

IN THE MATTER OF DAVID THOMAS PRICE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J N Barnecutt (in the chair)  
Mrs E Stanley  
Ms A Arya

Date of Hearing: 9th May 2002

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## FINDINGS

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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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 on 15<sup>th</sup> November 2001 that David Thomas Price of Monmouth, Gwent, 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in that he:-

1. failed to keep books of account properly written up in accordance with the requirements of Rule 32 of the Solicitors Accounts Rules 1998 (the Rules);
2. drew money out of client account for his own benefit or for the benefit of another;
3. dishonestly misappropriated clients' funds;
4. drew monies out of client account other than as permitted by Rule 22 of the Rules;
5. failed to deliver to The Law Society any Accountant's Reports for any year after 1995 contrary to Rule 35 of the Rules or the 1991 Rules.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 9<sup>th</sup> May 2002 when George Marriott appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the oral evidence of Mr Clemo, the Investigation Officer from the Forensic Investigation Unit of The Law Society, the oral evidence of the Respondent and a letter from Mr C handed in prior to the hearing and a copy client care letter handed up at the hearing.

At the conclusion of the hearing the Tribunal ordered that the Respondent David Thomas Price of Monmouth, Gwent, 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 in the sum of £7,356.

The evidence is set out in paragraphs 1 to 16 hereunder: -

1. The Respondent, born in 1947, was admitted as a solicitor in 1980. He carried on practice as a sole principal under the style of David Price from 43 Wonastow Road, Monmouth, Gwent. That was also the Respondent's home address.
2. By authorisation, the Office's Investigation and Compliance Officer Mr J Clemo commenced an inspection of the Respondent's books on 2<sup>nd</sup> August 2001. As a result of that inspection, a report dated 21<sup>st</sup> August 2001 was prepared setting out what the Investigation and Compliance Officer found.
3. Following notice duly given to the Respondent, Mr Clemo, the Investigation Officer began an inspection of the Respondent's books of account on 2<sup>nd</sup> August 2001. A Report dated 21<sup>st</sup> August 2001 was prepared and was before the Tribunal.
4. The Report of the Investigation Officer revealed that the Respondent's books of account were not in compliance with the Solicitors' Accounts Rules.
5. The Respondent failed to maintain a client account cash book written up-to-date and the cash records that were produced to the Investigation Officer were simply a list of clients' receipts up to 31<sup>st</sup> May 2001. No formal clients' ledger was produced and no client account bank reconciliations nor comparisons of client cash balances with liabilities to clients were produced. The Respondent's explanation to Mr Clemo was that "things had just drifted." In his oral evidence he said his book keeping had been "sloppy."
6. Because of the lack of book keeping records the Investigation Officer was not able to compute the Respondent's liabilities to clients as at the 31<sup>st</sup> July 2001, the inspection date. A minimum cash shortage of £21,950 existed as at that date as a result of round sum transfers having been made from client to office bank account. No bills of costs or other written intimations to clients had been given. The Respondent's explanation to the Investigation Officer had been that formal bills had not been rendered and that was being attended to. In evidence the Respondent said in the matter of A. Deceased his "client care" letter had indicated that he would transfer costs from time to time, the first of such transfers was to be made upon the grant of probate.

7. The Tribunal had before it a copy of the client care letter sent to Mrs W. That letter contained the following reference to costs:-

"The Law Society has laid down guidelines for the charges a solicitor/executor may make for administering an estate. In this case the suggested charges are the the [sic] spent on the work (my time at #75 (s/c) an hour) and a percentage increment based on the value of the estate (0.75% on the value of land and buildings and 1.5% on cash and investments). The final charge may be increased or decreased having regard to the complexity (or simplicity) of the work and what is fair and reasonable in all the circumstances."

8. The Respondent said he had discussed his charges with Mrs G, one of his co-executors in the estate of A. Deceased, and she had agreed. The Respondent referred the Tribunal to the letter faxed to the Applicant on 9<sup>th</sup> May 2002 by Mr C, the other co-executor in the estate of A. Deceased. In that letter he said that, after the deceased's ashes had been scattered, the three executors (one of whom was the Respondent) met for lunch when the atmosphere was friendly and congenial and Mr C could only assume that whatever had been discussed in the morning had been concluded in an acceptable manner.
9. No action had been taken by the Respondent by the conclusion of the accounts inspection to address the minimum shortage. His explanation had been that as the Investigation Officer had occupied his office and desk he could not deal with it.

The estate of A. Deceased

10. The Respondent was an executor of A. Deceased who died in 1998 leaving a gross estate of £297,317. A list of client account payments and receipts was prepared. The payments included eighteen transfers from client to office bank account varying in amount between £450 and £4,500 totalling £21,950 and made between 15.1.99 and 1.3.01. The transfers had been made in respect of the Respondent's costs. No bills of costs had been raised apart from one for £1,500 in respect of the sale of a property for which a further £1,500 transfer had been made. The Respondent's explanation had been that he was waiting to complete the distribution of the assets of the estate before delivering bills.
11. In evidence the Respondent told the Tribunal that he had sent a client care letter to his co-executors. He recalled that the form of the letter had been changed from the form adopted in the matter of H. Deceased.

The estate of H. Deceased

12. The Respondent was the executor of H. Deceased who died in 1998 leaving a gross estate of £171,909. Between September 1998 and November 1998 four transfers from client to office bank account in varying amounts between £1,000 and £3,500 and totalling £8,000 had been made.
13. The matter file contained bills totalling £3,445. On 13<sup>th</sup> October 1999 a transfer of £4,555 (£8,000 less £3,445) was made from office to client bank account. In evidence the Respondent told the Tribunal that he had accepted a motor car in part payment of his costs and the transfer back to client account included the value of the car. He had seen his client from time to time and had given oral explanations of the position.

