No. 8666/2002

IN THE MATTER OF JAMES NICHOLAS ROBERTS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr P Kempster
Mr G Fisher

Date of Hearing: 22nd May 2003

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

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1. An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors of 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on 15th August 2002 that James Nicholas Roberts of Dart Close, Worthing, West Sussex (whose address was subsequently notified as Welland Road, Worthing, West Sussex) 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.

2. On 27th January 2003 the Applicant made a Supplementary Statement containing further allegations. The allegations set out below are those contained in the original and the Supplementary Statements.

3. The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in all or any of the following circumstances, namely:-

    1. That he had failed to maintain properly written and reconciled books of accounts;

2. That he had allowed a shortfall to arise on client account;

3. That he took a payment on account of costs from a client's monies without the client's consent;

4. That he improperly withdrew money on account of costs from a client account;

5. That he knowingly assisted the directors of a limited company to continue trading in the name of a company that had been struck off the Company Register;

6. That he knowingly assisted the directors of a limited company to avoid the consequences of a winding up petition;

7. That he knowingly and improperly used his client account for the benefit of a client;

8. That he knowingly assisted a client by acting in a manner that was false and misleading to third parties;

9. In breach of Practice Rule 1 in the course of practising as a solicitor he compromised or impaired his proper standard of work;

10. Contrary to Rule 19 of the Solicitors Accounts Rules 1998 he failed to deal properly with costs received;

11. Contrary to Rule 32 of the Solicitors Accounts Rules 1998 he failed to keep properly written up accounting records.

4. The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 22nd May 2003 when Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors of 342 Lytham Road, Blackpool, Lancashire, FY4 1DW appeared as the Applicant and the Respondent appeared in person.

5. In his opening address the Applicant recognised that allegations 1 and 11 were essentially the same allegation and should not be considered as two separate allegations.

6. The evidence before the Tribunal included the admissions of the Respondent as to the facts and the allegations save that he denied allegations 5, 6, 7 and 8. The Respondent gave oral evidence.

Preliminary matter

7. The Respondent made a preliminary application with regard to allegations 5 to 8. Those allegations related to a company, CLC Limited. It was the Respondent's submission that it would be a breach of his human rights protected by the provisions

of Article 6(1) under the Human Rights Act, namely that he was entitled to a fair and public hearing within a reasonable time.

8. The Respondent cited instances of serious delay in bringing allegations 5, 6, 7 and 8.

9. No new evidence had been put forward since February 2000. The Tribunal was being asked to deal with the subject matter some seven years after the last activity of the Respondent in connection with CLC Limited. Four years and three months had elapsed since the Solicitors Indemnity Fund interview conducted by Michael Pooles of Queen's Counsel. Three and a quarter years had elapsed since the OSS resolved to refer the matter to the Tribunal. Twenty-one months had elapsed since the OSS investigation accountant's inspection. Nineteen months had elapsed since The Law Society had intervened into the Respondent's practice.

10. The Respondent invited the Tribunal to consider three areas, namely that the delay in bringing the disciplinary proceedings was not fair, the Respondent was prejudiced by the delay as the events went back to 1993 and he had no access to the papers in the intervening period of time. The Respondent had understood that the SIF interview with Michael Pooles of Queen's Counsel had been subject to privilege.

11. The Respondent said he accepted that time would run for the purposes of Article 6 from the date of the issue of the disciplinary proceedings.

The Submissions of the Applicant

12. The Applicant said that time would run from the date of the commencement of disciplinary proceedings. The application had been dated 13th August 2002 and would have been served on the Respondent shortly thereafter. The matter had been listed for hearing in March 2003 but had been adjourned to the May 2003 date at the request of the Respondent who was suffering ill heath. There had been no delay in the conduct of the proceedings before the Tribunal. Indeed a Supplementary Statement dated 27th January 2003 had been lodged.

