No. 9677-2007

IN THE MATTER OF BRIAN HARGREAVES-HADCROFT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Mr D J Leverton
Mrs C Pickering

Date of Hearing: 16th October 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Rosemary Rollason solicitor and partner in the firm of Field Fisher Waterhouse LLP of 35 Vine Street, London, EC3N 2AA on 23rd February 2007 that the Respondent might answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

On 14th September 2007 the Applicant made a Supplementary Statement containing further allegations.

The allegations set out below are those contained in the original and Supplementary Statements.

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

(i) failed to lodge with The Law Society, Accountant's Reports in respect of his practice, Hargreaves-Hadcroft Solicitors, for the years ending 31st March 2005 and 31st March 2006, contrary to Section 34 of the Solicitors Act 1974 (as amended);

(ii) failed to comply with his undertaking given to Mr H on 23rd March 2005 to discharge a charge on or before completion of the transaction relating to a property at 19 Teignmouth Road;

(iii) failed to comply with his undertakings given to Mr H on 23rd March to provide the TR1, completion of registration documents and pre-registration deeds upon completion of the transaction relating to 19 Teignmouth Road;

(iv) failed to comply and/or delayed in complying with his undertaking given to Mr H on 2nd and 5th August 2005 to pay Mr Leigh Hunt's costs arising from matters following the completion of the transaction relating to 19 Teignmouth Road;

(v) failed to keep Mr H, the recipient of his undertakings set out at (ii), (iii) and (iv) above, reasonably and adequately informed of the reasons for his delay in complying with the undertakings;

(vi) misled The Law Society in his letter of 23rd October 2005 by indicating that a cheque had been sent to Mr H in respect of his costs, together with an apology, when in fact no cheque or apology had been sent;

(vii) delayed in responding to correspondence from The Law Society concerning its investigation into the matter referred to at (ii) to (vi) above;

(viii) upon an inspection of his firm's books of account by The Law Society on 26th September 2006, he had failed to maintain up to date books of account in respect of his firm, contrary to Rule 32(1) of the Solicitors Accounts Rules 1998;

(ix) at the same inspection, he had failed to maintain reconciliations of liabilities to clients with cash held at client bank since 31st March 2002, contrary to Rule 32(7) Solicitors Accounts Rules 1998;

(x) he misused client's monies, namely mortgage advance monies received in connection with the purchase of a property by his client, Mr G which was:-

(a) dishonest;
(b) contrary to Rule 22 Solicitors Accounts Rules 1998;

(xi) he misused clients' monies, namely mortgage advance monies received in connection with a property purchase by his clients, Mr R and Miss H, which was:-

(a) dishonest;
(b) contrary to Rule 22 Solicitors Accounts Rules 1998;

(xii) he misused client's monies, namely a loan received by his firm on behalf of a client, Mr B in connection with his purchase of a property which was:-

(a) dishonest;
(b) contrary to Rule 22 Solicitors Accounts Rules 1998;

(xiii) having confirmed the existence of a minimum cash shortage of £59,700.00 on his firm's client account, on, at the latest, 22nd December 2006, he failed to replace the shortage until 26th January 2007, contrary to Rule 7(1) Solicitor Accounts Rules 1998;

(xiv) on 20th July 2006, he made misleading and dishonest statements to the solicitors acting for the vendor in connection with the completion of Mr G's conveyancing transaction, including by stating that funds in the sum of £119,000 had been debited from his firm's client account, when in fact he was aware that on 20th July 2006 there were insufficient funds in his client account to complete the transaction and was aware that the funds had not been debited on that date;

(xv) between 26th January 2006 and 18th August 2006, he transferred 15 round sums each in the sum of £5,875, from his firm's client account to office account which was:-

(a) dishonest;
(b) contrary to Rule 19 Solicitors Accounts Rules 1998;

(xvi) in March 2006, he misused his firm's client account by receiving the sum of £150,298.71 from Irish solicitors for his client, Mr F, of which £135,000 was then remitted to Mr F's bank account, in respect of which there was no underlying legal transaction in relation to the receipt and transmission of the funds, when he knew or ought to have known this was an inappropriate use of his firm's client account.

