No. 8466/2001

IN THE MATTER OF DAVID ROY LARKIN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H B Holmes (in the chair)
Mr. J R C Clitheroe
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, 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 29th August 2001 that David Roy Larkin solicitor of Palace Gardens Terrace, London, W8 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 that he:-

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

(ii) drew monies out of client account for his own benefit or the benefit of another;

(iii) dishonestly misappropriated clients' funds;

(iv) drew monies out of client account contrary to Rule 8 otherwise than as permitted by Rule 7 of the Rules;

(v) overcharged a client in respect of work done;

(vi) withdrawn;

(vii) by reason of the above compromised and impaired his independence and integrity; his duty to act in the best interests of his clients; his and the profession's good repute contrary to Rule 1 (a) - (d) of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS 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 appeared in person.

At the opening of the hearing the Applicant invited the Tribunal to consent to the withdrawal of allegation (vi) as that allegation had been dealt with on another occasion in another way. The Tribunal consented.

The Tribunal was also notified at the opening of the hearing that the Respondent had not received a supplementary statement containing further allegations dated 19th February 2002. The Respondent indicated that he was content that Mr Marriott should open his case in so far as it related to the allegations set out above and the Respondent would consider the supplementary allegations over the luncheon adjournment. After the luncheon adjournment the Respondent sought an adjournment of the hearing in order that he might have time to consider an deal with the supplementary allegations. It was accepted by both parties that the allegations contained in the supplementary statement did not relate to matters as serious as those contained in the original Rule 4 statement. The Tribunal decided that it would conclude its hearing of the allegations contained in the original Rule 4 Statement (those set out (i) to (vii) above) and that the Tribunal would make a direction at the conclusion of the substantive hearing as to how the matters contained in the supplementary statement should be dealt with.

The evidence before the Tribunal included the oral evidence of Mr Ireland and the oral evidence of the Respondent. The Respondent admitted allegations (i), (ii) and (iv) and disputed allegations (iii), (v) and (vii).

At the conclusion of the hearing the Tribunal ordered that the respondent David Roy Larkin solicitor of Palace Gardens Terrace, London, W8 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 £16,244.02.

The facts are set out in paragraphs 1 to 24 hereunder: -

1. The Respondent, born in 1956, was admitted as a solicitor in 1982. The Respondent practised as a sole principal under the style of Larkin & Co from 61 Pall Mall, London, SW1.

2. Following due notice an Investigation and Compliance Officer ("ICO") of the OSS inspected the Respondent's books of account. The inspection began on 26th June 2000. The ICO prepared a Report dated 4th April 2001 which was before the Tribunal.

3. The ICO noted that the Respondent's books of account were written up to the 30th September 1999 and that after that date only a client cash book with reconciliations between that book and the client bank account statements was provided. On 17th July 2000 the ICO was provided with client reconciliations up to 31st May 2000 which showed that as at the 31st May 2000 there was a cash shortage in respect of liabilities due to clients totalling £53,306.01.

4. The Respondent agreed the existence of the cash shortage in that sum and replaced the sum of £4,635.04 by transfers from office to client bank account and corrections of charges debited against client account. The Respondent stated that he was unable to replace the remaining shortfall of £48,670.97 immediately but would advise the OSS when he had done so.

5. The cash shortage total arose for five reasons. There had been incorrect transfers from client to office bank account of £3,189.62; debit balances due to overpayments and over transfers totalling £960.06; bank charges debited from client account totalling £210; unallocated transfers from office to client bank account led to a credit of £53.67 and an apparent misuse of clients funds totalling £49,000.

Misuse of client's funds

6. In November 1995 £170,202.45 had been transferred from the client account of another firm of solicitors called Masil Rumboid (when Masil Rumboid ceased to practise) to the Respondent's firm which was then called Musgrove Larkin. It represented the balances on 15 client matters. The Tribunal had before it details of three of those client matters (i) Ealing, (ii) S deceased and (iii) J deceased. Those details were as follows.

(i) Ealing

7. Between July 1996 and October 1998 four transfers were made from client and client designated accounts to office bank account: £30,000 on 4th July 1996, £12,000 on 2nd October 1998, £5,000 on 14th October 1998 and £2,000 on 28th October 1998 making a total of £49,000.

8. The first transfer of £30,000 was not posted to the office side of the client ledger. The Respondent on 13th September 2000 stated he did not know why that had not been done. A bill numbered 1604 in the sum of £30,000 was shown on the office side of the client ledger. The entry was dated 31st January 1997. The bill was in fact dated 4th July 1996.

9. On 28th September 1998 a further bill (No. 1791A) for £19,097.56 was posted twice to the office ledger. At a meeting with the ICO on 13th September the Respondent said he did not know why two bills had been posted for the same amount. He told the ICO that the matter was connected with litigation where he was acting for Thames Water and that the monies held on deposit were a retainer in respect of costs.

