No. 9686-2007

IN THE MATTER OF CHARLES EDWARD SHAW ROTHWELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D. J. Leverton (in the chair)
Mr. D. Glass
Mrs S. Gordon

Date of Hearing: 25th September 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 Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 12th March 2007 that Charles Edward Shaw Rothwell of Brockholes, Holmfirth, Huddersfield, might be required to answer the allegations set out in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

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

(i) contrary to Rule 6 of the Solicitors Accounts Rules 1998 (hereinafter referred to as "the 1998 Rules") he failed to ensure compliance with the Rules.

(ii) contrary to Rule 7 of the 1998 Rules he failed to remedy breaches promptly upon discovery.

(iii) he withdrew and/or transferred monies from client account other than as permitted by Rule 22 (1) and/or 30 of the 1998 Rules.

(iv) he acted in breach of Rules 15 and/or 19 (1) and (2) of the 1998 Rules in that he made improper payments into a client account.

(v) he utilised clients' funds for the benefit of other clients.

(vi) he misappropriated clients' funds which for the avoidance of doubt is an allegation of dishonesty.

And it was alleged that the Respondent acted dishonestly in his utilisation of clients' funds.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 25th September 2007 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent was represented by Andrew Lockley, solicitor of Irwin Mitchell, Solicitors of Sheffield.

The evidence before the Tribunal included the admissions of allegations 1 - 6 by the Respondent who denied that he had been dishonest. He gave oral evidence.

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

The Tribunal ORDERS that the respondent, CHARLES EDWARD SHAW ROTHWELL of Brockholes, Holmfirth, Huddersfield, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000 inclusive.

The facts are set out in paragraphs 1 - 24 hereunder:

1. The Respondent, born in 1968, was admitted as a solicitor in1993 and his name remained on the Roll of Solicitors.

2. At the relevant times the Respondent practised as an assistant solicitor and subsequently in partnership at the firm of Keeble Hawson which firm had offices at Sheffield and Leeds.

3. An officer of the Forensic Investigation Unit of The Law Society (the FIO) carried out an inspection of the books of account of Keeble Hawson commencing on 21st June 2006. The FIO produced a report dated 28th September 2006 which was before the Tribunal.

4. The books of account of Keeble Hawson were found to be in compliance with the Solicitors Accounts Rules save for matters relating to the Respondent, brief details of which are set out below:-

5. Mr Rothwell was employed by Keeble Hawson as an Assistant Solicitor from 1997. He became a salaried partner in 1999 and was appointed as an equity partner in 2001 until he left the firm in 2006. Mr Rothwell was Head of Commercial Litigation and the managing partner at the Leeds' office.

Client S & Co

6. Mr Rothwell had had conduct of a commercial litigation matter for this client.

7. On 29 October 2002, damages of £67,000 were received into client bank account and credited to the client ledger account of S & Co.

8. On 5 November 2002, this sum was transferred from the client ledger account of S & Co to the client ledger account of an unconnected matter, CAJ re: SBJ.

CAJ re: SBJ & CAJ re: Removal as Administrator

9. Mr Rothwell had conduct of these two commercial matters.

10. £67,000 had been improperly received into the client ledger account of CAJ re: SBJ from the client ledger account of S & Co. These funds were utilised as follows:-

Date	Amount £	Details
20 November 2002	8,291.86	Transferred to office account as "Costs Transfer"
20 November 2002	4,709.41	Transferred to office account as "part counsel fees"
20 November 2002	24,242.79	Transferred to CAJ re Removal as Administrator as "re fees cost trf" then transferred to office account.
13 December 2002	883.25	Transferred to another CAJ matter as "our fees" then transferred to office account.
19 December 2002	28,872.69	Paid to S & Co as "settlement monies".
Total	£67,000.00	

On 8 November 2005, £255,000.00 was received into the client bank account and credited to the client ledger account of CAJ re: SBJ representing settlement fees. This money should have been held on deposit on behalf of CAJ.

11. On 9 November 2005, transfers of £3,525.00 and £7,572.50 were made to the office account in respect of outstanding fees in the CAJ (re: SBJ) and the CAJ (re: Removal as Administrator) matters.

Mr O

12. Mr Rothwell had conduct of this commercial litigation matter.

13. On 26 January 2001 £19,971.03 was received into the office bank account from CAJ in relation to outstanding fees in the CAJ (re: SB matter). These funds were improperly credited to the client ledger account of Mr O, an unconnected matter.

