

No. 8319/2001

These Findings are not to be the subject of publicity without the consent of the Tribunal first obtained

IN THE MATTER OF DAVID ALUN PRICE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the chair)
Mr. Andrew N Spooner
Lady Maxwell Hyslop

Date of Hearing: 5th March 2001

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 ("OSS") by Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke, Potter & Chapman of 8 Bedford Row, London, WC1R 4BX on the 27th February 2001 that David Alun Price solicitor c/o Messrs Irwin Mitchell solicitors of St Peter's House, Hartshead, Sheffield, S1 2EL 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 particulars namely:-

- (a) that he failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (b) that contrary to Rule 8 of the Solicitors Accounts Rules he drew money out of client account other than permitted by Rule 7 of the said Rules;
- (c) that he utilised client's funds for the purposes of other clients;

- (d) that he utilised client's funds for his own purposes;
- (e) that he lodged bills of costs that were excessive, improper and/or unjustified.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Peter Harland Cadman solicitor and partner in the firm of Messrs Russell-Cooke, Potter & Chapman of 8 Bedford Row, London, WC1R 4BX appeared as the Applicant and the Respondent did not appear and was not represented.

The Respondent had addressed a letter to the Clerk to the Tribunal by fax. The letter was dated 4th March 2002 but had been faxed during the early hours of the morning of the 5th March 2002. That letter was as follows:-

"Thank you for your letter of the 19th February. I have been unable to obtain a medical report by a consultant as there has not been enough time nor can I afford the £250 fee. I still feel unable to cope with a Tribunal hearing having enough difficulty facing every day life. Also I cannot afford the £60 train fare to attend the Tribunal hearing. As the Tribunal will be aware I am bankrupt and as a family are struggling to make ends meet.

I would also ask the Tribunal to consider adjourning until after the conclusion of the criminal hearing on two grounds. (1) In order to defend myself properly the evidence of Mr Cotter needs to be tested. My legal representative in the criminal proceedings has stated that I would be ill advised to (illegible) so as it would be rehearing the witness. (2) Any such hearing if publicised could jeopardise the fairness of the criminal trial.

The criminal matter has been adjourned until the middle of April for plea and then on to a trial at the end of the Summer.

Yours faithfully
David A Price"

Mr Cadman in opposing the application for an adjournment dealt with the history of the matter before the Tribunal. The application had been made in February of 2001. On 27th September 2001 an adjournment had been sought on the ground that the Respondent might be eligible for assistance under the Legal Help Scheme. The Respondent had been charged by the police. Those representing the Respondent expressed reluctance to progress the matter to a full hearing before the Disciplinary Tribunal for fear of prejudicing the Respondent's position in the criminal case. After considering the issues the Tribunal considered it right to require the substantive hearing to take place at a date to be fixed. The matter was fixed for hearing on 17th January 2002.

On 17th January 2002 the Respondent requested an adjournment. A medical report from the Dove River Practice had been provided to the Tribunal. The Tribunal adjourned the matter in order that a proper medical report might be prepared and submitted. The Tribunal explained what details in the medical report would be required. The matter was listed for a mention on 12th February 2002 and the Tribunal required the detailed medical report to be filed by that date. If there was no medical report supporting the Respondent's application for an

adjournment on health grounds the Tribunal anticipated being in a position to proceed with a substantive hearing on that date.

On 12th February the Tribunal had not been provided with a full medical report but it appeared that the Respondent had only shortly before the hearing received a letter from the Tribunal requiring a medical report to be lodged. The Tribunal ordered that the substantive hearing be listed for the 5th March 2002 with a 9.30 a.m. start. The Tribunal said that if the Respondent wished to ask the Tribunal to delay matters for medical reasons then such application had to be supported by a full and detailed medical report including a detailed prognosis. The Tribunal said it would be assisted if details of the up-to-date position relating to the criminal matters could be placed before them.

No medical report had been supplied. The Respondent had taken no step to assist the Tribunal and appeared simply to require delay. The prejudice to the Respondent in the impending criminal proceedings could be dealt with by the Tribunal making an order that there be no publicity following the substantive hearing before the Tribunal.

The Tribunal took the view that the Respondent had not complied with the requirement to file a detailed medical report to give the Tribunal a proper opportunity of deciding whether it was right to adjourn the substantive hearing on medical grounds. The Respondent appeared to be seeking to delay the substantive hearing to satisfy his own ends. The Tribunal had to weigh the interests of the Respondent against its first duty to protect the interests of the public and its other important duty which was to protect the good name of the solicitors' profession.

