No. 8979-2004

IN THE MATTER OF PAUL FREDERICK STANDISH BROOKS and DAVID RICHARDSON, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr A G Gibson
Mr G Fisher

Date of Hearing: 9th September 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the then Office for the Supervision of Solicitors ("OSS") on 2nd February 2004 by David Elwyn Barton Solicitor Advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE that Paul Frederick Standish Brooks then of Prestbury, Cheshire (now of Macclesfield, Cheshire) and David Richardson of Stockport, Cheshire, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondents were as follows:-

(a) Against Mr Brooks (the First Respondent) that he had been guilty of conduct unbefitting a solicitor in each of the following respects:-

(1) He improperly utilized clients' money for his own purposes, and did so dishonestly;

(2) With the intention of misleading Clive Howland, a Senior Investigation Officer employed by the OSS, he produced false and misleading information concerning client account. In this respect the First Respondent was dishonest.

(b) Against both the First Respondent and Mr Richardson (the Second Respondent) that they had been guilty of conduct unbefitting a solicitor in each of the following respects:-

(3) They acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors Accounts Rules 1998) they drew from clients account monies other than in accordance with the said Rules and utilized the same for their own benefit;

(4) They failed to keep properly written up books of account to show their dealings with client money, contrary to Rule 11(1)(a) of the Solicitors Accounts Rules 1991 (Rule 32(1) of the 1998 Rules).

(5) They failed to keep properly written up books of account to show the current balance on each client's ledger, contrary to Rule 11(1)(c) of the said Rules (Rule 32(5) of the 1998 Rules);

(6) They failed to pay client money into a client account, contrary to Rule 3 of the said 1991 Rules and Rule 15(1) of the 1998 Rules.

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th September 2004 when David Elwyn Barton appeared as the Applicant and the Respondents appeared in person.

The evidence before the Tribunal included the admissions of both Respondents to allegations (3) to (6) but the denial by the First Respondent of allegations (1) and (2). The Tribunal heard oral evidence from Mr Clive Howland, a Senior Investigation Officer and from the Second Respondent.

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

The Tribunal order that the Respondent Paul Frederick Standish Brooks of Macclesfield, Cheshire, (former of Prestbury, Cheshire), solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

The Tribunal order that the Respondent David Richardson of Stockport, Cheshire, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 9th day of September 2004.

The Tribunal further order that he do pay a fine of £10,000, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal further order that upon termination of the period of suspension he is not to practise save in employment approved by the Law Society.

The Tribunal further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.

The facts are set out in paragraphs 1 to 34 hereunder:-

1. The First Respondent, born in 1935, was admitted as a solicitor in 1960. The Second Respondent was admitted as a solicitor in 1961. The names of both Respondents remained on the Roll of solicitors.

2. At all material times the Respondents were carrying on practice in partnership under the style of Standish and Co of Canada House, 3 Chepstow Street, Manchester, M1 3HJ.

3. On 26th February 2001, Mr Clive Howland, then an Investigation and Compliance Officer, now a Senior Investigation Officer employed by the OSS, commenced an inspection of the Respondents' practice papers and books of account. He first attended the Respondents' offices on 26th February 2001, and attended again with Mr DG, a Senior Investigation Officer, from 27th to 30th March 2001. The Respondents were interviewed on 2nd April 2001 by both DG and Mr Howland following which Mr Howland prepared his report dated 11th April 2001 ("the first report"). There followed from this an intervention into the Respondents' practice, effected on 15th June 2001. Thereafter, both Mr Howland and DG conducted further investigations into the Respondents' practice papers at the request of the Law Society's intervention agents, Messrs Turner Parkinson. The investigations were made the subject of DG's report dated 20th June 2001 ("the second report"). Copies of Mr Howland's and DG's reports were before the Tribunal.

