No. 9888-2008

IN THE MATTER OF COLIN JOHN TURNER, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date of Hearing: 9th July 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by David Elwyn Barton of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX on 31st January 2008 that Colin John Turner, solicitor of 59 Charlotte Street, Birmingham, West Midlands, B3 1PZ 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.

The allegations are that he had been guilty of conduct unbefitting a solicitor in each of the following respects namely:

(a) being the sole principal of his said practice he had been in breach of Rule 5(1) of the Solicitors Financial Services (Scope) Rules 2001;

(b) he had failed to supervise and manage his practice in breach of Rule 13 of the Solicitors Practice Rules 1990;

(c) he had failed to reply promptly or at all to correspondence and other communications from the Society;

(d) he had failed to comply with directions of the Adjudicator dated the 22nd March 2007 and had thereby compromised or impaired his good repute and that of the solicitors' profession in breach of Rule 1(d) of the Solicitors Practice Rules 1990;

(e) he had failed to arrange professional indemnity insurance for the practice year 2006/2007 in accordance with the requirements of the Solicitors Indemnity Insurance Rules 2006.

First Supplementary Statement

(f) contrary to Rule 1(c) of the Solicitors Practice Rules 1990 he had failed to act in the best interests of his client;

(g) contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 he failed to deal with the Solicitors Regulation Authority and the Legal Complaints Service in an open, prompt and cooperative way;

Second Supplementary Statement

(h) contrary to Rule 22 of the Solicitors' Accounts Rules 1998 he had improperly withdrawn money from his client account and utilised it for his own purposes. In doing so the Respondent had been dishonest;

(i) he practised as a solicitor without there being in force a certificate issued by The Law Society in accordance with the provisions of Part 1 of the Solicitors Act 1974, contrary to Section 1(A) of the said Act;

(j) contrary to Solicitors Indemnity Insurance Rules 2006 he practised as a solicitor during the practice year 2006/2007 having failed to take out and maintain qualifying insurance.

(k) contrary to Rule 23(3) of the Solicitors Accounts Rules 1998 he transferred money in respect of costs to an account other than his office or personal account;

(l) he wrongly described and charged telegraphic transfer fees as disbursements when they contained a proportion of profit costs, thereby misleading his clients;

(m) he failed to deliver his Accountants Report for the period 1st April 2006 to 31st March 2007, due by 1st October 2007;

(n) he failed to comply with a direction made by the Authority made under Section 44(B) of the Solicitors Act 1974 requiring him to deliver to the Authority a client matter file, thereby breaching Rule 20.03 of the Solicitors Code of Conduct 2007 which required him to deal with the Authority and the Legal Complaints Service in an open, prompt and cooperative way.

Third Supplementary Statement

(o) that he failed to comply with an undertaking dated 9th January 2007 given to Pattmans solicitors.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th July 2008 when David Elwyn Barton appeared as the Applicant and Mr Neil Davies, solicitor, appeared for the Respondent.

The evidence before the Tribunal included the Rule 5 Statement, exhibits and evidence of Mr Turner.

The Applicant had included with the second supplementary statement, allegation (J), a duplication of allegation (e), which was withdrawn before the Tribunal with their agreement.

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

The Tribunal Orders that the Respondent, Colin John Turner of 59 Charlotte Street, St Paul`s Square, Birmingham, B3 1PZ, 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 £9,874.47

The facts are set out in paragraphs 1 to 48 hereunder:

1. The Respondent, born in 1946, was admitted as a solicitor in 1973 and his name remained on the Roll of Solicitors.

2. At all material times the Respondent was carrying on practice under the style of Turner and Co of 59 Charlotte Street, Birmingham, West Midlands, BP3 1PX.

3. On 1st September 2005 an Investment Business Officer (IBO) employed by The Law Society commenced a supervision visit at the Respondent's office. The visit took place on three days and was concluded on 8th September 2005 following which a report was prepared. The IBO's report was prepared following The Law Society receiving a complaint from a Mr and Mrs S who had instructed the firm in relation to a property transaction. They had engaged the services of the firm in February 2003 whilst they were in the process of buying a property in France. During the course of their dealings with the firm they were advised by an unadmitted member of staff, Mr Peter Vaughan, who worked on a part time basis between October 1999 and July 2003.

