No. 8969-2004

IN THE MATTER OF MARK GITTINS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mrs E Stanley
Mrs V Murray-Chandra

Date of Hearing: 12th July 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jonathan Richard Goodwin, of Jonathan Goodwin Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT, on the 20th of January 2004, that Mark Gittins of Plungington Road, Preston, might be required to answer the allegations set out in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

On the 26th July 2004 the Applicant made a supplementary statement containing further allegations. On the 7th December 2004 the Applicant made a second supplementary statement containing further allegations.

The allegations in the originating and two supplementary statements are set out below.

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

(i) That he failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 ("the SAR").

(ii) That he failed to carry out reconciliations as required by Rule 32(7) of the SAR.

(iii) That he transferred monies from client to office account, which could not be allocated to individual client ledger accounts, contrary to Rule 19 of the SAR.

(iv) That he incorrectly retained client monies in office account contrary to Rule 21 of the SAR.

(v) That he withdrew monies from client account other than as permitted by Rule 22 of the SAR.

(vi) The conduct of the Respondent was such as to give rise to breaches to Rule 1 of the Solicitors Practice Rules 1990 in that his independence and/or integrity was compromised or likely to be compromised and/or the duty to act in the client's best interests was compromised or likely to be compromised and/or the good repute of the Solicitor or of the Solicitors profession was compromised or likely to be compromised.

(vii) That he failed and/or delayed in dealing with post completion matters, that is to say the registration of transfers and/or stamping of documents following completion.

(viii) That he has acted in breach of Practice Rule 1 of the Solicitors Practice Rules 1990, in that his conduct has compromised or impaired his independence and integrity and/or the good repute of himself and/or the Solicitors' profession, in that:-

(a) He allowed a client, MS, to utilise his status as a Solicitor, to give customers comfort and/or reassurance in relation to monies paid to him on behalf of his client;

(b) Acted in a way that led customers of MS to conclude that monies paid to the Respondent, would be held in an escrow account, pending satisfactory completion of the transaction by MS;

(c) Acted in a way which he knew or, in the alternative, ought to have known, would lead customers to believe that he was acting as an independent third party and/or as the customers' agent, when in fact he was acting on behalf of and/or as agent to MS.

(ix) He failed to keep accounts properly written up for the purposes of Rule 32 of the SAR [on a further occasion].

(x) Contrary to Rule 7 of the SAR he failed to remedy breaches of the SAR.

(xi) He withdrew monies from client account other than as permitted by Rule 22 of the SAR.

(xii) He utilised clients' funds for his own benefit.

(xiii) He utilised clients' funds for the benefit of other clients and/ or third parties.

(xiv) He made a claim for costs which he knew or ought to have known he could not justify, which for the avoidance of doubt was an allegation of overcharging.

(xv) He wrote letters to The Law Society which were misleading and/ or inaccurate.

(xvi) He wrote letters to clients and/or third parties which were misleading and/or inaccurate.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 12th July 2005 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

The Respondent's Application for an Adjournment

By letters of 5th July 2005 and 12th July 2005 (the latter having been received by fax on the morning of the hearing) the Respondent sought an adjournment of the substantive hearing. The Law Society resisted such application. The Tribunal sets out below the recent history of this matter.

1. By letter of 12th of January 2005 Mr Gittins sought an adjournment of the hearing scheduled for 18th January 2005. He said he was not fit to attend. He also said he had had insufficient time to deal with the allegations. He made some admissions in that letter which have been dealt with later in this document. By letter of 13th January 2005 the Applicant confirmed that The Law Society was prepared in all the circumstances to consent to an adjournment.

2. On 13th January 2005 the Tribunal's clerk confirmed that the hearing had been adjourned with the consent of The Law Society and the agreement of a Tribunal chairman. The chairman considered that the matter should stand adjourned on the basis that Mr Gittins would file with the Tribunal within 28 days of the 13th of January 2005 a consultant's medical report confirming the diagnosis of his illness and a detailed prognosis in particular making reference to the date when the consultant anticipated Mr Gittins would be fit enough to deal with a substantive hearing. Mr Gittins was sent a further copy of the Tribunal's practice direction relating to adjournments. At the request of the chairman the clerk had arranged for the matter to be listed for hearing before the Tribunal on the 24th February 2005, allowing 20 minutes for the current position to be reported to the Tribunal and in order that the Tribunal might make any necessary directions. The Tribunal produced a memorandum dated the 4th March 2005 confirming the position.

3. On 5th July 2005 Mr Gittins wrote a letter to the Tribunal enclosing a statement of truth made by him confirming his present medical condition. He attached correspondence from his insurers and Dr Soni who had produced a medical report dated the 7th February 2005. In that report it was said that the clinical picture described by Mr Gittins tended to suggest that there was a baseline of chronic low-grade depression which he had had for a long time. His recurrent depressive disorder was currently moderately severe and was associated with symptoms and appeared to have occurred with a background of chronic dysthymia. Dr Soni was guarded in making a prognosis as Mr Gittins appeared to be quite disabled and distressed by the psychopathology which he manifested and was therefore unlikely to be able to return

to work in any capacity; he was unwilling to accept any kind of medical or psychological treatment. If such treatment were implemented he indicated that Mr Gittins could be reviewed again in 6 months to determine his fitness either to return to his own work or to another occupation.

