No. 8644/2002

IN THE MATTER OF DENNIS PHILIP HARDY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A.H. Isaacs (in the chair)
Mr A. Gaynor Smith
Mrs V. Murray-Chandra

Date of Hearing: 3rd September 2003

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 Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke solicitors of 8 Bedford Row, London, WC1R 4BX on 9th July 2002 that Dennis Philip Hardy solicitor of Walton Breck Road, Liverpool, 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.

Allegations (a) to (d) contained in the Rule 4 Statement which accompanied the application were dismissed by the Tribunal at a hearing on 13th May 2003. By a supplementary statement of Peter Harland Cadman dated 14th October 2002 it was alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

(e) That, having received monies on the condition that they would be held to the sender's order, he improperly failed to do so;

(f) that he improperly handled monies received by him;

(g) that he failed to provide full and proper answers to matters raised in correspondence by other solicitors and by the Office for the Supervision of Solicitors;

(h) that he improperly and/or unprofessionally permitted his firm's headed notepaper and a signature stamp to be in the possession of and to be used by others.

By a second supplementary statement of Peter Harland Cadman dated 18th March 2003 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

(i) [withdrawn with the consent of the Tribunal]

(j) that he was responsible for unreasonable delay in the conduct of professional business;

(k) that he lost or mislaid title deeds with regard to a client's purchase;

By a third supplementary statement of Peter Harland Cadman dated 18th June 2003 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

(l) that he utilised his clients' funds for his own purposes;

(m) that he utilised clients' funds for the purposes of other clients;

(n) that he set up and/or utilised off-shore bank accounts in the firm's name that were not client accounts;

(o) that he failed to keep accounts properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998;

(p) that he failed to remedy breaches of the Solicitors Accounts Rules promptly contrary to Rule 7 of the Solicitors Accounts Rules 1998;

(q) that he withdrew money for his own benefit in cash from clients' accounts contrary to Rule 23 of the Solicitors Accounts Rules 1998;

(r) that he withdrew money improperly from client account in breach of Rule 22 and/or Rule 19 of the Solicitors Accounts Rules 1998.

(s) that he failed adequately to supervise staff.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 3rd September 2003 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 David Lawrence and Mr Clive Howland.

At the conclusion of the hearing the Tribunal ordered that the Respondent Dennis Philip Hardy solicitor of Stanley Avenue, Southport (formerly of Walton Breck Road, Liverpool) be struck off the Roll of Solicitors and they further ordered him to pay a contribution towards the legal costs of and incidental to the application and enquiry fixed in the sum of £11,000 together with the costs of the Investigation Accountant fixed in the sum of £16,043.24.

The facts are set out in paragraphs 1 to 83 hereunder: -

1. The Respondent born in 1950 was admitted as a solicitor in 1977 and his name remained on the Roll of Solicitors. At all material times the Respondent carried on practice on his own account under the style of D P Hardy & Co. at 220 Walton Breck Road, Liverpool, L4 0RQ.

Allegations (e) - (g)

The CFS matter

2. The Respondent acted for CFS Ltd who were proposing to enter into a contractual arrangement with P Air Charter Executive 2000 Ltd. (P Ltd).

3. By a letter dated 25th January 2000 DL, a director of P Ltd, wrote to the Respondent regarding the sum of £30,000 which DL had arranged to transfer to the Respondent's client account. DL indicated in the letter that the money would have the reference "VAJ Ltd" being the company in whose name the agreement would be signed. He further wrote:-

> "This money is to be held to your account until you receive authority to transfer to CFS from either DH or myself."

4. A copy of the Respondent's client ledger account for Mr B, UK representative of CFS, showed a receipt of the funds of £30,000 on 25th February 2000 and on 15th March 2000 payments out totalling £29,975.57p.

5. On 15th March 2000 DL wrote to the Respondent as follows:-

> "We transferred £30,000 to your Clients Account No. 45239142 on the 25th January 2000 to be held as deposit on purchase of 50% of the above company. This transaction has currently been delayed by 6 months and would therefore be grateful if the funds could be transferred back to our account either today or tomorrow."

This letter was acknowledged by a letter from the Respondent dated 21st March 2000.

6. On 27th February 2001 the Respondent wrote to DL confirming the receipt of the £30,000, stating that this was in connection with a lease and that

> "It was a condition under the lease that before its expiry you would have conducted an inspection of the aircraft in order that any defects which have arisen during the course of the lease would be put right and the expense of this would be shared between yourselves and CFS in the agreed proportion.
>
> Since you have not undertaken this inspection, it as been arranged that this would be carried out at the first practical date available and a schedule of defects will be provided in due course.
>
> Perhaps you will liaise with CFS in order that we may receive joint instructions from you in connection with these monies".

7. On 9th August 2001 DL wrote to the Respondent requesting confirmation that the £30,000 was still being held as a deposit on the purchase of fifty percent of CFS stating

> "This is the only reason that the funds were deposited and it was specifically stated that the funds should not be released without our permission".

8. On 16th August 2001 the Respondent wrote to DL as follows

> "The position is much the same as our last letter to you earlier in the year, in that we are instructed that you made the request for this sum to be set off against rental payments due for the last three months of the lease."

9. On 17th August 2001 DL replied:-

> "With reference to your letter dated 16th August faxed to me today, at no time was this money authorised to be released for payment of the lease to CFS, the lease money was covered by funds owing to P Ltd by CFS (see attached) with a balance still owing to us of £9,754.11."

