No. 8474/2001

IN THE MATTER OF BERE-PELE DAN HARRY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J R C Clitheroe (in the chair)
Mr. S N Jones
Mr. D E Marlow

Date of Hearing: 27th June 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 (the "OSS") by Rosemary Jane Rollason solicitor and partner in the firm of Messrs. Field Fisher Waterhouse of 35 Vine Street, London EC3N 2AA on 31st August 2001 that Bere-Pele Dan Harry of Rye Lane, London, SE15 solicitor 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, namely in the following particulars:

(i) he failed to admit that he had retained at his offices correspondence and/or files relating to another solicitors clients, and in so doing;

(a) he failed to act with good faith towards another solicitor and to the Office for the Supervision of Solicitors;

(b) he acted in a manner likely to compromise or impair the good repute of the solicitors profession contrary to Principle 1.01;

(ii) when giving evidence on oath during an investigation held by the Financial Services Tribunal pursuant to s98(1) Financial Services Act 1986, he misled the Tribunal and in so doing;

(a) he acted in a manner likely to compromise or impair his independence or integrity and the good repute of the solicitors profession, contrary to Principle 1.01 of the Guide to the Professional Conduct of Solicitors (seventh edition);

(b) he acted in a deceitful manner contrary to Principle 17:01;

(iii) that an inspection in January 1999, the books of account of D J Harry & Co. were found not to be in compliance with the Solicitors' Accounts Rules 1991, as unallocated transfers from client to office bank account had been made in the total sum of £17,050.00;

(iv) that at the same inspection the books of account of D J Harry & Co were found not to be in compliance with the Solicitors' Accounts Rules 1991, in that overpayments totalling £12,939.25 had been made in respect of eleven clients;

(v) that at the same inspection, the books of account of D J Harry & Co. were found not to be in compliance with the Solicitors' Accounts Rules 1991, in that payments of office account items had been made from client bank account to a total value of £2,063.00;

(vi) that at the same inspection, as a result of the above items and other matters, there was found to exist a client account shortage of £43,260.98;

(vii) that an inspection in July 1999, the books of account of D J Harry & Co. were found not to be in compliance with the Solicitors' Accounts Rules 1991 in that the client account cash book and ledger accounts had only been written up to the end of March 1999;

(viii) that at the same inspection, the books of account of D J Harry & Co. were found not to be in compliance with the Solicitors' Accounts Rules 1991 in that the client cash book had not been reconciled to bank statements later than 31st December 1998;

(ix) that at the same inspection, the books of account of D J Harry & Co. were found not to be in compliance with the Solicitors' Accounts Rules 1991 as it was found that between approximately 15th March 1999 and 1st June 1999, client bank account had been charged with unallocated payments to a total value £11,696.46

(x) During 1998 and 1999, he used headed notepaper in respect of his firm, D J Harry & Co., which was inaccurate and misleading as to the persons named as partners.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Rosemary Jane Rollason appeared as the Applicant and the Respondent did appear and was not represented.

The evidence before the Tribunal included evidence as to the due service of documents upon the Respondent and the oral evidence of the Investigation and Compliance Officer of the Law Society, Mr Inman.

At the conclusion of the hearing the Tribunal ordered that the Respondent Bere-Pele Dan Harry of Anerley Park, London, SE20 (formerly of Rye Lane, London SE15) solicitor be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £15,939.30p.

The facts are set out in paragraphs 1 to 51 hereunder:-

1. The Respondent, born in 1962, was admitted as a solicitor in 1997. At the material times he carried on in practice under the style of D J Harry & Co. from offices at 32-36 Rye Lane, London, SE15 5BS . During the period up to 31st May 1999, the Respondent had various different partners in the practice at different times. The Respondent ceased to be a partner in the firm on 31st May 1999, following which he acted as a consultant to the firm. In August 1999 the Law Society intervened into the practice which was subsequently disposed of to another firm.

