

Order in Weston not filed until 14 days after
filing of Findings with Law Society

No.7110/1996

IN THE MATTER OF MICHAEL ANTHONY WESTON, GRAHAM EDWARD
WESTBURY NORTH AND RESPONDENT 3
solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Ground (in the Chair)
Mr. R J C Potter
Mrs. C Pickering

Date Of Hearing: 21st November 1997

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 17th April 1996 that Michael Anthony Weston of Wormley, Surrey, Graham Edward Westbury North of RESPONDENT 3 of London, SE3 and London W10 solicitors 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 29th May 1996 the applicant made a supplementary statement setting out further matters in support of the allegations made in the statement dated 17th April 1996.

On the 22nd May 1997 the applicant filed a second supplementary statement containing a further allegation against Mr North.

The allegations contained in all three statements are set out below.

The allegations were:-

Against all three respondents

That they had been guilty of conduct unbecoming a solicitor in each of the following circumstances namely that they had:-

- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rule 1991;
- (ii) drawn money from a client account other than as permitted by Rule 7 of the said Rules contrary to Rule 8 of the said Rules;
- (iii) failed to pay promptly clients' monies into client account in accordance with Rule 3 of the said Rules;
- (iv) improperly transferred sums between clients' ledger accounts contrary to Rule 10 of the said Rules;
- (v) utilised trust monies and/or clients' monies for their own purposes;
- (vi) utilised trust monies and/or clients' monies for the purposes of other clients.

Against Mr North alone

- (vii) been convicted of furnishing false information and sentenced to a term of imprisonment.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 21st November 1997 when Roger Field solicitor and partner in the firm of Messrs Higgs & Sons of Inhedge House, 31 Wolverhampton Street, West Midlands appeared for the applicant, Mr Weston was represented by Mr Tibber of Tibber Beauchamp Ward of 707 High Road, North Fincheley, London N12 0BT, Mr North was represented by Mr Lynch of Counsel instructed by Messrs Burton Copeland of 51 Lincoln's Inn Fields, London WC2A 3LZ and ~~RESPONDENT 3~~ was represented by Mr Butcher of Counsel instructed by Messrs Hallinan Blackburn Gittings & Nott of 26 Buckingham Palace Road, London SW1W 0OP.

The evidence before the Tribunal included the admissions of the respondents as follows: Mr Weston accepted allegations (i), (ii) and (iii) and accepted the contents of the second statement so far as they related to allegation (ii). ~~RESPONDENT 3~~ accepted all of the allegations except for allegation (v) and accepted the matters contained in the second statement as far as it related to allegation (ii) and (vi). Mr North accepted all of the allegations in all of the statements.

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

The Tribunal ORDERED that the respondent Michael Anthony Weston of Wormley, Surrey solicitor be Struck Off the Roll of Solicitors and they further

ordered him to pay fifteen percent of the costs of and incidental to the application and enquiry fixed in the sum of £10,156.50p.

The Tribunal ORDERED that the respondent Graham Edward Westbury North of London SE3 solicitor be Struck Off the Roll of Solicitors and they further ordered him to pay seventy percent of the costs of and incidental to the application and enquiry fixed in the sum of £10,156.50

The Tribunal ORDERED that the respondent **3** of London, W10 solicitor be suspended from practice as a solicitor for a period of twelve months to commence on the 21st November 1997 and further ordered her to pay fifteen percent of the costs of and incidental to the application and enquiry fixed in the sum of £10,156.50p

Upon the application of Mr Weston the Tribunal agreed that the filing of their Order made in respect of Mr Weston might be suspended for the period of fourteen days after the filing with the Law Society of the Tribunal's written Findings. It was not the Tribunal's intention that the filing of a motion of appeal with the Divisional Court within that period of time should mean that the Striking Off Order remained ineffective until the outcome of any appeal. The Striking Off Order would be filed with the Law Society on the 14th day after the filing of the Findings and should Mr Weston wish for the order not to be effective until the outcome of the appeal, that would have to be the subject of an application to the Divisional Court.

The facts are set out in paragraphs 1 to 42 hereunder:-

1. Mr Weston, born in 1948, was admitted a solicitor in 1972. Mr North, born in 1952, was admitted a solicitor in 1977. ~~RESPONDENT 3~~ **3** born in 1960, was admitted a solicitor in 1988. At the material times the respondents practised together under the style of Burton Yeates Westburys at 38, St. Martins lane, London WC2. They had done so since the 1st November 1988. They conducted a general practice employing a staff of eleven. They were controlled trustees in eleven matters and their firm was regulated by the Law Society in the conduct of Investment Business.
2. The Law Society intervened into their practice which was subsequently disposed of to other firms.
3. Upon due notice to the respondents the Investigation Accountant of the Solicitors Complaints Bureau (which had been superseded by the Office for the Supervision of Solicitors hereinafter referred to as "the Office") carried out an inspection of the respondent's books of account and a copy of the Investigation Accountant's report dated the 18th December 1995 was before the Tribunal.
4. The report revealed that the books of account of the respondents' firm were not in compliance with the Solicitors Accounts Rules.
5. A list of liabilities to clients as at the 31st October 1995 was produced for inspection. The items were in agreement with the balances shown in the clients ledger and totalled £694,245.84 after adjustment. The list did not contain further liabilities to clients

totalling £111,481.96 which meant that there was a cash shortage on client account in that figure.

