No. 9664-2007

IN THE MATTER OF ANAL SHEIKH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Miss J Devonish
Mrs C Pickering

Date of Hearing: 5th, 6th, 7th, 12th, 13th, 14th, 15th and 16th January, 22nd, 23rd, 24th, 28th and 29th April, 1st and 5th May 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Solicitors Regulation Authority (SRA) by Peter Harland Cadman, then a partner in the firm of Russell Cooke of 8 Bedford Row, London, WC1R 4BX on 31st January 2007 that Anal Sheikh, a solicitor, of Blackbird Hill, London, NW9 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 fit.

On 4th September 2007 Peter Harland Cadman then a member of Russell Cooke LLP of 8 Bedford Row, London, WC1R 4BX made application that Anal Sheikh might be required to answer a further allegation that was contained in the statement that accompanied the application and further that the Tribunal should make such Order as the Tribunal should think fit and a further direction having been made for the repayment of money pursuant to paragraph 2(1)(d) of Schedule 1A of the Solicitors Act 1974 and/or the payment of compensation pursuant to paragraph 2(1)(c) of Schedule 1A of the Solicitors Act 1974 the said directions be enforced as if they were contained in an Order made by the High Court pursuant to paragraph 5(2) of the Solicitors Act 1974.

The allegations set out below were contained in the original and supplementary statements amended as agreed by the Tribunal:

(a) That she transferred monies from client account to office account purportedly as costs in circumstances when she knew or ought to have known that such transfers were excessive, improper and/or unreasonable.

(b) That she has improperly asked an employee to sign a bank document that was misleading.

(c) That she improperly withdrew the sum of £254,000 from client account in breach of the Solicitors Accounts Rules.

(d) That she improperly used clients' funds in the sum of £254,000 for her own purposes.

(e) That, having improperly withdrawn funds from client account, she failed to return those funds promptly to client account.

(ee) That she failed to account for the residual credit balance referred to at paragraph 15.4 of the Rule 4 Statement.

(f) That the books of accounts of the practice were not properly written up.

(g) That monies were transferred from client account, other than as permitted by the Solicitors Accounts Rules.

(h) That the Respondent utilised clients' funds for her own benefit.

(i) That the Respondent failed properly and/or at all to account to clients for interest on monies held on client account.

(j) That the Respondent has improperly failed promptly and/or at all to comply with directions made by the adjudication panel of The Law Society to compensate a client for inadequate professional services. *(see note below)*

(k) That she failed promptly or at all to reply to correspondence from The Law Society.

(l) That she failed to comply with the directions of the Adjudication Panel of the Legal Complaints Service session 25th January 2007. *(see note below)*

Note: The Tribunal was at the outset concerned that the time allocated to the hearing would prove insufficient to allow full consideration of allegations (j) and (l). The Tribunal ruled that it would not hear evidence or make any ruling on these two allegations, the consideration of which was deferred.

(i) The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on the 5th, 6th, 7th, (8th and 9th additional reading days) 12th, 13th, 14th, 15th and 16th January, 22nd, 23rd, 24th, 27th, 28th and 29th April, 1st and 5th May 2009. Patricia Robinson of Queen's Counsel represented the Applicant and the Respondent was represented by Anesta Weekes of Queen's Counsel. On the morning of 22nd April 2009 (the date when the hearing recommenced), applications made on behalf of the Respondent were refused and Ms Weekes informed the Tribunal that she was without instructions and withdrew from

the hearing. The Respondent remained present at the hearing. The Respondent did not attend the hearing on 27th April, but did communicate with the Tribunal by telephone, fax and email. The Applicant's evidence was concluded on 27th April. On that date the Tribunal directed that the Applicant file with the Tribunal and serve on the Respondent by 12 noon on 28th April 2009 written closing submissions. The Tribunal directed the Respondent to file and serve on the Applicant any submissions that she wished to make in response by 12 noon on Thursday 30th April. The Respondent did file and serve a document which did not amount to a full response. The Tribunal hearing continued at 2pm on Friday, 1st May when the Tribunal announced its findings. The Respondent was briefly present on that day but left before the announcement of the Tribunal's findings: she was not represented from 22nd April.

(ii) During the course of the hearing the Respondent's bookkeeper, Mr Sampat, had been permitted by the Tribunal from time to time to make representations on behalf of the Respondent.

(iii) The Applicant had arranged for a stenographer to record the proceedings and transcripts relating to the days when the Respondent was not present at the hearing were provided to her by email shortly after the close of business on each of those days.

(iv) The Applicant had provided a Chronology, a written opening note and written closing submissions.

(v) During the course of the hearing the Respondent had provided a great many documents the great majority of which were not relevant to the issues before the Tribunal. She had also provided a document in response to the Applicant's closing submissions. At no time and despite requests to do so did the Respondent identify from amongst the files and documents she delivered or communicated to the Tribunal any documents on which she specifically relied upon as evidence relevant to the allegations.

(vi) At the opening of the hearing the Applicant had invited the Tribunal to consent to a number of amendments to the Rule 4 Statement and the withdrawal of paragraph 15.3. The Tribunal did so consent. This document reflects those amendments of which the Tribunal was reminded in paragraph 4 of the Applicant's written closing submissions.

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

The Tribunal Orders that the Respondent, Anal Sheikh of Blackbird Hill, London, NW9, solicitor, be Struck Off the Roll of Solicitors and they further Order that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Officers of the Solicitors Regulation Authority.

The Tribunal further Orders the Respondent to make an interim payment towards such costs of £100,000 within 28 days of today's date.

The Evidence before the Tribunal

The Evidence before the Tribunal included (1) extensive written evidence including an Inspection Report dated 22nd November 2004, a report of Mr Shelley (costs draftsman), the Judgement of Mr Justice Park dated 1st July 2005 and the appeal Judgement of the Court of Appeal dated 23rd November 2006 and certain witness statements sworn in those proceedings together with certain documents, ledgers and correspondence. (2) the oral evidence of Mrs Baker (née Patrick), Mr Shaw, Mr Shelley, Mr Baines, Mr Penson, Mr Jones and Mr Sturgeon in support of the Applicant's case.

The following documents were handed up at the hearing:-

A scanned copy of document DLS5 an analysis of the figures relating to the Respondent's firm's overdrawn position when transfers of costs were made; a copy of the Forensic Investigation Officer's Report which had been cross referenced to documents in the Tribunal's bundle; a copy of the case of Beller; a copy of the case of Campbell and Hamlet to be added to the authorities already before the Tribunal. The Respondent put in a written request for disclosure of documents. Documents to be added to bundle T2. During the course of the hearing new bundles of documents were put in by the Respondent and following disclosure of further documents by the SRA a further bundle of documents had been put in. A copy of the communications between Mrs Baker and Mr Shelley was put in. During the course of the hearing the Respondent sent to the Tribunal a number of documents by fax and email. The Tribunal made copies available to the Applicant.

Summary of the Evidence

The Respondent's background

1. The Respondent, born in 1960, was admitted as a solicitor in 1988. She practised as a sole practitioner as Ashley & Co (the firm) based in London NW9.

2. The Respondent alone might operate client and office bank accounts of Ashley & Co maintained at Lloyds TSB at High Street, Burnham, Buckinghamshire and Barclays Bank Plc at Park Royal Road, London, NW10. A further client account was maintained at Abbey National Plc and on 11th February 2004 a further client account had been opened at Abbey National Plc.

3. On 17th February 2005 the SRA had resolved to intervene into the firm on the grounds of her suspected dishonesty and breaches of the Solicitors Accounts Rules.

4. The Respondent had mounted a successful challenge to the intervention but this had been overturned by the Court of Appeal.

5. The disciplinary proceedings were (by agreement) not commenced until January 2007 because their scope could not be finally determined until after the Court of Appeal's judgment in the contested intervention. The judgment of the Court of Appeal was dated 23rd November 2006.

The Investigation by The Solicitors Regulation Authority

6. The SRA's Forensic Investigation Officer, Mr Shaw, (the FIO) and a caseworker on its Investigation and Casework Team, Mrs Baker, (the Caseworker) had carried out investigations into the firm. The FIO's Report dated 22nd November 2004 was before the Tribunal.

7. Mr Shaw confirmed that at the time of his inspection of the firm it was not the practice to record interviews conducted with solicitors. Mr Shaw was in no doubt that the written notes taken at interview with the Respondent were accurate, even though he accepted that his alteration by "tippexing" had been inappropriate.

8. Mrs Baker gave her evidence in chief in January 2009 and returned for cross-examination on 22nd April 2009. At the material time Mrs Baker (then Miss Patrick) was a caseworker with the Multiple Complaints Investigation Team at the SRA. Mrs Baker was in no doubt that the notes of conversations that she and a colleague, Ms Faulkner, had with the Respondent, were a true record of what was said by the Respondent in response to questions put to her at those meetings. These notes were before the Tribunal.

9. The Tribunal received no evidence to indicate that the facts stated in the FIO Report were in any material respect inaccurate or misleading and, having heard the oral evidence of Mr Shaw and Mrs Baker, find as facts the facts and matters stated in the FIO Report.

Mr Shaw's Evidence

10. Mr Shaw had attended at the offices of the firm on 23rd February 2004 to begin an inspection of the firm's books of account and other documents. Mrs Baker had also attended. He together with Mrs Baker had prepared the Forensic Investigation Officer's Report (the FIO's Report) which was before the Tribunal. The inspection date was 31st January 2004.

11. Mr Shaw had ascertained that the firm's computerised accounting package allowed the retrospective posting of transactions into earlier accounting periods so that the running balance on both the office and client sides of a client's ledger could be amended. Adjustments made to correct earlier errors and omissions could be back-dated and written into the books to give the appearance that no error or omission had occurred.

12. A list of liabilities to clients as at the inspection date had been printed out on and dated 11th February 2004. Further printouts dated 22nd and 23rd April 2004 relating to five client matters showed different balances. Three ledgers that had credit balances recorded in the earlier printout now had debit balances. The FIO had established that transactions posted between 11th February 2004 and 23rd April 2004 to the office side of these clients' ledgers had been dated prior to 31st January 2004 and had been entered retrospectively in chronological order into the office side of those clients' ledger accounts thereby changing the running balances and the balance as at 31st January 2004. Such retrospective posting was not generally accepted as best accounting practice.

13. Mr Shaw found that the Respondent's books contained numerous round sum transfers made from client to office account totalling £475,125. Mr Shaw did not check whether bills had been drawn against which such transfers could properly have been made. It was his point that it would be most unusual for a single bill or for a number of bills to be added together (with the inclusion of VAT at the rate of 17.5%) to amount to a round figure. The Respondent had not produced the bills to which the round sum transfers related.

14. Mr Shaw had noted that when round sum transfers were made from client to office bank account the office bank account had been overdrawn. Mr Shaw had identified twenty seven round sum transfers from client to office bank account made between 2nd May 2001 and 29th January 2004 varying in amount between £5,000 and £41,250.The Respondent's firm's overdraft limit was £20,000.

15. Mr Shaw had analysed those round sum transfers as follows:-

		Total
(i)	Fifteen transfers relating to multiple clients	£249,000.00
(ii)	Three transfers relating to the LSC (Legal Services Commission) control account	£ 58,000.00
(iii)	Eight individual client transfers	£148,125.00
(iv)	One transfer made in error	£ 20,000.00

16. In her evidence before the High Court in the intervention proceedings the Respondent explained that she decided what transfers to make to office account by looking at a report generated by her computer system which showed costs due (in respect of what she described as "outstanding bills") as debits to the office side of the client ledger and sums available in client account.

17. Although in connection with individual client transfers the allocation to the client concerned was made reasonably quickly, there had been some considerable delays to the allocation of physical transfers of money from client account to the accounts of the individual clients to whom they related. The average delay was twenty six days and one transfer was not allocated for seventy eight days.

18. In connection with the LSC control account transfers the average delay in allocation was twenty one days and the maximum delay was thirty five days.

