

IN THE MATTER OF PAUL STOTT & CATHERINE LOUISE COPP, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. I. R. Woolfe (in the chair)
Mrs J. Martineau
Mr. S. Marquez

Date of Hearing: 18th December 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 Geoffrey Williams of Queen's Counsel of Geoffrey Williams & Christopher Green, Solicitor Advocates of 2A Churchill Way, Cardiff CF10 2DW on 14th May 2007 that Paul Stott and Catherine Louise Copp, whose address for service was c/o Mr Jack Friend, Jack Friend & Co Solicitor, 11 Sudbury Hill Close, Wembley, Middlesex HA0 2QR might be required to answer the allegations contained in the statement which accompanied the application and that such Orders be made as the Tribunal should think right.

The parties had reached agreement and this was set out in a note on behalf of The Law Society with regard to the hearing on 18th December 2007 which was before the Tribunal. That note explained why The Law Society did not wish to pursue certain of the allegations and at the opening of the hearing the Tribunal's consent to the withdrawal of such allegations was sought. The Tribunal gave such consent and the allegations are set out below in the agreed amended form.

The allegations were that the Respondents had:-

- (a) improperly made payments to introducers of clients in consideration for the introductions contrary to Rule 3 Solicitors' Practice Rules 1990 (as amended) and the Solicitors' Introduction & Referral Code 1990 ("the Code");
- (b) breached the terms of Rule 1(c) Solicitors' Practice Rules 1990 (as amended) with respect to the system they adopted for the payment of fees for the advance vetting of potential claims and by their consequent failure to disclose material information to clients in this regard;
- (c) withdrawn monies from client account otherwise than in accordance with Rule 22 Solicitors Accounts Rules 1998;
- (d) withdrawn;
- (e) withdrawn;
- (f) withdrawn;
- (g) breached the terms of Rule 1(d) Solicitors' Practice Rules 1990 (as amended) by virtue of their corresponding with a Mrs EL.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18th December 2007 when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondents were represented by Jack Friend solicitor.

The evidence before the Tribunal included the admissions of both Respondents as to allegations (a), (b), (c) and (g). A bundle of testimonials was handed up at the hearing.

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

The Tribunal ORDERS that the Respondent, PAUL STOTT of c/o Mr Jack Friend, Solicitor of Jack Friend & Co, 11 Sudbury Hill Close, Wembley, Middlesex, HA0 2QR, solicitor, do pay a fine of £15,000.00, 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 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 Respondent to pay £10,000 on account of the Applicant's costs within 28 days of today's date.

The Tribunal ORDERS that the Respondent, CATHERINE LOUISE COPP of c/o Mr Jack Friend, Solicitor of Jack Friend & Co, 11 Sudbury Hill Close, Wembley, Middlesex, HA0 2QR, solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that she do pay the costs of and incidental to this application and enquiry 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 Respondent to pay £10,000 on account of the Applicant's costs within 28 days of today's date.

(The Orders made in respect of costs were made on a joint and several basis. There was to be a payment of the Applicant's costs subject to a detailed assessment unless agreed between the parties and the Respondents were jointly and severally responsible to pay £10,000 on account of the Applicant's costs within 28 days of the date of the hearing).

The facts are set out in paragraphs 1 to 27 hereunder:-

1. Mr Stott, born in 1960, was admitted as a solicitor in 1984. Mrs Copp, born in 1961, was admitted as a solicitor in 1993. The names of both Respondents remained on the Roll of Solicitors.
2. From April 2001 and at all material times Mr Stott and Mrs Copp had practised as solicitors in partnership with each other under the style of Ingrams Solicitors ("the firm") at 8 Marina Court, Castle Street, Hull, North Humberside HU1 1TJ and at 10 Great North Way, York Business Park, York YO26 6RB.
3. Upon notice duly given an inspection of the books of account and other documents of the firm was carried out by a Forensic Investigation Officer (FIO) of The Law Society. The FIO's Report dated 20th May 2005 was before the Tribunal.
4. The FIO's Report included information about payments made to Midland Claims and Zahier Hussain.
5. The firm produced a list of payments made to introducers for cases, entitled "Investigation Fee Payments – December 2002 to March 2004". The following information was included:-

Midland Claims – Irisc cases - £451,175
Zahier Hussain – Irisc cases - £10,000
6. Initially the Respondents asserted that these payments were not "referral fees" but rather they were "investigation fees" paid for work done by the introducer but they had come to accept that there was an element of payment for the introduction of work to the firm.
7. The relationship between Midland Claims and the Respondents had broken down. The Respondents issued High Court Proceedings against Midland Claims. The Particulars of Claim made it clear that the Respondents regarded the payments to Midland Claims as commission for the referral of cases to the firm.
8. When cases were referred to the firm by Messrs Beresfords, a firm of solicitors, it paid fees for investigative work, or "vetting" of claims. In fact once cases were received the firm subjected them to another vetting process by Expert Referrals Ltd ("ER"). A fee of £125 (without VAT) was charged by ER.
9. Both Respondents were directors of ER. Mrs Copp was also a shareholder as was Mr Stott's wife. The other director of ER was DB, an "associate partner" of the firm.
10. It is said that DB carried out this extra "vetting". Prior to this exercise a substantial fee had been paid to Beresfords for such work.
11. In all cases of this nature the firm was acting under a Conditional Fee Agreement with the client. The firm received disbursement funding from First National Bank and there was insurance cover in place with the National Insurance & Guarantee

Corporation. This was cover against the prospect of a failed claim with the consequent inability to recover costs and disbursements.

