

IN THE MATTER OF ROY STEWART PYBUS

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Miss T Cullen
Dame Simone Prendergast

Date of Hearing: 6th June 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 Katrina Elizabeth Wingfield, solicitor and partner in the firm of Penningtons, Bucklersbury House, 83 Cannon Street, London, EC4N 8PE on 7th August 2001 that Roy Stewart Pybus of Wavertree, Liverpool, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

- (i) that his books of account were not in compliance with the Solicitors' Accounts Rules;
- (ii) that he failed to promptly comply with a decision of inadequate professional services dated 16th September 1999 (confirmed on appeal on 21st December 1999);
- (iii) that he failed to comply with the resolution of the Adjudicator dated 15th June 2000, affirmed by the Appeals Committee on 31st January 2001.

- (iv) by virtue of the aforementioned he had brought the Solicitors profession into disrepute and is guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 6th June 2002 when Katrina Elizabeth Wingfield, solicitor and partner in the firm of Penningtons, Bucklersbury House, 83 Cannon Street, London, EC4N 8PE appeared as the Applicant and the Respondent was represented by Mr Stirling of Counsel.

The evidence before the Tribunal included the admission of the Respondent to allegation (ii). The Tribunal heard oral evidence of the Respondent and Mr Rowson, Investigation and Compliance Officer.

The Tribunal considered the late submission by the Respondent of certain documents. In relation to the Respondent's accountant's report this was submitted on the day of the hearing contrary to early directions of the Tribunal. After hearing submissions and noting that the Applicant made no objection to the late filing of the statement, the Tribunal accepted the accountant's report. In relation to the Respondent's own statement which was only available to the Tribunal on the day of the hearing the Tribunal noted that appended to it were statements by two other people who had not been called to give evidence. The Tribunal said that if particular parts of these documents were brought to their attention they would look at them but in the circumstances very little weight could be placed on the documents.

At the conclusion of the hearing the Tribunal ordered that the Respondent Roy Stewart Pybus of Wavertree, Liverpool, be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless otherwise agreed.

The facts are set out in paragraphs 1 to 34 hereunder: -

1. The Respondent born in 1941 was admitted as a solicitor in 1966 and whose name remained on the Roll of Solicitors.
 2. At all material times the Respondent carried on practice on his own account under the style of Roy Pybus solicitors latterly at 254 Smithdown Road, Liverpool L15 5AH.
- Breaches of Solicitors Accounts Rules
3. On 12th January 2000 an inspection of the books of account of the Respondent was commenced by Mr D Rowson, Investigation and Compliance Office of the OSS. A report in connection with that inspection dated 2nd May 2000 was before the Tribunal.
 4. In the Report Mr Rowson said that the books of account were not in compliance with the Solicitors' Accounts Rules. A list of liabilities to clients as at 30th November 1999 compared with cash available showed a cash shortage of £6,532.22. The Respondent agreed the existence of an initial cash shortage of £4,855 in respect of four incorrect transfers from client to office bank account and indicated that he would replace that shortage by the end of the day and provide evidence to Mr Rowson accordingly.
 5. On 28th February 2000 Mr Rowson observed that although a transfer from office to client bank account had been made in the sum of £4,855 a further sum of £611 had been transferred from client to office bank account and posted to a client ledger

account headed "suspense" when no funds stood to its credit thereby creating a debit and client account shortage in that sum. The Respondent agreed that cash shortage and in addition on 1st March 2000 he agreed that there was a cash shortage totalling £1,800.78 the breakdown of which was detailed in the Report.