19. On 2nd May 2001 when a transfer of £20,000 was made from office to client account the LSC Account 1000 had a debit balance of £2,063.83. On 23rd July 2001 a further £20,000 transfer was made and on 29th January 2002 another client to office bank account transfer of £18,000 increased the credit balance on the office side of the LSC ledger to £55,936.17. From March to November 2002 various transactions including the allocation of funds were made so that at 13th November 2002 there remained a credit balance on the office side of the account of £13,140.15, which remained the position at the inspection date. Mr Shaw explained that at least the sum of £13,140.15 remained to be allocated and such allocation recorded on the office side of the individual client's ledger.

20. The Respondent had confirmed to Mr Shaw that amounts received on account of costs and disbursements from the LSC had been paid into client bank account and credited

to the LSC account 1000 until October 2003 when the firm changed its accounting practice and began to deposit funds from the LSC in office bank account.

21. The Respondent confirmed to Mr Shaw that the funds standing to the credit of the LSC account 1000 received from the LSC were in respect of certificated legally aided matters and they were not standard monthly payments made under the franchising scheme.

22. At interview on 28th April 2004 the Respondent had said that it was the firm's usual practice to debit the LSC account 1000 with client to client inter-ledger transfers, placing the credit on the client side of the relevant accounts in the clients' ledger from which they could then be properly dealt with. This would include the payment of disbursements.

23. In his oral evidence Mr Shaw said there was nothing inherently wrong with a transfer made in a round sum, provided that such round sum was the actual sum due. In his oral evidence Mr Shaw explained that he had not looked for the bills in respect of which any of these transfers had been made and he did not assert that there were no bills. He accepted that a central register of bills had been maintained at the firm and that it should have been possible to identify the bills against which the round sum transfers had been made, although that was likely to be a time consuming process. He had not considered it necessary to undertake that exercise himself during the course of the inspection. Mr Sampat had indicated that he would be able to identify such bills but he had not done so.

24. Mr Shaw pointed out that where a single round sum transfer was made up of a number transfers for costs relating to different client matters, it would be highly unlikely for the addition of those items to result in a round sum total. Examples of round sum transfers occurred in the cases of TS deceased and B deceased. The Respondent had indicated that she checked the position with regard to bills delivered and client moneys held on her computer and would "tick off" or highlight on those reports the matters where she proposed to make transfers, add up the amounts available in respect of costs, and round the resulting sum down. She retained the marked up report so the appropriate accounting records could be made. She rounded down the sum due to the firm and made the transfer of the rounded down sum.

25. On 7th June 2001 the office bank account was overdrawn by £19,680.49 when she transferred £20,000 from client account to office account. That transfer was allocated three days later to the client TS Deceased ledger the Respondent having issued a bill dated 7th June 2001 for £19,975. The matter of TS is dealt with in greater detail below. On 13th October 2003 the firm's overdraft was £15,851.83 when the Respondent made a transfer of £12,000 from client to office account. A bill dated 5th March 2002 in the matter of Burrows had been entered on the client ledger on 14th May 2002 and was for £10,884.44.

26. As at January 2004 the books contained numerous credit balances totalling £95,706.01 on the office side of the clients' ledger. Mr Shaw explained that credit balances on the office side of the clients' ledger did not necessarily mean that there had been breaches of the Solicitors Accounts Rules but they needed to be investigated.

27. Eleven bills were identified, the value of which totalled £46,751.27, that had not been posted to the office side of the relevant accounts in the clients' ledger. It was accepted that once posted they would eliminate a large part of the credit balances on the office side of the clients' ledger. Failure to post bills might have caused the firm to understate its VAT liability and the firm's fee income.

28. It was Mr Shaw's stance that an overcharge in the case of GT Deceased led to a minimum cash shortage on client account of £41,125.00.

29. In view of the accounting inadequacies and the matters for concern Mr Shaw did not consider it practicable to attempt to compute the Respondent's liabilities to clients and could not express an opinion as to whether there were sufficient funds held on client accounts to meet such liabilities to clients.

30. The FIO Report identified a lack of detail was maintained on the Respondent's client matter files. Files did not contain attendance notes of telephone conversations or meetings. Computer printouts were found on some files. They appeared to record the time spent on work on the file and a narrative of work done. There was no computerised time recording system. The printouts did not record which fee earner had undertaken the work. The Respondent's terms of business indicated that lower hourly rates would be charged where work was undertaken by a fee earner other than the Respondent. On the file of ST a note was found on which the date of the firm's invoice had been encircled and in manuscript the words "make up attendance notes" appeared. It had been the Respondent's explanation that she did not always have time to write contemporaneous notes and would write them retrospectively from her recollection.

31. Mrs Baker told the Tribunal that the Respondent had been sent five "EWW" letters (letters requiring explanation with a warning of the consequences of failure to respond) between 24th March 2004 and 16th July 2004 in respect of the matters of B, M, H, S and McG. The Respondent sought extensions of time to reply in respect of two of those matters which were granted. No responses were received even though a number of follow up letters had been addressed to her. Mrs Baker sent the Respondent copies of her reports on the individual matters between 30th June and 12th November 2004 and wrote to the Respondent about multiple complaints issues on 10th December 2004 and sent her a report on 14th January 2005. The Respondent had felt under pressure and that she was being victimised and had pointed out that it was difficult for a busy sole practitioner to handle such an onslaught of correspondence.

Probate matters and Mr Shelley's evidence

32. The Tribunal had been invited to consider the way in which the Respondent handled a number of probate matters. It was understood that probate work did not form a large part of the Respondent's workload although it did generate a substantial proportion of the firm's fee income.

33. Those probate matters were those of GT deceased, ST deceased, WS deceased, HS Deceased, RS Deceased and WB deceased and B Deceased. Mr Shelley, a costs draftsman, considered all of them save for B Deceased.

34. The concerns expressed in the FIO's report included the level of the Respondent's charges in probate matters. The SRA had instructed a costs draftsman, Mr Shelley, to consider these probate matter files. Mrs Baker had instructed Mr Shelley on behalf of the SRA. Both Mrs Baker and Mr Shelley denied that there had been any suggestion that the regulator or any individual had been "out to get" the Respondent. The matter had been handled by them in a routine and professional manner.

35. Mr Shelley had been instructed by Mrs Baker at the SRA to review the firm's charges in six probate matters. He had given evidence about this in the intervention proceedings during the course of which Mr Shelley confirmed that he was not instructed to find fault but to give a professional unbiased opinion. He maintained that position before the Tribunal. The Respondent had submitted evidence from another costs draftsman. The opinions of the two costs draftsmen did not diverge in any significant way.

36. Mr Shelley had had an opportunity to review the transcripts of the intervention proceedings in relation to evidence given by him in cross-examination and the evidence given by the Respondent in relation to the costs issues touched upon by his written reports and he gave further opinion in his evidence before the Tribunal.

37. The history of the law and guidance relating to the calculation of solicitors' costs was explained. The principle was that such costs were to be fair and reasonable both to the client and to the solicitor. He pointed out that it had been said by Donaldson J in a case in 1975 that costing is "an exercise in assessment, an exercise in balanced judgement – not an arithmetical calculation."

38. The established method for costing non-contentious work until the late 1990s was a two stage process. First the solicitor would multiply the hours spent on each case by the expense rate (the hourly charge appropriate to the fee-earner who undertook the work). "Expense rates" represented the direct cost of running the solicitor's office. Secondly a "mark-up" would be added for "care and conduct" and, sometimes a "value" element. The mark-up for non-contentious business would typically be between 35% and 50%.

39. The Law Society's guidance in "An Approach to Non-Contentious Costs" (revised edition 1995) and "Non-Contentious Costs" (Practice Advice Service, November 1999) was that, where a matter, such as probate, had a defined value, the solicitor might charge a separate "value element", usually an approved percentage of the value of the estate or property. The value element was usually added to the charge based on the expense rate when care and conduct might not be charged in full.

40. In the years up to 1999 a simplified system of charging began to emerge. Solicitors began to adopt a system of "composite" hourly rates which were fully inclusive of direct cost, mark-up for care and conduct, and value. Composite hourly rates were transparent and predictable. They were in line with systems used by other professions and commerce. They offered certainty both to clients and the profession.

41. The Guide to the Summary Assessment of Costs issued by the Supreme Court Costs Office in April 1999 stated, "In the past solicitors have sought to recover their charges on what is known as the A plus B basis, namely an hourly expense rate (A) and an uplift for care and conduct (B). The Lord Chancellor has decided that the system of

calculating charges is to be discouraged and solicitors will therefore be urged to claim costs at a single charging rate." Since 1999 composite hourly rates had become firmly established. Recent case law had supported the idea that composite rates included all the factors leading to a fair and reasonable charge.

42. There were no rules or guidance which prevented a solicitor from charging for work on fair and reasonable basis calculated in another way, provided that the basis of charging has been agreed with the client. The Solicitors Costs Information and Client Care Code, which came into force in September 1999, required solicitors at the outset of a matter to give written costs information setting out their retainer and explaining how costs would be calculated. Updated costs information was to be given from time to time.

43. In assessing costs standard techniques were often adopted, such as counting letters and telephone calls, and totalling the recorded time spent on attendances and in considering documents. So far as possible Mr Shelley followed those processes in making his own assessment. It had been difficult to check time spent on work recorded in the Respondent's breakdowns attached to the files as her calculations could not be checked.

44. The Respondent had provided a detailed printout which at first Mr Shelley had thought had been produced by a computerised time recording system but he had later realised that the "print outs" were in fact attendance notes upon which time spent on the case had been noted.

45. The fee earner doing the work was not identified in these notes. The Respondent was apparently the only qualified fee-earner at the firm. The terms of business sent with her client care letter implied that files would also be worked on by an unqualified fee-earner at a much lower hourly rate. It was difficult to ascertain from the notes the notes the correct charging rate.

46. Mr Shelley's opinion had been arrived at by adopting the system of counting routine letters out and in; accepting the "print-out" as a definitive record of the solicitor's time for attendances and telephone calls, (chargeable at Grade A rates) in the absence of any comments on these times from clients and others. He then assessed, having regard to the nature of the work described and having examined the documents worked on, the time which might reasonably have been spent by the solicitor herself, as a qualified fee-earner with experience in probate. Where there was doubt that a qualified and experienced fee-earner might reasonably have spent all the time that was recorded as "work" Mr Shelley conjectured how much chargeable time a qualified and experienced fee-earner might reasonably have taken. Mr Shelley then added 20% as a "tolerance" to provide for a margin of error in the Respondent's favour. This had been intended to counterbalance the disadvantage that Mr Shelley was not in direct contact with the Respondent. Normally a costs draftsman would seek explanation of any unclear matter from the solicitor instructing him to prepare a bill. This was not practicable in the present case.

47. Interim bills might be drawn for work done to the date specified in the bill. When a matter concluded, the solicitor should determine a fair charge for the whole matter. The final bill should be the total charge less all the interim bills.

48. In general Mr Shelley considered that the Respondent's charges were substantially higher than he would have expected to see. She had charged a 50% mark-up on hourly rates which were broadly comparable with the composite rates which Mr Shelley expected to see for a solicitor in the same area at the time that the work was done. The basic charges of £150 per hour in 1999, rose to £185 in and after 2001. After adding 50% mark-up, the resultant rate (£225 for 1999 and £277 for 2001) was far higher than those of similar firms conducting similar work in the same area.

49. There had been duplication of some charges, for instance a charge for preparation and consideration of correspondence where item rates had been charged for those letters.

50. All work had been charged at grade A fee earner's rate although some work was undertaken by a junior fee earner. It was common ground that Mr Sampat had undertaken some work on the files of B and GT. The time spent was much more than an experienced fee-earner would have been likely to spend on straightforward and routine tasks.

51. The file disclosed no system for recording which fee earner had undertaken particular tasks.

52. It was an essential part of a costs draftsman's expertise to form a view of the level and nature of legal skills required to deal with particular types of work and to assess whether the time spent was reasonable. Mr Shelley formed the opinion that much of the time claimed to have been spent on a case would upon an independent assessment be held to have been unreasonably spent.

53. Mr Shelley pointed out that in most matters there was evidence of expedition. Four of the six estate administrations that he reviewed were completed within a year. He considered that the Respondent's approach was usually planned and systematic. Her files had been easy to navigate. He recognised that in the matter of HS Deceased the co-executor/residuary beneficiary expressed satisfaction with the Respondent's services. Generally the documents, correspondence, and detailed printouts in the files appeared to be comprehensive and, subject to the limitations of the recording system, amounted to contemporaneous records of the work done.

