No. 8850/2003

IN THE MATTER OF CHRISTOPHER ANTHONY FLOWERDEW

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A Isaacs (in the chair)
Mr. D J Leverton
Mr. D Gilbertson

Date of Hearing: 6th January 2004

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 Margaret Bromley solicitor of TLT Solicitors, One Redcliff Street, Bristol BS99 7JZ on 7th July 2003 that Christopher Anthony Flowerdew of Wicken, Ely, 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:-

i) That the Respondent had been guilty of conduct unbefitting a solicitor in that he attempted to use clients' funds for his own purposes;

ii) The Respondent failed to comply with the Solicitors Accounts Rules in that he withdrew money from client account in breach of Rule 22.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Margaret Bromley appeared as the Applicant and the Respondent was represented by David Morgan solicitor of 9 Gray's Inn Square, London WC1R 5JF.

The evidence before the Tribunal included the oral evidence of Miss Leonard, Mr Thorogood, Mr Judkins and the Respondent. The Applicant handed up further documents which were added to the bundle of documents before the Tribunal and Mr Judkins handed up a Memorandum made by him dated 25th October 2000 and a bundle of testimonials in support of the Respondent.

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

The Tribunal order that the Respondent, Christopher Anthony Flowerdew of Wicken, Ely, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,800 plus VAT.

The evidence before the Tribunal is set out in paragraphs 1 to 58 hereunder:-

1. The Respondent, born in 1952, was admitted as a solicitor in 1990. The Respondent had previously served as a police officer and had been an unadmitted legal executive. At all material times the Respondent was employed as an assistant solicitor by Messrs Archer & Archer of Ely, Cambridgeshire. He was dismissed from employment with that firm in October 2001 following the events forming the subject matter of the allegations.

2. On or about 29th August 2001 the Respondent instructed his secretary, Miss L, to request a cheque to be sent to Mr A, a client. The cheque was to be made payable to Halifax plc in the sum of £339.89.

3. Miss L typed the letter to the client (dictated by the Respondent) enclosing the cheque. She also typed an Attendance Note (dictated by the Respondent) of a telephone conversation between the Respondent and Mr A. Set out below is a copy of the Attendance Note and the letter:-

   "TELEPHONE NOTE

   Date: 29 August 2001
   Client Name/Matter: A
   File No:
   By: CAF

   Incoming √ Outgoing

   Attending Mr A when he telephoned he acknowledged safe receipt of the cheque in the sum of £4,000.00 but said that he also has debts which he has built up and does not want his wife/partner to know about. Would it be possible for me to let him have payments in respect of that, the amount immediately due being £339.89.

   I told him that I would arrange for a cheque to be forwarded.

   Time Engaged: 1 unit"

Letter

"M A Esq

29 August 2001

Dear Mr A

Personal Injury Claim - Slipping Accident

Following our telephone conversation on 29 August, as requested, I enclose a cheque in the sum of £339.89 made payable to Halifax plc paid from the balance held in Client Account in respect of your damages.

Would you please sign a copy of this letter acknowledging safe receipt.

Yours sincerely

C A Flowerdew

E-mail: caf@archerandarcher.co.uk
Enc

I acknowledge receipt of a cheque in the sum of £339.89 received from Messrs Archer & Archer."

……..
Mr A Dated this day of 2001"

4. In his letter to the OSS dated 28th February 2002 the Respondent indicated that Miss L had initially told him that Mr A had requested a further payment and that Miss L made the file note in which the specific sum was requested. That sum was identical to the sum falling due on his Halifax plc credit card account. He went on to say that Miss L admitted that she had looked in the Respondent's bag at his personal correspondence including the Halifax card account details. Miss L would have completed the cheque request form. The Respondent said he had never completed cheque request forms and would not know how to do so. He went on to say that it was Miss L who "found" the cheque and letter "hidden" on his desk and despite his having dictated an instruction asking her to cancel the cheque prior to the Respondent seeing Mr Thorogood, one of the firm's partners, the previous week. She did not deal with that until 3rd September.

Miss L then, as the Respondent put it, "rather strangely took the unusual step of typing a memo apparently from the Respondent cancelling the cheque".

5. During the course of his oral evidence the Respondent accepted that what he said in that letter to the OSS was untrue.

6. Miss L's evidence was that she took the letter and other letters typed that day into the Respondent's room for signature. Upon being given the cheque by the firm's cashiers Miss L asked the Respondent where the letter to Mr A was as it was not in the post basket with the first lot of post as she would normally have expected. The Respondent replied that the letter was on his desk. Miss L attached the cheque to the letter with a paperclip.

