

IN THE MATTER OF [*FIRST RESPONDENT*] – *NAME REDACTED* & PETER SINCLAIR  
SHIPSTON, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr S N Jones (in the chair)  
Mr J C Chesterton  
Mrs C Pickering

Date of Hearing: 13th December 2005

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by George Marriott, solicitor and partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes MK5 8NL on 20<sup>th</sup> May 2005 that the First Respondent of Co Durham SR7 and Peter Sinclair Shipston of Ponteland, Newcastle, solicitors, might be required answer the allegations contained in the statement which accompanied the allegation and that such order might be made as the Tribunal should think right.

The allegations were as follows:-

The allegations against [*FIRST RESPONDENT*] and Mr Shipston (the Respondents) were that they had been guilty of conduct unbecoming a solicitor in that they:-

- 1.1 Paid their own funds into client account contrary to Rule 13(xii) of the Solicitors Accounts Rules 1998 (the Accounts Rules).
- 1.2 Withdrew money from client account contrary to Rule 22(i) of the Accounts Rules.
- 1.3 Used clients' funds for his their own purposes.

- 1.4 Maintained debit balances in client account contrary to Rule 22(5) of the Accounts Rules.
- 1.5 Failed to keep accounting records up to date contrary to Rule 32 of the Accounts Rules.
- 1.6 Made round sum transfers contrary to Rule 19 of the Accounts Rules.
- 1.7 Maintained suspense accounts contrary to Rule 32(16) of the Accounts Rules.
- 1.8 Failed to remedy the breaches of the Accounts Rules contrary to Rule 7.

A further allegation against Mr Shipston was that he had been guilty of conduct unbecoming a solicitor in that he:-

- 1.9 Failed to comply with Rule 15 of the Solicitors Practice Rules 1990.

Against Mr Shipston the Applicant put the case as one of dishonesty with regard to allegations 1.2 and 1.3 as set out above.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13<sup>th</sup> December 2005 when George Marriott appeared as the Applicant, Mr Mark Cosgrove of Queens Counsel appeared for *[FIRST RESPONDENT]* and Mr Shipston appeared in person.

The evidence before the Tribunal included admissions by both Respondents. In the case of *[FIRST RESPONDENT]* his admissions were on the basis of his written plea placed before the Tribunal. Mr Shipston admitted the allegations but denied that he had been dishonest.

*[FIRST RESPONDENT]* and Mr Shipston both gave oral evidence, as did Mr A B Marsh of Counsel who gave evidence as to *[FIRST RESPONDENT]*'s good character. Mr Clifford, a costs draftsman instructed by The Law Society's Investigation Officer, gave oral evidence.

**At the end of the hearing the Tribunal made the following orders:-**

The Tribunal orders that the First Respondent, of Co Durham, SR7, solicitor, be suspended from practice as a solicitor for the period of six months to commence on the 13th day of December 2005 and it further orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,339.93

The Tribunal orders that the Respondent, Peter Sinclair Shipston of Ponteland, Newcastle, 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 £18,679.85.

