No. 10389-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF NICHOLAS JOHN HEADLEY BENNETT, solicitor (First Respondent) and BENNETTS LAW PRACTICE LIMITED (A Firm) (Second Respondent)

Upon the application of Geoffrey Williams QC
on behalf of the Solicitors Regulation Authority

Mrs K Todner (in the chair)
Miss T Cullen
Mr S Marquez

Date of Hearing: 2nd November 2010

FINDINGS & DECISION

Appearances

Geoffrey Williams QC, a solicitor, of Geoffrey Williams and Christopher Green, Solicitor Advocates, of The Mews, 38 Cathedral Road, Cardiff CF11 9LL, the Applicant, appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent, who was present, was represented by Gregory Treverton-Jones QC who was attended by his instructing solicitor, Mr Trevette of Murdochs Solicitors.

The application was made on 20 November 2009, supported by a Rule 5 Statement of the same date. That application contained three allegations against the Respondents. In addition, a Rule 7 Statement was made on 12th October 2010 and contained a further five allegations against both Respondents and an additional allegation against the First Respondent alone.

Allegations

The allegations made against the Respondents on 20 November 2009 were that they:

1. Paid monies or caused monies to be paid out of client account contrary to Rule 22 Solicitors Accounts Rules 1998 ("SAR").

2. Failed to maintain properly written books of account contrary to Rule 32 SAR.

3. Failed to remedy breaches of SAR promptly upon discovery contrary to Rule 7 SAR.

The further allegations made against both Respondents on 12 October 2010 were that they:

4. Further paid monies or caused monies to be paid out of client account contrary to Rule 22 SAR.

5. Further failed to maintain properly written books of account contrary to Rule 32 SAR.

6. Transferred costs from client account to office account without having sent a bill of costs or written intimation of costs to the client contrary to Rule 19 SAR.

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

8. Failed to deal adequately with clients with respect to professional charges contrary to Rule 1.04 and 1.05 The Solicitors' Code of Conduct 2007.

It was further alleged against the First Respondent only that he had:-

9. Carried on practice as a solicitor whilst in breach of a condition imposed upon his Practising Certificate.

Factual Background

1. The First Respondent was born in 1964 and was admitted as a solicitor in 1989. At all material times he practised as a solicitor under the style of Bennetts Law Practice Limited ("the Second Respondent") at 10-12 Crusader Business Park, Stephenson Road West, Clacton-on-Sea, Essex CO15 4NT. At the time of the hearing the First Respondent held a practising certificate. The Second Respondent was a recognised body. The First Respondent had practised in partnership with his father from about 1999. In about 2003 the Second Respondent was incorporated and from that time the First Respondent and his father practised under the umbrella of the recognised body. The First Respondent's father retired from the practice and from 2006 to 2008 a Mr S who was not subject to these proceedings, was a director of the Second Respondent. From 2008 the First Respondent was the sole director of the Second Respondent.

2. The Tribunal had jurisdiction to deal with the recognised body pursuant to the Solicitors' Recognised Bodies Regulations 2007, now the SRA Recognised Bodies Regulations 2009 (substituted 31 March 2009, amended 1 July 2009 and 14 July 2010, and hereafter referred to as "the Regulations"). The practice of the First and Second Respondents was a general practice with five unadmitted employees. The First Respondent's wife, JB, was the firm's cashier until December 2008 or alternatively spring 2009.

3. The SRA authorised an investigation into the books of account and other documents of the Respondents' firm to commence on 4 November 2008. The first Forensic Investigation Report ("FIR1") was dated 20 November 2008. A subsequent investigation was authorised to commence on 1 June 2009. A second Forensic Investigation Report ("FIR2") was dated 31 March 2010.

4. The allegations related to matters reported in FIR 1 and FIR 2.

Evidence

5. The Tribunal had read and considered the Rule 5 Statement and supporting documents, the Rule 7 Statement and supporting documents and in particular FIR1 and FIR2. The Forensic Investigation Officer, Jonathan Chambers gave oral evidence in respect of his FIRs dated 20 November 2008 and 31 March 2010.

