No. 8719/2002

IN THE MATTER OF PHILIP ROBIN LINDSAY TOTENHOFER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mrs H Baucher
Ms A Arya

Date of Hearing: 15th May 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 George Marriott, solicitor and partner in the firm of Gorvins of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 22nd November 2002 that Philip Robin Lindsay Totenhofer of Brightlingsea, Essex, solicitor might be required to answer the allegations contained in the statement ("the First Statement") which accompanied the application and that such order might be made as the Tribunal shall think right.

On 21st January 2003 the Applicant made a Supplementary Statement ("the Second Statement") containing further allegations. On 13th March 2003 the Applicant made a second Supplementary Statement ("the Third Statement") containing further allegations.

The allegations set out below are those contained in the original statement and the two Supplementary Statements.

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

1. Acted as a solicitor without there being in place a practising certificate contrary to Section 1 of the Solicitors Act 1974;

2. Acted as a solicitor in beach of a condition imposed upon his practising certificate pursuant to Section 12 of the Solicitors Act 1974;

3. Utilised clients' funds for his own benefit;

4. Drew monies out of client account contrary to Rule 8 of the Solicitors Accounts Rules 1991 other than as permitted by Rule 7;

5. Failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998;

6. Took unfair advantage of clients by overcharging for work done;

7. In the course of practising as a solicitor compromised or impaired:

   (a) His integrity and independence;
   (b) His duty to act in the best interest of his client;
   (c) The good repute of the solicitors' profession;
   (d) His proper standard of work contrary to the Solicitors Practice Rule 1 1990.

8. Acted as a solicitor without there being in place a practising certificate contrary to Section 1 of the Solicitors Act 1974;

9. Utilised clients' funds for his own benefit;

10. Drew monies out of client account contrary to Rule 2.2 of the Solicitors Accounts Rules 1998 other than as permitted by Rule 19;

11. Failed and/or refused to conclude the administration of an estate within a reasonable time;

12. Acted, whether in his professional capacity or otherwise, towards the OSS in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor;

13. Acted, whether in his professional capacity or otherwise, towards R in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor;

14. Drew money out of client account contrary to Rule 8 otherwise than as permitted by Rule 7 of the Solicitors Account Rules 1991; alternatively contrary to Rules 19 and 22 of the 1998 Rules;

15. Drew money out of client account for his own benefit;

16. Failed to raise a bill within a reasonable time or at all of concluding work on a file.

Allegations 1-7 were in the First Statement, 8-11 in the Second Statement and 12-16 in the Third Statement.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 20th May 2003 when George Marriott appeared as the Applicant and the Respondent did not attend and was not represented.

The evidence before the Tribunal included a letter addressed by Messrs Gorvins to the Respondent dated 25th March 2003 giving Notice to Admit and Notice of Intention to rely on documents pursuant to the Civil Evidence Act sent to the Respondent, the Respondent's letter with attached comments dated 12th May 2003 sent to the Applicant and a letter dated 9th May 2003 addressed to the Applicant by the Head of the Legacy Department of the RSCPA.

At the conclusion of the hearing the Tribunal ordered that the Respondent Philip Robin Lindsay Totenhofer of Brightlingsea, Essex, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £7,740.12.

The facts are set out in paragraphs 1 to 43 hereunder: -

1. The Respondent was admitted to the Roll of Solicitors in 1973. At the material time he carried on in practice as sole principal under the style of PRL Totenhofer at 1 Queen Street, Brightlingsea, Essex, CO7 OPH. He apparently continued to work from that address, his letterhead described him as a "Legal Consultant".

   <u>Acting as a solicitor without a practising certificate and in breach of a condition attached to it</u>

2. On 4th October 1999 an Assistant Director of The Law Society considered the Respondent's application for a practising certificate for the year 1998/99 and granted him a certificate for that practice year subject to a condition that he could act only as a solicitor in employment approved by the OSS or as a member of a partnership so approved. The Respondent appealed and on 12th January 2002 the Appeals Committee dismissed his appeal but extended the period within which the Respondent had to comply with the condition to 29th February 2000 and stated that no further extension would be entertained.

