

IN THE MATTER OF DAVID JOHN BULTITUDE & NICHOLAS CHARLES RITSON,
solicitors

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the chair)
Mr. P Haworth
Mr. M C Baughan

Date of Hearing: 16th & 17th September 2003

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 (the "OSS") by Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool (subsequently of 17e Telford Court, Dunkirk Lee, Chester Gates, Chester, CH1 6LT) on 16th September 2002 that David John Bultitude of Watford, Hertfordshire and Nicholas Charles Ritson of Chesham, Bucks 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 Respondents had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- a) Allegations against both Respondents
- (i) That they withdrew monies from client account other than as permitted by Rule 22 and/or Rule 23 of the Solicitors Accounts Rule 1998;
 - (ii) that they utilised clients' funds for their own purposes;
 - (iii) that contrary to Rule 6 of the Solicitors' Accounts Rules 1998 they failed to ensure compliance with the Solicitors' Accounts Rules and/or failed to keep

- accounts properly written up for the purposes of the said Rules;
- (iv) that they failed and/or delayed in dealing with post completion matters, that is to say registration of transfers following completion.

b) Allegation against the first Respondent – David Bultitude alone

that he misappropriated clients' funds, which for the avoidance of doubt is an allegation of dishonesty.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 16th and 17th September when Jonathan Richard Goodwin appeared as the Applicant, Mr Bultitude was represented by Mr Benjamin Browne of Queens Counsel instructed by Jack Friend & Co. of Wembley, Middlesex and Mr Ritson was represented by Mr Geoffrey Williams of Queens Counsel.

The evidence before the Tribunal included the oral evidence of Mr Lane a senior Investigating Accountant of the OSS, Mr Bultitude, and Mr Rosen, the accountant advising the Respondents. Mr Bultitude admitted allegations a)(i) to (iv) but denied allegation b)(i) that he had been dishonest. Mr Ritson made admissions in accordance with his letter. He accepted responsibility for the fact that a bill of £6,030.93 had not been addressed direct to his client Mrs C. The firm's cashier in error could only have made the second transfer from client to office account made in respect of Mrs C. Mr Ritson accepted responsibility for late registrations, which had been due to pressure caused by the untimely departure of the firm's experienced conveyancing secretary.

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

The Tribunal ordered that the Respondent, David John Bultitude of Watford, Hertfordshire solicitor, 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 (to include the costs of the Law Society's Forensic Investigation Accountant) to be subject to a detailed assessment if not agreed between the parties (subject to the contribution towards costs ordered against Mr Ritson).

The Tribunal ordered that the Respondent, Nicholas Charles Ritson of Chesham, Bucks, HP5 2QN solicitor, be reprimanded and they further ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £500.

The facts are set out in paragraphs 1 to 45 hereunder: -

1. Mr Bultitude was born in 1957 and was admitted as a solicitor in 1981.
2. Mr Ritson was born in 1960 and was admitted as a solicitor in 1985.
3. At all material times the Respondents carried on practice in partnership under the style of Seakens from offices at 12 Station Road, Watford, Hertfordshire. Mr Ritson was a salaried partner having no administrative or managerial responsibilities. Mr Bultitude was the sole equity partner.

4. An Investigation Officer of the Forensic Investigation Unit of the OSS (the I.O.) carried out an inspection of the Respondents' books of account commencing on 29th August 2000. A copy of the I.O.'s Report dated 31st May 2001 was before the Tribunal.
5. The Report revealed that the Respondents' books of account did not comply with the Solicitors' Accounts Rules and that there was a shortage of clients' funds of £46,971.57 as at 31st July 2000.
6. The shortage arose in the following way:-
- | | | |
|----|---|-------------|
| a) | Small client ledger credit balances improperly transferred to office bank account - | £36,205.75 |
| b) | Incorrect transfers from client to office bank account | £6,030.93 |
| c) | Overpayments | £3,876.89 |
| d) | Unidentified transfer from client to office bank account | £1,947.76 |
| e) | Book difference – surplus | (£1,089.76) |
| | | ----- |
| | Net shortfall: | £46,971.57 |
7. The Respondents did not agree the existence of the majority of the cash shortage identified by the I.O., but did agree that a cash shortage of £7,629.07 existed in respect of the matters detailed in paragraphs 73-83 of the Report, which related to costs transfers when insufficient funds were held of £1,804.42, overpayments of £3,876.89 and an unidentified transfer from client to office bank account of £1,947.76.
8. The agreed cash shortage of £7,629.97 was replaced on 10th August and 15th September 2000.
9. The Respondents asserted that they had corrected part of the remaining cash shortage but the I.O. had been unable to establish how and when such monies were replaced.

Small Clients Ledger Credit Balances Improperly Transferred to Office Bank Account
- £36,205.75

10. The I.O. identified a large number of transfers from client to office bank account which appeared to have been instigated to clear the client ledger balance on the relevant client's ledger account to nil. The clients' ledger balances were cleared in one of two ways.
11. In some cases a debit note was raised and posted to the office side of the relevant client's ledger account contemporaneously with a transfer from client to office bank account.
12. The second way, was that the balance on the client's ledger account was transferred to office bank account and the resulting credit balance arising on the office side of the relevant client's ledger was written off.
13. In respect of residual clients' ledger balances in excess of £50 a hand written debit note was raised and a corresponding transfer from client to office bank account made.

