

IN THE MATTER OF DAVID JOHN CHRISTENSEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)
Mr A Gaynor-Smith
Mr M C Baughan

Date of Hearing: 7th June 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 Michael Robin Havard, solicitor of Morgan Cole Solicitors of Bradley Court, Park Place, Cardiff, CF10 3DP on 14th July 2006 that David John Christensen of J V Vobe & Co Solicitors, Clinton House, High Street, Coleshill, Birmingham B46 3BP solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order should be made as the Tribunal should think right.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor and/or, where stipulated, in breach of the Solicitors Practice Rules 1990 and the Solicitors Accounts Rules 1998 in each of the following respects namely that:-

1. He conducted himself in a manner that was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990.
2. He conducted himself in a manner which was likely to compromise or impair his duty to act in the best interests of the client contrary to Rule 1(c) of the Solicitors Practice Rules 1990.

3. He conducted himself in a manner which was likely to compromise or impair the good repute of the Solicitors' profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990.
4. He transferred monies from client account to office account in respect of costs in excess of the amounts properly due in breach of Rule 19 of the Solicitors' Accounts Rules 1998.
5. He withdrew monies from client account, otherwise than is permitted by Rule 22 of the Solicitors' Accounts Rules 1998, leading to a cash shortage.
6. Following the withdrawal of monies from client account leading to a cash shortage, he failed to remedy promptly the consequent breach of Rule 22, contrary to Rule 7 of the Solicitors' Accounts Rules 1998.
7. He acted on behalf of clients when his own interests conflicted with the interests of his clients.
8. He acted dishonestly.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 7th June 2007 when Michael Robin Havard appeared as the Applicant and the Respondent was represented by Gerald Malcolm Lynch solicitor of Drysdales solicitors of Cumberland House, 24/28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ.

The evidence before the Tribunal included the admissions of the Respondent to allegations 4 to 7. During the hearing a letter dated 1st February 2007 from Lord G to the Applicant was handed to the Tribunal by the Applicant. A bundle of testimonials in support of the Respondent was handed to the Tribunal on behalf of the Respondent. Ms Seager and the Respondent gave oral evidence.

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

The Tribunal Orders that the Respondent, David John Christensen of J V Vobe & Co Solicitors, Clinton House, High Street, Coleshill, Birmingham, B46 3BP, 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 - 29 hereunder:-

1. The Respondent born in 1940 was admitted as a solicitor in 1967.
2. At the material time the Respondent practiced as a sole practitioner under the style of J V Vobe & Co at Clinton House, High Street, Coleshill, Birmingham B46 3BP. The Respondent was now a consultant to that practice.
3. An inspection of the books of account and other documents of the Respondent's practice was undertaken by an investigation officer at the Respondent's offices

commencing on 6th May 2005. A copy of the resulting report dated 8th August 2005 was before the Tribunal. The report noted the matters set out below:-

Cash Shortage

4. As at 31st March 2005 the investigation officer identified a client account shortage of £33,312.79. The report indicated that the cause of the cash shortage related to the misuse of money held for the Respondent's client Mr JT. Initially it related to acting for JT in the sale of land owned by him to CC Limited at the conclusion of which the Respondent agreed to hold £72,135.00 in an Escrow account. As at 31st March 2005 however only £1,904.21 was held in that account and the Respondent's client JT was not aware of that state of affairs.
5. It was not suggested in the report that the difference between the balance of monies originally held in the Escrow account and the remaining sum of £1,904.21 represented a client account shortage. £20,000 had been returned to the client at his request and the Respondent had borrowed £12,000 with the agreement of his client. A further sum of £4,917.30 was owed by solicitors acting on another matter and had been deducted from the balance with the client's agreement. Deducting those figures and the amount remaining in the Escrow account from the original sum left a shortage of £33,312.79.
6. The investigation officer attempted to understand how that cash shortage had arisen. By reference to three transactions she was able to identify £26,871.58 of the cash shortage. However she noted in her report that as a consequence of the large number of transfers between various client ledger accounts of JT and the lack of a consistent and full explanation from the Respondent it was not possible to account for the balance. The three transactions are summarised below.

