

IN THE MATTER OF PHILIP WILLIAM HOLLIDAY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr R.J.C Potter (in the chair)  
Mrs H. Baucher  
Lady Maxwell-Hyslop

Date of Hearing: 17 February 2003

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## FINDINGS

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Christopher Bonney-James, a solicitor employed at the OSS of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on the 10<sup>th</sup> November 2000 that Philip William Holliday of Swanley, Kent, might be required to answer the allegations contained in the statement which accompanied the application and that such orders be made as the Tribunal should think right.

On the 30<sup>th</sup> July 2001 the Applicant made a supplementary statement containing further allegations.

After the service of the supplementary statement but before the hearing the conduct of the matter as Applicant was assumed by Geoffrey Williams, Solicitor of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF10 2DW.

On the 12<sup>th</sup> June 2002, Mr Williams filed a document "Proposed Amended Allegations arising from the Rule a 14a Statement" (the supplementary statement). In that document the Applicant sought permission to substitute for the allegations set out in paragraph 3 of the

Rule 14a statement new allegations. The Respondent did not object. The Tribunal consented thereto.

The allegations set out below are those contained in the original and supplementary statements as amended in accordance with Mr Williams' application dated 12<sup>th</sup> June 2002.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following aspects:-

- (i) He has failed to comply with a professional regulation case-work committee decision of the 4<sup>th</sup> March 1999;
- (ii) He has failed substantively to reply to OSS correspondence;
- (iii) He has failed to pay outstanding counsel's fees;
- (iv) He has drawn moneys out of a client account contrary to Rule 22 of the Solicitors Accounts Rules 1998;
- (v) He has drawn moneys out of a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991, contrary to Rule 8 of the said Rules;
- (vi) He has used clients' funds for his own purposes.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Geoffrey Williams appeared as the Applicant and the Respondent was represented by Gerald Malcolm Lynch, solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, SE2 6HZ.

The evidence before the Tribunal included the admissions of the Respondent saying that he denied dishonesty on his part. The Respondent gave oral evidence.

At the conclusion of the hearing the Tribunal ordered that the Respondent Philip William Holliday of Bickley, Kent (formerly of Swanley, Kent) solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £9,000.

The facts are set out in paragraph 1 - 38 hereunder: -

1. The Respondent, born in 1946, was admitted as a solicitor in 1980. At the material times the Respondent practised as a solicitor on his own account under the style of Philip Holliday at 46 High Street, Swanley, Kent, BR8 8BQ. The Law Society had indicated its intention to intervene into the Respondent's practice, but he had disposed of his practice on the 29<sup>th</sup> May 2001 to Mr R Khilkoff-Boulding.
2. On the 16<sup>th</sup> April 1997 Clerk to Counsel, Miss Reed, wrote to the OSS complaining about unpaid Counsel's fees due from the Respondent. There had been numerous requests for payment and correspondence with the Bar Council. On the 24<sup>th</sup> April

1997 the OSS acknowledged receipt of the complaint and indicated that due to pressure of caseload it might be some time before the complaint was dealt with.

