

IN THE MATTER OF SELWYN KENNEDY NOEL, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr P Haworth
Ms A Arya

Date of Hearing: 1st July 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 ("OSS") by Stuart Roger Turner solicitor of Lonsdales, 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on 29th October 2002 that Selwyn Kennedy Noel of Isleworth, Middlesex, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

- 1.1. that he breached Practice Rule 1 in that during the course of retainers with clients his professional behaviour compromised or impaired or was likely to impair any or all of the following:-
 - 1.1 The Respondent's independence or integrity;
 - 1.2 The Respondent's duty to act in the best interests of his clients;
 - 1.3 The Respondent's good repute or the good repute of the solicitor's profession;

- 1.4. The Respondent's proper standard of work;
 - 1.5. The Respondent's duty to the Court.
2. That he acted in breach of an undertaking.
 3. That he wrote offensive and derogatory correspondence to clients and third parties.
 4. That he continued to act where there was or was likely to be a conflict of interest between the interests of his client and his own interests.
 5. That he disclosed confidential Court documents from a Public Law Children Act case to a third party without first obtaining the Court's permission to do so.
 6. That contrary to Rule 7 of the Solicitors Accounts Rules 1998 he failed to remedy a breach of the Solicitors Accounts Rules promptly upon discovery of such a breach.
 7. That contrary to Rule 22 of the Solicitors Accounts Rules 1998 he improperly withdrew money from the firm's client account.
 8. That contrary to Rules 10 and 16 of the Solicitors Indemnity Insurance Rules 2001 he failed to pay the assigned risks pool premium after making an application to enter the assigned risks pool.
 9. [Withdrawn with the consent of the Tribunal]
 10. That he practised in breach of the condition on his Practising Certificate for the practising year 2000/2001.
 11. That contrary to Rule 4 of the Solicitors Indemnity Insurance Rules 2001 he failed to take out and maintain qualifying insurance whilst practising as a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 1st July 2003 when Stuart Roger Turner solicitor and partner in the firm of Lonsdales, Solicitors, of 341 Lytham Road, Blackpool, Lancashire, FY4 1DW appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the oral evidence of Mrs A (name not disclosed to protect the identity of children who have been the subject of Children Act proceedings), together with the following documents submitted to the Tribunal at the hearing by the Respondent:-

1. Statutory Demand dated 28th May 2003.
2. Letter to the Respondent from the OSS dated 9th January 2003 and enclosures.
3. Letter from the Solicitors' Indemnity Fund dated 25th February 2003.

The Respondent also submitted a written statement in mitigation.

At the conclusion of the hearing the Tribunal ordered that the Respondent Selwyn Kennedy Noel of Isleworth, Middlesex solicitor be suspended from practice as a solicitor for an indefinite period to commence on 1st July 2003 and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The facts are set out in paragraphs 1 to 34 hereunder: -

1. The Respondent, born in 1936, was admitted as a solicitor in 1984 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practise as a sole practitioner in the style of S K Noel & Co of 239-241 Balham High Road, London, SW17 7BE and latterly in the style of S K Noel & Co of 135 Thornbury Road, Isleworth, Middlesex, TW7 4ND.

The Facts

3. The Respondent acted on behalf of Miss S who was involved in a property dispute with her former husband, Mr W. Mr W instructed solicitors C & Co to act on his behalf.
4. On 24th April 1997 the Respondent gave an undertaking to C & Co as follows:-

"We give the following undertaking upon the sale of the above property and having deducted the amount to redeem the mortgage, agent commission and legal costs, we undertake to put the net proceeds of sale into joint account in the names of the three parties and not to divide the said proceeds, except by:-

 - (a) mutual agreement of the parties or failing this.
 - (b) by an Order of the Court."
5. On 15th November 1999 by a Consent Order it was agreed that Mr W should be paid his half share of the sale proceeds and his costs. The Respondent calculated Mr W's share to be £85,053.65 and paid that amount over to Mr W's solicitors.
6. On four occasions between 14th December 1998 and 19th February 1999, i.e. prior to 15th November 1999, the Respondent made four withdrawals as follows:-
 - 14th December 1998 - transfer to Noel & Co for £5,000 (3)
 - 31st December 1998 - transfer to current account for £5,000 (3)
 - 13th January 1999 - transfer to Noel & Co for £1,000 (3)
 - 19th February 1999 - transfer to current account for £13,000 (3)

The withdrawals were made without the mutual agreement of the parties and without an Order of the Court.

