

IN THE MATTER OF GORDON LESLIE KINGAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr I R Woolfe (in the chair)
Mr S N Jones
Mrs V Murray-Chandra

Date of Hearing: 15th February 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, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 28th April 2004 that Gordon Leslie Kingan Solicitor of Wallesey, Wirral, Solicitor, might answer the allegation contained in the statement which accompanied the application and that the Tribunal should make such order as it thought right.

On the 20th August 2004, the applicant made a supplementary statement containing further allegations.

On the 11th January 2005, the applicant made a second supplementary statement containing further allegations.

The allegations set out below are those contained in the original first and second supplementary statements. The allegations were that the Respondent had been guilty of conduct unbecoming a Solicitor in each of the following particulars, namely:-

1. That he has failed and / or delayed in the delivery of Accountant's Reports for year ending 31st January 2002 (due for delivery on or before 31st July 2002) and; For year ending 31st January 2003 (due for delivery on or before 31st July 2003), contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
2. That he failed to comply with a direction of an Adjudicator dated 7th February 2003, such direction being to deliver the outstanding Accountant's Report for the year ending 31st January 2002 within 28 days of notification to him;
3. That he has failed and / or delayed in replying to correspondence from the Office for the Supervision of Solicitors;
4. That he withdrew money out of client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
5. That he has failed to keep accounts properly written up for the purposes of Rule 32 (1), (2) and (5) of the Solicitors Accounts Rules 1998;
6. That he has failed to carry out the required reconciliations contrary to Rule 32 (7) of the Solicitors Accounts Rules 1998;
7. That contrary to Rule 7 of the Solicitors Accounts Rules 1998 he failed to remedy breaches promptly;
8. That contrary to Rule 15 (2) of Solicitors Accounts Rules he retained non client's money in client bank account;
9. That contrary to Rule 16 of the Solicitors Accounts Rules he withheld client money from client bank account;
10. That contrary to Rule 19 of the Solicitors Accounts Rules he transferred money from client account, purportedly in respect of costs, when no bill or written intimation had been delivered to the client(s);
11. That contrary to Rule 22 of the Solicitors Accounts Rules he withdrew money out of client account other than as permitted by the said Rule;
12. That contrary to Rule 22 (5) of the Solicitors Accounts Rules he withdrew monies from client account in excess of funds held on behalf of the client(s);
13. That contrary to Rule 32 (1) and (2) of the Solicitors Accounts Rules he failed to keep accounts properly written up;
14. That contrary to Rule 32 (7) of the Solicitors Accounts Rules he failed to carry out the required reconciliations;

15. That he utilized clients' funds for his own benefit;
16. That he misappropriated clients' funds which, for the avoidance of doubt, was an allegation of dishonesty;
17. That he failed to comply with Practice Rule 15 of the Solicitors Practice Rules 1990, in that at the outset of acting, clients were not given in writing the necessary costs information nor were they given information about complaints procedures;
18. That he acted for the buyer and seller in conveyancing transaction(s) without having the written consent of both parties contrary to Rule 6 (2) of the Solicitors Practice Rules 1990;
19. That he practised in breach of a condition on his Practising Certificate;
20. That he has failed and / or delayed in the delivery of an Accountant's Report for year ending 31st January 2004 (due for delivery on or before 31st July 2004), contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
21. That he has failed and / or delayed in the delivery of a "Cease to Hold" Accountant's Report for the period ended 15th April 2004 (due for delivery on or before 15th October 2004), contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
22. That he has failed fully to comply with a Section 44 B Notice dated 1st August 2003 requiring delivery of his file of papers in relation to the estate of Mrs E, in that he failed to produce or deliver a copy of the client ledger account(s);
23. That he failed to comply with a direction of an Adjudicator dated 9th February 2004, such direction being to pay compensation to Mr G E in the sum of £1,500.00;
24. That he has failed and / or delayed in replying to correspondence from The Law Society.

