No. 9275-2005 (RH)

IN THE MATTER OF FRANK EMILIAN D'SOUZA , solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mrs J Martineau
Mr S Marquez

Date of Hearing: 10th July 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Michael Robin Harvard of Morgan Cole Solicitors of Bradley Court, Park Place, Cardiff CF10 3DP, on 16th June 2005 that Frank Emilian D'Souza, solicitor of DAS House, 20 Revell Road, Kingston-Upon-Thames, Surrey KT1 3SW might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The matter had been heard by the Tribunal on 20th December 2005 and had been remitted to the Tribunal on 20th December 2005 by the Divisional Court for reconsideration of sanction following an appeal by Mr D'Souza.

At the opening of the hearing the Applicant sought to withdraw two allegations. The Respondent agreed and the Tribunal consented thereto.

The allegations below are set out in the agreed amended form.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in that:-

1. [Withdrawn].

2. He failed to record his dealings with office money on the office side of client ledgers in breach of Rule 32 of the Solicitors Accounts Rules 1998.

3. He failed to provide a client with information about costs and other matters in breach of Rule 15 of the Solicitors Practice Rules 1990.

4. He conducted himself in a manner which was likely to compromise or impair the solicitor's duty to act in the best interest of the client contrary to Rule 1(c) of the Solicitors Practice Rules 1990.

5. He conducted himself in a manner which was likely to compromise or impair the solicitor's proper standard of work contrary to Rule 1(e) of the Solicitors Practice Rules 1990.

6. [Withdrawn].

The rehearing was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London ECAM 7NS on 10th July 2007 when Michael Robin Harvard appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent made at the earlier hearing and the oral evidence of Mr SM Middleton-Cassini.

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

The Tribunal Orders that the Respondent Frank Emilian D'Souza of Leaps & Bounds, 44 Kings Road, Kingston, Surrey, KT2 5HS (formerly of DAS House, 20 Revell Road, Kingston-Upon-Thames, KT1 3SW), solicitor, do pay a fine of £1,500, 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 up to and including the Tribunal hearing on 20th December 2005 to be subject to a detailed assessment unless agreed between the parties (to include the costs of the Investigation Accountant of the Law Society).

The facts found by the Tribunal in 2005 are set out in paragraphs 1 to 16 hereunder:-

1. The Respondent, born in 1942, was admitted as a solicitor in 1977. At all material times the Respondent practised on his own account under the style of "John Smythe & Co" at DAS House, 20 Revell Road, Kingston-Upon-Thames, Surrey KT1 3SW.

2. A Forensic Investigation Officer of The Law Society (the FIO) began an inspection of the Respondent's books of account on 19th April 2004. The FIO's written report dated 20th August 2004 was before the Tribunal.

3. The Respondent was unable to provide the FIO with any evidence that he was consistently recording his dealings with office money on the office side of client ledgers.

4. The bank reconciliations provided up to and including 20th May 2004 showed that client liabilities listed were covered by available funds but because of the lack of book keeping in relation to the office side of the client ledgers, no opinion could be given by the FIO as to whether all client liabilities had been appropriately recorded. A true and accurate calculation of the financial position could not be performed.

5. The FIO recorded that the Respondent stated that he was not aware of his responsibility to maintain the office side of the client ledgers. His accountants had not been aware of this requirement.

6. The Respondent had been instructed to act on behalf of Mrs W, the widow and personal representative of Mr W who died intestate on 8th November 1994. The Respondent's firm dealt with the administration of Mr W's estate. Mrs W had difficulties in communication and other difficulties and relied on her neighbour, Ms J, for day-to-day help.

7. There was no evidence of any estate accounts having been compiled, although a cash statement was prepared and sent to Mrs W on 2nd November 1995. The cash statement could not be reconciled with any of the information on the client file. The Respondent gave no satisfactory explanation to the FIO.

8. The cash statement recorded total funds received as £24,337.67 but the FIO could only find evidence of a receipt of £22,828.99.

9. On 14th August 1995, the Respondent transferred £18,828.99 to the designated client deposit account with Bradford & Bingley plc.

10. There was what appeared to be a rough handwritten client ledger on the file, this had not been updated since 9th August 1995.

11. The Respondent provided the FIO with two computer-generated client ledgers dated 4th March 1996 (showing a closing credit balance of £447.90) and 1st November 1996 (showing an opening credit balance of £1,947.00). The Respondent was unable to reconcile the figures with the information contained on the client file. Following a reconstruction by the FIO of the client ledger from the information available, it was concluded that there should have been a net balance of £442.89 as at 19th May 2004. The Respondent's balance of £525.05 had not been explained.

