No. 8604/2002

IN THE MATTER OF PETER CHARLES COLLINSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J C Chesterton (in the chair)
Mr J N Barnecutt
Mr G Fisher

Date of Hearing: 18th December 2003 & 29th January 2004

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# FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Office for the Supervision of Solicitors (the OSS) by George Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 14th May 2002 that Peter Charles Collinson of Manta Road, Dosthill, Tamworth, Staffordshire (subsequently notified to be of Cygnet Drive, Tamworth, Staffordshire) 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 were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he:-

(i) failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998;

(ii) failed to account to the Legal Aid Board (LSC) for monies received contrary to Rule 90 of the Civil Legal Aid (General) Regulations 1989 (the Legal Aid Rules);

(iii) paid damages to a legally aided client without the authority of LSC contrary to Rule 90 of the Legal Aid Rules;

(iv) wrongly obtained payments on account of costs from his legally aided clients damages contrary to Regulation 64 of the Legal Aid Rules;

(v) without authorisation from LSC made payments on account of disbursements from clients' damages contrary to Regulation 90 (1) of the Legal Aid Rules;

(vi) failed at the conclusion of cases to file Reports on Case with LSC contrary to regulation 72 of the Legal Aid Rules;

(vii) utilised clients' funds for his own benefit or alternatively for the benefit of other persons not entitled to the funds;

(viii) drew money out of client account other than as permitted by Rule 22 of the Rules;

(ix) dishonestly and/or improperly used clients' funds for his own benefit;

(x) paid into office account monies on account of costs contrary to Rule 19 of the Rules;

(xi) failed to account to his client for commission received contrary to Rule 24 of the Solicitors Accounts Rules 1998;

(xii) failed to account to his client for interest received contrary to Rule 24 of the Solicitors Accounts Rules 1998;

(xiii) failed to follow directions given by the Public Trust Office;

(xiv) took an unfair advantage of a client by raising bills of costs which he knew or ought to have known were in an amount that was incapable of being justified;

(xv) failed to comply with the direction given by an adjudicator dated 10th January 2002 to pay compensation to Jeremy Page of £500 and to refund to him fees of £3,000 making a total of £3,500.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the oral evidence of Mr G, the oral evidence of Mr Carruthers, the ICO, the oral evidence of the Respondent and of Mrs A Reith. A letter to Mr H dated 3rd April 2000 was handed up at the hearing as was a letter addressed to Messrs Nelsons by the Respondent.

Part of the evidence of Mr G was of a sensitive personal nature and the Tribunal heard that part of his oral evidence and the relevant part of the oral evidence of the Respondent in private.

The Respondent admitted allegations (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (x), and (xv) and during the course of his oral evidence came to admit allegation (xiii). The Respondent denied allegations (ix), (xi), (xii) and (xiv).

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

The Tribunal order that the Respondent, Peter Charles Collinson c/o 2 Hollinwell Court, Edwalton, Nottinghamshire, NG12 4DW (formerly of 17 Manta Road, Dosthill, Tamworth, Staffordshire, B77 1NZ) solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application (to include the costs of the investigation accountant of The Law Society) to be subject to a detailed assessment if not agreed between the parties.

**The evidence before the Tribunal is set out in paragraphs 1 to 66 hereunder:-**

1. The Respondent, born in 1952, was admitted as a solicitor in 1982. He practised as a sole principal under the style of Collinson & Co from 12 Millstone Lane, Leicester.

2. An inspection of the Respondent's books of account was commenced on 14th June 2000 by an Investigation and Compliance Officer of the OSS, Mr Carruthers (the ICO). His report was dated 6th December 2001 and was before the Tribunal.

3. The ICO's report revealed that liabilities totalling £69,185.42 were not shown by the books meaning that there was a cash shortage of that sum on 31st October 2000.

4. The shortage arose as follows:-

   There had been incorrect lodgements in and transfers to office bank account in respect of legally aided matters totalling £57,183.99

   <u>The Client, D</u>

5. The Respondent took over conduct of this matter in September 1997. It was settled by consent in January 1998 with damages of £12,000 plus costs to be taxed if not agreed. Taxation belatedly took place in August 2000. The Respondent held £3,269.03 in client account.

6. The Respondent agreed that out of the costs he had received, totalling £30,000, he had to pay previous solicitors £5,917.29 but he had disputed a further sum of £2,741.21 interest claimed. He also agreed that he had to pay counsel £9,361.81 but disputed a further sum of £2,723.07 on the grounds that counsel's fees had been reduced by agreement and then by Court Order. He agreed that £2,171.40 would have to be repaid to the Legal Services Commission (LSC). He was not able to explain why LSC records showed that he owed them a further sum of £1,896.38.

7. D's damages totalled £12,500. The Respondent had paid to D (or on his behalf) a total of £10,207.53. The Respondent stated that the difference (£2,292.47) was a shortfall on costs received which D had agreed to bear. The Respondent did not pay the damages received to the LSC as required by Regulation 90 (1) (a) of the Legal Aid Rules.

