

IN THE MATTER OF EDWARD DAVID LEWIS EDWARDS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A.G. Gibson (in the chair)  
Mrs. K. Todner  
Mr. M.C. Baughan

Date of Hearing: 15th October 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 Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke, Potter & Chapman of 8 Bedford Row, London, WC1R 4BX on 8<sup>th</sup> January 2002 that Edward David Lewis Edwards, solicitor, of Graig Llwyn Road, Lisvane, Cardiff, 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 fit.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

- (a) That he had withdrawn money from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (b) That he had utilised clients' funds for his own purposes;
- (c) That he had failed to keep accounts properly written up and recorded for the purposes of Rule 32 of the Solicitors Accounts Rules 1998;

- (d) That he had failed to pay professional disbursements promptly or at all;
- (e) That he had failed to comply with the directions given to him under Section 44B of the Solicitors Act 1974 (as amended);
- (f) That he misrepresented to First Assist Group Limited that his lay client had already paid a bill of costs.

### **Application for an adjournment**

Prior to the substantive hearing the Tribunal considered the application for an adjournment contained in letters from the Respondent to the Tribunal dated 11<sup>th</sup> and 14<sup>th</sup> October 2002.

#### **The submissions of Mr Edwards**

In his letter of 11<sup>th</sup> October 2002, Mr Edwards had written:-

“This matter was adjourned on 4<sup>th</sup> July due to my ill health. I enclose a medical certificate and latest prescriptions. I am not well enough to defend myself in this matter. Please will the Tribunal adjourn the case. My GP has changed all my medication in an attempt to get me back to work and good health.

I really do wish to attend when this matter is dealt with. It is vitally important to me, but I am simply not well enough to deal with the hearing and the necessary journey.”

In his letter of 14<sup>th</sup> October 2002, Mr Edwards had written:-

“Thank you for your letter of 11<sup>th</sup> October 02. I confirm that it is not just that I am unwell, I am not physically able to conduct my defence. I am unrepresented, Legal Aid is not obtainable.

The current court proceedings between Mr S. Randhawa and myself continue in Cardiff County Court under No. CF104977. I have an order against Mr Randhawa where I am seeking indemnity for £22,000. Mr S. Randhawa has appealed. Surely this must be heard first in any event?”

#### **The Submissions by Mr Cadman on behalf of the OSS**

Mr Cadman opposed the application for an adjournment. The matter had been adjourned on 4<sup>th</sup> July 2002 when Mr Edwards had been taken ill on the way to the Tribunal. On that occasion, no detailed medical report had been available to the Tribunal, just a letter that Mr Edwards was at the accident and emergency department at Frenchay Hospital on that day.

The Tribunal today had only a short doctor’s note and it was submitted that it was not normally the practice of the Tribunal to adjourn on that basis. The Tribunal’s normal practice in this regard was set out in the Practice Direction of 4<sup>th</sup> October 2002 which said that the following would not generally be regarded as providing justification for an adjournment:-

“The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor’s certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient.”

Mr Cadman had instructed an enquiry agent in this matter. On 14<sup>th</sup> October the enquiry agent had gone to Mr Edwards’ former office (his practice having been intervened) and was told that Mr Edwards visited to collect his post.

The enquiry agent then went to Mr Edwards’ home address and obtained no answer. When enquiries were made of neighbours, the enquiry agent was told that Mr Edwards was “at work”.

### **The Decision of the Tribunal in relation to the application for an adjournment**

The Tribunal considered the submissions of Mr Edwards contained in his correspondence and the oral submissions of Mr Cadman. It was not the normal practice of the Tribunal to adjourn a hearing on production only of a statutory sick pay certificate. Where a respondent sought to adjourn a hearing on the grounds of ill-health, the Tribunal required a reasoned medical report in support of the application. At the previous adjournment the matter had been put to the Tribunal as a medical emergency and the Tribunal had felt able to adjourn the matter without a full medical report. That was not the case on this occasion. The Tribunal refused the application for an adjournment.

### **The substantive hearing**

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 15<sup>th</sup> October 2002 when Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr Surinder Singh Randhawa.