6. The cash shortage arose in the following way -

(i)	Improper Transfers - L T N (deceased)	£100,000.00
(ii)	Clients' funds improperly retained in office bank account	5,771.40
(iii)	Unpaid professional disbursements improperly retained in office bank account	<u>5,710.56</u>
		<u>£111,481.96</u>

7. At the time of the inspection the respondents were not in a position to rectify the cash shortage relating to the improper transfer. In a letter dated the 8th December 1995, Mr North stated that they had rectified the cash shortage in respect of unpaid professional disbursements on the 7th December 1995, by transfer from office to client bank account and they were in the process of rectifying the clients funds improperly retained in office bank account.

8. With regard to the improper transfer in L T N deceased of £100,000, ~~RESPONDENT 3~~ acted in connection with the will trust created on the death of L T N on the 15th February 1976. The firm had originally acted for the executors in the administration of the estate and the trustees of the trust created by the will were currently Mr North and Mr Weston. Under the terms of the will the trustees were to hold the residuary estate upon trust to pay the income therefrom to the late Mr N's sister during her life and after her death to divide the same into specific shares to be distributed between a number of charities. The late Mr N's sister died on the 22nd October 1994.

9. The relevant account in the clients' ledger showed, inter alia, the following entries -

<u>Date</u>	<u>Detail</u>	<u>Office Ledger</u>		<u>Client Ledger</u>	
		<u>Dr.</u>	<u>Cr.</u>	<u>Dr.</u>	<u>Cr.</u>
	Balance brought forward				£331,092.44
23.02.95	Costs billed: 70789	£100,000			
28.02.95	To pay bill: 70789			20,000.00	
28.02.95	From client: 70789		20,000.00		
10.03.95	To pay bill: 70789			60,000.00	
10.03.95	From client: 70789		60,000.00		
21.03.95	To pay bill: 70789			10,000.00	
21.03.95	From client: 70789		10,000.00		
29.03.95	To pay bill: 70789			10,000.00	
29.03.95	From client: 70789		10,000.00		
	Balance carried forward				£231,092.44

10. The Investigation Accountant examined the client file and bill of costs dated the 23rd February 1995 addressed to the trustees and numbered 70789 for £10,000.00 plus VAT of £1,750.00 was found therein.

11. **RESPONDENT 3** told the Investigation Accountant that on the 16th December 1994 and 31st January 1995 she had raised bills of costs respectively for £3,000 and £4,000. On the 23rd February 1995 the trustees (the other two respondents) had instructed her to raise another bill for £10,000.00. She would not have billed again at that stage considering that insufficient work had been undertaken to justify such further charge.
12. An examination of the firms copy bills' file revealed a bill for costs with the same number, namely 70789 also dated 23rd February 1995 drawn in the amount of £100,000 with no value added tax.
13. **RESPONDENT 3** had been unable to explain the existence of the two bills numbered 70789 or the differences in the sums charged. Mr North told the Investigation Accountant that he and Mr Weston, as trustees, had looked at the file, seen the size of the estate, and had seen what was going on and using judgement based on experience thought the value of the work was another £10,000. They instructed **RESPONDENT 3** to raise a bill accordingly. Mr North offered a possible explanation concerning the £100,000.00 bill; he said he had raised the bill for £10,000.00 but an error had occurred in its drawing. The bill for the wrong amount and excluding VAT had been sent to the cashier. The bill had been later corrected and filed but the corrected version never got back to the firm's cashier. In a written explanation sent to the Law Society signed by all three respondents it was said that Mr. North and Mr. Weston had taken a serious view of this matter when the Investigation Accountant drew it to their attention. Both equity partners had told **RESPONDENT 3** that she had been underbilling and had required her to raise a bill for £10,000. Subsequently **RESPONDENT 3** denied that to have been so. She had lied upon the instruction of Mr. North.
14. The Investigation Accountant suggested that the £100,000.00 bill had been deliberately raised to enable the under-noted transfers to office bank account to be made in order to meet partnership liabilities:-

<u>Transfer from Client A/C</u>		<u>Office Account Payments</u>		
<u>Date</u>	<u>£</u>	<u>Date</u>	<u>£</u>	<u>Payee</u>
28.02.95	20,000.00	01.03.95	8,085.36	Nat West (salaries)
		01.03.95	3,262.09	S I F
		01.03.95	2,284.16	British Telecom
		08.03.95	11,300.69	A L (Temp Agency)
10.03.95	60,000.00	10.03.95	62,924.93	H M Customs & Excise
		10.03.95	5,562.58	K S (Temp Agency)
21.03.95	10,000.00	21.03.95	10,692.50	S B (Accountants)
29.03.95	10,000.00	29.03.95	<u>8,176.61</u>	Nat West (salaries)
			<u>£112,288.92</u>	

