

IN THE MATTER OF CHARLES ANTHONY GORDON and RICHARD JOHN BARKER,
solicitors

- and -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr P Kempster (in the chair)
Mr I R Woolfe
Mr D Gilbertson

Date of Hearing: 23rd 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 Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1, 6LT on 26th September 2005 that Charles Anthony Gordon and Richard John Barker of Foster Savage & Gordon Solicitors, Farnborough, Hampshire, (who had instructed Messrs Ambrose Appelbe Solicitors of 7 New Square, Lincolns Inn, London, WC2A 3RA to accept service of the proceedings) might be required to answer the allegations as set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondents were that they had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

- (i) That they withdrew monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998 (hereinafter referred to as 'The Rules').
- (ii) That they utilised funds for their own purpose.
- (iii) That contrary to Rule 6, they failed to ensure compliance with The Rules.

- (iv) That they misappropriated clients funds (for the avoidance of doubt this was an allegation of dishonesty).
- (v) That contrary to Rule 32 of The Rules they failed to keep accounts properly written up.
- (vi) That contrary to Rule 32 (7) of The Rules they failed to carry out the required reconciliations.
- (vii) That they failed to deliver an Accountant's Report for the periods ending 31st December 2002 and 31st December 2003, contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
- (viii) That they failed to comply with an expectation and/or direction of an Adjudicator dated 16th November 2004, relating to the delivery of the outstanding Accountant's Reports for the periods ending 31st December 2002 and 31st December 2003.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 23rd May 2006 when Jonathan Richard Goodwin appeared for the Applicant. The Respondents were separately represented, Charles Anthony Gordon (Mr Gordon) was represented by Mr Henry Mainwaring of Counsel and Richard John Barker (Mr Barker) was represented by Mr Heppinstall of Counsel.

In a supplementary statement dated 20th March 2006 the Applicant made further allegations. The allegations set out below are those made in the supplementary statement.

- (ix) Contrary to Rule 6 of The Rules they failed to ensure compliance with The Rules.
- (x) Contrary to Rule 7 of The Rules they failed to rectify breaches to The Rules promptly upon discovery.
- (xi) Contrary to Rule 19 of The Rules they retained undrawn costs in client bank account.
- (xii) They withdrew money from client account in excess of money held on behalf of a client(s) in breach of Rule 22(5) of The Rules.
- (xii) They failed to keep accounts properly written up in accordance with Rule 32 of The Rules.
- (xiv) They failed to carry out reconciliation as required by Rule 32(7) of The Rules.
- (xv) They misappropriated and/or utilised clients' funds for their own benefit.
- (xvi) They failed to deliver Accountant's Reports for the period ending 31st December 2004 (due to be filed on or before 30th June 2005), and the six monthly report for the period ended 30th June 2005 (due to be filed on or before 31st August 2005) contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.

Allegations made against Mr Gordon alone

- (xvii) He acted in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor, in that he misled his client(s) into believing that his firm had collected rent on their behalf, by the preparation of statements detailing rents collected, and representing to his client that rents had been received, when in truth no rent had been received.
- (xviii) He made representation(s) to a Senior Investigation Officer of The Law Society which was deliberately misleading and/or inaccurate.

The evidence before the Tribunal included the admissions of both Respondents of all of the facts. The allegation of dishonesty was contested by both of them. Miss Hartley, The Law Society's Forensic Investigation Officer gave oral evidence. Mr Gordon gave oral evidence and Mr Barker gave oral evidence. A bundle of documents and a statement of Mr Gordon and testimonials in his support were handed up at the hearing.

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

The Tribunal Orders that the Respondent, Charles Anthony Gordon of Foster Savage & Gordon Solicitors, Farnborough, Hampshire, 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 £14,625.00

The Tribunal Orders that the Respondent, Richard John Barker of Foster Savage & Gordon Solicitors, Farnborough, Hampshire, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 23rd day of June 2006 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,875.00

The facts are set out in paragraphs 1 to 43 hereunder:-

1. Mr Gordon, born in 1945, was admitted as a solicitor in 1970. His name remained on The Roll of Solicitors. Mr Barker was born in 1946 and was admitted as a solicitor in 1975. His name remains on The Roll of Solicitors. At the material times the Respondents carried on practice in partnership under the style of Foster Savage & Gordon from offices at 269 Farnborough Road, Farnborough, Hampshire, GU14 7LX.

Allegations (i) – (vi)

2. Following notice duly given to the Respondents the Investigation Officer of The Law Society (the IO) carried out an inspection of the Respondents' books of account. Her Report dated 17th February 2005 was before the Tribunal.
3. That Report revealed that a number of breaches of the Solicitors Accounts Rules had been identified. The books of account were not in compliance with the Solicitors Accounts Rules because the recording of client and office account transactions was incomplete from 30th June 2003 onwards and client account reconciliations had not been prepared since 30th June 2002.

4. The respondents acknowledged to the IO that their books of account were incomplete.
5. The IO ascertained that there had been round sum withdrawals from client to office bank account in the period 15th October 2004 – 23rd December 2004 totalling £66,750.00.
6. In view of the inadequacy of the accounts it was not possible for the IO to express an opinion as to whether or not funds held on client bank account were sufficient to meet the firm's liabilities to clients as at 31st December 2004.
7. Mr Gordon told the IO that he realised it was '*out of order*' to take round sum withdrawals on account of costs, acknowledging that he could not be certain that there was not a shortage on the client account, because he '*guesstimated*' the amount of costs due to the firm.