7. The Respondent then took the letter and the rest of the day's post into the secretaries' room and attempted to do up the letter to Mr A himself. Miss L took over and stapled the cheque to the letter and the letter went down with the rest of the post to be sent out.

8. Miss L said that someone had told her in passing though she was unable to recall who it was that the Respondent had tried to retrieve a letter from the post. She was not more specific than that either as to the date or the intended recipient of that particular letter.

9. On 31st August 2001 during the firm's regular coffee break (where staff of the firm met together) the Respondent spoke to Mr Thorogood, a partner in the firm, about the cheque and mentioned that he was waiting for it to be returned as it had been sent out by mistake. Miss L remembered that conversation having taken place during the morning coffee break and remembered thinking that it was odd because the cheque had been sent to Mr A at Mr A's own request and that would not appear on the face of it to have been a mistake. The Respondent said that he believed that conversation had taken place during an afternoon coffee break.

10. As Miss L was going back up the stairs after the coffee break Mr A came into the firm's reception area and handed a letter to the receptionist saying that the Respondent had spoken with him. As Miss L was going back up the stairs she passed the Respondent and mentioned that Mr A was in reception. The Respondent went downstairs saying that he would collect the cheque. It was the normal procedure for any letters handed in to reception to be opened and considered by a partner before being passed to the fee earner concerned.

11. Miss L questioned in her own mind what was going on. She looked in the Respondent's office and found the file copy of the letter to Mr A on the Respondent's desk. It was not the normal practice for the Respondent or any other fee earner in the firm to retain a file copy which was normally passed to the secretary to be placed on the relevant file when the top copy of the letter had been sent out. Miss L noticed in the Respondent's bag a Halifax plc credit card bill on which the total sum due was £339.89, the same amount as that in the cheque sent to Mr A. There was also a pre-paid envelope addressed to Halifax plc.

12. Miss L spoke to the partner, Mr Thorogood, who then went to speak to the Respondent. Mr Thorogood told the Tribunal that he was not a litigator and he did not relish confrontation. He asked the Respondent if there was anything the Respondent wished

to tell him about the cheque and the Respondent said that the client had asked for some money to settle some debts but that his ex-wife had found out about the matter and so he had returned the cheque so that it could be dealt with when the balance was paid to him. The Respondent went on to say that he would be dealing with the cheque and when asked by Thorogood where it was he indicated his desk by a hand gesture.

13. Mr Thorogood had made an attendance note dated 31st August in the following form:-

"ARCHER & ARCHER
Solicitors

ATTENDANCE NOTE

Date: 31-8-01

Client Name/Matter:

File No:

By: JT

Attending Miss L and TP regarding Chris Flowerdews client Mr A. Miss L had heard Chris ask me whether we had received a cheque payable to Halifax which had been sent to the wrong client and which he was returning to us. Mr A had been in with an unopened letter, which he gave to S; this contained a cheque for 339.89. It had gone to Chris, but Miss L had been a little surprised at this and having look [sic] at Chris desk saw that the cheque was not with the letter, but that there was a credit card per-paid [sic] envelope to Halifax and Chris statement which showed a balance due to Halifax from Chris of £339.89. I said I would deal with it.

Attending Chris Flowerdew
Explaining that I had been told that the cheque had been returned and asking him if there was anything he wanted to tell me about this. Contrary to what Chris had told me originally he said that the client had asked him for the money to settle some debts, but that his ex wife had now found out about the matter and so he had returned the cheque to Chris so it could be dealt with when the balance was paid out to him. Chris said that he would be dealing with the cheque and when asked by me where it was he vaguely indicated to his desk and said it was somewhere here. I did not confront him on the issue of the credit card statement seen by Miss L.

Attending RBB
Explaining what had occurred. He felt we needed to see what was going to happen with the cheque if it was cancelled then the money would be back where it should be but with a major question mark over Chris which we would need to

keep an eye on. If the cheque was not cancelled then we could trace where it had gone. I said I would speak to T about this.

Attending T
Explaining that I wanted her to let me know if Chris brought the cheque in to cancel. If not I would speak to her next week to see about tracking the cheque."

14. The Respondent said that when he initially spoke to Mr Thorogood in the coffee break he did not go into great detail principally because his main concern had been to ascertain whether he might have seen a cheque in the morning's post. The Respondent had simply asked whether Mr Thorogood had seen it and said that it had been sent out by mistake. He had not thought it necessary to go into further detail. He did not think it was appropriate to discuss the details in front of the rest of the staff.

15. The Respondent had been embarrassed by the mistake which he had made and regretted that although what he initially told Mr Thorogood had been partially true, he had been economical with the truth. Mr A had asked for the money as he had needed to settle some debts which he did not wish his new partner to know about and when Mr A returned the cheque he told the Respondent that Mr A had secured a job working on the railways and no longer needed the money urgently so he was content to wait for one final payment after the costs had been resolved.