54. The Tribunal has below summarised the concerns recorded in the FIO's report and the costs draftsman's opinion under the headings of the individual cases.

<u>The matter of GT</u>

55. T died in June 1999 leaving no close relatives. The Respondent was T's sole executor. The residuary beneficiary was a charity, who were represented by CR solicitors. The net value of the estate was £337,051.00.

56. On 9th July 2002 the Respondent's office account was overdrawn. On that date, the overdraft was cleared by a transfer of £41,125 to the office account from the client account (representing £35,000 plus VAT). There was a bill stated to be interim estimated bill on the matter file for that amount bearing that date.

57. On 25th July 2000 the Respondent wrote to the charity saying she was in the process of finalising the estate and anticipated being able to account to the charity within the

next few weeks. She did not disclose the amount charged as her costs. On 9th May 2001 she wrote to the charity enclosing an interim distribution and proposing that the capital of the estate be vested in the charity by deed of variation. On 29th November 2001 CR wrote on behalf of the charity agreeing to this and asking for the deed of variation.

58. On 18th October 2002, the Respondent wrote to CR enclosing provisional accounts to April 2002 and saying that she was waiting to hear back from the Inland Revenue on the income tax liability and "she had yet to calculate and submit a bill". CR pressed the Respondent to bring the matter to a close.

59. On 13th September 2004 the Respondent wrote to CR recording the fact that the share portfolio had been transferred to the charity, making a final distribution and enclosing accounts for the year to April 2004. She stated that she had retained enough to meet her fees to the conclusion of the administration, "which we have estimated" together with any further tax liability. By letter of 9th October 2004, CR told the Respondent that the charity did not accept the firm's fees and they asked for a breakdown. Subsequently the Respondent was pressed by CR for the breakdown saying that it was the charity's intention to apply for a remuneration certificate if the fee question was not resolved.

60. On 25th January 2007, the Adjudication Panel of the Legal Complaints Service directed the firm to refund the sum of £5,000 to the charity and to make an application for a remuneration certificate. The Respondent had not complied with this direction.

61. There was only one bill on the file, dated 9th July 2002, which on its face was described as "Interim Account (estimated only)" in the sum of £35,000 on which VAT was charged.

62. Mr Shelley took account of all work recorded to the date of the bill, although the print out and breakdown provided to him stopped earlier.

63. Based on a notional rate for a senior fee earner of £170 (average of £150 for 1999 and £185 from 2001) the interim bill represented a charge for more than 200 hours. In Mr Shelley's opinion, that was more than twice the number of senior fee earner hours that the work on the estate would have necessitated up to that date.

WB Deceased

64. Mr WB died in February 2001. His daughter and the Respondent were appointed his executors. The administration of the estate was finally completed in October 2003, soon after a beneficiary attained her majority in the previous September.

65. There were four bills:

14/12/2001	Interim probate	£11,193.75
10/10/2002	Interim probate	£200.00
06/05/2003	Interim probate	£750.00
13/10/2003	Final probate	£1,118.33
	Total	**£13,262.08**

66. The times shown in the print out did not add up to the times in the breakdown. Mr Shelley had re-calculated and had adjusted 35 hours 15 minutes shown on the print out to 25 hours 30 minutes.

67. There was no breakdown showing how the second interim bill had been calculated. As the equivalent of 1 hour 20 minutes charged at £150, the bill was not unreasonable for all work in the file in the ten months to which the bill related. Similarly times shown in the breakdown and print out were reasonable for work undertaken in the period to which the third interim bill related. Despite the absence of a printout, the breakdown showing 2 hours 35 minutes work appeared reasonable in so far as the final bill was concerned.

68. There had been no provision in the terms of business for a separate charge for administering the estate (presumably the notional cost of keeping the file open pending the granddaughter attaining her majority). Any time attributable to this element was presumed to have been included within the time recording in the printout.

69. The client care letter sent at the outset stated an hourly rate of £150. This was the rate charged in the first Interim Bill. As no further client care letter was sent, the client could reasonably assume that the original charging rate would continue to be applied. There was nothing on the file to show that the client had been sent an updated terms of business. Mr Shelley had costed the entire file at £150 per hour. Mr Shelley noted that the terms of business sent with the client care letter on the conveyancing file dated 21 February 2003 stated that the charging rate was £185, but mark up was not mentioned.

70. The total charged was £13,262.08. The most that Mr Shelley would have expected to see as costs in this matter would have been £6,145.00. There was an overcharge in the region of £7,000. The Respondent's charges represented 215% of the most that Mr Shelley would have expected to see.

The Matter of TS

71. On 7th June 2001 the firm's office account was overdrawn in the sum of £19,680.49. The firm's overdraft limit was £20,000. On 7th June 2001 the Respondent transferred £20,000 from client account to office account. This transfer was allocated 3 days later to the TS ledger. The Respondent issued a bill for £19,975 dated 7th June 2001.

72. The Respondent was sole executor. TS deceased had no immediate family. The assets of the estate were a house (sold for £162,000), over £179,000 in three bank accounts and a shareholding valued at £1,220. Two bills had been raised, one for £18,000 plus VAT on 18th February 2002 (accounted for in the estate accounts) and the second for £17,000 plus VAT dated 19th March 2002. The Respondent had explained that there was only one bill and that the figure of £18,000 that appeared in the estate accounts was an "administrative error".

73. The estate was distributed on the basis of costs of £18,000 plus VAT. The ledger recorded that the sum of £19,975 (£17,000 plus VAT) was transferred to office

account on 1st September 2001, which predated both of the bills. It subsequently was established that the money had not actually been transferred until 30th April 2002.

74. The final credit balance shown on the ledger produced when the SRA investigated was £1,196.20, but by 31st January 2005 there was a debit balance of £918.80.

75. There were two "final" bills in this matter, and it was unclear which was effective. The first, in the sum of £18,000, was issued on 18th February 2002, and accounted for in the Estate Account. A second bill in the sum of £17,000 was issued on 19th March 2002, and Mr Shelley had been informed that this sum was transferred from client to office account.

76. The Respondent had correctly followed Law Society guidance in calculating the amount of the value element. In Jemma Trust Co Ltd – v – Liptrott (October 2003) the Court of Appeal held that a Costs Judge erred in holding that it was wrong in principle for solicitors to charge a value element in addition to time charges and mark-up, but that a solicitor should be vigilant to ensure that value was not charged twice, first as one of the matters taken account of in deciding the level of mark up, and again as a separate value element. The breakdown entitled "draft purposes only on time basis" made in connection with the first bill was arithmetically incorrect to the Respondent's detriment. The total of £18,172.62 did not include £1,218.38 which represented the value element on the residence. If calculated correctly, the figure would have increased to £19,391.00.

77. A third bill for £50 had been taken by deduction from the final distribution to one of the residuary beneficiaries. The bill had been raised without prior notice to the beneficiary who had requested a copy of the will, and had asked what the value of the estate was and to whom it was distributed. He had been provided with photocopy documents from which he could deduce the information he requested.

78. There were some uncertainties as to what the estate was charged, but the overall total was at least £17,000 and possibly £18,000 or more.

79. Mr Shelley made his evaluation on the basis that all necessary work was undertaken by the senior fee earner and that the bill could properly be charged in respect of the following matters:-

£7,585.00	41 hours attendances and preparation
£307.50	41 telephone calls
£1,800.00	120 letters out
£600.00	80 letters in

After noting that at the time of billing the Respondent did not have the benefit of the analysis in Jemma Trust Ltd v Liptrott, and that the difficulties in charging mark up and a value element had not been widely addressed where a value element had been added, the most that Mr Shelley would have expected to see charged was £14,244.75. The Respondent's charges represented 125% of the most that Mr Shelley would have expected to see.

80. The Respondent notified the Tribunal in a communication sent by email on 30th April 2009 that she had, after hearing that there was an issue in this matter, thoroughly

examined the file and had discovered that she had assumed that the bill of £18,000 was unpaid in 2004 and had transferred money on the back of it. That bill was redundant and should have been disposed of. The Respondent stated that in the summer of 2006 she had regularised the position by transferring the sum back to client account and distributing it amongst the beneficiaries. She claimed this would have been apparent from the file had the FIO or Mr Shelley inspected it. The Tribunal was unable to attach weight to this evidence given some years after the date of Mr Shelley's report.

WS Deceased

81. The executor's son and daughter (who lived in Canada) were appointed co-executors. The son, a local resident who occupied the deceased's residence for part of the administration period, was a builder by trade who undertook repairs on the property for which he was reimbursed by the estate. There was evidence that the son and daughter did not see eye-to-eye over the administration.

82. A grant of probate was obtained in September 2001, the residence was sold in January 2002, and the matter concluded in August 2002. The administration involved routine work but the length of time taken to complete this administration reflected the time taken to sell the house, the need to account for Inheritance Tax, and the payment of residue to minors.

83. There had been four bills:

25/01/2002	Sale of residence	£720.00 (£695.00 plus £25.00 postages, telephones, copying which were petty disbursements which should have been included within the hourly rate)
25/01/2002	Abortive sale	£400.00
05/03/2002	Interim probate	£9,263.25 (was £10,789.43; amended on 14/08/2002 after co-executor pointed out that it had been calculated at the wrong hourly rate
14/08/2002	Final probate	£2,289.00

84. Mr Shelley's evaluation of the matter led him to conclude that in the interim bill 5 hours of work had been duplicated. 4 hours and 30 minutes had been deducted as he considered that the recorded time exceeded the time that he would have expected a Grade A fee earner to expend . He then added back a 20% tolerance.

85. With regard to the final bill Mr Shelley deducted non chargeable and routine calls overcharged but added in properly chargeable calls.

86. The Respondent correctly responded to the co-executor's complaint by reducing the rates charged on the interim bill. She then calculated the final bill at £185 per hour, to which, she said she trusted the co-executor would have no objection.

87. The Respondent had given an estimate in this matter, the structure of which caused Mr Shelley to be concerned. He thought that an estimate of £1,500 - £1,800 for the

costs of "obtaining grant of probate", routine and straightforward work, was surprisingly high. The estimate for sale of property which did not specify a separate charge for an abortive sale was substantially exceeded. The principal bill included a charge for "postages, telephones, copying" which should have been subsumed within the bill as petty disbursements. It exceeded the estimate by 20% and a second bill of £400.00 for an abortive sale was rendered.

88. The total charged, after the Respondent reduced the interim bill, was £11,552.25. The most that Mr Shelley would have expected to see as costs in this matter would have been £6,252.50, leading to an overcharge in the region of £5,000. The charges represented 185% of the most that Mr Shelley considered to be a proper charge.

89. Mr Shelley had not had sight of the conveyancing file, the Respondent had given an unqualified estimate for conveyancing of £600.00. In the light of that, the charge of £1,125.00 was excessive. On application for a Remuneration Certificate Mr Shelley would have expected the conveyancing charge to be reduced to £700 (estimate + 15%)

90. The overcharge was some 160% of the amount Mr Shelley would have expected.

HS Deceased

91. The Respondent worked closely with her co-executor, obtained grant of probate promptly, and calculated and paid the Inheritance Tax Liability. She then transferred the property and shares, realised the pecuniary assets, and distributed the estate.

92. HS died in January 2000 and the matter was completed by December 2000. The final bill was calculated on the basis of time at £150 per hour plus letters and telephone calls, plus 50% mark up. The total was £20,003 which the Respondent had discounted explaining to Mr P, her co-executor and a beneficiary, that her recorded time had led to a bill higher than she would have expected.

93. The only bill was for £17,000, issued on 11th December 2000. Mr Shelley had reduced the hours claimed, some of which had been duplicated and he felt that the recorded time exceeded by 12 hours the time that he would be expected a Grade A fee earner to expend. Mr Shelley noted that Mr P had praised the Respondent's work and had been "overwhelmed" by her decision to reduce her fees.

RS Deceased

94. Mr Shelley considered that the Respondent had overcharged in the region of £4,300. Her charges represented 134% of the most that Mr Shelley would have expected to be charged.

95. The Respondent obtained grant of probate one month after the death and the estate was fully wound up after eleven months.

