

IN THE MATTER OF WILLIAM CHARLES ROSENBERG, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the chair)
Mr. P Kempster
Lady Bonham-Carter

Date of Hearing: 10th February 2003

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 (the "OSS") by Gerald Malcolm Lynch solicitor and consultant with Messrs Drysdales Solicitors of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, Essex, SS2 6HZ on the 12th October 2000 that William Charles Rosenberg (a solicitor) whose address for service was c/o Messrs Miller Gardner Solicitors of 497 Chester Road, Manchester, M16 9HF 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.

At the opening of the hearing the Applicant sought to amend and/or withdraw some of the allegations. The Respondent agreed to the Applicant's proposals and the Tribunal consented thereto. The allegations are set out below in the agreed amended form.

The allegations were that the Respondent had:-

- (a) Acted in breach of the Solicitors Accounts Rules 1991 in that he drew from client account monies other than in accordance with the provisions of Rules 7 and 8 of the said Rules;

- (b) Misappropriated clients' funds and utilised the same for his own benefit;
- (c) Contrary to the provisions of Practice Rule 1 of the Solicitors Practice Rules 1990, failed to act in the best interest of his clients;
- (d) Acted in circumstances where a conflict of interest had arisen between the interests of a private client and a building society client in respect of the same instructions. The Respondent was in breach of the provisions of Practice Rule 6 of the Solicitors Practice Rules 1990 in improperly acting for both sides in a conveyancing transaction;
- (e) Not proceeded with;
- (f) Not proceeded with;
- (g) Not proceeded with;
- (h) Contrary to the fiduciary relationship extant between a client and solicitor, took advantage of a client and/or the client's representatives in relation to the submission of fees;
- (i) Not proceeded with;
- (j) Not proceeded with;
- (k) By virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Gerald Malcolm Lynch appeared as the Applicant and Darryl Allen of Counsel instructed by Messrs Miller Gardner appeared for the Respondent.

The evidence before the Tribunal included the Respondent's admissions of the facts and the allegations.

At the conclusion of the hearing the Tribunal ordered that the Respondent William Charles Rosenberg c/o Messrs Miller Gardner, 497 Chester Road, Manchester, M16 9HF solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum agreed between the parties of £10,500.00.

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

1. The Respondent, 53 years of age, was admitted as a solicitor in 1975. At the material times he practised as a sole practitioner under the style of Charles Rosenberg & Co at 56 Bury New Road, Sedgley Park, Prestwich, Manchester. At the time of the hearing the Respondent was employed by Messrs Miller Gardner Solicitors. The Law Society had authorised such employment. The Law Society intervened into the Respondent's practice on the 30th June 1999.

2. On the 30 June 1999 the Monitoring & Investigation Unit (MIU) of The Law Society arranged for one of its officers to carry out an inspection of the Respondent's books of account. The inspection began on the 5th May 1999 and the MIU Officer's report dated 30th June 1999 was before the Tribunal.
3. The report indicated that the Respondent was Receiver in a Court of Protection matter involving Mrs D C. The Respondent did not comply with the terms of the First General Order having transferred £79,412.93 on account of bills and costs which had not been submitted for assessment as required by the Court.
4. A cash shortage on client account of £10,672.57 was identified. The cash shortage arose in the following way and was described in the report as being caused entirely by the Respondent's improper transfers of funds from client to office bank account in respect of the following:-

(i)	PC Deceased	£4,264.65
(ii)	59 matters re:- account M1829	2,567.43
(iii)	32 matters re:- "administration charges"	2,489.24
(iv)	12 matters re:- "management charges"	1,351.25

5. At the time of the inspection the Respondent did not agree the existence of the shortage. It was the MIU Officer's case that there was evidence that bills, in respect of which transfers had been made from client to office account, had not been delivered to the client. The Respondent had, however, admitted allegation (a) at the hearing before the Tribunal.
6. The MIU Officer's report set out details of the transfers made in the matter of PC Deceased and to the other items making up the cash shortage and these were as follows:-

Improper Transfers re:- P C Deceased - £4,264.65

7. The firm acted for the administratrix of the estate of PC deceased, who died intestate on 28th September 1995. The Grant of Letters of Administration was dated 4th March 1996 and certified that the gross value of the estate did not exceed £145,000: the net value did not exceed £100,000. The Respondent told the MIU Officer that initially Mr G, a Fellow of the Institute of Legal Executives, acted for the administratrix and later Mrs R, a trainee legal executive, had taken over.
8. Client bank account was charged with the following five client to office bank account transfers. An examination of the relevant account in the clients' ledger showed that five bills of costs had been posted to the office column, corresponding in amount and date to the transfers.