12. The disbursement funding loan made for the benefit of the client was (quite properly) paid in to the firm's client bank account and credited to the ledger of each individual client. At the commencement of the claim the ER fee of £125 was withdrawn from the client account and paid into an office bank account nominal ledger. Ultimately the firm made a reduction in its profit costs of a like amount. The effect was to enhance the firm's cash flow position by £125 per case.
13. Thus by the use of their own company for this further vetting process Mr Stott and Mrs Copp derived the benefit of the sum of £125 per case from inception to conclusion thus enhancing their cashflow position.
14. The Respondents had described the vetting fee as a disbursement. It related to work undertaken before any retainer was established. The work was done on behalf of the Respondents to enable them to decide whether to accept the case.
15. The Respondents should not have deducted such fees from disbursement funding – in particular not without express and informed authority of the client as provided by Rule 22 Solicitors Accounts Rules 1998.
16. Allegation (g) arose out of the firm's correspondence with Mrs EL.
17. On 4th March 2004 the firm created a new client matter on its system in the name of "Ms L", for British Coal Respiratory Disease Litigation. On the same day the firm wrote four letters to Mrs L, one confirming that her claim had been registered, one explaining how the claim would be progressed and details about costs, a Rule 15 letter and a further letter requesting a copy of Mr L's death certificate, details of funeral expenses incurred and his national insurance number.
18. On 15th March 2004 Mrs L's granddaughter, wrote to the firm with concerns relating to the correspondence her grandmother had received.
19. Her concerns were that her grandmother had made no claim for compensation and had no wish, or grounds, to do so. She was unaware of any previous correspondence with the firm. She had not instructed the firm and did not know how the firm had obtained her details. The following further points were made. The firm had incorrectly recorded Mrs L's name and address. The firm was not local to her area. Four separate letters in the same envelope all dated the same day had been sent yet their content suggested 'a progression' in this matter. Mrs L was 90 years old and did not wish to be bothered with this issue, by anyone.
20. The firm replied on 19th March 2004 stating, "A referral company called Midland Claims obtained the details, which we have in our possession. Midland Claims have agents that visit or call people who may have a potential claim for respiratory disease either for themselves or on behalf of family members. This is how we have obtained your Grandmother's details; therefore she will have been visited by a representative or will have spoken to someone over the phone that would have taken details from her..."

If this claim is to be cancelled then please let us have a letter signed by Mrs L (sic) to this effect".

21. On 22nd March 2004 the granddaughter wrote to say that it was "unacceptable that a widow 90 years of age found herself at the centre of a compensation claim she had not instigated, did not want, and which seemed to have proceeded without informed consent".
22. On 7th April 2004, after a further letter was sent by the firm to Mrs L, the file was closed.
23. Mr Stott had indicated that this sort of thing had happened a "handful of times".
24. On 9th August 2004 Mrs L received a further undated, letter and also a letter of authority from the firm. The following are extracts from those:- 'As you know, the government has already set up two schemes to compensate former mineworkers or their families for injuries suffered as a result of their employment in British coal mines. The existing schemes are for Vibration White Finger and Lung Disease. Ingrams Solicitors has already acted on your behalf in relation to one of these schemes, and we are now able to bring you the following news:-

...Ingrams Solicitors is a member of the Miners' Knee Injury Litigation Solicitors Group. They would like to hear from you if you think that you or a member of your family might have a claim for knee-related injuries. Please complete the enclosed Letter of Authority...'
25. Mr Stott had explained to the FIO that writing again to Mrs L was a mistake. Her details were still on the database. The firm had apologised profusely to her.
26. During the FIO's inspection, Mr Stott provided the firm's folder of client complaints. A number of files relating to these complaints were reviewed.
27. It was noted that on a number of the client matter files reviewed, the client had previously been a client of another firm and the firm had asked the client to sign an authority allowing it to take over conduct of the claim. The FIO's Report set out details of two client matters where this had occurred. The files included letters from the client's original solicitors seeking explanation as to how this had occurred.

The Submissions of the Applicant

28. The Respondents had paid referral fees before the rule change which permitted that to take place. The Respondents had referred to those payments as "investigation fees" but had come to accept that they were making payment for the referral of work when this was not permitted by Practice Rule 3. Although the Respondents had put forward a number of arguments to support their initial denial of breach they had come to admit the breach of a mandatory and clear provision. The Respondents had been aware of the Introduction and Referral Code. The mischief was that clients were treated rather as commodities. Where referral fees had been paid improperly there was the danger that the solicitor would be seen to have compromised his independence. It could be thought that his loyalty was elsewhere. He had someone else's interest to consider.