6. The Tribunal had further considered the evidence submitted on behalf of the Respondents and in particular:-

- The witness statement of the First Respondent served on 1 November 2010;
- The witness statement of JB served on 1 November 2010;
- The Accountant's Reports from Jamesons and reporting accountant's check list dated 28 October and 29 October 2010 respectively;
- Letters from Dr Guille concerning the First Respondent and JB, both dated 29 October 2010;
- A bundle of 25 testimonials (primarily from clients but also including one from the First Respondent's father);

The Tribunal heard oral evidence from the First Respondent and from two character witnesses, Mr Devonshire and Mr Marshall.

Findings as to Fact and Law

7. The Tribunal noted that dishonesty was alleged against the First Respondent in relation to allegations 1, 2, 4 and 5. The First Respondent denied dishonesty but admitted the factual basis of all of the allegations. It was the Applicant's case that it was not necessary to prove dishonesty in order to prove the various allegations. In order to avoid repetition, the findings of fact will be stated, followed by the Tribunal's decision on the issue of dishonesty to which the Tribunal noted it needed to apply the highest standard of proof. That is, in order to make a finding of dishonesty it would have to be satisfied beyond reasonable doubt that this allegation had been proved. The Tribunal also noted that the burden was on the Applicant to prove the dishonesty allegations.

8. The Tribunal found all of the factual matters set out below, which had been admitted, to have been proved so that it was sure.

9. The First Respondent had admitted the factual basis of all of the allegations, and that those allegations had been made out, save on the question of dishonesty. The Second Respondent was wholly controlled by the First Respondent. The findings relate primarily to the conduct of the First Respondent but where required by the context should be taken also to refer to the Second Respondent.

10. At the time of the investigation leading to FIR1, only the First Respondent could operate the firm's office bank account. Either the First Respondent or JB, acting on the First Respondent's specific authority, could operate the client bank account. JB, on the First Respondent's specific authority, could operate the internet banking

facility for the client bank account. By the time of the investigation which led to FIR2, only the First Respondent could operate client and office bank accounts. The First Respondent also usually operated the internet banking facility but on occasion a staff member would do so acting on his express instructions.

11. As at November 2008, when the first investigation began, the firm's overdraft limit on office account was £15,000. This had been reduced from an earlier, higher, level of £25,000. The overdraft facility was withdrawn completely in June 2009.

Allegation 1

12. Between 13 March 2007 and 4 November 2008 there were at least 18 improper payments from office account to client account which totalled £67,131.56. As the transactions took place over a period of time, this meant there were varying shortages in the client bank account through this period. The Tribunal considered a schedule of the improper payments and saw underlying documents e.g. client bank account statements in relation to most of the transactions in question.

13. The Tribunal found it proved that on 30 July 2007 there had been a payment from client account to JS, the firm's former director, in the sum of £82.00. There had been payments to the First Respondent and his wife and daughter from client account in the period September 2007 to November 2008. The payment to the First Respondent's daughter was in the sum of £750 and was on 1 September 2008, at a time when the First Respondent's daughter was working for the firm, and this payment was explained as being, in effect, a payment to her of "salary". A payment was made to JB in the sum of £3000 on 4 November 2008 from client account. The payments to the First Respondent from client account were £1,600 on 7 September 2007, £2,500 on 13 November 2007, £2,500 on 22 April 2008, £1,500 (by way of a CHAPS payment) on 19 August 2008, £2,500 on 1 September 2008 and two payments of £500 each on 4 November 2008, being a total of £11,600.

14. The Tribunal was also satisfied that there had been payments from client account of staff salaries of: £8,566.09 on 13 March 2007; £8,585.48 on 13 April 2007; £8,428.73 on 15 August 2007; £560.27 on 22 October 2007; £9,014.86 on 14 December 2007 and £8,599.01 on 15 April 2008. A further payment of salary from client account made on 15th April 2009 in the sum of £3,384.95 was considered under allegation 4.

15. The Tribunal found that all of the improper transfers referred to above amount to a breach of Rule 22 of SAR. It noted in particular that staff salaries had been paid from client account seven times in a 19 month period, thereby amounting to approximately one third of the firm's salary bill for that period. The Tribunal considered that there were no circumstances in which payment of staff salaries from client account would be proper.

