

IN THE MATTER OF BARRIE CHRISTOPHER JACKSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr J P Davies
Mrs C Pickering

Date of Hearing: 14th 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 Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire SG14 1BY, on the 27th of January 2005 that Barrie Christopher Jackson, solicitor, of Endon, Stoke-on-Trent, Staffordshire should appear before the Solicitors Disciplinary Tribunal to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such Order as it thinks fit.

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

- (i) That he failed to keep accounting records properly written up.
- (ii) That he withdrew monies from his client account other than as permitted by the Solicitors Accounts Rules.
- (iii) That he utilised clients' funds for his own purposes.
- (iv) That he failed to comply with a witness summons requiring him to attend the Court of Protection on the 11th February 2004.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 14th July 2005 when Stephen John Battersby appeared as the Applicant and the Respondent was represented by Kate Heap, solicitor of Richard Nelson Business Defence Solicitors of North Star House, 6 The Midway, Nottingham NG7 2TS.

The evidence before the Tribunal included the oral evidence of Mr Howland, The Law Society's Investigation Accountant and the oral evidence of the Respondent. The Respondent handed up at the hearing a bundle of testimonials and his reconstruction of the client account ledger relating to the sale of "The Lodge".

The Respondent admitted allegations (i), (ii) and (iv). It was confirmed that the Applicant did not allege that the Respondent had been dishonest with regard to allegation (ii). The Applicant did put the case as one in which the Respondent had been dishonest with regard to allegation (iii) and the allegation of dishonesty relating to allegation (iii) was contested by the Respondent. The Respondent indicated that for the most part the facts were admitted.

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

The Tribunal orders that the Respondent, Barrie Christopher Jackson of Endon, Stoke-on-Trent, Staffordshire, 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 fixed in the sum of £7,994.94.

The facts are set out in paragraphs 1 to 40 hereunder:-

1. The Respondent practised on his own account under the style of Jacksons at Old Railway Building, Station Road, Endon, Stoke-on-Trent, Staffordshire. The practice had been set up in March 1999 and continued until it was intervened into by The Law Society on the 14th October 2004. For part of the time the Respondent had a salaried partner.
2. The Respondent was born in 1947 and was admitted as a solicitor in 1990.
3. On the 1st of September 2004 an inspection of the Respondent's books of account and other documents was commenced by a Law Society's Senior Investigation Officer (the IO). He prepared a Report dated 6th October 2004 which was before the Tribunal.
4. The IO's Report revealed that the Respondent had a high street practice but he did not conduct matrimonial or personal injury work. In his oral evidence the Respondent said his work was non-contentious in nature with a bias towards conveyancing.
5. As at 31st July 2004 the Respondent maintained two designated client accounts and one general client account at Lloyds TSB bank in which there was a credit balance of £92,384.29. His balance on the office account at the same bank at the same date was £10,453.61 debit.