The Tribunal concluded that it was right that the substantive hearing should take place forthwith. The Tribunal accepted that a finding by the Tribunal could well prejudice the Respondent in his criminal trial and the Tribunal ordered that its Findings and Order should not be the subject of publicity until after the conclusion of the criminal trial.

At this stage the public were asked to leave the hearing.

The evidence included the affidavit of Barry Cotter, an OSS Investigation and Compliance Officer to which was exhibited the Report signed by M J Calvert and Mr Cotter's contemporaneous notes taken on the 4th August 2000 at an interview with the Respondent all of which had been subject to a notice served upon the Respondent in respect of which no counter-notice had been received.

At the conclusion of the hearing the Tribunal ordered that the Respondent David Alun Price of 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 £6,240.43.

The facts are set out in paragraphs 1 to 33 hereunder: -

1. The Respondent born in 1954 was admitted as a solicitor in 1982. His practising certificate had been suspended as a result of The Law Society's intervention into his practice and had not been reinstated.
2. At all material times the Respondent carried on in practice either in partnership or as a sole principal under the style of Parrans & Co,

On 13th September 2000 the Professional Regulation Casework Sub-Committee of The Law Society resolved to intervene in the Respondent's practice.

3. Upon due notice to the Respondent the Monitoring and Investigation Unit of the OSS carried out an inspection of the Respondent's books of account. Mr Cotter's Report dated 10th August 2000 was before the Tribunal.
4. Mr Cotter's Report revealed the following matters.
5. At the time of Mr Cotter's inspection the dissolution of the Respondent's partnership with another had not been fully resolved. Bank accounts were maintained both in the name of the Respondent and his former partner trading as Parrans & Co, and also in the name of the Respondent trading as Parrans & Co. The bank accounts held in the name of the Respondent and his partner could only be operated by the Respondent and his partner together. The bank accounts held in the name of the Respondent might be operated either by the Respondent alone or by two assistant solicitors together. The balances set out in the Report were those shown on the bank statements as at 30th June 2000 unless otherwise stated and were as follows:-

Barclays Bank plc, PO Box 493, Sir Frank Whittle Road, Derby, DE1 9UU

The Respondent trading as Parrans & Co

Client Account (50585920)	£314,805.88 credit
Four Client Designated Deposit Accounts totalling	285.50 credit
Office Account (50638927)	3,332.08 debit
Loan Guarantee Scheme (94504879) (at 31 st May 2000)	21,666.78 debit
Parrans Holding Account (80690732) (at 31 st May 2000)	756.30 credit

The Respondent and Partner trading as Parrans & Co

Client Account (40426946)	£48,220.25 credit
Nineteen Client Designated Deposit Accounts totalling	1,923.42 credit
Office Account (10721441)	25,666.70 debit
Office Number Two Account (00288047)	35.51 credit

6. The firm held the passbook for account no. _____ held in the name of Mr W, Trustee for P deceased. Mr W was an employee of the firm until his death on 7th January 1998. His personal representative Mrs S (his daughter) was granted probate of his will on 17th February 1998. The balance on this account as at 5th April 2000 was £110,515.02.
7. The books of account were not in compliance with the Solicitors' Accounts Rules as they contained numerous improper transfers from client to office bank account purporting to be in respect of costs for which no bill had been delivered to the client and for the reasons noted below.
8. It was not practicable to compute the firm's total liabilities to clients. It was calculated that a minimum shortage of £109,292.62 existed at 30th June 2000 in respect of the undernoted eleven client matters alone.

Improper Transfers from Client to Office Bank Account

(i)	Mrs P deceased	£38,922.50
(ii)	Mr C deceased	25,951.95
(iii)	Mrs S deceased	12,183.32
(iv)	Mrs B deceased	6,085.88
(v)	Mr B deceased	4,644.62
(vi)	Mr T	3,332.66
(vii)	Mr D deceased	2,386.06
(viii)	Mr W	<u>467.00</u>
		£93,973.99

Unallocated Transfers from Client Account

(ix)	Suspense	£11,540.00
------	----------	------------

Legal Aid Board Payments on Account of DisbursementsLodged in Office Bank Account and not Paid

(x)	Ms TB	2,928.63
(xi)	Ms TR	<u>850.00</u>
		<u>3,778.63</u>
	Minimum Cash Shortage	<u>£109,292.62</u>