The Applicant sought a direction by the Tribunal that the direction made by the adjudicator of The Law Society dated 9th February 2004 be treated for the purposes of enforcement as it were an Order of the High Court.

The application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when Jonathan Richard Goodwin appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent save that he denied the allegation of dishonesty made by the Applicant in respect of allegation 16. The facts were not in dispute.

The Tribunal made the following Order:-

The Tribunal ORDERS that the Respondent, GORDON LESLIE KINGAN of Wallasey, Wirral, 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 £20,000.

AND the Tribunal ORDERS that the direction made by an Adjudicator of The Law Society dated 9th February 2004 be treated for the purposes of enforcement as if it were an Order of the High Court.

The Facts are set out in paragraphs 1 to 38 hereunder:-

- 1 The Respondent, born in 1944, was admitted as a Solicitor in 1973 and at all material times he carried on practice on his own account under the style of Gordon Kingan Solicitor & Notary Public from offices at 66 Wallasey Road, Wallasey, Merseyside.
2. By letter dated 30th September 2002 The Law Society wrote to the Respondent in respect of his outstanding Accountant's Report for the period ending 31st January 2002.
3. By letter dated 11th October 2002 the Respondent replied indicating that his administration had suffered due to relocation of his office. He indicated that the matter was in hand and he hoped to file the Report before the end of the month. As the Report had not been received by the end of the month, the Office for the Supervision of Solicitors (the OSS) telephoned the Respondent on 1st November 2002. The Respondent indicated he had not been able to have the Report prepared as he had lost a paying in book. By letter dated 11th November 2002 the Respondent wrote again to the OSS indicating that having spoken with his accountant, he hoped to be in a position to file the Report by "25th November or possibly sooner". The Report was not received.
4. On 7th February 2003 a Law Society Adjudicator directed, "I expect Mr Kingan, within 28 days of the date of the letter notifying him of this decision, to deliver the outstanding Accountant's Report for the year ending 31st January 2002, failing which his conduct will be referred, without further notice, to the Solicitors Disciplinary Tribunal."
5. The Respondent did not reply or comply with the direction of the Adjudicator. By letter dated 26th February 2003 the OSS told the Respondent that the time for submission of any application for review had expired and the Adjudicator's decision had therefore become final. The Accountant's Report had to be filed on or before 10th March 2003 if disciplinary proceedings were to be avoided. There was no response.
6. By letter dated 20th November 2003 the OSS wrote to the Respondent in respect of the outstanding Accountant's Report for the period ending 31st January 2003, seeking his explanation within 14 days. In the absence of a response the OSS wrote again by letter dated 4th December 2003. It was pointed out to the Respondent that his failure to reply could be regarded as unprofessional conduct. He was asked to respond within eight days to avoid disciplinary proceedings. There was no reply.