At the conclusion of the hearing the Tribunal ordered that the Respondent Edward David Lewis Edwards of Graig Llwyn Road, Lisvane, Cardiff, solicitor, be struck off the Roll of Solicitors and they further ordered that he do pay the costs of the investigating accountant of and incidental to the application and enquiry fixed in the sum of £3,700 together with the legal costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

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

1. The Respondent, born in 1954, was admitted as a solicitor in 1985 and his name remained on the Roll of Solicitors.
2. At the material time the Respondent had initially carried on practice as a partner in the firm of G.S. Randhawa & Co. From 1<sup>st</sup> November 1997 to 3<sup>rd</sup> December 1998 the Respondent then practised as a sole practitioner as E.D.L Edwards of 3<sup>rd</sup> Floor, 32

Charles Street, Cardiff. The Professional Regulation Adjudication Panel of the Law Society on 4<sup>th</sup> September 2001 resolved to intervene in the Respondent's practice under Part 2 of Schedule 1 of the Solicitors Act 1974.

3. Upon due notice to the Respondent, the Monitoring and Investigation unit of The Law Society carried out an inspection of the Respondent's books of accounts commencing on 10<sup>th</sup> October 2000. A copy of the report dated 19<sup>th</sup> March 2001 was before the Tribunal.
4. The report noted the following matters.
5. The Respondent maintained two bank and building society accounts, one being his office account and the other, which the Respondent maintained was his client account, being a Cash Transactor Account at the Yorkshire Building Society. No documentation relating to this account produced to the investigating accountant included the word "client" in the title of the account.
6. The investigating accountant identified a cash shortage in respect of liabilities to clients in the sum of £3,173.35.
7. The cash shortage of £3,173.35 arose solely in respect of funds being received to pay professional disbursements, where the funds were not used to pay those disbursements.
8. A review of four client matter files, together with the accounting records and explanations given by the Respondent, indicated that funds had been received by the firm to pay professional disbursements but confirmation had been received from the professionals concerned which indicated that they had not been paid.
9. The Respondent acted for Mr JW in connection with a personal injury action.
10. A review of the client ledger account showed the following transactions:-

		<u>Debit</u>	<u>Client Credit</u>	<u>Balance</u>
10.7.2000	L C		£547.50	£547.50
17.7.2000	Dr EC	£280.00		267.50
17.7.2000	Dr RE	150.00		117.50
20.7.2000	OPL	117.50		Nil

11. A review of the Respondent's Cash Transactor Account with the Yorkshire Building Society, however, showed the following withdrawals:-

17.7.2000	Cash Wdl	£430.00
20.7.2000	ATM Wdl	100.00
20.7.2000	Cash Wdl	17.50

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£547.50

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12. Correspondence had been received by the OSS which indicated that the three professionals appearing on the ledger account had not received their payments.
13. The Respondent, when asked for an explanation as to why these people had not received payment, commented that:-

“there may be a cheque out/in post floating about with Yorkshire Building Society, they debit your account straightaway .... I think there are two possibilities – one, Yorkshire Building Society records are correct and those are cash payments and someone else has withdrawn it, or they are cheque payments which have not been received and they will show as debits on the account.”
14. The investigating accountant suggested to the Respondent that he had not in fact made the payments to the third parties he claimed to have made. He said:-

“My records show them to be made – if the parties have not received the funds there are only two explanations:-

  - (i) these should properly be shown as cheques from Yorkshire Building Society accounts. If they’ve not been received by E,O and C they won’t have been cashed.
  - (ii) If those monies were withdrawn as cash then I have a suspicion as to who’s done it and I intend to inform the police”.
15. The Respondent indicated who he thought might be responsible, namely a Mr F (a part-time employee), and added that Mr F might have been drawing money from his account as he knew the pin number of the card relating to the office bank account.
16. The investigating accountant noted in his report that funds in respect of this matter had been drawn from “client” bank account. The investigating accountant’s report set out details of the three further matters which he had identified as being similar to the matter of JW set out above, these were the matters of LF, Mr and Mrs O and AM.
17. The OSS wrote to the Respondent requesting his comments on the points raised in the report. A copy of the correspondence between the OSS and the Respondent in that regard was before the Tribunal.
18. By letter of 8<sup>th</sup> February 1999, Messrs G S Randhawa & Co lodged a complaint with the OSS. A copy of their complaint and relevant correspondence was before the Tribunal. One of the matters raised in their letter of complaint related to Mr D and First Assist.
19. In correspondence with First Assist, the Respondent asserted that a bill of costs to a lay client, Mr D, had been paid by Mr D to the Respondent. On the basis of that assertion, the Respondent requested that First Assist reimburse Mr D for the full amount of the bill. Despite requests made, no evidence had ever been produced to support the Respondent’s assertion that the bill of costs had actually been paid. There

was nothing in the Monitoring & Investigation Unit inspection to show that the monies for that bill had ever actually been received by the Respondent.