   Allegation (i)

2. The OSS received a complaint concerning D J Harry & Co. by a letter dated 13th May 1998 from a solicitor, Mr R Camacho of Camacho Nnyanzi & Co., alleging that since January 1998, mail relating to Mr Camacho's clients had been posted to him at Mr Harry's DX number, DX 34267 Peckham. The letter stated that D J Harry & Co had repeatedly denied receiving any such mail, although Camacho Nnyanzi & Co. had been informed by various courts and Counsel's chambers that files had been sent to the DX number since January 1998 and Camacho Nnyanzi had not received any of them.

3. It is understood that until April 1997, Mr Harry and Mr Camacho had worked within the same firm at the offices later occupied by D J Harry & Co and using the same DX number. In a letter dated 26th February 1999, Mr Camacho has confirmed that Mr Harry was his employee, but subsequently set up his own firm and the two parted company. The letter stated that Mr Harry,

   "had apparently arranged with Hays Document Exchange to take over the DX number in the name of his firm without our knowledge. Mr Harry had agreed to collect our DX mail and keep it for me to collect".

   Mr Camacho states that the DX number belonged to his firm up until April 1997.

4. Mr Camacho had referred the matter to the Metropolitan Police in May 1998. The statement of PC Robert Slee dated 20th July 1998 confirms that PC Slee attended at Mr Harry's offices on 29th May 1998. Mr Harry admitted to him that a quantity of correspondence had been delivered by way of DX post system addressed to Mr Camacho, and that he had retained it. In his statement, PC Slee states that Mr Harry admitted his relationship with Mr Camacho was not good and that he objected to Mr Camacho using the DX service for which he, Mr Harry, paid. The police decided to take no further action regarding the allegation of theft.

5. On 14th July 1998, Ms G of the OSS telephoned Mr Harry and he informed her that the police had visited, had checked his mail room and found no files belonging to Camacho Nnyanzi. He assured her that he had no Camacho files and would have returned them if he had, as they were of no use to him. He said he would check again and revert to the OSS.

6. On the 20th July, Mr Harry confirmed to the OSS that he had checked and found no files. On 21st July the OSS again spoke to Mr Harry by telephone and informed him of the information obtained from PC Slee. Mr Harry still denied having any of the files. The OSS was able to pass to him the names of files given to it by Mr Camacho. Mr Harry said he would conduct a thorough search of the premises and would revert to the OSS in writing.

7. Subsequently, the matter was resolved when Mr Nnyanzi intervened and recovered all the files relating to Mr Camacho's firm. Mr Harry finally admitted that he had had the files belonging to Camacho Nnyanzi all along. This was confirmed in his telephone conversation with the OSS of 31st July 1998.

8. On 31st July 1998, during a telephone call to the OSS, Mr Camacho confirmed that Mr Nnyanzi had secured the return of his files. Mr Camacho claimed that clients had suffered loss as a result of Mr Harry retaining the files for example, that two limitation dates had been missed.

9. The matter was put to Mr Harry by the OSS in a letter dated 1st September 1998, and he gave his explanations in letters dated 9th September 1998 and 24th February 1999.

Allegation (ii)

10. On 8th June 1998, the Financial Services Authority ("FSA") forwarded to the OSS a copy of a report of the Financial Services Tribunal ("FS Tribunal") dated 11th May 1998 and published on 5th June 1998. The report set out findings following the FS Tribunal's investigation into matters concerning two individuals, Mr O & Mr N. The Respondent, who had acted as solicitor to these individuals, gave oral evidence before the FS Tribunal during its investigations. At paragraph 490 of its report, the FS Tribunal rejected the evidence Mr Harry had given to it and Mr Harry was alleged to have misled the FS Tribunal.

11. The background circumstances were as follows: Mr N and Mr O either were, or held themselves out as, directors and/or employees of G Ltd., a company incorporated in 1995. G Ltd provided speculative spot foreign currency trading services, largely to private clients who had been obtained by mailshots.

12. On 17th October 1997, the Securities and Investments Board ("SIB"), the predecessor of the FSA, gave notice to Mr O and Mr N of its intention to give a direction pursuant to s59 of the Financial Services Act 1986 that neither should be employed in connection with investment business of any kind without the written consent of the SIB. Mr O and Mr N required that the proposed direction be referred to the FS Tribunal.