This situation would be seen to obscure the solicitor's duty to put the best interest of his clients first.

29. The allegation was that in each such case Mr Stott and Mrs Copp failed to act in the best interests of their clients as follows:-
 - (a) they should have disclosed to their clients that:
 - (i) this further "vetting" was being carried out by a company which Mr Stott and Mrs Copp effectively controlled;
 - (ii) the amount of the ER fee was being paid out of disbursement funding obtained by the firm and held in client account for the clients in question; and
 - (iii) the Respondents were obtaining a financial benefit from this process.
30. Prior to 9th March 2004 solicitors were prohibited from rewarding introducers of clients by making payments in consideration for the introductions – Section 2(3) of the Code.
31. The Applicant recognised that both of the Respondents had been cooperative throughout the investigation and had submitted detailed representations when called upon to do so. The Applicant did not allege that either of the Respondents had behaved dishonestly.
32. It was alleged that the Respondents had failed to act in the best interests of their clients because they did not disclose to their clients that which they should have disclosed namely that further "vetting" of cases was being carried out by a company (ER) which Mr Stott and Mrs Copp effectively controlled. The amount of the ER fee was being paid out of the disbursement funding obtained by the firm and held in client account for the clients in question when the payment was not a disbursement and the Respondents were obtaining a financial benefit from that process. The Respondents had described the vetting fee as a disbursement when it was not properly described as such. Although the allegations were not put on the basis of dishonesty they were nevertheless serious.
33. The system created by the Respondents for advance vetting of clients' claims led to a failure to disclose relevant information to clients. References had been made by and payments therefore made to a firm of solicitors called Beresfords. It was acceptable to make a payment of referral fees to other solicitors. A very substantial sum indeed had been paid to Beresfords. That having been done the cases were vetted again.
34. The cases were referred to the company ER who charged £125 per case. They were described as "personal injury assessors". It had not been disclosed to clients that the Respondents were directors of the company which gave the Respondents a financial advantage. Further Mrs Copp and Mr Stott's wife were shareholders. Initially the Respondents had indicated that they felt that this arrangement represented a common practice. The Applicant did not agree that this was the case. The clients were

affected as the payment for vetting came out of funds borrowed by clients to fund their cases. This further vetting was undertaken in a substantial number of cases.

35. The Respondents had initially maintained that the set up and procedures in this regard were proper and appropriate but they had come to accept that in accordance with the firm's policy of complete transparency it would have been appropriate for the identity of the directors and shareholders of ER to have been specifically disclosed to clients.
36. The Respondents' cashflow was improved by £125 from the beginning of a case until it was concluded. The acceptance of that payment was contrary to the Practice Rule. The clients had not been told that the fee came out of their disbursement funding and the clients were not informed of the financial advantage to the Respondents. That was a serious failure to act in the best interests of the client. The Solicitors Accounts Rules did not permit payment to be made in this way. That payment could not possibly have fallen within the definition of a disbursement.
37. The way in which Mrs L had been treated graphically showed what happened when claims were sold on to solicitors. It was clear that Mrs L had been shocked by the suggestion that solicitors were acting on her behalf in a claim for compensation on behalf of her late husband. Mrs L's granddaughter had graphically expressed her concerns which were of course entirely reasonable. The way that elderly lady had been treated by the firm was unacceptable. Mr Stott had accepted that there were other similar cases where there had been what he described as an "administrative error", and what had occurred was bound to put the solicitors' profession in a bad light.
38. The Applicant sought a full Order for costs. He accepted that the Tribunal might wish to consider that the Respondents should be given an allowance in respect of allegations with which The Law Society did not proceed. The Tribunal was in such circumstances invited to determine the percentages. The Tribunal was invited to bear in mind that the most serious of the allegations had been admitted. It was not accepted that the reprimand imposed by The Law Society's adjudicator was of any relevance. It was, of course, important that there should be consistency amongst the Tribunal's decisions but there was no requirement that the Tribunal's decisions should be consistent with those made in house by The Law Society. The Tribunal had an unfettered discretion as to the nature of the appropriate sanction to impose upon the Respondents.

The Submissions of the Respondents

39. The events which formed the subject matter of the allegations were historic. All featured in about 2004 and those relating to allegation (a) went back as far as 2002. If the facts underpinning allegation (a) had been of a more recent vintage the Respondents would not have been criticised because there had been a change in the relevant rules.
40. The Law Society's investigation into the Respondents' firm began three and a half years previously. The history of the matter and the delays had been significant and the Tribunal was invited to bear such matters in mind.

