No. 10237-2009

IN THE MATTER OF YVONNE SHANTI, solicitor
and MAYSON SHANTI, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs K Todner (in the chair)
Mr A N Spooner
Mr J Jackson

Date of Hearing: 1st December 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by George Marriott, solicitor and partner in the firm of Gorvins, 4 Davey Avenue, Knowlhill, Milton Keynes, MK5 8NL on 23rd April 2009 that Mrs Yvonne Jayne Shanti 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.

On the same date George Marriott applied on behalf of The Law Society, via the SRA, that an Order under s.43 of the Solicitors Act 1974 (as amended) be made by the Tribunal directing that as from a date specified in such Order, no solicitor, recognised body or Registered European Lawyer should employ or remunerate Mr Mayson Shanti who was employed or remunerated by Chaselaw Solicitors of 25 Beaumont Street, Oxfordshire, OX1 2NP except in accordance with permission granted by The Law Society via the Solicitors Regulation Authority or that such other Order might be made as the Tribunal should think right.

The allegations made against the First Respondent, Yvonne Jayne Shanti, were that she:

1. Failed to keep accounting records properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998 ("SAR").

2. Misappropriated clients' funds.

3. Made improper withdrawals from client account, contrary to Rule 22 of the SAR.

4. Failed to remedy breaches promptly upon discovery, contrary to Rule 7 of the SAR.

5. Failed to fulfil undertakings, contrary to Rule 10.05 of the Solicitors Code of Conduct.

6. Allowed misleading and inaccurate publicity to feature on the firm's website.

7. Failed to act with integrity, failed to act in her client's best interest and acted in a manner likely to diminish public confidence in the solicitors' profession, contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct.

8. Acted in a situation where the best interests of the client conflicted or were significantly likely to conflict, with her own interests, contrary to Rule 3.01 of the Solicitors Code of Conduct.

The allegations made against the Second Respondent, Mayson Shanti, were that he:

1. Misappropriated clients' funds.

2. Misled the public by holding himself out as a solicitor.

3. Was convicted of a criminal offence involving dishonesty.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 1st December 2009 when George Marriott appeared as the Applicant and neither of the Respondents appeared nor were represented.

The evidence before the Tribunal

The evidence before the Tribunal included the documents attached to the Applicants' two statements which had been the subject of Notices to Admit under the Tribunal's Rules and Civil Evidence Act Notices served upon both Respondents neither of whom had served any counter-notice.

Preliminary matter

Shortly before the hearing the Respondents had, in writing, invited the Tribunal to adjourn the substantive hearing to enable them to obtain representation. The Tribunal noted that the Respondents had been represented by a solicitor during the course of the SRA's investigation. The Tribunal also noted that both Respondents had been notified of the substantive hearing date a considerable period of time in advance and they had had more than enough time to

arrange for representation at the hearing. The Tribunal dismissed the application for an adjournment and ordered the substantive hearing to proceed.

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

The Tribunal Orders that the Respondent, Yvonne Shanti, solicitor, be Struck Off the Roll of Solicitors and it further Orders that she do pay two thirds of 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 Tribunal further Orders the Respondent to pay £7,000 towards such costs within 21 days of today's date.

The Tribunal Orders that as from 1st day of December 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Mayson Shanti, a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay one third of 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 Tribunal further Orders the Respondent to pay £3,500 towards such costs within 21 days of today's date.

The facts are set out in paragraphs 1 - 64 hereunder:

1. The First Respondent, born in 1960, was admitted as a solicitor in 2002. Her name remained on the Roll. She was a sole practitioner practising at the firm Chaselaw Solicitors at Beaumont Street, Oxford.

2. The Second Respondent, the First Respondent's husband, was not a solicitor. He was a director in several companies registered at the address of the Respondent's firm in Oxford. The companies' names included the word "Chase" so that their names had this connection with the name of the First Respondent's firm.

3. On 3rd March 2008 an Investigation Officer of the SRA ("the IO") commenced an inspection of the First Respondent's firm. The IO produced two Reports respectively, dated 26th August 2008 and 15th September 2008 that were before the Tribunal.

4. These Reports revealed the following matters.

5. On 24th June 2008 the IO, accompanied by a second IO, had discussed issues identified during the investigation with the First Respondent, who had been accompanied by her legal representative.

6. On 27th February 2008, the First Respondent's accountant telephoned the IO's office asking the IO to postpone the investigation because he retained all of the firm's accounting records saying that these were currently in storage because he was moving premises. The accountant had been informed that the IO would still attend on 3rd

March 2008 and would assess the position on his arrival. On 3rd March 2008 the IO met the First and Second Respondents.