10. Messrs Mundays solicitors were retained to pursue this matter against the Respondent. Copies of correspondence between Mundays and the Respondent were before the Tribunal.

11. Included in the correspondence was a letter from Messrs Mundays dated 7th December 2001 which stated:-

> "For the attention of: Mr D Hardy 7 December 2001
> D P Hardy & Co
>
> Dear Sirs
>
> E------ H------ S------ Ltd – CFS Ltd ("C")
>
> We act on behalf of E------ H------ and have been passed their file of papers in connection with the sum of £30,000 which was transferred to your client account on 25th January 2000. The letter from Mr Lawrence advising you of the transfer of those funds made it clear that:-
>
> > "This money is to be held in your account until you receive authority to transfer to CFS form, (sic) either Mr DBH or myself."
>
> Our client's advice is that no such authority has been given. We attach the most recent request for payment to be made to our client in the form of a letter dated 17th September 2001.
>
> Please can you confirm that you will make immediate arrangements for the transfer of the monies to my client's account today. If you are either unable or not prepared to accord with this request, please advise by return setting out your reasons for not making the transfer.

In the meantime, all our client's rights remain reserved, including without limitation their claim for interest, costs and other monies due from C.

Yours faithfully,

Mundays

PS We refer to our brief telephone conversation, timed at just before midday, today, with your Mr Hardy, having held for some time to speak to him.

Your Mr Hardy advised our Mr I that:-

1. he was not aware of the request for the return of £30,000;

2. he was not the fee earner dealing with the matter, although he acknowledged that the letter written on 22nd August 2001 by our clients contained his fee earning reference.

3. he required written instructions before he could deal with this matter because he had no recollection of the case.

We trust you now have the information that you require, and that the monies will be credited to our client's account this afternoon."

12. By a letter dated 10th December 2001 Messrs Mundays wrote to the Respondent and the following is an extract from that letter:-

E------ H------ S------ Ltd – CFS Ltd ("C")

"We refer to our Mr I's further conversation with your Mr Hardy timed just before 5.00 pm on Friday, 7th December.

You advised:-

1. That our client's letter of 17th September had been addressed to you at the wrong address. We apologise for this, but note that our client's letters of 9th and 17th August were both addressed to 81 Dale Street, and prompted responses from you on 16th and 22nd August respectively. Indeed, in your letter of 22nd August you said "we are anxious to resolve this matter amicably" and expected to be able to reconcile the matter "towards the first week in September."

2. You stated that your client, Mr B, was out of the country but will be back today. We pointed out that you do not need to speak to your client about this, bearing in mind the basis upon which you are holding our client's money.

3. You were able to confirm to us that you are holding the £30,000 on behalf of our clients and that you have not released it."

13. On 13th December 2001 Mundays lodged a complaint to the OSS regarding the Respondent. Copies of subsequent correspondence between Mundays, the OSS and the Respondent were before the Tribunal.

Allegation (h)

The Costs Assessors matter

14. By letter of 11th April 2002 Messrs Amelans complained to the OSS concerning the Respondent as follows:

> "Our costs department has dealings with a few firms such as DP Hardy & Co. which appear to act as 'paperboys' for unregulated costs negotiators. These firms of costs negotiators are unregulated companies who often employ unqualified staff to deduct as much as possible from solicitors costs as they are paid a percentage of the costs they 'save'. It would appear that the solicitors have little or no involvement in the management of these cases.
>
> We enclose a letter dated 14th March 2002 supposedly from D P Hardy & Co but at the end of the letter it becomes apparent that the letter is actually from BHLC Assessors Ltd."

15. The OSS wrote to the Respondent concerning this matter and the Respondent replied by letter of 28th May 2002 stating:-

> "In so far as the connection between ourselves and BH is concerned as it is pointed out to you in the letter of 11th April from Amelans we are indeed paper boys for LC Assessors Ltd. However we would rather use the more suitable term as solicitors on the record. We have an agreement with BH to act as solicitors on record for their insurer clients where costs only proceedings are instituted in relation to costs. We are only involved in the procedural aspects of the proceedings……..The letter of 14th March is an unfortunate incident and will not be repeated. Those letters etc as set out in the letter from LC Assessors Ltd are complied by the extensive typing assistance's (sic) of BH to assist ourselves. All those letters and documents are signed personally by this firm."

16. Enclosed with the Respondent's letter was a copy of a letter from BH dated 21st May 2002 in which he stated:-

> "In this instance, the particular letter referred to in the complaint was wrongly sent out on your letterhead…… you have supplied us with copies of your letter headed paper for the following specific purposes
>
> 1. Agreed pro-forma letters accepting service of costs-only proceedings, in line with the general instructions to accept service of proceedings agreed with our mutual clients…….

2. Preparation of agreed pro-forma letters enclosing Part 44.12A (costs-only proceedings) acknowledgments of service. These are then forwarded to yourselves for checking, signing and service.

3. Preparation of agreed pro-forma letters agreeing directions for detailed assessment proceedings. These are then forwarded to yourselves for checking, signing and service.

4. Preparation of agreed pro-forma letters enclosing points of dispute, following service of N252 and formal bills of costs. Again, these are then forwarded to yourselves for checking, signing and service."