13. With regard to the Respondent's submission that the matters dealt with at the SIF interview with Leading Counsel were privileged, this was not correct. David Robinson, the senior claims controller of SIF, had written to the Respondent on 5th January 1999 pointing out that there was an issue of possible dishonesty to be resolved and if, following the obtaining of Counsel's views, SIF determined that it was their opinion that the Respondent had been concerned with a dishonest and fraudulent act or omission he would be informed that indemnity would be declined and the OSS would also be informed and all relevant information would be passed to that body. At the opening of the SIF interview Michael Pooles indicated that what had passed between the Respondent, his former partner, Counsel and the solicitors representing SIF was privileged subject to exceptions. The exceptions were that the content of the interview would be passed to the OSS should a dispute arise between the Respondent and his partner or either of them and the SIF, in which case the content of the interview would not be privileged. It was the Applicant's submission that the Respondent had sought indemnity from the SIF and that indemnity had been declined. The Respondent was, therefore, in dispute with the SIF and the interview with Michael Pooles was no longer privileged.

14. The Applicant addressed the question of prejudice to the Respondent caused by the passage of time. No oral evidence was to be called and the Respondent himself would not be required to give oral evidence. The allegations relied entirely upon the documents before the Tribunal. Because the matter was fully documented there could be no question of prejudice to the Respondent. The Respondent had in any event at the time been made aware that the matter was hugely important. He had been called back from holiday by his former partner to sort the matter out. Although it was accepted that a number of years had passed, there was no doubt that the matter must have been at the forefront of the Respondent's mind. The Respondent was, however, not required to recall anything other than what was already in writing.

15. With regard to the question of fairness, Article 6 provided that a fair trial must be provided within a reasonable time. In the submission of the Respondent, the reasonable time ran from the institution of the proceedings until the final substantive hearing. Time did not run from the date when the subject matter of the complaints arose. There had been no delay.

16. The Respondent had indicated that he had not received notice of the OSS resolution to refer the matter for disciplinary proceedings. It was clear that an appropriate letter had been sent. The resolution was dated 9th February 2000.

The Decision of the Tribunal

17. The Tribunal accepted that it was bound by the provisions relating to a fair trial contained in Article 6 of the European Convention on Fundamental Freedoms and Human Rights 1950 incorporated into the Human Rights Act 1998.

18. Article 6 of the Convention provides in so far as it is material:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

19. The only aspect of that Convention which the Respondent considers is being breached is the requirement that the hearing be within a reasonable time.

20. For the purposes of determining whether the delay in bringing proceedings has been of a length such as to constitute a breach of Article 6(1) the relevant period starts to run at the initiation of the proceedings and ends when the case is finally determined (Konig v Federal Republic of Germany (1982) 5 EHRR 1).

21. In identifying the initiation of proceedings for the purposes of Article 6(1) the Court and Commission had in a number of cases held that time begins to run from the date upon which "the situation of the (suspect) has been substantially affected". Deweer v Belgium (1980) 2 EHRR 439.

22. In this case it is the Tribunal's view that the Respondent's situation had been substantially affected since he became aware that the serious complaints against him were to be investigated by the OSS. He was informed by letter from SIF on 27th

October 1999 that SIF had decided not to afford him an indemnity. The reasons why the SIF had taken that stance were carefully set out and the final paragraph indicated that a copy of the letter had been sent to the OSS. The Tribunal considers, therefore, that time began to run at the end of October 1999 when the Respondent would have received that letter.

23. The OSS considered the matter on 9th February 2000 and resolved to refer the conduct of the Respondent to the Tribunal. Clearly there was no serious delay there.

24. The practice of the OSS would have been to instruct a solicitor, in this case the Applicant, to consider the case and prepare an application and supporting statement together with a bundle of documents to be sent to the Tribunal.

25. This clearly was a matter of great importance to the Respondent and it was right that it should have been given due and careful consideration. It was not to be expected that the solicitor instructed by The Law Society would be able to prepare the documents, have them approved by the OSS and lodge them with the Tribunal in a very short time. The Tribunal notes that the Applicant's application to the Tribunal was dated 13th August 2002, some two and a half years after the resolution to refer the matter to the Tribunal. On the face of it, this does constitute a longer period of time than would in the ordinary course have been appropriate.

