No. 8740/2003

IN THE MATTER OF JACQUELINE RHODA FARFAN-TAYLOR, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A Gaynor-Smith (in the chair)
Mr S N Jones
Lady Bonham Carter

Date of Hearing: 20th May 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 ("OSS") by Jonathan Richard Goodwin, solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool, L2 5RH on 9th January 2003 that Jacqueline Rhoda Farfan-Taylor of Nettlebed, Henley on Thames. Oxon, solicitor might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondent were that she had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

(i) That she had failed to keep accounts properly written up for the purpose of Rule 32(1) of the Solicitors Accounts Rules 1998;

(ii) That she had withdrawn money from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998;

(iii) That she had utilised clients' funds for her own purpose;

(iv) That she had misappropriated clients' funds which for the avoidance of any doubt was an allegation of dishonesty;

(v) That she had failed and/or delayed in filing her Accountant's Reports for the period ending 30th September 2001 (due to be filed on 30th November 2001, a request for an extension having been requested to 28th February 2002) and for the period ending 31st March 2002 due to be filed on or before 31st May 2002.

By a Supplementary Statement of Jonathan Richard Goodwin dated 8th April 2003 it was further alleged against the Respondent that she had been guilty of conduct unbefitting a solicitor in that:-

(vi) She had failed and/or delayed in filing an Accountant's Report for the period ending 24th June 2002 due to be filed on or before 24th December 2002.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 20th May 2003 when Jonathan Richard Goodwin, solicitor and partner in the firm of JST Mackintosh, Colonial Chambers, Temple Street, Liverpool, L2 5RH appeared as the Applicant and the Respondent was represented by David T. Morgan solicitor of 9 Gray's Inn Square, London, WC1R 5JF.

The evidence before the Tribunal included the admissions of the Respondent to the facts and allegations save that the Respondent denied dishonesty. The Tribunal heard oral evidence from Mr Becconsall, Investigation Officer, and from the Respondent. At the hearing the Applicant handed in a letter from The Law Society dated 18th March 2003 and the Respondent handed in the following documents:-

(1) A letter from Paladin Commercial Credit Management Limited to The Law Society dated 4th March 2003;

(2) A decision of the Adjudicator dated 16th December 2002;

(3) A letter to the Respondent from the OSS dated 6th March 2003;

(4) A letter dated 12th February 2003 from a Consultant Physician to the Respondent's General Practitioner.

At the conclusion of the hearing the Tribunal ordered that the Respondent Jacqueline Rhoda Farfan-Taylor of Nettlebed, Henley on Thames. Oxon, solicitor be struck off the Roll of Solicitors and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £4,000.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The Respondent, born in 1955, was admitted as a solicitor in 1988 and her name remained on the Roll of Solicitors.

2. At all material times the Respondent carried on practice on her own account under the style of The Blackwell Partnership from offices at 1A Central Parade, Harrow,

Middlesex, HA1 2TW. On 21st June 2002 an emergency delegated decision by the Chairman resolved, inter alia, to intervene into the Respondent's practice and to refer her conduct to the Solicitors Disciplinary Tribunal.

3. The Forensic Investigation Unit ("FIU") of The Law Society carried out an inspection of the Respondent's books of account commencing 19th June 2002. A copy of the FIU report dated 20th June 2002 which was before the Tribunal showed that the Respondent's books of account were not in compliance with the Solicitors Accounts Rules. The Respondent had not maintained any client records since 31st July 2001.

4. As a consequence of the Respondent's failure to maintain accounting records, the Investigation Officer was not able to ascertain the firm's liabilities to clients. However, the Respondent admitted that a minimum client account shortage of £88,530.83 existed as at 31st July 2001, being the last time a client account reconciliation was produced. The Respondent also conceded that the shortage had increased since that date but she could not quantify the figure due to a lack of accounting records. However, the Respondent was able to indicate that at least a further amount of £55,768.61 had been utilised from client bank account on 20th May 2002. Accordingly there was a minimum client shortage of £144,299.44 as at 13th June 2002.

5. The Respondent agreed that the shortage of £88,530.83 as at 31st July 2001 occurred as a consequence of incorrect transfers from client to office bank account and the payment from client bank account of office expenses. The Respondent indicated the transfers and payments were done in anticipation of receiving costs.