6. The IO went on to report that the books of account were not in compliance with the Solicitors Accounts Rules as:-
 - a) The Respondent instigated numerous improper transfers from client to office bank account, as well as improper withdrawals/ payments from client bank account.
 - b) The IO could not rely on the listing of client balances at the inspection date of 31 July 2004 because of the state of the bookkeeping.
 - c) No proper reconciliations between client liabilities and available client cash had been undertaken since 1 May 2002, a period of over two years.
7. The firm's longstanding bookkeeper had left owing to ill-health on 30th April 2002. She had maintained a computerised accounts system. The firm had been without a bookkeeper for approximately three months until a replacement was found. She was very experienced but did not like computers and introduced a manual accounts system.
8. In or around May 2003, the replacement bookkeeper left. The Respondent agreed that the bookkeeping during this period was inadequate.
9. On 24th September 2003 the firm appointed another bookkeeper (Mrs L). For the period of approximately four months the firm had no bookkeeper. Mrs L initially maintained manual cashbook and client ledger accounts, but no proper reconciliations were undertaken.
10. During March 2004, a new computerised bookkeeping system was introduced and, over the following two months, Mrs L attempted to reconstruct the firm's books of account retrospectively from 1st May 2002.
11. By 16th May 2004 month end reconciliations were carried out for client and office bank accounts for the two-year period from 1st May 2002, thereby bringing matters up to date. The Respondent agreed that Mrs L was under pressure to complete her task as his Reporting Accountant's had to produce a Report for The Law Society. The Accountant's Report dated 26th April 2004 was qualified and referred to substantial shortfalls in client account at the two comparison dates.
12. All reconciliations undertaken for the period from 1st May 2002 to the inspection date did not show the firm's total liabilities to clients for two reasons. First the system incorrectly 'netted off' debit balances from the total of client credit balances, and secondly incorrect ledger balances existed as a result of unallocated and incorrect postings. The Respondent accepted that the client ledger account balance listing at 31st July 2004 was unreliable.
13. The listing included:-
 - a) seventy-nine client account balances ranging from £0.01 to £40,299.41 and totalling £139,870.58, and
 - b) forty-two office credit balances ranging from £0.01 to £13,027.92 and totalling £35,307.12.

14. The Respondent said he had become aware that the month-end listing of client balances was a net figure only when the IO pointed this out to him during the inspection. Client bank account reconciliations for the period from 1st May 2002 to 31st July 2004, which were produced from March 2004 onwards, contained adjustments that were added back to the bank balance.
15. The Respondent said that the first time he became aware that every one of the twenty-seven reconciliations contained adjustments was when the IO showed the schedule prepared by the IO to him. The Respondent agreed from the schedule that the total adjustments shown by the eighteen reconciliations to 31st July 2004 generally exceeded £60,000.00.
16. In view of the standard of bookkeeping the IO was unable to express an opinion as to the firm's total liabilities to clients at 31st July 2004. The IO was able to establish minimum liabilities in respect of thirteen individual client matters and a comparison of those minimum liabilities at 31 July 2004 with cash held on client bank accounts at that date showed the following position:

Minimum Liabilities on Thirteen Client Matters	£287,869.15
Total Cash Available	<u>195,282.29</u>
Minimum Cash Shortage	<u><u>92,586.86</u></u>

17. The Respondent agreed that a minimum cash shortage as at 31st July 2004 existed. It was partially rectified on 2nd August 2004 following the receipt of funds totalling £25,622.33 from a client in respect of an overpayment made.
18. On 28th September 2004 the Respondent transferred £66,964.53 (£92,586.86 - £25,622.33) from a personal bank account to the firm's client bank account. In evidence the Respondent said he did not believe there was an actual shortage of client funds but he took this step upon the advice of the IO.
19. The Respondent agreed on 29 September 2004 that a few significant client debit balances still needed investigation by the firm which, if found to be valid, would increase the minimum shortage identified by the IO. The Respondent agreed to ensure the firm's client bank accounts contained sufficient funds to meet all of the firm's liabilities to clients. He indicated that he had funds available to rectify any further shortages that were identified.
20. It had not been possible to account for the minimum cash shortage, but contributory factors were:-

(i) Improper payments and withdrawals from client bank account	£38,270.95
(ii) Improper transfers from client to office bank account	<u>32,661.45</u>
	<u><u>£70,932.40</u></u>