9. The Respondent agreed the existence of the minimum cash shortage and said that he was not in a position to replace £109,292.62. He added that he was intending to sell the practice to make good any shortage from the proceeds. He said that he would try to raise loan finance in the interim.
10. The Respondent admitted that the shortage was largely due to improper transfers made at his instigation from client to office bank account. He said that it was his normal practice to review the list of client ledger credit balances at least monthly and generate a hand written list of clients on whose matters he thought costs could be taken, together with the amount of those costs. The total of this list would then be transferred from client to office bank account. He agreed that in many cases no bill of costs had been sent to the client concerned and in addition a large proportion of the costs taken could not be justified.
11. Mr Cotter noted that when client matters affected by earlier improper transfers were to be completed insufficient funds were available on client account to make the required payments. The Respondent then generated an office to client account transfer to put the relevant client ledger in funds to make the payments. In order to fund these office to client account transfers and keep his office bank account overdraft within the bank's required limit of £5,000, The Respondent made further improper transfers from client to office bank account. In this way the resultant client account shortages had been disguised in the books of account and were continuously rolled forward without effective rectification. Mr Cotter was able to ascertain that this process had been in operation since at least the latter part of 1997.
12. Mr Cotter set out by way of example details of the matter of Mrs P deceased.
13. The firm acted for Mrs S, the personal representative of Mr W who was the sole executor of the estate of Mrs P until his death in January 1998.

14. The will of Mrs P, who died on 22nd April 1997, was dated 8th June 1978 and provided that her estate was to be divided equally between The Newlands House Cheshire Home (a replacement for The Staunton Harold Home mentioned in the will) and the Imperial Cancer Research Fund. By 26th June 1998 estate funds totalling £200,969.14 had been received and lodged in client bank account.

15. After paying funeral and testamentary expenses totalling £3,471.91 the balance of the realised estate of £197,497.23 was applied as follows:-

(a)	Newlands House Cheshire Home	£22,000.00
(b)	Imperial Cancer Research Fund	22,000.00
(c)	Inland Revenue "Tax Due"	14,558.93
(d)	Transfer to the Derbyshire Building Society	100,000.00
(e)	Transfers from Client to Office Bank Account	<u>38,922.50</u>
		£197,481.43
	Ledger Balance 30 th June 2000	<u>15.80</u>
		<u>£197,497.23</u>

16. During the period 8th August 1997 to 20th March 2000 the relevant account in the clients' ledger was charged with ten transfers from client to office bank account, varying in amount from £500 to £5,875 and totalling £38,922.50 purporting to be in respect of costs. In the same period seven interim bills of costs, varying in amount from £500 to £20,000, and totalling £38,922.50 were posted to the ledger account. The Respondent agreed that it was unlikely that any of those bills had been sent to the client and that no estate accounts had been delivered to Mrs S or to the residuary legatees. The Respondent estimated that his firm's proper costs in this matter might be no more than £1,000 plus vat.

17. The Respondent had been unable to offer a satisfactory explanation as to why tax totalling £14,558.93 had been paid to the Inland Revenue in respect of an estate where the residue was payable entirely to charitable organisations. He said that it might have been tax payable by Mrs P in her lifetime but he could provide no evidence to support this nor to demonstrate why it had been paid on 22nd November 1999, some thirty months after her death.

18. The firm acted for Mr G and the Respondent who were co-trustees of the estate of Mr C, who died on 4th September 1998 leaving a gross estate of £1,042,943. By 27th June 2000 estate funds totalling £266,932.53 including an executor's loan for £70,000 had been received and lodged in client bank account. (Mr G also operated his own executor's bank account which had not been reviewed).

19. After allowing for fifteen pecuniary legacies totalling £138,250 the residuary estate was to be held on trust, the income to be applied for the benefit of Mr C's wife for the remainder of her life and thereafter to be divided equally between her four daughters.

20. After paying testamentary expenses of £1,573.50, the balance of the estate funds of £265,359.03 was applied as follows:-

(a)	Paid to Legatees	£110,409.84
(b)	Applied to life interest	91,646.00
(c)	Transfers from client to office bank account	<u>25,951.95</u>

