No. 10086-2008

IN THE MATTER OF JOHN RHYS DAVIES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr K W Duncan (in the chair)
Mrs E Stanley
Mr D Gilbertson

Date of Hearing: 12th August 2009

FINDINGS

of the Solicitors' Disciplinary Tribunal
Constituted under the Solicitors' Act 1974

An application was duly made on behalf of The Law Society by Jayne Willetts, a solicitor advocate and partner of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham B3 1AP on 26th August 2008 that John Rhys Davies, solicitor, be required to answer the allegations contained in the statement which accompanied the application and that such Order be made as the Tribunal should think right.

The allegations against the Respondent were:

1. He claimed costs that he knew could not be justified in the administration of the estates of Mrs N deceased and of Mr A deceased (which is an allegation of overcharging and of dishonesty).

2. He utilised client monies for his own purposes (which is an allegation of dishonesty).

3. He failed to disclose material facts to his client (Mrs P) as to the progress of her case and in doing so contrary to Practice Rule 1 of the Solicitors Practice Rules 1990 ("SPR 1990") conducted himself in a manner that was likely to compromise or impair.

   (i) His integrity;

(ii) His duty to act in the best interests of his client;

(iii) The good repute of the solicitors profession; and

(iv) His proper standard of work.

4. He failed to provide clients with written notification of costs before transferring monies from client to office account in breach of Rule 19(2) of the Solicitors Accounts Rules 1998 ("the SAR").

5. He transferred monies from client account to office account otherwise than as permitted by Rule 22 of the SAR.

6. He failed to provide costs information to his client (Mrs CP – the co-executor of the estate of Mr A (deceased) contrary to Rule 15 of the SPR 1990.

7. That contrary to Rule 7 of the SAR he failed promptly to rectify a minimum cash shortage of £135,912.25 that was in existence as at 13th September 2007.

On 18th November 2008 the Applicant made a supplementary statement containing a further allegation:

8. He failed to deal with the SRA in an open, prompt and cooperative way contrary to Rule 20.03(1) of the Solicitors Code of Conduct 2007.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Jayne Willetts appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal

The evidence before the Tribunal included the written evidence which had been served upon the Respondent and was the subject of a Civil Evidence Act Notice to which no counter notice had been served by the Respondent.

Preliminary Matter

<u>The Respondent's application for adjournment</u>

By a letter dated 11th August 2009 the Respondent invited the Tribunal to adjourn the hearing because of his ill health. He submitted with that letter a copy of a letter written by his general practitioner dated 7th May 2009 in which the general practitioner expressed the view that the Respondent's health was such that he could not act as executor of his father's estate. The Respondent also submitted a copy of a letter from the insurers Aviva dated 30th July 2009 acknowledging receipt of documents in the Respondent's claim under his personal health insurance policy.

It was the Respondent's case that he had suffered from depression and one of the symptoms was that his memory had been affected. He claimed protection under the Disability Discrimination Acts.

The Applicant provided a small bundle of documents including copies of correspondence which she had had with the Respondent together with a copy of the Tribunal's practice note on adjournments and she handed up transcripts of the judgements in R - v - Hayward Jones & Purvis (Court of Appeal) 31st January 2001 and R - v - Jones [2002] UKHL 5 (20th February 2002) which dealt with matters that were to be considered in deciding whether or not to adjourn a hearing.

The Applicant reminded the Tribunal that there had been an adjournment of an earlier hearing on 26th February 2009. That adjournment had been granted to the Respondent but the Tribunal had made clear directions. The Respondent had not complied with any of those directions.

The Tribunal was reminded that the Respondent had written to the Tribunal on 5th November 2008 asking for proceedings to be delayed for three months owing to his ill health. As a result of the Respondent's letter, with the agreement of the Applicant, the substantive hearing had been listed after three months. The current application before the Tribunal was, effectively, for a third adjournment.