96. There had been two bills:

29/02/2000	Interim probate	£4,560.00
17/08/2000	Final probate	£1,500.00
	Total	**£6,060.00**

The costing information in this file had been confusing. Mr Shelley considered that times for work claimed in the interim bill were exceptionally high.

97. By comparison with the Interim Bill Mr Shelley found calculations leading to the final bill to be clear. The resultant total of £2,377.50 had been discounted to a charge of £1,500.00, but this was higher than Mr Shelley would have expected to see based on a non-discounted charge for about 6 hours 30 minutes attendances and preparation (less 1 hour 30 minutes charged for forward work in the interim bill), plus 20 telephone calls, 35 letters out, and 8 letters received.

98. The total charged was £6,060.00. Mr Shelley found that it was impossible to determine what he would have expected to see as a global figure for costs, but it was possible to assess the amount of preparation time ("work") which the costs would represent if calculated at £150 per hour as follows:

	£6,060.00	**Total Costs**
Less	£975.00	Routine letters/telephone calls (£15/£10/£7.50) – interim bill inclusive of 50% mark up
	£1,500.00	Value of final bill
Leaving	£3,585.00	Charge for 16 hours for work up to 29 February 2000, (of which 1 hour 50 minutes was recorded as attendances)

99. The Respondent had therefore charged 14 hours for dealing with documents up to 29th February 2000. The administration of the estate was not complicated. Further charges had been raised to conclude the administration. Mr Shelley's opinion was that the time charged was substantially more than he would have expected to see for this period.

100. In summary Mr. Shelley's overall conclusion had been that the files that he had considered generally supported the conclusion that the bills on those matters had been excessive having regard to the 50% mark up added to the composite rates, duplication of time charged and where all work charged at the senior fee earner's rate regardless of who had undertaken the work or the routine or straight forward nature of the work. There had also been irregularities to include bills calculated at wrong rates, charges for costing and misleading estimates. Mr Shelley had been able to report that he found that work in these cases had largely been undertaken systematically and completed expeditiously and in the case of Mr P had received express approval.

B Deceased

101. This was not a matter which had been considered by Mr Shelley. The Respondent was a co-executor in this estate with Mrs B. She had been instructed in April 2002. The estate value was some £137,000 of which some £129,000 was accounted for by the sale of a property. On 10th February 2003, Mrs B wrote challenging the final distribution, saying that she had not received a note of the firm's fees and asking for a "complete breakdown". The Respondent sent an account with three bills, two relating to the sale of the property (dated 7th August 2002: £822.50 and 12th August 2002: £436) and the third, to which she attached a two page breakdown of times, dated 28th January 2003 for £15,000 plus VAT (rounded down from £15,686.42).

102. On 13th October 2003 the firm's office account was £15,851.83 overdrawn. On that date the Respondent transferred £12,000 from client to office account.

103. The file was sent for a remuneration certificate. On 9th September 2003 a provisional assessment reduced the fees of £15,000 to £3,850 (excluding VAT and disbursements). The adjudicator considered that the rate applied (£185 plus mark up of 50% and a value element) was "wholly excessive", and the time spent on the matter was excessive.

104. On 2nd October 2003 the Respondent gave notice by letter that she would be challenging the provisional assessment. It had been the Respondent's case in the intervention proceedings this was a standard letter sent by a secretary. In the event, the Respondent did not formally challenge the assessment. A final assessment in the same terms was made on 20th November 2003.

105. On 13th December 2003 the Respondent transferred £7,341.25 from the client ledger. The Respondent did not respond to requests for an explanation as to how this figure was calculated.

106. On 27th February 2007 solicitors instructed on behalf of the beneficiaries wrote to the firm challenging the fees saying that it was a 'simple estate,' to administer and much of the work had been done by Mr Sampat, the firm's bookkeeper. They required the Respondent to confirm she would not transfer costs from client account until the dispute had been resolved.

Interest payable on clients' money

107. The payment of interest on client money held by the Respondent was considered in the light of the Solicitors Accounts Rules in the matters of RS Deceased, Tribunal's Deceased, WS Deceased and WB Deceased. In TS Deceased the Respondent was sole executor and there was a controlled trust so that she was obliged under the general law to account for interest earned.

108. Designated deposit accounts had been opened in the matters of HS and RS. In the matter of WB the deceased's granddaugher's share in the state had been placed in a high interest trust account until her majority. Interest on these funds was included in the trust account relating to this matter.

109. With regard to interest on moneys in the firm's general client account, payments had been made to the beneficiaries in TS, and WS but not in the matters of HS, RS and WB.

110. According to the interest calculation on the client ledger of £2,441.61 accrued in interest on sums held in the general client account in the matter of TS Deceased, payments in respect of interest were made to the beneficiaries after the firm had made final distributions and apparently following an enquiry from a beneficiary. On 13th March 2002 the firm had received a receipt from the beneficiary for his final distribution on which he had written, "Looking forward to hearing from you in due course with cheque for accrued interest of monies while held by you." Deductions had been made from the total of £2,441.61. The ledger showed that interest payments were made to the various beneficiaries out of the client account on 20th and 22nd March 2002 by cheque. The ledger shows that the sum of £1,868.88 was then credited to the office account on 25th March 2002 described as "Interest To Cls [close]" and transferred to the client account on the same date.

111. The Respondent deducted £50.00 plus VAT from the beneficiary's interest payment to cover her administrative costs in providing him with various copy documentation which he had requested.

112. In the matter of WS Deceased, the interest calculation on the client ledger showed that a total of £900.07 had accrued in interest. The ledger recorded that interest of £806.63 was credited to the office account on 16th August 2002 from ledger number 107 described as "To WS Decd" and payments were made to the beneficiaries from the office account on the same date.

113. It was not clear from the client ledger relating to the sale of the deceased's property, whether the interest that had accrued on the sale proceeds prior to their being transferred to the probate ledger had been accounted for. The interest calculation at the foot of the property sale ledger showed that a total of £123.79 had accrued.

114. The Respondent had indicated to the FIO that her firm had been less than conscientious in this connection.

115. In the matter of HS Deceased the interest calculation at the foot of the client ledger indicated £582.77 accrued in interest on moneys held in the general client account. The balance of moneys held had fluctuated but had not fallen below £20,000 until 13th November 2000. It was not clear that interest had been accounted for.

116. In the matter of RS Deceased, the interest calculation at the foot of the client ledger showed that £801.01 had accrued in interest on moneys held in the general client account. Sums greater than £20,000 for periods in excess of one week had been held. The interest calculated at the foot of the ledger showed that the sum of £248,446.68 had been held for 21 days and £478.86 had accrued in interest during this period.

117. The Respondent had told the FIO that if it did not appear as income in the statement of assets and liabilities she would have taken it as costs and reduced what she had taken. She said she would have to take a view – either the interest was so little she would not have accounted for it or she would have taken it as fees or it was an oversight.

118. In the matter of WB Deceased, the interest calculated at the foot of the client ledger showed that £272.72 had accrued in interest on moneys held in the general client account. The ledger showed that at various times, the firm held sums greater than £20,000 for periods in excess of one week. When asked whether the interest had been accounted for the Respondent stated that she was inclined to think her answer was the same – either she had not looked at it or she had looked at it and thought it was so small it was not worth taking action.

<u>£254,000 withdrawn from Client Account on 17th February 2005</u>

119. The Respondent had made an application to Northern Rock for a mortgage advance on 20th October 2004. On 23rd November 2004 a Northern Rock re-mortgage questionnaire was completed and requested that the proceeds of the advance be paid into the firm's office account at Lloyds TSB.

120. On 1st February 2005 Northern Rock made a re-mortgage offer of £319,540.00 to the Respondent.

121. On 17th February 2005 the SRA resolved to intervene into the Respondent's practice (on the basis of reason to suspect dishonesty and failure to comply with the Solicitors Account Rules) and to refer her conduct to the Tribunal.

122. At 4.45pm on 17th February 2005 an Intervention and Disciplinary Unit Officer of the SRA (Mr Jones) telephoned the firm and spoke to a member of the Respondent's staff. He was told that the Respondent would be returning to the office. The Officer left his direct dial telephone number and explained that it was very important that the Respondent should contact him.

123. Also on 17th February 2005, £254,490.83, the Respondent's re-mortgage advance moneys, was received into the Respondent's office account at Lloyds TSB from Northern Rock's solicitors, who notified the Respondent of the payment by a letter of the same date.

124. A notice of the intervention was faxed to the firm at 17.57 on 17th February 2005. The fax coversheet referred to intervention. The coversheet and the first page of the letter attached made reference to Officers attending at her office at 10.30am on 18th February 2005.

125. At 9.45am on 18th February 2005 the Respondent's secretary telephoned another Intervention Officer at the SRA and sought to postpone the 10.30am meeting on behalf of the Respondent.

126. At 10.13am a CHAPS transfer authority faxed from the Respondent's office to Lloyds TSB for the withdrawal of £254,000 from client account and the transfer of that money to the Respondent's personal account at Barclay's Bank was received by Lloyds TSB and was actioned. The transfer authority had been signed by the Respondent's secretary upon the Respondent's telephoned instructions.

127. The Respondent arrived at her office at about 10.20am when she read the fax from the Law Society. At 10.30am the Intervention Agents met with the Respondent at her

offices. The Respondent stated that she had recently received £245,000 into client account as the proceeds of a re-mortgage of her home. The Respondent did not mention the CHAPS transfer to Barclays Bank made a few minutes earlier on that day.

128. Lloyds TSB implemented the CHAPS transfer in error. It had not made internal checks before taking action on the transfer authority so that the person effecting the transfer had been unaware that the firm's bank accounts had been frozen as the result of the intervention. The person making the transfer accepted the signature to be that of the Respondent.

129. On 22nd February 2005 the firm's client and office accounts at Lloyds TSB were transferred to the intervention agents. Lloyds TSB did not take account of the transfer out of client account of £254,000 made on 18th February. The net effect was that Lloyds TSB had paid the Respondent £254,000 from its own funds.

130. On 23rd February 2005 at 8.00 am Mr C of Lloyds TSB discovered the error. It was his evidence in the High Court proceedings that he asked the Respondent to return the money. She refused to do so. Lloyds TSB notified the Intervention Agent who in turn notified the SRA. On 23rd February 2005 the Respondent wrote to Lloyds TSB noting that the proceeds of her re-mortgage had been credited to office account rather than client account and enquired of the bank from which the account the transfer of funds to her had been made.

131. On that same date the Respondent requested her personal bankers, Barclays Bank, to issue a banker's draft in the sum of £260,000 in favour of her mother which she then paid into a joint account at Barclays of which her mother was one of the account holders. The withdrawal was recorded at Barclays Bank at 10.27.

132. The Law Society wrote to Barclays Bank on 23rd February 2005 in an attempt to prevent the movement of the £254,000. The letter had been received after the money had been transferred to meet the banker's draft.

133. On 25th February 2005 Lloyds TSB obtained a freezing order against the Respondent and proceedings against her were instituted.

The Submissions of the Applicant

134. All of the allegations except (j) and (l), related to conduct on the Respondent's part leading up to, or at the time of and immediately, after the intervention. Allegations (a) to (i) fell broadly into three groups:

(1) Allegations relating to the Respondent's withdrawal of £254,000 from the firm's accounts at the time of the intervention and her subsequent dealings with this money. It was the Applicant's case that having withdrawn £254,000 from the firm's accounts at a time when she must have suspected that an intervention was about to take place; having instructed her secretary to sign the transfer instruction in the Respondent's name and having failed to return the money (and indeed having moved it to her mother's account after she knew about the intervention and after the bank had asked her to return the monies), she acted with conscious impropriety.

(2) Allegations (a), (g), (h), and (i) were that the Respondent used client funds for her own benefit, in essence, by transferring monies purportedly for costs to which she was not properly entitled because the transfers were excessive, improper, unreasonable and/or were made in breach of the Solicitors Accounts Rules and/or by failing to account to clients for interest or for a residual credit balance.

The Respondent had made round sum transfers in respect of costs and had overcharged in seven matters by applying an excessive rate for her own hours charging out unqualified staff at her own rate (in circumstances where she knew this to be improper because of a previous complaint against her) and charging for an excessive number of hours. In the case of B she had made the transfer notwithstanding that she knew that the beneficiaries were challenging her fees as excessive and had already had them substantially reduced following a remuneration certificate. Thereafter she failed fully to refund the excess after final assessment.