4. Mr Gittins said he went to see Dr Soni in January 2005. That appointment was arranged by his insurers as he had claimed under his income protection policy. Mr Gittins had not received a copy of the report until June 2005.

5. Mr Gittins said that he had continued to undergo the treatment suggested and to take the medication prescribed. He had been advised to avoid stressful situations until his medical situation had been stabilised. He was due to be reviewed in September 2005.

6. Mr Gittins said that whilst he had admitted some of the allegations against him he had no intention of ever practising again. He did wish to have his say with regard to the allegations which he had not admitted. He was not well enough at the time of making his witness statement to attend the Tribunal hearing.

7. On the 7th July 2005 the Applicant wrote to Mr Gittins pointing out that he had not complied with the Tribunal's direction of the 24th February 2005 and that the medical report from DR Soni dated February 2005 was out of date. The Applicant confirmed to Mr Gittins that he would resist the application for adjournment drawing to Mr Gittins' attention the Court of Appeal decision of Awan v The Law Society. The Applicant pointed out the Respondent had admitted a good number of the allegations raised and it would seem entirely sensible for the Tribunal to proceed to deal with the matter having regard to length of time this case had been outstanding and the absence of up-to-date medical evidence.

8. On the 8th of July 2005 the Tribunal's clerk wrote to the Respondent saying the Tribunal would deal with his application for adjournment as a preliminary issue on the 12th of July. She pointed out that the Respondent should be aware that if his application failed the Tribunal would deal with the substantive matter and had power to do so in the absence of a Respondent.

9. On the 12th July 2005 Mr Gittins sent a faxed letter to the Tribunal's office in the following terms:

> "I refer to the recent service upon my sister of papers for me. I also refer to your recent letter which my sister has passed on to me.
>
> As a result of the tone and the contents of your letter I determined to attend today's hearing. This was against the medical advice.
>
> However, my wife has been in hospital. This was not a pre-arranged appointment but as a result of a biopsy taken last Thursday. As a result I have had to agree to look after 5 children aged between 7 and 18. I cannot attend today. I would request an adjournment."

10. The Applicant was ready to proceed and his oral witnesses were in attendance.

The Decision of the Tribunal

11. The Tribunal did not have the requisite medical evidence required to enable it to give favourable consideration to the Respondent's application for an adjournment on health grounds. Further, the Respondent had indicated that it had been his intention to attend the Tribunal hearing, but it appeared that he had been thwarted by the fact that his wife was in hospital and he had had to assume responsibility for the care of 5 children the eldest of whom was 18 years of age. The Tribunal did not have the medical evidence that it would need to enable it to grant an adjournment on health grounds. The Tribunal was unpersuaded by the Respondent's second new and different reason why he should have an adjournment.

12. The Respondent had made admissions of a number of allegations contained in the original and the second supplementary statement. The Applicant had assured the Tribunal that those allegations which were not admitted necessarily flowed from the allegations that had been admitted. He invited the Tribunal to deal with the admitted allegations and those which flowed therefrom with a view to leaving the unadmitted allegation (viii) (contained in the 1st Supplementary statement) to lie on the file.

13. The Tribunal expressed concern that this matter had been outstanding for a considerable period of time. The matter had been adjourned and the Respondent had been given the opportunity of filing an up-to-date detailed medical report. He had not done so. Further, the Respondent had admitted some of the allegations. The Tribunal has not only to consider the position of the individual Respondent but has also to consider its wider and very important duty to protect the public and the good reputation of the Solicitors' profession.

14. In view of the fact that the Respondent had not supplied adequate medical evidence to support his adjournment application, and that his second application was made on entirely different grounds, and that he admitted allegations in the original and second supplementary statements the Tribunal concluded that it would be both right and proportionate to proceed to hear the matters relating to the allegations which the Respondent admitted and such other allegations as there were in the original Rule 4 statement and the second supplementary statement on the basis that allegation (viii) contained in the first supplementary statement should lie on the file. The Tribunal gave the Applicant liberty to apply to restore that matter to be heard before the Tribunal.

15. The matter then proceeded to the full substantive hearing of allegations (i) to (vii) and allegations (ix) to (xvi).

16. The evidence before the Tribunal included the following admissions of the Respondent:

    a) Admissions made in the Respondent's letter to the Applicant dated the 4th of February 2004 which were as follow…-
        (i) Admitted
        (ii) Admitted
        (iii) Denied
        (iv) Admitted

(v) Denied
(vi) Denied
(vii) Admitted

b) Admissions made in the Respondent's letter of the 12th January 2005:
(i) Admitted
(ii) Admitted
(iii) Admitted
(iv) Admitted
(v) Denied
(vii) Admitted
(ix) Admitted
(x) Admitted
(xi) Admitted
(xii) Denied
(xiii) Denied
(xiv) Admitted
(xv) Denied
(xvi) Denied

17. Mr Gittens made other comments in his letter of 12th January 2005 which the Tribunal has taken into account and are noted under the heading below "The Submissions of the Respondent".