Cause of the cash shortage - £6,532.22

6. The cash shortage arose as follows:
- | | | |
|-------|--|------------------|
| (i) | unallocated transfers from client to office bank account | £4,855.00 |
| (ii) | incorrect transfers from client to office bank account | 1,213.78 |
| (iii) | overpayments | 411.69 |
| (iv) | indemnity insurance paid from client bank account | 44.75 |
| (v) | bank charges debited to client bank account | <u>7.00</u> |
| | | <u>£6,532.22</u> |
7. The sum agreed by the Respondent of £4,855 represented four unallocated transfers from client to office bank account made between 29th December 1998 and 6th August 1999 varying in amount from £500 to £2,905. These were exemplified in the Report.
- Unallocated transfers from client to office bank account - £4,855
8. The Respondent agreed that between 29th December 1998 and 6th August 1999 four transfers were made from client to office bank account, varying in amount from £500 to £2,905 and totalling £4,855 which had not been allocated to any client ledger account. All these transfers are exemplified below.
- Suspense account - £3,405 (£2,905 and £500)
9. On 20th July 1999 and 6th August 1999, transfers of £2,905 and £500 respectively were made from client to office bank account. Both amounts were not allocated to any client ledger account but merely allocated to a "suspense" account ledger when no funds stood to its credit thereby resulting in a debit balance and client account shortage of £3,405.
10. The Respondent said that "the cashier had made an error and identified the transfers as regarding Wilkie but this was a mistake. He applied transfer monies to the wrong ledger."
11. Mr Rowson asked the Respondent to which ledger the transfer monies should have been applied and he said "The transfers shouldn't have been made."
12. Mr Rowson noted that when the first transfer of £2,905 was made the office bank account balance was £17,795.87 overdrawn and that when the second transfer of £500 was made the office bank account balance was £16,624.99 overdrawn.
13. The Respondent said that his office account overdraft limit was £15,000 and when Mr Rowson asked the Respondent if his overdraft position had influenced him in making the transfers from client to office bank account he said "No, that is not correct. It was just an error."
14. The Respondent said that he had not corrected the errors immediately as he did not discover them until December 1999, as client account balances had not been prepared

until that date. He added that he had left it at this stage while he looked into the matter.

Dr and Mr D -£1,450 (£700 and £750)

15. The Respondent acted for these clients in the sale of a property.
16. After completion of the sale, on 14th December 1998, the balance on the client ledger account was £3,698.14 and thereafter certain payments and transfers were made and noted on the ledger card.
17. However the ledger card omitted to include two further transfers of £700 and £750 from client to office bank account on 29th December 1998 in respect of this matter which had been recorded in the client cash book and which would have had the effect of creating a debit balance on the ledger during January 1999 of £1,450 if they had been allocated.
18. The Respondent said that the two amounts were "duplicate transfers for costs in error." He said that the mistake occurred by sending transfer authorities to the bank as well as authorising the transfer by telephone. He said that he thought he had correct the error in July 1999 and did not realise, until the Reporting Accountant identified the problem in December 1999 that he had not.
19. During the course of his inspection of the books of account Mr Rowson observed additionally a number of incorrect transfers from client to office bank account after the inspection date totalling £781.64 details of which are set out in paragraphs 23 and 24 of the said Report.
20. In addition transfers for costs had been made from client to office bank account prior to delivery of bills or any intimation of costs in writing on six client matters as exemplified below.
21. In relation to the estate of one AW deceased £4,000 in total had been transferred on various dates between March and September of 1999. Although the Respondent produced an alleged written authority to take such transfers, the first, in the sum of £1,100 predated the said authority.
22. In relation to the estate of one NJ deceased £3,000 in total had been transferred on various dates between September 1998 and September 1999. The Respondent who was an executor of the estate said that he did not have a written transfer authority from his co-executor which allowed him to transfer costs on account but that they had agreed this verbally.
23. In relation to the estate of one ED £1,243.75 in total had been transferred on various dates between April and October 1999. The Respondent said that he had not given any intimation of costs until January 2000 and did not until that date have a written transfer authority from the executor which allowed him to transfer costs on account but that they had already agreed this verbally.
24. Mr Rowson noted that all the said transfers were made at a time when the office bank account overdraft was near to or above the available facility. When asked if this was

the reason that he had made the transfers the Respondent indicated "I can only keep my overdraft down from the costs I earn and I am not trying to pretend any different." When asked why he had not raised interim bills he indicated "rather than produce formal bills I have noted the work involved and the charging rate and kept the client informed as the matter progressed." The Respondent also accepted that the amounts transferred were often round sum amounts stating that this was "only because of the agreement I have reached whereby I am authorised to transfer round sum bills not related to specific bills."

25. An explanation was sought in respect of those breaches by a letter from the OSS to the Respondent dated 16th May 2000. The Respondent replied by letter on 24th May 2000 requesting further information. The OSS replied to the Respondent on 6th June 2000.
26. The matter was placed before the Compliance and Supervision Committee on 14th June 2000 when a decision was made to intervene into the practice of the Respondent and to refer his conduct to the Solicitors' Disciplinary Tribunal.
27. Further representations were received from the Respondent by fax on 15th June 2000 following the decision of the Compliance & Supervision Committee.

