

IN THE MATTER OF KANAPATHIPILLAI SRITHARAN AND  
[*SECOND RESPONDENT*] – NAME REDACTED, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr D J Leverton (in the chair)  
Mr A H Isaacs  
Mr M C Baughan

Date of Hearing: 16<sup>th</sup>, 17<sup>th</sup> and 18th May 2006

---

## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

---

An application was duly made on behalf of The Law Society by George Marriott, solicitor advocate and partner in the firm of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes MK5 8NL on the 9<sup>th</sup> March 2005 that Mr Kanapathipillai Sritharan, solicitor of, Middlesex HA5 and [*SECOND RESPONDENT*], solicitor of, Middlesex HA2, solicitor might be required to answer the allegation contained in the statement which accompanied the application and at that such Order might be made as the Tribunal should think right.

The allegations against the First Respondent, Mr Sritharan, were that he had been guilty of conduct unbecoming a solicitor in that he:-

1. failed to maintain properly written books of account contrary to Rule 32 of the Solicitors Accounts Rules 1998;
2. drew or permitted to be drawn monies from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998;
3. used client funds for his own purposes;

4. transferred monies from client account into office account (round sums) contrary to Rule 19 of the Solicitors Accounts Rules 1998;
5. failed to carry out a client's (the mortgagee) instructions diligently, promptly and properly;
6. acted deceitfully towards a client (the mortgagee) and took advantage of that client.

The allegations against the Second Respondent, were that she had been guilty of conduct unbecoming a solicitor in that she:-

1. failed to maintain properly written books of account contrary to Rule 32 of the Solicitors Accounts Rules 1998;
2. drew or permitted to be drawn monies from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998;
3. used client funds for her own purposes;
4. transferred monies from client account into office account (round sums) contrary to Rule 19 of the Solicitors Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> May 2006 when George Marriott appeared as the Applicant, Mr Sritharan was represented by Kenneth Hamer of Counsel and *[SECOND RESPONDENT]* was represented by Peter Knight, solicitor.

1. At the opening of the hearing an application for an adjournment was made on behalf of Mr Sritharan on two grounds, the first was that prejudicial and irrelevant material had been introduced by the Applicant and second was that the parties had not been able to agree the net position relating to the current shortfall on the Respondents' client account:
  - (i) Mr Hamer told the Tribunal that his client's application rose principally from documents numbered 53 to 85 in the Applicant's bundle.
  - (ii) The Law Society had intervened into the Respondent's practice and Mr Sritharan had not practised as a solicitor since the intervention. Mr Sritharan had appealed against The Law Society's decision to intervene but had not been successful in the High Court proceedings. The High Court had not granted Mr Sritharan permission to appeal further.
2. There was no serious dispute about the breaches of the Solicitors Accounts Rules alleged against him. The issue for the Tribunal was whether or not Mr Sritharan had behaved dishonestly.

3. Following its intervention at the end of 2004 The Law Society began to investigate the Respondent's reporting accountants. They were the subject of separate proceedings which it was claimed were irrelevant to the Solicitors Disciplinary Tribunal proceedings and were inadmissible. The issues raised were, was the material placed before the Tribunal relevant and was it admissible to prove the case against Mr Sritharan?
4. There were two categories of material, the first dealt with the investigation process and was supported by a bundle of correspondence which took place between The Law Society and V & Co and secondly there was a dispute as to whether or not Mr Sritharan had sent a letter which he said he did not sign.
5. Mr Sritharan had been advised to apply for an adjournment pending the obtaining of expert evidence from a handwriting expert to support Mr Sritharan's contention that he had not signed the letter.
6. It was accepted that the Tribunal had been asked to consider the adjournment application on the date when the matter had been fixed for substantive hearing but the Tribunal had not been able to accommodate an oral application in the previous week.
7. The disputed letter was to be relied upon by The Law Society as relevant material and had been included as a letter purported to have been written by Mr Sritharan to his reporting accountants.
8. The Tribunal indicated that it considered that a more maintained fact to be considered was the making of round sum transfers, and that whether or not Mr Sritharan wrote a particular letter was a peripheral matter.
9. Mr Hamer submitted that the letter was important as it went to the credibility of Mr Sritharan and was therefore relevant to the issue of dishonesty. It was accepted that the Tribunal would have to consider the dishonesty allegation and reach its decision applying the test in *Twinsectra-v-Yardley*. The point was that The Law Society relied upon this unacceptable material.
10. Mr Hamer acknowledged that he was making a very late application but explained that the application was late because the offensive material had been delivered late.
11. The Applicant opposed the application.
12. The Applicant had disclosed to the Respondents all documents produced by The Law Society's Forensic Investigation Accountant.
13. The letter in dispute was relevant to the disciplinary proceedings but as the First Respondent denied its authenticity and the Applicant might have difficulty in proving the document, he was content to exclude the letter from the bundle rather than rely on an unproved document.