Accounts Breaches

7. A Law Society Investigation Officer (the IO) carried out an inspection of the books of account of the Respondent's practice, commencing on 25th April 2003. A copy of the IO's Report dated 30th June 2003 was before the Tribunal. The books of account were not in compliance with the Solicitors Accounts Rules because:
 - (a) no cash book recording payments and receipts on the client account had been kept since 31st July 2001, save for a list said to record CHAPS payments and receipts;
 - (b) no client ledgers had been maintained since 31st July 2001;
 - (c) no reconciliations had been performed of client liabilities to client funds held since 31st July 2001;
 - (d) there was a minimum cash shortage of client funds of £1,500.50.
8. Due to the inadequacy of the accounting records, it was not possible for the IO to establish whether sufficient funds were held to cover the Respondent's total liabilities to clients as at 31st March 2003. However, he was able to calculate that there was a minimum cash shortage of £1,500.50 in respect of one client matter as at that date. The shortage was rectified during the inspection.
9. The shortage arose in a probate matter in which overpayments had been made. On 18th November 2002, approximately 17 months after the overpayments had arisen, the sum of £6,000 was received into client bank account in respect of the matter, reducing the overpayment to £1,500.50 which existed until 31st March 2003.
10. During the inspection in 2001 the Respondent was alerted to the fact that he was not complying with the Solicitors Accounts Rules. He agreed in writing, "I confirm that each of these items has been discussed with me and that I agree to take action to correct the breaches listed. I understand that failure to carry out such corrective action as agreed may result in disciplinary action as a matter of conduct."
11. By letter dated 13th August 2003 the OSS wrote to the Respondent enclosing a copy of the IO's Report, seeking his explanation. The Respondent did not reply. The OSS wrote to him again by letter dated 5th September 2003 pointing out that his failure to respond could be viewed as unprofessional conduct. He was asked to reply within 7 days.
12. In his letter dated 15th September 2003, the Respondent indicated that he had been carrying out ledger postings himself but the paying in book became misplaced. The Respondent went on to indicate that he now employed a book keeper to deal with the ledger entries and the breaches had been corrected. The minimum cash shortage of £1,500.50 was due to an overpayment in error of £1,750.50, the balance of £250 being held by the Respondent on account of a potential Income Tax liability. He went on to

say. “Had my accounts been up to date I would have realized that the error had occurred and would have immediately rectified it.” The Respondent concluded by saying, “I very much regret that I have permitted the breach of the Rules to occur and for the avoidance of doubt and for your assistance, I confirm that I do not dispute any of the matters contained in the report of your accountant, a copy of which you have attached to your letter of 13th August.”

13. On 6th January 2004 a second inspection of the Respondent’s books of account was carried out by an IO whose report dated 27th February 2004 was before the Tribunal.
14. The report recorded that the Respondent’s books of account were not in compliance with the Solicitors Accounts Rules. The Respondent told the IO that “basically pressure of work and me not supplying the book keeper with the information he needed....” led to his books not being up-to-date.
15. It was not possible for the IO to compute the total liabilities to clients as at 30th November 2003 and to express an opinion as to whether or not sufficient funds were held in client bank account to meet those liabilities. The IO identified a minimum cash shortage on client bank account of £10,520.00 as at 30th November 2003, which was caused by an incorrect payment from client bank account of £9,020.00 and a personal payment from client bank account of £1,500.00
16. The incorrect payment was made in the matter of Mr M for whom the Respondent acted in connection with a commercial conveyancing transaction. The solicitors acting for the mortgagee required an undertaking from the Respondent that he would be responsible for their fees in the sum of £10,000.00. On about 9th October 2003 Mr M gave the Respondent £10,000.00 in cash which he was to retain until required. The Respondent kept the money in his safe at the office. There were no records on the client matter file to indicate that Mr M had given permission to allow the Respondent to keep the money out of client account and in his office safe.
17. Over the subsequent months the £10,000.00 cash was used by the Respondent for his own personal use. The Respondent said, “I’ve spent the money and at the same time it suited me to have cash and rather than go to the bank and draw cash I took it as drawings netting the £10,000.00 against the transfers which I knew I was entitled to receive”.
18. The commercial conveyancing transaction did not proceed and the Respondent instructed his bank to make a CHAPS transfer out of client bank account on Mr M’s instructions to his business associate, Mr K. The client bank statement showed a payment out of £9,020.00 (£20.00 being added in respect of a bank charge for the CHAPS transfer). The Respondent indicated that the remaining £1,000.00 was to be retained by him in respect of fees.
19. The client account bank statement showed that on the 18th November 2003 the sum of £1,500.00 was debited to client bank account. The Respondent said he had used “the wrong cheque book”. The money had been used to pay the Respondent’s mortgage.

