

IN THE MATTER OF PHILIP ALEXANDER HIRST, STEVEN MURDOCH
AND JOHN FITZPATRICK, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr W M Hartley
Ms A Arya

Date of Hearing: 7th and 8th March 2002

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 ("OSS") by George Marriott solicitor and partner in the firm of Gorvin Smith Fort, 6-14 Millgate, Stockport, Cheshire, SK1 2NN that Philip Alexander Hirst of Ilkley, West Yorkshire, (during the course of the hearing it was confirmed that Mr Hirst's address notified to the Tribunal and to the Applicant was Hallfield Road, Bradford) solicitor, Steven Murdoch of Burley in Wharfedale, West Yorkshire, solicitor and John Fitzpatrick of Liversedge, West Yorkshire, solicitor should answer the allegations contained in the statement which accompanied the application and that Tribunal should make such order as it thought right.

On 5th December 2001 Mr Marriott made a supplementary statement containing further allegations against Mr Fitzpatrick.

After discussions between Mr Murdoch's representative and Mr Marriott and after the hearing by the Tribunal of applications for adjournment, which were refused, Mr Marriott sought the consent of the Tribunal to withdraw certain of the allegations. Mr Murdoch agreed. The Tribunal took the view that the withdrawal of certain allegations against Mr Hirst and Mr

Fitzpatrick was of assistance to those gentlemen and did not prejudice them. The Tribunal therefore consented to the withdrawal of certain allegations.

The allegations below are set out in the agreed amended form and include the allegations contained in the original and supplementary statements made by Mr Marriott.

The allegations (which follow the numbering used in the Applicant's statement) were as follows:-

The allegations against the First Respondent Philip Alexander Hirst were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely he:-

- 2.1. failed to keep accounts properly written up for the purpose of Rule 32 of the Solicitors Accounts Rules 1998 ("the Rules");
- 2.2. utilised clients' funds for his own benefit or alternatively for the benefit of other persons not entitled to the funds;
- 2.3. Withdrawn
- 2.4. Withdrawn
- 2.5. improperly and/or dishonestly used clients' funds for his own benefit;
- 2.6. acted in property transactions which had the hallmarks of property fraud and ignored the green warning card;
- 2.7. acted in conveyancing transactions for the seller, buyer and lender contrary to Practice Rule 6 of the Solicitors Practice Rules 1990;
- 2.8. failed to disclose all material facts to a mortgagee/lender in conveyancing transactions;
- 2.9. acted for clients where there was a conflict of interest or alternatively a potential conflict of interest;
- 2.10. acted in transactions for which there was no underlying legal nature and which had the hallmark of money laundering and ignored the blue warning card;
- 2.11. withdrawn
- 2.12. withdrawn
- 2.13. withdrawn

The allegations against the Second Respondent Steven Murdoch were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely he:-

- 3.1. failed to keep accounts properly written up for the purpose of Rule 32 of the Solicitors Accounts Rules 1998 ("the Rules");

- 3.2 utilised clients' funds for his own benefit or alternatively for the benefit of other persons not entitled to the funds;
- 3.3 withdrawn
- 3.4 withdrawn
- 3.5 improperly and/or dishonestly used clients' funds for his own benefit;
- 3.6 acted in property transactions which had the hallmarks of property fraud and ignored the green warning card;
- 3.7 acted in conveyancing transactions for the seller, buyer and lender contrary to Practice Rule 6 of the Solicitors Practice Rules 1990;
- 3.8 failed to disclose all material facts to a mortgagee/lender in conveyancing transactions;
- 3.9 acted for clients where there was a conflict of interest or alternatively a potential conflict of interest;
- 3.10 acted in transactions for which there was no underlying legal nature and which had the hallmarks of money laundering and ignored the blue warning card;
- 3.11 withdrawn
- 3.12 withdrawn
- 3.13 withdrawn

The allegations against the Third Respondent John Fitzpatrick were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely he:-

- 4.1 failed to keep accounts properly written up for the purpose of Rule 32 of the Solicitors Accounts Rules 1998 ("the Rules");
- 4.2 utilised clients' funds for his own benefit or alternatively for the benefit of other persons not entitled to the funds;
- 4.3 drew money out of client account contrary to Rule 23 other than as permitted by Rule 22 of the Rules;
- 4.4 failed to discharge his duties to clients with due diligence and/or in their best interest;
- 4.5 improperly and/or dishonestly used clients' funds for his own benefit;
- 4.6 practised on his own account when not authorised to do so;

- 4.7 withdrawn
- 4.8 held clients' monies in his own business account and operated a client bank account out of his own personal bank account contrary to Rules 14, 15, 16 and 20 of the Rules;
- 4.9 withdrawn
- 4.10 withdrawn
- 4.11 dishonestly misappropriated clients' funds;
- 4.12 failed to account to his client for moneys received.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott solicitor and partner in the firm of Gorvin Smith Fort, 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the Applicant, Mr Hirst and Mr Fitzpatrick did not appear and were not represented (save that Mr Hirst was represented by Mr McKone of Counsel in his adjournment application) and Mr Murdoch, who attended the Tribunal was represented by Mr McKone.

At the opening of the hearing the Tribunal was invited to adjourn the substantive hearing by all three Respondents.

- (i) Mr Hirst had addressed a letter to the Applicant on 1st March indicating that he was unaware of the hearing fixed for the 7th and 8th March 2002.
- (ii) The Tribunal had before it an attendance note made by the Tribunal's Assistant Clerk, Mrs Ralph, pointing out that the time and date of the hearing was contained in a letter sent by the Tribunal by special delivery on 5th November 2001. The Royal Mail confirmed that the letter had been delivered and signed for on 6th November 2001. A letter had been sent by the Tribunal to Mr Hirst on 28th February 2002 enclosing copy letters from the solicitors representing Mr Murdoch and advising Mr Hirst that Messrs Bassra were to make an application at 9.00 a.m. on Thursday 7th March.
- (iii) On 4th March 2002 Mr Hirst had confirmed that he had received the Tribunal's letters of 28th February and 1st March with enclosures when speaking on the telephone with Mrs Ralph. Mrs Ralph had advised that if he wished to make an application for adjournment that would have to be made at 9.00 a.m. on Thursday 7th March and that should the application be refused the matter would proceed on that day. Mr Hirst had then indicated that he would probably not be attending on 7th March but would try to get someone to represent him.
- (iv) Mr McKone had been instructed to represent Mr Hirst on 7th March and had immediately prior to the hearing handed in to the Tribunal a letter from Mr Hirst's GP dated 6th March in which was stated:-

"I have seen the above patient (Mr Hirst) today and confirm that he is suffering from acute anxiety state related to stress. I do not feel he is fit to attend any form of hearing for at least the next few weeks."