Sale of land to CC Limited

7. Completion took place on 7th April 2003 and as stated above the sum of £72,135.00 was to be held in Escrow but as at 31st March 2005 only £1,904.21 was held in the Escrow account.
8. Whilst the statement of account did not detail any costs claimed by the Respondent a bill dated 8th April 2003 was raised for £17,625.00. A copy of the bill was not found on the file but was provided by the accountants of JT during the inspection. The Respondent subsequently sent to the investigation officer a number of invoices under cover of his letter of 15th July 2005 all of which the Respondent appeared to relate to the unauthorised use of the money held in the Escrow account but not all of which related to this particular transaction. There was however no evidence of those invoices being sent to JT and his accountants did not produce them when they handed over the bill of 8th April. In his letter the Respondent stated that some of the bills enclosed with his letter would be cancelled and that he would consult with JT about this issue. In effect in relation to this particular transaction a total of a further £8,798.13 was transferred from client to office account in respect of costs. The over transfers of £8,798.13 accounted for part of the cash shortage identified of £26,871.53.

9. The report noted that there was another profit cost transfer of £440.63 on 15th April 2005 which was not included in the shortfall calculation because the date of inspection of the accounts was as at 31st March 2005.

Purchase of a property in Ruthin

10. This matter related to the purchase of property for JT. According to the completion statement prepared by the Respondent the costs due in connection with this matter were £5,898.50. The costs transferred from client to office account as at 31st March 2005 however totalled £16,550.00. The over transfer of costs therefore caused a shortage of £10,651.00. On 28th April 2005 an additional costs transfer of £2,200.00 was made from client to office bank account which was not included in the shortfall calculation as it postdated the inspection date.

Purchase of premises at Atherston

11. BE was a company in which JT had an interest. In accordance with the completion statement the Respondent transferred profit costs from client to office account in the total sum of £13,716.95. Some of the costs transfers however had only been made possible by funds having been transferred without the client's authority from the Escrow account to this ledger. Whilst the total of profit costs listed in the statement of account was the same as the total of transfers recorded in the client ledger the dates and amounts of the transfers were entirely different and details of these were set out in the appendices to the report.
12. The statement of account recorded that BE owed the Respondent £7,421.95 in respect of this matter. On 29th June 2005 the same amount was credited to the BE ledger and subsequently formed part of the £47,217.70 which was repaid to JT in relation to the monies missing from the Escrow account (paragraph 13 below). The Respondent had stated that JT did not owe him any money. It was not known whether the Respondent accounted for interest. After being repaid the monies JT thought that all he was owed was the money referred to at paragraph 5 above of £4,917.30.

Action taken to rectify the cash shortage

13. In order to pay the sum owing to JT in accordance with the statement of the Escrow account amounting to £47,217.70 itemised in a document prepared by the Respondent on 24th June 2005 the Respondent arranged to take a loan from a client TPM Limited of £55,000 (paragraph 28). The identified shortage of £33,312.79 together with part payment of the loan of £12,000 made by JT to the Respondent (paragraph 5 above and paragraph 25 below) was rectified by the transfer of the total sum of £37,850.31 from the office to client bank account and credited to the ledger of JT.
14. On 13th July 2005 the Respondent was asked why the money which he calculated as being due to JT of £47,217.70 was no longer in the Escrow account. He said that it had been "used for other things" but was unable to provide a comprehensive explanation. JT subsequently expressed his surprise and concern at the monies that had been the subject of unauthorised transfers by the Respondent.

