No. 9511-2006

IN THE MATTER OF CATHERINE CHARLENE SAMUEL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. I. R. Woolfe (in the chair)
Mr. N. Pearson
Mrs C Pickering

Date of Hearing: 21st February 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Ian Ryan, partner in the firm of Bankside Law, solicitors of Thames House, 58 Southwark Bridge Road, London SE1 0AS on 23rd June 2006 that Catherine Charlene Samuel, solicitor, c/o David Morgan, solicitor, LDE 128 London might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

At the date of the hearing David Morgan, the Respondent's solicitor representative, had changed his address. His new address is set out below.

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

(i) That she failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules).

(ii) That she failed to carry out reconciliations as required by Rule 32 of the 1998 Rules.

(iii) That she acted in a situation where her interests conflicted with those of a client.

(iv) That she improperly utilised client's funds for her own purposes. In the body of the Applicant's statement it was further alleged that the Respondent improperly utilised clients' funds to complete the purchase of her property and that by doing so she behaved dishonestly or was grossly reckless as to whether there were sufficient funds legitimately available to complete her purchase.

(v) That she failed to comply with conditions on her practising certificate for the practice year 2004/2005.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 21st February 2008 when Ian Ryan appeared as the Applicant and the Respondent was represented by David Morgan, solicitor consultant with Radcliffes Le Brasseur, 5 Great College Street, London SW1P 3SJ.

The evidence before the Tribunal included the admissions of the Respondent of allegations (i) (ii) (iii) and (iv) save that she did not admit that in respect of those allegations she had been guilty of conduct unbefitting a solicitor and she denied that in respect of allegation (iv) she had acted dishonestly. The Respondent denied allegation (v).

The Respondent gave oral evidence and on her behalf an extract from a Law Society case worker's report was handed up at the hearing. A bundle of written testimonials in support of the Respondent had been handed up prior to the hearing and further testimonials were handed in during the course of the hearing.

<u>The background facts</u>

1. The Respondent, born in November 1964, was admitted as a solicitor in December 2003. Her name remained on the Roll of Solicitors.

2. The Respondent had prior to her admission as a solicitor been qualified as a barrister and solicitor in Nigeria. She had set up a Law firm there in 1990. She came to the United Kingdom in 1993 and worked as a legal cashier and accounting assistant, and as a lawyer in various law firms before setting up her own practice under the name of CSamuels solicitors on 1st March 2004. She had attended various courses and obtained a waiver from The Law Society of the requirement that she be admitted for three years before setting up as a sole principal. The Law Society had permitted her to set up a practice as a sole principal some two to three months after her admission as a solicitor. Subsequently the Respondent took on various partners at different times.

3. At the material time the Respondent practised on her own account under the style of CSamuel solicitors, Suite 1, The Latin Quarter, 88 Blackheath Road, Greenwich, London SE10 8DA.

<u>The facts relating to allegations (i) - (ii)</u>

4. An Investigation Officer of The Law Society (the IO) carried out an inspection of the Respondent's books of account commencing on 29th March 2005. His report dated 4th April 2005 was before the Tribunal.

5. The Respondent had indicated that some 99% of the work she undertook was conveyancing.

6. The IO reported that the Respondent's books of account were not maintained in accordance with the Solicitors Accounts Rules. The Respondent explained that she had prepared some of her accounts on spreadsheets, and others had been prepared on two different computerised accounting systems. She had had problems with her accounting system and kept switching systems. Her accounts had not been kept on one system alone.

7. The Respondent had not been able to produce her books of account immediately because her computer system had crashed and she had lost stored information. She was not able to confirm the date of her last client account reconciliation. She was not able to say when her computing system crashed or provide any documents prepared prior thereto. The computer system had not been backed up. Documents had not been printed prior to the crash. She had not appointed an accountant to act on behalf of the practice.

8. The IO reported representations made to him by the Respondent on 29th March 2005 in response to his questions. On 31st March 2005 the Respondent denied that she had made these representations.

9. The IO had obtained copies of the client account and office account bank statements since the practice began. He was also provided with the cheque books and paying in slips. The Respondent had not provided the IO with BACS statements. The Respondent had not been able to remember specific details about her accounts.

10. The Respondent did not produce to the IO client ledger cards showing the office account side of the ledgers, or cash books dealing with monies coming into and out of the client and office bank accounts and had not reconciled the client bank as required by the Solicitors Accounts Rules.