Mr and Mrs K and WM Company Ltd

14. Mr Rothwell had conduct of the SC two commercial litigation matters.

15. On 29 October 2004, an improper transfer of £19,705.00 was made from the client ledger account of WM Company Ltd to the client ledger account of Mr and Mrs K and then immediately transferred to the office account in respect of outstanding costs. These two matters were unconnected.

Mr A & Ms S

16. Mr Rothwell had conduct of the above commercial litigation matter.

17. On 24 May 2004, a payment of £2,000.00 was made from the client bank account and charged to the client ledger account of Mr A & Ms S described in the narrative as "Agents fee"

18. This payment was not related to the Mr A & Ms S matter.

19. Mr Rothwell told the FIO that MH was a friend who owned a racing car. The payment was for sponsorship to promote the firm at a race day. Mr Rothwell said the payment "should have come out of nominal but came out of client account - total error". Mr Rothwell said that he did sign the cheque but had not realised at the time it was being paid from client bank account.

AB and DNN

20. Mr Rothwell had conduct of the above two commercial litigation matters.

21. On 30th June 2005 a payment to E of £1,300.00 was made from the client bank account and improperly charged to the unconnected client ledger account of DNN. This payment was in relation to a service charge payable by AB and should have been charged to her client ledger account.

22. When contacted by Keeble Hawson AB said that she had paid £1,300.00 in cash to Mr Rothwell to be paid on her behalf for a service charge on her property which had been subject to dispute.

23. This cash had not been paid into the client or office bank accounts of Keeble Hawson nor was the amount credited to the client ledger account of AB.

24. Mr Rothwell told the FIO that he did receive the cash and he left it in the accounts department at the Leeds office of Keeble Hawson. He said that he "had no idea what happened to the money".

The Submissions of the Applicant

25. The Respondent had admitted all of the allegations but he denied that he had been dishonest.

26. In the submission of the Applicant the Tribunal when considering the question of dishonesty should apply the combined test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Chairman raised with the legal representative the Privy Council case of Barlow Clowes decided towards the end of 2006. In the submission

of the Applicant the Twinsectra case invited inquiry into the Respondent's mental state. That meant that his knowledge had to render his participation contrary to normal standards. The Privy Council had considered that the test for dishonesty did not differ from that set out in the earlier Privy Council case of Royal Brunei Airlines v Tan, so that the Tribunal was required to assess the conduct of the Respondent, taking into account what an ordinary person would consider to be dishonest on the part of the Respondent, bearing in mind the particular attributes of the Respondent. In this case the Tribunal would bear in mind in particular the Respondent's intelligence, knowledge, experience and his state of mind.

The Submissions of the Respondent

27. The Respondent accepted the facts placed before the Tribunal but he sought entirely to refute allegations that his actions were motivated by a dishonest intent.

28. The Respondent regretted that he had taken the course that he did. No clients had been disadvantaged financially or otherwise. On resigning from his former firm the Respondent willingly ensured that the accounts in respect of the matters complained of were properly readjusted and he ensured that no loss was suffered by any client or his former partners.

29. The Respondent invited the Tribunal to consider the background to what had occurred. In July 1997 the Respondent joined Keeble Hawson in Sheffield as an assistant solicitor. He viewed the move as an opportunity to improve his career prospects. Within a year the partners had acquired a practice in Leeds and the Respondent was asked to go to Leeds to head up the office, where there were about 10 solicitors and about 20 support staff. He was told that the practice in Leeds needed to be radically overhauled. He was 28 and was enthusiastic but inexperienced. The Respondent was an assistant solicitor supposed to manage senior members of the acquired firm including the former senior partner who was resistant to the take over. Staff left or were sacked. The Respondent had to cope with staff resentment and pressure from the Sheffield partners to make money.

30. At about the same time a more senior litigator at the firm left and the Respondent was charged with forming a litigation department in addition to his workload which led to a much increased case load. Managing the Leeds office, the increased case load and forming the litigation department had been a great burden of work.

31. In November 1999 the Respondent was appointed a salaried partner. He worked hard to generate work and to fulfil the roles allotted to him. He was regularly in the office at 5am just to try to keep on top of things. The Respondent achieved a fair degree of success.

32. The Respondent encountered interference from the equity partners in his management decisions so his promotion to equity partner was viewed by the Respondent as an opportunity to meet this interference on an even footing. This proved not to be the case and the Respondent had on occasions been presented with a "done deal". Perversely the equity partnership only increased the pressure the Respondent was under as he discovered that the partnership was riven with serious discontent and the investment required was considerable. He had been expected to contribute to the

funding of the practice by way of a six figure capital injection and also to buy what was termed "excluded work in progress" in order to acquire a profit share.