4. The IBO's Report explained that as from 1st December 2001 the Financial Services and Markets Acts 2000 ("FSMA 2000") came into force. Under the FSMA 2000 firms carrying on mainstream "regulated activities" as defined by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) needed to be directly authorised by the Financial Services Authority. Turner & Co was authorised to conduct non-discrete investment business by The Law Society until 30th November 2001. Firms of solicitors which were not authorised by the Financial Services Authority had to comply with the Solicitors Financial Services (Scope) Rules 2001 (the Scope Rules) made under Section 332(3) of the FSMA 2000. Turner & Co was authorised by The Law Society to conduct activities only falling within the Scope Rules.

5. At the time of the visit in September 2005 the firm explained that it was Turner & Co's policy to avoid any mainstream investment business which required

authorisation from the Financial Services Authority and instead to conduct only exempt regulated activities. The main incidental investment business work that the firm conducted was arranging general insurance in the form of indemnity policies in conveyancing matters.

6. The firm had also received a Law Society monitoring visit on 13th December 2000 in relation to its investment business. The firm was at the time conducting non-discrete investment business. As a result of the previous visit the firm should have been aware of the compliance requirements and areas of work likely to involve mainstream investment business for which FSA authorisation was required.

7. The purpose of the visit conducted on 1st September 2005 was to establish the nature of any incidental investment business being undertaken by the firm and to clarify the nature of the complaint from Mr and Mrs S.

8. The Respondent advised the IBO that 50% of the work carried out by the firm consisted of French property work which came from exhibitions run by the French Property News. The Respondent explained that approximately 30 firms in the UK conducted this type of work. He went on to explain that a Notaire was a self employed representative of the French Government appointed exclusively to deal with matters of property transfer and a number of other legal matters. A Notaire did not owe a duty of care to the vendor nor to the purchaser as he/she was "independent" and would simply carry out the sale/purchase in accordance with what was stated within the contract agreed between the parties. In general the Notaire was appointed by the vendor and Turner & Co provided independent legal assistance regarding the initial contract, succession rules in France, inheritance tax and completion. Turner & Co also employed the services of a second Notaire at no extra charge to the client. The second Notaire was employed as an extra layer of protection. He liaised with the first Notaire throughout the transaction and prepared reports on the contract etc.

9. The Respondent advised the IBO that the firm provided a fixed price package and that the fees were paid up front by the client into the firm's client account. An interim bill was raised in the middle of the transaction and at the final stage. When the bills had been submitted to the clients the money was then transferred from the client account to the office account. Completion took place either in person or by proxy and the completion money was paid direct by the client into the Notaire's bank account approximately seven working days before completion. After completion the Notaire would provide the clients with an "attestation" which was a declaration of ownership and which served as legal title. The Notaire would then publish the title and, depending on the Département of France where the property was located, the purchaser would receive the title deeds between three to fifteen months after completion.

10. Mr and Mrs S had complained to The Law Society in respect of the advice that they had received in 2003 from Peter Vaughan at Turner & Co. He was an unadmitted member of staff. The firm also employed Mr Vaughan's wife, Marylisse Vaughan from 1st October 1999 to 31st August 2003. Mr Vaughan had approached the Respondent explaining that the firm of solicitors that he was working for had decided to cease trading and he proposed to the Respondent that he should employ Mr Vaughan and his wife because of their French connections and their knowledge of the French property market. They were subsequently both employed at Turner & Co and Peter Vaughan's role was to assist at French property exhibitions and to assist with the

obtaining of new instructions from British clients who wanted to buy property in France. For the balance of his time Mr Vaughan was understood to have worked on his own account with builders in France, banks and mortgage providers. Mrs Vaughan was employed to carry out legal work in the French property purchases.

11. Mr and Mrs S's complaint was that they had been wrongly advised by Peter Vaughan to take out a French mortgage which was not suitable for them and they had not been informed of the total costs that they would have to bear. Mr S explained to The Law Society that he returned from France on 1st February 2003 after finding a property to purchase and employed the services of Turner and Co seeing their advertisement on the internet. Mr and Mrs S explained that they had a mortgage in place with the Royal Bank of Scotland. Peter Vaughan advised them to borrow the money in France saying that it would be a cheaper option. Mr and Mrs S complained that they were not informed of the additional charges and costs involved in setting up such finance and it proved to be very expensive compared with their original plan to obtain a mortgage with Royal Bank of Scotland. Mr S stated that he was able to make contact with the Respondent only after numerous attempts.