Allegations (3) to (6)

4. The first report indicated that the Respondents' practice consisted mostly of personal injury work, with some conveyancing work handled by the Second Respondent. The quantity of conveyancing work was low and at the date of the inspection there were client liabilities on only six matters. The firm also undertook debt recovery work which was referred to in the introduction to the first report as "diminishing".

5. The First Respondent indicated that personal injury work was referred to the practice by a company called Insurance Claims Assistance Limited ("ICA"). The company operated out of the same office as the Respondents.

6. In relation to the personal injury work, Mr Howland's inspection concluded that the firm was acting for the individual claimants, notwithstanding the First Respondent's assertion that the client was ICA. The files did not reveal any legal work conducted by the firm on behalf of ICA. Settlement money for those individuals was received and banked by Standish and Co and then paid to the individuals concerned at a later date.

7. The first report set out details of the various office and client accounts maintained by the firm. At the date of the inspection the Number 1 Office and the Business Term Loan Accounts were substantially in debit. The balance on client account at the date of the report was small given the substantial number of personal injury claims the firm was handling (600 to 700).

8. The first report described three general client accounts, numbers 1, 2 and 3. The report noted that:-

> "The partners have treated No 3 Client Account, which was maintained for Personal Injury matters, as a Business Account and at 6th March 2001 the statement for that account showed that the designation of the account was changed to ICA No 3 Account."

Monies paid into No 3 Account comprised both client and office, and monies withdrawn were not withdrawn in compliance with the relevant Rules.

9. In a letter dated 25th May 2001 to the OSS the Respondents wrote:-

> "Rule 14 - Client Accounts
>
> Where such monies are identified as client monies they are paid into a client account, where a client account is identified as such.
>
> Rule 19 - Receipt and Transfer of Costs
>
> This has been the source of our problem in determining the composition of any payments received but where we have been able to bring our accounting up to date we have complied with this rule. However, since were are acting on the basis that the client is not responsible for any costs or disbursements to some extent this rule does not apply."

10. The first report noted that the books of account were not in compliance with the Solicitors Accounts Rules.

11. For the six to seven hundred personal injury matters then being handled, no individual client ledgers had been maintained. In addition, no record of total money held for clients on these matters was kept.

12. No current information had been provided of client money held for debt recovery matters, for which Client No 1 Account was maintained. The First Respondent explained that they use the services of Colsys Ltd, a software company that provided collection systems for debt recovery and the client balance reports were normally produced on a yearly basis, the last being 30th June 2000 (see paragraph 29 below). Mr Howland asked for a report as at 31st January 2001 but none had been provided as at the date of the report. Colsys Ltd also operated out of the same premises as Standish & Co.

13. Due to the above, it was not practicable to compute the firm's total liabilities to clients. However, Mr Howland was able to establish certain minimum liabilities and this revealed a minimum cash shortage of £126,172.88.

Action taken by the partners

14. On 2nd April 2001, Mr Howland provided the partners with copies of the minimum cash shortage calculations and supporting schedules. The Second Respondent made no comment. The First Respondent did not agree with the position stated and he said that he needed to clarify the position for the partners themselves. The First Respondent said that no money had been put into the client accounts by way of replacement.

15. DG asked the partners if they were in a position to replace the shortage. The First Respondent explained that Colsys Ltd, a company owned on a family trust basis, could make a contribution if needed, but he added that he did not think a contribution was needed.

16. As at the date of the report there had been no replacement of the shortage.

17. Mr Howland described in the first report two factors which he believed significantly contributed to the cause of the minimum shortage. Firstly there were a series of transfers from client to office account, and secondly he identified the payment of settlement money on three personal injury cases from client account, when the money had in fact been previously credited directly to office account.

(i) Transfers from Client to Office Bank Account - £115,475

18. During the period 1st February 2000 to 31st January 2001 twenty transfers ranging from £500 to £16,000 and totalling £115,475 were made from Client No 3 Bank Account to Office Bank Account. The First Respondent explained that these transfers represented global transfers of costs that he believed the firm was entitled to, based on weekly 'production figures' that he received for all of the business conducted by the firm.