8. The Respondent therefore accepted he had to pay out a total of £17,450.50 which together with the disputed liabilities was £9,653.13 when there was only £3,269.03 held in client bank account.

The Client T

9. The Respondent conducted a personal injury claim by this client. The claim was effectively completed by 1998 but the LSC Certificate remained in force as at November 2000. The Respondent did not pay all monies recovered on behalf of T to the LSC, contrary to Regulation 90 of the Legal Aid Rules. He transferred £3,763.26 from client to office bank account on account of costs and disbursements from monies held on account of the client's damages. This meant he had obtained payment on account from his client during the currency of the LSC Certificate contrary to Regulation 64.

10. Without the authority of the LSC the Respondent made payments on account of disbursements from the client's damages, contrary to Regulation 90 (2). Without authority he paid £7,000 to T on account of damages in 1998, contrary to Regulation 90 (2).

11. Having lodged into client account £7,357.15 on account of costs and disbursements the Respondent did not pay over damages to the LSC, contrary to Regulation 90 (1).

12. The Respondent did not file a Report on Case to the LSC in 1998, contrary to Regulation 72. He transferred from client to office bank account £4,932.49 on account of costs from the monies held on account of costs and disbursements without obtaining a release from LSC.

13. The Respondent did not account to the client for the full amount of the damages awarded to him nor for accrued interest.

14. The financial statement sent to the client in May 1998 was incorrect.

The client F

15. This matter was taken over by the Respondent in February 1999. F was a minor. A damages and costs order was made in March 1999. The damages offer was accepted but the costs offer was not. Taxation of the costs had not taken place. The LSC discharged the Certificate in May 2000.

16. The Respondent did not pay monies recovered on behalf of F to the LSC, contrary to Regulation 90 (1). He paid into office account £6,850 paid to him as an offer to settle costs and disbursements which should have been paid into client bank account and then paid to the LSC. This was contrary to Regulation 90 (1).

17. The Respondent received money for work undertaken during the Certificate other than payment made by the LSC, contrary to Regulation 64.

18. He delayed taxation of the bill of costs following the rejection of the offer to settle costs. He failed to submit for assessment the bill of costs as soon as practicable following the discharge of the Certificate, contrary to Regulation 84.

The Client J

19. The Respondent acted for J in a breach of contract matter, concluded in May 1999 pursuant to an LSC Certificate, which was discharged in May 1999.

20. The Respondent did not pay all monies recovered on behalf of J to the LSC after lodging monies in client bank account totalling £27,000, contrary to Regulation 90 (1). He paid, without authority, £24,000 to J contrary to Regulation 90 (2). The Respondent transferred £3,000 from client to office bank account in 1999, on account of costs, from monies held on account of the client's damages and as a result took money from damages to pay fees contrary to Regulation 64.

21. The Respondent lodged in office bank account £3,500 recovered on account of costs and disbursements which should have been retained in client account until appropriate release was obtained from the LSC.

22. The Respondent sent a statement of account to J which stated that the costs and disbursements totalled £4,317.41 whereas as at May 1999 £6,500 had been transferred to office bank account on account of costs. The Respondent made payments totalling £2,664.34 in 1999 from client bank account when no funds were available. He replaced the money later that month. He did not account for deposit interest held.

The client B

23. The client's case effectively completed in January 1998 with the benefit of an LSC Certificate. The Certificate had not been discharged as at November 2000.

24. The Respondent failed to pay monies recovered on behalf of B to the LSC after lodging £9,000 in client bank account in 1998, contrary to Regulation 90 (1).

25. He transferred £4,182.80 from client to office bank account on account of costs from the client's damages, and thereby settling fees from the damages, contrary to Regulation 64.

26. The Respondent paid to B £4,817.20 without authority from the LSC, contrary to Regulation 90 (2).

27. He failed to file a Report on Case following the effective settlement of the case, contrary to Regulation 72. The Respondent failed to submit for assessment a bill of costs following the consent order which stated that there be no order save that B's costs be taxed on a standard basis.

Incorrect payment of monies recovered for H

28. The Respondent conducted this case for Mr H pursuant to an LSC Certificate. Following judgement in January 2000 a payment on account of damages was received into client account in March 2000.

29. The client died in June 2000. The LSC Certificate was discharged in June 2000 but taxation of costs had not taken place. The Respondent did not pay to the LSC £103,327.03 which was lodged in client bank account, contrary to Regulation 90.

30. The Respondent wrote a misleading letter to H stating that the sum of £103,000 was to be paid to the LSC.

31. Without authority from the LSC the Respondent paid £30,000 to H, contrary to Regulation 90 (2). Again without authority of the LSC the Respondent made payments totalling £9,509.38 on account of disbursements from H's damages, contrary to Regulation 90 (2), and thereby took money from damages for work undertaken contrary to Regulation 64.