3. On the 15<sup>th</sup> May 1997 a caseworker from the OSS contacted the Respondent who assured the caseworker that he would sort the matter out with Counsel as soon as possible. The caseworker informed the Respondent that if he did not deal with it the matter would be referred to Committee.
4. On the 25<sup>th</sup> September and 1<sup>st</sup> July the caseworker again contacted the Respondent. In July the Respondent was on holiday.
5. On the 10<sup>th</sup> July 1998 the OSS wrote to the Respondent. £400.01 Counsel's fees remained outstanding. The OSS requested confirmation within 14 days that the fees had been paid. If the Respondent failed to do so then the matter would be referred to the Compliance & Supervision Committee.
6. On the 18<sup>th</sup> December 1998 the OSS wrote to the Respondent enclosing a copy of a draft report prepared for the Committee seeking his comments on the contents.
7. The matter was referred to the Committee on the 4<sup>th</sup> March 1999. The Committee resolved that the Respondent should pay the £400.01 due to Counsel within 14 days and if the Respondent complied to impose an internal sanction. The Respondent was notified of the decision on the 22<sup>nd</sup> March 1999. If the Respondent failed to comply, the matter was to go back to Committee for further consideration.
8. On the 11<sup>th</sup> June 1999 the OSS wrote to the Respondent, referring to the Committee's decision, seeking his explanation with warning. Further correspondence took place. On the 15<sup>th</sup> March 2000 Clerk to Counsel confirmed that the sum remained outstanding.
9. The OSS wrote to the Respondent on the 11<sup>th</sup> May 2000 enclosing a copy of a further report and seeking his comments.
10. On the 11<sup>th</sup> August 2000 the Respondent was notified that the Committee had on the 12<sup>th</sup> July 2000 resolved, inter alia, to refer his conduct to the Tribunal.
11. The Respondent told the Tribunal that he had paid the full sum outstanding shortly before the hearing.
12. On 19 January 2001, an Investigation and Compliance Officer of the OSS (the ICO) attended at the offices of the Respondent to inspect his books of account.
13. The ICO produced a report dated 13<sup>th</sup> March 2001 which was before the Tribunal.
14. The Report revealed the following matters which caused concern to the ICO.
15. The Respondent's books of account, as at 31<sup>st</sup> December 2002, were not in compliance with the Solicitors Accounts Rules.

16. The cash shortage at 31<sup>st</sup> December, 2000 was calculated in the following way: -

a)	Duplicated Transfers from Client to Office Bank Account	£3,903.08
b)	Overpayments from Client Bank Account	342.79
c)	Overtransfers from Client to Office bank Account	<u>160.20</u>
		<u>£4,406.07</u>

17. The ICO's report set out details of the duplicated transfers (a). On 13<sup>th</sup> November 2000 the Respondent transferred £3,699.33 from client to office bank account in respect of costs relating to six client matters. These costs had already been included in another composite of £5,600.00 made on 1<sup>st</sup> November 2000. A further duplicated transfer of £203.75 was made on 16<sup>th</sup> November 2000 increasing the total duplicated transfers to £3,903.08. The Respondent attributed the duplicated transfers to error. The Respondent said his wife who acted as his cashier had identified the one transfer of client money and had prepared a cheque drawn on office account on 17<sup>th</sup> November 2000 to rectify the duplicated transfer. The cheque had not been paid into client account because it had become attached to some other papers and had only come to light when the Respondent was providing documents to the ICO during the inspection.

18. The Respondent agreed the existence of the cash shortage of £4,406.07 at 31<sup>st</sup> December 2000 and it was replaced by transfers of £502.99 and £3,903.08 from office to client bank account during January and February 2001.

19. Shortages on client account had existed and had been replaced prior to the inspection. The details of those shortages were as follows: -

Amount	Ledger Account Charged	Payee	Date of Transfer or Payment	Date of Replacement
£6,000.00	Re 2171	Office A/C	16/08/99	11/10/99
£9,000.00	Unallocated	Office A/C	02/11/99	14/09/00
£12,000.00	Unallocated	Office A/C	29/02/00	14/09/00

20. It was noted that on 16<sup>th</sup> August 1999 the client bank account was charged with a round sum transfer of £6,000 to office bank account. The transfer per the cash book was allocated to a ledger account 'Re 2171'. The Respondent had been unable to confirm the identity of the client but he provided a written explanation in which he said that the transfer was effected in error.

21. At 16<sup>th</sup> August 1999 the balance on the office bank account was £10,310.58 overdrawn.

22. On 2<sup>nd</sup> November 1999 and 29<sup>th</sup> February 2000 the client bank account was charged with round sum transfers of £9,000 and £12,000 respectively to office bank account. These transfers were not allocated to any individual client ledger account.

23. In a written explanation dated 15<sup>th</sup> February 2001 the Respondent described his procedure for making transfers from client to office bank account. His written explanation was as follows: -

"TRANSFERS FROM CLIENT ACCOUNT TO OFFICE ACCOUNT

All incoming client funds are paid into the client account. As funds arrive, I note them on my spreadsheet if they are available for transfer (that is, if they have been paid against a bill delivered). I also enter onto the transfer list items that are available for transfer following, for example, a conveyancing completion. Periodically, I then make a transfer from client account to office account. A printed list of the amounts making up the total sum transferred goes to the accounts department with a print of the instruction to the bank making the transfer.

