

IN THE MATTER OF EMENIKE MGBEMENA, OLUBUNMI OLAJUMOKE OMOTOSO
AND JOSIAH IKECHUKWU NWABUEZE, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr R B Bamford
Lady Maxwell-Hyslop

Date of Hearing: 8th August 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 Gerald Malcolm Lynch solicitor consultant with Drysdales at Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex, SS2 6HZ on 22nd March 2007 that Emenoke Mgbemena of 5 Stirling Road, London, N17 9UN, Olubunmi Olajumoke Omotoso of Phoenix & Co Suite 35 Imperial House, 64 Willoughby Lane, London N17 0SP and Josiah Ikechukwu Nwabueze of Equitable Solicitors of 30A Brixton Road, Kennington, London, SW9 6BU might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations were:-

(a) Against all Respondents:

Breach of the Solicitors Accounts Rules 1998 contrary to the provision of Rule 32 failing to maintain full accounts as by the said Rule required.

(b) Against the First and Second Respondents:

(i) Breach of Rule 2(a)(3) of the Solicitors Introduction and Referral Code 1990;

- (ii) Breach of Practice Rule 1, Solicitors Practice Rule 1990 in failing to act in clients' best interests by obtaining a secret profit in connection with conveyancing charges.
- (c) Against the First and Third Respondents:
- (i) Failure to produce books of account for inspection by The Law Society contrary to the provisions of Rule 34 of the Solicitors Accounts Rules 1998;
 - (ii) Contrary to the provisions of Practice Rule 13 of the Solicitors Practice Rule 1990 failing to ensure that their firm was adequately managed and/or supervised by a Solicitor qualified in accordance with the said Rule;
 - (iii) Acting in breach of the Solicitors Publicity Code 2001 in, at the material time, showing the Respondent as an Assistant Solicitor, a position not held at that material time.
- (d) Against the First Respondent alone:
- Breach of Practice Rule 1 of the Solicitors Practice Rules 1990:
- (i) In failing to maintain a proper standard of work;
 - (ii) In making an untrue statement on a professional history form required by The Law Society.
- (e) Against the Second Respondent alone:
- Breach of the provisions of Practice Rule 6 (3)(b) of the Solicitors Practice Rules 1990
- (f) By virtue of each and all of the aforementioned the Respondents have been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS, when Gerald Malcolm Lynch appeared as the Applicant, Mr Mgebemena was represented by David Giles of Counsel. Miss Omotoso was represented by James Pike, solicitor, and Mr Nwabueze was represented by Mr Umezurruike of Counsel.

The evidence before the Tribunal included the following admissions by the Respondents. Allegation (a), was admitted by the First and Third Respondents as this allegation related to the firm of Russell Stanley. The Second Respondent denied the allegation as she was not a partner at that firm. The First and Second Respondents admitted allegation (b)(i) and denied allegation(b)(ii).

The First and Third Respondents admitted allegation (c)(i), the Third Respondent admitted allegation (c)(ii) which was denied by the First Respondent.

Allegation (c)(iii) was admitted by the Third Respondent and denied by the First Respondent. The First Respondent denied allegations (d)(i) and (d)(ii). The Second Respondent admitted allegation (e).

All of the Respondents considered that allegation (f) was a matter for the Tribunal to decide.

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

The Tribunal Orders that the Respondent Emenike Mgbemena c/o Phoenix & Co Solicitors, Suite 35, Imperial House, 64 Willoughby Lane, London, N17 0SP, solicitor, do pay a fine of £4,000.00, 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 £9,200.85.

The Tribunal Orders that the Respondent, Olubunmi Olajumoke Omotoso of Phoenix & Co, Suite 35, Imperial House, 64 Willoughby Lane, London, N17 0SP, 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 £4,245.55.

The Tribunal Orders that the Respondent Josiah Ikechkwu Nwabueze of 84 Challice Way, London, SW2 3RO, solicitor, be Reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,486.82.

The facts are set out in paragraphs 1 to 24 hereunder:

1. The First Respondent was admitted as a solicitor in 1998 and was 39 years of age. The Second Respondent was admitted as a solicitor in 1999 and was aged 39 years. The Third Respondent was admitted as a solicitor in 2004 and was aged 38 years. The names of all Respondents remained on the Roll of Solicitors. The First and Second Respondents were husband and wife.

