No. 8436/2001

IN THE MATTER OF GARY CARTER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr R B Bamford (in the chair)
Mr A G Gibson
Mr M G Taylor CBE

Date of Hearing: 12th September 2002

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 by Ian Christopher Bonney-James solicitor employed by The Law Society at the Office for the Supervision of Solicitors ("OSS") of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 2nd August 2001 that Gary Carter of Twickenham, Middlesex, 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 respects namely:-

i) that he misused alternatively misappropriated clients' funds for his own benefit;
ii) that he failed to keep properly written up books of account as required under Rule 11 of the Solicitors' Accounts Rules 1991 (Rule 1 of the Solicitors' Accounts Rule 1998);
iii) that he failed to carry out client reconciliations as required under Rule 11 of the Solicitors' Accounts Rules 1991 (Rule 32 of the Solicitors' Accounts Rules 1998);
iv) that he failed to lodge Annual Accountant's Reports as required under Section 34 of the Solicitors' Act 1972 (as amended);
v) that he culpably overcharged on a client matter;
vi) that he failed to act in the best interests of a client.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Mark Barnett solicitor employed by The Law Society at the OSS appeared for the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included a letter addressed to the Clerk to the Tribunal dated 9th September 2002 from the Respondent to which was attached his statement and supporting documents. Mr N J Shelley (Law Costs Draftsman) gave oral evidence.

Application for Adjournment

1. In his before mentioned letter the Respondent said that it would be impossible for him to attend the hearing or be represented. He had spoken to the Applicant twice during the week before the hearing and he had been informed that any application for an adjournment would be opposed unless it was strictly on medical grounds.

2. The Respondent was working having commenced employment with the Civil Service on 5th August. He had been attending intensive training courses since then and had already missed two sessions through illness. He was serving a probationary period having previously been unemployed since August of 2001 and could not afford any further absence.

3. The Respondent enclosed a letter from his general practitioner indicating that the Respondent's medical problems included diabetes, hyperlipidaemia hypertension and obesity.

4. The Respondent went on to say that he was reluctant to seek an adjournment as he had been waiting for the matter to be dealt with for almost eighteen months and the stress and anxiety had seriously affected his health. The matter had previously been listed for one day on 30th May 2002 and the Applicant had requested an adjournment owing to the absence of a witness. The Respondent had consented to that adjournment.

5. The Respondent hoped the Tribunal would consider it equitable to adjourn the substantive hearing until his Civil Service training had been completed. His training would be completed at the end of a ten to thirteen week period after 5th August.

6. The Applicant could not be inconvenienced as he was attending the Tribunal on 12th September on other business.

7. The Respondent hoped that he would be able to save sufficient money to pay for representation at an adjourned hearing.

8. The Respondent intended no discourtesy to the Tribunal and apologised for any inconvenience caused.

9. The Applicant opposed the application for an adjournment. There was no suggestion that the Respondent was not unable to attend on medical grounds. It was accepted that the substantive matter had been adjourned on an earlier occasion owing to the unavailability of a witness.

10. Six allegations had been made against the Respondent. They were serious allegations. At the eleventh hour the Respondent had admitted four of the allegations but he disputed the allegation relating to overcharging. The evidence of overcharging had been the subject of the costs draftsman's report and that had been the subject of the

Civil Evidence Act Notice. No counternotice had been served by the Respondent. This meant that the Respondent did not dispute the costs draftsman's report. It was clear that the Respondent was prepared for the matter to proceed in his absence.

11. The matter should proceed in the absence of the Respondent.

The Tribunal's decision in the adjournment application

12. The Tribunal noted that the Respondent himself accepted that there were no medical grounds upon which he could rely in support of his application for an adjournment. The Tribunal noted the Respondent's involvement in a course which it was accepted was of great importance to him, but the Tribunal took the view that a member of the solicitors' profession should give a proper priority to business involving him before his own professional Disciplinary Tribunal. The Tribunal had to balance the interests of both parties wih the interests of the public and the good reputation of the solicitor's profession. The Respondent had chosen not to attend – he could not be said to have been prevented from attending. He had formulated his own priorities. The Tribunal did not consider it right to grant an adjournment and ordered that the matter proceed to the substantive hearing. The Tribunal had the Respondent's statement and would take all of the matters to which he referred into account.