The bookkeeper (my wife) has a standing instruction to draw a cheque on office account to rectify any error that may arise in this process. The cheque comes to me for signature (my wife does not have a mandate to sign cheques) and for payment into the client bank account. She writes on the back of the cheque the makeup of the sums covered by the cheque.

This system has worked effectively since I started my own practice in 1997.

At around the end of 1999, my personal domestic circumstances became complicated. My attention to my business was not what it should have been and I did not take sufficient care in administration. I made transfers from client account without carrying out the process I have referred to above. It was my belief that I was transferring money that was due to me and my intention was to provide the details of the sums transferred but, due to my domestic embarrassment, I failed to do this. My wife would write a cheque to put the money bank in the client account but, on receiving it, I would treat it as a reminder that I had to provide a breakdown of the sum which had been transferred to office account. Unfortunately, my circumstances at the time were such that this was a job which was postponed for too long.

I was reconciled with my wife in August 2000. At the time, I no longer had the information available with which to correct the erroneous transfers and, due to the need then to put the client account in order as quickly as possible, I obtained a loan from the bank and I used the money to credit the client account.

Details of the transfers in question are:

02.11.99	£9,000.00
29.02.00	£12,000.00

Both of these transfers were made in anticipation of being able to reconcile them to particular client accounts (although I am not here suggesting that one client owed me £9,000 and another £12,000).

On 20.06.00 I wrote a cheque in favour of solicitors on the client account relating to my client Mr A (file number 218) in the sum of £2,694.20. The cheque was wrongly drawn against the client account and was made good with the credit to client account of £23,794.32 on 14.09.00.

(Signed)  
15 February 2001"

24. The ICO noted that during November 1999 as well as the unallocated transfer of £9,000 the Respondent also made six other separate transfers to office bank account totalling £18,027.21, all of which were supported by printed lists of the individual amounts making up the total sums transferred allocating them to specific clients and made in accordance with the procedure described by the Respondent.
25. The ICO noted that during February 2000 when the Respondent made the unallocated transfer of £12,000 he also made two other separate transfers to office bank account totalling £15,167.17. Both of these transfers were supported by printed lists of the amounts making up the total sums transferred and had been made in accordance with the Respondent's standard procedure. One of these transfers, for £13,153.78, had been made on 28<sup>th</sup> February 2000.
26. There had been transfers in the intervening months which were undertaken in accordance with the standard procedure.
27. When the ICO asked for his comments, the Respondent said: "The point of these two transfers was that I intended to allocate them to specific clients". When asked why he didn't offset the round sums transferred against the next few properly allocated transfers he replied: "I just was not doing things the right way at that time".
28. At 1<sup>st</sup> November 1999 the overdrawn balance on the office bank account was £11,302.29. The Respondent told the ICO, "I wouldn't have transferred money from client to office account if I didn't need the money in office account."
29. The ICO noted that an office account cheque for £13,508.54 dated 18<sup>th</sup> February 2000 payable to Customs and Excise cleared through the office bank account on 2<sup>nd</sup> March 2000.
30. The ICO reported that when asked whether he would have been able to pay Customs and Excise but for the transfer from client to office bank account of £12,000, the Respondent replied, "No I couldn't". In his oral evidence he told the Tribunal that he enjoyed a good relationship with his bank. The bank held security and would have made a loan to discharge the VAT liability if requested to do so.
31. The sum of £21,000 remained a shortfall on client bank account until 14<sup>th</sup> September 2000 when it was rectified by a transfer from office to client bank account. The Respondent had obtained a loan which had been lodged in office bank account.