13. In such circumstances, the role of the FS Tribunal, pursuant to s98(1) of the Financial Services Act 1986, is to investigate the matter and report to the SIB what would in its opinion be the appropriate decision. The Tribunal is empowered to investigate the matter in its own right and in this case, heard oral evidence from 16 witnesses, including the Respondent. Pursuant to s98(6) and schedule 6, paragraph 5 of the 1986 Act, evidence to the Tribunal is given on oath.

14. The evidence of the Respondent related to one specific issue under consideration by the FS Tribunal. The background to the report was that G Ltd was one of a number of companies carrying on the similar business of speculative spot foreign currency trading and almost all were not authorised to carry on investment business within the meaning of the Financial Services Act 1986. In February 1996, the SIB announced that in their view, such business did amount to investment business within the meaning of the Act, but that they would take no action against unauthorised firms provided that, by 1st March 1996, they had applied for authorisation. Messrs N and O applied to the Securities and Futures Authority ("SFA") for authorisation on behalf of G Ltd and for individual registration as directors of G Ltd. They were notified by the SFA that it would recommend rejection of their application. Reasons for rejection, given by 10th January 1997, included that G Ltd in the view of the SFA did not appear to have the amount and type of financial resources required (it was suspected to have been trading whilst insolvent), that the company had failed to demonstrate an ability to understand the SFA's financial rules and requirements, that G Ltd was not composed of individuals with an appropriate range of skills and experience to understand its activities, and that G Ltd had not demonstrated that it had in place a proper system of internal control.

15. G Ltd indicated an intention to appeal against the refusal of authorisation, but before the appeal was brought, the SIB on 15 and 16th May 1997 applied ex parte for orders restraining G Ltd from dealing with its assets and from taking in any new client monies. Ultimately on 9th June 1997, G Ltd was compulsorily wound up by the court.

16. The two reasons the SIB gave for proposing to give disqualification directions pursuant to s59 of the Financial Services Act 1986 in relation to Mr N and Mr O were, first, that they had not demonstrated they were fit and proper persons for the authorisation required and, secondly, their conduct after the application for authorisation had been refused. In particular under the second area, a relevant ground was that they had "wilfully failed to ensure that G Ltd was compulsorily wound-up by the court in accordance with the terms of an undertaking given to the court on 23rd May 1997". It is in respect of this latter ground that the Respondent's involvement was relevant.

17. The Respondent's firm was instructed shortly following G Ltd being served with the orders and supporting evidence from the SIB on 16th May 1997. The Respondent was in charge of the case. He had been admitted as a solicitor only on 15th May 1997 and the firm had commenced on 1st May 1997. The Respondent stated in evidence that the senior partner of the firm was Jacqueline Devonish, although it appeared from the firm's paper that the senior partner was the Respondent himself. The Respondent admitted in evidence to the FS Tribunal that his firm had not been able to deal with matters at the speed required by the court.

18. Following obtaining ex parte orders on 15th and 16th May 1997, on 22nd May 1997, the SIB returned to court to renew the orders on notice to G Ltd. For the purposes of this hearing, the Respondent instructed Mr Ogunbiyi of Counsel, but he was unable to attend and, in his place, Mr Alex Hickey of Warwick House Chambers, Gray's Inn was instructed.

19. At the hearing on 23rd May 1997, Mr Justice Lightman ordered that G Ltd be restrained from dealing with its assets until after judgment in the substantive trial of the action. There had been discussion concerning G Ltd obtaining refinancing in the sum of £250,000 which would effectively rescue the company. Amongst the orders made at the hearing was the following:

"G Ltd, its directors and shareholders by Counsel (for G Ltd) undertook …….

(i) that if the sum of £250,000 refinance is received by 4.00 p.m. on 28th May 1997 in the form of payment for the purchase of shares in G Ltd that sum will be paid forthwith (by way of gift to G Ltd by the said directors and shareholders) into a bank account to be opened in the joint names of the SIB and G.Ltd's solicitors;

(ii) that if the sum of £250,000 is not received by 4.00 p.m. on 28th May 1997, the said directors and shareholders will resolve that (G Ltd) be wound-up by the Court and will by 12.00 p.m. on Thursday 29th May present to the Court a petition seeking a compulsory winding-up".

