No. 8464/2001(R-H)

IN THE MATTER OF JONATHAN ANTHONY LEVENE, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Miss T Cullen
Mr D E Marlow

Date of Hearing: 9th April 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 ("OSS") by George Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 29th August 2001 that Jonathan Anthony Levene of Levene & Co, 8 Connaught Street, London, W2 2AY (now of address unknown) 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 against the Respondent were that he had been guilty of conduct unbefitting a solicitor in that he:-

(i) failed to keep his client informed as to the progress of his case and the terms of settlement;

(ii) failed to disclose the receipt of settlement monies;

(iii) issued false bills;

(iv) failed to dispatch bills to his client;

(v) dishonestly misappropriated client's money;

(vi) failed properly to account to the Legal Aid Board;

(vii) took unfair advantage of his clients by overcharging;

(viii) failed to comply with a request from his client for information relating to his case;

(ix) improperly abandoned his practice;

(x) held client's money contrary to a decision made by the Compliance and Supervision Committee on the 21st June 1995;

(xi) improperly threatened defamation action against his client.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 9th April 2002 when George Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr Albert James Ridout. The Respondent had addressed a letter to the Tribunal dated 21st March 2002 received on 28th March 2002. This letter is referred to under the heading "The Submissions of the Respondent."

At the conclusion of the hearing the Tribunal ordered that the respondent Jonathan Anthony Levene of address unknown but formerly of 8 Connaught Street, London, W2 2AY former solicitor be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the inclusive sum of £5,054.65.

The rehearing had been sought by the Respondent following his notification that there had been a flaw in the constitution of the division of the Tribunal at the hearing on 15th January 2002. The Tribunal ordered that the Respondent should not pay the additional costs incurred by the rehearing.

The facts are set out in paragraphs 1 to 22 hereunder: -

1. The Respondent born in 1943 was admitted as a solicitor in 1969 and his name was removed from the Roll on 17th October 1997.

2. The Respondent carried on practice as a sole principal under the style of Levene & Co from 8 Connaught Street, London, W2 2AY until 31st August 1994.

3. AWR died in April 1985. Under the terms of his Will one of his sons AJR (Jamie") and his solicitor Mr Jennings were appointed as executors of the estate. AWR's building company BR & Son Limited ("the Company") was left to four members of the family namely Jamie, his brother D and their two cousins A and R. This was conditional upon each of them covenanting to pay AWR's widow £186 per week. Because it was thought the payments could last longer than the business, an agreement was reached through Mr Jennings whereby the weekly payment was increased to £226 for the life of the company only. This agreement lasted only until

1986 when the widow commenced proceedings against Jamie, D, A and R, Mr Jennings and his firm.

4. The Respondent through his firm was instructed in 1992 to act on behalf of the four members of the R family to defend the proceedings. All four started off as privately paying clients but on 23rd October 1992 Jamie and D were granted Legal Aid Certificates.

5. The Respondent issued a bill of costs dated 9th November 1992 against all four of his clients totalling £25,679.35. The bill was to be inclusive of all matters up to and including 6th October 1992. Jamie and D paid collectively £10,539.68 and therefore were in debit by £2,300 and A and R paid £18,500 and therefore were in credit in the amount of £5,660.33.

6. On 17th March 1993 the Respondent's father on behalf of the Respondent requested from Jamie a quarter share of the sum of £10,000 requested from all four of them ostensibly by letter dated 12th January 1993. When Jamie queried that he had been in receipt of a Legal aid Certificate since 23rd October 1992 the Respondent stated that the request for payment was to cover costs incurred before the granting of Legal Aid.

7. Following negotiations, the action was settled by a Consent Order dated 20th April 1993. The gist of the Consent Order was to stay the proceedings and to order Mr Jennings and his firm to pay the sum of £40,000 (£10,000 to each of the family). The terms of the settlement were neither explained to nor agreed with Jamie. Following the Order £40,000 was paid by letter dated 29th April 1993 to the Respondent who acknowledged it by letter dated 4th May 1993.

8. The Respondent did not notify Jamie or his brother or cousins of the receipt of £40,000 despite writing to Jamie only two days after acknowledging receipt of the money.

9. On 1st July 1993 the Respondent issued two further bills, one against Jamie and D totalling £27,246.49. This bill could only be for work done between 7th October 1992 and 22nd October 1992. The bill was not forwarded to Jamie until 30th August 1994 after he had complained to the OSS. The Respondent confirmed in the letter that payment of the bill was being met by monies recovered on his behalf.

10. The second bill addressed to A and R was for £20,000 exactly. This bill was paid from the £40,000 received even though A and R were still in credit in the amount of £5,660.33.