12. The Law Society wrote to the Respondent regarding the complaint on 27th July 2004, 3rd September 2004 and 18th October 2004 but the Respondent did not respond. Mr Turner was then advised that having failed to provide an explanation in respect of the matter affecting his conduct and having failed to give sufficient and satisfactory explanation a discretion would be vested in The Law Society with respect of the issue of his next practising certificate.

13. On 22nd November 2004 the Law Society wrote to Mr Turner advising him that under the provisions of Section 44b of the Solicitors Act 1974 (as amended) they were satisfied that they needed to examine the documents in the firm's possession relating to Mr and Mrs S's matter and accordingly requested the firm to deliver up such documents within seven days of the letter to which Mr Turner again did not respond.

14. Mr and Mrs S instructed another firm of solicitors in Kidderminster in relation to their matter and that firm wrote to Turner & Co on a number of occasions including 16th June 2004, 13th July 2004, 18th August 2004 and 22nd September 2004 requesting the transfer of the file of papers. Turner & Co forwarded the file of papers to Mr & Mrs S's new representatives on 7th January 2005 which was in turn then forwarded to the Law Society.

15. Consideration of the file of papers indicated that Peter Vaughan advised Mr and Mrs S to take out a French endowment type of mortgage (an "Assurance Vie" Bond) through a firm called Entenial.

16. A letter dated 18th February 2003 from Entenial to Mr and Mrs S stated:

> "further to your discussion with Peter Vaughan I have pleasure in enclosing a simulation concerning the placing of €145,000.00 in the above mentioned type of contract."

which was an "Assurance Vie".

17. The letter also highlighted the advantages of an "Assurance Vie" explaining that it seeks "to limit the amount of money you put into the investment and in order to maximise your tax position it's in your interest to deposit 45% of the purchase price in an investment bond. This is known in France as an "Assurance Vie", the bond is linked to the Euro and not the stock market. The deposit over a period of 15 years and achieving an average growth of 4.65%, will double. The bond value is calculated on a compounded basis so that you know the value of the bond at any time. The bond last year produced in excess of 5%".

Allegation (a)

Solicitors Financial Services (Scope) Rules 2001

18. Mr and Mrs S had written to the Respondent on 30th July 2003 in which they explained that "we already had the money in place to finance the purchase, which we planned to pay off as soon as our house in England was sold, but on his advice we agreed to a loan being arranged with Entenial as a cheaper and tax efficient way to purchase the property". Mr S went on to explain that they were not advised about the extra charges involved such as commission and the set up charge, an earlier repayment of 3%, life insurance premiums and "fran de la presents operation" of €11, 570.00.

19. The Respondent had explained that Peter Vaughan had been under strict instructions not to do any investment business work and that a strict term of his employment was that he would not sell any mortgages or any investments to any clients of Turner & Co and that such sales would only be made to third parties through his builder contacts and had nothing to do with the firm. When the Respondent was asked by the IBO whether or not the loan that had been agreed had been completely unsuitable for Mr and Mrs S, the Respondent explained that they had already arranged a mortgage with the Royal Bank of Scotland and perhaps Peter Vaughan had arranged the French mortgage because it was more cost effective but he did not know. The Respondent had to concede that Peter Vaughan had acted in a conveyancing transaction and had also provided advice on the funding of the property purchase which had in investment element to it.

20. The Respondent explained that he was not aware that Peter Vaughan was advising on or arranging investments for clients of Turner & Co. The Respondent told the IBO that he had had to threaten Peter Vaughan on a number of occasions that he would be dismissed if he gave any investment advice to clients of Turner & Co. When asked why the Respondent had felt it necessary to threaten Peter Vaughan in this way, he explained he had been aware that Peter Vaughan did work for Entenial and would often be seen talking to personnel from Entenial at French property exhibitions.

21. The Law Society's Investment's Business Officer inspected a total of 40 of Peter Vaughan's files during the visit and found no other direct evidence of Peter Vaughan having advised on or arranged any investments but a number of the files made reference to mortgage to Entenial.

22. The Respondent said that he felt that he had adequately supervised Peter Vaughan. He said it was Marylisse Vaughan who was responsible for doing all the technical work on the files and Peter Vaughan was acting almost as a translator most of the time,

taking instructions, getting documents signed and liaised with clients about the progress of any transactions. The Respondent explained that he would only check the files if any of the fee earners had queries, but otherwise he would not check the files. The Respondent went on to confirm that he did not conduct any regular checks on fee earners files.