3. In a conversation between a representative of the OSS and the Respondent on 22nd February 2000 the Respondent stated, among other things, that from 29th February 2000 it was his intention to "trade as a legal consultant rather than as a solicitor". Accordingly the OSS wrote to the Respondent on 25th February 2000 requesting evidence that he would cease to practise as a solicitor by 29th February 2000. The Respondent's reply dated 1st March 2000 indicated that he would give a substantive response by 2nd or 3rd March 2000.

4. By letter dated 3rd March 2000 the Respondent stated that he was not practising as a solicitor although the letter described him as such and he attached a copy of a letter which he said he had sent to his clients. He did not answer questions raised by the OSS in its letter dated 25th February 2000 in connection with arrangements for the

transfer of work to a qualified solicitor, areas of work he would practise in and a copy of his headed notepaper.

5. In the absence of any assurance from the Respondent that his practice as a solicitor had ceased or that he was in approved employment or partnership, The Law Society resolved to intervene into his practice on 5th May 2000.

6. A copy of the Brightlingsea Parish magazine "The Native" dated December 2000 included an advertisement in which the Respondent held himself out as a solicitor and advertised for conveyancing and Legal Aid work.

7. The Respondent sent a letter to the OSS enclosing copy bank statements dated 27th April 2000.

8. It was accepted that in 2002 "The Native" did not include any advertisement by the Respondent. There was still, however, a brass plate on the outside wall of the Respondent's offices describing him as a solicitor.

Utilising clients' funds for his own benefit and withdrawing monies from client account

9. Solicitors appointed as agents for The Law Society following the intervention into the Respondent's practice on 5th May 2000 sent to The Law Society's Compensation Fund a client file of MP relating to an accident claim with a copy of the relevant client ledger showing a debit balance on client account of £1,461.15.

10. By letter dated 16th January 2001 the Respondent accepted that there had been an over-transfer from client to office account on account of costs. He sent a cheque for £1,456.45 to rectify the error.

Failing to keep accounts properly written up

11. In June 2001 the intervening solicitors wrote to the Compensation Fund as they had been instructed by the personal representatives of WR. With the letter was a consolidated ledger which showed three matters:-

(i) There was a difference of £800 between the sum indicated in the Respondent's cash account as being paid to Nat West and the sum that was in fact paid according to the ledgers.

(ii) A cheque for £2,350 was issued but was later cancelled;

(iii) A cheque for £1,020.46 representing an unpaid share of the residue due to their client was issued but not sent. The total amount of the unpaid sums was £4,170.46.

Utilising clients' funds for his own benefit and withdrawing monies from client account

12. The same solicitors advised the Compensation Fund that the Respondent had billed and been paid a total of £20,679.87 inclusive of VAT on all the matters he handled on behalf of WR. Bills raised by the Respondent amounted to £11,162.50. There was, therefore, an overcharge of £9,517.37.

13. There was nothing to show that a bill dated 15th February 1994 for £1,175 had been delivered to the personal representatives.

Overcharging

14. In the letter dated 20th November 2000 it was pointed out to the Respondent that he had taken a total of £13,040 excluding VAT in profit costs. It was also pointed out to him that The Law Society had assessed the client file and ledgers and were of the view that a fair and reasonable charge for such a matter would amount to £3,000 excluding VAT. These calculations demonstrated the Respondent had overcharged £10,040 plus VAT.

15. The Compensation Fund notified the Respondent of an application for payment by letter dated 14th September 2000. The Respondent denied that he had overcharged by his letter dated 27th September 2000.

16. When asked for his explanation, the Respondent by letter dated 16th January 2001 refuted that there had been an overcharge and asserted that the interim bills were based upon work done. He could comment no further as he was without the file.

Breach of Practice Rule 1

17. Following the intervention in May 2000 a number of applications were made to the Compensation Fund. Two examples were before the Tribunal. In the first example, the Respondent made the application on behalf of his client and in the second example another firm of solicitors made the application on behalf of the client.