14. The Investigation Officer had prepared a schedule showing the Respondent's overdraft limit on office account according to bank statements, the balance in office account immediately prior to the making of round sum transfers and the amounts of the round sum transfers. This schedule indicated that on twelve occasions out of twenty-two the bank overdraft limit was exceeded immediately prior to the transfer to office account of funds from client account.
15. In evidence the Respondent said that he had negotiated increases in his overdraft limit. This was demonstrated by the fact that the bank had paid cheques when the overdraft limit had on the face of the bank statements been exceeded.
16. The Respondent failed to deliver any Accountant's Reports since he began practising as a sole principal in June 1995. His explanation was that he had only been requested by The Law Society to deliver one, that being for the year ending 31<sup>st</sup> May 2000.

### **The Submissions of the Applicant**

17. The Respondent had admitted allegations 1, 4 and 5.
18. The Tribunal was invited to find allegations 2 and 3 to have been substantiated. These allegations related to the round sum transfers made from client to office bank account without reference to any particular client matter and without any bill of costs or written intimation of costs being delivered to the Respondent's lay clients.
19. In the submission of the Applicant the Respondent was utilising clients' funds to bring his office account overdraft limit into line with what his bank had agreed. All of the transfers in the list prepared by the Investigation Officer had been made in round sums. The transfers had been made frequently and over a substantial period of some two and a half years. The Tribunal was invited to draw an inference of dishonesty on the Respondent's part.
20. In submitting that the Respondent's behaviour had been dishonest the Applicant invited the Tribunal to apply the test in the case of *Royal Brunei Airlines -v- Tan* (Privy Council 1994) as considered and approved in the more recent case of *Twinsectra-v-Yardley* (H.L.2002). This amounted to a composite test. The Tribunal had to be satisfied (a) that the Respondent's conduct was unacceptable and dishonest and (b) that the Respondent knew or ought to have known that what he was doing was dishonest.

### **The Submissions of the Respondent**

21. The Respondent believed he had served his clients well.
22. The only two complaints made against the Respondent were those relating to the two estates, details of which have been placed before the Tribunal.
23. In the matter of A. Deceased that had been a difficult matter and one co-executor, Mrs G, had apparently been entirely satisfied initially with the Respondent's conduct of the matter but subsequently had changed her mind.

24. The Respondent denied that he had behaved dishonestly and denied that he had taken clients' money for his own purposes. He said his relationship with his bank had been good. He had renegotiated higher overdraft limits. The Respondent had not been able to produce paperwork in support of his submissions because his files had been removed upon The Law Society's intervention into his practice.
25. The Respondent accepted that his book keeping had been sloppy and shoddy.
26. Since the intervention into his practice, the Respondent had earned his living as a consultant undertaking probate work at the firm of one of his erstwhile partners.

### **The Findings of Fact by the Tribunal**

The Tribunal accepted the contents of the Investigation Officer's Report. The Tribunal has not made a finding as to whether or not the Respondent had exceeded his office account overdraft limit when round sum transfers were made. The Tribunal does find as fact that on every occasion when a round sum transfer was made from client to office account the office account was overdrawn and the effect of such transfers was to reduce the amount of the Respondent's borrowing. The Tribunal finds as a result that the Respondent had drawn money out of client account on each of the occasions when a round sum transfer was made for his own benefit. The Tribunal does not find that such transfers were made for the benefit of any other person.

The Tribunal finds that the Respondent's conduct was dishonest.

### **The Tribunal's Findings as to the Allegations**

The Tribunal find all of the allegations to have been substantiated and that includes a finding that the Respondent has acted dishonestly.

Punctilious compliance with the Solicitors' Accounts Rules and the requirement to file Annual Accountant's Reports with The Law Society were necessary and important prerequisites to a solicitor's practice. Those rules and requirements were in place to safeguard the public and enable The Law Society properly to fulfil its obligations as a regulator. Any failure by a solicitor in these important areas denies the public its proper protection and prevents The Law Society from fulfilling its duty to ensure that the public is protected.

The Tribunal concludes that the Respondent took monies belonging to clients by transferring it from his client account and using it to bolster his office account. Not only was this a breach of the important rule that a solicitor may not take clients' money in respect of costs without first delivering a bill or written intimation of his costs but it amounted to an unauthorised use of clients' money of which the client was unaware. Solicitors who are entrusted with the handling of clients' money are bound to handle that money honestly, properly, fairly and transparently. There may very well not have been an intention on the part of the Respondent permanently to deprive his clients of the monies transferred to office account. The absence of such an intention was relevant only to a criminal charge of theft. It is the Tribunal's view that

the unauthorised and secret use of clients' money for a solicitor's own purposes, in the absence of any such intention to deprive the client of such money on a permanent basis, in the case of a solicitor, did amount to dishonesty when applying the test in *Royal Brunei -v- Tan* as approved in *Twinsectra -v- Yardley*.

The Respondent had fallen very far short of the qualities of integrity, probity and trustworthiness required of a member of the solicitors' profession. He had been guilty of a lamentable failure to exercise a proper and honest stewardship over clients' funds.

The Respondent had flouted the regulations with which he was bound to comply in his capacity as a practising solicitor.

The Tribunal ordered that the Respondent 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 include the costs of the Investigation Office) in an agreed fixed sum.

DATED this 5<sup>th</sup> day of August 2002

on behalf of the Tribunal

J N Barnecutt  
Chairman