23. The IBO considered the complaint by Mr and Mrs S in accordance with the Solicitors Financial Services (Scope) Rules 2001. It was clear from the file that Peter Vaughan had advised on and arranged for the clients to invest in the "Assurance Vie".

24. Turner and Co was in breach of Rule 5 (1) of the Solicitors Financial Services (Scope) Rules 2001 which stated that "a firm must not recommend or make arrangements for, a client to buy any packaged product except where;

    (a) recommending, or arranging for a client to buy a packaged product by means of an assignment".

    The Scope Rules define a packaged product as "a life policy, a unit or share in a regulated collective investment scheme or an investment trust saving scheme whether or not held within an ISA or PEP or a stakeholder pension scheme". A life policy is defined as a "long term insurance contract" the meaning of which is given in part 2 of schedule 1 to the Financial Services and Markets Act (regulated activity) Order 2001. The "Assurance Vie" arranged for Mr and Mrs S, fell within the definition.

    Allegation (b)

    Solicitors Practice Rules 1990

    Practice Rule 13 - Supervision and Management of a Practice

25. Practice Rule 13 was explained to the Respondent and it was put to him that he had not adequately supervised Peter Vaughan's work. The Respondent had indicated that he only ever examined Peter Vaughan's files if there were queries regarding them. Inspections of Peter Vaughan's files on a regular basis in compliance with Practice Rule 13 (1)(E) had not been conducted by the Respondent.

    Allegations (c) and (d)

    Complaint by Mrs BD

26. Turner & Co was instructed by Mr and Mrs BD in 2001 in respect of the purchase of a property in France. They met Peter Vaughan who advised them for tax reasons to form a "*société civile immobilière"* (SCI) a company established under French law which would then purchase properties in its name. Mr and Mrs BD purchased two properties. In 2005 they decided to sell one of the properties. In doing so they discovered that it had not been placed within the SCI but had been purchased in their own names.

27. Mr and Mrs BD subsequently met the Respondent who explained that he had no idea why the property had not been placed within the SCI. He said it had not been

necessary to set up the SCI in any event. He offered to refund their costs and find out the costs of winding up the SCI. He did not do this although subsequently he offered through the Consumer Complaints Service to refund £1,000.00 plus VAT to conciliate the matter. That offer was accepted by Mr and Mrs BD but despite substantial efforts on the part of the Consumer Complaints Service the Respondent had not made the payment.

28. An Adjudicator of the Law Society on 22nd March 2007 found that the services provided by Turner & Co had been inadequate in that it had failed to follow Mr and Mrs BD's instructions to place the property in an SCI and had failed to advise them properly about the SCI. The firm had not dealt promptly or at all with Mr and Mrs BD's complaints and the firm not complied with a conciliated settlement of the matter. The Adjudicator noted that the firm's costs for acting in connection with the formation of the SCI was £1,500 plus VAT and directed that the firm reduce those costs to nil and refund the entire £1,500 plus VAT to the clients. The Adjudicator further directed the firm to pay Mr and Mrs BD the sum of £1,500 compensation and further directed the firm to limit its costs to nil and make a refund to Mr and Mrs BD.

29. The firm was required to carry out the Adjudicator's directions within seven days. It did not.

Allegation (e)

The Solicitors Indemnity Insurance Rules 2006

30. On 14th February 2007 the Law Society wrote to the Respondent explaining that it had not received details of his qualifying indemnity insurance for the period commencing 1st October 2006. He was requested to confirm in writing the name of the qualifying insurers the policy number and the policy start and end date. A further letter was sent on 7th March 2007. Telephone calls were made by The Law Society to the Respondent's office on 24th April 2007, 2nd May 2007 and 15th May 2007 advising the Respondent of his indemnity insurance obligations. A further letter was sent on 13th June 2007. No satisfactory reply was received.

31. The Respondent had explained to the FIO that he had previously defaulted in paying his professional indemnity premiums for the year 2005/2006 and following the expiry of his indemnity cover he had failed to obtain professional indemnity insurance for the year 2006/2007. He had not made arrangements to enter the Assigned Risks Pool.