41. The Respondents had appealed against The Law Society's adjudicator's decision. It was accepted that the Tribunal's discretion remained unfettered by the matters that had gone before where The Law Society or its adjudicator had made decisions.
42. The Respondents were decent, honest solicitors. They had not pursued their methods recklessly and had not been in deliberate breach.
43. It was accepted that all solicitors' practices should operate fully in compliance with the rules and regulations relating to such practice. The Respondents had come to accept that they had been in breach and had admitted the allegations that The Law Society had continued to pursue against them. The Tribunal was invited to take into account the fact that The Law Society did not pursue a number of its original allegations. The Tribunal was invited to take the view that the Respondents' breaches were not of the highest rank.
44. The Respondents had wished to run their practice with full transparency and had come to accept that some of the arrangements which they had in place which had not been fully disclosed to clients should have been so disclosed.
45. The approach made to Mrs L was a simple mistake. No suggestion had been made that the Respondents in making that mistake had pursued a deliberate breach. The Respondents regretted what had happened and did make an unreserved apology.
46. Mrs Copp had not appeared before the Tribunal on any earlier occasion. She was acutely embarrassed to be appearing. Mr Stott had appeared before the Tribunal on an earlier occasion together with a number of former partners. It had been Mrs Copp who had alerted those partners to the possibility of fraud in that matter.
47. The Respondents had built up a highly respected firm. The testimonials written in their support spoke of their integrity and competence.
48. The Tribunal had dealt with Mr Stott on an earlier occasion but he should not, however, be categorised as a recidivist. In the earlier matter Mr Stott had admitted the allegations save that he had denied dishonesty. The Tribunal had found Mr Stott not to have been dishonest and a fine of £2,000 had been imposed upon him. The subject matter of the earlier case of Mr Stott did not have any bearing on the breaches currently under consideration by the Tribunal.
49. Mr Stott apologised for the breaches that had occurred.
50. Both of the Respondents were married with young families. They took their professional responsibilities very seriously indeed. Mr Stott held a public appointment and was held in high esteem.
51. It was submitted on behalf of the Respondents that justice did not require the infliction of any sanction by way of punishment for appealing against The Law Society's adjudicator's decision. The appeal had been proper. The Law Society's adjudicator had imposed a severe reprimand upon the Respondents. They had appealed against that decision. Whilst it was accepted that the Tribunal was in no way bound by that decision it was hoped that the gravamen of what had happened was

reflected in the recommendation that the breaches could be adequately dealt with by way of a Law Society internal sanction. The Tribunal was invited to recognise the need for consistency.

The Tribunal's Findings

52. The Tribunal found allegations (a), (b), (c) and (g) to have been substantiated, indeed they were not contested.

Previous Findings

53. At a hearing that took place on 24th to 28th January, 23rd and 25th February and 18th April 2005 Mr Stott had been a Respondent with six other Respondents, being partners in the firm of Wright, Goodall and Carr. Mr Stott had admitted a breach of Rule 11 of the Solicitors Accounts Rules by Messrs Wright, Goodall & Carr; he had admitted breaches of Rules 7 and 8 of the Solicitors Accounts Rules by Messrs Wright, Goodall & Carr and with regard to that firm he had admitted the use of clients' funds for the Respondents' own purposes. On the same basis he had admitted that false entries in the firm's books of account had existed and that there had been breaches of Rules 4 and 6 of the Solicitors Accounts Rules. He denied a breach of Rule 21 of the Solicitors Accounts Rules and had denied excessive costs claims being made to the Legal Services Commission. Mr Stott denied a failure to supervise staff or that he had been guilty of delay. In its findings the Tribunal said:-

"It was necessary to record certain background features to these proceedings. The Respondents previously carried on practice as solicitors in partnership as Carrick Carr & Wright from January 1993 until the intervention by The Law Society in late August 2002. It should however be pointed out that as from 31st July 1999 Mr Carr retired as a partner but continued to be employed as a salaried consultant on a 3 days a week basis. It should also be noted that Mr Stott left the partnership on 1st August 2001 to set up a separate practice in York, and Mr Grassam left the partnership on the 1st April 2002 previously having given six months notice to leave. Mr Grassam was also a salaried partner with a two percent share of profit. All the other Respondents were equity partners.

The Law Society's intervention was preceded by an investigation into the finances of the firm which commenced on 7th February 2002 and resulted in the report by Mr Duerden dated 30th July 2002. At all relevant times during the life of the partnership Mr R was the chief cashier until he was dismissed in April 2002.

Mr P, a chartered accountant, was the practice manager of the firm from 1st October 2000 until 1st July 2002 when he was made redundant.

It was first necessary to deal with the individual allegations which were denied before referring to the more general allegations of dishonesty which were made against all the Respondents.

Mr East and Mr Stott denied allegation (h). This related to submitting claims for costs to the Legal Services Commission which they should have known could not be justified. This allegation related to the "Goldstar cases" run on a Legal Aid basis and in essence the allegation was that the same letter was copied onto different files for the same client and were included in the fees costed for the Legal Services Commission to pay in each separate case i.e double charges for the letters. There was a dispute over the question of overpayments to the firm by the LSC and this was eventually resolved. The actual bills were drawn by an external costs draftsman and should have been checked and agreed before being submitted to the LSC. Mr Stott denied having had bills prepared before he left. Mr East thinks he did, but there is no positive evidence one way or the other. There is no real evidence against Mr Stott and the Tribunal is not satisfied that the allegation has been made out against him. Accordingly the allegation is not found to be substantiated against Mr Stott.