Misuse of charitable funds

15. This allegation related to charitable funds held by CGSEF. The charity was a client of the Respondent's firm and the Respondent had been clerk to the governors of the charity for some 25 years for which he was paid an annual agreed fee which at the time of the inspection was £5,500.00. The Respondent had full control of two bank accounts held at Barclays Bank in the name of CGSEF.
16. The report contained a schedule of withdrawals from CGSEF in favour of the Respondent's firm for the financial year 1st April 2004 to 31st March 2005 totalling £43,000.00. On 31st March 2005 £12,000 was repaid to the charity from the Respondent's firm with the aid of a loan of that amount from his client JT (paragraph 5 above). The Respondent confirmed that he had "borrowed" monies from the charity to assist with the cashflow of the firm which he described as "tight". He said that all the money had been used to assist with cashflow problems in the firm. Asked whether any of it was for his personal benefit he responded "I can't be categorical".
17. At a meeting on 14th June 2005 with the investigation officer and her colleague the Respondent confirmed that he had "borrowed" money from the charity during the last two years on "three or four occasions". He said that there was no written agreement in relation to the borrowing, no agreement regarding the amount and the period of the loans and that he did not provide any security for the loans or pay interest.
18. The Respondent said that the loan of monies from the charity had been agreed in principle by Lady P when she was chairperson to the charity. The Respondent stated that the current chairperson Lord G had not agreed to him borrowing money. On 13th July 2005 however the Respondent gave a conflicting response by saying that Lord G had given him permission although he could not recall when he had spoken to Lord G and could not find a record of the same.
19. The investigation officers met Lady P on 16th June 2005. She confirmed that the Respondent had visited her in about June 2002 and had asked if he could borrow some money for a week for use in his firm because he was short of funds. She said she was "taken unawares" and fully understood it to be a "one off agreement". She was "aggrieved to hear" that the Respondent had continued to borrow money from the charity and she considered that he had "traded" on this one agreement and commented that "You should be able to trust solicitors".
20. At a meeting with Lord G on 16th June 2005 Lord G said that he was not aware of any borrowing from the charity and had never given the Respondent permission to use money from the charity. A witness statement to this effect was attached to the report.
21. On 14th June 2005 the Respondent said that he had cleared the full balance of the monies he had borrowed from CGSEF by 31st March 2005. On 13th July 2005 he was questioned again regarding the fact that the draft financial statements of the charity recorded that he had benefited from a loan and advance fees of £31,000. He denied any knowledge of the same and would not comment until he had discussed the matter with the accountants.

22. Following that discussion the Respondent confirmed in a letter to the investigation officer dated 15th July 2005 that the accounts of CGSEF for the financial year 2004 to 2005 would show an outstanding loan of £20,000 and a prepayment of £11,000 in relation to his fees as clerk to the charity. No further explanation was provided for the same. An appointment was made to discuss the matter further with the Respondent, this was cancelled by the Respondent.
23. A letter dated 14th November 2005 from Lord G to the investigation officer provided further background relating to the amounts outstanding by the Respondent to the charity and requested the immediate repayment of those amounts.

Conflict of interest - Loans from clients

24. The Respondent arranged two loans from clients to assist with the cashflow problems of the firm.
25. The Respondent confirmed to the investigation officers that he had received a loan of £12,000 from JT (paragraph 5 above) to repay money which he had borrowed from the charity. The Respondent wrote to JT on 31st March 2005 confirming that he was borrowing £12,000 for a period of two months. The Respondent said that he had not told JT the reason for the loan, there was no security provided, there was no signed agreement and he had not advised the client to seek independent legal advice about the loan.
26. JT confirmed to the investigation officers that he had agreed to loan £16,000 to the Respondent and confirmed that there was no formal agreement.
27. The Respondent's letter to the investigation officer dated 15th July 2005 and attached reconciliation of the Escrow account prepared by the Respondent indicated he had borrowed £16,000 from JT. Only £12,000 had been verified on the Escrow bank statements however and was drawn down on 31st March 2005. This was repaid with the assistance of a loan from another client summarised below.

Loan from TPM Limited - £55,000

28. The Respondent arranged a loan of £55,000 for the firm from his client TPM Limited. The Respondent said that the loan had been used to repay JT and for other cashflow purposes. He confirmed that there was no security in place for the loan and that he did not know how he would repay it. There was a loan agreement in place according to which the interest rate was 2% above base rate and it was to be repaid in 6 equal monthly instalments from 31st July 2005. The Respondent said that he did not advise the client to seek independent legal advice in relation to the loan.
29. Correspondence from the Respondent dated 19th August 2005 and 29th August 2005 setting out his explanations in relation to the allegations contained in the report and refuting any claims of suspected dishonesty was before the Tribunal. Further correspondence from the Respondent's solicitor dated 22nd September 2005 together with the supporting documentation supplied by the Respondent on 30th September 2005 was also before the Tribunal.