The history of Russell Stanley & Co

2. At all material times the First Respondent was either a partner or the sole principal in this firm. The Third Respondent was a partner from 12th January 2005 to 16th June 2006. The Second Respondent was an assistant solicitor from 20th November 2001 to 31st October 2002. At the date of the Forensic Investigation Officer's (FIO) inspection Ms Omotoso had remained sole signatory on Russell Stanley & Co's office account. The Law Society intervened into the practice of Russell Stanley & Co on 26th October 2006.

The history of Phoenix & Co

3. The First and Second Respondents were in partnership in this firm at all relevant periods and in particular from 7th July 2004 to 21st March 2006. From 22nd March 2006 to 4th May 2006 the Second Respondent was the sole principal. On 5th May 2006 she was joined in partnership by the Third Respondent. He ceased to be a partner on 27th September 2006.

The Investigation Accountant's inspection

4. In September 2005 an FIO of The Law Society inspected Russell Stanley & Co's books of account. The FIO's Report dated 21st September 2005 was before the Tribunal. At the time of inspection the First and Third Respondents were partners.

Mr A, noted on the firm's letterhead as an assistant solicitor, stated that he was a consultant and also a sole practitioner in another firm. He stated that in the absence of the Respondents he was responsible for supervising staff at Russell Stanley & Co. He attended the firm in early morning and in late afternoon. He supervised mainly by telephone. Mr A had been admitted as a solicitor on 3rd February 2003 and was not qualified to supervise a solicitor's practice.

5. When the FIO attended at the offices of Russell Stanley & Co on 1st September 2005 he was informed that there had been a burglary, that books were not on the premises and that a new accountant had been appointed. The records were with the accountant but they had not been released on request.
6. The inspection was adjourned until 13th September 2005 when again the books of account were not available.
7. When asked how transactions were recorded in the absence of the books, the First Respondent stated "we have got bits and pieces". He produced a cash book from May 2005 to August 2005 relating to office account transactions. When the First Respondent was asked if he maintained any ledger accounts for his clients, he replied "no - probably with the Accountants".
8. In the absence of books and records the FIO was unable to express an opinion as to whether moneys should have been held by the firm at the inspection date to meet liabilities to its clients.
9. In connection with the FIO's inspection the First Respondent completed and signed a "Professional History of Partner" form on 13th September 2001. Which stated that he had no other current partnerships. At that date he was a partner in the firm of Phoenix & Co.
10. In September 2005 the Second Respondent's name was noted on Russell Stanley & Co's letterhead as an assistant solicitor. She had been an assistant from 20th November 2001 to 31st October 2002 and was not an assistant solicitor at the inspection date.

Explanations offered to The Law Society

11. On 7th October 2005 The Law Society wrote to the First and Third Respondents about the FIO's Report, asking them to comment on the question of supervision under Rule 13, the failure to produce records and the discrepancy on the firm's letterhead. In the absence of response, a further letter was sent to them on 25th October 2005. A letter was also sent to Mr A seeking his explanation on the question of supervision. Mr A responded on 24th October 2005 saying that the supervision and management of Russell Stanley & Co was not his concern, except for the period 1st September to 12th September 2005.
12. In a letter dated 26th October 2005 Russell Stanley & Co said that Mr A was a qualified solicitor and supervised the office and staff. They went on to say that books of account were not available as they were with accountants. The failure by the First Respondent properly to complete his "Professional Partnership" form was an oversight.

13. On 19th January 2006 the Adjudication Panel of The Law Society's Compliance Board resolved to stand over consideration of the matter for a period of one month. The First and Third Respondents were written to on 27th March 2006 and their comments were sought. On 27th March the First Respondent replied, referring to the difficulty in obtaining books from the accountants. He said that he did not have a client account, he was no longer a partner with Phoenix & Co and he had not intended to mislead The Law Society. On 12th April the Law Society required further information on the accounts particularly in the light of Rule 32 of the Solicitors Accounts Rules. The First Respondent provided copies of office accounts to the Society.
14. On 20th June 2006 The Law Society wrote to the First Respondent raising with him the question of personnel i.e. the Second Respondent shown on the letterhead which was inaccurate. The provisions of the Solicitors Publicity Code 2001 were drawn to the First Respondent's attention. In the absence of response a further letter was addressed on 10th July. On 8th August the First Respondent wrote to say that this constituted an oversight and the use of old headed paper.
15. On 30th August 2006 an FIO reported upon the First Respondent's practice as Russell Stanley & Co, following an inspection commenced on 8th August 2006. The books of account were not in compliance with the Solicitors Accounts Rules. A question arose as to the existence or otherwise of a client account. Full records were not produced on the basis that there had been a burglary and that a briefcase containing relevant documentation had been stolen. The First Respondent said that he did not keep copies of bills. When pressed on the point he then said that copies of bills were kept inside a cash book which had been stolen. The FIO was unable to verify from source documentation whether the accounting records accurately recorded the firm's dealings with office money relating to any particular client matter.
16. The FIO referred to instructions received by the First Respondent. from Nigerian Airways Limited and others. The Respondent had forwarded a bill of costs in excess of £59,000.00. Disbursements exceeding £22,000.00 had been incurred on behalf of Nigerian Airways. The FIO sought production of the client ledger relating to this matter and was advised that there was none. The First Respondent said that he paid all disbursements out of his own personal account. The First Respondent said that he had not retained copies of any bills that had been issued and he was unable to produce documentation relating to work carried out and disbursements made on behalf of Nigerian Airways, or the Nigerian Government.
17. In the absence of accounting records, the FIO was not able to establish whether there were any liabilities to clients.
18. On 4th September 2006 The Law Society wrote to the First Respondent in relation to the matters raised in the FIO's Report. On 11th September the First Respondent wrote to The Law Society. He said that steps had been taken in relation to security. Explanation was advanced in relation to the work undertaken for the Federal Government of Nigeria.
19. After receiving representations from the Third Respondent on 21st December 2006, the Adjudication Panel considered the matter (which had been stood over for further

