

IN THE MATTER OF LAWRENCE DAVID KENNEDY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr. J C Chesterton (in the chair)  
Mr. A G Ground  
Dame Simone Prendergast

Date of Hearing: 1st October 1998

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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 Office for the Supervision of Solicitors by David Rowland Swift, then a solicitor and partner in the firm of Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead on the 7<sup>th</sup> August 1996 that Lawrence David Kennedy of 159 Herne Hill, London, SE24 9HX 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.

Two supplementary statements were made by Jonathan Richard Goodwin respectively on the 30<sup>th</sup> May 1997 and on the 13<sup>th</sup> July 1998 each of which contained further allegations. The allegations below are those set out in the original and two supplementary statements.

Following David Rowland Swift's appointment as one of Her Majesty's Judges, the conduct of the application was taken over by Jonathan Richard Goodwin, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead. It was he who made the two supplementary statements.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely that he had:-

- (i) made a representation to his client that was untrue;
- (ii) failed to act in the affairs of his client with due diligence;
- (iii) been responsible for unreasonable delay in the delivery of client's papers;
- (iv) failed to reply promptly or at all to letters from the Solicitors Complaints Bureau;
- (v) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (vi) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (vii) utilised clients' fund for the purposes of other clients;
- (viii) utilised clients' funds for his own purposes;
- (ix) misappropriated clients' funds;
- (x) further misappropriated clients' funds;
- (xi) failed to account for the funds handled by him in his capacity as a solicitor;
- (xii) contrary to Rule 1 of the Solicitors Practice Rules 1990 and Principle 25.01 – Practice Rule 6 - accepted instructions to act for both purchaser and vendor of a transfer of land for value at arms length;
- (xiii) took advantage of his client by misusing his position as a solicitor in a situation of conflict of interest;
- (xiv) contrary to Rule 1 of the Solicitors Practice Rules and Principle 25.03 accepted instructions to act and continued to act as a solicitor when a conflict of interest existed between his client and himself;
- (xv) failed to disclose material information to his client;
- (xvi) failed to reply to letters from the Office for the Supervision of Solicitors;
- (xvii) contrary to Rule 8(ii) of the Accountants Report Rules 1991 failed to produce a Cease to Hold Accountant's Report for the period ending 10<sup>th</sup> January 1997 which became due on the 10<sup>th</sup> July 1997;
- (xviii) failed to comply with a Direction made by the Compliance and Supervision Committee of the Law Society dated 8th October 1997.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 1<sup>st</sup> October 1998 when Jonathan Richard Goodwin, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the fact that all documents had been served upon the respondent in person by an enquiry agent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Lawrence David Kennedy of London, WE21 (formerly of 159 Herne Hill, London, SE24 9HX) 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 £1,333.46 inclusive.

The facts are set out in paragraphs 1 to 20 hereunder.

1. The respondent, born in 1938, was admitted as a solicitor in 1963. At all material times the respondent carried on practice on his own account under the style of Robert Thompson & Partners at 159 Herne Hill, London.
2. On the 24<sup>th</sup> January 1995 Messrs. Wade Stevens & Co. solicitors of Sidcup complained to the Solicitors Complaints Bureau (the Bureau) that the respondent, who had previously acted for their clients CA Ltd and DJC had failed to pass over a file of papers, relating to a loan transaction, and the original wills of Mr and Mrs DJC despite request to do so. The respondent had variously claimed that he held no papers or that his papers had been sent to solicitors acting for the Solicitors Indemnity Fund neither of which explanations was accepted to be true by Messrs. Wade Stevens.
3. On the 12<sup>th</sup> May 1995 the Bureau wrote to the respondent seeking explanation. The respondent did not reply nor did he provide any explanation. Further letters were sent to the respondent on the 8<sup>th</sup> June and 5<sup>th</sup> July 1995 when he indicated that he had sent a charge certificate relating to the affairs of the clients to Messrs. Wade Stevens on the 16<sup>th</sup> June but offering no comment as to the file of papers and the wills. Those points were taken up by the Bureau in a letter to the respondent on the 4<sup>th</sup> September 1995. On the 14<sup>th</sup> September 1995 the respondent replied to the effect that he had that day sent the file of papers and had earlier sent the will of Mr DJC to Messrs. Wade Stevens but that he could not trace the will of Mrs DJC.
4. On the 20<sup>th</sup> September 1995 Messrs. Wade Stevens further complained to the Bureau that although the respondent had rendered a bill of costs to his client for "attending HM Land Registry registering the same" he had not registered the charge which fact was not apparent until the respondent passed over the file of papers some seventeen months after it had been requested.
5. Upon due notice to the respondent the Investigation Accountant of the Law Society carried out an inspection of the respondent's books of account commencing on 6<sup>th</sup> June 1994. A copy of the Investigation Accountant's Report dated 22<sup>nd</sup> December 1994 was before the Tribunal. It revealed that the respondent's books of account did not comply with the Solicitors Accounts Rules 1991 and that there was a shortfall in clients' funds of £37,239.63. The shortfall which was rectified during the inspection arose as a consequence of three debit balances.
6. The largest debit balance of £18,435.16 had occurred on the ledger of Mrs D. The respondent explained to the Investigation Accountant that Mrs D was a friend of his