It is clear that bills were submitted under the supervision of Mr East to the LSC and there does appear to have been duplication of certain letters that were charged for. The matter was resolved with the LSC by setting off the overcharge against the sums due to the firm. Accordingly the Tribunal finds this allegation to have been substantiated against Mr East on the basis of lack of supervision but not because of any intention to deceive.

Allegation (i) was denied by Mr Prescott, Mr Stott and Mr Grassam. This allegation related to failure properly to supervise staff. The Tribunal did not consider that the same liability as principals as attached to allegations (a) to (f) apply to allegation (i). In a busy practice in a seven partner firm divided into departments with the accompanying assistants and managers and other staff, this allegation must relate to those partners actually in control of the particular department or section of the firm. This allegation related to non supervision of conveyancing staff at the Beverley office. Mr Prescott was not a conveyancer nor in charge of the Beverley office and relied on Mr Wright as the partner in charge of conveyancing to deal with problems which arose. Mr Stott was not a conveyancer nor in charge of the Beverley office. Similarly Mr Grassam was principally a commercial lawyer and was not in charge of the Beverley office. It was to be noted that when matters relating to conveyancing problems were raised, Mr Wright gave assurances to the other partners that matters were being dealt with. The Tribunal was not satisfied that the allegation had been made out and accordingly find it was not substantiated against Mr Prescott, Mr Stott and Mr Grassam.

Allegation (j), undue delay in dealing with professional business, related to the Beverley office conveyancing backlog and delays. The same considerations applied to this allegation as to allegation (i) and in the circumstances and having heard the evidence, the Tribunal was not satisfied that the allegation was proved against Mr Goodall, Mr Prescott, Mr Stott and Mr Grassam. Accordingly this allegation was not substantiated against those Respondents.

The Tribunal was satisfied that allegation (k) against Mr Wright (receipt of deposit) is substantiated because Mr Wright had said that he held the deposit

when he did not. Allegation (1), the Tribunal finds is not substantiated on the basis of the evidence given about the changes in the particular transaction over a period of several months.

The Tribunal has given careful consideration to the disputed allegation of dishonesty which is made against all the Respondents.

The Applicant relies on a number of factors to prove his case: the financial background from March 2000 shows a deteriorating financial position. The office account overdraft was £470,000 at 1st March 2000 - £120,000 over its limit. Over the period from March 2000 until The Law Society's intervention the overdraft gradually increased to just under £1 million. In addition to this there were additional borrowings from secondary lenders (sometimes described as "off balance sheet borrowing") of some £335,000. The position was made worse by the departures from the partnership of Mr Carr and Mr Stott who were paid out their capital accounts; by the "Vendor Hold" imposed on the firm by the LSC; by the failure of the "Goldstar" work and by the inability of the partners to manage their firm.

Mr Wright was the senior partner throughout: he was responsible for conveyancing and to a large extent, finance. Decisions were taken at partners' meetings but were not always followed through. Although concerns were expressed by various partners no one followed up the concerns or made a real effort to get to the bottom of the problem or to take appropriate action.

The partners seemed happy to rely on the bank being supportive and to muddle through.

Having seen the partners give evidence, the Tribunal does not believe that any of the partners had the will or the ability to deal with an escalating bank overdraft and a situation where a net profit of £602,923 was made for the year to 30th April 2000 but which turned into a loss of £122,642 for the period ended 31st March 2001.

The blame for the breaches of the Solicitors Accounts Rules is put squarely on the cashier, Mr R, by all the Respondents, and it is quite clear that he wrongly manipulated the firm's computer records and kept a "secret" or "fictitious" bank account and operated some 4 or 5 suspense accounts which he used for his own purposes.

In support of his allegation of dishonesty the Applicant relies on a number of specific matters to show the Respondents' awareness of Mr R's activities.

These matters are: the emails and memos from Mrs Copp dated 19th April, 15th February, 9th June & 7th November 2000; the memo from Mr East of 12th June 2000; the fact that Mr R attempted to pay himself an unauthorised bonus, the misuse of "bulk" or suspense accounts and the Respondents' knowledge of them; Mr R's role and his subjection to two disciplinary hearings in respect of his bonus and in respect of using a bulk account when told not to.

The Applicant contends that the Respondents should have known from clear signals that Mr R could not be relied on and they should have taken action to deal with his improper activities. The Applicant also points to interest payments wrongly debited to client account; to bank charges similarly debited; payment of loans into client account and what was discussed at partners' meetings together with other memos which were written and seen by the partners.

It is clear from the evidence that Mr R was responsible for the firm's accounts. He took advantage of a software system which, unknown to the partners, could forward and backdate entries and postings. In addition he closed and condensed ledgers to show nil balances on a regular basis and appears to have targeted the Beverley and York offices because of administrative and other difficulties plus delays which affected particularly the Beverley office. This misuse of the accounts was hidden from the firm's reporting accountants, and from Mr P, the chartered accountant office manager, quite apart from the partners. It has to be said that the partners, before the appointment of Mr P relied completely on Mr R and accepted all that he said. None of the Respondents seems to have looked at the firm's bank statements or done any spot checks or looked in detail at the bank accounts which they did know about. One of the surprising matters to emerge during the evidence of Mr Wright was that when the loan cheques arrived for the "off balance sheet borrowing" they were merely passed to Mr R to deal with and no proper payment in slips were completed by a partner. It is however clear from the evidence that if the partners had looked at the records they would have seen nil balances on some of the ledgers and would not necessarily have realised that anything was wrong. Mr R was of course a trusted employee of just under 20 years standing and as far as the partners were concerned he was a reliable and loyal member of the firm.