17. Copies of further correspondence between the Respondent and the OSS were before the Tribunal. In a letter dated 9th July 2002 from the Respondent to the OSS the Respondent wrote:

> "When we originally made the agreement to act as solicitors on record it is true to say that a signature stamp was provided to BH LC Assessors. However the use of that signature stamp has been withdrawn and has been withdrawn for a considerable period and as you are aware the use of the stamp in relation to this one letter was an error. The stamp itself has been recalled from BH so this accident should not happen in the future. You will appreciate that we are utilising the typing services of BH in relation to pro-forma letters which are then sent to us for our personal signature."

Allegations (j) and (k)

Loss of Title Deeds

18. Mrs C (formerly Miss N) retained the Respondent in approximately 1996 to purchase a property in Mawdesley in Lancashire. The property was purchased without a mortgage. In February 2003 the lay client requested that the deeds of the property be forwarded to her. Copies of correspondence between Mrs C, the Respondent and Messrs Brighouse Wolff, solicitors retained by Mrs C, were before the Tribunal. The deeds were not forwarded and on 6th September 2002 Messrs Brighouse Wolff complained to the OSS concerning the professional conduct of the Respondent.

19. The OSS wrote to the Respondent on 4th October 2002 and on 10th October 2003 the Respondent replied explaining that the file could not be located and that the firm had been endeavouring to reconstruct the title to re-lodge the original application for registration without success. Further correspondence followed between Messrs Brighouse Wolff, the OSS and the Respondent, copies of which were before the Tribunal.

20. Mrs C had not been registered as the owner of the property nor had any title deeds or papers been forwarded to her.

Allegations (l) to (s)

Misuse of client account

21. An inspection of the books of account of the Respondent resulted in a Report dated 10th October 2002, a copy of which was before the Tribunal. There was a further inspection of the Respondent's books of account commencing on 4th March 2003 resulting in a further Report dated 16th May 2003, a copy of which was before the Tribunal. The second Report noted the matters set out below.

22. The Respondent had a series of bank accounts at National Westminster Bank, Guernsey branch. The Respondent used his firm's name in the designation of the accounts but agreed with the Investigation Officer, Mr Howland, that none of the accounts were client accounts and that they had not been operated as such.

23. The Respondent had made a series of improper withdrawals from client account purportedly in respect of a client, Mr B, even though there were no funds for that client. The client ledger account of Mr B was in debit throughout the period from 1st August 2001 to 31st January 2003 when the balance shown was £224,733.25 debit. The Respondent's Accountant's Report as at 31st January 2003 showed a difference of £288,549 which comprised the debit client balance of Mr B and an unexplained difference of £63,816.

24. At the time of the inspection in order to justify the withdrawals in respect of Mr B the Respondent produced a series of bills dated from 1st February 2002 to 12th December 2002. The Respondent produced the bills on 20th March 2003 and agreed with Mr Howland that the bills had been produced during the inspection to correspond with amounts already withdrawn from client bank account and that the bills had not been delivered to Mr B. The Respondent was unable to demonstrate the work undertaken in respect of each bill and agreed that the bills were estimates and that he did not maintain time recording for work on Mr B's matters.

25. On 14th January 2003 the Respondent drew the sum of £54,000 from client account in cash on the basis that the funds were owed to the firm as costs. Withdrawal of funds from client account in cash in favour of a solicitor is in breach of Rule 23 of the Solicitors Accounts Rules 1998.

26. The Respondent used his client account bank account for personal transactions. These transactions were posted to a client ledger account in the name of Mr F. The transactions included the collection of rental income, the payment of personal mortgages and other withdrawals, some of which were in cash.

27. For the twelve months ending 31st July 2002, there was only one client account reconciliation. For the six month period ending 31st January 2003 there was only one client account reconciliation.

28. The cash book was not maintained accurately by the Respondent and was written up retrospectively. The narrative often stated only the name of the client ledger account to which the Respondent had posted the transaction and not the payer or payee. The Respondent agreed with Mr Howland that when he was unsure to whom or to what a certain transaction related, he posted it to client ledger accounts in the names of either

Mr B or Mr F. Cash book and client ledger accounts maintained by the firm were found to contain a number of errors and omissions.

29. The client ledger account for Mr B showed a debit balance at 31st July 2002 of £138,242.75. Thereafter even though no further funds were received from Mr B, further payments were made on his behalf including £21,000 paid on 2nd October 2002 and £5,000 on 24th April 2003.

30. On 19th September 2002, the Respondent paid the sum of £1,000 from client account to his reporting accountant. On 21st March 2003 the Respondent paid a further £1,410 improperly from client account to his reporting accountant. Both sums were to settle debts of the Respondent's firm to his reporting accountant.

31. The Respondent agreed that he had paid the first fee from client account and that he had allocated this payment to the client ledger account of Mr F. In respect of the second payment the relevant cheque book stub had no payee details. The Respondent agreed that he had completed and signed the cheque in respect of his reporting accountant's fees but was unable to explain why he had made the payment from client account.

32. Mr Howland had noted that the date of the cheque for payment of £1,410 was 18th March 2003 and that the office bank account balance on the same date was £20,105.85 debit. The Respondent had previously stated to Mr Howland that the overdraft limit on this account was £15,000.

33. The Report noted the position regarding the supervision of two fee earners. Mr M was an unqualified conveyancer working for the Respondent on a self-employed basis. His normal place of work was a local property management business. Mr Howland saw no evidence throughout the inspection to indicate any supervision by the Respondent of Mr M's client matters. On 24th April 2003 the Respondent agreed that he did not undertake any systematic overseeing of Mr M's client matters.