- (v) It was clear that Mr Hirst was not fit to attend the substantive hearing. His mental state had prevented him from dealing with the papers and giving meaningful instructions.

The Tribunal had by fax received a note from Mr Fitzpatrick marked "dated 6th March 2002" marked "Urgent for hearing tomorrow." Attached was a copy of the letter addressed to Mr Marriott dated 2nd March which was in the following terms:-

"Dear Mr Marriott,

I have your letter of 7th February. Unfortunately the following pages are missing from the bundle 19, 20, 27, 28, 29, 33, 34, 49, 56, 95/96, 101-105 and 112. As these pages may contain important information I would like a short adjournment to deal with them.

I have been incapacitated until recently. I had a severe nervous breakdown in January 2001 caused by business worries and the breakdown of my marriage. I would now like to set matters straight about many of the unfounded financial allegations against me as you can read in the attached letter should the adjournment be refused."

A copy of the letter referred to was also sent to the Tribunal. The Tribunal considers that letter later in these Findings.

- (vi) Mr McKone on behalf of Mr Murdoch sought an adjournment. It was of concern to Mr Murdoch that Mr Hirst was not in attendance. At the material times Mr Hirst was the partner who was constantly in the office. Mr Murdoch was at Court every day often all day. Although Mr Murdoch accepted his joint liability as a partner he would wish Mr Hirst to be questioned about a number of aspects of the subject matter of the allegations.
- (vii) It would further be Mr Murdoch's case that Mr Fitzpatrick had forged Mr Murdoch's signature on an important document. Mr Murdoch would wish to have Mr Fitzpatrick present so that those matters could be put to him.
- (viii) There were some more technical matters relating to the disclosure of documents but these matters could perhaps be left in abeyance until the Tribunal had decided whether or not it would adjourn the substantive hearing.
- (ix) Mr Marriott opposed the application for an adjournment. The applications for adjournment had been made at the eleventh hour. The disciplinary proceedings had been well known to all of the Respondents over a period of time. In particular, Mr Marriott referred to the letter which he wrote to Mr Hirst marked "second letter" setting out details of the communication with Mr Hirst and pointing out that Mr Hirst had indicated by letter addressed to Mr Marriott dated 2nd August 2001 that he was to appoint representatives.
- (x) The Tribunal was invited to consider the adequacy of the medical report handed in immediately before the hearing.

- (xi) In reality Mr Hirst was a man who wished to delay the disciplinary proceedings because of the case against him and the consequences to him if the allegations were found to have been substantiated.
- (xii) The Tribunal was invited to bear in mind the case of *Brabazon-Drenning -v- U.K.C.C.* in the Divisional Court (CO/490/2000) which dealt with the requirement that a Tribunal presented with an application for an adjournment on medical grounds should be entirely satisfied as to the nature and extent of the medical grounds and must balance the interest of fairness to the person seeking the adjournment with the Tribunal's wider duties to protect the public and the good reputation of the solicitors' profession.
- (xiii) Mr Murdoch wished the other two Respondents to be present as it was felt that their evidence would serve to ameliorate the seriousness of the allegations made against Mr Murdoch. The Respondents could not be compelled to attend before the Tribunal. It might well be that if the hearing were adjourned then neither of the other two Respondents would attend on the next occasion. It was the Applicant's case that Mr Hirst and Mr Murdoch were the two principals in charge of the practice of T I Clough.
- (xiv) With regard to Mr Fitzpatrick, Mr Marriott had sought an Order for Substituted Service from the Tribunal and the disciplinary proceedings had been the subject of an advertisement in *The Times*. The advertisement was placed before the Tribunal. Mr Fitzpatrick had indicated that he had suffered from a nervous breakdown but had indicated that only shortly before the hearing. Mr Fitzpatrick's letter had been dated 2nd March but was faxed on 6th March. Mr Marriott found it difficult to accept that papers had been missing from the bundle. In any event Mr Fitzpatrick had had plenty of time to check the bundle of papers. Those papers had been served upon solicitors representing Mr Fitzpatrick and it was a reasonable assumption that papers were returned to Mr Fitzpatrick early in September 2001 when those solicitors were no longer instructed. It had taken from early September 2001 until 6th March (the day fixed for the hearing) for Mr Fitzpatrick to indicate that certain documents were missing from his bundle. All of the documents which Mr Fitzpatrick said were missing were within the original Rule 4 Statement. That statement and the accompanying documents were bound and it was inconceivable that individual documents had been pulled out. There had been no request for extra copies of documents at an earlier stage – if there had been they would have been supplied.
- (xv) Mr Fitzpatrick indicated that he had suffered a nervous breakdown some fifteen months earlier. He had not supplied any medical report.
- (xvi) The Tribunal had opened its hearing at 9.00 a.m. In view of the fact that the advertisement in *The Times* pursuant to the Tribunal's Order for Substituted Service had stated that the hearing would commence at 10.00 a.m., the Tribunal was invited to deliver its decision with regard to the adjournment application not earlier than 10.00 a.m. The Tribunal agreed to do so.
- (xvii) The Tribunal refused the adjournment sought. The Tribunal took note of the fact that Mr Murdoch was in attendance at the hearing and had instructed Counsel to represent him. The Tribunal did not accept Mr Hirst's assertions that he had been kept out of documents until a very late stage. The medical report provided by Mr Hirst, it had to

be said at the eleventh hour, had not been prepared in sufficient detail to enable the Tribunal to place reliance upon it. In particular, there was no indication that the doctor writing the letter was aware of the nature of the hearing scheduled to begin on 7th March 2002. It was the Tribunal's opinion that Mr Hirst had made a last ditch attempt to delay the disciplinary proceedings.