14. The Reporting Accountant had been served with a witness summons. No witness statement was available because the Accountant was not willing to give evidence and the Accountant had not attended at the Tribunal. The Applicant was satisfied that he was in a position to continue with his case without relying on the document to which Mr Sritharan objected. Certain other documentation had been included in the bundle as being of possible assistance to the Respondents but if they wished it to be excluded the Applicant did not object.
15. In response Mr Hamer said that the Tribunal had seen the documents which were prejudicial and it was not fair for the matter to continue before the division of the Tribunal dealing with the adjournment application.
16. The Applicant submitted that the Tribunal was an expert Tribunal and could well ignore any documents that were not relied upon as evidence. The Tribunal was well able to distinguish between relevant and irrelevant material. The Tribunal was able to be vigorous and robust as to the weight to be given to documents in evidence before it. The Applicant relied upon the appeal judgement in *Constantinides-v-The Law Society* and in particular at paragraphs 17 and 26.
17. It was Mr Hamer's position that the division of the Tribunal hearing the adjournment application should withdraw and the matter should be listed for a new division which had not read the withdrawn material. Even if the Tribunal, as an expert Tribunal, was able to put out of its mind the irrelevant material the appearance of impartiality was crucial.
18. In a case only recently reported (*A W G Gruel-v-Morrison*) the Judge had known one of the witnesses and did not recuse himself. The Court of Appeal said that the appearance of impartiality was of importance and the judge should have recused himself.
19. The Applicant did not agree that the exchange of correspondence was prejudicial. He said it was relevant but he could not prove it. The other material relating to exchanges between the Respondents Reporting Accountants and The Law Society was background material only.
20. For *[SECOND RESPONDENT]* it was pointed out that it had been very difficult for the Tribunal to find a window of time when all parties were available and the Tribunal could sit for three days. It was obvious that if the matter were adjourned it might not be listed for another six months. *[SECOND RESPONDENT]* had had the matter hanging over her head since November 2004 when she first heard that there was a deficiency on client account. *[SECOND RESPONDENT]* wanted the matter to be dealt with as quickly and at as little cost as possible.
21. *[SECOND RESPONDENT]* was neutral with regard to the documents under discussion. It had always been her position that they had no bearing on her case. She did not have any requirement for them to be either in or out of the bundle of documents before the Tribunal.

22. *[SECOND RESPONDENT]* hoped that the matter would be dealt with forthwith.

### **The Tribunal's Decision on the Adjournment Application**

23. The Tribunal after consideration decided that the matter should proceed but that pages 53 to 86 of the bundle be excluded on the basis that the Applicant no longer wished to rely upon them.
24. The Tribunal did not regard the excluded documents as prejudicial and it was not a consequence of the fact that they might have been seen or read by members of the Tribunal that the Tribunal was disqualified from hearing the matter in order fairly to determine the allegations made against both Respondents.
25. Following an adjournment Mr Hamer made an application to the Tribunal on behalf of the First Respondent to adjourn the substantive hearing in order that his client might seek leave for judicial review of the Tribunal's decision made earlier.
26. The Applicant submitted that in effect Mr Sritharan was seeking to appeal against the Tribunal's decision and such application would be opposed by The Law Society.
27. Mr Knight did not support the application. *[SECOND RESPONDENT]* wished the substantive matter to be dealt with as quickly as possible.
28. The Tribunal refused the application and directed that the matter proceed to a substantive hearing.

### **The Substantive Hearing**

29. The evidence before the Tribunal included the admissions of both Respondents. Mr Sritharan denied that he had been dishonest and gave oral evidence. Mr Ireland, The Law Society's Forensic Investigation Officer and Mr Shah, a Chartered Accountant, also gave oral evidence. The Second Respondent had lodged a written witness statement.

### **At the conclusion of the hearing the Tribunal made the following Orders:-**

The Tribunal Orders that the Respondent, Kanapathipillai Sritharan of Middlesex, HA5, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The Tribunal Orders that the Second Respondent, of Middlesex, HA2, solicitor, be suspended from practice as a solicitor for the period of 3 Months to commence on the 18th day of May 2006.