7. The First Respondent explained that since October 2007 her accounting records had been maintained by a bookkeeper, who attended on a weekly basis. He was currently using a manual accounting system but there were plans to computerise the system.

8. No accounting records were available as all records and bank documents had been taken away before Christmas by the firm's accountants to enable them to prepare an Accountant's Report.

9. When the IO was able to speak with the accountant he was told that the accountant had taken over the firm's books in October 2007, he received data from the bookkeeper on a weekly basis which was then posted to manual ledgers. The accountant believed that the books were up to date to the end of January or the first week of February 2008. The accountant would not attend to the books until his firm's relocation. The IO told both Respondents that this was unsatisfactory and requested them to obtain the accounting records for his examination the next day.

10. On 5th March 2008 another IO attended at the firm and was told by the Second Respondent that a driver had been sent to collect the firm's accounting records and they would be delivered by early afternoon, but the papers were not in an orderly state. Both IO's attended at the firm in the afternoon of 5th March 2008 but no accounting records were provided. The Second Respondent explained that he had been unable to arrange for the recovery of the firm's accounting records, but he would make them available if granted a little more time.

11. The IO reluctantly suspended the investigation until 31st March 2008 making it plain that he expected all of the firm's accounting records to be available on 31st March 2008.

12. On 25th March 2008 the Second Respondent emailed the IO asking him to call. The IO telephoned on 29th March 2008 when the Second Respondent asked the IO to postpone his return. The IO insisted that he would return on 31st March 2008.

13. On 31st March 2008 the IO returned to the firm accompanied by another IO and was met by the Second Respondent who explained that he would produce all of the items required by the IO and he did produce:

    (i) bank statements for client and office account but omitted client reserve account;

    (ii) bank reconciliation statements for the months of August 2007 to January 2008;

    (iii) client account cashbook;

    (iv) file of posting slips;

    (v) file of copy bills.

14. The IO expressed dissatisfaction that not all the required information had been made available and in particular no client matter ledgers were available. The IO also made his position clear to the First Respondent whose responsibility it was to ensure that her firm maintained adequate accounting records. The IO expressed his concern that the overall structure of the firm's accounting records could be inadequate.

15. The two IOs identified the following matters: The reconciliation statement produced commenced with the balance of the "clients control ledger" and from records produced they appeared to be the net of posted client account receipts and payments that would normally be recorded in a cash book. That figure had then been adjusted by a number of unposted items and the resultant adjusted figure had been compared with the balance on the current client account bank statement. No comparison of any figure with the total of client liabilities was possible as no list of client liabilities had been produced.

16. The stated transfers to and from the firm's high interest account (net value £192,645.16) could not be verified as no statements for the high interest account had been produced.

17. An item headed "Outstanding balances Chase Group £104,906.15" had been used to reduce the overall client control ledger total by £104,906.15. The First Respondent had been unable to explain what that sum related to. The IO pointed out that an entry such as this on the face of a reconciliation usually represented receipts that had been posted to the accounting records but were unsupported by the actual receipt of funds at the bank. If these were uncleared funds and client payments had been made against them shortages would have arisen.

18. The IO was not able to establish the firm's total liability to clients at 31st January 2008 or the client money available to meet the firm's liabilities to its clients at that date. The firm's accounting records were not in compliance with the SAR.

19. From the records that were produced the IO established that a minimum cash shortage of £38,782.41 existed at 31st January 2008.

20. The client account bank statements recorded a series of withdrawals with the narrative, Unpd Chq...Chase Group". Further analysis of these items showed the following position:

Matter Number	Amount Received (£)	Date Received	Date Re-presented	Date Unpaid	Amount Paid Out (£)	Date Payment Cleared	Resulting Shortage (£)
100560	3,671.88	23.01.08	28.01.08	31.01.08	3,671.88	28.01.08	3,671.88
101270	19,500.00	22.01.08	25.01.08	30.01.08	19,500.00	23.01.08	19,500.00
[No ref]	5,000.00	15.01.08	18.01.08	23.01.08	5,000.00	15.01.08	5,000.00
101107	10,639.91	11.01.08	16.01.08	21.01.08	10,610.53	11.01.08	10,610.53
						Total	£38,782.41

21. In each of these matters a cheque had been received from the Second Respondent (trading as Chase Group) and an immediate payment out made. The cheques received from Chase Group were subsequently dishonoured after the payments out had been cleared through client bank account. As a result the general funds of other clients had been used to fund the payments made on behalf of the Second Respondent.

22. By 1st April 2008, no further accounting records had been produced to the IO who established that the First Respondent was meeting clients and was not due to return to the office that day.