10. In evidence the Respondent said that the precise amount of the bills had been achieved in the unconventional way of deciding upon the final figure and then working out what proportion of it would be the VAT element.

11. On 18th January 2001 the Respondent was asked by the ICO what work he had undertaken on behalf of Ealing to which bill number 1604 related and the Respondent stated that he had been instructed to sue two companies who had caused £2.5 million of damage. The property affected was at Dalling Road in the Borough of Hammersmith. The Respondent confirmed that it was the responsibility of Ealing. On 1st March 2001 the Respondent confirmed that he had no idea what the monies transferred from Masil Rumboid represented.

12. The Respondent was unable to produce correspondence relating to his instructions to act on behalf of and his retainer with Ealing. Upon enquiry by the ICO, Ealing confirmed that they had no records relating to the bill either being received or paid. The Respondent asserted that the bill had been sent to Ealing and when it was put to him that he had never acted for Ealing in the matter the Respondent said "I don't agree that, no." The ICO had put to the Respondent that the bills raised were "dummy matters" in respect of a matter in which the Respondent had never been instructed and the Respondent replied "No, I don't. Certainly not." The Respondent had not produced evidence of his instructions to act for Ealing Council.

13. The Respondent agreed with the ICO that there was therefore a shortage on client bank account totalling £49,000. His response to a question about that had been "Well, to the extent that they have been transferred against bills not relating to that matter, then yes." The ICO had obtained confirmation from Ealing that no work had been undertaken by the Respondent in connection with this matter.

14. In evidence the Respondent said it was not unusual for Thames Water to Act through Agents. He had acted for Thames Water and London Borough of Hammersmith. Thames Water had been in control of the litigation. He had in error believed the Thames Water matter and the Ealing matter to have been one and the same. He had erroneously applied Ealing's money to the payment of the Thames Water bill. Subsequently the Respondent had obtained payment from Thames Water and had thereby repaid the Ealing money. It transpired that the money had been held by Masil Rumbold for Ealing following the sale of Council houses. On an occasion when Masil Rumbold had attempted to pay the money to Ealing, that authority had been unable to identify the matters to which it related.

15. The Respondent denied that he had drawn "dummy" bills. In July 2001 the Respondent had sent £49,097.56 to Ealing. That was not an admission of wrongdoing but a recognition that he had been in error.

(ii) S. Deceased

16. The files on this matter were requested by the ICO from the Respondent in July 2000. Enquiries from Mr Rumbold revealed that he had passed the files and balances to the Respondent but searches at the firm by the Respondent did not produce either of the files. In March 2001 Mr Rumbold advised the ICO that he had found the files and he would produce a statement of account. Mr Rumbold confirmed that he had not billed the administration of the estate and stated that his bill would have been in the region of between £2,000 and £3,000.

17. Mr Rumbold was the co-executor of S deceased who died on the 9th September 1982. The estate amounted to £55,196. Transfers from client account to office account

totalled £20,562.50 and were made in respect of a bill dated 6th July 1998 for that sum. Mr Rumbold informed the ICO that the amount transferred to the Respondent's client account represented amounts due to untraced beneficiaries. He confirmed that he did not raise the bill dated 6th July totalling £20,562.50 and that the address on the bill was his old firm's address. He also confirmed that the Respondent had not contacted him at any time about the costs to be billed on the matter.

18. The Respondent confirmed that he would have made the withdrawal from client account as he was the only signatory. The Respondent stated on 11th January 2001 that he would not have raised a bill without discussing it with Mr Rumbold.

19. In evidence the Respondent said he had intended the bill to represent work undertaken both by Mr Rumbold's firm and his own. He had believed that the value of the estate was in the region of £500,000 and had drawn the bill with reference of the value of the estate. The Respondent accepted that he had not undertaken a great deal of work for the estate.

J Deceased

20. A transfer from client to office bank account had been made in respect of a bill dated 24th July 1998 for £4,419.69. An executor of the estate had been approached by the ICO who confirmed that the Respondent had not dealt with the administration of the estate and had been instructed only in respect of a recovery action for the deceased prior to his death. The executor confirmed that he had no knowledge of the monies held and had received no bill. Mr Rumbold confirmed that he knew nothing about the bill being raised on this matter and confirmed the Respondent had never contacted him about the costs to be billed on this matter. The disbursements of £50 were general and not specific disbursements.

21. On 18th January 2001 the Respondent confirmed that the bill had been incorrectly addressed to the executors, that he assumed that someone had contacted the bookkeeper and they were given the address from the wrong ledger. He also confirmed that as he was the only signatory on the client account he would have made the withdrawal. The Respondent stated that he would not have raised any bills on Mr Rumbold's matter without discussing it with him which he confirmed in evidence before the Tribunal. Mr Rumbold stated that he had not discussed the matter with him. Accordingly it was put to the Respondent by the ICO that he had raised "dummy" bills to match the transfers made from client to office bank account and he said "No certainly not."