Preliminary issue

13. The Respondent had indicated that he had been taken by surprise that the allegations made against him included allegations that he had been dishonest. The Applicant accepted that he had made no specific allegation of dishonesty against the Respondent but pointed out that the costs draftsman's report made it clear that dishonesty could be a factor.

14. It would be the submission of the Applicant that the costs charged by the Respondent amounted to professional misconduct at the top end of the scale and it would be open to the Tribunal to make an inference that the Respondent's behaviour had been dishonest.

The Tribunal's Decision

15. The Tribunal accepted the position to be as described by the Applicant. The Respondent had been in possession of all of the papers and had been fully aware of the nature of the allegations made against him.

The Tribunal's Order

16. At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal order that the Respondent, Gary Carter of Twickenham, Middlesex, solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry (to include the costs of The Law Society's Investigation Accountant) to be subject to a detailed assessment unless agreed between the parties.

Dated and filed with The Law Society this 12th day of September 2002.

The facts are set out in paragraphs 16 to 24 hereunder: -

17. The Respondent, born in 1951, was admitted as a solicitor in 1980.

18. At all material times the Respondent practised on his own account under the style of Price Carter solicitors of 76 Kew Road, Richmond, Surrey until The Law Society intervened on 24th May 2001.

19. On 5th April 2001 the Investigation and Compliance Officer of the OSS ("the ICO") attended at the Respondent's offices to inspect his books of account.

20. The ICO's Report dated 14th May 2001 revealed that the books were not in compliance with the Solicitors' Accounts Rules and noted that no client account reconciliations had been undertaken since August 1998. There were numerous errors and omissions of which the Respondent was aware. No Accountant's Reports had been delivered to The Law Society since August 1998.

21. At the time of the inspection there was a minimum cash shortage of £66,080.07. The shortage was mainly attributable to two factors, one being a client account deficiency in the matter of R of £14,588.88, caused by an over transfer, and the matters contained in a "Suspense" Ledger Account containing unidentified transfers from client to office account totalling £52,859.22.

22. During the inspection the ICO became concerned about the level of costs charged in a probate matter, J deceased. The ICO called in the client file and sent it to a costs draftsman for assessment.

23. The costs draftsman's report (which was before the Tribunal) concluded that the Respondent had grossly overcharged for the work done. The Tribunal noted that the costs draftsman took the view that the maximum proper charges would have been £12,200 for the pre-death work and £8,900 for the probate work, a total of £21,100. The deceased had granted power of attorney to the Respondent and another. The Respondent's bills raised while the deceased was still alive totalled £21,903 over a five year period and the bills raised in respect of the probate matter totalled £40,105. The Respondent had drawn the deceased's will and was his sole executor. The assets were liquid and easily realised; the value of the estate did not exceed £180,000. There had been some difficulty in tracing certain beneficiaries, but that had not been a substantial problem.

24. During the course of giving oral evidence the costs draftsman agreed that it was possible that not all attendances made by the Respondent had been noted on the files. He pointed out that there had been a set of attendance notes each of which had been typed on a separate piece of paper. They had all been typed at the same time. The notes represented the Respondent's recollection of what he had done. Those notes (some of which amounted to duplications and some of which contradicted others) showed the equivalent of 136 hours of professional time devoted to the client. That was a large number of hours for a solicitor to spend in attending upon a client – it appeared that the Respondent said that he had spent more than 1,000 hours in attendance upon the client prior to his death. It was the costs draftsman's view that 136 hours bore no relationship to the actual time spent. The costs draftsman had not had the opportunity of comparing attendance notes made with the Respondent's diary entries.