The question of Mr R paying himself an unauthorised bonus was considered in some detail. The Tribunal has carefully noted the evidence of Mr Wright and of the partners who made up the first disciplinary hearing. There is no doubt that Mr R did attempt to pay himself a bonus. The question was, was it authorised? During the disciplinary hearing, the partners conducting it adjourned to speak to Mr Wright. Their evidence is that Mr Wright told them that he could not be sure whether he had given Mr R the impression that he could draw his bonus or not. It was clear to the partners conducting the disciplinary hearing that Mr Wright's evidence could not be relied on and that accordingly Mr R could be right in saying that his bonus had been approved by Mr Wright at the time. Mr Wright denied in his evidence before the Tribunal that he had authorised the bonus at the time but the Tribunal was not impressed with Mr Wright's evidence and prefer the evidence of the partners conducting the hearing. The result of the hearing therefore was not unexpected as the evidence against Mr R would not have held up before an Employment Tribunal. The partners' case against Mr R had been completely undermined by Mr Wright.

In the circumstances there was nothing to alert the partners to any wrongdoings on the firm's accounts because of the disciplinary hearing. Mr

R's mistake was to attempt to take his bonus when Mr East refused to sanction it without referring to the other partners. This attempt to disregard Mr East was entirely wrong but the force of it largely falls away because of Mr Wright.

The second disciplinary hearing in respect of Mr R took place after the discovery by Mr East that Mr R was still using the bulk accounts after being instructed not to by Mr P. The result of this hearing is entirely understandable as Mr P strongly supported Mr R and it appeared that there were only a few occasions when Mr R had used the bulk accounts and that these instances were fairly trivial. Faced with their own highly qualified appointee strongly supporting the cashier the partners were driven to deal with matters as they did. Again, nothing at the hearing was sufficient to alert the partners to the fact that there was a serious fraud being committed by Mr R.

The other relevant point concerning Mr R is that not only did the firm's reporting accountants completely fail to uncover his fraudulent dealings, but The Law Society's attempt to cease to recognise them as qualified reporting accountants proved unsuccessful. They were aware of the use of bulk accounts for limited purposes and reported to the partners on occasion about them, but they produced completely clear Accountant's Reports on the firm year after year for Solicitors Accounts Rules purposes. Relying on their Accountant's Report, the firm used the balance sheet and profit and loss account produced to negotiate and pay out Mr Carr and Mr Stott when they left the partnership, and Mr Grassam relied on them when he came into the firm. It is also noteworthy that Mr Prescott introduced further capital of £20,000 in 2000 in reliance on those accounts.

Mr P, brought in by the partners as office managers and administrator, worked in the same room as Mr R and discovered nothing amiss. Indeed he supported Mr R as has previously been indicated.

The email from Mrs Copp of 9th June 2000 to all the partners was obviously an important document. There was a very clear complaint of problems encountered by the York office where stamp duty was being transferred into nominal accounts from individual client ledgers. She asked what was going on and why the client money was being removed. She also pointed out that breaches of the Solicitors Accounts Rules were apparent. This email was backed up by a memo from Mr East of 12th June 2000 and there was a minute of a partners' meeting at which these matters were discussed on 13th June 2000. Mr Stott expressed misgivings at the situation but apart from saying that Mr R was not in control of his job, viewed the matter as a failure in administration as was made clear in the minutes of that meeting. It was resolved that a cheque book be issued to Mrs Copp to overcome the question of delay. There was also a reference to a "detailed reorganisation" being carried out by the new office manager when he arrived.

It was also clear that at several partners' meetings, Mr Wright as senior partner, the partner responsible for conveyancing and largely for financial matters, gave assurances that matters of concern raised at the meeting would be dealt with and the particular delays over payment of stamp duty and

registration were "historic problems" which were being addressed. The partners clearly considered at the time that the problems were of an administrative kind and had no reason to suspect fraudulent behaviour by Mr R.

There were a number of partners' meetings minutes produced upon which the partners were cross-examined. To the partners it appeared that delays were there and action needed to be taken but they were being dealt with. Faced with assurances, nothing else was done. Mrs Copp did not complain again after her memos and although the partners were criticised by the Applicant, it does not seem that the matters discussed at partners' meetings would lead any of the partners to conclude that Mr R could not be trusted and that a major fraud was in progress.

