

IN THE MATTER OF RICHARD PREDKO, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.C. Chesterton (in the Chair)
Mr. A.G. Ground
Mrs. C. Pickering

Date Of Hearing: 12th July 1996 and
2nd August 1996

FINDINGS

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

An application was made on behalf of the Solicitors Complaints Bureau by Gerald Malcom Lynch solicitor of 16 Warrior Square, Southend on Sea, Essex on the 28th March 1996 that Richard Predko a solicitor of 5 South Parade, Salisbury Road, Totton, Hampshire 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:-

- (i) improperly utilised clients' funds for the benefit of clients and/or third parties not entitled thereto;
- (ii) acted in breach of the Solicitors Accounts Rules 1991 (and previous Accounts Rules superseded thereby) in that he drew from clients' account moneys other than permitted by the said Rules and utilised the same for his own benefit or alternatively for the benefit of other persons not entitled thereto and contrary to Rules 7 and 8;

- (iii) contrary to Rule 11 of the said Rules failed to keep full and accurate books of account as by the said Rule required;
- (iv) contrary to the said Rules permitted or allowed transfers from the ledger account of one client to that of another in circumstances other than as permitted by the said Rules and where there was no prior authority (in respect of a private loan) of the lender;
- (v) misled the Court of Probate by deliberately and/or recklessly understating the value of an estate, the subject of a probate application in which the respondent was instructed ;
- (vi) acted in breach of the Principle that a solicitor must not act where his interests conflict with the interests of the client;
- (vii) by virtue of each and all of the aforementioned had been guilty of conduct unbecoming a solicitor.

At the conclusion of the hearing the Tribunal considered it right to amend the form of allegation (iv) and allegation (vi) to take account of the Principles and Rules in force at the date when the subject matter of the allegations took place. The respondent was not prejudiced thereby, and made no objection. The allegations set out above are in the form as so amended.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 12th July and 2nd August 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales and Janes of 16 Warrior Square, Southend on Sea, Essex appeared for the applicant and the respondent was represented by David Morgan solicitor and partner in the firm of Messrs. Wright Son & Pepper of 9 Grays Inn Square, London, WC1R 5JF.

Following the opening of the applicant's case on the 12th July 1996, the Tribunal became concerned that it did not have sufficient details concerning certain loans made by the respondent on behalf of clients to other clients of his firm and loans made by clients to the respondent himself. The Tribunal of its own motion adjourned the proceedings to enable further and more detailed evidence in that regard to be filed. Prior to the adjourned hearing on the 2nd August 1996 the respondent had filed schedules of loans and the applicant had filed a schedule of loans prepared by the Law Society's Investigation Accountant.

The evidence before the Tribunal included the beforementioned schedules and the admissions of the respondent as to the majority of the facts and the allegations. The applicant in opening the case on 12th July 1996 stated that he did not make any allegation of dishonesty against the respondent, but stated that the respondent had misled the Probate Division of the High Court, had used clients' money for the benefit of himself and/or his family and other clients without authority, and had derived benefit from the purchase of clients' houses and the use of their money without observing the requirements of independent advice. At the adjourned hearing the applicant stated that the mischief of the case lay in the misuse of clients' money. The Tribunal had before it exhibit "RP1", a testimonial letter in support of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent, Richard Predko of 5 South Parade, Salisbury Road, Totton, Hampshire, Solicitor, 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 £7,600.

The Tribunal agreed that the filing of the Order with the Law Society might be suspended for fourteen days.

The facts are set out in paragraphs 1 to 19 hereunder.