Allegations (vii) & (viii)

8. On 16th November 2004 an Adjudicator considered a failure by the Respondents to deliver Accountant's Reports for the periods ending 31st December 2002 and 31st December 2003. The Reports were due to be delivered on or before 30th June 2003 and 31st July 2004 respectively and had not been delivered in November 2004. The Adjudicator's decision was in the following terms:-

“5. The Adjudicator expects Mr Barker and Mr Gordon, within 28 days of the letter notifying them of this decision, to file the outstanding Accountant's Reports for Foster Savage & Gordon, for the six month period ending 31st December 2002 and for the year ending 31st December 2003, failing which the Adjudicator directs that the conduct of Mr Barker and Mr Gordon be referred without further notice, to the Solicitors Disciplinary Tribunal.

“6. If Mr Gordon and Mr Barker comply with the decision at paragraph 5 above, the Adjudicator **DECIDES** to severely reprimand Mr Barker and Mr Gordon for the late delivery of the Accountant's Reports for the six month period ending 31st December 2002 and the year ending 31st December 2003, in breach of Section 34 of the Solicitors Act 1974 (as amended)”.
9. The Respondents were notified of the Adjudicator's decision by letter dated 17th November 2004. By letter dated 10th December 2004 the Respondents said:-

“Our Accountants have practically finished the remainder of their audit for 2002 and have been asked to lodge their report for the year 31st December 2002 most urgently.

“As soon as they have done so, they have been asked to proceed immediately with the audit for 2003 with a view to lodging with you the report for the year to 31st December 2003 as early as possible in the New Year”.
10. By letter dated 20th December 2004 The Law Society wrote to the Respondents, acknowledging their letter of 10th December 2004 and indicating that in accordance with the Adjudicator's decision, they were due to file the Accountant's Reports for the

period ending 31st December 2002 and 31st December 2003 within 28 days of the letter notifying them of the decision. The notification letter was dated 17th November 2004 and the Respondents had until 15th December 2004 to file the outstanding Accountant's Reports. They failed to do so.

Allegations (ix) - (xv) – Solicitors Accounts Rules Breaches

11. Upon due notice to the Respondents a Senior Investigation Officer of The Law Society (the SIO) carried out a further inspection of the Respondents' books of account and produced a Report dated 1st September 2005 and a subsequent Memorandum dated 16th September 2005 which were before the Tribunal.
12. The SIO found that the Respondents' books of account were not in compliance with the Solicitors Accounts Rules because client account reconciliations had not been undertaken since 30th June 2002 and transfers from office account to client bank account had been made as a bookkeeping exercise without the corresponding transfers being made between the office and client bank accounts to rectify shortfalls.
13. In view of the inadequacies of the accounts the SIO did not consider it practicable to express an opinion as to whether or not the funds held on client bank account were sufficient to meet the firm's liabilities to clients. It was possible to calculate a minimum cash shortage of £153,633.08 as at 31st July 2005 in respect of four client matters in each of which cases the shortages identified were:

(a)	Mr and Mrs M	£89,477.47
(b)	Mr and Mrs W	£55,000
(c)	Mr and Mrs G	£4,708.11
(d)	Mr C and Ms H	£4,447.50
14. The Respondents agreed the minimum cash shortage in that sum.
15. The SIO ascertained that during the period 6th August 2002 to 30th July 2005, overpayments varying in amount between £200 and £55,171.77, totalling £153,663.08, had been made on account of the four clients referred to above.
16. The SIO set out in her report details of the shortages in the Mr and Mrs M and Mr and Mrs W matters.
17. Mr Gordon had acted for the M family since 1989 in connection with a property in Farnborough. He was required to collect rents from three tenants and account to Mr and Mrs M.
18. The relevant client ledger identified that the last time rents were received from all three tenants had been in May and June 2001. No further receipt from one tenant had been recorded and the last receipt from another tenant had been on 2nd October 2002.