	<u>Date</u>	<u>Transfer</u>	<u>Bill no.</u>
(i)	27.02.97	£2,350.00	27628
(ii)	12.11.97	650.65	28730
(iii)	26.06.98	700.59	29765

(iv)	21.09.98	293.75	30121
(v)	17.11.98	269.66	30369

9. An examination of the relevant client matter file showed that it did not contain any evidence that the bills had been delivered to the administratrix. The administratrix informed the MIU Officer that the bills had not been delivered to her.

(ii) Improper transfers re: fifty-nine matters re: Account 'M1829' - £2,567.43

10. Client bank account was charged, between 4th February 1997 and 27th January 1998, with seven transfers to office bank account, varying in amount from £47.00 to £552.25 and totalling £2,567.43, which were allocated to an account in the clients' ledger numbered 'M1829' and entitled 'Management of Trust Accounts / Dormant Balances – Annual Fee'.
11. The office column of the relevant account in the clients' ledger showed that seven bills of costs had been posted, corresponding in amount and date to the transfers from client to office bank account. The bills were not addressed to any client but to 'Management of Trust Accounts / Dormant Balances'. The detail section of the bills contained the narrative either 'To our professional charges re: dealing with the above' or 'To our professional charges in connection with administering deposit / trust in our clients' account for a year ensuring that Law Society Rules were complied with and dealing with statements etc. throughout the period'. Two of the seven bills were hand-written and four contained hand-written titles and amounts.
12. The ledger account also showed that between 31st January 1997 and 27th January 1998, fifty-nine client to client transfers, varying in amount from £29.38 to £47.00 and totalling £2,567.43, had been made from unconnected client ledger accounts to account number 'M1829'.
13. The Respondent's explanation was that he was holding clients' money in deposit accounts on a long-term basis and from time to time he drew bills for the management of those accounts. "Round up" bills were done for the cashiers, to "save administration time" because of the volume of individual bills and these "round up" bills were the seven bills referred to.

(iii) Improper transfers re thirty-two matters re 'Administration Charges' - £2,489.24

14. Client bank account was charged, between 4th and 7th January 1999, with thirty-two transfers to office bank account, varying in amount from £52.88 to £493.50 and totalling £2,489.24, which were allocated to thirty-two accounts in the clients' ledger.
15. An examination of the office columns of the relevant accounts in the clients' ledger revealed that in every case a bill of costs had been posted, corresponding in amount and date to the transfers. An examination of the bills showed that they were not addressed to any client and only contained the client's name (except one). The narrative on all thirty-two bills was the same and was 'Re: Administration Charges – To our professional charges in connection with administering deposit / trust in our client account for a year ensuring that Law Society Rules were complied with and dealing with statements etc throughout the period'. All the bills contained a further

charge of £200 plus VAT in respect of an item described as ‘Contribution to Office PI charge’. The Respondent explained that the transfers related to an “annual charge” for “administration of the accounts”. He said that the transfers were made on account of bills of costs and that the relevant bills had been delivered to the clients concerned. He said that the fact that the bills were not addressed was irrelevant because he had sent the bills to the clients with a compliments slip.

16. One client matter file was examined by the MIU Officer. It was in respect of a conveyancing matter which had been completed on 29th October 1997 and funds, being held to order, were placed on deposit on 7th November 1997. There was no evidence on the file of any further work having been done after 27th November 1997 or of delivery of the relevant bill, which was said to support the transfer of £199.75 on 4th January 1999.

(iv) Improper transfer re: twelve matters re ‘Management Charges’ - £1,351.25

17. Client bank account was charged, between 21st and 23rd September 1998, with twelve transfers to office bank account, varying in amount from £58.75 to £293.75 and totalling £1,351.25, which were allocated to twelve accounts in the clients’ ledger.
18. An examination of the office columns of the relevant account in the clients’ ledger showed that twelve bills of costs had been posted, corresponding in amount and date to the transfers. An examination of those bills showed that they were not addressed to any client and only contained the client’s name. The narrative on all twelve bills was the same and was ‘To Management Charges – General review of file – costs and administration to date; Assessed with reference to the Solicitors (Non Contentious Business) Remuneration Order 1994’.

First Conveyancing Transaction

19. On the 17th May 1998 the Solicitors Indemnity Fund (SIF) wrote to the Respondent in relation to a claim by the Bradford & Bingley Building Society arising out of a conveyancing transaction.
20. In August 1991 the Respondent was instructed to act on behalf of Mr Hn in the purchase of a property. Bradford & Bingley Building Society instructed the Respondent to act on its behalf in relation to a mortgage advance to be secured by the same property. The purchase price was to be £109,950.00. In December 1991 the Respondent wrote to Mr Hn stating “We believe that you have paid a deposit cheque of £22,950 direct to the Vendor. In order to confirm that there has been no mortgage fraud can you please provide a copy of the cheque paid over to the Vendor and the Vendor’s receipt when replying”. An unqualified report on title was submitted by the Respondent to Bradford & Bingley requesting moneys in time for intended completion on the 2nd September.
21. The Respondent did not ask the vendor’s solicitors to confirm that the deposit had been paid direct.
22. The only moneys received by the Respondent were the advance moneys from Bradford & Bingley. Taking into account the direct deposit of £22,950 already paid,

there was paid on completion the sum of £87,000 to the vendor's solicitors. The balance of the advance moneys was used to discharge costs and disbursements.