investigation) on 17th January 2007 and resolved to refer the conduct of the First and Third Respondents to the Tribunal.

20. An FIO inspected the books of account of Phoenix & Co on 1st February 2006. His Report dated 30th August 2006 was before the Tribunal.
21. The FIO's Report revealed that:
 - (a) The Second Respondent stated that she had practised in partnership with the First Respondent since 1994, conducting a mainly conveyancing practice assisted by one secretary. The First Respondent was her husband and although she was a partner in the practice this was in name only and she had no involvement in the practice itself.
 - (b) The books of account were not in compliance with the Solicitors Accounts Rules. No accounting records were produced when required but were said to be either with the accountant or elsewhere. The books of account were made available on 3rd February. It was noted that monthly reconciliations had not been produced and the books of account were not up to date as they contained no entries after 30th November 2005.
 - (c) At 30th November 2005 a cash shortage of £23,849.85 upon client account was noted. The ledger had been written up manually and contained numerous posting errors. So the inspection was adjourned to provide the Second Respondent with time to bring the book-keeping up to date. Upon resumption of the inspection a full set of reconciliations for the period July to December 2005 was provided. All the identified posting errors had been satisfactorily remedied.
 - (d) The FIO reviewed the purchase of premises by the Second Respondent from the seller, Halifax Plc. All monies received in relation to the purchase had been deposited in the Second Respondent's client account. There was no documentation on file to indicate that the Mortgagee, the Bank of Scotland, was informed that the Second Respondent was the Mortgagor. In interview, the Second Respondent said that this had been an oversight.
 - (e) During the course of the FIO's inspection it emerged that referral fees were being paid by the Second Respondent to introducers without compliance with the Introduction and Referral Code. The Second Respondent provided that information voluntarily and admitted that she had not been familiar with the Code and had not informed clients of the payment of referral fees. The First Respondent as a partner bore an equal responsibility for this breach.
 - (f) On review of the firm's bills of costs the FIO noted that it was standard practice in almost all conveyancing transactions to bill each client an amount of £50.00 exclusive of VAT for a disbursement described as "indemnity insurance contribution". The Second Respondent undertook in the future to treat this matter as profit costs and not as a disbursement.

22. On 15th September 2006 The Law Society wrote to the Second Respondent in relation to this Report and seeking explanation. A similar letter was addressed to the First Respondent.
23. On 28th September 2006 the Second Respondent wrote to The Law Society strongly refuting that there was a “sham partnership”. There was a genuine partnership between the First and Second Respondents. The First Respondent took a full part in the management of Phoenix & Co. It was acknowledged that accounting records had not been produced when initially required. There was an admission of error in relation to reconciliations. The Second Respondent had mistakenly thought it was available to her to act on her own behalf in the purchase where she was the mortgagor. It was confirmed that referral fees had been paid without compliance with the Solicitors Introduction of Referral Code but that had since been remedied. The question of the indemnity insurance contribution had also been rectified.
24. The Second Respondent wrote on her own and the First Respondent’s behalf on 17th November 2006. The letter confirmed the position in relation to the First Respondent’s connection with the firm.