19. Statements had been prepared by Mr Gordon, purporting to show the receipt of rents for periods from 29th September 2002 to 23rd June 2005. No rent had been collected for the periods shown on the statement. Mr Gordon told the SIO “the rents have not been collected and I have prepared statements showing a false position and paid out monies to the clients which haven’t, in fact, come in”. Mr Gordon accepted that he had failed to collect rents since 2001 and the reason was, “It got into a muddle and then it’s the sort of matter I had frozen on”.
20. The client had been pressing for payment of the rent and by letter dated 28th February 2004 Mr M wrote to Mr Gordon and said, “since 2002 from October to December last year, its 15 months rent. End of next March it will be 18 months rent. The tenants pay the rent, you said that you has(d) received the last 15 months rent. I feel more difficult to get my money. What is to hold up, every time I call so far no materialised. I wish you to explain this matter”.
21. Mr Gordon told the SIO that he had informed Mr and Mrs M that he had received the last 15 months rent, when in fact he had not, “to put his mind at rest and to fob him off”. Mr Gordon accepted that he had deliberately misled Mr M and accepted that he had failed to act in the best interests of his client.
22. The client ledger account purported to show that transfers from office to client bank account had been made with a view to rectifying the shortfall on client bank account. Mr Gordon was asked by the SIO to demonstrate that the office to client account transfers had been made by physical transfers of funds from office to client bank account. Mr Gordon had said, “the receipts were done as a book entry without corresponding movements of funds except for the last one”. The total said to have been transferred from office to client bank account to rectify the shortfall was £9,621.57. It was ascertained that during the period 14th May 2003 to 27th April 2005 the relevant account in the client’s ledger was charged with eleven payments, totalling £93,841.35, when only £4,363.88 stood to the credit of that ledger account, resulting in a shortfall on client bank account of £89,477.47.
23. Two of Mr and Mrs M’s tenants spoke to the SIO on 25th August 2005, and both confirmed that they had not paid the rent. One tenant indicated that after cheques he had sent had not been cashed he stopped paying rent and had thereafter not received any reminders. The other tenants said that their rent had not been paid but they had tried to pay it.
24. Mr Barker acted for Mr and Mrs W in property transactions. Mr Barker explained to the SIO that mortgage funds had been returned to the lender (Britannia Building Society) due to a delayed completion. The funds had not been sent back to the firm as requested, although completion had taken place, resulting in a shortfall of £55,000 on client bank account. Mr Gordon said he had become aware of the problem in or around April or May 2005 and that he had been chasing the mortgagee. Mr Barker said that he had become aware of the shortfall “shortly after that date...”
25. The client matter file contained a copy of a slip completed by Mr Gordon showing the receipt of £55,000 on 5th August 2002 into client bank account. The funds had not been credited to client bank account. The transaction was completed on 6th August

2002 and as at the date of the inspection, 31st July 2005, the shortfall had not been rectified.

26. Mr Gordon indicated on 23rd August 2005 to the SIO that he was chasing the Britannia Building Society for the funds when he had not done so. On 24th August 2005 Mr Gordon told the SIO "I was beating about the bush yesterday. Nothing specific has happened about it". When asked why he had misled the SIO on the day before he replied, "basically it's a situation of being pushed into a corner and being on the defensive".
27. At a meeting on 25th August 2005 the SIO pointed out that Mr Gordon had misled Mr Barker and the SIO about the position. Nothing had been done to correct the shortfall of £55,000 on client bank account which had arisen on 6th August 2002, some three years earlier.
28. The lender had rejected the Respondents' claim that it was liable for the shortfall and eventually Mr and Mrs W rectified the matter by a payment of £55,000 to the firm in January 2006.
29. The SIO discovered during the course of the inspection that a shortage of £225,951.50 had existed prior to the inspection as a result of clients' money having been paid into the firm's office bank account in respect of two matters.
30. In Mr D's matter on 15th July 2005 £99,976.50 received from another firm of solicitors was credited to the firm's office bank account. The bookkeeping entry in the client ledger account showed a credit of that sum on 15th July 2002. The transaction was completed on 15th July 2002 but an equivalent amount was not transferred back from office to client bank account.
31. In the matter of Mr A and Ms S, on 23rd July 2002 £125,975.00 received from Abbey National Plc was credited to the firm's office bank account. The bookkeeping entry in the relevant client ledger account showed a credit in that amount on 23rd July 2002. The transaction was completed on 24th July 2002. £125,975.00 was not transferred back from office to client bank account.
32. Mr Gordon explained that the payments into office bank account were errors on the part of the bank and added "what's happened is that monies have sat in office account" and this had been allowed to continue "because of a lack of action on our part".
33. At the meeting on 25th August 2005 the SIO asked Mr Barker when he first became aware of these matters to which he replied, "I am afraid I do not look at the accounts or the bank statements".
34. The SIO put it to the Respondents that they had taken advantage of the bank error to fund their office account. Mr Gordon did not agree that the receipts into office bank account represented a shortage on client bank account, indicating that it was partially covered to the extent of £49,920.00 by a transfer from office to client account on 31st December 2002. He confirmed that no further amounts had been transferred from office to client bank account in respect of these matters. He contended that in the

period July 2002 to December 2002, the receipts were covered in part by client bank account interest wrongly credited to client bank account in the sum of £9,272.17. He further said that they were “further and more substantially covered by cost transfers during the period which were, in fact, not made from client to office bank account”.

35. Mr Gordon was asked to produce copies of lists of costs transfers for the relevant period. Mr Gordon dealt with this in a letter dated 30th August addressed to the SIO in which he said:

“I would refer to our discussions last week. As I explained, no transfers were made from client account to our office account in respect of costs VAT and disbursements and also client account interest credited to client account during the period from 1st July 2002 to 31st December 2005. You already have details of the client account interest.

“I now enclose full lists of the costs transfers during the six month period, which total £152,061.09p, together with copies of the computer costs listings from July to December.

“In addition no costs transfer was made in July 2002 for the balance of costs transferred for June 2002. That balance (an audited figure) was £15,045.18p. There would therefore have been a small balance of costs and interest as at December 2002 to be transferred in the January.”