23. On 2nd April 2008 the IO sent an email to the First Respondent setting out the position in general terms and on 4th April 2008 the IO wrote to her setting out the accounting and other issues that he wished to discuss with her.

24. The firm's Accountant's Report for the year ending 31st October 2007 was due to be delivered to the SRA by 30th April 2008. On 29th May 2008 the firm applied for an extension of time but this application was refused.

25. On 4th March 2008, the SRA received notification from Oxford City Council which suggested that the firm was in financial difficulty as there were unpaid business rates of £27,332.75.

26. The IO had been provided with documents on 31st March 2008 from John Marston & Co, High Court Enforcement Officers, relating to the seizure of goods pursuant to a judgment debt against the firm.

27. The IO had noted that what appeared to be staff salaries had been paid by bank transfer on 18th December 2007. It appeared that payments of salaries had not been made in January 2008. The Second Respondent had made several references to the need to introduce capital into the practice when speaking with the IO.

28. On 10th March 2008 the IO's office received information that a further County Court judgment for £8,038 had been obtained against the firm in connection with the provision of accounting computer software.

29. On 12th November 2007 information regarding the Second Respondent had been received by the SRA from an anonymous source namely that:

    (i) the Second Respondent was a director of a provider of financial services, whilst not authorised by the Financial Services Authority;

    (ii) the Second Respondent had a criminal conviction for obtaining property by deception;

    (iii) The Second Respondent had represented the firm in an official capacity.

30. An IO reviewed the file relating to the purchase of a leasehold interest by Chase Group which contained documents relating to demands for rent from Oxford City Council. It was not clear why these payments were made through the firm's client account and not paid direct.

31. When reviewing the firm's website, the IO noted a reference to a satellite office in Dubai in connection with litigation work. SRA records contained no details of such an office.

32. The First Respondent had provided the IO with specimen client care letters. In connection with conveyancing work, the charges and expenses section made reference to telegraphic transfer fees of £29.38 as a disbursement. This was not a fee charged by the firm's bank.

33. The IO established that there had been a breach of undertaking where the firm had acted for a purchasing client. The matter file contained an undertaking that the firm would make a payment of £43,475 to the seller's solicitors by close of business on 31st March 2008. That undertaking had not been discharged when the IO wrote to the First Respondent on 4th April 2008.

34. Mrs B, a conveyancing client, had complained to the Legal Complaints Service about the relationship between the firm and the Second Respondent's business interests. The IO had been made aware of this on 18th April 2008. At interview the First Respondent said it was common for her husband to use the firm's fax machine. Arrangements had been made to remove the name of Chaselaw from the fax header.

35. The IO had noted responses to his enquiries provided by the First Respondent's legal representative. The Tribunal has not here recorded such responses but has summarised them under the heading "The Submissions of the First Respondent".

36. On 24th June 2008, two IOs returned to the firm. The First Respondent's legal representative confirmed that the firm's accounting records were still incomplete and further time was needed to complete his assessment of those records. The First Respondent was now intending to close the practice.

37. The IO, having notified her in advance of the areas he wished to cover, interviewed the First Respondent on 24th June 2008. The IO reported that her responses were generally vague and, where specific information or explanations had previously been requested, these were not provided. A transcript of those discussions was before the Tribunal.

38. The First Respondent was not able to explain the history or the current nature of her accounting records. She gave the impression that she had little involvement in, or understanding of, the day to day maintenance of her accounting records. She accepted that there were inaccuracies which she was trying to address. She could not explain the content of the reconciliation statements. In particular she was unable to explain an item "Outstanding Balances-Chase Group". She appeared to have been aware of longstanding problems with the firm's accounting records and appeared initially to have been unaware that cheques from Chase Group had been dishonoured, and when this was drawn to her attention by the IO, she had not addressed the issue.

39. The First Respondent confirmed that £70,000 had been paid into client account to ensure that any shortage of funds was corrected. This money had come from overseas through her husband.

40. The First Respondent had confirmed that the judgment debt of £27,332.75 to Oxford City Council had been partially settled and that she had entered into an agreement with the Council to pay the remainder. She suggested that the judgment debt of £1,595.45 due to Aston James Office Supplies Ltd had been entered in default and had been paid once she was aware of it on the arrival of the bailiffs. She believed the suppliers of the firm's "Proclaim" accounting software had obtained judgment against her for £8,038. She said that staff salaries had been paid in cash.

41. Mr A, an Oxford street trader, had complained that he and other traders had employed the Second Respondent of Chaselaw to represent their interests. Mr A referred to the Second Respondent's criminal record relating to fraud and questioned his ability to represent the traders in the light of his record.

