No. 8642/2002

IN THE MATTER OF SIR GERRARD ANTHONY NEALE, Solicitor

- AND –

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S.N. Jones (in the chair)
Mr R.J.C. Potter
Ms A Arya

Date of Hearing: 8th October 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 George Marriott, solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 2nd July 2002 that Sir Gerrard Anthony Neale, solicitor of Shirley Oaks Village, Croydon, Surrey, 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:-

(1) in the course of his practice as a consultant to a firm of solicitors he became involved in dubious or fraudulent banking transactions that bore the hallmarks of bank instrument fraud;

(2) with regard to such transactions, he was a knowing participant because:-

(a) he ignored warnings from The Law Society that he should not participate in such transactions;

(b) he knew or ought to have realised that each transaction was highly unusual;

(c) the transactions were not ones which a solicitor should properly involve himself in.

(3) he failed to take adequate and reasonable steps to protect funds under his control held on behalf of clients and/or third parties;

(4) he further endorsed bankers drafts without the endorsees' authority;

(5) he acted in circumstances of conflict of interest;

(6) by virtue of the above he compromised or impaired:-

(a) his independence or integrity;

(b) his duty to act in the best interests of a client;

(c) his good repute or that of the solicitors' profession;

(d) his proper standard of work.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 8th October 2002 when George Marriott, solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent to the allegations save that the Respondent denied dishonesty.

At the conclusion of the hearing the Tribunal ordered that the Respondent Sir Gerrard Anthony Neale of Shirley Oaks Village, Croydon, Surrey, 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 fixed in the sum of £7,484.00.

The facts are set out in paragraphs 1 to 30 hereunder:-

1. The Respondent, born in 1941, was admitted as a solicitor in 1966 and his name remained on the Roll of Solicitors.

2. The Respondent was until 1998 a consultant with Radcliffes ("the Firm") practising from 5 Great College Street, London, SW1P 3SJ.

Background

3. The Respondent was a partner in a practice of solicitors known as Heald Nickinson which merged with another practice, Radcliffes & Co., in 1991. The new practice

was called Radcliffes & Co until 1995 when following another merger it was renamed Radcliffes Crossman Block. From that date the Respondent ceased to be a partner and became a consultant. During 1997 the practice changed its name to Radcliffes. In 1998 the Firm terminated his consultancy agreement.

4. From 1991 the Respondent's role in the Firm was to provide services solely in the area of marketing and public relations and in advising the Firm and its clients in the area of "issues advocacy" in relation to Parliament and public affairs issues. The Respondent had been an MP until 1992. He was not expected to provide legal advice except through other lawyers within the Firm. The services were set out in the terms of a letter written to the Respondent dated 29th August 1991.

The Respondent's involvement with The W Corporation

5. In 1996 the Respondent met JH. He remained in contact with him until the late summer of 1997 when JH told the Respondent that he had some potential transactions requiring an escrow arrangement.

6. JH operated through an Isle of Man company, The W Corporation ("W"). W and JH worked from London having London telephone numbers and a London address.

Documentation

7. JH supplied the Respondent with specimen documentation relating to a proposed Neutral Holders Agreement. The purpose of such agreements was for the Firm to hold potential investors' funds "in escrow" which would be paid into a US dollar account operated by the Firm and released by the Firm to W on the fulfilment of certain conditions when at the same time a fee would become payable to the Firm.

8. In addition to the Neutral Holders Agreement, certain other terms were used and were common to each agreement.

(i) Confirmed Funds Agreement

These were the agreements between W and the investor whereby W arranged to provide banking facilities for the investor in substantial sums; sometimes $10 million and on one occasion £200 million.

(ii) The Sub-account facility

This amounted to the money which was stated to be under the sole authority of W and to which no access by the investors was permitted.

Intended Fraud

9. Although no fraud could be proved, there was sufficient evidence to substantiate that the purported investment transactions listed below constituted in whole or in part an intended fraud and followed a pattern of prime bank instrument frauds which had been the subject of regulatory warnings. The purported contractual documents were confused and unclear and riddled with meaningless jargon; there was excessive and

unwarranted secrecy surrounding the proposed transactions. The supposed advantage to the investors was that for the consideration paid to W they had for a period of time access to a very large sum of money from which they could make a profit. The involvement of a firm of solicitors would have given a veneer of respectability to the proposed transactions.