**The Facts are set out in paragraphs 1 to 74 hereunder:-**

1. *[FIRST RESPONDENT]*, born in 1952, was admitted as a solicitor in 1979. His name remained on the Roll of Solicitors. Mr Shipston, born in 1941, was admitted as a solicitor in 1965 and his name remained on the Roll. The Respondents at the material times carried on practice as partners under the style of Pawson and Murray at 5 Royal Road, Stanley, Co Durham DH9 8AH. They had been partners since 1986. They conducted a general practice in which Mr Shipston primarily conducted conveyancing and probate work and *[FIRST RESPONDENT]* primarily had conduct of criminal matters. They were assisted by an unadmitted staff of four.
2. On 13<sup>th</sup> January 2004 an Investigation Officer of The Law Society, (“the IO”), began an inspection of the Respondents’ books of account and other documents. The IO produced a report dated 9<sup>th</sup> July 2004 which was before the Tribunal.
3. The report revealed that either partner could operate the bank accounts held by their firm at Lloyds TSB Victoria Road Consett branch where they held client and office accounts and fifteen designated deposit accounts.
4. At the commencement of his inspection the IO found that the books of account were not in compliance with the Accounts Rules. The last client account reconciliation was at 30<sup>th</sup> April 2002, prepared by the Respondents’ reporting accountants. This was some twenty months prior to the start of the inspection. No entries into the books of account had been made since October 2003. Client ledger accounts were often inaccurate or incomplete. Numerous client ledger accounts were in debit. Numerous payments and receipts had not been allocated to particular client ledger accounts.
5. On 16<sup>th</sup> February 2004 the IO returned to the firm’s office when he noted that the books of account had been written up to 30<sup>th</sup> September 2003 and a client reconciliation had been prepared as at that date. The Respondents’ reporting accountants had assisted with this.
6. The Respondents’ books of account were still not in compliance with the Accounts Rules as the books of account and client reconciliations were still not up to date. Client ledger accounts remained often inaccurate or incomplete. Numerous client ledger accounts remained in debit and further debit balances were in existence. Numerous payments and receipts remained unallocated to particular client ledger accounts and further unallocated amounts existed.
7. On 30<sup>th</sup> March 2004, the IO returned again to the firm’s office and noted that the books had been written up to the inspection date, namely 31<sup>st</sup> December 2003, and a client reconciliation had been prepared with the assistance of the Respondents’ reporting accountants. However, the books of account were still not in compliance with the Accounts Rules for the reasons set out in paragraph 6 above.
8. The Respondents accepted the deficiencies in their books of account. They explained that they had been caused by the following factors. The previous cashier, who had been employed for at least two years, did not adequately maintain the books of account but the partners had not been aware of this at the time. The same cashier had left in October 2003 and the Respondents had not found a replacement prior to the

inspection date. The Respondents suffered a computer software failure in 2003 which took several weeks to correct, by which time a backlog in postings had arisen.

9. The Respondents had encountered difficulties in recruiting appropriately qualified staff for the cashier role so they arranged for a current member of staff to fulfil the role after completing training. The Respondents' reporting accountants were to supervise the cashier and working closely with the firm until the Respondents were satisfied that the cashier was competent in the role.
10. A list of liabilities to clients as at 31<sup>st</sup> December 2003 totalled £1,062,245.77, after adjustment. No reliance could be placed on this list by the IO because of the history of bookkeeping deficiencies. It followed that no opinion could be expressed as to the Respondents' liabilities to clients. The IO was able to calculate that a minimum cash shortage of £174,288.22 existed as at 31<sup>st</sup> December 2003.
11. Mr Shipston wrote to the IO on 16<sup>th</sup> April 2004 and in his letter he addressed a number of apparent debit balances in the books of account. These and other apparent debit balances and unallocated items were discussed in an interview between the IO and Mr Shipston on 6<sup>th</sup> May 2004 and in a further interview between the IO, Mr Shipston and *[FIRST RESPONDENT]* on 23<sup>rd</sup> June 2004.
12. A number of the apparent debit balances remained. These were due to accounting posting errors which, once corrected, would eliminate the debit balance and these were excluded from the minimum cash shortage calculation.
13. The Respondents agreed many of the individual amounts that had resulted in the overall minimum cash shortage, but they did not agree the total cash shortage of £174,288.22 indicating that they were still investigating some of the items included in this figure. The Respondents did agree the minimum cash shortage relating to debit balances, overpayments and overtransfers, totalled £24,478.00 and the minimum cash shortage relating to incorrect transfers from client to office bank account, totalled £34,874.08.
14. The Respondents said that they were unable to replace the minimum cash shortage "in the short term" and would be looking to obtain finance in order to do so as soon as possible.
15. In an interview with the IO on 23<sup>rd</sup> June 2004, the Respondents said that they had provisionally arranged a £30,000 loan facility with a finance company but that they were aware that more funds would be required. *[FIRST RESPONDENT]* said that the firm "will do whatever is needed to rectify any discrepancies". No part of the shortage had been replaced.
16. The minimum cash shortage arose in the following way:-

(i)	Unallocated Payments and Transfers from Client Bank Account	£114,936.14
(ii)	Incorrect Transfers from Client to Office Bank Account	34,874.08
(iii)	Debit balances: Overpayments and Overtransfers	<u>24,478.00</u>
		<u>£174,288.22</u>