42. Articles from Oxford local newspapers dated 27th February 2007 and 17th July 2007 reported that the street traders had instructed the Respondent's firm to act for them. The article of 17th July 2007 included a quotation which was attributed to the First Respondent. The First Respondent had said that the Second Respondent had decided that his success against the Council could have been good publicity for the Respondent's firm. The complaint from the street trader in Oxford received by the SRA stated:

> *"...last summer me and like minded companies employed a solicitor Mr Majdi Shanti - also known as Mayson - from his company Chaselaw... This firm represented our group in talking to with City council about late night trading times... We found out that Mr Shanti was not the professional man he claimed to be..."*

The complainant had also made reference to the Second Respondent's conviction for obtaining property by deception.

43. The First Respondent stated that work undertaken by her firm for any of the Second Respondent's businesses was on a solicitor client basis but she did not have knowledge of the nature of those instructions. She said that the Second Respondent was not employed by the firm and had not represented the firm at a meeting of the Oxford City Council General Purposes Licensing Committee on 17th July 2007. The minutes of that meeting had recorded that the Second Respondent was a solicitor from Chaselaw. She did not think that the firm was instructed by the street traders.

44. The First Respondent explained that a reciprocal arrangement with a firm in Dubai had been proposed but this had not come about.

45. The First Respondent recognised that the procedure she adopted of charging for telegraphic transfer fees was incorrect.

46. With regard to the undertaking referred to above, the First Respondent confirmed that she was aware of it and that it had not been complied with. She had been given reasons for non-compliance by a fee earner and found them reasonable; the seller's solicitors had not sought to enforce the undertaking. The reason for non-compliance was not the absence of funds.

47. The IO had confirmed by email the further items that had been requested by him in the course of discussions. Those items were not forthcoming and had been the subject of further emails to the First Respondent and her representative.

48. The First Respondent had suggested that a significant cause of her accounting problems was the use of "Proclaim" software. This software was recognised by The Law Society. Chaselaw had not raised any significant performance issues with the providers of the "Proclaim" software.

49. In his second Report dated 15th September 2008, the IO referred to his discussions with the First Respondent and her representative and that items that he had requested had not been immediately forthcoming.

50. Emails had passed between the IO and the First Respondent's legal representative indicating that the requested information would be provided. On 28th July 2008 a quantity of information had been received by email. By the date of his Report the IO had not received everything that he had requested. There remained outstanding details of the shortage of client funds; details of a claim to the firm's professional indemnity insurers; explanation for the transfer of £7,500 from client to office bank account and paid away on 30th May 2008; documents evidencing the arrangement with Oxford City Council; bank statements demonstrating the payment of staff wages; copies of client care letters/instructions relating to each matter where the firm represented Chase Hotels Ltd and Chase Group Ltd in connection with claims by Oxford City Council and copies of client care letters/instructions relating to representation of street traders.

51. The First Respondent's legal representative had by letter of 8th August 2008 indicated that funds had been provided to the Second Respondent by a Mr A to enable the Second Respondent partially to replace a shortfall on client account resulting from the dishonours of cheques issued by the Second Respondent's businesses paid into client account. Mr A had complained to the Legal Complaints Service that he had provided funds to Chaselaw in connection with matters where the firm was acting for his businesses and in connection with undertakings that had been given. There had not been compliance with the undertakings which related to the use of the funds.

52. One of the undertakings related to the sum of £23,589.10 provided by Mr A on 20th June 2008. The First Respondent's legal representative had described this payment as a loan to the Second Respondent to enable the shortfall resulting from the dishonoured cheques to be replaced.

53. NT of the First Respondent's firm had emailed Mr A on 18th June 2008 and confirmed that they held £23,589.10 from Mr S in the firm's client account. Furthermore, once they had received Mr A's funds the firm would pay the Council the outstanding business rates and the deed of variation costs. NT also stated that they would not dispose of funds held on client account or receipt on the same without both directors' consent.

54. On 20th June 2008 the Respondent wrote to Mr A and stated that:

> *"Chaselaw Solicitors hereby undertakes that subject to your forwarding us the sum of £23,589.10 to pay Oxford City Council the sum of £47,178.20 and failing this, to refund to you the sum of £23,589 upon your request."*

55. A Bank of Scotland payment schedule showed that Mr A transferred £23,589.10 on 20th June. The beneficiary of the transfer was "Chaselaw Solicitors".

56. Mr A requested the return of his funds on 26th June 2008 and had done so "again and again in various ways". He later instructed Darbys Solicitors formally to request the funds.