20. The Respondent had transferred “round” sums from client to office bank account of £6,000.00 and £5,000.00 on the 21st November 2003 and 18th December 2003 respectively. The Respondent said that the monies represented costs due to him. He said “I knew that I was entitled to transfer more than that and because it was a particularly busy time I didn’t have time to work out the exact figures”. He had not delivered a bill or written estimate of costs to the client.
21. The IO ascertained that during the months of March 2003 – December 2003 the client bank account had been credited in respect of interest with £5,289.24. The Respondent confirmed that he was aware that interest had been credited and explained that he had told the bank about this in the past. The Respondent had not transferred the money out of client account, taking the view that “I would rather have too much in there than too little”.
22. During the course of the inspection the IO reviewed 14 client matter files and ascertained that no copies of client care letters were to be found therein. The Respondent indicated that he knew that he should send letters out, but did not. He said, “I just don’t think it is appropriate to send out formal letters all the time”.
23. The IO also ascertained that the Respondent acted for both buyer and seller in three conveyancing transactions where he had not obtained the written consent of both parties.
24. The Respondent was subject to a condition on his Practising Certificate that ‘he may act as a Solicitor only in employment approved by this office in connection with the imposition of that condition....’ The condition was to take effect on the 24th December 2003.
25. When the IO commenced the inspection on 6th January 2004 the Respondent was still practising alone. He indicated that he was planning to set up in partnership with another sole practitioner. The Respondent accepted that because he had left it late he had not received The Law Society’s approval for the partnership and he continued to practise alone after his Practising Certificate conditions became effective.
26. By letter dated the 25th March 2004, in response to that of the OSS of 8th March, the Respondent said “With regard to the Investigation Accountant’s Report I confirm that I do not dispute its contents. I consider that the Investigation was carried out in a fair, reasonable and courteous manner and that my comments referred to in the report have been accurately transcribed from the recording of the interview”.
27. In a letter dated the 13th April 2004, the Respondent confirmed that he accepted there had been a breach of Practice Rule 6.
28. On 8th April 2004 The Law Society resolved to intervene into the Respondent’s practice.
29. By letter dated 16th August 2004 The Law Society wrote to the Respondent about his outstanding Accountant’s Report for the period ending 31st January 2004. The Respondent did not reply. The Law Society’s intervention into the Respondent’s practice

took place on 15th April 2004. The Respondent was required to file a “Cease to Hold” Accountant’s Report for the period ended 15th April 2004, which was due for delivery on or before 15th October 2004. Both Reports remain outstanding.

30. The Respondent was the sole executor of the estate of the late Mrs E. Mr G E was the residuary beneficiary.
31. In or about November 2002 Mr G E, through his Solicitors, made complaint to the OSS about the Respondent’s handling of the administration of the estate.
32. By letter dated 19th June 2003 the OSS wrote to the Respondent providing details of the complaint and requesting his explanation. The Respondent did not reply. The OSS wrote again by letter dated 4th July 2003 and telephoned the Respondent on 7th July 2003 when it was stressed to him that he needed to respond and address the issues raised. The Respondent indicated he would respond but was very busy.
33. By letter dated 17th July 2003 the OSS wrote to the Respondent and gave Statutory Notice requiring a response to earlier correspondence. There was no response.
34. By letter dated 5th August 2003 the OSS wrote to the Respondent serving Notice pursuant to Section 44 B of the Solicitors Act 1974 requiring production to the OSS of his file of papers relating to the estate of the late Mrs E together with all ledger sheets relating to the matter. The Respondent did not reply.
35. On 6th October 2003 an agent instructed by the OSS collected the files relating to the estate and sale of a property. The Respondent did not provide the ledger and account records as directed, indicating that they were not available.
36. The matter was considered by an Adjudicator on 9th February 2004, who found that the service provided by the Respondent was not of the quality which it was reasonable to expect of a solicitor and he directed the Respondent to pay compensation to Mr G E of £1,500.00. The Respondent was notified by letter of 17th February 2004.
37. On 17th March 2004, the OSS requested confirmation within 7 days that the Respondent had complied with the decision. The Respondent did not reply.
38. By letter dated 28th April 2004 the OSS wrote to the Respondent indicating that in the absence of compliance with the decision, consideration would be given to referring the matter to the Tribunal unless he complied within 14 days. By letter dated 29th April 2004 the Respondent replied. He requested Mr G E’s address and the return of the file of papers to him to comply with other directions made by the Adjudicator. These were provided by the OSS on 10th May 2004 when the Respondent was requested to confirm within 20 days that he had complied. The Respondent did not reply.
39. On 9th November 2004 an Adjudicator resolved to refer the conduct of the Respondent to the Tribunal if he failed to comply with the original decision dated 9th February 2004 within 14 days of being notified by the Intervention and Disciplinary Unit of The Law