33. Under-performance was dealt with in a brutal fashion at the firm. One department head had been reduced to tears on a number of occasions at partners gatherings. The Respondent was trying to sustain a large personal and departmental billing and that was becoming hard to sustain with all the other pressures. The senior partners sought to maximise profitability while taking an increasingly hard line on expenditure and on writing off time and bills. The litigation department found it difficult to meet credit control expectations. A number of clients had been very late in paying.

34. In 2003-2004 the younger partners expressed concern about the methods by which partners bought into, and were bought out of, partnership. The older partners had been resistant to change. The Respondent instructed a firm of accountants on behalf of the younger partners to review the options. The senior element was unhappy with the findings in the accountant's report and also with the fact that it had been commissioned. The Respondent came to be seen as a dissenting voice and the representative of dissent generally.

35. With regard to the matter of O the Respondent had allowed payment of his outstanding account to be made out of monies received into the CAJ matter in payment of fees. The Respondent believed that he was undertaking an office account adjustment. He would not have looked to recover the apparent shortfall in fees from CAJ. He aimed to write off the CAJ fees. The Respondent did what he did as a panic measure. He was having difficulty getting the O account paid and he had sought to alleviate credit control pressures. The Respondent felt trapped between his senior partner and a difficult client. He did not undertake this action to secure promotion.

36. At this time (January 2001) the Respondent's marriage hit a very testing time. The Respondent's wife who was shortly due to give birth to their first child became convinced that the Respondent was too close to a work colleague. She suffered depression following the birth. For a period of some two years the Respondent had to deal with domestic incidents during the working day, sometimes requiring him to go home.

37. With regard to the S & Co matter the Respondent could not explain why the payment had been made from S & Co's account to the CAJ account. The Respondent did not authorise that transfer. This was a case which had been handled by a number of fee earners. The Respondent believed that an accounting error had occurred. The Respondent was dealing with six matters for CAJ at the same time as S & Co's and instructions dictated to his secretary might have become confused. The Respondent accepted that on discovery of the erroneous transfer, on 19 December 2002, when he transferred back into S & Co's account the balance of the settlement money, he failed to correct the previous payments made in error. The Respondent accepted that he did not handle the matter well when the error was discovered. When making the CAJ payments the Respondent would have relied upon the fact that there was a credit balance on that client ledger without investigating its source.

38. The Respondent had agreed with Mr S that S & Co would not have to pay costs over and above what was recovered from the other parties by way of a detailed assessment.

The detailed assessment did not recover for the client anywhere near the total costs paid to the firm. The Respondent aimed to reimburse the clients the costs which they had paid and put right the sums which had been erroneously paid out on the CAJ account. In arriving at a settlement with the firm the Respondent ensured that the payments were corrected and honoured his agreement with the client by paying the refund on fees paid over and above the assessed costs.

39. £255,000.00 had been received from CAJ Limited for damages and the costs of both sides. It remained in client account for four or five months while heads of terms were agreed. £11,000.00 had been applied to the firm's outstanding costs on other CAJ matters. The Respondent had no recollection of this. The most likely explanation was that once the accounts department had asked if they could settle outstanding bills due from these clients the Respondent did not think too hard before agreeing. However, that was only a settlement of fees due from the same clients and simply meant that in due course there would need to be an adjustment. There was no gain to the Respondent or to the firm.

40. In the matter of S, in May 2004, there had been a valuation of properties to arrive at a settlement. On the chit requesting payment, the name and matter lines had been written out by the Respondent. The rest of the form was probably completed by his secretary. The Respondent would have started to fill out the chit and signed it and then been interrupted and he asked another person to complete it. His instruction had been misinterpreted with the result that a payment had been made from the client account and not made as a nominal payment. The payee, Mr H, was a valuer used by the firm and his fees would normally have been paid out of client account. The Respondent had signed the cheque. Cheques were passed to him for signature in a bundle without chits and he would probably have been in a hurry and would have signed the cheque without reading the name of the payee. The Respondent certainly did not intentionally make a payment from this account to an unrelated party for an unrelated purpose. He was unaware of the error until he was asked about it. He had reimbursed the client. If the Respondent had acted dishonestly, he would not have chosen a file where somebody else was the main fee-earner.

41. The K matter in October 2004 occurred in similar circumstances to that of O. Funds came in from WM Co for the firm's costs. Because of pressure from the senior partner to recover outstanding fees on this case, the Respondent transferred the moneys received and applied them to pay outstanding costs of K. The Respondent knew that the result was that he would have to write off the costs on WM Co in due course, but he bought time from the senior partner's pressure. There was no other benefit to the Respondent.