14. Appendix 1 to the Report had been prepared by the I.O. it detailed one hundred and eighty transfers, varying in amount between £0.01 and £2,923.49 (totalling £34,027.60) made between 1st May 1997 and 30th April 2000.

15. The following three matters were exemplified in his Report:-

Mr IS – purchase of a property

16. Mr Bultitude acted for Mr IS in connection with his purchase. The transaction was completed on 20th November 1998. The transfer was registered at HM Land Registry in February 1999. There remained a credit balance on the relevant client's ledger in the sum of £2,923.49 following registration, because the client had paid a deposit twice.

17. On 30th April 1999 the office side of the relevant account in the client's ledger was debited with a debit note of £2,923.49 thereby creating a debit balance of a like amount. On the same day the balance of £2,923.49 remaining on the client's ledger was transferred to office bank account thereby clearing both the office and client side of the client's ledger account to nil. The "debit note" had been completed in manuscript on a proforma "credit note", the word "credit" having been altered to "debit" as set out below:-

		Client: S
		File Number L435
		Date 30.4.99
DEBIT		
CREDIT NOTE		
		£2,923.49
Profit Costs	£2,488.08	
VAT	435.41	
Disbursements		
Total	2,923.49	

Mr & Mrs R – re-mortgage of a property

18. Mr Bultitude acted for Mr & Mrs C in relation to their re-mortgage to Britannia Building Society. Completion of the re-mortgage took place on the 28th January 1998. The matter was registered with the Land Registry in or about February 1998. The I.O. ascertained that there remained a credit balance on the relevant client's ledger account of £1,080.67 following registration. The surplus arose as a consequence of the client having made an overpayment on their old mortgage, which was subsequently refunded by the mortgage lender to the Respondents' firm. The relevant client's ledger account showed that the refund in the sum of £1,989.67 was received and credited to the ledger account on the 11th February 1998.

19. On 30th April 1999 the office side of the relevant account in the clients' ledger was debited with a debit note of £1,077.67 thereby increasing the existing debit balance of £3.00 to £1,080.67. On the same day the balance of £1,080.67 remaining on the clients' ledger was transferred to office bank account thereby clearing both the office and client side of the clients' ledger account to nil.

20. The “debit note” raised was in the following form

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Client: C
File Number: K345
Date: 30.4.99

	DEBIT
	CREDIT NOTE
	£
Profit Costs	917.17
VAT	160.50
Disbursements	
Total	1,077.67”

Mr W – Sale of a property

21. The Respondent’s firm acted for Mr W in the sale of his property at the price of £45,500. A deposit of £2,275 had been paid ‘up the chain’. Mr A Bultitude, a licensed conveyancer in the Respondents’ firm, acted in the matter. The Respondent’s firm had previously acted for this client in relation to the re-mortgage of the property in December 1998.
22. On 27th May 1999 the net sale proceeds of £43,225 were received into client bank account and subsequently partially disbursed by redemption of the mortgage in the sum of £39,372.09, a transfer of costs in the sum of £389.88 and payment to the client of £2,551.90, such amounts totalling £42,313.87.
23. The balance of £911.13 remained on the clients’ ledger account until 31st March 2000 when a client to office account transfer in the sum of £911.13 was effected.
24. The transfer created a credit balance on the office side of the relevant account in the client’s ledger of £911.13. On the same day the office side of the relevant account in the client’s ledger was debited with a debit note of £911.13 reducing the office balance to nil.
25. In cases where the residual clients ledger balances were below £50, generally the practice was to transfer the amount from client to office bank account and the credit balance arising on the office side of the client’s ledger was then written off. The I.O. identified one hundred and thirty such transfers, varying in amount between £0.01 and £100 and totalling £2,178.15, which had been made between 31st May 1997 and 28th April 2000.
26. Mr Bultitude explained that following the firm’s year end on 30th April 1999 the firm’s regular reporting accountants resigned. On the recommendation of Mr Rosen, who advised Mr Bultitude on accountancy and taxation matters on a day to day basis but was not qualified to give an Accountant's Report, the firm instructed Mr Rossides as its new reporting accountant. An extension of time for filing the firm’s Accountant’s Report was sought and obtained from the Law Society extending the period until 30th November 1999.