18. Mr Norton and Mr Lane, Forensic Investigation Officers of The Law Society, and Mr Shelley, a costs draftsman, gave oral evidence at the hearing.

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

19. The Tribunal ORDERS that the respondent, MARK GITTINS of Plungington Road, Preston, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he 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 Accountants of the Law Society and the costs of the costs draftsman engaged by the Law Society.

20. The Order reflected the Respondent's practice address. The Respondent had however informed the Applicant that he had sold his practice and his subsequent address was St Davids Gardens, Ingol, Preston.

The facts are set out in paragraphs 21 to 77 hereunder:-

21. The Respondent, born in 1956 was admitted as a solicitor in 1982. At all material times the Respondent carried on in practice on his own account under the style of Mark Gittens & Co from offices at 111-113 Plungington Road, Preston. In or about March 2003 the Respondent entered into partnership with his former assistant solicitor Ms M. In his aforementioned letter addressed to the Applicant Mr Gittens said that he had sold his practice on the 30th January, believed to be 2004.

22. A Forensic Investigation Unit Officer (the FIO) carried out an inspection of the Respondent's books of account commencing on 15th October 2001. A copy of the FIO's Report dated 28th March 2002 was before the Tribunal and he gave oral evidence. The Respondent's books of account did not comply with the Solicitors Accounts Rules and there was a shortage on client account of £14,152.65 as at 30th September 2001.

23. The FIO identified a number of shortcomings in the Respondent's books of account. At a meeting with the FIO on 17th October 2001 the Respondent accepted the inadequacies in his accounting records and gave an indication that he would attempt to bring matters up to date. The FIO agreed to suspend the inspection until 12th November 2001. At that date the accounting records had been brought up to date but they were not in compliance with the SAR.

24. The FIO did not consider it practicable to calculate the Respondent's total liabilities to clients as at 30th September 2001, however he was able to calculate a minimum cash shortage of £14,152.65 in client funds as at 30th September 2001. On 4th October 2001, the shortage was partly replaced by the transfer of £2,371.43 from office to client bank account. The Respondent gave an indication that he had paid £8,000 into client bank account, and that the remaining shortage would be replaced when possible and he would provide confirmation of same to the FIO. Such confirmation had not been provided at the date of the Report.

25. The shortage arose as a consequence of:

(i)	Unallocated transfers from client to office bank account	£6,264.48
(ii)	Overpayments	£4,975.30
(iii)	Incorrect transfers	£2,371.43
(iv)	Client money incorrectly held in office account	£541.44

In his Report the FIO gave examples of items (i), (ii) and (iv).

26. During August 2001 transfers from client to office bank account had been effected by the Respondent in respect of costs while the firm's book-keeper was on holiday. Upon her return the book-keeper was unable to allocate the transfers to individual client ledgers. The FIO was able to identify the amounts totalling at least £6,264.48 which had not been allocated.

27. The FIO identified that between 27th July and 21st September 2001, six transfers from office to client account, of sums between £8.00 - £2,002.42, totalling £4,935.30, had been posted to the relevant ledger accounts to ensure the balance held in client bank account for the clients concerned was sufficient to enable proposed payments from client bank account to be made. The associated physical transfers of money from office to client bank account had not been made. Each client ledger account showed a nil balance as at the inspection date. The largest overpayment, in the matter of B deceased was in the sum of £2,002.42.

28. The Respondent received two payments from the Legal Services Commission on account of disbursements in the sum of £427.00 into client bank account on 26th May and 9th June 2000, in connection with the matter of LB, a personal injury claim.

Counsel had received payment on account of £132.20 from the Legal Services Commission on 12th July 2000. The total payment on account by the Commission was in the sum of £559.20.

29. On 23rd April 2001 the third party paid costs and disbursements to the Respondent which were credited to client bank account. The LSC payments on account were due for recoupment by the LSC. £17.76 remained in client account from 21st May 2001 onwards, the balance of costs received having been transferred to office account or paid to Counsel. The Respondent confirmed that the LSC had yet to be notified that the matter had concluded as he had not yet returned a Claim 2 form.

30. The FIO identified further areas of concern in connection with S deceased and B deceased and the late Stamping and Registration of conveyancing documents.

31. In the matter of S deceased, Mr S had died on 7th November 1999. The Respondent acted for his Executrix who was also the sole beneficiary of his estate. Probate was granted on 2nd June 2000. Prior to Mr S's death, the Respondent had acted for him under a power of attorney and operated Mr S's bank accounts. The Respondent continued to operate the account after Mr S's death, which event invalidated the power of attorney.

32. For the period during which the Respondent acted as attorney, bills totalling over £35,000 were posted to the relevant client ledger account. Transfers from client to office account in excess of £23,000 had been effected in payment of the bills, together with a number of payments of costs direct to office account. The FIO ascertained that the only reference to the delivery of a bill for the period on the client matter file was a letter dated 28th April 1998, which enclosed a detailed bill for the period 1st February 1996 to 30th April 1998, for £5,536.60. The FIO asked the Respondent to comment on the number of bills posted and their total value to which the Respondent said that as far as he was aware all bills had been delivered to Mr S when he visited him. He also indicated that he considered the value of the work was potentially about the £35,000 charged, to include the probate work but that some of the bills would have to be cancelled.

