

IN THE MATTER OF JAMES GORDON SHUTE HARRIS, solicitor

AND

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. W M Hartley (in the chair)
Mr. A N Spooner
Mr. D Gilbertson

Date of Hearing: 24th September 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 David Elwyn Barton solicitor of Monckton House, 72 Kings Street, Maidstone, Kent, ME14 1BL on 15th April 2002 that James Gordon Shute Harris of Mallet Court, Curry Mallet, Taunton, Somerset, TA3 6SY solicitor 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 as follows:-

- (a) He had dishonestly, alternatively improperly, utilised clients' money for his own purposes;
- (b) He had acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules, (Rule 22 of the Solicitors' Accounts Rules 1998) he had drawn from client account moneys other than in accordance with the said Rules and utilised the same for his own benefit;
- (c) He had failed to keep accounting records properly written up to show his dealings with client money, contrary to Rule 32 of the Solicitors' Accounts Rules 1998;
- (d) He had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th September 2002 when David Elwyn Barton solicitor and partner in the firm of Whitehead Monckton of Monckton House, 72 King Street, Maidstone, Kent, ME14 1BL appeared as the Applicant and the Respondent was represented by Michael Lloyd- Davies solicitor and partner in the firm of Porter Dodson, of 11 Hammet Street, Taunton, Somerset, TA1 1RJ.

The evidence before the Tribunal included the admissions of the Respondent save that the Respondent denied dishonesty. The Tribunal heard oral evidence from the Respondent and from Mr James B Lewis.

At the conclusion of the hearing the Tribunal ordered that the Respondent James Gordon Shute Harris of Mallet Court, Curry Mallet, Taunton, Somerset, TA3 6SY be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £6,617.27.

The facts are set out in paragraphs 1 to 32 hereunder:-

1. The Respondent born in 1933 was admitted as a solicitor in 1960 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was carrying on practice under the style of J G S Harris of Mallet Court, Curry Mallet, Taunton, Somerset, TA3 6SY. He was a sole practitioner.
3. An Investigation Accountant of the Law Society investigated the books of account of the Respondent. The inspection started on 11th October 2001 and the resulting Report dated 29th November 2001 was before the Tribunal.
4. The Report of the Investigation Accountant set out the following matters.

Books of Account

5. At the start of the inspection the Respondent explained that he was not able to produce his books of account as they were with his self employed bookkeeper, Mr B, who was abroad. In the circumstances the Investigation Accountant, Mr Sutherland, made arrangements to return to continue the inspection on 8th November 2001.
6. Upon his return, Mr Sutherland noted that the narrative recorded on the individual accounts within the clients' ledger was inadequate and the list of client balances produced at 30th September, 2001 did not fully agree with the balances recorded in the clients' ledger. When Mr Sutherland asked the Respondent why he had not maintained his books as required by the Solicitors' Accounts Rules, the Respondent said there had been a lack of communication between himself and his bookkeeper.
7. In addition the bank statements showed a number of transfers and payments from client bank account which were not capable of allocation to any particular clients.
8. Further inspection of the books of account showed nineteen round-sum transfers from client to office bank account.

9. A minimum shortage of £14,600.30 existed at 30th September, 2001 as a result of unallocated transfers and payments having been made from client bank account and as a result of round-sum transfers having been made from client to office bank account for which the Respondent could not produce bills of costs.

Partial Replacement of the Minimum Shortage - £14,600.30

10. During the inspection the Respondent introduced private funds totalling £3,225.00 into client bank account. On 13th November, 2001 he said that the remainder of the minimum shortage would be replaced from the sale of stocks and shares. The Respondent agreed to inform the OSS when such replacement had been made. On 19th November, 2001 the Respondent informed the OSS that he had replaced a further amount of £5,246.49.

Unallocated Transfers and Payments £6,835.30

11. During the inspection Mr Sutherland noted that eight payments and transfers had been made from client bank account, totalling £6,835.30, which were not capable of being allocated to any particular client. The Respondent initially said that these payments and transfers had been made for fees due to him, but he later agreed that they were not capable of allocation and that was why he had partially replaced them.
12. At a meeting with the Respondent on 13th November, 2001 Mr Sutherland asked him about one payment made from the client bank account dated 9th July, 2001 for £1,225. Mr Sutherland said “why did you do this”, to which the Respondent replied “I was away, it was done in my absence”. Mr Sutherland then said “by whom?” and the Respondent conceded that he had made the payment and that he “must have done it on a misunderstanding”.