23. Mr Hn was then an existing client of the Respondent and the Respondent was already acting for him in relation to purchases and sales of other properties. Mr Hn was a property developer. The Respondent acted for Mr Hn in relation to his purchases on the basis that he was buying as a private individual. The Respondent corresponded with Mr Hn at an address other than that given by Mr Hn to the Building Society as his correspondence address.
24. The Respondent was aware of The Law Society's "Green Card Warning on Mortgage Fraud".

Second Conveyancing Transaction

25. SIF wrote to the Respondent in relation to his acting for Bradford & Bingley Society in a different conveyancing transaction. The Respondent acted for the Society and for Miss H in the purchase of a property for £70,000. A mortgage advance of £66,490 had been agreed. The matter had been completed on 13th August 1991. The Respondent had written to Miss H requesting money in respect of the deposit. He enclosed a promissory note for the balance of the purchase price. There was no evidence that the balance of the purchase price (over and above the promissory note) was ever paid by Miss H.
26. Miss H was the step sister of Mr Hn who had taken an active role in the purchase. Miss H did not live at the address she had given to Bradford & Bingley Building Society.
27. The Respondent acted for Miss H, the borrower and purchaser, and also for the vendor, Mr P, in breach of Rule 6 of the Solicitors Practice Rules 1990.
28. The question arose as to whether the Respondent was entitled to be indemnified under the Solicitors Indemnity Rules 1994 in respect of the claims brought by Bradford & Bingley Building Society.
29. The matter was referred to arbitration by Lesley Anne Webber appointed by the President of The Law Society and whose decision dated the 6th July 1998 was before the Tribunal. Indemnity was declined by SIF.

Third Conveyancing Transaction

30. In June 1991 the Respondent was instructed by Mr Hn in relation to his proposed purchase of the long leases of four houses at Wilmslow known as Units 3, 4, 5, and 6. The total purchase price was £400,000. The purchase price allocated to Unit 3 was £100,000. On the 29th August 1991 Mrs Hm instructed the Respondent to act on her behalf in the purchase of Unit 3 for £135,000. The Respondent acted at the same time for Bradford & Bingley Building Society in relation to a mortgage advance of £128,240.00. The Building Society obtained its own valuation before making the advance.

31. The purchaser agreed to pay the balance of the purchase price (over and above the mortgage advance) by promissory note. The Respondent drew the promissory note for a sum of £7,974.60 in favour of Mr Hn and it was signed by Mrs Hm. It was dated the 4th September 1991. £7,974.60 was specified as the deposit in the contract for the sale of Unit 3. Completion of the lease of Unit 3 to Mrs Hm took place on the 12th September 1991.
32. Legal proceedings were issued by Bradford & Bingley Building Society against the Respondent on the 10th June 1995 following upon the fact that Unit 3 had to be repossessed and was sold in September 1993 for £80,000. The proceedings against the Respondent were in respect of the Building Society's loss quantified at £72,000 plus interest and costs.
33. The matter was referred to SIF. Expert valuation advice was obtained and revealed that the true value of Unit 3 in August 1991 would have been £95,000 and not the purchase price of £135,000.
34. Consideration was given by SIF as to whether indemnity should be afforded to the Respondent in respect of this transaction.
35. In January 1997 the Respondent was notified that the claim had been repudiated.
36. The matter was also referred for formal arbitration by Miss Webber. Miss Webber's finding and award dated the 6th July 1998 was before the Tribunal. Indemnity was declined.

Fourth Conveyancing Transaction

37. On the 20th April 1999 SIF wrote to the Respondent in relation to a further Mr Hn matter involving a property at Withington. Bradford & Bingley Building Society provided a mortgage advance of £104,445.00 against a purchase price of £109,950.00. Indemnity was denied by SIF.

The Fifth Conveyancing Transaction

38. On the 25th June 1999 SIF wrote to the Respondent in relation to his representation of Cheshire Building Society in the purchase by Hy of a property at Wilmslow. The transaction completed on the 10th March 1992. The vendor was Mr Hn. The original purchase price was £100,000, the resale price was £135,000. The Respondent had acted for all parties in relation to the transaction.

The Sixth Conveyancing Transaction

39. On the 22nd March 2000 SIF wrote to the Respondent in relation to his acting for Britannia Building Society which had advanced £76,000 to assist Mr C to purchase a long lease of a property at Wilmslow for £80,000. The Respondent had acted on behalf of the vendor in respect of his purchase of the property for £66,000. The letter set out in chronological order the way in which the matter had proceeded and which in the submission of SIF amounted to a fraudulent application. Indemnity was denied by SIF.