Warnings

10. In September 1994 The Law Society circulated to all solicitors on the Roll a warning regarding money laundering. The warning card specifically warned against unusual transactions and large sums of cash being deposited in a solicitor's client account.

11. In October 1997 each solicitor was issued, with his practising certificate, a printed warning card in connection with bank instrument fraud. The warning was headed "Fraud Intelligence Office Warning Banking Instrument Fraud". The warning gave examples of schemes and common characteristics of banking fraud.

The transactions

TS

12. This transaction was aborted but the Firm nonetheless received a fee.

SA

13. In September 1997 SA who was based in Lebanon entered a Confirmed Funds Agreement with W and after certain enquiries the Respondent signed a Neutral Holder Agreement on behalf of the Firm for $300,000. The Firm then received into its bank account that sum together with $5,000 in respect of the Firm's fee. Following the receipt of a certificate from a foreign bank confirming the availability of $10 million for twenty-one days, the Firm via the Respondent duly released the fee or deposit paid by SA to W.

WL

14. WL, who was based in Canada, entered into a Confirmed Funds Agreement with W in October 1997. The Respondent signed a Neutral Holder Agreement also in October 1997 for $315,000 including $5,000 as the Firm's fee. Two days later the monies were received into the Firm's bank account from WL and shortly thereafter a certificate from the same foreign bank confirmed that for thirty days $10 million would be available in an account in WL's name whereupon the Firm via the Respondent released the fee to W.

E

15. E was a company registered in the Bahamas but apparently carried on a business in Miami and entered into a Confirmed Funds Agreement with W also in October 1997. The Respondent signed a Neutral Holder Agreement for $300,000 about the same time and the Firm received into its bank account an equivalent sum from E. The Firm's fees were $5,000. In November 1997 W produced to the Respondent an original confirmation signed on behalf of the same foreign bank indicating the

availability of $10 million for thirty days in an account in the name of E whereupon the Firm via the Respondent released the sum of $300,000 to W.

N November 1997

16. JH sent to the Respondent a copy of a Confirmed Funds Agreement between W and N (a consortium of investors) providing for the payment of $300,000 by N to W to arrange a sub-account facility of $10 million for thirty days with the Firm's fee to be $5,000. The Respondent signed the Neutral Holders Agreement whereupon JH delivered two bankers drafts to the Respondent endorsed in favour of the Firm for a total of $305,000.

N December 1997

17. JH produced a Confirmed Funds Agreement entered into by N and W for a sub-account facility in the amount of $200 million. The fee for the Neutral Holders Agreement which was signed by the Respondent was $5.5 million. The Firm's fees were $50,000. Six bankers drafts with a total face value of $7 million were delivered by JH to the Respondent and each draft was endorsed by Mr T of Newport. It seemed that the bank would not present the drafts because of the lack of clarity in the endorsements. The Respondent spoke to JH and as the result of information given by JH to the Respondent, the Respondent endorsed on the back of the three drafts payable to the S Group Limited the words "the duly authorised signatory of S Group Limited" to qualify the signature other than that of Mr T. The Respondent produced no evidence that he had obtained confirmation from S Group Limited as to this.

18. The Respondent also wrote on the draft payable to R (a firm of solicitors) to the effect that the endorser was "the chairman of R". The Respondent produced no evidence that he had obtained confirmation from the Firm of solicitors as to this.

19. JH's letter to the Respondent contained instructions that the difference between the total of the drafts ($7 million) and that which was required for the sub-account facility ($5.5 million) was to be converted into sterling and paid by way of a bankers draft to Mr T.

20. In December 1997 the Firm received a telephone call from another firm of solicitors who indicated in summary that it had come to their attention that the Firm was to be the escrow account holder of another proposed investor and was holding other funds of a similar sort.

21. The Firm thereupon referred the matter to The Law Society and the National Criminal Intelligence Service, investigated the service and resolved not to release the $7 million until there had been an investigation as to their source and the High Court had sanctioned the release of those monies. The proceedings instituted by the Firm were finally resolved in February 1999 and in answer to a letter from the OSS to the Firm, the Firm gave full and satisfactory explanation for its conduct and that of its partners.