Allegation (xvi)

36. The Respondents’ Accountant’s Report for the period ending 31st December 2004 (due on or before end June 2005) and the Report for the six month period ending 30th June 2005 (due on or before end August 2005) were outstanding. When asked by the SIO what the likelihood was of the Report for the period ending June 2005 being delivered by the due date, Mr Barker replied “zero isn’t it”.
37. It was suggested to the Respondents by the SIO that they had displayed blatant disregard for the requirements of the Solicitors Accounts Rules, to which Mr Gordon replied, “we accept there have been substantial failures with regard to certain specific matters and I was primarily responsible for the management of the accounts and not Mr Barker”.
38. Subsequent to the preparation of the report of 1st September 2005, the SIO prepared a memorandum dated 16th September 2005 detailing further issues which had come to light.
39. The memorandum identified that client funds in the amount of £208,000, £63,437.63 and £107,900.00 were credited to the firm’s office account in June 2003, September 2003 and May 2004 respectively. The SIO wrote to Mr Gordon by letter dated 7th September 2005 seeking explanations for each of the amounts, why the funds were credited to office bank account and when the relevant office to client account transfers were made. Mr Gordon replied by letter dated 8th September 2005 and indicated that as with the clients Mr D, Mr A and Ms S, the sums compensated for the non-transfer of

costs, VAT and disbursements and client account interest credited to client bank account.

40. The SIO established that some payments by telegraphic transfer or CHAPS had been credited to the office account upon instruction and were not the result of bank error.
41. The SIO's memorandum also provided details of further round sum transfers in respect of further costs made during the same period of January 2003 to December 2004, totalling £306,250.00.

Allegation (xvii) and (xviii) Against First Respondent Alone

42. Mr Gordon conceded that he had deliberately misled his clients and had not acted in their best interests when he had led them to believe he had collected rent when he had not. He also conceded that he had deliberately misled the SIO as to the matter concerning Mr and Mrs W and his asserted efforts to chase the Britannia Building Society in respect of the mortgage advance of £55,000.

Replacement of the Minimum Cash Shortage

43. On 21st October 2005 an SIO of The Law Society attended the Respondents' firm and confirmed that the minimum cash shortage identified in the SIO's Report of 1st September 2005 in the sum of £153,633.08 as at 31st July 2005 had been replaced in full but no significant progress had been made by the Respondents in bringing the client account bank reconciliations up to date.

The Submissions of the Applicant

44. An affidavit to which Elizabeth Savage (the former bookkeeper of the Respondents' firm) had attested had not been served in time. The Applicant accepted the factual matters contained therein but her opinion evidence that neither of the Respondents acted dishonestly was not to be relied upon.
45. The Applicant accepted that he had to satisfy the Tribunal so that it was sure that the Respondents had acted dishonestly. The Tribunal would in making its finding in that respect rely upon the combined test given in the case of Twinsectra-v-Yardley. The first test was the objective test, would by the standards of ordinary people what the Respondents did be considered to have been dishonest; and the second test was the subjective test, did the Respondents themselves realise that by those standards their conduct was dishonest?
46. It was noted that Mr Barker denied having any involvement in the accounting side of the firm. It was right that the Tribunal should explore the extent of his involvement and if indeed he had no such involvement then he was seriously at fault for having abdicated his responsibility in this two partner firm.
47. The Tribunal was reminded of the decision in the case of Weston when, on appeal from a decision of the Tribunal, it was said that the Solicitors Accounts Rules were in place to provide the maximum protection to the public from improper and unauthorised use of their money. There was an onerous obligation on solicitors to

comply with the Solicitors Accounts Rules and that obligation was in addition to their duties as solicitors and/or as trustees.

48. Solicitors were expected at all times to act with integrity, probity and trustworthiness. They had a duty to exercise a proper stewardship over clients' money. Those duties were violated if there were breaches of the Solicitors Accounts Rules.
49. Mr Barker had been alerted to difficulties with the accounts in the autumn of 2003 when he opened a letter from The Law Society refusing to extend time for the filing of the firm's Accountant's Report. Mr Barker was aware of difficulties with the firm's accounts and The Law Society's concern and it was his obligation fully to check the position.
50. Round sum transfers had been made from client to office bank account in considerable sums. They totalled over £66,000. In a small two partner firm Mr Barker could not have been unaware of the financial difficulties of the firm and the need for its cash flow to be enhanced. He was in a similar position to that of Mr Weston and The Law Society advanced its case against Mr Barker as one involving conscious impropriety on his part.
51. The Tribunal was reminded of the Court of Appeal's decision in the case of Bultitude-v-The Law Society where it was made clear that it was not necessary to prove an intention permanently to deprive any client of any money, but taking funds to which a solicitor was not entitled did amount to dishonesty.
52. The Court of Appeal decision in Bultitude-v-The Law Society made it plain that if solicitors fell seriously below the high standards of honesty, probity, integrity and trustworthiness required of them then they can expect to have severe sanctions imposed upon them even if there was no finding of dishonesty. Even if the Tribunal were to conclude that neither of the Respondents had been dishonest, their breaches and failures were nevertheless extremely serious.
53. It was important that the good reputation of the Solicitors profession be maintained and that members of the public should be able to believe that solicitors can be trusted "to the ends of the Earth".
54. The round sum transfers had been instigated by Mr Gordon. He accepted that such actions were "out of order" and acknowledged that he could not be certain that there was not a shortage on the client account because he guessed the amounts of costs due to the firm. Such conduct amounted to conscious impropriety. A reasonable and prudent solicitor would have satisfied himself by enquiry that he was entitled to transfer the monies before doing so and in the event that the same represented costs he would have delivered a bill to the client prior to the transfer in accordance with the Solicitors Accounts Rules. Mr Barker could not avoid responsibility for those round sum transfers.
55. It was further alleged against Mr Gordon that he had acted in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor in that he misled his clients into believing that his firm had collected rent on their behalf by the preparation of statements detailing rents collected and representing to his client that