6. The Respondent further indicated that on 20th May 2002 she had made a payment out of client account to the Inland Revenue and that this payment had increased the shortage on client funds. The Respondent accepted the payment was in breach of the Solicitors Accounts Rules and the payment was made to settle a County Court judgment obtained against her in relation to unpaid PAYE and National Insurance contributions.

7. On 14th June 2002 the Respondent issued a client account cheque to a Mrs GH in the sum of £52,123.48 in relation to probate funds. However, the Respondent was subsequently informed by her bank that there were insufficient funds in client account to meet the cheque. The Respondent instructed the bank to put a stop on the cheque and the Respondent said that she informed the client of the situation.

8. The Respondent conceded that she had not paid contributions for the six month period prior to the date of the inspection to her indemnity insurers, Zurich. The Respondent conceded that she owed the insurance company approximately £40,000 and that Zurich had served a cancellation notice on her in relation to the indemnity insurance.

9. During the course of the inspection the Respondent signed a statement dated 19th June 2002 in which she admitted the shortage on clients' funds and breaches of the Solicitors Accounts Rules together with misappropriation of clients' funds. A copy of the statement was exhibited to the FIU report.

10. By letter dated 12th June 2002 The Law Society wrote to the Respondent in connection with the outstanding Accountant's Reports for the period ending 30th September 2001 and 30th March 2002, such reports being due to be delivered to The Law Society by 30th November 2001 (an extension request having been made to the 28th February 2002) and 31st May 2002 respectively. The Reports were not lodged by the due date and remained outstanding.

11. By letter dated 10th January 2003 The Law Society wrote to the Respondent in connection with an outstanding Accountant's Report for the period ending 24th June 2002, such report being due for delivery to The Law Society by 24th December 2002. The letter confirmed that although the firm was subject to an intervention on 24th June 2002, an Accountant's Report was still required up to the date of the intervention. The Report had not been lodged and remained outstanding.

The Submissions of the Applicant

12. The Respondent's failure to maintain client records was a matter of concern.

13. The Respondent had told the Investigation Officer that she had made a payment of £55,768.61 out of client bank account in respect of a judgment debt against her stating that when she received the County Court judgment she panicked and made the payment from client bank account. The Tribunal was asked to note this was in the context of the Respondent already being heavily in debt. The Investigation Officer had included in his report a list of the amounts due to creditors which totalled £261,350.76. This would have left the Respondent with little ability to replace the shortage.

14. The Respondent had agreed with the Investigation Officer that the shortage of £88,530.83 as at 31st July 2001 was the result of incorrect transfers from client to office bank account and a payment from client bank account of office expenses. In the submission of the Applicant these were not only incorrect but improper. On any view, the fact that the Respondent had said that she had done these "in anticipation of receiving costs" did not make matters better.

15. The Applicant would have to persuade the Tribunal so that the Tribunal was sure that the Respondent had been dishonest. The appropriate test as agreed by the Respondent's solicitor was the combined test set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In that case Lord Hutton had said:-

> "Thirdly there is a standard which combines an objective test and subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. I will term this the "combined test".

16. The Applicant would have to satisfy the Tribunal that reasonable people would see the Respondent's conduct as dishonest and that this Respondent knew that what she was doing was wrong and dishonest.

17. In the submission of the Applicant the utilisation of the £55,763.61 paid from client account to satisfy a judgment debt against the Respondent from the Inland Revenue was a stark example of dishonesty. The Respondent had said that she had panicked but there could be no justification for any solicitor to withdraw money from client account in such circumstances. These had been substantial sums and the Respondent must have know that her action was improper.

18. The integrity of solicitors' accounts was something which solicitors had to ensure. The Respondent's conduct in this regard was of the most serious type. The then Master of the Rolls in the case of Bolton v. The Law Society in 1994 had spoken of the importance of the integrity of the profession and the need:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

19. Cases like that of the Respondent damaged the reputation not only of the solicitor involved but of the profession and dented public confidence in the profession.

20. The submissions of the Applicant were supported by the oral evidence of Mr Andrew Stephen Becconsall, Investigation Officer employed by the OSS.

Oral evidence of Mr Becconsall

21. Mr Becconsall gave details of his professional background and stated that the contents of his report were true to the best of his knowledge and belief.

22. When he had arrived for the inspection of the Respondent's accounts there had been no current books of account and the accounting reports had not been maintained since the end of July 2001. The Respondent had said that there had been a problem with the software. This had been a concern as it was a busy practice with many transactions.