The Submissions of the Applicant

25. The Respondent had failed to file Accountant's Reports with The Law Society for three years. One extension of time had been granted to him during that period but reports had not been filed. He had not carried out client account reconciliations.

26. A suspense ledger had been created. It was accepted that this ledger had not been drawn up by the Respondent but had been prepared by his accountants. Nevertheless that suspense ledger demonstrated that between 1996 and 1997 a number of transfers from client to office account had been made which could not be identified. It was accepted that the existence of the "Suspense Account" kept some record but it was indicative of the fact that the Respondent had very little control over how his accounts were managed and run. It appeared that some systematic transfers had been made. The Respondent had not given any explanation to the ICO.

27. With regard to the charges rendered in the matter of J deceased there could be no doubt that the Respondent had been guilty of culpable overcharging.

28. The Tribunal's attention was drawn in particular to that part of the costs draftsman's report in which he said there was an arguable case that the Respondent had grossly overcharged for the work done. It was his view that if an application for a remuneration certificate had been submitted the reduction in the bills would be so significant that he would expect the matter to be referred for further investigation for both misconduct and fraud.

29. He went on to say that the following particulars were strongly suggestive of dishonesty:-
    (i) failure to finalise the estate account which would have alerted the beneficiaries to the costs charged
    (ii) deduction of £15,000 in respect of a "value element" which the solicitor must have known could not reasonably exceed £2,700 being one and a half per cent of the value of the estate;
    (iii) the further deduction (after deducting £15,000 in respect of Bill 2488 on 3rd March 1998) of four sums each in excess of £4,250 any of which added to the previous interim bills far exceeded the possible total charge for the work done.

30. The overcharging increased as the case progressed.

31. The level of charges for probate work were particularly disturbing because there was little evidence that there was any complexity in the work undertaken. There was no evidence that final accounts had been prepared and the value element had been grossly inflated.

The Submissions of the Respondent (contained in the statement submitted to the Tribunal with his letter of the 9th September 2002 – summarised hereunder).

32. The Respondent commenced in practice as a sole practitioner in September 1984.

33. His wife was a career Civil Servant and wished to start a family. He anticipated that his practice would be small in the early years which would allow him time to undertake parental duties outside of nursery and subsequently school hours.

34. During the years 1984-1990 the Respondent's client base grew, his prosperous period being 1987-1989 when he concentrated on conveyancing. Between 1984 and 1989 there had been one book keeper. When he retired, the Respondent made book keeping entries himself for about a year. The firm had been of modest size.

35. The Respondent employed an assistant but by 1994 he had become aware of the assistant's deficiencies and dismissed him. The book keeper who had been with the Respondent since 1991 on a freelance part-time basis took full time employment elsewhere. The Respondent was diagnosed diabetic. His illness was the main reason why he was not more pro-active and did not recognise the problems arising and remedy them at an early stage.

36. The Respondent's health had not prevented him from attending the office on a daily basis (other than normal holidays) but it curtailed the hours worked and impaired his efficiency. In June 1992 the Respondent suffered an hiatus hernia while swimming and was rushed to hospital presenting symptoms of a heart attack.

37. Diabetes needs to be well managed and the patient stabilised to lead a nearly normal lifestyle. The Respondent had not done so primarily due to his lifestyle, lack of exercise, which he gave up after the hernia incident, and the need to socialise with existing and prospective clients. It is also considered that stress can have an adverse affect on diabetic patients and several events during 1995/1996 caused a rapid deterioration of the Respondent's health those events included the loss of a vital member of staff; a dispute with a set of barristers' chambers over the quality of work; the death at the age of 35 of the husband of an assistant solicitor, who was badly affected by this; the deaths in rapid succession of the partner of a client; the Respondent's elder sister and another client during 1995 and 1996 from complications relating to diabetes at relatively young ages. The Respondent had been particularly close to his sister. He had been very concerned that he also suffered from the same disease that caused her premature death.