21. The IO prepared a list of improper payments and withdrawals from client bank account:-

04 Apr 02	C – Indemnity Insurance	£462.62
08 May 02	HM Customs & Excise	4,858.69
16 May 02	Inland Revenue – Bus. Tax	3,175.23
21 May 02	FR – wages	327.22
14 Jun 02	Cash (Petty Cash)	135.00
21 Jun 02	Petty Cash	76.25
17 Jul 02	BL Finance	438.26
09 Aug 02	Cash (Petty Cash)	293.50
14 Aug 02	HM Customs and Excise – VAT	5,799.49
28 Aug 02	Bank of Scotland – Finance Agreement	585.50
30 Aug 02	HMLR a/c	76.00
13 Sep 02	MT – Painting/ Decorating	129.54
27 Nov 02	HM Customs and Excise	3,868.45
30 Nov 02	E Parish Council	687.50
10 Dec 02	S Finance	<u>5,790.40</u>
	Total as per ‘cqs on office to 31.’	£26,703.65
16 Jul 02	FN/ R (finance arrangement)	2,402.30
01 Oct 02	BW – Bus. Pur. (car purchase)	9,000.00
01 Mar 04	Post Office – car tax	<u>165.00</u>
		<u>£38,270.95</u>

22. The Respondent agreed that all of the above payments and withdrawals from client bank account, some of which were in cash, were improper. In evidence he said that he had used client account cheque book in error. He had however sold a property he owned, The Lodge, and he had been personally entitled to the balance of the proceeds of sale which had lodged in client account.
23. The Respondent explained to the IO that the payment of £687.50 to E Parish Council on 30 November 2002 might have related to the sale of The Lodge. The IO noted from the relevant client ledger account that, had the payment been allocated to that matter, there would have been sufficient funds at that date to meet the payment although subsequent withdrawals exceeded the funds held.
24. The Respondent further explained that the payment of £5,790.40 to S Finance was to bring the lease of a photocopier to an end and he believed that it had been paid for from the sale proceeds of The Lodge. The IO noted that sufficient funds remained from the sale proceeds at the time the payment was made although other subsequent payments exceeded funds held.
25. With regard to the £9,000 payment to BW, the Respondent said that the payment was made for the purchase of his car, which was supposed to coincide with the sale of The Lodge. He agreed that, “overall, [there were] insufficient funds to take what has been taken”.
26. Examination of the firm’s client bank account reconciliation as at 31 July 2004 showed “adjustments” of £61,325.49 which included an item described as “cqs on office to 31.[/12/02]” amounting to £26,703.65. That was the “boldface” subtotal of items in the list prepared by the IO.

27. The Respondent agreed that no rectification had been made in respect of the listed improper payments from client bank account as at 31st July 2004.
28. A credit of £3,274.77 from HM Customs and Excise was lodged in the firm's office bank account on 4th April 2003 but was not transferred to client account partially to rectify payments from client bank account to HM Customs and Excise totalling £14,526.63 in respect of the firm's VAT liability.
29. When the IO asked the Respondent if a general lack of funds in the firm's office bank account was the fundamental reason for making the improper payments from client bank account, his response was "Yes... the answer would have to be yes". In his oral evidence the Respondent confirmed that client account had been utilised in error. He had an overdraft facility with his bank. He had enjoyed a good relationship with his bank, and he had been permitted to overdraw beyond the agreed limit without difficulty. The bank pointed out the level of his overdraw beyond that agreed only if it was considerably over his limit.
30. Shown within the adjustments section of the client bank reconciliation as at 31st July 2004 were the following items:
- | | |
|------------------------|-------------------|
| o/stated tfrs to 28.2 | £30,161.45 |
| o/stated tfr – june 04 | <u>2,500.00</u> |
| | <u>£32,661.45</u> |
31. The IO examined client and office account cash books which indicated a number of sums transferred from client to office bank account which were not matched to sums properly required for the payment of the firm's costs and which were described as 'o/stated tfr', 'unallocated' or similar. After allowing for occasional under transfers, the overall position shown by the client bank account reconciliation was a total of improper transfers from client to office bank account of £32,661.45 for the period from 1st May 2002 to 31st July 2004.
32. The Respondent agreed that the client and office account reconciliations identified a running total of over transfers from client bank account to office bank account.
33. Included within the improper transfers were eight round sum transfers from client to office bank account during the period from 1st May 2002 to 31st July 2004, ranging in value from £1,000 to £6,000.00, and totalling £22,500.00. The Respondent agreed that the transfers did not relate to bills delivered or other notification of costs.
34. The office bank account overdraft limit immediately prior to each round sum transfer had, in the majority of cases, been exceeded or was very close to being exceeded. The Respondent agreed with the IO that it would be fair to conclude that the majority of these transfers had been made as the office overdraft limit had been, or was about to be, exceeded. In his oral evidence the Respondent confirmed that he had a good relationship with his bank which was relaxed about his level of borrowing. The Respondent himself had reduced the overdraft limit- from £10,000 to £5,000. The reduction not been instigated by the bank.