27. During the week commencing 27th November 1999 the new reporting accountant drew attention to the number of credit balances on client account. Earlier reporting accountants had not done so and it had been the practice of the firm to clear up such small credit balances as and when opportunity arose.
28. The new reporting accountant said that unless the old credit balances were removed he would refuse to sign the Accountant's Report which had to be filed on 30th November 1999. That demand had been made on or about Tuesday 23rd November 1999.
29. Mr Bultitude had a pressing meeting with a client in Bath. He needed to spend time preparing for that meeting and he left for Bath on Friday afternoon the 26th November. It was Mr Bultitude's position that Mr Ritson and Mr Rosen, and the firm's bookkeeper Adele Beasley had spent the weekend transferring balances and raising a hard copy debit note in each case. It was the evidence of Mr Rosen and Mrs Beasley that Mr Ritson had not played any part in this exercise. No one when giving oral evidence was able to state how old the balances had to be before the reporting accountant required them to be removed from the client ledger.
30. Mr Rosen told the Tribunal that the firm had a computerised accounts package. The system was such that it was impossible to record a transfer of money from client to office account unless a bill had been drawn and recorded as a debit in the office column of the individual client's ledger. He had devised a method whereby when a "debit note" was prepared it took the form of a bill of costs to the extent that it was dated and profit costs and VAT were recorded. The sums transferred represented the total sum of profit costs and VAT. It was recognised by Mr Rosen and the bookkeeper that these were not truly a transfer of costs. No bill or written intimation was sent to the client. It was purely an exercise to remove outstanding credit balances on individual client ledgers so that the new reporting accountant would feel able to sign the firm's annual Accountant's Report. The debit notes were kept in a separate lever arch file in the bookkeeper's room. It had been the intention to work through each and every one of these debit notes and ascertain why a credit balance appeared on the individual client's ledger and to put matters right either by making payments due to be made or returning the money to the client. The procedure described had been adopted owing to the urgency of the matter. Mr Rosen told the Tribunal that the transfers were made with the inclusion of a VAT charge because he was aware of strict Customs and Excise Rules and a failure to make a charge of VAT at that point would have put the firm in breach of VAT rules with serious consequences to the firm. He was aware that VAT paid could be claimed back if and when it was found the monies which were taken to include VAT were monies to which the firm was not in fact entitled.
31. Mr Bultitude said he had wished the matter to be resolved expeditiously and was most anxious for the firm's Accountant's Report to be filed on time because he had already been reprimanded by the OSS in connection with an earlier late delivery of his Accountant's Report. Mr Bultitude told the Tribunal that he believed that the Law Society would take draconian steps if he again fell short of the statutory requirement to file an Accountant's Report on time and he might well have been prevented by the Law Society from practising. He believed that there was a risk that his firm would be closed down. Mr Bultitude told the Tribunal that he did not telephone his office or his

staff over the weekend to enquire how the problem was being dealt with. Upon his return to the office after the weekend he had signed a cheque transferring a composite sum of client balances to office account. He said he had not enquired as to how the exercise had been carried out and he was unaware of the file of debit notes retained in the bookkeeper's office.

32. All of the debit notes were dated 30th April 1999 and dealt with the credit balances appearing on individual client ledgers as at that date. That date was selected because it represented the end of the firm's accounting year.
33. In her evidence Mrs Beasley the firm's bookkeeper, explained that when she came to make the physical transfers of money in November 1999 there had in some cases been movements on the ledger which meant that the balance available in November 1999 was insufficient to enable her to transfer a sum representing the credit balance which existed at the end of April. It was for this reason that the total sum transferred from client to office account in November 1999 represented an over transfer and Mrs Beasley herself had to arrange for monies to be transferred back from office to client account to ensure that no debit balances appeared on any client ledger.
34. The I.O. reported upon an incorrect transfer from client to office bank account totalling £6,030.93. Between the 30th June 1999 and the 31st July 2000 incorrect transfers from client to office bank account, varying in amount between £29.25 and £3,970.70 and totalling £6,030.93 had been made. There had been no delivery of bills of costs in respect of £4,226.51 and cost transfers had been made when insufficient funds were held totalling £1,804.42.
35. Mr Ritson had acted for Madame C, a French National. Madame C had been assisted by Ms.I an English solicitor resident and working in France. An invoice dated 21st June 1999 had been raised in the sum of £5,875 made up of profit costs of £5,000 and VAT of £875. The invoice had been addressed Monsieur I but there was no documentary evidence suggesting that the invoice had been delivered. The I.O. had also expressed concern that the invoice included a VAT charge when he thought that the firm's profit costs were exempt from VAT as the client was a French National.
36. The office side of the clients' ledger account following the debit of the invoice on 21st June 1999 and the subsequent partial payment by means of a client to office bank account transfer on 30th June 1999 produced a debit balance of £2,127.80. On 30th March 2000 the office side of the relevant client's ledger was debited with £1,356.51 by means of a hand written debit note thereby increasing the debit balance on the office side of the relevant client's ledger to £3,484.31. On the same day a transfer from client to office bank account of £3,484.31 was made thereby reducing the balance on both sides of the ledger account to nil.
37. The transfer of £3,970.70 on 30th June 1999 and £3,484.31 on 30th March 2000 had been made in breach of the Solicitors Accounts Rules save in so far as the firm had incurred disbursements of £223.50 which could properly have been reimbursed. The shortage on client account ascertained by the I.O. was £7,231.51. On 4th April 2000 an interim payment was paid to Madame C when no funds were held on the relevant client ledger. A transfer from office to client account of £3,000 was made to cover the payment. On 20th April 2000 office bank account was charged with a disbursement of £5 which reduced the shortage to £4,226.51 and that remained the