33. For the period of the administration of the estate, it was ascertained that nine bills ranging from between £101.44 to £2,772.94, totalling £11,239.97 had been posted to the client ledger account, and that transfers from client to office account in payment of those bills had been effected. The FIO ascertained that the only reference to the delivery of a bill for the period of the estate administration on the client matter file was a letter dated 30th November 2000, enclosing a detailed bill for the period 1st January 2000 to 30th November 2000 for £1,076.48. In response to a request from the FIO to comment on the position, the Respondent indicated that there were a lot of files connected with Mr S and that as far as he was aware all of the bills had been delivered to the Executrix.

34. The FIO wrote a letter dated 20th November 2001 to the Executrix in an effort to confirm the Respondent's assertion. The letter was sent to the address that appeared on all correspondence on the client matter file, but the letter was returned marked "These documents sent to wrong address".

35. It was ascertained that on 24th January 2000 a payment by cheque of £5,000.00 was cleared from Mr S's account. The Respondent could not recall to whom the payment had been made, but he believed it to be the Executrix. Further, on 18th December 2000 a cheque for £800.00 was drawn on client bank account. Both the cheque stub and client ledger account narrative described it as being payable to Mr S's account. The cheque cleared on 27th December 2000 but could not be identified as being received on the bank statement for Mr S's account. The Respondent indicated to the FIO that he would look into those two matters and report back. At the date of the FIO's report, no further information had been received.

36. Mr B died on 21st August 1999. Probate was granted on 1st December 1999. The Respondent acted for the Executor. During the course of the administration, ten bills ranging from £235.00 - £9,128.93 totalling £22,696.14 had been posted to the client ledger account, with transfers from client to office account effected in satisfaction of the bills. A review of the relevant client matter file by the FIO revealed correspondence which enclosed four interim bills totalling £9,958.73. By letter dated 22nd November 2000 to a beneficiary, the Respondent estimated his costs at that time to be £2,937.50. It was ascertained that the client ledger account at that time recorded that seven bills totalling £19,410.27 had in fact been raised and that corresponding transfers from client to office account had been effected.

37. By letter dated 5th November 2001 the Respondent wrote to the Executor and enclosed the estate accounts, He indicated that his costs would be reduced to £3,170.20 plus VAT (£3,724.99) with all interim accounts being cancelled. The letter also indicated that five separate trustee accounts had been opened for the beneficiaries. The estate accounts indicated that there were to be three accounts in the sum of £9,382.31 each and two accounts in the sum of £9,382.32 each, giving a total of £46,911.57. The relevant client ledger account showed the client account balance to be £27,393.61 as at 15th October 2001, such sum being paid to Halifax plc on that date, leaving the balance of £19,517.96 to pay the legacies. Notwithstanding the indication given by the Respondent that his costs were to be reduced, the only transfer identified by the FIO from office to a client bank account was in the sum of £690.00 on 15th October 2001 in respect of a cancelled bill, dated 1st July 2001.

38. The FIO asked the Respondent to explain why he had estimated his costs at £2,937.50 in November 2000 when he had already at that time transferred in excess of £19,000 to his office account? The Respondent indicated that his costs would have been £2,500.00 which with the VAT produced the figure of £2,937.50 if he had not had to do extra work, but he was unable to explain why that estimate was given, when in fact the larger sum had already been transferred. The Respondent agreed that insufficient funds were held in client bank account to enable the trust accounts to be set up and indicated that he would have to transfer funds back from office account to enable the trust accounts to be established. The FIO wrote to the executors on 20th November 2001 to seek confirmation that they had received the relevant bills but no reply was received.

39. The FIO reviewed a sample of client matter files which revealed failure and / or delay in the stamping and registration of post completion documents. The FIO listed those files reviewed and identified the date of completion in all of them. Save one matter, none of the transaction documents had been stamped and none had been registered.

The FIO requested that the Respondent forward confirmation of registration in respect of each of the properties, but as at the date of the Report no confirmation had been received.

40. By letter dated 19th April 2002 the Office for the Supervision of Solicitors (The Law Society) wrote to the Respondent seeking his explanation of the matters included in the FIO Report.

41. By letter dated 24th April 2002 the Respondent wrote to The Law Society by way of explanation and with reference to a number of enclosures. In particular the Respondent indicated that the cash shortages had been rectified and he enclosed copy bank statements to identify the transfers effected in December 2001 and January 2002. He indicated that all of the accounts had been reconciled and were up to date and accurate. The Respondent did not accept that the costs in relation to the matter of Mr S were excessive and set out his explanation. In relation to the matter of Mr B deceased, the Respondent stated "I accept that on the face of it the bills referred to in paragraph 31 of the FIO's Report were excessive, but as far as I am aware, they were cancelled prior to Mr B's visit." The Respondent also sought to explain his failure to revert back to the FIO in respect of certain matters following the conclusion of the inspection by indicating that insofar as he was concerned the FIO would be writing to him confirming points raised at the meeting. There was ongoing exchange of correspondence.