Failure to promptly comply with IPS decision

28. On 16th September 1999 a first instance decision of inadequate professional services was made by an Officer of The Law Society in respect of a complaint by Miss C. A copy of the decision was before the Tribunal.
29. The Respondent appealed that decision but that appeal was rejected on 21st December 1999 by the Client Relations Appeals Casework Sub-Committee.
30. Following a failure to comply the matter was considered by the Chief Adjudicator on 8th February 2000 when it was resolved that the Respondent be referred to the Solicitors' Disciplinary Tribunal if he had not complied with the IPS decision within 14 days of being notified that the file had been transferred to legal services for the purpose of disciplinary proceedings.
31. By way of response the Respondent indicated that he was unable to comply with the decision because he had not received a deposit interest certificate. The Respondent made no attempt to obtain a deposit interest certificate, this was obtained by Miss C's solicitors on 21st June 2000. The monies due thereunder were paid on or about 12th December 2000 under the terms of an order annulling the Respondent's bankruptcy (a bankruptcy order had been made in May 2000).
32. The Respondent paid the £1,500 award on or about 10th February 2000.

Failure to comply with resolution of Adjudicator

33. In April 1996 Mrs B made complaint to the Solicitors' Complaints Bureau regarding the conduct of her late husband's affairs by the Respondent. After investigation the matter was considered by an Adjudicator who resolved on 15th June 2000 inter alia:-

"I find proven on a balance of probabilities the allegation of failure to account and I accordingly expect Mr R S Pybus to account to the Estate of the late DB for any sum currently standing on client account in the name of Mr B together with interest accrued since the date of Mr B's death (23rd January 1996) within 14 days of notification of this decision, failing which I direct that Mr Pybus' conduct shall be referred to the Compliance and Supervision Committee, without further notice to him, with a recommendation, to refer the matter to the Solicitors Disciplinary Tribunal."

34. That decision was upheld on appeal on 31st January 2001. On 28th March 2001 the Compliance and Supervision Committee resolved to refer the conduct of the Respondent to the Solicitors' Disciplinary Tribunal.

The Submissions of the Applicant

35. The Applicant had served notices to admit documents under the Civil Evidence Act without response from the Respondent. The Applicant would therefore call only Mr Rowson the Investigation and Compliance Officer to give oral evidence and would otherwise rely on the documents.
36. In relation to the transfers of costs in the estate of AW the authority to the Respondent from the co-executor which was annexed to the Report did not comply with the Solicitors' Accounts Rules. There had to be a written intimation of costs or a bill delivered prior to a transfer of costs. This had been accepted by the Respondent's Counsel although the Respondent's accountant in his Report had taken a view that the authority was sufficient. The Applicant's view in this regard was supported by the case of Jiwaji in February 2000.
37. The dates of the transfers were set out in the Report and in the matter of ED some of the transfers were within the same week. In the matter of AW sums were transferred on a fairly regular basis.
38. In relation to allegation (ii) which was admitted by the Respondent, the Respondent had complied in part with the decision in that he had met the Compensation Award but he had failed to obtain a Deposit Interest Certificate or to pay the interest.
39. In relation to allegation (iii) the Respondent had been made bankrupt in May 2000 and the decision had been in June 2000. The Respondent's practice had been intervened because of the bankruptcy and then again after the Report. The failure to account however was in the Respondent's knowledge as shown by the correspondence.
40. In a letter of 14th December 1998 from the Respondent to the OSS he had written:-

"In relation to our alleged failure to account, we have found a record of a fairly modest sum of money being received here at the time of Mr B's demise..... It seems, on looking at the file, that these monies were (modest as they are, being not much more than £100 from what we can see) retained until the issue of the monies, apparently wrongfully obtained from the B's account, was resolved."

41. In the submission of the Applicant the Respondent was well aware that monies were due to the estate of Mr B. The Grant of Representation had been obtained in March 1996 yet this matter remained outstanding and Mrs B had not yet received the monies.