12. The Respondent was not able to illustrate that a central record of bills was maintained.

13. The FIO found no evidence of a "client care letter" being sent to Mrs W, and the apparent breach of Practice Rule 15 was not restricted to the file of Mrs W but was more widespread.

14. In the matter of the estate of W Deceased two cheques had been sent to Mrs J, totalling £2309.31. There was no evidence that Mrs W consented to either of these payments being made to Mrs J.

15. Mrs W had instructed Athi Kulisra Smith Solicitors to act in place of the Respondent. There had been exchanges of correspondence between that firm and the Respondent

but the file was not transferred to the new firm. The Respondent stated that Mrs W had given him explicit instructions to continue to act but there was no evidence on the file to support that. Attendance notes on the file suggested that the opposite was so.

16. Since 1996, no progress had been made on the W Deceased file. The FIO carried out his inspection in April 2004, some ten years later, at which time the Respondent indicated that the late Mr W's property at Walthamstow was still to be sold. Until the completion of the sale the administration of the estate remained incomplete.

The submissions of the Applicant made at the hearing in 2005

17. The Respondent did not recognise that he had to record his dealings with office money on the office side of the client ledgers. The Respondent explained that his own accountant had not been aware of that requirement.

18. It was a requirement that a solicitor, pursuant to Practice Rule 15, provided every client upon receipt of instructions from that client with a letter setting out details of the terms of the solicitor's retainer.

19. In connection with the estate of the late Mr W, it appeared that Mrs W was a vulnerable client in respect of whom he should have taken particular care. Whilst the Respondent might say that Mrs W made her wishes clear that Mrs J should receive certain payments, it was absolutely critical that the Respondent received written authorisation for such payments to be made. The payments made to Mrs J, taking into account the size of the estate, amounted to a significant sum.

The submissions of the Applicant made at the hearing in 2007

20. The Applicant had produced to the Respondent and to the Tribunal a copy of a schedule of issues which had been prepared. Those issues were:-

    1. The production of client ledgers to the FIO at the time of his inspection.

    2. Circumstances surrounding the FIO's conclusions that no opinion could be given as to whether or not all client liabilities had been properly recorded.

    3. Whether or not The Respondent was aware that there was a requirement to write up the office side of client ledgers.

    4. Whether The Respondent had the capability, by means of computer software or otherwise, to update individual client ledgers "at the push of a button", i.e. instantly.

    5. The overall state and condition of the W file, in particular:-

        (i) The recording and preparation of the requisite financial date and transactions; and

        (ii) Details of the instructions given and advice tendered.

6. Whether or not The Respondent could establish that a central record of bills was maintained.

21. The FIO dealt with the schedule of issues in his oral evidence. With regard to issues 1, 2 and 3 the FIO said that postings on the office side of client ledgers had been omitted. It was important to maintain the office side to see whether there was client money in office account that should not be there. The FIO went into some detail with The Respondent about the office side of the client ledger. Together they looked at a very old copy of a book about the Solicitors Accounts Rules held by The Respondent. The FIO accepted that the relevant Rule had not changed. The FIO thought that it was possible that The Respondent had not recognised the significance of writing up the office side of the client ledger.

22. With regard to the suggestion that the Respondent could update the office side of the client ledgers "at the push of a button", the FIO thought that the Respondent was struggling with the computer. The Respondent had submitted statements of persons who had worked in his office dealing with the way in which the firm's bookkeeping and accounts were kept but he had not served Civil Evidence Act Notices and had not brought the witnesses to give oral evidence and the Tribunal would have to take care about the weight to be given to these statements.

23. The FIO observed that those statements appeared to accept his findings that the office side of the client ledgers had not been written up. Work undertaken by the Respondent in that respect postdated the FIO's visit.

24. With regard to issue number 6, the FIO said he had a wide experience of looking at solicitors' client matter files relating to conveyancing and probate cases. The FIO described the file of Mrs W as "the worst file I have ever seen". He was critical of the condition of the paperwork, paperwork that had been misfiled, filed papers not being in chronological order and the documents having been "stabbed" onto the file clip without a hole having been punched.

25. The FIO said that his first job was to reconcile the file with the ledger. If he could not do that then he would recreate the ledger. In the case of Mrs W he had tried to do that from primary sources of information contained in the file. He had been unable to reconcile the file.