Example 1 – LC Deceased

18. The Respondent made an application which was received by the OSS on 5th June 2000 asserting that the OSS was holding the sum of £3,726.28 in respect of the estate. The OSS requested the file to consider the matter. In the absence of the file, an adjudicator rejected the application because of the Respondent's failure to provide substantive evidence. In March 2001 the Respondent provided the OSS with letters from his file evidencing receipts in the estate. He continued to decline to supply the file.

Example 2 – IW Deceased

19. Solicitors acting for the sole beneficiary under the Will of the late IW made an application to the Compensation Fund for £36,319.25.

20. The OSS requested the file from the Respondent on two occasions. He declined to supply it. He requested the solicitors acting for IW to obtain monies from The Law Society and then account to him for them.

21. The matter was considered by the Compliance Board Adjudication Panel on 28th April 2002. The Panel took into account submissions made by the Respondent in his letter of 26th February 2002, namely:-

- He wound up conveyancing matters after the 29th February 2002;
- He carried on dealing with probate and wills;
- He did not carry out any litigation or criminal work and took on no new conveyancing instructions;
- As he was not practising as a solicitor, the question of approved employment did not arise;
- He did not understand the discrepancy of £800 at Nat West Bank;
- He asserted that the fees charged were reasonable but had difficulty without the file and other papers.
- The bills were interim bills and would be replaced by final bills;
- That he was attempting to obtain the monies from The Law Society;
- That the brass plate describing him as a solicitor did not hold him out as a solicitor.

22. The Compliance Board resolved to refer the Respondent to the Tribunal on 18th April 2002. The Respondent applied for a review and submitted a further document undated and a transcript which was received by the OSS on 27th May 2003 in which the Respondent stated that:-

- He ceased to practise as a solicitor on 29th February 2000;
- Since that date he had practised as a law consultant;
- The overdrawn account was cleared up to eighteen months ago;
- There had been no overcharging;
- He had not practised uncertified since the intervention;
- There was no deficit in client account at the time of the intervention and that funds were still held by The Law Society

DGS

23. DGS made a Will dated 29th March 1991 in which the Respondent was appointed with his secretary, LAM, executors. The Respondent had drafted the Will. DGS died

on 2nd April 1991. The majority of his estate was concerned with a life interest. The life tenant died in 2000.

24. The Respondent then sold the property belonging to the estate in April 2001. He and his co-executor signed both the contract and the transfer. The Respondent undertook the conveyancing work. He billed the estate approximately £900 for doing the work.

25. The estate was in deficit by approximately £17,000. It was unclear how that came about. The Respondent controlled the monies in the estate.

26. The Respondent's co-executor made complaint to the OSS in July 2002 about the Respondent's failure to administer and conclude the estate.

27. The ledger card relating to the matter headed "Probate" which ran from 3rd January 2001 to 28th June 2002 showed a debit balance in client account of £20,194 and a credit in office account of £19,900.25.

28. Despite frequent requests from one of the three charitable residuary legatees, the Respondent had not distributed the estate in accordance with his obligations as co-executor and/or solicitor.

Mr and Mrs R

29. Mr and Mrs R made Wills each dated 5th February 1992. The Wills were held by the Respondent who was also named as an executor. The Law Society's intervention agent scheduled Mr and Mrs R's Wills on 13th July 2000.

30. On or about the same day Mr and Mrs R instructed the intervention agent to hold their Wills and sent to him an authority to that effect.

31. By letter dated 7th June 2001 the Respondent wrote to The Law Society enclosing authorities to release the Wills of various individuals back to the Respondent. Mr R's authority was not included. The Respondent asserted in a letter sent to The Law Society in April 2001 that the authority of Mr R had been sent in June 2001.

32. By further letter dated 13th December 2001 the Respondent demanded (inter alia) the Will of Mr R and enclosed the appropriate authority.