Allegations (f) and (g)

Complaint by Miss BS

32. On 22nd December 2006, Ms BS, instructed the Respondent in connection with the sale and purchase of property in France. She emailed the firm on 18th January 2007, 19th January 2007, 22nd January 2007, 8th February 2007, 16th March 2007, 12th April 2007 and 16th April 2007 asking if the contract had been sorted out and the exact current legal position. On 19th January 2007, 22nd January 2007, 29th March 2007 and 13th April 2007 the firm responded explaining that the Respondent was not available and that he would contact her upon his return to the office. Ms BS did not receive a reply except in the case of the email to Miss BS, dated 29th March 2007, in which the

Respondent explained that he had spoken to the associates in France and that there was a delay in the preparation of the contracts but draft contracts would be available in 10 days.

33. In her complaint to the Law Society dated 13th April 2007 Miss BS explained that she had instructed the firm before Christmas to produce the contracts and its failure to do so or identify a date when the contract would be ready resulted in her sustaining heavy financial losses as she could not legally work in France without them. Miss BS explained that she had been given the impression that the matter would take six weeks to complete but that she had received nothing from the firm and she had been given no estimates for the amount of time it would take for the matter to be completed. She had been none the wiser after six months.

34. On 26th April 2007 Miss BS emailed the firm addressing enquiries to the Respondent explaining that she had telephoned the office the day before and on 26th April 2007 but that she had not been able to get through. She explained the urgency of the matter. Information was not provided .

35. On 16th May 2007 the Law Society wrote to the Respondent about Miss BS's complaint. On 7th January 2008 the Solicitors Regulation Authority ("SRA") wrote to the Respondent explaining that it had received a referral from the Legal Complaints Service in relation to the complaint by Miss BS, and the Respondent was referred to Rule 1.04, (dealing with the best interest of the client) and the Respondent was requested to provide his response. He did not. The SRA told the Respondent on 21st January 2008 that he ran the risk of disciplinary proceedings if he did not respond.

36. On 29th January 2008 the Respondent's representatives wrote to the SRA seeking further time to reply. An extension was granted to 28th February 2008. No reply was forthcoming.

Second Supplementary Statement

Allegation (h)

Breach of Rule 22 Solicitors Accounts Rules 1998

37. A Forensic Investigation Officer ("FIO") of the Law Society visited the Respondent's firm. His investigation commenced on 30th July 2007. The FIO's Report dated 7th January 2008 was before the Tribunal.

38. The FIO's Report recorded that the Respondent had been adjudicated bankrupt on 15th April 2007. The Bankruptcy Order was stayed until 2nd August 2007 when the Respondent made an application for an annulment which was unsuccessful.

39. The Report considered the bank accounts held by the firm, the books of account and the firm's liabilities to clients. A cash shortage of £455.41 was identified. Payments preferring creditors appeared to have been made. The Respondent had made a secret profit when charging to clients for bank telegraphic transfers.

40. As at 30th June 2007 the books of account were not in compliance with the Solicitors Accounts Rules 1998. A cash shortage of £455.41 existed on the client bank account in respect of liabilities not shown by the books of account. The firm's accounting year end was the 31st March 2007. The firm had raised 11 invoices during April 2007 in what appeared to be concluded matters.

41. The FIO noted that 11 conveyancing matters had been concluded up to 50 months previously where credit balances varying from £66 to £27.43 and totalling £455.41 had remained in client bank account following completion. In April 2007 the firm had raised invoices inclusive of VAT, in respect of the client credit balances which appeared to be dormant and transferred the total sum of 455.41 from client to office bank account. The Respondent had not provided a justification for these invoices to the FIO. The Respondent agreed that the files did not indicate that the clients had been advised that additional costs would be incurred. No further work after the conclusion of the matter appeared to have been carried out. It was specifically put to the Respondent that the transferring of funds from client to office bank account against such fictitious invoices was dishonest. The Respondent had replied, "there was certainly no intention to be dishonest, whilst it breaches Rule 15 and Solicitors Accounts Rules 22 clearing off small balances is not uncommon".

Allegation (i)

Practising Certificate

42. The Respondent had been adjudicated bankrupt at the Birmingham County Court on 19th April 2007 and as a result his practising certificate was automatically suspended. The Respondent continued to practise from that date. The Respondent had made an application for his bankruptcy to be annulled. A hearing took place on 2nd August 2007 at which the Respondent was unsuccessful.