38. Following the death of the Respondent's sister there had been dispute in the family involving the distribution of his sister's chattels.

39. In late 1995 the Respondent's elderly mother-in-law had to change the arrangements for her care leading to self neglect and serious malnutrition. The Respondent had suffered much guilt as he and his wife had not visited, for a number of reasons, for a few months.

40. A simple manual book keeping system had been introduced in 1984 which remained broadly unchanged until 1996 when there was an enforced change of book keeper. The new book keeper introduced a new manual system claiming it was what he was used to but this could not explain the errors made. It was never necessary for a book keeper to work more than half to one day a week. In 1995 the Respondent's accountants were to provide book keeping services, followed by the employment of the services of a person who proved unsatisfactory. The accountants did not then again provide book keeping services as expected and the matter was handed to the Respondent's assistant solicitor. From 1999 onwards a secretary kept the books. The Respondent had remained unaware of any deficiencies in the books until the inspection by the ICO.

41. As a result of the VAT returns not being submitted in 1996/1997 Customs & Excise carried out an inspection in September 1997. The Respondent had been let down by his accountants, not only in respect of the Solicitors Accounts Rules but also in matters of tax and VAT.

42. The Respondent had become aware of this when all the books came into his control during June 2000.

43. The accountants had reconciled clients' accounts only twice a year.

44. The Respondent refuted the suggestion that he overcharged or did unnecessary work in the J deceased matter. The Respondent referred to J deceased as "Stuart" and said in his statement:-

> "Stuart was introduced to me in about 1992 by a long standing client and former neighbour (Ted) who had been a friend of Stuart since World War Two. Ted was well into his seventies and would do shopping for Stuart who lived in his own flat in Ealing. He lived alone and following matters coming to a head in 1994 most of his friends fell by the wayside. Ted had gone for a holiday in December and had made arrangements with social services to do shopping. It was clear that Stuart was in the early stages of dementia but was probably worse than anyone appreciated as he was picked up by the police in the street during the night in a state of undress. Social Services placed him in hospital and referred to me pending Ted's return (who was the appointee). In consultation with Social Services, Ealing Hospital, Stuart's GP, Ted and Stuart it was decided that he required more than respite care and was borderline between residential or a care home. Ted and I investigated and visited numerous homes from Ealing through to Wimbledon eventually choosing a home in Shepperton. Ted had a limited authority to draw cash on behalf of Stuart which was not sufficient to pay the home's fees. Following further proper consultation we elected to use an enduring power of attorney. I had numerous meetings with Stuart often in company with Ted it being quite common for Stuart to make a request to see me. This was especially true when Ted was away visiting relatives or involved with one of his projects.
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> Stuart developed Parkinson's disease but still had many lucid intervals when it was possible to take instructions. It was however very time consuming involving many visits to deal with Stuart's various whims. He wished to change his will. His broker had a copy but the original could not be found despite extensive enquiries to solicitors mentioned in his address book or in the Ealing area. He had previously owned a house jointly with a friend who wished to move north and had forced a sale. She was the principal beneficiary named in the will and as there was considerable bad feeling I came to the conclusion that the will had been destroyed. I was aware that Stuart had a niece in Scotland and a nephew in Belgium neither of whom had visited or contacted him since 1988.
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> Stuart was adamant that he did not want his relatives to be major beneficiaries. Many hours were taken to prepare the will to such an extent that I did not dictate notes as it was not practical but I did make a record in my diary. In all there were fifteen visits just to execute the will. This was because the doctor had to be present and Stuart's lucid periods were impossible to predict.

I calculate that I spent over a thousand hours in attendances upon Stuart or dealing with his affairs during his lifetime. I submitted that my fees were reasonable bearing in mind that he had limited funds available until probate was granted. I was criticised by the investigating officers for not billing when the work was done but this was not practical as I could not use the cash accounting system and would have to account for VAT.