position as at 31st July 2000. In a letter dated 13th December 2001 addressed by the solicitor representing Mr Ritson to the OSS he said that Mr Ritson was quite convinced that he would have sent the original bill either to Madame C directly or via Mrs I. He accepted that he should have addressed the invoice to Madame C but most of the correspondence had been conducted through Mrs I. It was wrong to state that VAT should not have been charged on the bill as legal services rendered to a foreign resident were subject to VAT at the standard rate when the supply was made unless the services related to the client's business. That had not been the case. Mr Ritson had been at a loss to understand how the second transfer from client to office account came to have been made and could only assume that the firm's cashier misunderstood her instructions when dealing with the interim payment to a beneficiary at the same time.

Costs transfers where insufficient funds held - £1,804.42

38. The I.O. ascertained that nine client ledger accounts were charged with transfers from client to office bank account between 30th June and 30th July 2000. In each case insufficient funds were held to the credit of the client's ledger of the client concerned to cover the transfers in full. In all cases the relevant client ledger account showed that an office to client account transfer was recorded as having been made, although the physical transfer of monies from office to client bank account was not undertaken until 10th August and 15th September 2000. Mr Bultitude acknowledged these errors. He pointed out that the firm had several thousand client files. There had been no question of any client suffering loss.

Overpayments £3,876.89

39. As at the date of the investigation the I.O. identified a client shortage of £3,876.89 which had arisen as a result of overpayments being made on behalf of clients varying in amount between £0.21 and £845.69 totalling £3,876.89 between 26th May and 25th July 2000 in respect of some twenty eight client matters. In respect of each of the twenty eight matters identified, insufficient funds were held to the credit of the ledgers of the clients concerned to cover payment in full.
40. Mr Bultitude explained that the practice adopted by the firm, through its bookkeeper, was to carry out a reconciliation of the client account ledger position against the client account bank statements at the end of each month. In the event that a shortfall was ascertained on the client account, funds would be transferred from office account in order to rectify the position. The shortfalls had occurred for a number of reasons, the principle ones being arithmetical errors or failure by clients to transfer funds to client accounts expeditiously and/or dishonoured cheques.
41. Owing to the bookkeeper being away from the office for personal reasons that reconciliation exercise together with the appropriate corrective transfer did not occur in respect of the month ends for June and July 1999. The matter had been corrected as soon as it was identified.

Unidentified Transfers from client to office bank account - £1,947.76

42. A corrective transfer from office bank to client bank was effected on 15th September 2000 of £5,510.95 which was the correction of a shortage which existed as at 31st July

2000 and included sums of £1,203.13 and £744.63 in respect of which the I.O. was unable to identify the relevant client matters where the shortage had existed.

43. The book difference, a surplus of £1,089.76 served to reduce any shortfall on client account.
44. The I.O. noted that in a number of conveyancing transactions where completion had taken place sometime ago, transfers remained unregistered as at 31st July 2000. Some completions had taken place as long ago as 1999.
45. It was accepted by Mr Ritson that he had been responsible for the conveyancing transactions in which post completion formalities had not been attended to. An experienced conveyancing secretary had left the firm and a conveyancing assistant had been assigned to other duties. Pressure of work and shortage of staff had caused the delays. Mr Ritson had brought all matters up-to-date. Mr Ritson had suffered a cut in his salary in the face of this complaint.

The Submissions of the Applicant

46. The Applicant accepted that whilst Mr Ritson was a salaried partner having no real responsibility for the keeping of accounts of the firm he was, however, under the provisions of the Solicitors Accounts Rules liable for compliance with those Rules in his capacity as a salaried partner.
47. The Applicant invited the Tribunal to consider that the actions of Mr Bultitude amounted to conscious impropriety and that he had been dishonest.
48. A number of credit balances on client ledger accounts had been cleared off in November 1999 by transfers of costs to office account using the debit note system. These credit balances should have been dealt with by proper analysis and an ascertainment as to whom the money belonged and to what particular matter it related.
49. Further, although the exercise (during the panic weekend following the new reporting accountant's announcement that he would not sign an Accountant's Report unless the client ledger balances had been corrected) had been recorded as having been carried out as at the end of April 1999, it had in fact been carried in November 1999. The face of the books were not correct in this regard.
50. In the submission of the Applicant, Mr Bultitude acted with a total disregard for the integrity of client funds. He had done this when he knew or had concerns that what the reporting accountant had required was wrong. There could have been no doubt in Mr Bultitude's mind that his Accountant's Report was required to show a fair and true picture of the way in which he held clients' money. It could not be said to be a fair and true picture if an exercise seven months later was calculated to show the position as at the end of April 1999. That could not be a true and fair representation on the face of the accounts.
51. Mr Bultitude was the sole equity partner. He was the helm of the ship. It was the Applicant's submission that Mr Bultitude was involved in the decision to conduct matters in the way that they were and it was he who signed the transfer cheque.

