No. 8525/2002

IN THE MATTER OF GEORGE STEPHENSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date of Hearing: 9th May 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 by George Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 8th January 2002 that George Stephenson of Warrington, Cheshire might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

1. transferred monies from client account to office account in respect of fees without sending to the clients bills of costs or other written intimation of the costs contrary to Rule 19 (2) of the Solicitors' Accounts Rules 1998;

2. drew monies out of client account for his own benefit;

3. failed to honour professional undertakings given within any or any reasonable time;

4. having received instructions from a third party to act for a client failed to obtain written instructions from the client confirming that he was to act;

5. acted and/or continued to act for a client when his interests conflicted with the interests of that client;

6. withdrew monies from client account without obtaining his client's instructions.

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

The evidence before the Tribunal included the Applicant's statement and exhibits and a bundle of the Applicant's further documents all of which had been served upon the Respondent. The Tribunal also had before it a copy of the letter addressed by the Respondent to the Applicant dated 3rd May 2002, received on 7th May 2002.

At the conclusion of the hearing the Tribunal made the following Order:-

> "The Tribunal Order that the Respondent, George Stephenson of Warrington, Cheshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 9th day of May 2002 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,148.89 inclusive."

The evidence before the Tribunal is set out in paragraph 1 to 16 hereunder:

1. The Respondent, born in 1938, was admitted as a solicitor in 1964. He carried on in practice as a sole principal under the style of Jeans & Bottomley at 3 Palmyra Square, South Warrington, Cheshire.

2. Following notice duly given an Investigation & Compliance Officer employed by the OSS attended at the Respondent's premises on 22nd January 2001 to inspect his books of account. Following the inspection a Report was prepared dated 8th March 2001 which was before the Tribunal. That Report revealed the following matters.

<u>Accounts</u>

3. A list of liabilities to clients as at 31st December 2000 totalled £238,232.16. This sum was in agreement with the balances shown in the client ledger. A further sum of £7,170 existed in respect of funds which had been transferred from client to office bank account in respect of costs where no bills of costs or other written intimation had been delivered to the clients. Bank charges totalling £374 had been debited from client account. There was as a result of these two items a cash shortage on client account of £7,544.

4. Forty-nine conveyancing files for the period 1st June 1999 to 31st December 1999 were inspected. The Respondent was asked in each case to show whether a bill of costs or other written intimation of costs had been delivered to the client. The Respondent agreed that with the exception of two there was no such evidence. The Respondent's explanation at the time was pressure of work.

5. The Respondent said he would transfer the sum of £374 in respect of bank charges from office to client bank account.

Undertaking (a)

6. The Respondent acted for Mr and Mrs D in their purchase of property. Mr and Mrs D obtained a mortgage from O Ltd who were represented by solicitors Bernard Elliston Sadler & Co.

7. By an exchange of letters dated 28th June 1999 between the Respondent and the mortgagee's solicitors the Respondent gave an undertaking that he would provide the Land Certificate to them within ten working days of completion.

8. Completion took place on 30th June 1999. The Respondent had not delivered the Land Certificate. His explanation was that the vendors' mortgage provider had wrongly sent the Land Certificate to the vendors' solicitors. He understood that the matter had been resolved by those solicitors providing an undertaking to Bernard Elliston Sadler & Co that they would either discharge the mortgage or give the Land Certificate to the mortgagee within 28 days from 21st March 2000.

Undertaking (b)

9. The Respondent was instructed by A in connection with the purchase of property.

10. By letter dated 13th December 1999 the Respondent "undertook following receipt of the net advance to account to the client for the full amount of the net advance not used for the payment of the purchase price save for legal fees."

11. The Respondent paid £250 and £495.50 to a firm "Legal Services" in accordance with instructions received from Michael Seward, a struck off solicitor. The Respondent explained that he believed he had complied with his undertaking by making the payment upon the instruction of Michael Seward.

Third Party Instructions

12. The Respondent was introduced to a new client by Mr Seward in respect of the sale of her property to her son by letter dated 11th November 1999. Mr Seward acted for the purchaser's son. Following completion, the Respondent paid out all the funds he had received in respect of the matter totalling just over £93,000 in accordance with instructions received from Mr Seward. The payments included an amount to the firm, Legal Services, of £657.58.

13. There was no evidence on the file to demonstrate:-
    (i) that the mother knew that her house had been sold to her son;
    (ii) that the mother consented to the disbursement of the proceeds of sale in the way Mr Seward had directed.

14. The Respondent said that there was not a conflict of interest because the vendor and the purchaser were related as mother and son.

15. By letter dated 9th April 2001 from the OSS the Respondent was invited to give an explanation of his conduct. He did so by letter dated 15th May 2001 in which the Respondent:-
    a) denied that there was any shortage on client bank account as each client had either received a bill or a written intimation of costs;
    b) said that he had instructed his bank to reimburse client account the amount of the charges debited and decided not to do it himself in case they did it and thereby duplicated the work. He did correct the position by sending a cheque dated 19th February 2001 for £374;
    c) said that he could not comply with the undertaking (a) as it concerned a matter which was outside his control;
    d) said that he had the consent of his client to make payments to Mr Seward and therefore was not in breach of his undertaking (b);
    e) said his client, the mother, had confirmed her instructions to the effect that the money could be paid to Legal Services.