Incorrect Transfers from Client to Office Bank Account

Mrs D deceased - £7,765.

13. The Respondent was appointed sole executor of the estate of Mrs D who died in December, 1999 leaving a gross estate valued at £270,685.
14. Mr Sutherland noted that between the 20th July, 2000 and 16th August, 2001 nineteen round-sum amounts totalling £14,750.00 had been transferred from client to office bank account in respect of this matter.
15. The Respondent said that these transfers were for his costs but he was only able to produce three bills as listed below:-

August 2000	£2,250.
August 2001	<u>4,735.</u>
	6,985.
August 2001	<u>875.</u>
	<u>£7,860.</u>

16. Mr Sutherland asked the Respondent whether he had prepared estate accounts (as stated in the August 2001 bill for £875) and he said “no”. Mr Sutherland then said, “in that event why did the narrative of your most recent bill for £875. state, inter alia, “... drafting accounts ... “. The Respondent replied “... that will be returned”.

17. Mr Sutherland therefore calculated that a shortage of £7,765, existed on this matter being the total of the nineteen round sum transfers (£14,750) less the August 2000 bill of £2,250 and the August 2001 bill of £4,735.
18. During an interview on 13th November, 2001 the Respondent confirmed that the transfers totalling £14,750. represented approximately 5.5% of the gross estate. He added that he had not delivered any of the three bills to the residuary beneficiaries but he contended that, during a meeting with them, he had informed them that his costs would be in the order of £14,000. The Respondent was not, however, able to produce documentation as to his purported discussions with the beneficiaries.

OTHER MATTERS

Payments from the Account of Mrs G - £5,145.00

19. The Respondent was appointed the attorney of Mrs G by an Enduring Power of Attorney dated 7th June, 1994.
20. During the course of the inspection the Respondent was asked to supply the chequebook(s) and bank statements relating to Mrs G's account.
21. The Respondent produced one chequebook only and it subsequently became clear from the bank statements that at least one further chequebook was currently in use.
22. The chequebook provided did not contain the usual counterfoils but simply a blank schedule for use as an aide memoir. This was not fully completed and thus it was difficult to tell to whom a number of cheques had been paid.
23. The Respondent explained that Mrs G's late husband had set up a Trust for her in his Will whereby she was to receive income from the Trust assets during her lifetime and thereafter the assets were to be distributed amongst a number of charities.
24. The Trust assets comprised a portfolio of shares, which were currently administered by a firm of stockbrokers in Taunton.
25. The Respondent was a trustee of the Will Trust together with a representative of a charity.
26. Income was received regularly from the Taunton stockbrokers and paid in to Mrs G's account. A regular monthly payment by standing order was made from Mrs G's account to a residential home where she resided.
27. Mr Sutherland asked The Respondent whether he had delivered bills of costs to Mrs G for the work he was doing. He said "no, she is not capable of understanding bills of costs because she is mentally unfit".
28. Mr Sutherland asked the Respondent when Mrs G had lost her mental capacity and he said "... a little while ago". Mr Sutherland then asked whether the Power of Attorney had been registered with the Court of Protection immediately Mrs G had lost her mental capacity and the Respondent said "it's probably about the right time to do that now".

29. Examination of Mrs G's private bank account statements revealed the following payments:-

Date	Cheque Number	Amount £
20.04.01	69	600
18.05.01	102	650
19.06.01	104	500
14.08.01	105	895
04.10.01	70	270
08.10.01	71	825
09.10.01	72	925
12.10.01	74	475
Total		5,140