wife for whom he was “doing a good turn”. He added that he “did not act for her as such”. The respondent said that the entries shown on the account in the clients’ ledger headed “Kennedy A M” (his wife) did not reflect the true position. Certain transactions recorded on that account related to Mrs D. On the 30<sup>th</sup> November 1993 the respondent’s reconstructed accounts showed a credit balance of £48,870.92 which was accounted for by a book transfer from the client ledger account of “Kennedy AM” of £19,435.76 and a lodgement in client account on that day of £29,435.16. Two contemporaneous payments of £27,515.28 and £21,355.64 (totalling £48,870.92) were charged to the ledger account reducing the balance to nil. The Investigation Accountant noted that both of the payments had been charged to the client bank account on the 23<sup>rd</sup> November 1993. The cheque for £19,435.16 was dishonoured upon presentation and its retrospective recharging to the ledger placed it in debit by that sum. A further book transfer of £1,000 from the account of “Kennedy AM” was credited to the ledger account reducing the debit balance to £18,435.16 at the inspection date. The shortage remained in existence until the 8<sup>th</sup> June 1994 when the position was rectified by a receipt expressed to be from Mrs D.

7. The respondent acted for DM Company generally. On the 4<sup>th</sup> February 1994 the relevant account in the clients’ ledger showed a credit balance of £173.84 when it was charged with a client bank account payment of £14,600 giving rise to an overpayment of £14,426.16. That remained the position at the inspection date. The shortage remained in existence until the 16<sup>th</sup> June 1994 when it was rectified by a receipt on behalf of the client.
8. The respondent acted generally for DFM Ltd. On the 12<sup>th</sup> April 1994 an account in the clients’ ledger headed “DM” contained a credit balance of £4,385.11 due, in part, to its having been credited with a receipt in the amount of £4,271.21 when it was charged with a client bank account payment of £4,371.21 reducing the balance to £13.90. The respondent said that the transactions related to DFM Ltd. The received cheque for £4,371.21 was dishonoured on presentation and its retrospective recharging to the ledger account placed it in debit by the same amount. A further client account payment of £21.00 was charged to the ledger account on the 29<sup>th</sup> April 1994 culminating in a debit balance at the inspection date of £4,378.31. The shortage remained in existence until the 16<sup>th</sup> June 1994 when it was rectified by a receipt in cash from DFM Ltd.
9. Following notice again given to the respondent the Investigation Accountant of the Law Society carried out a further inspection of the respondent’s books of account. The inspection began on the 29<sup>th</sup> August 1995 and a copy of the Investigation Accountant's Report dated the 19<sup>th</sup> January 1996 was before the Tribunal. The respondent’s books of account did not comply with the Solicitors Accounts Rules 1991. There was a shortfall in clients’ funds of £189,155.93 as at 31<sup>st</sup> July 1995 arising from an overpayment of the same amount made on behalf of Mr N. The cash shortage of £189,155.93 was rectified during the inspection by the receipt of funds from the client concerned.
10. During the inspection it was noted that a further cash shortage of £86,000 had arisen in October 1994 in connection with the matter of Mrs K which was not completely rectified until 31<sup>st</sup> January 1995.