I am also certain that the investigators did not remove all the files when assessing the fees as several remained after the intervention uplift and have gone into archive storage. I would by way of comment only state that these files were not made available to me for costing.

In any event I submit that on a commercial and professional basis a charge out rate of £135 per hour for a senior solicitor practising in Richmond had been quite common for over ten years and by my calculation fees in excess of £135,000 could have been charged."

45. The Respondent accepted that there was a shortfall on client account and that there was an unintentional misuse of client funds. This arose due to numerous bookkeeping errors.

46. He accepted allegation ii), iii) and iv).

47. The Respondent had been granted a Practising Certificate subject to conditions but his poor health and the indemnity insurance restrictions had prevented him from working in the legal profession since August 2001. He had been unemployed and not entitled to any social security benefits.

48. The Respondent had been in financial difficulty and had suffered loss of self esteem and reputation. He had also suffered matrimonial difficulties to the extent that for the past six months he had had a nomadic life style and lost most of the love and companionship of a marriage lasting 31 years. The relationship with his 18 year old son had also been strained. There had been a partial reconcilation since the Respondent became employed and had some purpose to his life.

49. The Respondent hoped that the Tribunal might feel able to avoid the imposition of the ultimate sanction. The Respondent had suffered misfortune. He had not been dishonest. He expressed the hope that in imposing a financial sanction the Tribunal would take into account the Respondent's current financial difficulties.

The Findings of the Tribunal

50. The Tribunal find all of the allegations to have been substantiated. The Respondent had been guilty of serious failures with regard to the requirements to maintain proper books of account and to carry out proper client account reconcilations. As a result of over transfers or unidentified transfers of money from client to office account the Respondent had misused clients' funds for his own benefit. Compliance with the Solicitors' Accounts Rules is a fundamental requirement of the practice of a solicitor. It is a fundamental requirement that a solicitor treats clients' money entrusted to him with the utmost propriety and that he exercises proper stewardship of those monies. The Respondent did not do so.

51. Further the Respondent failed to file annual Accountant's Reports with The Law Society. The Respondent had been granted an extension of time on one occasion but even then had not filed the outstanding Report. The filing of Accountant's Reports with The Law Society is a statutory requirement and compliance is essential in order that The Law Society might maintain its credibility as a regulator and is able to give assurance to clients that monies placed with a solicitor are not in jeopardy. A breach of this important regulatory requirement is serious.

52. The Tribunal does find that the Respondent has been guilty of culpable overcharging in the matter of J deceased. The Tribunal accepts the evidence of Mr Shelley, the costs draftsman, and has reached the conclusion that the Respondent made transfers from client to office account of substantial sums of money in circumstances where he was not subject to any check on his activities. He was an attorney of J deceased during his lifetime and after his death was J deceased's sole executor. He had not produced any estate accounts leaving the beneficiaries unaware of the charges he had made. The Tribunal in particular noted that in an estate consisting of liquid assets not exceeding £180,000 the Respondent had made charges in excess of £40,000. Even if the Respondent had not deliberately overcharged the Respondent's approach had been at best extremely reckless and fell very short of the probity, integrity and trustworthiness required of a member of the solicitors' profession.

53. The Tribunal accepted that the Respondent had placed before them a number of mitigating factors. The Tribunal had taken these into account and had some sympathy for the Respondent's personal predicament. However the Tribunal, in recognition of its wider duty to the public and the maintenance of the good reputation of the solicitors' profession, concluded that the Respondent's behaviour fell so far below the high standard required of a solicitor that it was right that the Respondent should be struck off the Roll of Solicitors. They further ordered that he should pay the costs of and incidental to the application and enquiry. In view of the fact that there had been no agreement as to costs they ordered that the costs (which should include the costs of The Law Society's Investigation Accountant in this Findings referred to as the ICO) to be subject to a detailed assessment unless agreed between the parties.

DATED this 18th day of October 2002

on behalf of the Tribunal

R B Bamford
Chairman