### **Unallocated Payments of Transfers from Client Bank Account**

17. During the period 19<sup>th</sup> January 2001 to 23<sup>rd</sup> December 2003, many items had not been allocated to any individual client ledger account but had been entered into client ledger accounts labelled “unknown” or “sundry”. There had been one hundred and three transfers in the client ledger, varying in amount from £0.01 to £6,375.63 and totalling £45,625.38 representing unallocated transfers from client to office bank account. Many of the amounts entered into the “unknown” or “sundry” client ledger accounts represented the total amount transferred from client to office bank account in a month. There had been ninety-five payments from client bank account, varying in amounts from £0.08 to £12,181.00 and totalling £69,310.76. The total of unallocated payments and transfers from client bank account was therefore £114,936.14 (£45,625.38 + £69,310.76). The Respondents said that they did not know what these items related to and that their investigation was continuing.
18. The IO included a complete list of the unallocated items, including unallocated receipts totalling £4,467.99 and unallocated transfers to client bank account totalling £12,740.62 in his report.
19. The Tribunal was asked to note in particular the items (set out in paragraph 20 below) and which were set out in paragraph 24 of the Report of the IO.
20. On 19<sup>th</sup> January 2001 two withdrawals were made from client account of £275 and £200 respectively and described as “drawings”. On 18<sup>th</sup> and 19<sup>th</sup> June 2002, “drawings” of £700 and £540 respectively had been made. Cash had also been drawn from client account on three occasions in the amounts of £1,000, £2,000 and £2,300. The reason for transfers from client to office account identified in paragraph 10 of the Report of the IO were unknown. It was also noted that on a number of occasions the cheque stub had not been completed.
21. *[FIRST RESPONDENT]* said that the amounts described as drawings were the approximate amounts he would take as personal drawings in cash each week and he could “only imagine they were written on the wrong cheque book”. He accepted that he had signed such cheques.
22. Mr Shipston confirmed that the items noted “PSS” in paragraph 24 of the Report of the IO would relate to him but he was not able to explain the reason for them, other than error, stating that “it looks like all drawn on the wrong account”. He said, in relation to item (vi), that he might have acquired something for the office and was reimbursing himself or it might have been that he had mistakenly picked up the wrong cheque book. It was confirmed that the office and client account cheque books had no feature to distinguish one from the other.
23. In respect of three cash items (numbered xv, xvi and xvii) the Respondents said that they had no explanation for the cash payments or to what they related. *They said that clients often requested payments in cash.* Other payments were said to be for search fees that should have been allocated to individual client matters.

24. A payment of £1,000 had been made to Customs & Excise on 15<sup>th</sup> November 2002 (item xx) Mr Shipston said that he did not know why this payment had been made from the client bank account, but that it would have been made in respect of the firm's VAT liability. He said that again it might have been that the wrong cheque book had been used in error.
25. The Respondents said that they had not been aware of these errors at the date of the commencement of the IO's inspection as the books of account had not been up to date.
26. The IO noted that three of the transfers from client to office bank account (xxxiii, xxxiv and xxxx) had been made at a time when the office bank account stood overdrawn in excess of its £10,000.00 overdraft limit.
27. The details were as follows:-

<u>Date</u>	<u>Amount Transferred from Client to Office Bank Account</u>	<u>Overdrawn Balance prior to the transfer</u>
22 <sup>nd</sup> May 2003	£1,735.00	£10,185.94
27 <sup>th</sup> May 2003	£1,200.00	£10,930.71
23 <sup>rd</sup> December 2003	£1,200.00	£11,071.59

28. Mr Shipston confirmed that the office bank account overdraft limit was £10,000.00. He said that the bank returned items when the account was over its limit and that he would "find fees" by considering which client matters could be billed, so funds could be transferred over to office account.
29. When asked if these transfers had been made in order to reduce the overdraft to below its limit and if the transfers did not actually relate to an individual client, Mr Shipston answered "certainly not consciously as far as I am concerned". *[FIRST RESPONDENT]* said that they would not know at that particular date what the overdraft balance actually was, as they did not check it on a daily basis and the bank did not telephone to advise them.
30. *[FIRST RESPONDENT]* also said that he did not personally make or know about the transfers. He said that there was "no connection between the overdraft level and the transfers". He went on to say, "we have not been taking client money ourselves, drawings are not this sort of money and we do not know where this money has gone".
31. The Respondents accepted that these unallocated items did appear to be either personal or office payments.