22. As the result of information given to The Law Society by the Firm, arrangements were made for the inspection of the Firm's books of account. The inspection was started on 14th February 2000 and the report was dated 30th April 2001.

23. As the result of noting the transactions referred to above, a detailed interview took place between the Investigation and Compliance Officers and the Respondent on 21st March 2001.

The Respondent's replies

24. The Respondent in summary stated:

SA.

(1) He was unaware of The Law Society Guidelines on Banking Instrument Fraud and Money Laundering;

(2) He relied on information supplied to him by SA;

(3) He did not make any checks into the probity of JH;

(4) He did not make any checks upon the foreign bank;

(5) He did not speak to any other partners or fee earners at the Firm and signed the Neutral Holder Agreement on behalf of the Firm;

(6) He did not really understand what was going on and with hindsight should have spoken to other partners and fee earners;

(7) He did not think SA signed the agreement in his presence;

(8) He accepted he should have referred the matter to the Firm's money laundering officer;

(9) He was involved in the Firm on a marketing basis but this transaction involved sums of money passing through the Firm's US dollar client account.

(10) He met SA for thirty minutes and really did not do any work for the transaction;

(11) He believed the fee charged of $5,000 was acceptable;

(12) He believed that if the parties needed an independent party the Firm should not do that for nothing;

(13) The fee was "think of a number" and the number happened to be $5,000;

(14) When put to him he had rarely earned so much for doing so little, he declined to answer;

(15) He based his consultancy fee on 80% of the income he generated plus a monthly retainer;

(16) He provided no advice in respect of the transaction and purely provided a banking facility;

(17) He did not know whether the bank would hold money in this way when it was suggested to him that the client account was being used in that manner;

WL

(1) He agreed the second transaction followed a similar pattern to the first;

(2) He was informed by JH that WL and JH wanted him to act on the escrow agreement;

(3) He never met WL;

(4) He did not understand the transaction or the paperwork;

(5) He was given instructions from WL in a hand-written five line letter;

(6) He was to receive the fee of $5,000 from WL;

(7) He should have been aware of the warning card on money laundering;

(8) He had not told anyone in the Firm what was going on;

(9) He should have involved other members of the Firm and the money laundering officer;

E

(1) He agreed this transaction followed a similar pattern to the first two;

(2) He only focused on the mutual funds part of the agreement and was very busy outside the Firm;

(3) He agreed that with hindsight the transaction displayed characteristics of prime bank instrument fraud;

(4) He agreed that he was to receive $5,000 from E;

(5) He never met Mr G;

(6) He did not make the Firm aware of the agreement.

25. The Respondent stated that he had no wish or intent to defraud anyone or be a party to any action which defrauded others or to bring the Firm or himself into disrepute.

Conflict of interest

26. The Respondent acted for both the investors and W, which gave rise to a conflict of interest.

The Respondent's financial arrangements with the Firm

27. Pursuant to the consultancy agreement, the Respondent received a fixed retainer from the Firm and in addition he received 80% of fee income generated. The Firm received a total of £12,500 in respect of the matters of SA, WL and E and, pursuant to the agreement with the Respondent's limited company Dengan, paid £10,000 to that company. The total of all fees paid to the Firm including a further fee for a transaction which did not proceed and inclusive of VAT was £15,464.72. The Respondent arranged for Dengan to repay the fees which had been paid by the Firm to his company.

28. As a result of the report, the OSS sent to the Respondent a letter dated 9th August 2001 asking for his explanation. Following a further letter dated 11th September 2001, the Respondent replied via his solicitor in a letter dated 5th October 2001. In summary, the Respondent through his solicitor stated:

(1) He raised the issue of guidelines with the former head of the commercial department at the Firm;

(2) He did not feel he was acting outside his competence as the Firm were merely acting as escrow agents;

(3) The Firm's existing general US dollar account was used to hold the funds;

(4) Some evidence of W's identity had been offered, namely a certificate of incorporation and of good standing. [These documents had not been provided to the OSS].

(5) He did not act in any solicitor/client capacity to the parties and therefore did not feel it necessary to verify the existence of the foreign bank;

(6) With regard to the other investments, no proof of identity was made since the Respondent was sure that sufficient evidence was voluntarily offered. [No copies of any such documentation evidencing the parties' identity had been made available to the OSS].