rents had been received when in truth no rent had been received. He also made a representation to the SIO which was deliberately misleading or inaccurate.

56. The allegation that the Respondents had misappropriated and/or utilised clients' funds for their own benefit was also put by The Law Society as an allegation involving dishonesty.
57. In the submission of the Applicant the test in Twinsectra –v- Yardley had been satisfied and the Tribunal could be sure that each of the Respondents had been dishonest.

The Submissions of Mr Gordon

58. For about 8 years up until the end of 1999 the Respondents' bookkeeping and accounts records were dealt with by Mrs S, who was the wife of Mr Gordon's former partner who retired as a partner at the end of 2001.
59. At the end of 1999 the firm needed to replace its old accounting system because it was not going to be millennium compliant. Mrs S was not happy about the new accounting system which was going to be introduced from 1st January 2000, due to the re-training and hours of work that would be required. She resigned in January 2000. When she left, her functions were carried out by Mr Gordon, with assistance from Mr S and an experienced legal executive. In the middle of the summer of 2002, the legal executive left the firm and it fell to Mr Gordon to carry out all the necessary accounting work. In addition, he took on some of the legal executive's workload. Some of the accounting failures were explained by Mr Gordon's lack of competence in operating the modern accounting system.
60. During the summer there were problems with the office accounts computer and several weeks of accounts were lost and it became necessary to re-enter the data using hard copies of the back-up. Mr Gordon was entirely responsible for that task, and in the event he proved unequal to it.
61. As time went by the accounts began to get into arrears. At first Mr Gordon thought that he would be able to catch up. Mr Barker was not involved. When, from time to time, Mr Barker asked how things stood with the accounts, Mr Gordon told him that things were in hand and there was nothing to worry about. That had been wishful thinking on Mr Gordon's part. He should have engaged assistance right away but did not. He tried to find someone to fill the accounting role a year later, but had been unsuccessful.
62. In the spring of 2002 the firm's bankers, Lloyds TSB, began to move their old TSB customers from the TSB banking system to the Lloyds system. That involved changes to the firm's bank accounts, with new account numbers and sort codes. The balances on the TSB accounts were transferred to the new Lloyds accounts. It was a time consuming process. Mistakes were made by the bank with regard to standing order and direct debit payments and the payment of interest on the client account.
63. As the accounts slipped into arrears, and as the deficit began to grow, it became impossible to make withdrawals from the client account in respect of costs which

were not round sum withdrawals. Mr Gordon agreed that this was an unacceptable situation.

64. Eventually the firm's accountants recommended an agency and the firm then employed an experienced bookkeeper, Mrs T, for four days a week. Mrs T helped the firm to regain control of its accounts and to operate once more in accordance with the Rules. The firm had caught up entirely with postings. Since 1st January 2005 no round sum withdrawals had been made and transfers of costs had been properly made.
65. In making round sum transfers Mr Gordon always attempted to be as accurate as he could be. He never once knowingly overcharged a client for work carried out, or transferred sums from the client to the office account larger than those which he honestly believed to be due.
66. While it had not been proved that the firm had received any money to which it was not entitled, Mr Gordon did accept that it was very likely that at some point the inexact system which he used would have worked to the detriment of some of the clients. If that were the case, any such sums improperly received into the office account would have been relatively small. Such a receipt was the result of a poorly managed bookkeeping system, rather than of a deliberate and wilful design to defraud clients.
67. Mr Gordon absolutely refuted having made any conscious misappropriation of client funds.
68. The Respondents cooperated fully with the SIO and had been as transparent as possible. Their failings arose from the inefficient way in which the books of account were managed for a time. These were genuine mistakes and Mr Gordon never acted with the preconceived intention of defrauding or stealing from any of the clients or from anyone else.
69. It was pressure from The Law Society to get the outstanding Accountant's Reports lodged that provided the necessary catalyst to make Mr Gordon face up to the situation which he had inadvertently allowed to develop, and to admit to himself that he had allowed the management of the firm's practice to get out of control.
70. Mr Gordon did not operate in a way which was deliberately calculated to misappropriate clients' funds. Neither Respondent attempted to abscond with any clients' money or assets.
71. Monthly drawings made by Mr Barker and Mr Gordon were relatively modest and bore a reasonable relationship to work actually carried out and billed. No client complained about the handling of his money or the firm's accounting processes. Considerable efforts had been made to bring the accounts up to date.
72. Accountant's Reports up to 31st December 2004 had all been submitted. The production of the Accountant's Reports required a considerable input from Mr Gordon particularly as the accounts were in arrears and poorly managed. Mr Gordon could not devote himself entirely to accounting matters as he had to continue with his

ordinary legal work. The Reporting Accountants were a two partner firm and the work took them longer than might have been the case with a larger firm.