26. The Tribunal takes the view that the delay would be culpable and serious if during that period no action at all was being taken. However, it is clear from the paperwork that the OSS was in June 2001 investigating the complaint made by Mrs P. The OSS had written to the Respondent in February 2002.

27. It was also noteworthy that an Investigation Accountant from the OSS had inspected the Respondent's books of account in 2001 leading to his report dated 16th October 2001.

28. The complaint by Mr H had been made by letter in November 2001. There were, therefore, during the period of time which the Respondent asserts amounted to a culpable delay in bringing the matter to the Tribunal, a number of other matters under investigation at the OSS. It could not be said that there had been no action taken at all.

29. The Tribunal concludes in all of these circumstances that the length of time taken to bring the matter to a substantive hearing before the Tribunal did not amount to culpable delay such as to interfere with the fairness of the trial.

30. Even though the Tribunal does not find culpable delay, the Tribunal has placed reliance upon R v (1) Her Majesty's Advocate (2) Advocate-General of Scotland 2002 in the High Court of Justiciary Appeal Court on 31st May 2002 which provided that annulment was not a necessary consequence of a breach of Article 6(1) in regard to reasonable time for the proceedings. The Convention did not require the discontinuance or annulment of the proceedings to be the automatic remedy for a breach of the reasonable time requirement. The Attorney-General's reference No.2 of 2001 (2001) EWCA Crim 1568 confirmed that in general proceedings should only be stayed where it would amount to an abuse of process of the Court to proceed with a

prosecution and in other situations the Court had alternative remedies including marking the fact that there had been a contravention of Article 6(1) by taking account of the contravention in any sentence imposed, or making an award of compensation if a defendant was acquitted.

31. The Tribunal dismissed the Respondent's application and the matter proceeded to the substantive hearing.

32. At the conclusion of the hearing the Tribunal ordered that the Respondent James Nicholas Roberts of Welland Road, Worthing, West Sussex (formerly of Dart Close, Worthing, West Sussex) 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 a detailed assessment if not agreed between the parties.

33. The facts are set out in paragraphs 34 to 57 hereunder: -

34. The Respondent, born in 1953, was admitted to the Roll of Solicitors in 1980. At the material times he carried on in practice both in partnership and on his own account in the firm of Howlett Cree & Co., solicitors of 7 Strand Parade, Goring-by-Sea, Worthing, West Sussex, BN12 6DH.

35. The Respondent practised in partnership with one partner until that partner's resignation from the partnership on 30th April 2000. From 1st May 2000 the Respondent practised alone.

36. On 17th September 2001 The Law Society began an inspection of the Respondent's books of account and other documents at his practice address at Goring-by-Sea, Worthing, West Sussex.

37. On 16th October 2001 a written report of the inspection was sent to the Head of Investigation and Enforcement at the OSS by the Head of Forensic Investigations at The Law Society.

38. The report revealed, amongst other things, that the books of account were not in compliance with the Solicitors Accounts Rules as they had not been reconciled since May 2000 and no entries had been made since June 2000.

39. No comparison of the total liabilities to clients and the total client cash available was possible because the books of account had not been written up or reconciled. However, the Respondent's former partner was able to produce a list of balances from manual records he had kept since April 2000, the date of the last reconciliation. From this list it was possible to compute the following minimum sterling client account shortage as at 7th September 2001:-

Liabilities to client per Mr N's list after adjustment for un-presented cheques	£1,865,780.57
Liabilities in respect of the following specific clients determined from available client records	
1. IMR – sale and purchase	187,777.00
2. H – matrimonial and investment	16,121.27
3. JCD – sale and purchase	8,993.00
4. H – purchase	838.50
5. H – sale	431.00
	£2,079,941.34
Cash available	2,052,159.28
Minimum cash shortage	27,782.06

40. The cause of the cash shortage was unknown due to the Respondent's failure to reconcile his books of account since April 2000.

41. On 15th August 2001 the Respondent's firm received into a US Dollar client account the sum of $582,689.78. The accounts had been opened on the 30th July 2001 for the sole purpose of receiving these funds.