Mr and Mrs B

22. The Respondent acted in respect of a personal injury matter with a litigation executive having initial conduct of the matter until his departure.

23. By a Court Order by consent on 17th October 1995 the personal injury matter was compromised by substantial payments being ordered to be made by the Defendant to the Plaintiff. The Respondent retained monies on client account.

24. The Respondent's costs had been assessed at £18,875.31. He had not informed his client in writing that he had utilised monies towards settlement of his costs and agreed that he did not fully comply with the written requirement under the Rules. He had

declined to agree with the ICO that there was therefore a shortfall of £17,103.63 on client bank account. The Respondent in evidence said that the clients were in America. He had regarded the money held by him as security for costs. In view of the fact that the clients were abroad it would have been difficult to enforce the payment of costs. He went on to agree that the transfer had been made in breach of the Solicitors Accounts Rules.

The Submissions of the Applicant

25. In the submission of the Applicant the Respondent had acted dishonestly in connection with the drawing of bills and the transferring of money from client to office account in the matters of Ealing, S deceased and J deceased.

26. The Tribunal was invited to have due regard for the judgment of Lord Nicolls of Birkenhead in the case of Royal Brunei Airlines -v- Tan (1994 Privy Council) and would note the approval of that approach in Twinsectra Ltd -v- Yardley & Others in a decision of the House of Lords shortly before the disciplinary hearing.

27. In particular the Tribunal was invited to consider part of the judgment of Lord Nicholls of Birkenhead in which he said:-

> "In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take other's property."

28. The Respondent's position was that he had received a substantial sum of client's money from another firm of solicitors. That money had been paid to client account perfectly properly. The reality was that the Respondent had made transfers of that money to office account in order to extinguish the sum of money received. When asked where that money had gone the Respondent had been unable to give a satisfactory response. In the Ealing matter he returned over £49,000 to Ealing which was the clearest possible demonstration that he had not been entitled to retain that money. The question had to be posed, "would the Respondent have paid that money to Ealing if he had not been caught out by the ICO?"

The Submissions of the Respondent

29. The Respondent had set up his practice in 1985 as sole practitioner and had practised successfully over the years and had helped many people. For a while he had made a reasonable living and had provided employment for a number of people.

30. It was only in recent years that the Respondent had run into difficulties. Although he had continued to practise he had to recognise that his practice had ceased to be viable in April 2001 before The Law Society sought to intervene. The Law Society had imposed a condition on the Respondent's Practising Certificate that he would not be permitted to practise as a sole principal. The Respondent hoped that he might be permitted to return to paid employment within the legal profession in order that he might continue to support his wife and child.

31. The Respondent had had to let his former home since last year. The Respondent was not in remunerated employment at the time of the hearing. He had undergone a small surgical operation earlier in the year which appeared to have been successful.

32. The Respondent expressed regret that matters had come to this pass. The Tribunal was asked to take into account that no one had suffered apart from the Respondent himself. He had made full restitution to Ealing. He found himself in the position that he would have been pilloried if he had not made restitution and the restitution was regarded as evidence of his own wrongdoing. A smaller shortfall on client account had been replaced promptly and had been caused as the result of error and a mistake.

The Findings of the Tribunal

33. The Tribunal found all of the allegations to have been substantiated and confirmed that they did find in connection with allegations that the Respondent had been dishonest in connection with allegations (ii), (iii) and (v).

34. On 5th June 2001 the Tribunal found the following allegations to have been substantiated against the Respondent.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following respects:-

A. he had breached Practice Rule 1 of the Solicitors Practice Rules 1990 in that his professional behaviour during the course of a retainer compromised or impaired or was likely to compromise or impair any of the following:

(b) his duty to act in the best interests of his client.
(c) his good repute or the good repute of the solicitors' profession.
(d) his proper standard of work.

B. he had acted in breach of Practice Rule 15 of the Solicitors Practice Rules 1990 in that he had failed:

(b) to ensure that a client knew whom to approach in the event of any problem with the service provided.
(c) to ensure that a client was at all relevant times given appropriate information as to the issues raised and the progress of the matter.

C. he had failed to carry out his client's instructions diligently and promptly.

D. he had abused the solicitor/client professional relationship by taking advantage of his clients.

E. he had failed to deal promptly with communications relating to the matter of a client or former client.

F. he had failed to lodge a bill of costs for taxation or detailed assessment within a reasonable time of the conclusion of the matter to which the bill related in

circumstances in which the respondent was holding sums of money on behalf of his client.

G. he had failed to deal promptly and substantively with correspondence from the Office for the Supervision of Solicitors.