35. The IO reported that the Respondent had at interview agreed that his actions amounted to a dishonest use of client funds. In evidence the Respondent said he had assisted the IO where he could. He had not been dishonest and had not expressed the view reported by the IO.
36. Prior to the inspection date a payment of £3,578.82 had been made on 20th January 2003 from client bank account, payable to PPC for the purchase of computer equipment and that was an improper payment. The consequent cash shortage had been rectified on 28th May 2004.
37. The Respondent's Accountant's Report dated 26 April 2004 was qualified and each of the two comparisons between liabilities to clients and cash held to meet those liabilities showed a difference of £156,613 and £120,554 respectively. The Respondent told the IO that he had not read it.
38. On 20th January 2004 the Court of Protection issued a witness summons at the request of The Public Guardianship Office in respect of a matter of which the Respondent had conduct.
39. The Respondent was ordered to attend before Assistant Master Prime at the Court of Protection on 11th February 2004 to give evidence and to supply a cheque due or to provide an explanation.
40. The Respondent accepted that he did not attend. He had completely overlooked the witness summons owing to personal pressures.

The Respondent's Submission that there was no case to answer

41. There had been no evidence of any loss to clients and no clear evidence that the £40,000 of equity in the net proceeds of sale of The Lodge, had not covered the specific withdrawals made from client account which totalled some £38,000.
42. It was conceded that the ledger card relating to The Lodge that was before the IO was not accurate. If that was not accurate, how many more inaccuracies were there in the accounts which led the IO to reach his conclusions? The cash shortage identified by the IO was not reliable.
43. There was no evidence before the Tribunal of what had been found by The Law Society's intervention agents. It was not known how much work remained to be billed. The final position was unknown.
44. The Respondent admitted that he had been in breach of the Solicitors Accounts Rules. In earlier years he had not had any problems. It was only when he had difficulties with the employment of bookkeepers which coincided with the time of considerable personal stress and difficulty did the breaches arise.
45. At that stage of the hearing the Tribunal had to be satisfied that dishonesty had been proved to the high criminal standard.

The Submissions of the Applicant relating to dishonesty and No Case to Answer

46. The Applicant accepted that where an allegation of dishonesty was made against a solicitor the Tribunal would apply the higher standard of proof. The appropriate test to be applied by the Tribunal was that set out in the case of Twinsectra Limited v Yardley (2002) UKHL 12. In the submission of the Applicant as a result of applying such test the Tribunal would be bound to conclude that the Respondent had been dishonest.
47. A reasonably directed Tribunal could find dishonesty on the evidence placed before it at this stage of the hearing and there could be no doubt that there was a case to answer.
48. The test to be applied by the Tribunal was: would an honest solicitor conclude that the Respondent's actions as a solicitor had been dishonest. The Tribunal was one dealing with solicitors and not lay people. It was drummed into solicitors from the earliest stage in their careers that monies in client account were sacrosanct. Where there was evidence that monies had been removed from client account and then used for non-client purposes then that was prima facie evidence of conscious impropriety on the part of the solicitor. That case ought to be answered. The Tribunal could not make a decision until it had heard the Respondent's explanation.