The Tribunal's decision on the adjournment application

The Tribunal gave careful consideration to the Respondent's application. By letter dated 11th August 2009 (the day before the hearing) faxed to the Tribunal's office the Respondent sought to adjourn the proceedings. The Tribunal had provided the Applicant with a copy of that letter on the morning of the 12th August 2009. In considering the Respondent's application the Tribunal was acutely mindful of Lord Bingham's ruling that a Tribunal should exercise its discretion in this respect with the utmost care and caution. The Tribunal had carefully considered the check list set out in R - v - Hayward Jones & Purvis (Court of Appeal) 31st January 2001.

The Tribunal took into account the fact that this was the Respondent's third application for an adjournment. It had been made very late in the day. The Respondent had been aware of the date of the substantive hearing since it was notified to him in April 2009.

The Tribunal's Memorandum of Directions following the adjournment hearing on 26th February 2009, and dated 8th April 2009, had been served upon the Respondent. It contained specific directions concerning evidential matters, and the Tribunal's own practice note dealing with the question of adjournment had been made available to the Respondent at the same time.

The Tribunal had before it no relevant medical evidence. The Respondent had provided only a letter from his general practitioner dated some three months prior to the hearing which was directed to a different issue, namely the Respondent's ability to act as his father's executor.

The Tribunal would have expected the Respondent, by the date of the substantive hearing, to have sought the advice of an appropriate consultant and to have provided that consultant's

report to the Tribunal. It was noteworthy that no such report had been attached to the Respondent's application.

The Tribunal was aware that serious allegations had been made against the Respondent. The Tribunal was of the view that it was in the public interest that such serious allegations be considered by the Tribunal as speedily as justice would allow. The Tribunal did take into account the fact that the Respondent no longer held a current practising certificate. It noted the allegation that the Respondent had made improper charges in an estate where charities were the residual beneficiaries. Those charities had an interest in the outcome of the disciplinary proceedings.

The Respondent had given no indication of the points he wished to take in his defence. He said in his letter that he wished to challenge all allegations, in marked contrast to what he said in his letter of 21st January 2008 in which he clearly admitted serious allegations. The Tribunal further noted that he made those admissions some six months prior to The Law Society's intervention into his practice. The Respondent had not engaged with his professional regulator and had made no attempt to explain the allegations made against him or the facts upon which the SRA placed reliance.

If the substantive hearing were to be adjourned it was unlikely that there would be time in the Tribunal's calendar to relist the substantive hearing until early in 2010.

In his letter dated 11th August 2009 the Respondent invited the Tribunal to consider the protection he claimed was afforded to him by the Disability Discrimination Acts but without giving any further explanation. Nor had the Respondent provided appropriate medical evidence to support such claim.

Such medical evidence as was provided did not comply with the directions made by the Tribunal. The Tribunal would expect to see a report from a suitably qualified medical consultant which included a prognosis so as to enable the Tribunal to assess how long an adjournment might be needed.

The Tribunal took the view that the Respondent's letter of 11th August 2009 was perfectly lucid dealing clearly with the various issues which the Respondent wished to address. This was at odds with his stated state of health.

The Respondent had sent his letter of 11th August 2009 by fax using a fax number that would not accept replies. The Respondent could not be accessed by email or telephone and, indeed, the address at which he could be contacted had been varied (as was noted in the Tribunal's earlier memorandum dated 8th April 2009.)

The faxed letter making the current adjournment application was sent very late in the day and that, of course, had also been the case in February 2009.

The Tribunal concluded that the Respondent's letter and the application bore all of the hallmarks of a contrived application to force an adjournment.

The Tribunal recognised that the public had an interest, in this case in particular the charities who were residual beneficiaries, in serious allegations being brought before the Tribunal against a solicitor being brought before the Tribunal without undue delay. The good

reputation of the solicitors' profession would be upheld only in circumstances where the Tribunal fulfilled its function without undue delay.

For the reasons set out above the Tribunal considered that weighing all of the various interests it was both proportionate and appropriate to dismiss the adjournment application and to Order that the substantive hearing be dealt with in the absence of the Respondent who had, in the Tribunal's view, deliberately absented himself.

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

The Tribunal Orders that the Respondent John Rhys Davies, solicitor, be Struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £29,000.00.