20. The money was not forthcoming. On 28th May, Mr N consulted an insolvency practitioner and, by a letter of the same date, stated that G Ltd wished to appoint him as a liquidator immediately, as the directors had agreed it was in the best interests of G Ltd to be put into voluntary liquidation. The undertaking given on 23rd May was breached in that no steps had been taken by 4.00 p.m. on 28th May to resolve that G Ltd be wound-up by the Court and no petition was presented to the Court by 12.00 noon on Thursday 29th May seeking a compulsory liquidation of G Ltd. This led to telephone calls and a letter from the SIB's solicitors complaining that the terms of the undertaking given to the Court had not been complied with.

21. On 30th May 1997, the SIB lodged a notice of motion returnable before the Court on Wednesday 4th June 1997, seeking the committal to prison of both Mr O and Mr N for contempt of court, inter alia for "failing to comply with the undertaking concerning compulsory liquidation".

22. The Court found that both Mr N and Mr O had given undertakings in their personal capacity through Counsel and, as a matter of law, would be in contempt if they failed to carry out the terms of their undertaking, even if such failure had not been wilful. Mr Hickey of Counsel acknowledged that his clients were in contempt of court and after a further adjournment, the Judge did not impose a jail sentence, but ordered them to pay the costs of the contempt proceedings on an indemnity basis.

23. In respect of conduct of G Ltd's solicitors, Mr Justice Lightman stated:

"I think a further mitigating factor is that I doubt if they (G Ltd) have been properly served by their solicitors, whose behaviour, as demonstrated by their own conduct, for example by not turning up at the fixed time of 2.00 p.m. but turning up eventually at 4.00 p.m., and by the other evidence before me, would reveal them to be persons who fell on occasion, and in particular in this matter, well below the standard to be expected of officers of the court".

The Respondent's firm was also ordered personally to pay costs in the sum of £500.

24. It fell to the FS Tribunal to consider during its investigation whether there was evidence that Mr N and Mr O had deliberately flouted the undertaking to the Court to avoid an investigation by the Official Receiver. Issues arose as to their knowledge and understanding of the undertakings given and as to their knowledge of the difference between a voluntary and a compulsory winding-up order.

25. In evidence to the Tribunal, Mr N's case was that he had realised that the undertaking was to put the company into compulsory liquidation and that any breach of the application was accidental and not deliberate. Mr O's case was that he had not been in court on the 23rd May 1997, had not given undertakings and that his understanding of what had happened was relayed to him by Mr N, who told him that if the money was not forthcoming by 28th May, they must voluntarily put the company into liquidation.

26. Mr N said that he had been at the back of the court and did not hear the Judge state that the liquidation had to be compulsory. He had not discussed the extent of the undertakings with Mr Hickey afterwards and Mr Hickey had not explained the difference between a voluntary liquidation and a compulsory liquidation. Mr N agreed that Mr O was not in court and confirmed what he had told Mr O subsequently.

27. Evidence was also given by Mrs Wallace, Mr N's secretary, to the effect that she was also at the back of the court and found it difficult to hear or understand what the Judge was saying. She also said that the Respondent was not in court that day, and that the solicitor present from the Respondent's firm was Mr Mark Alagoa, an assistant solicitor.

28. In his evidence to the Tribunal, Mr Hickey said that the solicitor instructing him on that occasion was Mr Alagoa. He also said that only Mr N was present, not Mr O. He accepted that he had had no instructions to give any undertaking on behalf of Mr O personally. He agreed that no discussion took place with Mr N as to the difference between a voluntary and a compulsory liquidation and he did not explain the nature of the undertakings after the court proceedings.

29. The FS Tribunal found that Mr N was not aware that the undertaking he had given was to put the company into compulsory liquidation and that his breach of the undertaking was not deliberate. They also accepted that Mr O was not in court on that day and that he did not give any instructions to Mr Hickey to give any undertakings on his behalf.