Taking advantage of a client contrary to the fiduciary relationship between solicitor and client

40. The MIU report dated 30th June 1999 further reported that the Respondent was Receiver in the Court Protection matter involving Mrs DC.
41. In that matter the Respondent failed to comply with the terms of the First General Order, having transferred from client to office account £79,412.93 on account of bills and costs which had not been submitted for assessment as required by the Court.
42. At the request of the Applicant, the files of Mrs DC (Court of Protection) were referred to an expert costs draftsman and adviser, Kathleen Anderson, whose report dated 19th April 2000 was before the Tribunal. In the expert's opinion, a proper charge would have been £15,713.00. The total of the bills was over £79,000. The Respondent had transferred the sum to office account without the authority of the Court of Protection.

The Submissions of the Applicant

43. The matter had taken some time to reach the substantive hearing before the Tribunal. The matters had been subject to an investigation by the Police but no criminal prosecution had been brought.
44. The solicitor instructed by the Respondent had sought to bring concerns that the Respondent had been denied the rights given to him by Article 6 of the European Convention for Human Rights and Fundamental Freedoms of 1950. The Respondent had faced delays when resolutions by the OSS had not been followed up – this had happened at a time when the OSS was suffering from a substantial backlog of work.
45. The Tribunal had consented to the Applicant not proceeding with certain of the allegations.
46. With regard to the allegations which remained, both the facts and the documents were agreed by the Respondent. In the main, the allegations were admitted save that the Respondent did not admit allegation (b) (that he misappropriated clients' funds and utilised the same for his own benefit) and he did not admit allegation (h) (that he acted contrary to the fiduciary relationship extant between a client and solicitor and took advantage of a client and/or the client's representatives in relation to the submission of fees) (this allegation related to the Court of Protection matter of Mrs DC).
47. The Respondent considered himself to be an expert in the field of conveyancing. There were a number of conveyancing transactions where a lending institution had made a claim against the Respondent who sought the indemnity of the SIF. That indemnity was declined by the SIF on the grounds that the Respondent had behaved dishonestly.
48. Fair warnings had been given to the solicitors' profession and there was an obligation on the members of that profession to be aware of the badges or hallmarks of mortgage

fraud and to be vigilant at all times to ensure that lending institutional clients were not defrauded.

49. In the first conveyancing transaction the deposit was purported to have been paid without reference to the Respondent. There were discrepancies in the date of the cheque and the receipt provided. The manuscript "proof" of the payment of a direct deposit was considered by the SIF to be inadequate. In submitting an unqualified report on title to Bradford & Bingley Building Society, the Respondent concealed from his client society that there had been the suspicious direct deposit and he failed to advise the Society that the Respondent was corresponding with his client at a different address from that which the Society had been given by the client, Mr Hn.
50. In the second conveyancing transaction the Respondent had acted not only for Miss H, the borrower and purchaser, as well as Bradford & Bingley Building Society, the lender, but also for the vendor, Mr P, in breach of Rule 6 of the Solicitors Practice Rules 1990.
51. In the third conveyancing transaction it was the view of the arbitrator that the sale and purchase of Unit 3 pointed to a mortgage fraud in which Mr Hn was put, at its lowest, as a participant. There were a number of elements indicative of mortgage fraud; in particular there was a simultaneous purchase and sale of the same property with a substantial profit on the resale. There was evidence that the valuation was substantially too high. A part of the purchase price which exceeded the building society loan was deferred and covered by a promissory note so that no money actually passed from Miss Hm to Mr Hn who was paying her legal costs. There had been a strong suggestion that Miss Hm had no genuine intention to live in Unit 3. In fact she did not do so. The report on title presented an opportunity for the Respondent to reconsider the circumstances of the transaction and to make a full report to the building society on any elements he considered to be unusual or suspicious. He did not do so. The arbitrator formed the view that the Respondent had been guilty of a dishonest or fraudulent act or omission such as to enable the SIF to decline indemnity.
52. In relation to the second conveyancing transaction, there were no pre-contract enquiries, no requisitions on title and no evidence of exchange of contracts. The transaction moved straight to completion on 13th August 1991. A promissory note was sent to Miss Hz. The contract on the file (there was no evidence of exchange) recorded no deposit. There was no evidence that the balance of the purchase price was ever paid by Miss Hz. Expert evidence was obtained and it appeared that the manuscript received purportedly signed by the vendor, Mr P, bore a signature which was different from the signature on the contract also purportedly to have been that of Mr P.
53. With regard to all of the conveyancing transactions involving Mr Hn, Miss H and Mr P, it appeared that the name Hn on various documents showed two distinct ranges of variation which was sufficiently marked to suggest that the signatures were written by two different individuals. Similarly there was a likelihood that two different persons had been involved in signing Mr P's signatures.
54. In the fifth conveyancing transaction the badges of mortgage fraud were present. There was an increase of £35,000 on the sale, although all transactions completed

were simultaneous. The Respondent failed to advise Cheshire Building Society, who were his clients, of a number of factors which might have been material to their decision to lend, in particular the fact that he was acting for all parties, that the purchase by the vendor and the sale by the vendor to the Building Society's borrower would take place on the day of completion, that the vendor, Mr Hn, had granted the purchaser an allowance in respect of legal fees and that £21,000 of the purchase money would not be passing through the Respondent's bank account.