30. The Respondent confirmed to Mr Sutherland that these payments represented costs.
31. Mr Sutherland inspected the files with regard to the Will Trust and Mrs G's personal affairs and these revealed a minimal amount of work carried out by the Respondent from May, 2001 to the present day. From 5th April, 2001 to 13th October, 2001 the Respondent had sent twelve short letters and had received sixteen letters mainly from the firm of stockbrokers.
32. At a meeting with the Respondent, Mr Sutherland said "turning now to Mrs G, I note that £5,145. in fees have been taken from her personal account with Lloyds since April this year, £2,500. of which had been taken in October alone. I have inspected the file and there appears to have been very little work carried out on the matter in this period – what do you say". The Respondent said "if they are unreasonable they will have to be returned". Mr Sutherland then said "is it appropriate to take fees of this magnitude from a lady in a home who has lost mental capacity and whose interests are not being safe guarded by the Court of Protection?", to which the Respondent replied, "all I seek to do is to take fair and reasonable fees – I do not seek to take unconscionable fees".

The Submissions of the Applicant

33. The Respondent had denied dishonesty although he had admitted improperly utilising clients' money for his own purposes. The Applicant however was presenting the matter as a dishonesty case. In the submission of the Applicant the matter went beyond impropriety and became dishonesty.
34. The Applicant had admitted the Report of the Investigation Accountant and the contemporaneous notes made by the Investigation Accountant.
35. The Tribunal would need to be satisfied beyond reasonable doubt that there had been conscious impropriety by the Respondent. The Tribunal would, it was submitted, consider whether the Respondent knew or realised that what he was doing fell below the standards required.
36. The Tribunal was referred to the case of *Twinsectra v Yardley* which principally considered the matter of a solicitor who was an accessory and considered whether he

was guilty of dishonesty if he obviously closed his eyes. The House of Lords had indicated that dishonesty required advertent conduct rather than inadvertent. Carelessness was not dishonesty. If the Tribunal found on the evidence that the improper conduct was conscious then it was submitted that the Tribunal must find that dishonesty followed.

The Submissions on behalf of the Respondent

37. The facts of the Accountant's Report were accepted.
38. This was not a case where the Respondent had closed his eyes. The question was whether there had been conscious impropriety i.e. deliberate and advertent conduct as opposed to gross carelessness which was very different.
39. The Tribunal was invited to consider carefully the written statement submitted by the Respondent.
40. The Submissions on behalf of the Respondent were supported by the oral evidence of the Respondent.

Oral evidence of the Respondent

41. The Respondent confirmed his written statement.
42. He had spent nearly all his working life in practice in Taunton in partnership but in 1992 had gone into practice alone. He had another business interest and since 1992 he had been running down his practice looking only after existing clients.
43. His gross costs for the year to July 1999 had been £17,426. He dealt with conveyancing and (mostly) probate and trust matters.
44. He employed a part-time secretary and a bookkeeper who worked from home.
45. The Respondent acknowledged deficits on client account and had introduced the sums set out in his statement.
46. In relation to the unallocated transfers and payments, as set out in the Respondent's statement these included a direct debit (not a cheque) in payment of the Respondent's private telephone account. The enquiries had been made by the Respondent's accountant Mr Lewis who would speak of this matter when giving evidence.
47. The payment stated to be in relation to the matter of E related in fact to a different matter with a similar name and as stated in the Respondent's statement arose from a misreading of the cheque counterfoil. Again Mr Lewis would speak to this matter.
48. With regard to the allegations regarding Mrs D deceased the file was with the Law Society's solicitors. The Respondent had requested that it be sent to the new solicitors dealing with her matter and also to the Respondent's accountants.
49. The Respondent would repay if it was found that he had charged too much but he had not yet been able to establish this.