**The facts are set out in paragraphs 30 - 61 hereunder:-**

30. Mr Sritharan, born 1961, was admitted as a solicitor in 1996 and his name remained on the Roll.
31. The [*SECOND RESPONDENT*], born in 1961, was admitted as a solicitor in 1991 and her name remained on the Roll.
32. The First Respondent carried on practice as a principal under the style of M K Sri & Co from 1 Central Parade, Station Road, Harrow and 2c Farholme Road, Harrow, until The Law Society's intervention. The Second Respondent at all material times was a salaried partner.
33. Following authorisation, an inspection by The Law Society's Forensic Investigation Officer (the FIO) of the books of account and other documents of M K Sri & Co (the firm) began on 9<sup>th</sup> November 2004. The FIO prepared a report dated 22<sup>nd</sup> November 2004 which was before the Tribunal.
34. The FIO's Report revealed that the firm's books of account did not comply with the Solicitors Accounts Rules and there were other matters of concern details of which are summarised below.
35. At the commencement of the inspection the FIO was given a client account reconciliation as at 30<sup>th</sup> September 2004 which relied upon funds of £514,000 described as 'Business Reserve Account' and £1,157,015.19 described as 'Unbilled bills of costs'.
36. £514,000 was not an amount held in a client bank account. It represented personal investments of the First Respondent. The 'Unbilled bills of costs' represented the amounts held on individual client ledgers representing costs due to the firm, where bills had not been posted or not yet raised although amounts had been transferred from client bank account to office bank account.
37. The firm had over a significant period of time made round sum transfers from client bank account to office bank account. The figure of £1,157,015.19 included in the client account reconciliation at 30<sup>th</sup> September 2004 was the cumulative surplus of unallocated round sum transfers.
38. The FIO reviewed the client matter balance listing at 30<sup>th</sup> September 2004, where there were balances in excess of £5,000. The FIO identified twenty conveyancing matters, totalling £1,591,872.07, which were amounts that would not be available as costs. The FIO explained that client liabilities at 30<sup>th</sup> September 2004 totalled £2,148,814.07, the maximum figure that could theoretically have represented costs due, would have been £556,942. Even if all the balances were available for costs, this would have been insufficient to cover the shortage of approximately £1,617,015.19 at 30<sup>th</sup> September 2004. This shortage was identified by subtracting the "Business Reserve" balance from the "Unbilled bills of costs".

39. The FIO identified ten transfer authorities signed by the Second Respondent for the round sum transfers to be made from client bank account to office bank account. The Second Respondent said that she had not been provided with a list of specific sums for costs making up the amount transferred, but she had been under the impression that one of the accountants employed by the firm had identified costs that were due. The great majority of the round sum transfer from client bank account to office bank account had been authorised by the First Respondent.
40. A list of liabilities to clients as at 31<sup>st</sup> October 2004 was produced for inspection. It totalled £1,999,652.74 after adjustment. The items on the list were in agreement with the balances shown in the clients' ledger, but further liabilities existed which were not shown by the books, amounting to £344,348.41. A comparison of the liabilities including the further liabilities with cash held on client bank accounts at that date, after allowance for uncleared items, showed the following position:
- |                                    |                      |
|------------------------------------|----------------------|
| Liabilities for Clients            | £1,999,652.74        |
| Liabilities Not Shown by the Books | <u>344,348.41</u>    |
|                                    | £2,344,001.15        |
| Cash Available                     | <u>800,028.85</u>    |
| Cash Shortage                      | <u>£1,543,972.30</u> |
41. At a meeting between the FIO and the First Respondent on 18<sup>th</sup> November 2004, he agreed the cash shortage of £1,543,972.30. On 15<sup>th</sup> November 2004, £400,000.00 and on 16<sup>th</sup> November 2004 £70,000 were paid by the First Respondent into client account.
42. The First Respondent provided the FIO with a list of bills identified to date, totalling £157,944.05. The First Respondent said this represented costs due to the firm.
43. The FIO reviewed a sample of those bills. In one case the costs were £590.00 but no moneys had been received from the client as it was a legally aided matter. In five further matters bills appeared to have been raised to 'sweep up' old balances. There was no evidence on the client files of additional work undertaken after earlier bills had been raised. The First Respondent told the FIO that his staff was continuing to identify balances representing costs due to the firm and raising the necessary bills and once this exercise was completed he would immediately replace any remaining cash shortage.
44. At 31<sup>st</sup> October 2004, the FIO identified twenty two (mainly) conveyancing matters, the balances on which totalled £1,409,260.20 which mostly would not be available for costs. The FIO calculated that the theoretical maximum amount available for costs, represented by client ledger balances at 31<sup>st</sup> October 2004, would have been under £600,000 and the minimum unreplaced shortage at least £449,000.
45. The cash shortage arose in the following way:

(i)	Total Improper Withdrawals from Client Account	£2,422,917.53
	Less:- Replaced on 19/1/04	£550,000.00
	Replaced on 1/10/04	<u>£676,613.00</u>
		£1,226,613.00
		£1,196,304.53
	Add: Amount not available to replace shortage	<u>£341,479.00</u>
		£1,537,783.53
(ii)	Debit Balance	5,345.00
(iii)	Overpayments from Client Account	850.00
(iv)	Bank Charges Incorrectly debited to Client Account	30.01
(v)	Interest incorrectly credited to Client Bank Account	(92.74)
(vi)	Book Difference	<u>56.50</u>
		<u>£1,543,972.30</u>

Improper withdrawals from client account - £2,422,917.53

46. Although the firm did raise bills each month, the amounts transferred from client bank account to office bank account exceeded the amounts properly due to the firm. Since at least August 2001 round sum transfers had been made from client bank account to office bank account. Each month there was an overall unallocated transfer of funds from the firm's client bank account to office bank account.
47. At each month end the external accountants employed by the firm to maintain their books of account, highlighted on the month the end cashbook printout the fact that there was a difference between the moneys held in client bank account and the firm's liabilities to clients and the First Respondent had been informed of this.
48. As a result of the improper transfers from client bank account to office bank account the firm's client bank account became overdrawn on 27<sup>th</sup> October 2003, by £139,819.48. The Respondent had recognised that there was a serious problem and had paid money into client account raised by re-mortgaging his and his wife's properties. The Respondent agreed that the £550,000 paid into client account had not replaced the overall shortage.
49. When the £550,000 was paid into client bank account a full analysis of the overall position had not been undertaken.
50. The Respondent told the FIO that he had authorised transfers from client bank account to office bank account in order to keep the firm's bank overdraft within its agreed limit of £75,000. The money was utilised for the day to day running of the firm. The FIO reported that the First Respondent had said that he acted upon a receipt of telephone calls from the bank but in his oral evidence he said that this was not necessarily so. He would not have encountered difficulty in negotiating a higher overdraft limit.
51. The firm used to have a contract with the Legal Services Commission in respect of immigration work during the currency of which the firm received standard monthly payments paid directly into office bank account. The



Respondent explained that the loss of the Legal Services Commission contract caused him problems, particularly as he had not made any staff redundant.

52. It was the Respondent's assertion that the round sum transfers were made on the assumption that bills would be raised against the client balances in client account, but there had been a delay in carrying out the billing process.
53. As well as apparently being reduced by £550,000 on 19<sup>th</sup> January 2004 the cash shortage of £2,422,917.53 was reduced further by the introduction of £676,613 on 1<sup>st</sup> October 2004 but of this amount £341,479 was not available for this purpose for reasons explained in paragraphs [54] to [60] below.
54. A review of the First Respondent's personal re-mortgage files disclosed that the firm had been instructed by GMAC Residential Funding (GMAC) to act in accordance with the Council of Mortgage Lenders "Lender's Handbook" and any additional instructions set out in their offer of advance.
55. Although the re-mortgage advance had been made the prior mortgages secured on the properties had not been redeemed. There was no evidence on the files that those redemption statements or the title deeds had been requested from the existing lenders. No search application had been made to H M Land registry to secure priority for GMAC. There was no correspondence on the client matter files to show that GMAC was notified that the First Respondent was a principal in the firm. The First Respondent told the FIO that all searches had been carried out and that GMAC was aware that it was his firm that was acting.
56. The firm's Reporting Accountants, who had been involved in arranging the re-mortgaging of properties, had written to GMAC on 24<sup>th</sup> June 2004 saying "the solicitor, partner of Mr's (sic) firm, would be acting on this matter". It was a requirement of GMAC that the First Respondent should not act on his own behalf. The Second Respondent did not have conduct of the matter which was, the First Respondent explained, handled by Mrs Suresh, a member of staff under his supervision. Each of the files contained a client care letter, stating that the First Respondent would be responsible for the transaction. The First Respondent had signed all of the certificates on title submitted to GMAC.
57. The First Respondent accepted that he had failed to carry out GMAC's instructions with regard to searches. At a meeting with the FIO on 18<sup>th</sup> November 2004 the First Respondent confirmed that he had that day made the appropriate search at H M Land Registry on behalf of GMAC Residential Funding.
58. At the same meeting the First Respondent confirmed that he had not redeemed the prior existing mortgages and had further failed to comply with GMAC's instructions. The sum required to effect redemption was £341,479. He had not registered GMAC's first charges and thereby had failed to comply with GMAC's instructions. The First Respondent said that he was aware that there were no entries that would adversely affect GMAC's security.