11. Upon due notice to the respondent the Investigation Accountant of the Law Society carried out a third inspection of the respondent's books of account commencing on 2<sup>nd</sup> July 1996. A copy of the Investigation Accountant's Report dated 30<sup>th</sup> August 1996 was before the Tribunal. The respondent's books of account did not comply with the Solicitors Accounts Rules and, notwithstanding that reconciliations had been attempted on a month end basis, it was noted that the last time the bank balance included in the reconciliation for the TSB Bank matched the balance on the bank statement was 29<sup>th</sup> December 1995. The balances included in the reconciliations had been inflated by £42,187.00 at the end of the month by virtue of a cheque credited to the client bank account on or about 30<sup>th</sup> of every month. The effect of that was to make the client bank account balance appear to be £42,187.00 greater than was right at each month end.
12. Because there were no meaningful reconciliations, there were missing client ledgers, missing bank statements and client bank account entries had not been posted to the client ledger accounts, the Investigation Accountant did not consider it practicable to ascertain the true extent of the respondent's liabilities to clients. From a list of liabilities to clients as at 31<sup>st</sup> May 1996 which was produced it was possible to ascertain a minimum cash shortage in the sum of £177,101.81. That shortfall arose as a consequence of an unallocated unknown payment in the sum of £110,000, overpayments not recorded in the books in the sum of £56,981 and payments of office account cheques from client bank account in the sum of £10,158.25. The minimum cash shortage was replaced during the course of the inspection by transfer from office to client bank account in the sum of £177,101.81.
13. The respondent was made bankrupt on the 19<sup>th</sup> June 1997.
14. By letter dated the 4<sup>th</sup> April 1997 Messrs. Hill Lawson solicitors complained to the Office for the Supervision of Solicitors (the Office – which had then superseded the Bureau) about the respondent's conduct concerning the administration of the estate of the late FM who died intestate on the 8<sup>th</sup> August 1993. The administrators of the estate were Mr M's widow and his son RM. During the course of the administration the respondent was instructed to act in the sale of a property which formed part of the estate. On the 8<sup>th</sup> June 1995 the property was sold to CH Ltd for £212,000.00.
15. The respondent had in fact purchased CH Ltd himself in 1994, the registered office being the practice address of the respondent's firm.
16. On the same day as the property was sold to CH Ltd the respondent acted for that company in the sale of the property in the sum of £265,000.00, producing a profit in the sum of £53,000 to the company. The respondent witnessed the transfer deed in his capacity as secretary of CH Ltd.
17. The respondent failed to advise the administrators of the estate of the "back to back" nature of the transaction. The respondent failed to account to the estate for the sale proceeds, and failed to provide any estate accounts or completion statements to the administrator.
18. On the 5<sup>th</sup> June 1997 the Office wrote to the respondent enclosing a copy of Messrs. Hill Lawson's letter dated the 4<sup>th</sup> April 1997 seeking an explanation. The respondent

did not reply and despite a further letter sent to him on the 27<sup>th</sup> June 1997 he failed to reply or provide explanation.

19. Upon the intervention into the respondent's practice by the Law Society a "Cease to Hold" accountant's report for the period ending 10<sup>th</sup> January 1997 became due. It remained outstanding. On the 21<sup>st</sup> July 1997 the Office wrote to the respondent seeking an explanation for the outstanding Accountant's Report. No reply to that letter had been received.
20. On the 8<sup>th</sup> October 1997 the Compliance and Supervision Committee resolved "*to expect Mr L D Kennedy to submit the outstanding report for the period ending 10<sup>th</sup> January 1997 within 28 days of the date of being notified of the decision, failing which to refer the conduct of Mr L D Kennedy to the Solicitors Disciplinary Tribunal*". The respondent was notified of the Committee's decision by letter dated the 13<sup>th</sup> October 1997. The report had not been received within the 28 day period referred to, or at all.