50. In relation to the professional fees charged to Mrs G the Respondent had realised that he had incorrectly charged fees to her personal account which related to her late husband's Wills Trust. The Respondent had dealt with both matters.
51. The Respondent had accepted that there had been mistakes in his accounts but these were definitely not dishonest or intentional. The Respondent had relied entirely on his bookkeeper and had only drawn moneys on client account when the bookkeeper had approved this.
52. In cross examination the Respondent explained his internal method of requisitions namely that he would seek the approval of his bookkeeper in person at their weekly meeting. The Respondent did not complete cheque requisition slips. It was the bookkeeper's responsibility to make postings and the Respondent would sign cheques as the sole signatory.
53. The Respondent's accountant, Mr Lewis, would check the position on his audit visits. For a time these had been quarterly and then when Mr Lewis had been more satisfied they had reduced in frequency to between nine months and a year. From time to time the Respondent would ask the bookkeeper if all was in order and he said yes.
54. The overdraft facility on the office account had been amended at some time and further facilities granted on an occasion when the bank had made a mistake. The Respondent thought that the figure of some twelve hundred pounds overdrawn was within the figure agreed.
55. The Respondent could not remember if he signed a document regarding the direct debit for the telephone but Mr Lewis had investigated this and would speak to the matter.
56. The Respondent had attempted to repay funds into the client account drawing a cheque on his garden business. He had been advised to do this by this bookkeeper. A cheque had been refused on two occasions due to a bank error and Mr Lewis had all the information.
57. The payment of £1,225 in July 2001 had been drawn on the advice of the bookkeeper against client account. The Respondent had believed that there had been a ledger card for the N Trust and he had drawn the payment against the N ledger in that belief. Mr Lewis had subsequently come in and advised that that was incorrect and that there was no such ledger.
58. Asked why in relation to this matter he had told the Investigating Accountant that he had been away, the Respondent said that there was a period when he had been away. Mr Lewis would clarify the matter. The money had been repaid.
59. Asked why the Respondent had subsequently told the Investigating Accountant that he "must have done it on a misunderstanding" the Respondent said that he would like Mr Lewis to assist the Tribunal in this matter.
60. There had not been a misunderstanding on the part of the Respondent because he had been informed by the bookkeeper that it was in order to make the payment for fees.

The Respondent could not remember whether the bookkeeper had told the Respondent that there was a ledger in the name of the N Trust but a bill was delivered in that name drawn by the Respondent. The Respondent knew that he had a client of that name and that he was a trustee of the Trust.

61. The Respondent could not remember what he had meant when he told the Investigating Accountant that two of the unallocated transfers were taken as fees for a particular matter. The Respondent said the money was taken from client account with the approval of his bookkeeper and no money was taken out without that approval. The money was not taken to make payments from office account.
62. The Respondent did not write the books. He did from time to time ask to look at the ledger cards.
63. Asked why the transfers were round figures the Respondent said that he would prepare bills and the bookkeeper would say that he would check the position but in the meantime he would suggest that the Respondent take a certain amount of the bill in fees. The amounts taken might therefore not reflect the full amount billed. The Respondent was not registered for VAT.
64. The Respondent could not explain how the Investigating Accountant could not attribute all the payments. Mr Lewis had not been present and the Respondent had been trying to assist the Investigating Accountant to the best of his ability.
65. In relation to Mrs D deceased the Respondent said that monies had only been withdrawn from client account with the approval of the bookkeeper. If there had been an error it was that of the bookkeeper for which the Respondent had to take responsibility.
66. Three bills had been correctly drawn and would have been produced to the bookkeeper who would say take a certain amount on account and he would check out the position and let the Respondent know.
67. The Respondent did not know how the bookkeeper got it wrong but there had been no intention to deceive.
68. The Respondent could not remember if he had drawn nineteen bills. They would have been bills on account which would have been handed to the bookkeeper who would be asked if payments could be made. The Respondent had trusted the bookkeeper. He doubted whether nineteen bills had been prepared because costs would have been taken on account against bills delivered.
69. The bill dated August 2001 for £875 would have been prepared on the Respondent's dictation. It was correct that the Investigating Accountant had asked the Respondent whether he had prepared the estate accounts and the Respondent had said no. The Respondent admitted that the wording of the bill was generous. The Respondent had done a lot of the preliminary work and had made notes but had not put the estate account into a legible form. He had said that he would return any repayment due. It became apparent that more had been debited to the client than should have been so the whole amount had to be looked at and adjusted.