16. Also with respect to the first allegation the Tribunal found that there had been six "over transfers" from office to client account in the period 1 April to 4 November 2008 totalling £10,977.46. The amounts in question varied between £614.73 and £3,000. On two occasions there were duplicate transfers and on three occasions the transaction was not noted in the fee transfer book.

17. The Tribunal further found that the firm had a practice of systematically transferring amounts from client to office account on property transactions, mostly in respect of amounts which would or may fall due for stamp duty or other disbursements. As these transfers were made before the disbursement was actually paid, a series of shortages on client bank account were created.

18. FIR1 had considered eight transactions, on seven of which the transfers from client to office account had been in respect of stamp duty and one in respect of estate agent's fees. At the time these transfers were made, the property sales or purchases had not completed and so no liability for stamp duty/estate agent's fees had been incurred at the time of the transaction. The Tribunal noted that four of the transactions examined occurred on or after the date the inspection started.

19. The Tribunal saw authorisation forms for each of these transactions signed by the First Respondent, save that in one case the authorisation form was not signed. However, the First Respondent did not dispute, and the Tribunal found, that this transaction had been authorised by him.

20. The Tribunal accepted that in some circumstances it was acceptable to transfer money from client account to office account and then discharge the disbursement e.g. stamp duty from office account, but the acceptability of this practice depended on the transfer from client to office account being contemporaneous with or followed swiftly by discharge of the liability from office account. In the transactions considered in this case, there had been significant delay between the payment from client to office account and the discharge of the disbursement and in some cases there was no liability to pay the disbursement at the time of the transfer from client account. The Tribunal found that as at 31 October 2008 the amount owed by the firm for stamp duty amounted to £34,935.43, excluding the matter of Mr DH, explained in further detail below. It was a breach of SAR Rule 22 to retain these sums in office account for as long as occurred in the transactions considered.

21. In the matter of Mr DH, the First Respondent was instructed in connection with the purchase of a property priced at £950,000. The firm received from the client the amount of £99,952.84 on 15 October 2008, in respect of the proposed deposit and sundry disbursements and costs. On 15 October there was a transfer of £21,500 to office account expressed to be for stamp duty and on 6 November 2008 there was a further transfer from client to office account of £16,500 which was expressed to be an "amendment to stamp duty". The total sum transferred, £38,000, was equivalent to the amount which would be payable in stamp duty on the completion of a purchase in the amount of £950,000. However, at the time the transfers were made, contracts for the purchase had not been exchanged, and of course the matter had not completed so there was no liability to pay stamp duty as at the dates of the transfers. As a result of the transfers, as at 7 November 2008 the Respondent held only £60,549.72 on client account in respect of this matter, which would not have been sufficient to provide the full deposit on exchange of contracts. In the event, the transaction did not proceed to exchange or completion.

22. In the matter of Mr LB, a liability for stamp duty in the sum of £8,700 arose on completion of the purchase on 9 September 2008. The payment of stamp duty was posted to a nominal account but was not actually paid until 29 December 2008.

23. In the matter of Mr B (executor of Mrs L) there was a transfer from client to office account on 7 November 2008 of £2,878.67 which was expressed to be for estate agent's fees. However, the property sale to which it related had not completed and so there was no liability at that point to pay such fees. Payment was actually made of the estate agent's fees on 22 December 2008.

24. The Tribunal noted the First Respondent's evidence to the effect that he believed that his procedures with regard to the payment of stamp duty and other disbursements were compliant with SAR due to his understanding of matters discussed on a training course undertaken in 2000. The Respondent had subsequently, rightly, accepted that he had been mistaken in his understanding.

Allegation 2

25. The Tribunal found that the First Respondent had failed to maintain properly written books of account contrary to Rule 32 SAR. The First Respondent had admitted the allegation and the evidence was sufficient to satisfy the Tribunal that it had been proved.

26. There were a number of occasions on which receipts to client account were shown in the firm's books but these entries did not relate to actual receipts. Those receipts had been posted against the improper payments of a personal nature (as set out above) and appeared to show that the shortages which arose because of those payments had been replaced. However, these entries were false and did not show the true position.

27. The Respondents' firm had operated two suspense ledger accounts within the client ledger. Adjusting items were posted to these ledgers. The Tribunal found that there should not be a suspense account on the client ledger and noted that the First Respondent had not been able to explain why entries in the accounts did not relate to actual payments into the client bank account. At the time of the first investigation, the effect of the entries on the suspense ledger was to artificially inflate client funds by over £22,000.