23. The Respondent had told Mr Becconsall of the cash shortage of over £88,000 in existence at the end of July 2001 arose because of incorrect transfers from client to office account and incorrect payments out of client account for office expenses. Mr Becconsall had no details; he had accepted what the Respondent had said. The lack of records was a contributing factor to this.

24. The Respondent had been very open about the payment of over £55,000 from client account in respect of the County Court judgment against her. She had said that she had panicked, she had known that she had to pay by a certain date and she had paid from client account.

25. The Respondent had also been very open regarding her indebtedness and had provided Mr Becconsall with details of creditors. Mr Becconsall considered that the level of indebtedness had contributed to the Respondent's conduct. As a matter of simple economics, a large amount of money was going out of a busy practice but not enough money was coming in. All the staff were owed money.

26. Mr Becconsall assumed that the sum of £38,356.76 shown on the schedule of indebtedness as being due for PAYE was a separate figure from the figure in the County Court judgment.

27. The Respondent had told Mr Becconsall about the matter of GH. She had not had enough money in client account to pay the beneficiaries.

28. **In cross examination** Mr Becconsall said that he had no basis to argue with a suggestion that the figure for PAYE would have been included in the County Court judgment. He had been given the information by the cashier. During his visit the Respondent had been very open and helpful.

Oral evidence of the Respondent

29. The Respondent confirmed that the contents of her statement signed on 16th May 2003 were true and correct to the best of her knowledge and belief.

30. She said that she had taken the £55,768.61 from client account to pay the judgment against her obtained by the Inland Revenue because she had panicked. She had been under quite a lot of pressure from the Inland Revenue who had refused extensions of time to pay. The Respondent had thought she was going to go bankrupt. She had used money belonging to Mrs GH but had known that she would pay this back within three to four weeks as Legal Services Commission ("LSC") money was expected by the end of June at the latest. The Respondent had constantly been on the phone to the LSC.

31. The Respondent had known that her action was in breach of the Rules but had not thought of it as being dishonest as she already knew where the money was coming from to pay the sum back, namely from the £75,000 or so which would shortly be coming from the LSC.

32. The Respondent clarified that she did have a practising certificate for 2002/2003 subject to conditions. She had an offer of employment to be an in-house solicitor for a debt recovery firm and the employment had been approved by The Law Society in March 2003. She had not yet started in this post.

33. The Respondent was very sorry for what had taken place. She had been under a lot of pressure and had thought that she could handle everything and had not sought help. She knew that she had breached the Rules and would never do anything like that again.

34. **In cross examination** the Respondent admitted breaching the Solicitors Accounts Rules. She had explained in her statement the failure to file Reports.

35. In relation to the money used for the judgment debt, the LSC had promised that money would come in under certificated work. The Respondent accepted that she had been heavily in debt but all other creditors had been prepared to wait. She knew when she took the money that she was going to be able to pay it back from the LSC source. She knew she had had breached the Rules but the firm was expecting payments of over £100,000 from various sources.

36. She knew that she was utilising clients' money and she had made a conscious decision to use this being the only pool of money available.

37. The Respondent did not accept that a member of the public would conclude that her actions were wrong if she knew that she intended to pay the money back.

38. Asked to draw an analogy with someone taking something from a shop she said she would ask why they had taken it in considering whether or not they were dishonest.

39. The Respondent had telephoned The Law Society in February 2002 because her accountant had seen some breaches of the Rules while auditing the accounts. The Law Society had, therefore, been aware since February 2002 of the state of the firm. The Respondent had been waiting for someone to come or to write but nothing had happened until June.

40. Mr Becconsall's report had led to the intervention but the Respondent had known that an intervention would take place at any time after February.

41. This was the only time the Respondent had ever behaved like this.

42. With regard to the office expenses paid out of client account, the Respondent thought they related to VAT. At the time she had been using a postal system with her business bankers. She accepted that payments for office expenses had been paid out of client account wrongly but there had not been an intention to pay out of client account. Bailiffs had attended the offices on a few occasions and would not leave without a draft. They would not accept an office account cheque. The accounts manager should have transferred the money back. The Respondent did not accept that this was dishonest.

43. **In response to questions from the Tribunal**, the Respondent said she had left banking and bookkeeping matters to her full-time accounts manager and realised that she should not have done so. The Respondent had been the only signatory to client account cheques.

44. The accounts manager would prepare cheques for the Respondent to sign. The Respondent did not check the situation before signing as she trusted the accounts manager. The Respondent had known at the time of the payment of the judgment debt that she did not have that sum. She had known that she was signing to pay the money from the client account.