32. The ICO put it to the Respondent that the fact that he had never allocated the round sum transfers totalling £21,000 to any client ledger accounts indicated that these funds were not available for transfer to the office bank account. The Respondent at the time had accepted that saying, "With hindsight that's obviously the way it appears. I was in a complete muddle at that time". When asked whether the transfers were undertaken to benefit him personally, he replied, "I can't say that they weren't, obviously they went into the office account". He agreed that with hindsight these transfers were improper.
33. In his oral evidence the Respondent said that when he made round sum transfers he was confident that he was entitled to the sums transferred as costs. He accepted that the transfers were improper as bills of costs or written intimations of costs had not been delivered to the clients concerned. On the morning of the hearing the Respondent produced computer printouts of individual client ledger credit balances as at 29<sup>th</sup> October 1999 and 29<sup>th</sup> February 2000. He produced lists of client credit balances where there was work in progress and showing the amount payable to the Respondent if he had delivered a bill for work in progress at that point. These lists demonstrated on their face that at the end of October 1999 the costs due to the Respondent and available for transfer from client account were £10,050.55. The costs similarly available at the end of February 2000 were £12,260.13.
34. Because of the eleventh hour delivery of these lists of figures, the Applicant had not had sufficient time to give them deep consideration.
35. The 29<sup>th</sup> October 1999 list contained details of 84 client credit balances and the 29<sup>th</sup> February 2000 list contained details of 93 client credit balances.
36. By way of example, the Tribunal sets out below a selection of balances, work in progress and sums payable if billed contained in the October 1999 list.

	No.	Client	Client Balance	Work in Progress	Payable if Billed
(a)	2253	A	3000.00	365.05	365.05
(b)	2138	C	0.50	105.00	0.50
(c)	2236	M	5480.00	440.00	440.00
(d)	2271	R	1350.00	10.00	10.00
(e)	1729	S	508.00	500.90	500.90
(f)	1969	W	4.50	6.00	4.50

37. The following clients were included in the 29<sup>th</sup> October 1999 list. The same client matters were included in a transfer list prepared by the Respondent on and dated 11<sup>th</sup> October 1999, and such transfers had been effected on at about that date.

No	Client	Client Balance	Work in Progress	Payable if Billed	Transfer made on 11 <sup>th</sup> October 1999
2326	B	£30.00	£60.00	£30.00	£118.00
2416	H	£200.00	£31.50	£31.50	£145.47
2177	R	£189.99	£139.50	£139.50	£221.07

38. A number of transfers had been made on the 2<sup>nd</sup> and 3<sup>rd</sup> November 1999 where bills had been delivered to clients referred to in the 29<sup>th</sup> October 1999 list prepared by the Respondent. By way of example: -

No	Client	Client Balance	Work in Progress	Payable if Billed	Transfer made on 3/11/99
2357	A	£160.00	£156.00	£156.00	£156.00
1906	K	£114.11	£85.50	£85.50	£100.46
2007	U	£17.54	£41.00	£17.54	£160.00

### **Submissions of the Applicant**

39. Dishonesty was an issue in this matter.
40. The Respondent had not paid Counsel's fees despite being required by his own professional body to do so. It was accepted that he had paid part of Counsel's fees, but when the OSS became involved, the sum of £400.01 remained outstanding. The Respondent had told the Tribunal that he had settled that final amount shortly before the hearing. There had been, however, a failure to pay Counsel's fees within a reasonable period of time.
41. The allegations relating to the Respondent's books of account and handling of clients' money was the more serious aspect for the Tribunal.
42. The Applicant did not allege criminality against the Respondent, but he did invite the Tribunal to find that the Respondent had been guilty of conscious impropriety, bearing in mind the tests set down in the case of *Twinsectra -v- Yardley*. Naturally when the Tribunal was invited to make such a finding, it would expect to apply the highest standard of proof. The Applicant put the matter that the improper transfers, which were in round sums, had been consciously improper action on the part of the Respondent.
43. With regard to the improper transfers which had occurred prior to the inspection by the ICO, it was accepted that the shortages so created had been put right prior to the inspection and without any prompting by the ICO, but the Tribunal would note that at the time when improper round sum transfers had been made, the Respondent had also made perfectly proper transfers and this did not support the Respondent's contention that he had been in something of a personal turmoil and administrative muddle and it was that state of affairs which had led to his making the improper round sum transfers. The Tribunal would also note that he made it clear to the ICO that "I needed money in office account." It was noteworthy that two large round sum transfers had been made towards the end of February 2000, at a time when a cheque had been drawn on office account for a large amount of value added tax. The VAT cheque had been met from office account on 2<sup>nd</sup> March 2000.
44. The Applicant invited the Tribunal to take the view that the transfers had been made to boost office account and in particular to pay the Respondent's VAT liability. It was



the Respondent's position that he had work in progress which he could have billed and although he had not implemented the procedures required by the Solicitors Accounts Rules, he was strictly entitled to the moneys transferred. The Applicant did not agree. The Respondent's lists of properly available moneys were created as an ex post facto attempt to justify his deliberate improper transfers.

