

IN THE MATTER OF PAUL WILLIAM GEORGE BROOK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D. Potts (in the chair)  
Mr. J. R. C. Clitheroe  
Mr. J. Jackson

Date of Hearing: 26th May 2009

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority (SRA) by Gerald Malcolm Lynch, solicitor of Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ on 13<sup>th</sup> May 2008 that Paul William George Brook, solicitor of King & Brook, 77 Saltergate, Chesterfield, Derbyshire S40 1JS might be required to answer the allegations contained in the statement that accompanied the application together with those in the supplementary statement dated 23<sup>rd</sup> April 2009 and that such Order might be made as the Tribunal should think right.

The allegations against Paul William George Brook (the Respondent) were that the Respondent had:-

1. Dishonestly, alternatively with culpable recklessness, improperly utilised clients monies for the benefit of himself or other clients not entitled thereto.
2. Acted in breach of the Solicitors' Accounts Rules 1998 in the following particulars:
  - (a) In breach of Rule 7 had failed to remedy breaches of the Rules promptly upon discovery.

- (b) Contrary to Rule 22 had withdrawn from clients' account monies other than in accordance with the provisions of the said Rule.
  - (c) Contrary to Rule 32 had failed to properly effect reconciliations of clients' money as provided by the Rule.
3. Acted in breach of undertakings given in the course of his practise as a solicitor.
  4. Failed contrary to Practice Rule 13 of the Solicitors' Practice Rules 1990 to effect or maintain adequate supervision of the Cashiers Department.
  5. A further investigation of the books of account of King & Brook Solicitors dated 8<sup>th</sup> December 2008 had revealed further breaches of Rules 7, 22 and 32 of the Solicitors' Accounts Rules as follows:-
    - (a) The books of account had not been properly maintained since 30<sup>th</sup> June 2008 which was the date of the last client bank reconciliation. Moreover, the reconciliation was not in the suggested format.
    - (b) No transactions had been recorded on the clients' ledger account since the end of July 2008 and the Respondent had agreed that the firm's accounts were four months behind. There was an absence of information or financial summary on client files. The Respondent had said he could "remember" what client money was held on files both his own and in respect of his late partner David Edward King. A check would be made with the cashier.
    - (c) At 30<sup>th</sup> June 2008 there had been many client ledgers with credit balances on the office side of the ledger. Fifty two had been greater than or equal in value to £500. The total value of those credit balances had been £379,976. The Respondent had said that the credit balances on the office side of clients' ledger would most probably be due to bills that had not been recorded.
    - (d) In view of the matters noted above, the Forensic Investigation Officer (FIO) had been unable to calculate the firm's total liability to clients as at the inspection date of 31<sup>st</sup> October 2008. However, he had been able to ascertain that there had been a minimum cash shortage of £210,443.96 as at 30<sup>th</sup> October 2008. No action had been taken in respect of the minimum cash shortage.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Gerald Lynch appeared as the Applicant and the Respondent, who was present, was represented by David Morgan.

The evidence before the Tribunal included three Forensic Investigation Reports and partial admissions by the Respondent.

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

The Tribunal Orders that the respondent, Paul William George Brook of King & Brook, 77 Saltergate, Chesterfield, Derbyshire, S40 1JS, solicitor, do pay a fine of £20,000 such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,217.25.