1. The respondent, 58 years of age, practised as a sole practitioner under the style of Richard Predko at 5 South Parade, Salisbury Road, Totton, Hampshire. He was admitted as a solicitor in 1971. Pursuant to notice given the Investigation Accountant of the Law Society inspected the respondent's books of account commencing on the 13th February 1995 and reporting on the 11th April 1995. A copy of the report was before the Tribunal.
2. The following matters were revealed:-
 - (a) There was a shortage on client account in the sum of £26,962.13 arising from the administration of the estate of a Miss HS in which the respondent was sole executor. The respondent had replaced the shortage.
 - (b) There was no clause in the Will of Miss HS authorising the executor either to invest or to make loans from estate funds.
 - (c) The respondent had made application for probate on the basis that the gross value of the estate was £14,534.48. The respondent admitted to the Investigation Accountant that the gross figure did not include a minimum of £9,000 in respect of the net sale proceeds of Miss HS's residence. The actual value of the estate was in a minimum sum of £60,576.27. The respondent in evidence told the Tribunal that he had forgotten about certain monies which had become due to Miss HS on the death of her sister. The probate paperwork had been prepared by a member of his staff in error and he had accepted the paperwork and figures therein as accurate.
 - (d) During the period between the death of Miss HS and the Grant of Probate the respondent had granted from her estate funds twenty five loans which together totalled £64,586 (though not all outstanding at any one time) apparently to 18 unconnected clients although it later became clear that the respondent himself was a borrower. That had not been clear earlier because the respondent had on certain occasions treated himself as a client for bookkeeping purposes and on those occasions another unconnected client had been treated as the borrower rather than the respondent for those bookkeeping purposes. On the date of the Grant of Probate loans amounting to £11,080 remained outstanding. Thereafter and up to the 31st January 1995 a further 35 loans totalling £126,066.49, again not all outstanding at any one time, had been made to 22 unconnected clients from the funds of Miss HS.
 - (e) The respondent explained that the loans had been made as investments on behalf of his daughters who were residuary beneficiaries of Miss HS's estate. The respondent further agreed that 18 payments totalling £27,773.08 had been

made at his instigation to his daughters and ostensibly on account of their entitlement in the estate.

- (f) Payments had been made from the Miss HS deceased client ledger to Halifax Building Society by way of investment. Allowing for a debit and credit analysis there was a net payment to Halifax Building Society of £13,111.86. The respondent said that was not a client account but it contained funds held and utilised for the benefit of his two daughters.
 - (g) An analysis of the Miss HS estate showed a minimum value of £60,576.27, inclusive of interest earned. Loans had been made on behalf of Miss HS prior to her death. The respondent's daughters were to share one half of the residuary estate and Mrs B was entitled to the remaining one half, but she had in fact been paid only £3,500. Not all of the pecuniary legatees had received their proper entitlement.
 - (h) The schedules of loans before the Tribunal demonstrated that over a long period of time, and in particular between 1973 and 1992 the respondent had been facilitating loans to his clients. The loans were from one client to another. The respondent said the majority were "bridging" loans to cover a lack of or shortage in the deposit monies payable on exchange of contracts in conveyancing transactions, and were repaid upon the completion of the transaction.
 - (i) The respondent himself also borrowed from and lent to his clients. In evidence the respondent said the client's authority had been given in every case. He said he made no charge in the nature of an administration fee. No formal register of any such loans was kept nor could the respondent give to the Investigation Accountant a list of outstanding balances. In evidence the respondent accepted that he had charged legal fees in respect of some loans.
 - (j) There was evidence of borrowings by the respondent from clients and of the utilisation of clients' funds for the benefit of the respondent in circumstances where the interests of the respondent and those of his client were in conflict. During the course of the investigation other areas of apparent conflict had come to light.
3. The Bureau corresponded with the respondent after the inspection of his books of account. On the 30th June 1995 the respondent wrote to the Bureau to set out further enquiry made by him into the estate of Miss HS and in particular as to monies due to her beneficiaries. The respondent accepted that the estate had not been properly distributed and that the gross estate had been incorrectly shown. He accepted that the will of Miss HS did not expressly permit the making of loans. He said that he had received instructions from the deceased to lend money on her behalf when she was alive.
4. The respondent had drawn Miss HS's will. She had been a spinster with no relatives. She expressed the wish after one or two small pecuniary legacies, to leave the rest of her estate to Mrs B as to one half and for the balance to be shared between the

respondent's daughters. The respondent told the Tribunal that he had explained to Miss HS that she must take independent legal advice. She had in fact expressed pleasure in being given an excuse to be able to make an outing to see another solicitor. The respondent was under the impression that she had visited a firm of solicitors in Winchester who had advised her. The respondent believed he was not in breach of any principle of professional conduct in drafting Miss HS's will in accordance with her clear instructions.