57. In later representations to the SRA the First Respondent admitted giving the undertaking to Mr A, but maintained that the monies paid by Mr A to the firm represented a loan to the Second Respondent. In exchange for which the Second Respondent transferred shares to Mr A. A company search dated 6th January 2009 recorded that the Second Respondent was the sole-shareholder, although Mr A was now the sole director.

58. An outstanding balance of £104,906.15 in respect of Chase Group was recorded on the reconciliation statement, the First Respondent referred to two payments made by Mr A to the firm of £70,000 and approximately £23,000 representing loans to her. According to the First Respondent the effect of these payments was to reduce the outstanding debit balance.

59. The First Respondent had expressed concern that Mr A might have changed his position in relation to the loans so that he could make a claim against The Law Society's Compensation Fund, although he had made a complaint to the LCS about his payment to the firm of £23,589.10.

60. The IO had become aware that the First Respondent had been adjudicated bankrupt on 19th June 2008. She had not disclosed this at the time of the discussions on 24th June 2008.

61. A member of the public visiting the Second Respondent's offices would walk through the reception area shared with Chaselaw to the Second Respondent's separate office. The First Respondent had explained that members of the public would know that they were dealing with Chase Group rather than her solicitors' firm because they would be dealing with the Second Respondent.

62. The First Respondent had stated that the Second Respondent was not employed by the firm, Chaselaw, and he had no formal role there. She said that the Second Respondent had an informal administration and set up role. Her explanation had been,

> *"He was not a fee earner engaged by the practice nor did he have any official practice management functions. However, he provided funding for the refurbishment of the building when it was first acquired. He assisted in the selection and overseeing of the installation of IT equipment and he made contributions to the finances of the practice through the family purse... but he has undoubtedly undertaken tasks on behalf of the firm within the building and*

has benefited from [the First Respondent's] drawings insofar as these have contributed to the family's finances."

63. On 23rd September 2008 the Legal Complaints Service sent the First Respondent a s.44(b) notice requesting all documents including all ledger sheets that related to Mr A's complaints. The notice stated that the documents were to be provided within seven days. There was no response or acknowledgment of that request.

64. On 28th March 1996 at Warwick Crown Court, the Second Respondent pleaded guilty to various offences of incitement to obtain property by deception. On 9th August 1996 the Second Respondent was sentenced, on three counts, to four years imprisonment on each count to run concurrently.

The submissions of the Applicant

65. The Applicant had served Civil Evidence Act notices and notices to admit the facts upon both Respondents and no counter-notices had been received. He relied therefore upon the written evidence already before the Tribunal.

66. The Applicant put allegations 2 and 5 against the First Respondent as allegations of dishonesty. He also alleged that the Second Respondent had been dishonest.

67. The Applicant accepted that the Tribunal would need to adopt the highest standard of proof to make a finding of dishonesty and the appropriate test for dishonesty to be adopted was that in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. It remained open to the Tribunal to find all allegations proved against both Respondents without making a finding of dishonesty.

68. The First Respondent had not maintained her firm's books of account in accordance with the Solicitors Accounts Rules. The relevant books and documents had not been made available to the IO when requested and even when subsequent requests had been made she had prevaricated and not all items had been supplied.

69. The Tribunal was invited to pay due attention to the IO's analysis of the cash shortage on client account. What had happened should have been obvious to the First Respondent when cheques issued by her husband or his companies were dishonoured.

70. The First Respondent had indicated dissatisfaction with the computing software but she had made no complaint to the provider.

Undertakings

71. There had not been compliance with undertakings and the requirement that solicitors comply with formal undertakings was one of the cornerstones of a solicitor's duties and responsibilities as it was essential that those dealing with solicitors could be sure that a solicitor's undertaking was to be relied upon without any doubt. That was of fundamental importance to the business world and solicitors' clients would find their business transactions very much more complicated and expensive if compliance with a solicitor's undertaking were ever to be placed in doubt. The First Respondent had indicated that she had discussed the undertaking with a fee earner and had been told

the reason for non-compliance, although she had forgotten it. In a later written response she had remembered the reason. The Tribunal was invited to find those explanations disingenuous.

72. With regard to the second undischarged undertaking, the Applicant alleged that the First Respondent had been dishonest. The client was the Second Respondent and one of his hotel companies. His landlord was Oxford City Council. The Second Respondent was director/secretary and sole shareholder of Chase Hotels Ltd and his co-director was Mr A. If the money provided by Mr A had been a loan there was no explanation why an undertaking should have been given. The Tribunal was invited to take the view that the First Respondent's explanation was dishonest. It was also said that money had been received from companies controlled by the First Respondent's husband and, coupled with the way in which the two undertakings had been manipulated, the First Respondent had behaved dishonestly.