11. At a meeting attended by the IO and a colleague with the Respondent on 31st March 2005 the Respondent produced a reconciliation for March and April 2004. She explained that she had prepared later reconciliations on spreadsheets but she was unable to print those spreadsheets because they had been lost.

12. The IO had not found it possible to calculate whether the Respondent's firm was holding sufficient client funds to satisfy its liabilities to clients or to express an opinion on the books of account.

Allegations (iii) and (iv)

13. The IO reported upon a misuse of client funds in connection with the Respondent's own purchase of a property at Catford. The purchase price had been £130,000.

14. On 11th January 2005 a deposit of £3,250 was sent to the vendor's solicitors. On 10th January 2005 the Respondent had deposited £750 in client bank account. On the same date a transfer of £2,500 had been made from the ledger of Mr A to a ledger in the name of the Respondent, making up the whole of the deposit sent.

15. The Respondent had not recognised that she should not conduct her personal purchase transaction through client account. In the course of her evidence she explained that Mr A had not been a client of her firm but she acknowledged that his funds had been held in client account. By letter of 3rd May 2005 addressed "to whom it may concern" Mr A confirmed that he authorised the Respondent to transfer £2,500 to her own ledger to fund part of the deposit on her own purchase. It was a personal loan. He confirmed that he did not wish to seek independent advice. He confirmed that he had received repayment of the whole of the loan. No written authority from Mr A appeared on the file at the time of the IO's inspection.

16. The Respondent's purchase of the property at Catford was completed on 28th January 2005 when a CHAPS transfer of client account funds of £126,750 was made to the vendor's solicitors.

17. On the day before completion the Respondent's net mortgage advance of £110,451 had been credited to the firm's client account.

18. The IO had not been able to find evidence that the balance of the purchase price had been paid into client account.

19. When the IO pointed out to the Respondent that it appeared that she had misused general client funds for her own purposes in a minimum sum of £16,299 her response had been that she would look into it.

20. The IO ascertained from the banking and other records that on 18th February 2005 £25,001 had been credited to office bank account and on 21st February 2005 the Respondent had withdrawn £17,000 in cash. The narrative on the relevant cheque stub was "re-loans". On the same date £16,469.75 had been paid into client account. The source of the £16,469.75 had not been identified on the paying in slip.

21. When the IO asked the Respondent about the payment in she replied that she would have to look into it.

22. Another payment in of £4,000 on 9th February 2005 had been lodged in client bank account where the paying in slip did not identify the client to whom it related. A further sum of £1,325.00 was paid into client account on 17th March 2005, the paying in slip did not provide details of who had paid in those funds.

23. The IO pointed out that all other client account paying in slips had been completed with details of the client to whom the slip referred.

24. When the IO asked the Respondent if those payments into client account had been her replacement of funds she had previously used in her own purchase transaction she said she would have to look at the file.

25. In her statement lodged with the Tribunal dated 15th February 2008 the Respondent explained that the misuse of client monies for the purpose of completing her own purchase had been entirely inadvertent.

26. The transaction had been handled by a partner of the Respondent as had been required by her mortgage lender.

27. The Respondent mistakenly believed that she could rely on her aunt who had agreed to arrange to advance monies to the Respondent through her friend and that those monies would be provided in time for completion.

28. The Respondent's major mistake had been to pay out completion monies in the expectation of the receipt of those funds. The Respondent had been under pressure from the vendor who wanted to move very early in the day to allow his helper to travel to the United States of America.

29. The estate agent had planned to "gazump" the Respondent as the vendor had reduced the purchase price by £10,000.

30. It was for those reasons that the Respondent completed the transaction early, very foolishly having not checked with her aunt that that would be in order. The Respondent had not set out to use clients' funds for her own purchase as she had already secured an equity release loan.

31. As soon as the Respondent realised what had happened when her aunt was unable to make the payment or arrange for the funds to be made available through her friend the Respondent took steps to rectify the situation by paying £4,000 into client account. She had not been able to lay her hands on the whole sum needed to make good the overpayment of client funds immediately. She had borrowed the £4,000 from a member of her Church. The Respondent had further borrowed £25,001 from a commercial lender of which £16,469.75 had been paid into client account on 21st February.