42. On 22nd August 2001 the US Dollar client account was charged with the transfer of $7,500 which was converted into sterling and transferred to the firm's office bank account. At the same time the Respondent faxed Mr H, the depositor of the US Dollars, informing Mr H that he needed a sum of money on account of fees and that $7,500 would be "a fair sum at this stage". By the end of the inspection on 19th September no further transactions on the US Dollar account had been made.

43. The Law Society had intervened into the Respondent's practice following a resolution on 30th October 2001. A disposal of the practice had been achieved.

44. Mr H wrote on 3rd November 2001 to the intervention solicitor. In that letter he stated:-

> "At no time did I engage Howlett Cree to perform any services for me nor did I agree to the amount of $7,500 for future services to be rendered, if needed. I presume that since I did not agree no invoice was ever sent.
>
> I did request a copy of the bank account that would evidence that US$582,699.86 was in the account together with interest. To date I have not received anything. I am quite upset to learn that $7,500 was withdrawn from my funds without any permission and that apparently no interest was paid on the funds".

45. On 19th October 2001 the OSS wrote to the Respondent enclosing a copy of the Investigation Accountant's report asking for a reply within 48 hours to the matters raised within it.

46. On 26th October 2001 the Respondent replied. On 30th October 2001 the Adjudication Panel resolved, amongst other things, to intervene into the Respondent's practice and to refer the Respondent's conduct to the Tribunal.

47. On 5th January 1999 the SIF reported the conduct of the Respondent to the OSS having come to the conclusion that it felt that it had reasonable grounds to suspect dishonesty.

48. From about 1993 the Respondent had acted for the directors of a limited company, CLC Limited. The company went into liquidation and the liquidator instructed his own solicitors to act for him. On 19th August 1996 those solicitors wrote to the Respondent putting him on notice of a potential claim against his firm for a sum in excess of £120,000. The reason for the claim was that the Respondent accepted instructions from his director client to transfer money into his client account and then accepted instructions to make payments out of it to third parties. The effect of this was to allow the client company to avoid the consequences of a winding up petition and to continue to trade. Money that should have been at the liquidator's disposal was not available to satisfy creditors.

49. On 15th January 1999 the Respondent and his partner attended a conference with Mr Michael Pooles QC, Counsel instructed by Blake Lapthorn on behalf of the SIF. As a result of the conference and other investigations, the SIF concluded that it would indemnify the Respondent's partner but would not indemnify the Respondent and on 27th October 1999 wrote to the Respondent a declinature letter to him setting out their reasons.

50. On 9th February 2000 the Professional Regulation Casework Sub-Committee considered a complaint from the SIF of dishonest conduct and resolved inter alia to refer the conduct of the Respondent to the Tribunal.

51. At the time when he was sole practitioner the Respondent was instructed on 14th February 2001 by Mrs P with regard to a family dispute between Mrs P and her sister and her sister's partner. Mrs P instructed the Respondent that she had been assaulted and the Respondent advised her that she could seek protection from the Court by applying for an injunction against her sister and her sister's partner.

52. The application for an injunction was issued on 20th February 2001 and came before the Court without notice on 21st February 2001. The District Judge ordered that the application be heard on notice and abridged the time for service to 24 hours and ordered service to be effected by 2 pm on 21st February. There would be an On Notice hearing on 22nd February. The application notice could not be served on the defendants and the hearing was adjourned until 2nd March 2001.

53. On 2nd March 2001, in the absence of the defendants, the Court granted an injunction order in favour of Mrs P. The order would not be effective until it was served on the defendants. The defendants were not served until 14th September 2001.

54. On 20th June 2001 Mrs P wrote to complain about the Respondent to the OSS. Her complaint was in regard to the overall fees charged for the work done, she having not been made aware of the likely charges. She also complained that having made repeated telephone calls the Respondent did not respond to them. She had also written letters to the Respondent requesting information and expressing concern that the non-service of the injunction was compromising her personal safety.

55. Mrs P's letter to the OSS was written ten days after a letter to the Respondent complaining to him of the failure to reply to her previous correspondence and the failure to serve the injunction order.