The evidence before the Tribunal included the admissions of the Respondent set out in a letter addressed to the Tribunal from HMA Law dated 15th October 2007 in which the Respondent admitted the allegations but denied dishonesty on his part.

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

The Tribunal Orders that the Respondent, Brian Hargreaves-Hadcroft of Rangeview Close, Streetly, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 51 hereunder:-

1. The Respondent, born in 1963, was admitted as a solicitor in 1988. At the material time he was a sole principal, his firm being Hargreaves-Hadcroft Solicitors of Edgbaston, Birmingham.

2. On 20th January 2006 the Law Society wrote to the Respondent to advise him that his firm's Accountant's Report for the period ending 31st March 2005 had not been received. It was due by 17th December 2005. The Respondent did not reply immediately but when The Law Society wrote again on 18th May 2006 the Respondent did respond. He stated that the reason for his difficulty was a change in his accountants. In the absence of the required Report the matter was referred to an Adjudicator of The Law Society who decided, on 24th July 2006, to expect the Respondent to file the outstanding Accountant's Report within 28 days from the date of the letter notifying him of the decision.

2. Subsequently the Respondent failed to file his next Accountant's Report namely that for the period to 31st March 2006.

3. At the date of the hearing such Reports had not been filed.

4. Mr H, a solicitor, had acted for the purchaser of a property. The Respondent acted for the Vendor. Completion of the transaction took place on 24th March 2005. In his replies to requisitions on title dated 23rd March 2005 the Respondent confirmed "the Halifax charge will be discharged on or before completion" and confirmed that "the following documents would be handed over, TR1 and confirmation of registration and pre-registration deeds". The Respondent also confirmed he would be adopting The Law Society's code for completion by post.

5. Mr H transferred the completion monies to the Respondent on 24th March 2005. On 1st and 7th April Mr H reminded the Respondent that he was waiting for the documents.

6. On 11th April 2005 the Respondent sent the pre-registration deeds and documents and confirmed that the client's mortgage had been discharged. He understood the mortgagee would automatically file the appropriate END with HM Land Registry. He said that he appeared not to have received an amended transfer from Mr H and requested that another be sent.

9. A fresh copy of the transfer was sent to the Respondent on 11th April but the Respondent's letter of 13th April 2005 returning the transfer to him was not received by Mr H.

10. Mr H sent a number of chasing letters to the Respondent in April and May 2005 and in a conversation of 9th May Mr H pointed out to the Respondent that he was seriously in breach of the code for completion by post.

11. On 25th May the Respondent replied to Mr H apologising for the delay, stating that the letter sending the transfer appeared to have been lost in transit and that a fresh transfer would have to be executed by all parties. Mr H on 26th May wrote to the Respondent with a fresh transfer for execution. On 4th July 2005 Mr H wrote to the Respondent requesting his urgent attention to the matter. Mr H's client, the purchaser, had collected a letter at the premises, which were then empty, from TLT Solicitors of Bristol in which the Respondent's vendor client was named as defendant in possession proceedings brought by the mortgagees. The claim was to be heard in Birmingham County Court on 5th August 2005. Mr H asked for confirmation that the Vendor's mortgage with the mortgagees had been discharged. Mr H had drawn the matter to the attention of The Law Society and on 30th September 2005 he stated that the issues between himself and the Respondent had been resolved but there remained the issue of Mr H's costs for dealing with the matter. The Respondent had given assurances that he would meet Mr H's additional costs.

12. Following enquiry by The Law Society the Respondent explained in a letter of 23rd October 2005 that he had received the redemption statement when he was out of the office in South Africa, his office had sent him by fax a CHAPS form to sign and return by courier to the UK. The mortgage should have been discharged but it subsequently transpired that the bank had not transferred the funds. That had become

apparent only upon receipt of the possession proceedings. The mortgage was then discharged together with all accrued interest and costs.

13. The Respondent said that he considered that he had kept Mr H informed but accepted that "it may not have been as prompt as it could have been". The Respondent could not recall undertaking to pay Mr H's costs but confirmed that a cheque had been sent.