26. The FIO said that in order to establish the financial position he looked at the correspondence and attendance notes in the file. A number had been misfiled and appeared not to follow client instructions on a number of occasions but in particular the file had not been sent to the clients' new solicitors.

27. The FIO had been concerned that money had been held on a designated account in this probate matter. It would not normally be necessary to open a designated account in a probate matter and he considered that such designated accounts in probate matters sometimes were prone to abuse.

28. The FIO confirmed that he had asked the Respondent for the 'bills delivered' book having made that request while undertaking the inspection. The Respondent had been unable to produce that book.

29. In answer to questions raised by the Respondent, the FIO confirmed that his inspection had been carried out on three separate days. There was no strict format followed by FIOs on such inspections. The FIO confirmed that his third visit was a short one made primarily to discuss the W file. On the first two days of the inspection the FIO went through several files. He said that he had exemplified the W file because it was in such a bad state. It was accepted that the allegations related to no other files. The FIO said that he had sorted out the W file when he took it away with him, including punching holes for the documents to be inserted in the ring binder. The FIO confirmed that he had been supplied by the Respondent with bank statements and cheque books to assist him in his verification of the financial position.

The submissions of the Respondent made in 2005

30. The FIO accepted that the Respondent produced an up to date cashbook. The Respondent could "at the press of a button" isolate all office entries for a particular client which could be transferred to the individual client ledger.

31. The Respondent was familiar with the Rules. His records were there and available via the cashbook system. A computer cashbook entry was written up on the client ledger automatically by the system. The Respondent's comment that he was not aware of the need to complete the office side of the individual client ledger meant that he did not appreciate that these entries had to be side by side. He had amended his bookkeeping procedures to ensure that all such entries were now 'side by side'. The Tribunal was invited to consider that this was a matter of presentation rather than substance. The Respondent's Accountant had provided unqualified Annual Accountant's Reports.

32. With regard to Mr W Deceased and Mrs W, the file had been opened following Mr W's death in November 1994. At that time practitioners were frequently unaware of their duty to provide costs information as was now required by Rule 15.

33. An estate account had not been completed as the Respondent regarded the matter as still continuing. It was not a "normal" probate file. Mrs W did not understand English. It was difficult to communicate with her.

34. The Respondent considered that Mr R was a man trying to take advantage of Mrs W. He had never met Mr R but knew that he was married to a Thai lady. Mrs W was a Thai national, she and Ms J had told the Respondent that "they" were trying to get hold of her money.

35. The document described as a rough handwritten client ledger was not a ledger sheet but it was a rough working sheet. The computer generated sheet before the Tribunal was accurate so far as the Respondent was aware.

36. The Respondent accepted that the document headed 'List of Monies etc' might contain bookkeeping errors. The receipt of £888.91 was recorded in the ledger printout and the top two receipts on the 'List' were cheques drawn in favour of their respective payees not passing through the Respondent's account. If those two 'contra items' were deducted together with the £888.91 the balance was £22,835.99. The

difference was £7. After further deducting the difference between the mistaken figure of £193 and £198, the difference was £2. There was nothing sinister in that.

37. Mrs W did not have a bank account. She told the Respondent to send the cheque for £1,500 to Ms J. He could not produce the instruction. Mrs W also told the Respondent to send a cheque for £809.31 to Ms J.

38. The Respondent did not send the W Deceased papers to the other solicitors as Mrs W told him that they had been instructed through Mr R and that he should ignore them.

39. The Respondent had attempted to trace Mrs W but it was understood that she had returned to Thailand. The Respondent did not know whether she ignored attempts to contact him or whether the Bangkok Bank which the Respondent had asked to trace her had not managed to communicate with her. In connection with Mrs W's affairs the Respondent had sought guidance from The Law Society as to the ethical position. He had attempted to do his best.

40. The Respondent accepted that he had not strictly adhered to Practice Rule 15. On some of the files where Rule 15 letters had not been found by the FIO, the Respondent had been undertaking repeat work for the same clients and had not considered it necessary to send a new Rule 15 letter in connection with every new instruction. He now complied with Rule 15 punctiliously. His breach had not been persistent.

41. The Respondent was sixty three years of age. He had been admitted as a solicitor in 1977. He was divorced and lived alone. He was the only member of his firm. He employed no staff.

42. The Respondent had instructed new accountants. He had changed the way in which he kept records. The new accountants had examined the Respondent's books of account and had provided a clear report to The Law Society. Everything was now presented properly and the books were kept in an appropriate manner.