15. That interpretation was denied by Mr North.
16. Following the Investigation Accountant's Report, the partners on the 18th December 1995 had drawn and submitted an explanation to the Office. **RESPONDENT 3** had at that stage agreed that she had been instructed to draw a bill for £10,000, but subsequently her explanation had been that she had checked the computerised ledger

record in a routine way and had been astounded to find a transfer in respect of costs in the sum of £100,000. She had taken the matter up with the firm's cashier who had taken it up with Mr. North. Mr. North had indicated that he would sort the matter out. **RESPONDENT 3** had not made the transfer and had not been aware of it until she checked the computerised record.

17. With regard to clients' funds improperly retained in office bank account at the 31st October 1995 the clients' ledger contained a total of two thousand and forty-four matters where there was a credit balance shown on the disbursements column of the relevant ledger account, which together totalled £121,397.74. An examination of the seven largest matters, which totalled £5,771.40 showed that clients' funds had been improperly retained in office bank account. The respondents explained that owing to the nature of their work and their computer system, a large number of credit balances had arisen, but not all such balances represented clients' funds retained in office bank account. They said that many balances were items such as postage and photocopying charges, or there were debit balances shown on other matters which could be properly sent off against the credit balances.
18. At the 31st October 1995 twenty office bank account cheques varying in amount between £47 and £1,862.30 and totalling £5,710.56 were shown as unrepresented on the office bank account reconciliation. The respondents said that cheques had been drawn in settlement of Counsel's fees for which they had been put in funds by the relevant clients. None of the cheques dated between 17th and 25th January 1995 had ever been sent out. The respondents admitted that the funds held in respect of the unpaid professional disbursements should have been retained in client bank account.
19. The Investigation Accountant went on to report a misuse of clients' funds which also related to the will trust created upon the death of L.T. N deceased.
20. On 1st November 1994 client bank account was credited with £13,367.02 in respect of part of the proceeds of the sale of the share portfolio. That entry was allocated to an account in the client ledger entitled "Miss M.P. N - Probate". On the same day the client ledger account was charged with a transfer to office bank account of £11,750 in respect of costs.
21. On 8th November 1994 client bank account was credited with £307,358.74 in respect of further proceeds of the share portfolio sale. That entry was correctly allocated to an account in the clients' ledger entitled "L.T. N - Termination of Will Trust" and created a credit balance of that amount.
22. On the 8th and 15th November 1994 the account was charged with the following transfers to the clients' ledger accounts -

<u>Date</u>	<u>Transfer</u>	<u>Client Ledger Account</u>
08.11.95	£1,558.05	Miss M.P. N - personal affairs
15.11.95	11,750.00	Miss M.P. N - probate

On the same dates those client ledger accounts were charged with transfers to office bank account in respect of costs in the sums of £1,558.05 and £11,750.

23. **RESPONDENT 3** told the Investigation Accountant that she had borrowed funds, namely £13,367.02, £1,558.05 and £11,750 totalling £26,675.07 from the will trust of L. T. N to pay the firm's costs in respect of Miss M.P. N deceased in connection with handling her probate and personal affairs. She said that sum would have been repaid with interest.
24. On 16th February 1995 the client account of L. T. N - termination of Will Trust was credited with £28,030.02 in respect of a transfer from the client ledger account of Miss M.P. N - probate. **RESPONDENT 3** said that that was the refund to the will trust and she presumed it had been made up of the three figures transferred totalling £26,675.07 plus interest.
25. Following the death of Miss M.P. N on 22nd October 1994, two bills of costs amounting to £10,000 each (net) had been raised on the 27th October and 15th November 1994.
26. **RESPONDENT 3** together with Mr. Weston, had acted for the executors of Miss M.P. N deceased who had left a gross estate of £620,301.
27. On 18th October 1995 the relevant account in the clients' ledger was charged with £1,405.29 in respect of a transfer to another unconnected client's ledger account, Mr. J. F divorce. **RESPONDENT 3** acted for Mr. J. F. On 12th October 1995 his account in the clients' ledger was credited with £3,000 in respect of his share of the equity from the sale of the property. The ledger account showed, inter alia, the following entries -

<u>Date</u>	<u>Details</u>	<u>Debit</u>	<u>Credit</u>
12.10.95	W & Co.		£3,000.00
12.10.95	To pay bill	£1,405.29	
18.10.95	From client (N)		1,405.29
18.10.95	Mr. J. F	3,000.00	
26.10.95	Mr. J.F.		1,405.29
26.10.95	To client (N)	1,405.29	

28. **RESPONDENT 3** was shown the relevant client ledger account when she initially said the figures were clearly incorrect. She explained that she had transferred her costs to office bank account from client's money received, but had been confused between verbal and written instructions from the client and had remitted £3,000 to Mr. J. F. She subsequently admitted that in order not to overdraw his ledger account she had improperly transferred £1,405.29 from the ledger account of Miss M.P. N deceased, but had rectified the resultant shortage following the receipt of £1,405.29 from Mr. F in October 1995 by transferring the same amount back to the account of Miss M.P. N deceased.
29. The Investigation Accountant's Report went on to set out improper transfers which had been rectified prior to the inspection.