19. Mr Howland asked whether there had been double counting to the effect that costs were transferred twice. The First Respondent said that there would be no double counting as the firm did not make individual transfers of costs on personal injury matters. Mr Howland noted however, that transfers in addition to the above and amounting to at least £13,290.51 had been made in respect of individual Bills of Costs.

20. Several of the files reviewed also showed that cheques received from third party insurers in respect of costs and disbursements had been paid directly into Office Account.

21. No evidence was provided of any transfers from Office to Client Bank Account prior to 31st January 2001 in reverse of the above.

(ii) Settlement monies paid from Client Bank Account but funds originally lodged in Office Bank Account - £6,737.47

22. Three personal injury client matters were examined where the client settlement money totalling £6,737.47 had been lodged in Office Bank Account during November 2000. In each case, the settlement monies for the client were then paid from Client No 3 Bank Account and not the Office Bank Account.

23. No evidence was provided to show that transfers from Office to Client Bank Account had been made to correct these matters.

Accountant's Report for the year ended 30th June 2000

24. The partners' Accountant's Report for the year ended 30th June 2000 signed by DJ Frangleton, a chartered accountant, showed differences of only £57 and £15 at 31st January 2000 and 30th June 2000 respectively.

25. In addition, the Reporting Accountant's checklist showed only one area where test checks proved unsatisfactory in that clients' money had not been paid into a client account.

26. On 9th May 2001 the OSS wrote to both Respondents to request their explanations of the matters raised by the first report. On 17th May 2001 the Respondents submitted a joint explanation. The documents submitted by the Respondents revealed that the firm was indeed acting as solicitors for individual claimants, and not ICA, in connection with their accident claims. All their obligations under the Solicitors Accounts Rules accordingly applied to monies received in respect of such clients.

27. In the letter from the Respondents dated 25th May 2001 they said that they "are introducing a card system which will be available very shortly, and in the meantime we are bringing up to date as quickly as we can the areas in our accounting which we admit. We have extended our accounts office and introduced further staff to this effect."

Allegations (1) and (2)

28. The intervention into the Respondents' practice referred to at paragraph 3 above followed a consideration of the first report in which Mr Howland had identified a minimum cash shortage of £126,172.88. The second report noted that the Intervention Agent had identified potential irregularities with the firm's debt recovery work to the effect that the debts recovered by the firm on behalf of certain clients had not been accounted for and that this had been the practice for a considerable time.

29. The First Respondent had produced to Mr Howland during the first inspection two pages said by the First Respondent to list the clients for whom the firm acted in debt recovery work and the balances due as at 30th June 2000. A reconciliation of the

client account used by the firm for its debt collecting work had been obtained from the bookkeeper during the first two days of the inspection. According to the matter listing and reconciliation the firm owed its debt collecting clients the sum of £2,455.25.

30. The Intervention Agent informed the Investigating Officers that within the debt recovery department of the firm he had found a considerable number of monthly debt recovery statements and invoices which detailed how much had been collected on behalf of individual clients and the firm's charges. The Intervention Agent said that he understood that these were intended to accompany cheques sent by the firm to the client and that he had also found unused envelopes addressed to the clients with the debt recovery statements. He said that he had been informed that the presence of the statements indicated that the cheque had not been sent to the client. During the intervention the Intervention Agent totalled the value of the sums due to the client as recorded on the monthly debt recovery statements which had apparently not been sent to the client concerned. The total sum was £871,109.91.

31. Mr Howland was present during an interview with Mr DC who had been the manager of the Respondents' debt recovery department. A copy of DC's statement was before the Tribunal.