34. A similar arrangement was noted by Mr Howland in the employment of Mr L, a solicitor undertaking conveyancing work for the Respondent on a self-employed basis. The Respondent said that Mr L's normal place of work was either at a mortgage brokerage firm in Manchester belonging to Mr L's father or at Mr L's own home address. The Respondent agreed that Mr L's conduct of client matters was predominately undertaken from either of those two locations and was not supervised by the Respondent.

35. Mr Howland notified the Respondent by telephone on 26th February 2003 that the inspection would commence on 4th March 2003. On 28th February 2003 the Respondent transferred an amount of £150,000 to client bank account from the bank account of a company of Mr B. On the same day a cheque in the sum of £70,000 had also been lodged in client bank account again from the account of a company of Mr B. The Respondent said that he was effectively the UK signatory for the account and had signed the cheque with permission from Mr B. The Respondent explained to Mr Howland that he had made the payments into client bank account in connection with the debit balance on Mr B's ledger account to avoid a "shortage situation" arising from that cause.

36. The Respondent agreed that after taking into account the £220,000 lodged in client bank account there still appeared to be a difference in the region of £60,000. The Respondent said that he did not currently have such funds available to lodge in client bank account but was in the process of raising them.

37. On 22nd May 2003 the Adjudication Panel of the OSS resolved to intervene in the Respondent's practice under paragraph 1 (1) (c) of Part 1 Schedule 1 of the Solicitors Act 1974 (as amended).

38. At the conclusion of the Inspection Report Mr Howland referred to the three qualified accountant's reports covering the periods 1st August 2001 to 31st January 2003 and noted certain matters which had not been identified or had been understated in those reports.

The Submissions of the Applicant

Allegations (e), (f) and (g)

39. In the Respondent's response to the directions of the Tribunal dated 6th February 2003 the Respondent had denied allegations (e), (f) and (g). He had admitted receiving the £30,000 and had suggested that the money had been distributed in accordance with a contract which he had not produced at the time. No bank records had been produced but at the last hearing on 13th May 2003 the Respondent had produced a copy of the ledger account. The ledger account appeared to show that on the very day of the letter from DL i.e. 15th March 2000, the Respondent had made a series of payments out from the £30,000 on the instructions of his client Mr B.

40. The Applicant said that the money had been received on the basis set out in a letter from DL dated 25th January 2000. The Tribunal was asked to note that it had been accepted in evidence at the last hearing (of which the Tribunal had a transcript) that the letter from DL had been incorrectly dated and should have been dated 25th February 2000.

41. The Respondent had produced a bundle of documents at the last hearing which the Applicant had included in his bundle for the present hearing. Included in that bundle had been a letter purporting to be dated 28th February 2000 to P Limited stating as follows:-

> "We are instructed to make it quite clear that monies received are not to be held "in your account" as indicated but as you have agreed by way of a deposit in relation to the lease and/or Sale Agreement reached between yourself and CFS.
>
> Accordingly we will deal with the money as agreed as a deposit if you object please let us know."

42. DL would say in evidence that this letter had never been received by him. It had never been referred to by the Respondent in any other correspondence to DL or the OSS. In the submission of the Applicant this letter had never been sent. If it had been sent then DL's letter of 15th March 2000 requiring the transfer back of the funds would

not have been sent or if it had been sent the Respondent would have referred to the arrangement purportedly summonsed in the letter of 28th February 2000.

43. The Tribunal was referred to the Respondent's letter of 16th August 2001 referring to the lease. If the Respondent's assertion in that letter was correct then in the submission of the Applicant the Respondent would have referred to the letter of 28th February 2000.

44. The Tribunal was asked to note the correspondence from Messrs Mundays setting out notes of the telephone conversations with the Respondent. In the telephone conversation in December 2001 the Respondent had said he was not the fee earner dealing with the matter and had no recollection of the case, yet a look at the ledger account would have shown the position.

45. There had been prevaricating correspondence from the Respondent thereafter and the Tribunal was referred, by way of example, to the Respondent's letter to the OSS of 25th February 2002 and a letter from the Respondent's firm to the OSS dated 27th March 2002.

46. Totally absent from the correspondence was any reference to the ledger or the purported letter of 28th February 2000. In the submission of the Applicant the reason why the explanation referred to in the letter dated 28th February had not been given in correspondence was because it was untrue.

Oral evidence of Mr David Lawrence

47. Mr Lawrence said in evidence that he had seen the transcript of his evidence at the hearing on 13th May 2003 and that his answers on that occasion were true.

48. He had first seen the copy of the ledger of Mr B at the hearing on 13th May 2003 which was also the occasion when he had first been made aware of the disbursements made on 15th March 2000. The Respondent had given the impression that he still held the £30,000.

49. Mr Lawrence had first seen the letter dated 28th February when he had received the bundle of documents from the previous Tribunal hearing. This letter had never been referred to in any correspondence sent by the Respondent.

50. Neither Mr Lawrence nor any other member of the company had authorised the release of the £30,000.

51. Mr Lawrence said DH was a controlling shareholder of various companies including EHS Limited and P Limited. The £30,000 had, he believed, come from the EHS Limited (a school) and loaned to P Limited which had then gone into liquidation.

52. Mr Lawrence had met Mr B at meetings but DH had conducted the dealings with Mr B. Mr B had suggested that the deposit be placed with the Respondent in respect of the sale of 50% of CFS.