The Submissions of the Applicant

30. The Applicant alleged dishonesty in relation to the matter of CGSEF. It was specifically stated in the Rule 4 statement that the Applicant alleged dishonesty in that regard. The Applicant also alleged dishonesty in relation to the matter of the cash shortage and JT and said that this was indicated in the Rule 4 statement by the references to allegation 8 in the heading of the section of the Rule 4 statement which dealt with that matter.
31. The circumstances surrounding the cash shortage indicated a breach of the Solicitors' Accounts Rules but also of Practice Rule 1. They also indicated dishonesty.
32. Although the investigation officer had detected a cash shortage in excess of £33,000 because of the confused state of the accounts she could only identify £26,000 of it.
33. The investigation officer had not found any of the bills referred to at paragraph 8 above in relation to the CC Limited matter. It was not clear what had happened to the proposed cancellation of bills. The important point was that there was no evidence that the bills had been sent to JT.
34. In relation to the £17,625.00 for which a bill was rendered the money was actually transferred before the rendering of the bill.
35. The statement of account in the CC Limited matter referred to £20,000 transferred to JT purportedly from the Escrow account. As there was not £20,000 in the Escrow account at that time the money was in fact transferred from client account. It was submitted that this was material to the allegation of dishonesty. A letter from the Respondent to JT dated 31st March 2005 misrepresented the position to JT stating:

“Although I think it is unlikely that CC are going to ask for any of the escrow money I do not feel comfortable about releasing all of it to you, but as we discussed I think that the £20,000 can be safely released.... ”
36. The costs transfers referred to at paragraph 11 above were in direct contravention of the agreement to hold the money in the Escrow account and conflicted with the Respondent's two letters to JT of 31st March 2005. JT had believed all the time that the monies were in the Escrow account.
37. The fact that JT was now supportive of the Respondent was irrelevant. JT had expressed surprise to the investigation officer. JT had had no idea what was going on which was an issue of public protection. Further, to enable JT to be repaid another inappropriate loan had been taken from another client. The Tribunal was asked to consider what JT's attitude would have been if he had not been repaid. The firm had had cashflow problems. The Tribunal was asked to note that the steps taken to rectify the cash shortage all commenced after the commencement of the inspection. The attachment to the Respondent's letter of 15th July 2005 to the investigation officer and in particular the schedule entitled CC deposit account illustrated the unauthorised use to which the funds in the Escrow account had been put. Further the amount which should have been in the Escrow account was shown as £72,135.00 but the total of the figures in the schedule amounted to £77,583.26.

38. The picture was further confused in that it was understood that the loan from JT was in the sum of £12,000 whereas the schedule suggested a loan of £16,000 having been made.
39. The Law Society took a particularly serious view of the misuse of the charitable funds. The Respondent had held a very responsible position and a position of trust within the charity and as its solicitor.
40. Whilst the Respondent was paid an annual fee of £5,500.00 for his work as a clerk any legal work above that would be charged separately.
41. The Applicant relied on the 2004 - 2005 withdrawals only. When the investigation officer had interviewed the Respondent however he had referred to his earlier conversation with Lady P. The letter from Lord G dated 1st February 2007 also referred to earlier withdrawals.
42. The Respondent had suggested that in or around June 2002 there had been an informal arrangement. The position in 2004/2005 however was absolutely clear. The Respondent had been taking funds from the charity to his firm's account to assist with cashflow. The governors had signed blank cheques.
43. Although the Respondent had originally denied knowledge of the £31,000 he had had little choice but to admit in his written statement that he had borrowed funds without approval.
44. The charity had been to an extent "bankrolling" the Respondent's firm. It was clear from the three documents from Lord G that he had been unaware of that practice and would not have consented.
45. The Respondent's dishonesty was shown by the fact that he had full control of the two bank accounts held at Barclays Bank in the name of CGSEF. There were blank cheques signed by governors on which the Respondent would fill in the amount and then withdraw the money from Barclays to his firm. He withdrew significant sums from the charity without the knowledge of the chairpersons save in respect of one amount which was not specified and which Lady P expected to be repaid within a week. The Respondent's explanation that the cashflow of the firm was "tight" suggested that he was not in a position to repay the sums to the charity's account. The only way he could repay was by an improper loan from another client. The Respondent had stated that he had the permission of Lord G to borrow the money whereas Lord G had stated that he never gave permission. The Respondent provided no security. He had not paid interest. He did not advise Lady P to seek independent legal advice.
46. These activities were covert. The Tribunal was asked to consider the likely reaction of Lord G if at the start of 2004/2005 the Respondent had said his firm was in financial difficulties and could he withdraw money from the charity. The Tribunal was also asked to consider whether "loans" from the charity could be seen as loans. The word assumed a lender who knew the amount being borrowed and when it was to be repaid. No one from the charity was aware of the withdrawals except the Respondent. The governors trusted him.