16. By a further letter dated 10th September the Respondent expanded his answers and said that:-
    (a) the bills had all been prepared and copies could be supplied to the Office;
    (b) undertaking (a) was qualified by "God willing" and that the problems had eventually been resolved;
    (c) he was still awaiting the letter from his client (the mother);
    (d) That letter arrived subsequently and was sent to the OSS. It was undated, but attached to the Respondent's letter of 21st September 2001.

The Submissions of the Applicant

17. It was not clear whether or not the Respondent admitted any of the allegations. The Applicant had sought to prove the matters alleged. He had served Notices to Admit upon the Respondent and no Counternotice had been received.

18. In correspondence the Respondent said that he had given written intimations of his costs but that flew in the face of what he had told the Investigation & Compliance Officer. The Respondent suggested that he had prepared hand written intimations of costs but he had not retained them.

19. It was hard to understand why the Respondent had not immediately replaced the relatively small amount that the bank had taken in error from client account by way of charges.

20 With regard to the two professional undertakings given by the Respondent, in respect of which he was in breach, the Respondent had given some explanation. The Tribunal was invited to take the view that the Respondent had been in breach of his undertakings and that the explanations which he offered were in mitigation of his failures.

21. With regard to his acceptance of third party instructions, the Respondent had after the event produced something in support of his contentions. It appeared, however, that monies had been disbursed in accordance with the instructions of Mr Seward, a struck off solicitor.

22. During the course of correspondence the Respondent did not at any time say that he considered that the Investigation & Compliance Officer was wrong. He at one point asked the question: "When is a bill not a bill?"

23. With regard to the undertakings which he gave and with which he did not comply, the Respondent said that allegation (a) was a qualified undertaking namely that the ten day period of time was not to be enforced. The Tribunal was invited to bear in mind the importance of compliance with a professional undertaking given by a solicitor in the smooth running of commercial transactions. The Respondent's breach led to another firm having to give an undertaking to deal with the matter.

24. Undertaking (b) was given in connection with the purchase of a property. The relevant part of the undertaking had said:-

> "To account following completion to your client's borrowers for the full amount of any part of the net advance (if any) not utilised for the payment of the balance of the purchase price save for our proper legal fees."

The payments made to Mr Seward clearly were in breach of that undertaking.

25. In connection with the third party instructions received by the Respondent in a transaction which apparently was the sale of a property by a mother to her son it appeared that the Respondent was simply doing the bidding of Mr Seward, a struck off solicitor.

26. The Applicant did not put the matters before the Tribunal as matters involving dishonesty on the part of the Respondent. Rather the matters demonstrated muddle and a failure properly to get to grips with matters. It appeared that the monies transferred for costs related to a proper charge for work done but bills had not been delivered to the clients.

The Submissions of the Respondent – his letter dated 3rd May 2002 referred to above

27. "3rd May 2001

Dear Mr Marriott,

S.D.T

Following recent correspondence I make the following point

1. To deal with the matter of when is a bill not a bill. When it was discussed with Mr Freeman at the outset we were dealing with bills on headed notepaper. Therefore what I meant was that I hadn't done a bill on headed notepaper. My former partner acted in the local courts for (illegible) AA, RAC and police authorities and he produced a statement containing merely figures and not on headed notepaper. This was acceptable then and unless things have changed recently

should be acceptable now. However the main point in that agreement was reached on the question of bills. I was told that there was doubt as to whether or not my bills were sufficient but that if I repeated others this would clear up the matter. I did all the bills again to resolve the matter. I would suggest that it is morally wrong to reopen a matter that was resolved 15 months ago.

2. Regarding the Yorkshire Bank episode. I accept there was a technical breach but only a very minor one. In view of the complex dealings with money in conveyancing transactions I believe the few, if any, firms doing a volume of conveyancing work over a period of years would not, albeit unwittingly, commit a technical breach. If we are "splitting hairs" I could say that at all times there was money in clients account earmarked for costs for which I could have recorded a bill and transferred. Of course it was Yorkshire Bank and not me that was responsible.

3. I have been in contact with Barry Ashton of Geoffrey Morris & Ashton and he had promised to send me a letter. However it has not yet arrived but I will send it to you if it is received in time. However I am enclosing a copy of a fax from Mr Ashton to Elliston's showing that he was holding the Land Certificate and transfer.

In summing up I still feel that I did what I could. I realise that I am fallible and that people hold different opinions to my own as to how to deal with matters but if it is felt that I could have done more than I did then I can only offer my apologies and ask for consideration and for a realisation that these matters took place three years ago.