Further Submissions of the Applicant

Allegations (e) to (g)

53. The Applicant referred the Tribunal to the Notices to Admit documents, to the statement of DL which he had adopted and to the Memorandum of Directions and the Respondent's replies.

54. In relation to the Respondent's evidence, in the submission of the Applicant the Respondent's statement was of no evidential value as the Respondent was not present and his statements could not be challenged by cross examination. Mr B was also not present to be challenged on his statement.

55. There had been no formal Notice served by the Respondent to admit the bundle of documents which he had submitted at the previous hearing. The Respondent had placed the bundle before the Tribunal but the Applicant was unable to cross examine the Respondent particularly in respect of the letter purportedly dated 28th February 2000.

56. Despite directions from the Tribunal, no bank statements had been produced but only the copy ledger. A lease dated August 2001 had been produced at the last hearing but this did not assist with any explanation of why the Respondent had disbursed the money in March 2000. It was accepted that there had been an agreement for a lease at some stage but no permission had been given to use the £30,000. The Respondent's correspondence after 15th March 2000 was positively misleading stating as it did that he still held the money.

57. In the submission of the Applicant the use of the £30,000 on 15th March 2000 had been a deliberate act which the Respondent had known was wrong. His behaviour afterwards made it worse.

58. The letter dated 28th February 2000 was a false letter which had not been received and as there was no reference to it in subsequent correspondence the Tribunal should place no rehance on it. The Respondent had then deceived Messrs Mundays and had prevaricated with his professional body. This had been a dishonest course of conduct.

Allegation (h)

59. The facts of this matter had been admitted by the Respondent but the allegation had been denied. In his response to the Memorandum of Directions the Respondent had said that this was a third party assisting with administrative functions. The Respondent had allowed his headed paper and signature stamp to go to a third party in a different building. In the submission of the Applicant, headed paper and the signature stamp should not under any circumstances be given to a third party and the Respondent had been abrogating his responsibility. The Tribunal was asked to find the allegation proved on the documents.

Allegations (j) and (k)

60. The Respondent had admitted these allegations at the previous hearing and the Applicant relied on those admissions.

Allegations (l) to (s)

Oral evidence of Mr Clive Howland

61. Mr Howland confirmed that the contents of his affidavit were true. Mr Howland had seen the Respondent's written response dated 1st September 2003 to the matters raised in the Inspection Report generated by Mr Howland.

62. In relation to the off-shore accounts at in Guernsey, the name of the firm had been in the title to the accounts and four of them were named as client accounts. While there was some ambiguity in the Rules, the amounts in the accounts were relatively small and did not substantially alter the situation.

63. Nevertheless the Respondent had said in his letter that he had treated them as client accounts and that the client had requested and it had been the Respondent's intention for them to be client accounts. In his final interview with Mr Howland however he had said that that intention had "fallen by the wayside."

64. The Respondent had further written that there were adequate funds in these "client" accounts to cover the withdrawals from the client account in the UK and that one of the accounts from which the £70,000 had been paid had over £327,000 in it at 14th March 2003. This account however had the title Payroll and Corporate Services and was nothing to do with Hardy & Co. This account related to Mr B and the Respondent had confirmed in interview that he needed Mr B's authority to make withdrawals. He had said that the account was linked with Mr B's operations and was intended for those and not for the firm. The Respondent in his response was mixing discussion of various accounts.

65. Mr Howland had only become aware of the Guernsey accounts because of the transfers made by the Respondent. The Respondent had not told him of the accounts.

66. Mr Howland had had to ask the Respondent for authority to obtain information about the Guernsey accounts but despite numerous requests this had not been provided and bank statements had not been available.

67. The Rules implied that client accounts must be held in England and Wales.

68. The Respondent in his response had stated that taking into account the balances in the off-shore accounts there were sufficient monies to offset withdrawals. The Respondent was taking a global position regarding accounts which had nothing to do with his firm. He was a signatory to the account but needed the authority of Mr B.

69. While the Respondent in his response had said that the accounts had not been set up for any dishonest purposes he had not told Mr Howland about them and throughout the inspection he had always given the impression of helping but without any actual results.

70. The Respondent had agreed in his written response that he had failed to keep the accounts written up but had gone on to say that the accounts had been written up. This was not entirely correct as when Mr Howland had left he had been unable to place reliance on the books especially in relation to Mr B and Mr F whose matters

made up a large part of the Respondent's work. The books of account maintained by Mr M and Mr L were closer to showing the correct picture.

71. It appeared that the bookkeeper instead of keeping the books simply received information from the three fee earners and tried to make good of it.

72. The Respondent had written that he had had the ledgers brought up-to-date. The ledger relating to Mr B was handwritten by the Respondent. He had made the transfer of £220,000 being an amount in the region of the shortage but Mr Howland was not aware that the Respondent had refined the position subsequently.

73. In relation to the cash withdrawal the Respondent had said that he did not understand that this was prohibited by the Rules and said that he could have withdrawn the sum by cheque. This was contradicted however by what had been said in the final interview with Mr Howland when the Respondent had agreed that he was under some pressure to withdraw that sum for his personal benefit. The Respondent had said that he had a debt to settle and agreed that it was important that the money was in cash.