- (xviii) The Tribunal had to weigh the question of fairness to Mr Hirst with its wider duty to protect the public and preserve the good reputation of the solicitors' profession. There had already been delays in this case for a number of reasons. Mr Hirst had had plenty of time to prepare and, indeed, he had been able to instruct Mr McKone to appear in the adjournment application. The Tribunal considered it right in the public interest not to adjourn the disciplinary hearing. The Tribunal had the discretion to proceed in the absence of a Respondent and it exercised that discretion and would proceed in the absence of Mr Hirst.
- (xix) Mr Fitzpatrick had made reference to a medical condition in his letters, copies of which had been placed before the Tribunal, but there was no medical report in support of his assertion that he had suffered from mental ill health. He had asserted very late in the day that he had not received certain documents. The Tribunal noted that those documents were contained in the bound bundle of documents attached to the statement made pursuant to Rule 4 of the Solicitors Disciplinary Proceedings Rules 1994. The Tribunal does not believe that those documents were missing and the reality was that Mr Fitzpatrick's assertions of mental ill health and missing documents constituted an attempt to evade these proceedings. The Tribunal in these circumstances would not agree to adjourn the matter. It exercised its discretion to proceed with the substantive hearing in the absence of Mr Fitzpatrick.
- (xx) With regard to Mr Murdoch, he had attended before the Tribunal and had instructed Counsel to represent him. The Tribunal noted that Mr Murdoch had sought the attendance of Mr Hirst and Mr Fitzpatrick in order that they might be questioned by his representative. The other two Respondents could not be compelled to attend as Respondents. Mr Murdoch should have given proper consideration to his position well in advance of the date fixed for the hearing. He had plenty of time to take advice and adopt a course in accordance with that advice. The Tribunal did not agree to adjourn on the grounds put forward on behalf of Mr Murdoch.
- (xxi) At this juncture the Tribunal was invited to withdraw in order that Mr Murdoch's representative might have an opportunity of taking further instructions.
- (xxii) Upon the Tribunal's return, discussions had taken place between the Applicant and Mr Murdoch's representative and it was at this juncture that the Tribunal consented to the withdrawal of certain of the allegations. The matter then proceeded to the substantive hearing.

The evidence before the Tribunal included the admissions of Mr Murdoch of all of the allegations made against him, including the allegation of dishonesty. The Tribunal heard the oral evidence of Mr Fletcher and Mr Freeman, Investigation Accountants of The Law Society, Mr Singh and Mr Murdoch.

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

"The Tribunal order that the Respondent, Philip Alexander Hirst of Middleton, Ilkley, West Yorkshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,974.00."

"The Tribunal order that the Respondent, Steven Murdoch of Burley in Wharfedale, West Yorkshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,974.00."

"The Tribunal order that the Respondent, John Fitzpatrick of Liversedge, West Yorkshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,974.00 together with the additional costs of the Investigation Accountant of The Law Society of £7,570.97."

For the avoidance of doubt the Tribunal here confirm that the costs awarded against all three Respondents in the sum of £21,974 were inclusive of the costs of the Investigation Accountant of The Law Society in connection with his investigation into the books of account of T I Clough & Co and were a joint and several liability as between the three Respondents. Mr Fitzpatrick was additionally ordered to pay the additional costs of the Investigation Accountant of The Law Society in connection with the investigation into Mr Fitzpatrick's financial affairs.

The facts are set out in paragraphs 1 to 49 hereunder: -

1. Mr Hirst, born in 1956, was admitted as a solicitor in 1983.
2. Mr Murdoch, born in 1953, was admitted as a solicitor in 1980.
3. Mr Hirst and Mr Murdoch carried on in practice together in partnership under the style of T I Clough & Co ("the firm") from Bridge House, 24 Sunbridge Road, Bradford, West Yorkshire, BD1 2TD.
4. Mr Fitzpatrick, born in 1948, had been admitted as a solicitor in 1974. He practised on his own account from his home at 373 Halifax Road, Liversedge, West Yorkshire, WF15 8DU.
5. Following authorisation an inspection of the books of account of T I Clough & Co was commenced on 3rd May 2000 by Mr Fletcher, an Investigation Accountant at the OSS. On the 14th and 15th June 2000 Mrs Prue, a senior Investigation Accountant at the OSS, assisted Mr Fletcher and was present during interviews with the First and Second Respondents. As a result of the inspection a report was prepared dated 9th August 2000 with appendices. Following a further authorisation Mr Fletcher and Mr Hankin (also an Investigation Accountant with the OSS) commenced an inspection of the books of account of Mr Fitzpatrick on 18th December 2000. As a result a report with appendices was prepared dated 10th January 2001. Both of the Investigating Accountant's Reports were before the Tribunal.