Society that the file had been transferred to them for the purposes of enforcing the decision. The compensation remained unpaid.

The Submissions of the Applicant with regard to the question of dishonesty

40. The Tribunal was invited to bear in mind the principles in the case of Bolton -v- The Law Society, in which it was said that members of the public were entitled to expect Solicitors to be of the highest integrity, probity and trust worthiness. Nothing less would do. The case of Weston -v- The Law Society in The Court of Appeal, confirmed the sacrosanct nature of client's funds and the obligation on a solicitor to handle clients' funds in the light of that. In the more recent case of Bultitude -v- The Law Society, the court reaffirmed what had been said in the Bolton and Weston cases.
41. The way in which the Respondent handled the large cash sum (£10,000) handed to him by Mr M did not represent the actions of an honest solicitor. That money should have been paid into a client account. The Respondent himself acknowledged that he used that money for his own purposes.
42. The Tribunal was invited to consider the test for dishonesty set out in the case of Twinsectra -v- Yardley and Others [2002] UKHL 12 and was asked to find that the public knowing all of the facts would conclude that the Respondent's actions were dishonest and wrong and that he himself knew, by those standards at the time, that by taking clients' monies that in that manner was acting dishonestly.
43. The Respondent relied upon the letter of Mr M dated 20th October 2004. The Respondent claimed that Mr M would have been happy to give oral evidence at the hearing, but at the Respondent's expense. The Respondent had not been able to afford to meet Mr M's expenses. The letter was in evidence and it was clear from that letter that Mr M knew about the way in which the £10,000 in cash had been used. At the material time the Respondent had been busy with client matters, particularly those of Mr M. Telephone calls and faxes arrived at the Respondent's offices many times in a day. Mr M had been fully aware that the Respondent held the £10,000 in cash and that he utilized the cash.
44. Mr M had instructed the Respondent in connection with a substantial commercial property transaction and the Respondent had been asked by the intended lenders solicitors to give an undertaking in connection with their fees, otherwise the matter would not proceed. Their fees were agreed to be at a maximum level of £10,000 plus VAT. The £10,000 had been paid to the Respondent in order that he might give the appropriate undertaking. The £10,000 was given in cash.
45. The Respondent accepted that the cash had not been paid into his client account. It had been intended that the £10,000 would be held for a very short period of time. The Respondent accepted that he had been in breach of the relevant Solicitors Accounts Rule, that monies must be paid promptly into client account, but he claimed the client had not been in any way prejudiced.