33. By letters dated 27th February 2002 and one received by the OSS dated 30th April 2002 Mr and Mrs R made it plain that no authority had been given to the Respondent.

34. By letter dated 14th June 2002 the OSS asked for the Respondent's explanation. He replied by letter dated 20th June 2002 asserting that he did have the authority from Mr and Mrs R. He supplied a copy (undated) which was annotated in manuscript "transferred to T & Co as per client's authority". When asked to explain the annotation on the authority, the intervention agent confirmed by letter dated 14th October 2002 that it had been made by him.

35. In the meantime the OSS by letter dated 19th July 2002 had written once more to the Respondent asking him for copies of the authorities signed and the date on which the

forms of authority were signed. The Respondent's reply by letter dated 30th July 2002 enclosed copies of the annotated authorities. He asserted that he did not know the date they were signed save that it would have been after the intervention on 5th June.

36. The OSS wrote to the Respondent by letter dated 21st August 2002 asking for the identity of the author of the annotation, why he sought to have Wills released to him and asking him to explain his conduct.

37. The Respondent by letter dated 29th August 2002 asserted then for the first time that the authorities without annotations were originally sent to The Law Society in April 2001 and were re-sent on 29th November 2001 but returned by The Law Society with the annotation and that he was unaware that instructions had been transferred to the intervention agent and that as a consequence he had misled nobody.

Miss C

38. Miss C instructed the Respondent in April 1996 in connection with monies due to her as a beneficiary under a Will.

39. Following the intervention into the Respondent's practice in June 2000 Miss C appointed new solicitors to look after her interests.

40. Those solicitors wrote to the OSS by letter dated 26th October 2000 asserting that four sums of costs and VAT totalling £4,670.62 had been transferred from client account to office account between July 1998 and July 1999 improperly. Attached were the Respondent's ledger sheets.

41. The OSS sent to the Respondent a letter dated 9th April 2001. In the letter the OSS identified eight transfers from client to office account between July 1998 and September 1999 where bills were raised after the transfers. The bills were £260 less than the sums transferred. In September 1999 £200 was transferred without any bill being raised . A total of £460 (alternatively £328.75) was transferred to office account with no bill raised.

42. The Respondent was also asked to give an explanation as to why he had failed to raise a bill within a reasonable time of concluding the matter. The last activity on the file was a letter dated 17th September 1999.

43. The Respondent requested the return of his file. It was copied by the OSS and sent to him. The Respondent's explanations were set out in his letters dated 19th April 2001 and 22nd May 2001. In summary the Respondent stated he did not know why a final bill was not submitted and agreed that if a final bill had been drawn there would be no further sums due to him. The matter had been concluded by mid-October 1999 and the file was put aside for billing. The matter had been overlooked.

The Submissions of the Applicant

44. The Applicant told the Tribunal that he had spoken on the telephone to the Respondent who had indicated that he did not intend to attend the hearing. The

Respondent had sent a letter to the Applicant dated 12th May 2003 which the Applicant had ensured had been placed before the Tribunal.

45. The Applicant had served notice both under the Tribunal's Rules of Procedure and under the Civil Evidence Act. No counter-notice had been served by the Respondent.

46. The Tribunal was invited in particular to take note of the statement made by LAM who had been a secretary at the Respondent's firm. In particular, she confirmed that she had pressed the Respondent to deal with the payment of the legacies due to the three charitable beneficiaries in the estate of DGS. She was particularly concerned because she also had been appointed as an executor of the Will of the late DGS. LAM had also indicated that it was only when she typed the Will of Mrs W that she discovered that she had been appointed a co-executor.

47. The Applicant opened the case to the Tribunal clearly on the basis that dishonesty was alleged against the Respondent. He had made the allegation of dishonesty against the Respondent plain in his statement. It was open to the Tribunal to find the allegations substantiated with or without a finding of dishonesty. It was the Applicant's position that the Respondent's behaviour had been dishonest either with regard to individual allegations or that he had collectively pursued a dishonest course of conduct.

