Appeal lodged 25/3/97

No.7232/1996

IN THE MATTER OF ROGNALD HATLEM-OLSEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr.A Gaynor-Smith (in the Chair)
Mrs E Stanley
Mr. D E Marlow

Date Of Hearing: 11th March 1997

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors on the 12th September 1996 that Rognald Hatlem-Olsen of Messrs Hodson & Lines at 43 High Street, Market Harborough solicitor 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 each of the following circumstances namely that he had:-

(i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;

(ii) drawn money from a client account other than as permitted by Rule 7 of the said Rules, contrary to Rule 8 of the said Rules;

(iii) utilised clients' funds for his own purposes.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 11th March 1997 when Roger Field solicitor and partner in the firm of Messrs. Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley West Midlands appeared for the applicant and the respondent was represented by Mr Rex Tedd of Queens Counsel instructed by Messrs. Charles Russell & Co. of 8-10 New Fetter lane, London EC4A 1RS.

The evidence before the Tribunal included Exhibits "RHO1 to RHO4". The respondent admitted allegations (i) and (ii) but disputed allegation (iii). He denied dishonesty.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Rognald Hatlem-Oslen of Messrs Hodson & Lines, 43 High Street, Market Harborough 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 £1,522. and the costs of the Investigation Accountant of the Law society to be taxed if not agreed.

The facts are set out in paragraphs 1 to 10 hereunder:-

1. The respondent, born in 1945, was admitted a solicitor in 1974. Prior to the 8th December 1995 the respondent carried on practice in partnership under the style of Hatlem-Olsen at 43 High Street, Market Harborough LE16 7AQ. Thereafter, he practised on his own account under the same style at the same premises.

2. On the 26th June 1996 the Law Society intervened into the respondent's practice, at that time the respondent was in the process of disposing of his practice to Messrs Hodson & Lines and that disposal was successfully concluded. The respondent had then been employed by Messrs Hodson & Lines as a consultant.

3. Upon due notice to the respondent the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) carried out an inspection of the respondent's books of account. The inspection began on the 7th May 1996 and the Investigation Accountant's report dated the 20th June 1996 was before the Tribunal.

4. The report revealed that the books of account were not in compliance with the Solicitors Accounts Rules.

5. A list of liabilities to clients as at the 31st March 1996 was produced for inspection. The liabilities totalled £166,613.12 but the list did not include a further liability to one client in the amount of £20,860.00. A comparison of the proper total of liabilities was compared with cash available on client bank account at the same date (after allowance for uncleared items) which revealed a cash shortage of £29,795.21.

6. The net cash shortage arose in the following way:-

(i)	clients' funds improperly transferred from client to office bank account in respect of undelivered bills of costs	£20,860.00
(ii)	Unallocated transfers of clients' funds from client to office bank account	6,315.52
(iii)	Book difference (shortage)	2,646.47

		29,821.99
(iv)	Interest credited to client bank account (deducted)	(26.78)
	Net cash shortage	£29,795.21

7. The respondent agreed the existence of the net cash shortage which was rectified by the lodgement of £23,506.47 into client bank account on the 22nd May 1996 and allocations correctly made to clients' ledger accounts subsequent to the 31st March 1996.

8. The respondent admitted in respect of one client matter that he had instigated transfers of funds from client to office bank account in respect of bills of costs which had not been delivered to the clients. The respondent had been appointed Court of Protection Receiver in February 1982 in connection with the affairs of Mr M, who had since died. The respondent was removed as receiver on the 14th March 1995 as he had failed to deliver accounts to the Public Trust Office covering a period ending later than the 2nd February 1989.

9. During the period 3rd December 1992 to the 30th September 1993 the relevant account in the clients' ledger was charged with four transfers from client to office bank account varying in amount between £1,410.00 and £9,750.00 and totalling £20,860.00 purporting to be in respect of costs. The respondent had not delivered the bills of costs to the Public Trust Office and he had not obtained the necessary authority to deal with Mr M's funds in that way. The respondent told the Investigation Accountant that he was unable to offer any explanation for his actions as he was in receipt of counselling and medical supervision at the time and subsequently had suffered a mental breakdown.