42. In his letter of 18th September 2002, the Respondent said he was unable to explain why a payment from client bank account of £800.00, said to be to Mr S did not appear on Mr S's bank statement and indicated that he was still making enquiries of the bank.

43. In relation to the failure and/ or delay in the registration/ stamping of documents, the Respondent confirmed completion of registration in respect of certain of the transactions. There had been significant delay in registration. By way of example, the transaction relating to the property at Ashton was completed on 4th May 2001. The application for registration was not received by The Land Registry until 25th April 2002. The transaction relating to a property in Ribbleton was completed on 3rd August 2001. Application for registration was made approximately nine months after the date of completion.

44. In relation to the matter of LB the Respondent provided a completed Form 2, dated 22nd April 2002. The costs were received from the third party approximately twelve months earlier.

45. A second FIO carried out an inspection of the Respondent's books of account commencing on 13th May 2003. A copy of the FIO's Report dated 26th July 2004 was before the Tribunal and the second FIO gave oral evidence to the Tribunal.

46. The Report showed that the Respondent's books of account did not comply with the Solicitors Accounts Rules and identified a minimum cash shortage on client account of £32,679.57 as at 30th April 2003.

47. There had been partial rectification of the cash shortage when a cheque for £2,000.00 was received from a client during April 2003 and correctly recorded in the firm's

client account records as having been received but the cheque was not paid into the client bank account until 7 May 2003.

48. £8,297.43 was transferred from office to client account on 12 May 2003 to rectify part of the minimum cash shortage. A further transfer slip for an office to client account transfer of £9,826.48 was completed and stamped by the bank on 12 May 2003, which was said to be a further part-rectification of the minimum cash shortage but the second FIO was unable to verify that a physical transfer of funds had taken place.

49. During an interview with the second FIO on 4 June 2003, Mr Gittens said that all of the minimum cash shortage had been corrected apart from £10,000.00 relating to an incorrect transfer. Mr Gittens did not provide documentary evidence of this.

50. The minimum cash shortage arose as a consequence of:

(i)	Unallocated client to office transfers -	£ 9,364.68
(ii)	Incorrect transfers -	£11,500.00
(iii)	Debit balances -	£ 9,826.48
(iv)	Undue delay in banking clients' funds -	£ 2,000.00 (£32,691.16)
(v)	Book difference – surplus	£ 11.59
	Shortage	£32,679.57

51. Mr Gittens's cashier told the FIO that a total of £9,364.68 represented transfers made from client to office bank account, when neither a transfer slip providing a breakdown of the transfer had been provided to her, or the details were available but no funds stood to the credit of the relevant account within the client's ledger against which the transfers could be allocated.

52. Client bank account had been incorrectly charged with two transfers from client to office bank account on 7th March 2003 in the sum of £10,000 and on 28th April 2003 in the sum of £1,500. In connection with the transfer of £10,000 on 7th March 2003 the Respondent accepted that the £10,000 incorrectly transferred would have to be rectified, but he had failed to do so.

53. As at 30th April 2003 two accounts within the client's ledger existed from which payments had been made in excess of the funds properly available. In the matter of F deceased there was a debit balance of £8,492.73 and in the matter of Mr NH there was a debit balance of £1,335.75.

54. The relevant accounts within the client's ledger relating to both matters were not shown as being overdrawn, as entries had been made which indicated that funds had been transferred from office to client account to ensure that sufficient funds were available. In both cases no physical transfer of funds had taken place.

55. The FIO ascertained that the situation as at 30th April 2003 was not unique. The FIO considered the monthly reconciliations for the preceding 12 months which showed that at the end of each month in the period April 2002 to March 2003 there was a cash shortage, in varying amounts, in respect of clients' funds. The month end shortages ranged from £4,232 to £36,170.

56. On 4th June 2003 the FIO interviewed the Respondent and raised the monthly shortages with him. The defendant's response had been:

"It was a shambles before, it is not as big a shambles now. There are still a lot of problems and I try to sort them out. I wish I could click my fingers and everything would be right immediately. It is my fault, I don't blame anyone else. I don't abrogate any responsibility for it. I might be trying to put it right, but I can't do it overnight."

57. During the course of his inspection the FIO examined a number of probate files. He was concerned about the extent of the charges made by the Respondent for work that had been undertaken on those files. The files of S deceased and B deceased and others were provided to Mr N Shelley of Bennett and Shelley, Costs Draftsmen, for him to consider them and provide an opinion on the level of charges raised by the Respondent. A copy of Mr Shelley's Report dated 26th April 2004 was before the Tribunal and Mr Shelley gave oral evidence. Mr Shelley considered five client matters, and reported as follows:-

58. In B deceased, Mr Shelley's opinion was,
"The amount charged in the Solicitor's final bill was £3,170.20, which was thus 7% more than the maximum reasonable amount. To put it another way, the charges exceed the maximum reasonable amount by £458. This overcharge is more than nominal, but, in the absence of any aggravating features, I will be surprised to see an overcharge of this level receiving the attention of a forensic investigation."