**The facts are set out in paragraphs 1 – 21 hereunder**

1. At the material times the Respondent carried on practice in partnership with David Edward King under the style and title of Kind & Brook at 77 Saltergate, Chesterfield, Derbyshire S40 1JS. Although David Edward King had been initially named as a Respondent in the proceedings, following his death, the proceedings had continued only as against Paul William George Brook.
2. The Respondent, born in 1950, was admitted as a solicitor in 1978. His name remains on the Roll of Solicitors.
3. On 31<sup>st</sup> October 2007 the Forensic Investigation Department of the SRA had reported upon an inspection of the books of account of the Respondent which had commenced on 5<sup>th</sup> September 2007.
4. The following relevant matters had emerged from the said report:-
  - (a) At all material times the office account of the Respondent's firm had been in debit and approaching the disclosed overdraft limit.
  - (b) The Respondent had confirmed that neither he nor his partner had reviewed the client account reconciliation. The firm's cashier had confirmed that she had not prepared a list of client liabilities when she had prepared client reconciliations, save at the time of the inspection.
  - (c) Debit balances, ranging in value from £3,617 to £23,887.43, totalling in all £86,916.28, had arisen on six client matters identified by the Investigation Officer (IO). The shortages had arisen during the period from 23<sup>rd</sup> April 2003 to 20<sup>th</sup> January 2006 although they had been corrected prior to the investigation.
5. In summary, the matters which had caused concern were as follows:-
  - (i) F (deceased) £23,887.43. David King had had conduct of the file and between 10<sup>th</sup> March and 23<sup>rd</sup> April 2003 there had been six transfers from client to office bank account charged to the client ledger and totalling £23,887.43. The transfers had been referred to as "costs" but no bills of costs had been entered on the client ledger account in respect of the amounts concerned. The IO had ascertained that there had existed two bills of costs raised at a later date which had not related to the above transfers. All of the transfers had been later repaid from office to client bank account. At the date of the transfers, the office bank account balance had been near to the firm's overdraft limit. The aforesaid two bills were dated 15<sup>th</sup> May 2003 for £370 and £450 plus VAT respectively. The

Respondent had said that the firm had been acting in a number of matters for the client and that the transfers “may have been for bills in respect of these other matters”. No bills of costs had been entered on the client ledger account, there had been no transfer to any other client ledger account and as indicated above, the funds had later been repaid. The Respondent had said “can’t explain this”. He had further said that he would provide any evidence that he could that the transfers related to bills of costs but no such evidence had been received. When asked by the officer whether the reason for the transfers had been to maintain an office overdraft within its agreed limit, the Respondent had said “this is why we would do bills so as to keep under the overdraft limit”.

- (ii) AMC - £14,435.90. Between 8<sup>th</sup> April and 14<sup>th</sup> July 2003 the total of £14,435.90 had been transferred from client to office bank account. Messrs Elliot Mather Solicitors, in a letter of 3<sup>rd</sup> July 2003, had sought an undertaking to hold the net sale proceeds of £15,127.90 on deposit which undertaking had been given in a letter of 7<sup>th</sup> July. At the time the undertaking had been given the firm had not held such required funds. The Respondent had said that it had been caused by a mistake and a failure to appreciate the state of account in respect of the client’s affairs. The Respondent had said that the transfers would have been for costs for other matters in progress for the same client but that no bills of costs had been entered on the client ledger account in respect of those amounts. Other bills of costs had been raised in the matter which had not related to the above transfers. All of the sum of £14,435.90 had been later repaid from the office to client bank account. The Respondent, in response to enquiry by the officer, had confirmed that the transfers had been billed for the purpose of maintaining the bank overdraft within its agreed limit.
- (iii) EG (deceased) - £22,855.21. Between 8<sup>th</sup> March 2004 and 10<sup>th</sup> January 2005 a total of £22,855.21 had been transferred from client to office bank account. The Respondent had said the transfers had been respective amounts paid to the granddaughter of the deceased pursuant to the instructions of the beneficiary thereof, RG. It had been said that RG had agreed with the advance of the said monies but there had been no signed authority confirming that. The Respondent had said that RG had been a personal friend and “it would be awkward to ask him”. He had further said that he had maintained a detailed record of transactions personally but nothing in relation to those had been held or noted on the file. The record had been no longer available. The Respondent had said that the debit balance had been caused by mistake. Repayments by LG had been paid into the office account and had not been transferred to client bank account.
- (iv) IJA - £3,617. Transfer had been made from office to client bank account in August 2004 in the sum of £3,617. The Respondent had not been able to give a reason for the transfer. The debit balance had been rectified by a transfer from the office bank account in February 2007.
- (v) CB - £12,739.74. On 9<sup>th</sup> December 2004 the Respondent had written to Elliot Mather Solicitors who had represented the Child Support Agency saying “we are authorised by our client to undertake that we will retain in our client