52. The Tribunal was invited to apply the test in the *Twinsectra Ltd v Yardley* [2002 UKHL 12] in which it was said a combined test should be applied
- A. The objective test was “Would the public in full knowledge of the facts and circumstances where no proper analysis had been taken regard the steps taken by Mr Bultitude as wrong?”. It was the Applicant’s submission that the public would regard those actions as being wrong.
- B. The subjective test to be applied was “Did Mr Bultitude know or have cause to be concerned that what he was doing was wrong?”. In the submission of the Applicant the answer to that question was yes.
53. The Tribunal would be concerned as to what had happened. The Applicant referred the Tribunal to the appeal from a decision of the Tribunal, *Weston*, in which Lord Chief Justice Bingham gave a leading judgement. He pointed out that the Solicitors Accounts Rules had been put in place to afford maximum protection to the public. Solicitors bore a heavy obligation to ensure proper and close observance of those Rules. In the Leading case of *Bolton* it was said that the solicitors’ profession’s most valuable asset was its collective reputation. That reputation would be sullied if any of its members failed to exercise a proper stewardship over clients’ monies. Even if the Tribunal considered that Mr Bultitude had not been guilty of conscious impropriety he had at best displayed a serious lack of the proper stewardship he was required to exercise when holding clients’ funds.
54. The transfer of the credit balances from office account to client account placed the firm’s office account in a much healthier position than it otherwise would have been. The transfer caused a significant increase in funds held on office account and Mr Bultitude knew that he was not entitled to that money. Mr Bultitude knew that the money had been transferred for fees and his explanation was that a proper analysis was to be carried out at a later date. Clearly it would have been better to leave the client balances where they were than to transfer the funds for his own use.
55. In the matter of Mr S his client ledger showed a nil balance when in reality nearly £3,000 was due to Mr S. A deposit had been paid twice by the client creating that credit balance. It was very obvious that that was not due to the firm and it was wholly inappropriate that such money should be transferred to office bank account. It would have been easier to pay the client the money than to draw the “debit note” and transfer the money to office account.
56. Mr Bultitude accepted responsibility for the use of the debit note system and said that he relied upon his reporting accountant’s advice.
57. The integrity of client account had to be maintained at all times and that had to take priority over any need to file an Accountant’s Report. It would have been better for the Respondent to file his Accountant’s Report late, than to take clients money in order to satisfy a requirement of his Reporting Accountant.
58. Mr Bultitude was a solicitor for twenty two years qualification and in following the advice of the reporting accountant displayed a degree of naivety that was alarming. Mr Bultitude could not delegate responsibility for the actions taken to Mr Rosen and his bookkeeper.

59. The production of “pro forma debit notes” very clearly could not have been the best way forward and Mr Bultitude’s acceptance of that course of action amounted to conscious impropriety. Clients’ monies were treated as fees even if only for the time being and Mr Bultitude was responsible for the conscious decision to transfer client monies without first undertaking a full analysis.
60. Even on his own case Mr Bultitude queried the reporting accountant’s advice. Mr Bultitude had remained in the office for some three days before he left for a weekend appointment with a client. It was inconceivable that he had not played any part in the exercise which had been carried out. He was the sole equity partner. He had a hands on responsibility and was sole signatory on the firm’s accounts. His case was that he simply signed a cheque on his return to the office after a weekend away. His case was that he raised no query as to the way in which the problem had been solved. An honest solicitor who had not been aware of the procedures would have asked how the amount of the cheque had been calculated and what work had been undertaken by his staff and advisors over the course of the weekend while he was away.

The Submissions of Mr Bultitude

61. Mr Bultitude admitted allegations a)(i) to (iv) inclusive but denied allegation b).

Allegations a)(i) to (iii) misuse of Funds/Improper Accounting

62. The overall sum to which the allegations related was £46,971.57 and was made up of the five individual sums set out in the I.O.’s Report. By far the largest sum was made up of

“Small client ledger credit balances improperly transferred to office bank account £36,205.75”

63. The explanation for these transfers lies in two initially unrelated matters.
- (i) Transfers executed to satisfy the reporting accountant’s requirements.
 - (ii) Earlier transfers executed to correct accounting errors.

Category (i) Transfers for Auditors’ requirements

64. These transfers came to be made in the following circumstances.
65. The firm had been reprimanded in relation to the submission of a late Accountant’s Report in 1994. The Report had been submitted to the Law Society but was never apparently received. The Law Society issued a receipt to reflect receipt of the Report and sent it to Seakens, Watford. Unfortunately the Report in fact received by the Law Society was that of Seakens, Virginia Water. The Law Society had sent the Virginia Water receipt to Watford in error. Despite the circumstances a reprimand was issued to Mr Bultitude. He was accordingly unusually sensitive to the need to submit his Accountant’s Report on time.