32. The Respondent failed to act upon an LSC letter dated April 2000 requesting payment of the damages to them.

33. The Respondent lodged £18,887.39 in office bank account in respect of an LSC payment on account of disbursements whereas office account payments totalled £8,104.46. He raised a bill for £5,395.57 which had the effect of eliminating the resulting office account credit balance.

Incorrect transfers from client to office bank account had been made in respect of undelivered bills of costs totalling £6,703.71

34. In the matter of T the sum of £2,505.17 had been transferred for costs when no bill had been delivered to the client. The Respondent acted for T in connection with the recovery of a debt. Three bills of costs had been posted to the office column totalling £3,505.17 of the client's ledger.

35. T denied receipt of the bills and stated that he understood that the defendant would be paying his costs. He had paid a deposit of £1,000 to the Respondent and was forced to demand its return.

36. The Respondent told the ICO that he denied that the £1,000 received on account of costs should have been paid into client account and said that a bill had been raised and delivered the same day to the client. He could not explain the delay of approximately two weeks in lodging the monies paid to him on account of costs in client bank account. A transfer in September 1999 had been in respect of a bill that should have been delivered to the client. He could not explain why a transfer had been made from client to office bank account on 15th October 1999 and that a £1,000 bill looked like a "draft bill" for a further final account. An overpayment of £647.50 had been made because the accounts were "out of date". The Respondent asserted that he had undercharged his client by paying him £5,902 when his total costs had exceeded the recovered costs of

£1,505.17. He was unable to explain the delay in accounting to his client. He agreed that he should have accounted to his client for deposit interest but had not done so. He agreed to put that right. The Respondent said he had no idea why the office column was charged with a payment to counsel which had been written back and agreed that counsel appeared to remain unpaid. He agreed that an overpayment to the client had been made by the sum of £1,000 out of client account when it was not available. It had been replaced by an office to client bank account transfer of the same sum on 30th November 1999.

37. The Respondent explained that the bills which were handwritten and addressed which contained no detailed narrative were "draft bills". He could not comment why his client had not received any bills of costs. The ICO calculated that the cash shortage, after repayment, amounted to £1,857.67.

The client S

38. The Respondent had conduct of the administration of an estate when two transfers totalling £940 were made in February and April 1999 on account of costs. No intimation or bill of costs had been delivered to S, the sole executrix.

39. The Respondent transferred from client bank account to office bank account £587.50 and £352.50 in respect of bills which had not been delivered to the executrix.

40. The Respondent asserted that he thought he was the personal representative and that was why he had not delivered bills to S. He accepted that the transfers had been incorrectly made, accepted they were draft bills, and could not explain why they had not been sent out. He agreed to pay interest due.

The client G

41. From 9th July 1999 Mr G's matter was conducted by the Respondent. He transferred £500 from client to office account in July 1999 in respect of a bill which had never been delivered.

42. The Respondent's explanation was that the secretary had not typed out a draft bill that he had prepared.

The client A

43. The Respondent acted for A in connection with the estate of her late mother. A was an executrix.

44. A number of transfers were made from client to office bank account in respect of undelivered bills, totalling £2,578.54, between March 1996 and September 1997. The Respondent told the ICO that he expected the draft bills to be sent out but was unable to produce any documentation to substantiate that they had been delivered to either

executrix. He did not agree that there was a cash shortage. Draft bills should have been sent out by his staff.

Generally

45. In the matter of Mr T, monies received on account of costs, £1,000, were lodged into office account rather than client account.

46. In the matter of Mr G £1,000 sent on account of costs in September 1999 had been lodged into office account. No bill of costs had been delivered to G, the client.

47. The Respondent had received commission totalling £1,038.43 in respect of his client, A. The Respondent asserted that his policy, to which he had his client's oral agreement, was to split commission in half. He accepted that he had received £787.50 in respect of commission in April 1999, that he had transferred it from client to office account on 9th June 1999 in lieu of a bill of costs for that sum with the explanation that his client agreed that he might retain the commission in view of further costs. The Respondent denied that there was a cash shortage of that amount.

48. Further commission was paid to the Respondent totalling £250.93 in 1999. The cheques had not been banked. The Respondent's explanation was that this was an oversight, that he would return the cheques to the bank in order that fresh cheques could be raised and he would then pay them into office bank account and raise bills accordingly. The Respondent did not accept that his failure to lodge the cheques resulted in a cash shortage.

49. During the course of the administration of the estate, a designated deposit account was opened. Deposit interest during the period March 1996 to June 1997 was credited to the client's ledger. The account was closed in June 1997, the money was placed in general client account but no interest for the period of June 1997 to April 1999 was added. The Respondent agreed that he had only paid interest to A in respect of the designated deposit account and stated "we need to calculate interest due to the client".

50. The Respondent gave to the ICO an undated computer generated schedule of interest which showed that £1,280.79 was due. The Respondent explained that he had agreed with A that she would forgo the interest because of past legal services and "psychotherapy counselling sessions".