32. In summary, DC stated that he had been employed by the Respondents since 1974. He stated that it was the practice until 1992 for cheques received from debtors to be paid into the Number 1 Client Account, and that details of the payment would be submitted to Colsys Limited, a separate company that maintained computer records on behalf of the Respondents. The usual practice had been that each month Colsys Limited would provide the firm with a statement setting out what was due to each client, and how much the firm could charge for its services. This would enable the Respondents properly to account to their clients.

33. However, according to DC, in 1992 the First Respondent instructed him not to send out cheques to clients unless specifically authorised by him to do so. DC gave the Investigation Officer details of those clients who were thereafter sent statements and cheques, and those who were not. DC's estimate of the sum due to such clients was approximately £1million.

34. The most recent statement for No 1 Client Account used for debt recovery matters showed a credit balance of £9,456.49 as at 6th June 2001. It was not possible for the Investigating Officers to establish the destination of the funds received into No 1 Client Account in respect of the debt recovery clients who did not appear to have received sums recovered.

The submissions of the Applicant

35. The admitted breaches of the Accounts Rules were serious.

36. In relation to allegation (2) the purported lists of clients for whom the firm acted in debt recovery given by the First Respondent to Mr Howland during the first

inspection was materially inaccurate and was produced to Mr Howland to mislead him.

37. In relation to allegation (1) there was nothing approaching the sums owed to debt recovery clients in the No 1 Client Account which the firm traditionally used for debt recovery work. The only reasonable conclusion to be drawn from an assessment of the facts was that the money had been misappropriated by the First Respondent.

The oral evidence of Mr Howland

38. In relation to the first report Mr Howland had dealt principally with the First Respondent who had appeared to be the senior partner and in control of the practice and of the financial state of the firm. The Second Respondent appeared to have no idea what was happening with the various bank accounts.

39. Mr Howland referred the Tribunal to his notes of the initial interview with the First Respondent and briefly with the Second Respondent to provide the context to the report. In particular the First Respondent referred to debt recovery as having "died out" and described the work of the firm as conveyancing (the Second Respondent) and personal injury (the First Respondent).

40. In relation to the firm's bookkeeping system the First Respondent referred to the Second Respondent's work as having a manual system and debt recovery work as having a computer bureau printout system but did not refer to any system for personal injury work. The First Respondent confirmed that he had overall responsibility and control over the accounting records. He said that the books were "pretty well" up to date and that there were no debit balances on client account. Asked if the partners were familiar with the requirements of the Solicitors Accounts Rules the First Respondent said that he relied on advice from his accountant.

41. Asked if there were any office loan accounts, the First Respondent said "none". Mr Howland however later found that a business loan account did exist and that as at 31st January 2001 it was £256,000 in debit. The First Respondent had also referred to a "static overdraft" on the No 1 Office Account but did not indicate that that overdraft was in the region of £157,000.

42. In a letter dated 21st February 2001 to the OSS the First Respondent had written:-

> "We were engaged in debt recovery but we have abandoned that field because of the corruption which is involved and with which we do not wish to become in any way associated."

43. Mr Howland then gave evidence in relation to the three types of work within the firm, namely debt recovery, conveyancing and personal injury.

Debt recovery

44. On the face of it Client Account No 1 was used for debt recovery. Mr Howland had asked the First Respondent several times for client balances and liabilities in relation to debt recovery as at the end of January 2001. The list of client balances as at the end of June 2000 (see paragraph 29 above) was the only information the First Respondent provided. This was also the date of the last Accountant's Report to the Law Society. On the basis of the documents provided Mr Howland had noticed a difference of only £15.55, similar to that identified in the last Accountant's Report. Given the First Respondent's comments regarding debt recovery both in the letter of 21st February 2001 and at interview Mr Howland had taken the view that he could put investigation into the debt recovery work on hold. There had been no reason to assume that the figures on the list provided by the First Respondent would have increased. Mr Howland had taken the documents at face value and had had no reason to dispute them given that they linked into the firm's reconciliation.

45. The Tribunal was referred to the First Respondent's comment in the final interview that in relation to debt collection, printouts were normally on a yearly basis. This would be relevant to the findings in the second report.

