No. 8473/2001

IN THE MATTER OF PATRICK FRANCIS COLLIN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Miss T Cullen
Mr G Fisher

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 Rosemary Jane Rollason solicitor of 35 Vine Street, London, EC3N 2AA on 31st August 2002 that Patrick Francis Collin solicitor of Tennyson Street, London, SW8 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:-

I) during the period between approximately 1997 and 1999, he acted in transactions relating to banking instrument and investment schemes in respect of which he:

(a) failed to comply with assurances given to the OSS in October and November 1996, following a warning letter sent to him on 17th October 1996, that he would "not be involved in any further way with such transactions.";

(b) that in the course of the said transactions, he either failed to be alert or deliberately closed his eyes to the suspicious features of these transactions;

and in so doing the Respondent acted contrary to Practice Rule 1 of the Guide to the Professional Conduct of Solicitors (7th Edition) in a manner likely to compromise or impair:

i) the solicitor's independence or integrity;

ii) the good repute of the solicitors' profession;

iii) the solicitor's proper standard of work.

II) withdrawn with the consent of the Tribunal.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 9th April 2002 when Rosemary Jane Rollason solicitor and partner in the firm of Field Fisher Waterhouse of 35 Vine Street, London, EC3N 2AA appeared as the Applicant and the Respondent was represented by M Raphael solicitor and partner in the firm of Peters and Peters of 2 Harewood Place, Hanover Square, London, W1S 1BX.

The evidence before the Tribunal included the admissions of the Respondent to allegation I together with a bundle of letters of testimonial in support of the Respondent and a statement by Mr Gareth Keene as a character witness for the Respondent at the hearing.

At the conclusion of the hearing the Tribunal ordered that the respondent Patrick Francis Collin solicitor of Tennyson Street, London, SW8 solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment unless agreed.

The facts are set out in paragraphs 1 to 45 hereunder: -

1. The Respondent who was 54 years old was admitted as a solicitor in 1972 and his name remained on the Roll of Solicitors.

2. At all material times the Respondent carried on practice in partnership under the style of Leon Kaye Collin and Gittens. The firm's practising address was 9/10 Barnard Mews, London, SW11 1QU with a further office at 92 St John's Road, London. The Respondent's partner in the firm was Leon Joseph Kaye. The firm was authorised by The Law Society in the conduct of investment business.

3. Following authorisation of an inspection of the firm's books of account in accordance with Rule 27 of the Solicitors' Accounts Rules 1991, the inspection commenced at the firm's offices at 9/10 Barnard Mews on 27th April 1999. The inspection was conducted by OSS Investigation and Compliance Officer, Mr A S Becconsall. A copy of the Inspection Report ("the Report") was before the Tribunal.

4. Upon the conclusion of the inspection, no action was recommended concerning the firm's compliance with the Solicitors' Accounts Rules. However the Report referred to details of a sample of banking and investment transactions in respect of which the Respondent had acted. During the inspection, the Respondent was interviewed concerning these transactions by Mr Becconsall and OSS Senior Investigation and Compliance Officer, Ms P Rumble on 17th June 1999.

5. The Report noted at paragraphs 5.4 to 6 that the Respondent and his partner, Mr Kaye had been sent a "warning letter" by the OSS on 17th October 1996 relating to capital enhancement programmes. The letter followed a previous inspection of the firm. A copy of the letter was before the Tribunal.

6. The OSS letter confirmed that during the previous inspection, the firm was noted to have represented clients in connection with "capital enhancement programmes" purporting to be able to produce huge profits provided that substantial funds were either invested or advanced.

7. The OSS letter stated expressly that it was sent as a formal warning that such transactions were invariably fraudulent and that in the numerous examples of such transactions seen by the investigation accountants of the OSS in every case they had been seen to be either fraudulent per se, or part of a larger mechanism designed to facilitate fraud. Further, the Respondent was informed in the clearest terms that receipt of the letter of 17th October 1996 would be taken into account by the OSS when "reviewing any future involvement by you or the firm in transactions of this type."

8. The Respondent replied in a letter dated 25th November 1996 confirming receipt of the "warning letter" and stating:-

> "both myself and my partner, Leon Kaye, have taken fully on board the matters referred to in that letter and have confirmed both verbally and in writing to Mr Michael Calvert the Deputy Chief Investigation Accountant of your office that we will not be involved in any further way with such transactions."

A copy of the relevant correspondent was before the Tribunal.