(3) Allegation (f) was that the books of account were not properly written up. This allegation was supported by failures to raise and/or post bills promptly or to allocate the transfers promptly to client ledgers. In addition, round sum transfers were made in respect of legal aid matters and were not properly allocated or recorded. It was not asserted that this benefited the Respondent personally but these failures amounted to a breach of the Solicitors Accounts Rule 32(4). These failures were not necessarily dishonest but could have led to difficulties that at least played a part in other matters alleged against the Respondent.

135. It was the SRA's case that the Respondent acted dishonestly and/or with conscious impropriety in respect of the circumstances of round sum transfers that were made; the circumstances and quantum of bills and overcharging; and the circumstances relating to her withdrawal and subsequent dealings with the £254,000, including her instruction to her secretary to forge her signature.

136. Even if the Tribunal were not to conclude that her conduct was dishonest in these particular respects, the Respondent had perpetrated numerous breaches of the Solicitors Accounts Rules in respect of her practice and her books of account were not properly written up. It was the SRA's submission that the Respondent failed in her responsibilities as a custodian of clients' funds, failed to comply with proper accounting procedures and had put client funds at risk. Her methodology for making round sum, transfers, even if not dishonest, put client funds at risk because it created a risk that one client's bill would be paid with another client's money.

137. The Tribunal had to decide whether the quantum of the Respondent's fees in GT was excessive and unreasonable. She did not comply with directions made by the Adjudication Panel on 27th January 2007 in favour of the residuary beneficiary of the GT estate, the Alzheimer's Society, that she refund the sum of £5,000 to the beneficiary and apply for a remuneration certificate. The Law Society relied on a costs draftsman, Mr Shelley, and on the direction itself as evidencing the fact that those fees were excessive and unreasonable.

138. The probate matters to which the Tribunal had been referred might have represented a small proportion of the total number of cases handled by the Respondent, but they made a major contribution to her fee income. The fees for the year ending 2002 were £155,935, of which her charges in T deceased amounted to 15%. The invoice in the GT matter was on its face described as an "interim" charge.

139. The total fees charged in the seven probate matters before the Tribunal was £99,874.08. The billing of those charges took place in the period February 2000 to October 2003. The Respondent's entitlement to charge a proper fee for her work was not disputed. She had taken unfair advantage and had benefited her practice at the expense of the estates in ways that were improper and were the more invidious because they might have gone undetected if the SRA's inspection had not taken place.

140. This was not a case of "technical" breaches of the Solicitors Accounts Rules. At best, there was a cavalier disregard for the rules that were in place to provide important protection for client money. At worst, client funds were taken which should not have been taken in probate matters where the Respondent was sole executor, a situation least likely to be uncovered by those affected.

141. At the very least, if the Respondent could establish that proper bills had in all cases been rendered before transfers were made, her practice of "rounding down" when making block transfers in respect of multiple clients would result in a "rump" of office money remaining in client account for some considerable time after the relevant bills had been rendered - in itself a breach of the Solicitors Accounts Rules. The significant delays in posting entries created a danger that her round sum transfers would be made against credit balances which were not in fact available to meet them.

142. It was accepted that bills could properly be rendered in a round sum amount where work has been done to at least that value. A round sum on account of costs based on an estimate of what might be due would in any event be improper; it would exceed what was properly due at the date of transfer. It followed that the Respondent either knew what the position was or she was reckless as to whether she was properly entitled to the money or not.

143. Authority for a withdrawal from client account had to be signed by a solicitor (or one of the other professionals specified in the Solicitors Accounts Rules). The transfer of £254,000 was made on the basis of the Respondent's secretary writing the Respondent's signature on the Respondent's instructions.

144. The Respondent had an obligation to account for interest on money held for clients. She accepted that she omitted to do so. In the case of a controlled trust (which exists where a solicitor is sole executor), the Solicitors Accounts Rules provisions to account for interest did not apply, but trustees of a controlled trust have an obligation under the general law to account for all interest earned.

145. Solicitors Accounts Rule 32 provided that properly written up books of account and records of bills be kept. The Respondent's books of account did not comply with that Rule.

146. The Tribunal was reminded of the case Twinsectra Ltd v Yardley and others [2002] UKHL 12, [2002] 2 AC 164; in which the test for dishonesty was set out as follows:-

> "dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct". (per Lord Hutton at para 36).
>
> In Bryant v Law Society [2007] EWHC 3043 (Admin) it was held that "the decision of the Court of Appeal in Bultitude stands as binding authority that the test to be applied in the context of solicitors' disciplinary proceedings is the Twinsectra test as it was widely understood before Barlow Clowes, that is a test that includes the separate subjective element. The fact that the Privy Council in Barlow Clowes has subsequently placed a different interpretation on Twinsectra for the purpose of the accessory liability principle does not alter the substance of the test accepted in Bultitude and does not call for any departure from that test".

147. There were concerns about the Respondent's methodology. If the bills had been raised and recorded on her computer accounts system, it made no sense to transfer a rounded down amount rather than the exact amount due. If the Respondent annotated the report as a record of what she was doing and why, and if the bills had been raised, why would Mr Sampat need to speak to her before allocating the transfers to individual client ledgers? Why should there be delays in making the relevant postings.

148. Mr Shaw reported that round sum transfers were made at times when the office account was overdrawn.

149. The Respondent's round sum transfer for costs in the T matter was based on a bill which was described on its face as "estimated". The Respondent had given differing explanations, but her oral evidence in the High Court described her general practice as "I do an estimate of total sum and transfer it over and at the end of the day I allocate and prepare the bills…"

150. Transferring money from client account would amount to taking client money in flagrant disregard for the Solicitors Accounts Rules and reckless (if not worse) if the Respondent was not certain that she was properly entitled to that money. The Law Society's case was that that was not honest conduct on her part.

151. The Respondent had accepted that there were significant delays in posting transfers to the individual client ledgers. As a result she could not sensibly rely on what the computer reports on which she placed reliance showed as being available in the client account. If the money was not available, because of earlier round sum transfers which had not been posted, she would inevitably pay one client's costs with the money of other clients.

Overcharging

152. The SRA relied on the report and supplemental report of Mr Shelley, an experienced costs draftsman. The former had been produced in the High Court proceedings and a subsequent report had been made in the disciplinary proceedings. Mr Shelley costed

the work done on six sample cases, having reviewed the matter files. Mr Shelley's calculations had been generous to the Respondent.

153. Mr Shelley pointed out in his reports that the hourly rates charged started at £150 in 1999, rising to £185 in and after 2001. A 50% mark up had been added. This was a higher rate of charge than Mr Shelley would have expected.

154. All work had been charged at "Grade A" fee earner's rates, regardless of who had carried out the work and regardless of what the client had been told as to the rates that would apply to work done by clerks. Printouts provided did not identify who had done the work. Much of the routine work would not have required a senior fee earner.

155. There were also a number of other shortcomings such as charging both item rates for letters and also charging for time spent on them (using the wrong hourly rate), charging for costing the file and adding a mark up on time charged for travel.

156. Mr Shelley had very fairly made a number of points in the Respondent's favour but he also made serious criticisms.

157. The report of the Respondent's own expert costs draftsman did not take issue with any of Mr Shelley's comments save on one minor point.

158. In his evidence before the High Court Mr Shelley had said that a pattern of persistent overcharging had been revealed and it was the SRA's case that such overcharging was at a level and of a nature which could properly be characterised as culpable.

159. The Respondent accepted that she had not accounted for interest in circumstances where she should have done so. Deliberate failures to account for interest were capable of being dishonest conduct.

<u>The Matter of GT</u>

160. What happened in the matter of GT formed a key plank of the case against the Respondent relating to transfers and billing.

161. There had been overcharging at a high level. The bill produced by the Respondent was described on its face as an "interim" bill and as being "estimated".

162. The Respondent had given inconsistent explanations to the SRA investigation and during her evidence in the High Court proceedings.

163. The SRA accepted that the firm did undertake work on the GT matter but the Respondent could not justify charging for that work in the large round sum and she made the transfer improperly, to clear her overdraft at the time. The Respondent's explanations were inconsistent. Either no bill existed at the time the funds were transferred, or the bill dated 9th July 2002 was produced at a later date to justify the transfer. In any event the work done did not justify the amount billed. The spreadsheets produced in the course of the High Court proceedings by the Respondent were altered in an attempt retrospectively to justify the amount of that bill. This part of the case against the Respondent depended on inconsistencies between the explanation she had given of the GT matter at different times (in interview, in her

witness statements, in oral evidence), inconsistencies between her explanations and those advanced by her own book-keeper. There were too many inconsistencies to be credibly explained away.

164. It was in addition or alternatively the SRA's case that the amount charged was so excessive as to be improper and/or the Respondent took unfair advantage of the beneficiary by seeking to charge that amount. The SRA relied on the evidence of Mr Shelley to demonstrate this and the fact that the Respondent was aware of a complaint upheld against her on an earlier occasion that she had charged her own hourly rate in respect of work undertaken by unqualified staff. The Respondent's charging rates were excessive and the number of hours charged was excessive, although Mr Shelley did not have sufficient information to enable him to assess what would have been a reasonable amount of time to spend on the matter.

165. Charles Russell's complaint resulted in a direction that the Respondent refund £5,000 and apply for a remuneration certificate. She had not complied with either limb.

The B Matter

166. When giving evidence in the High Court the Respondent had shifted her ground at first recognising that it would be improper to transfer fees when she was aware of the provisional assessment reducing them, but later she maintained that such transfer was proper when the reduction had not been made final and she intended to make a refund if that met the final decision.

167. It was the SRA's case that the Respondent knew that her behaviour in making the transfer (in the circumstances where her fees had been reduced far below the level of the sum transferred and she had specifically been asked not to make a transfer until the dispute was resolved) was improper by the standards of her profession and it was a breach of the Solicitors Accounts Rules where the bill had been reduced to £3,850 and the transfer of £12,000 could not be viewed as "properly required" to meet her fees. Whether she herself disagreed with the provisional assessment was not the point. It was not credible that the Respondent's unqualified secretary would lodge a challenge without reference to her or that she had forgotten about so recent and so swingeing a reduction in her fees at the time she decided to make the transfer on 13th October 2003.

168. In the event the Respondent did not pursue a challenge. On 20th November 2003, the adjudicator upheld the reduction of the bill to £3,850 on a final assessment and a copy of this was sent to the firm. Three weeks later, the Respondent transferred £7,341.25 back to the client ledger. How that figure was calculated was obscure. On the face of it what was required was a reimbursement of £7,476.25, being the difference between £12,000 and £3,850 plus VAT (and restitution of interest). The Respondent did not respond to The Law Society's requests for an explanation.

169. Mr Shelley was in agreement with the adjudicator's opinion in general terms (Mr Shelley did not review this matter) that the Respondent's hourly rate was at a level comparable to composite rates (i.e. inclusive of mark up) that he would expect to see in her area at the time. He considered her rates to be excessive and it was inappropriate to charge Mr Sampat's time at the Respondent's hourly rate. Her

system did not record by whom work was done. The Respondent already knew this and should have remedied her system of recording and charging long before.

The Matter of TS

170. The Respondent's own records indicated that no bill had been raised at the time of the transfer.

171. The Respondent had charged for time spent billing and had charged a mark up on travelling time and attendances on persons, resulting in Mr Shelley identifying an overcharge of some £3,750. The explanations as to the reasons for the transfer from client to office account given in the High Court were contradictory.

172. The Respondent accepted in her third witness statement made in the High Court proceedings that the distribution of the estate was made on the basis of an £18,000 bill and not the bill in fact rendered, which was £1,000 less. That would have meant that the beneficiaries would have been paid a total of £1,000 plus VAT too little from the estate. The likelihood was that the credit balance of £1,196 at the date of the inspection was largely referable to this. The under-distribution appeared never to have been corrected. The credit balance disappeared in circumstances which had not been satisfactorily explained. The inconsistencies in the explanations given strongly suggested that the Respondent had taken a residual credit balance improperly without any honest belief in her entitlement to it (Bultitude v Law Society [2004] EWCA Civ 1863).