73. The same facts were to be applied in considering whether the Second Respondent had been dishonest and it was the Applicant's case that the Second Respondent issued the cheques that were dishonoured knowing that they would not be honoured and he knew what was going on. He must have known that the cheques drawn on his account would be dishonoured. Knowing that monies would be paid out of his wife's client account against his cheques, he must have been aware that other clients' monies would be used to make payment on his behalf when his own money was not available in client account for such purpose.

74. The First Respondent breached the undertaking given by her on 20th June 2008. Mr A transferred £23,589.10 at 14.07 on 20th June relying on the undertaking faxed to him at 13.46 on the same day. The transfer of funds to Oxford Council was never made and therefore under the terms of the undertaking the firm was obliged to return £23,589.10 to Mr A. Despite his requests and those made on his behalf by his solicitors that was not done. The First Respondent's conduct in failing to comply with the undertaking compromised her ability to act in the best interests of her client, Mr A, as well as comprising her integrity and diminishing the public's confidence in the solicitors' profession.

75. It was the Applicant's submission that the First Respondent had acted in a situation where the best interests of her client had conflicted with her own best interests. The monies paid into client account by Mr A were be used by the First Respondent to reduce any potential shortfall in her client account.

76. Even if the Second Respondent had not been remunerated by the First Respondent he clearly from the facts before the Tribunal was involved in the First Respondent's practice and to that extent he was "employed" in the practice. It was not necessary for s.43 of the Solicitors Act 1974 to be applicable to him for there to be a "master and servant" relationship between the First and Second Respondents.

77. The Tribunal was reminded that the First Respondent had been adjudicated bankrupt by the time of the hearing. She would have been automatically discharged from that bankruptcy. The Applicant was able to offer no information about the Second Respondent's circumstances.

The submissions of the Respondent
(summarising explanations contained in letters addressed to the SRA by the First Respondent's legal representative

78. Because of the bookkeeper's problems and the First Respondent's practice management failures, Chaselaw Solicitors ceased to trade and had not accepted instructions from clients since July 2008. The First Respondent was assisted by her legal representative in the voluntary closure of the practice, which included the distribution of the live files. This work was undertaken also with the assistance of the firm's professional indemnity insurers.

79. The First Respondent had been declared bankrupt, although the Official Receiver's website stated that this was on 19th June 2008, the bankruptcy order was made on 22nd August 2008, when the First Respondent was automatically suspended from practice as a solicitor.

80. The First Respondent initially trained as a barrister, and having been called to the Bar, then undertook paralegal work before gaining sufficient experience to transfer to become a solicitor. She worked as an assistant solicitor for approximately three years before setting up in sole practice. Her former secretary was with her at the start of the practice and undertook the accounting function. At that stage the accounts were properly managed.

81. The firm had a computer accounting system called "Proclaim" and employed a part-time accounts assistant who remained with the firm until August 2008. The accounts were in order at the time of this assistant's departure.

82. Having advertised for a replacement accounts clerk, Mr B was appointed. He already provided bookkeeping services for other firms of solicitors and claimed to be able to deal with the computerised system in place.

83. Up until the time that the FIO began the inspection the First Respondent believed that the accounting records of the firm were being properly posted, although she was aware that they were slipping into arrears. Mr B, at the end of each month, sent his records to the firm's accountant who prepared management accounts. The accountants completely rewrote the accounting records and then conducted a reconciliation for the period in question.

84. This approach had caused delays in the books of account being completed, and meant that the reconciliations could not be undertaken by the First Respondent as at any given date because the ledgers were not properly maintained. She had delegated the task of completing reconciliations to her accountants and had not been made aware of difficulties. A balancing figure had been included in the reconciliation undertaken by the accountants and that balancing figure appeared in the reconciliation for October 2007 and a balancing figure was still present in the reconciliation for January 2008.

85. A cash shortage arose as a result of a combination of matters. The ledgers were not posted on a daily basis and were in arrears. Fee earners had to calculate client balances from file records. It had transpired that Mr B did not understand how to use the computer system and did not appear to know the Solicitors Accounts Rules. The

First Respondent accepted her responsibility in this regard but had believed Mr B's assertions about his expertise.

86. The fee earners lacked knowledge of the Solicitors Accounts Rules. Mr B also made basic errors in the posting of payments to the accounts even where those payments had been properly made. There was a failure accurately to record office and client account payments and transfers from one account to the another on the ledger.