11. By letter dated 5th April 1993 other solicitors involved in the litigation referred to a figure of £31,706 which were apparently the costs incurred by the four family members in favour of the Respondent prior to the grant of Legal Aid on 23rd October 1992. That figure was £6,026.65 in excess of the amount previously billed on 9th November 1992 i.e. £25,679.35. By raising the bill against Jamie and D for £27,246.49 on 1st July 1993 the Respondent purported to charge them an extra £21,219.84 (£27,246.49 minus £6,026.65).

12. The Respondent, pursuant to the Consent Order, obtained a Legal Aid taxation of Jamie and D's bill for the amount of £33,035.97 plus £4,170 being a taxing fee. The

bill was raised on 1st June 1994 and the Respondent did not notify Jamie or D of that taxation or the raising of the bill.

13. Pursuant to the Legal Aid Act 1984 monies recovered on behalf of a client who had the benefit of a Legal Aid Certificate were subject to the Legal Aid Board's statutory charge. The Legal Aid Board recouped therefore the sum of £10,000 in respect of Jamie's costs and a further £10,000 in respect of D's costs from monies paid out to the Respondent. It was impossible for the Respondent to have negotiated a settlement whereby Jamie and D received money which was intended to cover the non-legally aided costs with the intention that the Legal Aid Board could not exercise their charge over any part of it.

14. In August 1994 Jamie gleaned that the payment of £40,000 had been made to the Respondent in April 1993. Accordingly by letter dated 17th August 1994 he complained to the Solicitors' Complaints Bureau ("SCB"). He copied this to the Respondent who replied on 21st August 1994 threatening defamation proceedings. By letter dated 27th September 1994 the SCB drew the Respondent's attention to Principle 30.35 and the Respondent replied by letter dated 30th September 1994 disagreeing with the view of the SCB but he never commenced defamation proceedings.

15. By letter dated 5th September 1994 Jamie requested details of various payments and receipts. The Respondent's reply dated 16th September 1994 was to reserve his position with regard to potential defamation proceedings and state that Jamie was aware of all the figures. Jamie wrote once more by letter dated 22nd September 1994 but received no reply. Following the SCB's involvement the Respondent's firm wrote to the SCB by letter dated 30th September 1994 setting out the position and asserting (wrongly) that the monies recovered only covered the non legally aided costs with the result that the Legal Aid Board could not exercise a charge over any part of it. Further requests were made of the Respondent to provide information which in part was provided by the Respondent's father by letters dated 27th February 1995. On 24th March 1994 the Respondent's father provided a copy of the ledger but declined to send copies of the bills and asserted that had the Legal Aid Board not claimed the statutory charge the bill dated 1st July 1993 would have been rendered at that time.

16. After a further request for copy bills, the Respondent's father sent the copy bills dated 9th November 1992 and 1st July 1993 to the SCB together with a copy of the letter dated 30th August 1994.

17. Following the resolution made by the Committee on 21st June 1995 The Law Society intervened into the firm on 6th July 1995. The file of papers relating to the R matter was passed to Jamie and he supplied further argument and papers in support of his complaint by letter dated 14th February 1996.

18. The Respondent ceased to practise on 31st August 1994 according to an Accountant's Report dated 22nd December 1994.

19. On the intervention the SCB was informed by National Westminster Bank that there was still a credit in the firm's client account totalling £958.55.

20. By letter dated 24th February 1997 the OSS sought the Respondent's response on matters raised within that letter. The letter was returned undelivered but the Respondent's father replied by letter dated 5th March 1997.

21. The matter was initially considered by a Professional Casework Committee on 22nd September 1999 and their decision was to reprimand the Respondent and to vest a discretion in his next Practising Certificate. The matter was referred to the Legal Services Ombudsman who ordered that the matter be referred back to the OSS and then re-investigated and referred to a different committee.

22. It was then discovered the Respondent's name had been removed from the Roll of Solicitors on 17th October 1997. That issue was not known by the Committee when they made their decision on 22nd September 1999. As a result of the Report from the Legal Services Ombudsman the OSS wrote to the Respondent by letter dated 9th March 2001. A copy was sent to the Respondent's father also on that date. The letter enclosed the report prepared by CW, a caseworker within the Solicitors Practice Unit of the OSS dated March 2001. The Respondent's father replied by letters dated 20th March 2001 and 9th April 2001.

The Submissions of the Applicant

23. In the light of the allegations and the evidence supporting three allegations it was right that the Respondent should not be permitted to practise as a solicitor.

24. The Respondent's name had been removed from the Roll of Solicitors in 1997 following his failure to respond to reminder letters as part of the renewal exercise. The applicant therefore sought an order pursuant to Section 47(2)(g) of the Solicitors Act 1974 that the Respondent be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal.

25. The submissions of the Applicant were supported by the oral evidence of Mr Albert James Ridout.

The Submissions of the Respondent

26. The submissions of the Respondent were contained in his before-mentioned letter dated 21st January 2002 to the Tribunal. The Tribunal also had before it a letter addressed to it by the Respondent dated 4th January 2002.