Yours sincerely,
G. Stephenson"

The Findings of Fact by the Tribunal

The Respondent had offered different explanations as to the position with regard to his transferring monies from client account for costs without delivering bills to his clients. The Respondent does not make it plain whether he prepared longhand bills or formal bills on his firm's letterhead. Whatever his explanation, the Tribunal finds that bills or written intimations for costs were not delivered to the clients concerned. The Tribunal finds that the sums of money involved were the proper sums representing work undertaken by the Respondent but that he had not fulfilled the technical requirements of the Solicitors' Accounts Rules.

As a result of his non-compliance with the Solicitors Accounts Rules it followed that he had drawn monies from client account for his own benefit. The Tribunal accepts that the Respondent had not behaved dishonestly in that connection but simply had not attended to the billing of costs in the proper way.

The Respondent had not received written instructions from the mother apparently introduced to him by a struck off solicitor. It was accepted that he had produced a

letter from that lady after the event but he had acted at the time without having such written instructions.

It was in the same matter that a conflict of interest arose, when the Respondent accepted instructions from a party acting for the purchaser in a transaction as to what to do with the vendor's funds, whilst the Respondent himself was acting for the vendor.

In so doing the Respondent had withdrawn monies from client account without obtaining his client's instructions (that is the instructions of the mother in the transaction). The fact that the Respondent had transferred money from client account in settlement of costs could also be said to be a withdrawal of monies from client account without the client's instructions.

The Tribunal's findings as to the allegations

The Tribunal found all of the allegations to have been substantiated.

On 16th March 1993 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that the Respondent had:-

(i) contrary to the provisions of Rules 7 and 8 of the Solicitors Accounts Rules 1986 improperly withdrawn from clients account monies not available under the provisions of the said Rules to be so drawn and utilised the same for the purposes of other clients not entitled thereto;

(ii) improperly made false entries in his books of account to conceal his improper use of clients' money alternatively acted in breach of Rule 11 of the Solicitors Accounts Rules 1986 and failed to keep his books of account properly and accurately written up;

(iii) by virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

On that occasion the Tribunal said:-

> "This Respondent has misguidely considered himself to be a victim of and in dispute with The Law Society. Clearly he has permitted that misconception seriously to cloud his professional judgement. This experienced solicitor has deliberately misused clients' monies and has caused false entries to be made in his books. Although the Tribunal is prepared to accept that again misguidedly the Respondent was initially moved by altruism, there is no doubt that he has deliberately and flagrantly flouted the Solicitors Accounts Rules which are designed to ensure that clients' monies are safeguarded in all circumstances and to ensure that members of the public are protected. The Tribunal is alarmed by the Respondent's attempts to justify his activities. The Tribunal seriously considered prohibiting the Respondent from practising as a solicitor but in view of his long and hitherto unblemished career as a solicitor they will treat him leniently and will impose a financial penalty. That penalty does however mark the impropriety of the Respondent's actions and the misguidedness of his attitude.

> The Tribunal order that the Respondent George Stephenson, solicitor, of 3 Palyma Square South, Warrington, do pay a penalty of £3,000 in respect of each of the allegations numbered (i) and (ii), a total penalty of £6,000, such penalty to be forfeit to Her Majesty the Queen and they furter Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,363.15 to include disbursements, value added tax and the costs of the Investigation Accountant of the Solicitors Complaints Bureau."

In May of 2002 the Tribunal was concerned to find that the Respondent had yet again seriously misdirected himself as to his professional responsibilities. In flouting the Solicitors Accounts Rules by transferring monies for costs without delivering bills of costs the Respondent had breached one of the fundamental principles binding the solicitors' profession and its responsibility for the proper handling of and the exercise of proper stewardship over clients' funds.

The Respondent had failed to honour two professional undertakings. Neither of those undertakings was conditional on its face. It is fundamental to the expeditious and economic process of commercial transactions in the United Kingdom that solicitors' undertakings can be relied upon without question. If a solicitor considers that he might not be able to comply with an undertaking then he should either not give it or he must make it conditional. In any event, he must be careful with its wording. If he is not, then he must face the consequences. A breach of professional undertaking on the part of a solicitor is a most serious matter.

The acceptance of instructions from a third party to act for a client, particularly where those instructions came from a struck off solicitor who appeared to be running some sort of legal firm, left the Tribunal feeling a considerable disquiet as to the fitness of the Respondent to continue to practise as a solicitor. He further appeared to have disbursed monies to which that client was entitled in a somewhat cavalier manner.

In all of the circumstances and bearing in mind all of the Respondent's failures and his unacceptable explanations, the Tribunal considered it right in the interests of the protection of the public and the protection of the good reputation of the solicitors' profession that the Respondent should not be permitted to continue in practice.

The Tribunal ordered that the Respondent be suspended from practice as a solicitor for an indefinite period of time and they further ordered that he should pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation & Compliance Officer of the OSS). Such costs were ordered in a fixed sum.

DATED this 5th day of August 2002

on behalf of the Tribunal

J N Barnecutt
Chairman