#### **Incorrect Transfers from Client to Office Bank Account**

32. During the inspection the IO noted that in ten probate matters transfers from client to office bank account in respect of costs exceeded the total bills of costs, varying in amount from £697.50 to £9,072.03 and totalling £34,874.08. The three largest

examples were exemplified by the estates of M deceased, H deceased and B deceased.

33. In M deceased Mr Shipston was a joint executor and he acted in the grant of probate and the administration of the estate. The matter was ongoing. One bill of costs dated 3<sup>rd</sup> October 2003 had been raised and delivered totalling £1,997.50 in respect of a property sale on behalf of the estate.
34. Between 16<sup>th</sup> April 2003 and 24<sup>th</sup> September 2003, fifteen transfers from client to office bank account varying in amount from £235.00 to £2,526.25 and totalling £11,069.53, had been charged to the client ledger account of M deceased in respect of costs. £11,069.53 had therefore, been transferred from client to office bank account in respect of costs, resulting in an over transfer and a client account shortage of £9,072.03. (£11,069.53 less £1997.50).
35. Mr Shipston said that the matter was current and that he had further work to bill before completing the administration of the estate. Mr Shipston agreed that he had raised and delivered only one bill and that the other transfers had been made without the delivery of a bill. He said that he should have been sending interim accounts but that he had not. He was not able to offer an explanation. Mr Shipston agreed that the utilised amounts had to be paid back to the client bank account but he had not done so at the date of his discussion with the IO.
36. Mr Shipston acted for the lay executors in the grant of probate and the administration of the estate of H deceased. The matter had been completed and a general estate account prepared. The estate account showed the costs to be £4,993.75.
37. Between 11<sup>th</sup> March 2003 and 26<sup>th</sup> September 2003, twenty-six transfers from client to office bank account, varying in amount from £117.50 to £1,117.50 and totalling £11,370.74 had been charged to the client ledger account of H deceased in respect of costs. The resulting overtransfer and client account shortage was £6,376.99 (£11,370.74 less £4993.75).
38. Mr Shipston said that many of the transfers made were duplication errors and should not have been made. He also said that some of the transfers might have been in respect of property incurred costs for which a bill had not been raised and delivered.
39. Mr Shipston agreed that the amounts overtransferred had to be paid back to the client bank account but he had not done this at the time of his discussion with the IO.
40. Mr Shipston was a joint executor of B deceased and he acted in the grant of probate and the administration of the estate. The matter had been completed and a general estate account prepared. The estate account showed that the costs were £7,637.50.
41. Between 20<sup>th</sup> June 2001 and 1<sup>st</sup> May 2002, twenty-nine transfers from client to office bank account, varying in amount from £117.50 to £3,291.25 and totalling £13,816.88 had been charged to the client ledger account of B deceased in respect of costs, leading to an overtransfer in the sum of £6,179.38 (£13,816.88 less £7637.50).

42. Mr Shipston agreed that these overtransfers had to be paid back to client bank account. He said that they might partly be transfers that should be recorded on other client ledger accounts and that there may be some duplication errors, but he had not been aware of these as the books of account had not been up to date.
43. Mr Shipston accepted that in the other seven matters where overtransfers had been identified there had been duplication errors and transfers for costs from client to office bank account without delivery of a bill.
44. The Law Society had instructed a costs draftsman (Mr Ned Clifford) to consider the file of M deceased for which Mr Shipston had conduct. It was Mr Clifford's evidence that insufficient work had been carried out on the file to justify the transfers made. The costs draftsman's evidence was that the total work recorded on the file justified a charge considerably less than the total transfers made. In the case of M deceased the work in the opinion of Mr Clifford justified a charge of £3,613.41 (exclusive of VAT). The transfers totalled £11,069.53 (and one bill of £1997.50 raised). The costs draftsman accepted that there had been a lack of attendance notes but he had analysed and included time spent which had not been recorded on the file. Mr Clifford's evidence was that even taking into account all of the matters raised by Mr Shipston in his letter of 21<sup>st</sup> November 2005 the most which could be justified was a charge of £4855.46.
45. It was Mr Shipston's assertion that in the case of M deceased there had been a distinct lack of attendance notes on the file which explained why the justification for charges had not been apparent from the file. The costs for the property sale had been charged separately and formed part of the overall transfers made. A considerable number of the transfers made included a VAT element.
46. Mr Shipston had been under considerable pressure at the relevant time owing to staff difficulties. In particular the firm's cashier had left. The replacement cashier proved not to have had sufficient experience and she left in October 2003. A replacement could not be found.