56. After the granting of the injunction order, the Respondent wrote to Mrs P under cover of a letter dated 5th March 2001 enclosing his account for £1,842.20. Mrs P was unhappy with the account and relayed this to the Respondent. After discussion the account was reduced to £1,242 which Mrs P paid under cover of a letter dated 18th March 2001. Unusually she was requested to write out two cheques, one for £1,000 made payable to Close Brothers and the balance of £242 directly to the Respondent's firm. Having reduced the invoice by £600 the Respondent failed to send Mrs P an amended account reflecting the reduction in fees and failed to record that the fee had been raised and payment had been received. In doing so, he had failed to account for monies he received.

57. Initially a local conciliation officer was engaged by the OSS to deal with Mrs P's complaint. By December 2001 it was established that there was no prospect of conciliation and so on 22nd February 2002 the OSS wrote to the Respondent. The Respondent provided a substantive reply on 14th July 2002. It contained a completed ledger in respect of Mrs P. In his letter the Respondent pointed out that the ledger card was incomplete. The Respondent said that this was because the records were only made up to June 2000 at the time the Respondent's firm was subjected to an inspection in 2001 and the ledger card had been extracted from the Respondent's file of papers in respect of Mrs P.

The Submissions of the Applicant

58. The Investigation Accountant of the OSS had established during his inspection that there was a shortage on client account of £27,782.06 which the Respondent had come to admit.

59. The receipt of US$500,000 into an account opened especially for the purpose of its receipt was extraordinary. The money had been sent by a Mr H, a client in Florida. No legal services were provided in connection with the receipt of this money and within a few days the Respondent had taken US$7,500 from the account for his own use without the agreement of the client. The client had not given permission for that transfer. Although, on the face of it, there were concerns about the possibility of money laundering, The Law Society had in fact refunded the money to Mr H and there had been no allegation of money laundering.

60. The matter of Mrs P had concerned a family dispute in which an injunction for the safety of Mrs P had been obtained. The injunction had not been served upon the

persons affected by it until very late in the day. That, of course, had rendered the protection of the injunction ineffective. The situation with regard to the billing of Mrs P, the agreed reduction and requirement that payment be made by two cheques, one of which was not payable to the Respondent's firm, was odd. The ledger did not show any billing but did demonstrate that Mrs P had paid a court fee of £120. The Respondent had admitted the delay in dealing with the matter and his failure to answer correspondence.

61. The Respondent accepted that his books of account had not been up-to-date.

62. The most serious matters alleged against the Respondent were those concerning CLC Limited. The Respondent had provided a banking service to a director of CLC in order to and with the effect of frustrating the claims of creditors. The Respondent had received money from the director after the company's bank account had been frozen. Banks would have known of that situation because notice had been posted in the London Gazette. Money had been diverted to the Respondent's account and had then been paid out to the order of the director.

63. At the interview with Leading Counsel conducted on behalf of the SIF, the Respondent had not denied that that had been the case. The payments out had even included paying money to another account belonging to the director of the company personally so that he could deal with that money as he wished.

64. The Applicant accepted that he had to establish dishonesty on the part of the Respondent to the highest standard of proof. He relied upon the tests of dishonesty in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378 and Twinsectra Ltd v Yardley and Others [2002] UKHL 12, namely that the Respondent must have appreciated that what he was doing was dishonest by the standards of honest and reasonable men.

65. The correspondence indicated that the Respondent had more knowledge of the situation than he disclosed at the conference with Leading Counsel and the Respondent's behaviour could not be said to have amounted simply to negligence. The Respondent could not claim in those circumstances that he was trying to act in the best interests of his client. What he did was clearly wrong and the Respondent knew that what he was doing was wrong. The Tribunal was invited to consider the part of the transcript of the interview with Leading Counsel where the Respondent accepted that he knew that a petition had been issued and that the company's accounts had been frozen. He had been aware of the law of preference and he had been aware that there can be preferential creditors. He was aware that transactions could be set aside by the Court. He was also aware that a director who permits a company to trade when it is insolvent is acting in breach of the Companies Act and also was exposed to criminal liability.