5. The Tribunal had before it a copy of a letter written by Mrs B in which she confirmed that she had no objection to the way in which the respondent had handled the monies to which she was entitled as a residuary beneficiary.
6. The respondent acted for another Mrs B ("Mrs B2"), the executrix of her late mother's estate. On the 6th December 1989 and the 15th November 1990 the relevant account in the client's ledger was charged with two transfers of £18,166.07 and £4,375.00 respectively from client to office bank account. The respondent said that included in those transfers was a personal loan from Mrs B2 to himself of £20,000 which, he said, was secured on a property owned by him.
7. The Tribunal had before it a letter written by Mrs B2 dated the 21st July 1993 to the respondent in which she confirmed that she was aware of the fact that she lent to the respondent the sum of £20,000; she stated that at the time it was lent the respondent advised her that she was free to obtain advice from another solicitor with regard to the matter. The Tribunal were provided with a copy of a statement dated 22nd February 1995 signed by Mrs B2 and unwitnessed in the following terms:-

"I BMB hereby confirm that I requested and authorised Richard Predko to lend any part or all of the money on any loans of whatsoever nature and to whosoever he wished or to Richard Predko as unsecured loans and I acknowledge that I was informed by Richard Predko that I should seek independent legal advice and confirm that I gave written authority to Richard Predko from the original payment of the money to him for the purposes mentioned above and I confirm my original instructions to him to this effect and my instructions and confirmation to him to lend the money to him personally.

Dated 22nd February 1995
signed BMB"

8. A further statement dated 22nd November 1995 and signed by Mrs B2 was in the following terms:

"I BMB of ----- Dorset hereby confirm my previous instructions to Richard Predko that having been given advice by him to seek independent legal advice I confirm that I gave written authority to Richard Predko and this I now reaffirm to the effect that I lent him personally all my money which he holds on my behalf in accordance with my previous instructions to him."

9. The respondent had purchased a property from Mr and Mrs K. Mr and Mrs K had approached him in July 1983 with a view to the respondent purchasing their property.

In evidence he said he had offered to lend money to Mr and Mrs K instead of purchasing their house but it was upon their insistence that the property had been purchased by him. He agreed that Mr and Mrs K might stay in the house indefinitely. Between the months of July and November 1983 four payments totalling £4,750 were made from the office bank account to Mr and Mrs K which represented the agreed purchase price.

10. Between the 17th August 1983 and the 31st January 1995 the K client ledger account was credited with six amounts varying between £1,800 and £10,000 cumulatively totalling £34,358. The respondent agreed that the receipt was not connected with the affairs of Mr and Mrs K. They were in respect of loans made to him by a total of six unconnected clients. As in para 2(d) above it appeared on the face of the Client Account ledger of Mr and Mrs K that Mr and Mrs K were the borrowers and not the respondent.
11. Between August 1983 and January 1986 the ledger account was charged, inter alia, with three transfers totalling £14,800 from client to office bank account. The respondent agreed that his purchase had been financed by the provision of loans which included part of the loan to him from Mrs B2.
12. The respondent said that although he had stamped the transfer on completion he had not registered the transfer at HM Land Registry as he wished to be able to transfer the property back into Mr and Mrs K's name at any time.
13. Mr K died in October 1983 following which Mrs K moved into a nursing home. The respondent sold the property in 1990 in Mrs K's name for £53,500. The sale proceeds were credited to Mrs K's client ledger account. £27,012.38 of the sale proceeds were used to repay the respondent's outstanding loans from clients and a sum of £24,872.38 was paid out of client bank account into the respondent's Halifax Building Society account. That sum represented the respondent's "profits" on the sale of the property.
14. The respondent said that he made sure that the owner of the property, Mr K, had full disclosure of valuation and all other relevant information as did his wife Mrs K. When Mr K died the respondent informed the wife that he would resell the property to her at the same price that he paid for it. He also made sure that she had seen another solicitor and had further independent advice and swore an affidavit. A copy of that affidavit dated 17th December 1990 was before the Tribunal together with details of the formal valuation and copy of a letter addressed by Messrs. Underwood & Co., solicitors of Southampton to the respondent confirming that they had been through the statutory declaration with Mrs K in which that independent solicitor said:

"I distinctly remember the dear lady waxing eloquent over how very kind you have been to both her and her husband over the years, even insisting that both she and her husband had independant legal advice before selling the house.