74. The Respondent had produced some paperwork to justify costs but Mr Howland had not been in a position to verify these. The bookkeeper had intimated the view that the Respondent had needed £54,000 and paperwork would justify it. The Tribunal was referred to a handwritten document [page 138 of the exhibit to Mr Howland's affidavit] which was the Respondent's justification for the costs. While Mr Howland had not been able to verify the figures the documentation he had been shown regarding the £5,342 in respect of a matter dealt by Mr L had appeared to be reasonable. Mr Howland had not seen copies of bills in relation to the £54,000 costs.

75. The Respondent did not keep a central bills record and in general the documentation was scanty.

76. The Respondent's written comments in relation to allegation (r) related to the schedule of bills provided by the Respondent to Mr Howland set out at Appendix 1 of his Report. On 11th March Mr Howland had been struggling to understand the cause of the debit on the B account. The Respondent had first suggested that this was due to monies paid to the Treasury solicitor for Mr B but this was not the case. The Respondent had then said that it was due to costs and Mr Howland had asked for evidence.

77. A week later the Respondent had given him a revised ledger for Mr B which was the third version which had been given to Mr Howland during the inspection. The Respondent's explanation for the changes was that he had realised that certain items on the F ledger which should be on the B ledger. Mr Howland had suggested that the Respondent had raised the bills during the inspection and the Respondent had agreed that the bills had not been rendered to Mr B. He agreed that they were best estimates and non-specific.

78. Mr Howland had only been able to find information by being present in the firm. There had been very little supporting documentation. The final interview with the Respondent had provided the basis for a substantial part of the Report.

79. As the Respondent had said in his response the account with Mr F was a joint ledger. It was more of a business account in respect of Mr F, the Respondent and the Respondent's brother and sister. It appeared that once bank statements came in the Respondent would try to allocate payments and receipts but he had said that when in doubt he tended to allocate sums to the F ledger. It had been impossible to verify the sums. There was no paperwork. Mr F appeared to visit the premises regularly. The account appeared to relate to rental income. The Respondent paid several mortgages from the ledger in respect of rental properties. The Respondent had not explained the function of the ledger at the beginning. The payments went in and out of the general client account.

80. Problems allocating sums paid arose when the Respondent wrote a cheque. He often did not fill in the cheque stubs.

81. With regard to the payment to the Respondent's accountant, Mr Howland had discussed with the Respondent the office account at the time of the second payment and the Respondent had agreed that the office account was £5,000 over the overdraft limit and inferred that he could not have written the cheque from the office account.

82. The Respondent had said in his written response that the further shortfall of some £63,000 did not exist. The Respondent's accountants had become aware that Mr Howland would criticise him for not reporting the shortage as at 31st July 2002 and as at 31st January 2003 the accountants had looked at the accounts very carefully. Mr Howland had not been able to rely on the books but the accountants had tried and had come up with figures in their supplementary reports as set out at paragraph 44 of Mr Howland's Report. Mr Howland had emphasised to the Respondent that he was not going to be able to find the cause of the further shortfall (in addition to the debit client balance of Mr B) of £63,816 but that the Respondent should demonstrate if there was no shortfall. The Respondent had not done so by the end of the inspection in April 2003. The Intervention Agent had been unable to reconcile the accounts. There could be some merit in what the Respondent had written as Mr Howland was not placing reliance on the books of accounts. The Respondent did get paid cheques back but was not always able to say what the cheques related to.

Further Submissions of the Applicant

Allegations (l) to (s)

83. The Respondent's conduct had been deliberate and dishonest for the benefit of Mr B and Mr F and also for himself as illustrated by the payment of his accountants from client account and the taking of cash from client account to pay an urgent debt.

The Submissions of the Respondent

84. The Submissions of the Respondent were contained in his representations written in manuscript dated 1st September 2003, a copy of which was before the Tribunal. The representations referred to the third supplementary statement only. The Respondent denied all of the allegations except for allegation (o).

85. The Respondent explained that he could not afford representation and would not be appearing before the Tribunal and said that he expected to be struck off the Roll of

Solicitors. He said that the Applicant had only just indicated that he was alleging dishonesty which was why the Respondent was making his written representations. He denied dishonesty.

86. In summary the Respondent said that at the time of opening the Guernsey accounts he had not known that according to a strict interpretation of the Solicitors Accounts Rules these were not client accounts. He had however treated them as such and that had been his intention.

87. He said that at all material times taking into account the balances in those accounts there were adequate funds to cover the withdrawals from the UK client account. He said that he had made two transfers from those accounts of £150,000 and £70,000 and that the account from which the £70,000 has been transferred had a credit balance of over £327,000 at 14th March 2003. He said that had the accounts been open in the UK, they could have been used as client accounts and the withdrawals from the general client account would therefore not have been improper. He had believed the withdrawals to be proper as he considered the accounts to be client accounts as intended by his client. There had been no dishonest intent to use clients' money for the purposes of other clients. He denied concealing the accounts which he said had not been set up for any dishonest purpose.

88. The Respondent admitted failing to keep his books properly written up and said he had employed two bookkeepers to bring the ledgers up to date which had been achieved. The accounts had been written up.

89. He said that he did remedy breaches when he was made aware of them and cited the transfer of £220,000 to the general client account. He again denied dishonesty.

90. The Respondent said that he had not realised that cash withdrawals from client account were not permitted under the Solicitors Accounts Rules and said that he could have easily made the withdrawal by cheque. He said that there was no suggestion that the costs were not payable and there was no dishonest intent.