6. The annual Accountant's Report for the year ending 31st August 1999 submitted on behalf of Mr Hirst and Mr Murdoch to The Law Society on 25th February 2000 had been qualified and included a number of schedules which highlighted the following three areas of concern:-
 - (i) there were a significant a number of bills of costs raised in February 2000 which were dated 31st August 1999 and recorded as such on the appropriate client ledger accounts. The accountants were not satisfied that written intimations of those costs had been sent to the clients or that the firm was entitled to those costs;
 - (ii) there was no supporting documentation provided to the Accountants in respect of payments made to a client in the aggregate sum of £190,500;
 - (iii) credit balances in the office ledger amounted to £139,064 as at the 31st August 1999 and included client money which could not be readily identified or quantified.
7. Because of the matters raised by the reporting accountants the firm wrote to the OSS on 25th February 2000 and stated among other things:-
 - (i) that they were installing a computer package to avoid the problems of a manual accounting system which would be fully operational by 1st May 2000;
 - (ii) the errors in the manual system (if any) would be rectified before that date;
 - (iii) they had started an examination of the office ledger balances to ensure proper transfers were made to clients without delay.
8. The Investigation Accountant ascertained that as at the 31st March 2000 there were 234 office ledger credit balances totalling £96,451.88 and that the reduction in the credit balances from £139,064 had been achieved by the billing exercise in February 2000. When interviewed Mr Hirst and Mr Murdoch agreed that there could well be client monies in office account.
9. The client account reconciliation as at 31st March 2000 showed that a number of telegraphic transfers, receipts and payments had not been notified to the firm's cashier. The transactions involved Mr B, a conveyancing clerk employed and supervised by Mr Hirst and Mr Murdoch. The cashier had asked Mr B in writing on numerous occasions to identify matters and had copied his memos to the two partners.
10. During the inspection the Investigation Accountant had ascertained that Mr Hirst and Mr Murdoch had made improper withdrawals and transfers from client bank accounts and lodged those client monies in office account in the total amount of £254,989.35. It was demonstrated that sufficient sums of money were regularly transferred from client account to office account to enable the firm to make payments required of their practice, for example their VAT liability.
11. The aggregate sum of £254,989.35 was transferred from client account to office account between 2nd September 1998 and 19th August 1999. That money had been replaced by Mr Hirst between 5th August 1999 and 1st October 1999.
12. Throughout that time the bank overdraft limit had been £10,000.
13. By way of an example, immediately prior to the transfer to office bank account of £22,500 on 28th September 1998 the bank overdraft stood at £12,139.74. On the same

date a payment to the Solicitors Indemnity Fund (SIF) totalling £19,317.54 cleared through the account. That same payment had been shown as a debit on the bank statement on 22nd September 1998 which together with other debits took the bank overdraft on 21st September 1998 to £30,803.03. The cheque payable to the SIF was shown as a credit on 23rd September 1998 marked "returned cheque L/R."

14. By way of further example the office bank statement showed that on 1st June 1999 a payment was made in respect of VAT totalling £29,361.29 and that that, together with other payments made that day, left the bank overdraft at £6,449.31. A £10,000 transfer from client account to office account had been made. If it had not then the overdraft would have reached £16,449.31.
15. The most recently prepared set of draft accounts for the partnership prior to the Investigation showed capital accounts as at £163,617 overdrawn. The draft accounts related to the year ended 31st August 1997.
16. When asked for an explanation, Mr Hirst stated that following a Legal Aid Board investigation in 1995 a request for a repayment of £360,000 had been made against the firm. HM Customs and Excise had petitioned for the bankruptcy of Mr Hirst and Mr Murdoch in respect of unpaid VAT. The transfers from client account to office account had been to avoid bankruptcy.
17. Mr Hirst had explained that transfers dated 8th February, 24th June and 6th July 1999 had been errors made by the firm's cashier. The cashier denied that the mistakes had been made by him. On 15th June 2000 at interview Mr Hirst and Mr Murdoch accepted responsibility for the transfers.
18. Mr B was a conveyancing clerk employed by Mr Hirst and Mr Murdoch who were responsible for his supervision. The Investigation Accountant reported upon a number of conveyancing transactions and details of seven were sent out as examples.

P Road, Barnsley

19. The firm acted for the purchaser and the institutional lender. The sale agreement recorded two special conditions namely that the seller would contribute £3,060 towards the purchaser's brokerage fee and that the seller had received £2,100 directly from the purchaser. The client ledger card showed that the net mortgage advance of £39,875 was the only receipt. Of the mortgage advance monies £3,000 was recorded as paid directly to the purchaser. This contravened the instructions issued by the lender which stated in terms that the whole purchase price must be paid in full to the seller's solicitors on completion and that any matter which suggested that the transaction was not bona fide must be referred to the lender. When interviewed Mr B agreed that he had not made the lender aware that either a deposit was paid directly; or that £3,000 of mortgage money was used to pay the purchaser's brokerage fee.

Y Lane, Barnsley

20. The firm acted for the purchaser and the institutional lender. Mr B was notified by the seller's solicitor that £1,350 was paid direct from the purchaser to the seller and that the purchaser had agreed to pay the seller's legal fees totalling £495.90. The transaction proceeded as a sub-sale with the matter file noting the transfer to another. The lender's conditions stated in terms that they must be notified in the event of a sub-

sale or in the case of an allowance or a discount from the purchase price. In interview Mr B admitted that he had not notified the lender of either fact.

B Lane, Edington

21. The firm acted for the purchaser and the institutional lender. One of the conditions imposed by the lender was that the difference between the purchase price and the advance had to be paid from the purchaser's funds to the seller's solicitor. Mr Brown agreed that the purchase price was £35,900 that only £29,910 had been paid, that it was a "back to back" sale and that he did not notify the lender.
22. T Lane, Scholes
The firm acted for the purchaser and the institutional lender. The mortgage instructions showed a purchase price of £76,000 and a completion statement showed a purchase price of £75,000. In interview Mr B agreed that he had not notified the lender of the difference.
23. Mr B also had conduct of conveyancing and other transactions for Mr E. Three transactions caused concern to the Investigation Accountant:-
 - (i) R Limited: Sale of Car. The client ledger card showed a receipt of £180,000 and £11,790.46. It also showed the monies being disbursed by one payment of £12,000 to Mr E, two payments of £50,000 to JM, one payment of £5,000 to CB, one payment of £21,000 to PM and one payment of £52,000 to AJW. The client file could not be produced. Mr B agreed with the Investigation Accountant that it "would have been monies in and out." "Mr J is R Limited." He further agreed that Mr J transferred the money to the firm because he wanted cheques paid out to others.
 - (ii) Site in S Lane. The client ledger included a card with this description, which indicated a receipt of £8,750 from suspense account. The client file did not provide any documentation with regard to the receipt nor any explanation for payments out. When interviewed by the Investigation Accountant Mr B agreed that Mr E was using client account as his own bank, became confused as to the size of a refundable deposit and explained that he was doing too many things at once.
 - (iii) Sale of T Lodge. The relevant client file showed an agreement for sale with the seller as MBB for a price of £700,000. Three receipts, two for £250,000 and one for £200,000 were credited to the ledger. A completion statement showed that the sum of almost £680,000 was paid to the seller but the ledger card showed a payment to NS Garage. In interview Mr B confirmed that the payment to the garage had been authorised by Mr E; that MBB had bought the property with money provided by Mr E; that a signed transfer was never registered to protect Mr E's interests; and that there was nothing on the file to confirm authority to pay the figure of almost £680,000. He explained that "you don't mess about with [Mr E's] money."