45. The Respondent accepted that the impropriety of the transfers would have been revealed upon the production of reconciliation statements. He said that he relied upon his bookkeeper to bring cash shortages to his attention.
46. It was the Applicant's position that the Respondent had deliberately carried out transfers on a speculative basis. He didn't write down the details of those transfers as he had done with others made at about the same time.
47. In the submission of the Applicant such action might well be dishonest, but that depended upon the Tribunal's view of the Respondent's explanation. It did in the submission of the Applicant amount, at least, to conscious wrongdoing.

#### **The submissions of the Respondent**

48. The Respondent admitted his delay in paying Counsel's fees and doing so in accordance with a direction of the OSS. He admitted the alleged breaches of the Solicitors Accounts Rules and had to admit that such breaches led to his utilising clients' money. However, the Respondent strenuously denied misappropriation of clients' money and that he had been dishonest. In making that denial, the Respondent recognised that a serious state of affairs had existed.
49. The reality was that the Applicant had invited the Tribunal to find that the Respondent had made a raid on client account for the express purpose of paying his VAT bill and to bring down the level of his office account overdraft. It was not right that the only explanation was that the Respondent had utilised clients' money in order to keep his firm afloat.
50. The Respondent accepted that a disciplinary sanction had to be imposed upon him, but having heard the Respondent's explanation the Respondent trusted that the Tribunal would feel able to impose a sanction which would not interfere with the Respondent's ability to practise as he was no risk to the public or to the good reputation of the solicitors' profession.
51. It was hoped that the Tribunal would consider that it would be appropriate to impose a financial sanction, bearing in mind that there had been no loss sustained by anyone, in particular clients and members of the public, and there had been no claim upon The Law Society's Compensation Fund.
52. In 1987 the Respondent set up in practice. After a unsuccessful amalgamation with another firm, in 1995 he returned to sole practice with the assistance of a Fellow of the Institute of Legal Executives. The Respondent and his legal executive had worked hard to obtain a Legal Aid Franchise. In the event this was one of the only two firms

in the Sevenoaks District of North West Kent to be awarded Legal Aid contracts. He had achieved a high level of compliance in his Legal Services Commission Region.

53. By the end of the 1990's there were three fee earners, a senior assistant solicitor responsible for conveyancing, the legal executive who managed the matrimonial department and probate work, and the Respondent. There was a support staff of three secretaries and a bookkeeper (the Respondent's wife).
54. After the assistant solicitor left, a suitable replacement could not be found. The Respondent and the legal executive shared the conveyancing work. They were under considerable pressure of work.
55. In 1998 the Respondent was appointed the Chairman of the Swanley Citizens Advice Bureau.
56. At a time when the Respondent and his wife had been married for 30 years, things started to go wrong at home, though no fault of the Respondent's wife. The Respondent fell into an extramarital relationship and inevitably his marriage suffered. He put this down to the increasing pressure of practice.
57. The Respondent's bookkeeping system included computerised time recording. The Respondent's wife managed the accounts department from an office at their home and the Respondent took home daily the invoices, bills and other documentation that she needed. Each week she took home the cheque and bank paying in books and time record discs. Everything was up to date.
58. The client and office bank accounts were reconciled monthly. The Respondent's wife had a standing instruction to write a cheque for his signature to correct any inadvertent incorrect transfers from client to office account. The system was one that had been checked and approved in the course of an OSS monitoring visit in 1995, when a few corrections had been suggested. The required Accountant's Reports had been filed with the Law Society.
59. The round sum transfers had been made during a period when the Respondent had been subjected to considerable pressure of work and was encountering difficulties in his personal life.
60. The Respondent expanded on the explanation of the transfers of £9,000 and £12,000 which he had made.
61. It was the Respondent's procedure to collect together on a list on his computer the amounts transferable following delivery of bills to clients. Entries on this list would be made both by the Respondent in respect of his work and by the legal executive in respect of hers. The Respondent then effected a bulk transfer of those items from client to office account. The Respondent did not transfer money immediately upon being entitled to do so, but effected transfers when it seemed that money was needed in the office account.

