No. 6955/1955

IN THE MATTER OF DENNIS RAYMOND BARKWILL, solicitor

\- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.G. Gibson (in the Chair)
Mr. D.W. Faull
Mr. R.P.L. McMurtrie

Date Of Hearing: 9th November 1995

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Complaints Bureau by Geoffrey Williams, solicitor of 36 West Bute Street, Cardiff on 27th July 1995 that Dennis Raymond Barkwill, solicitor of Houghton-le-Spring, Tyne & Wear 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 right.

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

(a) drawn money out of a client account otherwise than in accordance with Rule 7 of the Solicitors' Accounts Rules 1991 contrary to Rule 8 of the said Rules;

(b) failed properly to account to beneficiaries;

(c) been guilty of culpable overcharging.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 9th November 1995 when Geoffrey Williams, solicitor and partner in the firm of Messrs. Cartwrights Adams & Black appeared for the applicant and Nicolas Mitchell, solicitor and

partner in the firm of Messrs. Garrard Mitchell & Co. of 24 The Crescent, Town Walls, Shrewsbury appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent. He denied that he had acted dishonestly. The respondent gave oral evidence.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Dennis Raymond Barkwill, solicitor of "Lynthorpe", , Gosforth, Newcastle-Upon-Tyne NE3 (formerly of Houghton-le-Spring, Tyne & Wear) be STRUCK OFF the Roll of Solicitors and they further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £3,741.85p.

The facts are set out in paragraphs 1 to 9 hereunder.

1. The respondent, born in 1939, was admitted a solicitor in 1962. At the material times he practised on his own account under the style of A.E. Priddin & Son at Scruton Houghton-le-Spring, Tyne & Wear.

2. Upon notice duly given to the respondent, an inspection of his books of account was carried out by the Investigation Accountant of the Law Society. The Tribunal had before it a copy of the Investigation Accountant's Report dated 2nd May 1995.

3. The Report revealed that the respondent's books of account were not in compliance with the Solicitors' Accounts Rules as they contained numerous improper entries made apparently at the instigation of the respondent. It was not considered practicable for the Investigation Accountant to attempt to compute the respondent's liabilities to clients, but the respondent agreed that a minimum cash shortage of £42,370.50 existed on client bank account as at 31st March 1995 as a result of his having made improper transfers from client to office bank account.

4. The improper transfers arose in connection with the estates of three deceased persons in which matters the respondent had been instructed.

5. In the matter of Mrs. G deceased, the respondent had acted for the executrix and by the 27th January 1989 receipts totalling £50,910.59 and payments totalling £16,388.29, including the payment of specific legacies and the respondent's proper costs left a residual estate held in client bank account of £34,522.30p. Estate accounts had been drawn up which showed the residuary estate to be distributed between four charities in equal shares. The distribution had not taken place.

6. During the period 10th March 1993 to 23rd February 1995 the relevant account in the clients' ledger had been charged with sixteen transfers from client to office bank account varying in amount between £235.00 and £2,350.00, totalling £19,646.00, purporting to be in respect of costs.

7. Bills had been drawn and the VAT thereon had been invoiced and paid. The bills had not been delivered to the executrix. The respondent told the Investigation Accountant that no active work had been done on the file since 1989.

8. A similar pattern had emerged in connection with the estates of Mrs. A. G deceased and Mr. L deceased. In the case of Mrs. A. G deceased, bills had been drawn in the sum of £12,737.00 and in the case of Mr. L. deceased, bills had been drawn in the sum of £9,987.50 and equivalent sums had been transferred from the client bank account to the office account.

9. The shortage was not rectified at the time of its discovery by the Investigation Accountant.

The submissions of the applicant

10. A pattern had emerged whereby, in the three estates referred to above, bills drawn in similar amounts and/or drawn in the same matter only a short period of time apart, in one case a matter of days only, had emerged. The respondent would say that they represented errors and he had not deliberately taken clients' money for his own use.

11. In the submission of the applicant the respondent had sole conduct of the matters and must have been aware that bills had been drawn in respect of work that he had not carried out. The applicant was supported in that view by the fact that the bills were for substantial sums of money. They had been drawn after estate accounts had been provided to the executors and had been paid out of monies held in client account representing the residuary estates. The respondent agreed that the amounts charged were improper and that no active work had been done on the files that would justify the level of costs charged. The result was that the residuary estate had not been distributed in accordance with the deceaseds' instructions which, of course, amounted to a failure to account to beneficiaries. There was no doubt that the respondent had been guilty of culpable overcharging. It appeared that the amount of the bills generally became greater as time went by. The narratives shown on those bills were plainly untrue as the work described therein had not been undertaken.

12. In the submission of the applicant the matters placed before the Tribunal represented a very serious case of conduct unbefitting a solicitor and it would not be unreasonable for the Tribunal to find that the respondent had acted dishonestly.