59. The certificates of title stated “we, the conveyancers named above, give the Certificate of Title set out in the Appendix to Rule 6 (3) of the Solicitor’s Practice Rules 1990 as if the same were set out in full, subject to the limitations contained in it”. The Respondent agreed that because of his before mentioned failures the certificates appeared to be inaccurate or misleading but he had signed in good faith and understanding that he could carry out GMAC’s instructions.
60. The First Respondent agreed that the sum required to redeem the outstanding prior mortgages in the region of £341,479.00 was not available to reduce the shortage on client bank account.
61. The Respondents’ Accountant’s Report for the year ended 30<sup>th</sup> June 2003, signed on 23<sup>rd</sup> December 2003, was unqualified notwithstanding that:
- (a) Client liabilities and cash held in client bank accounts were stated to be Client liabilities and cash held in client bank accounts were stated to be £577,199 at 31<sup>st</sup> March 2003 when the true position was that client account was overdrawn.
  - (b) At 30<sup>th</sup> June 2003 client liabilities and cash held in client accounts were said to match but the true position was that there was a shortage of client funds of £947,000.

### **The Submissions of the Applicant**

62. Both Respondents admitted the facts and the allegations against made against them.
63. The only issue to be decided by the Tribunal was whether or not Mr Sritharan had acted dishonestly in acting as he did. It was the Applicant’s case that Mr Sritharan had indeed acted dishonestly and that the two part test for dishonesty set out in the case *Twinsectra-v-Yardley* had been satisfied.
64. The Applicant acknowledged that he had to satisfy a high burden of proof and he had to prove beyond reasonable doubt that Mr Sritharan had acted dishonestly.
65. It was not open to serious dispute that Mr Sritharan knew what the provisions of the Solicitors Accounts Rules were. This being so it was not seriously arguable that he could honestly think that his application of client moneys held by him was justifiable even if he thought paying his staff and keeping his firm afloat was the right thing to do.
66. There were two particular points which the Applicant wished to highlight. The first was the introduction of the “business reserve account”. That was not liquid funds. It might not have been money at all. The Law Society had been provided only with out of date details of “TESSAS” and “PEPS”. The second matter was that Mr Sritharan brought into his client account reconciliation an item described as “unbilled costs”. This was merely a balancing figure and the

so-called “unbilled costs” was simply the difference between liabilities to clients and cash held in client account.

67. Mr Sritharan had ignored the fundamental principle that a solicitor may not transfer his costs from client account until he has delivered a bill or a written intimation of the costs to the client concerned. There was no such concept as “unbilled costs.”
68. Mr Sritharan had made round sum transfers from client to office account. Round sum unallocated transfers were not permitted by the Solicitors Accounts Rules. The round sum transfers made by Mr Sritharan had been frequent and in large amounts.
69. Mr Sritharan had completely ignored the provisions of the Solicitors Accounts Rules. He had not kept separate records and had treated client money and client bank account as his own. Client money had not been kept in a qualifying bank or building society as was required. The sum of £514,000 described as and “client reserve account” was held neither in a bank nor a building society.
70. Further it was fundamental principle that a client's money should be used for the purposes of that particular client only. If a client deposited money with a solicitor for a house purchase he was entitled to expect that money to be kept safe and readily identifiable.
71. Round sum transfers ostensibly made to pay the Respondents' costs could not identify the clients whose moneys were being applied. The Solicitors Accounts Rules were designed to ensure that in no circumstances should clients' funds be misused. The fact that Mr Sritharan’s client account was overdrawn on two occasions meant that every single client's funds had been misapplied.
72. A solicitor must have an accounts system which ensures compliance with the Solicitors Accounts Rules.
73. Mr Sritharan was required to keep an accurate record for each individual client. The round sum transfers made on a regular basis prevented a true record being made for any one client. Mr Sritharan had been under a duty to send a bill to the individual client and then take his proper costs. He did not do so nor did he ensure that the transfer was properly recorded in the individual client ledger.
74. Mr Sritharan was responsible as senior partner in and sole principal of the firm. He was responsible to ensure that any shortfall on client account was replaced very quickly. Further the FIO reported that some of the bills which the Respondent claimed reduced the shortfall on client account were not accurate. A number amounted to a “sweeping up” of old balances. Mr Sritharan’s attitude had been “must be costs therefore transfer it”.