62. At the time of the £9,000 and £12,000 transfers, the Respondent had fallen behind with his billing and he had not followed his normal practice of checking to identify matters where a bill was due.
63. One of the facilities the computer accounts system offered was to list credit balances on client account. The Respondent had adopted the habit of using this as a quick system of identifying bills that had been delivered and had available balances on client account to cover them. This list also showed the value of any unbilled work in progress and unrecovered disbursements. The Respondent's strong recollection was that at the time of the transfers, the relevant listings showed that there was unbilled time and/or disbursements that would, if billed, be sufficient to justify the transfer. The sums in question were probably either below the threshold that had been agreed with the client, or simply too small to warrant billing at that time. In the muddle surrounding the Respondent at that time, his logic was that he was entitled to the money if billed and that he would get on and do the bills as soon as possible to ratify the transfers.
64. In the event, the Respondent never did get around to preparing the bills and by the time he was operating on "an even keel" again, the simplest and quickest way of rectifying the situation was to just make a bulk transfer from office account back to client account, which is what he did. The resolution of his matrimonial difficulties coincided with his return to an appropriate approach to his managerial and accounting duties.
65. The Respondent did not keep copies of his computer records when his practice was sold in May 2001. The accounts were transferred to the system used by the new firm. "Lawpak" (the accounts software the Respondent used) was a "DOS" based system of some antiquity. He had a backup copy but could not install it on a computer himself. By the time of the hearing, with assistance, the Respondent had been able to produce schedules and lists, which had been produced to the Tribunal.
66. As soon as the Respondent got "back on even keel" and as soon as he realised that he had not billed in accordance with his earlier intention in relation to the transfers of £9,000 and £12,000, he took immediate steps to ensure that the position was restored by paying an equivalent sum into client account. The Respondent appreciated that this was some months afterwards. The Tribunal was entitled to take into account the problems which arose at the time of the matrimonial problems and severe work pressure. There had been no previous problem of any kind. The Tribunal would appreciate that the payment back was made before the Respondent knew of an impending inspection by the Law Society. He had intended to draw bills, but realised that they were going to be very large in number and he put off doing what he should have tackled immediately.
67. It was suggested in the ICO's report that the Respondent made the transfers to ease pressure on his overdraft. It was true that the Respondent said that any payment in would ease the overdraft, but the Respondent had not been under pressure from his bank to reduce the overdraft. It had not been a panic transfer to meet pressure imposed by the bank. Money was raised at the bank at the time the Respondent made the repayments. The Respondent had been building garages behind his office, which

were in fact built, and much of the advance by the bank was utilised in financing the building work. The loan had not been negotiated simply to make money available to repay the client account shortage.

68. Shortly before the hearing, the relevant computer printouts and lists of client balances had been able to be produced. These were before the Tribunal and demonstrated that the Respondent was entitled to sums of money in the order of the sums transferred. His real error had been that he had not drawn and delivered the relevant bills.
69. At the time of the hearing the Respondent did not hold a practising certificate; he was working as an in-house legal consultant. He hoped to be able to take advantage of the offer of employment as a solicitor with the purchaser of his practice.
70. The Respondent had entered the legal profession at the age of sixteen. He had pursued his education and eventually had qualified as a solicitor. He had enjoyed success as a solicitor and had played his part in the community. The Tribunal was invited to find that the Respondent had been guilty of error, which he had put right, but he had not been dishonest.
71. The Respondent regretted that he had overlooked the payment of Counsel's fees, the sum being small.
72. The Respondent offered his unreserved apologies to the Law Society and the Tribunal for his transgressions. The Respondent hoped that he might be permitted to return to the profession which he valued so highly. He would not be a threat either to that profession or the public. He had something to offer.