Preliminary submission of the Respondent in 2007

43. In the submission of the Respondent in view of the fact that his representative had advised the Respondent in 2005 that he should "plea bargain" and upon the withdrawal of certain allegations he should admit others, to which the Respondent agreed in the light of his inexperience of such matters, the Tribunal could not only consider the question of sanction but also could reopen its findings as to whether or not the allegations made against the Respondent could be reopened.

The Tribunal's Decision on the Preliminary Submission

44. The Tribunal did not agree. The decision of the Divisional Court was clear that the matter was to be remitted to the Tribunal for the purposes of reconsidering sanction. The Tribunal was prepared to consider only submissions relating to the question of sanction.

The Respondent's submissions with regard to the sanction to be imposed upon him

45. The Respondent had hoped to be represented by a member of the Bar's pro bono unit. He had not received a reply to his request.

46. The Respondent invited the Tribunal to read the statements of Ms K and Ms B in relation to his financial and general reputation as submissions.

47. On the date of the hearing the Respondent would shortly be 65 years old. He had always practised in small firms after qualification in 1977 at the age of 35. When newly qualified he had been given dispensation by the Law Society to practise as a sole practitioner with the daily attendance of Mr Smythe as consultant and then the Respondent had taken over what had been left of Mr Smythe's practice, which had been very run down.

48. The Respondent attached great importance to accounts. He engaged a chartered accountant to keep the books, not only to deal with the production of Accountant's Reports. When that accountant retired the Respondent sought the services of another chartered accountant who was also a barrister and that gentleman and his wife wrote up the Respondent's books. The Respondent had supplied all accounting materials including blue and pink paying-in and cheque requisition slips. The accountant and his wife had always promised that they would get round to bringing the books up to date. The Respondent himself did not have such skills.

49. The Respondent himself drew the matter to the attention of the Law Society and asked for assistance. That report and request for assistance led to the inspection, when nothing untoward was found save that the books were not written up to date. There had been no loss to clients and never had been. That failure had been the subject of the 1989 disciplinary matter.

50. The Respondent said that he asked his accountants in 1989 to write to the Tribunal and they did so but the letter had not come before the Tribunal. The Respondent had been able on appeal to persuade the Court on that occasion that the sanction imposed was excessive and the fine imposed upon him had been reduced by two-thirds.

51. The Respondent had appealed the Tribunal's earlier decision because the penalty imposed by that Tribunal was out of line with penalties imposed on others for similar failures. On appeal the financial sanction imposed by the Tribunal had been reduced by two-thirds.

52. The Respondent accepted that he had admitted the allegations but he was anxious to demonstrate to the Tribunal the extent of his default. It was the Respondent's case that all of the information required by the FIO had been available and there was no difficulty in connection with the records that he kept and all information was there. The reporting accountants had not been unhappy.

53. The FIO inspected not just the Respondent's books and records, but the whole of his history since he commenced practice on his own account 30 years ago. Two inspections conducted by the Law Society's Monitoring Unit had resulted in a clean

bill of health. The Respondent considered that the FIO had instructions to "make a case" which was evidenced by the telephone calls he made to his office.

54. The FIO paid three separate but connected visits to the Respondent's office in 2004, two of which were for full days. It was the Respondent who drew the W estate to his attention. The Respondent was concerned that the Law Society had pursued him as part of a policy to thin out or eradicate small practitioners.

55. The emphasis at the time of the inspection was that clients and office entries should be recorded side by side. The Respondent's own accountant had prepared the necessary Accountant's Reports with, of course, full knowledge of his record keeping.

56. The Respondent did have a 'bills delivered' book but he did not have it readily to hand at the time of the FIO's visit.

57. With regard to the breach of Rule 15, the Respondent explained that his routine system was that he worked from home and did not have a brass plate. He did not advertise. Most of clients were established clients. On occasions when he was instructed by a new client he did write an appropriate Rule 15 letter. The Respondent had been able to provide a copy of his standard letter to the FIO. The Respondent had never taken advantage of any client and he had not abused the spirit of Rule 15. The Respondent questioned whether the writing of a client care letter was an absolute requirement.

58. The Respondent asked the Tribunal to accept that he was not unaware of Rule 15, nor intended to neglect it, but found difficult in tailoring letters, which might introduce excessive formality into the way that many small (and larger) practices were run – with warmth, informality and above all trust. Nevertheless, whilst the spirit of Rule 15 was never breached, not always was its letter observed.