20. Thereafter the OSS requested an explanation from the Respondent. Copies of relevant correspondence was before the Tribunal.
21. On 22<sup>nd</sup> May 2000 the OSS wrote to the Respondent requiring him under the provisions of Section 44B of the Solicitors Act 1974 (as amended) to produce by return the ledgers relating to Mr D, details of all bills and invoices submitted to and payments received from Mr D and/or First Assist with documentary evidence in support. The Respondent failed to comply with this requirement. Copies of the relevant correspondence were before the Tribunal.
22. On 5<sup>th</sup> December 2000 a further Section 44B direction was made. This was hand delivered to the Respondent by an officer of the OSS. However, no further information or documentation had been provided. The Respondent had still not complied fully with either direction. A copy of the relevant correspondence was before the Tribunal.
23. The OSS prepared a report which was not before the Tribunal. The Respondent replied and a copy of his correspondence was before the Tribunal.
24. The matter was considered by the Professional Regulation Adjudication Panel on 4<sup>th</sup> September 2001 who resolved to refer the matter to the Solicitors Disciplinary Tribunal.

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

25. The applicant had served a notice to admit evidence in respect of the investigating accountant's report and no counter-notice had been received.
26. The Yorkshire Building Society account was one which allowed withdrawal by use of a card and a pin number. Client funds had been withdrawn in cash using the card.
27. All three of the withdrawals in respect of JW referred to in the investigating accountant's report were withdrawals in cash from a "hole in the wall" machine.
28. The Respondent had blamed Mr F but the Respondent was the custodian of his clients' funds and the Applicant was not aware that any report had been made to the police by the Respondent.
29. There should never have been a pin number in respect of a client account and funds should not have been withdrawn in that way. The disbursements had not been paid.
30. The situation in the matter of JW was paralleled in the case of LF. The accountant's report again identified the fact that the client ledger account showed that monies had been received in and purportedly paid out when in fact the disbursements had not been paid. It was impossible to say how that money had been used.

31. Similarly in the matter of AM, it was not known what the monies had actually been used for. The disbursements remained unpaid.
32. In the submission of the Applicant, allegation (e) was proved by the documentation relating to the two section 44B Directions.
33. In relation to allegation (f), a counter-notice had been served by the Respondent in respect of Mr Randhawa's affidavit and Mr Randhawa would therefore give oral evidence.

The oral evidence of Mr Surinder Singh Randhawa.

34. Mr Randhawa confirmed that the contents of his affidavit (setting out details of the matter of Mr D and First Assist) were true.
35. Mr Randhawa had seen the Respondent two weeks ago in Cardiff marching along the street at quite a hectic pace.
36. Mr Randhawa's firm had never received recompense for the fees due to it in respect of Mr D.
37. The litigation referred to in the Respondent's letter of 14<sup>th</sup> October 2002 related to a claim by the firm's former landlord for rent arrears. This matter was due to be heard shortly at Cardiff County Court and the Respondent was representing himself.

**The Findings of the Tribunal**

38. Having considered the evidence and submissions, the Tribunal found all the allegations to have been substantiated. In respect of allegations (a) to (d), the Respondent had not served a counter-notice in respect of the accountant's report and the allegations were clearly made out in that report and the other exhibits to the affidavit of the investigating accountant.
39. In relation to allegation (e), the failure to comply with the Directions was made out on the documentation before the Tribunal.
40. In relation to allegation (f), the Tribunal had considered carefully all the documentation including previous correspondence from the Respondent. The Respondent had, however, produced no documentary evidence to support his version of events. The Tribunal had had the benefit of Mr Randhawa's oral evidence confirming his affidavit.