The Respondent's Submission that he had not been dishonest

49. The Respondent denied that he had been dishonest. Because of the high standard of proof required by the Tribunal in connection with such a serious allegation the appropriate test for dishonesty was that used in criminal matters namely, would the ordinary man in the street consider that the Respondent's behaviour had been dishonest? The ordinary man in the street would not consider that the Respondent's actions had been dishonest: there had been a degree of muddle and error.
50. It had been in a recent case that a high court judge reflected that the Solicitors Accounts Rules were highly complicated and breaches of those rules were not rare.

The Tribunal's Decision on the Respondent's submission that there was no case to answer

51. The Tribunal was entirely satisfied that there was a case to answer and it was right before reaching any decision that the Respondent put his case fully to the Tribunal.

The Submissions of the Applicant

52. The Applicant based his case on what the IO had found to be the position at the inspection date. He relied upon the IO's report.

The Submissions of the Respondent

53. The Respondent had worked in the commercial field as well as having served in the army. He obtained a degree and decided to move into law being admitted as a solicitor in 1990. He served articles and became an assistant solicitor with his principal's firm. In 1993 he set up in practice, initially he had a salaried partner who undertook personal injury and family work. The Respondent undertook non-contentious work, mainly conveyancing.
54. He engaged Mrs M, a bookkeeper, in 1993 and she remained in that post until April 2002. She operated a computerised accounts system, she was conscientious and good at her job and was supervised by the firm's auditing accountants.
55. The Tribunal was invited to consider the written references handed in at this stage of the hearing with the consent of the Applicant, all of which attested to the Respondent's probity and professional competence.
56. As time passed the Respondent relied increasingly on his bookkeeper Mrs M.
57. The Respondent had acquired another practice in 1997 and closed it down in 1999. He moved the staff to his original practice. In 1997 his original salaried partner left and the salaried partner who had run the other office left in March 1999. There had been no bookkeeping difficulties at that stage.
58. From 1997 personal difficulties took up a great deal of the Respondent's time. A replacement bookkeeper had gone to live with the Respondent's best friend abroad. His marriage had been dissolved, his former wife and he having been separated since the end of 1994. The Respondent had three children with his first wife and access became difficult and he ceased to have contact with his children. The Respondent became seriously depressed and drank a lot. He had worked very long hours. He had then met another woman who had become pregnant and although he would not in other circumstances have married her he did so in 1997. Their son was born in March 1998. His second wife had previously suffered mental illnesses and had abused alcohol and drugs. She had spent some time in a mental hospital and had to be an inpatient following the birth of the child. The Respondent had had to assume responsibility for her three children as well as his own child. Subsequently they were divorced. The Respondent had always had custody and responsibility for his son. He had control and residence after he made an application which was contested over an eighteen month period. The Respondent's mother had died in December 1999 and the Respondent's father who lived on his own couldn't cope. The Respondent and his brother looked after him although the major part of the burden rested on the shoulders of the Respondent. The Respondent's father was admitted to hospital in 2003 where he died in September. His father's health had deteriorated and he had collapsed while the Respondent was on holiday. The Respondent had cut his holiday short because of this. The Law Society's inspection had coincided with the Respondent's return from holiday.
59. The Respondent's time consuming personal commitments and difficulties had come at a time when Mrs M, his original bookkeeper, had left the practice. There had, however, been no financially-related complaint from any client and when the

Respondent's practice had been closed his clients had reacted with shock and they had been very supportive.