The oral evidence of Mr Rowson, Investigation & Compliance Officer with the OSS

42. Mr Rowson confirmed the truth of his Report.
43. The cash shortage of £6,532.22 had arisen through debit balances on client account, mainly because of unallocated transfers but also because of incorrect transfers and small overpayments.
44. The Respondent had agreed the initial shortage and the final shortage at the end of the inspection.
45. The initial shortage had been as at 30th November 1999 but continuing cash shortages arose subsequently up to the end of February 2000.
46. With regard to costs, the Respondent had felt that he was entitled to transfer costs because he had an agreement with the clients that he could transfer costs after a certain amount of work.
47. As with the allocated transfers however the office account overdraft had been at its highest limit or over.
48. With regard to the Respondent's accountant's report, Mr Rowson generally agreed with its contents apart from some details and some differences in figures. Also the Respondent's accountant had gone beyond the dates covered by Mr Rowson and had found further shortages.
49. Mr Rowson disagreed however with the Respondent's accountant's interpretation of the Solicitors' Accounts Rules regarding the transfer of costs.
50. At the onset of the inspection the books and records had not been up-to-date. They had been brought up-to-date while Mr Rowson was there. They were not in a good state. Mr Rowson had reconciled most of his figures with those of the Respondent's accountant. The books had not been in compliance with the Solicitors' Accounts Rules.
51. In cross-examination Mr Rowson said that in relation to the transfer of costs he had not been satisfied that the Respondent had authority to transfer the costs from the three executors. Mr Rowson believed that the Respondent had made some transfers without authority. The Respondent had said that he had the verbal authority of the clients.
52. Mr Rowson had made a contemporaneous note showing that the transfers were made at a time when the overdraft was at its limit.
53. With regard to the Respondent's comment to Mr Rowson that he could only keep his overdraft down from the costs he earned, Mr Rowson agreed that that was in the

context of the Respond explaining how he operated transfer of money from his client account. Asked whether the keeping down of the overdraft was purely an incidental effect Mr Rowson said that it was an effect and that he was not able to comment on whether or not the Respondent had done the work in respect of which the costs were transferred.

54. Mr Rowson was referred to the Respondent's comment set out in the Report in relation to the transfers from client to office bank account when the Respondent had said:

"Certainly in my interest to do it. Element of self-preservation which undoubtedly there is but it is also in the interests of the clients."

Mr Rowson accepted that this was in the context of the Respondent saying that he had done the work and felt entitled to take the profit costs. Asked whether the self-preservation was incidental, Mr Rowson said that the transfer had the same effect both ways.

55. In relation to the shortage on client account the matter of Dr and Mr D was not related to the suspense account but that the other items were. All the figures in the shortage as set out by Mr Rowson had been confirmed by the Respondent's figures once the books had been brought up-to-date.
56. On the original visit the books had not been up-to-date and there had been no list of balances. Mr Rowson had discovered two transfers of £2,905 and £500 in the cash book referred to as "suspense account."
57. Mr Rowson had been able to see from the client ledger that there was a debit balance on the matter of Dr and Mr D.
58. On Mr Rowson's return visit the books had been brought up-to-date and the rest of the shortage had been identified by the Respondent and his book keeper.
59. Mr Rowson did not agree that the Respondent was on top of regularising the position. The books were some months behind and Mr Rowson suspected that they had been brought up-to-date because of his investigation.
60. As far as Mr Rowson could recall the Respondent had told him that he had identified the error on the D matter as early as July 1999. Mr Rowson took notes at the time. Mr Rowson did not think that he was confusing this matter with other matters or with confusing his dates.

The Submissions of the Respondent

61. Counsel for the Respondent set out before the Tribunal the various dates relating to the Respondent's bankruptcy and the two Intervention Orders are as follows:

2 nd May 2000	The Respondent was made bankrupt
2 nd May 2000	The OSS wrote to the Respondent asking what arrangements were to be made regarding his firm in view of the loss of his Practising Certificate due to bankruptcy.
4 th May 2000	The Respondent replied to the OSS that he intended to seek an Order annulling the Bankruptcy Order.
10 th May 2000	An Intervention Order was made on the grounds of bankruptcy. By this date the Respondent had made an application for an annulment of the bankruptcy.
14 th June 2000	The OSS resolved to intervene on the grounds that the Respondent had failed to comply with the Solicitors' Accounts Rules.
May and June 2000	Both Intervention Orders were challenged. The Respondent was unsuccessful for setting aside the Intervention Orders.
October 2000	The application for annulment was granted.

The oral evidence of the Respondent

62. The Respondent verified the contents of his witness statement and amended the date of signature from 6th May 2002 to 5th June 2002.
63. The Respondent had not dealt with the matters of Miss C and Mrs B in his statement. He accepted in relation to Miss C that he had failed to comply promptly with the decision of inadequate professional services in that he had not obtained the certificate as promptly as he should have done. The certificate had been received after his own funds had been removed by the Applicant and placed out of his control. His Practising Certificate had been suspended so he could not work.
64. It had been difficult to obtain the certificate and it became apparent that the Respondent could ask his professional body to obtain it. He had written in this regard in February 2000 but had had no response. The next the Respondent had heard was that a certificate had been obtained after the intervention.
65. The Respondent had taken no further steps when there had been no response. The Respondent had contacted the bank but they were not able to provide the service at that time.
66. The Respondent had written to the complainant but without response. It was the first time the Respondent had been asked to obtain a Certificate of Deposit Interest and he was not familiar with this.
67. After the intervention all matters had been taken over and since May 2000 the Respondent had earned a living on an ad hoc basis but not as a solicitor.