87. One of the most significant elements contributing to the shortfall in client account was the firm's propensity to pay out against uncleared funds. The fee earners failed to appreciate the clearance time for incoming cheques and on occasions payments out had cleared before a payment in.

88. The Second Respondent had explained that he provided security to Mr A for the payment of £70,000. They were partners and were joint shareholders in Chase Hotels Ltd and in another property. Mr A wished to make the payment, as a loan to the Second Respondent, direct to Chaselaw so that the transaction would be properly evidenced. The £23,000 loan was supported by the Second Respondent transferring some of his shares in the company to Mr A.

89. The First Respondent had been concerned that Mr A might have changed his position with a view to making a claim against the Compensation Fund rather than against the Second Respondent.

90. The full amount of the cash shortage of £104,906.15 had not been cleared. The payments of £70,000 and £23,000 approximately were introduced in order to reduce this element. The Second Respondent sought to dispose of assets with a view to discharging any shortfall, but the prevailing commercial climate had made this difficult.

91. The First Respondent had been unable to provide the IO with all accounting information requested because it was not physically on the premises. It had not been possible to make the documents available to the IO. Indeed the absence of key documents such as paying-in books had hindered attempts to resolve the position on the client account and had delayed the administrative closure of the practice.

92. The First Respondent accepted her responsibility. She had engaged sub-contractors who had been dilatory and mistakes had occurred within her own office causing further delays. She had not been able to remedy breaches promptly because of a shortage of ready funds. The Second Respondent had not had funds available.

93. The Second Respondent had no formal role within the firm. As the husband of the First Respondent he was keen to support her whenever possible and he had an informal administration and set up role. He was not a fee earner engaged by the practice. He provided funding for the refurbishment of the office building when it was first acquired, he assisted in the selection and overseeing of the installation of the IT equipment and he made a contribution to the finances of the practice through the family purse. He had no employment contract with the firm and did not receive any salary. He had undoubtedly undertaken tasks on behalf of the firm within the building

and had benefited from the First Respondent's drawings insofar as these had contributed to the family's finances.

94. The Second Respondent had not represented Chaselaw when he attended a Council meeting and the clients represented were his own clients with whom he had formerly dealt, rather than clients of Chaselaw. The Second Respondent had involvement in a number of businesses and in the course of this had some time before been approached to assist in the purchase of a number of burger vans by traders in Oxford. He had been retained to negotiate the acquisition of the vans and when the traders had issues with Oxford City Council, he attended a meeting on their behalf and at their request.

95. It was accepted that the Second Respondent ran his businesses from within the same building as that occupied by Chaselaw. He had separate rooms but there was no separate reception or a separate administrative office.

96. The Second Respondent had made a unilateral decision, which he did not discuss with the First Respondent until after the event, that his success in representing the traders might reflect well, if published, on Chaselaw. The press release was issued without the First Respondent's knowledge or consent and reflected a well meaning gesture of support on behalf of her husband.

97. When the matter came to light the First Respondent did remonstrate with the Second Respondent but she did not anticipate the significance of the matter until it was raised by the IO.

98. In the case of Mr A the complaint and allegation came some 12 months after the activity concerned and appeared to have been instigated by some unknown supervening event. He had not raised any issue at the time.

99. With the benefit of hindsight the First Respondent recognised that it would have been far better for her and her husband’s ventures to operate from separate premises.

100. The payment of rent due to Oxford City Council had been paid out of the client account and out of funds which were held for Chase Group at the direction of Chase Group and for the benefit of Chase Group.

101. In respect of the breaches of undertaking, both were acknowledged to have occurred. In respect of each undertaking, supervening events meant that the parties were negotiating prior to proceedings. One undertaking had been given to sellers' solicitors to complete a transaction relating to a property which had been vandalised. There was an ongoing negotiation about the level of repairs that were required.

102. With regard to Mr A, he had initially sought an undertaking which the First Respondent conceded was given and although discussions had taken place in the intervening period, that undertaking had not been varied or discharged. The First Respondent was no longer in a position to provide funds.

103. The First Respondent denied dishonesty but accepted that she had failed to manage or supervise the practice adequately.

104. Any delay in providing responses had been caused by the lack of ability to provide documents and at no stage was there an unwillingness to cooperate with the SRA.

The Findings of the Tribunal

105. The Tribunal found the facts set out above to have been proved and further accepted the submissions made by the Applicant.

106. The Tribunal in particular concluded that the Second Respondent by the fact that he was "employed" in the ordinary sense of the word as being engaged in work relating to the practice of Chaselaw was subject to the provisions of s.43 of the Solicitors Act 1974 (as amended).