14. Mr H told The Law Society in a letter dated 6th December 2005 that he had not received a cheque for costs from the Respondent nor an apology. He had been informed on 22nd August 2005 by the Land Registry that the END form had been received.

15. The Respondent did not reply to letters from The Law Society addressed to him about these matters. Eventually the Respondent wrote to Mr H on 30th January 2006 stating that he had thought that a cheque had been sent but "as a result of change in bankers from Lloyds TSB Bank Plc to NatWest this did not happen". Mr H confirmed receipt of the cheque on 1st February 2006.

16. The Respondent's file was requisitioned by The Law Society pursuant to Section 44B of the Solicitors Act 1974. The Respondent did not provide his file within the seven days required. It was the Respondent's case that he had not sought to mislead The Law Society nor Mr H but as a consequence of pressure of work at that time the matter had been neglected and in particular a new cheque to pay Mr H's costs had not been raised until the Respondent was reminded.

17. In response to The Law Society's complaint that he had delayed in responding to letters addressed to him by that body the Respondent stated that he was a sole practitioner with limited staff. He stated that he appreciated "the requirements of dealing with correspondence promptly but sometimes time pressures of other matters of clients had been put before my own personal position".

18. A Senior Investigation Officer of The Law Society (the SIO) commenced an inspection of the Respondent's books of account on 26th September 2006. The SIO produced a Report dated 2nd February 2007 which was before the Tribunal.

19. On 26th September 2006, the SIO noted that the Respondent's books of account were not in compliance with the Solicitors Accounts Rules 1998. He agreed to return at a later date to allow the Respondent time to update the books of account. The SIO returned on dates in October and November, but the books of account were still not up to date.

20. The SIO noted that whilst bank account reconciliations were produced to the end of March 2004, they contained significant adjustments which included unallocated payments varying between £2,000 and £40,000 and totalling £155,125.00. In addition, there were unallocated receipts varying between £10,000 and £40,000 and totalling £137,125.00.

21. The Respondent explained that owing to long periods of illness he had been unable to maintain the books of account and although he was working through the reconciliations, he could not understand some of the entries made by his former

assistant. The books would have to be re-written from the point at which they did reconcile.

22. A review of client matter files by the SIO revealed that clients' funds had been misused in relation to at least three matters.

23. In view of this, and the state of the books of account, the SIO considered it impracticable to attempt to calculate the firm's total liabilities to clients as at 31st August 2006. He established that a minimum cash shortage existed on client account of £59,700.10.

24. The Respondent faxed a letter to the Solicitors Regulation Authority confirming that he had paid £60,000 into client bank account to rectify the minimum shortage on 26th January 2007.

25. The Respondent had advised the SIO that he had been suffering from a long-term blood disorder since September 2002 which was the reason that he had moved his practice to his home address. He had decided to cease practising and was in the process of bringing files and records up to date and transferring them to a firm set up by his ex-wife, Evolution Legal. That firm informed the SIO that it would take on the Respondent's client matters once all accounting issues had been resolved but in the meantime the partners were assisting the Respondent to deal with day to day matters.

Client Mr G

26. The Respondent acted for Mr G in the purchase of a property at the price of £119,000 with the assistance of a mortgage advance from Birmingham Midshires.

27. On 11th July 2006, the Respondent faxed a certificate of title to Halifax plc (of which Birmingham Midshires was a division) indicating that completion was fixed for that date. The net mortgage advance, £101,101.00, was received by the firm's clients' bank account on the same day.

28. Contracts were in fact exchanged on 18th July with completion on 19th July. The date of actual completion was 26th July 2006.

29. On 14th July 2006, the Respondent wrote out a cheque for £87,300.00 in respect of the refund of a mortgage advance received concerning Mr R and Miss H's abortive purchase transaction.

30. The SIO noted that when the payment had been made, the client bank account should have contained a minimum of £102,405.26 (being £101,101.00 from Halifax plc and £1,304.26 in respect of another client). The client bank account balance was £42,705.16.