68. In relation to the matter of Mrs B at the time the Order arrived there had been little that the Respondent could do but as far as he had been able he would have cooperated with the removal from client account of the sums standing to the credit of his late client's account.
69. The Respondent had not taken steps afterwards but he had made it clear in the letter that he would not seek to obstruct such a move. The Respondent had not had the client account so could not take positive steps. The intervention had occurred one month before.
70. The sum claimed was about £131 and the sum in client account was about £60.
71. The Respondent had been at an early stage in dealing with one of the several firms of solicitors instructed by Mrs B. The Respondent had made clear that regarding some matters done for the late client he was entitled to costs. No objection was made and the Respondent had thought that about £131 had been paid to him shortly after B's death and had been placed in client account.
72. A third party fund had been set up to deal with admitted claims but disputed ones were different and the Respondent was not aware that any claim had been made against that fund in respect of the matter of Mrs B.
73. In relation to the suspense account the Respondent said that his previous book keeper for some eleven years had opened suspense accounts usually identified by an alphabetical letter thus the account S related to all clients whose names began with S.
74. In May 1999 the book keeper had been engaged in completing the monthly balancing exercise because the accounts had to be ready by the end of May to be submitted as part of the accountant's report to The Law Society. It was discovered that there were debits of which the Respondent had not been previously aware including the matter of D.
75. The accountant had audited the ledgers but had not made mention of this. It had been discovered because of items in the bank statements.
76. The exercise was to raise the necessary funds to correct the debits. They were placed in the suspense account and were to be debited to the correct client account. The accountant had been aware of this which was ongoing from May.
77. The problem on the D matter came to light because of the drawing up of the monthly balances. Two transfers had occurred in mid December 1998 but there was no reference to these in the ledgers. The transfers had been made by the bank of its own accord as set out in the Respondent's statement. When the book keeper and the Respondent were satisfied the money did belong to the D matter it had to be cleared. The matter had been dealt with as set out in Mr Rowson's Report. By the end of September 1999 the book keeper had drawn up a list of balances. By the end of September all the debits of which the Respondent had been aware were removed.
78. The reason for the hiatus through to July 2000 was that the book keeper had been engaged in the exercise of completing the monthly balances and in the second week of

September the Respondent had received the notice of intervention. The Respondent had then left the office to go to Court to pursue an application for a stay of the intervention.

79. While the Respondent was away the Intervention Officer had told the Respondent's staff to go to the employment centre. This had been traumatic. The Respondent's secretary had found other work and he had not been able to replace her for several months.
80. The book keeper had come back on a voluntary basis to carry on the exercise he had started but had then become seriously ill and the Respondent had taken on a temporary book keeper.
81. It was discovered that the previous book keeper had made a number of errors and it was decided that the exercise should be started again. It had taken to the end of the year to produce a set of balances and it had not been possible to do this within the five weeks cycle.
82. At Christmas the Respondent had been granted an extension by the OSS. The Reporting Accountant had been told what had been done and he had approved the method. He confirmed that as soon as the book keeper had completed the monthly balances the Respondent could make the necessary transfers.
83. The book keeper had presented the Respondent with a complete analysis of the position on the day after Mr Rowson had come without notice.
84. The Respondent confirmed that the information which he had given to Mr Rowson at the time of the inspection in this regard had been true.
85. In cross-examination the Respondent said that he was responsible for keeping the books of account and the way he had attempted to meet that duty was to employ a book keeper.
86. There had been debits on client ledgers and the Rules obliged the Respondent to correct these as soon as possible which the Respondent had attempted to do.
87. The Respondent confirmed that he had become aware of the D matter in May 1999. It had arisen in December 1998. It had been corrected in January 2000. It had taken longer than the Respondent intended for the reasons he had mentioned. The Rules said that such debit should be rectified as expeditiously as possible.
88. Asked if he had been in breach of the Solicitors' Accounts Rules the Respondent said he "could not be of further assistance."
89. There had been an intervention in the second week of September 1999 which had been withdrawn although the Respondent had had to return to court to obtain this. With the approval of his accountant the Respondent had set up a system to deal with the debits with his book keeper who had continued with that exercise until removed in September 1999.