30. Mr. North acted for C & Co. in connection with numerous debt collection matters. Client bank account had been charged, inter alia, with the following transfers to office bank account as follows -

	<u>Date</u>	<u>Client Ledger A/C Charged</u>	<u>Amount</u>
(i)	25.07.95	-	£2,500.00
(ii)	27.07.95	-	8,200.00
(iii)	29.08.95	C & Co.	<u>7,448.38</u>
			<u>£18,148.38</u>

31. The relevant transfer authority slips bearing Mr. North's initials indicated that the transfers were all in respect of costs to be allocated to an account in the clients' ledger entitled "C & Co. - NHM -v- GP". Items (i) and (ii) were not allocated to any individual account in the clients' ledger. Item (iii) had been debited to the relevant client ledger account as shown above. The relevant account in the clients' ledger showed, inter alia, the following entries -

<u>Date</u>	<u>Detail</u>	<u>Debit</u>	<u>Credit</u>
17.07.95	A P		£11,506.23
28.07.95	Transfer to office costs	£8,655.01	
31.07.95	C & Co. costs		8,655.01
01.08.95	C & Co. (2N19002)	4,057.85	
29.08.95	Transfer to office cost	7,448.38	
31.08.95	Costs repaid		7,448.38
08.09.95	C & Co.	7,448.38	

32. The purported payment of £8,655.01 and receipt of £7,448.38 were not supported by corresponding movements of cash at the bank and bills of costs in respect of the transfers totalling £18,148.38 had been raised.
33. Initially, Mr. North said he did not understand the entries on the transfer authorities and client bank statements and that he would have to ask his cashier for an explanation. He said he could not comment as to whether the transfers were improper. He could not explain why apparently false entries appeared in the books of account.
34. In his letter of 8th December 1995 Mr. North said, inter alia, "where perhaps we are at fault is in the mechanism of posting as opposed to authority to transfer."
35. The Investigation Accountant suggested that the transfers had been instigated in order to help the partners to meet payroll liabilities to be paid from office bank account, a standing order to be paid to RESPONDENT 3 on 25th July 1995 and to Nat West - Autopay (salaries) as to £10,200.84 on 27th July 1995 and as to £11,152.13 on 29th August 1995. The Investigation Accountant also suggested that the transfers had been made from funds held in client bank account in respect of a debt recovered for the benefit of the client and in anticipation of the monthly receipt of costs from C & Co. in respect of other unconnected matters.

36. Mr. North refuted that, saying he would not transfer sums in respect of costs without C's permission.
37. The cash shortage of £10,700 (£2,500 and £8,200 on 25th July and 27th July respectively) was rectified on 28th July 1995 by the lodgement of £10,194.28 received from C & Co. into client bank account of which £8,655.01 was in respect of the firm's proper costs and by transfer of £2,044.99 from office to client bank account. The resultant cash shortage of £7,448.38 was rectified on 31st August 1995 by the lodgement of £6,488.46 into client bank account and the transfer of £959.92 from office to client bank account.
38. On 5th January 1996 the Investigation Accountant composed a memorandum concerning a further misuse of clients' monies which had not been included in his earlier Report of the 18th December 1995. ~~RESPONDENTS~~ had acted for the executors in the administration of the estate of G. R. deceased who died on 12th February 1994. The late Miss R had life interests in two trusts. The details were set out in the following way -

<u>Trust</u>	<u>Trustees</u>	<u>Life Tenant</u>	<u>Remainder Men</u>
G A Will Trust	Mr. Weston & L S	G R	Several
B R Settled legacies	G R & L S	G R	L S

The firm also acted for the trustees in connection with the above-mentioned trusts.

39. The following clients' funds were received on the dates noted below -

<u>Date</u>	<u>Amount</u>	<u>Client</u>
31.3.94	£ 5,743.70	G A Will Trust
28.3.94	35,080.65	B R Settled Legacies
30.6.94	35,206.30	B R Settled Legacies
30.6.94	5,724.93	G A Will Trust
Total		
	<u>£81,755.58</u>	

Those funds represented the proceeds of the buy-back of shares owned by the respective trusts in A E Limited, a private company. All those funds were credited to the client ledger accounts of G R deceased, rather than their own respective client ledger accounts. The funds were used partially to fund the inheritance tax payment for G R and to pay costs by transfer to office bank account as follows -

<u>Date</u>	<u>Costs</u>	<u>Client</u>
27.5.94	£ 952.92	B R Will Trust
27.5.94	1,288.60	G A Will Trust

27.5.94	1,833.00	G R probate
16.8.94	3,893.00	G R probate
Total	<u>£7,967.52</u>	

40. The ledger accounts of B R Will Trust and G A Will Trust were refunded by transfers amounting to £81,755.58 on 2nd December 1994 from the account of G R deceased. **RESPONDENT 3** suggested that L S (a trustee in both B R Settled Legacies and G A Will Trust) was aware of the use of the monies. The Investigation Accountant said that was not the case and by 17th November 1994 LS complained about delay in the matters. **RESPONDENT 3** working papers referred to "loans to pay BYW costs" from B R's funds and calculation of interest that would have been paid if the funds had not been so misused.