9. During the same meeting on 17th June 1999 the Respondent confirmed that he had received the "Yellow Card" guidance issued by The Law Society and was familiar with its contents. The guidance had been issued by The Law Society Fraud Intelligence Unit in October 1997 as a warning to the profession in respect of banking instrument fraud.

10. However at paragraph 7 onwards the Report identified a sample of further banking instrument and investment transactions entered into by the Respondent since receipt of the OSS warning letter.

Transaction 1

11. The Report set out details of a profit participation agreement in respect of which Mr Collin acted for both CS Limited (Mr JJ) and E International Limited, the parties to the agreement. He said that he had acted for this client only in relation to raising funds through profit participation agreements/capital enhancement schemes which the client used to pay for low cost housing in the Far East. He stated that CS Limited had invested in a profit participation agreement which was being run by E International Limited through its director, TW. He stated that he could not remember the details of the scheme but that it was expected to produce a "substantial" return.

12. The Report noted that there was no file or written correspondence in relation to the matter. The Respondent stated that all instructions had been received verbally. He stated that he did not advise in relation to the scheme but merely received money and passed it on. He further stated that he did not consider there was a conflict of interest in acting for both parties because he was "not advising on the investment but only acting as a conduit."

13. The Report identified the financial transactions conducted and noted that on 27th February 1997, an amount of US$999,987.80 was received from C S Limited and lodged in the client's US Dollars deposit account and allocated to a client ledger in the name of C S Limited.

14. The Report noted a subsequent cash withdrawal of US$88,500 from the general client account and debited to the client ledger account for Mr JJ (of CS Limited). The Respondent stated that he took the cash out of client bank account and paid it to Mr TW of E International Limited at a meeting in a London hotel. He stated that Mr TW had instructed him verbally to make this payment in cash and he did not obtain a receipt.

Transaction 2

15. The Report set out details of three further profit participation agreements in which the Respondent acted for C S Limited. The other parties to the respective agreements were Mr M, Mr K and Dr U.

16. The Respondent said that the agreements were basically the same and purported to be able to produce US$1 million per week for 40 weeks in return for the investment of US$1 million.

17. The Report noted that in each of the three agreements, C S Limited was stated to have access to a "high yield bank guaranteed investment program." The investor was to deposit US$1 million into an account held by the Respondent's firm. C S Limited was then to lodge into an account nominated by the investor a bank payment undertaking issued by a Western European Bank for the payment of US$1 million per week during 40 consecutive weeks. After receipt of the bank payment undertaking, the firm would be instructed to release the initial deposits to C S Limited.

18. The financial transactions upon the client ledger account in the name of C S Limited showed that the funds were received from the three investors. However the Respondent stated that the three agreements were not concluded because "JJ decided that they would not go ahead because it was taking too long." The Respondent then arranged to transfer the funds back to the respective parties.

Transaction 3

19. The Report set out details of a proposed transaction in respect of which the parties were to be USGC represented by a Mr H and Mr R. The Respondent acted for USGC. A copy of the investment agreement was before the Tribunal.

20. In interview the Respondent said he had never met Mr H who was introduced to him by an American client involved in financial consultancy. The investment agreement stated that USGC had pledged assets of US$50 million to invest in a high yield programme to be managed by Mr R and promised a minimum 600% return on the investment within a 48 week period.

21. The agreement required Mr R to provide a deposit of US$500,000 which was to be held in a client bank account by the Respondent who described it as "a sign of good faith" on the part of Mr R.

22. However the Respondent said the investment agreement did not proceed any further because Mr R did not provide the US$500,000 deposit. The Respondent agreed to meet Mr R to collect the cheque but Mr R did not turn up.

23. The Report noted that in a letter dated 4th June 1998 to Mr H, the Respondent confirmed that he would be pleased to act for the company, "although I would point out that as solicitors in the United Kingdom we do not have anything to do with trading account investments and cannot in any way advise you or your clients in relation thereto."

24. In interview the Respondent was asked what he meant by this. He said that he did not have anything to do with trading account investments because he had been asked not to be involved in the operation of them by The Law Society. When asked why he thought The Law Society was concerned, he said "because such schemes could be trying to get money out of people by deception and getting one's self in a position to have claims."

25. In the same letter of 4th June 1998 to Mr H the Respondent went on to state:-

> "I understand that you are going to give me a copy of your contract with Mr Rosell for me to have a look at and I shall be pleased to do so."