55. In the sixth conveyancing transaction the Respondent had not notified his lending client, Britannia Building Society, that he had recently acted for the vendor in the vendor's own purchase of the property at a substantially lower price. Clearly this affected the valuation of the property and was a factor which should have been notified to the lending client.
56. The solicitors' profession had been given clear warnings about the hallmarks or signs of mortgage fraud and solicitors had an obligation to be aware and be vigilant. The conveyancing transactions had taken place at a time when the profession in general had been made fully aware of the possibility of mortgage fraud.
57. In the Court of Protection matter of Mrs DC, the Applicant made it plain that he did not make an allegation that the Respondent had been guilty of overcharging. The First General Order of the Court of Protection required the Respondent's bill to be assessed by the Court and approved. The Respondent was not entitled to payment of his bill until that procedure had been completed.
58. With regard to the sums of money transferred by the Respondent from client account to office account where bills had not been delivered to clients and where bills which had been drawn had no detailed narrative as to the work undertaken and in respect of which charges were being made, this activity of transferring amounts from client office account was a blatantly wrong practice which was in breach of the Solicitors Accounts Rules. Indeed the Respondent could be said to have adopted a total disregard for the Solicitors Accounts Rules. There could be no doubt that the Respondent benefited from these improper transfers. There were a number of occasions when such transfers had been made – it was not a question of one isolated matter.
59. In the submission of the Applicant, the allegations made against the Respondent were established and represented a serious case of professional misconduct. The weight of the evidence and the number of the transactions involved where there was a breach of the Solicitors Accounts Rules could only lead to the inevitable conclusion that the Respondent did not intend to observe the Rules in a large number of transactions.

The Submissions of the Respondent

60. The Respondent was admitted as a solicitor in December 1975. He set up in practice as Charles Rosenberg & Co in July 1978. The Respondent's practice undertook primarily conveyancing, inheritance and property transactions.
61. The Respondent, save for a few instances, admitted the facts. He took issue with the inferences and conclusions the Applicant sought to draw.

62. Prior to the hearing, the Respondent had already confirmed to the Applicant that he admitted a number of the allegations. His admissions were in relation to allegations (a), (b) and (c) and were made:-
- (a) insofar as it related to the Mrs DC complaint and the client account cash shortage complaint;
 - (b) insofar as it related to the Mr Hn conveyancing complaints;
 - (c) insofar as it related to the Mr Hn conveyancing complaints;
63. The Respondent had agreed to pay the Applicant's costs.
64. The Applicant pursued two allegations, (b) and (h), which the Respondent denied.
65. The Respondent had co-operated with the OSS and the Tribunal. The Respondent recognised that his livelihood and ability to practise in his profession were at stake. The allegations were serious with potentially serious consequences for the Respondent. The Respondent's reputation, both professional and personal, was at stake.
66. There had been, and remained, a huge personal and professional burden on the Respondent. His family, his wife in particular, had also been affected by the extended period over which the Respondent has been the subject of the allegations.

The Admitted Allegations

67. The Respondent admitted that in breach of the Solicitors Accounts Rules 1991 he had drawn moneys other than in accordance with the provisions of Rule 7 and 8 in respect of his entitlement to fees as the Receiver for Mrs DC.
68. The terms of the Order appointing the Respondent as Receiver were clear:-
- “The Receiver is authorised subject to taxation to be paid solicitor's costs in respect of the work done by him as a Receiver”.
- The Respondent did not have his costs taxed (or subjected to detailed assessment as it is now known) before transferring money from Mrs DC's client account to his own office account. The transfers were therefore not authorised.
69. Insofar as the Respondent entered bills against client account, it was admitted that he did so without delivering bills to the relevant clients prior to transferring client moneys from client to office account.
70. It was also admitted that contrary to the provisions of Practice Rule 1 of the Solicitors Practice Rules 1990 the Respondent failed to act in the best interests of his clients, namely building society clients, when acting for buyer, vendor and lender on various property transactions.

71. It was admitted that the Respondent failed to bring to the attention of his building society clients features of the transactions which may have indicated mortgage fraud.
72. The Respondent's conduct in each of the conveyancing transactions was not dishonest, but amounted simply to a failure to comply with the Practice Rules. The Tribunal should ignore any conclusion reached by the SIF on this issue.
73. The Respondent admitted that he improperly continued to act where a conflict of interest had arisen between a building society client and a private client in respect of the same instructions in breach of Practice Rule 6 of the Solicitor Practice Rules 1990. The conflict of interest arose when the Respondent became aware of features of the relevant transactions which may have indicated mortgage fraud. The Respondent was not acting dishonestly but simply had been in breach of Practice Rule 6.