The Matter of RS

173. In the matter of RS, at the very least, more was taken than should have been because of errors. The discrepancies as to dates of entries raised broader doubts about the reliability of the ledgers. It had been explained that the Respondent's computerised accounts system permitted the making of retrospective entries. There could be no certainty that the bill was entered on the recorded date. It was unlikely that it was. The Respondent accepted in interview that there was accrued interest of £123.79 unaccounted for on the sale proceeds of the deceased's house: Although it was relevant to note that the amount would be considered de minimis for the purpose of Rule 24, it was indicative of the pattern of preferring the firm's interests to those of clients or beneficiaries and/or showing a troubling disregard for rules which were in place to protect those interests.

The Matter of WS

174. On any view, £25 too much was taken but, far more fundamentally, the discrepancy in the amount transferred (taken together with the inconsistencies in the Respondent's account of how she made her round sum transfers, generally, and in particular the inconsistencies in her explanations of the matter of T, suggested that at the time of the transfer the bill did not yet exist. The office account was overdrawn in the sum of £19,680.49 at the date of the transfer of £20,000.

175. Mr Shelley regarded the £17,000 bill as £4,300 higher than the most he would have expected to see. It was recognised that the Respondent had reduced that bill by 15%, from just over £20,000 to £17,000 and that her co-executor thanked her warmly for

this but what he did not know, because she did not tell him was that just over £580 of that reduction was in fact interest due to the estate which the Respondent had unilaterally decided to offset against her fees.

The Matter of HS and WB

176. Mr Shelley's view was that the fees charged were excessive in each of these probate matters because more time was expended than was reasonable for simple and straightforward estates.

177. The estate accounts for HS referred to an invoice dated 16th August 2000 in the sum of £1,500 plus VAT. On the same page is a manuscript comment: "make up att notes". At interview, the Respondent was asked about the manuscript comment and she explained that sometimes she did not have time to do the attendance notes and that she reconstituted them retrospectively, based on recollections, and that sometimes "the girls" (her secretaries) did the notes and estimated the costs.

178. On each of these two cases no interest had been accounted for, although the ledgers showed sums had accrued as interest (£801 odd on HS and £272 odd on WB). The Respondent's answer to this in interview had been that she would have taken it as costs and reduced what she took and that this would be noted in her bill or her new terms of business letter, although the latter had not yet been typed up. There was no reference to offsetting interest in any of the bills or in any of the terms of business that were in evidence in the High Court proceedings.

179. In her oral evidence in the High Court the Respondent said there was a final bill of £2,377 on HS which she discounted to £1,500 – a discount of £877, which exceeded the interest payable (£801). She also suggested for the first time that interest was not due on WB because the matter remained open.

180. It was the SRA's case that these costs claimed represented significant overcharging by the Respondent. In his oral evidence Mr Shaw accepted that the Respondent was entitled to some fees and that it was not accurate to state that the whole of the transfer should be regarded as a cash shortage.

181. It was the Respondent's position that a proper bill of costs should be delivered to her in her capacity as controlled trustee. The Respondent explained that she had been the principal fee earner but that she had been assisted by her firm's book-keeper.

182. In the matter of T a copy of the Interim estimated bill of 9th July 2002 was before the Tribunal. It was for £41,125.00 (£35,000 plus VAT) and this sum was transferred by the Respondent from client to office bank account. The Respondent had been interviewed on 28th April 2004 and on 21st July 2004. She had indicated that she had not costed the bill in the way that she normally would, but later she denied that she had said that and contended that the lack of accuracy was in the client's favour. There was no evidence that the bill had been drawn and delivered on 9th July.

183. The SRA had engaged Mr Shelley, to consider the Respondent's charges. His report dated 5th July 2004 considered the six probate matters, set out in paragraph 33 above, conducted by the firm, of which the T estate was one. It was the costs draftsman's opinion that the interim bill in the T estate represented a charge for more than 200

hours. That was more that twice the number of senior fee-earner hours that the work on the estate would have necessitated up to the date of the bill.

Credit balances on office side of client ledger

184. Credit balances and office account could be explained by un-posted bills and represented money due to the solicitors but to the extent that that was so, it was indicative of a failure to keep the books of account properly written up. Absent another satisfactory explanation for them, such balances indicated money owing to the client.

Legal Aid monies

185. Round sum transfers had been made in respect of legal aid matters and were not allocated to the individual client matter. Although allocations were eventually made, it was not possible to verify them. If for example, costs were recovered from the other side in a given matter, it would be important to know whether, and for how much, the Legal Services Commission was entitled to reimbursement.

The £254,000

186. The Respondent had completed a mortgage on her property. Separate solicitors had represented the lender. The proceeds of the mortgage, £254,000 had been sent to the Respondent's firm and had been paid into the firm's office account.

187. On 18th February 2005 the Respondent moved £254,000 from the firm's accounts at Lloyds Bank. This was done a matter of minutes before she was due to meet with the intervention team. It was the SRA's case that she made the transfer either knowing the intervention was imminent or fearing that it was.

188. The Respondent made the transfer by getting her secretary to sign the transfer instruction in the Respondent's name, so that the bank would act on the instruction.

189. Preceding events ensured that the Respondent was aware that matters were serious and that the SRA was taking action which was likely to be the implementation of an intervention. The Respondent moved the money (according to her own case) seven minutes before arriving at the office herself. Her claimed concern about remedying an inadvertent breach (own money believed to be in client account) could surely have waited another seven minutes to be remedied, unless of course, she knew or suspected there was about to be an intervention but was choosing to be "Nelsonian blind" to that.

190. The fact the sum of £254,000 less costs of some £50,000 was ultimately returned to her by the SRA does not affect the dishonesty of moving that amount at that point in time and by the method she chose.

191. Whether the Respondent actually told her secretary to make the signature look like hers or that was tacitly understood between them (because both knew the bank would have a signature card) it amounted to the same thing: it was intended to and did deceive the bank and was dishonest.

192. Moving the money further away to her mother's account on 23rd February 2005 was a particularly unattractive feature of the case. By then the Respondent knew the credit had gone through to office account (she had had her bank statement) whereas what she had arranged was a transfer from client. If the Respondent had been genuinely unsure which account had been debited she had no business making an onward transfer without establishing the true position. In fact she knew that what she had was the bank's money because by this stage a bank employee had told her of the bank's mistake.

Round Sum Transfers

193. The Respondent had accepted that in instances where a round sum transfer from client to office bank account had been allocated to a number of separate clients' matters it was inevitable that at least one of the allocations would have to have been made against a part bill as a balancing figure in order that the total of the individual allocations agreed with the amount of the round sum transfer. The Respondent had also accepted that as a consequence such transfers were in breach of the Solicitors Accounts Rules.

194. The Respondent's explanation had been that she used internet banking. She drew down from the internet her bank statements and she said that if she was a bit short [i.e. on office account] and she knew she was owed costs then she did a round sum estimate of these costs and made a round sum transfer from client to office bank account. At the end of the day she allocated the transfers and prepared the bills of costs. She explained that she operated that way because of time constraints. The Respondent explained that she knew exactly the amount she was able to transfer and that these amounts had been billed to the relevant clients.

195. Mr Shaw had explained to the Respondent that delay in the allocation of transfers made from client to office account might suggest that she did not know to which clients the transfers should be allocated at the time that they were made. The Respondent had not agreed that this was the position. She explained to Mr Shaw that before she made any physical transfer of funds from client to office bank account she checked the firm's computerised accounts system, which showed her the costs and disbursement transfers available. The Respondent said that the delays occurred because the writing up of the books had fallen into arrears.

The Submissions of the Respondent

196. The Respondent did not make any formal submissions.

The Findings of the Tribunal

197. The Tribunal accepted the evidence adduced by the Applicant. It regarded the evidence given by Mr Shaw, Mrs Baker, Mr Baines, Mr Penson, Mr Jones and Mr Sturgeon as honest. In so far as challenged by the Respondent (principally on the basis that these witnesses (or their employer) was biased or acting maliciously) the Tribunal rejected such challenges and accepted that in all material respects the evidence given by these witnesses supported the allegations made. The Respondent during the time that she attended the Tribunal hearing or when she was represented did not make any meaningful contribution to the proceedings. The Tribunal has taken

into account the explanations she was recorded as having given to the SRA's representatives during the inspection of her practice and the evidence which she gave in the intervention proceedings. The fact that she had on more than one occasion given explanations that were inconsistent could not be overlooked. She had not, however, given any proper, detailed or comprehensive formal explanation or evidence to this Tribunal. The Tribunal has taken into account the Respondent's explanation of what occurred in the matter of TS which has been included in the summary of the evidence at paragraph 80 above.

198. The Respondent was in the presence of the Tribunal when it gave its ruling on the evidence and its findings that the allegations had been substantiated. The Respondent did not remain to hear the Tribunal's oral reasons, nor did she invite the Tribunal to take into account any mitigation.

199. The Rule 4 statement in this case was issued on 31st January 2007 its issue being delayed until completion of proceedings in the Court of Appeal which had followed the Respondent's challenge to an intervention in her practice in February 2005. In the High Court Mr Justice Park had formed the view that the SRA did not have good grounds for the intervention, he having come to the conclusion that the Respondent presented herself as an honest solicitor. The SRA withdrew the intervention but appealed the decision of Mr Justice Park. In the Court of Appeal, Lord Justice Chadwick allowed the appeal but made it clear that the question the trial judge had asked himself was one which properly should be answered if at all by this Tribunal. The SRA's decision to intervene depended not on whether the Respondent was dishonest but whether The Law Society through the SRA had reasonable grounds for suspecting that she was. The question of dishonesty is therefore one amongst a number of allegations made in the Rule 4 statement which the Tribunal was invited to rule upon.

200. The Rule 4 statement contains 11 allegations contained in paragraphs 1 (a) to (k) and a supplementary statement dated 4th September 2007. Some of these are capable of being determined as issues of fact. Some and particularly the allegation of dishonesty could only be determined by having regard to the intention, motives or subjective intent of the Respondent. It would have been of assistance to the Tribunal if the Respondent had provided explanations of her conduct and the Tribunal on a number of occasions, both before the commencement of the hearing on 5th January 2009, before the resumption of the hearing on 22nd April and during the resumed hearing invited the Respondent to comply with numerous orders made by the Tribunal designed to ensure that the Respondent provide an answer to or explanation of the allegations so that the issues raised by the Rule 4 statement could be properly considered by the Applicant and by the Tribunal. The Respondent declined those invitations but had she co-operated the Tribunal would have been in a better position to assess the extent to which the conduct of the Respondent was culpable or should be regarded as excusable. Unfortunately these proceedings have been characterised by numerous attempts by the Respondent to delay or prevent the conduct of the case.

201. Before the start of the hearing in January, applications had been made seeking to have the proceedings dismissed as an abuse of process and there had been a number of applications for adjournment and additional disclosure of documents, some of which sought the permanent discontinuance or abandonment by the SRA of this Application. The reasons advanced by the Respondent had sometimes changed but documents

delivered to the Tribunal indicated that the fundamental reason relied upon by the Respondent was a claim that the Application had not been brought in good faith and that those responsible for the Application, including SRA staff and senior management and Counsel from time to time employed in connection with the High Court proceedings, the proceedings in the Court of Appeal and before this Tribunal were tainted with malice or that those involved had acted in bad faith towards the Respondent or were discriminating against her for a number of reasons. In addition, the Respondent had alleged that many of those involved, including the Judges in the Court of Appeal, lacked competence and honesty and that anyone else connected with the hearing of this Application is unqualified to hear it, lacks the necessary degree of independence and honesty to do so and although not openly expressed, was biased in some way against the Respondent and therefore was unable to render a fair decision.

202. Another important consideration has been the Respondent's repeated wish to widen the scope of the Application by claiming as relevant the Respondent's involvement in numerous legal proceedings which she indicated were of great importance to her. She had also alleged that the solicitors and Counsel employed by the SRA and the Clerk and Tribunal members were conspiring to pervert the course of justice by continuing to hear the case.