account the sum of £20,745 until the issue in relation to our client's alleged liability to the CSA is resolved". Five days later, on 14<sup>th</sup> December, the client's ledger account balance had been £20,775 but from 13<sup>th</sup> June 2005 to 20<sup>th</sup> January 2006 there had been five transfers from client to office bank account totalling £12,739.74. The Respondent had said that the transfers had been in relation to bills of costs but that no bills had been entered in the client ledger account in relation to the transfers and that no bills of costs had been on the relevant client matter file. He had further confirmed that the undertaking referred to above had been given but had said that it was "less our costs as we have an automatic lien on costs". In later proceedings, the Respondent had confirmed that a Court Order in respect of the matter had denied the right of the firm to have an automatic lien. The full amount therefore had been restored to client bank account.

- (vi) TB - £9,381. This had been a personal injury matter. On 1<sup>st</sup> October 2004 there had been an overpayment of damages to the client resulting in a shortage of £9,381. The shortage had been caused by the costs of the firm being transferred to the office bank account out of the damages before costs had been recovered from third party insurers. However, when the costs had been recovered they had been paid into the office bank account. The Respondent had said that this had been an error.
6. The IO had noted that throughout the period of the above transactions and in all those matters the bank overdraft had been consistently near to its agreed limit. The Respondent had said that the problem had no longer existed as the overdraft limit had been increased and he had had a flexible loan for use where necessary.
  7. On 13<sup>th</sup> November 2007, the SRA had written to the Respondent raising enquiry into the matters.
  8. On 12<sup>th</sup> December 2007 the Respondent had written an extensive response to the SRA's enquiries, including the following points of note:-
    - (a) The firm had had difficulty in recruiting staff in the Cashiers Department following upon the retirement of the long standing cashier in 2002. A replacement had not been satisfactory and a backlog of entries had built up. It had not been possible to keep accounts information up to date as required and a considerable backlog of entries had been unavoidable. The Respondent had not been aware of the matters raised in the Forensic Investigation Report as these had not been identified by the firm's Chartered Accountants in the yearly audit. Further, Mr King had suffered ill health for some time resulting in further pressure upon the Respondent. A removal of the firm's offices had led to a need to re-accommodate old files and not all files had been available when required.
    - (b) In the case of F deceased, the file could not be found. It had been said that the Respondent would not authorise or sign transfers for costs unless a bill had been prepared. If the office account had been near to the firm's overdraft limit that would have prompted the preparation of bills to maintain cash flow. However, only genuine bills could have been prepared. The transfers would

have involved other matters being dealt with in respect of the client. The re-credit to clients account “must have been some dispute as to payment of the bills from the Estate”. Cashier difficulties had been blamed. The cashier had been at fault in entering transfers. The Respondent had been unable to comment on the reason it had taken so long to rectify the balances.