51. In a Court of Protection matter relating to E the Respondent had been appointed as receiver in September 1998. He was replaced by W in September 1999. The Respondent had failed to refund monies to W, he had lodged in office bank account dividend payments totalling £472.39. He had only belatedly complied with a direction from the Public Trust Office dated September 1998 to lodge monies totalling £38,465.79 in Court. He lodged the monies in January 2000. He failed to open a receivership bank account as instructed by the Public Trustee Office and failed to lodge in Court the proceeds of sale of the patient's house amounting to £79,606.75 as directed by the Public Trust Office in July 1999. He did so in January 2000. He did not lodge a final account as directed by the new receiver's order in September 1999. He paid from client bank account, in October 2000, the balance of a fee for a detailed assessment of

the firm's bill of costs totalling £80. Such payment was not properly made without the authority of the Court. The Respondent explained to the ICO this was an oversight and he would transfer £80 from office to client bank account.

The client G

52. The Respondent acted for G in connection with several matters. In 1998 the Respondent asserted that G owed him over £11,000 and that proceedings would be commenced for its recovery.

53. The Respondent explained that the debt had not been pursued because G had instructed fresh solicitors who were alleging negligence.

54. The Respondent's (social) partner had asserted that the Respondent "put costs in his back pocket rather than through the books". The Respondent denied that allegation, saying that "hell hath no fury like a woman scorned".

55. The Respondent said that he had continued to act for G because he had become "mates with G". He said he had not issued the proceedings in April 1998 when there was no likelihood of a negligence claim because he was being "too soft".

56. G said that he had paid the Respondent and produced four receipts. The Respondent had proffered no explanation why there were no records that the payments had been received.

57. Mr G said that the Respondent had agreed to accept £8,000 in settlement of the debt payable as to 50% forthwith and the balance by way of instalments at a meeting in March 1998. G asserted that he paid the Respondent £4,000 by way of cash withdrawal from his bank on 28th April 1998. Mr G said he continued to make payments in cash at the request of the Respondent.

58. Mr G said in evidence that he did not set a receipt when he made his first cash payment of £500. On 3rd June 1998 Mr G made a payment of £600; on 11th July 1998 he made a payment of £600, a further payment of £600 was made on 17th November 1998. A final payment of £400 was made on 17th November 1998. Mr G had demanded and received receipts for all of these payments. The receipts were either on the Respondent's firm's receipt book, or the receipts had been given at Mr G's public house. After instructing other solicitors, who advised Mr G that the Respondent had been negligent, Mr G made no further payment.

59. The Respondent said that G had had sexual intercourse with his girlfriend. It was she who had alleged that the Respondent had received "back-handed" payments. The Respondent had no recollection of receiving any payments from Mr G. It was inconceivable that the Respondent would issue receipts of he had behaved in the underhand manner alleged. Mr G said he had been making payments before he met the Respondent's girlfriend.

60. The Respondent said that if he had received cash he would have put it in the cashier's room. Any member of staff could have appropriated it. The cashier worked only in the

mornings. The Respondent had not been aware of the situation. He said he was in a state of traumatic shock when the ICO drew the matter to his attention. He had not called the police because there would have been no purpose and it would have upset morale in the office.

61. The Respondent denied that G had paid any cash to him. Any cash received could have been passed to the firm's cashier. He accepted that G had produced receipts bearing the Respondent's signature. The Respondent said that G and his girlfriend had hatched a plan to cause harm to him.

The Client P

62. P instructed the Respondent's firm in 1998 following the breakdown of a matrimonial relationship.

63. On 19th November 1998 P paid the Respondent £1,000 on account. On 17th November 1998 he was sent an interim bill for £985 leaving him £15 in credit. The Respondent by letter dated 6th January 1999 requested from P a further sum of £3,000, which he paid. On 15th February 1999 P obtained a Legal Aid Certificate and the Respondent refunded the sum of £583.83 because of the delay in submitting the Legal Aid application forms. The Respondent asked P for a further £3,000, which he paid, and raised an invoice dated 28th July 1999 to cover work from 30th November 1998 to 28th July 1999.

64. The Respondent's letter dated 28th July 1999, enclosing the bill, indicated that the bill related to work which was not covered by Legal Aid. The ICO extracted from the file a limited number of attendance notes and letters relating to a matter not covered by legal aid. The Respondent's time sheets demonstrated that there was no attempt at apportionment by the Respondent between costs that were properly covered by the Legal Aid Certificate and costs that came outside that Certificate.

65. Overcharging and the performance of an inadequate professional service were considered by an OSS Adjudicator on 10th January 2002. The Adjudicator referred the overcharging to the Tribunal. With regard to the inadequate professional service the Adjudicator ordered the Respondent to pay compensation of £500 and to refund fees totalling £3,000.

66. The decision was communicated to the Respondent by letter dated 22nd January 2002. The Respondent did not appeal the decision and was notified by letter from the OSS dated 13th March 2002 that unless he complied with the decision within fourteen days, his conduct for failing to do so would also be referred to the Tribunal. At the hearing the Respondent told the Tribunal that he had complied.