The Disputed Allegations

74. The Respondent denied that he misappropriated client funds (Mrs DC, Mr H, and client account cash shortage) or that he used the same for his own benefit. He further denied that he took advantage of any client's representative in relation to the submission of fees (Mrs DC).
75. In relation to the Mrs DC matter, allegations (b) and (h) stood or fell together: if the Applicant was unable to establish that the Respondent was acting dishonestly in the transfer of funds from the Mrs DC client account to office account, it had to follow that the Respondent was acting honestly, albeit mistakenly, and therefore could not be said to be 'taking advantage' of Mrs DC.
76. It was conceded, given the terms of the Receivership Order of 16th March 1998, that the Respondent was not authorised to transfer moneys from the Mrs DC client account to the Respondent's office account. However, when he gave instruction for those transfers, he did so with an honest, albeit, mistaken, belief that he was authorised to make such transfers. There was no misappropriation. The funds were not transferred for his own benefit. It was accepted that the funds were transferred to the Respondent's firm, but the moneys were not utilised for personal expenditure by the Respondent. The Applicant was required to prove these allegations to the highest standard.
77. The Tribunal was invited to take into account the following:-
 - a. The Respondent failed to appreciate the significance of his role as a Court of Protection Receiver, or the existence and significance of the procedural safeguards incorporated within the Order appointing him as Receiver. His failure to pay sufficient attention to the obligations imposed upon him meant he was incompetent. He did not act dishonestly.
 - b. Subject to taxation, the Respondent was prima facie entitled to payment for work done by him qua Receiver. It was submitted that the Respondent's innocent error lay in the timing of the transfer rather than the transfer of funds per se.

- c. It was known by, or must have been obvious to, the Respondent that at some stage he would be called upon to account to the Court of Protection for the funds managed by him, transferred to his office account and spent on the care and maintenance of Mrs DC. The Respondent made no attempt to conceal the transfer of funds. Indeed the complete opposite was true: he entered bills against the Mrs DC file and recorded the transfer of funds to his own firm. If he had been misappropriating funds for his own benefit, the most obvious mechanism would be payments to fictitious third parties. The clearly recorded transfers out of the Mrs DC client account to the Respondent's office account are wholly inconsistent with dishonesty, misappropriation or personal benefit.
78. The Respondent had instructed a costs draftsman to prepare a bill in the matter of Mrs DC. Annual administration charges had not been included (in the period July 1997 to December 1998).
79. Administration charges were not routinely included in a solicitor receiver's general bill of costs. They were assessed separately.
80. The total billed and transferred by the Respondent over the period 16th March 1998 to 16th July 1999 (excluding the 1997 and 1998 administration charges of £16,097.50) was £53,287.04, (or £45,350.67 plus VAT). In respect of those charges, working from limited information/material available to him, the costs craftsman calculated a bill for £29,960 plus VAT.
81. On assessment the Respondent was allowed £25,000 plus VAT. That represented approximately 55% of the amount originally billed by him. That reduction did not give rise to a presumption or inference of improper overcharging. It corresponded with the average assessment figures for the SCCO, as reported by The Law Society Gazette in August 2001. The SCCO had reduced the Respondent's submitted bill by 16½%. Had the Respondent and the costs draftsman had access to the complete file, the Respondent would, or at least could, have recovered more than £25,000 plus VAT.
82. The Respondent was a conveyancing and property solicitor. He accepted the appointment as Receiver having acted as solicitor in the administration of the estate of Mrs DC's late husband. Mrs DC had proved difficult and demanding, as was evidenced by a letter from the local Social Services Department.
83. On or about 8th October 1999, the Respondent deposited with the Public Trust Office the sum of £70,000 in respect of fees drawn by him on the Mrs DC client account. The pre-March 1998 charges and the 1997/98 administration charges had yet to be assessed.
84. The reality was that the Respondent had ensured that over the previous three and a half years that Mrs DC had been fully protected in respect of sums transferred out of her account by the Respondent. Following the assessment of the March 1998 to July 1999 bill, it would appear that moneys were due to the Respondent from Mrs DC's account via the Public Trust Office.