Letter of 4th January 2002

> "I have had passed to me some documentation relating to a hearing intended to take place on, I believe 15th January next. I do not propose dealing in any detail with the various documents and allegations because:
>
> 1. I believe you have no jurisdiction to hold such proceedings.
>
> 2. The whole presentation is so distorted, one-sided and dishonest that I am reluctant even to make restricted observations.

3. I have no intention of ever applying to have my name restored to the roll.

I would though like to make a number of observations. First, I have not been on the roll for a number of years and I asked, in writing in 1994, to be removed from the roll.

There is a document amongst your papers headed "Schedule" with the reference, "CDT/17156-2000/CH4 Regis Ref:58033 LSO Re-Considerations Hybrid Sub-Committee." This document states under the heading "Previous Complaints and History" – 27th September 1995 – The Committee dismissed Mr Levene's oral application to lift the suspension of his Practising Certificate following the intervention." I do not know of the circumstances in which this purported event took place but in 1995 I did not have a practising certificate; I had not applied for a practising certificate; I had asked for my name to be removed from the roll and I certainly made no oral application to lift any purported suspension of my non-existent practising certificate. It seems to me to be a serious matter for a totally fictitious application to have been scheduled as a historical event. I would hope that the author or authors of this fiction would face the appropriate disciplinary procedures for their dishonest conduct.

Turning to point number 1 above, the short facts are that I have not had a practising certificate since 1994. I requested my name to be removed from the Roll the same year. I was removed from the Roll apparently in 1997. The purported disciplinary proceedings from which the current application originates took place apparently nearly two years after I was removed from the Roll. Notwithstanding this the Committee proceeded and acted on the basis that I was on the Roll. There is ample and recent authority that the Committee had no jurisdiction at that stage nor presently for proceeding as they have done. (See for example Surrey Police Authority v Beckett – Times Law Report August 8 2001). I also note the absurd, presumably exculpatory, contention in paragraph 23 of the affidavit of George Marriott of 29th August 2001 that when the Committee purported to make their decision of 22nd September they were not aware that my name had been removed from the Roll two years earlier. If true, such a statement would be a sad commentary on the competence of the Committee and those advising it.

As to 2 and the issues of Jamie Ridout. I cannot now remember all the facts relating to this matter. What I do know is that his allegations are a total fabrication and that all the evidence, if it were properly, objectively and honestly considered, would be against him. I also note that nowhere is there any mention of the documents signed by the other three Ridouts who were parties to the action. In those documents that I asked them to sign after Jamie's initial correspondence with me, they confirmed that they and Jamie were all kept fully and completely informed of all aspects of the litigation, the final settlement and the detailed costings; that their instructions were taken before the settlement and that they were completely satisfied with my conduct of the case and the bills, as was Jamie before he decided to try to take advantage of what he perceived to be a change in my circumstances. These signed documents were in the files of the case.

A further example of what I say in 2 is the one sided and totally inaccurate affidavit of Marriott as well as the Memorandum of Substituted Service signed by the Chairman of the Tribunal A.G. Gibson. In his Memorandum Gibson states that I "had fled the jurisdiction and was wanted by the police for the murder of his business partner…. the applicant was unable to assist the Tribunal whether the police matters had been proceeded with…. It was believed that the respondent was outside the jurisdiction in a country with which there was no extradition treaty." The entirety of this statement is untrue.

The easily ascertainable facts are that I was given police bail after having been questioned by the police; I was subsequently informed that I need not appear and that the bail had been cancelled as the Crown Prosecution Service, having taken leading counsel's opinion had confirmed to my solicitors that no further action was being taken against me. Apart from the facts being simply and independently ascertainable they are clearly stated in the documents set out in the bundle of exhibits to Marriott's affidavit to the Tribunal. It is manifestly unfair for the Chairman of the Tribunal to make untrue prejudicial statements about me, to say nothing of demonstrating a staggering lack of competence that reflects nothing more than his total unsuitability to act in any judicial or quasi-judicial capacity. Doubtless the Chairman will in the circumstances wish to recuse himself as well as apologising to me for these untrue, unjustified and defamatory remarks.

Finally I would ask (1) why it is that I have never had accounted to me £10,000 that I understand was collected by The Law Society on my behalf from my former practice. (2) why and how it is that a total of some £2,300 that was, at the time of the intervention held in client's account in specified accounts for my children has disappeared, apparently without trace and The Law Society has failed to do anything about it although having been in correspondence with my children who are now about to refer the matter to the legal ombudsman. As I understand the rules on intervention such sums of money should have been accounted for to my children and paid over to them. Instead they appear to have been stolen and officers of The Law Society asked by my children to account for the money have merely delayed and equivocated and sought to cover up the theft."