66. The Respondent had accepted that he had acted for the company since 1993. At the time when the complaints arose the company had been struck off the Register twice already for non-compliance with the Companies Act and the company with which he was dealing was its third manifestation. He was aware that the company could not satisfy preferential creditors and could not pay Value Added Tax that was due. The Respondent had knowledge that it was wrong for a company to trade when it was insolvent and knew about preferential creditors. The Respondent must have

appreciated that what he was doing was dishonest by the standards of reasonable and honest people.

The Submissions of the Respondent

67. With regard to the CLC Limited matter, the Respondent's former partner had agreed with what had been done. He played a part and indeed undertook most of the banking of the firm.

68. The Respondent had been aware that the client company had been in difficulties with its bank and it had been agreed that the Respondent's firm could endorse cheques and pass them on. The sole motive had been to help the client through a difficult time in order that it could pay off its creditors. The Respondent said that he was naive and had come to realise that it was per se wrong. Customs & Excise had been fully paid off and their petition was dismissed.

69. The company liquidator had been employed by Mr O, the director, to try to agree a company insolvency arrangement.

70. The liquidator had been paid fees out of the company's money.

71. It was said that the claim was for £120,000 but the Respondent said his firm had never handled that sum of money. A maximum of £20,000 had been used to pay the company's suppliers, staff and Customs & Excise. There had been a rolling balance to pay for materials and wages so that the company could carry on for another month.

72. The Respondent had not deliberately attempted to be dishonest. There was no intention of the Respondent himself making any gain and if the situation had been allowed to continue everyone who was owed money by the company would have been paid. That was the only intention of the scheme.

73. The Respondent's error had been that he had not "put two and two together". There was no question that "he must have realised". The Respondent regarded himself as a reasonable and honest man and that was what he had thought at the time. The company had claimed that the liquidator was fully aware of what was going on.

74. The Respondent had become a sole practitioner upon the retirement of his former partner who had been the Respondent's principal when he was training. He had been with the firm since shortly after he left university. The former partner had undertaken most of the firm's administrative work. The Respondent had been ill prepared to take on the administrative duties of a professional practice.

75. The Respondent's relationship with his former partner had deteriorated. A substantial client had been lost in 1995, as a result of which there had been a large reduction in the firm's fee income.

76. The former partner continued to operate as a consultant with the firm and required substantial payments. Both the former partner and the Respondent remained sole signatories on the firm's two bank accounts. The former partner had paid himself large sums of money which the firm could not afford.

77. The Respondent had fallen behind with the bookkeeping but had made progress in bringing the accounts up-to-date. He had completed some nine or ten months' of accounts after the inspection report. He had made an arrangement for the firm's auditors to come in in November 2001 whereas in fact The Law Society had intervened into the practice on 1st November and auditors' inspection had not taken place.

78. The Respondent had continued to work on the accounts after the intervention and had brought them up-to-date. It had been a monumental task in which he had been encouraged by The Law Society's intervention agent. The firm had been disposed of to another firm and the completion of the books of account had been part of the succession agreement.

79. The Respondent had at the time of the inspection accepted the shortfall but did not accept the Investigation Accountant's calculation. The Investigation Accountant had made no allowance for simple human error, in particular a cheque for a substantial sum had not been banked.

80. The Respondent has asked his successor firm if there was any shortfall on client account over and above that found by the Investigation Accountant and he understood that no shortfall had been found. The successor practice had been able to account to all clients from monies held in client account and the proceeds of sale.

81. The proceeds of sale had also been utilised to pay the Respondent's outstanding indemnity premium. The Respondent's indemnity premium had been very high. The Respondent had been in great difficulty because if he had not had professional indemnity then his practice would have collapsed which would seriously have affected the firm's staff and clients. The Respondent had not been able to discuss his situation with anyone.

82. The American, Mr H, had been introduced to the Respondent by Mr S. Mr S and the Respondent had known each other for many years. There had been no issue of money laundering. The Respondent had no reason to doubt the bona fides of Mr H. Mr H had proposed to lend money to Mr S for the purchase of a house by his daughter. Mr H had been very upset by The Law Society's intervention. The Respondent said he had spoken amicably with Mr H on the telephone after the deduction of fees.