31. The SIO noted that at his meeting with the Respondent on 22nd December 2006, the Respondent agreed that a cash shortage had arisen at the time the cheque payment had been made. The Respondent confirmed to the SIO that he had been aware of the existence of the shortage but he had not pointed it out earlier as he "didn't want you to know". He accepted that he ought to have disclosed it.

32. Mr R and Miss H had obtained a mortgage offer from Halifax plc in connection with their proposed purchase of a property. The purchase price was £90,000. The purchase proved to be abortive.

33. On 13th June 2006, the Respondent faxed the certificate of title requesting the mortgage funds for completion on 14th June 2006. On that date, the mortgage advance of £87,270.00 was received into the firm's client bank account. At that date, contracts had not been exchanged and the seller's solicitors had been requesting the return of the contract documents since 25th May 2006. The Respondent said his clients had told him that the matter was proceeding.

34. The mortgagee's instructions required the mortgage advance to be returned if completion was delayed by more than seven days. The Respondent returned the mortgage advance on or around 10th July 2006, more than 21 days after its receipt.

35. On 27th June 2006, client bank account had been charged with a transfer of £48,000. The Respondent explained that on that date the bank had in error made two payments totalling £48,000 on behalf of clients from office bank account and the error had been corrected on 27th June 2006 by a client to office bank account transfer of an equivalent amount.

36. Immediately after the making of the transfer of £48,000 to office account, client account should have held at least the net amount of the mortgage advance of £87,270.00. The relevant bank statements showed that only £39,424.97 was being held. The Respondent agreed that he had misused the mortgage advance monies.

37. The Respondent told the SIO that he had not returned the mortgage advance when he returned the contract documentation to the seller's solicitors on 21st June, "because obviously at the time there were insufficient funds to return it". When the SIO put it to the Respondent that the only reason he retained the mortgage advance after the transaction proved abortive was to keep client account fluid to facilitate other payments out, the Respondent responded "I wouldn't be able to deny it".

38. On 25th July 2006, the sum of £100,000 was received into client bank account by CHAPS from Mr DG. The Respondent indicated that this was a loan to Mr AB, another client of the firm, in connection with the purchase of a property. On the same date, client bank account was charged with a payment of £119,000 relating to Mr G's purchase transaction. After making that payment, the Respondent should have been holding at least £100,000 in client bank account. The client bank account balance was £65,513.96 The Respondent accepted that he had misused client funds in this respect.

39. It was alleged that on 20th July 2006, the Respondent made a misleading and dishonest statement to the Vendor's solicitors in connection with Mr G's conveyancing transaction. On 19th July 2006, the Respondent faxed his bank requesting £119,000.00, the full purchase price, to be remitted from his client account to the seller's solicitors. The solicitors notified the Respondent that they had not received the monies. By fax of 20th July the Respondent told them that on checking his client account bank balance that morning "it appears that the funds have been debited" and went on to say that it was imperative that the funds be traced as "if they are not within your client account they have not, as yet, been returned to us".

40. The SIO found no evidence of £119,000 being paid out until 25th July 2006. This was the first time after the exchange of contracts that there was sufficient money in client bank account to complete the transaction. This payment out was facilitated only upon receipt of the £100,000 from Mr AB.

41. The Respondent agreed with the SIO that his bank would not have sanctioned the payment of £119,l00 on 19th July 2006 as there were insufficient monies in client bank account and confirmed that when he wrote to the seller's solicitors on 20th July he was aware that there were insufficient funds in his client account to complete the transaction.

42. When asked why he had written a misleading letter to the seller's solicitors, the Respondent replied "I had hoped at that point to cover it from my own funds but I wasn't able to immediately". At the meeting with the SIO on 22nd January 2007, it was put to the Respondent that he had written the letter to create a smoke screen until he had sufficient funds to pay the purchase price. He responded that he genuinely believed he could cover the payment but that it proved to be impossible. He said "I wrote the letter but I wasn't intending to create a smoke screen, I was intending to try and put it right that day but I couldn't do. If that's a smoke screen then that's a smoke screen".