46. In relation to Colsys Ltd, in the letter of 17th May 2001 the First Respondent had denied that he or any other member of the firm had a personal interest in Colsys Ltd and said he was not sure what was implied by the OSS question in relation to family interests. In interview however the First Respondent agreed that he was a signatory for Colsys cheques. Mr Howland had also established that one of the two directors of Colsys, who was also the company's secretary, was a Mrs SL which was also the name of the Respondents' bookkeeper. The First Respondent had also said that the software company (ie Colsys) could make a contribution to the shortage if needed. Mr Howland therefore concluded that the reference to Colsys being a family trust had been a reference to the First Respondent's family.

47. Mr Howland had never been provided with information from Colsys save for an unusable computer disc. The subsequent discovery in relation to debt recovery had been made by the Intervention Agent from documents held in the firm, apparently in a pile on the floor in a room which Mr Howland had had no reason to enter. Given the First Respondent's statements he had had no reason to suspect such documents existed.

48. On the second visit Mr Howland had seen a substantial number of printouts done by Colsys showing how much had been collected for financial institution clients and the deduction for the firm's services. Mr Howland referred the Tribunal to the invoices in relation to Lloyds TSB which showed the monies owed by the firm to Lloyds where no cheques had been sent off. Mr Howland had reviewed the cheque stubs for a 17 month period ending in May 2001. During that period there had not been a single payment to Lloyds although it included the period covered by the exhibited invoices.

49. What Mr Howland was shown in the second inspection flew in the face of what he had been told on the initial inspection.

50. On the second inspection he also saw monthly and weekly statements, not annual as the First Respondent had said (paragraph 50 above). The money was being collected but there was no evidence that it was being forwarded to clients.

51. If the client account had been properly maintained and ledgers kept for debt recovery, Mr Howland would have seen this.

Conveyancing

52. The ledger balances on Client No 2 Account as at 31st January 2001 showed six conveyancing matters on which the firm held money in a total of £10,740.41.

53. Mr Howland gave detailed evidence relating to a suspense ledger and its relation to the conveyancing ledgers through inter-account transfers. Mr Howland believed that the firm through its online banking facility watched for cheques it had written which were due to bounce and made inter-account transfers accordingly. The precision of certain balances led Mr Howland to believe that the transfers were all done in real time.

54. Mr Howland in his evidence took the Tribunal through a sequence of inter-account transfers designed in his view to prevent cheques from bouncing culminating in the matter of Client G. At the end of the series of transfers there were insufficient funds for completion in the matter of G by the sum of £9,500, being the amount originally received in this matter by way of deposit. In the matter of Client G, Mr Howland noted that a cheque for £9,500 had been lodged in Client Account No 2 to allow the matter to complete on 2nd February 2001. The suspense account ledger showed that a cheque from Colsys in that sum had been credited on 1st February 2001. The First Respondent had agreed that without the Colsys cheque the matter of G could not have completed.

Personal injury work

55. The First Respondent had told Mr Howland that his client was ICA rather than individuals and as such he did not have to nor had he adhered to any of the Solicitors Accounts Rules. He had agreed that the No 3 Account was used as a pool, a business account. On 2nd April 2001 the First Respondent had reiterated that "it was only the Solicitors Accounts Rules which say there is a problem".

56. The files however had clearly showed that the firm acted for individuals and there was no evidence of work for ICA.

57. Although in his letter of 17th May 2001 the First Respondent had said that the firm did not pay for personal injury claims in the final interview he had said that ICA was paid an amount per case:-

> "Some I pay £100 as an introduction fee, some are £300. Perhaps I should call it a referral fee."

58. There were no individual client ledgers and the First Respondent could not give figures for how much money was held. Mr Howland had reviewed 32 of the files and had found liabilities on 30 totalling in excess of £106,000.