203. The Respondent both before the start of these proceedings and subsequently, had sought to require the production of additional documents and had herself delivered to the Tribunal at the commencement of the hearing in January a wealth of documents and more recently had sent emails or faxes containing voluminous documents and had claimed that all these were relevant and needed to be considered by the Tribunal. Documents submitted since the commencement of these proceedings had not been delivered in accordance with the procedural rules of the Tribunal and had not been formally admitted as evidence though the Tribunal indicated it did not refuse the admission of any documents, which were positively and specifically identified by the Respondent as being relevant to the issues and necessary for the purposes of her defence to the allegations contained in the Rule 4 statement. She had not identified any document or the relevant issue to which it related but rather had expected the Tribunal to make up its own mind as to what was relevant and of probative value.

204. The Respondent had also indicated her wish to be informed about numerous matters which had not been the subject of any application in accordance with the Rules, such as the qualifications and experience of Tribunal members and the Clerk, but the Tribunal had not responded to such demands and it considered it was not obliged to do so nor would it be of assistance so as to ensure that these proceedings were fair and that the Tribunal was acting in a manner which was independent and impartial. Since the commencement of the hearing the Tribunal had refused all applications that appeared to be designed to delay the hearing or render the hearing unmanageable. To do so would have been an abdication of the Tribunal's public duty to hear and decide cases properly brought before the Tribunal so long as it was satisfied that the hearing had the characteristics of independence, impartiality and fairness. The Tribunal was so satisfied and that it was in a position to judge the allegations fairly on the evidence presented to it.

205. The initial hearing was adjourned on 16th January 2009 at the end of the second week of a proposed three week hearing as it been indicated by Leading Counsel instructed

by the Respondent that Counsel had an important engagement abroad and that she would therefore not be available to represent the Respondent for the third week of the hearing. The Tribunal accordingly decided to adjourn the case part heard and on resumption on 22nd April it was anticipated and indicated to the Respondent and to her Counsel that the Respondent would have the opportunity, through her Counsel, to cross examine a witness Mrs Baker (formerly Miss Patrick), who had given her evidence in January but in respect of whom there had been no opportunity for cross examination. At the commencement of the resumed hearing, the Respondent's Counsel stated and the Respondent confirmed that the Respondent had not given Counsel instructions considered by Counsel to be sufficient to enable her to cross examine Mrs Baker. Allowing for the fact that the Respondent did not, for a short period after the conclusion of the first part of the hearing, have access to her Counsel (who was abroad), the Tribunal nonetheless concluded that she had had ample time to give instructions to enable her Counsel to conduct a proper cross examination of the witness. The witness was heavily pregnant and there were some concerns about complications and therefore her future availability was in doubt. No warning had been given that the Respondent or her Counsel would not be ready to cross examine the witness and the Tribunal therefore concluded that the afternoon of the first day of the resumed hearing should be made available and that such cross examination should commence at 2.00pm. The Respondent's Counsel indicated that she would not be present since in her view she could not do a professional cross examination without proper instructions.

206. On resumption of the hearing, Mrs Baker was tendered for cross examination and the Respondent indicated that she was willing and able to conduct this. It was made clear that she should do so during the course of the afternoon and that her cross examination must be completed within that period. After completion of that cross examination, (the Respondent having indicated that the time available was inadequate) the Tribunal indicated that the remaining witnesses for the Applicant, namely Mr Shelley, the expert witness on costs, and three SRA employees and a witness from the Bank, would be present on the following day to give evidence and, if the Respondent so wished, be subject to cross examination. All these witnesses had given witness statements delivered in accordance with the Tribunal's procedural Rules. Apart from Mr Shelley their oral evidence was mainly formal and the Tribunal did not consider that it would be necessary to afford more than approximately two hours in total for the hearing of evidence from these four witnesses.

207. When the Tribunal resumed its hearing on the 23rd April 2009, the Respondent was not present and indicated that neither she nor her Counsel would be present. She delivered by email a large amount of documentation mainly concerned with other civil litigation in which she was involved and she indicated her intention to obtain an Injunction to prevent the continuation of the hearing before the Tribunal. The Tribunal had provided the Respondent with written reasons for the rejection of her applications and refusal of an adjournment believing that it was its public duty to continue to hear the case and decide the matters which were the subject of a proper application to the Tribunal. The Tribunal accordingly heard evidence from Mr Shelley and the four other witnesses for the Applicant, having made it clear that it was open to the Respondent to make any further application she wished to the Tribunal. After Mr Shelley, Mr Jones and Mr Penson had given their evidence they were released but a fax subsequently received from the Respondent indicated she might wish to attend the hearing on a later date. Mr Spurgeon and Mr Baines gave evidence

and it was made clear to them that they might have to be recalled for cross examination if the Respondent made an application to this effect and the Tribunal decided to grant it. The Respondent was also entitled to make an application for released witnesses to be recalled. The Tribunal made it clear that time had been made available for the Respondent and her witness, Mr Sampat, to give evidence.

208. When the Tribunal resumed hearings on 27th April it was noted that no injunction had been served on the Tribunal. The Respondent was now indicating her wish to judicially review the Tribunal's interlocutory decisions regarding documents and adjournment and the Tribunal decided that it would not be in the public interest to halt the hearing of this case at a very late stage unless restrained from doing so by order of a superior court. The Applicant had made it clear to the Respondent that it would wish to appear as an interested party on any hearing in which the Respondent sought either judicially to review the Tribunal's decisions or obtain an order enjoining the Tribunal from proceeding further. The Applicant also submitted that any dissatisfaction with the way in which the Tribunal had dealt with the case could be the proper subject of an appeal from its decision if and when made. The Tribunal decided to allow time for the Applicant to deliver to the Tribunal and to the Respondent closing submissions in writing by noon on 28th April and that the Respondent deliver her closing submissions by noon on 30th April.

209. On 30th April the Tribunal met to consider the Applicant's closing submissions and two documents sent by email by the Respondent at different times containing her "Respondent's Preliminary Closing Submissions".

210. The Tribunal was informed that the Respondent's application to the High Court had not resulted in any order restraining the Tribunal from delivering its findings in this case. The Tribunal proceeded to give its decision with regard to each of the allegations. In doing so the Tribunal had taken into account such facts as were admitted by the Respondent during the course of the High Court proceedings and in these proceedings.

Allegations (a) and (g):

(a) Transfer of moneys from client account to office account purportedly as costs in circumstances when the Respondent knew or ought to have known that such transfers were excessive, improper and/or unreasonable and (g) transfer of moneys out of Client Account other than as permitted by the Rules. These allegations arose from associated facts. The Tribunal made the following findings of fact:-

1. The evidence that there had been round sum transfers from client account to office account was in amounts totalling £475,125. This had been admitted by the Respondent in the High Court and in these proceedings.

2. The Respondent had provided no explanation which provided justification for the round sum transfers beyond asserting that such transfers were supported by bills that had at some stage, been rendered to the client or written intimation given that costs were to be taken. She also said that composite transfers were approximate and had been made after she had checked the position on her

computer although, as the Tribunal finds, the computer records were unreliable.

3. There was no evidence that established that, at the time the round sum transfers had been taken from Client account bills had actually been delivered to the client or written intimation given in accordance with Rule 19. No evidence to this effect had been produced to the SRA investigators at the time of the inspection or had subsequently been produced over the 4 years since the Forensic Investigation Report was served on the Respondent in December 2004 nor was there evidence before the Tribunal to this effect.

4. The books of account were not up to date and were not accurate and retrospective postings of items was permitted by the computerised system.

5. The Tribunal was unable to rely upon documentary evidence which might have suggested the contrary as it was demonstrated to the satisfaction of the Tribunal that some of such documentation, as submitted in support of the Respondent, was a re-creation of accounts by insertion of transactions apparently on dates before the date on which such insertion was made. In other words accounts were created ex post facto and appeared to demonstrate what the Respondent considered would have been the position had the accounts been fully up to date. The Tribunal was unable to accept that this provided a proper explanation for the round sum transfers, not least because at the date on which the accounts were re-created, the underlying factual position and balances available for transfer might well have not been the same as they had been on a date of actual transfer.

6. The Respondent and her Counsel questioned both the definition of what constitutes a round sum transfer and the relationship between round sum transfers and compliance with the accounts rules. Round sum transfers put an investigator on enquiry because of:-

   (i) the fundamental obligation not to mix client money with a solicitors own money (the latter including billed costs delivered to a client);

   (ii) the unlikelihood that a bill or number of bills inclusive of VAT plus any disbursements will add up to an exact round sum;

   (iii) the assumption (which the Tribunal regarded as reasonable) that where a bill has been delivered, a solicitor holding sufficient money on his client account which he may properly take in respect of costs would be unlikely to settle part only of the bill.

   The matters mentioned in (i), (ii) and (iii) above might indicate, in the absence of explanation, a breach of Rule 19 but as Mr Shaw acknowledged in his evidence to the Tribunal did not necessarily indicate a dishonest misuse of funds or the absence of delivered bills. However when coupled with books of account which are not up to date the breach of Rule 19 (the note to this rule makes clear round sum transfers will be a breach of the Rule) is difficult if not impossible to refute. In this case the Respondent did not adduce any evidence to do so. In particular there was no evidence presented by the Respondent to

show that the Rule had not been breached because in every case of a round sum transfer it could be shown that before the transfer was made, a proper bill had been delivered to the client. "Proper" included not only a properly drawn and delivered bill but also a bill that was fair and reasonable. On the available evidence the Tribunal is sure that Rule 19 was not complied with. In reaching this decision and all others mentioned in these findings the Tribunal applied the "beyond reasonable doubt" standard of proof which it considered it was, by authority, bound to apply. In the absence of evidence that bills had been delivered before the transfers were made, the Tribunal regarded the breaches of the Rule as serious.

7. Insofar as the round sum transfers created a situation where transfers were made out of client account in respect of bills which had not been delivered (or intimation given that costs would be taken) this would involve a serious breach of the Solicitors Accounts Rules. Insofar as the amount transferred out of client account could have been less than the bill or aggregate of bills which had been delivered, this was also a breach of the Solicitors Accounts Rules since it left money in the client account which was not permitted to remain in the client account. In the absence of any satisfactory explanation from the Respondent as to what the true position was, the Tribunal concluded that allegations (a) and (g) were proved beyond reasonable doubt by these facts alone.

8. The Tribunal noted that despite requests to do so, the Respondent refused to have the GT Deceased bill made the subject of separate adjudication by the Law Society, a refusal which the Tribunal considered was professionally improper, not least because the Respondent, had put herself in the position of being her own client. The Tribunal considers that her refusal to respond to the wishes of the charity which was the residuary beneficiary placed her in a position where she had not recognised that her duties to the beneficiaries under the Will and her own interests as the recipient of fees were in conflict.

9. The Tribunal found that the evidence given by Mr Shelley was the independent expression of his expert view given with complete fairness and with due regard to what he reasonably considered to be matters where, on the basis of the documentation he had before him, might provide a justification for the bills rendered (including the Respondent's own expert's witness statement in the High Court proceedings). The Tribunal accepted his evidence and found as a fact that the bills delivered in the cases of HS, WS, GT, WB and HS were excessive and amounted to substantial overcharging. They were not proper bills which satisfied the requirement of Rule 19. The Tribunal did not reach this conclusion by attaching any significant weight to evidence that the bills rendered in respect of probate matters over the 4 year period 2001 to 2004 were a materially significant proportion of the Respondent's turnover in those years. However in the year to April 2002, which included the GT interim bill, they clearly did as they accounted for over 42 per cent of turnover. Furthermore the evidence pointed strongly towards the Respondent's wish to maintain her bank borrowing within her overdraft limit and her having given this priority over settlement and delivery of bills in accordance with a procedure which would have ensured proper compliance with the Rules. At best the Respondent was not compliant with current

charging practices and "marked up" costs that had been calculated using a composite hourly rate, which in effect amounted to a double charge. At worst the Respondent had made a deliberate decision to inflate her bills by using this method, charging junior fee earner work at senior fee earner rates and justifying the time spent on files by producing attendance notes long after the work to which they might have related.

The overall picture that emerged was that the Respondent's charges were not fair and reasonable. Because the Respondent had been told by her regulator in an earlier matter that her costing method was inappropriate the Tribunal has concluded that the Respondent's persistent overcharging was deliberate.