**The Submissions of the Applicant**

67. It was the Applicant's case (allegation (ix)) that the Respondent had accepted funds from his client Mr G and had dishonestly and improperly utilised those funds for his

own benefit. He had not passed those funds through his firm's accounts by way of settlement of a bill of costs.

68. The Respondent denied that he had failed to account to a client for commission received. He said he had entered an oral agreement with his client. Even if he had entered such oral agreement that was inadequate to meet the requirements of Rule 10, which required commission to be disclosed to the client in writing (either the amount or the basis of the calculation of the commission) and he had the client's agreement to retain it.

69. The Applicant relied upon the ICO's report to support allegation (xii), that the Respondent had failed to account to his client for interest received.

70. Allegation (xiv) was supported by the Respondent's having submitted a bill of costs for a legally aided client in a sum that could not be supported by the work the Respondent had actually undertaken in connection with a matter for that client which was not legally aided.

71. The Respondent had dealt inappropriately with a number of legally aided matters. The purpose of the Legal Aid Rules was to ring-fence any damages obtained for a client so that they are not used for payment of the solicitor's charges or disbursements incurred. Rule 90 provides that the solicitor shall inform the Area Director of any monies recovered and provides that with authority of the LSC the solicitor may pay monies to the LSC or pay damages or a part of them to his client. Regulation 64 of the Legal Aid Rules provides specifically that the solicitor for the legally aided client shall not use any of the monies recovered for his costs or his disbursements. Regulation 72 of the Legal Aid Rules states that the solicitor shall make a report to the LSC immediately upon completing the work authorised by the Certificate.

72. The Respondent had come to accept that he had made an incorrect payment from client bank account of court fees in a Court of Protection matter. The Applicant did not put that matter as one involving dishonesty on the part of the Respondent.

73. The Tribunal had before it a copy of a letter addressed by the Respondent to the OSS dated 11th January 2001. He accepted some of the matters of complaint and denied some others. He said he would put right certain matters. He said that Mr G had been mistaken when he said that he had paid the Respondent £10,900 as the account showed payment of only £7,416.

74. The Applicant made it plain that he did allege dishonesty on the part of the Respondent in connection with all of the breaches occurring in legally aided matters. In the main the Respondent's explanation had been that breaches of the Legal Aid Rules and the use of damages paid to a client did not matter as long as the client did not suffer in the long run. That was unacceptable and was a breach of fundamental principles applying to legally aided clients.

75. The Respondent had ignored the importance of the fundamental sanctity of client account. He had transferred monies from client account when he was not permitted to do so. He had adopted a course which was wholly unacceptable and was in the submission of the Applicant plainly dishonest.

76. The Tribunal was invited to determine whether or not the Respondent had been dishonest by applying the subjective and objective test set out in the House of Lords case of Twinsectra -v- Yardley. In the submission of the Applicant the Respondent's behaviour did meet that test. What he did amounted to conscious impropriety. Individuals could not consider what amounted to dishonesty on an optional scale. The Respondent had knowingly appropriated clients' money and it was not open to him to say that he had not behaved dishonestly because he saw nothing wrong with his actions.

**The Submissions of the Respondent**

77. During his years of practice it had been the Respondent's honest belief that whenever a client was legally aided and recovered damages and costs, an agreement could be reached between the client and the solicitor to keep the damages and costs without resort to the legal aid fund. That belief was based not only upon his numerous conversations with personnel at the LSC (or the LAB as they were then called), but also conversations with other members of the solicitors' profession. The advice given by the LAB was that it was proper to enter such an arrangement, provided the solicitor accepted the risk that by giving the client the damages any shortfalls in costs would not be the responsibility of the LAB.

78. In the case of D the Respondent had been advised by the co-ordinating solicitor of this group claim to release funds to the client. Other solicitors in Leicester on becoming aware of The Law Society's intervention into his practice told the Respondent that they regarded the foregoing as a practice sanctioned by the LAB.

79. The failures which the Respondent admitted had not been deliberate but were attributable to a number of factors, in particular the Respondent made reference to the sheer volume of work. He had, compounded by other exacerbating features in his practice, to carry a work load far in excess of what was humanly possible. He had been unable to attract qualified legal staff. He had had to apply enormous amounts of unpaid time in applying for a legal aid franchise in family and criminal work. He had to take over conveyancing work due to the absences of his conveyancer through ill health. The Respondent had suffered a family bereavement and a divorce in 1999.

80. The Respondent had arranged a transfer to a new accounts system in 1998 for franchising purposes. This new system was beset with problems owing to network crashes on a frequent basis. He could never rely on the information on the accounts as being up to date and accurate. The part time cashier had to re-enter data on frequent occasions.