90. In relation to Miss C the Respondent said that he had located the letter which he had written to The Law Society asking them to provide the certificate but he had not obtained a response.
91. The Respondent had discovered that under the Rules the matter could be agreed with the complainant and he had paid £500 and had written to her.
92. In the year 2000 there had been an intervention because of the Respondent's bankruptcy which led to the automatic suspension of his Practising Certificate. The moment the Order and bankruptcy was made the Respondent's estate vested in his Receiver. Further once the intention to intervene had been made the OSS had contacted the Respondent's bank and the accounts had been frozen. For both of these reasons the Respondent had no funds and had no Practising Certificate. In relation to Mrs B both the Respondent and Mrs B had appealed the decision. The Respondent had made it clear to the OSS that he had no objection to the monies being removed. In relation to the receipt issued by the Respondent following B's death the Respondent had accepted in the proceedings that he could only transfer costs if there was a bill or he had sent a written intimation but at the time he had believed that if he had the authority of the client he could transfer the costs.
93. In relation to the matter of AW in April 2000 the Respondent had sent interim estate accounts bill for all the work done to that date which had been approved by the client.

Further Submissions of the Respondent

94. In relation to allegation (i) under the 1991 Solicitors' Accounts Rules, Rule 11(i) was the primary Rule which affected the preparation of accounts. As a matter of law in so far as it was alleged that the Respondent had breached Rule 7 this was not spelt out as such in the Rule 4 Statement for where it was in for Mr Rowson's Report. On the face of the application the Respondent did not have to address the allegation that he had transferred costs when he might not have done a bill or written initiation.
95. In relation to Rule 11 (i), sub section (5) was of assistance:
- "(i) compare the total of the balances shown by the clients' ledger accounts of the liabilities to the clients, including those for whom trust money is held in the client account, with the cash account balance; and
 - (ii) prepare a reconciliation statement showing the cause of the difference, if any, shown by the above comparison; and
 - (iii) reconcile that cash account balance with the balances shown on client account bank and building society pass books or statements and money held elsewhere;"
96. There was no obligation to correct mistakes within a particular time limit and no obligation that the accounts should be perfect. The Rule was that the accounts should be properly written up.
97. It was submitted that so long as the Respondent was properly monitoring the accounts and where he found errors he took reasonable steps to correct them, then he was complying with his obligations under Rule 11(i).

98. The Respondent accepted that in relation to transfers of costs it was not sufficient to rely on the client's general authority. The Respondent accepted that he must either render a bill or send a written intimation. It was submitted however that the Respondent had had a genuine belief that it was sufficient to rely on a client's authority. The Respondent had had that authority. The costs had been transferred in respect of work done. The allegation was that the Respondent's conduct was such as to be unbefitting a solicitor but the Respondent had made a mistake of law. It was not a mistake which had caused prejudice and it was not arising from dishonesty or recklessness on the part of the Respondent. He had done the work. What he did should not be regarded as unbefitting conduct.
99. Due to the change over in book keeper, mistakes were made. If the Tribunal accepted the Respondent's evidence but every reasonable step was taken to produce properly written up accounts and to restore the debit balances and that this was already in process before the investigation and the Tribunal could conclude the Respondent kept properly written up accounts. If the Tribunal felt that the Respondent had been remiss in this, this did not amount to conduct unbefitting.
100. The Respondent had been beset by financial problems during late 1999.
101. The circumstances in which he was practising were relevant. He had been a sole practitioner stretching between contentious and non-contentious work. He had to devote a lot of time to his professional practice and had had to provide the documentation and information required by the accounts Rules. The Tribunal was asked to have regard to the circumstances in which the Respondent was practising when considering conduct unbefitting.
102. The Tribunal was asked to note the long standing use of the suspense account which had been in place for eleven years. This was a procedure the Respondent used to regularise immediately any wrongful debits against the client account. He immediately recorded in writing any problems. This was an open method of the Respondent making absolutely clear that there had been a wrongful debit.
103. There was no basis on which it could be said that the Respondent having found a problem attempted to conceal a debit. The suspense account was the only method he had been aware of. While objectively a solicitor should not use suspense accounts for "dumping" debits so far as the Respondent was concerned he was entitled to have the Tribunal pay regard to his own particular circumstances.
104. The Tribunal was asked to accept in the matter of D that on the Respondent's evidence the delay if any was excusable and that there had been no attempt on his part to misuse any money wrongly debited.
105. In relation to allegation (ii) this was admitted with mitigating circumstances. The Respondent had contacted the OSS for assistance and they had not responded. The Respondent had done no more. He felt that his professional body was where he should have obtained assistance. He had acted in a way which was professionally correct but matters were overtaken when the other side obtained the certificate.