Should the partners have looked at the bank statements? Should they personally have analysed the various ledger accounts of the practice? Should they have alerted their reporting accountant that something serious appeared to be wrong? Clearly the partners were inefficient and to some extent weak in not sorting out the conveyancing mess at Beverley and the general delays in payment of stamp duty and registration. Those are, after all, serious matters. Late payment of stamp duty incurs financial penalties and late registration can lose priority for the purchaser of a property or security for a mortgagee. The Tribunal feels that Mr Wright bears a heavy responsibility for this lack of control and failure to act to sort out what was wrong.

At the end of the day, and following the intervention there was an apparent shortfall on client account of £385,360. There was a partial replacement of £11,490. There is no current information as to what the position is today. There has been no attempt to draw any further accounts and although the partners had to enter IVA's (and in one case to be made bankrupt), there is apparently no suggestion that clients have taken action against the partners in respect of client money taken or misappropriated. There was a large client account balance on the date of the intervention and the Tribunal finds it unsatisfactory that there is no clear and up to date statement of the true and final financial position.

Whether or not Mr R profited personally from his fraudulent behaviour and to what extent is still unknown.

This case occupied the Tribunal for some 7 days and the allegations brought against the Respondents had been thoroughly investigated and tested. The dishonesty tests set out in *Twinsectra Ltd v Yardley* [2002 UKHL 12] and in *Royal Brunei Airlines -v- Tan* 1995 2 AC 378 are well known to this Tribunal. The cases of *Bolton -v- The Law Society* (1994) 1 WLR 512, *Bultitude -v- The Law Society* [2004] EWCA Civ 1853, *Weston v The Law Society* (the Times, 15th July (1998) and other cases were also referred to the Tribunal.

The partners in a solicitors firm have a heavy duty of responsibility to their clients to ensure that client money is kept sacrosanct and that the Solicitors

Accounts Rules are completely complied with at all times. The public has the right to expect this to be so for all solicitors and to expect solicitors to exercise integrity and propriety at all times. The partners must exercise a proper stewardship of the client funds under their control.

The Tribunal feels that this is a case where the partners have failed to conduct their firm in an efficient and proper manner. They failed to tackle problems in the conveyancing department which had been obvious for some time and lacked the ability or inclination to put the firm on a better footing, particularly when they were faced with an escalating overdraft and falling profits in the year 2000 and thereafter. Ought they in addition to have realised that there was a major fraud being perpetrated by Mr R?

There was no managing partner in the practice and busy partners running their own separate departments should not be expected to look at the firm's bank statements or personally analyse the ledger accounts where there is a trusted cashier of some twenty years standing and where their accountants tell them that all is in order as unqualified Accountant's Reports are given by the accountants year after year. Additionally when Mr R was absent from the office through ill health the reporting accountants supplied a replacement who found nothing amiss. The partners did appoint an office manager (perhaps a bit late in the day); they did engage other accountants to look at specific projects for them and they did know that Price Waterhouse had examined their books in 1992/93 at the time of the former partnership dissolution and had found nothing wrong.

It would in the opinion of the Tribunal be wrong to ascribe to these partners the tag of dishonesty in the light of the full circumstances which have unfolded before the Tribunal. They were poor managers and have paid a heavy price following the intervention, but at the end of the day the Tribunal does not find dishonesty proved. There is lack of convincing evidence to lead to a finding of dishonesty and the tests set out in Twinsectra -v- Yardley and Royal Brunei Airlines -v- Tan have not been satisfied and the high standard of proof required has not been met in all the circumstances.

The Tribunal should add that given the facts revealed by Mr Duerden's investigation and the judgement given in the appeal against the intervention it is hardly surprising that The Law Society has brought the proceedings on the basis of an allegation of dishonesty but, as Mr Williams has conceded throughout, the hurdle that he had to clear was a high one and in the Tribunal's view the Office for the Supervision of Solicitors acted perfectly properly in requiring the Respondents to confront this allegation.

To many members of the solicitors' profession and to members of the public the story of how events evolved would at first blush seem to indicate that only dishonesty could explain the inexplicable manipulation of a substantial firm's accounts, including client account, which led to such a disastrous situation. That said it has also to be acknowledged that the disaster appears to have been one suffered by the partners as no evidence has been brought to show that clients have suffered loss but there is certainly evidence that the partners have.

To a very large extent however it has to be said that they were the authors of their own misfortune.

It is almost inconceivable that the Respondents' actions were driven by dishonesty on a thorough review of their actions. All they really achieved was to dig an even deeper hole for themselves. Anything less likely to show evidence of a clever conspiracy in association with Mr R to defraud clients and line their own pockets can hardly be imagined.

The Tribunal heard the mitigation put forward by the Respondents. As was readily clear from their evidence each of them had suffered both financially and in other ways as the result of the events affecting their practice. The Tribunal has taken the mitigating factors in each case and evidence as to good character into account.

The Tribunal has concluded that it is right to impose financial sanctions upon each of the Respondents and these, as do the payment of the Applicant's costs, reflect the proportion of culpability which the Tribunal attributed to each Respondent."