81. All the above factors meant that administrative matters with the LAB were not dealt with in a timely manner. The Respondent invited the Tribunal to compare his situation with that of a multi-partner firm solely practising in the Respondent's speciality of family and children's work. In that case he would have had ample time to deal with such administrative matters. As a sole practitioner, the effect of franchising was catastrophic.

82. The Respondent did not seek to challenge the accounting evidence of the ICO. Of the shortfall of £69,185.42 on clients account £57,183.99 was allegedly owed to the LSC. That represented 82.73% of the monies paid into office account. The alleged shortfall was alleged to be divided between five Legal Aid Certificates, D, T, F, J and B. In all of these cases monies recovered for the litigants had been released by the Respondent to the client concerned, with the exception of F. Monies could not be released to F because it was an infant settlement and such monies had to be paid into the Court Funds Office pending the child reaching the age of 18. The Court itself must approve the quantum offered by the defendant. Costs in infant settlement cases were always awarded on an indemnity basis. There was not therefore a sum of £6,850 due to the LSC because the rules did not allow such a payment to be made with the LSC.

83. In all cases (with the exception of F), agreements had been reached with clients to make no claim on the fund, thereby providing immediate release of damages to them. Clients preferred to have damages and costs dealt with on a "no claim on fund basis" since otherwise there was an unacceptable delay to them concerning taxation of costs and lodgement with the LSC, and ultimate payment. Adopting that procedure could contribute to a delay of a year or more. Clients were advised by the Respondent of the Statutory Charge which applied to recovered monies and it was because of this that clients invariably wished to have their claims dealt with on a "no claim on fund" basis.

84. The Respondent was always under great pressure from clients to release funds the moment a case had been settled or made subject to final order.

85. In the case of H the pressure from the client resulted in the Respondent being ordered at gunpoint by H at his home to transfer £103,000 into his bank account. The Respondent also received a "visit" from H's hired thug in his offices to make him pay the sum into his account. The Respondent contacted the Police and the LSC in Liverpool. The Police put the Respondent into hiding for two days. When the Police raided H's house they discovered a Kalashnikov automatic gun and a Luger handgun there. The LSC officials at Liverpool, despite knowing that the Respondent's life was under threat, told him as usual that money could be released to H but the solicitor would have to bear any shortfall in costs if inter partes costs were insufficient to cover actual costs.

86. In the submission of the Respondent, had "no claim on fund" forms (a mere administrative matter) been lodged in a timely manner in all of the cases referred to by the ICO, then the Applicant would have no case to put forward that the £57,183.99 was due to the LSC. Had the Respondent had sufficient time at his disposal, he would have attended to such administrative matters. Payments on account made against "no claim" cases would have been recouped against credits to the practice's LSC account, as there was an ongoing supply of LSC funded work due for payment. The standard practice of the LSC was to recoup interim payments on a particular case against credits due on any other case. There was no possibility of loss to the LSC.

87. At the time of The Law Society's intervention, approximately 196 cases were outstanding, awaiting assessment, taxation or to be billed. Costs due to the Respondent were in the region of £400,000. In December 2001 the Respondent instructed N solicitors to recover costs due to his firm by finalising the assessment, taxations and subsequent report on cases to the LSC. In two years the solicitors had recovered approximately £65,000 of such money and paid this to the LSC.

88. The Respondent had not been satisfied with the solicitors' progress and had taken over the recovery of such monies with the consent of The Law Society's Intervention Agent.

89. It was true that a letter had been sent to H saying that the sum of £103,000 had to be paid to the LSC. That letter was not misleading. Subsequently instructions accompanied by threats to the Respondent's life from H were that he wished his claim to be dealt with on a "no claim on fund" basis which thereby enabled him to have a substantial part of his damages released to him immediately. Threats to the Respondent's life were subsequently made because he refused to release the whole of the £103,000 as the Respondent considered it proper to keep a reserve for any costs shortfall as the client had recovered only 75% costs in the action.

90. In the cases of T, S, G and A it was the Respondent's submission that notwithstanding prima facie non-delivery of the bills, the amounts they were drawn for were proper and accurately reflected the cost of the work involved. My Respondent's practice was to review private client billing on a monthly basis and to hand to his secretary a bulk of draft handwritten bills for typing, copy to accounts and for the original to the client. None of the clients suffered any detriment.

91. A was a long established client. The Respondent was instructed by her to handle the estate of her late mother and to deal with the subsequent investment of the inheritance. Notwithstanding an inheritance of approximately £65,000, A continued to draw state benefits without disclosure to the Benefits Office of the capital. The inheritance money was placed in a designated deposit account and paid interest until A's requests for release of tranches of capital became quite frequent. Thereafter the balance of the inheritance was transferred to general client account until A received all capital due to her.

92. A had requested investment advice and independent financial advisers were consulted. In respect of such investment work an oral agreement, which with hindsight the Respondent recognised should have been in writing, was made with the client allowing the Respondent to keep commission in lieu of billing fee time. A also agreed to forego deposit interest on the inheritance for the period when funds were placed in general client account. This was because A had been advised that a declaration of interest paid and deduction of tax at source had to be made and this could have had implications re her position with the Benefits Agency. A did not wish the Benefits Agency to be aware of her deception of them and hence chose to forego interest.