The Submissions of the Applicant

25. The way in which the firm of Russell Stanley & Co was run and its work conducted appeared to be chaotic. When asked about the accounting records they described them as being “bits and pieces”. The rule that a solicitor must maintain a proper standard of work was not observed.
26. When the First Respondent completed his "history of partnership" form he completed it saying that he held no other partnerships. He was in fact a partner at Phoenix & Co with his wife. The information he had given in that form had not been correct although the Applicant recognised that his action in this respect had not been at the most serious level.
27. Miss Omotoso had been shown on the list of assistant solicitors on that firm’s letterhead when she was no longer an assistant at that firm. That was a breach of the Solicitors Publicity Code.
28. Mr A had been left to supervise the firm of Russell Stanley & Co at a time when he had not been qualified as a solicitor for three years. Mr A had been granted a waiver to run his own practice but he was not permitted to assume supervisory responsibility at any other firm.
29. Copies of bills issued and documentation relating to work carried out and disbursements paid on behalf of Nigerian Airlines or the Nigerian Government had not been retained.
30. With regard to the situation at Phoenix & Co the First Respondent had indicated that he was not a partner at that firm when he was. In a subsequent letter he agreed that that was the situation. There appeared to be a substantial shortage on client account. A manual ledger was kept but it contained many errors. It was accepted that when time was allowed by the FIO the books of Phoenix & Co were brought up to date and

that included reconciliations. It was clear that the reconciliations had not been carried out on a five weekly basis as was required by the Solicitors Accounts Rules.

31. The payment that was a contribution to the firm's indemnity premium was, of course, not a disbursement. It was a contribution towards an office overhead. It was incorrectly described as a disbursement and did not give a proper indication to the client of the nature of the charge being made.
32. The First and Second Respondents denied that their partnership at Phoenix & Co was a sham partnership.
33. Mrs Omotoso had acted for herself in the purchase of a property and for her lender without notifying the lender of that situation. It was not suggested that Mrs Omotoso had acted dishonourably but she had been in breach of the Rules. It was noted that in September 2006 Mrs Omotoso wrote to the Bank of Scotland, her mortgagee, formally notifying it of the position.
34. The Applicant did not allege a breach of Rule 32 of the Solicitors Accounts Rules against Miss Omotoso at Russell Stanley & Co, where she had been an assistant solicitor for a short period of time, but a breach of that Rule was alleged against her with regard to the practice of Phoenix & Co as proper and timely reconciliations had not been carried out as required. The Solicitors Accounts Rules required accounts to be properly maintained and all partners were liable for compliance with those Rules.
35. Mrs Omotoso had been a signatory on the office account at Stanley Russell & Co and although she was not a partner it was the Applicant's submission that as a sole operator of that account whatever status she had in the firm she could not avoid responsibility for compliance with the Solicitors Accounts Rules.

The Submissions of the First Respondent - Mr Emenike Mgbemena

36. Mr Mgbemena, the First Respondent, had been admitted as a solicitor on 2nd March 1998. Previously he had been a lawyer in Nigeria. He came to England and was able to be admitted to the Roll of Solicitors without becoming a trainee solicitor, as a result of the Convention between Nigeria and this Country.
37. Following admission the First Respondent, when he worked as assistant solicitor at Douglas & Co, managed a branch office and mainly dealt with immigration and criminal matters.
38. He started the firm of Russell Stanley & Co in April 2000. In January 2005, the Third Respondent became a partner but ceased to be one in January 2006. He continued to work as an assistant solicitor.
39. The Law Society intervened into Russell Stanley & Co following The Law Society's decision of 24th October 2006 and since then the First Respondent had been unemployed.
40. Before the FIO's inspection the First Respondent had informed The Law Society, when he received notification of the inspection, that the accounting records would not be complete as a result of a recent burglary at the office. He was told that the FIO

would come in any event to see how things were and also to obtain evidence of the Police Report.