107. The Tribunal found all of the allegations to have substantiated against the First Respondent and found all of the allegations to have been substantiated against the Second Respondent.

108. The Tribunal found that with regard to allegations 2 and 5 the First Respondent had been dishonest.

109. The Tribunal found that the activities of the Second Respondent in misappropriating clients' funds and holding himself out as a solicitor thereby misleading the public were also dishonest acts.

110. The Tribunal found that the First Respondent was responsible for exercising a proper stewardship over clients' funds and she had authorised the payment out of monies against uncleared cheques provided to her by her husband neither knowing nor caring whether those cheques had been or would be cleared. Inevitably this led to the improper utilisation of monies held on behalf of other unconnected clients and in addition, in failing to comply with two undertakings given by her firm to deal with sums of money in a particular manner, the First Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that monies paid into client account were available to be paid out. She was aware of her husband's criminal history and knew that he was a person who had been convicted of a serious offence involving dishonesty and was a person upon whom she could not reasonably rely. The Tribunal noted that the First Respondent's explanation for her failure to comply with the undertaking given to Mr A that she gave to the IO differed from that which she instructed her legal representative to give some time later. The two conflicting accounts seriously damaged the First Respondent's credibility and the Tribunal did not believe that either of the First Respondent's explanations was true. The Tribunal was therefore satisfied so that it was sure that the First Respondent did not have an honest belief that her handling of client's monies was legitimate and therefore that she knew that what she was doing was dishonest by the standards of reasonable and honest people. Further, in connection with the undertakings the Tribunal concluded that in both cases the First Respondent had deliberately and knowingly been in breach of those undertakings and that she knew that what she was doing by acting in breach was dishonest by the standards of reasonable and honest people.

111. With regard to the Second Respondent, he had allowed payments out of the firm's client account to be made on his behalf knowing that the cheques that he had paid in had been or would be dishonoured and in acting as he did his conduct was dishonest by the standards of reasonable and honest people. Because of his knowledge that he was receiving money out of the firm's client account to which he was not entitled, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he could properly accept payment from client account and therefore that he knew that what he was doing was dishonest by those same standards.

112. In holding himself out as a solicitor when he was not so qualified, the Second Respondent's conduct was dishonest by the standards of reasonable and honest people and the Tribunal was satisfied so that it was sure that the Second Respondent did not have an honest belief that he could properly describe himself as a solicitor and therefore that he knew that what he was doing was dishonest by those same standards.

113. The Tribunal took into account the representations made by the Respondents during the course of an interview with the IO and written representations made on their behalf by their legal representative.

114. The Tribunal noted that the First Respondent had been adjudicated bankrupt but would have been discharged by the date of the hearing. The Tribunal had no information about the financial circumstances of the Second Respondent.

115. Because of findings of dishonesty made in respect of each of the Respondents the Tribunal concluded that it was both appropriate and proportionate to Order that the First Respondent be struck off the Roll of Solicitors. It was also proportionate and appropriate to Order that the Second Respondent be subject to an Order made pursuant to s.43 of the Solicitors Act 1974 (as amended). In making those Orders the Tribunal's primary consideration was the protection of the public and its second consideration was the protection of the good reputation of the solicitors' profession.

116. The Applicant had sought the costs of and incidental to the application and enquiry and had submitted a schedule of such costs for the consideration of the Tribunal. The Tribunal noted that the sums sought were substantial. In the absence of the Respondents and in the absence of any representations made on their behalf with regard to costs, the Tribunal considered that whilst the Respondents should in all the circumstances bear the costs of and incidental to the application and enquiry, it was not minded summarily to fix the costs but to order that such costs be subject to a detailed assessment unless agreed between the parties.

117. The Tribunal took the view that the First Respondent as a solicitor and the sole principal of the firm of Chaselaw should bear responsibility for the greater part of the costs. The Second Respondent should bear a smaller proportion but one which reflected his dishonest and unscrupulous behaviour.

118. Upon the application of the Applicant that where costs were to be assessed, an interim order would be appropriate, the Tribunal, having taken the view that the First Respondent should be responsible for two-thirds of the costs and the Second Respondent should be responsible for one third of the costs, ordered the First Respondent to pay £7,000 towards the Applicant's costs within 28 days of the 1st

December 2009 and ordered the Second Respondent to pay £3,500 towards the Applicant's costs within 28 days of the 1st December 2009. The Tribunal accepted the Applicant's assurance that if the SRA found itself unsuccessful in obtaining such interim payments, it would take a pragmatic view as to the enforcement of the overall costs order and the need for assessment.

Dated this 29th day of March 2010
On behalf of the Tribunal

Mrs K Todner
Chairman