83. The delay in the service of the injunction order in the matter of Mrs P was not as serious as it might on the face of it have appeared. Mrs P's sister and the sister's partner had been subject to a non-molestation bail condition in force at the time. The reality was that the police would have enforced that bail condition far more speedily than the injunction could have been enforced. The Respondent had worked extremely hard. He had prepared the paperwork overnight and had undertaken the word processing himself. The Respondent had raised a process server and had spent many hours trying to help Mrs P. He had not charged a high amount. Mrs P was well off and not naïve. She was herself a magistrate and knew what was going on. She had in fact been fully protected. Mrs P had been aware of the difficulties encountered by the Respondent in service of the injunction. Mrs P's sister and the sister's partner had

owned an antique shop but Mrs P had not been able to give any details of its whereabouts.

84. When Mrs P informed the Respondent that her sister and her sister's partner were involved in a criminal case at Lewes the Respondent went there instantly and personally served the injunction. The reality was that insufficient credit had been given to the Respondent for his work and his effort.

85. As a result of the matters before the Tribunal, the Respondent had lost his job, his practice, his profession and his good name. He enjoyed no income. He had sold his home and the Respondent, his wife and his son were living with the Respondent's mother.

86. The Respondent had applied for many lowly jobs. No one wanted to employ a solicitor with a degree.

87. The Customs & Excise had made the Respondent bankrupt in August 2002. At the time of the disciplinary hearing he had not been discharged. The bankruptcy petition was in respect of Value Added Tax owing.

88. The Respondent had obtained a job as a clerk with a modest salary. He had applied to remove his name from the Roll of Solicitors but had found that he could not do that while disciplinary proceedings remained outstanding.

89. The Respondent's friends and family had stood by him. He had not committed a crime or any hideous act. He had made a mistake and accepted that he had been both weak and naïve. He had more than paid for that.

The Findings of the Tribunal

90. With regard to the disputed allegations, the Tribunal finds that the Respondent had been at least naïve to allow his client account to be used as a banking system.

91. It must have been clear to the Respondent that his client company had been struck off the Register. The Respondent was aware that that company had been struck off the Register twice before and he must have been fully aware of the consequences.

92. The Tribunal accepts that the system adopted by the Respondent had not been so adopted for his own personal gain. The Respondent's biggest mistake had been that he had not made a distinction between being a legal advisor and joining in a scheme to assist a client in difficulty. There was no doubt that in failing to make that distinction the Respondent had fallen below an acceptable standard. The Respondent had paid company staff through office account and accepted cheques to be endorsed over. Payments had been made to trade creditors and payments had been made to the director's personal account.

93. Those payments had been made when the company was no longer a legal entity. Even Mr O, the director, had commented in one letter "Isn't it a bit embarrassing to send a cheque to Customs & Excise when the company does not exist?"

94. The Tribunal concludes that the Respondent did what he did knowingly and he knew enough about the law to know that he should not be doing it. The Tribunal concludes, having applied the test in Royal Brunei Airlines v Tan and Twinsectra Ltd v Yardley and Others, that the Respondent had acted dishonestly in this connection. The Tribunal found allegations 5, 6, 7 and 8 to have been substantiated on the basis that the Respondent was dishonest.

95. The Tribunal found the rest of the allegations to have been substantiated, indeed they were not contested.

96. The Tribunal gives the Respondent credit for appearing before them and the Tribunal has taken into account the mitigating circumstances which he so carefully explained.

97. In finding that the Respondent acted dishonestly in dealings on behalf of his client company and its director, the Tribunal concludes that the Respondent has fallen so far below the expected standards of probity, integrity and trustworthiness required of a solicitor that in order to protect the public and the good reputation of the solicitors' profession it is appropriate to order that he be struck off the Roll of Solicitors. The Tribunal also ordered that the Respondent should pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation Accountant of the OSS), such costs to be subject to a detailed assessment if not agreed between the parties.

DATED this 30th day of June 2003
on behalf of the Tribunal

T Cullen
Chairman