He also said in connection with the Respondent's billing practice,
"Assuming that the file and ledger can be relied upon as an accurate account of the costs charged to the estate, whether by way of interim bills or as a final account against which a substantial refund has been given, the situation is disturbing. While there was only a modest overcharge on the final bill, the solicitor took at least £9,000 on account where the final bill was not much more than one third of that total. Indeed, the final ledger suggest that the total taken on account was in excess of £18,000."

59. In R deceased, Mr Shelley's opinion was,
"The amount charged to date is £3,398.75, which was thus 143% more than the maximum reasonable amount. To put it another way, the charges exceeded the maximum reasonable amount by £2,002.25. In percentage terms, this is a very substantial overcharge."

He also said with regard to the billing practice,
"Substantial costs were deducted from the estate in interim bills over three months. No final bill was prepared. The level of activity on the file was extremely modest. These charges represent a substantial overcharge if included in a final bill. Furthermore, the costs are 30% of the value of the estate, although most of the assets were in two accounts at a single bank."

60. In the related matters of RF deceased, SF deceased and DC deceased, Mr Shelley expressed the following opinions:-

RF deceased
"The amount charged to date is either £3,000 or £3,913.99. If £3,000, this was 25% more than the maximum reasonable amount. The charges exceed the maximum reasonable amount by £600. If £3,913.99, this was 63% more than the maximum reasonable amount. The charges exceed the maximum reasonable amount by £1,513.99."

SF deceased and DC deceased
"The amount charged to date is £2,500. This was 60% more than the maximum reasonable amount. The charges exceed the maximum reasonable amount by £934."

Mr Shelley's opinion on the billing practice in these three matters was,
"The early bills (five in RF and one in SF) are the result of careful and fair calculations. Those bills were replaced (or in RF, apparently 'overlooked') by later bills for round sums which exceed the value of the work done. There is no indication how the solicitor arrived at the figures for these bills, and their issue demands further explanation."

61. In HeH deceased & HiH deceased, Mr Shelley's respective opinions were that,

"The amount charged to date is £3,485.93. This was more than my basic assessment, but slightly less than the "maximum reasonable amount" after allowing 20% tolerance."

"The amount charged to date is £5,496.08. This was 422% of the maximum reasonable amount. To put it another way, the charges exceeded the maximum reasonable amount by £4,443."

With regard to the billing practice in these two matters Mr Shelley expressed the following opinion:

"The billing on HeH's estate, though following an unusual pattern, was not inappropriate in my opinion. However, even if the solicitor was of the opinion that some of the work dealing with the Trust tax liability was attributable to HiH's estate, there is nothing on the file to suggest that he could reasonably have assessed costs at this level on the basis of the papers before me."

62. In the matter of Mr S, Mr Shelley's opinion as to the Respondent's charges and billing practice were:

"Bill 2001/1110 dated 10th December 2001, read together with the covering letter, states that the total charges were £14,461.20. That was 50% more than the maximum reasonable amount. To put it another way, those charges exceed the maximum reasonable amount by £4,980. In reality, as we shall see below, the total charged must have substantially exceeded that total." And

"There were many issues with the way that the file has been billed, which, for the sake of brevity, can be summarised in the following way. Some bills duplicate earlier bills. Many are issued soon after (sometimes issued simultaneously with) earlier bills. Many bills are not placed on the file. The bills and covering letters gave the clients

(Mr S and then his executor) information which was materially misleading about the solicitor's charges."

63. Mr Shelley reported generally that:

"nearly all the concerns about costs issues which emerged in this investigation, such as overcharging, unusual billing, deduction of excessive costs "on account", and exceptionally large refunds occur in all the matters. Other concerns which were relevant to costing, but which were not primarily costs issues, such as misleading costs records and doubts about the value of the work in the light of standards of practice arose principally in Mr S and to a lesser extent in RF, SF and DC."

64. From his own review of certain of the client matter files, the second FIO ascertained,

(i) The estate accounts in relation to the estate of RF showed that the proceeds from the realisation of RF deceased's assets, amounted to £21,483.02. Liabilities and expenditure, to include, £3,525.00 inclusive of VAT in respect of the Respondent's costs, totalled £5,103.26 leaving an amount of £16,379.76 due to Mrs SF.

(ii) The relevant file contained the combined estate accounts for DC and SF. Such accounts showed that DC's only asset at the date of death was the amount due to her from the estate of SF. SF's only asset was £16,379.76, due to her from the estate of her son, RF. Liabilities and expenditure, including a sum of £2,937.50 in relation to the Respondent's costs totalled £5,056.10, leaving an amount of £11,323.66 due to the beneficiaries of the late DC.

(iii) A client ledger printout was available which related to the distribution of the money due to the beneficiaries of DC. The distribution of the estate took place in November and December 2002 when four client account cheques were raised in favour of the beneficiaries. At the time of the distribution of the estate in 2002, no funds stood to the credit of the client ledger account maintained in the name of SF. In order for the distribution to take place, without giving rise to a debit balance on the client ledger account, it was necessary for funds to be introduced from the Respondent's bank account. The client ledger account recorded two transfers made from office to client bank account, £2,830.92 on 29th November 2002 and £8,492.73 on 2nd December 2002, totalling £11,323.65. The client ledger account for SF showed that prior to the transfers from office to client bank account on 29th November 2002 nil balances existed on both the office and client sides of the ledgers. The transfer on 29th November 2002 created a debit balance on the office side of the ledger, which was cancelled out by the posting of a credit note for an equivalent amount. The transfer on 2nd December 2002 created a debit balance on the office side of the ledger, which remained the position as at the date of the inspection.