7. On 17th November 2000 the OSS requested the Respondent to provide his explanation in respect of the four withdrawals made from the account between 14th December 1998 and 19th February 1999. The OSS further requested the Respondent to confirm whether or not he had authority from all the parties involved in the transaction or from the Court that these withdrawals could be made from the funds held.
8. The Respondent replied by letter dated 21st November 2000. Within that letter the Respondent commented of Mr W that he:-

"...is just malicious and has given extra work to your goodself and us. Of course, he is of a peasant mentality and you can't expect any better."
9. As a result of the Respondent's letter Mr W made a further complaint to the OSS on 14th December 2000 that the Respondent had now written offensive correspondence to the OSS regarding him on two occasions, 6th June 2000 and 21st November 2000. In respect of a letter dated 6th June 2000 the Respondent had stated:-

"As regards the last paragraph of Mr W's complaint we fail to see how a person with £85,053.65 in his pocket should suffer deteriorating in his health. On the other hand, if his health is so bad there is a Maudsley Hospital which deals with mental patients."
10. Further offence had been taken to the following comment:-

"Concerning Mr W's credibility and integrity, he has none."
11. The OSS sought an explanation from the Respondent who replied on 15th January 2001:-

"There is nothing more to say, that is my view of him."
12. On 14th September the Adjudication Panel resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.
13. In a separate matter the Respondent acted for Miss W in care proceedings instigated by Miss W's Local Authority the London Borough of Hammersmith & Fulham.
14. Due to events that took place within the care proceedings the Local Authority took the view that the Respondent and his firm were acting for the child's mother where there was a conflict which affected the Respondent's ability to act in the best interests of his client. This resulted in the Local Authority making an application to the High Court for the Respondent to be removed from the Court record as acting for his client. An Order made by consent was granted by Mr Justice Holman on 20th July 1999. In the Order the Respondent consented to cease acting for his client Miss W; leave was granted to the Local Authority to disclose the documents to The Law Society; and the Respondent was ordered to pay on an indemnity basis the costs thrown away of the Local Authority and the two other parties in this action.

15. On 30th August 2001 the Compliance and Supervision Committee resolved to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal.
16. Within the family proceedings mentioned above in May 1999, at the Family Proceedings Court the barrister acting for the Local Authority was approached by another member of the Bar who reported overhearing a conversation between the Respondent and his client, Miss W. She alleged that the Respondent inappropriately advised his client to hide her child from the Local Authority should an Interim Care Order be made. It was this amongst other things that prompted The Law Society to approach the Respondent about his firm's continued involvement with the proceedings and the subsequent transfer of it to the High Court.
17. On 24th January 2002 the General Council of the Bar ("the Bar Council") complained to the OSS about the Respondent's conduct concerning a breach of confidentiality.
18. The Respondent had raised a complaint about the barrister who reported the conversation she overheard between the Respondent and his client. In the letter of complaint he enclosed two Affidavits and statements relating to proceedings before the Family Proceedings Court and the High Court.
19. The Complaints Commissioner enquired of the Respondent whether the documents enclosed were confidential and whether or not permission of the Court to disclose them had been obtained. The Respondent replied in terms to the effect that they were not confidential documents. The Bar Council Committee subsequently advised the Respondent that the Complaints Commissioner had been advised that "...it would have been nothing short of contempt for the Chairman to authorise further dissemination of these documents without leave of the Court, which you have thus far not obtained.....".
20. The OSS wrote to the Respondent enclosing the Bar Council complaint letter and asked the Respondent for his comments. He acknowledged the letter and suggested awaiting the outcome of the Ombudsman's decision in relation to his complaint to the Bar Council. On 27th April 2002 the OSS wrote again requiring him to deal with the Bar Council complaint about him. He replied on 7th May 2002 and in that letter the Respondent made derogatory comments regarding the barrister he complained about to the Bar Council, referring to her as a "wicked witch".
21. On 31st August 2001, after being refused indemnity insurance with St Paul, the Respondent submitted a proposal form to join the Assigned Risks Pool and indicated that he preferred to pay the premium by instalments.
22. By applying to join the Assigned Risks Pool, pursuant to Rule 18 of the Solicitors Indemnity Insurance Rules 2001 the Respondent's firm was subject to a monitoring visit by an Investigation Officer from the OSS. The visit was scheduled for 8th January 2002 but on 2nd January 2002 the Respondent wrote to the Investigation Officer stating amongst other things that he had not practised for over a year and he no longer occupied his former premises.
23. The proposed visit did not proceed. However the Investigation Officer did attend the Respondent's premises at 239-241 Balham High Road, London, SW17 7BE on 7th