Letter of 21st March 2002

27. The Respondent acknowledged that he was aware of the date of the rehearing an he repeated his assertion that the Tribunal did not have jurisdiction.

28. The Respondent said that Mr Ridout's evidence was untrue. The Respondent said the relevant facts were:-

"1. Initial discussions took place regarding settlement based upon our asking for reimbursement of non-legally aided costs incurred by the two Ridout brothers and their cousins. Legal Aid was only granted to Jamie and his brother at a very late stage just prior to the action coming on for hearing and the bulk of the costs incurred up to the date of the discussions were not covered by the Legal Aid Certificates.

2. I calculated the pre-Legal Aid costs as something over £40,000. The figure in Sampson's letter of (sic) contains a typographical error of a "3" rather than a "4." This figure was given to Sampson in November 1992 and became rounded down to £40,000 in the course of negotiations between Counsel, C.A. Brodie and Peter Sheridan.

3. The original offer from the other side was £20,000 which was an amount offered by the 5th and 6th Defendant's insurers by way of overall settlement of the litigation. Mrs Ridout had been advised by Peter Sheridan that she was likely to lose against us but she was not willing to make any payment to us out of her own pocket. It was therefore proposed that we would receive everything offered by the insurer. Because this sum was only approximately half of the four Ridout's non legal aid costs, Sampson negotiated on the basis reiterated in his letter of 5th April 1993 that there be an order for his client to pay half our non Legal Aid costs or £20,000 whichever was the greater. He only intended our non Legal Aid costs to be taxed. The negotiations which took place in November and early December 1992 fizzled out until the adjourned hearing became imminent.

4. Our Counsel, Mr Brodie was of the view that the money should be taken as a lump sum payment because, I believe, he considered that it would have been improper to have obtained an order for taxed costs which excluded Legal Aid costs. I had my reservations about settling for a figure that would have been less than an amount required to reimburse the clients for all their non legally aided costs when Counsel was of the view that we ought to win and there seemed every likelihood of our recovering these costs either from Mrs Ridout or the insurers.

5. The insurers subsequently increased their offer to £40,000 which it was agreed we would take as it was a figure that substantially covered the non Legal Aid costs.

6. In the interim I had spoken to The Law Society consequent upon various discussions I had had with Mr Brodie. The purpose of my speaking to The Law Society was to ascertain whether or not there would be any difficulty about accepting as a lump sum a payment that was intended only to cover non legally aided costs without making any provision for Legal Aid costs.

7. Throughout all the negotiations the Ridouts (including Jamie) were all kept fully informed; their instructions were taken and they attended meetings at my office and with leading Counsel.

29. It was the Respondent's position that much discussion and negotiation had taken place.

The Findings of the Tribunal

The Tribunal found all the allegations to have been substantiated.

The Tribunal rejected the Respondent's submission that it did not have jurisdiction to deal with this matter. The Tribunal's jurisdiction derived from Section 47 of the Solicitors Act 1974 (as amended).

The Tribunal found Mr Rideout to be a credible witness and preferred his sworn evidence to that provided by the Respondent in his two letters.

At a hearing before the Tribunal on 3rd April 1986 the Tribunal found the following allegations proved against the Respondent and another namely that they had:-

(i) contrary to Rule 1 of the Solicitors' Practice Rules 1936-1972 as amended directly or indirectly without reasonable justification invited instructions for professional business through the agency of Countdown plc;
and

(ii) were thereby guilty of conduct unbefitting a solicitor.

The Tribunal in 1986 was mindful of the fact that the Respondents had discontinued the scheme which had been the subject of the proceedings upon receiving indications from The Law Society that it was likely to constitute a breach of Rule 1 and in the circumstances the Tribunal ordered that the Respondents each pay a penalty of £500 together with the Applicant's costs.

At the hearing on 9th April 2002 the Tribunal concluded that the Respondent had been guilty of serious dishonesty and had brought the solicitors' profession into disrepute. The Respondent had shown no remorse. Indeed in his letters to the Tribunal he had continued to deny any responsibility whatsoever and had accused his former client, the Applicant and the Chairman of an earlier division of the Tribunal of lying.

The public needed to be able to have absolute confidence in their solicitors. The Respondent's conduct served to undermine that confidence. The Respondent's name had been removed from the Roll of Solicitors by default. In view of the Respondent's behaviour, it was right that his name should not be restored to the Roll without an Order of this Tribunal first obtained. If the Respondent's name had been on the Roll, then the Tribunal would have made a striking off Order.

The Tribunal ordered that the Respondent Jonathan Anthony Levene of address unknown but formerly of 8 Connaught Street, London, W2 2AY former solicitor be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal and they further ordered that he do pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 10th day of June 2002

on behalf of the Tribunal

R B Bamford
Chairman