

IN THE MATTER OF MARGARITA JULIET CARTER-WOODS
(now known as MARGARITA JULIET MILLER), solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Miss T Cullen
Mrs V Murray-Chandra

Date of Hearing: 25th May 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") (subsequently known as The Law Society's Consumer Complaints Service) of Victoria Court, 8 Dorner Place, Leamington Spa, Warwickshire CV32 5AE by Jonathon Richard Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 28th August 2003 that Margarita Juliet Carter-Woods of Wellingore House, Wellingore, Lincolnshire, LN5 OHX might be required to answer the allegations set out in the statement which accompanied the application and such Order might be made as the Tribunal should think right.

On 2nd February 2004 the Applicant made a first supplementary statement containing an additional allegation and on 15th April 2004 he made a second supplementary statement containing a further allegation. The allegations set out below are those contained in the original and both supplementary statements.

The allegations were:

- (i) that by virtue of the matters set out in the Report of the Forensic Investigation Unit dated 23rd April 2003, her conduct was contrary to Rule 1 of the Solicitors Practice Rules 1990 in that it compromised or impaired, or was likely to compromise or impair any of the following, namely her independence or integrity as a solicitor, her duty to act in the best interests of a client or clients, her good repute or that of the Solicitors profession and her proper standard of work;
- (ii) that she accepted an appointment as Attorney to Mrs W at a time and in circumstances when the Respondent knew or ought to have known that the donor did not have the necessary mental capacity to make such appointment;
- (iii) that she acted and/or continued to act in circumstances in which her own interests conflicted with the interests of Mrs W;
- (iv) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 she failed to keep her accounts properly written up;
- (v) that she transferred monies from client to office account in respect of costs, in circumstances where she failed to deliver a bill or written intimation to the client contrary to Rule 19 of the Solicitors Accounts Rules 1998;
- (vi) that she withdrew monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (vii) that contrary to Rule 22 of the Solicitors Accounts Rules 1998 she failed to remedy accounts breaches promptly upon discovery;
- (viii) that she utilised clients' funds for her own purpose;
- (ix) that she misappropriated clients' funds, which for the avoidance of doubt is an allegation of dishonesty;
- (x) that she failed to disclose material information to a client(s);
- (xi) that she made a representation to the Investigation Officer that was misleading and/or inaccurate;
- (xii) that she failed and/or delayed in complying with a direction of an Adjudicator dated 29th October 2003;
- (xiii) that she failed and/or delayed in complying with a direction(s) of an Adjudicator dated 17th November 2003.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jonathon Richard Goodwin appeared as the Applicant and the Respondent was represented by David Barton Solicitor Advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE

The evidence before the Tribunal included at the outset of the hearing the admissions of the Respondent to allegation (i), (iii), (iv), (vi), (vii), (x), (xii) and (xiii). During the course of the hearing the Respondent admitted allegation (v) in so far as it related to the client, Mr M. At the hearing the original documents at page 25 of the Tribunal's bundle and a copy letter from Beneficial Bank was handed up at the hearing. This latter document was held by the Respondent's Advocate to the Order of The Law Society and was returned to him at the hearing. The Tribunal heard the oral evidence of Richard Lane, the Respondent, Simone Nannetti, Graeme Woods and William Miller.

At the conclusion of the hearing the Tribunal made the following Orders:

The Tribunal Order that the Respondent, Margarita Juliet Carter-Woods now known as Margarita Juliet Miller of Wellingore House, Wellingore, Lincolnshire, LN5 0HX, solicitor, be struck off the Roll of Solicitors and they further Order that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The Tribunal Order that the Directions made by the Adjudicator of The Law Society made;

- (i) In respect of Miss B on 29th October 2003; and
- (ii) in respect of Mrs L on 17th November 2003

be treated for the purposes of enforcement as if they were Orders of the High Court.

The history of the Respondent

1. The Respondent, born in 1960, was admitted as a solicitor in 1990.
2. The Respondent obtained her law degree in 1984. It had been her intention to take the then Law Society Finals Course at Manchester but had moved to Lincolnshire when her husband's employment led him there. In September 1984 she obtained employment with a firm of solicitors at Sleaford, Godson & Co, where she was employed as a litigation assistant dealing initially with debt collection and assisting with personal injury work. In due course she obtained a place at Trent in 1986 to study for her solicitor's qualifying examinations. She was trained with the firm of Godson & Co.
3. At all material times the Respondent carried on practice on her own account under the style of Carter-Woods & Co from her office at Wellingore House, Wellingore, Lincolnshire.
4. On 28th April 2003 the Adjudication Panel of the OSS resolved to intervene into the Respondent's practice.
5. The Forensic Investigation Unit ("the FIU") of The Law Society carried out an inspection of the Respondent's books of account commencing on 12th April 2003. The Investigating Officer ("the IO") made an interim Report dated 23rd April 2003, a copy of which was before the Tribunal.

The evidence relating to allegations (ii) and (iii) that the Respondent accepted an appointment as attorney to Mrs W at a time and in circumstances when the Respondent knew or ought to have known that the donor did not have the necessary mental capacity to make such appointment; and that she acted or continued to act in circumstances in which her own interests conflicted with the interests of Mrs W