47. The Tribunal was referred to the case of Twinsectra v Yardley [2002] UKHL 12 and the combined objective and subjective test to be applied in order to find dishonesty. The Tribunal had read correspondence from Lord G referring to issues of trust and that he would not have authorised the withdrawals. The Tribunal was invited to look at the course of conduct of the Respondent as a clerk and as solicitor to the charity. Extracting money over that length of time without the consent of the governors had to be dishonest. The objective test had been met. In relation to the subjective test the Tribunal was asked to consider why the Respondent had not been entirely open with the governors and the inference which could properly be inferred from the fact that he had not asked permission.
48. In relation to the allegation of conflict of interest the Applicant referred not only to the loan from JT and the loan from TPM Limited but also the loan obtained from CGSEF.
49. JT and Mrs L of TPM Limited were friends of the Respondent but also clients. The guidance set out in the Guide to Professional Conduct of Solicitors was clear. Both clients should have been told to take independent legal advice and if they had not done so the loans should not have been taken. No security had been given for the loans. When considering the gravity of these matters it was necessary to look at the matters in the round including how JT's loan was being repaid and the matter of the Escrow account. The Tribunal was invited to look wider than the Respondent's acceptance of a breach of the Rules.

Oral evidence of Ms Seager

50. Ms Seager, an Intervention Officer of The Law Society who had carried out the inspection of the Respondent's firm confirmed that her report dated 8th August 2005 was true to the best of her knowledge and belief.
51. In her inspection Ms Seager had focussed on the matters referred to in her report and had not looked at other matters in great depth. She therefore could not say whether there were any concerns on other matters.
52. The accounts relating to JT had been very difficult to decipher. She had not noticed any other client with that many transactions. When she had spoken to JT about the Escrow account he had been very surprised and quite angry. He wanted to be sure that he got his money back. He commented that he had been concerned about the Respondent's work over the last year or so and did not know whether he would continue to instruct him. He had attempted to seek Ms Seager's advice regarding future transactions but she had said she could not give such advice.
53. Ms Seager had been aware that a large transaction for JT had been going through at the time of the inspection and she knew that there were companies which were intermingled.
54. Ms Seager had seen the agreement in relation to the loan from Mrs L of TPM Limited. Ms Seager could not recall whether Mrs L had said that she had been advised to get independent advice. Mrs L had not expressed any concern.

55. The fact that it had not been possible fully to account for the exact composition of the cash shortage was unusual in Ms Seager's experience.