85. It was submitted that the payment by the Respondent to the Public Trust Office represented not only a genuine attempt by him to make amends for his errors in administering the affairs of Mrs DC, but also pointed firmly away from any inference of misappropriation for personal benefit. If the Respondent were not in a position to repay £70,000 to the Public Trust Office (within 3½ months of The Law Society's intervention into his practice) and if he were in severe financial difficulties when the transfers were made then a degree of force might be seen in the Applicant's allegation of misappropriation. However, the Respondent was able to repay the moneys, he did so quickly and he was not in financial difficulty. There was no reason for the Respondent to risk his career, and probably criminal charges, in those circumstances. Further, Mrs DC's account was always likely to be assessed by the Court of Protection. If the Respondent needed to misappropriate funds from a client account, it was most unlikely that he would have selected Mrs DC's account to do so.
86. It was the Applicant's case that as at 16th April 1999 there was a shortfall in the Respondent's cash available to clients of some £10,672.57. It was further alleged that the Respondent misappropriated those moneys by transferring sums from various client accounts to his office account without presenting bills to the clients. The Respondent had not had access to his files in order to ascertain whether bills had been sent. He believed that they had but was prepared to accept the account given in the MIU Officer's report. It was on that basis that he admitted allegation (a) in respect of those additional transfers. He denied misappropriation or personal benefit.
87. The cash 'shortage' described in the MIU Officer's report arose only if the Respondent was not entitled to make the transfers. This was not a case where there was a substantial shortfall in cash available to client account which the Respondent had to conceal with bogus bills.
88. Under cover of a letter dated 5th October 1999, the Respondent deposited with The Law Society a cheque in the sum of £10,672.57. This was hardly the act of a solicitor who less than two years earlier had been misappropriating funds for his own benefit.
89. The sums involved themselves did not suggest misappropriation for personal benefit.
90. There was no evidence that the Respondent had benefited personally.

Mitigation

91. The Tribunal was invited to give the Respondent credit for the admissions he had made.
92. The Respondent invited the Tribunal to accept that his misconduct, which he freely admitted, arose out of incompetence, rather than dishonesty. It was of note that there was no evidence that any of the steps taken by him had resulted in personal profit or benefit. By way of example, in the conveyancing transactions which bear, it was said, the hallmarks of mortgage fraud, there was no suggestion that the Respondent was party to those transactions or that he received any form of payment or bonus other than his ordinary conveyancing charges. On at least one occasion he positively questioned a client as to the possibility of mortgage fraud but failed to fulfil his

obligations to bring this to the attention of the lender: a reflection of inadequate performance rather than dishonesty.

93. The allegations which the Respondent admitted and those which he disputed had been hanging over him for the last 3½ years.
94. In accordance with Attorney General's Reference (No.2 of 2001) [2001] WLR 1869 CA, the Respondent invited the Tribunal when considering penalty to take into account the delay in bringing all of the allegations made before the Tribunal.
95. The Tribunal was also invited to take into account the Respondent's conduct subsequent to the matters alleged. Within less than four months of the 1999 intervention, voluntarily the Respondent had deposited £70,000 with the Public Trust Office and £10,672.57 with The Law Society to cover the alleged discrepancies in his client account and the Mrs DC bills. Every client had been protected in respect of every transfer which attracted the attention of the Applicant.
96. Mrs DC had not lost any moneys at all as a result of the Respondent's conduct. At the time of the hearing payment was due from the Public Trust Office to the Respondent.
97. Insofar as funds were transferred out of client account other than in accordance with the Solicitors Accounts Rules 1991, then any client so affected would have received or would be entitled to receive a full refund from the Respondent's £10,672.57 deposited with The Law Society.
98. Every building society client which has presented a claim against the Respondent in respect of conveyancing matters (where the Respondent was not indemnified by SIF) has compromised its claim with the Respondent. Save for one claim, where the building society has accepted stage payments from the Respondent, every claim has been compromised by a substantial personal payment by the Respondent.
99. It was understood that there had been no claims on the Compensation Fund arising out of the Respondent's conduct.
100. The Respondent had been permitted to practise, subject to conditions and supervision, since about six weeks after the intervention. He had done so without complaint and with a substantial number of former clients returning to him for conveyancing services. The Respondent's practising certificate had been renewed, subject to conditions, every year and for the past three and a half years.
101. It was accepted that the Tribunal would seek to protect the public and to ensure public confidence in the integrity of practising solicitors. It was submitted that the Respondent's conduct over the previous three and a half years showed that it was not necessary to 'strike off' the Respondent in order to achieve either of those goals. The Respondent had learned from his mistakes and the Tribunal could be confident that he would not transgress any of the Practice or Accounts Rules again.
102. The Respondent was a father of three. He was married and his wife's health had suffered as a result of the strain of the allegations placed upon her and the Respondent. The Respondent's wife was a part-time teacher. The Respondent's

youngest daughter was in her second of three years at university. Her education was funded by the Respondent. He was the main breadwinner.

103. The Respondent had only ever worked as a solicitor. His family would suffer severe financial hardship if the Respondent were unable to practise as a solicitor.
104. The Tribunal was invited to give due weight to the testimonials offered in his support which spoke of his competence and integrity.