6. The IO ascertained that the Respondent had been appointed as attorney for Mrs W on 23rd February 2001. Mrs W was the Respondent's mother-in-law at the time and was resident in a nursing home in Lincolnshire when the Power of Attorney was made.
7. The IO expressed concern that Mrs W did not have the necessary mental capacity to appoint an attorney under an enduring power.
8. The Respondent's practice had written letters prior to the execution of the Power of Attorney, including those to British Gas Services, the Council Tax Office at Metropolitan Borough Council explaining that Mrs W was to grant a Power of Attorney, making reference to the fact that Mrs W suffered from Alzheimer's disease.
9. By letter dated 28th February 2001 the Respondent's practice wrote to Mrs W's doctor requesting a certificate to forward to St Helen's Metropolitan Borough Council in support of a claim for a discount from her Council Tax liabilities based on her mental impairment. A subsequent letter to St Helen's Metropolitan Borough Council stated that Mrs W had become mentally impaired in or around 1997.
10. Both in discussion with the IO and in the course of her oral evidence before the Tribunal the Respondent explained that Mrs W enjoyed lucid moments and it would have been during one of those periods of lucidity that the Power of Attorney was executed. The Respondent had not obtained a medical opinion as to Mrs W's mental capacity to execute a Power of Attorney.
11. The Respondent said that she had known Mrs W for some 20 years. She had been in no doubt when she took instructions from Mrs W both in regard to the Power of Attorney and in connection with other matters that she had been lucid and knew what she was doing.
12. The IO reported that at the time the Power of Attorney was executed Mrs W appeared to have limited assets.
13. The Respondent and her former husband in oral evidence confirmed that Mrs W had sold a property for a figure in the region of £90,000.
14. The IO pointed out that the Respondent's power to make gifts was limited by the Powers of Attorney Act 1985 and yet the relevant account in the clients' ledger at the Respondent's firm indicated that payments had been made to Mr W (the Respondent's husband and the son of Mrs W) and Mrs M (Mrs W's daughter). The entries in the clients' ledger were as follows:

<u>Date</u>	<u>Mr W</u>	<u>Mrs M</u>
04.04.01	£5,000.00	£5,000.00
22.02.02		15,000.00
25.02.02	£15,000.00	
01.07.02	£10,000.00	
02.08.02		<u>10,000.00</u>
Total	<u>£30,000.00</u>	<u>£30,000.00</u>

15. The IO was of the opinion that the gifts were not in the Respondent's power to make as Mrs W's attorney given the provisions of the Powers of Attorney Act 1985 and as such were improper.
16. The Respondent explained that the sums of money set out in the above table were not gifts. They were loans made to Mrs W's son and daughter. Mr W confirmed the position. Mrs M had suffered some financial difficulty and her mother had been keen to help. Mrs W had also been anxious that each of her two children should be treated equally. The basis on which the loans were made was that Mr W and Mrs M should retain the money until Mrs W had insufficient money to meet her nursing home fees. The intention had been that Mr W and Mrs M would pay back the money by way of making payments to meet any deficiency of capital or income which Mrs W had when seeking to pay her nursing home fees. There was no question that there had been any attempt to remove assets from Mrs W's estate in order to ensure that such deficiency in her assets or income would be met by the State. Mr W told the Tribunal that no claim would be made for State assistance until all of the loan money had been paid back to Mrs W and her assets had fallen to the level at which she would be entitled to such State support.
17. The Respondent explained that she had not made those loans in her position as donee of the Enduring Power of Attorney. She had made the loans on instructions from Mrs W. She was in no doubt that at the time when Mrs W instructed her to make the payments as loans that Mrs W was lucid and fully aware of what she was doing.
18. The Respondent was married to Mr W, the son of Mrs W, and the conflict of interest arose between the Respondent's duty to Mrs W as her attorney and solicitor and the benefit that she, the Respondent, derived either directly or indirectly in making the payments from Mrs W to Mr W.

The Submissions of the Respondent

19. It had been accepted that the Respondent had acted in circumstances in which her own interests conflicted with the interests of Mrs W.
20. At the conclusion of the Applicant's opening of the case against the Respondent, it was submitted on her behalf that the Applicant had placed before the Tribunal no evidence that Mrs W did not have the necessary mental capacity to appoint an attorney. It was necessary to establish before allegation (ii) could be found that Mrs W was mentally incapacitated at the time she appointed the Respondent as her attorney.

The Submissions of the Applicant

21. It was unusual for the Respondent to make such an application at this stage of the hearing. There was sufficient doubt about the mental capacity of Mrs W at the time when the Power of Attorney was entered into, indeed the Respondent herself had written letters saying that she was suffering from Alzheimer's. The Respondent was on notice of that.

The Tribunal's Decision

22. The Tribunal found that it did not have evidence before it that Mrs W was mentally incapacitated when she executed the Power of Attorney in favour of the Respondent. The Tribunal had considered the material relating to dementia and Alzheimer's disease provided to it by the Respondent and notes that the Alzheimer's Society advises anyone diagnosed as suffering from dementia, of which Alzheimer's is a type, to put his or her affairs in order including making an enduring Power of Attorney. It is a progressive illness. The Tribunal has before it only the evidence of the Respondent and that of Mr Woods that when Mrs W executed the Power of Attorney and instructed the Respondent to make loans to her children she was lucid and knew what she was doing. The Tribunal cannot find that at those material times Mrs W was mentally incapacitated and it announced after considering the submissions made on behalf of the Respondent that allegation (ii) was not substantiated.

The evidence relating to allegations (iv), (v), (vi), (vii), (viii) and (ix) relating to breaches of the Solicitor's Accounts Rules, utilisation of clients' funds for her own purposes and dishonest misappropriation of clients' funds

23. In his Report the IO expressed concern about the appointment of the Respondent as Attorney for her mother-in-law, Mrs W as set out above. The Respondent had not obtained a medical opinion as to Mrs W's capacity to execute the Power of Attorney document.
24. The IO reported that when asked at what point the Respondent considered that the Power of Attorney should have been registered with the Court of Protection she said that she should have registered the Power of Attorney sometime on or about September 2002 as, in her view, by this time Mrs W was no longer mentally capable. The Powers of Attorney Act 1985 requires that an attorney should make an application to register the Power of Attorney with the Court of Protection when the donor "is becoming or has become mentally incapable". The Respondent initially indicated to the IO that she had not sought to register the Power of Attorney with the Court of Protection as she had placed reliance upon two promissory notes signed by Mrs W's children who had benefited from gifts to the value of £30,000 each from Mrs W's assets. In a subsequent discussion the Respondent withdrew her earlier comment concerning the promissory notes which had not been signed as the Respondent had not attended to that due to the pressure of work.
25. The evidence as to Mrs W's mental capacity set out in paragraphs 10 and 11 are relevant and the Respondent's explanation and her former husband's evidence about the payments being loans are set out in paragraphs 13 to 17 above.