The oral evidence of the Respondent

56. The Respondent was now a consultant to his former firm and employed with The Law Society's permission. The Respondent admitted breaches of the Accounts Rules and conflict of interest with respect to the loans from JT and Mrs L. They had however been fully advised of the reasons for the loans and the circumstances and the Respondent continued to act for them. The Respondent did not think he had taken advantage of them in taking the loans. In the case of JT the Respondent continued to act both for him personally and for his companies and had carried out a number of transactions, two of them in excess of one million pounds. JT had not instructed other solicitors and the Respondent believed that he retained his full and unqualified confidence. The Respondent was JT's appointed executor.
57. The Respondent had been in practice since 1967 and had never been referred to the Tribunal or been investigated by The Law Society regarding any complaint. He was aged 66½ and would continue to work no more than 18 months or two years. The firm would then cease or be sold.
58. The Respondent confirmed that the contents of his written statement were true and accurate.
59. The firm's financial difficulties had started in the middle of 2004. There had been a one off shortfall in 2002 which was why the Respondent had been to see Lady P. The money borrowed from the charity at that time had been repaid within three or four weeks. The firm had continued to trade within its banking limits until early 2004 and there had then been cashflow problems.
60. The Respondent clarified the three companies of JT and details of their ownership. M was owned by JT and his wife, L by JT and BE was owned 50% by JT.
61. There had been a misunderstanding by The Law Society of the purpose of the Escrow account. The money had been retained following a sale of land in anticipation that the purchasers' might have a claim. It was thought by JT that the money would almost certainly be coming to him. No undertaking had been given. As time went on it seemed less likely that any claim would be made. The money would be accounted for ultimately to JT.
62. The opening balance had been £72,135.00. There had been monthly interest and movements in and out. The Tribunal was referred to the document appended to the Respondent's statement headed L Limited Escrow account in which he had tried to prepare the Escrow account to show the bill monies and the companies. The Respondent accepted that although the Escrow account belonged to L Limited bills had been debited for M and BE. He said this had been done with the client's approval. It should not have happened but due to confusion it had done so. JT had very much regarded his two companies as effectively one entity so had had no objection. JT had been one of two directors of BE. It was only the money in the

Escrow account which had been used in this way. In all other respects the companies' monies had been kept separately.

63. The Escrow money had not been placed in a separate account but had been placed in an existing client deposit account in which the balance of money from the sale of the land was held.
64. The Respondent said that the bills had been sent to JT. They had been on the files and he did not know why they had not been found during the inspection. There had been no complaint from JT with whom the Respondent had discussed the allegations and to whom he had sent a copy of the relevant parts of the Rule 4.
65. The reference to the cancellation of certain bills in agreement with JT related to the purchase of the property. JT decided it would suit his accounting purposes if two bills were cancelled and other costs increased on other conveyancing matters. The Respondent had therefore cancelled a bill and inflated costs on another with the agreement and at the request of the client.
66. The Respondent said that the £20,000 repaid to JT had come out of client account, money having been injected from office account. He accepted that his letter to JT of 31st March 2005 would have left JT with a very different impression of the situation.
67. Following certain detailed questions to the Respondent by the Tribunal relating to the accounts of JT's company and the bills the Respondent accepted the suggestion put to him by Mr Lynch that he was asking the Tribunal to accept that there was such a muddle in the accounts that even today it was difficult for everyone, including the Respondent, to sort out. He could not take the matter further.
68. In relation to CGSEF the Respondent had not taken any steps to utilise charity money prior to the informal meeting with Lady P. Most of his meetings with Lady P had been informal and at one such meeting he had raised the issue.
69. The accounts were prepared by a local firm of accountants usually for the September meeting as that was when most grants were made by the charity. The accountants would prepare draft accounts and discuss any points with the Respondent and they were then finalised. The Respondent did sign the accounts and it was his responsibility to ensure that they were accurate and correct but he relied on the accountants. The accounts would go to a full meeting of governors for approval.
70. The Respondent had decided to raise the question of the loan with Lady P two weeks before his meeting with her. He had told her that there was a short term cashflow crisis in his firm and she had given her consent unequivocally. Given Lady P's comments subsequently the Respondent could only say that his memory of the conversation between them was at fault and that she had not given him the authority he had thought. His memory was that her agreement had not been limited to this one issue and his subsequent raising of money from charity funds had been based on that belief. He had not considered independent advice, interest or security but should have done. He accepted that if he had not been able to rely on the kindness of Lady P he would in 2002 have been in serious difficulty.