H. he had drawn from clients account monies other than in accordance with the provisions of Rule 7(a)(iv) of the Solicitors Accounts Rules 1991 by transferring funds towards payment of his costs in circumstances in which there had been no written intimation of the amount of the costs incurred to his client.

In June 2001 the Tribunal said:-

"The Tribunal found allegation A to have been substantiated. The fact that a client and that client's American attorneys were not kept closely and satisfactorily informed and the fact that Canadian lawyers similarly were not kept closely informed did amount to a breach of Practice Rule 1.

The Tribunal found allegation B to have been substantiated. In particular the lay client or the overseas attorneys had not been given appropriate information as to the issues raised and the progress of the matters.

It followed in connection with allegation C that the respondent had not carried out his client's instructions diligently and promptly.

With regard to allegation D the Tribunal considered that it had no evidence before it which indicated that the respondent had sought to or indeed did take advantage of his clients. The Tribunal find allegation D not to have been substantiated.

With regard to allegation E it was entirely clear that the respondent had not dealt promptly with communications relating to the matters of a client or a former client both in relation to Mrs B and the Grant of Probate matter of RLM Deceased. The Tribunal find allegation E to have been substantiated.

The Tribunal find allegation F to have been substantiated. The Tribunal accept that the respondent had not been guilty of a total failure, but clearly the matter of Mrs B was a significant one and it was clear to the Tribunal that the respondent had not taken any vigorous steps to ensure that the matter progressed with a proper degree of expedition. It was accepted by the respondent that he was at the time holding a large sum of money on behalf of the client and clearly it was in the client's interests that the matter should be resolved as quickly as possible.

The Tribunal find allegation G to have been substantiated. The Tribunal has noted that the respondent had responded to the Office on some occasions and accepted that he had spoken with the Office on the telephone. However on the face of it there were a large numbers of letters addressed to him by the Office which had gone unanswered and that was a matter which was serious and

could not be overlooked. A solicitor has a clear duty to respond promptly and fully to letters addressed to him by his own professional body.

Allegation H related to the transfer of £1,000 from the respondent's client account to his office account in the matter of RLM Deceased apparently without the submission of a bill. It was clear to the Tribunal that a bill had been drawn. The Tribunal accept that there was no evidence on the file that it had been sent but the Tribunal did note that the Canadian lawyers to whom it had been sent had moved offices and the Tribunal agree that the Canadian lawyers request for a breakdown of the fees and a remuneration certificate indicated that they must have been in receipt of a bill at some point. The Tribunal was not satisfied to the required standard that the respondent had not delivered his bill to the Canadian lawyers. The Tribunal find allegation H not to have been substantiated.

The Tribunal has taken into account the fact that the respondent has ceased to practise. The Tribunal has also noted the part played by the respondent's managing clerk, but a principal cannot pass responsibility for the conduct of matters within his own firm to an unadmitted employee. In the case of RLM Deceased, the beneficiary must have been very concerned at the delay. In the matter of Mrs B the respondent was holding a large sum of money and clearly there is a particularly strong duty on a solicitor to keep a client and his representatives out of the jurisdiction closely informed as to what is going on in connection with his affairs. In both cases the lay clients had engaged attorneys in the countries where they lived and an inevitable consequence of the respondent's failures was that the time expended on the matters by the local attorneys was increased at an increased level of cost to the lay clients concerned.

The Tribunal always takes a most serious view of solicitors who do not answer correspondence and in particular solicitors who do not promptly and fully answer correspondence addressed to them by their own professional body. In this matter the respondent's failures to answer letters were disgraceful.

In all of the circumstances the Tribunal considered it right to impose a substantial fine (£5,000) upon the respondent and they further ordered him to pay the costs in a fixed sum which had been agreed between the parties."

In April 2002 the Tribunal was dismayed to learn of the activities of the Respondent. The Tribunal indicated that it did find that the Respondent had been guilty of dishonesty. The Tribunal, in the light of the evidence, concluded that the Respondent had received a tranche of client money from another firm upon its closure and had sought to utilise that money for his own purposes and had attempted to camouflage his own action by transferring the money from client account ostensibly to settle bills of costs. Those bills of costs were spurious and the Respondent had been responsible for drawing them. All solicitors are required to exhibit the qualities of probity, integrity and trustworthiness. Every solicitor is required to comply with the Solicitors Accounts Rules and to exercise proper stewardship over clients' money. The Respondent has failed miserably to exhibit such qualities and to exercise proper stewardship over clients' money. Such behaviour will not be tolerated.

Mindful of its first duty to protect the public and its second duty to preserve the good reputation of the Solicitors profession the Tribunal ordered that the Respondent be struck off the Roll of Solicitors. They further ordered that he should pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation & Compliance Officer of The Law Society) in a fixed sum.

DATED this 21st day of June 2002

on behalf of the Tribunal

A H B Holmes
Chairman