41. **RESPONDENT 3** acted for the trustees of E.M. R deceased. On 26th September 1994 the relevant account in the client ledger was charged for the following payments -

Her Majesty's Paymaster General	£ 400.00
Inland Revenue	£6,692.82

The payments were in respect of the probate fees and part of the inheritance tax due on the estate of G R deceased. The ledger account was refunded by a transfer of £6,692.82 on 4th November 1994 from the account of G R deceased. The trustees of E.M. R deceased were paid the balance of the funds due to them on the same day.

42. On 6th May 1997 at the Crown Court at Southwark Mr. North was, upon his own confession, convicted upon indictment of furnishing false information. On 13th May 1997 he was sentenced to twelve months imprisonment.

The submissions of the applicant

43. In the matters handled by **RESPONDENT 3** where she had authorised the transfers of funds she was candid in her explanation that she had borrowed monies from one client ledger which was to be repaid with interest. She also admitted that she had paid monies to the account of one client who was not entitled thereto. She had been confused and in order not to overdraw had made a transfer from another client and subsequently had put the matter right. Those improper transfers had been rectified prior to the Investigation Accountant's inspection.

44. With regard to the transfers made in the matters of the G A Will Trust and the B R Settled Legacies, **RESPONDENT 3** had perpetrated a very serious breach of the Solicitors Accounts Rules. Either she had made the transfers deliberately, knowing them to be wrong, or she had been reckless.

45. Mr. Weston, as an equity partner in the firm, had absolute joint and several liability for compliance with the Solicitors Accounts Rules and any deficiencies found in the firm's book-keeping and accounts.

46. The applicant did not allege dishonesty against Mr. Weston and **RESPONDENT 3**

47. The applicant's position against Mr. North was rather different. The case against him was set on a platform of dishonesty. Indeed, Mr. North had committed the most serious offence that a solicitor could commit. He had acted in a dishonest way in his handling of clients' money.
48. Mr. Weston's position was rather more difficult to ascertain. He had said that the financial side of the firm was dealt with by Mr. North alone and that he was not privy to any of the matters concerning the £100,000 bill. He had said that that matter had solely been down to Mr. North. The applicant accepted that Mr. Weston had not been tainted with the dishonesty perpetrated by Mr. North. However, as an equity partner in the firm, Mr. Weston was jointly responsible for ensuring scrupulous adherence to the Solicitors Accounts Rules. The philosophy of the Solicitors Accounts Rules was clear in that they were formulated to ensure that clients' and office monies be kept rigidly separate from each other. There was a responsibility on all partners in a firm to comply with those Rules.
49. It was accepted that as a salaried partner *RESPONDENT 3* had no access to the firm's books. Her degree of responsibility was not at the same level as that shouldered by Mr. North and Mr. Weston.
50. The respondents jointly had made a written explanation to the Office. If Mr. Weston's second version of what occurred was to be believed, then Mr. Weston, if not tainted by Mr. North's dishonesty, had been guilty of a grave abstention of his duties. He could not avoid his responsibility as a partner for the financial affairs of the firm.
51. The allegations made against *RESPONDENT 3* were, of course, serious. She had taken positive actions which were clearly in breach of the Solicitors Accounts Rules. The applicant did not suggest that *RESPONDENT 3*'s actions had been for the purpose of personal gain. The Tribunal was invited to accept that *RESPONDENT 3* knew that what she was doing was wrong, or that at least she had a very strong reason to suspect that what she was doing was wrong.
52. The applicant did allege that Mr. North had been dishonest. Indeed, he had been convicted of a criminal offence involving dishonesty and had served a term of imprisonment.
53. Substantial claims had been made against the Law Society's Compensation Fund. The Fund had paid out the sum of £112,442.67 and there were pending claims at the time of the hearing of £85,870. The recovery made to the date of the hearing had been £1,218.87. To the claims upon the Compensation Fund had to be added the costs to the profession amounting to £22,601.64 which included Mr. Field's costs in connection with the disciplinary proceedings.

The submissions of Mr. Weston

54. Mr Weston found himself in some difficulty. He found himself before the Tribunal to answer allegations against him brought by the Law Society. Broadly, he admitted those allegations but did so on the basis that he was liable under the provisions of the

Solicitors Accounts Rules as an equity partner in the firm but had not been culpable in so far as those breaches were concerned as they had in reality been perpetrated by his partners and the respondent had been in ignorance of them.