60. When Mrs M left the practice it had not been easy to replace her. It was a specialised job. The first replacement bookkeeper used a manual accounts system. She had been extremely experienced as a solicitor's bookkeeper but she could not operate a computerised system. She had stayed until May or June 2003. The Respondent again had encountered difficulties finding a replacement.
61. Mrs L had been engaged in September 2003. She had been trained at a bank and had undertaken cashier's work for a major public company. She had been a very competent ledger clerk and the Respondent had concluded that it would be appropriate to train someone with that type of experience in keeping solicitors accounts. She agreed to undergo such training and upon advice a new accounting software package had been obtained. The software house had agreed to bring old ledgers forward from the old computerised system. Mrs L had undergone training and her job had been to bring the new computerised accounts system up to date. Mrs L proved to be efficient and she enjoyed getting to grips with this task. She had relied for slips generated at the time when transactions were requested and also the old manual ledgers. The Respondent had taken home a box of files every night in order to identify and correct entries on the ledgers. Mrs L opened a holding or suspense account in which entries that could not be allocated were kept until such allocation could be made.
62. The Respondent owned the freehold of The Lodge. The ledger placed before the Tribunal, being one of the Applicant's documents, showing movements on that account had been compiled retrospectively by Mrs L and contained entries that were inaccurate. That ledger card was typical of other client ledgers in that respect.
63. Mrs L had been over fazed with the amount of work she had to do.
64. The Respondent had charged fixed fees for conveyancing work and the round figure transfers referred to by the IO had been consistent with such fixed fees due to him.
65. When the original bookkeeper had left the firm the Respondent had not kept up with billing. Matters had been completed without raising bills. Inevitably the firm's overdraft on office account increased when the billing got behind.
66. Mrs L had not drawn the Respondent's attention to accounting irregularities.
67. The Respondent said where he had paid monies for office expenses out of client account he had just signed the cheque. He had not prepared the cheque which would have been prepared by a secretary.
68. The Respondent had not drawn such cheques on client account because his office account was close to exceeding or had exceeded its overdraft limit. His bankers had been supportive and had not expressed great concern about any spending over and above the agreed overdraft limit. The bank had frequently allowed the overdraft limit to be exceeded by £2,000 or £3,000 without comment.

69. The Respondent did have his own money in client account relating to The Lodge and it was that money that would have been used for the office payments. The Respondent produced a revised ledger account relating to The Lodge which demonstrated the moneys which were available as the net proceeds of sale held in client account. The Respondent repeated that round sum transfers had not been made to reduce the office account overdraft using money to which the Respondent had not been entitled. Whilst he accepted that the effect of some of the transfers was to reduce the overdraft limit, such action was entirely acceptable where monies were properly due to the Respondent.
70. The Respondent was not running client account as his personal bank account.
71. The Respondent said that when the payment to Customs & Excise had been made he had forgotten to put that matter right. All of the other payments were covered by his own funds in client account.
72. The Respondent did not expect ultimately when the bookkeeping was sorted out that there would be a shortfall on client account. He had used the proceeds of sale of his late father's home to discharge the shortfall identified by the IO because the IO had told him that that was the action he should take.
73. At the time of the IO's inspection and his interview with the Respondent, the Respondent had just cut his holiday short owing to his father's serious illness as a result of which his father had died. The Respondent believed that the IO had been unhappy about the fact that the Respondent had devoted time to dealing with his father.
74. The Respondent said that he knew that his books were in a mess. That had been why he had brought in Mrs L. Considerable strides had been made in putting the matters right. The Respondent had been under severe personal pressure at the time of the inspection and had no recollection of making the answers recorded by the IO.
75. The Respondent had reflected on whether his actions were dishonest. He had no intention to take anyone's money. The IO had presented him with a shortfall figure which he said had to be made good. The Respondent had done so. At the time of the hearing the Respondent did not have sufficient information to know whether he was correct in doing so or not.
76. In cross examination the Respondent accepted that the client owned the money in client account. He also accepted that his own money should not have been retained in client account. He accepted that upon reconciling client liabilities with monies held on client account that sufficient money should be held fully to discharge those liabilities. He accepted that he had been in the dark as to what monies he held on behalf of clients. He had been surprised when a large shortfall had been discovered by the IO. The Applicant had accepted that it was appropriate for The Lodge sale monies to be held in client account until the mortgage had been redeemed as the firm acted for the lender.
77. The Respondent said he had not seen the weekly client account bank statements. It was the practice for the Respondent's secretarial staff to complete accounts slips and to prepare cheques. The Respondent confirmed that he had not realised that he had

signed client account cheques for office expenditure. The Respondent accepted that of the list of payments made from client account to meet office expenses the first eleven had been made before the receipt of the proceeds of sale of the Lodge. He confirmed again that he had inadvertently drawn the cheques on client account and personal pressures coupled with the fact that his books of account had been in a mess had meant that the matters had not been drawn to his attention.