The facts found by the Tribunal are set out in paragraphs 1 - 36 hereunder

Professional details

1. The Respondent (date of birth 5th May 1953) was admitted as a solicitor on 16th May 1977. He practised on his own account at Parkington Holliday & Co, Advocates House, Market Street, Denton, Manchester M34 2AW until the SRA intervened in his practice in June 2008.

Background facts

2. On 11th June 2007, an Investigation Officer of the SRA (the IO) commenced an inspection at the Respondent's practice. The IO's Report dated 24th September 2007 was before the Tribunal.

3. The IO reviewed a sample of nine probate matters of which the Respondent had conduct.

4. An independent costs draftsman was commissioned by the SRA to assess the level of costs on two of the files, namely Mrs N deceased and Mr A deceased.

Mrs N deceased

5. The Respondent acted in the administration of the estate of Mrs N deceased. He was the sole executor. Mrs N left some chattels and modest legacies to friends and relatives and the bulk of her estate to fourteen charities. Mrs N had died on 9th June 2005. The client ledger indicated that the file had been opened on 14th June 2005. Probate was granted on 2nd November 2005. The gross estate was valued at £477,357.

6. The Respondent had raised two bills neither of which described the work done in the period to which the charges related.

Date	Costs	VAT	Total
16th December 2005	£55,000	£9,625	£64,625
23rd December 2005	£25,000	£4,375	£29,375

7. The IO did not find any costings or calculations on the file in support of these bills. The Respondent was unable to justify the level of costs charged but stated that they had not been estimated. The Respondent had offered no explanation as to why the second bill had been raised seven days after the first one.

8. On 7th September 2007, the costs draftsman produced a report, which was before the Tribunal. The Report concluded that the chargeable work as evidenced by the file was valued at £9,300 and that by adopting a broad brush approach and allowing for a separate charge for value, the maximum figure for costs would be £21,700. It was the costs draftsman's opinion that the charge of £80,000 could not be justified.

Mr A deceased

9. The Respondent also acted in the estate of Mr A deceased. The Respondent and Mrs CP were co-executors. Mrs A had died on 14th December 2004. The client ledger indicated that the file had been opened on 17th January 2005. The gross estate value declared on Inheritance Tax Form 205 was £176,888.62.

10. The Respondent had raised bills in the total sum of £40,000 + VAT on this matter, none of which specified the period to which it related or described the nature of the work undertaken:

Date	Costs	VAT	Total
22nd June 2005	£10,000	£1,750	£11,750
30th June 2005	£5,000	£875	£5,875
31st August 2005	£15,000	£2,625	£17,625
27th October 2005	£10,000	£1,750	£11,750

11. The IO did not find any costings or calculations on the client file in support of these bills, or evidence that the bills had been provided to the co-executor or that she had been given prior written notice that costs were to be transferred from the client account. The Respondent confirmed that he had not delivered the bills or other written notification to the co-executor. The Respondent did not provide anything to justify the amount billed.

12. The independent costs draftsman also examined the file of Mr A deceased. He concluded that the chargeable work evidenced by the file was valued at £9,800. By adopting a broad brush approach and allowing for a separate charge for value the maximum proper costs charge would be £17,025. The costs draftsman considered that the charge of £40,000 could not be justified.

13. The IO did not locate a "client care" letter on the file relating to Mr A deceased in compliance with Rule 15. The Respondent was unable to provide evidence that his co-executor had received such a letter.

14. The Respondent had transferred costs from client to office account in respect of bills raised without delivering the bill other written notification to the client, his co-executor. The Respondent had stated that he was not aware of this requirement.

Minimum Cash Shortage

15. A minimum cash shortage of £135,912.35 was identified by the IO. This was caused by the transfer of costs from client to office account in respect of five probate matters where no written notification of costs had been made to the clients. These were as follows:-

A deceased - £47,000 – (£40,000 plus VAT)

HO deceased - £22,701 – (£19,320 plus VAT)

HOD deceased - £27,318.75 (£23,250 plus VAT)

BE deceased - £18,800 – (£16,000 plus VAT)

BR deceased - £20,092.50 – (£17,100 plus VAT)

Total - £135,912.25

Mrs P

16. The Respondent had acted for Mrs P in respect of matrimonial proceedings that were concluded by way of a Consent Order. In 2001, Mrs P instructed the Respondent to set aside the Consent Order.