48. The Applicant accepted that the burden of proof fell upon his shoulders and he was required to prove such matters to a high standard of proof. The Tribunal was invited to apply the test of dishonesty set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12, namely that the Tribunal was satisfied that the Respondent's conduct judged by the standards of reasonable and honest people had been dishonest and did the Respondent himself realise that by those standards of decent and honest people that he was behaving dishonestly.

The Submissions on behalf of the Respondent

49. In his before-mentioned letter dated 12th May 2003 the Respondent had said:-

> "We would refer to earlier correspondence and enclose herewith our response to the allegations made together with our comments on the statement and no doubt the Tribunal will consider these in reaching their decision.
> Yours faithfully,
> Signed P R L Totenhofer"

The enclosed comments were:

> "I confirm that in my submission I have never since the time of the intervention acted as a solicitor without a practising certificate and if I have not practised without a practising certificate it follows that I have not acted in breach of any condition imposed on any such certificate.
>
> I have not utilised clients' money for my own benefit except on one occasion when it may be deemed that I have done so, namely with regard to Mrs P.

Again I do not accept I have drawn monies out client account other when I have been permitted to do so.

I have employed a bookkeeper during the time I practised and to the best of my ability kept properly drawn accounts.

I dispute that I have overcharged.

I do not accept that I have compromised or impaired my integrity and independence or my duty to act in the best interest of my clients or the standards of the profession. None of the allegations would appear to relate to the standard of my work and as far as I am aware none of the clients referred to have complained about the standard of work carried out on their behalf.

As to the first supplementary statement, I repeat what I have stated above in respect of the allegations.

As to the second supplementary statement, I deny that I have acted in a manner fraudulent or deceitful and I have only drawn monies deemed to be for my own benefit to the extent that my fees were reduced and these monies have been refunded.

I trust the Tribunal will take these matters into account when dealing with my case and should any fine be imposed I confirm I would seek time to pay. Finally I have been sent the Applicant's bill of costs. I would seek to have this taxed as there is no detail given as to how the time spent on attendances it arrived at. I would also dispute the amount spent on travel and hotel as I see no reason for this as presumably local agents could have been used or a solicitor nearer London.

<u>Acting as a solicitor without a practising certificate</u>

As to paragraphs 5 and 6, I have always made my intentions clear to the Law Society and during various telephone conversations with the Law Society since October 1999 had asked for advice as to what should be done to achieve this but never received any assistance.

As to the transfer of work, there was none to transfer as I had already stopped carrying out any litigation and the few matrimonial matters I had been handling in October 1999 had been transferred to other firms. As to conveyancing, the only work carried out after the expiry of my practising certificate was limited to finishing off matters by attending to stamping and Land Registration formalities for completions that had already taken place.

The only other conveyancing matters I have dealt with are where I am acting as executor.

Again after the expiry of my practising certificate and the intervention I again sought guidance from the Law Society as to any work I could not do and the

on1y advice I received from the Law Society was to tell me to find out for myself

Paragraph 3.8

I confirm that the publisher was told to change the advertisement which appeared in the parish magazine immediately following the change in status. No proofs are ever supplied and why the advertisement was not changed I do not know. Any requests to act in such matters were turned away and the limit of any advice given in such matters was to indicate what local firms might assist.

Paragraph 3.10

It is correct that there is still a brass plate and at the present time my name is still on the Roll of Solicitors. However, as stated above, I only carry out work which as far as I am aware I am entitled to do and all new clients are told by me I am a Law Consultant only and all existing clients were sent a letter to this effect in 1999.

Paragraph 3.11.1

This is correct but as the letter in question was sent to the Law Society who were obviously aware of the situation having created it there could be no confusion and we saw no problem at the time in using up old notepaper in this way.

Paragraph 3.11.2

The questions were answered as the Law Society have acknowledged receipt of the letters in March.

Paragraph 3.11.3

The position is as stated in the response to Paragraph 3.11.1.