54. And on that occasion the Tribunal Ordered that:-

1. Mr Wright pay a fine of £7,500 and do pay costs fixed in the sum of £6,000 together with 1/7 of the costs of Investigation Accountant of The Law Society.
2. Mr East pay a fine of £3,500 and do pay costs fixed in the sum of £4,000 together with 1/7 of the costs of Investigation Accountant of The Law Society.
3. Mr Goodall pay a fine of £3,500 and do pay costs fixed in the sum of £4,000 together with 1/7 of the costs of Investigation Accountant of The Law Society.
4. Mr Prescott pay a fine of £3,500 and do pay costs fixed in the sum of £3,500 together with 1/7 of the costs of Investigation Accountant of The Law Society.
5. Mr Carr be reprimanded and do pay costs fixed in the sum of £1,000 together with 1/7 of the costs of Investigation Accountant of The Law Society.
6. Mr Stott pay a fine of £2,500 and do pay costs fixed in the sum of £2,000 together with 1/7 of the costs of Investigation Accountant of The Law Society.
7. Mr Grassam pay a fine of £1,000 and do pay costs fixed in the sum of £2,000 together with 1/7 of the costs of Investigation Accountant of The Law Society".

The Tribunal's Decision and its Reasons in December 2007

55. The Tribunal has given the Respondents credit for their cooperation and their making of explanations and representations when appropriate. The Tribunal has noted the excellent references written in support of the Respondents.

56. With regard to allegation (a) about one thousand payments had been made to Midland and Zahier Hussain, those payments had been dressed up as an investigation fee when in fact they were payments for the referrals of work in breach of the then Introduction and Referral Code. The Respondents did not make a single payment but had been guilty of regular repeated breaches. As a result of those breaches they obtained a great deal of work. There could be no doubt that the Respondents saw this as a way of making a lot of money. There was no doubt that at the material time the Respondents were in breach of the Rules and they had made substantial sums of money as a result of those breaches.
57. With regard to the second "vetting" of referred claims by ER the Tribunal considered the Respondents' position to have been disgraceful. They were directors and/or shareholders in the company, a situation of which the clients were never notified. The Respondents simply paid themselves. They treated that payment as a disbursement and charged it to the clients' disbursement funding loan. Whilst it was not alleged that the Respondents had been dishonest, the gravamen of the breach in allegation (b) was that the clients were kept in the dark.
58. The Tribunal accepted that the approach made to Mrs L had been a mistake. It was however symptomatic of a body of work for different clients being processed in a similar way without giving proper individual thought to each case that led to such an unfortunate mistake. The Tribunal regretted that Mrs L had been troubled and noted with regret that Mr Stott had indicated that this was not an isolated case.
59. The Tribunal gave due consideration to the Applicant's submissions in connection with his costs and noted that the Respondents were of the view that The Law Society should not be awarded the whole of its costs as it did not proceed with all of the allegations made in the Rule 4 Statement.
60. The Tribunal considered that the allegations which remained before them which had been admitted by the Respondents were serious. There was no suggestion that the Respondents deliberately flouted the rules or acted deliberately or dishonestly. They had allowed the prospect of conducting a large volume of work in respect of which they would sustain a substantial fee income and this had gone some way to clouding their judgement. They themselves indicated that they wished to deal with their clients with transparency but they had significantly failed to do so where they arranged for claims to be vetted by a company of which they were directors and one of the Respondents and the wife of the other were shareholders. The failure to make full disclosure to the clients concerned either of the payment of referral fees and the interest of the Respondents in the vetting company prevented the clients from making an informed choice as to the solicitor they would instruct.
61. The pursuit of the unwilling client, Mrs L, an elderly and vulnerable lady, was to be deprecated and should not have occurred.
62. The Tribunal did consider that the admitted breaches were serious and further considered that it was both appropriate and proportionate to impose a substantial financial sanction upon each of the Respondents. The Tribunal Ordered that each of the Respondents pay a fine of £15,000.

63. The Tribunal gave careful consideration to the submissions made by each side as to the question of costs. The Tribunal recognised that the Applicant had undertaken a great deal of work in the preparation of the case. The Tribunal considered that all of the allegations contained in the Rule 4 Statement had been properly made and the allegations admitted by the Respondents were serious. The case had generated a great deal of paperwork. In all of the circumstances the Tribunal considered that it was right that the Respondents should pay the whole of The Law Society's costs. The Tribunal had been told that no agreement as to quantum had been reached. It therefore ordered the Respondents to pay the costs of and incidental to the application and enquiry to include the costs of The Law Society's Investigation Accountant to be subject to a detailed assessment unless agreed between the parties.
64. The Tribunal considered an application by the Applicant that the Respondents should be required to pay £10,000 on account of the Applicant's costs immediately. The Respondents' representative objected to this request, expressing the view that the Tribunal did not make such Orders as a matter of practice.
65. The Tribunal did not agree. Interim costs Orders had been made by the Tribunal on a number of occasions. The Tribunal considered in view of the substantial costs incurred by The Law Society that it would be appropriate to order the Respondents to pay £10,000 on account of the Applicant's costs within 28 days of 18th December 2007.
66. The liability for costs was to be joint and several as between the Respondents.

Dated this 13th day of February 2008
On behalf of the Tribunal

I R Woolfe
Chairman