January 2002. There was a sign on the ground floor wall and the first floor windows but no response to the doorbell. A further monitoring visit was rescheduled for May 2002. The inspection took place on 21st May 2002. A copy of the resulting Report dated 12th June 2003 was before the Tribunal. It was noted in the Report that the Respondent told the Investigation Officer he had ceased to practise from 239 Balham High Road, London on 28th November 2000 and had not returned to practice upon the expiry of the suspension on 28th May 2001.

24. The Report noted that the books of accounts were not in compliance with the Solicitors Accounts Rules. The reason for this was that there was a cash shortage on client account of £91 made up of an incorrect payment of £60 to the Respondent's bookkeeper and an incorrect transfer of £31.
25. The Investigation Officer also investigated the Respondent's Professional Indemnity Cover. In his Report he stated that the Respondent confirmed that for the indemnity period 1st September 2000 to 31st August 2001 he had obtained professional indemnity cover through St Paul. He was unable to secure professional indemnity cover with the qualifying insurer for the indemnity period 1st September 2001 to 31st August 2002. On 31st August 2001 the Respondent submitted a proposal to the Assigned Risks Pool indicating a preference to pay the premium by instalments.
26. On 6th November 2001 the Assigned Risks Pool issued the Respondent with a debit note for £24,931 for his premium and enclosed documentation for payment by instalments through Premium Credits Limited.
27. The Respondent wrote to Premium Credits Limited on 4th December 2001 stating he was not practising and therefore did not need indemnity cover.
28. On 20th December 2001 the Manager of The Law Society Assigned Risks Pool at Eastgate Insurance Services Limited wrote to the Respondent seeking clarification of the Respondent's current situation. Following a reminder the Respondent replied on 22nd January 2002.
29. At the inspection the Respondent maintained he had not practised since November 1998. He did confirm that he currently held client money in connection with two long running personal injury matters and the Investigation Officer identified at least three conveyancing matters and a matrimonial matter that had been active since 1st September 2001 along with several instances of bills apparently being raised during that period.
30. In one case the Respondent acted in a conveyancing matter for Mr T, Mrs A T and the relevant lending institutions. The transactions completed on 29th October 2001. The instructions from HSBC, the Lender in respect of Mr T's purchase, stated that the Respondent must amongst other things hold a current Practising Certificate and have professional indemnity insurance. The Respondent's professional indemnity insurance with St Paul expired on 31st August 2001. The Respondent told the Investigation Officer that he had been offered cover with the Assigned Risks Pool but had decided that he could not afford the premium of £24,000.

31. By a letter dated 26th March 2002 the OSS raised a query relating to the Respondent practising in breach of the condition imposed on his Practising Certificate for the year 2000/2001 and 2001/2002. The certificate for those years was subject to the condition that the Respondent "may not accept instructions to prosecute or defend any action, suit or contentious proceedings, or represent a litigant in the course of such proceedings, except in the course of employment as a fee earner."
32. The Respondent held a Practising Certificate from 19th July 2001 subject to that condition. The Investigation Report had noted that the Respondent explained that he currently held money in connection with two long running personal injury matters and the Investigation Officer had identified a matrimonial matter which had been active since September 2001.
33. On 5th July 2002 the OSS wrote to the Respondent requiring an explanation concerning the matters raised by the Investigation Report of 12th June 2002. After a chasing letter was sent the Respondent replied on 13th July 2002, In that letter he maintained that the word suspension was not the same thing as termination and maintained that there was never the setting up of a new practice on 19th June 2001. In respect of the books of account he asserted that the shortfall of £91 was an innocent error. He maintained that the matrimonial matter was not a contentious matter and denied being in breach of the Solicitors Indemnity Insurance Rules 2001.
34. On 9th September 2002 the Adjudication Panel of the OSS resolved amongst other things to refer the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