Allegation (k)

Transfers from Client Account

43. The FIO noted that the Respondent had made irregular transfers (apparently representing costs) from client bank account to a firm of accountants which were then to be paid on to a third party. The Respondent explained that he had to do this to pay salaries and other payments to continue trading as his office account had been frozen.

Allegation (l)

Charges to clients for telegraphic transfers

44. In his client care letter sent to conveyancing clients under the heading "Disbursements" the Respondent said that bank charges for telegraphic transfers were £30.00 plus VAT. The FIO noted that on a number of the firm's invoices it was standard practice for the firm to charge clients for telegraphic transfers as a disbursement. The charge made by the bank to the firm for such transfers was £20. As a result the firm made a profit of £10. This was not explained to the client. Invoices delivered to 14 clients for the period 1st July 2006 to 30th June 2007 included

disbursements relating to telegraphic transfers which totalled £660. One third of this, £220 was profit to the firm.

Allegation (m)

Accountant's Report

45. The Respondent did not deliver an Accountant's Report for the period 1st April 2006 to 31st March 2007.

Allegation (n)

Direction made by the Authority

46. Mr H had made complaint to The Law Society about the Respondent. The LCS wrote to the Respondent on 18th January 2007 and on 12th February 2007, requesting him to produce the file. The Respondent did not reply.

Allegation (o)

Undertaking

47. The Respondent gave an undertaking dated 9th January 2007 to Pattmans Solicitors, saying:

> "with regard to the question of consent to the assignment please accept this letter as our formal undertaking to discharge the outstanding ground rent on completion. Please also accept this letter as our undertaking to discharge the outstanding service charge as shown on the recent statement".

Pattmans Solicitors complained that the undertaking had not been complied with. On 14th January 2008 the SRA wrote to the Respondent about his failure to comply with the undertaking. In the absence of a reply a further letter was written on 2nd April 2008 to the Respondent's solicitors.

48. On 4th April 2008 the Respondent's solicitor explained that as he was in bankruptcy he did not have the "ability or obligation (subject to anything you may have to say to the contrary) to pay the relatively small amounts referred to in the alleged breach of undertaking."

Preliminary matter

49. The third supplementary statement had been put in only the month before the substantive hearing and Mr Barton requested the Tribunal to find that there was a prima facie case. The Tribunal accepted this and took into account that the Respondent himself had consented for the third supplementary statement being put in late. The Tribunal endorsed the third supplementary statement as disclosing a prima facie case.

The Submissions of the Applicant

50. The Respondent indicated from the outset that he admitted all of the allegations except the allegation that he dishonestly and improperly withdrew money from his client account and utilised it for his own purposes.

Allegations (a), (b) and (c)

51. Mr and Mrs S's transaction was conducted by Mr Peter Vaughan, the Respondent's employee. The Respondent was responsible as the principal for the work undertaken by him. The lack of supervision in this particular case took the matter beyond liability as principal and constituted conduct unbefitting a solicitor. The Respondent had inadequately supervised Peter Vaughan. He only examined files when questions were specifically raised by clients, otherwise he did not conduct any regular inspection of Mr Vaughan's files.

Allegations (c) and (d)

52. On 22nd March 2007 an Adjudicator of the Law Society made a finding that the Respondent had provided an inadequate professional service to Mr and Mrs BD and the Adjudicator directed that the Respondent pay Mr and Mrs Davies £1,500 compensation and in addition refund fees of £1,500 plus VAT. The Respondent did not comply within the required seven days. At the date of the substantive hearing these payments had been met from the Law Society's Compensation Fund.

Allegation (e)

53. The Respondent provided no evidence to demonstrate that he had taken out and maintained his qualifying indemnity insurance for the period 2006/2007.

Allegations (f) and (g)

54. Ms S had complained about the Respondent's failure to reply to communications and of poor service. She had paid the Respondent a sum of money on account of her costs and despite her complaining directly to the Respondent no explanation was provided and her letters remained unanswered. She had not received satisfactory explanations from the Respondent even after the intervention of the Law Society.

Allegation (h)

55. With regard to the "clearing off" of small client credit balance, it was submitted, that the size of the transfers whilst modest, was not the issue but the principle and ownership of the money was key. The withdrawals of the monies without the client's permission amounted not only to a breach of the Rules, but amounted to a dishonest taking of client money by the Respondent. He accepted the facts but denied that he had been dishonest.