Allegations (b), (c) and (d):

The Respondent admitted that she instructed her employee in the Respondent's name to sign a bank document withdrawing moneys from client account. The Tribunal finds this was in circumstances where it was clearly and knowingly improper to do so. The Tribunal finds these allegations established beyond doubt. The Tribunal finds as a fact that the Respondent knew or suspected that Law Society officials calling on her at 10:30am on 18 February 2005 would be calling on her to implement a decision to intervene in her practice in circumstances where she knew that her practicing certificate had been suspended. The Respondent therefore knew that it was improper for her to give an instruction to the Bank that someone other than a practising solicitor in the firm, duly authorised, should secure payment of moneys from client account to her personal account and that she also knew that she was no longer entitled herself to give such an instruction. The Tribunal finds this action consciously improper and addresses the question of whether that also meets the test of dishonesty in paragraph 211 below. The Tribunal also noted the Respondent claimed to have been unaware of the fact that the SRA was about to intervene into her practice. She claimed not to have opened the envelope containing the FIO's report which her secretary had collected from the DX. That assertion was implausible. The Respondent had never claimed not to have received the case note that was sent to her in which it was made clear that the panel was considering intervention. Her secretary had passed on the contents of the conversation she had had with a representative of the SRA about the suspension of her practising certificate. The Tribunal did not accept that the Respondent was unaware that an intervention into her practice was imminent. She had claimed that she was remedying a breach, namely that her own moneys had been incorrectly paid into client account. The mortgage advance moneys had, of course, been paid into office account. The removal of £254,000 from client account caused that account to become overdrawn. The Respondent had also claimed that the money belonged to or was earmarked for a client with whom she was involved in a joint venture. She had also claimed that the money belonged to her mother.

Allegation (e):

As soon as the Respondent was aware (and she was aware on 18th February 2005) that the £254,000 she had asked her employee to instruct the bank to send to Barclays Bank Limited, had in fact been drawn from client account, the Tribunal finds she should have unquestionably immediately returned it to that account. She did not do so and therefore has no answer to the allegation that she failed to return those funds promptly to client account.

The Tribunal finds that it was a particularly shocking aspect of this matter that the Respondent sought to distance the money further from the Bank or the SRA by transferring it from her personal account to that held jointly by her with her mother.

Allegations (f) and (g):

The Tribunal finds that the books as produced for inspection and referred to in the Forensic Investigation Report dated 22nd November 2004 demonstrated that the books were not properly written up and the Tribunal has not seen evidence presented by or on behalf of the Respondent to establish otherwise. This allegation is therefore found proved.

Allegation (h):

Having regard to the finding that the Respondent did overcharge in respect of the probate matters mentioned above the Tribunal is driven to the conclusion that to the extent of the overcharge, the Respondent used clients' funds for her own benefit.

Allegation (i):

The Respondent admitted in the High Court proceedings her failure to account for interest on some moneys held on client account although the amounts were not material in the overall context of the allegations made against the Respondent. Solicitors should have the reputation of being scrupulous in relation to dealing with clients' financial affairs and this Respondent cannot demonstrate that she was. This allegation accordingly is found proved.

Allegation (j) and (l):

As set out above the Tribunal did not consider this allegation or the facts upon which it was based. This was without prejudice to the right of the Applicant to make further application confined to these allegations relating to the Respondent's failure to comply with directions made by the SRA.

Allegation (k):

The Tribunal finds that the Respondent failed promptly or at all to reply to certain correspondence from the Law Society. The Respondent was not entitled to treat her apparent complete breakdown of trust of the SRA as a reason for declining to answer, even though the requests for an explanation were burdensome for a sole practitioner. The Respondent had a duty to give a proper explanation for what occurred and could not therefore resist a finding that her refusal to do so was culpable and has been aggravated by her refusal in these proceedings to respond to any of the Tribunal's orders which were designed to provide at least a belated opportunity to give an explanation of the conduct for which she was being criticised. The Tribunal found this allegation to have been substantiated.

The issue of dishonesty

211. The question whether the conduct of the Respondent amounted to dishonesty in relation to her proved professional misconduct and breaches depended on whether the tests laid down in the relevant authorities were met. The Tribunal well understood that any solicitor facing an allegation of dishonesty might find it difficult if not impossible to acknowledge that he acted with a dishonest motive. So far as the objective part of the test laid down in Twinsectra v Yardley was concerned the Tribunal was required to consider to what extent the Respondent's behaviour was such that a reasonable, honest and competent solicitor would conclude that it was dishonest. The Tribunal had regard to the transfer of round sums, the evidence accepted by the Tribunal of over-charging, the non payment of interest due to clients, the behaviour of the Respondent in relation to the removal of £254,000 from Client Account and her attempts to resist its replacement, and the complete failure of the Respondent to provide to the SRA or to the Tribunal any coherent or plausible explanation supported by evidence justifying her conduct. Cumulatively this has led the Tribunal to the conclusion that this limb of the "Twinsectra test" is unquestionably met.

212. The Tribunal, before finding that the Respondent was dishonest, must also be sure that she knew that her behaviour was dishonest by the standards of reasonable honest and competent solicitors. She was not in this respect able to set her own standards of honesty or claim that she could have an honest belief that the views of her professional colleagues would be that her behaviour was honest. In relation to overcharging, the Tribunal would acknowledge that billing the correct amount in any matter is an art not a science. The solicitor and the client might have different views as to the appropriate charge and a solicitor's view would not necessarily be dishonest if it differed from that held by the client or by independent assessors. Although in all the cases cited before the Tribunal it found there had been overcharging where there had been a wrong basis of charging and time charges were greater than they should have been, the Tribunal would accept that the Respondent could assert that she had an honest belief that her charges were justified. However she learned no lessons from previous complaints and the Tribunal regarded her behaviour as demonstrating a reckless disregard for making fair and reasonable charges and at least in the GT case the Tribunal was in no doubt that the Respondent could not have had an honest belief that her charges were proper. That was an instance where the allegation of dishonesty, in relation to allegation (a) was established. This is for the following reasons:-

(1) she knew there was no contemporaneous and accurate record of time spent;
(2) she knew the calculation of the charge was not soundly based;
(3) she was less than open as to the fees she was charging and their basis;
(4) she refused to have her charges independently assessed; and
(5) she ignored the fact that as sole executor she had a conflict of interest which called for greater transparency.
(6) she had produced no credible explanations justifying her fees.

213. In relation to the removal of £254,000 from client account, the Tribunal finds that the Respondent knew that it was improper to authorise her secretary to distance the money from the intervention agents. A claim that she honestly thought the money was hers did not justify her failure to tell the intervention agents at 10.30am on 18th

February 2005 what she had done a matter of a few minutes earlier. This was not indicative of innocent and honest conduct.

214. The Tribunal had no doubt that the Respondent had, as have other solicitors who find themselves accused of dishonesty, a fierce belief that she had done nothing professionally wrong let alone done any thing dishonest. In this case this had led the Respondent to refuse to acknowledge obvious shortcomings which unfortunately had damaged her credibility and made such defence to these allegations as she has indicated to the Tribunal unconvincing. It is not enough for the Respondent merely to assert she is honest particularly where, as in this case, she has refused to provide explanations or evidence which point to honest rather than a dishonest conduct.

215. The Respondent's failure to enable the Tribunal to hear the case in a considered way had deprived the Respondent of putting a better case forward in answer to the allegations but the Tribunal was in no position to speculate whether a more convincing answer to the allegations could have been presented and the Respondent deprived her counsel of that opportunity.

216. The Respondent had undoubtedly found the proceedings stressful and it seems to the Tribunal that her unwillingness to acknowledge any professional misconduct has led her to adopt the attitude that everyone else is in the wrong and cannot have acted from proper motives or with necessary competence. The Tribunal took the view that the Respondent's arrogant disregard for fundamental requirements of practice led her to adopt a stand where she neither knew nor cared whether she was exercising a proper stewardship of client funds, billing at fair and reasonable levels and achieving full compliance with the Solicitors Accounts Rules. The Tribunal had seen no evidence that the SRA had acted other than in accordance with its public duty to require the Tribunal to hear and adjudicate upon this Application and it and its advisers, although from time to time provoked by the Respondent, had not been shown to have any improper motive in bringing and pursuing this Application .

217. This is a very sad case but the Tribunal does not have any doubt that the Respondent must in accordance with the legal authorities binding on this Tribunal be held to have acted with conscious impropriety and with dishonesty.

218. In order to protect the public and the good reputation of the solicitors' profession the Tribunal considered that it was both proportionate and appropriate to order that the Respondent be struck off the Roll of Solicitors.

Costs

219. The Applicant having succeeded in respect of all of the allegations dealt with at this hearing (allegation (j) and the allegation contained in the Second Supplemental Statement were to be the subject of a further application if so advised) the Applicant applied for costs and sought an interim payment on account.

220. The Tribunal had no reason to doubt the Applicant's submission that by the manner in which she chose to resist the Application, the Respondent greatly increased the costs. The Tribunal considered that the hearing was unnecessarily lengthy because of the Respondent's refusal to comply with any of its orders. The non attendance of the Respondent for some of the time and her refusal to give adequate instructions to her

Counsel (which resulted in Counsel in effect withdrawing from the case) also prolonged the hearing. She had also bombarded the Tribunal with irrelevant documentation and lengthy emails mainly concerned with other litigation in which she was involved. The Respondent wasted a great deal of time making allegations of incompetence and/or bad faith of all those engaged in the disciplinary process and others. The Tribunal's orders were designed to ensure that if the Respondent was unwilling to admit any of the allegations, she should at the least provide an explanation for her refusal and of any matter which she believed would provide an explanation or excuse for the misconduct which was alleged against her. This did not in the Tribunal's view involve any shifting on to the Respondent of the burden of proof which the Tribunal acknowledged rested with the Applicant. The absence however of any explanations in relation to the detailed matters alleged against the Respondent did however leave the Respondent in a position where the facts on which the allegations were based were uncontradicted by any evidence of substance provided by the Respondent, save that the attention of the Tribunal had been drawn to explanations offered by her at interview with the SRA Officers and given during the course of her oral evidence in the High Court.

221. After the case had closed, the Respondent had instead of mitigation provided an explanation in one matter which the Applicant believed had not previously been advanced by her and this is addressed in more detail at paragraph 80 above. However, the Tribunal was satisfied that this explanation did not provide a good reason for disturbing the conclusions it had already reached.

222. The Tribunal therefore had to decide whether it was appropriate that some part or all of the costs of this case should be borne by the solicitors' profession as a whole rather than visited upon the Respondent. The fact that the Respondent had alleged that the SRA had in bad faith brought proceedings against her and that a number of others had conspired to pervert the course of justice, even if honestly held (as to which the Tribunal makes no finding) could not in the Tribunal's view justify the Respondent escaping liability for costs, a misfortune which she had very largely brought upon herself.

223. The Tribunal had been enjoined in one case to have regard to the means of the Respondent. The Tribunal had no significant information as to the Respondent's means beyond statements, which it was not willing to accept as reliable, that the Respondent was penniless. At various times there had been references to her properties and the Tribunal was aware that the Respondent was seeking to have repaid to her a substantial sum of which she claims to have been defrauded. She had mentioned litigation against the counsel previously instructed by her in which she seeks repayment of a large sum, which matter remained undetermined. The Respondent had chosen to expend her assets in an endeavour, ultimately fruitless, to make this case unmanageable and so defeat the exercise by the SRA of its public duty to bring the case and the duty of the Tribunal to hear it. If the consequence was to render the Respondent unable to meet a proper claim by the SRA to be reimbursed its costs, the Tribunal did not consider it proper to relieve the Respondent of her obligations nor should it do so because, for the protection of the reputation of the Profession and for the protection of the public, the Tribunal had concluded that this Respondent should no longer be able to practise as a solicitor.

224. The Tribunal therefore decided that it should make an order requiring the Respondent to pay the proper costs of the Applicant to be subject to a detailed assessment if not agreed. The Applicant had produced a schedule of costs which was not quite complete but indicated that costs would exceed £240,000 including VAT.

225. The Tribunal accordingly was of the view that it was reasonable and proportionate to order that the Respondent pay interim costs fixed in the sum of £100,000.

Dated this 29th day of June 2009
On behalf of the Tribunal

A H Isaacs
Chairman