75. There was some dispute about the calculation of the shortage on client account. There had been a shortage over a long period of time. In 2002 the shortage had been in the region of £147,000, by October 2004 it had gone up to over £1,196,000. In January of 2005 the Respondent had paid £550,000 into client account. In view of that there could be no doubt that he was fully aware of the shortage. In October he put over £676,000 into client account at the time when the FIO was carrying out his inspection.
76. Even if Mr Sritharan had thought that nothing was amiss, alarm bells must have rung from time to time, particularly when client bank account became overdrawn.
77. The nub of the case against Mr Sritharan was the fact that he transferred round sums of client money on a regular basis from his client account to his office account. The loss of a Legal Aid contract caused financial problems to Mr Sritharan and yet he had decided not to make any staff redundant.
78. When the last substantial sum of money had been received from the Legal Services Commission the round sum transfers continued to get bigger.
79. In this manner Mr Sritharan was paying fast and loose with client account. In fact he simply took money from client account whenever he needed it.
80. A further example of Mr Sritharan's dishonesty occurred when he accepted moneys from a new mortgagee upon a remortgage of his own property and did not redeem the existing charge. Mr Sritharan had made no attempt to carry out the conveyancing processes necessary to protect the new lender. For instance, he did not carry out any searches. He did not redeem the existing mortgage until some eighteen months later and it was the Applicant's case that Mr Sritharan had acted in that way because he needed the money to put into client account to make good a shortage of money in that account of which he was fully aware. That was not the action of an honest man.
81. As at the date of the substantive hearing The Law Society's position was that there was still an identified shortage on client account of £888,000. Mr Sritharan did not agree but the current shortage on client account was not relevant. The Applicant's case was based on the position discovered by The Law Society's FIO on the inspection date.

### **The Submissions of Mr Sritharan**

82. Mr Sritharan accepted that there had been breaches of the Solicitors Accounts Rules in that in matters where work had been undertaken on behalf of clients, the clients had not been billed and the bills had not been posted in the books. The firm had embarked thereafter upon entering the bills in the books but before that process could be completed the Law Society took the draconian step of intervention.
83. Mr Sritharan asserted that he had not intended any intention of any dishonesty and even long before the intervention, when he had been informed of

shortfalls on client account, the shortfall sums were immediately agreed to be paid into the firm's client account.

84. What had taken place at the firm was that at the end of each month Mr Sritharan's in house accounting staff and he together calculated the fees due from clients in relation to the work which the firm had undertaken during a particular period and Mr Sritharan authorised the transfer of the fees. He checked the number of conveyancing transactions and took the amount of an average conveyancing bill to estimate the costs due to the firm in conveyancing matters. In non-conveyancing matters he asked the fee earners concerned to provide estimates of costs due to the firm. The amounts of transfers in respect of costs had been estimated. Figures were not "pulled out of the air".
85. The firm thereafter prepared bills of costs and submitted the same to the clients. In relation to matters which had not been concluded, bills were delivered at the conclusion of the matter.
86. The 'business reserve account' referred to investments held in the name of Mr Sritharan and his wife and they amounted to £514,000.00. That money had been transferred from their investment accounts to the firm's client account.
87. As soon as Mr Sritharan became aware of any shortfall on client account the moneys were immediately replaced. No client or any financial institution had been at risk at any time.
88. The Law Society's intervention had adversely affected Mr Sritharan's family of three children, his elderly parents, and his thirty two full time staff and their family members as well as six thousand clients.
89. During the investigation, Mr Sritharan and his staff prepared bills and whilst the investigation was going on almost three hundred and fifty bills had been prepared which totalled a sum of nearly £200,000. The FIO reported that out of the three hundred and fifty bills which had been prepared he had checked eighteen sample bills and in five of them no work had been undertaken on the files. It was not fair to suggest that a similar proportion of the bills which he had not examined could similarly be criticised.
90. Mr Sritharan had introduced £470,000 into the firm's client account and subsequently a further £44,000 had been paid in.
91. Mr Sritharan held substantial assets and realisation of them would meet any established shortfall in client funds.
92. Because the intervention agents held the firm's client files Mr Sritharan had been prevented from billing for work done up to the date of the intervention and he had been able to check the position on cases where queries had arisen.