28. The firm's reporting accountant's report in March 2008 had indicated a small shortage on client account and the First Respondent should thereafter have been on notice that there was at least a potential problem with the accounts. Due to inaccuracies on the account it was not possible for the FIO to calculate an exact cash shortage but the minimum cash shortage as at 8 November 2008 was calculated to be at least £69,678.67.

29. The Tribunal did not need to make or set out specific findings in respect of each individual incorrect accounts entry but it was satisfied that the contents of FIR1 on this allegation were correct. The evidence was clear that the books of account had not been properly maintained. Although the First Respondent had signed a number of reconciliation statements, these could not be relied on.

Allegation 3

30. At the time of the first investigation, the First Respondent was on notice that there was a substantial shortage on client account, which was estimated at that point to be around £65,000. The Tribunal heard and read evidence, which it accepted, that the First Respondent had attempted to correct the shortage but in doing so had created a fresh shortage. As at 11 November 2008 the First Respondent had intended to raise £60,000 to replace what appeared at that stage to be the minimum cash shortage on client account, after some correcting adjustments had been made. On 14 November 2008 a payment of £12,500 was made by credit card by JB into client account. The First Respondent applied for a loan, which was required in order to replace the shortage on client account, and the First Respondent received a loan from JB's parents on or about 20 January 2009.

31. It was clear to the Tribunal that the Respondent had not made good the identified shortage on client account for over two months after it was identified. Further, the First Respondent in attempting to correct the various improper transfers and payments had treated those amounts as being capable of set off against other improper transfers. This was not the correct treatment.

Allegation 4

32. This allegation was similar in nature to allegation 1. Again, the Tribunal was satisfied so that it was sure that the allegation had been proved.

33. The First Respondent instructed new accountants who were of good reputation to assist in rectifying the books of account. On 5 March 2009 those accountants reported that there was no difference between client liabilities and client cash as at 27 February 2009. However, the FIO calculated that at that point there was a minimum cash shortage of £19,856.25.

34. The First Respondent had signed reconciliation statements dated 30 November and 31 December 2008 neither of which referred to cash shortages, although cash shortages had been identified in FIR1 in a minimum sum of £69,678.67 as at 7 November 2008. That cash shortage was not fully replaced until about 13 January 2009.

35. The FIO had identified, and the Tribunal accepted, that there were fourteen separate shortages on client account between December 2008 and June 2009. The number of days' shortage varied on individual client ledgers between 5 in the case of Mr IC and 89 in respect of the same matter for a different payment on the matter of Mr IC.

36. On 12 December 2008 the sum of £3,725.65 was improperly transferred from client account to office account and on 22 December 2008 the sum of £5,000 was improperly transferred from client account to office account. These transfers were not in respect of costs properly due to the firm.

Allegation 5

37. The transfers referred to above in December 2008 in the sums of £3,725.65 and £5,000 were not correctly written up in the firm's books of account. In this regard, and in regard to a number of the other transactions considered, the Tribunal was satisfied that the Respondents had failed to maintain properly written books of account in breach of Rule 32 SAR. There was considerable overlap between the various allegations, and to some extent the failure to maintain the books of account properly was linked to the other breaches of SAR, which are dealt with in more detail elsewhere in these findings.

Allegation 6

38. In the matter of Mr WM, the firm improperly transferred £1,495.00 from client account to office account on 23 December 2008. This transfer was described in the records as being in respect of a bill but no bill was rendered in this matter for that amount at that point. The shortage which arose on the client account as a result of this improper transfer was replaced 33 days later.

39. In the matter of Mrs AP, the Respondents transferred £300 from client to office account purportedly in respect of costs on 18 December 2008. No bill in that amount was rendered.

40. In the matter of Mr IC, the client account ledger appeared to show a receipt of £17,000 from Abbey National on 24 December 2008. A bill had been rendered in the matter totalling £2,238.94 and on 24 December 2008 that sum was transferred from client to office account. There was no transfer of £17,000 at or before the time of the transfer from client to office account. Although £92,000 was received from Abbey National on 29 December 2008, the falsely recorded receipt of £17,000 on 24 December gave a false positive figure on the client ledger in this amount. The client account in this matter was in fact in debit until the sum of £92,000 or thereabouts was received from Abbey National on 29 December 2008.