- (c) AMC. In mistake the Respondent had referred to a completion statement showing a balance available of £15,127.90 but had not referred to the client ledger card which, occasioned by the firm’s cashier difficulties, might have been out of date. There had been no deliberate intention to deceive and the undertaking would have been honoured, come what may. The repayment had been, the Respondent had presumed, due to cancellation of bills. The new cashier had rectified matters. There had been no loss to the client.
  - (d) EG. With the benefit of hindsight, the Respondent had accepted that it would have been better and preferable to obtain written authority from Mr G. Proper receipts had not been obtained from LG as “this may show an element of mistrust of a friend”. It had not been thought necessary to maintain a record of the transactions. Repayments had mistakenly been paid into office account.
  - (e) Mr IJA. The transfers in August 2004 had been as a result of interim assessments of costs which had been reviewed following the final bill being prepared resulting in overpayment to office and a credit necessary to the clients. There had been again error.
  - (f) CB. The Respondent had denied being in breach of undertaking, the Respondent had considered that the firm had a lien for costs which had overridden the terms of the undertaking. A consolidated bill had been prepared. It had been regretted that the transfers did not show transfer of costs rather than just transfer and appropriate instructions were being given to ensure that this did not re-occur.
  - (g) TB. Costs due to the firm had been transferred initially from damages and then had been placed into office account when paid directly to the firm by the Defendant’s Insurers. Monies should have been paid into client account to reimburse the transfers.
  - (h) The Respondent had denied dishonesty. There had been no intention to permanently deprive.
  - (i) The Respondent had apologised for breaches of the Solicitors’ Accounts Rules. Pressure of work and historical difficulties had meant that it had not always been possible for the cashier to prepare a monthly list of client balances. That had led to the breaches being overlooked.
9. A report had been prepared for consideration by the Adjudication Panel and in respect of which the Respondent had written on 20<sup>th</sup> February 2008.
10. Mr King had written to the SRA on 20<sup>th</sup> February 2008. He had explained that he had suffered health problems and that had meant added pressure on his partner, the

Respondent. Mr King had agreed with the Respondent to take an administrative roll and had taken full responsibility for the firm's accounting and billing procedure. It had been his job to ensure that the cashier had complied with the Solicitors' Accounts Rules in all respects. Adequate supervision had been less than satisfactory. When necessary to support cash flow, he had instructed the cashier of the source from which interim bills should be taken and had fully intended to prepare those but may not always have completed them due to his attention having been distracted for various reasons.

11. On 12<sup>th</sup> March 2008 the Adjudication Panel had considered the matter and had resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.
12. Subsequently the Forensic Investigation Report of 8<sup>th</sup> December 2008 had identified a minimum shortage of clients' monies in the sum of £210,543.96. The Respondent had said that the firm had experienced problems redeeming mortgages when the mortgage had been redeemed by cheque rather than by direct transfer.
13. The FIO had noted also that on 28<sup>th</sup> August 2008, with the reference of the Respondent, an undertaking to discharge a mortgage in relation to Mrs MRW deceased had been given where examination had shown that there would not have been sufficient funds or such clearance. The Respondent had been unable to explain the difficulties experienced (breach of undertaking was alleged in the original rule 5 statement and this was a further example of such breach).
14. On 18<sup>th</sup> December 2008 the SRA had written to the Respondent raising with him the matters identified in a second report. His response had been received dated 23<sup>rd</sup> December 2008 in which the Respondent had made the following submissions:-
  - (a) His deceased partner, David Edward King, had had full control of the cashier, accounts and compliance issues. The Respondent had worked with the deceased for 32 years and had had no reason not to trust him.
  - (b) Following the initial visit of the FIO, the Respondent had undertaken further enquiry as a result of which he had requested the officer's return. He had found many transactions that should not have been made from client to office account. The matter had been referred to the firm's insurers on the basis that the Respondent had suffered fraud as a result of the action of the deceased David Edward King.
  - (c) The Respondent had not been able to explain why transfers for the five months period from June to October 2008 had been so excessive compared to bills delivered and as identified in the Forensic Investigation Report. The transfers had amounted to £398,000. The Respondent had not been able to explain the failure to allocate transfers.
  - (d) The Respondent had said that he had not been aware of the state of the office account until he had looked back at bank statements. He had presumed that the overdraft had been exceeded on occasions by insufficient cash flow.