#### **Debit Balances - Overpayments and Overtransfers**

47. Debit balances ranging from £0.01 to £1,367.08 and totalling £24,478.00 had arisen on one hundred and forty eight matters during the period 25<sup>th</sup> May 2001 to 22<sup>nd</sup> December 2003 as a result of overpayments and transfers from client bank account. The Respondents accepted that this had resulted in a shortage of client funds. They said that this arose due to errors of which they had been unaware as the books of account were not up to date.
48. In his Report the IO highlighted two particular examples, namely the case of Mr St and a personal matter for Mr Shipston. In the first example Mr Shipston confirmed that he had conduct of his own personal matter. He told the IO that he had been unable to find the paperwork but said that the matter was in respect of a personal loan raised to facilitate personal payments, although he could not now remember the specific nature of those payments. Mr Shipston said that this personal matter had been conducted through the client account for convenience and that he was not aware that this was a breach of the Accounts Rules.



49. There were two receipts into the client account and two payments out of the client bank account, all of which had been entered against the client ledger account of Mr Shipston.
50. Mr Shipston said that the two receipts of £2,400.00 (30/6/1999) and £1,200.00 (1/7/1999) were in respect of a personal loan that he had obtained from a finance company.
51. On 1<sup>st</sup> July 1999, a payment of £3,600.00 was made to JC Ltd and Mr Shipston said this was a personal payment made on his behalf.
52. On 1<sup>st</sup> June 2003 a payment of £1,000.00 was made from the client bank account and charged to the client ledger account of Mr Shipston when no funds were available, resulting in a debit balance and cash shortage of £1,000.00.
53. The narrative on the client ledger account stated “Drawing WD” for this amount. In an interview with the IO on 23<sup>rd</sup> June 2004, the Respondents established that the narrative in the client ledger was incorrect and the payment represented personal drawings of Mr Shipston.
54. Mr Shipston said that he could not be sure why he had paid the £1,000.00 to himself as personal drawings, but said that he “probably thought that there was still money available from that ledger (from the personal loan) but obviously it wasn’t”. He said that it was possible that he had picked up the wrong cheque book and paid the drawings from the client bank account in error.
55. The partners said that their normal procedure was to pay drawings by way of a cheque made out to “cash” and not by transfer for personal convenience. Mr Shipston said that during this period he would have been writing out the partners’ personal drawings cheques himself.
56. Mr Shipston said that he was not aware of the error prior to the inspection, as the books of account were not up to date.
57. Mr Shipston confirmed that the £1,000.00 had not been repaid to the client bank account.
58. Mr Shipston agreed that he had benefited personally from client’s funds which financed £1,000.00 of his drawings on 1<sup>st</sup> June 2003.
59. In the second example in the report of the IO [*FIRST RESPONDENT*] acted for Mr St in a personal injury matter.
60. Mr Shipston said that the firm had lost the file for a time causing delay in dealing with the matter and that the client had complained. It was agreed, therefore, that the firm would not charge the client for their services.
61. [*FIRST RESPONDENT*] said that the settlement proceeds and legal costs received from the third party insurers were all paid in full to Mr St and this was supported by

the client matter file. Nevertheless, costs totalling £775.00 were transferred from client to office bank account on 23<sup>rd</sup> December 2002 and 16<sup>th</sup> January 2003 and charged to Mr St client ledger when no funds were available.