16. On Monday 3rd September Miss L typed a Memorandum to the cashiers from the Respondent asking them to cancel the cheque and to credit the relevant client ledger. The cheque was not with the tape upon which the Respondent had dictated that Memorandum.

17. Miss L looked in the Respondent's room and found the cheque under his mouse mat together with the file copy letter. The cheque had a number written on the back and the same number written on the front. Some of the figures appeared to have been altered. Miss L took the cheque and photocopied both the back and the front of it and then put the cheque back where she found it.

18. The Respondent agreed that the handwritten numbers on the front and reverse of the cheque had been written by him. The original number was that of his own Halifax credit card account. The Respondent told the Tribunal that he had been unaware of the need to return the cancelled cheque to cashiers. He had found it difficult to read the numbers on his credit card and it had been his practice to write out the number in a form that was easy to read before attempting to transact any credit card business. He had treated the cheque as a piece of scrap paper for this purpose. In order to stop the written out number from being used fraudulently by any other person he had sought to alter it after he had utilised the clearly-written number on the face of the cheque. The Respondent said that he generally adopted that practice when he had written out his credit card number as a security measure.

19. The Respondent said that he had a practice of putting documents which required to be given priority under his mouse mat as a way of reminding himself to deal with them. They were thereby "hidden".

20. Also on 3rd September the firm's accounts manager spoke to the Respondent in his office and requested the cheque. He indicated that he may have scribbled on it.

21. On 4th September the accounts manager found the cheque on her desk when she arrived in the morning. The cheque had a lot of writing on the back in addition to the amended credit card numbers. Miss L said that this additional writing had not been on the cheque the previous day - as was evidenced by the photocopies that she had made. The Respondent's explanation had been that he had used the cheque as scrap paper for the purpose of note taking.

22. The Respondent said that he had dictated the Memorandum to Cashiers at the time Mr Thorogood had spoken to him (31st August). Miss L confirmed that she had been up to date with typing and unless work had been given to her late in the day she would have completed typing it on the same day. Miss L produced the post book kept by her for that day indicating that she had not typed a large number of letters. It was accepted that she might well have undertaken other fee earners' work that would not have appeared in her own post book. She recalled not being particularly busy at that time and her practice had been to assist another secretary with her workload if she did not have sufficient work to keep her busy. The Respondent had indicated that there were often a number of tapes waiting to be typed and had also pointed out that Miss L was kept extremely busy by a job allocated to her by the partners of the firm involving completing returns of cases referred to the firm by an organisation which "farmed" personal injury claims. Miss L said that such work was not particularly time-consuming and was undertaken at the beginning of each month and not at the end of each month. The Respondent's work had been given priority.

23. In the course of disciplinary proceedings initiated by the firm against the Respondent, the Respondent prepared a written statement in which he said that he had realised that a mistake had been made when he was writing out a cheque to pay his Halifax account. He said that this was during the lunch period on 30th August.

24. In his statement prepared for the internal disciplinary proceedings the Respondent claimed that he had dictated a note to cancel the cheque on 30th August.

25. The Respondent in that statement admitted that he had written his Halifax credit card account number on the front and on the back of the cheque. It had been his practice to take personal bills to the office to deal with them there. He explained that he had been intending to pay his TV licence fee using the Halifax card. As he had difficulty reading the numbers on his credit card it was his habit to write them out clearly before using them on the telephone payment. As the cancelled cheque was readily to hand and he was not aware that cashiers would need it he wrote the number out from the card first on the front of the cheque and then as there wasn't enough room he turned the cheque over and wrote in larger, clearer numbers on the back. He then made the telephone call in respect of the television licence fee payment. The Respondent also confirmed that it was his habit to alter the numbers in some way as a security precaution so they could not be used by anyone else to order something with payment met by his credit card.

26. In his statement the Respondent said that either later on Friday (31st August) or perhaps on Monday (3rd September) he received a call from another solicitor to discuss settlement of the firm's costs in the case of R. He took the first scrap paper available to

make notes of this. This was the cancelled cheque upon the reverse of which he wrote brief notes.

27. During the course of the internal disciplinary hearing the Respondent said in response to the question "Why didn't you go to accounts to deal with the cheque in some other way?", "I have never cancelled a cheque before, I did not know the system. I never thought about it. To me I had cancelled it when I had dictated the note.". In his oral evidence before the Disciplinary Tribunal the Respondent confirmed that evidence.

28. The firm's accounts manager, who had made a written statement and was not available to give oral evidence, said that the Respondent had cancelled cheques before and on those occasions the cheque had been returned to the cashiers.