43. The SIO ascertained that a number of round sum client to office bank account transfers had been made on a regular basis. Between 26th January 2006 and 18th August 2006, fifteen client to office bank account transfers were made. Each was in the sum of £5,875.00 and the total was £88,125.00. In the majority of instances when those unallocated transfers were made office bank account balance was overdrawn in excess of the overdraft limit of £10,000 and the transfer brought office account within the permitted overdraft limit.

44. When it was suggested that these transfers might have been a cause of the shortage, the Respondent said "I would suggest that it is the cause of the shortfall. I had taken monies but I can attribute some and I may not be able to attribute others".

45. The Respondent was asked if he thought his actions were those of an honest solicitor. He replied "I've obviously done things I shouldn't have done" and when pressed further, "no, in theory no". The SIO suggested to the Respondent that he had been using his client account to fund his office account and the Respondent replied "To a degree, yes".

46. The Respondent received £150,298.71 from Irish solicitors for his client, Mr F. Of that sum, £135,000 was then remitted to Mr F's bank account. There was no underlying legal transaction in relation to the receipt and transmission of the funds. The Respondent said that the £150,398.71 represented client funds which had been paid into office bank account by mistake and the error had then been rectified.

47. The Respondent explained that he had acted for Mr F in relation to several companies. He said that £150,398.71 had been sent to him by Mr F's Irish solicitors and that it represented the sale proceeds of property in Northern Ireland.

48. The Respondent said that he had remitted £135,000 directly to Mr F's bank account in accordance with instructions, that a further £2,000 - £3,000 had also been paid to Mr

F and the balance had been retained towards the firm's costs in respect of work conducted for Mr F concerning directorships held in other companies. He confirmed that no client ledger had been maintained recording the movement of the funds.

49. In interview on 22nd January 2007, the SIO referred the Respondent to The Law Society's "Blue Warning Card" relating to money laundering. He asked how the Respondent had complied with it in relation to the section entitled "Use of Your Client Account". The Respondent said that Mr F was a long-standing client of his, he had bought the property and that he had no reason to doubt that it had subsequently been sold. He said "I took them in and disbursed them back to John because I have no interest in that company or that property itself". He confirmed that he undertook no legal work in relation to the receipt and transmission of the funds and that there was no underlying transaction.

50. The Law Society had intervened into the Respondent's practice.

51. The Respondent made written responses to written enquiries made by The Law Society. These were before the Tribunal and the Tribunal has summarised them under the heading, "The Submissions of the Respondent".

The Submissions of the Applicant

52. Rule 32(1) of the Solicitors Accounts Rules 1998 requires that a solicitor must at all times keep accounting records properly written up to show the solicitors dealings with client monies, controlled trust money and office money relating to any client matter or any controlled trust matter and Rule 32(7) provides that a solicitor must carry out reconciliations at least every five weeks.

53. The obligations placed upon a solicitor by the Solicitors Accounts Rules to keep accurate and timely accounting records and to exercise proper control and stewardship over clients' monies are a fundamental aspect of the solicitor's professional responsibilities and fundamental for the protection of the public. A principal is not able to delegate his responsibility for compliance with the Solicitors Accounts Rules.

54. The Respondent had not disputed in interview with the FIO that he utilised clients' monies in a manner which was contrary to Rule 22 of the Solicitors Accounts Rules 1998, which provided:-

> "22(5) Money withdrawn in relation to a particular client or controlled trust from a general client account must not exceed the money held on behalf of that client or controlled trust in all the solicitors general client account(s) (except as provided in paragraph (6) below)".

55. The Respondent had been aware of the existence of a shortage and said that he did not want to disclose it to the SIO.

56. The Respondent had also taken round sums of money from client account to fund his office account. That was taking clients money for his own use. The Respondent had found himself with insufficient money to complete a client's property purchase and he had handled moneys on behalf of a client where there was no underlying transaction which might well have had money laundering implications. Errors were not promptly

corrected. The Respondent had had to wait for an unrelated client's money before he could discharge an outstanding liability for another client. He had said:-

> "I had no intention to permanently disadvantage any client but do appreciate that Rule 22 of the Solicitors Accounts Rules 1998 is entirely clear as to the circumstances in which withdrawals from client account can be made".