35. Allegation 9 had been withdrawn with the permission of the Division of the Tribunal at an earlier hearing. The Respondent had agreed the facts and admitted the documents but denied the allegations. With regard to Allegation 2 the Tribunal was asked to note that the four withdrawals all predated the Consent Order. In the submission of the Applicant in the absence of the mutual agreement of the parties or a Court Order the Respondent was in breach of his undertaking.
36. The Respondent would say that he was discharged from his undertaking when the Defendant had taken his instructions to new solicitors. Alternatively the Respondent would say that the undertaking was too wide and was only intended to protect the Defendants' half share. In the submission of the Applicant that was not the case. The undertaking was specific and did not simply refer to a half share. No evidence had been put forward that the undertaking had been discharged notwithstanding the transfer of instructions by the Defendant. The undertaking had been addressed in effect to the Defendant represented by solicitors and the Defendant had placed reliance on it. It was the client to whom the undertaking was given and the client took the benefit of the undertaking with him when he changed solicitors.
37. The Respondent had strong views of the Defendant in the proceedings but in the submission of the Applicant the comments which the Respondent had made in relation to Mr W were not such as should be made by a member of the profession.

38. In relation to the Children Act matter and to Allegation 4 the Applicant adopted the arguments put forward by The London Borough of Hammersmith & Fulham in the High Court proceedings. Mrs A was an employee of the Respondent and the aunt of the mother of the child who was the subject of the proceedings. Mrs A was being put forward as a potential carer. In the view of the Local Authority the mother was leaving the child with Mrs A.
39. Mr S in his Affidavit on behalf of the London Borough of Hammersmith & Fulham had written:-
- "A conflict of interest had arisen (or is very likely to arise) given that:-
- (a) Mrs A is receiving instructions from the mother in which the mother expresses her wish to have X in her care;
 - (b) Mrs A is a potential carer for X; she had indicated her interest in caring for him in the future;
 - (c) Mrs A has filed a statement in the proceedings in which she states "I will oppose any Interim Care Order and that H be left with X, so that he can be properly cared for within his extended family unit."
40. The potential for conflict was great. The Respondent's duty in these proceedings to be open would be compromised. The Tribunal was referred to the various affidavits which outlined the situation. There had been an application to the High Court and the Respondent had stood down from acting in the proceedings. The conflict would be obvious to all who read the papers.
41. It was not necessary for the Tribunal to decide what had or had not been heard by the barrister who reported overhearing the Respondent's conversation with his client. The allegation made against the Respondent resulted from the derogatory comment he had made about the barrister in correspondence to the Bar Council. In the submission of the Applicant it was unprofessional for the Respondent to publish his strong views in that way.
42. In relation to the disclosing of Court documents to the Bar Council, the Tribunal was referred to the Order of Mr Justice Holman dated 20th July 1999 which granted limited permission to the Local Authority solicitors and to the Respondent to disclose documents in the proceedings to The Law Society. There had been no permission to disclose the documents to the Bar Council.
43. The Tribunal was referred to the Inspection Report in respect of the allegations which arose from that Report. In relation to Allegation 11 a Statutory Demand had been served on the Respondent in respect of the premiums.
44. In relation to the conveyancing matter for Mr T and Mrs AT the Respondent had taken the view that he was insured at the time he was acting for the Lending institution. The insurance had however expired on 31st August 2001 and completion was not until October 2001. The Respondent would say that he relied on the fact that he had applied for entry into the Assigned Risks Pool for the period September 2001

to 2002. The Respondent would further say that if he paid the Statutory Demand he would be insured retrospectively. The allegation however meant that by failing to pay the Respondent had failed to maintain his insurance.