John Fitzpatrick

24. Following a report dated 17th October 1996 The Law Society had intervened in and disposed of the practice of Clough Fitzpatrick of 9-11 Sunbridge Road, Bradford. One of the partners in the firm at the time was Mr Fitzpatrick. As a result of that, Mr Fitzpatrick's practising certificate had conditions imposed upon it. The practising

certificate issued on 18th March 1999 was subject to a condition that he could only practise in employment or partnership approved by The Law Society.

25. Mr Hirst and Mr Murdoch had explained that Mr Fitzpatrick had been paid commission and expenses in relation to the introduction of work to them: they had not employed him.
26. Mr Fitzpatrick had removed over one hundred files from the firm in September 2000. He said he had removed "dead files" but disputed the quantity. Moneys had been transferred from the client account of T I Clough & Co to the bank account of Mr Fitzpatrick.
27. There were twenty six matters identified by the Investigation Accountant where Mr Fitzpatrick was acting as a solicitor either during the period when he had an arrangement with the firm or after that arrangement came to an end.
28. Mr Fitzpatrick agreed that he had no accounting records and a review of fifteen of the twenty-six files showed that they did not contain a full record of receipt or payment of clients' monies. In seven matters a total of approximately £697,500 passed through his own bank account in relation to those clients. The whereabouts of the file relating to the largest transaction of £475,000 was not known.
29. The sum of £101,000 of client's money had been in a "business account." That account contained mixed funds i.e. not exclusively client money. Mr Fitzpatrick had been unable to show that all clients' money held by him had been properly accounted for.
30. Whilst attending the intervention of T I Clough & Co on 21st December 2000 an employee of the OSS was told by Mr Hirst that Mr Fitzpatrick had entered the premises of the firm on the August bank holiday weekend 2000, forged the signature of Mr Murdoch and transferred from the firm's client account to his own bank account the sum of £495,000. Mr Hirst and Mr Murdoch had been unaware of the transfer until bank statements were received. They had not reported the matter to the police because they wished to secure the return of the monies.
31. Mr Fitzpatrick agreed that he had received £495,000 into his business account. He said the purpose of it was a loan which was authorised by Mr Hirst and Mr Murdoch and that the telegraphic transfer instruction had been signed by Mr Murdoch.
32. The documents supplied to the Officer showed that the ledger card had been opened under the name "suspense" with the partners shown as "Mr A N Other". The first entry on the ledger card was the opening debit balance of £476,469.96 dated 4th September 2000 and the closing balance as at 6th December showed a debit balance of £87,682.67. Five receipts to the ledger card were discussed with Mr Fitzpatrick who in terms stated as follows:-
 - a) The £100,000 receipt on 18th September 2000 was a private loan;
 - b) The £30,000 on 21st September 2000 was returned to the bank on 2nd October 2000 marked "refer to drawer" was drawn on a private bank account of Mr Fitzpatrick;

- c) Th £95,000 on 13th November 2000 was from Mr Fitzpatrick's business account;
 - d) The £100,000 on 27th November 2000 was from the sale of Mr Fitzpatrick's private property;
 - e) The £100,000 on 6th December 2000 was from Mr Fitzpatrick's business account;
 - f) The £100,000 on 6th December 2000 was a cheque that had been paid.
33. A "chit" from the firm recorded a banker's draft for £26,750 received from Mr Fitzpatrick which appeared to have been credited to the ledger account in respect of the redemption of a mortgage on property, P Road. Mr Fitzpatrick confirmed that he acted in the sale of that property whilst in his arrangement with the firm, that the sale concluded early in 2000 and that he could not recall paying that sum to the firm, but he had not got the relevant client matter file and that no money from the sale went into any of his bank accounts.
34. Mr Fitzpatrick denied that he dealt with client monies, admitted that he took client files, agreed that there was a mortgage that was not repaid but had been repaid later and concluded by saying a "friend had paid it."
35. Mr Fitzpatrick agreed that he had been employed as a consultant at another firm of solicitors (J Bodnar) from June 1999 to January 2000 and whilst there he had been able to initiate transactions from J Bodnar's client bank account. Following his departure, accounting problems came to light showing debit balances on nine individual client ledgers relating to matters all of which had been conducted by Mr Fitzpatrick. As a result Mr Fitzpatrick paid to J Bodnar the sum of £61,900 to rectify shortages of clients' funds totalling £61,842.08 which had arisen by misuse of client funds totalling £59,648.16 and incorrect transfers from client to office bank account totalling £2,193.92.
36. Mr Fitzpatrick confirmed that he had received funds from clients and from the J Bodnar's client account into his "business" bank account. He said "I have been in practice for many years and rightly or wrongly people may have thought they were dealing with me personally..."
37. At a meeting on 19th December 2000 Mr Fitzpatrick stated that he had only acted in two sale transactions. The OSS had received a complaint in respect of a sale transaction not mentioned by Mr Fitzpatrick whereby the sellers of A Nursing Home were short of £105,000 from the proceeds of sale. Initially the sellers instructed the firm and gave no authority for their file of papers to be released to Mr Fitzpatrick. Mr Fitzpatrick agreed that there was a shortfall that was his fault but asserted it was only £25,000, that it was a transaction which initiated at the firm and that he took it with him when he left but that it had now gone back to the firm, that the completion monies went into his personal account totalling £475,000 that a delay in discharging the mortgage of two months was because of the shortfall, the proceeds of £475,000 had always been available from his "business" account and that he had no professional indemnity insurance.