26. The IO reported that at 27th March 2003 there existed a credit balance on the office side of the relevant account in the client's ledger of £21,371.57. That appeared to be the net funds belonging to Mrs W deposited in the Respondent's office bank account. When the IO asked the Respondent to explain why Mrs W's money had been deposited in office bank account, the Respondent said that she was unaware of the fact that this was the case.
27. The Respondent queried whether an entry shown on the ledger account of Mrs W related to that matter or whether it was in fact capital introduced into the practice by her and/or her husband. The entry in question was a receipt from the Halifax Building Society on 22nd March 2001 in the sum of £13,772.66. There was no evidence of the client matter file to show that the money did belong to Mrs W and the relevant "chit" could not be located. The Respondent had not been able to produce any evidence to support her claim that the money was capital introduced.
28. A payment charged to Mrs W's account in the client's ledger on 10th June 2002 of £10,700 to "Eric Haynes" had been made. The IO established that this related to the payment of the fitting of a new kitchen at the Respondent's and Mr W's home. On 11th June 2002 the sum of £15,000 was credited to Mrs W's ledger account with the narrative "sundry credit". The IO had not been able to establish the source or the purpose of those monies. He noted that shortly thereafter there was a transfer out of Mrs W's ledger account in the sum of £4,300 and considered it possible that the credit of £15,000 less the transfer out of £4,300 represented a replacement of the funds paid to Eric Haynes.
29. In her oral evidence the Respondent confirmed that she and her husband had had a new kitchen fitted by Mr Haynes, the kitchen fitter. She had borrowed the money from Beneficial Bank and produced a letter indicating that she had borrowed £15,000. Attached to that letter was a "chit" which her cashier had written out relating to the payment to Eric Haynes referring to the account name of Woods (the Respondent's own and her husband's name). The Respondent believed that her cashier had paid her own £15,000 into client account and had credited the ledger of Mrs W with that sum. She did not understand why her cashier should have done that. She was adamant that she had obtained the money from Beneficial Bank to pay for the kitchen and as far as she was aware that money had been used for such purpose. There had been no recourse to client funds and certainly no recourse to any funds belonging to her mother in law.
30. The "post it note" attached to the letter from Beneficial Bank which had been prepared by the cashier as a memorandum to himself stated that the £15,000 should be paid into the client account of the Respondent's former husband and the cheque should be issued to Eric Haynes from that account.
31. The Investigating Officer reported that a list of liabilities to clients as at 28th February 2003 was produced for his inspection and totalled, after adjustment for overdrawn clients' ledger accounts £160,294.24. The items on the list were in agreement with the balances shown in the clients' ledger but the list did not include further minimum liabilities to clients of £779.44 which were not shown by the books. A comparison of the totals including the minimum liabilities not shown by the books with cash held on

the client bank account, at that date, after allowance for uncleared items, showed the following position:

Net Liabilities to clients shown by the books	£44,215.72
Add: Overdrawn client ledger accounts	116,078.52
Add: Minimum additional liabilities to clients not shown by the books	<u>779.44</u>
	£161,073.68
Cash available	<u>114,225.62</u>
Minimum cash shortage	<u>£46,848.06</u>

(This figure excluded the payments made from the ledger account of Mrs W).

32. The Respondent told the IO that she had introduced £70,000 into client bank account in January 2003 when she became aware that a problem existed. She believed the remaining shortage to be in the region of £15,000 to £27,000 and that her husband was trying to raise funds by selling assets to replace that remaining shortage.
33. In addition to the £70,000 introduced by the Respondent some further debit balances had been corrected by identifying matters where funds were held on client account in relation to other matters being dealt with by the firm for the same client. The value of such offsets was £2,573.53. A further £15,000 of the minimum cash shortage had been corrected by the receipt of that sum in March 2003, in relation to a conveyancing matter which had been completed in July 2002.
34. The IO reported that the minimum cash shortage of £46,848.06 as at 28th February 2003 arose in the following way:
- | | |
|--|--------------------|
| (i) Debit balances – Improper transfers | £84,363.64 |
| (ii) Unallocated transfers | 17,676.96 |
| (iii) Debit balances - overpayments | 14,517.36 |
| (iv) Debit balances - unknown | 300.00 |
| (v) Books difference – surplus | <u>(9.90)</u> |
| | £116,848.06 |
| Less: funds introduced by the Respondent | <u>(70,000.00)</u> |
| | <u>£46,848.06</u> |
35. With regard to item (i), referred to in paragraph 34 above, between 5th September 2001 and 27th January 2003 one hundred and three client matters had been charged with improper transfers from client to office bank account varying in amount between £1 and £13,500 and totalling £95,087.06. In each case, no funds stood to the credit of the relevant account within the clients' ledger at the time the transfer was made. Between 11th April 2002 and 27th February 2003 corrective transfers varying in amount between £6 and £2,340.60 and totalling £10,723.42 were made from office to client bank account. The net effect was a deficit on client account of £84,363.64 as at 28th February 2003.
36. Details of the two largest matters were set out by the IO in his Report.

(a) Mr & Mrs H - £16,220

37. The firm acted for Mr and Mrs H in the sale and purchase of property, both transactions were completed in September 2001. In 2002 the following transactions arose on the client side of the relevant ledger card when the balance held on the client's behalf was £335.38.