46. It transpired that the commercial transaction did not take place and the loan was not made to Mr M. The Respondent regarded himself, therefore, as having been released from his undertaking, whereupon he was required to account to the client in respect of the £10,000. In fact, the Respondent accounted to Mr M's business associate as requested and retained the sum of £1,000 in respect of his costs. The client was given a proper statement of account.
47. The Respondent accepted that he had utilized some of the cash held by him. The cash had been kept in the Respondent's safe and it had been his usual practice if cash was required, to cash a cheque at his bank. The Respondent had been very busy and had utilized the cash kept on his premises, rather than going to the bank to cash a cheque as a matter of convenience.
48. The Respondent accepted that the way in which he handled the £10,000 was in breach of the Solicitors Accounts Rules but he had not been dishonest. The client concerned had not complained and indeed he had supported the Respondent's position by the letter dated 20th October 2004 .
49. In that letter Mr M confirmed that £10,000 in cash had been provided to the Respondent, acting as solicitor to his Company, because there had been an ultimatum from the other side in a commercial conveyancing transaction, and that unless the Respondent gave them an undertaking for costs by close of business that night, the deal would be off. There was insufficient time to clear a cheque and if a banker's draft were to be obtained that "involves people going to their bank or building society and in my girlfriend's case she was in the middle of an OFSTED inspection ... so could not leave her playschool". Cash was the only alternative. The cash was given to the Respondent at about 4.30 pm which gave him half an hour to get his undertaking over to the other side.
50. Mr M said in that letter that he trusted the Respondent with the money. He said that the Respondent contacted him as to whether he could use some of the money rather than drop what he was doing and go to the bank. Mr M said his response had been that he could do what he liked with the money as long as the deals were concluded.
51. Mr M had not provided a formal witness statement and had not been called to give evidence. The Tribunal was invited to give the letter from Mr M appropriate weight against that background.

The Applicant's Submissions in respect of allegations

52. The Respondent had been in breach of the Solicitors Accounts Rules even though matters had been explained to him at earlier IO's inspection and he had agreed to take corrective action.
53. The attitude displayed by the Respondent with regard to his breach of Rule 15, the requirement to write client care letters, was extraordinary. It was not for the Respondent

to exercise a discretion as to whether or not he should follow that Rule. The Rule was in place in order to protect clients.

54. There had been three occasions where the Respondent had acted for the buyer and the seller in conveyancing transactions without getting appropriate written confirmation from clients.
55. The Respondent had continued to act as a sole practitioner despite conditions on his Practising Certificate being in force to the effect that he could practise only in employment.
56. The Respondent had failed to deliver a client file to The Law Society, so that it had been necessary to make a “limited intervention” and he had not complied with the requirement to make the appropriate ledgers available. He still had not forwarded such ledgers to The Law Society. The Respondent had not complied with a direction made by his own professional body that he should make a payment of £1,500 by way of compensation for inadequate professional services to a client.
57. Even without the allegation of dishonesty, the wide range, nature and number of allegations meant that the Applicant put the case against the Respondent in the serious category. He had demonstrated a wilful disregard of the need to ensure compliance with the rules of practice in a number of respects. Those rules were in place to ensure that the public gets from solicitors the service it is entitled to expect. Even if the Tribunal were to find that the Respondent’s behaviour with regard to Mr M’s £10,000 cash had not been dishonest, in the submission of the Applicant, his fitness to practise was nevertheless an issue.

The Submissions of the Respondent with regard to the allegations

58. The Applicant had painted a picture that was perhaps not entirely accurate. A number of breaches had been ascertained and rectified by the Respondent prior to the involvement of The Law Society’s IO.
59. The Respondent had initially worked from home and had undertaken all administrative work. He had dealt with posting in the books and had undertaken reconciliations on a regular basis. The IO had told the Respondent that he was not carrying out reconciliations in the correct way. He had used a computerized system and had assumed that the figure provided as the total of current balances, was correct, although he was told he should print out the balances and then check them and not rely upon the computer produced figure.
60. The Respondent had been hampered when he lost his paying-in book and he had suspended posting until it was found.
61. The Respondent had tried to bring his books of account up-to-date and had tried to identify global credits and had posted unidentified items to a suspense account