73. Mr Gordon had responsibility for collecting the rents from the tenants of a commercial property in Farnborough and for passing these on to his clients Mr and Mrs M. He could not make excuses for the way in which he handled this matter and accepted that the course which he took was unacceptable. This was symptomatic of the fact that by the autumn of 2002 Mr Gordon was losing the ability to cope and was becoming overwhelmed by the volume of work which he was having to manage. He placed the file on one side, and having done that, matters ran further out of hand. To pay the 'rents' out of the client account and to state that this money had in fact come from the tenants was utterly wrong. Mr Gordon did not do this with the intention that anyone should be defrauded of his money or assets. He sought to "buy time". The uncollected rents had since been collected in full.
74. With regard to the cash shortfall in Mr and Mrs W's matter, Mr Gordon, having sent Britannia Building Society a letter dated 25th July 2002 requesting that the mortgage advance monies be resubmitted by CHAPS payment on 5th August 2002, and having received no notice from the Building Society that it would not do as requested, mistakenly assumed that the transfer would take place. He authorised a transfer of £55,000 to Mr and Mrs W without having first received payment from the Building Society. Had the firm's accounts been up to date at that point, then the discrepancy would have come to light almost immediately.
75. The third matter which resulted in the cash shortfall related to Mr and Mrs G. These clients were in financial difficulty and Mr Gordon was trying to organise a solution for them. One of their creditors was owed £4,708.11 and they asked Mr Gordon to pay this out of monies which they assured him they had sent to the firm. He decided to trust the clients and paid the creditor. It later transpired that they had not sent this money. Again, had the firm's accounts been up to date at that point, the discrepancy would have come to light almost immediately.
76. In the matter of Mr C and Ms H, Mr Barker had acted for the clients on the sale of a property. When the accounting entries had been brought up to date, it transpired that he had by mistake sent the clients too much money on completion of the sale.
77. Mr Gordon from the summer of 2002 found himself in a situation where he was overburdened and unable to cope. A vicious cycle developed. The longer any particular piece of work was put off, the longer it would take to try and put it in order, creating further delays and increasing backlog.
78. Mr Gordon understood that when certain of his actions were looked at in isolation he might well appear to have acted dishonestly. A fairer characterisation was that he had been weak. He found himself in a situation which was spiralling out of his control, and for a time he effectively blinded himself to reality. Mr Gordon did not attempt to excuse his actions. He deeply regretted the way in which he conducted himself in relation to Mr M's matter.

The Submissions of Mr Barker

79. Mr Barker had joined Foster Savage & Gordon as an assistant solicitor in 1986 and became an equity partner in 1988. Upon the retirement of Mr Savage, Mr Gordon and Mr Barker were the only partners. Mr Barker undertook conveyancing and non-contentious work.
80. Mr Gordon had complete control of all financial dealings. Mr Barker had no experience of the practical day to day compliance with the Solicitors Accounts Rules. The partners never discussed financial issues. Mr Barker received a cheque for £1,500 each month from Mr Gordon and sometimes had a bonus at Christmas. He had no idea how much the partnership was earning. When Mr Barker first became a partner he had asked Mr Gordon questions about the partnership's finances and the level of drawings. His enquiries were often met with displays of temper, which he found frightening and intimidating. Such displays of temper were well known to those who worked with Mr Gordon both inside and outside the firm.
81. Mr Barker enjoyed a modest lifestyle. He had not been financially driven and he opted to allow Mr Gordon to maintain financial control.
82. Mr Barker had always been treated as "the junior" partner. He was too weak to seek to change things. He accepted that he was however a signatory on client account.
83. The retired partner's wife, Mrs S, was the firm's bookkeeper until she left in February 1999. She left because of changes to the Solicitors Accounts Rules when she wanted the firm to purchase a particular accounting system. Mr Gordon refused to consider her opinion and ordered a different system. The installation of that system led to many financial mistakes which made Mrs S cross. She requested an increase in her salary. The partners agreed they could not accept this. Mrs S left in January 2000. Mr Barker regretted this but felt that he could do nothing about it.
84. Mr Gordon then decided that he would deal with all of the bookkeeping himself. Mr Barker later learned of the problems that had arisen.
85. Mr Barker explained that the firm's internal accounts procedures for funds receipts and payments used a system of colour-coded sheets; pink for client account; blue for office account. Mr Barker only completed his sheets when CHAPS money arrived, or when money was paid out. Mr Gordon drafted all of his sheets in advance and when the monies arrived the receptionist tallied it with the relevant sheet and made an entry in the 'CHAPS received' book.
86. Initially, secretarial staff filled in the sheets to draw a cheque. When experienced secretaries left Mr Barker decided to complete all his accounts sheets himself. Mr Gordon got his secretary to do his.
87. Mr Gordon always opened the post in the morning. Because of this Mr Barker had come to realise that there was much correspondence that he ought to have seen but did not. Letters from The Law Society were not shown to him until it was too late.