32. In her oral evidence the Respondent said that she had made the CHAPS transfer to complete her purchase. As soon as she had done that she went to her aunt's address in Old Kent Road, London. She had expected her aunt to take her to the bank. The aunt would not see her. The Respondent said she did not know her aunt's name. As soon as she realised that the expected money was not to be made available to her, the Respondent borrowed what she could from a member of her church and immediately made an application for a loan.

The evidence relating to allegation (v)

33. On 3rd October 2005, an Adjudicator of The Law Society granted the Respondent a practising certificate for the practice year 2004/2005 subject to conditions one of which was that she might act as a solicitor only in employment which had first been approved by The Law Society and that she should not be the sole principal, partner, or salaried partner of any solicitor's practice and that those conditions should become effective within three months from the date of notification of the decision to the Respondent.

34. The Respondent had applied for a review of that decision which was successful in part but the conditions set out in the previous paragraph were upheld. The Respondent

was informed in a letter dated 3rd January 2006, that those conditions would take effect three months from the date of the notification of the appeal decision.

35. On 9th January 2006 The Law Society wrote to the Respondent confirming that the relevant conditions would take effect from 3rd April 2006. Following an exchange of correspondence between The Law Society and the Respondent's solicitor, the Chairman of the Adjudication Panel that dealt with the Respondent's application for a review agreed to amend the decision to allow condition 4 from the original Adjudicator's decision of 3rd October 2005 (that she not be a sole signatory to office or client account cheques) also to take effect from 3rd April 2006.

36. An application for approval of employment of the Respondent with CSamuels solicitors was refused by an Adjudicator of The Law Society on 11th July 2006. A review of that decision was refused and the Respondent was informed of that by letter dated 15th September 2006.

37. On 4th October 2006, an Investigation Officer of The Law Society began a second inspection of the Respondent's books of account. His report dated 20th December 2006 was before the Tribunal.

38. When the IO attended at the Respondent's premises on 4th October 2006 he discovered that she was still working at the firm of CSamuel solicitors. It was the Applicant's case that the Respondent had worked in breach of the conditions on her practising certificate from 17th September 2006 (the date of her receipt of The Law Society's letter of 15th September 2006 referred to above) and 4th October 2006 (the date when the IO commenced his inspection) ("the period of breach").

39. The Applicant relied on a number of documents to demonstrate that the Respondent had during the period of breach worked as a solicitor at the firm of CSamuel solicitors. By way of examples; a letter written by CSamuels solicitors to a client bore the reference CS/YM/MTENBAMBIR/FP; as did a letter to the same client of 26th September 2006; other letters had been written during the period of breach bearing the initials "CS" at the start of the firm's reference; a letter about a client's affairs had been written to CSamuels by another firm of solicitors dated 19th September 2006 which was marked "For the attention of Katherine Samuel" and a fax of 3rd October 2006 to CSamuels solicitors had been similarly marked - it was addressed to "Dear Catherine". In one letter sent to a client during the period of breach she was described as the "Supervisor".

40. The Respondent said that she was working at the firm but she was not working as a solicitor.

41. In her written statement she said that Mr R became a partner in the firm on 16th December 2005. She disclosed the conditions on her practising certificate that were to take effect from 3rd April 2006. He was made aware that he would be supervising the Respondent and other members of staff from that date. The Law Society was notified of Mr R joining CSamuels by letter dated 16th December 2005.

42. Owing to family difficulties Mr R resigned in a letter of 14th March 2006, but the Respondent persuaded him to stay.

43. By letter dated 31st March 2006 the Respondent sought The Law Society's approval of her working as an employed solicitor at CSamuels. She did not work in the firm as a solicitor while waiting for that approval. She had worked in the firm as a cashier. She trained staff in a new computerised case management system. She was also involved in marketing the business and recruiting staff.

44. The Law Society assumed that the Respondent was a solicitor at CSamuels. Her application for approval of her employment as a solicitor with CSamuels was refused and her appeal was unsuccessful.

45. The Respondent employed Mrs W-L to be the supervising partner after an interview on 18th September 2006. She commenced work on 20th September 2006 although the Respondent had expected her to start on an earlier date.

46. The Respondent had taken steps to make others signatories on the firm's bank accounts.

47. Prior to Mrs W-L joining the firm the Respondent had been involved in assisting CSamuels's then accountant with replies to his enquiries, with a view to the firm's Accountant's Report being filed with The Law Society on time. The latest date for filing was 30th September 2006. In her oral evidence the Respondent said she had continued with this work without being instructed so to do by the partners in the firm. The Respondent had also been involved with processing the firm's professional indemnity insurance for the new indemnity year 2006/2007.