62. The Respondent had started his practice in 1998 with only a few files but in his final year he had opened 400 files. The book keeping burden had become more onerous as time went on.
63. The lack of formal accounts had not been catastrophic. He maintained a standard computer list of payments in and out and could establish what had been paid and what was due to clients. He conceded however that his book keeping method had been in breach of the Solicitors Accounts Rules. It had been a mistake in an Excel spreadsheet “cell” which gave rise to the overpayment on a probate matter. In another probate matter the deposit on the sale of the deceased’s flat was held by the buyers’ solicitors subject to an undertaking to retain it to the Respondent’s order. That had been overlooked by both sides and the Respondent had not been alerted to it. Following a telephone call, the funds had been transferred from the other solicitors’ client account to the Respondent’s client account to put matters right.
64. The Respondent had made a payment out of client account for his personal mortgage by using the wrong cheque book. The cheque books of office and client accounts were both dark blue and unmarked and there was no obvious difference between them. The Respondent had in the past marked “client account” on the cover of the cheque book to ensure that it looked different from that of the office account but had not done so on this occasion. He said that he had also made a mistake by drawing on office account for a client account payment. The Respondent had a substantial credit balance in his office account at the material time and there had been no need for him to write a client account cheque. It was a genuine and honest mistake.
65. The Respondent had been aware of the requirement to send “client care letters” according to Rule 15. The Respondent had written client care letters but had not done so on every single file. A great deal of work was involved in repeating such letters. The Respondent accepted, however, that he had strictly been in breach of that Rule.
66. The Respondent had not habitually acted for both parties in conveyancing transactions. He had difficulties where he had been instructed by clients in different and independent matters and then they had come together. He had written to clients where such a situation was about to arise and they had instructed other firms of solicitors.
67. The Respondent was aware of the conditions on his Practising Certificate. He had a partnership in prospect and that partnership had been approved by The Law Society. The partnership had not been entered into formally as the other sole practitioner had encountered difficulties in arranging professional indemnity insurance. He had been able to make arrangements on reasonable terms but only on the basis that he did not employ the Respondent. The Respondent said he had been naïve and had assumed that The Law Society knew what was happening. He considered that The Law Society had not raised any objection as all matters had been in hand. The Respondent’s prospective partner had been in direct contact with The Law Society.

68. In the estate of the late Mrs E, it had reached final accounting stage but because the Respondent's accounts had been behind, it had not been possible to prepare the final estate accounts. The Respondent had found it easier to deal with many other smaller matters than to give up time to the preparation of the estate accounts. He did not dispute what had been said with regard to the level of service which he provided and it was his intention to make payment in accordance with the direction of The Law Society's Adjudicator. He did not object to a formal order relating to the enforcement of the Adjudicators' direction being made by the Tribunal.
69. The Respondent had been an overworked solicitor who had not been able to find time to comply fully with the Rules relating to practice. He had been in practice on his own and had undertaken all administrative tasks, including typing and sticking on postage stamps. He had been under a great deal of pressure and had not been able to stand back and see what was happening. The Respondent no longer wished to continue in practice on his own account. He hoped he might have the opportunity to continue in supervised employment as a solicitor.
70. The Respondent appreciated the sanctions available to the Tribunal and asked that it should be taken into account that since The Law Society's intervention in his practice, in April 2004, in reality he had been suspended save for one month when he was employed by the solicitor with whom he proposed to enter partnership.
71. The costs of the intervention exceeded £100,000 and matters had not yet been concluded.
72. The effect of the intervention, both in terms of suspension from practice and financial penalty in terms of costs, had already been a substantial punishment for the Respondent.
73. With regard to the outstanding annual Accountant's Report and the "Cease to Hold" Report, the Respondent had instructed chartered accountants who had been in touch with The Law Society's intervention agent. The firm of accountants instructed by the Respondent agreed that a substantial proportion of any delay was attributable to the fact that that firm had not pursued the Respondents' work with due speed, there having been a delay by the firm between the middle of May and the beginning of October 2004.