(iv) The Respondent acted in connection with all three estates and the monies to have been distributed to the beneficiaries of DC should have been held on client account at all times, following the realisation of the assets of RF. The Respondent told the FIO that he could not remember what had happened to the

£16,379.76 due to SF from her son's estate. The Respondent did confirm that in relation to DC's estate, the only estate asset was the amount due to SF, so that £16,379.76 should have been retained on client account as it had not been paid out. The Respondent had not been able to explain why it had been necessary to introduce funds from office account when distributing the net proceeds to DC's beneficiaries.

65. Concerning HeH deceased, in addition to the matters raised by Mr Shelley in his Report the FIO's own examination of the relevant client matter file revealed additional matters of concern. On the following dates client to office bank account transfers took place, when no bills of costs had been raised at the time the transfers were made:-

(a) 25th October 2002 - £1,762.50
(b) 25th October 2002 - £3,525.00
(c) 28th October 2002 - £2,350.00

66 The combined effect of transferring the above sums was to create a credit balance on the office side of the ledger of £7,637.50 as at 28th October 2002. On the 29th October 2002 two bills of costs were posted to the office side of the ledger, which had the effect of eliminating the credit balance. The first bill was in the sum of £5,875.00 inclusive of VAT, the second bill being in the sum of £1,762.50 inclusive of VAT. The Respondent when asked about this matter said he would have to check the position but that it appeared that the matter had been billed for over £6,500.

67. By letter dated the 31st October 2002 the Respondent wrote to Mrs W indicating that he retained £13,000 from sale proceeds to distribute in accordance with HeH's will and to pay any tax outstanding. Following the interim payment the Respondent retained only £4,017.12 in client account.

On the 10th March 2003 the Respondent wrote again to Mrs W and said:

"However, once the cost and commission had been deducted the actual amount received by ourselves was £6,974.21. We have retained an additional sum of £1,500.00 plus VAT to cover our costs and make payments due to the Inland Revenue in respect of your late mother's estate."

At the date the letter was written the Respondent held £285.68 on client account.

68. By letter dated 19th April 2002, The Law Society wrote to the Respondent enclosing a copy of the first FIO's Report seeking his explanation. The letter asked the Respondent to advise whether or not he had investigated the circumstances surrounding the 24th January 2000 cheque for £5,000 drawn on Mr S's bank account.

69. The Respondent replied by letter dated 24th April 2002 saying:

"With regard to the cheque for £5,000, I enclose for your attention correspondence I have entered into with Lloyds TSB. I am still awaiting a letter from them to confirm to which account this cheque was presented. I will provide this information to you as soon as possible."

70. In a letter to Lloyd's bank plc dated 17th April 2002, the Respondent said:

"we note that you enclosed a copy of a cheque debited on 24th January 2000. Unfortunately we can find no record as to where this cheque was paid although it was paid to ourselves". He sought further information.

71. The Law Society wrote to the Respondent by letter dated 30th July 2002 requesting copies of further correspondence between the Respondent and his bank in relation to the cheque for £5,000. The Respondent was asked to advise on the outcome of his enquiries as regards the cheque.

72. The Respondent replied by letter dated 27th August 2002. In connection with the cheque for £5,000 the Respondent said this:

"I am still making enquiries with both Lloyds Bank TSB plc and National Westminster Bank plc. In the last few weeks I have spoken to a representative of the National Westminster Bank plc who has requested information from me concerning cheque numbers etc, which I will be providing to them in the hope that this cheque can be traced. When I have this information I will be more than willing to provide it to you."

73. By letter dated 11th September 2002 The Law Society wrote to the Respondent requesting further information. The Respondent replied by letter dated 18th September 2002. The Respondent enclosed with that letter a copy of a letter to the National Westminster Bank dated 15th May 2002. In his letter dated 18th September 2002 the Respondent stated, "I am still in correspondence with the bank concerning this matter… again this matter has not been resolved to my satisfaction and I am still pursuing the matter."

74. By letter dated 14th November 2002 The Law Society wrote to the Respondent informing him that the matter was to be referred for adjudication. The Respondent replied by letter dated 28th November 2002. In connection with the cheque for £5,000 he said this, "I am still in correspondence with both Lloyds TSB and Nat West concerning this particular cheque."

75. No further correspondence relevant to this matter was received from the Respondent following his letter of 28th November 2002.

76. During the course of the second FIO's inspection, the FIO noted that the Respondent had written to National Westminster Bank plc on 24th January 2003 (not 2004 as shown in the FIO's Report at paragraph 62) requesting inter alia, that the Bank check their records to ascertain whether the cheque for £5,000 had been paid into either of the two general client bank accounts maintained by him with them. By letter dated 30th January 2003 National Westminster Bank replied to the Respondent stating: "upon checking our records we can find no trace of this item being applied to either account."