17. The Respondent issued an application on behalf of Mrs P to set aside the Consent Order but failed to attend to final hearing on 23rd September 2003 so the application failed. An Order was made that Mrs P pay Mr P's costs from her share of the proceeds of sale of the former matrimonial home. At a subsequent hearing on 22nd April 2004, again in the absence of the Respondent, Mr P obtained an Order to complete the conveyance in the absence of Mrs P.

18. By letter dated 3rd June 2004 the solicitors acting for Mr P confirmed that pursuant to Court Orders dated 23rd September 2003 and 22nd April 2004 they had completed the sale of the former matrimonial home and that Mrs P's share of the proceeds of sale was £23,548.27. A cheque for that amount was enclosed. A figure for costs was proposed by Mr P's solicitors and deducted from Mrs P's profit share. The Respondent was required either to agree the costs or to revert to Mr P's solicitors within 14 days for a detailed assessment. The Respondent failed to take any action to protect his client's position. He did not bank the cheque.

19. Mrs P wrote to the Respondent the next day, 4th July 2004, asking for the Respondent's assurance that she was still the legal owner of the property and stating that she would like to buy Mr P out. She had been to the Building Society and been informed that the mortgage had been paid off. She also noted that the "for sale" board had been taken down. She asked for the Respondent's opinion on her legal position on the basis that her name was still on the title deeds. The Respondent failed to advise his client that Mr P had obtained an Order to complete the conveyance in her absence or that the property had already been sold.

20. By letter dated 25th January 2005 the Respondent was notified by Mr P's solicitors that the cheque sent for Mrs P on 3rd June 2004 had not been banked.

21. Mrs P wrote to the Respondent on 26th January 2005 asking for a set of keys. She also asked if she would be within her rights as joint owner of the property to change the locks. The Respondent did not inform his client that she had ceased being a joint owner in May 2004 when the property had been sold.

22. The Respondent requested a further cheque by letter dated 31st January 2005.

23. Mrs P wrote again to the Respondent on 3rd April 2005 stating that she had been more than patient and that she wanted the Respondent to do whatever he could to get the property sold and the proceeds divided up fairly. The Respondent did not inform his client that she had not been joint owner since May 2004 when the property had been sold.

24. Mrs P wrote again on 22nd November 2005 requesting a progress report from the Respondent. The Respondent did not advise his client that the property had already been sold.

25. A further cheque for £23,548.27 was sent to the Respondent on 19th December 2005.

26. On 19th December 2005 Mrs P again asked the Respondent for a progress report.

27. On 20th December 2005 the Respondent prepared an invoice for £23,548.27, the exact sum received from Mr P's solicitors in settlement of her share in the former matrimonial home.

28. The same day the Respondent paid from office account into Mrs P's client account ledger £80,000 and then sent her a cheque from client account for this amount. There was no evidence that Mrs P was entitled to £80,000. The Respondent had explained to the IO that this payment was compensation for his negligent conduct but he did not communicate this fact to Mrs P.

29. The client ledger recorded that on 21st December 2005 the Respondent transferred £23,548.27 from client to office account in settlement of the invoice for Mrs P's costs. There was no evidence that he provided his client with written notification of costs. There was no evidence that he was entitled to such costs.

30. The Respondent acknowledged that he had failed to attend a hearing on behalf of Mrs P but could not recall which one or when it was. He did not advise his client of this. The Respondent stated that he did not inform his client that he was holding monies on her behalf because he had made a mistake in not attending the court hearing. The Respondent did not report this matter to his insurers and decided to "shoulder it himself".

<u>Mrs H deceased</u>

31. The Respondent was the sole executor of the estate of the late Mrs H. The Donkey Sanctuary was one of six residuary beneficiaries, all charitable institutions.