- (e) The Respondent had been unable to give any explanation in respect of an unallocated bank slip as identified in the report and had considered that the withdrawal should not have been made. It had not been within his knowledge.
  - (f) The failure to maintain the books of account had been due, in the main, to cashiers holidays and periods of ill health. Matters were being brought up to date.
  - (g) The Respondent had said that his investigation of the transfer sheets and account had indicated that transfers in breach of the Solicitors' Accounts Rules had been made on numerous occasions over a period of at least six years, all of these by the deceased, Mr King. Those transfers had gone undetected because clients account was one global account and other clients' monies had come into the account to replace monies unlawfully transferred.
  - (h) On raising the question of transfers with the cashier, she had told the Respondent that when she had needed money to pay bills and keep the office side going she would ask the deceased partner, Mr King, who would instruct her to transfer monies from a particular source. She had done as she had been instructed believing that she had been acting perfectly properly on the instructions of a senior partner.
  - (i) In relation to the case of Mrs W, dealt with in the report, the Respondent had dealt only with an application for letters of administration and the deceased, Mr King, had dealt with all conveyancing aspects.
15. The Respondent had written a further letter to the SRA on 16<sup>th</sup> January 2009 in which he had confirmed the improper transfers identified in the Forensic Investigation Report and had enclosed a schedule of missing client monies in the sum in excess of £2,000,000. He had spoken to his partner, David Edward King, in a Hospice. Mr King had said that when he had made the transfers he had always intended to correct the same but matters had gone beyond correction. The insurance cover had extended to some £7,000,000 with no excess payable. In a further letter of 28<sup>th</sup> January, the Respondent had said that Mr King had formally resigned from the partnership on 21<sup>st</sup> January 2009.
  16. On 29<sup>th</sup> January 2009 the SRA had written again to the Respondent in relation to a new matter. A Mrs VL, a client in a conveyancing matter, had suffered a debit of mortgage payments after a date when completion had taken place. The deceased, David Edward King, had acted. Overpayment of mortgage had totalled some £2,660. On 5<sup>th</sup> February 2009 the Respondent had written to say that he had agreed a settlement of the matter with the complainant, a cheque having been sent on 29<sup>th</sup> January 2009.
  17. On 18<sup>th</sup> March 2009 a third Forensic Investigation Report had been delivered in respect of King & Brook Solicitors. The Respondent was now running a sole practice.
  18. The following matters of relevance had been noted in the report:-

- (a) There had been significant unallocated transfers from client to office bank account and a minimum bank account shortage of £210,543.
  - (b) The books of account had not been in compliance with the Solicitors' Accounts Rules as they had not been maintained since 30<sup>th</sup> November 2008. The Respondent had agreed that the firm's accounts had been three months behind; the books of account having been in the hands of insurers and accountants.
  - (c) There had been 256 client debit balances recorded totalling £1,490,820. The unallocated improper transfers from client to office bank account had been occasioned over a period of some twelve years.
  - (d) In view of the above, the Officers had been unable to calculate the firm's total liabilities as at 30<sup>th</sup> January 2009 but had been able to ascertain that a minimum client account cash shortage of £1,670,858 had existed as at 30<sup>th</sup> November 2008.
19. Three matters were identified in the report in respect of which the Respondent had held instructions. In one case of JH, damages had not been paid to the client. The Respondent had said that this should have been actioned and authorised by the deceased, Mr King. In a further matter, monies, in a sum of £200,000, available in respect of an administration, had not been paid out. The Respondent had said that a Memorandum of Settlement had been signed by his client but not by beneficiaries. He also stated that the money owed to the client was not in the client bank account.
20. In a third matter of JH, the Respondent had said that he had instructed a sum to be forwarded to Halifax Plc for redemption of a mortgage which sum had not been sent as per his instructions.
21. An Adjudication Panel of the SRA had considered the matter on 24<sup>th</sup> March 2009 and had decided to intervene into the Practice of King & Brook and to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal. The Respondent had been advised by letter of 9<sup>th</sup> April 2009.

### **The submissions of the Applicant**

22. The Applicant referred the Tribunal to the relevant facts and the documentation in support of those facts. He explained that all the facts and documentation had been admitted as, in large degree, had the allegations. Turning to the first allegation, the Applicant said that as he did not believe that dishonesty could be proved against the Respondent, he was proceeding on the basis of culpable recklessness. All the particulars of the second allegation had been admitted by the Respondent as had all the allegations of breaches of undertakings and the lack of supervision of the Cashiers Department. The Applicant submitted that there had been a totally unsatisfactory approach to the stewardship of clients' funds. He maintained that the Respondent had offloaded his responsibility for the firm's client account and that while his arrangement with his deceased partner might be a mitigating factor, it could not absolve him of all responsibility for the firm's client account.