70. When a bill was prepared the Respondent would have had the file and would have known when other bills had been drawn provided these had been correctly filed up to date by his secretary.
71. The Respondent had not kept time records, preparing bills from his knowledge of the case and from letters and attendance notes. He had probably undercharged. If there was an attendance note it would give a time but the Respondent would not always put in a note of his time if, for example, he was working on estate accounts. It was fair comment that it was therefore difficult to work out a charge but he had probably undercharged.
72. It was correct that the three bills had not been delivered to the residuary beneficiaries but the Respondent had written to them a short while afterwards.
73. When the matter had started the Respondent had had a meeting with the beneficiaries and accountants. He had advised them that the fees would be around £5,000 and he should have advised them when the fees had exceeded that amount but had been late in doing so.
74. In relation to Mrs G the Investigating Accountant had drawn the Respondent's attention to the issue of Mrs G's capacity to understand her affairs and the Respondent was grateful for his advice.
75. He did not visit Mrs G on a regular basis but would telephone the nursing home regularly and was told a visit would not assist.
76. He had been told by the nursing home that there would be no point in sending letters as Mrs G would not understand. In speaking to the Investigating Accountant the Respondent had loosely used the words "mentally unfit". He meant that Mrs G was getting elderly.
77. The Respondent telephoned the nursing home once a month to ask after Mrs G's condition and whether she needed moneys for small payments.
78. The Respondent accepted that he had told the Investigating Accountant that Mrs G had lost her mental capacity "a little while ago" but the Respondent had no hard evidence. The Power of Attorney had not been registered with the Court of Protection until the Investigating Accountant had advised this. It had not been done before because the Respondent had not applied his mind to it and he accepted that he should have registered it earlier.
79. The Respondent was familiar with the Court of Protection having registered other Powers although he could not recall the names of any clients in this regard. He had only done it once or twice. The Respondent was familiar with the procedure which would follow registration regarding charging. The fact that the Court of Protection's permission would be needed was definitely not the reason why the Respondent had not registered the Power in respect of Mrs G. The Respondent had generally looked after her affairs including checking her statements regularly and dealing with the stockbrokers.

80. The Respondent at this time had worked approximately half a week, some thirty five hours, on his legal practice and had also devoted time to his other business.
81. The payments set out in the Investigating Accountant's Report which had been debited from Mrs G's private bank account represented costs. Some of these had related to the matter of her later husband's Will Trust and the Respondent had recognised that this was wrong and had corrected the matter. When the Investigating Accountant had pointed this out the Respondent had been utterly aghast.
82. The Respondent normally charged quarterly and did not know that he had charged more often. There had been no intention to deceive or deprive to the detriment of a client. He may have drawn the costs without the file in front of him. He was aghast that he had misdirected himself. In relation to the four payments in October the Respondent said that some of these would have been the Will Trust and he could not say if he had the file as it was sometimes at the secretary's home. He was dealing with the Will Trust and Mrs G and it was perfectly possible that he had misdirected himself and taken fees twice. He did not always complete cheque stubs, as the Investigating Accountant knew, through slackness. The Respondent wrote out the cheques but would not necessary have looked at the cheque stubs which were very small.
83. Asked if he would not have recalled there had been three payments already in October almost sequentially the Respondent said that there were two cheque books but it was fair comment that they were probably drawn from the same book.
84. The Respondent could not recall knowing there had been earlier payments and this was inadvertence rather than anything else.
85. The Respondent did not overcharge or charge unconscionable fees. The files showed little work because the Respondent did not keep time records. The charges of some £2,500 in October 2001 had been due to inadvertence. The Respondent had thought he had not charged for the previous quarter and he had also been charging for the Will Trust.
86. There had been a lot of work other than that recorded in the file and the time spent had not been unreasonable when looking after an old lady's affairs.
87. The Respondent's other business was going satisfactorily and with his solicitor's business had provided him with a livelihood.
88. There had been no other occasions when the bank had returned cheques from his other business than that referred to in the Investigating Accountant's notes. This had been due to a bank error.
89. In re-examination the Respondent said that the bank had acknowledged its error, repaid the amounts and paid compensation.
90. Mrs G had become incapable gradually. The Respondent had known her for some eight or nine years.