59. In relation to the shortage on client funds the First Respondent had never agreed that there was a shortage. He always argued that he had paid clients. Mr Howland had told him however that had all clients demanded their money at once he could not have paid. The First Respondent had agreed that a two month delay in paying personal injury clients their funds was not abnormal. By way of example Mr Howland referred the Tribunal to the matter of Client D where £8,500 of damages had been banked in client account on 29th November 2000 (Applicant's bundle page 173). A notification schedule with a "payout date" of 28th November 2000 had a narrative indicating that the sum had been paid to the client in full and final settlement. A Memorandum of 7th February 2001 indicated that Client D was chasing for payment of £8,500. A cheque stub to Client D for that sum had the date of 23rd February 2001 which Mr Howland had noted was a date written over Tipp-ex. A letter (page 176) marked "date as postmark" enclosed the cheque to Client D.

60. The Tribunal was referred to a cheque for damages from an insurance company made out to Client W in the sum of £7,000. The cheque was crossed "account payee only" and should have been forwarded to the client but in fact was paid into client bank account. It had appeared to Mr Howland throughout the file review that damages cheques were paid into the firm's bank account no matter to whom they were made payable. A further cheque in respect of the same client but made payable to the firm had been banked into Office No 3 Account.

61. In cross-examination Mr Howland confirmed that he had been provided with facilities by the firm during the inspection and appeared to have been provided with information although in retrospect he had not been given complete information.

62. Mr Howland said that the First Respondent had regularly referred to the inter-account transfers between the suspense account and the conveyancing ledgers as errors. Mr Howland referred however to a credit entry in the sum of £13,000 from Client No 3 Account into Office No 3 Account. The First Respondent had agreed in interview that without this transfer the firm's salary cheques would have bounced. There were other similar examples and Mr Howland was therefore unsure what the First Respondent meant by referring to the transfers as errors.

63. Mr Howland explained his method of taking interview notes to ensure that paraphrases were fair representations of what had been said and that he clearly indicated where he was using a direct quotation.

64. Mr Howland expressed the view that the Second Respondent had "cocooned" himself in his own area of work and had looked at nothing else. The Second Respondent had been equally authorised to operate the accounts with the First Respondent but nothing indicated that the Second Respondent had been involved in any of the transfers referred to in Mr Howland's evidence.

65. Mr Howland confirmed in response to questions from the Tribunal that there were no bills relating to the global transfers which the First Respondent had said were based upon weekly production figures.

66. It was still not known where the unaccounted for debt recovery funds were. Because of the frequency of the transfers between accounts it had been impossible to determine the correct amount of money on office account. There had been a circular movement of money and it appeared that too much had gone from client to office account. Mr Howland had had no contact with the various institutions to which it appeared recovered monies had not been sent, including LloydsTSB. There was no evidence of any cheques being sent to LloydsTSB. DC had said that he had been instructed by the First Respondent at an early stage only to pay clients who were asking for their money and only when specifically authorised by the First Respondent.

The submissions of the First Respondent

67. The First Respondent accepted that there had been a total breach of the Law Society Rules but said that there had been no improper motive behind that.

68. He asked the Tribunal to consider the case of the Second Respondent very differently from his own. There had been no monies owing anywhere in respect of the work of the Second Respondent who had been very remote from the main activity of the practice. While both Respondents were bankrupt, the Second Respondent might one day be able to return to the profession.

69. The First Respondent said that Colsys was a system to control collection activity. It was entirely separate from the firm. Colsys had subsequently closed. The First Respondent had not personally held any shares in Colsys. The shares were however held for the benefit of his family.

70. The First Respondent hoped that the Law Society would find in the end that there was no deficiency. He had delegated the accounts to his staff while he looked for work but accepted responsibility for the accounts.

71. The First Respondent in mitigation said that he had had no previous appearance before the Tribunal. He said that no benefit had accrued to his family through Colsys.