66. Following Seaken's year end 30/4/99 the regular reporting accountants suddenly resigned. Hitherto it had been considered acceptable to carry forward old balances on the client account which were unattributed to any particular purpose.
67. On recommendation from Mr Rosen, Mr Rossides was appointed as the new reporting accountant. An extension for filing the Accountant's Report of one month to 30/11/99 was sought and obtained.
68. During the week commencing 22nd November Mr Rossides drew attention to the client account credit balances. Whilst Mr Rosen (and no doubt Mr Bultitude) knew that the Law Society encouraged the clearing up of such balances they had not hitherto been regarded as unduly serious.
69. On very short notice Mr Rossides demanded that the balances be removed or he would refuse to sign the Accountant's Report on 30/11/99. This demand took place on or about Tuesday 23rd November.
70. Mr Bultitude left for Bath on 26th November. Mr Ritson, Mr Rosen and Adele Beasley then spent the weekend transferring balances, raising a hard-copy "debit note" in each case.
71. All but seven or eight transfers were achieved over the weekend and completed therefore before 30th November. The seven or eight were omitted but completed shortly thereafter.
72. All the debit notes were backdated because it was the 30th April 1999 year-end that mattered. Whilst about twenty five of the transactions bore earlier dates of transfer as these related to bona fide earlier transfers. (These were the transactions that fell into category (ii).)
73. It was intended that there would be an investigation of all these transfers to ascertain the appropriate destination of funds. An investigation and re-allocation of the sums the subject of these transfers had been started.
74. Subsequent to the investigation, the whole sum the subject of the debit notes was either:
 - (1) Sent back to clients
 - (2) Retained as fees/disbursements owed
 - (3) Returned to clients' accounts.

It therefore submitted that in relation to these "write-offs" the true position was that

- (1) The scheme was implemented at the insistence of Mr Rossides and at very short notice.
- (2) The scheme was designed and implemented by persons other than Mr Bultitude.
- (3) In signing documents which reflected the implementation of the scheme Mr Bultitude, not unreasonably, relied upon the advice he had received from others.

- (4) The transfers were all reflected clearly within the documentation, there was no attempt at concealment.
 - (5) There was no shortage of funds which would motivate any such scheme.
 - (6) When the investigation started steps were already in hand to identify the correct destination of the individual sums transferred and to correct the transfers as appropriate.
75. Whilst the substantial majority of transfers were effected as part of the exercise described during the November weekend, twenty five had taken place earlier, though debit notes dated 30/4/99 were raised as part of that exercise.
76. Accountants instructed by Mr Bultitude, Lackmaker and Co., had been satisfied that these transfers were regular transfers which reflected the correction of errors which had occurred within Seakens' accounts. The Tribunal was invited to give due weight to the Report prepared by Lackmaker & Co. which had been placed before it.
77. The non-delivery of the bill of costs for £4,226.51 concerned a client of Mr Ritson, who had explained the situation. There was no suggestion that Mr Bultitude had direct responsibility for that matter, save as principal of the firm. Mr Ritson was a very senior and experienced conveyancing solicitor upon whom Mr Bultitude reasonably relied.
78. Mr Bultitude accepted that a transfer of £1,084.42 had been made when insufficient client funds were held. He acknowledged that this occurred in relation to nine files. Seakens held several thousand client files. There was no question of any client suffering a loss through these transfers.
79. With regard to the overpayments of the total sum of £3,876.89 on twenty eight client matters over the period 26th May to 25th July 2000, the practice adopted by Seakens, through its bookkeeper Mrs Beasley, was to carry out a reconciliation of the client account ledger position against the client account bank statements at the end of each month. In the event that there was a shortfall of client account, funds would be transferred from the office account in order to rectify the position. These shortfalls occurred for a number of reasons, the principal ones being mathematical errors or failure by clients to transfer funds to client account expeditiously and/or dishonoured cheques. Mrs Beasley, the bookkeeper, explained this procedure.
80. Unfortunately, as Mrs Beasley also explained, this reconciliation exercise, together with corrective transfers, did not occur in respect of the month ends for June 1999 and July 1999 as a consequence of absence of Mrs Beasley from the office upon compassionate grounds and holidays. The matter was corrected as soon as it was identified.
81. The unidentified transfers of £1,947.76 were closely linked to the uncorrected shortage following a failure to carry out two month end reconciliations. This formed part of the shortfall identified and corrected late in respect of the June and July 1999 month ends. The particular transfers forming the global total had not been identified in this case.
82. It was accepted that there was a book difference surplus of £1,089.76. It served to reduce any shortfall.

83. The failures and/or delays relating to post completion matters all related to files handled by Mr Ritson without direct supervision by Mr Bultitude. Mr Ritson accepted responsibility for these. Following discovery of these failures/delays Mr Ritson's remuneration package was amended to deter repetition of such errors in the future.
84. The allegation that Mr Bultitude had dishonestly misappropriated clients' funds was effectively an allegation of theft. It was made for the first time in the Rule 4(2) Statement made by the Applicant over two years after the investigation commenced.
85. It was for the Tribunal to consider whether, in respect of some or all of the allegations made against him Mr Bultitude was acting dishonestly or with conscious impropriety as considered in cases such as *Royal Brunei Airlines SDB.BHD v Tan* 1995 2 AC 378.
86. In the light of the factual explanation of the allegations the following submission were made:

(A)

First Category

- (i) The reasons for the transfers were apparent, they were made to comply with the reporting accountant's requirements.
- (ii) Clear evidence was left within the firm's files to show that the transfers had been made.
- (iii) Before the investigation started the exercise of correcting and re-allocating the transfer had been started.
- (iv) There was no financial motivation to steal these sums.
- (v) The allegation of dishonesty could not in these circumstances succeed.