41. The FIO was given the Police Report and such documents that could be located. The firm's new accountant was holding some of the books at that time. He had delayed the return of the books owing to illness.
42. When the inspection began the First Respondent was unwell and therefore not in attendance. On 13th September the First Respondent produced the office cash book which had been written up to August 2005, audited accounts for the years ending April 2003, April 2004 and April 2005, as well as other documents.
43. Client account ledger accounts were not produced because the firm had closed its client accounts on 27th October 2004. The accountants had submitted their final Accountant's Report in March 2005 to The Law Society. This was because "client money" was no longer being held as the firm conducted mainly private immigration work and a small amount of criminal, employment and civil litigation work. None of this work involved the holding of client moneys. This had been explained to The Law Society.
44. On 8th August 2006 another FIO attended the office. In his Report dated 30th August 2006 he recorded his conversation with the First Respondent and his being told of the burglary and attacks on the offices.
45. The First Respondent accepted the breaches of the Introduction and Referral Code. He agreed with the Second Respondent's statement and admitted the allegation.
46. With regard to the allegation that a secret profit was made in respect of Phoenix & Co, the First Respondent read the statement of the Second Respondent dated 1st August 2007, he agreed with its contents and admitted the allegation. As a result of refunding the indemnity insurance premium contributions no clients had suffered any loss.
47. The First Respondent admitted that he was unable to produce the books of account for the reasons given above. The Tribunal was invited to bear in mind that no client had made a complaint to The Law Society about missing funds, nor had any claim been made to professional insurers.
48. With regard to the question of supervision the First Respondent had attended the office on 30th August 2005 but had felt very ill. He did not know how long he would be ill. He took the precautionary step of asking another solicitor to supervise his staff in his absence. Mr A offered to assist. The First Respondent was not aware that Mr A could not supervise another firm.
49. It was necessary only to effect supervision to the level required by Rule 13 if a temporary absence was to be for more than one month in the case of a sole principal. The First Respondent's absence was for a rather shorter period of time.
50. Mrs Omotoso's name appeared on the letter head and the First Respondent was sorry that the old letter headed paper had been used. He had been trying to practise in the most difficult of circumstances.

51. The Applicant had not made it clear in what respect the First Respondent had failed to maintain a proper standard of work. He understood that the FIO had been most concerned with the non-production of the files relating to the clients, Nigerian Airways. That client had made no complaint and requested its files and papers to be handed back to it.
52. If the allegation related to failing to maintain a proper standard of work generally, then the Tribunal was invited to take into account the trials and tribulations that the Respondent had suffered as the result of being the target of criminals.
53. The First Respondent confirmed that, on 13th September 2005, the FIO asked him to complete a "professional history of partner" form, which he did. It was correct that he, the First Respondent did not mention that he was also a partner at Phoenix & Co with his wife, the Second Respondent. He ceased to be a partner there on 21st March 2006.
54. The only reason the First Respondent did not mention this fact was because the FIO was talking to him about his involvement with Phoenix & Co as a partner of that firm and immediately after that he handed the form to him to complete with the question "any other partnership" so the First Respondent thought at that time, that the question related to partnerships other than those discussed so he wrote "None".
55. The First Respondent had no quarrel with the Third Respondent. He gave any letters to the Third Respondent when he received them. He could not recall the Third Respondent going on leave for two months starting ten days after the birth of his daughter.
56. The Third Respondent was never denied access to the firm's accounts; and he was able to contact both the book-keeper and the accountant. The First and Third Respondents both jointly and individually visited the firm's accountant with regard to issues relating to the accounts.
57. The First Respondent had represented his clients competently. The Tribunal was invited to give due weight to the references written in support of the First Respondent. Any failure on his part to comply with the Solicitors Accounts Rules 1998 and the Solicitors' Practice Rules 1990 had not been due to disregard of his professional responsibility but had come from a lack of experience and the frequent break-ins, vandalism and arson attacks at his offices which had left him worn out.

The Submissions of the Second Respondent – Olubunmi Olajumoke Omotoso

58. Between June 1999 and October 2001, the Second Respondent worked part time as a locum or was on maternity leave. She had been an assistant solicitor at Russell Stanley from 20th November 2001 to 31st October 2002. She became a partner with her husband, the First Respondent, in the firm of Phoenix & Co from 7th July 2004 to 21st March 2006. The Third Respondent became her partner between 5th May 2006 and 27th September 2006. Since 27th September 2006 the Second Respondent had been in partnership with Ms O.
59. The Second Respondent denied that she had been in breach of the Solicitors Accounts Rules Rule 32. It is true that, when the FIO attended her office on 1st February 2006,

her books of account were not in her possession and available for inspection. The visit had been without any previous warning. The books of account were ordinarily kept at the office.