71. As the cashflow in his office deteriorated he had used money in the charity bank account. With the exception of the year ending 31st March 2005 balance, any money borrowed had been repaid prior to the end of the financial year. In the year 2002-2003 he had taken money only in June 2002. Some money had been taken in the year 2003 - 2004. There had been a series of borrowings in 2004. He had still been under the misapprehension that Lady P had authorised the borrowing and believed he had authority. He now accepted that he had interpreted the matter wrongly.
72. He did not seek to conceal the borrowing nor could he have done so. The auditors prepared the accounts on the basis of two sets of papers, the bank accounts and the charity's books. All movements of money were recorded. None could have been hidden or concealed.
73. The Respondent confirmed that he had obtained the blank cheques signed by governors and filled them out making them payable to his firm. There had been a number of payments to his firm, some for costs and some round sum transfers. He referred the Tribunal to the handwritten account exhibited to the Applicant's bundle which recorded the borrowing or payment of clerk's fees. The ledger was prepared on his behalf quarterly by his retired accountant. There was and could be no concealment. The governors would however know only if it was reported to them by the Respondent or the accountant. At no point did the accountants or governors raise any issue on the money moves. The Tribunal was referred to the printed accounts exhibited to the Applicant's bundle. The reference to debtors would include the Respondent's firm. After the second interview with the investigation officer the Respondent had spoken to the accountants and they had prepared a second set of accounts which specifically referred to a loan to the Respondent's firm. At the time of the second interview the Respondent had not seen any of the draft accounts.
74. The objects of the charity permitted it to make loans.
75. The Respondent denied paying the money back before the financial year end so as to disguise what he had done. He said he was just making sure the money was paid back.
76. The Respondent had genuinely thought that the money borrowed in 2004/2005 had been repaid. When he knew this was not the case he had gone to see Lord G immediately. He agreed that he had initially found it difficult to accept that the money had not been repaid and had to establish the facts for himself. He accepted that there had been a conflict of interest and that no one in the charity had agreed to any loan.
77. The money to repay the charity was found from within his family not from the loan from JT. He had had no dishonest purpose in his dealings with the charity. Despite his extensive experience as a solicitor it had not crossed his mind that he might die. He never at any time considered that he was improperly misappropriating charity funds and he never had an intention not to repay. The money had been repaid.
78. He had used money from his pension to repay TPM Limited and no client had suffered loss except for the lack of interest payments. He accepted that what he had

done was improper but did not consider that his conduct was dishonest within the test set out in *Twinsectra v Yardley*. He accepted however that his conduct was contrary to Practice Rule 1 and the Accounts Rules.

79. Mrs L had been fully aware of the situation at all times and had been repaid in accordance with the agreement.
80. The practice was now viable and he was personally solvent. He had a condition on his practising certificate that he could not handle client's money.

The Submissions on behalf of the Respondent

81. The Respondent had admitted that there had been muddle and confusion in the accounts. He had not expected an allegation of dishonesty in respect of JT and Mr Lynch formally protested at that matter being put on the basis of dishonesty.
82. Allegations 4, 5, 6 and 7 were admitted. Allegation 8 was denied. Allegations 1, 2 and 3 were not admitted as such and were a matter for the Tribunal's discretion.
83. The Tribunal would consider the test in *Twinsectra v Yardley* and whether the subjective element of the test had been satisfied.
84. The Respondent's history was relevant. He was an old fashioned family solicitor in practice for 40 years. He had had no previous problems with The Law Society or the Tribunal.
85. The Tribunal was referred to the Respondent's written statement and to difficulties which the Respondent had suffered at the relevant time.
86. Firstly he had found a monitoring inspection of The Law Society in the early part of 2005 stressful and distressing. Secondly he had been admitted to hospital with a heart condition. The relevant medical reports were before the Tribunal.
87. His actions in relation to his cashflow problems had been wrong both by utilising the JT money in breach of The Law Society requirements and by raising money from the charity. The Respondent accepted the breaches of the Rules and would have to face the consequences.
88. The Respondent came across as a man with a simple approach who had made a grave error of judgment and had sought to remedy matters. He was not a trickster, a thief or one to plunder the client account.
89. The Respondent had gone to the chairperson of the charity and said he had problems and could he have help from the charity and she had said yes. What had emerged was a total mutual misunderstanding regarding that meeting. The Respondent believed in principle that it was alright to fund his firm with charity money. There was no intention dishonestly to appropriate or use charity money. He genuinely believed that the charity had accepted he could utilise the money. The Respondent now accepted he should have asked on each and every occasion but a wrong belief did not satisfy the *Twinsectra* test. While it was agreed that prima facie the first limb of *Twinsectra*