78. The Respondent, when asked why the bank had refused to make a payment on office account and how he could be so confident that the bank would continue to be flexible about his level of overdrawing, pointed out that the bank had allowed his overdraft to run up to £7,000, £8,000 or £9,000 when his formal overdraft limit had been £5,000.
79. The Respondent accepted that he had been in breach of the Solicitors Accounts Rules. He had previously been in practice for ten years when everything had been in order. His books of account had got into a mess at a time when the Respondent suffered serious personal difficulties. Although the final position had not been made clear, there had been no claims on The Law Society's Compensation Fund. No client had made any claim of loss. When the IO established a minimum shortfall on the face of the books, the accuracy of which clearly was in question, the Respondent had put in his own money. The Respondent accepted muddle and breach of the rules. He had not been dishonest.

The Tribunal's Finding on the question of Dishonesty

80. The Tribunal concluded that the Respondent's actions had been dishonest. His payment of office expenses out of client account had been carried out some seventeen times over a period of eight months. The fact that this appeared to be a regular procedure adopted over a period of time led the Tribunal to conclude that use of client account in this way was not a simple error but a deliberately pursued course of action. In one case the Respondent had drawn a bankers draft using client account money in order to meet a payment. It was in the Tribunal's view implausible that a solicitor could go through this procedure without being aware of the improper source of the funds.
81. The Tribunal was in no doubt that the Respondent was fully aware of the status of his overdraft on office bank account. Money was not available to him on office account to meet his outstanding personal liabilities.
82. The Tribunal concluded that the unallocated round sum transfers were made with a view to reducing the office account overdraft and this was a deliberate and dishonest action.
83. The Tribunal noted the Respondent's explanation that some of his own money from a sale of property had been held in client account but noted that a number of the cheques improperly drawn on client account had been so drawn before the completion of the sale.
84. The Tribunal has applied the objective and subjective tests in Twinsectra v Yardley. The Tribunal does not concur with the submission made on behalf of the Respondent that the objective test for dishonesty is what the ordinary man in the street would

consider to be dishonest. It takes a view that the appropriate test is “would the ordinary honest solicitor consider the Respondent’s behaviour to have been dishonest?”. The Tribunal is in no doubt that the ordinary honest solicitor would consider the Respondent’s actions to have been dishonest. The Tribunal considers it to be inconceivable that the Respondent himself did not know that ordinary honest solicitors would consider his actions to have been dishonest and that when utilising clients’ money for his own purposes he was acting with conscious impropriety.

85. Even if the Tribunal is wrong in considering that the test relates to ordinary honest solicitors, the Tribunal is in no doubt that an ordinary member of the public would also consider that the Respondent’s deliberate use of clients’ money for his own purposes amounted to dishonesty.

The Tribunal’s Findings

86. The Tribunal found the admitted allegations (i), (ii) and (iv) to have been substantiated and also found allegation (iii) to have been substantiated on the basis that the Respondent utilised clients’ funds for his own purposes dishonestly.