56. The Tribunal's attention was then drawn to the case law surrounding the issue of dishonesty and the Tribunal was specifically asked to consider the guidance as

expressed by Lord Hutton in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, in which the Tribunal had to consider that:

> "Before there can be a finding of dishonesty it must be established that the Defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

The Tribunal in applying that two part test was invited to find that in making the transfers as he did, the Respondent had been dishonest.

Allegation (k)

57. This was admitted by the Respondent.

The Submissions of the Respondent

58. The Respondent admitted all of the allegations, bar the dishonesty allegation.

59. The Respondent's representative explained that things had got out of control and that was the reason that the Respondent found himself in the situation that he did. He sought to impress upon the Tribunal that the Respondent did not wish to practise again. He was currently working subject to conditions on his practising certificate. He accepted that he had suffered problems and made it clear to the Tribunal that he did not wish to return to partnership.

60. The Respondent qualified in 1973 and between 1985 and 1992 worked with a firm consisting of eleven partners and 100 staff where his role was as a senior managing partner. In 1995 he moved to another firm as a salaried partner. He left in 1997 and set up Turner & Co in the centre of Birmingham. Over the first three years he traded profitably but between 2003 and 2004 the business deteriorated, despite having moved to larger premises.

61. The Respondent's wife was diagnosed with a serious illness in late 2001. The Respondent found the effect devastating and consequently was unable to commit as much time to the practice as it needed. He suffered a psychological reaction to his wife's illness and effectively "took his eye off the ball"

62. The Respondent sought to impress upon the Tribunal that he wanted to bring these disciplinary matters to a close and admitted bringing the profession into disrepute but denied the dishonesty allegation. The Respondent thought that he could trade through the problems that his practice was suffering and he needed to continue to work particularly as there were long-serving staff members, some of them he had worked with since 1997.

63. The Respondent was specifically asked by his solicitor whether or not he thought his own conduct was dishonest. He denied that he thought he had been dishonest. The Respondent explained to the Tribunal that he completely trusted the information and guidance that was provided to him by his accountant and that the small client credit balances could be written off in the way that he did.

64. The Respondent relied on guidance from his accountant, whom he had known since his time as a senior partner. The accountant understood that it was usual practice for the balances to be rounded up at the end of the year. The Respondent trusted his accountant implicitly. The accountant had produced a list of client balances and recommended that those matters were now billed.

65 The Respondent was asked by the Tribunal why he felt it appropriate to rely on the guidance from his accountant. He explained that he felt able to rely on the instruction from his accountant as he was very precise and he genuinely believed that the monies belonged to the practice and his decision to treat those monies in the way that he did was not a major issue. The accountant dealt with the raising of the invoices and the Respondent merely signed them off.

66. The Respondent explained that having been made bankrupt with debts of £100,000 he did not regard the sums involved, totalling of £455, would make any difference at all to the practice in the scheme of things. He explained that he was made bankrupt on 19th April 2007 and consequently his mind was "all over the place". The invoices went out in April 2007 in preparation for an audit and he thought no more about the matter.

67. In reply to the Applicant's questions about this issue, the Respondent confirmed that his explanation about the accountant's involvement had never been explained to the Law Society. The invoices were raised in the eleven matters purely as a way of clearing off the balances and the Respondent explained that he believed that the monies could be dealt with in this way, particularly as they all related to completed transactions and in reliance on the guidance he received from his accountant. He genuinely thought that the work had legitimately been carried out on the files and consequently the balances could be cleared in the way that they were.

68. The Tribunal specifically asked the Respondent to explain how, if the amounts on the eleven invoices were different, did they all relate to work done. The Respondent explained that he understood that all the balances related to work done and the clearing of those small balances could be transferred as the accountant had indicated.

Previous Findings

69. The Tribunal considered a previous Finding under reference 9564/2006 in which he was found to have been guilty of conduct unbefitting a solicitor in each of the following respect, namely:-

(a) He failed to comply with a professional undertaking within a reasonable time;

(b) He failed to reply promptly to correspondence from The Law Society;

(c) He failed to comply fully with the terms of a direction made by the Society under Section 44B of the Solicitor Act 1974.

In each case compromising or impairing his good repute contrary to Rule 1 of the Solicitors Practice Rules 1990.