was satisfied the issue for the Tribunal was what had the Respondent believed at the time. He had wrongly believed that he had authority. When the situation had been made known to him he took immediate steps to pay the money back. He had initially thought there was a temporary crisis but unhappily this had repeated itself a couple of years later. The Respondent had kept the problems to himself, not even telling his wife. He was at fault in that he had not gone back to the new chairperson but he had believed that he had continuing authority. He persuaded himself that he was in control and could pay the money back. He was aware that there were independent auditors who would check everything. He accepted that he had not paid interest and had not given security but what he did did not amount to dishonesty.

Further submissions of the Applicant

90. The Applicant accepted that the burden on him was high and that he must satisfy the combined test in *Twinsectra*. He submitted however that the evidence was overwhelming. The Respondent had realised that by the standards of ordinary and decent people his behaviour was dishonest. The governors trusted him and the chairperson trusted him. He had indicated to Lady P that one shortfall needed to be rectified. He had conceded that if he went to Lord G and asked the charity to bank roll his firm as he was short of cash Lord G would say no. The Tribunal was asked what more it needed to show that the Respondent knew that what he was doing was wrong. The Tribunal could conclude that previously the Respondent had paid the money taken back at the year end so that it did not form part of the account for that year. He had then borrowed further money at the beginning of the next financial year. The Tribunal was asked whether the Respondent could really say that he did not know that what he had done would be regarded as dishonesty by ordinary people.

The Findings of the Tribunal

91. Allegations 4, 5, 6 and 7 had been admitted and the Tribunal found them to have been substantiated. The Tribunal having considered the documentation and having had the benefit of oral evidence was satisfied that allegations 1, 2 and 3 were substantiated.
92. In relation to allegation 8 the Tribunal found that in taking money from the CGSEF charity to bolster his office account and to enable office account outgoings to be met in 2003, 2004 and 2004/2005 without informing the chairperson or the governors of the charity of what he was doing the Respondent's conduct had been dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence and heard his explanation for the borrowing and his assertions that he believed he had the authority to act as he did the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he had such authority and therefore that he knew that what he was doing was dishonest by the standards of reasonable and honest people. In particular the Tribunal considered that the Respondent's whole course of conduct in relation to the use of charity money was relevant to the issue of dishonesty. There had been no note of his meeting with Lady P. There had been no formal loan agreement, no security or interest and no suggestion that independent legal advice was required. Payment had been by means of blank cheques signed by the governors. The new incoming chairperson had not been told by the Respondent of his use of the charity's money. In summary there was overwhelming evidence of dishonest conduct in relation to the charity.

93. The Tribunal did not consider dishonesty in relation to JT given the clear misunderstanding which had arisen on the part of not only the Respondent but his legal adviser, given the specific reference in words to an allegation of dishonesty in relation to the charity but a reference only by numbered headings in relation to the matter of JT. The Tribunal found that the Respondent had not been aware that the allegations relating to JT were put as matters involving dishonesty on his part.
94. In relation to sanction the Tribunal considered carefully the testimonials in support of the Respondent and the letters of thanks from clients. The Tribunal was mindful of the Respondent's long and unblemished career and of his wish to continue in practice for a further relatively short period. The Tribunal had noted the pressures which the Respondent had said he had been under at the relevant time including the pressure of ill health. The Tribunal had however made a finding of dishonesty against the Respondent in relation to misconduct in the course of his practice as a solicitor relating to the charitable funds of a client. Such conduct was severely damaging to the reputation of the profession. In the interests of the protection of the public and the maintenance of the profession's reputation it was right that the Respondent be struck off the Roll. It was also right that he pay the Applicant's costs to be assessed if not agreed.
95. The Tribunal therefore Ordered that the Respondent, David John Christensen of J V Vobe & Co Solicitors, Clinton House, High Street, Coleshill, Birmingham, B46 3BP, solicitor, be struck off the Roll of Solicitors and it further Ordered 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.

Dated this 5th day of November 2007

On behalf of the Tribunal

J P Davies
Chairman