The Submissions of the Respondent

45. The Tribunal was referred to the Respondent's Skeleton Arguments.
46. In relation to the undertaking the Respondent took the view that the undertaking was personal to the solicitors to whom it had been given like a contract and could not be assigned or transferred.
47. There had not been four withdrawals. The Respondent accepted that there had been two transfers to himself but the other two transfers had been to the current account and were not withdrawals.
48. The declaration in this matter signed by the Respondent's client on 28th December 1988 more or less gave Mr W a half share of the property. The Respondent had taken the view that as long as Mr W's half share was protected, his client could do what she liked with her share, hence her permission to the Respondent to take his costs from her share. The Respondent had felt that he was still within the terms of the undertaking. Mr W in his Affidavit had referred to a half share and indeed his half share had been accepted by his solicitors and the matter had been closed.
49. Sometime later there had been an allegation of a breach of undertaking and in the view of the Applicant this was malicious on the part of Mr W. Mr W had said that his health had deteriorated and the Respondent had indicated that if his health had deteriorated while he had £85,000 available he should seek medical care. The Respondent did not consider that to be derogatory.
50. Likewise the term "peasant" in Jamaica meant someone who worked in the fields. While it might be considered as a derogatory remark in England it was not so considered in Jamaica.
51. In relation to the Children Act matter the Respondent submitted that there was no conflict. Each party's role had been different. The Local Authority's role had been to determine the parenting skills of the mother. The Local Authority had obtained assessments and then drawn up a package and the issue of conflict had not arisen.
52. The mother of the child was the niece of Mrs A, an employee of the Respondent who already cared for two children of the mother. The mother, who had no other relations, sought guidance from Mrs A and she was the best person to guide her. Mrs A had wanted her niece to keep the child.
53. The Local Authority had changed its mind because the mother had left the child with Mrs A but this was due to the unsuitability of the mother's accommodation plus the fact that Mrs A already cared for the mother's other two children. This was not abandonment as the child was safe at all times.

54. Mrs A was not putting herself forward as a potential carer it was the Local Authority who had wished to place the child in the extended family. Mrs A had never joined the proceedings but just wished to assist her niece.
55. In relation to the allegations made by the barrister, the Respondent still felt angry.
56. The disclosure of documents to the Bar Council had been done when the Respondent was very upset regarding what the barrister had said which had been repeated by all those involved in submitting affidavits to the Court. The Respondent had submitted the documents to the Bar Council to show what the barrister had said and what had resulted from it.
57. The Respondent had been so angry that he had not been able to find other words than "wicked witch".
58. The Respondent apologised as the question of leave from the Court had not occurred to him. His main concern had been to draw to the attention of the Bar Council what the barrister had said.
59. In relation to the Accountant's Report the £60 payment to the bookkeeper from client account and the £31 transfer had been innocent mistakes. The office and client account chequebooks were kept in the same drawer and it was most likely that the Respondent had picked up the wrong book. He had not been dishonest. The error had been discovered and put right. It was possible that the £31 might have been a bank error.
60. In relation to the matter of indemnity insurance at the time of the instructions from the lender client in the matter of Mr T and Mrs AT the Respondent had still been insured with St Paul's. Things subsequently went wrong when the Respondent could not get insurance and he had applied to join the Assigned Risks Pool. The Tribunal was referred to the correspondence from the Assigned Risks Pool dated 3rd September 2001 confirming that he was covered under the Assigned Risks Pool. If the Tribunal accepted that letter as it was then the Respondent had had insurance.
61. A condition had been imposed on the Respondent's Practising Certificate that he could only practise in an employed capacity. He had then written to the Assigned Risks Pool and said that he did not need insurance. He was too old to seek employment. The Assigned Risks Pool however had never accepted that position. The Respondent had not paid the premium but the debt remained and the Respondent submitted to the Tribunal the Statutory Demand he had received. The Assigned Risks Pool was therefore still pursuing the debt. If the Respondent paid it then he would retrospectively have insurance.
62. It appeared to the Respondent that The Law Society said that he did not have insurance but the Assigned Risks Pool said that he did. The Statutory Demand had to be paid or the Respondent would face bankruptcy.
63. In relation to Allegation 10 in the Submission of the Applicant the conveyancing matter was non-contentious so there had been no breach in that respect. The personal injury matter was an old matter with money in client account to be settled and nothing

else to be done. The Respondent could not recall the divorce matter except that it was an agreed matter which in the submission of the Respondent was therefore not a contentious matter.