Second Category

- (i) As the Lackmaker report demonstrated, these were regular transfers.
- (ii) The allegation of dishonesty could not succeed.

(B)

- (i) This matter of Mrs C concerned not Mr Bultitude but Mr Ritson.
- (ii) There was no evidence that Mr Bultitude was involved in this matter.
- (iii) The allegation of dishonesty could not succeed.

With regard to the other improper or unidentified transfers reported by the I.O.,

- (i) There was no question of any client suffering a loss. There had been no misappropriation of funds.
- (ii) The allegation of dishonesty could not therefore succeed.

(C)

- (i) There was a credible explanation as to the late correction of the shortfall on the client account, supported by the evidence of Adele Beasley.
- (ii) This reconciliation and correction system was invariably adopted at the month end. It was only because of unfortunate and exceptional circumstances that two month end reconciliations and resulting corrections had not taken place.

- (iii) There was no evidence of intention to misappropriate the funds.
- (iv) The allegation of dishonesty could not succeed.

87. Mr Bultitude had been a solicitor for eighteen years and hitherto had enjoyed an unblemished career and was of clean character. He had never been subject to disciplinary proceedings or any internal sanctions imposed by the Law Society, save for the reprimand in 1994.
88. £14,000 of the £50,000 transferred to client account from office account was properly due to the firm. On any view it was clear that necessary corrections were underway. The transfer had not simply been made and then forgotten about.
89. Mr Bultitude apologised for the position that he found himself in. He was genuinely full of remorse and ashamed. In particular he regretted letting down those who were close to him. Mr Bultitude had endeavoured to ensure that Mr Ritson's lack of involvement had been placed in its proper context.
90. Mr Bultitude had co-operated throughout. He had made prompt admissions and his limited denials at an early stage. The Tribunal was invited to take into account the testimonials written in support of Mr Bultitude.

The Submissions of Mr Ritson

91. Mr Ritson had been an assistant solicitor at Seakens which firm he left in 2001. He had gone on to be an assistant solicitor in another firm and then moved to his present firm. He was a conveyancing specialist: a good solicitor who was both hard working and resourceful.
92. The Tribunal was invited to consider the scope of Mr Ritson's involvement in this matter. He was a salaried partner but was held out as a partner and therefore had responsibility for the accounts of the firm and for compliance with the Solicitors Accounts Rules. He did not shirk that liability. The reality was that he was liable for breaches which he did not commit.
93. Mr Ritson had only two areas of involvement namely the financial matters relating to Madame C and the late dealing with post completion conveyancing matters.
94. Mr Ritson was not a signatory on either the firm's client or office bank account. He was not able to sanction transfer of funds from client to office account or visa versa. He was not able to authorise telegraphic transfers of client funds. Mr Ritson was paid a fixed salary together with a bonus based on profit costs. He did not receive profit linked pay. Mr Ritson had not seen the firm's accounts. He had no idea of the financial position of the firm and no idea whether or not the firm had an overdraft facility. Partners meetings were not held. Although he was called a salaried partner, he was a glorified assistant solicitor.
95. Mr Bultitude had described the practice as being "mine in all respects". That was right.
96. Mr Ritson had not been physically able to commit a breach of the Solicitors Accounts Rules. He was not in a position to remedy any such breach should he

become aware of it. Mr Ritson did not benefit from any funds that went to office account. He had not been wilfully involved in any breach.

97. In the particular circumstances of the case, Mr Ritson had admitted his liability for Accounts Rules breaches in his capacity as a salaried partner but the Tribunal was invited to find that such admitted breaches did not amount to conduct unbefitting a solicitor. It would be wrong in view of the very different positions of the two Respondents to make findings against each of them on an identical basis. Mr Ritson could not have been said to have behaved disgracefully and therefore could not have been said to have been guilty of conduct unbefitting a solicitor.
98. With regard to the events which took place during the weekend in November 1999, it was pointed out that client account was there for client credit balances. Indeed credit balances were the only sort of balances which could be held on client account. There could be no breach if the credit balances were left exactly as they were. It was not a breach of the Solicitors Accounts Rules in 1991 to do nothing about those credit balances. The new reporting accountant took a different view. Mr Rosen designed a system for the sole equity partner, Mr Bultitude. Of the credit balances that were identified one hundred and forty five related to files handled by an unadmitted fee earner, one hundred and thirty four related to cases handled by Mr Bultitude and only thirty one related to cases of which Mr Ritson had conduct. That was to say Mr Ritson's file represented 10% by volume and 10.6% by cash value of the whole of the balances apparently causing the problem. Mr Ritson had produced a list of his client credit balances and that had been the end of his involvement. Mr Ritson had not participated in the events of the November weekend at all. He had not known of Mrs Beasley's involvement.
99. Mr Ritson had returned to work on Monday and had learned that the reporting accountant had expressed himself to be satisfied. He knew that Mr Bultitude had written the transfer cheque.
100. In the matter of Madame C, Mr Ritson could recall only having produced one interim bill for £5,000 plus VAT. He had in fact undertaken work of greater value. Mr Ritson had believed that the bill had found its way to the client but had to concede that he subsequently learned that it had not. If the bill had been delivered there would have been no breach when a part payment occurred. When Mr Ritson decided to make an interim payment to the beneficiary Mrs Beasley, the bookkeeper said that the money was not there. Mr Ritson had been surprised and angry and had wanted anxiously to put the matter right.
101. Mr Ritson had accepted primary responsibility for dealing late with conveyancing registrations. It had been the practice to delegate the post completion work in the interests of efficiency. The staff to whom such work had been delegated were no longer available. The Respondent had put right the outstanding matters very quickly and, indeed, it was unlikely that he would have been brought before the Tribunal on those matters alone. Mr Ritson had already suffered a financial punishment at the hands of his own partner.
102. Mr Ritson had joined another firm where he had good prospects. He was a married man, having two children from a former marriage. He had supported his wife through a degree course.