Previous appearances before the Tribunal

41. At a hearing on 31<sup>st</sup> October 1995 the Tribunal had found substantiated an allegation that the Respondent, contrary to the provisions of Section 1 and Section 1A of the Solicitors Act 1974 (as amended), had acted as a solicitor uncertificated whilst employed in connection with the provision of legal services and was accordingly guilty of conduct unbecoming a solicitor. On that occasion the Tribunal said:-

“It was of fundamental importance that a practising solicitor should hold a Practising Certificate. That was the way in which The Law Society was able to indicate to members of the public that a solicitor was properly competent and qualified to act on their behalf and that the safeguards upon which the public rely were properly in place. The breach was, therefore, a serious one. However, the Tribunal had some sympathy for this young man who was working as a solicitor earning a modest salary and having a young family to support and who found himself with insufficient funds to pay the Practising Certificate fee there having, apparently, been some confusion both with The Law Society and with his own employer. It was to the respondent’s credit that he appeared before the Tribunal and recognised the seriousness of his position. The Tribunal had taken into account the fact that the respondent’s position had been regularised and that proper application has been made for a Practising Certificate relating to the practice year which was to commence on the day after the hearing.”

The Tribunal had ordered the respondent to pay a fine of £1,000 and the Applicant’s costs”.

42. At a hearing on 12<sup>th</sup> July 2001, the following allegation had been substantiated against the Respondent and others, namely that each had been guilty of conduct unbefitting a solicitor in that contrary to Section 41 of the Solicitors Act 1974 they employed or remunerated in connection with their practice as a solicitor G S Randhawa who to their knowledge was disqualified from practising as a solicitor by reason of the fact that his name had been struck off the Roll of Solicitors.
43. The Tribunal on that occasion considered that the facts placed before them represented a wholly unsatisfactory state of affairs. A struck off solicitor ran a business from rooms close to the rooms occupied by his former practice which continued to bear his name. He clearly did not accept the consequences to him of the striking off order and there was no doubt in the minds of the members of the Tribunal that Mr G S Randhawa had undertaken work for the clients of the firm. The Tribunal noted that Mr G S Randhawa had received payments not only in respect of rent, to which no exception could be raised, but also as a “consultancy fee”. The Tribunal was unable to accept the Respondent’s explanation that although called a “consultancy fee” in the books of account the payments of £500 per month were in reality instalment payments for the goodwill and work in progress of the former practice of Mr G S Randhawa. The Tribunal had before it no evidence that a figure had been agreed for goodwill and work in progress and it was clear to the Tribunal that the payments were being made on an ongoing and “revenue” basis. The Tribunal did not agree with the Respondent’s contention that the word “remunerate” had a very confined meaning related to the payment of salary or wages. “Remunerate” must be considered in a common sense and wide meaning way including “reward” or “provide recompense for”. The Tribunal considered it very difficult to find that any payment made to a struck-off solicitor in connection with his former practice as a solicitor fell outside the provisions of Section 41 of the Solicitors Act 1974.
44. The Tribunal had found that Mr G S Randhawa was employed in the practice in G S Randhawa & Co after the date of his striking off. Employment also needed to be given a suitably wide definition. There had been no doubt in the mind of the Tribunal



on the evidence before them that Mr G S Randhawa had been kept occupied in the business of the firm or its clients and was so employed. The Respondent had been aware of this and he did remunerate Mr G S Randhawa.

45. The Tribunal considered that the Respondent had recognised the difficulties, but had not acted as firmly as he should have done and had, albeit mistakenly, remunerated Mr G S Randhawa. The Tribunal had ordered that the Respondent should be suspended from practice for the period of three months (and imposed penalties in respect of the other respondents) and ordered that the Respondent pay 40% of the costs.
46. At the hearing on 15<sup>th</sup> October 2002 the Tribunal noted that the Respondent had had two previous appearances before the Tribunal on serious matters. A series of serious allegations had been proved against him at the present hearing. Professional disbursements remained unpaid yet the Respondent's books of account had indicated that clients' funds had been used for that purpose. The Tribunal was concerned to note that there was no explanation before it as to what had happened to that money. The Respondent had failed to comply fully or promptly with Directions of the Regulatory body. He had misrepresented the position regarding a bill of costs. In the interests of the protection of the public and the reputation of the profession, the Respondent could not be allowed to remain as a member of the profession. The Tribunal ordered that the Respondent Edward David Lewis Edwards of Graig Llwyn Road, Lisvane, Cardiff, Solicitor, be struck off the Roll of Solicitors and they further ordered him to pay the costs of the investigating accountant fixed in the sum of £3,700 together with the legal costs of the application and enquiry to be subject to detailed assessment unless agreed.

DATED this 29<sup>th</sup> day of November 2002  
on behalf of the Tribunal

A G Gibson  
Chairman