30. The Respondent also gave evidence to the FS Tribunal, in respect of which the FS Tribunal's report states at paragraph 460 as follows:

"The one witness whose evidence contradicted our above conclusions to any substantial extent was Mr Harry. He gave a very confident and clear account of the events of the day. He said he had explained to Mr N and Mrs O outside the court room, when they were considering giving undertakings, the difference between a compulsory and voluntary liquidation, and what they would have to do was to present a petition to the court to wind up the company if the money was not forthcoming and that they would need to instruct his firm to do this. He said Mr Hickey was part of the discussion. He said when they went into the court room, it was only Mr N who was with him, because Mr O had gone back to the office. After the hearing he said he went back to G Ltd's offices with Mr N where they discussed matters with Mr O. He said that if they were unable to raise the money they would need to instruct his firm to petition the court for compulsory liquidation of the company. He said he had no attendance note for that day in his file. Both Mr Hickey and Mrs Wallace however clearly recollect that it was Mr Alagoa and not Mr Harry who was in court on that day. Regrettably we reject the entirety of Mr Harry's evidence in respect of what happened on 23rd May 1997".

31. Ultimately, the FS Tribunal's conclusion was that the appropriate decision was for directions to be given that neither Mr N nor Mr O were a fit and proper person to be employed in connection with any kind of investment business.

32. On 13th August 1998, the OSS wrote to the Respondent seeking his explanation of matters raised by the Report of the F S Tribunal. He replied in a letter dated 24th August 1998, asserting that the evidence he had given to the F S Tribunal was "true in all material respects" and suggesting that he may have made a mistake as to the date in question.

33. The OSS subsequently obtained from the FSA extracts from the transcript of oral evidence given to the Tribunal which were sent to the Respondent for his comments and further response on 4th November 1998. He replied in a letter dated 23rd November 1998, maintaining his position as set out in his earlier letter.

Inspection January 1999 – (Allegations iii – vi)

34. On 26th January 1999 an inspection of the books of account of D J Harry & Co. was commenced following authorisation under Rule 27 of the Solicitors' Accounts Rules 1991. The inspection took place at the offices of D J Harry & Co. at Christ House, 32 – 36 Rye Lane, London SE15 5BS. The Tribunal had before it a copy of the inspection report dated 12th March 1999.

35. The Respondent gave the Investigation & Compliance Officer (ICO) details of his professional history.

36. At commencement of the inspection, the books of account were found not to be in compliance with the Solicitors' Accounts Rules as numerous receipts and payments had not been allocated to client ledger account. The firm had brought the

bookkeeping up to date by 25th February 1999, but breaches of the Accounts Rules were noted to have occurred and were identified in the Report.

37. A list of liabilities to clients as at 31st December 1998 was produced. Additional liabilities totalling £1,592.50 were not shown by the books.

38. A comparison of total liabilities, including the additional liability of £1,592.50, with cash held on client bank accounts, after allowance for uncleared items, showed a cash shortage of £43,260.98.

39. The cash shortage arose as follows:

		£
(a)	unallocated transfers from client to office bank account;	17,050.00
(b)	overpayments;	12,939.25
(c)	office account items paid from client bank account;	2,063.00
(d)	unallocated payments;	985.60
(e)	Legal Aid Board disbursements lodged in office bank account;	592.50
(f)	over transfers;	250.00
(g)	bank charges incorrectly paid from client bank account;	55.00
(h)	book difference – shortage;	9,325.63
	Total	£43,260.98

Allegation (iii)
Unallocated transfers from client to office bank account - £17,050

40. A review of the firm's office and client bank account statements revealed there had been a practice of funds being transferred in round sums from client to office bank account. The transfers were not allocated to specific client matters at the time when the transfers were made. The amounts transferred were subsequently allocated to various client matters as costs due to the firm.

41. The report noted that as at 31//12/98, nine transfers totalling £17,050 remained unallocated. The Respondent agreed that at the inspection date these transfers had not been allocated to any specific client matter.