106. The mitigation for the delay of ten months lay in the difficult financial circumstances in which the Respondent found himself in that period. The payment was only produced from third party funding which showed the Respondent's difficulties and the length to which he would go to annul the bankruptcy and to pay creditors in full.
107. Allegation (iii) was disputed because of the technical way in which the direction had been made. If the Order relied on the Respondent disgorging the money from client account, then technically he had not breached the Order. The Order was made against a background in which normally a solicitor would be continuing in practise and could calculate interest but the Respondent had been in peculiar circumstances outside of his control.
108. The Tribunal did not accept that submission but it was submitted that the Respondent did not display any wrong intent in not paying the debt which was an unusually small amount. It had not been paid because the Respondent thought it was outside of his control and given the wording this was an understandable view. The Respondent's conduct fell far short of conduct unbecoming.
109. The Tribunal was asked to look at the allegations as narrowly as they were put. There were defences. It was submitted that it was not possible to make a finding that the Respondent's conduct was disgraceful or morally reprehensible. Mistakes had been made in the course of practise which the Respondent had thought to correct in difficult circumstances from late 1999 onwards.

Submissions of the Applicant in relation to matters of law

110. The Applicant had put allegation (i) in round terms. Transferring sums without bills or written intimations was a breach of the accounts Rules and was covered by allegation (i).
111. The Solicitors' Accounts Rules were there to protect the public. In the case of a sole practitioner it was extremely important that the Rules were followed properly. The Rules must be interpreted tightly and narrowly and the case of Jiwaji gave authority to that effect.
112. The Respondent's accounts had shown debits and shortages on client account. These were not general little errors but major problems.
113. Rule 11(5) said that balances and reconciliations should be done every five weeks. If a shortage existed for up to a year it was apparent that Rule 11(5) had not been complied with.
114. In relation to conduct unbecoming both the other allegations related to resolutions of the Respondent's professional body. If a solicitor did not comply and comply promptly he was bringing the profession into disrepute and his conduct was conduct unbecoming.

Submissions of the Respondent in Mitigation

115. After the Tribunal had found the allegations proved the following further submissions were made on behalf of the Respondent in mitigation.

116. The Respondent was aged 60 and had practised for over 30 years. What was of paramount importance to him was the facility to continue in practice. He had not practised for the last two years.
117. Whatever shortcomings he had been guilty of the Tribunal was asked not to prevent him from having the ability to practice.
118. The Respondent was a man of good character. Events of the last two and a quarter years had had a traumatic effect on him and his life.
119. While having regard to the protection of the public the Tribunal was asked to consider the special considerations which applied to the Respondent.
120. A recent finding of the Tribunal had been made against the Respondent in his absence. He had felt unable to attend because of his health and this matter was presently the subject of an appeal to the Court of Appeal.

The Findings of the Tribunal

121. The Tribunal found the allegations to have been substantiated. Allegation (ii) was admitted. In relation to allegation (i) the Respondent's own accountant's report agreed that there had been a cash shortage. The Tribunal could not see any meaningful defence to the charge that the books had not been in compliance with the Solicitors' Accounts Rules. The breaches were detailed in the Rule 4 Statement and in the Report of Mr Rowson. There had been no proper defence to allegation (iii) the "defence" being rather mitigation but mitigation which did not go to the heart of the allegation. The Tribunal had not found the Respondent to be an impressive witness. His evidence had been evasive and unsatisfactory. The Tribunal having carefully considered the oral evidence, the documentation and the submissions found all the allegations proved. A failure to comply with decisions of the regulatory body was clearly conduct unbecoming a solicitor.
122. In relation to the breaches of the Solicitors' Accounts Rules, the Rules were there for the protection of the public. The breaches could not be regarded as just "mistakes." The breaches of the Rules in respect of which the Tribunal had found the Respondent's explanations unsatisfactory, did amount to conduct unbecoming a solicitor.

Previous appearances of the Respondent before the Tribunal

11th November 1993

123. At a hearing on 11th November 1993 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in each of the following respects:
- (a) failed to deliver up papers to a firm of solicitors within a reasonable time of a proper request being made;
 - (b) failed to render an account to clients within a reasonable time of the determination his retain.