29. The Respondent's timesheets did indicate that he had a telephone conversation concerning the file on which he said costs were discussed on Monday 3rd September.

30. The statement of account relating to the Respondent's Halifax plc credit card account dated 13th September 2001 showed the receipt of a payment of £100 on 6th September and a debit for TV licensing on 4th September (£109).

31. After holding its internal disciplinary hearing Archer & Archer dismissed the Respondent. He sought to pursue a claim against the firm in the Employment Tribunal. The Respondent told the Disciplinary Tribunal that he had decided not to pursue the matter having discussed it with his new employer. The Applicant invited the Respondent to consider his response in the light of written evidence from the Employment Tribunal that he had been required to make a deposit of money for costs and the Employment Tribunal had indicated that there was no reasonable possibility that his claim against Archer & Archer would succeed. The Respondent said that he recalled the requirement to pay monies in but he had forgotten the Tribunal's initial opinion of his case.

32. Messrs Archer & Archer reported the matter to the OSS. The Respondent replied to a letter addressed to him by the OSS on 10th December 2001 on 19th December. The explanation given by the Respondent in that letter was that "Mr A, having requested that I send him whatever money I could from money held in client account depending on agreement on costs, I prepared a cheque but in error made it out for the same amount that was due on my Visa card." On 28th February 2002 the Respondent wrote a long letter to the OSS in response to the report prepared for the adjudicator. In that letter he said:-

> "I therefore feel it of considerable significance that it was Miss L who initially told me that Mr A had requested a further payment. Miss L who also made the file note in which the specific sum is requested which is identical to that of my Halifax card, that Miss L admits that she had looked in my bag at my personal correspondence, including the Halifax card details, it was her who would have completed the cheque request form".

He went on to say:-

> "Throughout I found Miss L's attitude extremely unhelpful. I had frequent occasion to speak to Miss L about her behaviour but I found her attitude unhelpful and surly to say the least. On two or three occasions she remarked to me that she had worked with seven other fee earners whilst at the firm and she had "got rid of all of them". I therefore feel it of considerable significance that it was Miss L who initially told me that Mr A had requested a further payment, Miss L who had also made the file note in which the specific sum is requested which is identical to that of my Halifax card, that Miss L admits that she had looked in my bag at my personal correspondence, including the Halifax card details, it was her who would have completed the cheque request form (I have never completed cheque request forms and would not know how to do so), it was her who "found" the cheque and letter "hidden" on my desk and despite my having dictated a note asking her to cancel the cheque, prior to my seeing Mr Thorogood the previous week she did not deal with that until 3rd September, then rather strangely she took the unusual step of typing a memo apparently from me cancelling it."

33. Miss L in her evidence before the Tribunal said that she had not indicated that she had "got rid of" other fee earners. The Respondent himself accepted that his statement that Miss L initially told him that Mr A had requested a further payment and had made a file note in which the specific sum requested was untrue.

34. In his letter of 28th February 2002 the Respondent also said that he believed there had been a falling out between himself and his employers following an earlier incident when the Respondent had given evidence at an Employment Tribunal when a complaint had been brought by his former secretary for disability discrimination which the Employment Tribunal found proved and made an award against Archer & Archer. He went on to say:-

> "Inevitably this led to difficulties in the workplace, including the relationship between my replacement secretary and myself, about when I had made various complaints to Mr Judkins as the litigation partner. Regrettably, an incident then occurred which in my view allowed Archer & Archer to feel justified in taking inappropriate steps which they have then compounded with inaccuracies and untruths in an attempt to justify their actions, including referring this matter to the OSS, where they anticipated [rightly as it transpired] that their position was such that they were in danger of a further claim being made against them to the Employment Tribunal which, if proved, would cause them considerable difficulty in view of the fact that the previous tribunal finding had been reported to and investigated by The Law Society."

35. In his oral evidence the Respondent said he wished to retract that assertion which was untrue and he welcomed the opportunity of making apology to Archer & Archer for making such assertion.

36. Both in his oral evidence and in his written statement the Respondent went on to say that he regretted making the comments to the OSS about Miss L and he wished to apologise to her. He had made the comments at a time when he felt that he had given a full and frank explanation of his mistake to his employers and he was shocked that they

had not only rejected that explanation but had actively sought to prevent existing clients from following the Respondent to his new employers, also situated in Ely. He had not been subject to any covenant in restraint of trade.