10. During the month of March 1996 client bank account was charged, inter alia, with seven separate transfers totalling £6,315.52 to the office bank account which were not allocated to any accounts in the clients' ledger. Allocations made subsequent to 31st March 1996 rectified the position.

The submissions of the applicant

11. In the matter of Mr M the respondent had made four transfers from client to office account totalling £20,860.00, all of them purported to be in respect of costs. However, no reference to costs was made on the relevant ledger card. The respondent himself admitted that he had not delivered bills to the Public Trust Office and had not obtained authority to deal with the client's money in the way that he had. He was not able to give any proper explanation.

12. The question which arose was "had the respondent acted dishonestly?" In the submission of the applicant, the respondent would clearly have known what his duties were and what was expected of a solicitor - he was an experienced solicitor having been admitted in 1974. The Tribunal was invited to take the view that the respondent had simply raided his client account, moving substantial funds over to office account.

13. The Tribunal had been asked to consider the question of dishonesty which had two possible meanings. There was dishonesty in the criminal sense and also the dishonesty which was inherent in a solicitor treating clients' monies as his own without any knowledge of the client. A solicitor's retainer by a client created a relationship involving absolute trust. It was entirely inappropriate that the respondent should simply treat client account monies as if they were his own. The transfers had not been recorded on the relevant client ledger card to show that monies had been taken as costs. It appeared that no bill, not even in draft form, had been prepared. If the respondent had not taken any steps to get an order from the Court of Protection and no order had been made for taxation it was inconceivable that the respondent would not have known that what he was doing was culpably wrong and dishonest. The Tribunal was invited to draw the inference that when he took the monies he must have known that he was not entitled to them, and no amount of retroactive reasoning would help him. The respondent's representative would cite the case of R v Preddy in the House of Lords in 1996. That case involved a very complex argument, but what was at issue there was (had the prosecution made out the offence under Section 15 of the Theft Act 1968) the obtaining of property by deception in connection with a mortgage advance obtained by fraud.

14. The applicant's submission was that R v Preddy was irrelevant in the determination of the matter before the Tribunal. In the first place R v Preddy was a criminal case and the Tribunal was a professional Tribunal dealing with questions of professional conduct and not crime. Secondly the applicant did not allege that the respondent had committed a crime. He alleged that he had taken clients' funds for his own purposes. That was a serious example of conduct unbefitting a solicitor but it was not put before the Tribunal as a criminal offence.

15. The Tribunal had in the past recognised that a transfer of client's money to office account which was not properly authorised did amount to a utilisation of clients' monies for the solicitor's own purposes either because it enhanced the balance shown on office account or reduced any overdraft thereon.

The submissions of the respondent

16. The case of R v Preddy in the House of Lords related to persons who were charged under Section 15 (i) of the Theft Act 1968 with obtaining or attempting to obtain a mortgage loan by deception. They had been convicted of such offences and their conviction had been upheld in the Court of Appeal, despite their submissions that they had not committed the offence "by any deception dishonestly obtaining property belonging to another" under Section 15 because they had always intended to repay the advances in full when the properties were resold at a profit and no property belonging to the lending institutions had been obtained or attempted to be obtained.

17. In the appeal to the House of Lords the following questions arose.

(1) Whether the debiting of a bank account and the corresponding crediting of another bank account brought about by dishonest misrepresentation amounted to the obtaining of property within Section 15

(2) Whether the position was different if the account in credit was that of a solicitor acting in a mortgage transaction

18. It was held that the person who obtained a mortgage advance by deception did not commit the offence of dishonestly obtaining property belonging to another contrary to Section 15 of the 1968 Act, despite the deception involved, as Section 15 did not legislate for and was inappropriate to cover deception, which involved the debiting of one person's bank account and the corresponding crediting of another bank account as in those circumstances no property "belonging to another" was obtained by the person practising the deception. This was the part of this case which was relevant here although it dealt also with the case for a mortgage advance obtained by deception where the defendant's or his solicitor's bank account was credited with the amount advanced by the lending institution. The defendant did not obtain the lending institution's chose in action since that chose in action was extinguished or reduced pro tanto, and a new chose in action was brought into existence representing a debt in an equivalent sum owed to the defendant or his solicitor by a different bank (i.e the bank where the defendant's or his solicitor's account was credited).