38. N Road, Ravensthorpe
Mr Fitzpatrick admitted that this was a further conveyancing transaction beyond the two mentioned, that he had started it after leaving the firm and that he used a letterhead stating that he was a solicitor. Mr Fitzpatrick said "It looks terrible in (the) cold light of day. (I) was doing a favour for (a) friend."
- R T Drive
39. In the course of this transaction Mr Fitzpatrick gave an undertaking in writing to redeem a charge within fourteen days of completion giving an account number which was his "business" account. However the monies for the mortgage redemption were paid from a different account. Mr Fitzpatrick confirmed that the transaction had taken place after he had left the firm, that he had used the word solicitor in his letterhead, that the completion monies had been paid into his personal account which was wrong. He further agreed that approximately £35,000 had passed through his personal bank account instead of a client account. He denied that he had a client account and that any client monies were held by him. He also agreed that he was on the Court record as acting for a client.
40. The Tribunal had before it copy correspondence passing between the Respondents and the OSS.
41. The supplementary allegations (4.11 and 4.12) against Mr Fitzpatrick related to a property at C H Road.
42. JH was the owner of this property which was subject to a first charge in favour of the Midland Bank and a second charge to the value of £50,000 in favour of S Limited, a company whose majority shareholder was Mrs R. Mr Fitzpatrick acted for S and Mrs R.
43. The £50,000 second charge was to secure the indebtedness of JH's company to S Limited.
44. In 1996 JH's Company went into liquidation and shortly afterwards JH was made bankrupt. Midland Bank became mortgagees in possession and decided to sell the property to Mrs R for £250,000.
45. Mrs R obtained a mortgage offer of £200,000. Shortly before completion she agreed with the Mr Fitzpatrick that he would loan to her the balance of the purchase price namely £50,000 from his firm. The sale to Mrs R completed on the 20th December 1996. A firm of solicitors called John Cordingley & Co represented Midland Bank. The transfer showed that the consideration was £250,000 and the completion statement showed that of the proceeds of sale, £50,000 was paid to the second mortgagee who was also represented by Mr Fitzpatrick. The bank statement of John Cordingley & Co demonstrated that they received £250,000 on the 20th December 1996 and paid out in respect of the second charge £50,000 on 27th December 1996.
46. In acting for the second mortgagee the Third Respondent was under a duty to account to S Limited for the sum of £50,000.

47. In 1999 S Limited went into liquidation. The liquidator discovered that the sum of £50,000 had never been paid to S Limited. They instructed solicitors to make enquiries of Mr Fitzpatrick as to what had happened to that sum. Mr Fitzpatrick wrote a letter to the OSS dated 16th March 2000 attaching to it a letter sent to the Solicitors Indemnity Fund dated 17th March 2000. In the letter to the OSS Mr Fitzpatrick denied that he ever received the sum of £50,000 to repay the second charge and asserted that he only paid to John Cordingley & Co, £200,000 to complete. He also asserted that Mrs R never paid to him the sum of £50,000. In a letter to the Solicitors Indemnity Fund, he asserted that he did not have his client account records, that he handed over a cheque for £250,000 to complete and acknowledged that he received a cheque back from John Cordingley & Co, totalling £50,000. He asserted that the second charge had been satisfied in effect by Mrs R acquiring value in the property and that he had never been in possession of the sum of £50,000.
48. Copies of Mr Fitzpatrick's client account bank statement for the week ending 27th December 1996 demonstrated that the sum of £50,000 received from John Cordingley & Co was not banked into Mr Fitzpatrick's client account. That sum was debited from the account of John Cordingley on the 27th December 1996.
49. The liquidator came to an agreement with Mrs R whereby she accepted that she had paid £200,000 for the property, £50,000 was therefore due to the liquidator and she had agreed to pay £25,000 of that immediately and the balance in instalments.

The Submissions of the Applicant

50. Mr Murdoch had admitted all of the allegations, including the allegation of dishonesty. The Tribunal was invited to find the allegations made in respect of Mr Hirst and Mr Fitzpatrick to have been substantiated. The applicant put the cases against both Mr Hirst and Mr Fitzpatrick as cases involving dishonesty.
51. Mr B, the clerk referred to as employed in T I Clough & Co, had been made the subject of an Order pursuant to Section 43 of the Solicitors Act 1974 following an internal procedure at the OSS.

The Submissions of Mr Hirst

52. Mr Hirst did not attend the hearing and did not make any written submissions.

The Submissions of Mr Murdoch

53. Mr Murdoch had admitted the allegations and in particular had admitted the allegation that he had behaved dishonestly. The Tribunal was invited to give Mr Murdoch credit for making those admissions. Mr Murdoch was aware of the possible consequence of making such admission even though he was very keen to continue in practice.
54. Mr Murdoch had cooperated fully with the enquiry. Because Mr Murdoch had made an admission of wrongdoing the Tribunal was invited to conclude that it could have confidence in his future behaviour.