55. It was emphasised that Mr Weston had no knowledge of what happened or of any impropriety but he accepted that as an equity partner taking little or no interest in the accounting procedures and financial arrangements of his firm he had committed a grave abstention of duty.
56. It was anticipated that Mr North, who admitted responsibility for the transfer of £100,000 from a trust account to office account and utilisation of the same for the firm's own purposes and who had been convicted of a criminal offence and had served a custodial sentence, would assert that Mr Weston was at worst complicit in Mr North's actions and at best acquiescent. That cross allegation by Mr North was strenuously denied by Mr Weston who would make his submissions on the basis that he had no knowledge of what had happened and took no active participation.
57. Mr Weston had been admitted a solicitor in 1972. He had been a partner in another firm in 1976 and in the early 1980's that firm amalgamated with Mr North's firm to form Burton Yates Westburys. Until the current proceedings Mr Weston had never encountered any professional difficulties and hitherto had enjoyed an unblemished career.
58. Mr Weston had entered the solicitors' profession as he wanted to practise law. He was not interested in and did not wish to become involved in the administration of the practice.
59. When the two former firms amalgamated, Mr North had been a sole principal undertaking all work upon his own books. He expressed a keenness to carry on dealing with that work in the firm and Mr Weston had taken the view that he was both happy and relieved that another person was prepared to take on that burden. He assumed that he could trust his experienced fellow solicitors to carry out that work honestly.
60. Mr. Weston had been given regular pieces of paper concerning bookkeeping and the financial affairs of the firm but he had not really looked at them. He was happy to undertake the work that he loved, to be paid for it and to let Mr North deal with the financial management of the firm. Mr Weston's clients had the highest praise for him.
61. The firm had never been very profitable from the partners point of view. They took moderate drawings on a monthly basis if Mr North said the monies were there.
62. Mr Weston and Mr North held a joint mandate at the bank. Mr Weston accepted that where an instruction to the bank needed to be signed he would have signed it. On occasions the firm's cashier would go to Mr Weston at the end of the day with thirty or forty cheques for signature together with transfer instructions and Mr Weston signed them without question.

63. Mr Weston accepted that the firm had been in and out of financial difficulties for a number of years.
64. Mr Weston understood that Mr North would rely upon the fact that a statutory demand had been served by Customs and Excise in respect of Value Added Tax. Because of the firm's financial difficulties threats by creditors had not been particularly unusual and the firm had always managed to find a way out of it. Mr Weston's response had been to pass the statutory demand to Mr North.
65. It was Mr North's position that there had been regular meetings and reports on the firm's current billing position. It was Mr North's position that the respondent was aware of the £100,000 bill but it had not been included on a weekly report and Mr Weston had been unaware of it.
66. Mr Weston denied absolutely that a conference took place to discuss the financial position of the firm and did not enter any discussion about raising a fictitious bill. The first that Mr Weston had come to hear about the £100,000 bill was when the fact of its existence was raised by the Law Society's Investigation Accountant.
67. It was also almost certainly right that no clear evidence of the difficulty would emerge from the accounts. The bills would have been debited to one account and credits received on another account. Those matters would not have come to light on a cursory checking of the position but only during the course of a forensic accounts investigation. In the submission of Mr Weston however hard he might have looked and however an active part he might have played in the firm's accounts he would not have discovered the situation and he had no knowledge of the fictitious bill. It had not been suggested that Mr Weston would have had any knowledge of the improper acts and transfers of *RESPONDENT 3*
68. In summary Mr Weston stood alone. Not one positive act had been alleged against him. There had been no collusion by him in any of the wrongdoings of the other respondents. His stance throughout had been and continued to be one of ignorance as to what was going on. He accepted that he had signed both transfers and cheques without enquiry and had allowed his office finances to be dealt with by others without enquiry. Similarly he had signed the initial response by the partners to questions raised by the Law Society without proper enquiry. Mr. Weston allowed his partner to do everything, even opening the morning post.
69. Mr Weston accepted what had been said against him by the Law Society. Whilst it could not be said that he had closed his eyes to what was going on, he had nevertheless abstained from any involvement in the financial management of the firm. Mr Weston accepted that that was a serious breach and he had failed miserably to live up to his proper responsibility in that regard. He admitted allegations (i) (ii) and (iii) and accepted that as a solicitor and a partner he had a duty to ensure that the books of account were properly written up.
70. Mr Weston did know about the funds improperly retained in office account but he was powerless to do anything about it. That deficiency had been a hang over from Mr

North's previous firm and had been a matter for Mr North himself to sort out. Mr North had been unable to work out why the balances were there.