91. The Respondent would keep his files at his house unless they were being worked on by his secretary and would dictate bills. He would prepare interim bills. In the matter of the N Trust the Respondent was a trustee and had sent the bill to himself. No money had been held for that client although the Respondent had previously been advised that there was money held. The fees should have been paid from outside the firm's accounts and that eventually happened.
 92. In the matter of Mrs D deceased the Respondent had relied on his bookkeeper to find out if there was money in client account. He would say draw part of a bill and then draw a further figure when the money was available. In the meantime a further interim account could have been submitted.
 93. The Respondent had definitely not intentionally put his telephone account onto client account. This had been a mistake either by the Respondent or by someone else.
 94. He had inadvertently drawn money on client account when money was not there but had definitely not been dishonest and had no intention to deceive or deprive anyone to the detriment of a client.
- Oral evidence of Mr James B Lewis
95. Mr Lewis, accountant, confirmed his statement of 16th August 2002. The figure given by the Investigating Accountant in relation to the telephone bill represented a number of payments made from client account by direct debit. British Telecom was looking at this at the present time. The telephone account was that of a lady based in North Scotland and was nothing to do with the Respondent. The bookkeeper had told the Respondent that the account was that of the Respondent's other business but the Respondent's accountants had corrected that.
 96. In relation to the "bounced cheque" this was due to a bank error in that the bank had transferred money from office account but had failed to put it into client account. The bank had apologised.
 97. Mr Lewis's firm had done the Respondent's accounts for some years and these had been alright up to October 1999 but there had been delays in the year to October 2000. Mr Lewis had been in touch with the intervening solicitors but they had been very obstructive only providing a summary of balances. Mr Lewis was still waiting for the information. At the Respondent's request Mr Lewis was looking at the information again together with the information from the bookkeeper.
 98. In the matter of E which had been put as an unallocated payment this had now been allocated to the correct E. Three or four of the unallocated payments remained but Mr Lewis had not yet seen the records.
 99. In terms of the amounts repaid by the Respondent, the Respondent had paid on the higher figure of the reporting solicitors but Mr Lewis had advised a lower figure and believed the lower figure to be correct.
 100. The round figures transferred by the Respondent were because he was not vatable.

101. What the Respondent had said was consistent with honest conduct.
102. In the reconciliation figures produced by the intervening solicitors it was correct that a cheque had been payable to the Respondent's other business. It appeared that the Respondent had picked up the wrong cheque book. This was in December 2001 after the Investigating Accountant's visit as set out in the Respondent's statement.
103. In cross examination Mr Lewis said that in October 2000 he had prepared a qualified Accountant's Report and that had not occurred previously during the time in which Mr Lewis had been with his present firm. The report was qualified because of the overdrawn client account. The bookkeeper was very sloppy. He had always said that he would get more up to date but the year 2000 was worse than previous years.
104. Mr Lewis had joined his present firm in 1998 and the bookkeeper had been sloppy from then. Mr Lewis had conveyed this to the Respondent during audits. The Respondent had always called the bookkeeper in or the bookkeeper had been present and they had discussed how matters could be improved. The matters referred to in the Investigating Accountant's Report were more than Mr Lewis had seen before.
105. In re-examination Mr Lewis said that he had been to the bookkeeper's house where the bookkeeper had a very small office. The bookkeeper worked for a number of businesses and there were papers and boxes everywhere. Mr Lewis said that one had to "step gingerly" to get to a chair.
106. Mr Lewis confirmed that the matter of N was a Will Trust.
107. Mr Lewis said that the Respondent's wife was a lady of means with her own private income.

Further Submissions on behalf of the Respondent

108. The Tribunal was referred to the references submitted in support of the Respondent and again invited to read the Respondent's statement and that of Mr Lewis very carefully before reaching a decision.
109. The Respondent was a man of 69 with an exemplary record. He had been a partner in some very effective firms in Taunton.
110. Only right at the end of his professional life had he gone into sole practice and for the first six or seven years of that there had been no evidence of problems. He had only become a sole practitioner in semi-retirement and had only continued with his existing clients. It had been a very small business with only some seventeen thousand pounds worth of costs.
111. There had been no effective time recording but time recording was modern method not formerly used by practitioners. It did not show dishonesty. The Respondent had come to his sole practice with old habits.
112. In a larger firm the accounts partner would oversee such matters. As a sole practitioner the usual checks and balances were not there.