59. With regard to the case of Mrs W, the Respondent had been engaged by the widow of the deceased to protect her from the adult children of the deceased's first marriage, which protection was duly secured, notwithstanding the disappointed children's attempts (continuing to this day) to deny the widow's entitlement to her deceased husband's estate.

60. The Respondent said he had sent details of the figures to the new solicitors in November 1995.

61. The current state of affairs was that Mrs W had died in Thailand. She had previously been difficult to track down. The Respondent had taken out letters of administration in the estate of her late husband on behalf of Mrs W. One adult stepchild of Mrs W denied the validity of the marriage.

62. The Respondent had reconstructed the account of Mrs W and had sent a copy to the Applicant. The new account balanced exactly.

63. It was right that Mrs W was a vulnerable client. She had signed a power of attorney in favour of the Respondent and Mrs J. The Respondent explained that there had been a huge to-ing and fro-ing of papers between himself, advisors and the clients. The last

words Mrs W had spoken to the Respondent had been that she had confidence in Mrs J. Mrs W had spoken on the telephone to Mrs J from Thailand.

64. It was not the case that the Respondent had plundered Mrs W's account for the benefit of Mrs J.

65. Mrs W could hardly write her name. She was however highly intelligent woman who knew her own mind.

66. The refusal of the first Tribunal sitting in 2005 to grant the Respondent's request for an adjournment was to be questioned in the light of medical evidence obtained at short notice. The case was not as simple as the Tribunal had believed. The Respondent's advocate did the best that he could which was to secure an inappropriate "plea-bargain".

67. It was only in its written Findings without any prior indication of its intended purpose that the Tribunal gave liberty to apply to the Respondent to have the conditions of practice imposed by the Tribunal removed or amended. The Respondent was caused considerable and unnecessary expense and stress in preparing for what proved to be a futile third hearing, where the Tribunal, quite rightly, decided that in the absence of fresh evidence, it could not vary the decision of the previous Tribunal relating to the imposition of those conditions.

68. The Respondent's up-to-date reconciliation statements showed that "clients' liabilities [were] covered by available funds". There was not, and never had been in the Respondent's 30 years as a sole practitioner, even an "innocent" shortfall. The Respondent would have provided whatever documents he was asked to provide.

69. By simply keying in the computerised records, the unique reference number allotted to each client or matter at the outset of a matter, all entries relating to client or office monies could be instantly called up and displayed. It was inconceivable that a solicitor sole principal of 30 years' experience would not know about the need to maintain the office side of their client ledgers.

70. Mrs W's file had been studded with covering letters, indicating both receipts and payments, as well as photocopies of cheques drawn and at least one paying-in slip. Far from not being able to give a satisfactory explanation, the Respondent believed he had given one.

71. The absence of a client care letter to Mrs W was admitted. However, reference is made to previous statements, which may be summed up thus:-

    (a) "client care letters" were not so commonplace in 1994 as they were 12 years later today;

    (b) such a letter would have been superfluous to a woman who could not read or write English, but who clearly understood and approved of what the Respondent was doing, which was in accordance with her clearly expressed wishes.

72. It was unfortunate that the Applicant had not placed before the Tribunal the whole of the W lever arch file, which the FIO removed without notice and retained for several months, returning it only after specifically requested. As a result the Tribunal was denied the background which not only illuminated what subsequently took place or did not, but also showed the intense and successful efforts made on behalf of the widow W, frequently referred to as "Leck".

73. Having regard to the fact that Mrs W (born and bred in Thailand, where she had lived until the age of at least 31), had barely a word of English, the Respondent maintained that she was as fully informed as was reasonably practicable, and that she was more than satisfied, indeed grateful, for the invaluable service provided. She would cheerfully have paid a substantially higher fee than the very low ones actually charged. In short, the absence of what was then much less commonplace, i.e. a client care letter, was never a source of anxiety to the client or used to gain any advantage over her.

74. Mrs J had sprung to Mrs W's aid and sustained her through thick and thin from before November 1994 (when Mr W died) to November 1995 (when Mrs W went back to Thailand) to beyond, without any thought for herself. She was Mrs W's saviour and spokeswoman, someone in whom Mrs W justifiably reposed total trust.

75. Sums paid to Mrs J were partial reimbursement for the many sums that Mrs J had paid out of her own pocket to keep Mrs W afloat, and debts of Mrs W which she had asked Mrs J to discharge.