26. He confirmed that the contract referred to was the investment agreement. He examined the investment agreement and in a letter of 5th June 1998 to Mr H made observations about the agreement and stated at the end of letter "I would like to confirm my firm's fees will be US$10,000 for the service provided." He stated that his role in relation to the matter was to "handle the funds they were going to raise and act as an escrow agent."

27. It was noted in the Report that when asked if he thought the claims as to the return were realistic the Respondent said "No" and that he was not asked to advise on the authenticity of the investment.

28. It was pointed out that the agreement stated that the laws of the State of Phoenix, Arizona would govern the agreement. When asked if he was familiar with these laws the Respondent said "No, perhaps they should have used a Phoenix lawyer."

29. The Respondent was asked whether he considered that his reviewing of the agreement conflicted with his assertion that he did not have anything to do with trading account investments. He said "A lot of lawyers look at contracts but don't get involved with

their client's activities. I had a hard look at the agreement in relation to the terms but not the success of the venture."

30. When asked if he had known any such agreements to succeed, the Respondent replied "No, most don't get beyond the initial skirmish."

31. The Report further noted that in a letter dated 12th June 1998 to Mr H the Respondent noted that the matter was not proceeding but went to on to state "I understand that you may still be interested in the type of arrangement that was previously to be dealt with by Mr R and if I can be of any assistance please do not hesitate to contact me...."

Transaction 4

32. The Report detailed a transaction in which the Respondent was instructed by a Mr O and a Mr N in relation to the sale of bonds said to be worth ten billion Japanese Yen.

33. It was noted in the Report that the Respondent confirmed he had not undertaken this sort of work before. Further, he did not investigate the legitimacy of the clients or the authenticity of the bonds himself but relied on investigations carried out by the introducer of the clients, a Mr M. He did not know what checks had been made by Mr M.

34. The Respondent stated that he attended meetings and visited Japan and that the contract for the sale of the bonds was drafted by Japanese lawyers. In the event the bonds were not sold. However, the Respondent prepared and delivered a bill for US$100,000 addressed to Mr N.

35. The Report noted that the bill had not been given an invoice number and the firm's cashier informed Mr Becconsall that she had no knowledge of it. The Respondent's partner, Mr Kaye, also stated he had not been aware of the bill's existence.

36. The Respondent had not made any attendance notes in relation to his meetings or conversations with the Japanese clients. He stated that Mr N had told him to bill him for US$100,000 for the work he had done, which would include a retainer for future work. However he was unsure about the precise split of the fees between the bond transaction and the retainer.

37. The Report noted that it was apparent from the file that the Respondent had previously certified a copy of the bonds before he started to act for the Japanese clients. He said that he did not verify the authenticity of the bonds. He said that if it had been suggested to a third party that he had verified the bonds, he would have corrected this misunderstanding. However he was then shown a copy of a letter dated 19th November 1997 from T Limited addressed to his firm in respect of a proposed transaction involving the bonds which stated that he had verified the bonds. The Respondent examined the letter and said he had not countered the assertion contained therein that he had verified the bonds.

Transaction 5

38. The Report set out details of a number of clients for whom the Respondent acted in relation to providing safe keeping receipts for bonds. All clients were based in the

USA and delivered bonds to the Respondent who arranged for them to be held at NatWest Bank in Clapham.

39. In each case the Respondent provided the clients with a safe-keeping receipt for depositing the bonds at the local bank. He stated that for this service he usually charged a flat fee of US$5,000. He said that he provided no other service in respect of the bonds. He said the charge made by the bank for this service was about £5 per quarter. When asked if he thought his fee was reasonable he said that he charged this fee to stop time-wasters.

40. The Respondent was asked during the inspection if he thought that the safe-keeping receipt could be used in investment programmes. He stated "It is possible but not as far as I am aware."

41. The Report confirmed that when the Respondent's partner, Mr Kaye, was made aware of the various transactions, he was surprised and said he was not aware that the Respondent was involved with capital enhancement programmes.

42. The Respondent said he did not feel that he was as involved as before (that is prior to the OSS warning letter) because he had only been asked to advise and hold monies. In his view, the work carried out by him did not constitute being "involved."

43. A Report on this matter had been prepared by Mr Ian Wickens, Manager of the Investigation and Fraud Section of the Royal Bank of Scotland Group. A copy of the Report was before the Tribunal. The Report identified several features common to such fraudulent transactions including:-
    - the use of expressions and terms in the transaction documentation appended to the Investigation Accountant's Report which are highlighted in the Yellow Card Guidance as characteristic of banking instrument fraud;
    - the very substantial sums involved in the investment transactions which should have put the Respondent on enquiry as to their authenticity;
    - the unrealistically high rates of promised returns;
    - the Respondent's failure to consider or investigate the possibility that his firm was being utilised to facilitate money laundering;
    - the fact that the Respondent was not providing legal advice but was merely acting as a "conduit" to receive and pass on monies.