93. With regard to the incorrect payment from client bank account concerning a Court of Protection matter, there had been no fraud, deception or loss to the client. There had been delay caused by incompetence. This was the first Court of Protection matter the Respondent had undertaken. Of the sum of £80 it had been the Respondent's honest belief that this disbursement could properly be met from money held in client account. The £80 was refunded to the client account at the ICO's request. The monies received on behalf of the estate were held in a designated deposit account which the Respondent believed was sufficient to be a receivership account. The Respondent had not been aware, until the ICO pointed it out to him that without the words "Receivers Account for E Emerton" as the title, the account constituted a non-compliance.

94. It had been alleged that the Respondent failed to refund money due to W. That was denied as money paid by W (the client's niece providing the instructions) was used to pay for the medical certificate and the initial Court of Protection fees. A lodgement of the dividend payment into office account was made in error. A transfer back to client account had already been made prior to the ICO's investigation once the anomaly had been spotted by the cashier in his bank reconciliation.

95. G was a long-standing client of the Respondent who had been instructed to act in a variety of litigation matters. In all cases, G was the defendant. He was a private paying client. Despite receiving favourable outcomes to the majority of his cases, G formed a perverse view that the Respondent was in some way responsible for his subsequent bankruptcy. The Respondent had declined to act on the appeal.

96. It was after the Respondent discovered G and his girlfriend on the bed engaged in sexual intercourse that he confronted both of them and G departed. The woman concerned was five months pregnant with the Respondent's child. It was after that incident that G and the girlfriend conspired to write a letter to The Law Society concerning alleged cash payments. Following the incident and letter, the Respondent's girlfriend forced her way into the Respondent's office premises whilst drunk and made allegations of "back hand payments" to the ICO. The allegation that the Respondent agreed to accept "back-hander" payments is bizarre and does not fit with the facts. An alleged agreement to accept a debt reduced by 50% in consideration of cash would only benefit G and not the Respondent. Furthermore to give G receipts for cash would defeat the whole purpose of a cash payment and would have been, in the circumstances, madness. The Respondent had no recollection of any monies being paid to him by G.

97. The Respondent denied that P was overcharged and further denied that he received an inadequate service. By this time the Respondent was suffering from major depression following the loss of his business.

98. The Respondent had been the victim of a traumatic personal relationship with his girlfriend, who was an alcoholic, violent, abusive and very destructive. Such violence completely destroyed the Respondent morally, spiritually and psychologically. After the death of his mother and at a time when his first marriage was very strained, the Respondent was in a very vulnerable state.

99. Having received P's complaint the Respondent had not been in a fit state to respond. The file obtained by the Adjudicator did not contain all of the costings for the private client element which were kept on a separate case management system held only on a personal computer. The case management software, which ran independently of accounts records, recorded key dates and document production, attendance notes and time records. It was the Respondent's practice to be scrupulous in keeping accurate time records. He had not been in a position to rebut P's complaint. The Respondent had been traumatised and had not had access to the case management system after The Law Society's Intervention. Mr P had been a difficult client, and vented his frustration on the Respondent. The loss of his business had prevented the Respondent from complying with any award.

100. The Respondent graduated from Manchester University in 1974 with a 2.1 Honours Degree in economics, and became interested in a legal career in 1976 after meeting a

Circuit Judge in Yorkshire. He had been inspired by the fact that he could champion ordinary people in the Courts. At that time he was quite class conscious as he had bee born into a very traditional working class background, his father being a coal miner and his mother a nurse in Nottinghamshire.

101. After qualification the Respondent spent short periods of time as assistant solicitor with two practices in Nottingham until the Respondent was offered a post as assistant litigation solicitor, with a view to partnership, with Horwood & Co in Leicester in 1983. In the same year he married Barbara who had just qualified as a medical GP and was practising in Nottingham. The Respondent set up his own practice in 1985. He became successful and soon developed a good following of clients. In 1986 his wife suffered a near fatal car accident, which lead to her retirement from the medical profession. The loss of his wife's income threw the burden onto the Respondent to support both of them financially at a time when his business had recently started. He had been forced to become a "workaholic" and work seven days each week for many years. Barbara eventually made almost full recovery and re-entered medicine in 1990. She had succeeded in gaining Honours in The Law Society's solicitors final exam but decided against law as a profession.

102. In 1991 the Respondent was offered a place as a pupil barrister, but declined to accept it as by that time he and Barbara had two children. The Respondent worked hard and achieved high earnings. His devotion to work led to the breakup of his marriage and divorce from Barbara in 1999.

103. 1994 saw the death of the Respondent's father followed by his mother's death in 1998.

104. After separating from Barbara the Respondent formed a relationship with a girlfriend which contributed to his downfall as he found it impossible to concentrate on running his practice due to the volatility of the relationship.