60. The firm's Accountant had expressed the wish to work on them at his own office; he had taken the books with him. The books had been given to him for the purpose of being brought up to date and for reconciliations to be carried out. The Accountant had been unable to return the books on the day of the FIO's visit but they had been collected the following day. The FIO inspected them on 3rd February when he noted that they were not up to date and reconciled. When the FIO returned on 7th February, and re-inspected them he concluded that the books were up to date and a full set of reconciliations had been carried out.
61. The Second Respondent denied that she had breached Rule 32 of the Solicitors Accounts Rules at Russell Stanley & Co. She had never been a partner of Russell Stanley & Co, but only an assistant solicitor between 20th November 2001 and 31st October 2002. It was correct that the lease for the office of Russell Stanley & Co was put in her name by her husband, the First Respondent. This happened because the First Respondent was abroad and to make matters easier he suggested to the landlords that the lease be in the Second Respondent's name and this was agreed. When the First Respondent opened the firm's office account, the bank asked that the account be opened in the Second Respondent's name because the office lease was in her name. To assist her husband, the Second Respondent agreed to this suggestion.
62. The office account of Russell Stanley & Co continued to be in the Second Respondent's name notwithstanding that she was not a member of that firm because her husband was often abroad and it seemed sensible to have the office money under her "watch".
63. The Second Respondent admitted that she had acted in breach of the Solicitors Introduction & Referral Code 1990.
64. She should have been familiar with the Code but she was not. Some mortgage brokers had referred clients and referral fees in the region of £50 to £100 referral had been paid. In about 40 to 50 cases the payments were made out of the firm's fixed fees. The mortgage broker's fees were not added to those of the firm. The standard fixed conveyancing fees were charged to all clients, whether or not they were referred by introducers. Since the investigation, referral fees were no longer paid.
65. During the period in question Phoenix & Co was not reliant on a limited number of sources of referral. Prospective clients were not restricted in their choice of solicitor. Advice given to clients was impartial and independent and the best interests of those clients were properly protected. There had been no client complaint.
66. The Second Respondent denied making a secret profit. The FIO had indicated to her that solicitors could charge for an indemnity insurance contribution but not as a "disbursement". Such a charge should have been listed with the firm's own fees. She had not been aware of the difference.
67. The Second Respondent did not believe the firm was acting in breach of Practice Rule 1 because it had given notice in client care letters that a charge would be made

for an indemnity insurance contribution. The clients had accepted the fee quotations and no one had complained about the payment. In the submissions of the Second Respondent the admitted breach was not so serious that it amounted to breach of Practice Rule 1. The Second Respondent's firm had refunded the indemnity insurance premium contribution to those clients who had paid it.

68. The Second Respondent admitted that she did not obtain written confirmation from her lenders that she could act on their behalf in a conveyancing transaction as well as on her own behalf. The lender was made aware that she was a partner in Phoenix & Co in her mortgage application. The lenders had suffered no financial loss. Once the FIO drew the Second Respondent's attention to this breach, she telephoned the lenders and informed them of her omission and also wrote to them. There had been no repercussion from the lenders.
69. The Second Respondent continued to practise, holding a Practising Certificate subject to conditions. She had complied with those conditions by attending a Solicitors' New Code of Conduct course, as well as filing half yearly Accountant's Reports.
70. The Second Respondent had made a modest profit in the previous tax year and her profit would show a modest improvement for the tax year ending 2007.
71. The Tribunal was invited to adopt a lenient stand and not impose a sanction that would deprive the Second Respondent from earning a living by continuing to practise as a solicitor. She was no threat to the public.

The Submissions of the Third Respondent – Josiah Ikechukwu Nwabueze

72. The Third Respondent became a partner in the firm of Russell Stanley & Co on 12th January 2005 and he resigned his partnership on 16th June 2006. Since the intervention into the practice of Russell Stanley & Co, conditions had been imposed on his Practising Certificate. He could now only practise in employment with the prior approval of The Law Society. His current employment with Equitable Solicitors of Kennington had been so approved.
73. The First Respondent was already running Russell Stanley & Co as a sole principal when the Third Respondent entered into partnership with him. He had done some fee-earning work for the firm before this.
74. The First Respondent continued to be responsible for managing the firm and ensuring compliance with the Solicitors Accounts Rules. The firm had closed its client account before the Third Respondent became a partner.
75. The Third Respondent recognised that as a partner he also had a duty to ensure compliance with the Solicitors Accounts Rules.
76. The First Respondent had been unable to resolve a dispute with his accountant and in about August 2005 he informed the Third Respondent that he had ceased to instruct that accountant and that he had replaced him.
77. The First Respondent told the Third Respondent that Russell Stanley & Co's accounting books and documents had been given to the new accountants. The Third

Respondent did his best to ensure compliance with the SAR by telephoning the accountants to urge them to prepare the accounts and to release the accounting documents to him. He was told that the accountant had fallen ill in Nigeria. The Third Respondent even went to the accounting firm physically in order to retrieve the documents from them. The release of the documents was refused while the appointed accountant remained in Nigeria.