42. In the matters of B and D, the Respondent received from B in about October 2003 £1300.00 for payment of a service charge on her apartment. He received the cash at the Sheffield office. He drove back to the Leeds office when he left the money in the unmanned accounts department in an envelope. That was the last time that he saw the money. The Respondent did not check that the money had been paid into B's account. The payment out from D funds was an error in the description of the client. It was possible that an instruction for payment on one matter had been confused with another because the system of chits and cheque signing meant that errors occurred. The Respondent realised that the implication of this allegation was that he stole the cash

and later tried to cover that up by paying the service charge out of another client's funds. Neither of those suggestions was true.

43. At the time of his departure from the firm the Respondent agreed with the finance partner to put right the problems that had arisen. He agreed without reservation that the monies which he had built up in the practice in his own partner's account through withheld drawings could be utilised to adjust the account balances so that clients would not appear to have outstanding debts to the firm, or be at risk of attempts to recover costs twice over. In cases where the fees of one client had been misallocated to another, leaving a shortfall, the Respondent made good the shortfall. In the case of S & Co the Respondent bore the agreed fees himself. Financially he had done everything asked of him to ensure that neither clients nor former partners had been financially disadvantaged.

44. The Tribunal was reminded that it was required to apply the highest standard of proof when considering an allegation of dishonesty. The cases considered by the Tribunal in connection with the question of dishonesty rarely required the Tribunal to consider the same points as those leading to the combined test in Twinsectra -v-Yardley. The Respondent had not been guilty of conscious impropriety. He had not deliberately acted in a way that was dishonest. He had explained how transactions had occurred, a number of them had been the result of innocent errors and in the case of O and the case of K the Respondent had used monies received by the firm in payment of its fees by one client to discharge fees payable by another client with a view to writing off the fees of the clients from whom payments had come. This did not amount to a deliberate and dishonest misuse of one client's money for the benefit of another client but rather a manipulation of the firm's own money. The Tribunal was invited to find, in the light of the background evidence and the Respondent's own explanations, that he had not acted dishonestly.

The Findings of the Tribunal

45. The Tribunal found the allegations to have been substantiated, indeed they were not contested.

46. The Tribunal had to decide whether or not the Respondent's actions amounted to dishonesty on his part.

47. The Tribunal noted that the Respondent had from early in the proceedings admitted the allegations but he had always and consistently denied the overarching allegation of dishonesty.

48. The Tribunal had been concerned to consider the issue of dishonesty having been referred to the law on this subject, hearing submissions and upon the Respondent giving evidence in the witness box.

49. The case had been put to the Tribunal by the Respondent's advocate that in four of the specific matters referred to in the FIO's report, namely S & Co., CAJ, B & S amounted to errors and that the matters of O and WM & Co were deliberate transactions where the Respondent knew what he was doing at the time. The Tribunal had given careful thought to the situation that obtained in each of these cases in order

to arrive at a decision as to whether or not it found the Respondent to be dishonest in each of the individual examples.

50. The Tribunal had concluded that the Respondent's behaviour was dishonest in the cases of O, WM & Co and S & Co. In the latter case when the Respondent discovered in December that payments had been made on behalf of CAJ from monies belonging to S & Co he did not attempt to remedy the situation and put the S & Co money back immediately. The Respondent was dishonest, that was to say he behaved with conscious impropriety, when he failed to return to S & Co the money which properly belonged to it that had been misapplied. The Tribunal also came to the conclusion in connection with O and WM & Co. The Tribunal rejected the Respondent's explanation that he considered that he was using firm's money received from CAJ to settle the firm's fees in respect of work undertaken for CAJ to settle fees in the matter of O. His explanation that he was manipulating funds belonging to the firm was undermined by the fact that he paid monies into the O client account.

51. What had transpired very simply was not reflected by the firm's bookkeeping records. JAC had paid its bill and the firm's records indicated that it had not. The firm's records recorded that O had paid its bill when it had not. Whilst the Tribunal accepted that there was no financial gain to the Respondent emanating from his action, he himself accepted that he derived a benefit in that pressure on him to collect costs was, at least temporarily, lifted. The Respondent's actions served to deceive his partners as to the true state of affairs and the bookkeeping records did not reflect the true position. That was not an honest course of action. With regard to the matter of K, the position was broadly similar to that in the matter of O. The Tribunal found dishonesty in this case for similar reasons.

52. The Tribunal found that the Respondent's actions in the matters of Band D were not dishonest. The Tribunal accepted that the payment had been made in error. Similarly in the case of B the Tribunal accepted the Respondent's explanation about leaving the money in the firm's accounts department. Clearly his handling of the cash was stupid and careless but the Tribunal accepted that he had not in this matter been dishonest and an error had occurred when the payment was made out of D funds.