23. The Applicant referred the Tribunal to Mr King's letter of 20<sup>th</sup> February 2008 to the SRA in which he had admitted that he had taken full responsibility for the firm's accounts and billing procedure. Mr King had also explained that when it had been necessary to support cash flow by the preparation of bills, he had instructed the cashier of the source from which interim bills could be taken but that while he had intended to prepare the interim bills, he might not always have done so, and that the overdrawn balances on client account had been his fault alone.
24. Referring to the matter of re: F deceased in which Mr King had had conduct of the file, the Applicant explained that a debit balance of £23,887.43 on the client account had not yet been resolved. In the absence of the client files, the matter had been referred to the firm's Indemnity Insurers.
25. Turning to the allegations in the supplementary statement, the Applicant confirmed that all those alleged breaches of the Solicitors' Accounts Rules 1998 had also been admitted by the Respondent.

### **The submissions on behalf of the Respondent**

26. Mr Morgan explained, in response to a question from the Tribunal, that some £2,000,000 of client monies remained unaccounted for. He referred to Weston – v – The Law Society CA 1998 and stressed that while the Respondent accepted his responsibilities under the Solicitors' Accounts Rules, he had not been dishonest in any way when dealing with his firm's accounts. However, he accepted that he should have taken a more active role in overseeing those accounts. The Respondent now realised that his decision to delegate responsibility for the management of the practice and of the accounts to Mr King had been foolish.
27. The Respondent had requested Mr Hair, the SRA Investigator, to return to the firm on 5<sup>th</sup> December 2008 when having reviewed the files the Respondent had realised that there was a significant problem in that there was a large shortage of funds on client account.

### **Oral evidence by the Respondent**

28. In evidence the Respondent relied on his statements of 3<sup>rd</sup> April 2009 and 23<sup>rd</sup> May 2009. He stressed that while he admitted all the allegations, he denied both dishonesty and gross recklessness. Referring to the first Forensic Investigation Report dated 31<sup>st</sup> October 2007, the Respondent explained that he was now aware that the cashier did undertake monthly reconciliations of client account which he believed had been reviewed by Mr King. The firm had moved offices in 2007 and during that move some files had been misplaced. Mr King's file relating to F deceased had never been found. The Respondent said that the breaches revealed by the first Forensic Investigation Report had been put right. The firm's Accountant's Report of November 2007 had been unqualified.
29. The Respondent accepted that he had breached an undertaking on the file of Mrs C. He explained that he had not realised, when he had given the undertaking on 7<sup>th</sup> July 2003, that Mr King had transferred monies from client account to office, not as costs but as part of a fraud. In the matter of A, the Respondent said that at the time of the

first investigation, he had believed that Mr King, who had dealt with the conveyancing on the file, would have been able to explain the two transfers on the client ledger.