78. The Third Respondent admitted breaches of Rules 32 and 34 of the Solicitors Accounts Rules 1998 but he did use his best endeavours to try to avoid breaching the Rules.
79. The First Respondent arranged for Mr A to supervise the firm in his absence. At the time the Third Respondent believed that Mr A was eligible to supervise the firm.
80. The Third Respondent admitted the failure to supervise allegation only on the basis that he should have checked Mr A's date of admission and that had he done so, he would have realised that he was not eligible to supervise the firm.
81. The Third Respondent knew that the First and Second Respondents were married to each other. He also knew that the Second Respondent was the sole signatory to Russell Stanley & Co's office account.
82. During the time that he was a partner of that firm, the Second Respondent used to attend the office and sometimes would help out with files and administration. The Third Respondent's understanding had been that the Second Respondent was working part-time with the firm. With the benefit of hindsight he recognised it might have been that she was doing those things in order to help her husband.
83. The Third Respondent admitted this allegation solely on the basis that if he had enquired of the Law Society at the material time, it would have been revealed to him that The Law Society's records showed that the Second Respondent was an assistant solicitor only from 20th November 2001 to 31st October 2002.
84. The Third Respondent sincerely apologised to the Tribunal for his failings. The Tribunal was invited to take into account the following:
 - (a) he admitted the allegations before the trial;
 - (b) he had shown remorse;
 - (c) the events happened at a time when the Third Respondent was very young and inexperienced in the profession;
 - (d) he relied on a more experienced solicitor to manage the firm and ensure compliance with the Solicitors Accounts Rules;
 - (e) he used my best endeavours to ensure compliance with the Solicitors Accounts Rules, but unfortunately, was let down by the firm's accountants;
 - (f) the firm suffered several burglary and arson attacks which affected proper accounts records;

- (g) no earlier complaint had been made against the Third Respondent or any finding of misconduct;
- (h) the allegations in the application arose solely because of his liability as a partner and the Third Respondent had been very diligent in the performance of his duties as a solicitor. The Tribunal was invited to give due weight to the testimonials written in support of the Third Respondent;
- (i) the disciplinary proceedings had had a traumatic effect on the Third Respondent and his family. They had caused tension in the family. Despite the strain on his marriage, the Third Respondent's wife had been very supportive. The Tribunal was invited to take her letter into account.
- (j) the Third Respondent was the main breadwinner of his family. He had a very young child and his wife could only work part-time.
- (k) the imposition of conditions on his Practising Certificate was a form of penalty already imposed upon the Third Respondent.

The Findings of the Tribunal

- 85. The Tribunal found all of the admitted allegations to have been substantiated except allegation (c)(ii) which had been admitted by the Third Respondent.
- 86. With regard to the allegations that had been denied, the Tribunal found that the Second Respondent was guilty of a breach of the Solicitors Accounts Rules contrary to Rule 32, failing to maintain full accounts as by the Rule required, because as a solicitor who was a sole signatory on the office account of Stanley Russell & Co, even though she was not a partner in that firm and had no connection with the firm save that she was the wife of the First Respondent, she could not whilst being a solicitor having authority to authorise the use of that firm's monies abdicate responsibility for compliance with the Solicitors Accounts Rules. The Second Respondent had similarly been in breach of Rule 32 at the time when the FIO attended at the offices of Phoenix & Co. Her books were not available and when first inspected by the FIO they were not up to date and the required reconciliations had not been carried out. The Tribunal recognised that this had been put right but that mitigated the breach and did not obviate it.
- 87. The First and Second Respondents denied that they had been in breach of Practice Rule 1 in failing to act in clients' best interests by obtaining a secret profit in connection with conveyancing charges. This related to a contribution towards the firm of Phoenix & Co's indemnity insurance premium which was described as "a disbursement". A disbursement is an amount of money paid out by a solicitor on behalf of a client. The payment of an indemnity insurance premium is an office overhead. As the Second Respondent herself suggested to charge a contribution towards the firm's indemnity premium was acceptable, however by charging such contribution as a disbursement the clients were not made fully aware of the nature of that payment which in reality was an additional fee charged by the firm. Whilst the Tribunal accepted that the clients were fully aware of the payment that they made, they were not aware of the fact that it amounted to an additional charge by the firm and the mischief was the fact that the firm was making an additional profit by seeking

such contribution and that was hidden from the client. That payment either enhanced the firm's costs or operated as a mitigation of their overheads. It was an element of their charge and not a disbursement. By describing it as a disbursement that payment was made to appear as if it was an unavoidable payment to a third party incurred by the client. The Tribunal found allegation (b)(ii) to have been substantiated.