**The Submissions of .[SECOND RESPONDENT]**

93. [SECOND RESPONDENT] regretted and unhesitatingly accepted and admitted the allegations against her. She did so recognising that she had strict liability for breaches of the Solicitors Accounts Rules in her capacity as a salaried partner at the firm.
94. [SECOND RESPONDENT] qualified in Sri Lanka as an Attorney-at-Law in 1986. She moved to the United Kingdom in 1989 and was admitted as a solicitor in March 1996. She continued to work in the firm where she trained and from October 1998 was employed by Mr Sivasanthiran's firm.
95. At the firm [SECOND RESPONDENT] initially undertook immigration work. Subsequently, she worked as a conveyancer. Mr Sritharan was the sole proprietor of the firm. In September 2002 [SECOND RESPONDENT] was given the title of salaried partner. She remained an employee of the firm and had no investment or equity interest in it and took no share in its profits or losses. She received a salary irrespective of the profitability of the firm.
96. [SECOND RESPONDENT] had been unaware of the Accounts Rules breaches and the shortfall in client funds identified by the FIO. From what the FIO had told her and what she had gleaned from the papers, the principal cause of the shortfall on client account appeared to have been where bills had not properly been properly raised and round sum transfers of moneys made in respect of costs.
97. When [SECOND RESPONDENT] joined the firm there were no employed accountants or bookkeepers, instead this function was outsourced by Mr Sritharan to Mr R. [SECOND RESPONDENT] understood that Mr R had his own accountancy practice and did the bookkeeping for a number of different solicitors' practices. By the end of 2003 this agreement changed and Mr Sritharan employed an internal accountant, M A, who worked with one assistant who made the bookkeeping entries on the computer. Mr Sritharan established, oversaw and managed the accounts department and all matters relating to the finances of the firm.
98. A costs draftsman had been employed by the firm to prepare bills for legally aided costs in immigration matters. In conveyancing transactions, each fee earner would send completion statements to the accounts department and that department would generate a bill and send it to the client direct.
99. Mrs Sivasanthiran had cooperated fully with the Law Society throughout. When the disciplinary proceedings were served on her she admitted all of the allegations at the earliest possible opportunity.
100. Mrs Sivasanthiran had a received a long schedule from the Law Society concerning Compensation Fund claims and she had dealt with each one as expeditiously as possible. In all but two cases she had no involvement with any of the matters in respect of which claims had been made upon Compensation Fund.

101. Mrs Sivasanthiran had been deeply distressed that due to her own naivety she had appeared before the Tribunal. She was sorry that a deficit should exist in the firm's client account.
102. Immediately upon the intervention, *[SECOND RESPONDENT]* lost her job. She had not been able to work since her practising certificate was suspended on 26<sup>th</sup> November 2005, although it had been reinstated subject to certain conditions on 31<sup>st</sup> August 2005. She was a mother and had three children to support.
103. As a salaried partner *[SECOND RESPONDENT]* had had to deal with Compensation Fund claims and enquiries from the Law Society. Additionally she was facing a multitude of claims from the trade creditors of Mr Sritharan. She had the prospect of future claims hanging over her head as there might well have been a substantial difference between the combined deficit on the firm's client account and the costs of the intervention after whatever Mr Sritharan realised from assets that were subject to a freezing order. *[SECOND RESPONDENT]* was deeply distressed and concerned about this. She did not know how much the client account deficiency or the intervention costs would be.

#### **The Findings of the Tribunal**

104. The Tribunal found the allegations to have been substantiated indeed they were not contested. Additionally the Tribunal found that Mr Sritharan's behaviour had been dishonest.

#### **The Tribunal's Decision and its Reasons**

105. The Tribunal had carefully listened to all of the oral evidence and had given careful consideration to the documents including the affidavits in previous proceedings and a considerable amount of correspondence and other documents. The Tribunal had listened carefully to the submissions made on behalf of both Respondents.
106. Mr Sritharan admitted allegations 1, 2, 4 and 5 but denied allegation 6 in part. He accepted allegation 3 on the basis that he had applied moneys to enable his firm to continue. The Tribunal had heard the evidence of Mr Sritharan on allegation 6 and also in support of that allegation. The Tribunal found that all the allegations were substantiated. Mr Sritharan certainly acted deceitfully by taking advantage of his lending client and failing to redeem earlier mortgages.
107. Mr Sritharan gave evidence at some length and was cross examined by the Applicant and answered questions put to him by the Tribunal. His evidence was that the round sum transfers which apparently began to be made in 2001 and continued until the FIO's inspection visit were made to "maintain the office account and in anticipation of bills to be done." Mr Sritharan said that he "had to pay costs of £80,000 to £90,000 to meet his office expenses" and pointed out that he believed he had acted honourably in that he had "never failed to pay the staff."