### **The Tribunal's Findings**

73. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.
74. The Tribunal found that the Respondent did not pay Counsel's fees which were outstanding although it accepted that he had paid part of those fees. The Respondent did not comply with the decision made by the Professional Regulation Casework Committee on the 4<sup>th</sup> March 1999 and had failed to reply substantively to correspondence addressed to him by the OSS. The Tribunal rejected the Respondent's contention that the sum involved was only small and that the matter had escaped his attention. A solicitor has a clear professional duty to pay the fees of Counsel instructed by him. Not only had the Respondent failed in that clear professional duty, but he had floun in the face of a requirement made by his own professional body and had not dealt fully and properly with correspondence addressed to him by that professional body. Such behaviour demonstrated a flagrant and disregard for the Rules and standards of practice expected of a solicitor and is unacceptable.
75. The Tribunal has been invited to conclude that the Respondent's actions did amount to dishonesty in accordance with the test laid down in *Twinsectra -v- Yardley and Others*, 21 March 2002, [2002] UKHL 12. The Tribunal has considered the question of dishonesty in the light of this test.

76. The Tribunal found that the Respondent was guilty in making the round sum unallocated transfers from client to office account of conscious impropriety, which amounted to dishonesty. The Tribunal considered that any solicitor in private practice would regard such transfers as wrong and the Tribunal was in no doubt that the Respondent himself knew that such transfers were wrong. The Tribunal has reached its conclusion for the following reasons.
77. The lists, the printouts and schedules relating to October 1999 and February 2000 had been produced ex post facto in an attempt to demonstrate that the moneys transferred by the Respondent from client to office account in those months could have been justified.
78. The Tribunal did not accept the Respondent's analysis of the position because with reference to the October schedule, some of the items said to be work in progress and available for transfer could not be so; a bill had already been delivered in that month and therefore there could have been no billable work in progress.
79. The Tribunal did not accept the Respondent's explanation of muddle or confusion caused by his personal circumstances as the reason why he had not allocated the round sum transfers made to individual clients, as at or about the same time the Respondent continued to make perfectly proper transfers in accordance with his established procedure. There was no explanation why he should on the one hand continue to make perfectly proper transfers and on the other hand make substantial improper round sum transfers. The Tribunal found that the improper transfers were made at a time when a credit to office account was necessary in order to meet liabilities of the firm. In particular the Respondent had to meet a large liability for Value Added Tax. The Tribunal concluded the transfers were made knowingly in a cynical attempt to boost office account to ensure that office liabilities could be met. The Tribunal accepted that the Respondent had no intentions permanently to deprive the clients concerned of their money and he might well have intended to regularise the position by drawing and delivering bills and making such adjustments as were necessary. However, an intention permanently to deprive is not a factor in the test in *Twinsectra -v- Yardley*. It is the Tribunal's view that the Respondent did make a dishonest misappropriation and did improperly use clients' funds for his own purposes and that did amount to dishonest behaviour on the part of a solicitor.
80. It was noteworthy that the moneys were returned to the client account with the assistance of a bank loan. The position was not in fact regularised by the late delivery of the bills which the Respondent said he could properly deliver.
81. Not only did the Tribunal establish that in the 29<sup>th</sup> October 1999 list the Respondent has claimed work in progress to be available for billing when complete bills had been delivered for the same month, the Tribunal also wished to question whether the Respondent would, for example, have drawn a bill for 50p or whether he would have billed for amounts of £10, £20 or £30. The administrative work involved in drawing and delivering a bill and dealing with the Value Added Tax would have rendered it unlikely that such bills would or could economically have been drawn. The Tribunal

was of the view that these small amounts were included in the list to bolster the total sum purportedly demonstrated to be properly available to the Respondent.

82. The Tribunal concluded that the Respondent deliberately used clients' money to bolster his office account and therefore used such money improperly and dishonestly for his own purposes. The Tribunal gave the Respondent credit for the fact that he repaid such sums, but nevertheless took the view that the Respondent had not behaved with the probity, integrity and trustworthiness required of a solicitor and he had seriously failed in his duty to exercise a proper stewardship over clients' money.
83. In such circumstances the Tribunal considers that the public needed to be protected from the Respondent as does the good reputation of the solicitors' profession. The Tribunal considered it right that the Respondent be struck off the Roll of Solicitors and that he should pay the Applicant's costs in an agreed fixed sum.

DATED this 11<sup>th</sup> day of April 2003  
on behalf of the Tribunal

R J C Potter  
Chairman