37. The Respondent said that he had found working with Miss L rather difficult.

38. In his letter to the OSS dated 19th December 2001 the Respondent explained that after his former secretary's successful claim against Archer & Archer in the Employment Tribunal things had become difficult with Mr Judkins, the litigation partner. The Respondent said there had been an instance when he had to attend court for a three day trial in Luton. That involved his leaving his house at about 6.30 am, travelling to Luton, attending the trial with counsel, when the court sat late so he was not getting home until 9.00 pm. He said on the third day the trial was concluded at approximately midday by which time he was exhausted, principally because of his medical condition. He stayed with the client to explain to her the effects of the conditional fee agreement on the consent order that had been reached and because he felt too unwell to return to Ely he booked into a hotel in Luton and stayed that night.

39. He said the Learned Judge had made certain comments criticising what he saw as a failure to lodge trial bundles although they had been lodged and lost by the court. The Judge had asked somebody to attend the next day to explain the situation so the Respondent went back into the court where the matter was satisfactorily explained and dealt with. Even though he felt unwell, the Respondent went back to the office although he did not return until the middle of the afternoon.

40. The Respondent had been surprised to find that Mr Judkins had telephoned counsel to ascertain when the trial had finished. He had made enquiries with the court and with staff members and then made representations to the other partners that the Respondent had wrongly claimed travelling expenses and taken time off.

41. During the course of his oral evidence it was established that the case at Luton had lasted for only one and a half days. The Respondent had repeated his assertion that he had stayed overnight because he was required to attend court on the next day to deal with the question of the trial bundles. In his statement lodged with the Disciplinary Tribunal the Respondent said it was a complex trial which lasted several days. He accepted that that was an erroneous statement and the trial had lasted for one and a half days, explaining that the expectation had been that it would take a long time to reach a conclusion. He went on to say in his statement that after several days of evidence a negotiated settlement was reached. This position had been arrived at at lunchtime and the Respondent then spent some time having lunch with counsel and the client.

42. During the course of giving evidence Mr Judkins handed up a memorandum which he had made on 25th October. He said the case had been listed for 2nd and 3rd October and the Respondent had phoned Miss L on the morning of 4th October to say he was back at court as the case was continuing. The Respondent had told Mr Judkins on 5th October that the case had been settled on Tuesday but he had to go back the day after for the consent order. When the order came in from the court it was dated 3rd October and counsel confirmed that the case had been settled in all respects on the morning of 3rd October and the initial handwritten order had been handed in to the district judge at

about 11.45 am after which everyone finally left the court. Counsel had left the Respondent and the client at about 12.45 following a sojourn to a coffee bar.

43. Mr Judkins had confirmed that at Luton County Court no hearing of any sort took place on 4th October.

44. When it was put to the Respondent that the judge presiding at the trial had been a woman, although he had referred to the judge as "he", he said he did recall that to have been the case although a male judge had first been assigned to the case but had been reassigned to another case at the outset.

45. The Tribunal had before it the Respondent's timesheet showing that he recorded that he was sitting behind counsel on 2nd and 3rd October 2000. He also claimed travelling time on both 2nd and 3rd October. He had spent either two and a half hours or two hours and eighteen minutes travelling. It was not considered by Mr Judkin to be an unreasonable amount of time to claim for travelling between Ely and Luton.

46. In his statement before the Tribunal the Respondent said he had taken a trial bundle to the court. On the last day for lodging he had telephoned the Luton Court Office and explained that he was late with the bundle. He had to copy all the bundles himself as there was no junior available. He said he had explained to the lady in the Court Office that he might not be able to get to court before 4 pm. He was told that the Court Office would be closed but it would be in order for him to leave the bundle in a certain location outside the court office. The Respondent said he arrived after 4 pm and had left the bundle as directed.

47. He went on to say that after the comments made by the judge at the beginning of the trial he checked with the court but they couldn't locate the bundle. He said he was told the judge would see him about that matter on the day after the trial had concluded. The Respondent said he was too exhausted to travel back to his home in Ealing so he booked into a hotel in Luton and the next morning went to Luton District Registry where he was told by the court officer that they had now located the bundle and it was no longer necessary for him to see the judge.

48. The Respondent said he was concerned that the firm would not pay the hotel costs (although they were actually cheaper than the travelling costs).

49. The Tribunal had before it a copy letter produced from the relevant client file dated 22nd September 2000 in which it was said:-

> "We refer to the above matter which is set for a disposal hearing in the Luton County Court on 2nd and 3rd October 2000.
>
> We enclose, for the use of the Trial Judge, the trial bundle."

50. The Respondent said that he had not returned to Ely because he had been exhausted. When he arrived back at Ely at about 3 pm he decided not to go into the office. He was concerned and did not wish it to be apparent that he had difficulty in working long hours in view of his illness.