	£228,007.79
Ledger balance 30 th June 2000	<u>37,351.24</u>
	<u>£265,359.03</u>

21. During the period 18th October 1999 to 26th June 2000 the relevant account in the clients' ledger was charged with eight transfers from client to office bank account, varying in amount from £40.98 to £7,050 and totalling £25,951.95 (item (c) above), purporting to be in respect of costs. In the same period, four interim bills of costs, varying in amount from £470 to £20,000 and totalling £28,207.80, were posted to the ledger account. The Respondent agreed that it was unlikely that any of those bills had been sent to his co-trustee and that no estate accounts had been delivered to his co-trustee or any beneficiary.
22. The firm acted for Mrs S in her capacity as the personal representative of Mr W who was the sole executor of the estate of Mrs Sb until his death in January 1998.
23. The Respondent was unable to locate the file in relation to this matter. He agreed that four transfers from client to office bank account, made in the period from 30th April 1998 to 15th December 1999 totalling £12,183.32 and charged to the ledger of Mrs Sb deceased were improper. He said that he had not delivered bills to the client and that the level of billing was not justified.
24. In addition to the £12,183.32 noted above, an earlier transfer from client to office bank account dated 8th August 1997 in the sum of £2,350 had caused concern to Mr Cotter. The Respondent could not confirm that Mr W had raised the bill posted to the ledger on the same date during his trusteeship, indeed, he said that it was unlikely that the bill had been raised and that this transfer was probably the product of one of the Respondent's client ledger balance reviews.
25. Mr Cotter ascertained that two transfers from client to office bank account of £4,000 and £7,540 on 2nd June and 26th June 2000 respectively, totalling £11,540 had not been allocated to any client ledger account but had merely been noted on an account headed "misc ledger suspense account." The Respondent could not account for the transfer of £4,000 which, he agreed, was unallocated and constituted a client account shortage at 30th June 2000. In respect of the transfer of £7,540, he produced a transfer sheet detailing the client matters concerned.
26. The list produced was dated 26th June 2000 and it contained sixteen amounts ranging from £0.01 to £2,350 and totalling £7,540 purporting to be in respect of costs. None of the amounts on the list had been posted to the relevant client ledger accounts. The Respondent agreed that at least £5,746.35 of the transfer list total of £7,540 (in respect of the three largest amounts only) could not be properly transferred as no bills of costs had been delivered to the clients concerned.
27. In addition, the Respondent agreed that a further six amounts listed, varying in amount from £0.01 to £0.50 and totalling £2.65, were attempts to clear small balances on the client ledgers concerned.
28. The firm acted for Ms B who was legally aided in connection with her matrimonial affairs.

29. On 21st June 2000 the relevant account in the clients' ledger was charged with five client account payments, varying in amount from £45 to £2,313.37 and totalling £2,928.63 in respect of disbursements when no funds stood to the credit of the ledger thereby giving rise to an overpayment of that amount.
30. The ledger account also showed that on 6th June 2000 an amount of £5,983.63 had been received by the firm from the Legal Aid Board and lodged in the firm's office bank account.
31. Mr Cotter ascertained, and the Respondent accepted, that the amount of £5,983.63 was in respect of costs of £3,055 and disbursements of £2,928.63 and that as the funds had been lodged in office bank account then the disbursements should have been paid from office bank account and not client bank account.
32. Mr Cotter noted that the ledger account also showed a transfer of £5,983.63 from the office to client bank account on 30th June 2000 to clear the overdrawn position on client account but these funds had not been transferred.
33. The firm delivered an Accountant's Report for the year ended 31st May 1998 on 24th November 1998 which showed figures in agreement at both comparison dates. Subsequently, the reporting accountants wrote to The Law Society to say that they had "missed" Accounts Rule breaches during their audit work and that a client account shortage had existed as at 31st May 1998. More details of breaches were made available in subsequent correspondence. A subsequent Accountant's Report revealed shortages in client account, but the reported shortages were less than those ascertained by Mr Cotter.

The Submissions of the Applicant

34. The facts spoke for themselves.

The Submissions of the Respondent

35. The Respondent made no submissions.

The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated. It was clear that the Respondent had raided client account to obtain money for his own purposes. He had conducted a system of "teeming and lading" and had sought to disguise his activities by the production of unwarranted bills.

Punctilious compliance with the Solicitors' Accounts Rules was the foundation stone of a solicitor's practice. A solicitor was bound at all times to handle client's money properly and fairly and was required to exercise a proper stewardship over such monies.

The Tribunal regards any failure to comply with those heavy responsibilities as serious conduct unbecoming a solicitor but in this case where the improper utilisation

had been deliberate and dishonest, the Respondent's actions were such as to bring the solicitors' profession into serious disrepute. The Respondent's behaviour was disgraceful and at the highest end of the scale. It was right that the public should be protected from any further activities of the Respondent and to that end he could not be permitted to remain a solicitor.

The Tribunal ordered that the Respondent be struck off the Roll of Solicitors and they further ordered him to pay costs of and incidental to the application and enquiry fixed in the sum of £6,240.43.

The Tribunal would rely on the Applicant and the Respondent to keep it fully informed as to the progress of the criminal trial and its outcome.

DATED this 30th day of May 2002

on behalf of the Tribunal



A G Gibson
Chairman

*Findings filed with the
Law Society on the
12 JUN 2002*