<u>Date</u>	<u>Type</u>	<u>Description</u>	<u>£</u>	<u>Balance</u>
08/01/02	Balance	Opening Balance		£335.38
31/01/01	Debit	Client to Office Transfer	1,220.00	-884.62
29/05/02	Debit	Client to Office Transfer	10,500.00	-11,384.62
16/07/02	Debit	Client to Office Transfer	300.00	-11,684.62
30/07/02	Credit	Office to Client Transfer	-250.00	-11,659.62
30/07/02	Debit	Client to Office Transfer	4,560.38	-16,220.00

(b) Ms L - £9,418.76

38. The firm acted for Ms L in the purchase of her property which was completed in December 2001. In 2002 the following transactions arose on the client side of the relevant ledger card when the balance held on the client's behalf was £335.62.

<u>Date</u>	<u>Type</u>	<u>Description</u>	<u>£</u>	<u>Balance</u>
08/01/02	Balance	Opening Balance		£335.62
05/03/02	Debit	Client to Office Transfer	8,655.00	-8,319.38
05/04/02	Debit	Client to Office Transfer	300.00	-8,619.38
26/04/02	Debit	Client to Office Transfer	734.38	-9,353.76
22/05/02	Credit	Office to Client Transfer	62.00	-9,415.76
11/07/02	Debit	Client to Office Transfer	3.00	-9,418.76

39. With regard to item (ii), referred to in paragraph 34 above at the inspection date, an account within the clients' ledger in the name of Mr McK was overdrawn to the extent of £17,676.96. The ledger account contained a single entry dated 1st October 2002 with the following narrative, "C-O Transfer to Bal Bank Recs". The entry was a debit to the client bank account and a corresponding credit to the office bank account. Discussions with the firm's cashier revealed that this entry represented the cumulative effect of numerous client to office bank transfers which had been made but which could not be allocated to specific accounts within the client's ledger.
40. The IO went on to report that he had made a detailed examination of a small number of client matter files and the firm's accounting records which revealed the existence of further breaches of the Solicitors Accounts Rules. The IO referred to the matters of Mr M and Mrs Y.
41. The firm acted for Mr M in relation to a personal injury claim following a road traffic accident. The relevant client matter files showed that the client's claim was settled in the sum of £8,500 plus costs. On 5th and 6th June 2002 two cheques of £7,000 and £1,500 respectively were deposited in the firm's client bank account representing the client's damages.

42. On 5th June 2002 client bank account was charged with a transfer to office bank account in the sum of £7,000.64 in respect of disbursements incurred. There was no evidence to suggest that a bill had been delivered to the client nor that the client was aware that the firm was in receipt of the damages and utilised for costs and disbursements.
43. The Respondent assured the IO that the client was aware of the fact that the firm had utilised his damages for costs pending the agreement and receipt of the firm's costs from the other side. The Respondent told the IO and repeated in her oral evidence that it was her normal practice to utilise her client's damages in this way whilst costs were agreed with the other side.
44. The IO contacted the client by telephone. He said that he had not received any bills of costs and was not aware that the firm had received his damages. Mr M said that he had been chasing the firm regarding his damages since June 2002 when his case had been settled. The client said that he had had to obtain a loan from his bank to cover his living expenses because of the delay in receiving his damages.
45. The firm wrote to HSBC Direct on 24th January 2003 on Mr M's behalf in the following terms:

".....We can also confirm that Mr M's claim has settled and as soon as we receive his award for general damages, we will forward it on to him."
46. When that letter was written the client's damages had been received some several months earlier.
47. On 17th March 2003, the agreed costs in respect of this matter were received from the other side in the sum of £8,200.50 inclusive of profit costs, disbursements and VAT. Subject to a deduction of £210.10 which the firm made from the damages, described as a 'shortfall in our costs', the client was sent his damages by cheque on 14th April 2003.
48. The firm acted for Mrs Y in connection with a negligence claim against the Ministry of Defence. Mrs Y's claim was settled in the sum of £28,000 plus costs. On 27th February 2003 the sum of £5,000 was received in part settlement of Mrs Y's claim and was credited to the firm's client bank account.
49. On 28th February 2003 the client's account within the client's ledger was charged with a transfer of £5,000 from client to office bank account which purported to be in respect of the firm's profit costs and VAT. The IO was concerned to note that there was no evidence on the matter file to suggest that a bill had been delivered to the client nor that the client had been aware that the firm was in receipt of part of the damages.
50. The IO spoke on the telephone with Mrs Y who said that she had not received a bill of costs from the firm in relation to the transfer of £5,000 and, she added, she was unaware that the firm had received partial payment of the damages awarded to her.

51. The Respondent told the IO that whilst the bill might not have been sent to Mrs Y, Mrs Y was aware of the intention to utilise damages received for the purposes of costs pending the agreement of costs with the other side. The client matter file contained a letter dated 25th February 2003 to this effect but that letter had been sent to a wrong address.
52. The Respondent said that the firm had been dealing with Mrs Y's son and he was aware of the fact that this money had been received and utilised for costs. The IO spoke with Mr Y by telephone. He was able to confirm that he had been advised that it was the firm's intention to deduct its costs from any damages received but he had not received an invoice from the firm or any other form of written intimation of costs. He was unaware that the £5,000 part payment of damages had been received by the firm.

Mrs Nannetti's evidence.