I recall that Mrs K said to me that she didn't know why I was there as the house was yours (i.e. that of the respondent) and that you had kindly to quote "got them out of a hole at the time"."

15. The respondent similarly offered to purchase the house of Mr G during 1984. The respondent agreed to pay Mr G an initial £4,000 together with a further £10,000 by way of ten equal annual instalments. At Mr. G's request the additional payments had been made early and £10,000 had been paid to Mr G from the office bank account by 1990.
16. Between the 25th May 1984 and the 11th September 1989 the Mr G client ledger account was credited with 26 loans from seven unconnected clients varying between £50 and £4,000 and totalling £21,707. The Investigation Accountant in her report said that no evidence was seen that the receipts totalling £21,707 were connected with the affairs of Mr G. However during the course of the respondent's evidence it became clear that the monies in fact represented loans to the respondent which should have been paid to his own account rather than that of the client Mr G, even though the final destination of the monies was to Mr G as monies paid by the respondent to Mr G. The circumstances were similar to those set out at paragraph 2(d) and 10 above.
17. Between the 19th May 1986 and 22nd June 1988 the G ledger account was charged, inter alia, with 21 transfers totalling £9,774.04 from client to office bank account. The respondent had agreed with the Investigation Accountant that his purchase of Mr Gs house had been financed by the provision of the total of the loans. Mr G had died on the 1st June 1992. In November 1994 Mr Gs son complained with regard to the purchase of the property. The complaint was considered by the Adjudication and Appeals committee of the Solicitors Complaints Bureau who decided that the respondent should be rebuked for acting in that situation where his own interests conflicted with the interests of a client. At the time the Adjudication and Appeals Committee made its decision it had not been aware of the situation regarding the loans as set out at paragraph 16.
18. The respondent told the Tribunal that Mr G had taken independent advice and had placed a letter before the Tribunal dated the 9th February 1994 from Messrs. Ewing Hickman and Clark solicitors of Southampton in which the writer said he confirmed he had a hazy recollection of seeing Mr G several years previously but he no longer had any recollection of the advice given to Mr G nor had he kept any written record of that advice.
19. The respondent told the Tribunal that during the period that he had been a Principal or sole practitioner he had always received Unqualified Accountant's Reports.

The Submissions of the Applicant

20. The Solicitors Accounts Rules 1991, insofar as they were relevant to this matter reproduced precisely similar Rules of 1986. Rule 7 provided that there may be drawn from a client account money required for a payment to or on behalf of the client, money to settle costs or disbursements drawn on the client's authority or money which is transferred into another client account (subject to Rule 10).
21. Rule 8 provided the manner in which the money may be withdrawn and required any money not drawn in accordance with Rules 7 and 8 to be drawn only with the specific authority of the Council of the Law Society.

22. Rule 10 provided that no sum should be transferred from the ledger account of one client to that of another except in circumstances in which it would have been permissible under the Rules to have withdrawn from client account the sum transferred from the first client and to have paid into client account the sum so transferred to the second client. It was further provided that no sum in respect of a private loan should be paid directly or by means of a transfer from the ledger account of one client to that or another out of funds held on account of the lender without prior authority of the lender. It was accepted that the modern requirement that the authority be in writing did not apply at the material time.
23. Rule 11 required all solicitors to keep properly written up books of account to show dealings with clients' money and appropriately to record all dealings in the cash account or ledger account relating to the client concerned.
24. It was a well established principle that a solicitor must not act where his or her own interest conflicts with the interest of a client or a potential client. There was a conflict of interest where a solicitor in his or her personal capacity sold or purchased from or lent to or borrowed from his or her own client. A solicitor should in those cases ensure that the client took independent legal advice. If the client refused to do so, the solicitor must not proceed with the transaction. The solicitor must at all times disclose with complete frankness whether he might obtain any personal interest or benefit in a transaction in which he or she was acting for the client.