62. The Respondent's firm had paid Mr St £2,491.79 in respect of his settlement when they had received only £2,489.71. This difference, together with the costs and the disbursement repayments resulted in a debit balance on Mr St's client ledger (and a cash shortage of) £1,367.08.
63. *[FIRST RESPONDENT]* said that these payments and transfers from the client bank account were errors of which he had not been aware prior to the inspection. He said that the instructions not to charge this client ledger account with costs and disbursements could not have been passed on to the cashier.
64. The IO went on to report on other matters. Firstly, the IO noted that on 25<sup>th</sup> February 2004, after the inspection date, a payment from the client bank account in the sum of £7,529.46 was made to Customs and Excise in respect of the firm's VAT liability for the period 1<sup>st</sup> November 2003 to 31<sup>st</sup> January 2004.
65. This payment was entered into a client ledger account called "Loan Account", which, at the time of the payment, had a balance of £7,000.00 resulting in a debit balance and client account shortage of £529.46.
66. Mr Shipston said that a business loan of £20,000.00 had been raised to pay for various office expenses and the outstanding VAT liability and that this money had been paid into the client bank account. Mr Shipston said that the funds had been paid into client account for convenience and he was not aware that this was a breach of the Accounts Rules. He also was unaware that there were insufficient funds available from this loan as the books of account were not up to date. He said the debit balance was "entirely a miscalculation by me". He was aware that the funds had to be replaced but that had not been done at the time of the discussion with the IO.
67. Secondly the IO considered client care letters. *[FIRST RESPONDENT]* primarily conducted criminal cases and he said that he sent out client care letters to all of his clients.
68. Mr Shipston said that the firm had not been sending client care letters to clients in respect of other matters. He said that he saw all of his clients personally and explained the information that would be included in a client care letter. Mr Shipston appreciated that he should have provided each client with a client care letter and said he would so in future.
69. By identical letters dated 28<sup>th</sup> July 2004, both Respondents were sent the report from The Law Society and asked for an explanation. The Respondents responded by letters dated 19<sup>th</sup> August 2004, and 8<sup>th</sup> and 9<sup>th</sup> September 2004.
70. In their letters, the Respondents together asserted that the shortfall in client account could not be remedied without the Respondents raising finance. As there were no reconciliations, extra staff had been recruited to assist in the reconciliation. A reconciliation should be achieved by 1<sup>st</sup> October 2004 and the deficiency in client

account would be replaced within a month of that date. There was acceptance of breaches of the Accounts Rules. The Respondents denied any intention to use client monies for any improper purpose.

71. The substantial shortfall in client account which had been in existence for some time led The Law Society to contemplate an intervention into the Respondents' practice. The Law Society resolved to defer the matter until 4<sup>th</sup> October 2004 to allow the Respondent's Reporting Accountant to produce to The Law Society details of the true financial position. The Respondents asked for an extension until 31<sup>st</sup> October 2004. On 18<sup>th</sup> October 2004 the Respondents Reporting Accountants indicated that the balance which remained unallocated was £36,167.21 and that that did not take into account any overdrawn client accounts.
72. By letter dated 29<sup>th</sup> October 2004 [*FIRST RESPONDENT*] indicated that Mr Shipston was not able to assist in tracing any further balances and that [*FIRST RESPONDENT*] had served a notice of dissolution of the partnership in view of a dispute between the two of them as to how to raise funds.
73. By letter dated 1<sup>st</sup> November 2004 Mr Shipston told The Law Society that he would cease to trade once he had completed the firm's civil matters.
74. On 2<sup>nd</sup> November 2004 The Law Society resolved to intervene into the Respondents' practice and to refer the conduct of both Respondents to the Tribunal.