53. Mrs Nannetti formerly employed by the Respondent, told the Tribunal that she had had dealings with Mr M. She had explained on many occasions that his damages had been paid to the firm and that the firm had paid its own costs and disbursements from the monies received and that the firm would account to him for his damages when costs had been received from the other side.
54. Mrs Nannetti explained that the letter written to HSBC on 24th January 2003 had been written by a trainee at the firm who had not been aware of the difference between general and special damages and who had probably made use of a standard letter prepared by the firm. Mrs Nannetti agreed that that letter should have said that the firm was waiting for the payment of their costs by the other side.
55. In her evidence Mrs Nannetti said that she had felt extremely sorry for Mrs Y. She said it was a horrible case. Her daughter had died at the age of ten years. It had been very difficult to deal with Mrs Y. Mrs Nannetti had spoken to Mr Y, Mrs Y's son, and had told him that they had received an interim payment of damages and that the firm would take that to cover part of its costs.

The Directions made by the OSS Adjudicator

Miss B

56. The Respondent's firm acted for a Miss B in connection with a personal injury claim arising out of an accident that occurred on 9th February 1998. Complaint was made about the Respondent's handling of the matter to the OSS. On 29th October 2003 an Adjudicator made a finding that an inadequate professional service had been provided and imposed an internal sanction and directed that Carter Woods & Co pay compensation to Miss B of £800 and reimburse Miss B £1,500 in relation to her personal injury damages. The Respondent had not made either of those payments.

Miss L

57. The Respondent's firm acted for Mrs L in connection with claims made against her by her removal firm. Mrs L complained to the OSS. An Adjudicator made the Grant of Directions on 17th November 2003:

"I therefore direct Carter Woods & Co to pay compensation to Mrs L of £500.

I further direct Carter Woods & Co to reimburse Mrs L in the sum of £50 in respect of a taxi fare incurred on 31st January 2002.

I further direct Carter Woods & Co to limit their costs as set out in their bill of 13th May 2002 to £150 plus VAT and to refund to Mrs L the sum of £49.35 and to waive all further costs."

58. The Respondent had not complied with any of those Directions.

The Submissions of the Applicant

59. The Respondent did not deny that she had failed to comply with Directions of the OSS Adjudicators relating to two clients and the Tribunal was invited to make an Order in respect of each matter that the Directions should be enforceable as if they were Orders of the High Court.
60. With regard to the admitted allegations, the Respondent accepted that she had acted and continued to act in circumstances where her own interests conflicted with the interests of Mrs W, the Respondent's mother-in-law.
61. With regard to the allegations relating to the Respondent's handling of clients' money, the Respondent admitted that she had failed to keep her accounts properly written up.
62. During the course of the hearing the Respondent admitted that she had transferred monies from client to office account in respect of costs where she had failed to deliver a bill or written information to the client in the matter of Mr M. It was clear similarly that she had failed to deliver a bill or written information to Mrs Y or to her son, Mr Y. Neither Mrs Y nor Mr Y was aware of any bill.
63. The Respondent admitted that she had withdrawn monies from client account other than as permitted by Rule 22 and had failed contrary to Rule 7 of the Solicitor's Accounts Rules to remedy accounts breaches promptly upon discovery.
64. The Respondent strenuously denied that she had utilised clients' funds for her own purpose and had dishonestly misappropriated clients' funds. Where withdrawals from client account had been made and payments made into office account when there was no money standing to the credit of the client concerned it was an inevitable outcome that the Respondent had utilised other clients' monies for office account purposes which in turn were for the Respondent's own purposes.
65. The utilisation of client funds for the Respondent's own purposes was established in the payments from the ledger account of Mrs W to a kitchen fitter, and in the

improper transfers from client to office bank account which totalled on the date of the inspection £84,363.64.

66. On the face of the records it could be deduced that transfers were made when the Respondent's office account had reached or exceeded the overdraft facility agreed with the firm's bank and substantial payments, for instance staff salaries, had to be paid. In the submission of the Applicant this represented a deliberate cynical and dishonest use of clients' money to circumvent the firm's problems with cashflow. This was a dishonest course of action.
67. In establishing dishonesty the Tribunal was invited to apply the test set out in the case of *Twinsectra v Yardley & Others* namely that members of the public would consider that what the Respondent had done was wrong and dishonest and that the Respondent herself knew that what she had done was wrong. The Tribunal was invited to consider the cases appealed from decisions of the Tribunal, namely *Bolton and Weston* and also consider the ruling in *Royal Brunei Airlines v Tan* that deliberately turning a blind eye to what was going on did amount to dishonesty.
68. The Respondent had represented to the IO that Mr M had been aware that the firm had utilised his damages for the purposes of their costs pending agreement and receipt of the firm's costs from the other side. Mr M had been adamant that he was not so aware. Similarly the Respondent had told the IO that Mrs Y (and her son Mr Y) had been aware of her intention to utilise part payment of damages to settle her firm's costs pending agreement and receipt of costs from the other side. Mrs Y had been adamant that that had not been the case.

The Submissions of the Respondent

69. During her time as a sole practitioner the Respondent had employed a number of legal cashiers. Some had extensive general bookkeeping experience and others had formal ILC qualifications. It had been hard to retain them, as well as other staff, because of the geographical position of the office which was remote. The penultimate cashier had left in December of 2001 when it was discovered that she had set up a BACS system to pay salaries without the Respondent's knowledge. Following the Christmas break the Respondent advertised for a replacement cashier in the local press. In March a suitable candidate was found. He was 58 years old and had worked in the field of accountancy since the age of 15. He said he was computer literate and appeared to be sensible and reliable. That cashier did not have any previous legal experience but had assured the Respondent that he was quick to learn and was willing to undertake any relevant course. The Respondent paid for him to be trained on the firm's computer software system. He appeared to have acquired a good working knowledge.
70. Throughout the ensuing year the cashier had difficulty in dealing with instructions. The Respondent had not been aware of significant errors.
71. The Respondent admitted that she had not signed off the client account reconciliations at the end of each month. She had been unaware of that requirement. She had thought it was sufficient to receive the cashier's assurance that all was in order. It had been her practice to ask the cashier at the end of each month whether the month end

had been run and whether "matters balanced". He always confirmed that to be the case.