41. Between 30 January and 23 April 2009 the First Respondent provided for the client bank account to benefit from four amounts totalling £64,971.52 to replace cash shortages which had been identified. However, these transactions were not carried out on the dates recorded so the reconciliation figures signed by the First Respondent were not reliable.

42. In March 2009 in the matter of Mr IC two sums of £141.45 and £94.30 were transferred from client to office account, apparently in respect of bills. However, no bills were rendered in those sums.

Allegation 7

43. The Tribunal was satisfied that there had been a number of breaches of Rule 7 SAR, which requires breaches of SAR to be remedied upon discovery. These breaches of Rule 7 occurred on a number of the matters which were relied on in support of other allegations. By way of exemplification only, the Tribunal found that on 15 April

2009 the First Respondent had caused staff salaries totalling £3,384.95 to be paid out of client bank account. This payment was posted to a "corrections account" within the client ledger. The client account cash book apparently showed the improper payment was corrected on the same day but the money was not in fact replaced until 23 April 2009.

Allegation 8

44. FIR2 considered five complaint matters. In three of these it was established and the Respondents accepted there had been a failure to comply with the Respondents' own procedure concerning the time for dealing with complaints.

45. The First Respondent had explained the delay by referring to a period of ill health he suffered in about March 2009. The Tribunal found, however, that there was good evidence that the First Respondent had conducted legal work on 14 out of the 22 working days in March 2009 and that the client account had been operated throughout that month. Accordingly, the Respondent could have been more assiduous in dealing with client complaints.

46. As a further part of this allegation it was noted, and the Tribunal found, that the Respondent had failed to inform clients in writing that his hourly charging rate had increased from £195 to £205 with effect from 1 January 2009.

47. The Tribunal also found that on some matters the First Respondent had provided inaccurate costs estimates and/or not updated those estimates. The most serious occurrence was in the case of Mrs EG. In January 2009 the Respondent indicated in writing that the estimated cost of preparing a single Will was £150 including VAT. The Respondent stated that he had given verbal updates and information concerning costs. Nevertheless, the actual bill in this matter was £1,273.05 including VAT, which was 940% greater than the figure given in writing. The Tribunal noted that there is a duty to give clear costs information in writing.

Allegation 9

48. On 15 June 2009 the SRA imposed an immediate condition on the First Respondent's practising certificate requiring him to deliver half yearly accountant's reports within two months of the end of the period to which those accounts related. For the period ending 30 September 2009 the report was due by 30th November 2009. It was delivered to the SRA on or about 5 August 2010. For the period ending 31 March 2010 the accountant's report was due on or before 31 May 2010. As at August 2010, this had not been delivered. The Tribunal was satisfied that this allegation had been proved.

Dishonesty Allegation

49. The allegation of dishonesty related to allegations 1, 2, 4 and 5.

50. The test the Tribunal had to apply in considering this allegation is that set out in the case of Twinsectra v Yardley [2002] UKHL 12, [2002] 2 ALL ER 377. The test is expressed by Lord Hutton at paragraph 27 of that case as follows:-

> "...Before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

Further on in the Judgment in the Twinsectra case Lord Hutton states:-

> "...Dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he set his own standards of honesty and does not regard dishonest what he knows would offend the normally accepted standard of honest conduct"

51. The breaches of SAR which had been admitted and proved were serious and the Tribunal had no doubt that the allegations had all been proved. In considering the issue of dishonesty it further noted that the burden was on the Applicant to prove that the First Respondent had been dishonest and that dishonesty would have to be proved "beyond reasonable doubt" i.e. to the highest possible standard.

52. The improper transfers carried out in the Respondents' firm in the face of it appeared dishonest and would be regarded as dishonest by reasonable and honest people. In particular the Tribunal relied on the payments into office account from client account of sums in respect of stamp duty and the payments of salaries from client account on at least 7 occasions. These transfers, which were clearly a breach of SAR Rule 22, had allowed the Respondent's business to continue. The Tribunal was satisfied, therefore, that the First Respondent's conduct was dishonest by the standards of reasonable and honest people.