(7) He was not aware of the name of the Firm's money laundering officer but in any event as nothing about the transaction gave him cause for concern it was not felt that others within the Firm needed to be involved;

(8) The fees were sums agreed by the other parties to the agreement and therefore it was not something which the Respondent could comment upon;

(9) The suspicions of the partners within the Firm were only aroused following the failure of some of the cheques to clear and not because of any superior understanding of the nature of the transactions or the implications of money laundering rules;

(10) They had not had the opportunity to discuss a letter of 15th June 2001 with the Respondent and therefore it was inappropriate to pass comment upon it [this letter related to a potential claim against the Firm from JD in connection with advice allegedly given by the Respondent concerning the Firm entering into an escrow or Neutral Holders Agreement with him].

29. By a further letter dated 8th November 2001 to the OSS, the Respondent set out various points in relation to the matter of JD. This matter is currently the subject of a civil dispute.

30. Following representations, an Adjudicator on 27th November 2001 referred the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

31. The only issue between the parties was that of dishonesty. The Respondent admitted the allegations, but denied dishonesty.

32. It was accepted that the Tribunal would have to be satisfied beyond reasonable doubt that the Respondent had been dishonest.

33. The Tribunal was referred to the cases of Royal Brunei Airlines v Tan and Twinsectra Ltd v Yardley and Others.

34. In the documentation, the Respondent was saying that he was not too clear as to what was going on, but he did not believe he was party to the perpetration of any fraud.

35. Dishonesty required knowledge by a person that other people would regard the conduct as dishonest. In the case of Twinsectra, Lord Hutton had said**:-**

> "Dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct".

36. In the case of Royal Brunei Airlines v Tan, quoted in Twinsectra, Lord Nicholls had said:-

> "Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct. Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party, such as his experience and intelligence, and the reason why he acted as he did".

37. It was submitted that the Respondent must have known that what he was doing was dishonest conduct.

38. The Respondent had professed to have had no knowledge of money laundering and the guidance issued in relation to it yet in the matter of SA he had asked detailed questions which showed such knowledge. In other cases, he had made no such checks at all. It was submitted that going through the checks in one case and ignoring them in others showed dishonesty.

39. The fees received by the Respondent were quite large fees. The Respondent was paid a consultancy fee under the terms of his retainer, but was also allowed to keep 80% of all fees generated. It was submitted that the easiest way to generate fees was to be a party to a potential fraud on a banking system where the Respondent only had to sign a document and to look at a document. He would then receive fees which were mostly in the sum of $5,000, although in the case of the last transaction the fees would have been 80% of $50,000.

40. A man having the experience of the Respondent should have known that the transactions were unusual. They mostly involved foreigners and foreign banks which might or might not exist and no checks had been done by the Respondent.

41. Drawing all the straws together, the Respondent must have known that this was dishonest. It was easy for the Respondent to say that he had not known what was going on and was just "a little simple". On the agreed evidence, that could not have been the case.

42. One of the hallmarks of potential fraud was confusing agreements. The Tribunal was referred to the documents in this matter which were full of words of little significance.

43. The Neutral Holders Agreement would be signed by W and also by Radcliffes. This would give it an air of respectability.

44. Once the meaningless "confirmation of reserved funds" had been received then under the escrow agreement the Firm would release W's fee and its own fee.

45. The scheme in respect of which the fees were owned was to enable clients to participate in fabulously large sums of money over a period of time.

46. The Tribunal was referred to The Law Society warning to solicitors in relation to banking and money laundering fraud in which solicitors were reminded that any scheme which required the depositing of any substantial sums of money to solicitors for safekeeping at lucrative rates for doing very little "*may sound too good to be true and probably is*".

47. In relation to the endorsement of the bankers drafts in the matter of N, the Respondent had accepted that he had no authority to do that.

48. The Tribunal was referred to the Respondent's comments in a letter from his solicitors dated 5th October 2001 in which he said that as nothing in the transaction gave him any cause for concern*: "it was not felt that others within the Firm needed to be involved*". The Tribunal might consider that to be strange. It was submitted that the reason for that would be that if others in the Firm had been involved they would not have allowed the matter to continue.

49. The Tribunal was asked to find the admitted allegations proved and further to find that the Respondent had been dishonest.