72. The Respondent had become aware of accounting problems when her own reporting accountant in September 2002 telephoned to say that something was very wrong. She had employed a firm to investigate the matter and had stopped the cashier from making any further postings.
73. Investigations revealed that there was a deficit on client account of between £70,000 and £90,000. The Respondent, who had been advised of that in December 2002 took immediate steps to raise money to rectify the shortfall. She and her former husband made a joint effort to raise money on the security of their house. At the time of the IO's visit the Respondent was aware that the matter was reaching a close and the likelihood was that she would have to raise an additional £26,000 to £28,000 to meet the remaining deficit.
74. With regard to Mrs W, the Respondent had not been motivated by bad faith. The Respondent had carried out Mrs W's instructions. The Respondent had seen the matter as a family matter and did not consider that she was in a position where there was any conflict of interest. The Respondent explained that the sums paid to her husband and his sister had been paid on the instructions of Mrs W and were by way of loans and the monies were to be paid back whenever Mrs W reached the point where she had insufficient income and/or assets to pay her nursing home fees.
75. With regard to the payment from Halifax Building Society of £13,772.66 there were no funds due to the Respondent's former mother-in-law. She believed those funds were introduced into the practice either by herself or by her former husband from their Halifax Building Society Account or from her own MBNA credit card or Beneficial credit card account. She had explained the glaringly obvious mis-posting by the cashier in relation to the sundry credit of £15,000 and the payment of £10,700 to the kitchen fitter.
76. The Respondent had not dealt personally with the matter of Mr and Mrs H. It appeared to the Respondent who had viewed the matter with care that the debit balance on client account was the result of a combination of errors in accounting to the clients in relation to the financial aspects of the transactions which were compounded by the inaccuracy of the cashier's posting. Two of the transfers noted were in respect of stamp duty (£10,500) and Land Registry fees (£300). It had not been possible to review that matter further.
77. In the matter of Mrs L there had been an error in posting. The invoice had not been posted to the ledger resulting in a debit of £9,418.76.
78. The unallocated transfers were part of the accounting difficulties.
79. In the matter of Mr M the Respondent had had limited involvement in the file. The Respondent had spoken to Mr M on numerous occasions since the firm received a cheque for general damages and Mr M was well aware that the firm had taken its costs from the sum of damages received. The firm had "run" the file without asking Mr M for any payment on account and substantial liabilities had been incurred on his

behalf including issue fees, medical report and counsel's fees. It had been put to him that the firm would take its costs upon receipt of his general damages and he was in full agreement. The Respondent had invited the IO to speak with Mr M on the telephone and would not have made such an invitation if she had not been sure of Mr M's position.

80. The matter of Mrs Y had been an extremely sad case. Mrs Y had been a difficult client and the Respondent's firm had been the third firm of solicitors instructed in the case. No interim payment had been requested for some time because the Respondent had been aware of Mrs Y's financial and personal circumstances.
81. Mr Y clearly was aware that the £5,000 part payment would be taken against costs. It appeared that his only complaint was that no invoice had been received. The client was happy for those damages to be allocated against outstanding costs.
82. With regard to the suggestion that transfers had been made to office account from client account at a time when the office account overdraft facility had reached or exceeded its limit, that was not correct. The Respondent accepted that her firm did suffer some cash flow difficulties but they were no different from any other firm. She explained that she had the support of her bankers and even though her overdraft facility formally was limited to £60,000 the bank had demonstrated its confidence in her as no security had been required for that lending and it required only a telephone call for an increase in the overdraft to be negotiated with the bank. Reaching the formal overdraft limit was not a crucial factor when transfers were authorised.
83. The Respondent accepted that either she, or an assistant with whom she had hoped to go into partnership, would authorise transfers but the figures were presented to her by the cashier and she would accept the cashier's assurance that the sum to be transferred properly represented monies due to the firm. The Respondent considered that she authorised transfers on the basis of such assurance in exactly the same way as many other solicitors in other firms. She pointed out that partners in large firms of solicitors could not and would not instigate any checks to ensure that the monies said to be transferable were in fact available properly to be so transferred.

The Findings of the Tribunal

84. With regard to the disputed facts and allegations the Tribunal finds that the payments of money from the account of Mrs W to Mrs W's son and daughter were, as the Respondent explained, transfers of money which had been authorised by Mrs W to be made to her children as loans. The Tribunal accepts the Respondent's explanation that she did not make those payments in her capacity as Mrs W's attorney but rather had acted as Mrs W's solicitor and had made the payments in accordance with her client's instructions.
85. The Tribunal consider that the way in which the Respondent handled her relationship with her mother-in-law left a great deal to be desired but accept that the payments were not improper and did not constitute a dishonest misappropriation of clients' funds. The Respondent herself accepted that she had acted in a situation of conflict where she had acted on a client's instructions to make payments by way of loans to her then husband.