70. By a supplementary statement dated 12th January 2007 it was alleged that Mr Turner had been guilty of conduct unbefitting a solicitor:-

D Having failed to comply with a direction of the Adjudicator dated 17th November 2006 which required him to pay the sum of £650.00 in compensation and costs refund;

71. By a second supplementary statement dated 26th March 2007 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor:-

E Having failed to comply with a direction of the Adjudicator dated 20th December 2006 which required him to pay the sum of £350.00 in compensation to a former client.

72. The application was heard on 27th March 2007 and following admissions by The Respondent in respect of all of the allegations the Tribunal Ordered that The Respondent pay a fine of £5,500.00 and that he pay the costs in the sum of £3,812.82.

73. On 27th March 2007 the Tribunal said:-

> "The Respondent had buried his head in the sand. The Respondent had attributed this to staffing problems and his wife's illness. The Tribunal had to be certain that the misconduct would not reoccur but had received assurances from the Respondent that the situation had now improved and that the outstanding matters would be dealt with. The Respondent had not previously appeared before the Tribunal and the Tribunal felt able to accept his assurance that he would deal promptly with matters in the future. The Tribunal would therefore impose a financial penalty.
>
> The Respondent's failure to comply with the directions of the Adjudicators remained however a matter of serious concern. Clients were involved. The Tribunal would give the Respondent a further 28 days within which to comply with the directions, failing which he would be suspended from practice for an indefinite period. The Tribunal would also grant the enforcement orders sought by the Applicant and order the Respondent to pay the Applicant's agreed costs."

The Findings of the Tribunal

74. The Tribunal gave in depth consideration to the facts in this case and particularly in relation to the one disputed allegation that the Respondent had improperly withdrawn money from his client account and utilised it for his own purposes and in doing so had been dishonest. The Tribunal found that there had been dishonesty, under the guidelines of the Twinsectra case, namely that the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondent knew that what he was doing was dishonest by those same standards.

75. This was a case where the Tribunal regarded the Respondent as having taken his eye off the ball. He relied heavily on his accountant in advising him about the manner in

which the relatively small sums of monies should be dealt with but importantly he did not look with sufficient care into what those outstanding monies related to and consequently had no regard for how they should be dealt with. The Tribunal noted that the Respondent had been made bankrupt and his wife had been suffering from leukaemia. He had undoubtedly suffered a considerable period of stress through personal and professional issues. However the public needed to be protected and the confidence of the profession had to be retained. The Tribunal recognised that he Respondent had held senior positions but the need to protect the public and maintain the reputation of the profession was paramount. The Tribunal regarded the Respondent's decision to treat the monies in the way that he had as was unsatisfactory and they were particularly concerned that he maintained that he was entitled to treat the monies in the way that he did.

76. The Tribunal noted with concern the following matters. The Respondent repeatedly claimed that he had merely relied on the instructions given to him by the accountant and as a result he had acted accordingly by clearing the balances. The Tribunal were most concerned by this explanation. The Respondent was an experienced solicitor having spent many years as a partner in firms of varying sizes. He had been a sole practitioner and had also held the post of managing partner. The Tribunal found his explanation that he had merely been following the accountant's advice as unconvincing. Whatever instructions the accountant had given him it was nevertheless the responsibility of the Respondent to treat those monies balances in accordance with the Solicitors Accounts Rules, which he had failed to do.

77. Before the Tribunal the Respondent appeared to be a reluctant witness, giving his evidence in what the Tribunal regarded as being a less than frank manner. The Respondent was asked directly what the monies transferred related to and he was unable to explain. The Tribunal noted that the accountant, who could perhaps have cleared up a significant amount in respect of the Respondent's conduct, did not attend the hearing to give evidence and did not provide a statement in support of the Respondent. The Respondent did not meet a number of important requirements of practice as a solicitor and treated his professional regulator with disdain. In apparently abdicating his responsibility as a solicitor for punctilious compliance with the Solicitors Accounts Rules and his failure to exercise a proper stewardship of client funds entrusted to him the Tribunal took the view that the Respondent was not fit to be a solicitor. In order to protect the public and the good reputation of the solicitors' profession the Tribunal considered that it was both appropriate and proportionate to impose the ultimate sanction upon the Respondent and that he should pay the costs of and incidental to the application and enquiry.

78. The Tribunal Ordered that the Respondent be Struck Off the Roll of Solicitors and further Ordered that he pays the costs in the sum of £9,874.47.

Dated this 15th day of January 2009
On behalf of the Tribunal

Mr D Glass
Chairman