19. It was submitted on behalf of the respondent that the question to be considered was whether the debt in the new account was truly property belonging to another? Following the decision in R V Preddy it was not and allegation (iii) could not stand for technical reasons.

20. The respondent had been Court of Protection Receiver for Mr M for several years after his appointment in 1982 during which time he had regularly filed annual accounts and had charged modest fees for the work undertaken. There had been no question that those charges had not been dealt with properly.

21. The transfers made were clearly recorded in the firm's computerised accounts. It was accepted that no detailed bills had been submitted to the Court of Protection. The respondent had not dishonestly attempted to cover his tracks.

22. The respondent had suffered difficult times. He had maintained a staff which was too large for the income generated by the practice. The respondent had been adjudicated bankrupt and his Practising Certificate had been suspended. The respondent's Practising Certificate had been renewed subject to the condition that he practise only under supervision. He had assisted the purchasers of his practice in the capacity as a consultant.

23. The respondent had endured great strains not only in practice terms but also with domestic difficulties.

24. The respondent had suffered from depression and had been admitted for in-patient treatment. In fact he had suffered a complete nervous breakdown.

25. The respondent had not engaged in high living and had enjoyed a very modest lifestyle.

26. The Tribunal was invited to pay attention to the psychiatric report placed before them and the excellent testimonials written in the respondent's support.

27. The respondent's practice was described as that of a typical market town. The appointment of the respondent as a Court of Protection Receiver was unusual and he had not been familiar with Court of Protection procedures.

The Findings of the Tribunal

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

On the 29th September 1994 the Tribunal Found an allegation to have been substantiated that the respondent had been guilty of conduct unbefitting a solicitor in that he had failed promptly to discharge a personal liability for the payment of Counsels' proper fees.

The Tribunal on that occasion ordered that the respondent pay a fine of £500 and ordered him to pay the fixed costs of the applicant. The Tribunal believed that the respondent had been the victim of the financial recession and his own failure carefully to supervise staff in his employ, even though they were fully qualified. The Tribunal was pleased to note that despite considerable delays all outstanding Counsels' fees had been discharged prior to the hearing.

The matters before the Tribunal in March 1997 were quite different from that of 1994. The respondent admitted allegations (i) and (ii). The Tribunal considered the submissions made on the respondent's behalf in connection with allegation (iii), namely that the respondent had utilised clients' funds for his own purposes.

The Tribunal rejected the submission that the case of R v Preddy should be considered in connection with this matter. The Tribunal accepted the applicant's submissions that the decision in Preddy was made in the criminal jurisdiction and the Tribunal's jurisdiction extended only to the professional conduct of solicitors. It was not alleged that the respondent had committed a crime.

It was essential for the fair and proper treatment of clients' funds that solicitors comply with the Solicitors Accounts Rules. Failure so to do placed clients' funds in jeopardy and served to damage the good reputation of the solicitors' profession. It was axiomatic that an unauthorised transfer of clients' funds from a solicitor's client account to a solicitor's office account amounted to a utilisation by that solicitor of the clients' funds. It was possible that such utilisation might be inadvertent or unintentional. In this case the Tribunal was unable to find that the respondent's actions in transferring monies from client to office account had been inadvertent.

He was clearly aware that he had not submitted bills to the Public Trust Office and had not complied with the procedures laid down by it.

Despite the respondent's unfortunate state of mental health, the Tribunal was unable to avoid finding that the transfers had been made deliberately by the respondent and in the circumstances had been made dishonestly.

The Tribunal had considerable sympathy for the respondent who had suffered domestic difficulties, financial ruin and mental ill health but in the circumstances they considered it right that he should be Struck Off the Roll of Solicitors and further ordered that he should pay the applicant's costs of and incidental to the application and enquiry in a fixed sum and that the costs of the Investigation Accountant of the Law Society should also be paid by him, to be taxed if not agreed.

DATED this 23rd day of April 1997

on behalf of the Tribunal

A Gaynor-Smith
Chairman