55. A number of the allegations had been made against Mr Murdoch not because he had been directly involved in the subject matter but because he was a principal in the firm. The Respondent accepted that he was liable as a principal.
56. The Respondent had practised predominately in the fields of family law and undertook some criminal law. It had been the Respondent's practice to attend Court every day often all day and that might be in relation to a case lasting as much as two weeks.
57. Mr Murdoch had left the day to day management of the practice and the completion of the associated paperwork to Mr Hirst. Mr Murdoch had never been involved in and had no experience of such matters.
58. The practice had experienced financial difficulties. Mr Hirst had transferred money from client account to office account in order to meet important liabilities of the practice.
59. Mr Murdoch had become aware of that practice and had allowed it to continue. Although Mr Murdoch had not been the initial perpetrator of those wrongful acts, he accepted that he had been dishonest if the test in the case of *Royal Brunei Airlines –v- Tan* (Privy Council 1994) were applied. The Tribunal was however invited to note that it had not been Mr Murdoch himself who made the improper transfers, the monies so transferred had been used for business expenses and not for personal living purposes. Mr Murdoch himself had drawn only extremely modest drawings from the firm which were sufficient to cover his monthly direct debits and his weekly supermarket bill. It had always been intended and Mr Murdoch had always believed that client account would be fully reimbursed. Client account was in fact fully reimbursed and there had been no loss to clients. Mr Murdoch had taken active steps to recover money from Mr Fitzpatrick.
60. Against a background of financial difficulty the firm had been required to meet a repayment of one third of One million pounds to the Legal Aid Board. In that connection there had been no question of dishonesty but it was accepted that such a sum of money was due and owing. That liability for repayment had been created when there had been a large number of partners in the firm, a number of whom had left in quick succession.
61. Mr Murdoch had come to realise that the practice could not survive. It would have been appropriate to bring the business to an end at an early stage. Mr Murdoch had been desperate to keep the firm afloat not the least because the firm had a number of competent and loyal employees who would as a result of a closure lose their jobs. It was against that background that great efforts had been made to enable the firm to continue trading. From Mr Murdoch's own point of view he would have generated a greater income if he had been employed elsewhere as an assistant solicitor.
62. As a result of The Law Society's intervention into the firm Mr Murdoch had been suspended from practice for one week. The suspension had been lifted and Mr Murdoch had been employed by Mr Singh who attended the Tribunal to speak on behalf of Mr Murdoch. The Tribunal would note that Mr Singh had admired the work

of the Respondent and had been pleased to take him on as an employee where he had performed very well indeed and had been popular with clients and staff alike.

63. The Tribunal was invited also to take into account the bundle of written references written in support of Mr Murdoch. They all spoke highly of his competence and his integrity.
64. Mr Murdoch's Counsel had been able to speak to Mr Hirst who indicated that he would support the proposition that Mr Murdoch should be permitted to continue in practice.
65. Mr Murdoch had been subjected to considerable stress and anxiety about the disciplinary proceedings. The likelihood of his appearing before the Tribunal again was remote. Mr Murdoch had been a solicitor since 1979 and had no experience in any other job or occupation. Mr Murdoch's wife had suffered ill health.
66. Mr Murdoch accepted that his reputation would be tarnished by the disciplinary proceedings. It was hoped in all the circumstances that Mr Murdoch would be permitted to continue in practice as a solicitor. It was hoped that Mr Murdoch might be permitted to continue to practise in his current employment where he was supervised by Mr Singh. In that employment Mr Murdoch did not have and would never accept any responsibility for accounts or administration.
67. Mr Murdoch was an honest man and a competent solicitor. His real failure had been that he had acquiesced in a wrongful course adopted by his partner.

The Findings of the Tribunal

The Tribunal found all of the allegations made against each of the Respondents to have been substantiated.

The Tribunal had on two earlier occasions found allegations to have been substantiated against Mr Hirst and one earlier occasion had found allegations to have been substantiated against Mr Fitzpatrick.

On the 17th July 1997 the Tribunal found allegations to have been substantiated against Mr Hirst. The allegations were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely he had:-

- (i) failed to reply to letters from the Office for the Supervision of Solicitors;
- (ii) behaved in manner that was unbecoming a solicitor of the Supreme Court.

On that occasion the Tribunal said:-

"The Tribunal recognised that the respondent had endured a particularly stressful time. However in accepting that he was a good and competent solicitor and well aware of the importance of dealing punctually and properly with his own professional body, however unreasonable the complaint under investigation or however difficult the client, the Tribunal found it difficult to adopt a very lenient stance. It was inevitable that a complaining difficult client would be likely to be particularly persistent and in the event of a non

response from a solicitor would further complain about the ineffectiveness of the solicitors' professions' own regulatory provisions. Inevitably the good reputation of the solicitors' profession would suffer to a particularly great degree. In the circumstances the Tribunal considered it right to impose a fine of £2,000 and ordered the respondent to pay fixed costs in an agreed sum".

On the 2nd July 1998 the Tribunal found the following allegations to have been substantiated against Mr Hirst namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely that he had:-

- (i) failed to reply to letters from the Office for the Supervision of Solicitors;
- (ii) failed to act in the affairs of his client with due diligence.
- (iii). failed to maintain reasonable and adequate contact with the client.

In its Findings dated 13th August 1998 the Tribunal said:-

"When the respondent appeared before the Tribunal in July of 1998 the Tribunal accepted that the subject matter of the complaint had occurred at about the same time as the earlier proceedings. The earlier division of the Tribunal had not been aware of the respondents problems with the Legal Aid Board. The Tribunal accepted that those matters must have overwhelmed the respondent at the time.

The Tribunal was concerned to find the respondent before them on a second occasion having said this, no dishonesty was alleged against the respondent and the Tribunal were able to accept that he was a solicitor who demonstrated integrity and probity. He was a good solicitor successfully completing important work on behalf of his clients. He had achieved a great deal by resolving matters with the Legal Aid Board. His failure to deal with the complaints of Mr G and letters addressed to him by the Office for the Supervision of Solicitors would normally have been considered as serious by the Tribunal - particularly as this was his second appearance before the Tribunal. In view of the great mitigating circumstances, however, the Tribunal felt able to adopt a compassionate and lenient stance and imposed upon the respondent a financial penalty somewhat lower than they might otherwise have been minded to impose. The Tribunal Ordered the respondent to pay a fine of £1,500.00 and they ordered him to pay the applicant's costs in a fixed sum.

The Tribunal expressed the hope that the respondent would not appear before them again. A third appearance would result in his being prevented from practice in the future.

The Tribunal expressed considerable concern about the long hours worked by the respondent and the fact that continued stress might well result in psychological illness. The Tribunal hoped the respondent would cease to work such long hours and suggested that he might care to consider seeking assistance from the organisation Solcare which (amongst other things) supported and assisted solicitors suffering from stress. Details of this organisation were passed to the respondent at the conclusion of the hearing."