91. He said that he had rendered bills to Mr B at his request when the inspection took place. His agreement with Mr B had been by way of a retainer to claim costs on a monthly basis. There had been no complaint by Mr B regarding the withdrawals. There had been no complaint by any client of improper withdrawals. There had been no dishonest act or intent.

92. The Respondent said that Mr F was a business partner and the Respondent had operated a joint ledger in the name of Mr F for Mr F's purposes and the Respondent's purposes. Mr F had been in agreement with the withdrawals and had made no complaint. The monies in the ledger were mixed representing monies owed to Mr F and the Respondent. The Respondent did not believe that this was a breach of the Solicitors Accounts Rules. There was no dishonesty.

93. The Respondent denied that there was inadequate supervision of staff. All post was sent to the Respondent and he signed all cheques. He alone had authority to transfer money. The Respondent had monitored transactions. There was no dishonesty.

94. With regard to the payments to his accountants the Respondent said that payment was originally allocated to the F ledger and no complaint had been made by Mr F. The second payment was an error and should have come from the office account. There had been no dishonest act or intent.

95. The Respondent referred to the references in the Report of Mr Howland to the reports of his accountants. The Respondent said that much criticism had been made of the accountants in failing to identify an additional £80,000 shortage. The Respondent said that this was not a shortage. The only shortage related to Mr B and the Respondent had explained the technical reason for that.

96. The Respondent did not accept that there was an additional shortage of £63,000. His bookkeeper had tried before the intervention to identify the alleged shortage but could not do so. The Respondent believed that in time when the Intervening Agents had finished their reconciliation it would be revealed that this shortage did not exist.

97. The Respondent said that only the clients and not himself had benefited from the alleged breaches and there had been no suggestion or misappropriation of funds. His business and career as a solicitor was ruined but he had not been dishonest.

The Findings of the Tribunal

98. In the absence of the Respondent the Tribunal looked carefully at each allegation.

Allegations (e) to (g)

99. While the documentation which involved a number of different companies was not entirely satisfactory, that was not sufficient to cause the Tribunal any doubt regarding the terms on which the £30,000 had been sent to the Respondent. It had been sent on the terms set out in DL's letter incorrectly dated 25th January 2000 but believed to have been sent on 25th February 2000. This clearly stated that the money was to be held until authority was received from DL or DH. There was no evidence of instructions from either of those to release the money or to say that they had changed the conditions under which the money was being held. The Tribunal did not accept the letter purportedly sent on 28th February as genuine. There had been no reference to this letter in any correspondence. Had it existed at the time the Respondent would in the view of the Tribunal have referred to it when he received DL's letter of 15th March 2000 requiring the return of the funds or if not then when subsequently such a request was received from DL and from Messrs Mundays. The Respondent had disbursed the majority of the £30,000 on 15th March 2000 for the benefit of Mr B long before any lease had been entered into. There was evidence that he had told Messrs Mundays that he was still holding the money in December 2001 when this was not the case. There was also clear evidence from the documents of prevarication and failure to provide full and proper answers to matters raised by Messrs Mundays and by the OSS. The Tribunal was satisfied that allegations (e), (f) and (g) were proved.

Allegation (h)

100. The Respondent had not disputed the fact that he had allowed his signature stamp and headed notepaper to go to a third party. The evidence before the Tribunal was of a

single instance of the letterhead and signature stamp being used by the third party. The Tribunal took the view that allowing anyone to use a solicitor's letterhead and signature stamp on behalf of a solicitor was highly risky and could in many circumstances amount to unprofessional conduct. In this case however where there was a single allegation of improper use which the third party had said was not in accordance with the arrangements made with the Respondent, the Tribunal had concluded that what had occurred was not sufficient to amount to conduct unbefitting a solicitor. The Tribunal therefore found the allegation not proved.

Allegation (i)

101. Allegation (i) had been withdrawn.

Allegations (j) and (k)

102. On the documents before it the Tribunal considered that allegation (j) had clearly been proved. The Respondent had failed to effect the registration and had delayed in admitting that he had lost the file. He had shown a lack of diligence in following the matter up once he knew that he had lost the deeds. . There had clearly been unreasonable delay. In respect to allegation (k) the Tribunal accepted that losing title deeds to a client's property could amount to professional misconduct. The mere fact of loss did not necessarily however mean that a solicitor was guilty of conduct unbefitting a solicitor. The Respondent had clearly lost the deeds but given the circumstances and the other allegations against the Respondent the Tribunal did not make a finding in relation to allegation (k).

Allegations (l) to (s)

103. The Respondent had admitted allegation (o) but denied the other allegations. The Tribunal found all of the allegations (l) to (s) proved. The Respondent's accounts had been in terrible disarray. The Tribunal noted that much the same could have been said following the inspection in October 2002. It was certainly very apparent from the second Inspection Report that the Respondent's accounts were wholly inadequate and that he was failing to comply with the Solicitors' Accounts Rules in many important respects. The Respondent's conduct went further however than unacceptable disarray. The Respondent had dealt with payments and receipts which he could not identify by allocating them to the ledgers of Mr B or Mr F. He had withdrawn cash from client account to pay an urgent debt which he had indicated to Mr Howland he could not pay by cheque. Withdrawals by cash by client account were in themselves a clear breach of the Solicitors' Accounts Rules. The Respondent had not produced verifiable documentation to justify the costs which he said the cash represented. He had on two occasions paid his accountant's report costs from client account and had indicated to Mr Howland that one of the cheques could not have been written from office account due to the size of his overdraft. The Tribunal noted that the matters in the first two supplementary statements had not been put as dishonest by the Applicant previously. Following the third supplementary statement the Applicant had now put the case forward as one of dishonesty and in relation to the Respondent's conduct of his accounts the Tribunal was satisfied that the Respondent had behaved dishonestly. In reaching this view the Tribunal had considered the test of dishonesty set out in the case of Twinsectra -v- Yardley. In reaching its decision the Tribunal had taken full

account of all representations made by the Respondent both within the documentation contained in the Applicant's bundle and in particular in the Respondent's representations of 1st September 2003.