The Respondent’s mitigation

87. The Respondent invited the Tribunal to take into account the difficult personal circumstances and pressures which he had suffered at the material times.
88. With regard to allegation (iv) the Court of Protection matter had been one of some complexity. The Respondent did hold some £20,000 on client account and because of the difficulties in the matter it had dragged on for some time. Because of the pressures on the Respondent he failed to make a diary note of the Court of Protection appointment and did not attend the hearing. He regretted that he had allowed that to happen and he apologised.
89. The Respondent recognised the serious position in which he found himself. He had not practised as a solicitor since September 2004. At the time of the hearing he was working in a consultancy business and also as a director of a company concerned with a mental health hospital. That was a remunerated post taking up about 4 days a week.
90. The Respondent did not wish to return to practice as a sole practitioner solicitor. He did not wish to rule out the possibility of his practising as a solicitor in employment in the future.
91. The Tribunal was invited to bear in mind that there had been no complaint by clients, no loss to anyone, there was no actual shortfall and upon The Law Society’s closure of the Respondent’s practice his clients had been shocked but had been very supportive. The Tribunal had been fully apprised of the mitigating circumstances affecting the Respondent.

Application for costs

92. The Applicant invited the Tribunal to order that the Respondent pay the costs of and incidental to the application and enquiry. The IO's costs were £5,994.94 and the Applicant was content to fix his costs at £2,000. The Respondent agreed to those figures and he agreed that he should meet those costs.

The Tribunal's Decision and its Reasons

93. The Tribunal had some sympathy for the position in which the Respondent found himself. His personal difficulties were considerable and had affected his personal wellbeing as well as putting a great deal of pressure on him. The Respondent had encountered considerable difficulty with the proper keeping of his books of account as a result of the retirement of his longstanding competent bookkeeper after which he had had to run his practice without a bookkeeper when it had proved difficult to recruit a suitable replacement. The Tribunal had given the Respondent credit for the fact that he had made attempts to get his books brought up to date. The Respondent himself accepted that his books of account were in a mess. However there was no situation that could excuse the dishonest use of clients' money.
94. A solicitor has a high duty to ensure that he complies with the Solicitors Accounts Rules. Any breach of those Rules, which are in place to protect the public, is serious. Not only does a solicitor have to ensure full compliance with the Solicitors Accounts Rules but he has the highest duty to ensure that clients' funds are dealt with honestly, properly and fairly and that he exercises a proper stewardship over client funds.
95. It was the Tribunal's view that the Respondent sought to explain his abuse of clients' funds by the bad state of his books of account. The Respondent was the sole signatory on client account and had signed seventeen client account cheques to meet office expenditure over a period of eight months. The Respondent had also made round sum transfers of client funds to office account which had not been allocated to any client and could not be seen to be representative of any bills delivered. The Tribunal rejected the Respondent's explanation that the cheques had been written by mistake. The Tribunal considers that the use of client account cheques represented a deliberate course of action on the part of the Respondent.
96. The Tribunal rejects the argument that round sum transfers related to fixed conveyancing costs which themselves were in round figures. Bills delivered to clients in respect of conveyancing matters would contain disbursement charges and value added tax and were unlikely always to be in round figures.
97. The Tribunal also rejected the Respondent's contention that following the sale of the Lodge he had his own money in client account which he was using to cover the payments made out of client account. That in itself would have been a serious breach of the fundamental principle that a solicitor's money should not be intermixed with the monies of his clients. The Respondent's records were in such a poor state that he could not have been sure how much of his own money was in client account and the Tribunal finds that the Respondent cannot excuse his action by reference to the fact that when some of the client account cheques were written his own money was in

client account because he was turning a blind eye to the fact that there might not have been enough of his own money to cover the cheques written.

98. The Tribunal's first duty is to protect the public and its second duty is to protect the good reputation of the solicitors' profession. The public must be protected from a solicitor who so seriously improperly handles clients' money. Members of the public are entitled to be sure that any money held on their behalf by a solicitor will be treated properly and fairly and in accordance with the Solicitors Accounts Rules. The Tribunal has also to bear in mind the protection of the good reputation of the Solicitors' profession. The Tribunal considers that it is right in order to meet these important duties to order that the Respondent be struck off the Roll of Solicitors. The Tribunal so ordered and it further ordered that the Respondent pay the costs of and incidental to the application and enquiry in the agreed fixed sum.

Dated this 5th day of September 2005
On behalf of the Tribunal

W M Hartley
Chairman