53. In making a finding of dishonesty the Tribunal applied the highest standard of proof namely that it was sure. The Tribunal considered the tests for dishonesty in Twinsectra v Yardley and in Barlow Clowes and had been addressed on these matters by the advocates on both sides. The Tribunal had applied the law as it appeared to stand today.

54. In the matters of O, WM & Co and S & Co, the Tribunal found that by the standards of reasonable and honest people, the Respondent's actions were dishonest. Having heard the Respondent give evidence and having heard his explanations the Tribunal was satisfied so that it was sure that the Respondent knew at the time when he took the actions that he did in those matters, taking into account his intelligence, his experience and the fact that he was a solicitor, that he knew that he was acting dishonestly by those same standards.

The Mitigation of the Respondent

55. The Respondent recognised that the Tribunal, having made a finding of dishonesty against him, would be likely to impose a serious sanction.

56. The Respondent had been a young and relatively inexperienced solicitor at the time when he took the actions that he did. At the time of the hearing he was 38 years of age and had practised as a solicitor since qualifying in November 1993. He was a married man with two young children.

57. The Respondent had joined the firm of Ramsdens solicitors in March 2006.

58. In giving his explanations of what occurred the Respondent had explained a number of mitigating factors to the Tribunal. He had been inundated with work and responsibility whilst still a young and relatively inexperienced solicitor and he had not received the support that he might have expected from more senior members of the firm, as well as problems with his personal life.

59. The Tribunal was invited to consider the written testimonials in support of the Respondent that were handed up at the hearing. They all spoke highly of the Respondent's competence and integrity.

60. The Tribunal was invited to take into account the steps taken by the Respondent to put matters right financially and in some part this had been not only to his own detriment but to the benefit of his former partners. The Respondent had passed a six figure sum to his former partners.

61. There was no question that any client had suffered loss and, of course, the Respondent's former partners had not been financially disadvantaged. Client funds had not been put at risk.

62. It was hoped that the Tribunal would feel able to conclude that there were no public protection issues arising in this case, indeed the Respondent's testimonials included those from four satisfied clients.

63. The Tribunal was invited to consider whether it was necessary to impose the ultimate sanction or a period of suspension upon the Respondent in order to maintain the good reputation of the solicitors' profession.

64. The Tribunal was invited to take the view that in view of the particular allegations and the lack of impact that the Respondent's behaviour had upon clients this was not a case where the good reputation of the solicitors' profession demanded that the Respondent be struck off the roll.

The Tribunal's Decision

65. The Tribunal had taken into account the mitigating factors in this case. Many solicitors are subjected to considerable pressures of work, responsibility and the need to earn fees. Whilst the Tribunal recognises that such pressures are not always easy to cope with, particularly in the case of a young and in experienced solicitor, no amount

of pressure can excuse dishonest conduct. Members of the public are entitled to expect that not only client matters are dealt with properly but also that client funds are handled honestly, in accordance with the Solicitors Accounts Rules and with the solicitor exercising a proper stewardship over those funds. Any solicitor who finds himself in difficulties owing to the pressures earlier outlined must seek assistance. The Tribunal accepts that ultimately no client had suffered in any way, but they might well have done. It was clear to the Tribunal that the Respondent had not demonstrated the probity, integrity and trustworthiness required of a solicitor nor had he exercised a proper stewardship over client money. There had been serious breaches of the Solicitors Accounts Rules and a finding of dishonesty had been made against him in respect of three particular client matters. In all of the circumstances the Tribunal considered that it was both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors. The Tribunal noted that the parties had discussed the question of costs and that the Respondent had agreed to pay the Applicant's costs in the sum of £12,000.00 inclusive. The Tribunal therefore ordered the Respondent to pay the Applicant's costs in the agreed fixed sum.

66. At the conclusion of the pronouncement of the Tribunal's decision an application was made on behalf of the Respondent that the Tribunal agree to suspend the filing of its Order until a date 14 days after the filing of its written findings with The Law Society.

67. The Tribunal's usual practice was not to agree to a stay of the filing of the Order with The Law Society in cases where there had been a finding of dishonesty against the Respondent. The Tribunal had made a finding of dishonesty in this case. There was no exceptional feature in this matter. In recognition of its duty to protect the public and the good reputation of the solicitor's profession the Tribunal declined to agree to the suspension of the effect of the Order. It was pointed out that the Respondent could make an appropriate application to the High Court.

Dated this 8th day of November 2007
On behalf of the Tribunal

Mr D J Leverton
Chairman