53. However, the Tribunal was conscious that the second part of the Twinsectra test had to be considered. The Respondent had not appreciated that what he was doing was wrong by the standards of reasonable and honest people. The transactions in question had been carried out by JB, the First Respondent's wife whom he had failed to supervise properly. The fact that the breaches continued after the SRA investigation began suggested to the Tribunal that this was not a case where there was any deliberate dishonesty. The First Respondent had not hidden information from his firm's accountants, whom he had also instructed to liaise as necessary with the SRA. He had cooperated so far as possible with the SRA. When the FIO had informed him that operating a suspense account on the client ledger was improper, that practice had ceased.

54. The Tribunal also had regard to the compelling character evidence it heard and read on behalf of the First Respondent. The Tribunal also had regard to the evidence before it of the health difficulties suffered by the First Respondent and in particular the health problems of his wife, JB, who had for a significant part of the relevant period been the firm's cashier.

55. Bearing in mind all of the evidence read and heard, the Tribunal was not satisfied that the First Respondent realised that his conduct was dishonest by the standards of reasonable and honest people. Accordingly, there was no finding of dishonesty against the First Respondent on any of the allegations.

Mitigation

56. The First Respondent wished to apologise to the Tribunal and to the SRA for the breaches of SAR which had occurred.

57. Dishonesty had not been proved. The matters which had brought the Respondent before the Tribunal dated from 2008 and arose from a number of difficulties the Respondent had faced from 2007 to 2009.

58. In 2006 the Respondents' firm had introduced a new accounts software system. This was unsuccessfully installed and the firm had to revert to the previous system. Later, the firm transferred its bank account from HSBC to Barclays. JB's ill health became more pronounced during 2007. Her ill health had an impact on the firm as she was the cashier and the Respondent was reliant on her to carry out accounts transactions. At some point in 2008 the former director, JS, suddenly left the practice, without warning. Thereafter the Respondent received a number of obscene messages which ceased after the police had spoken to JS's wife. In September 2008 the First Respondent had suffered his first collapse. JB underwent a hysterectomy in November 2008 and was away from work for some weeks but returned in December 2008 and it was clear that a number of the SAR breaches had occurred during December 2008. JB had admitted that she had made mistakes. In March 2009 the First Respondent had suffered his second collapse.

59. JB's ill health had been serious and affected the management of the firm's accounts. It was, however, admitted that the First Respondent had failed to operate proper control. As the sole principal of the practice the responsibility for ensuring compliance with the accounts rules fell to him.

60. The firm had introduced improved accounts processes. The Respondents had taken advice from accountants and were receiving monthly visits and assistance with checking the transactions recorded. The First Respondent had not hidden anything from the firm's accountants at any point. The First Respondent had cooperated with the SRA and the Tribunal and had made full and frank admissions.

61. It was accepted that the Respondents' practice had been able to continue because of the various improper transactions in respect of which findings had been made. All of the shortages had been repaid. The Respondent had not received any personal long term gain.

62. The Tribunal had heard evidence from two of the many clients and colleagues who had submitted testimonials on behalf of the First Respondent. He was a good solicitor whose advice had been clear and appropriate and in the eyes of those giving the testimonials he had acted always with great professionalism and integrity. There was no criticism of his conduct of matters for clients, indeed, his conduct of various legal matters was praised by his clients.

63. With regard to some of the specific allegations, the First Respondent had, incorrectly, believed that his treatment of stamp duty had been compliant with the Rules. He had not known or appreciated that it was improper to have a suspense account on the client ledger. The First Respondent had given instructions to accountants to produce reports as required by the condition on his practising certificate from June 2009 but there had been delay due to some dispute concerning the accountant's fees and the need to transfer instructions to an alternative firm.

Previous Sanctions before the Tribunal

64. None.

Application for Costs

65. The Applicant applied for costs totalling £47,393.96 including the costs of FIR1 of £7,792.56 and FIR2 of £19,340.48. It was accepted that this bill was substantial but submitted that the allegation of dishonesty had been property brought.

66. On behalf of the Respondents it was submitted that the First Respondent had succeeded on the issue of dishonesty, and had made admissions as to all of the factual matters. The First Respondent recognised that he should be ordered to pay costs but requested that the costs sum should be fixed at a lower level than that claimed. There was no criticism of the hours spent or the work done by the Applicant but it was submitted that the costs of the SRA in preparing FIR1 and FIR2 were high.