#### **The Submissions of the Applicant**

21. The Law Society's Investigation Accountant's Report revealed a complete disregard for the integrity of the keeping of accounts and the Solicitors Accounts Rules. It was clear that the respondent had misappropriated clients' funds for his own benefit and had taken steps to disguise those actions.
22. Where the respondent had acted for the administrators of an estate in the sale of a property and had acted for a company, which he himself owned, in purchasing that property and then selling it on at a considerable profit, the respondent had been in serious breach of his duty of good faith to his clients. He had made a secret profit for himself without the knowledge of the executors of the estate and in reality that had been a further misappropriation of clients' funds. There had been a serious conflict of interest which the respondent simply had not addressed. He could not act both for the selling estate and the purchasing company. As a result of that and the resale at a higher price the respondent had failed to disclose material information to his clients and in particular had failed to disclose the profit made by him.
23. Upon the Law Society's intervention into the respondent's practice he was due to deliver a "cease to hold" Accountant's Report for the period during which he held clients' money from the date of his earlier Accountant's Report until the date of the intervention. No such report had been made and at the time of the hearing it remained outstanding. The Law Society had made a formal resolution expecting the respondent to file that report in view of the fact that the report had not been received he additionally had not complied with the resolution made by his own professional body.
24. Payments had been made out of the Law Society's Compensation Fund in the sum of £327,492.87 and there were pending claims totalling £246,193.66.

The respondent made no submissions.

### **The Findings of the Tribunal**

The Tribunal FOUND all of the allegations made against the respondent to have been substantiated.

On the 27<sup>th</sup> September 1988 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:

- (1) failed to comply with the Solicitors Accounts Rules 1975 in that he notwithstanding the provisions of Rule 8 of the said Rules drew out of client account money other than that permitted by Rule 7 of the said Rules;
- (2) failed to comply with the provisions of section 34 of the Solicitors Act 1974 in that the accounting period specified in the Accountant's Report delivered by him on 18<sup>th</sup> April 1986 terminated more than six months before the date of its delivery:
- (3) been guilty of conduct unbecoming a solicitor in that he:
  - (a) utilised money held and received by him on behalf of certain clients for the purposes of other clients;
  - (b) delayed in honouring an undertaking in the course of business;
  - (c) practised whilst uncertificated between 1<sup>st</sup> November 1985 and 24<sup>th</sup> March 1986;
  - (d) failed to pay the fees of Counsel within a reasonable time or at all;
  - (e) failed to answer correspondence addressed to him the Law Society and Solicitors Complaints Bureau;
  - (f) practised without paying his indemnity insurance premium during the year commencing 1<sup>st</sup> September 1984.

On that occasion the Tribunal found all of the allegations to have been substantiated and the respondent was ordered to pay a penalty of £2,500.

On the 16<sup>th</sup> August 1990 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that he had:

- (i) contrary to Rule 8 of the Solicitors Accounts Rules 1986 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (ii) utilised clients funds for the purposes of other clients.

The Tribunal then noted the invitation made on behalf of the respondent that they should regard the accounting deficiencies before them on the second occasion to be

part and parcel of the respondent's earlier difficulties. The Tribunal took the view that the matters before them related to a completely different set of circumstances than those before them at the earlier hearing. The Tribunal noted that the respondent had put his house in order, no client had suffered loss and there was no evidence before them of the respondent's dishonesty. The Tribunal wished to make it plain that if the respondent persisted with the type of accounting irregularity brought before them then the Tribunal would be unlikely to deal with him so leniently in the future. The Tribunal ordered the respondent to pay a penalty of £5,000 and to pay the applicant's costs.

#### The Tribunal's Reasons

On 1<sup>st</sup> October 1998 not only had the respondent been found guilty of breaches of the Solicitors Accounts Rules but the Tribunal found that the other serious allegations were also substantiated. The respondent had exhibited a complete and utter disregard for the requirement that he exercise a proper and trustworthy stewardship over clients' money. Substantial claims had been made upon the Law Society's Compensation Fund. The transaction in which the respondent acted for the administrators of an estate in the sale of a property where he was involved with the purchase and onwards sale of that property making secret profit represented a situation which would not be tolerated. There was no doubt that the respondent had behaved dishonestly. The Tribunal ordered that the respondent be struck off the Roll of Solicitors and they further ordered him to pay the costs of the application and enquiry to include the costs of the Investigation Accountant of the Law Society in a fixed sum.

DATED this 9th day of December 1998

on behalf of the Tribunal

J C Chesterton  
Chairman