44. On 27th October and on 2nd November 1999 the Compliance and Supervision Committee considered the matter and resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal. They further resolved to intervene into the practice and to suspend the Respondent's practising certificate.

45. The Respondent subsequently resigned from the firm of Leon Kaye Collin and Gittins at the end of October 1999. On 2nd November 1999 the Compliance and Supervision Committee resolved to lift the notice of intervention to allow the disposal of the practice in favour of Mr Kaye pursuant to Mr Collins retirement from the partnership.

The Submissions of the Applicant

46. The first allegation had been fully admitted and the Applicant did not propose to proceed with the second allegation. The first allegation was the gravity of this matter.

47. The Respondent had received a clear warning from The Law Society.

48. He had given the assurances which the Tribunal had seen but had continued almost immediately with such transactions.

49. His letter to Mr H in respect of the third transaction clearly indicated that he was willing so to continue.

50. The Respondent's attempt to seek to distinguish between the provision of legal advice and acting purely as a conduit was at best disingenuous.

51. The Respondent had been determined to continue with the transactions and to derive substantial financial benefit from them through the fees he charged.

52. The Respondent had been warned in the letter from the OSS of 17th October 1996 that receipt of that letter would be taken into account by the OSS in reviewing any future involvement by the Respondent in transactions of this type.

The Submissions of the Respondent

53. It was confirmed for clarification that only some US$80,000 of the funds received in transaction 1 had been used and the rest of the money had been returned.

54. It was further confirmed that the fees for the transactions had been paid to the firm not to the Respondent personally.

55. The firm had been intervened into in 1999 because of a suspicion of dishonesty on the part of the partners. However Mr Kaye's Practising Certificate had been restored to him subsequently and there had been no police enquiry of any kind.

56. The Tribunal was asked to consider the bundle of testimonials put in by the Respondent.

57. Mr Gareth Keene barrister spoke as a character witness on behalf of the Respondent in addition to the written testimonial he had provided. Mr Keene said that at no time had he had cause to question the competence or integrity of the Respondent who in addition to being a friend had acted for Mr Keene and his family, friends and acquaintances.

58. What Mr Keene had heard at the hearing did not change his personal opinion of the Respondent and Mr Keene continued to trust the Respondent absolutely.

59. Mr Keene said the Respondent had been extraordinarily foolish but the Respondent was in no way dishonest by nature.

60. At the conclusion of Mr Keene's statement the following further submissions were made on behalf of the Respondent.

61. It was a moment of utmost desperation when a solicitor found himself before the Tribunal who could remove his name from the Roll of the profession to which he had been proud to belong for nearly 30 years.

62. The Respondent had admitted the first allegation.

63. The testimonials gave a different picture from the bleak image conveyed by the Applicant's documents.

64. The Respondent was a creative, well educated and experienced lawyer who had apparently disregarded the assurance he had given to his professional regulator.

65. The Tribunal was asked to consider the possible explanations for this. The Respondent was not mentally unbalanced, dishonest or reckless and it was hoped that the Tribunal would accept an alternative explanation for his conduct. The Respondent had never been motivated by feelings of dishonesty.

66. The Respondent was a solicitor who spoke a number of foreign languages well.

67. The Respondent had been a choral scholar at St John's College, Cambridge and details of his professional history were given to the Tribunal.

68. The Respondent specialised in company law and off-shore transactions.

69. The Respondent had a settled domestic life.

70. Advanced fee frauds were not new but a disturbing feature of them from the late 1980s was the targeting of professionals by fraudsters.

71. An example of this was that solicitors were being used so that their client accounts would give a veneer of respectability. Solicitors could also be tricked as in this case into attending meetings and writing correspondence.

72. The Yellow Card had been issued in 1997 one year after the assurance given by the Respondent.

73. Solicitors were as much a victim in such cases as the intended targets. Fraudsters would seek out solicitors who were vulnerable in some way for example financially.

74. The Respondent was not financially vulnerable but was credulous, vain and anxious to please. He did not readily refuse to help.

75. The Respondent was horrified that at the conclusion of the hearing there could be a finding which could stigmatise him as having been a party to fraud.

76. There had been some suspicion of dishonesty at the time of the intervention but there had been no prima facie evidence of dishonesty or else there would have been, for example, a police enquiry.