88. Allegation (c)(ii) had been admitted by the Third Respondent but denied by the First Respondent. Mr A, who had not been qualified as a solicitor long enough to qualify as a supervising solicitor, had been asked to cover the absence of the First Respondent at Russell Stanley & Co while he was away from the office for a couple of weeks owing to illness. The Tribunal concluded that for a short temporary absence owing to illness, certainly an absence of less than one month, it was not necessary for the First Respondent to arrange for supervision of the firm by a person who was qualified for the purpose to supervise for the purposes of Rule 13. The Tribunal found that allegation not to have been substantiated against the First Respondent and, despite the Third Respondent's admission, the Tribunal found that allegation not to have been substantiated against him.
89. Allegation (c)(iii) was denied by the First Respondent. It was clear that the Second Respondent was shown on the letter head of Russell Stanley & Co as an assistant solicitor when she had ceased to be at the firm in that position for some time. The mischief including the names of solicitors on a firm's letter head is that it makes the firm appear bigger than it actually is. An attempt to make a firm look bigger and more important than is in fact the case is a marketing tool. To misrepresent the true position is a breach of the Solicitors Publicity Code 2001 and the Tribunal found allegation (c)(iii) to have been substantiated against the First and Third Respondents.
90. The First Respondent denied allegations (d)(i) and (d)(ii). There had been a chaotic situation at Russell Stanley & Co. An unsatisfactory situation was in place where important rules of practice were not observed. The failure to maintain a proper standard of work did not only relate to the work undertaken upon the instructions of clients but it also related to the way in which a solicitor runs his office. Because of the unsatisfactorily way that Russell Stanley & Co was run the Tribunal found allegation (d)(i) to have been substantiated against the First Respondent.
91. With regard to allegation (d)(ii) the Tribunal accepted the First Respondent's explanation that he made a mistake. However on its very face the answer which he completed on the form dealing with his current partnerships was untrue and the Tribunal did find that allegation to have been substantiated, accepting as it did that the First Respondent had put forward an explanation which amounted to a large degree of mitigation.
92. The Respondents indicated that allegation (f) was a matter for the Tribunal to decide. The Tribunal did consider that the allegations substantiated against each of the Respondents meant that each of them had been guilty of conduct unbefitting a solicitor. The Tribunal indicated, however, that finding allegation (f) to have been substantiated would not lead it to the imposition of any additional sanction.

The Tribunal's Sanctions and its Reasons

93. The Tribunal had given the most careful consideration to all of the mitigating circumstances placed before it. It had also given credit to the Respondents for their admissions. At first sight an impression would have been gained of three solicitors who appeared to be running their practices in a state of chaos and without due and proper regard for the Rules of practice by which solicitors are bound.
94. The Tribunal has taken into account the relative youth and inexperience of each of the Respondents. The Tribunal is of the view that none of the Respondents breached any Rule flagrantly or deliberately. The Tribunal has also taken into account the fact that the Respondents' Practising Certificates have been issued subject to conditions. The Tribunal has taken due note of the written references with which it has been supplied. The Tribunal has particularly noted the very strong mitigation offered by the First and Second Respondents whose office had been subject to burglary, damage and arson attacks which had been reported to the police and which press reports considered might have had a racial motivation.
95. The Tribunal has noted the regret expressed by the Respondents where they got things wrong and has taken into account their assurances that they had learned a salutary lesson and would be most unlikely to find themselves before the Tribunal to answer similar allegations in the future.
96. In all of the circumstances the Tribunal concluded that it was both appropriate and proportionate to impose financial sanctions upon the Respondents. The Tribunal Ordered that the First Respondent pay a fine of £4,000; the Tribunal Ordered the Second Respondent to pay a fine of £2,500 and in the light of the Third Respondent's position of becoming a partner when some of the matters complained of had already occurred and his own attempts to try to set matters right and his ready recognition of his liability as a partner, even where he was not culpable, it was sufficient to impose upon him a reprimand.
97. The Tribunal was pleased to learn that the Respondents had agreed to be responsible for the costs of and incidental to the application and enquiry. Following discussion between the parties the apportionment between the three Respondents had been agreed and the Tribunal was pleased to be able to award costs against each of the Respondents in a fixed sum which represented the agreement reached and for the avoidance of doubt each Respondent was ordered to pay an absolute sum there being no question of joint and several liability.

DATED this 1st day of November 2007

A H B Holmes
on behalf of the Tribunal