Oral Evidence of Mrs A

64. Mrs A gave to the Tribunal the background of her involvement with her niece's children. When her niece had become pregnant again Social Services had contacted her and invited her to the At Risk meeting. Social Services at that stage were quite happy with the Respondent representing the mother.
65. Things had gone smoothly and Mrs A was in communication with Social Services.
66. The mother had left the child with Mrs A on two occasions without complaint but suddenly things changed and Social Services said the child was abandoned. Mrs A had said that the child was not abandoned as it was with her. The solicitor for the child had then become less happy with Mrs A.
67. Mrs A had said that she would take the child but did not want Social Services intervention and thereafter everything went sour and Mrs A did not put herself forward as a carer.
68. Mrs A had given evidence in the Magistrates Court because she had been quite shocked at the way things had changed. The truth had not been told in Court. Mrs A had told the Magistrates that she would not take the child if the child was put into care. The child had been in Mrs A's care and control, not abandoned.

Submissions of the Respondent in mitigation

69. Subsequent to the Finding of the Tribunal in relation to liability, the Respondent submitted to the Tribunal his statement in mitigation.
70. In his statement he gave details of his family and professional background, firstly as a barrister and subsequently as a solicitor. He said that he had had a brilliant career in the legal profession for over 30 years.
71. The Respondent referred the Tribunal to his previous appearance before a Division of the Tribunal when he was suspended from practice for six months for misleading the Court of Appeal. He explained that it was Counsel who had misled the Court of Appeal but the Respondent had had to take the blame.
72. Following the suspension he had been unable to get employment and was now in financial difficulties. He had to find the money for the Assigned Risks Pool Premium and for the intervention costs.
73. The Respondent had been in poor health.
74. The Respondent asked the Tribunal to give him an opportunity to work as a solicitor and to pay his bills. If unable to work he would lose his home.

The Findings of the Tribunal

75. The Tribunal had considered carefully the documents submitted by the Applicant, the Respondent's Skeleton Arguments, the submissions and the evidence of Mrs A.
76. Allegation 2 related to the retention by the Respondent of the proceeds of sale of property which was the subject of a dispute. The terms of the Respondent's undertaking were before the Tribunal. Prior to an Order of the Court the total amount of money held had been reduced. Having considered the documents the Tribunal found that the Respondent had breached the undertaking. The Tribunal was not persuaded that the undertaking related only to half the proceeds nor that it ceased when Mr W changed solicitors. The Tribunal accepted the submissions of the Applicant regarding the continuation of the undertaking in those circumstances. The allegation was substantiated.
77. In relation to Allegation 3 there had been a number of items of correspondence in which the Respondent had made remarks regarding third parties which the Tribunal considered to be offensive and derogatory. The Tribunal found the allegation proved.
78. In relation to Allegation 4 Mrs A had given evidence to the Tribunal. The Tribunal made no judgement or criticism of Mrs A but she had been within the Children Act proceedings as a witness and there was potential for her to give useful and impressive evidence in those proceedings. At the same time she was an employee of the Respondent while he was representing the mother of the child who was the subject of the proceedings. In the view of the Tribunal there was an actual and potential conflict and that had been properly recognised by the High Court. The Tribunal found Allegation 4 proved.
79. The Respondent by his own admission before the Tribunal had said that he had been angry when he sent the documents and had made a mistake. It had not occurred to him to obtain leave from the Court and as he had sent the documents without the consent of the Court and the Tribunal found the allegation proved.
80. In relation to Allegations 6 and 7 the Tribunal appreciated that the amount of money involved was extremely modest. However relying on the Report and also on the Respondent's own admission in his submissions to the Tribunal that he had made mistakes in this regard, the Tribunal found the allegations proved.
81. In relation to Allegation 8 the Respondent's own submissions to the Tribunal had made clear that he had not paid the premium. The Tribunal found the allegation proved.
82. In relation to Allegation 10, the Respondent had conducted two personal injury matters and one divorce matter while there was a condition on his Practising Certificate that he acted on only non-contentious matters. Despite the views put forward by the Respondent, the argument could not be sustained that a divorce was not a contentious matter simply because the parties had reached agreement. The Tribunal found the allegation proved.