113. The Respondent should have been a great deal more careful and he had put his hand up to that.
114. The problems related to ongoing matters. There were two aspects, firstly the billing process with interim bills and secondly whether there was sufficient money to pay.
115. The Respondent asked his bookkeeper who would advise him to take some of the fees. Lump sums had been taken partly because the Respondent was not vatable but also because the bookkeeper had said take less than the full amount.
116. There might then be another interim bill and there would be a dislocation between billing and the accounts.
117. If the Respondent had had a punctilious and up-to-date bookkeeper there would have been no problems.
118. Some matters had been wrongly described as unallocated for example the two E matters. Some matters could not yet be clarified because the Respondent had not had his books back.
119. The Respondent had admitted his failure to keep his books straight which was a serious allegation.
120. The Respondent had accepted that he had improperly drawn money in the sense that he had drawn money in an excess of that available.
121. Both these were serious matters but as soon as the errors had appeared the Respondent had put matters right as in the case of the telephone bill.
122. The Respondent had made three payments to put matters right and indeed Mr Lewis thought the Respondent had paid too much.
123. The issue for the Tribunal was, was that all there was to it or was the Respondent dishonest?.
124. While dishonesty was an objective standard carelessness was insufficient.
125. In December 2001, well after the Investigating Accountant had visited twice, the Respondent had drawn a cheque on his client account for something to do with his other business. The Tribunal was asked to consider whether it was really being suggested that after the Law Society investigation had started the Respondent would dishonestly draw a cheque which he knew would be seen by the intervening solicitors. It was not very clever of the Respondent to have written in the wrong cheque book but it was not dishonest.
126. The Tribunal may well think that Mr Lewis had been an impressive witness and he had said that the Respondent's account was consistent with muddle not dishonesty. The Tribunal was asked to give the Respondent the benefit of the doubt in relation to the issue of dishonesty.

127. After the Tribunal had made its decision in relation to dishonesty, further submissions were made on behalf of the Respondent as follows.
128. It was submitted that on any showing the Respondent had arrived at the end of a long and unblemished career. He was a trustee for a number of charities and was of considerable standing in the area.
129. The Respondent had now retired and told all his clients to go elsewhere and had indeed attempted to remove his name from the Roll of Solicitors voluntarily.
130. Any deficits had been cleared and if any more appeared these would be put right.
131. The shame of appearing before the Tribunal at the end of a blameless professional life was the worst possible punishment for the Respondent.
132. The Tribunal was invited to consider whether it was also necessary to take the action of striking him off the Roll of Solicitors.
133. The Law Society was seeking £30,000 worth of costs from the Respondent towards the intervention in relation to a business which had annual gross fees of £17,000.

The Findings of the Tribunal

134. The Tribunal found the allegation to have been substantiated. The allegations had not been contested save that the Respondent had denied that there had been any dishonesty.
135. The Tribunal had considered very carefully the written statements of the Respondent and of Mr Lewis and their oral evidence. Some matters raised in the Investigating Accountant's Report had been explained for example the confusion between the two E matters. However in relation to the matter of Mrs G the Tribunal had not been given any satisfactory explanation regarding the numerous transfers in close proximity to each other. The Respondent had been acting on behalf of a lady in respect of whose deteriorating mental state he had been put on notice by the nursing home yet he had not satisfied himself as to the state of her mental health nor registered the Enduring Power of Attorney with the Court of Protection. The Respondent had been conducting only a small practice with only a very limited number of clients and the Tribunal did not accept his evidence that the payment of four sums from Mrs G's private bank account between the 4th and 12th October, two of them on sequential days, was due to inadvertence or that he had "misdirected himself". The Tribunal found that the Respondent had been dishonest in relation to the matter of Mrs G.
136. The Tribunal also considered that the Respondent had shown gross carelessness generally in relation to his accounts.
137. Mr Lloyd-Davies had made an eloquent case on behalf of the Respondent but the Tribunal had made a Finding of dishonesty. The Tribunal had also considered carefully the references put forward in support of the Respondent. However the Tribunal had a duty to protect the public from dishonest conduct by solicitors and the appropriate penalty was the ultimate sanction.

138. The Tribunal ordered that the Respondent James Gordon Shute Harris of Mallet Court, Curry Mallet, Taunton, Somerset, TA3 6SY be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,617.27.

DATED this 4th day of November 2002

on behalf of the Tribunal

W M Hartley
Chairman