88. Mr Barker found out that there was a problem in autumn 2003 when Mr Gordon was on holiday and Mr Barker had opened the post. There was a letter from The Law Society that refused an application to file the firm's Accountant's Reports out of time. Mr Barker did not know what to do to rectify the situation. Mr Gordon told him not to worry, that it was all being sorted out and there would not be a problem.
89. Mr Barker was naïve and stupid to believe that, although Mr Gordon was a very competent solicitor and an intelligent man, and Mr Barker was relieved that he was taking care of the situation, and believed that he would do so. Mr Barker did not know that the situation was very serious although he was worried by it. Mr Barker had asked Mr Gordon, at least once a week, about the progress of the accounts and was always told that they were nearly ready.
90. The Law Society gave a deadline in early 2004. Mr Gordon told Mr Barker that the Accountant's Reports were being sent by the accountants. When nothing appeared to be happening, Mr Barker contacted the accountants who told him that Mr Gordon had not been in touch with them for approximately two months, and that they could not get on with the job. When Mr Barker confronted Mr Gordon, Mr Gordon agreed that nothing had been done and that he could give no explanation.
91. Mr Barker learned of the shortfalls on client account in August 2005, during The Law Society's investigation, although he had been aware of the first investigation in February 2005, and that Mr Gordon had inappropriately been withdrawing costs from client account. Mr Barker had come to conclude that Mr Gordon had made round sum transfers for costs in the light of the bookkeeping arrears.
92. Mr Barker admitted all allegations except that he denied that he had been dishonest in relation to allegations (iv) and (xv). He was well aware that the Solicitors Practice and Accounts Rules had been breached and that he must take responsibility for that. He had no personal involvement in the control of the accounts or the actions that led to the breaches.
93. Mr Barker did have a personal involvement where mortgage advance moneys had been paid into office account in error. Mr Barker had completed the written notification of the firm's client bank account details from memory and on occasions had unintentionally and mistakenly entered the office account number. He had on his desk cards on which the accounts numbers were written. He had taken the details from the wrong card. When he discovered his errors, he made sure that he retained only the card showing the client account numbers.
94. The shortfall that occurred in the matter of Mr and Mrs W arose when Mr Barker was on holiday. Mr Gordon looked after the file. Completion had been delayed slightly and Mr Gordon sent the mortgage advance money back to the Building Society requesting that it be released again shortly afterwards for the new completion date. He had not noticed that the money had not come back because the bookkeeping was not up to date and Mr Gordon effected completion. Mr Barker learned of this during The Law Society's inspection. Mr Gordon said he had been trying to get money back from Britannia Building Society for a while. Mr Barker managed to get the money back eventually, and the situation was resolved because Mr and Mrs W had taken out a new mortgage advance which was used to repay the money.

95. Mr Barker had very little involvement with any of the mistakes which had been made. He admitted his responsibility for the failings and acknowledged that he had failed his clients in not ensuring that he and his partner both complied with the Rules. He did not admit that he had been dishonest in any way.

The Tribunal's Findings

96. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.
97. With regard to the question of dishonesty, which was denied by both Respondents, in the case of Mr Gordon he admitted deliberately creating a false document namely a record of rents he purported to receive on behalf of Mr M and supplying it to Mr M, his client. The Tribunal was in no doubt that Mr Gordon intended deliberately to deceive his client. He himself admitted that he had in that respect been guilty of conscious impropriety and that he had taken the action that he did in order to “fob off” Mr M.
98. Mr Gordon admitted that he misled Miss Hartley, The Law Society’s Forensic Investigation Officer and although he sought to put matters right on the following day the Tribunal was in no doubt that when he misled Miss Hartley he did so consciously and dishonestly.
99. The receipt incorrectly of a substantial amount of client money into the firm’s office account, was apparent to Mr Gordon and yet the incorrect payment in had not been rectified for three years. That also demonstrated dishonesty on the part of Mr Gordon.
100. To summarise, the Tribunal found allegations (iv), (xv), (xvii) and (xviii) not only to have been substantiated but in each case the Tribunal found dishonesty to have been proved against Mr Gordon, having applied the two part test set out in the case of Twinsectra-v-Yardley.
101. With regard to Mr Barker, the Tribunal accepted that he had no personal substantive knowledge of the firm’s accounting systems. Although the Tribunal regarded this as a very serious abdication of his responsibility as a partner, the Tribunal did not find dishonesty proved against Mr Barker to the required standard.

The Mitigation of Mr Gordon

102. It was the difficult situation which arose that led Mr Gordon to behave as he did. It was clear that the entire situation arose because Mr Gordon inadvertently got behind with keeping the firm’s accounts. He never managed to get back into control.
103. The resignation of the bookkeeper, Mrs S, was the first of a number of events which led to the accounting arrears. Further, in the summer of 2002 an experienced legal executive left the firm and Mr Gordon found himself doing not only the work formally undertaken by the legal executive and his own work but also keeping the accounts as well.