108. Mr Sritharan seemed to have no idea of his duties and obligations under the Solicitors Accounts Rules and was in fact using client account moneys to run his firm over a long period of time. He knew perfectly well that client moneys were sacrosanct but chose to use them for his own purposes. The fact that the firm's client account went into overdraft on two occasions demonstrated beyond any doubt that no honest solicitor in the context of his firm could conceivably have thought that all the moneys owed to client account could be represented by unbilled bills of costs.
109. The Tribunal found Mr Sritharan's evidence to be wholly unsatisfactory in a number of respects. He was completely unable to explain why the exact sum of £550,000 was required to be paid into client account or indeed why the sum of £410,000 was also required for this purpose.
110. The Tribunal accepted the evidence of the FIO, Mr Ireland, and his written report of 22<sup>nd</sup> November 2004.
111. Having considered the matter fully and carefully on the issue of dishonesty and taking full note of the tests set out in the case of *Twinsectra-v-Yardley* the Tribunal was is no doubt that Mr Sritharan was guilty of dishonesty. In relation to allegations 2, 3, 4 and 6 Mr Sritharan as a professional man with knowledge of the Rules must have known that what he did, by the standards of ordinary people, was dishonest. He could not set his own standard of honesty and by claiming a belief that his behaviour was honest he offended the normally accepted standard of honest conduct.
112. There was a shortfall of some £1.5 million identified in the FIO's report. It was perfectly true that the figure had subsequently been reduced by moneys raised by Mr Sritharan and by additional billing but there had been no agreement as to what was the final figure for the client account deficiency.
113. The payments made by Mr Sritharan showed that he had been concerned to try to put matters right but the fact remained that he had been guilty of serious dishonesty in his dealings with client money in his practice of which he was, in effect, the sole principal. The Solicitors Accounts Rules were in place to protect the public and it was essential that a solicitor achieved punctilious compliance with them in order that members of the public and clients might have absolute confidence in the way in which a solicitor would handle money. The careful and proper stewardship of client money was of fundamental importance and it was an aspect of a solicitor's behaviour upon which the good name of the solicitors' profession depended so as to protect the public interest.
114. With regard to *[SECOND RESPONDENT]*, she had admitted the allegations made against her and had admitted that she had authorised some round sum transfers from client to office bank account when asked to do so by a member of staff. She had not considered her action at the time to have been of any particular significance but in this she was mistaken.



### **Mr Sritharan's Mitigation**

115. Mr Sritharan had lost his firm and his good name. He was a destroyed man.
116. Mr Sritharan had fully cooperated in the investigation.
117. The Tribunal was invited to give due weight to the large number of written testimonials put in in his support all of which spoke of his competence as a solicitor. The judgement of Harry J in the intervention proceedings should be taken into account. He made no finding that Mr Sritharan had acted dishonestly. Mr Sritharan had suffered financially to a great degree. It could not be said that he had absconded with clients' money nor disobeyed any orders made. Mr Sritharan continued to cooperate with The Law Society.

### **Mrs Sivasanthiran Mitigation**

118. Mrs Sivasanthiran had explained the limited nature of her role as a salaried partner. Despite being a salaried partner with no powers within the firm she remained liable for breaches of the Solicitors Accounts Rules. She should have known the responsibilities that she would accept in becoming a salaried partner. In reality the only benefit she gained was her salary. Her being held out as a partner had meant that she was liable for the debts of the firm which she understood to be substantial. She would suffer grave financial difficulty as a result of the disciplinary proceedings.

### **Costs**

119. Mr Marriott sought the costs of and incidental to the application and enquiry. Mr Knight on behalf of *[SECOND RESPONDENT]* invited the Tribunal to take into account her lack of culpability and the great damage she personally had suffered. She had to pay the substantial costs of her defence. There had been a three day hearing before the Tribunal at the behest of Mr Sritharan and it was right that he should bear the whole of the Applicant's costs.
120. For Mr Sritharan Mr Hamer said he could not oppose an order that Mr Sritharan pay The Law Society's costs.

### **The Sanction Imposed by the Tribunal**

121. The Tribunal having found Mr Sritharan to have been dishonest in his use of client money for his own purposes, it was both right and proportionate, in order to protect the public and maintain the good reputation of the solicitors' profession, that he should be Struck Off the Roll of Solicitors.
122. Mrs Sivasanthiran had very properly accepted liability for breaches of the Solicitors Accounts Rules in her capacity as a salaried partner. The Tribunal accepted that her level of culpability was much lower than that of her senior partner. She acted however carelessly and very imprudently when she authorised round sum transfers to be made from client to office account. To that extent she could not be said to be blameless. The Tribunal took into account the very difficult financial situation in which *[SECOND*

*RESPONDENT* found herself but nevertheless concluded that it was necessary to demonstrate the seriousness of the Solicitors Accounts Rules breaches and the wrongful use of client money which was authorised by her as a partner. It therefore decided that she should be suspended from practice for the period of three months to commence 18<sup>th</sup> May 2006.

123. The Tribunal considered in all the circumstances, and to reflect the relative culpability of each of the Respondents, that it would be right to order Mr Sritharan to pay the whole of the Applicant's costs, to include the costs of the Forensic Investigation Officer of The Law Society such costs be subject to assessment if not agreed between the parties.

DATED this 29<sup>th</sup> day of August 2006  
on behalf of the Tribunal

D J Leverton  
Chairman