48. The Respondent said that she had not continued to practise in the period of breach. The documents upon which the Applicant relied did not indicate that she had. The firm's name appeared on correspondence . One letter stated that Mr M would be carrying out the work and that the overall supervisor would be Mr R. The references not only had the initials CS but also the initials of the person having conduct of the matter. The Respondent had not signed the letters. She explained that the only reason for her initials appearing was historical in that originally her initials appeared on all letters. The initials certainly did not indicate that she was in charge of these files. Where the Respondent was shown to be the supervisor in a letter, that was an error where an old form of letter had been used.

The Submissions of the Applicant

49. The Respondent knew at the time when she completed the purchase of her own property at Catford that she did not hold sufficient monies of her own to pay the whole of the balance required to complete. She knew that by sending the full balance required to complete she had utilised money held in client account on behalf of clients of the firm. The Tribunal was invited to find that the utilisation of client funds in this manner was dishonest. The appropriate test for the Tribunal to apply to establish dishonesty was that set out in the case of Twinsectra Limited v Yardley and others [2002] UKHL 12.

50. The Applicant relied on the documentary evidence to support his allegation that the Respondent had acted as a solicitor in the firm of CSamuels solicitors but he accepted

that his allegation related only to the period between 17th September to 4th October 2006.

The Submissions of the Respondent

51. The Respondent accepted that she had acted foolishly when she completed the purchase of her own property before funds promised to her by her aunt had been paid into her firm's client account.

52. The Respondent was a practising Christian and would not have done anything dishonest. The Tribunal was invited to give due weight to the testimonials written in support of the Respondent all of which attested to her integrity and honesty. The Respondent had formulated no intention to utilise clients' monies for her own use and, indeed, when the expected monies were not forthcoming on the completion date, the Respondent explained what had happened to the Pastor in her church and had made strenuous efforts to obtain sufficient monies to make sure that there was no shortfall on client account. She had paid in £4,000 following a loan from a member of her church very shortly after the purchase transaction had been completed and the balance of monies to eradicate the shortfall had been paid into client account between two and three weeks after completion upon the finalisation of a commercial loan arranged by the Respondent.

The Tribunal's findings of fact and its decision with regard to the disputed allegations

Allegation (iv) - dishonesty

53. The test applied by the Tribunal in considering whether or not the Respondent's behaviour had been dishonest was that expressed by Lord Hutton in Twinsectra Limited v Yardley.

54. The Tribunal also took into account the Judgment of the Administrative Court in Bryant and Bench v The Law Society [2007] EWHC 3043 (Admin) which commented that the decision of the Court of Appeal in Bultitude v The Law Society [2004] EWCA Civ 1853 is binding authority namely that the test to be applied when deciding dishonesty is as formulated by the House of Lords in Twinsectra...namely, "in the context of this case, first, did Mr Bultitude act dishonestly by the ordinary standards of reasonable and honest people and if so, secondly, was he aware that by those standards he was acting dishonestly?"

55. The Tribunal found that in taking money from client account to make up the shortfall required to complete the purchase of her own property at Catford the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence and heard her explanation for the utilisation of client funds and her assertions that she expected to be placed in funds by an aunt, whose name she said she did not know, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that her use of client's money for her own purposes in these circumstances was justifiable and therefore that she knew that what she was doing was dishonest by those same standards. In particular the Tribunal noted that when asked about the use of client funds in her own

purchase the Respondent indicated that before answering the IO's questions she would have to look at the file. It was not plausible that the Respondent who said that she had anxiously sought to borrow money to replace client funds used by her would not have had a clear recollection of what had happened in her own personal transaction. The Tribunal considered also that it was not plausible that the Respondent did not know the name of her aunt. Indeed the Tribunal concluded that the Respondent was not a credible witness.

56. The Tribunal did not accept the explanations given by the Respondent that she was working in the firm of CSamuels solicitors in a capacity other than that of a solicitor. On her own evidence she was undertaking work that would lead to the timeous filing of an Accountant's Report. The Tribunal did not accept her evidence that letters had been written to clients and others bearing her initials at the beginning of the firm's reference because those initials related to the name of the firm and not to the fee earner having conduct of the relevant matter. The Tribunal noted that letters had been addressed to the Respondent personally and she had been referred to in one letter addressed to a client as being the supervisor of the fee earner.