67. The Tribunal enquired as to the Respondents' means. The Tribunal was told that the firm usually made a pre-tax profit in the region of £80,000 to £85,000 per annum. The First Respondent had an income of about £6,000 per month which together with child benefit paid to his wife produced a household income of about £6,440 per month. One of the First Respondent's children was at university and the other at a state 6th form college. The First Respondent's outgoings were estimated at £5,570 per month.

Sanction and Reasons

68. The First Respondent was responsible for a catalogue of errors in the conduct of his firm's accounts. In particular, errors had occurred in the stewardship of client money. These various breaches were unacceptable. In particular, the Tribunal was concerned about the payment of salaries from client account, which had occurred on seven occasions. Also, on the matter of Mr DH, the Tribunal was concerned that the client would not have been in a position to have exchanged contracts on the proposed purchase, had the matter proceeded, because client account had been depleted purportedly to pay a stamp duty liability which was never actually incurred.

69. The Tribunal noted that the First Respondent had believed the way his firm routinely transferred money from client to office account in respect of likely disbursements was compliant with the Rules.

70. The Tribunal had found in favour of the First Respondent on the issue of dishonesty, but considered that that allegation had been properly brought.

71. There had been a significant abrogation of the First Respondent's responsibilities with regard to client account. The Tribunal was concerned to note, for example, that he did not routinely check client or office bank statements and so was unaware, for example, the payments of staff salaries had been made from client account. Although most of the improper accounts entries had been made by the First Respondent's wife, they remained his responsibility.

72. The Tribunal noted and considered the principles in the matter of Weston v The Law Society in which Judgment was given on 29 June 1998 in the Court of Appeal. The report of that case presented to the Tribunal was that which appeared in The Times newspaper on 15 July 1998. From that report it could be seen that the Lord Chief Justice had accepted the Tribunal's view that:-

> "The Solicitors Accounts Rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed. That was a duty which bound solicitors, quite apart from the duty to act honestly."

73. In the Weston case the matter of Bolton v The Law Society [1994] 1 WLR512 was referred to. The well established principle stated in that case was that the public should expect:-

> "The solicitor will be a person whose trustworthiness is not, and never has been, seriously in question."

In the Weston case it was decided that "trustworthiness" in that passage referred not only to honesty but also the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. It was stated, "...that (proper stewardship) was violated if one solicitor with a duty to see that the rules were observed failed to do so."

74. It was not necessary for the Tribunal to have found the Respondent to be guilty of dishonesty in order to consider its most severe sanction. There had been numerous breaches of the accounts rules over a prolonged period. In this case the protection of the public was a more important factor than the issue of the reputation of the profession.

75. In all of the circumstances, even giving as much weight as it could to the mitigation and testimonials put forward on behalf of the First Respondent, it was proper that the First Respondent should be struck off the Roll.

76. In the light of that decision, and taking into account the provisions of the Regulations, the Tribunal considered it appropriate to revoke the recognition of the Second Respondent.

Decision as to Costs

77. The Tribunal considered it appropriate for the First and Second Respondents jointly and severally to be liable to pay the Applicant's costs.

78. The Respondents had accepted that the Applicant's costs were reasonable with the main query being with regard to the FIR costs. The Tribunal noted that the overall costs claimed appeared to be high but considered that the investigation had been needed and the costs should be fixed in the sum claimed.

79. The Tribunal noted the First Respondent's financial situation and that by making the Order it had the First Respondent would lose his livelihood. In the circumstances, it was appropriate to Order that the costs should not be enforced without further permission from this Tribunal.

Orders

80. The Tribunal Ordered that the Respondent, Nicholas John Headley Bennett, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he be jointly and severally liable with the second Respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £47,393.96, such costs not to be enforced without the permission of the Tribunal.

81. The Tribunal Ordered that the recognition of the recognised body of Bennetts Law Practice Limited be Revoked and it further Ordered that it be jointly and severally liable with the first respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £47,393.96, such costs not to be enforced without the permission of the Tribunal.

Dated this 7th day of January 2011
On behalf of the Tribunal

K Todner
Chairman