts which we would do by going to the cashier and requesting printouts or any other details.”

The Second Respondent’s evidence was that he could only see accounts on the files with which he was dealing. The actual records were under the authority of the bookkeeper and the First Respondent. The Second Respondent confirmed his witness statement of 7th January 2009 which stated

“ General firm matters were under the supervision of Mr Farrell and I was allowed little or no involvement with the accounting records of client matters dealt with by Mr Farrell. Requests I made for information about general accounting matters were subject to the approval of Mr Farrell.”

The First Respondent effectively prohibited access by putting forward excuses that the accounts system was not working correctly.

58. The Second Respondent confirmed his present employment details where he was principally involved in conveyancing work. His employers were aware of the hearing. The Second Respondent confirmed the details of his income and expenditure as set out in his schedule which was before the Tribunal.

The Submissions on behalf of the First Respondent

59. The submissions of the First Respondent were set out in his letter of 28th January 2009 which was before the Tribunal.
60. The First Respondent wrote that at no stage during the course of the events in question had it occurred to him that he was acting dishonestly nor had he acted with any intent to cause loss to a third party. He accepted that he had lost control of the firm's accounting procedures and that errors had occurred for which he was responsible.
61. The First Respondent said that he had appeared before the Tribunal previously in respect of Accounts Rules' breaches which arose out of the failings of his then accounts clerk and had, as a result, continued to carry forward a shortfall. Even with the assistance of his accountants he could not establish where that shortfall lay. He had, on advice, sought the cooperation of the SRA to a voluntary closure of the firm; but the SRA had proceeded with the investigation and Intervention.
62. The First Respondent said that he had put through the client account a transaction involving himself and another party in relation to property development and also in relation to the raising of funds against his jointly owned matrimonial home. He had not however put his name on the client account as an interested party which had led to misinterpretation of the position. The effect had been to give the impression that he had withdrawn funds from client account when in fact he was drawing down funds to which he was entitled.
63. He accepted that there had been errors in respect of Mrs L's accounts which he could not explain. He also accepted that an error had been brought to his attention in this regard; but he had failed to take on board that this may have been "the tip of the iceberg" on that particular ledger. He could not challenge the contents of the Forensic Unit's Report with regard to the payments made nor could he offer any more particular explanation.
64. In relation to Mr S the First Respondent said that he accepted he had acted in breach of Rule 1 with the benefit of hindsight, but at the time it did not occur to him that he was doing so.
65. The First Respondent accepted that he should have satisfied himself that Mr S had taken independent advice and should have ensured that somebody else acted for Mr S in the course of the transaction. At the time he had thought that the loan was a mutually beneficial agreement. The funds were applied towards the purchase of a property. Mr S would have been repaid save that the Intervention prevented the timely conclusion of the matter.

66. The First Respondent expressed his regret for the errors which had occurred. He said he had no desire to continue practising as a solicitor. He confirmed that the Second Respondent had not taken an active part in the management of the accounting functions of the firm.

The Submissions on behalf of the Second Respondent

67. This was a very sad case. The Second Respondent had been the dupe of his senior partner who had allowed him to see as much as he needed to in respect of his own files, but not the general finances of the firm nor the First Respondent's own matters. The Second Respondent accepted that this did not relieve him of his responsibility for the management of the firm's accounts as set out in his witness statement. As clearly set out in his statement however he had been lulled into a false sense of security being assured that nothing was wrong. This was a case where one partner had trusted too much in the other.
68. The Second Respondent had a clean disciplinary record. The Applicant had alleged dishonesty only against the First Respondent who had to take the major portion of blame.
69. This matter had been devastating for the Second Respondent. He was now an employee in another firm in more constrained circumstances especially given the current economic position in relation to the property market. The Tribunal was asked to take his present circumstances into account in considering sanction.
70. The Tribunal was referred to various testimonials in support of the Second Respondent which came from other solicitors, professional clients and clients. The testimonials were outstanding.
71. The Second Respondent had learnt his lesson. He had himself been a victim in this sorry tale.

Submissions as to Costs

72. The Applicant sought her costs in accordance with the costs schedule before the Tribunal. The actions of the First Respondent had consumed much more of the Applicant's time particularly in trying to deal with the problems created by the ledgers which showed different transactions according to when the ledger was printed off. The Tribunal was asked to consider making an Interim Payment Order in respect of the First Respondent.
73. The Second Respondent submitted that he was not in a position to contest the Applicant's claim for costs but said that a major part of the Rule 5 Statement related to matters conducted by the First Respondent. The First Respondent had put up a smoke screen to cover his traces and the Tribunal was asked to take this into account in considering costs and to apportion the costs accordingly if possible.