104. The new accounts system which the firm adopted in the summer of 2002 had problems and a significant amount of data had been lost. The accounts ran irrevocably out of control. Mr Gordon tried to catch up and always thought that he would be able. He was over optimistic in this respect.
105. It was clear that Mr Gordon did at this stage bury his head in the sand. It then became necessary to carry out some of the practices about which complaint had been made. It had not been possible to be exact about dealings with the firm's accounts as was required by the Solicitors Accounts Rules. The implementation of round sum transfers began not because Mr Gordon wanted to defraud anyone but because the keeping of accounts became so far behind that he could do no better.
106. Mr Gordon had been in practice for over 35 years. He had enjoyed a distinguished and until today an honourable career. This made his fall from grace all the more painful and difficult to bear.
107. It was hoped that the Tribunal would exercise as great a degree of leniency as it felt it was able.

The Mitigation of Mr Barker

108. Mr Barker had not been found by the Tribunal to have been dishonest. Mr Barker was a partner in a small firm and he accepted that he had permitted Mr Gordon to deal exclusively with the firm's financial affairs but Mr Gordon had obstructed Mr Barker when he attempted to have anything to do with these financial affairs. Mr Barker said that he did not deal with Mr Gordon with sufficient force and he did not have the strength of character or the physical strength to go one step further.
109. Mr Barker had put his trust and confidence in his partner who had dealt with the firm's finances in what had appeared to be an entirely satisfactory manner.
110. Mr Barker's physical health had deteriorated in 1991 when he suffered major back problems which had left him disabled. He had spent five months away from work in hospital and in a rehabilitation centre. After he became a partner he felt too embarrassed for a long time to ask for any additional drawings as he felt he had been taking his salary without putting something back into the partnership during his stay in hospital. Mr Barker had always lived within his means and he blindly and somewhat naively trusted that there would be money built up in the partnership for when he retired. Again he did not have the physical strength and the confidence to have a confrontation with Mr Gordon who was renowned for his bad temper.
111. When Mr Barker became a partner in 1988 he was treated very much as the junior partner. He was ashamed to admit that he had been too weak to change that as time went on. Mr Barker accepted that funds had inappropriately been taken from client account and he recognised that he had to take responsibility as a partner in the firm. He personally had not gained anything from any misappropriation and personally had repaid approximately £8,000 to the firm to cover shortfalls. He had not utilised any client funds for the purposes of the firm or for his own purposes.

112. The Tribunal was invited to take into account the fact that Mr Barker had now faced up to his responsibilities; he had cooperated with The Law Society and had worked hard to rectify the mistakes; he had achieved compliance with the Rules; and he had used his own labour and money to see that his clients had not suffered any loss.
113. Mr Barker had ensured that a bookkeeper was hired in September 2004. She had worked initially for four days a week to update the backlog of accounting transactions and was able to work only two days a week subsequently as the accounts had been brought up to date.
114. Once Mr Barker had been alerted to the problem he spent many months chasing the accountants to ensure that they brought the accounts up to date for the year ending 2004. Mr Barker spent weekends going into the office to ensure accounts reconciliations were up to date. Mr Barker ensured, together with Mr Gordon, that the firm took out an overdraft of £85,000 to rectify the immediate shortfall on client account.
115. Mr Barker had been devastated by the events. He felt that in his complacency and weakness he had let down his family and himself both as a solicitor and personally. He had always considered himself to be a very honest person and had always worked hard to support his family, his colleagues and his business partner. He had dedicated his career to the law. He had always loved his chosen career and felt that he had always strived to give the best service possible to his clients. He believed that he had looked after his clients honestly and to a high professional standard.
116. Mr Barker understood that the allegations against him were serious. He knew that as a partner of the firm he should have been more involved in the financial side. He was truly filled with regret over what had happened. He should have been stronger and more assertive. He should have stood up to Mr Gordon. It was easier for him not to stand up to Mr Gordon and he was truly sorry.

The Decision of the Tribunal and its Reasons

117. The Tribunal deprecated the behaviour of Mr Gordon and having made a finding that his actions were dishonest it was right, in order to protect the public and the good reputation of the solicitors' profession, that he should be struck off the Roll of Solicitors.
118. The Tribunal accepted that Mr Barker did not have the same level of culpability as Mr Gordon. Mr Barker had not been dishonest but his abdication of his responsibilities as a solicitor and a partner in the firm was in itself a very serious matter. His duty to ensure compliance with the Solicitors Accounts Rules and to ensure the proper and honest stewardship of clients' funds was, of course, a high one. It was Mr Barker's own position that he had been weak and had allowed himself to be dominated by Mr Gordon. His response was to take no interest at all in the firm's financial affairs. Such an attitude simply was not acceptable.
119. The Tribunal considered that Mr Barker's shortcomings could be met by the imposition of a suspension from practice for one year. It ordered that the suspension

should not come into force until 23rd June 2006 in order that Mr Barker might make arrangements to ensure that his clients suffered the minimum possible inconvenience.

120. The Tribunal noted that The Law Society sought the costs of and incidental to the application and enquiry and the parties had agreed that such costs should be fixed in the sum of £19,500.
121. The Tribunal ordered that the Respondents pay The Law Society's agreed costs and apportioned the costs between the two Respondents to reflect their respective levels of culpability. Mr Gordon was ordered to pay £14,625 and Mr Barker was ordered to pay £4,875.

DATED this 17th day of July 2006
On behalf of the Tribunal

P Kempster
Chairman