57. On the Respondent's own evidence she was assisting the firm's accountant in connection with the firm's annual Accountant's Report even though she had not been instructed by the partners in the firm to do so.

58. The Tribunal found that the Respondent continued to act as a solicitor and, indeed, continued to act as she had when she was the sole principal at a time when a condition on her practising certificate preventing her from acting as a solicitor in the firm had come into force.

Conduct unbefitting

59. The Tribunal found that in respect of all of the allegations the Respondent had been guilty of conduct unbefitting a solicitor. A failure punctiliously to comply with the Solicitors Accounts Rules, the improper and dishonest utilisation of client's funds and a failure to comply with a condition on her practising certificate were serious matters and were considered by the Tribunal to amount to conduct unbefitting a solicitor.

The Respondent's mitigation

60. The Tribunal was reminded of the Respondent's history and that she had set up in practice as a sole principal, The Law Society having waived the requirement that she be of three years qualification before being permitted to do that.

61. The Law Society had intervened into the Respondent's firm in October 2006.

62. Since that time the Respondent had been unemployed and had suffered considerable hardship. She had been threatened with bankruptcy and homelessness. She had not been able to afford properly to keep herself and her son. She had been living on child benefit and had no other income. She had borrowed extensively against the security of her home in order to pay off debts and had little or no equity in that property.

63. At the time when she completed the purchase of her property at Catford the Respondent's mother in Nigeria had suffered blindness in one eye and had been ill. That had caused the Respondent not inconsiderable stress.

The Tribunal's sanction and its reasons

64. The Tribunal had found all of the allegations to have been substantiated against the Respondent and had found her not only to have been guilty of conduct unbefitting a solicitor but also to have been guilty of dishonesty.

65. The Tribunal took into account the Respondent's explanations, her apology, the fact that those writing testimonials on her behalf considered her to be an honest but perhaps naïve person and the difficulties that had faced the Respondent since the intervention into her practice. The Tribunal had also taken into account the fact that the Respondent had been allowed to enter into a sole practice by The Law Society before she had achieved three years of experience after qualification as a solicitor in England and Wales. The Tribunal recognised that the Respondent had deeply held religious scruples. The Tribunal recognised that the Respondent had suffered considerable hardship following The Law Society's intervention into her former practice. The Tribunal in addition gave the Respondent credit for recognising that she had created a shortfall on client account and for taking urgent steps to put that matter right. The Tribunal accepted that the Respondent had no intention permanently to deprive her clients of any money but this was not an element in the test for dishonesty set out in the case of Twinsectra v Yardley and Bultitude v The Law Society. The Tribunal had applied that two part test and having found the Respondent to have been dishonest and taking all of the circumstances and mitigating factors into account the Tribunal concluded that in order to protect the public and the good reputation of the solicitors' profession it was both appropriate and proportionate to order that the Respondent be struck off the Roll of solicitors.

66. The Applicant sought the costs of and incidental to the application and enquiry. He provided the Tribunal with a schedule setting out his calculations and he sought a figure, to include the IO's costs, in the region of £22,500.00.

67. The Tribunal had made specific enquiry as to the Respondent's financial circumstances. It had been told that she had little or no equity in her home and currently her only income was child benefit. The allegations against the Respondent included one that she had improperly utilised client money from the sacrosanct client account. That was a grave matter. The striking off order brought to an end the Respondent's professional career and her means of livelihood.

68. Following the decision in Merrick v The Law Society [2007] EWHC 2997 (Admin) it was recognised that there could be no general rule that the Tribunal should not impose an order for costs in addition to the order for striking off. Further in an individual case whether it was appropriate to add an order for costs to an order for striking off depended on the facts. Where an order is made depriving a solicitor of her livelihood the question necessarily arises as to how any order for costs would be paid. The Tribunal had ascertained that the Respondent had little or no assets and was currently living on child benefit. The Tribunal concluded that the Respondent would not be in a position to satisfy any order for costs. In all of the circumstances of this case, having

regard to the Respondent's explanations and her not inconsiderable and eventually successful attempts to put matters right, the Tribunal concluded that it would be neither appropriate nor proportionate to impose an order for costs upon her.

Dated this 13th day of May 2008
On behalf of the Tribunal

I R Woolfe
Chairman