71. Mr Weston had suffered terribly prior to the date of the hearing. He had been adjudicated bankrupt in October 1996. He owned his home jointly with his wife and his trustee in bankruptcy wanted the house to be sold in order to realise Mr Weston's share in the equity. The matters before the Tribunal together with these had put an enormous strain on Mr Weston's relationship with his wife.
72. Mr Weston had been permitted by the Law Society to work subject to stringent conditions placed on practising certificate. He had been working for a firm of solicitors receiving a modest salary. His salary was taken up by outgoings. His wife was taking a part time degree course and earned a small amount of money in a part time job. He had endured six months of being out of work following the intervention and the suspension by the Law Society of his practising certificate. The Tribunal was invited to consider a letter written by his current employers and other references given in his support from persons from all walks of life all of whom spoke very highly of Mr Weston.
73. Mr Weston could not be said to be a danger to the public. He was a solicitor of honesty and integrity. He was a competent solicitor who had not paid as much attention to the running of his firm as he should have done. It was accepted that members of the solicitors' profession had lost money as a consequence. He had already effectively served a six month suspension following the Law Society's intervention into the practice.

The Submissions of Mr North

74. Mr North admitted the allegations: he had been convicted of a criminal offence involving dishonesty and leading to a custodial sentence. He had not intended to be a secondary prosecutor of Mr Weston. Throughout the investigation and the criminal proceedings he had shouldered the blame for what had happened. He was entirely content that ~~RESPONDENTS~~ as a junior and salaried partner should not be prosecuted and he relished the good fortune of Mr Weston. However he had been concerned and upset by the attempts of Mr Weston to distance himself from the firm's difficulties and what had occurred.
75. Mr North had accepted responsibility for the financial management of the firm however Mr Weston had been well aware of the dire financial straights in which the firm found itself. As early as 13th April 1994 Mr Weston had put together a document to Mr North, of which a copy was put to the Tribunal, from which Mr Weston was clearly aware of the impending financial crisis for the firm and the partners. The document prepared by Mr Weston of 13th April 1994 referred to the then significant liabilities to the Revenue, PAYE and VAT then itself at over £62,000. The financial circumstances of the firm had been a shared responsibility. The response by the partners to enquiries by the Law Society had been drafted and redrafted on many occasions. Mr Weston had considerable input into the drafting of that document: it was inconceivable that Mr Weston had been unaware that the statutory demand from Customs and Excise had been for a sum in the region of £64,000 and

preparation but had signed the document as she believed what Mr Weston and Mr North said was true.

83. **RESPONDENT 3** ran the Trust and Probate department of the firm on her own without very much supervision. She had not made any excuse for her action but she had suffered difficulties with her health and had been under considerable pressure. As a salaried partner the parlous financial position of the firm was not well known to her but she had been under pressure to increase her billing. She had not enjoyed the supervision of more experienced solicitors which she might reasonably have expected. The large bill the subject of the investigation accountant's report had been raised on a matter of which she had conduct without her knowledge. She regretted that she had complied with the requirements of her senior partners in her responses to the Law Society's Investigation Accountant. Upon discovering the transfer of the £100,000 she had taken the matter up with the firm's cashier who had taken it up with Mr North who had indicated that he would sort the matter out. She had not pursued it believing that however the error had arisen her senior partner would put it right.
84. The Tribunal was invited to take note of the references put in in support of **RESPONDENT 3**
85. **RESPONDENT 3** had suffered severe personal stress. Despite improper transfers made by her between client accounts those matters had been put right and no actual loss to any individual client had occurred. **RESPONDENT 3** was ashamed. **RESPONDENT 3** apologised for the errors which she had made.
86. **RESPONDENT 3** practising certificate had been suspended since January of 1996 and nearly two years had elapsed since then. She had not earned any income as a solicitor from the date of the suspension. She had been adjudicated bankrupt and was in a parlous financial position.
87. **RESPONDENT 3** had much to offer the legal profession and she very much hoped that she might pursue her career putting the disciplinary matters behind her.

The Findings of the Tribunal

The Tribunal FOUND all of the allegations to have been substantiated against Mr North indeed they were not contested. They found allegations (i) (ii) and (iii) to have been substantiated against Mr Weston which he accepted. They found allegations (i) (ii) (iii) (iv) and (vi) to have been substantiated against **RESPONDENT 3** she did not contest them.

Mr North had admitted the matters alleged against him which were of the gravest nature. The utilisation of monies held by a solicitor not only in his position as a solicitor but also in his position as trustee for the purposes of his firm demonstrated a great degree of dishonesty which amounted not only to professional misconduct at the most serious end of the scale but, as was recognised by the court, criminal behaviour so serious as to warrant a prison sentence. The damage caused to the solicitors' profession by such behaviour on the part of one of its members was immeasurable. It

that there were 21 days for payment before the institution of bankruptcy proceedings.

The cheque for £64,000 to discharge that liability was signed both by Mr North and by Mr Weston. It was inconceivable that Mr Weston had been unaware of the position and that he had not known where the money had come from. He was aware of the difficult financial position of the firm and the cashier had given weekly reports. Monthly reports were computer generated and must have had the relevant information on them. It was self evident that even if Mr Weston had made only a cursory examination of the books then he would have known the true position. The firm's bank would not have made a transfer from client to office account without the usual authority which required the signatures of both partners.