51. The Respondent suffered from a debilitating illness which was thought by his medical advisors to be multiple sclerosis although no formal diagnosis had been made. The Respondent had complained of non-specific symptoms including episodes of numbness in the limbs, co-ordination and balance difficulties, occasional urinary incontinence and mobility problems. He also had suffered problems with concentration and memory.

52. The Respondent said that his medical condition was exacerbated by stress and tiredness. At the material time he was suffering the breakup of a personal relationship and had been under severe pressure of work owing to the fact that Mr Judkins, the litigation partner, had been on holiday.

53. In his oral evidence Mr Judkins confirmed that he had taken a fortnight's holiday at the material time, one day of which had been a bank holiday. He had been aware that certain of his matters would require attention during his absence and he had allocated specific matters to specific fee earners. It had not been the case that the Respondent had been required to shoulder responsibility for the whole of Mr Judkins' caseload.

54. The Tribunal had been invited to consider a medical report prepared by Professor R Langton Hewer, a consultant neurologist, dated 23rd October 2003. The report had been requested direct by the Respondent and not by the solicitor representing him. Professor Langton Hewer said that the report had been intended for the Respondent's own use and had not been addressed to a Tribunal or Court. He had not seen or examined the Respondent but had spoken with him on the telephone. He had seen a series of letters written by Dr Lennox and others and a limited number of general practitioner records. He had not seen any hospital records and had seen general practitioner records only which related to some or all of 1998, 1999 and 2000.

55. The report went on to express views, as requested by the Respondent, as to the effect of medication, possible multiple sclerosis, stress and/or a combination of these. The report agreed that the Respondent might well suffer with multiple sclerosis but the diagnosis had not been finally confirmed. It would be appropriate for further tests to be undertaken. Professor Langton Hewer considered it likely on the balance of probabilities that slow thinking and other cognitive problems from which the Respondent was described to have suffered were due to an involvement (sic) of the brain by multiple sclerosis. He thought it likely that the situation was compounded by other problems including some degree of depression and difficulty with dealing with stressful situations.

56. Professor Langton Hewer said he was not entirely clear exactly what medication the Respondent had been receiving. He recited his understanding of his medication taken by the Respondent. His experience was that one of the medications could cause mental slowing but he thought it was unlikely that that or any other drugs alone or in combination would have caused significant mental slowing in the doses given. His impression had been that there had been a deterioration in the urological condition in August/September 2001 and that was one of the main reasons for any mental slowing that was occurring then. The Respondent appeared to have been under considerable domestic stress as he was in the process of divorcing his wife and his current partner had left him because of the problems with muscle spasms and incontinence.

57. Professor Langton Hewer recognised that the question to be addressed was whether the incident surrounding the cheque could have been explained on the basis of cognitive impairment due to multiple sclerosis or some other cause. He did not feel able to express a confident opinion on the matter.

58. The Chairman of the Tribunal pointed out that the report had not been sought by the Respondent's legal representative and the terms upon which it had been sought were not clear. The report specifically stated that it had not been addressed to a tribunal or to a court. Professor Langton Hewer had prepared the report on the basis of a telephone conversation with the Respondent and documentation sent to him by the Respondent; he had not himself examined the Respondent. It was agreed with the Respondent's representative that the Tribunal would regard the report as having been filed to support any mitigation put forward by the Respondent and the Tribunal would give it appropriate weight bearing in mind that the way in which Professor Langton Hewer had been requested to produce the report and the fact that he was not available to give oral evidence.

The Submissions of the Applicant

59. The Respondent accepted that the Respondent had requested a cheque made payable to his credit card company for the balance then due on his credit card account. He also admitted that he written his credit card account number both on the front and the back of the cheque.

60. It was the Respondent's position that he was confused because of the medication which he had been taking. In the submission of the Applicant that was wholly improbable. The Respondent had prepared an attendance note and had dictated a letter to the client Mr A on 29th August making reference to the sum payable. He had mentioned the specific amount and the fact that the cheque was payable to Halifax plc. That was consistent with a carefully planned attempt to make it look as if the cheque had been requested by the client when it had not.

61. The Respondent claimed to have been confused as he dealt with a client at the same time that he was dealing with his credit card bill. He said he had written out a cheque and posted it on 31st August.

62. The letter and attendance note relating to Mr A had been dated 29th August. That was to say he had dealt with that aspect of the matter prior to writing his own cheque for the lesser amount of £100 to Halifax plc.

63. It was on Friday 31st August that the Respondent had had the conversation when he said the cheque had been sent out to Mr A by mistake. At the time that had struck Miss L as being odd as the client had requested the cheque in a specific amount and that it was unlikely that when the cheque had been sent out in the requested sum it would have been sent by mistake. The cheque had been brought back to the firm by the client on 31st August. It had not immediately been cancelled. The Respondent retained the cheque and wrote his credit card account number on it. The Respondent's explanation was implausible.