The Submissions of the Respondent

50. All the points raised by the Applicant today had been put to the Respondent before. The Respondent could not recall any more than he had put in the responses he had already given.

51. The Respondent's memory of events five years ago was not clear.

52. The Respondent was truly sad and sorry, but disputed that he had been dishonest.

53. It had been a great shock to the Respondent in 1997 when the ramifications of what had occurred came to light.

54. The Respondent had started practice in 1966. He had been involved with many external bodies. It had been accepted by the partners in his then firm that his contribution would relate to his outside interests together with easily executed functions for the Firm.

55. Subsequently the Firm of Heal Nicholson also wanted the Respondent's public affairs experience and felt that there were ways in which he could help the practice and the clients.

56. The Respondent had formed a limited company. He had always acted for a fixed fee or retainer.

57. As to the merger with Radcliffes, the Respondent was subsumed through the same limited company. He had still been involved in many outside activities including pro bono work.

58. The Respondent had secured benefits for Radcliffes, for example the membership of an American network and soon afterwards the Respondent had been appointed to serve on the board of that organisation.

59. The Respondent had also fielded for Radcliffes a number of uncomplicated matters. More complicated matters were referred to the other partners.

60. When the Respondent became a consultant he did not report to any particular person.

61. The matters before the Tribunal had seemed to the Respondent to be a simple arrangement in which he did not need to involve Radcliffes.

62. The Respondent had sought to serve people well all his adult life. He was deeply concerned about the proceedings alleged against him in the Tribunal.

63. The Respondent was now partly retired and of limited means.

64. The Respondent did not dispute that he had come to the matters in question with an inappropriate view of dealing with those matters and with ignorance.

65. The Respondent had never been at issue with the OSS or The Law Society previously and he deeply regretted the problems which had occurred.

66. The Respondent had attempted at all times to behave in a way which was right. Clearly in this matter he had fallen below the standards required and he was very sorry.

The Findings of the Tribunal

67. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The only matter of dispute between the parties was the issue of dishonesty. The Respondent had fallen woefully below the standards required of a solicitor. The Respondent had had knowledge of the issue of money laundering as was clear from the questions he had asked in the matter of SA. The Respondent knew that money was passing through the Firm's client account in a short time in highly unusual circumstances. The Respondent did not ask questions or tell the partners in the Firm about the transactions. He received 80% of the fee each time. The Respondent had been happy to endorse bankers drafts without making proper enquiries. The Respondent was an intelligent and experienced person.

68. The Tribunal had applied the tests set out in the leading authorities of Royal Brunei Airlines v Tan and Twinsectra Ltd v Yardley. In addition to the passages referred to by the Applicant, the Tribunal had in mind also that part of the judgment of Lord Nicholls in Royal Brunei Airlines v. Tan in which he had said:

> ".. Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learns something he would rather not know, and then proceed regardless."

69. In the case of Twinsectra, Lord Hutton supported the view:-

> "That for liability as an accessory to arise the defendant himself must appreciate that what he was doing was dishonest by the standards of honest and reasonable men. Dishonesty requires knowledge by the defendant that what he was doing will be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct."

70. The Respondent had said that he was ignorant and naive and had acted unforgivably. The Tribunal, however, found that the Respondent had been guilty of acts of commission rather than omission, in particular choosing to ask one client but not others whether the monies were coming from a legitimate source. Other acts of commission included the acceptance of substantial fees for little advice, the admitted willingness to endorse bankers drafts without authority and continuing to act despite there being a conflict of interest.

71. The Tribunal had taken into account all the circumstances and had concluded that the Respondent's behaviour fell well below the normally accepted standards of honest conduct. The Respondent's behaviour given his experience could not be explained by ignorance and naivety and his conduct, which he had not made known to the partners of the Firm to whom he was a consultant, and from which he had profited, was dishonest. Such conduct was damaging to the reputation of the profession in the eyes of the public. The Tribunal had a duty to protect the public who relied on members of the profession to act at all times with honesty and integrity. The Respondent could not be allowed to continue as a member of the profession.

71. The Tribunal ordered that the Respondent Sir Gerrard Anthony Neale of Shirley Oaks Village, Croydon, Surrey, 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 fixed in the agreed sum of £7,484.00.

DATED this 29th day of November 2002
on behalf of the Tribunal

S.N. Jones
Chairman