32. On 2nd March 2007 the Respondent rendered estate accounts to the residuary beneficiaries showing deductions for his fees of £15,358.20 plus fees of £393.63 for dealing with the sale of the house. The total value of the estate assets was £130,593.95 including the house valued at £115,000.

33. On 12th March 2007 the Donkey Sanctuary requested the Respondent to apply for a Remuneration Certificate. He failed to do so.

34. The LCS was made aware of this and wrote to the Respondent on 29th October, 28th November and 5th December 2007 and on 17th January and 2nd February 2008. The Respondent did not respond at all.

35. After the matter had been returned to the SRA, it sent letters to the Respondent dated 14th and 31st July 2008 (the latter both to his home and his practice addresses) to which the Respondent responded on 8th August 2008 requesting an extension of time to respond.

36. The SRA wrote to the Respondent's last known residential address on 8th August 2008 and granted an extension of time for reply until 26th August 2008. He did not reply by that date so a further letter was sent to the Respondent's last known residential address on 2nd September 2008. No response was received.

The Submissions of the Applicant

37. The IO had reviewed a sample of nine probate matters of which the Respondent had conduct. Costings in support of bills had been available for only five of the total of thirty three bills raised in those matters. For six of the client files reviewed costs expressed as a percentage of the value of the gross estates were in the range of 9.99% to 19.79%.

38. In the matter of Mrs N deceased the file had been opened only six months prior to the Respondent raising bills of £80,000. It was not possible for the Respondent to have completed work equivalent to £55,000 during the period 14th June to 15th December 2005 or for the Respondent to have completed work to the value of £25,000 in fees during the period 16th December to 23rd December 2005, a total of five working days, the second bill having been issued on 23rd December 2005. Further the bills dated 16th December 2005 and 23rd December 2005 were for round sums and were unspecific to the work undertaken. There was no corroborating evidence on the client file that work to the value of these bills had been carried out by the Respondent. There was no information in the bills relating to the period to which they related, no description of the work done other than the most basic summary, and no detail of the number of hours recorded or the hourly charging rate. Those facts together with the conclusion of the independent costs draftsman that the costs were not justified were relied upon in support of the allegation of dishonesty.

39. In the matter of Mr A deceased the client ledger revealed that the file was opened on 17th January 2005 and that the first invoice was raised by the Respondent on 22nd June

2005. Thereafter four bills were rendered in quick succession during a four month period between 22nd June and 22nd October 2005. There was no corroborating evidence on the client file of work to the value of those bills, having been carried out by the Respondent. The bills were for round sums and did not specify the work done. There was no information in the bills relating to the period to which they related, no description of the work done other than the most basic summary and no detail as to the number of hours recorded or the hourly charging rate. Those facts together with the conclusion of the independent costs draftsman that the costs were not justified were relied upon in support of the Applicant's allegation that the Respondent had been dishonest.

40. The Respondent had been asked to review his probate files to ascertain to which clients he had not given prior notice with regard to the transfer of costs. The Respondent had not provided such information.

41. Of the minimum cash shortage, the largest related to Mr A deceased and was £47,000. The Respondent agreed the minimum cash shortage as calculated by the IO. He was asked to provide evidence that the cash shortage had been rectified but no such evidence had been supplied.

42. The payment to Mrs P of £80,000 (described as the proceeds of sale of her matrimonial home) and subsequently stated by the Respondent to include a "compensation payment", was funded in part by the sum received from Mr P's solicitors which had been paid into office account as costs by the Respondent (£23,500) and in part from office account (£56,500). The Respondent's ability to fund part of the payment to Mrs P from office account depended on his use of costs from the estate of Mrs N deceased. The Respondent had a limited overdraft facility. If the transfer in respect of the late Mrs N's costs had not been made, the office account, after payment of £80,000 to Mrs P, would have been £90,107.38 overdrawn when the overdraft limit was £40,000. The Respondent had admitted to the IO that he could not have made the payment to Mrs P without transferring the costs charged in the late Mrs N's probate matter. The Respondent had however contended that he was entitled to such costs. It was the Applicant's position that the Respondent had acted dishonestly in utilising client monies belonging to the estate of Mrs N deceased to which he was not entitled by overcharging in order partly to fund the payment to Mrs P.