57. It was the Applicant's position that the Respondent was a dishonest solicitor. Whilst he asserted that he had no intention permanently to deprive any client of funds, nevertheless, being aware that this conduct was improper, he misused client's monies in the above manner. He was not, and could not without discovery, have been open and honest about his actions.

58. The Applicant invited the Tribunal to rely on the explanation of dishonesty in the case of Twinsectra Limited v Yardley (2002) UKHL 12 in which Lord Hutton described the approach of an "objective" and "subjective" test of dishonesty, stating:

> "Whilst in discussing the term "dishonesty" the Courts often draw a distinction between subjective and objective dishonesty, there are three positive standards which can be applied to determine whether a person has acted dishonestly. There is a purely subjective standard whereby a person is only regarded as dishonest if he transgresses his own standard of dishonesty, even if that standard is contrary to that of honest and reasonable people. This has been termed the "Robin Hood Test" and has been rejected by the Courts.....Secondly, there is a purely objective standard whereby a person acts dishonestly if his conduct is dishonest by the ordinary standards of reasonable and honest people, even if he does not realise this. Clearly, there is a standard which combines an objective and subjective test and which requires that before there can be a finding of dishonesty, it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he realised that by those standards, his conduct was dishonest. I will term this "the combined test".... ....The statement of the principle by Lord Nicholls has been widely regarded as clarifying this area of the law and, as he observed, the tide of authority in England flows strongly in favour of the test of dishonesty. Therefore I consider that the courts should continue to apply that test and that you should state that 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 dishonesty and does not regard as dishonest what he knows would offend the normal standard of honest conduct".

59. Proper standards of honesty and integrity are fundamental to the profession of a solicitor. Findings of dishonesty are regarded as at the highest end of the scale in matters of professional conduct. By his conduct in these matters, the Respondent misused clients monies for his own benefit and in so doing, knowingly put client monies at risk. These actions wholly undermined the core purpose of the Solicitors Accounts Rules in relation to the protection of client monies. It is submitted that this is not conduct in which any honest solicitor, exercising proper standards of integrity and probity, would engage.

The Submissions of the Respondent

60. The Respondent explained that the firm's books of account were completed only after the conclusion of the matter as usually disbursements were paid on receipt of monthly invoices via office account. On matters where neither exchange nor completion took place, expenses or disbursements were written off and the practice bore the loss, and because unpaid disbursements had been treated as an office expense he did not write up accounts as required.

61. The client ledgers had not been written up for a period of time due to the Respondent's long-standing illness and pressure of work. His only assistant had failed to inform him that she was not completing book keeping and accounting records. He had failed to check that the books of account were up to date prior to and during his period of illness. Reconciliations had not been carried out owing to difficulties with his computers and personal issues involving divorce and child custody proceedings.

62. In the matter of Mr R and Miss H the transaction had not been abortive as far as the clients were concerned. When it became apparent that it was, the Respondent returned the mortgage advance with interest due on the sum. All disbursements incurred were paid for by the firm. No bill was rendered to the client.

63. In relation to the misleading statement given to the Vendor's solicitor in Mr G's matter the Respondent held a misguided belief that he would be able to rectify matters immediately. Funds had been due to him which he honestly believed would be available on or before 22nd December 2006 but there were delays due to his illness and a hospital admission on 20th December 2006. The funds did not become available until January 2007.

64. In relation to the possible cause of the minimum shortage of £59,700.10, the transfers of the round sums occurred during the Respondent's period of illness to allow him to continue to provide a service to clients. He had no intention permanently to disadvantage any client. He had blurred the separation between client and office monies but had striven at all times to ensure that no client suffered actual loss as a consequence. The Respondent did not bring the existence of the shortage to the attention of the SIO at an earlier date as he was fearful of the ramifications. The shortage was not replaced immediately due to financial pressures.

65. The Respondent had not fully appreciated that the nature of the transaction with Mr F was one where he should not have acted as a bank and agreed to cash a cheque for the client. He believed the cheque was made out to the practice or to MD Limited (which had no bank account) and he merely sought to assist an existing client to resolve a problem.