77. In relation to the first four transactions there was nothing to indicate that they were successful and there had been no ultimate victim.

78. There had been no claims in respect of those transactions. This was not said as an excuse but it was a mercy.

79. This did not reduce the blameworthiness of the Respondent but the Tribunal was asked to take this into account.

80. In the early 1990s the Respondent had heard of the schemes from an acquaintance of some 20 years, a former art teacher who said he was now promoting investment programmes involving international foreign clients and large sums of money.

81. The Respondent was vain in the sense that being multilingual he had always fancied doing European work involving the speaking of languages and was now offered work involving high finance of an international character and of great responsibility.

82. Those who sought to involve and continue the involvement of the Respondent knew "which buttons to push", namely vanity and conceit. The Respondent had not needed the money and indeed these fees were not a major part of the firm's income.

83. The books had been properly kept. The Respondent had honestly believed that the schemes were genuine.

84. The Respondent had thought that he could continue after the 1996 assurance as long as he was dealing with people he already knew. He did not want to let people down.

85. The Respondent had believed that his fees were properly earned.

86. He had made few attendance notes because he was bad at making them, not in order to conceal the taking of money for nothing.

87. The Respondent was not only dealing with those who practised deceit but he had deceived himself that what he was doing after October 1996 was materially different from what he had done before.

88. The size of the fees by themselves were not a badge of dishonesty.

89. The Respondent had none of the frailties normally heard by the Tribunal, he did not drink, take drugs or gamble. His good judgement and integrity had been overborne by those whose profession it was to do just that.

90. Those members of the profession who dealt with more jaundiced behaviour might be surprised at how trusting some members of the profession could be. Fraudsters had realised this. A caring person was more likely to be gullible and a dash of hard cynicism would have helped the Respondent.

91. The Respondent's Practising Certificate had been suspended since 1999. The Respondent had been employed as a director in a business selling property and earned £2,000 per month gross. The Respondent had no assets but lived just about on what he earned.

92. The Respondent was in his mid fifties and it was probably unlikely that he would seek to return to the law. He had however been a solicitor for nearly 30 years and was the son of a solicitor. He was fearful of the stigma of being branded as dishonest and having his name removed from the Roll.

93. The Tribunal had the power to suspend the Respondent indefinitely or to impose a financial penalty which for this Respondent would be a real penalty.

94. The Tribunal had an overriding duty to protect the public. Only one claim however had been made from this period and that was being defended by the Solicitors Indemnity Fund. This would help the Tribunal to decide on the extent of the danger to the public.

95. The Respondent had learnt his lesson. This had taken him longer than it should have done but this was not a case where it would automatically be said that the Respondent was a rogue. He had been victimised as other solicitors had been.

96. The Tribunal could see a clear picture today but the person who was a victim did not see it at the time, the glass was very cloudy.

97. The average solicitor had still to realise that he was likely to be targeted. The people seeking to suborn solicitors were very clever.

98. The OSS had generally taken a charitable view of these matters but the Respondent had been foolish not to learn from the shot across the bow contained in the 1996 letter.

99. The Tribunal was urged to find that a penalty less than the absolute penalty was appropriate so that the Respondent could return to the profession in the future. The Tribunal was asked not to close the door on the Respondent. Applications for Restoration to the Roll were rarely successful in less than a decade so in the case of the Respondent removal from the Roll would be permanent.

Findings of the Tribunal

The Tribunal found the allegation to have been substantiated indeed it was not contested.

Fraudsters relied upon professionals such as solicitors to give a veneer of respectability. The Respondent had acted after a clear warning from the OSS and in a number of transactions after knowledge of the warning contained in the Yellow Card. The Respondent had been a solicitor with 25 years of experience and was experienced in the relevant area of law. He had deliberately involved himself in schemes which

obviously could have been fraudulent. He had failed to keep the assurance which he had given to his regulatory body and had failed in his duty to protect his clients.

The Tribunal regarded the Respondent's conduct as so serious, in particular in continuing to involve himself in potentially fraudulent schemes following the clear and unambiguous warning given by the OSS and the Respondent's equally clear and unambiguous assurance that he would not be involved in any further way in such transactions, that the appropriate Order was the ultimate sanction.

The Tribunal therefore ordered that the Respondent Patrick Francis Collin solicitor of Tennyson Street, London, SW8 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 to be subject to detailed assessment unless agreed.

DATED this 12th day of July 2002

on behalf of the Tribunal

J N Barnecutt
Chairman