13. The position of the Law Society's Compensation Fund was not conclusive. It appeared that there had been an outlay from the fund of £32,798.60 and there were pending claims of £165,000.00. However, a substantial sum remained on deposit being monies formerly held on the respondent's client account and it appeared clear that ultimately no loss would be sustained by the Compensation Fund.

The submissions of the respondent

14. The respondent was a married man with two grown up daughters. He had lived and worked in the Newcastle-upon-Tyne area all of his life.

15. Although he had a partner for a brief period of time, at the material times and from 1983 he had been a sole practitioner.

16. The respondent had been a pillar of the local community undertaking much voluntary work. He was well liked and well respected by fellow professionals and others in the area in which he lived and practised. A substantial bundle of testimonials in support of

the respondent had been placed before the Tribunal all speaking very highly of his work, his integrity and his value to the community.

17. It was said that the three estates in question had not been finalised for different reasons. In the first, some of the charitable residuary beneficiaries had not been clearly identified. The respondent had set the file on one side to find time to sort out that particular problem. In the third matter, a tax query had been raised and again he had put the file on one side until he found sufficient time to be able to give it his full attention. The respondent accepted that he had not "grasped the nettle" when difficulties in the estates arose and he had been dilatory and not very efficient. Indeed, he accepted that in those respects he had been guilty of conduct unbefitting a solicitor.

18. In the submission of the respondent he had been foolish but not dishonest. When the Investigation Accountant attended at his office the respondent was shocked when the figures were produced. In reality he had lost track of the matters in which the improper transfers had occurred.

19. The respondent ran his practice with financial assistance from his bankers. The bankers had sought to reduce the level of borrowing. At about the same time, the respondent's accountants had expressed concern that his level of billing was inadequate properly to maintain his firm. The accountants had suggested that he adopted interim billing for work to assist with the firm's cash flow. The respondent had always adopted a somewhat old fashioned approach to billing in the past and had not submitted a bill to a client until the work had been concluded. Indeed, he felt he had been generous when fixing the level of his charges.

20. The respondent had adopted his accountants' advice and had sought to issue interim bills from time to time. In the three matters in question, the respondent had prepared bills using "pro formas" - he had not submitted the bills so drawn to the clients concerned, taking the view that when the matters were finally concluded there would have been a final reckoning and proper and detailed accounting would take place.

21. He had lost track of what he was doing and it was only when the Investigation Accountant revealed the numbers and proximity of bills and the amounts of monies concerned that the respondent realised what had happened. It was his submission that he had adopted a new billing policy in which he was inexperienced and he had made mistakes. He had not been dishonest. He had no intention of depriving beneficiaries of their due entitlement or of taking money which was not rightfully his. He argued strenuously that there had been no dishonesty on his part but rather a failure to recognise what was happening.

The Tribunal FOUND the allegations to have substantiated, indeed they were not contested. The Tribunal found this a very sad case indeed. It was clear that the respondent had been for many years an honest, up-right, reputable and trustworthy solicitor popular with his fellow professionals and with his clients and his neighbours. He had given a good service to his community for which he charged at a very reasonable level. The Tribunal recognised how difficult it has been for solicitors, and in particular sole practitioners, to keep up the level of service to which they had aspired in the past in the face of the financial difficulties imposed upon them by the recession and the general financial climate. The withdrawal of support by a solicitor's

bankers inevitably had serious effects upon his firm's cash flow position and the overall viability of the business.

The Tribunal are able to accept that the respondent did not deliberately seek to take money belonging to clients for his own purposes. In drawing interim bills he lost sight of the fact that he could only properly charge for work actually carried out by him and even when drawing interim bills he was still bound to ensure that the clients concerned were aware of them before transferring monies.

The Tribunal found that the fact that the respondent made very substantial over-chargings and transfers meant that he had allowed himself to fall below the standards which he knew he should have upheld and that he had turned a blind eye to reality. It was with the greatest regret that the Tribunal reached the conclusion that such behaviour did amount to dishonesty. The Tribunal could not overlook the ultimate outcome which was that residuary beneficiaries had not been paid the monies due to them within a reasonable time scale and that a substantial shortage on the respondent's client account had been created.

In the meantime, however, the respondent's firm had survived which it might well have not done without the use of clients' money. It could not be said that the respondent had not benefitted from his ill-doing. The Tribunal was pleased to learn that the respondent would have sufficient funds, after the sale of his house and taking into account the monies held on behalf of his former practice, to discharge monies paid out of the Law Society's Compensation Fund. Despite the esteem in which the respondent was clearly held, his fall from grace was such that the Tribunal considered it right that they order him to be struck off the Roll of Solicitors and it was right that he should pay the costs of and incidental to the application and enquiry.

DATED this 1st day of December 1995

on behalf of the Tribunal

A.G. Gibson
Chairman