104. In relation to allegation (s) whilst the Tribunal considered there was some element of supervision, this was inadequate and the Tribunal found the allegation proved. This was not a reflection on those purportedly supervised who appeared to have acted properly.

Previous Findings of the Tribunal

Hearing – 21st July 1986

105. At a hearing on 21st July 1986 with Findings of 6th November 1986 the Tribunal found the following allegations to have been substantiated against the Respondent namely that he had:-

1. failed to comply with the provisions of the Solicitors Accounts Rules 1975 in that:-
   (a) notwithstanding the provisions of Rule 8 he drew from client account money other than that permitted by Rule 7 of the said Rules;
   (b) contrary to the provisions of Rule 11 he paid a sum of £1,000.00 into client account without allocating the same to a specific client or clients;
   (c) contrary to the provisions of Rule 11 he failed to keep properly written records of the sums received, held or paid in the matter of Mrs B;
2. been guilty of conduct unbefitting a solicitor in that he utilised for his own purposes money held and received by him on behalf of clients.

106. In 1986 the Tribunal ordered that the respondent pay a penalty of £2,500.00 and pay the applicant's costs.

Hearing on 21st June 1999

107. At a hearing on 21st June 1999 with Findings dated 2nd September 1999 the following allegations were substantiated against the Respondent namely that he had:-

(a) Improperly breached a Court Order;
(b) improperly accepted instructions to sell a property at an inflated price to enable a purchaser to obtain finance by deception;
(c) [not substantiated]
(d) [withdrawn]
(e) delayed in fully and promptly replying in some instances to the Office for the Supervision of Solicitors or other solicitors;
(f) delayed in releasing papers to other solicitors upon receipt of formal request;
(g) failed to advise clients to take independent legal advice when an issue of conflict had arisen;
(h) failed to keep his client properly informed of the conduct of litigation;
(i) [not substantiated]

108. The Tribunal considered that the Respondent had acted with stupidity rather than bad faith. It was extraordinary that the Respondent should breach the Order of the Court which had placed reliance on the fact the Respondent as a solicitor might be expected to act entirely properly. A solicitor should never succumb to pressure brought to bear upon him by a client however great that pressure or however strongly he recognised the force of their case or their desperate circumstances. The Respondent had already been penalised by a costs order made against him personally.

109. The Respondent had been fully aware of the difficulties surrounding the conveyancing transaction relating to the sale of his client's matrimonial home and should have been mindful of the requirement to behave with absolute propriety and should have taken steps to check that the entire transaction had been conducted in an open and above board manner and that there were no hidden parts of the transaction with which he had not made himself fully aware. It might well have been that the Respondent had been duped by his client and her estate agent, but he should not have permitted that to happen.

110. With regard to the Respondent's behaviour in relation to the case of Mr McK, he clearly was to be criticised. He had not been entirely open and frank with his client, his client's new solicitors or, indeed, with the Office for the Supervision of Solicitors. Whilst the Tribunal had some sympathy for the position in which the Respondent found himself, there was no excuse for the way in which he handled this particular matter.

111. The Tribunal imposed a fine of £9,000 upon the Respondent together with the payment of the Applicant's costs.

Hearing on 3rd September 2003

112. Serious allegations had been substantiated against the Respondent. The Tribunal had made a finding of dishonesty in respect of the Respondent's handling of his accounts. The Respondent had had two previous appearances before the Tribunal when allegations had been substantiated against him. The Tribunal recognised that the first appearance had been many years ago. At the second appearance in 1999, whilst no finding of dishonesty had been made the Tribunal had imposed a significant fine upon the Respondent. Given the Respondent's previous appearance and the Tribunal's finding of dishonesty at the present hearing the Tribunal had no doubt that in the interests of the protection of the public, who rightly expected the highest standards of stewardship of client accounts, and in the interests of the reputation of the profession the Respondent should not remain as a member of the profession.

113. The Tribunal considered carefully the matter of costs. The Tribunal noted that the fees of the Investigation Accountant related only to the second inspection. The Tribunal was aware that certain allegations had been dismissed by an earlier Tribunal and also that for reasons beyond the control of the Respondent it had been necessary to rehear the matters contained in the first two supplementary statements before a different Tribunal. The Tribunal considered that the appropriate order for costs was for the Respondent to pay the fees of the Investigation Accountant in full together with a contribution towards the total costs of the Applicant.

114. The Tribunal ordered that the Respondent Dennis Philip Hardy of Stanley Avenue, Southport (formerly of Walton Breck Road, Liverpool) solicitor be struck off the Roll of Solicitors and they further ordered to him to pay a contribution towards the legal costs of and incidental to the application and enquiry fixed in the sum of £11,000 together with the costs of the Investigation Accountant fixed in the sum of £16,043.24.

DATED this 15th day of October 2003

on behalf of the Tribunal

A H Isaacs
Chairman