The oral evidence of the Second Respondent

72. The Second Respondent confirmed the contents of his statement dated 2nd September 2004.

73. The Second Respondent said that his only contact with the day to day administration of the accounts was to pay in a cheque from a client or request a cheque using books of debit and credit slips.

74. The Respondents had been in partnership for some 30 years and the Second Respondent had thought that he had known the First Respondent very well. The

Second Respondent was the junior partner on a one-third to two-thirds basis. The Second Respondent was astonished and mortified by the proceedings. The First Respondent had always been a man of integrity and the Second Respondent did not believe that the First Respondent had had any personal benefit from the breaches. The breaches had astonished him.

75. The Second Respondent, who had struggled to pass his accounts exams, had decided to have nothing to do with accounts in practice. His failure to be more observant was the offending conduct.

76. The Second Respondent confessed humbly that he had taken no part in the financial part of the practice for 30 years. He had not paid sufficient attention. He had felt that he would have been told if something was wrong and had placed his trust in the First Respondent and in the staff. He described himself as an old-fashioned lawyer.

77. The Second Respondent knew that Colsys was a vehicle to deal with aspects of the First Respondent's work as an accounting convenience.

78. The Second Respondent said that he did have conduct of matters other than the six conveyancing matters current at the time of the first inspection.

79. The Second Respondent had been aware that there was an indebtedness by the firm but had believed that it was well within the firm's capacity to service it as it was secured upon the properties of the partners. He had earned a modest amount. His fee income would have been sufficient to cover what he took out and to contribute to the overheads.

80. The Second Respondent had not been aware of the dual role of SL whose duty was as the accounts manager.

Costs

81. The Applicant sought agreed costs in accordance with the Schedule served on the Respondents.

82. The Applicant accepted that it had taken longer than it should to bring this matter before the Tribunal but referred to the complexity of the prosecution and the need to gather detailed evidence.

The Findings of the Tribunal

83. Allegations (2) to (6) were admitted and the Tribunal found them substantiated.

84. Allegations (1) and (2) against the First Respondent only were allegations of dishonesty. The Tribunal considered carefully the evidence and submissions. The Tribunal found allegation (1) proved. Money had been improperly transferred from client account. One example of this was the transfer of money to enable the firm's employees' salaries to be paid. This was a clear use of clients' money for the First

Respondent's own purposes. There was also clear evidence of a failure by the First Respondent to account to clients promptly or at all for monies recovered. The Tribunal accepted the evidence of Mr Howland. The Tribunal also accepted the written evidence of DC which had not been denied by the First Respondent who had not given evidence nor made detailed submissions. It appeared that very substantial sums of money in respect of debt recovery clients remained unaccounted for and the Tribunal did not accept the First Respondent's explanation that this was simply a matter of accounts being in a total mess. There was also evidence that significant sums had been moved from client to office account without delivery of bills and there was also evidence that damages had been paid into office account and out of client account.

85. The Tribunal considered that the First Respondent's misconduct satisfied the test of dishonesty set out in the case of Twinsectra -v- Yardley. In particular in that case it was made clear that a person could not set his own standards of honesty. The Tribunal was satisfied that an honest solicitor could not have justified the blatant disregard of the Solicitors Accounts Rules which had occurred. The First Respondent had given no acceptable explanation of how monies received into the firm had been accounted for.

86. The Tribunal found allegation (2) proved. The Tribunal was satisfied that the First Respondent had been less than frank in his explanations to Mr Howland, especially in relation to the debt recovery work. The document he produced showing balances at 30th June 2000 gave a misleading impression of low level of continuing work, as did his comments regarding the decline of the debt collection work. In reality there was evidence not made available to Mr Howland that debt collection on a considerable scale was continuing. The misleading information led to Mr Howland not investigating this aspect of the work during the first inspection. The Tribunal was satisfied that the First Respondent had not given honest responses to enquiries properly made by Mr Howland.