Paragraph 3.11.4

These accounts are for internal use in my business and would not be seen by anyone outside the business. In any event they do relate to clients of my Law Consultancy business and I was not aware there was any prohibition on my firm dealing with clients' money in calling their account a client account.

Paragraphs 3.11.5 and.3.11.6

I have dealt with the situation referred to in these paragraphs above. Utilising clients' funds for his own benefit and withdrawing monies from client account

Paragraphs 12 and 13

It is accepted that there had been an over-transfer but this was due to a bookkeeping error and was rectified as soon as I received notification and the matter was remedied over two years ago by sending the money to the Law Society and if it were not for the intervention it would have been remedied very much earlier.

Failing to keep accounts properly written up

Paragraph 14

As I do not have the file relating to this matter I cannot comment on the difference of £800 but I can only presume that this is a bookkeeping error of some description.

Dealing with the cheque for £2,350, this was in connection with the accounts of R and B Limited. Companies House required the filing of accounts and the accountants of the company stated they would require payment of their fees of £2,350 in advance and I accordingly prepared a letter with a cheque in order for this to be achieved.

However, before it was sent I came to the conclusion that as the company had no assets that it could simply be wound up by being struck off the Register without the need to file accounts and this is what subsequently transpired. Accordingly there was no need to involve accountants, the letter was never sent and the cheque cancelled. The money remained in the account the whole time.

So far as the cheque for £1,020.46 is concerned, as far as I am aware this was sent but without the file I cannot take the matter any further.

Utilising clients' finds for his own benefit and withdrawing monies from client account

Paragraph 15

As to the bill not being delivered, this was probably correct but as I have already suffered sanctions from The Law Society in respect of this breach of the Rules I presume I have already dealt with this.

As to the difference in the figures, as I have explained I was originally instructed in connection with the Probate of WRR but it soon became apparent I could not finalise this without settling the affairs of R and B limited.

This included dealing with the day-to-day administration. Court proceedings involving a tenant and disposing of a property in Docklands including an abortive auction. As to the probate, I had to deal with a very dilapidated property in Clacton and the fact that the Will had not been properly executed.

In all I made a total charge of £20,679.87 for all the work over a period of several years.

Overcharging

Paragraphs 17-19

I do not accept there has been any overcharging.

I was dealing with an intestacy of an Austrian refugee who had come to Britain before the War and with, as it turned out, an extensive family in Europe. I had to make intensive searches of the property in which Mr K lived for documentation. In addition I had numerous meetings with the estate agent as to marketing the property which was partly tenanted.

The Law Society can have no knowledge as to the correct charge as they had no idea as to what work was carried out and as stated I have been given no opportunity to examine the file which as far as I am aware had a sheet in it setting out details of attendances.

Breach of Practice Rule 1

Paragraph 23

At the time of the intervention the representative from The Law Society told me that after the intervention was completed in those matters where I was appointed executor the files and monies relating to those matters would be returned to me. It was primarily as a result of those assurances that I did not contest the intervention as I was advised that I had good grounds for doing so. Subsequently I received back the file but I have still not received the money. As sole executor I saw no reason then and I see no reason why I am not entitled to both to enable me to complete the winding up of the estate. It is correct I have refused to release the file but as The Law Society has had it in their possession I see no need to especially as I have found in other matters when I have requested documentation The Law Society seem unable to find it. Finally the monies due to the estate are included in the monies seized.

Paragraphs 24 and 25

The position is basically the same as in regard to paragraph 23 above in that all the monies due to the estate were in the client account and were presumably paid out to the new solicitors.

Paragraph 35 - DGS

It is accepted that I have so far failed to account but this will be concluded within the next 6 weeks. As to the figures set out on the basis of the calculations I have so far made the fees for an ongoing matter over some eleven years including numerous attendances on the client tenant will be in excess of the figure mentioned.

Further in view of the fact that presumably it is not denied I had the right to deal with the estate as I am an executor I query whether the Tribunal has any right to deal with this matter as all the matters complained of took place well after the intervention was concluded.