Submissions of the Respondent

25. The respondent had been born just before the second world war in Poland and had suffered great deprivation as a child. Eventually after being reunited with his parents had come to England in 1947 staying in a refugee camp near Southampton. The respondent attended a local secondary modern school for two and a half years, that being all the education he had received. He left school at 15 and began to work in a local grocery shop and had attended night school to achieve academic qualifications which led to employment as an office boy in a firm of solicitors where he became articled and was eventually admitted as a solicitor in 1971. He became a partner in a firm shortly thereafter. At that time the practice included collection of rents from tenants of rented properties as well as lending money in loans and private mortgages and the collection of interest and capital. The respondent had remained in partnership, although the constitution of his partnership had changed from time to time, until 1995.
26. Where the respondent had utilised client's funds for the benefit of other clients or third parties who were not entitled thereto he had done so purely as the result of a mistake. He accepted that in so doing he was acting in breach of the Solicitors Accounts Rules. He did not utilise client account monies for his own use unless authorised so to do.
27. In connection with the estate of Miss HS, the respondent had made a mistake the details of which he had given during the course of his evidence. Mrs B, one of the residuary legatees was aware of the loans made out of the estate monies. She had not needed the money at the time and instructed the respondent to continue to keep the existing loans and obtain interest on them. The respondent's daughters asked him to

do the same in respect of their entitlement. He obtained those instructions in writing. They were placed in a file kept by his own book-keeper but following her departure from the firm in 1988 that file had been lost.

28. In 1984 the respondent's probate clerk informed him that as it was five years since Miss HS had died she had prepared the estate accounts showing the distribution of the estate and she had made a mistake which the respondent had not picked up. The true size of the estate did not attract payment of inheritance tax and there was no advantage in declaring an undervalue.
29. The respondent had throughout the period in question obtained unqualified accountant's reports and had also been subject of visits by the Law Society's Accountant and the Monitoring Unit when no adverse comment as made.
30. Before her death in 1979 Miss HS had requested the respondent to prepare a new will for her. She wished to pay legacies to certain of her friends and the rest was to be shared between the respondent's children and Mrs B. He had informed her that he would not be able to act unless she obtained independent legal advice. She had agreed so to do. Miss HS was the last of three elderly childless spinsters whose two sisters had predeceased her leaving no surviving relatives. She did not wish to give any money to charities and had considered she and the respondent were "related", sharing a similar Polish background.
31. The respondent believed that he had complied with the 1975 rules which were then in force and Miss HS had told him that she had spoken to a solicitor in Winchester.
32. The respondent at no time wished to break any of the Rules or act against any of the principles laid down.
33. As soon as the respondent became aware of the overpayment made to his two daughters, he rectified the situation by making an appropriate payment to Mrs B and clearing the shortfall on client account.
34. All of the loans made from client to client and also loans made to the respondent were made with the full knowledge and authority of the client concerned and each transaction was recorded in the firm's ledgers. The Tribunal had before it details of independent advice taken by specific clients.
35. All transfers from the first client to the second client and all private loans were paid directly by means of transfer directly from the ledger account of one client to that of another with the prior authority of the lender. The respondent believed that all transfers had been made in accordance with the Rules and recorded in the clients' ledger accounts.
36. In connection with the purchase of property from clients, the respondent had been moved by altruism. He had tried to assist clients who found themselves in difficulty. At all times the clients were advised to obtain independent legal advice and had done so. None of them refused to do so.