64. Mr Thorogood had spoken to the Respondent who had not given him a full and frank explanation. The Respondent himself accepted that he had been economical with the truth.

65. Miss L's evidence was that dictation made by the Respondent on 30th August would not have been typed on 3rd September. Her evidence was clear that dictation made on 30th August would have been typed on 31st August at the latest.

66. It was the Respondent's position that he used the Halifax plc cheque as scrap paper on two occasions. The first when he wrote his own credit card number on the cheque, and the second when he scribbled some notes on the reverse of the cheque. In the submission of the Applicant the notes scribbled on the back of the cheque amounted to another attempt to put his actions in an innocent light. The Tribunal was invited to conclude that no-one would use a cheque as scrap paper.

67. The Respondent's credibility was further brought into question in connection with the case of which he had conduct at Luton County Court. He had not given his employers a full and frank explanation. He had fabricated evidence to support his story. He accepted during the course of giving oral evidence before the Tribunal that entries that he had made on his timesheet were exaggerated and untrue.

68. The Applicant sought to question the medical report placed before the Tribunal although the Respondent himself had come to accept that it could be properly used only in mitigation. The Respondent's correspondence with Professor Langton Hewer had not been produced. It was apparent that the Respondent had not given all relevant information to the Professor and particularly he had not disclosed all of his medical records.

69. The Respondent appeared to have difficulty in telling the truth in difficult situations. The Tribunal was invited to find that the Respondent was an unreliable and untruthful witness.

70. The Respondent's actions at the time when he requested the Halifax plc cheque were consistent with an attempt to use clients' money for his own purposes. The cheque drawn on client account was in the sum required to discharge the Respondent's indebtedness to his own credit card company. The Respondent's assertion that he had suffered from confusion at the time was not sustainable.

The Submissions of the Respondent

71. The Respondent appeared before the Tribunal to answer only two allegations. He denied that he had been guilty of conduct unbefitting a solicitor and denied that he attempted to use client funds for his own purposes. He further denied that he failed to comply with the Solicitors Accounts Rules or that he withdrew money from client account in breach of Rule 22.

72. The Respondent had admitted the other details in the Applicant's statement, save where his own contention was set out in the Respondent's statement filed with the Tribunal shortly before the hearing. That statement had not been signed or dated but the Respondent did confirm the veracity of its contents whilst giving evidence on oath.

73. The papers in Mr A's case had been with the in-house costs draughtsman. Miss L had reported a telephone conversation with Mr A in which he asked if the firm could let him have some more money. Subsequently the Respondent had received a telephone call from Mr A. The Respondent decided that a further sum could be released to Mr A; he then dictated a file note recording the conversation and a cheque request slip and a covering letter. The Respondent did not hold request slips and left the preparation of such a slip to his secretary. He did not recall asking that the cheque should be for the sum of £339.89 nor did he recall asking that the cheque be made payable to Halifax plc although he accepted that he must have done so.

74. The Respondent in July 2001 had applied for a Visa account with Halifax plc with whom he already had a savings account. He had used the Visa account for two purposes and for the servicing of his car. The statement dated 13th August 2001 had been received by him by 16th August 2001. The total amount of £339.89 was to be paid by 7th September 2001. The Respondent had taken the Halifax statement to work in his briefcase, it being his intention to write out a personal cheque whilst at work and pay the amount due. The Halifax had offered a particularly advantageous rate of interest on the amount outstanding on the card as a introductory offer. This caused the Respondent to decide not to pay off the whole amount.

75. The Respondent assumed that immediately prior to dictating the letter to Mr A he had been looking at his own credit card statement. There was no reason why Mr A should be sent a cheque made payable to Halifax plc. Obviously the whole state of mind of the Respondent had been completely confused.

76. At the time the Respondent had not been feeling well and had been subjected to great pressure of work, particularly as Mr Judkins had been away on holiday.

77. It would not be right for the Respondent to be castigated for a failure to forward all medical reports to Professor Langton Hewer. He did send all of the medical notes which he had and made it clear what difficulties he faced.

78. In most firms of solicitors it would not be unusual for two working days to elapse before dictation was typed. Miss L's evidence made it clear that if she worked on other people's files, then letters written by her would not appear in her post book. The record of letters posted which she produced did not amount to a comprehensive list of all work which she had undertaken on a specific day and it was not therefore conclusive.