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

75. The Tribunal would be concerned to determine whether the allegations of professional misconduct had been made out and in that event what penalty should be imposed.
76. The allegations against both Respondents were allegations of conduct unbecoming a solicitor.
77. The case was put against [*FIRST RESPONDENT*] on the basis that he was reckless with regard to all the allegations. He failed to give any thought or any proper thought as to whether or not there was a risk of harmful consequences to clients in circumstances where if any or any proper thought had been given to the matter, it would have been obvious that there was such risk. [*FIRST RESPONDENT*] accepted that he had been reckless.
78. The case was put against Mr Shipston on the basis that his conduct had been dishonest. The Applicant recognised that the Tribunal would require him to discharge his burden of proof to the highest standard. The Tribunal was invited to apply the test in Twinsectra -v- Yardley and Others [2002] UKHL 12. It was the Applicant's submission that Mr Shipston's transfers of clients' money to office account where his firm was not entitled to such money would be regarded by any standard as being dishonest and Mr Shipston himself knew or ought to have known that to be so.

**The Submissions on behalf of [FIRST RESPONDENT]**

79. [FIRST RESPONDENT] admitted the allegations made against him. The only personal actions of [FIRST RESPONDENT] related to the two cheques for drawings where he signed client account cheques and these were innocent errors. All other matters were admitted on the basis that the actions of Mr Shipston, who controlled transfers and dealt with almost all non-contentious files were binding on the firm and [FIRST RESPONDENT] was liable as a partner, albeit that he was unaware of the full actions of Mr Shipston.
80. [FIRST RESPONDENT] had become aware that a loan received by the firm was paid by Mr Shipston into client account, but not into an account of an existing client of the firm.
81. [FIRST RESPONDENT] accepted that the client account cheques relating to drawings had been signed by him, this was an innocent mistake he believed that the cheques were office account cheques and were either for drawings or motor expenses. [FIRST RESPONDENT] was not aware of this mistake until it was drawn to his attention during the investigation. [FIRST RESPONDENT] denied that any other withdrawals were made with his knowledge or consent.
82. When [FIRST RESPONDENT] became aware of the unallocated transfers and consequent debits on some client accounts, the total liability was uncertain. Due to the state of record keeping it was not possible to allocate the transfers and rectify them immediately. [FIRST RESPONDENT] made all possible attempts to do so. The size of the deficit was so large that he was not able to rectify the client account shortage from his own personal resources but he indicated that he would be prepared to mortgage his own property to do so. Mr Shipston refused to make any financial contribution.
83. Due to the inefficiency of the firm's cashier and software difficulties the books of account were not up to date. [FIRST RESPONDENT] was not aware of the extent of the deficiency as he dealt only with criminal matters and kept separate computer files for costing his criminal cases. When he did become aware he made all possible efforts to rectify the situation. For example he re-arranged his own workload so that Mr Shipston could be released to deal with the problems initially one day a week and later three days a week.
84. [FIRST RESPONDENT] made no round sum transfers but accepted that such transfers were made by Shipston without his knowledge.
85. [FIRST RESPONDENT] created no suspense accounts. He was aware that such accounts were created to deal with unallocated amounts but was advised that this was a short term measure and the only way to represent the un-allocated balances.
86. [FIRST RESPONDENT] accepted that he failed to rectify the breaches but this was because he was unable to do so. Regularising the accounts required information he did not possess and it could only be done by Mr Shipston to whose files the unallocated balances principally related. [FIRST RESPONDENT] made all possible time and resources available for Mr Shipston.

87. *[FIRST RESPONDENT]* fully assisted the investigators and the firm's accountant in an attempt to rectify matters.
88. *[FIRST RESPONDENT]* enjoyed an excellent reputation for his work in the criminal field. He was a solicitor of integrity and competence. He had concentrated on client affairs, having trusted his partner of many years standing with the administrative side of the practice. *[FIRST RESPONDENT]* did not enjoy good health. He faced bankruptcy proceedings. He had been able to continue to practise in criminal law as an employed solicitor. The Law Society had granted to him a conditional Practising Certificate.
89. *[FIRST RESPONDENT]* accepted liability as a partner for what had occurred, but not personal liability. He hoped he might be permitted to continue to practise as a solicitor.

### **The Submissions of Mr Shipston**

90. Following the Law Society's intervention into the Respondents' practice, Mr Shipston had not been working. He faced bankruptcy. Mr Shipston had found himself in difficulties when the firm's competent cashier left. The replacement cashier proved to be unsatisfactory and left the firm in October 2003. Mr Shipston was not computer literate which did not help matters.
91. Mr Shipston formed no deliberate intention to transfer costs from client account to which the firm was not entitled. He accepted that he should have raised bills but he had not done so. He based his calculation of appropriate transfers by looking at the file. He intended that any error would be rectified when final accounts were prepared.
92. Things had not been helped by the fact that Mr Shipston had gone on to working part-time. The considerable pressure of the situation up to the date of the intervention played a part in his not being able fully to sum out outstanding matters.