77. The Respondent had received a copy of the paid cheque from Lloyds TSB on 22nd January 2002 which clearly showed the payee to be Mr M Gittens. The Respondent

did not provide a copy of the paid cheque to The Law Society during the exchange of correspondence, nor at any stage did he expressly state that the cheque was payable to him.

The Submissions of the Applicant

78. The Applicant did put the matters alleged against the Respondent as conduct unbefitting a solicitor. He did not make an allegation that the Respondent had been dishonest. However the Tribunal was invited to take the view that the unbefitting conduct fell into the most serious category. There were many and varied complaints about the Respondent's conduct. In behaving as he did the Respondent fell below the high standards expected of members of the solicitors' profession and he had not exhibited the qualities expected of a solicitor as defined in the case of Bolton v Law Society, namely integrity, probity and trustworthiness.

79. It was, of course, to the Respondent's credit that he admitted a number of the allegations made against him.

The Submissions of the Respondent (contained in his aforementioned letter of the 12th January 2005)

80. The Respondent had suffered from depression for several years and had been unable to work for a number of months.

81. The Respondent had notified the allegations which he admitted.

82. All of the shortages referred to in the FIO's Reports had been made good. The Respondent was unable to offer any explanation. The Respondent had over the past five years had time off work for ill-health. The sum of £8,000 referred to had been "paid back".

83. The Respondent accepted that overpayments had been made but they were made in error and had been corrected. In one case a transfer had been made twice in error.

84. The Respondent had not been aware that he could not continue to act as attorney after the donor's death. The Respondent apologised for that mistake.

85. Prior to his death, all bills were hand delivered to Mr S. He was blind and resided at a home for the blind. Mr S specifically asked that bills should not be sent through the post because he did not want other people to know his business. They were hand delivered, read to him, agreed and left with him.

86. There was a file on which copy bills were placed. This could not be located at the time of the FIO's visit. Subsequently that file was found. The Respondent denied that bills were not delivered.

87. The Respondent had not been able to explain the overpayments referred to in the Report of the first FIO.

88. The Respondent had not himself been involved in conveyancing but accepted that he had not sufficiently carefully checked the work of others.

89. The Respondent confirmed that he did not dispute Mr Shelley's findings. The Respondent denied that letters written to The Law Society by him were misleading and/ or inaccurate and also denied that he had written letters to clients and/ or third parties which were misleading and/ or inaccurate. The Respondent said that he told The Law Society and clients what he believed to be true.

The Tribunal's Findings

90. The Tribunal found the disputed allegations (v), (vi), (xii), (xiii), (xv) and (xvi) to have been substantiated. The Tribunal accepted the evidence of the two FIOs and Mr Shelley, the costs draftsman. Although the Respondent had made denials, he had not provided any evidence to support his position.

91. The Tribunal also found the allegations admitted by the Respondent to have been substantiated.

The Tribunal's Decision and its Reasons

92. The Tribunal took into account that the Applicant made no allegation of dishonesty against the Respondent. The Respondent had, however, been guilty of a serious degree of mismanagement and appeared to have conducted his practice whilst ignoring the requirement for full compliance with the Solicitors Accounts Rules. The Tribunal has given the Respondent credit for the fact that he did make some effort to put matters right. However the Tribunal could not overlook the fact that the Respondent's books of account and his management of clients' monies did not comply with the requirements of the Solicitors Accounts Rules when the second FIO's inspection took place.

93. The Tribunal does take a serious view of the fact that book entries had been made where there was no equivalent physical transfer of funds. That meant that the books did not on their face show the true position.

94. The Tribunal was very concerned about the Respondent's overcharging as reported by Mr Shelley, the costs draftsman, with whose report the Respondent confirmed he did not take issue.

95. The deficiencies on client account identified in monthly reconciliations meant that the Respondent had transferred money from client to office account when he should not have done so and the overall effect of that was that he was using clients' money for his own purposes, either to reduce his office account overdraft or to enhance any credit balance on that account. Where payments out had been made on behalf of a client where there were insufficient funds in that client's account to meet the payment, it was the inevitable outcome that other clients' money was being used for that under-resourced client.

96. There was no report before the Tribunal that any clients or members of the public had suffered, however the shambolic state of affairs could well have meant that the

public's money was placed at risk and the fact that the Respondent was not exercising a proper stewardship over clients' monies could only damage the good reputation of the solicitors' profession.

97. The Tribunal was compelled to conclude that the Respondent had not only not failed to exercise a proper stewardship of clients' funds but that in his dealings with his clients' affairs, both financial and otherwise, and in his dealings with The Law Society he had not at all times exercised the integrity, probity and trustworthiness required of a member of the Solicitors' profession.

98. The Tribunal concluded that it would be right and proportionate both in order to protect the public and the good reputation of the Solicitors' profession to order that the Respondent be struck off the Roll of Solicitors. It would further be right that the Respondent pay the costs of and incidental to the application and enquiry, such costs to include the costs of the FIOs and the costs draftsman, all such costs to be subject to a detailed assessment if not agreed between the parties.

DATED this 21st day of September 2005
on behalf of the Tribunal

R B Banford
Chairman