76. Mr North had been unable to accept the burden of sole responsibility any longer. He had not committed an act on his own which corrupted others or affected the lives of others. It was important that the true picture should emerge before the Tribunal. In reality the partners had borrowed money from one account to pay another. They had gone too far. It was a foolish act made by otherwise honourable men. It was a monumental mistake and one for which Mr North would pay for the rest of his life.
77. The intervention into the respondents' practice came to an end when effectively two firms took over the practice. Mr North had given every assistance to those new firms with a view to protecting the jobs of staff.
78. Mr North accepted that he had let down his profession, his clients, his friends and his family. He accepted that he would be the subject of a striking off order following which he would be destroyed professionally and socially. He had been adjudicated bankrupt. He had been convicted of a criminal offence and had served a term in prison. He did not know where his future would lie. All this had been the result of an act of madness.

The Submissions of RESPONDENT 3

79. RESPONDENT 3 did not resile from any of the allegations which she admitted and for which she accepted responsibility. It only added to her distress and disappointment at being brought before her professions' Disciplinary Tribunal to witness an unsavoury wrangling between her two senior partners whom she had held in high esteem professionally for many years.
80. RESPONDENT 3 was 37 years of age, she had been admitted as a solicitor in 1988 and had joined the firm in 1990 and had become a salaried partner in 1991. The fact that she was a salaried partner was an important distinction from the position of the other two respondents.
81. Mr Field in putting the case for the applicant had made it clear that no allegation of personal dishonesty had been made against RESPONDENT 3. Certainly it had been accepted that RESPONDENT 3's conduct had not been undertaken with a view to personal gain. She had enjoyed no access to the detailed accounts of the firm.
82. With regard to the detailed response dated 18th December 1995 made by all three partners to the enquiries of the Law Society, she did not accept responsibility for its

was right that Mr North should be struck off the Roll of solicitors and right that he should bear the greatest proportion of the costs incurred by the applicant.

The position of Mr Weston was not as clear cut. Mr Weston accepted that he was guilty of allegations (i) (ii) and (iii) but was adamant that he was not only not complicit in the nefarious activities of Mr North but had been wholly unaware of them. In the submissions made on Mr Weston's own behalf it was said that he took little or no interest in the accounting procedures or the financial management of his firm. He accepted that he had been responsible for a grave abstention from duty. The Tribunal endorsed that and took the view that as one of the only two equity partners he was well aware of the parlous financial position of the firm and his failure properly to shoulder the heavy burden of responsibility placed upon a solicitor in private practice for the proper keeping of accounts and the fair and honest handling of clients' monies was extremely serious. That responsibility was one to which he paid such a scant regard it rendered him in the opinion of the Tribunal not a fit person to continue to be a solicitor. His failures undermined the very bedrock upon which the public placed its confidence in solicitors namely the unquestioned propriety in a solicitor's handling of their client's money. Without making a finding of dishonesty on the part of Mr Weston which was not alleged against him, despite the written explanation of the 18th December 1995 given to the Law Society, the Tribunal do not consider Mr Weston to be fit to be a solicitor and they ordered that he be struck off the Roll of Solicitors and ordered that he pay a proportion of the costs commensurate with the part played by him in this unfortunate affair.

The Tribunal accept that the position of *RESPONDENT 3* could be distinguished from that of the other two respondents. She was a younger and less experienced solicitor who was a salaried partner. She was subject to the supervision and instructions of Mr Weston and Mr North and was not privy to the detail of the financial affairs or, indeed the parlous financial state, of the firm. She had accepted responsibility for the improper transfers between client's accounts.

The Tribunal had made allowances for the fact that *RESPONDENT 3* had suffered difficulties with her health and work pressures. The transfers which she instigated were improper and she had behaved stupidly. The Tribunal were satisfied that her actions had not been motivated by personal gain. Those matters had been rectified. The Tribunal were of the opinion that if those improper transfers between client accounts had been the only matters which they had to consider on the part of *RESPONDENT 3* then they would have been minded to impose a financial penalty. However broader issues were before the Tribunal in particular the more serious breaches alleged against her in her position as partner. Although accepting that her responsibility for those breaches could not be at as high a level as those of the equity partners, she had been aware of the transfer, she had not been frank with the Investigation Accountant of the Law Society and she had appended her signature to a statement prepared for the Law Society which she knew was not true. Whilst having some sympathy for *RESPONDENT 3* the Tribunal could not overlook that state of affairs and believed that it was right that she should be suspended from practice for a finite period of time. The Tribunal bore in mind the fact that *RESPONDENT 3* had not practised as a solicitor and had effectively been suspended from practice since the Law Society's intervention into

the firm. They therefore imposed a twelve month period of suspension upon ~~RESPONDENT 3~~ and ordered her to pay a proper proportion of the applicant's costs.

The Tribunal recommend to the Law Society that before it grants a Practising Certificate to ~~RESPONDENT 3~~ it should be satisfied that she has completed a course in solicitors and trust accounts and the administration of estates; and further that she should be permitted to practise only in employment first approved by the Law Society.

DATED this 9th day of January 1998

on behalf of the Tribunal



A G Ground
Chairman

*Findings filed with the
Law Society on the 13th
day of January 1998*