The Tribunal was satisfied with the basic good character of the Respondent and appreciated that he was deeply affected at having to appear before them today. There

was no doubt that the Respondent had allowed the entrenched position he had adopted to get out of hand and he seemed incapable of appreciating the other point of view. Nevertheless, they accepted that this was in part due to a misinterpretation of The Law Society's earlier advice and in part due to his anxiety about his own health.

The Tribunal, having looked through an extract of the correspondence on this case, could well imagine the inordinate amount of time the applicant had spent preparing this case and there was no doubt that the costs, when taxed, would be substantial. The Respondent would suffer a severe financial penalty in respect of payment of the costs alone. Whilst it was unfortunately true that the Tribunal had seen worse examples of delay than this, the profession is not well served by such conduct as the Respondent displayed – especially where the client is disaffected at the outset. In all these circumstances, they felt a financial penalty was appropriate but did not consider it necessary to levy a fine that was unduly high.

The Tribunal order that the Respondent Roy Stewart Pybus, solicitor of 163 Queens Drive, Childwall, Fiveways, Liverpool do pay a penalty of £50 to be forfeit to Her Majesty the Queen and they further Order that he do pay the costs of and incidental to this application and enquiry, such costs to be taxed by one of the Taxing Masters of the Supreme Court.

3rd February 2000

124. At a hearing on 3rd February 2000 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbefitting a solicitor in each of the following particulars:
- (i) failed to deliver to a client (or his solicitor) all the papers and property to which that client was entitled in breach of Principle 12.11 of the 7th Edition of the Guide to the Professional Conduct of Solicitors (1996);
 - (ii) failed to respond promptly to correspondence and telephone calls from the Office for the Supervision of Solicitors;
 - (iii) failed to comply with the decision of Inadequate Professional Services dated 19th August 1998 (confirmed on appeal on 20th January 1999).
125. The Tribunal in February 2000 considered that the allegations before it were perhaps not at the most serious end of the scale:

Having said that the Tribunal considered that the Respondent's behaviour has been a disgrace to his profession. He had made disingenuous attempts to have the substantive hearing adjourned and had lodged with the Tribunal a statement which is unhelpful, confusing and obfuscatory. The Tribunal hope that the respondent will in future moderate his wholly inappropriate attitude to his professional body and to this Tribunal. A solicitor has a duty to ensure that papers to which a client was entitled are promptly delivered to that client when he requests them. A solicitor had a professional duty to respond promptly to correspondence and telephone calls addressed to him by his own professional body and it was a serious matter if a solicitor did not comply with a decision and direction made by his own professional body.

126. The Tribunal imposed a fine of £6,000 upon the Respondent together with costs and made an order that the Inadequate Professional Services Direction be treated for the purposes of enforcement as if it was an Order of the High Court.
127. At the hearing on 6th June 2002 the Tribunal noted that this was the Respondent's third appearance before the Tribunal. The Tribunal noted what had been said about the Respondent at the hearing in February 2000 by the Tribunal. At the present hearing it had been proved against the Respondent that he had taken costs without proper authority and had a shortage on client account. He had not complied with directions of his regulatory body. The Tribunal had been asked to consider the "special considerations" which applied to the Respondent but the Tribunal had been unable to see that there had been any special mitigating factors which reduced the Respondent's responsibility for his conduct. The Solicitors Accounts Rules were there for the protection of the public. The Respondent had not complied with those Rules and even now did not appear to accept the seriousness of that failure. Even without the Respondent's two previous appearances before the Tribunal the Tribunal would have considered a striking off order in relation to the present allegations. The Tribunal had not been persuaded by the Respondent's evidence and nothing in the submissions in mitigation were such as to make the Tribunal draw back from that penalty. The protection of the public was paramount and the Respondent had fallen lamentably short of the standards required of a solicitor in relation to the stewardship of his client's funds and in relation to his duties towards his professional body.
128. An application for a stay of the filing of the order was made on behalf of the Respondent and refused by the Tribunal. It was not the practice of the Tribunal to accede to an application for a stay when serious allegations had been proved against a solicitor other than in the most exceptional of circumstances.
129. The Tribunal ordered that the Respondent Roy Steward Pybus of Wavertree, Liverpool, 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 to be subject to detailed assessment unless otherwise agreed.

DATED this 22nd day of August 2002

on behalf of the Tribunal

D J Leverton
Chairman