30. In the matter of CB, the Respondent accepted that interim bills had not been on the file and that he had acted in breach of his undertaking. However, at the time he had believed that his firm had a lien on costs that took precedence over that undertaking. The Respondent had subsequently found a consolidated bill that equalled the amounts of the interim bills. The Respondent said that in the case of TB the client account shortage had been the result of an error in paying costs into office rather than into client account.
31. Referring to the Forensic Investigation Report of 8<sup>th</sup> December 2008, the Respondent accepted the further allegations in the supplementary statement. He explained that Mr King had stopped working in November 2008. Following that the Respondent had taken over the accounts on 1<sup>st</sup> December 2008. He had been extremely shocked when told by the Investigator, Mr Hair, in early December 2008, that Mr Hair had been unable to calculate the firm's total liability to clients but that as at the 30<sup>th</sup> October 2008 there had been a minimum cash shortage of £210,443.96. The Respondent had then reviewed all the files and had discovered that there was a significant shortage of funds on client account; files where the firm should have been holding clients' monies where there was no money and transfers by Mr King from client account dressed up as bills.
32. In cross examination, the Respondent explained that Mr King had been his Principal and that he had become a partner in the firm in 1979. The Respondent had always looked up to Mr King and deferred to his judgement. Because of his workload, the Respondent had agreed with Mr King that he should take on the oversight and management of the firm, particularly client account. The annual Accountant's Reports had never shown any problems.
33. In the case of Mrs W, the Respondent explained that when he gave the undertaking he had done so in the firm belief that there were sufficient funds in client account. The Respondent had not checked the ledger card because he had remembered the details of the case and had had no reason to think that Mr King would have raised a fraudulent bill and transferred the money.
34. The Respondent accepted that the firm had been close to its overdraft limit but said that there had been a good relationship with the bank manager and bills, tax and staff were all being paid. The Respondent denied that he had buried his head in the sand. He stressed that he had seen satisfactory Accountant's Reports every year and that he had gone through those reports with the accountants. He had trusted Mr King and had taken the professional advice of his accountants.

### **The submissions on behalf of the Respondent**

35. Mr Morgan handed to the Tribunal various testimonials on behalf of the Respondent. He explained that following the intervention, the Respondent's practising certificate had been reinstated on 29<sup>th</sup> April 2009, subject to the condition that the Respondent did not hold, receive or have access to client monies and that he was not a signatory to

any client account. The Respondent was currently practising as a sole practitioner undertaking civil litigation with damages being paid directly to the client.

36. Mr Morgan referred to the case of Weston – v – The Law Society. However, he submitted that the Respondent was never the senior partner in the firm and in fact had looked up to and trusted his senior partner, Mr King. Although the Respondent accepted that he was jointly responsible, there had been no “red flags” over the years to alert him to any problems. The firm had had no creditors, there had not appeared to be any problems with client account and annual Accountant’s Reports had lulled the Respondent into a false sense of security. In 2007 the SRA had found breaches of the Accounts Rules which the Respondent believed the firm had rectified. Although the firm had operated near its overdraft limit, the Respondent had had no reason to consider that it had been in a parlous condition. However, both with and without the benefit of hindsight, the Respondent accepted that his supervision of the accounts had been badly inadequate.
37. Mr Morgan referred to the Respondent’s conditional practising certificate and submitted that the Respondent did not constitute a risk to the public. The Respondent was a man who had fully cooperated with the SRA and with his firm’s insurers. He had learnt a very expensive lesson in that he had agreed to pay costs of £14,217.25 in respect of the Tribunal proceedings and he was also responsible for the costs of the intervention. The Respondent had had a clean disciplinary record for over thirty years, some 80% of his clients had returned to him and he currently employed some four people in his sole practice.

### **The decision of the Tribunal**

38. Having considered all the evidence and the helpful submissions of the Applicant and of Mr Morgan, the Tribunal was satisfied that all the allegations were both admitted and proved. The Tribunal accepted that the Respondent had trusted his senior partner, Mr King, and had not suspected him or had not colluded with him in any fraudulent activities. However, some £2,000,000 had gone missing; monies out of the pockets of ordinary people that would have to be repaid via insurers or the Compensation Fund. While the Respondent had not been found dishonest or culpably reckless, the Tribunal found that he had been negligent in his stewardship of client monies. There had been clear breaches of the Solicitors’ Accounts Rules that the Respondent should have picked up had he not passed all responsibility to his partner. Such abrogation of financial and accounting responsibilities was not appropriate for a partner and in this particular case had led to substantial losses. In the circumstances, the Tribunal considered that a large financial penalty was appropriate and that the Respondent should be allowed to continue to practise subject to the existing condition as imposed and determined by the SRA, to include appropriate management accounts courses.

Dated this 23<sup>rd</sup> day of December 2009

On behalf of the Tribunal

Mr. D. Potts  
Chairman