76. As for the Applicant's submission that it was "absolutely critical that the Respondent received written authorisation for such payments to be made", he was saying in effect that if the Respondent had typed out letters of authority for payment and got Mrs W to sign them, that presumably would have absolved him even though she would have very little idea of what she was signing. In retrospect, of course that would have been the safer course of action, but it never occurred to the Respondent that anyone could so misconstrue his actions, in a manner Mrs W herself would never have dreamt of.

77. The disciplinary proceedings had damaged the Respondent's practice, which had always provided him with a modest living.

78. On each previous occasion, the Law Society vigorously opposed the Respondent's application to Mr Justice Jackson, being quite content to see him lose his livelihood with no alternative means of support to hand. The Law Society did not properly consider the alleged gravity of the Respondent's breaches, and whether the protection of the public and the preservation of the profession's reputation could not have been better achieved without recourse to disciplinary proceedings.

79. If what the Divisional Court stated was correct and that "contrary to the impression which may have been given by [the Chairman's] reference to the Clerk, the Tribunal was well informed as to the 1989 matter", a question could be raised as to how fair the proceedings were. Previous adverse findings were not normally known to those sitting in judgement, until after a conclusion had been reached as to the guilt or otherwise of the Respondent.

80. The Respondent believed that the reason for the omission of the oral statement from the written Findings was that upon reflection, the Tribunal thought it might have been unjustifiably harsh, but could not of course go back on any of the penalties they had imposed. That could also be the explanation for the appearance for the first time of "Liberty to Apply" in connection with the condition imposed by the Tribunal.

81. There was an ever-present danger of becoming case-hardened. The apparent ease with which Tribunal sometimes accepted the evidence presented by the Law Society had led the Law Society to be less and less meticulous in its methods, confident that very few of those selected for reference to the Tribunal had the resources and knowledge with which to mount a successful defence. There was little to indicate that criticisms made by the High Court were heeded.

82. The Divisional Court expressed its understanding that when imposing a fine (and costs) "the Tribunal does take means into account. It is plainly right that it should". The Tribunal does not, but should, make what it takes into account clear.

83. The Tribunal might come to the conclusion that the allegations against the Respondent were without some substance but could nonetheless have been properly and adequately dealt with by a "Pull your socks up" or compulsory attendance on a course, rather than the inevitable trauma and physical, mental and financial harm caused by disciplinary proceedings.

84. The Divisional Court "regretfully found" failings and a "flawed basis" which impelled it to state that the substantive Tribunal's decision could not stand.

85. The Respondent's 30 years of practice had been brought to the verge of extinction, leaving him without any income and the almost certain loss of his home, from which he ran his practice.

86. The Respondent wholeheartedly agreed with the ideals and necessity of protection of the public and preservation of the reputation of the solicitors' profession, and that hardship which may result to an individual practitioner was less important than the good reputation of the profession.

87. No member of the public and no member of the profession had complained about the Respondent.

88. The Respondent had suffered a traumatic three years. At the age of almost 65 he did not have a huge amount of time left to practise as a solicitor. He hoped that the Tribunal might in the light of the Respondent's submissions be able to deal with the admitted allegations with leniency.

The Tribunal's Findings

89. The allegations had been admitted at the 2005 hearing and the earlier Tribunal had found them to have been substantiated.

The Tribunal's Decision and its Reasons

90. The admitted allegations demonstrated that the Respondent had not fully complied with the Rules by which practising solicitors are bound. The Respondent would do well to remember that such Rules are in place not only to protect the clients of solicitors but also to protect the solicitors themselves.

91. The Tribunal has taken into account the fact that the Respondent has suffered anxiety and uncertainty over a period of time. The Tribunal accepts in large measure the submissions made by the Respondent that his Accounts Rules breaches amounted to little more than a "technical" breach, although it has to be said that full and punctilious compliance with the Solicitors Accounts Rules is an essential requirement.

92. The Tribunal accepts in the light of his explanations that the allegations against the Respondent were not as serious as they might initially on their face have appeared. The Tribunal has noted that the Respondent had a finding against him in 1989 but has not given that any great weight in view of the lapse of time since the earlier finding was made.

93. In all of the circumstances the Tribunal considered it appropriate and proportionate to impose a financial sanction upon the Respondent. The figure which reflected the seriousness of all of the allegations made against him was £1,500. The Tribunal noted that the 2007 hearing was a re-hearing and in all of the circumstances considered it appropriate that the Respondent should pay the costs of and incidental to the application and enquiry up to and including the hearing on 20th December 2005. He should not be required to meet the costs of and incidental to the re-hearing.

DATED this 14th day of September 2007
on behalf of the Tribunal

L N Gilford
Chairman