The Findings of the Tribunal

74. The Respondents had admitted allegations 1 and 2. The First Respondent had admitted allegations 3.1, save for the allegation of dishonesty, and 3.2 and 4.
75. In considering the allegation of dishonesty made against the First Respondent alone the Tribunal considered the two stage test set out in the case of Twinsectra - v - Yardley [2002] 2ER377 as referred to in the case of Bryant and Bench - v - The Law Society. The Tribunal considered carefully the written representations of the First Respondent. In this regard the First Respondent had said that some of the money held in client account was in fact his money. He had however no explanation for what had occurred in relation to Mrs L's account other than asserting that these were errors. The Tribunal noted that payments from Mrs L's ledger included payments of rent for the firm's premises and payments made to other clients who had no connection with Mrs L. The fee earner dealing with one of Mrs L's matters had queried two of the sums taken purportedly in respect of costs. The First Respondent had admitted in the civil litigation matter that he had acted in breach of trust in respect of client funds. The Tribunal found that in taking money from his client account for his personal use including the payment of rent from Mrs L's account, payments to unconnected clients and the transfer of costs without consent, his conduct was dishonest by the standards of reasonable and honest people. Having considered the limited explanations put forward in the Respondent's letter of 28th January 2009 the Tribunal were satisfied so that it was sure that the Respondent did not have an honest belief that he could use his client account in such a way and that therefore he knew that what he was doing was dishonest by those same standards. In particular having been alerted to problems on Mrs L's accounts the Tribunal did not accept his explanation that there were errors on this matter. Indeed he had said that he could not offer any more particular explanation. The Tribunal is therefore satisfied to the very high standard required that the allegation of dishonesty against the First Respondent was substantiated.
76. The First Respondent had not admitted allegation 3.3. The Tribunal did not accept his submission that the loan was mutually beneficial as between himself and Mr S. The requirement for a client in such circumstances to receive independent advice was there for the protection of the client. The outcome of this matter in which Mr S had not received repayment of the loan demonstrated precisely the reason why the requirements were there. Mr S was vulnerable. The Tribunal is satisfied that the First Respondent had taken advantage of Mr S.

The Previous Appearance of the First Respondent before the Tribunal

77. On 23rd February 1999 the following allegations were substantiated against the First Respondent, namely that he had failed to comply with The Solicitors Accounts Rules 1991 in that he had:-
- (i) failed to keep his books of account properly written up notwithstanding Rule 11 (1) of the said Rules;
 - (ii) drawn money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;

- (iii) failed to pay client money into client account contrary to Rule 3 of the said Rules.

78. The Tribunal in 1999 said

“It is, of course, of the utmost importance that a solicitor complies with the Solicitors Accounts Rules. He has a high level of duty to maintain a proper stewardship of clients’ monies and clearly cannot do so if his accounting records are not entirely accurate. The Tribunal accepted that the Respondent had not been dishonest and in reality has been taken in by the manipulations of a bookkeeper entrusted with the task of maintaining the firm’s books of account. Indeed the respondent’s reporting accountant had also been taken in for a period of time. At the time when the accounting deficiencies arose the Respondent was a sole practitioner and was entirely responsible for the proper keeping of the books of account and the proper handling of clients’ monies. He could not delegate that responsibility. The Tribunal had given the Respondent credit for the fact that he has put matters right. He has entered into partnership and one of his new partners has been charged with the responsibility of maintaining and checking the firm’s books of account. The Tribunal considered it right to impose upon the Respondent a financial penalty and one which reflected the seriousness of his failures. The Tribunal imposed a fine of £3,000 and ordered the Respondent to pay costs of and incidental to the application and enquiry.”

79. The Tribunal on 29th January 2009 had found an allegation of dishonest conduct substantiated against the First Respondent. The First Respondent had chosen not to attend the hearing and the Tribunal is not persuaded by anything in his written submissions that this was other than a serious case of dishonesty. Further the Tribunal was deeply concerned at the First Respondent’s conduct in relation to Mr S. For a solicitor to behave in this way towards a vulnerable client was appalling. Such conduct destroyed public confidence in the profession. Even had the allegation of dishonesty not being substantiated the First Respondent’s conduct had been so serious that the Tribunal would have applied the ultimate sanction. The Tribunal would Order that the First Respondent’s name be struck off the Roll of Solicitors.
80. In relation to the Second Respondent the Tribunal had taken careful note of the submissions on his behalf and of the impressive testimonials in his support. The Second Respondent had assisted the Regulatory Authority and had admitted his liability for the Accounts Rules breaches. He had recognised that, having been held out as a partner, he had responsibilities as such. The Tribunal noted that the Second Respondent had been a salaried partner only, with limited access to the accounts. The Tribunal noted that there were in the profession generally anomalies in the position of salaried partners which were unsatisfactory. Being named as partners gave the public some reassurance. It was however sometimes difficult for salaried partners to challenge equity partners. It was important that salaried partners understood the extent of their obligations when they accepted that role. The Tribunal noted that the Second Respondent had fully accepted his responsibilities with the benefit of hindsight. No dishonesty at all had been alleged against him. He had been duped by his partner in whom he had placed too much trust. The Tribunal is satisfied that the Second Respondent’s responsibility could be reflected in a financial penalty.

81. In relation to costs the Tribunal considered it right that the Second Respondent should pay only a small amount towards the costs. This matter was before the Tribunal largely because of the misconduct of the First Respondent. The balance of the costs should be paid by the First Respondent to be assessed if not agreed. In the circumstances the Tribunal felt it was right to make an Interim Payment Order in respect of the First Respondent who had been served with a schedule of costs.
82. The Tribunal Ordered that the First Respondent, Conn Finnian Farrell of The Shireburn, Effingham Common Road, Effingham, Leatherhead, Surrey, KT24 5JG, solicitor, be Struck Off the Roll of Solicitors and a fixed sum of £1000 of the costs of the application and enquiry having been ordered to be paid by the Second Respondent, the Tribunal Ordered that the First Respondent do pay the balance of the costs to be subject to a detailed assessment unless agreed between the parties, to include the costs of the Investigation Officer of the Law Society. The Tribunal further Ordered that the First Respondent pay an interim sum towards such costs of £7,500.00.

The Tribunal Ordered that the Second Respondent, [*Respondent 2*], solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

Dated this 15th day of June 2009
On behalf of the Tribunal

N Pearson
Chairman