The Submissions on behalf of the Respondent

45. The Respondent's mitigation was set out in her statement.

46. It was clear the Respondent was clearly out of her depth and had taken on the firm believing that she could make a go of it. She had relied too much on her staff to carry out obligations which were hers.

47. The Respondent had at all times been open regarding what she was doing. She had alerted The Law Society and Mr Becconsall had said that she was very helpful. She had volunteered the information. While this did not excuse her conduct, it went to her state of mind.

48. The Respondent was fully aware that she should not have taken money out of client account but she believed that she would repay it within a few weeks. In the event, the LSC payment had been intercepted by the intervention.

49. It might well be that others would consider the Respondent's conduct dishonest but the Respondent had not appreciated that. She had known where the money was coming from to repay.

50. Following the Tribunal's findings in relation to dishonesty, it was submitted on behalf of the Respondent in mitigation that she had not worked since the intervention and was suffering from stress and from Graves' disease. A letter from a Consultant was submitted. The Tribunal was asked to consider allowing the Respondent to continue to hold a practising certificate if she worked in approved employment along the lines of the correspondence submitted.

The Findings of the Tribunal

51. The Respondent had admitted the facts and allegations save for the issue of dishonesty. The Tribunal considered carefully the tests set out in the case of Twinsectra Ltd v Yardley. On an objective basis the Tribunal was satisfied that payment by solicitors of personal debts from clients' funds would been seen by ordinary reasonable people as dishonest. In relation to the subjective test, the Respondent had said in evidence that she had deliberately used clients' money to pay the judgment debt and prior to that to satisfy bailiffs. She had justified the use of client funds to use to pay the judgment debt on the basis that she knew that money to repay client funds would be coming in from the LSC. The Tribunal was not, however, dealing with a criminal case of intention permanently to deprive. The Tribunal had to consider whether at the time the Respondent took the money from client account she knew that it was not her money and she knew that it was wrong to take it. The Respondent was an experienced solicitor who had made a conscious decision to use clients' money for her personal use. The Tribunal was satisfied that she had known that that was wrong. An intention to repay the money at some time in the future did not justify her conduct. The Respondent had not addressed the issue of the payment of the judgment debt in her statement. In her oral evidence she had refused to concede that it was dishonest, accepting only that it was a deliberate breach of the Rules. The Tribunal was, however, satisfied that the Respondent had been fully aware of what she was doing and had been fully aware that it was wrong. The Tribunal was satisfied that the subjective element of the test set out in Twinsectra Ltd v Yardley was proved. Lord Hutton had said in Twinsectra that the Courts had rightly rejected a purely subjective standard of dishonesty whereby a person was only regarded as dishonest if he transgressed his own standard of dishonesty even if that standard was contrary to that of reasonable and honest people. Lord Nicholls' analysis of dishonesty in Royal Brunei Airlines v Tan said that subjective characteristics of honesty did not mean that individuals were free to set their own standards of honesty in particular circumstances. The combined test set out in

Twinsectra Ltd v Yardley meant that the Respondent had to realise that by the ordinary standards of reasonable and honest people her conduct was dishonest. Having heard the Respondent's evidence the Tribunal considered that the combined test was satisfied. The Tribunal found that the Respondent's conduct had been dishonest.

52. The Tribunal considered the references put forward in support of the Respondent and the mitigation put forward on her behalf both at the hearing and in her statement. The Tribunal had been asked to allow the Respondent to continue to hold a practising certificate. The Tribunal had, however, found the Respondent guilty of dishonest conduct which went to the heart of the solicitor/client relationship. Clients' funds were sacrosanct and the Applicant had rightly referred the Tribunal to the comments of the then Master of the Rolls in the case of Bolton v. The Law Society. The Respondent's assertion that she had "panicked" in the face of debt could not excuse the dishonest misappropriation of clients' funds. She had breached the trust placed in her by her clients. A solicitor's stewardship of client funds had to be maintained at the highest level no matter what the personal pressures on the solicitor. The Respondent had damaged the reputation of the profession. In the interests of the public, she should not be allowed to continue in practice. The Tribunal ordered that the Respondent Jacqueline Rhoda Farfan-Taylor of Nettlebed, Henley on Thames. Oxon, solicitor be struck off the Roll of Solicitors and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £4,000.

DATED this 7th day of July 2003
on behalf of the Tribunal

A Gaynor-Smith
Chairman