The Decision of the Tribunal with regard to Allegation 16 and dishonesty

74. Following a hearing in 1989 the Tribunal found the following allegations to have been found substantiated against the Respondent (with two other Respondents) namely, that they had:
- i. unreasonably delayed in the delivery of Accountant's Reports to the Law Society as required by Section 34 of the Solicitors Act 1974;
 - ii. contrary to the provisions of Rules 7 and 8 of the Solicitors Accounts Rules 1986 drew from clients account moneys not permitted to be so drawn and utilised the

same improperly for their own purposes, or alternatively for the purposes of clients not entitled thereto;

- iii. contrary to the provisions of Rule 3 of the Solicitors Accounts Rules failed to pay moneys received in respect of clients without delay into clients account;
 - iv. by virtue of the aforementioned been guilty of conduct unbecoming a solicitor.
75. On that occasion the Tribunal said “there was no deliberate dishonesty. However, they find the Respondents’ cavalier attitude to their handling of clients’ moneys to be wholly unacceptable. The Tribunal has in the past had cause to point out that the rules of professional conduct and in particular the Solicitors Accounts Rules have been drawn to protect the public. It has to be said in this instance that if every client of the Respondents had called for the sums of money due to them, there would have been insufficient moneys held in the Respondents’ client account and some clients would not have been paid on demand. That is a situation which cannot be permitted to exist.”
76. The Tribunal inter alia Ordered the Respondent to pay a fine of £1,000 and that the three Respondents pay any equal proportion of The Law Society’s costs.
77. In the present case the Tribunal accepted that it must adopt the highest standard of proof in regard to an allegation of dishonesty made against a solicitor.
78. The Respondent invited the Tribunal to accept that he had utilised cash held in his safe that was client money to make cash payments in settlement of the Respondent’s own liabilities where it was convenient to do so in full than was obtaining cash from his bank. He submitted that either he was entitled to take the money or that he intended to put it back. The Respondent accepted that the proper way of handling a £10,000 cash deposit received from a client (aside from any money laundering concerns that were not raised in this matter) would be immediately to pay that money into client account. He accepted that he was in breach of the Solicitors Accounts Rules in not doing so.
79. The Tribunal concluded that, having breached the Solicitors Accounts Rules and kept the cash in his office safe, the Respondent regarded it as a convenient pot of money on which he could draw from time to time. That money was not handled in accordance with the Solicitors Accounts Rules, nor had the Respondent exercised proper stewardship over that money. The claimed intention to put back money taken did not relieve the Respondent of a finding that he had acted dishonestly.
80. At the material time the Respondent’s books of account were in a mess.
81. The Tribunal concluded that the Respondent did make use of the cash held by him on behalf of Mr M for his own purposes in a way that met the combined test for dishonesty set out in the case of Twinsectra -v- Yardley and Others [2002] UKHL 12. In this case, a member of the public knowing all the facts would take the view that the Respondent had behaved dishonestly and, indeed, the Respondent, who was not able to set his own standard of honesty, would by the standards of reasonable and honest people know of the

impropriety of his acting in that way. The Tribunal concluded that the Respondent's actions in connection with the utilization of Mr M's £10,000 or part thereof did amount to dishonesty.

80. The Tribunal found the remainder of the allegations to have been substantiated, and indeed they were admitted. The Respondent's breaches and failures covered a wide range of misconduct and demonstrated a complete abrogation of his duties as a solicitor. So serious were the matters that the Tribunal concluded that the Respondent was not fit to practise as a solicitor and would have so concluded even if it had not made a finding of dishonesty against him.
82. In all of the circumstances, the Tribunal concluded that in order to protect the public and the good reputation of the Solicitors profession, it was right to order that the Respondent be struck off the Roll of Solicitors and that he should pay costs of and incidental to the application and enquiry fixed in the sum of £20,000.00. The Tribunal further ordered that the direction made by the adjudicator of The Law Society dated 9th February 2004 (the payment of £1,500 compensation to Mr G E) be treated for the purposes of enforcement as if it were an order of the High Court.

Dated this 4th day of April 2005
On behalf of the Tribunal

I R Woolfe
Chairman