43. When a copy of the IO's report was sent to the Respondent under cover of a letter dated 20th December 2007 the Respondent replied by letter dated 21st January 2008 in which he confirmed that the cash shortage had not then yet been rectified and he admitted that costs had been transferred without prior notice to the clients. He had denied intentional overcharging on any of the probate matters.

44. The Respondent had not responded substantively and indeed had ignored letters addressed to him by his own professional regulator.

45. The Tribunal was invited to find all of the allegations made against the Respondent to have been substantiated and also to find that the Respondent had acted dishonestly.

46. The Applicant recognised that the Tribunal would apply the two part test for dishonesty set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 as endorsed by the case of Bryant & Bench [2007] EWHC 3043 (Admin) in 2007.

47. In the submission of the Applicant, the objective test was satisfied as there could be no doubt that the commonly held view of ordinary people was that a person taking monies to which he was not entitled, was dishonest. Similarly, over charging would be regarded as dishonest.

48. With regard to the subjective test, the Tribunal was invited to take into account a number of factors which indicated that the Respondent knew that he was acting dishonestly by those same standards of ordinary people. The first was the length of time over which the Respondent produced invoices and made transfers from client to office account. In the case of Mrs N deceased the file had been opened in June 2005. According to the ledger, a substantial invoice had been raised in December 2005 and a further invoice for £25,000 had been raised only seven days later. In the matter of Mr A deceased, the Respondent's file had been opened in January 2005. The first invoice had been produced in June 2005 and a second invoice for £5,000 had been produced twelve days later. A further invoice for £15,000 had been produced at the end of August with another for £10,000 at the end of October. The periods between the invoices was too short for a sole practitioner to have spent sufficient time to render those charges accurate, even if that amount of work had been required in the case as the gross value of the estate was not substantial.

49. It was noteworthy that the invoices in the matters of Mrs N deceased and Mr A deceased had all been for round sums. There was no explanation as to how these amounts had been calculated. It was extremely unlikely that any properly calculated bill would amount to a round sum and even less likely that six bills in the period from 22nd June 2005 to 27th October 2005 would all be for round sums. There was no corroborative evidence on either of the files that work to the value of the invoices had been carried out. No time had been recorded either manually or on a computer. The invoices did not specify the period which they were intended to cover. They purported to be "interim invoices". No time had been recorded, no charging rate had been given and there was nothing to support or justify the Respondent's figures.

50. The independent costs draftsman employed by the SRA reached the firm conclusion that the costs claimed by the Respondent could not be justified. That led to the inescapable conclusion that the Respondent had been engaged in deliberate overcharging and that he knew what he was doing was dishonest.

51. With regard to allegation 3 and his failure to disclose material facts to Mrs P, the facts spoke for themselves. There had been a long period during which Mrs P had not known the true state of affairs indeed she might as well have been unrepresented in her matrimonial proceedings. The Respondent had failed in his duties to Mrs P and had kept the facts from her. He had even not provided her with her share in the proceeds of sale of the matrimonial property when they had been paid to him. Ultimately he had paid to Mrs P more money than she was entitled to stating that it was his intention to compensate her. In so doing the Respondent had used monies improperly taken from Mrs N's estate. It was the Applicant's case that the Respondent's actions had been deliberate and premeditated when he transferred

monies from the estate of Mrs N to which he was not entitled in order to ensure that the substantial payment made to Mrs P did not lead to the Respondent's office account being overdrawn beyond the overdraft limit agreed with his bankers. That was a premeditated use of client money for his own purposes.

52. The deception of Mrs P was a serious matter. She had been led to believe that she was still the joint owner of her matrimonial home when the fact was that property had been sold. The Respondent's actions had, of course, led to the specified breaches of the SAR.

53. Additionally the Respondent had failed to cooperate with the SRA in connection with its handling of a complaint from a residuary beneficiary about the Respondent's charges as sole executor in a modest estate. A finding of inadequate professional services had been made against the Respondent but no separate allegation had been placed before the Tribunal in connection with this matter.