On 10th February 1998 the Tribunal found the following allegations to have been substantiated against Mr Fitzpatrick who was brought before the Tribunal to answer allegations together with Philip John Brown. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

"In respect of both Respondents

- (a) they failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (b) contrary to Rule 8 of the Solicitors Accounts Rules 1991 they drew money out of client account other than as permitted by Rule 7 of the said Rules;
- (c) contrary to Rule 5 of the Solicitors Accounts Rules 1991 they failed to pay funds received from clients in respect of undisbursed liabilities into a client account;

Against Mr Fitzpatrick only

- (d) used clients' funds for his own benefit;
- (e) misappropriated clients' funds.

Against Mr Brown Only

- (f)

Against Mr Fitzpatrick Only

- (g) obtained loans from a client without ensuring that the client was separately represented.

In its Findings dated 13th March 1998 the Tribunal said:-

"Reasons

The Tribunal accept that there was no allegation of dishonesty against either of the respondents and clearly there was no question of either of them acting dishonestly or with any intention to flout the professional rules by which they were bound. Punctilious compliance with the Solicitors Accounts Rules was a fundamental principle for solicitors. It was clear that the firm's accounts were in considerable disarray and in those circumstances it was inevitable that clients money would not be dealt with fairly and properly. It was then, even if there was no dishonest intent, that clients' moneys were placed in jeopardy. That was a wholly unacceptable state of affairs. The public was entitled to assume that any solicitor holding a Practising Certificate would abide by the rules imposed upon him by his membership of the solicitors profession and that that solicitor could be trusted to the ends of the earth. The respondents were perhaps fortunate that those clients who had been in receipt of moneys to which they were not entitled had behaved with the utmost propriety themselves in returning the money to the firm. Of course the Tribunal had some sympathy for Mr Fitzpatrick's distressing personal circumstances. They accepted that such difficulties did amount to some mitigation but he himself admitted, and he had to be given credit for this, that he was aware of a failure properly to maintain up to date books of account and took no steps to grasp the

nettle.

In all of the circumstances the Tribunal felt that the respondent's shortcomings could be met by fines. Mr Fitzpatrick had a rather greater degree of culpability in these matters and the Tribunal ordered that he pay a fine of £5,000. Mr Brown's liability was in the view of the Tribunal rather more than the strict liability that was argued on his behalf. He was a partner. He had actual liability for compliance with the Solicitors Accounts Rules and was at fault for not taking a greater interest in accounting procedures and ensuring the fair handling of clients' funds. The Tribunal accept that his level of culpability was rather less than that of Mr Fitzpatrick and imposed upon him a fine of £2,000. The total costs of the application and enquiry amounted to £5,861.29, to include the costs of the Investigation Accountant of the Law Society, and the Tribunal ordered that the respondents should pay those costs on a joint and several basis."

In March 2002 the Tribunal has found that each of the Respondents behaved dishonestly.

Mr Murdoch was to be given credit for his admission of dishonesty as he acquiesced in a dishonest course of action adopted by his partner.

Although the allegations concern transactions where there might well have been mortgage fraud and money laundering perpetrated the Tribunal has not been made aware whether or not those transactions did involve those serious criminal offences. It was enough that solicitors dealt with such matters without notifying clients whom they should have notified of certain aspects of the transactions.

The real gravaman of the matters alleged against these three Respondents is the abuse of clients' funds. Solicitors should not need to be reminded that they have a duty to comply punctiliously with the Solicitors Accounts Rules, to handle clients monies properly and fairly and to exercise a proper stewardship over monies which they hold on behalf of clients. Clients' money in the hands of a solicitor is sacrosanct. Mr Fitzpatrick had little regard for the fact that monies which he handled were clients' monies. Not only did he remove clients' monies from other firms of solicitors he mixed such money with his own money demonstrating a total disregard for the fact that that money was not his. Mr Hirst had deliberately raided client account in order to meet personal liabilities. The Tribunal note that it has been said that the monies were used for the purposes of the practice and not for personal purposes. A solicitor's practice is of course a matter personal to him. There can be very little distinction between the use of clients' money to keep a business afloat or in connection with a solicitor's own living expenses.

Mr Murdoch has made an admission of dishonesty. He has clearly fully realised that to acquiesce in Mr Hirst's misuse of client money was the turning of a blind eye or a deaf ear to what was going on and that in itself did amount to dishonesty. The Tribunal has given Mr Murdoch every credit for his admissions, his attending the substantive hearing and his arranging to be represented. The Tribunal was grateful to Mr Murdoch for giving his oral address. He was to be commended for his

cooperation, realism and propriety in the conduct of proceedings before his own professional Disciplinary Tribunal.

The Tribunal was in no doubt that it was right to order that Mr Hirst and Mr Fitzpatrick be struck off the Roll of Solicitors. Despite having given much credit to Mr Murdoch and after taking into account the glowing testimonials written in his support, the Tribunal cannot turn from the fact that they have found serious allegations to have been substantiated against him and they have made a finding of dishonesty in respect of him. In such circumstances it was right that Mr Murdoch should be struck off the Roll of Solicitors.

After hearing submissions on the question of costs, the Tribunal was told that Mr Hirst and Mr Murdoch had entered insolvency voluntary arrangements. The financial status of Mr Fitzpatrick was not known. The total costs sought by Mr Marriott in respect of all three Respondents, to include The Law Society's Investigation Accountant's costs relating to the inspection of the accounts of T I Clough & Co totalled £21,974. In view of the insolvency of two of the Respondents it was submitted that a detailed division of that total sum could not bear any fruit. The Tribunal ordered therefore that all three Respondents should pay the Applicant's costs in the fixed sum of £21,974 such costs to be the joint and several responsibility of the three Respondents. A further Investigation Accountant's inspection had been carried in respect of Mr Fitzpatrick's connection with the firm of J Bodnar and it was right that the Investigation Accountant's costs relating to that inspection should be borne by Mr Fitzpatrick. The Tribunal ordered that Mr Fitzpatrick should pay additional Investigation Accountant's costs in the sum of £7,570.97. That figure was to be the liability of Mr Fitzpatrick alone.

DATED this 12th day of June 2002

on behalf of the Tribunal

A H B Holmes
Chairman