37. At all times the respondent disclosed with complete frankness his personal interests and benefit and gave time to the client to consider such matters. The respondent, indeed, had given advice to clients of other solicitors who were in a similar situation.
38. In the case of Mrs K the respondent made sure not only that the owner of the property but also his wife had full disclosure of valuation and all other relevant information. The respondent had agreed to sell the property back to Mrs K upon the death of her husband at the same price that he paid for it. He did not register the transfer into his name for that purposes. He also made sure that she saw another solicitor and had further independent advice.
39. The respondent had acted in an open honest and above board manner in all of his dealings with clients. Everything had been carefully recorded and errors and breaches which might have occurred were inadvertent. The respondent had not been dishonest. The respondent had made genuine errors at a time when he had been very busy.
40. No client or anyone else had suffered any loss and no claims had been made upon the Law Society's Compensation Fund. The respondent had been a caring member of society undertaking pro bono work for deserving causes. He was a married man with two young children and his wife was expecting another child. The respondent was concerned about the welfare of the staff employed by him.
41. The respondent admitted allegations (i) (ii) and (iii) but save for admitting the facts in relation to allegation (v) he contested the other allegations. The respondent genuinely had no intention to be responsible for the admitted breaches again and would take a great deal more care in the future.

The Tribunal FOUND all of the allegations to have been substantiated, in allegation (v) the Tribunal found that the respondent had behaved recklessly in misleading the Probate Division of the High Court by understating the value of an estate.

On the 31st October 1995 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:-

- (i) been guilty of unreasonable delay, alternatively failed to act with reasonable expedition in connection with the administration of an estate;
- (ii) failed, alternatively failed with reasonable expedition, to reply substantively to correspondence with parties and/or their solicitors;
- (iii) failed, alternatively failed with reasonable expedition, to reply substantively to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;
- (iv) acted in clients affairs in circumstances where a conflict of interest between him and the client might have arisen, or alternatively did arise;
- (v) by virtue of each and all of the aforementioned been guilty of conduct unbecoming a solicitor.

On that occasion the respondent had not contested the allegations and the division of the Tribunal hearing the matter accepted that the respondent was a competent honest and honourable solicitor giving a good service to his clients.

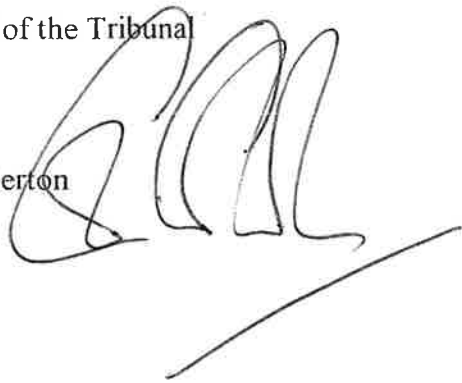
They went on to say that acting where a conflict of interest arose was a serious matter on the face of it for a solicitor to draw a will in which the client had left him a considerable sum of money was serious behaviour on the part of a solicitor and behaviour that would not be tolerated. It was behaviour that in many cases would lead to a solicitor being struck off the Roll. They accepted that in that particular case the seriousness of what had apparently occurred should be tempered by the surrounding circumstances.

It was matter of very great concern for the Tribunal to discover that the respondent appeared to have acted in a number of other cases where a conflict of interest arose. From the evidence before the Tribunal there emerged a cumulative picture from which it became clear that the respondent's personal affairs and those of his clients were closely intermingled even to the extent to that in certain cases where the respondent had borrowed money he treated himself in his firm's accounting records as a client of the firm and indeed sometimes as another named client of the firm. Quite apart from being in themselves serious breaches of the Accounts Rules the facts had to be considered against apparently Unqualified Accountants Reports over the relevant period. The Tribunal did not accept that authority or independent advice had been available prior to every transaction being entered into. The Tribunal accept that they had placed before them in relation to certain transactions what appeared to be retrospective or confirmation of authority or the fact that advice was taken that did not erase the mischief where the respondent had entered into transactions with clients without their interests being properly represented at the time. The Tribunal found the respondent's attitude to have been wholly unacceptable and considered that the sum of the whole was greater than the individual parts so far as the allegations were concerned. The respondent could be seen only to have been feathering his own and his family's nest at the expense of his clients and that could not be tolerated. The Tribunal Ordered that the respondent be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry in an agreed fixed sum.

DATED this 19th day of September 1996

on behalf of the Tribunal

J C Chesterton
Chairman



Findings filed with the
Law Society on the 19th
day of February 1997