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

93. Insofar as they were not admitted the Tribunal found all of the allegations to have been substantiated and also made a finding that Mr Shipston's actions had been dishonest after careful consideration of the facts and the authorities, particularly Twinsectra -v- Yardley.
94. The Tribunal based its finding of dishonesty on Mr Shipston's conduct whilst handling the file of M deceased. The Tribunal accepted the costs draftsman's evidence that a series of transfers had been made by Mr Shipston from client to office account relating to costs that the evidence available on the file did not justify. The Tribunal rejected Mr Shipston's explanations. Mr Shipston had not drawn and delivered bills of costs as he was required to do. It was not open to Mr Shipston to set his own standards of honesty. Funds were systematically transferred from client to office account without the delivery of any bills to the client, for amounts which the

evidence demonstrated could not be justified and Mr Shipston was unable to give any credible explanation for this behaviour. Any reasonable person would conclude that such a course of conduct was wrong and dishonest.

95. Following the pronouncement of the Tribunal's findings neither party wished to add anything further in mitigation.
96. The Applicant sought the costs of and incidental to the application and enquiry in accordance with the schedule of costs provided to the Tribunal. The Applicant invited the Tribunal to fix costs in the figure sought.
97. On behalf of *[FIRST RESPONDENT]* it was said that the level of costs was accepted. The Tribunal was invited to take into account that the attendance of the costs draftsman witness had nothing to do with *[FIRST RESPONDENT]*. The Tribunal was invited to consider an apportionment of costs to reflect the Respondents respective culpability.
98. The Applicant reported there had been an involvement with The Law Society's compensation fund and a list of figures was handed up. The Tribunal was invited to read the list with some caution. The Respondents firm's client account would have been frozen and at the time of the intervention and it was likely that the Compensation Fund had made substantial grants to enable clients' affairs to be completed. It was not possible to identify from the list what if any shortfall of clients' funds would finally be established.
99. Neither of the Respondents had appeared before the Tribunal on any earlier occasion.

#### **The Tribunal's decision and its reasons**

100. The Tribunal had found that Mr Shipston's conduct had been dishonest. A member of the solicitors' profession is required to practise with the highest standard of probity, integrity and trustworthiness. Mr Shipston had failed to uphold such high standards and such behaviour cannot be tolerated. In order to fulfill its duty to protect the public and maintain the good reputation of the solicitors profession the Tribunal ordered that Mr Shipston be Struck Off the Roll of Solicitors.
101. The Tribunal accepted what *[FIRST RESPONDENT]* had to say about his own position. It concluded that on the evidence presented he was less culpable than Mr Shipston. Even so the allegations substantiated against him were serious. In reaching its decision the Tribunal took into account *[FIRST RESPONDENT]*'s competence and integrity and the service which he gave to his local community. The Tribunal concluded that the seriousness of the allegations made against him could be reflected by a period of suspension from practice. The Tribunal decided to suspend *[FIRST RESPONDENT]* from the practice for the period of six months to commence immediately and in setting that period of suspension the Tribunal took into account the fact that *[FIRST RESPONDENT]* had already suffered a period of time when he had been out of practice.

102. The Tribunal considered that it would be right to fix the level of costs sought by the Applicant in accordance with the costs schedule handed up. The Tribunal ordered that *[FIRST RESPONDENT]* should pay one third of those costs and that Mr Shipston should pay two thirds of those costs. This apportionment reflected their respective levels of culpability and the additional costs incurred by the Applicant, for example in relation to the report of Mr Clifford which dealt entirely with the allegation against Mr Shipston.
  
103. The Tribunal recommends to The Law Society that *[FIRST RESPONDENT]* should in the future be permitted to practise only in approved employment.

Dated this 13th day of February 2006  
on behalf of the Tribunal

Mr S N Jones  
Chairman