86. The Tribunal does find that the transfer of monies from client to office account in respect of costs incurred by Mr M and Mrs Y had been made where no bill or written intimation of costs had been delivered to the client concerned. It was clear in the matter of Mrs Y that a wrongly addressed letter had not reached Mrs Y. Mr Y had not had any details as to the figures involved and no written bill had been delivered to him. Despite the assurances of the Respondent and a former member of the staff, the Tribunal is persuaded by the fact that Mr M reported that he was unaware of the Respondent's receipt of his damages and their utilisation to meet costs. He had not received any written indication of the position.
87. Where payments had been made from client account to office account either where there were no funds or insufficient funds standing to the credit of the client concerned or where the transfers had been made in breach of the Solicitors Accounts Rules it is the inevitable outcome that the solicitor has by crediting the office account, which is her own account, with those monies she has utilised those monies belonging to clients for her own purpose. The Tribunal finds this to have been the case here.
88. The Tribunal finds that the Respondent authorised transfers of funds to which she was not entitled. The Tribunal has noted the Respondent's explanation that she placed an inappropriate degree of reliance upon her cashiers and simply authorised the transfers without checking the propriety of them. The Respondent was a sole practitioner and had an absolute responsibility for compliance with the Solicitors Accounts Rules and was required to exercise a proper stewardship over clients' money. By not taking any step to ensure the correctness of transfers which she authorised she was in the Tribunal's view turning a blind eye to any impropriety that might have existed and in not taking steps to learn anything that she would rather not have known could be said to have acted dishonestly.
89. In reaching its conclusion that the Respondent acted dishonestly the Tribunal did apply the test in the case of *Twinsectra and Yardley*. The Tribunal considered that any member of the public would believe that the Respondent was wrong to authorise transfers without being sure that they could properly be made and the Tribunal does not believe that the Respondent herself considered that the authorisation of transfers she was invited to make by a member of her staff were properly made without implementing some checks.
90. The responsibility for honest and proper dealings with client money is a very high one indeed.
91. The Tribunal wished to make it plain that it did not consider that the dishonesty was of the worst kind namely where a solicitor deliberately and flagrantly steals clients' money, but the Tribunal did consider in all the circumstances that it was appropriate to find allegation (ix) to have been substantiated and to make the finding that the Respondent had been dishonest.
92. The Tribunal found that the Respondent did represent to the IO that Mr M had been aware that the firm had utilised his damages for the purposes of their costs. The Tribunal has found that Mr M was not so aware and that representation to the IO on

the part of the Respondent had not been correct. The same situation pertained in the matter of Mrs Y.

The Decision of the Tribunal

93. The Tribunal declined to make a finding with regard to allegation (i). That appeared to be a general allegation which would be proved only by the substantiation of the other subsequent allegations. It did not add anything to the matters alleged against the Respondent.
94. The Tribunal had at an early stage in the proceedings found allegation (ii) not to have been substantiated.
95. The Tribunal found all of the rest of the allegations to have been substantiated. The Respondent had admitted allegations (iii), (iv), (vi), (vii), (x), (xii) and (xiii). Allegations (v), (viii), (ix) and (xi) had for the reasons set out above been found by the Tribunal to have been substantiated.

The Submissions of the Respondent in mitigation

96. The Respondent accepted significant organisational shortcomings in the running of her practice. She did not accept that she had or could have been dishonest. The oral witnesses and written testimonials all spoke highly of the Respondent's integrity and commitment to her clients.
97. The Respondent had found the entire disciplinary process to be painful and stressful. There had been periods of time when she had not been able to face dealing with the disciplinary issues.
98. At the date of the hearing the Respondent was unemployed with no intention of returning to work within the legal profession. She was married to her second husband who was a practising solicitor in Lincoln specialising in crime. The Respondent had two small daughters from her previous marriage aged 8 and 10 years.
99. The Respondent had been adjudicated bankrupt on 5th May 2004 and continued to face civil litigation relating to her practice.
100. The Respondent's career had progressed after she concluded her employment with the firm at which she trained. Following an approach by a firm in Lincoln the Respondent agreed to move to that firm in August 1990. She had been attracted by the promise of personal injury work, an increase in pay and the promise of a partnership within 15 months.
101. On her arrival at the new firm one of the firm's matrimonial solicitors had handed in her notice. The Respondent was asked to cover her work until a replacement could be found. Most of the Respondent's time was spent on matrimonial work with some general civil litigation. The promised partnership did not materialise.

102. The Respondent accepted an offer by another firm and became head of the litigation department with an immediate partnership. The Respondent remained with that firm until October 1993 when she left to start her own firm, Carter Woods & Co.
103. There were several reasons for doing this. The Respondent had acquired a client through family contacts who provided her with a large amount of personal injury work. The client ran a credit car hire company which provided cars to persons involved in road traffic accidents. The solicitor's task was to obtain compensation for their injuries and other losses including the car hire charges. The annual profit costs from that source were substantial. A substantial amount of work became "stuck" in the court system while the House of Lords decided whether the claims were champertous. The steady income from that source ceased and the Respondent's partners became extremely concerned. Following discussions with her husband the Respondent took the decision to take the work and start her own firm. She was pregnant with her first child and saw it as a chance of spending some time with her baby whilst still earning.
104. The firm rapidly went from strength. The Respondent had come to recognise that she was not as well equipped to be a sole practitioner with the responsibilities it brought as she should have been. Her knowledge of the Solicitors Accounts Rules was inadequate. She was naïve. An assistant joined the Respondent some five months later and with the addition of a full time secretary and a part time cashier it became a good practice. Having initially worked from home, the Respondent obtained premises in a nearby business centre.
105. Credit car hire was dealt another blow when it was suggested that there was lack of compliance with the Consumer Credit Act and again a large amount of cases became "stuck" in the system. At that point the Respondent decided to diversify. She took on extra staff and the firm began to undertake conveyancing, matrimonial and some probate. The Respondent employed seven or eight people.
106. The Respondent had to work increasingly long hours to maintain what was a growing business. That brought considerable pressures. The Respondent's daughter was born in February 1996 and the practice's case load was such that she returned to work taking the baby with her the day after her birth.
107. The baby was not well. She had health problems and eventually was diagnosed as suffering from cerebral palsy. The pressure on the Respondent caused her to become severely depressed. She was prescribed medication which she took until the summer of 2002.
108. At home her marriage was floundering and she became dependant on alcohol. The Respondent entered a rehabilitation centre in March 2003. She had become dependent on alcohol, often drank at work and could not face life without it.
109. The Respondent had placed her trust in the cashier most recently employed by her. She believed his experience and the training she provided to him would equip him for the job. She trusted him but subsequently she was proved wrong to do so.