42. The Respondent produced evidence that the firm's bankers had been transferring funds, without authority, from the firm's client to office bank account when the overdraft limit on office bank account had been exceeded. The ICO asked why the Respondent did not replace the funds transferred out of client bank account once he became aware of the transfers and he replied "I thought we had sufficient profit costs we had not taken out". He confirmed that he was aware that funds should only be taken from client account in respect of specific client matters.

Allegation (iv)
Overpayments - £12,939.25

43. Between 12th May 1998 and 21st December 1998, overpayments totalling £12,939.25 had been made in respect of 11 clients.

Allegation (v)

Office Account Items paid from Client Bank Account £2,063.00

44. The Report noted that, during the period 9th March 1997 to 12th may 1998, seven office account items totalling £2,063 were paid from client bank account. The Respondent agreed with the ICO the payments should not have been made from client bank account, but had been made by mistake.

Allegation (vi)
Cash Shortage

45. The Respondent agreed the existence of the cash shortage of £43,260.98 on client bank account as at 31st December 1998. The cash shortage was reduced by payments totalling £2,446.52 on 25th and 28th January 1999 from office to client bank account.

Inspection July 1999 – Allegations (vii) – (ix)

46. On 5th March 1999, the Respondent purported to replace the remaining cash shortage by the introduction of funds from a family friend into client bank account. A further inspection of the firm's books of account by the ICO commenced on 20th July 1999. A copy of the report dated 27th July 1998 was before the Tribunal. A review of the client bank account statements revealed that the cheque representing this lodgement was subsequently dishonoured by the bank on 10th March 1999 and no evidence could be found of funds being introduced into client bank account in the subsequent period. At the time of this second inspection, the Respondent had resigned from the partnership at the end of May 1999 and subsequently had acted as a consultant. The partners of D J Harry then in attendance at the office were Mr C Lawrence and Mr J Oyekanmi. They informed the ICO that they were not in a position to rectify the shortage and, in their view, they were not responsible for it.

Allegation (vii)

47. The books of account were found during the inspection not to be in compliance with the Solicitors' Accounts Rules as the client account cash book and ledger accounts had only been written up to the end of March 1999.

Allegation (viii)

48. The client cash book had not been reconciled to bank statements later than 31st December 1998.

Allegation (ix)

49. It was noted that client bank account had been charged with six payments, to a total value of £11,696.46, between 15th March 1999 and 1st June 1999. Three were cash payments. The partners were not able to attribute any of the payments to specific client matters.

Allegation (x)

50. During 1999, the notepaper utilised by the Respondent in respect of his firm identified various individuals as partners in the firm of D J Harry & Co. when they were not in fact partners, according to the records held at the Law Society Registration Department.

51. The Respondent's firm's notepaper was therefore misleading and in breach of the Solicitor's Publicity Code, paragraph 1(c), which provides that "Publicity must not be inaccurate or misleading in any way".

The Submissions of the Applicant

52. The Respondent had after qualification as a solicitor had quickly become a partner. It appeared that the firm was in disarray. The Respondent appeared to have abandoned his responsibility as a solicitor and had left financial matters to be dealt with by others. There had been a wholesale flouting of the Solicitors' Accounts Rules. Compliance with the Solicitors' Accounts Rules was at the very root of the public maintaining trust and confidence in the solicitors' profession. The Respondent's partnership appeared to be a sham. The reality was that the Respondent was the true principal in the firm of D J Harry & Co. The fact that the Respondent had given evidence on oath before a statutory tribunal which was not true served seriously to undermine the good reputation of the solicitors' profession.

The Findings of the Tribunal

53. The Tribunal found all of the allegations to have been substantiated. The Respondent had been guilty of a catalogue of behaviour which was wholly inappropriate for a member of the solicitors' profession and served to undermine not only his own good reputation but the good reputation of the solicitors' profession as a whole. In all of the circumstances the Tribunal considered it right that the Respondent should be struck off the Roll of Solicitors. The Tribunal ordered that the Respondent should pay the costs of and incidental to the application and enquiry, to include the costs of the Investigation and Compliance Officer of the Law Society, in a fixed sum.

DATED this 12th day of September 2002

on behalf of the Tribunal

JRC Clitheroe
Chairman