The Decision of the Tribunal

105. The Tribunal found all of the allegations to have been substantiated. Allegations (a), (c), (d) and (k) were admitted. The Tribunal found allegation (b) to have been substantiated. The Respondent had taken money for costs in the Court of Protection matter of Mrs DC contrary to the First Order of the Court that such costs were to be taxed (or subjected to a detailed assessment) and could not, therefore, properly be taken by the Respondent without the authority of the Court. This did amount to a misappropriation of clients' money.
106. The Tribunal rejects the submission of the Respondent that he had not utilised that money for his own benefit. The Respondent was a sole practitioner. He and his firm could not be distinguished from each other. A payment to the firm was a payment to the Respondent. The monies would have been utilised in the same way as any other profit costs paid to the firm. The Respondent sought to make a distinction between payment of monies to the firm and payment of monies to the Respondent as an individual for purposes of personal high living. Whereas the Tribunal accepts to a degree that the taking of clients' monies to finance high living on the part of the Respondent would be at the highest end of a scale of impropriety, the taking of monies into office account was nevertheless a seriously improper utilisation for his own benefit by the Respondent of client funds. The Respondent was able to draw on those funds forthwith.
107. The Respondent himself accepted that the Tribunal's findings on allegation (h) would stand or fall with its finding on allegation (b). The Respondent did take advantage of his client and acted contrary to the fiduciary relationship existing between his client and himself as a solicitor. The Tribunal noted in particular that Mrs DC was a patient in respect of whom the Respondent had been appointed Receiver by the Court of Protection. His client was without capacity and the whole relationship between the Respondent and his client was governed by an Order of the Court. The Respondent had acted in a way which was contrary to the terms of his appointment as Receiver and had done so in a case where the client had been particularly vulnerable.
108. The Tribunal has taken into account the fact that the Respondent has lodged large sums of money with the Court of Protection and with The Law Society but these were funds which had been improperly appropriated by him. The Tribunal has also taken into account the fact that the Respondent has been working entirely satisfactorily for his current employers, a firm of solicitors, for the past three and a half years.

109. The Tribunal has noted that the Respondent has taken a large number of relatively small amounts of money from client account as costs in circumstances which the Tribunal finds unacceptable. A solicitor must be aware that client monies held by him are sacrosanct. He can transfer such monies to his office account to pay bills of costs only in the stringent circumstances laid down by the Solicitors Accounts Rules. Any failure to comply punctiliously with the Solicitors Accounts Rules is a serious matter.
110. The Respondent professes to be an expert in conveyancing and property transactions. The conveyancing transactions which had been drawn to the attention of the Tribunal (and in respect of which SIF had declined indemnity) had taken place at a time when the potential for mortgage fraud was well known to the solicitors' profession and The Law Society had issued warnings to the profession some time previously. The Respondent on one occasion had raised with his client the question of mortgage fraud but had taken the matter no further. On other occasions he appeared to have turned a "Nelsonian blind eye" to what was going on. The Tribunal accepted that the Respondent was not necessarily complicit in any fraud nor did he derive a personal benefit over and above the receipt of his standard conveyancing charges, nevertheless the Respondent was aware of but yet ignored his duty to his lending institutional clients and took no proper step to ensure that the private clients for whom he acted were not acting fraudulently.
111. The Respondent was an experienced solicitor who had acted in the absence of the probity, integrity and trustworthiness required of a member of the solicitors' profession and, indeed, he had failed to exercise a proper stewardship over clients' funds.
112. The Tribunal was told that the Respondent was not impecunious and had lodged large sums of money both with the Court of Protection and with The Law Society to ensure that no client would suffer loss and there would be no claim upon The Law Society's Compensation Fund. Be that as it may, and there was no doubt that the Tribunal would regard losses sustained by clients with the utmost gravity, it could not be said that the Respondent's behaviour was less serious because he was in a position to make payment to ensure that there would be no ultimate loss.
113. The Tribunal did take into account the delay in bringing this matter before it and regretted that this had happened. Even taking the delay into account, it was the Tribunal's view that the Respondent had so seriously breached the Solicitors Accounts Rules and the other Rules relating to professional conduct that he had been guilty of conduct unbecoming a solicitor at the serious end of the scale. The Tribunal gave weight to the significant testimonials submitted but, nevertheless, concluded that it would be right in the interests of protecting the public and in the interests of protecting the good name of the solicitors' profession if the Respondent were to be struck off the Roll of Solicitors. The Tribunal further ordered that the Respondent should pay the costs of and incidental to the application and enquiry in the fixed sum agreed between the parties.
114. The Tribunal noted that the Respondent had worked satisfactorily well and without complaint as an employed solicitor for the previous three and a half years and noted the Respondent's assurance that he would continue to give such service if The Law

Society would authorise his employers to continue to employ him, but that was, as the Respondent rightly suggested, a matter for The Law Society.

DATED this 26th day of March 2003
on behalf of the Tribunal

A G Gibson
Chairman