110. The Respondent had not been aware of significant errors but she was not sufficiently careful to monitor his work. Work pressures, her personal difficulties with alcohol and a misplaced judgement that the cashier could be left to get on with his job meant that she was not supervising adequately.
111. The Respondent accepted that she did not sign off the client account reconciliations at the end of each month: She thought it was sufficient to receive the cashier's assurance that all was in order. If she had taken a closer and proper involvement she would have seen the difficulties coming.
112. An assistant upon whom the Respondent placed reliance and who she hoped would become her partner left the firm in July of 2002 to relocate to the North.
113. In or about September 2002 the financial documents were taken to the firm's accountants Messrs Mumby & Co. Up to that stage the Respondent had not had a qualified Accountant's Report. It was a shock to her when her accountants telephoned to say something was very wrong. The Respondent attended a meeting with them. It transpired that the client account had not balanced at the month ends despite the cashier's assurance to the contrary since he joined the firm.
114. Initially it was thought that this may have been due to the computer system owing to a deficiency in the software. At her accountant's suggestion the Respondent telephoned The Law Society's IT advisors. The suppliers used by the Respondent were no longer on The Law Society's list of approved suppliers. A problem had been detected within the system. Nevertheless the suppliers continued to press for further payment in the region of £4,000-£6,000.
115. The Respondent's accountant was referred to a firm of legal management accountants who were experienced in problems with the system. The Respondent and her accountants met with the proprietor of the management accountancy firm. He looked at the Respondent's year end reports and identified that the problem might not be simply software based. He considered that there were fairly substantial accounting errors.
116. The Respondent agreed to employ the management accountants to investigate the matter. As the investigation progressed it became clear that the inaccuracies were incapable of being resolved unless the transactions for the whole year were reposted. The Respondent was warned of the likelihood of a deficit on client account. The inaccuracies also related to office account. There was a fair chance that a large part of the deficit in client account could be offset against monies retained in client account which had been properly due to office account.
117. In early December 2002, the Respondent learned that the investigations revealed that the deficiency on client account was approximately £70,000. The Respondent and her husband took immediate steps to rectify the shortfall and £70,000 was introduced into client account in early January 2003.
117. The Respondent disposed of the services of her cashier. She engaged a part time cashier and used a firm in which the management accountant had an interest to work on postings. This method was too slow to accommodate the conveyancing

undertaken by the firm. Another cashier was engaged but the services of the management accountants were retained.

118. The IO made his inspection before the work to rectify the accounts and make good any shortfall had been completed.
119. With regard to the matters relating to Mrs W, the Respondent's mother in law, the Respondent said that Mrs W was an intelligent woman. She took a keen interest in politics, literature and all topical issues. Her capacity to do so was not in any way diminished at the time of her appointing the Respondent her attorney.
120. The Respondent had first realised that there was a problem when Mrs W had been uncharacteristically abusive towards the Respondent's elder daughter in July or August 2002.
121. It had been agreed some time prior to Christmas 2001 that the Respondent would be appointed as Mrs W's attorney when she moved to Lincolnshire. The geographical distance between Mrs W's son and daughter was felt to be an obstacle to their joint appointment. The Respondent agreed to accept the appointment on the basis that matters would be run through her office and that she would charge for the work done. The Respondent had forwarded sums of money to Mrs W's son and daughter on Mrs W's instructions. The Respondent regarded this as a family matter and did not see any conflict of interest. She had come to accept that there was one.
122. The Respondent admitted that she had not complied with the Directions of the Adjudicators. She had failed only because she did not have the money to do so. The Respondent had telephoned the OSS caseworker to explain that she was unable to pay. She had not deliberately ignored the Directions. The Respondent was bankrupted on 5th May 2004 by The Law Society in respect of the intervention costs which were very substantial. In addition the Intervention Agents were suing the Respondent on behalf of Mrs W to recover monies which they contended had been taken by the Respondent, her former husband and his sister. By the time that case comes for hearing the Respondent will have been through a conciliation process in relation to those proceedings.
123. It was difficult to overstate the pressure the Respondent had been under for many months. Her life had been turned upside down.
124. The Respondent had had no income since the intervention and relied on her husband. She had received no state benefits as a formerly self-employed person. She was not entitled to any. The Respondent had no assets at the time of the intervention other than her work in progress, which she estimated to be in the region of £350,000 to £400,000 and her share of the equity in her former matrimonial home. All the work in progress was lost as a result of the intervention. The Respondent lost her share in the equity of her former home following an action brought by her bank.
125. Until shortly before the disciplinary hearing the Respondent had been unable to cope with matters. She had been caused enormous distress and making her statement had been a painful exercise. The Respondent apologised for her shortcomings.

The Decision of the Tribunal

126. The Tribunal has above set out those allegations which it has found to have been substantiated against the Respondent. The Tribunal had for the reasons also set out above found that the Respondent had been dishonest as alleged in allegation (xi). The Tribunal has given the Respondent credit for the admissions which she made and has borne in mind that it found allegation (ii) not to have been substantiated and considered that allegation (i) added nothing. The Tribunal has borne in mind that the oral witnesses and written testimonials spoke highly of the Respondent's integrity and competence. The Tribunal recognises that the Respondent has endured a number of personal difficulties.
127. The Respondent had not fulfilled the requirement that a solicitor is punctilious in compliance with the SARs and exercises a proper stewardship over clients' money. The Tribunal has made a finding that the Respondent has displayed a degree of dishonesty.
128. The Tribunal concluded that it would fulfil its duty to protect the interests of the public and its duty to maintain the good reputation of the solicitors' profession only by imposing the ultimate sanction on the Respondent and ordering her to pay the Applicant's costs to be subject to a detailed assessment if not agreed between the parties.

DATED this 16th day of July 2004
on behalf of the Tribunal

A G Gibson
Chairman