83. In relation to Allegation 11, the Tribunal found a conflict between Allegations 8 and 11. The Tribunal did not consider that the Applicant could sustain an allegation that the Respondent was not insured at the same time as saying that he had not paid for his insurance. In respect of Allegation 11, the Tribunal found in favour of the Respondent and found the allegation not substantiated.
84. The Tribunal had found all of the allegations proved except Allegation 11, Allegation 9 having been previously withdrawn. The Tribunal then considered Allegation 1. Having found the specific allegations proved the Tribunal did not consider it appropriate to find Allegation 1 substantiated in addition. Those matters had been dealt with in the other allegations.
85. In summary therefore the Tribunal found all the allegations substantiated except for Allegation 11 and Allegation 1, Allegation 9 having been withdrawn.

Previous appearance before the Tribunal on 11th May 2000

86. At a hearing on 11th May 2000 the following allegation was substantiated against the Respondent namely that he had breached Practice Rule 1 in that in his professional behaviour during the course of a retainer compromised or impaired or was likely to compromise or impair the following:-
- (i) his good repute or the good repute of the solicitors' profession;
 - (ii) his duty to the Court.

and that by reason thereof he had been guilty of conduct unbecoming a solicitor.

87. The Tribunal in May 2000 took the view that to suggest that a Learned Recorder had not given reasons for a judgment when she had done so at length and with great care was in itself a serious matter. To include that as a ground for appeal when it was not true was even more serious. The Tribunal accepted that errors inevitably occurred during the course of a solicitor's practice from time to time. It was an aggravating feature of the matter before the Tribunal on that occasion that the error had been pointed out to the Respondent and he had been in a position where he could have availed himself of a number of opportunities to rectify the error. He simply did not avail himself of those opportunities. He put himself in breach of his duty to the court and made himself the subject of criticism by the Court of Appeal. It was clear that such criticism of a solicitor damaged not only his own reputation but that of the solicitors' profession as a whole.
88. The Tribunal readily accepted that the Respondent's action had not been deliberate and he had not acted with intentional dishonesty. He had rather been negligent, reckless and had lacked judgement.
89. Although the Tribunal in May 2000 recognised that the sanction which it felt right to impose upon the Respondent was hard upon the Respondent himself who was described by those who know him as a competent solicitor of great integrity offering an invaluable service to the community in which he practised and enjoying the loyalty of staff and clients alike, the Tribunal had to have regard for the wider issues. The Tribunal recognised in this case that it need not address the first of its duties to protect

the interest of the public but it had to address the second of its duties namely, the protection of the good reputation of the solicitors' profession. The Tribunal concluded that the seriousness of the misleading of the Court of Appeal could only be reflected by a sanction which interfered with the Respondent's ability to practise. The Tribunal after taking into account the Respondent's good character and the mitigation placed before them imposed upon the Respondent a period of suspension of six months. As the Respondent represented no danger to the public, the period of suspension would not come into force until two months after the date of the order. The Respondent was also ordered to pay costs.

Hearing on 1st July 2003

90. At the hearing on 1st July 2003 the Tribunal had had the benefit of the Respondent's mitigation and had considered the Findings of the Tribunal in May 2000. None of the matters before the Tribunal at the present hearing alleged dishonesty but very serious allegations had been substantiated against the Respondent. The seriousness was aggravated by the number of allegations and the fact that despite strong evidence the Respondent appeared to be unable to recognise his failings and in consequence had made no admissions even in those matters where admissions had effectively been made during his submissions. The Respondent's lack of appreciation of the seriousness of these matters was of great concern to the Tribunal. The cumulative effect of the substantiated allegations meant that the public needed to be properly protected from the Respondent who would represent a danger to the public if allowed to continue in practice. The Respondent's behaviour had been unprofessional and he appeared to have been unable to be objective about the matters which formed the subject of the most serious allegations. The Tribunal had a duty to protect the public and to protect the reputation of the profession which the Respondent had damaged by his conduct. The Tribunal considered that the appropriate penalty was to suspend the Respondent indefinitely from practice.
91. The Tribunal ordered that the Respondent Selwyn Kennedy Noel of Isleworth, Middlesex, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of July 2003 and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

DATED this 2nd day of August 2003
on behalf of the Tribunal

R J C Potter
Chairman