The Findings of the Tribunal

54. The Tribunal found all of the allegations to have been substantiated against the Respondent.

55. With regard to the question of dishonesty the Tribunal considered this aspect of the case in the light of the two part test set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

56. The Tribunal found that in creating invoices to make it appear that the transfer of large lump sums from client to office account in the estates of Mrs N and Mr A was justified but where there was no question that the Respondent was not entitled to such exorbitant charges and without informing the beneficiaries, in the case of Mrs N deceased, or the co-executor, in the case of Mr A deceased, the Respondent's conduct was dishonest by the standards of reasonable and honest people. When he utilised the £80,000 transferred for costs in the matter of Mrs N deceased to make a payment to Mrs P over and above that to which she was properly entitled, the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal had reached the conclusion that his application for adjournment was a contrived application. The Respondent had not offered explanations for his actions. The Tribunal accepted the Applicant's submission that the Respondent's actions had been premeditated. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was entitled to act as he did and therefore that he knew that what he was doing was dishonest by those same standards.

57. At a hearing on 27th September 2007 (the Tribunal's written findings being dated 7th January 2008) the Tribunal found that the Respondent had been guilty of conduct unbefitting a solicitor in that;

    (i) He had breached a professional obligation to Bouchers Solicitors by failing to deal with the taxation of costs; by failing to account for costs received, and by failing to keep Bouchers informed of the reasons for the delay;

(ii) He had failed to deal promptly or substantively or at all with correspondence from The Law Society in relation to a complaint by Bouchers.

and on that occasion the Tribunal said;

> "The Tribunal concluded that it would be both appropriate and proportionate to impose a financial penalty of £4,000 upon the Respondent. The Tribunal recognised the existence of the "rogue file syndrome" and considered that the Respondent had been afflicted with this. Nevertheless his failures to grasp the nettle had caused a great deal of people a great deal of trouble and taken up much time. He, himself, had suffered as a result of his inaction.
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> The Respondent accepted that such behaviour on the part of a solicitor did bring his own and good reputation of the solicitor's profession as a whole into disrepute.
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> The Tribunal accepted the Respondent's assurance that he intended to discharge the sum due to Bouchers from his own resources.
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> The Tribunal pointed out that if he did not resolve this matter satisfactorily then he would remain in continuing breach and should he be brought before the Tribunal to answer a similar allegation because the matter had not been resolved, a future division of the Tribunal would be unlikely to view his shortcomings with leniency.
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> The Tribunal noted that the Applicant sought the costs of and incidental to the application and enquiry and agreed in the circumstances that it was right that the Respondent should meet these costs. The Respondent having seen a schedule of costs invited the Tribunal to Order that they be subject to a detailed assessment. The Tribunal took the view that the Applicant's costs were relatively modest and it was in no doubt that the costs sought reflected the amount of work undertaken. In order to avoid further time and costs being expended on this matter the Tribunal decided not to Order that the costs be subject to detailed assessment but to fix the costs in the sum sought by the Applicant, namely £3,304.49.
>
> The Tribunal directed its clerk to provide a list of solicitors in the Solicitors' Assistance Scheme to the Respondent and expressed the hope that he would seek assistance from one of the members of that scheme and give close consideration to passing Mrs V's file to another solicitor to ensure that all matters on that file, including the application for legal aid costs, were finally concluded without further delay."

58. The Respondent had appeared to have ignored the warning inherent in the Tribunal's earlier Findings and Order.

59. Having found the allegations to have been substantiated and that the Respondent had been dishonest the Tribunal, mindful of its duty to protect the public and the good reputation of the solicitors profession considered that it was both appropriate and proportionate to Order that the Respondent be struck off the Roll of Solicitors.

60. The Applicant had sought the costs of and incidental to the application and enquiry and had provided a schedule of such costs to the Tribunal confirming that the schedule had already been sent to the Respondent. In order to save the expenditure of further time and costs on this matter the Tribunal Ordered the Respondent to pay the Applicant's costs which it summarily fixed in the sum of £29,000.

Dated this 20th day of November 2009
On behalf of the Tribunal

K W Duncan
Chairman