105. In 1999 the Respondent's application for a Legal Aid franchise in family work (the Respondent being a member of The Law Society's Children and Family Law Panels) was turned down and that spelt the death knell for his practice. He built his reputation in Family Law. It was no longer possible to apply for a franchise in family work as the "Green Form" scheme was no longer available. The effect was that the Respondent could no longer carry out public funded family work, despite the fact that he was highly qualified in children and family work.

106. In an attempt to mitigate the loss of family work, the Respondent decided to increase private client work, conveyancing and seek a criminal franchise. The Respondent had found it difficult to attract fee earners of high quality. Since the intervention the Respondent had suffered financial ruin. Fees due to him amounted to circa £400,000 and the solicitors instructed in December 2001 to recover the costs had made little progress.

107. In 2002 the OSS granted the Respondent's application to have the suspension of his Practising Certificate withdrawn. He had not been able to gain employment in any legal capacity owing to the extant disciplinary proceedings.

108. At the time of the hearing the Respondent worked as a self-employed mortgage advisor selling mortgages. Any income was reliant upon sales. The Respondent had not received any income for over five weeks. He had an overdraft of £5,000 and had no prospect of income until February 2004. The Respondent had two children by his girlfriend, referred to above, whom he had married. Subsequently he had divorced. The Respondent's former second wife was considered by the authorities to be an unfit mother and the children would be taken into care if the Respondent could not provide for them.

109. The financial ruin suffered by the Respondent was out of all proportion to the compliance issues raised . No one apart from the Respondent himself had suffered financial loss.

110. The Respondent hoped he might work again as a solicitor, on a supervised basis as either a criminal advocate or family law solicitor. A Leicester solicitor had asked the Respondent to join his firm as a criminal law advocate, working under a conditional practising certificate.

111. The Respondent expressed his genuine remorse to the clients who had suffered distress as a result of non compliance issues. The Respondent's overriding concern was always to act in the best interests of his clients. The Respondent was truly sorry for his failure. He apologised to the Tribunal for any conduct which had undermined the good name of the solicitors' profession.

112. The Tribunal was invited to have a regard to the exceptional circumstances and problems that beset the Respondent's practice. As an employed solicitor the Respondent would be free from the problems of running a practice single-handedly and would enable him once again to champion clients' causes, the reason he followed his vocation in the law.

113. Mrs R informed the Tribunal that the Respondent was a man of good character and confirmed the difficulties facing him in connection with the two children of his second marriage.

**The Tribunal's findings of fact**

114. The Respondent accepted the truth of most of the matters in the evidence before the Tribunal. He had, of course, disputed Mr G's evidence that he had made cash payments to the Respondent. Mr G had given oral evidence about this situation as had the Respondent. The Tribunal concluded that Mr G was a witness of truth and they believed his account of the circumstances. The Respondent had said on the one hand that he had not received cash, although he accepted that some of the receipts provided by Mr G had been signed by the Respondent himself. He went on to say that if he had received cash he would have put it in the cashier's room and any member of staff could have appropriated it. He had not reported the theft of the money because there would have been no purpose and it would have upset morale in his office. The Tribunal concluded that the Respondent's evidence was inconsistent. He could not on the one hand deny receipt of the cash and on the other hand say that he had given it to his firm's cashier and it had been misappropriated by a member of staff. The Tribunal did not

believe the Respondent. The Tribunal found that the Respondent had received instalment payments for costs in cash which he had not passed through his firm's books.

**The Decision of the Tribunal**

115. The Tribunal found all of the allegations to have been substantiated. In so doing they did find that the Respondent had behaved dishonestly. The Tribunal reached that conclusion after applying the subjective and objective tests referred to in the case of Twinsectra -v- Yardley.

116. The Tribunal has taken into account the personal and professional difficulties encountered by the Respondent. It recognises that he had not had an easy time.

117. In its findings of fact the Tribunal has not believed the Respondent's evidence in connection with payments of cash received from Mr G. It finds that the Respondent did "pocket" the payments made in respect of costs and did not pass them through the firm's books.

118. A solicitor who undertakes work on behalf of legally aided clients is in a particular position of trust. He is paid from public funds. Not only does a solicitor have the high duty to act in his client's best interests, but he also has a high duty to comply punctiliously with the Rules and Regulations binding legal aid practitioners. Every step must be taken strictly in accordance with those Rules or with the express consent of the LSC. Any deliberate attempt to circumvent those strictures, and in particular a system under which legally aided clients paid their solicitor's bill directly from damages received, was gross impropriety on the part of the solicitor and could only amount to dishonesty. These are the most serious issues before the Tribunal, but the accounting and other failures were also grave.

119. The Tribunal concluded that in order to protect the public and the good name of the solicitors' profession it was right to order that the Respondent be struck off the Roll and that he pay the costs of and incidental to the application.

Dated this 29th day of March 2004
On behalf of the Tribunal

J C Chesterton
Chairman