66. The Respondent vigorously and emphatically denied that he had been dishonest.

67. No discourtesy was intended to the Tribunal by the Respondent's non attendance. The intention was to minimise costs and save the Tribunal's time.

68. At the outset, the Respondent acknowledged the seriousness of the allegations made against him. The Respondent had responded to the SIO frankly at interview. It was accepted that there was some delay in making the payment of £60,000 to rectify the

shortage on the client account but the Respondent was unable to do so earlier. There was no intention to ignore the serious ramifications of the shortfall on the client account.

69. The Respondent did not make misleading and dishonest statements to the solicitors acting for the vendor in connection with the completion of Mr G's conveyancing transaction. He accepted that his statements were wrong but were made in the misguided belief that he would be able to rectify matters immediately. He did not act dishonestly.

70. The Respondent made a solemn and deep apology to the Tribunal for the improper shortfall of any sums on client account, for other breaches of the Accounts Rules and in respect of the other allegations. In making this apology he did not seek to suggest that he should not be punished for what had happened. The Tribunal was asked to consider that the Respondent had, since the intervention, lost his only source of income. He was no longer able to practise as a solicitor, which was the only profession that he had known. The consequences of the intervention had been catastrophic both in financial and personal terms.

71. The Respondent had continued to assist the intervening agents in dealing with the winding down of his practice. At the outset, the Respondent offered to accept the immediate suspension of his Practising Certificate and if he was able to do so, to remove his name from the Solicitors Roll. He accepted that he would no longer be able to act as a solicitor in the future.

72. The principal reason for the Respondent's decision to retire from the solicitors' profession was health grounds. The Tribunal was invited to consider the written Medical Report placed before it. The Respondent had been ill for some time and his illness had been a significant factor in the difficulties that he faced with his practice and in maintaining updated accounts. He had been in and out of hospital, particularly in the previous twelve months and was not physically able to continue to practice.

73. Although the Respondent was under considerable pressure (both professional and personal), it was not suggested that those factors could be an excuse for what had happened: whatever the circumstances, there should not have been any shortfall on the client account or any other breaches of the Solicitors Accounts Rules.

The Findings of the Tribunal

74. The Tribunal found all of the allegations to have been substantiated.

75. The Tribunal took into account the mitigation offered by the Respondent in particular the fact that he had suffered from ill health over a period of time.

76. It was a most serious matter for a solicitor not to comply with an undertaking. In the conveyancing transaction in which the Respondent did not comply with his undertaking there were serious consequences for the purchaser whose solicitor had with complete justification relied upon the undertaking given.

77. The Tribunal considered the test for dishonesty set out in the case of Twinsectra v Yardley. The Tribunal was satisfied that both aspects of the test were satisfied and

that the Respondent had dishonestly misused clients' money in particular when he took round sums from client account to bolster his firm's office account and when he used the money of one client for the purposes of another unrelated client. It was noteworthy that he had had to wait to receive money from an unrelated client before he was able to meet his liability to the client in respect of whose transaction he utilised the newly received funds.

78. Client monies are sacrosanct. They may not be borrowed or used for a solicitor's own purposes and monies held on behalf of a client may be used only for the purposes of the client to whom they belong.

79. It is fundamental to the good reputation of the solicitors' profession that solicitors treat client money held by them honestly and fairly, with punctilious compliance with the Solicitors Accounts Rules which are in place for the protection of the public and that in every respect a solicitor exercises a proper stewardship over client funds held by him. The Tribunal find that the Respondent failed to meet these important requirements and further that he was dishonest.

80. Such behaviour on the part of a solicitor will not be tolerated by the solicitors' profession or this Tribunal. The Tribunal Ordered that the Respondent be Struck off the Roll of Solicitors.

81. It was right that he should pay the costs of and incidental to the application and enquiry to include the costs of the SIO. The Respondent did not appear at the hearing and had not made any written representations about costs. The Tribunal was handed a note of the Applicant's costs but without any input from the Respondent the Tribunal considered that it would be right to order that the Respondent pay the Applicant's costs, but such costs be subject to a detailed assessment if not agreed between the parties.

Dated this 3rd day of December 2007
On behalf of the Tribunal

J N Barnecutt
Chairman