79. There had been no sensible reason for sending a cheque to Mr A made payable to Halifax plc. It subsequently had been ascertained that Mr A did not have a Halifax account. When Mr A had telephoned to ask if he could have some more money he had not specified an amount. The only explanation for the Respondent's action in drawing and sending a cheque for £339.89 was that he must have suffered an aberration. He must have made a mistake when he dictated his letter. He had it in his mind at the time that the client was desperate for money. He wrongly dictated the amount and made Halifax plc the payee of the cheque. He realised after the letter had gone off what he had done and that was why he asked for the letter back. The Respondent had to accept that he compounded the position when the cheque was brought back to the firm and

came into the Respondent's possession when he left it on his desk and used it as scrap paper to make notes.

The Findings of the Tribunal

80. The Tribunal after hearing the Respondent give oral evidence and having read his written explanations has, without hesitation, come to the conclusion that the Respondent is not a reliable or a truthful witness. He has made assertions which he has been compelled to retract. He himself admitted that in explaining the affair to Mr Thorogood he was economical with the truth. He has given conflicting explanations for his actions and has made false entries on his timesheet. The Respondent's various explanations were so implausible and unlikely that they were not believable or capable of providing an honest explanation for his actions.

Submissions made by the Respondent in mitigation

81. The Respondent had served as a police officer and a legal executive, achieving the Filex qualification, before qualifying as a solicitor. He enjoyed an unblemished record until the offence before the Tribunal. He had not been the subject of any previous disciplinary proceedings.

82. The Tribunal was invited to take into account the written testimonials handed up at the hearing. They all spoke highly of the Respondent's competence and integrity.

83. The Respondent's failing health had been an element in the matters before the Tribunal. Although the Respondent had not formally been diagnosed as suffering from multiple sclerosis it was likely that this was the condition from which he suffered and the condition had had a serious effect upon him. The effects of his illness had caused the breakup of his personal relationship. At the time of the disciplinary hearing the Respondent had not been able to work since October and was living on Incapacity Benefit, being looked after to some extent by his former wife.

84. The Respondent accepted that he had behaved foolishly but he had formulated no intention to use client funds for his own ends. He had come to realise how his action would appear to others.

85. The Tribunal was invited to give due consideration to the impact that its findings would have upon the Respondent's life and was invited to exercise leniency in this unusual case.

The Decision of the Tribunal

86. The Tribunal gave careful and anxious thought to this sad case. There had been a short period of time when the Respondent's behaviour amounted to misconduct of the most serious kind.

87. The Tribunal consider that the Respondent's explanation for seeking payment from client account in the precise amount required to discharge his own credit card debt was so implausible as to drive the members of the Tribunal to conclude that there was no

honest explanation for what he did. The Respondent consistently maintained that he had no intention to be dishonest. The Tribunal has borne in mind the definitions of dishonesty contained in the cases of Royal Brunei Airlines -v- Tan as approved in Twinsectra -v- Yardley. A solicitor may not set his own standard of honesty. Any solicitor hearing all of the facts of this case would be compelled to conclude that the Respondent's explanations were so unlikely as not to be plausible and the members of the Tribunal themselves were compelled to conclude that the Respondent's actions had been dishonest.

88. The Tribunal had given due weight to the written testimonials submitted in support of the Respondent. They spoke highly of his competence and integrity.

89. Whilst the medical evidence which the Tribunal was invited to take into account was unsatisfactory for a number of reasons the Tribunal did recognise that the Respondent suffered from ill health for which they had considerable sympathy.

90. The Tribunal is mindful of its primary duty to protect the interests of the public and the good reputation of the solicitors' profession. Orders made by the Tribunal are not primarily directed at the punishment of individuals. In the case of Bolton -v- The Law Society in the Court of Appeal in 1994 Sir Thomas Bingham, Master of the Rolls (as he then was) said:-

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. … Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed on him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the Roll of Solicitors. If a solicitor is not shown to have acted dishonestly but is shown to have fallen below the required standards of integrity, probity and trustworthiness his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust."

91. In imposing its order the Tribunal has taken into account that the most fundamental purpose of imposing a disciplinary sanction is that of ensuring that the solicitors' profession is one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the solicitors' profession those individuals guilty of serious lapses sometimes must be treated harshly. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

92. The mitigation advanced by the Respondent is relevant and has been considered. Mitigation advanced before the Disciplinary Tribunal cannot be regarded in the same way as mitigation is regarded in a criminal case. Mitigation does not touch the essential issue which is the need to maintain among members of the public a well-

founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. The reputation of the solicitors' profession is more important than the fortunes of any individual member. Membership of the profession brings many benefits but that is part of the price.

93. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors and further ordered that he should pay the Applicant's costs in the fixed sum which had been agreed between the parties.

DATED this 9th day of February 2004
On behalf of the Tribunal

A Isaacs
Chairman