103. The proceedings had cost Mr Ritson dearly in terms of his reputation and financially. He was an honest solicitor who was largely blameless for the situation in which he found himself. He had suffered both a financial and an emotional cost. Some two years, and three months had elapsed since the I.O. made his Report.
104. There could be no doubt that Mr Ritson was not a risk to the public and there was absolutely no risk that he would re-offend. The Tribunal was invited to consider that Mr Ritson's culpability lay at the lower end of the scale.
105. The Tribunal was invited to give due weight to the testimonials handed up at the hearing in support of Mr Ritson.
106. On the question of costs, the Tribunal was invited to order Mr Ritson to pay a fixed sum being a contribution to the Applicant's costs such sum being proportionate to his culpability in relation to the whole matter. The Tribunal was further invited to consider that it would be just to order that the Applicant's costs be ordered to be paid by Mr Bultitude alone.

The Findings of the Tribunal

107. The Tribunal find all of the allegations against Mr Bultitude to have been substantiated and the Tribunal applying the test in *Twinsectra*, does find that Mr Bultitude was guilty of conscious impropriety amounting to dishonesty in endorsing the system of transfers of client money from office to client account devised by Mr Rosen and had failed to exercise the proper stewardship of clients' money which was a fundamental duty of a solicitor.
108. The Tribunal endorses a submission made by the Applicant that it would be better for a solicitor to deliver his Accountant's Report late than improperly to utilise clients' money. There was no doubt that in transferring a large sum of clients' money into office account without knowing whether he was entitled to it or not the Respondent had utilised clients' money for his own purpose.
109. The Tribunal has heard the explanation offered by Mr Bultitude and has heard his oral evidence. The Tribunal finds itself unable to accept that Mr Bultitude had been as worried about the possible late delivery of his Accountant's Report as he had suggested. If so he would not have spent the last working weekend away without telephoning Mr Rosen or his bookkeeper to ascertain the extent to which they had successfully resolved the difficulties concerning the large number of outstanding credit balances on clients' accounts.
110. Mr Bultitude could not seek to exonerate himself by contending that he had left it to his accounts advisor and a member of staff to sort matters out. The Tribunal did not accept that he had been unaware of the debit notes contained in a file or that he intended to carry out an analysis of the individual client's ledgers at a later time. He himself had signed the cheque to transfer the monies from client to office account when he had no entitlement thereto. He had been aware that there had been what he perceived to be a serious problem and had, on his own case, taken little or no interest as to how the serious problem had been resolved. Mr Bultitude's failures were serious and amounted to his having not asked questions to which he would rather not

know the answer, a type of dishonesty identified in the case of Royal Brunei Airlines v Tan.

111. The Tribunal recognises that Mr Ritson's involvement had been small. The Tribunal recognises that his liability for breaches of the Solicitors Accounts Rules and mishandling of clients' money had almost entirely been strict liability in his capacity as a salaried partner. The Tribunal accepts that the reality was that he was a partner in name only and in fact had no partnership powers. The Tribunal in finding the allegations substantiated against Mr Ritson did not find that he had been guilty of conduct unbecoming a solicitor.
112. In all of the circumstances the Tribunal considered it right to order that Mr Bultitude be Struck Off the Roll of Solicitors and that Mr Ritson be Reprimanded.
113. Having given consideration to the whole of the circumstances with this case, the limited involvement and culpability of Mr Ritson in particular Mr Ritson's lack of involvement in the scheme to transfer long standing client credit balances to office account, it was right and proportionate that Mr Bultitude should be responsible for most of the Applicant's costs. The Tribunal ordered that Mr Ritson should pay a contribution towards the Applicant's costs fixed in the sum of £500 and that Mr Bultitude should be responsible for the whole of the Applicant's costs to be subject to a detailed assessment if not agreed subject to the contribution of £500 by Mr Ritson.

DATED this 7th day of November 2003

On behalf of the Tribunal

A G Gibson
Chairman