Previous appearance of the Second Respondent before the Tribunal

87. At a hearing on 22nd December 1976 the following allegations were substantiated against the Second Respondent, namely that he had been guilty of conduct unbefitting a solicitor in the following respects:-

(a) On the occasions and each of them specified in the Affidavit he issued or caused to be permitted to be issued to a member of the public a pro forma letter headed "BANKRUPTCY ACT OF 1914, SECTION 1" which was on its face and in its terms and in the circumstances of its issue an improper letter to be sent by a solicitor;

(b) On the occasions and each of them specified in certain numbered paragraphs of the affidavit submitted in support of the application he caused or permitted a solicitor's letter to be sent out in an envelope bearing on its reverse a printed legend asking that replies be sent to a debt collecting agency;

(c) on the occasions specified in the allegation set out in paragraph (b) he caused or permitted a solicitor's letter to be sent out to a member of the public by a debt collecting agency.

88. The Tribunal on that occasion considered that the facts indicated that the Second Respondent was not exercising supervision over the debt collecting work of his practice. The Tribunal regarded the matter as serious. Had it not been that an order suspending the Respondent from practice would not only be a very serious penalty indeed but also would in the circumstances have the effect of bringing to an end at least for the time being the useful service which the firm was able to render on behalf of the public generally, they would have thought suspension an appropriate penalty to impose. In the circumstances they imposed the maximum fine permitted together with the Applicant's costs.

89. The Tribunal on 9th September 2004 had found substantiated against the First Respondent not only the serious breaches of the Accounts Rules but also allegations of dishonesty directly affecting clients' money. No persuasive mitigation had been advanced by the First Respondent. The Tribunal was satisfied that in the interests of the public and for the reputation of the profession the appropriate penalty was to strike the name of the Respondent from the Roll of Solicitors.

90. In relation to the Second Respondent it was accepted that the Second Respondent's only involvement with the accounts had been transfers regarding his own conveyancing matters. There was no suggestion that the Second Respondent had been knowingly involved in any dishonest conduct. The First Respondent to his credit had spoken in support of the Second Respondent and had accepted responsibility for the Accounts Rules breaches. The Tribunal however was greatly disturbed to hear that the Second Respondent had been in partnership for some 30 years and throughout that period had taken so little interest in the accounts of the firm of which he was a partner. The previous finding against the Second Respondent in 1976 should have been a warning to him that he should scrupulously observe his professional obligations. Partnership carried important responsibilities and all partners in a firm were responsible for the proper management of accounts and the proper stewardship of clients' funds. It was a totally inadequate excuse for the Second Respondent to say that he had taken a decision not to be involved in any accounting matters. The Second Respondent had abrogated his responsibilities with serious consequences. The Tribunal did not seek to prevent the Second Respondent from practising at some time in the future under appropriate conditions but considered it right to impose penalties on the Second Respondent which marked the seriousness with which it regarded his failure to fulfil his responsibilities. The Tribunal decided to impose a period of suspension from practice together with a fine and an order that the Second Respondent subsequently not practise save in employment approved by the Law Society.

91. In relation to costs the Tribunal would mark its concern at the delay in this matter by reducing the costs awarded to the Applicant from the sum sought of £24,391.11 to £20,000. The First Respondent, who had prime responsibility for what had occurred and against whom the most serious allegations had been substantiated, would bear the greater burden of the costs.

92. The Tribunal made the following orders:-

The Tribunal order that the Respondent Paul Frederick Standish Brooks of Macclesfield, Cheshire (formerly of Prestbury, Cheshire), solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

The Tribunal order that the Respondent David Richardson of Stockport, Cheshire, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 9th day of September 2004.

The Tribunal further order that he do pay a fine of £10,000, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal further order that upon termination of the period of suspension he is not to practise save in employment approved by the Law Society.

The Tribunal further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.

Dated this 5th day of October 2004
On behalf of the Tribunal

A H Isaacs
Chairman