Paragraph 44 – Mr and Mrs R

The Wills in question were held by me until they were taken away following the intervention. Within a few weeks at the most Mr and Mrs R were written to explaining the situation and enclosing the authority for me to continue to hold the Wills. It is presumably accepted these authorities were signed and returned to me.

I do not know the exact date this took place nor do I know when J & Partners sent their authority to them.

I did not forward this to J & Partners immediately as they were holding a large number of Wills and files and it would have been difficult for both firms to deal with the return of all of them at once but when they subsequently advised they had sent the remaining files to The Law Society I wrote to them but The Law Society lost the original letter and the matter was not chased up by me until December 2001.

Again I heard nothing until the letter of the 14th June which was the first intimation I had that Mr and Mrs R had asked J & Partners to store the Wills. Obviously if I had been told of the situation by either J & Partners or by the clients or indeed if the authorities had not been returned to me I would not have sought the return of the Wills.

Paragraph 56-61 - Miss C

I confirm that the time a bill was to be submitted was during the period prior to the intervention and was overlooked and that due to bookkeeping errors the transfers were carried out in error. However, I maintain that if a final bill had been submitted the amount due would have been substantially in excess of the interim accounts. Furthermore as my fees have already been reduced by The Law Society I consider that having refunded monies to Miss C I have already been dealt with in respect of this matter."

The Findings of the Tribunal

50. The Tribunal found all of the allegations to have been substantiated and found that the Respondent had been dishonest. The Tribunal was satisfied beyond reasonable doubt that the Respondent's overall conduct had been dishonest. He had not behaved honestly according to the standards of reasonable and honest solicitors nor could he have failed to realise that he had been dishonest according to the standards of decent and honest people.

51. On 31st March 1999 the Tribunal found the following allegation to have been substantiated, namely that the Respondent had been guilty of conduct unbefitting a solicitor in that he had when acting for a legally aided client in a matrimonial matter deducted his fees of £2,244.25 from his client's settlement in breach of Regulation 64 of the Civil Legal Aid (General) Regulations 1989. On that occasion the Tribunal found the allegation to have been substantiated, indeed it was not contested. The Tribunal said that it accepted that the Respondent had made a mistake. It pointed out that the rules and regulations regarding the handling of monies by a solicitor were in place for the important purpose of protecting members of the public. The Tribunal would not take the breach of any of those rules and regulations lightly. In all of the circumstances, the Tribunal considered it right to impose a fine upon the Respondent and concluded that it was appropriate to exercise a degree of leniency in the matter taking into account the Respondent's assurance that his purpose in acting as he had had been to ensure that the client received her money as quickly as possible. The Tribunal ordered the Respondent pay a fine of £500, such penalty shall be forfeit to Her Majesty the Queen, and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

52. The Respondent has in the matters before the Tribunal in May 2003 exhibited a course of conduct by which it has been made entirely clear that he has sought to give his own interests and benefit priority over the interests of anybody else whether they were clients, members of his staff or his own professional regulatory body. The Tribunal concludes that the Respondent has ignored important regulatory rules, has ignored the strict rules for accounting for clients' money and has utilised clients' funds for his own benefit. He has failed to conclude clients' business within a reasonable time.

53. When pressed by his professional regulatory body to give explanation or put matters right, he acted towards that body in a manner which was deceitful. The Tribunal also finds that the Respondent attempted to deceive The Law Society into releasing Mr R's Will to him when Mr R clearly had authorised it to be held by The Law Society's intervention agent.

54. Overall the Respondent appears to have utilised clients' money in such a manner as to be for his own benefit without any regard for the high standards of probity, integrity and trustworthiness required of a member of the solicitors' profession and in total neglect of his fundamental duty to exercise a proper stewardship over clients' funds.

55. For these reasons, the Tribunal considers that the Respondent had hoped to divest himself of the control to which he has been subject as a member of the solicitors' profession by seeking to act as a "Legal Consultant" rather than as a solicitor. Despite the fact that he was not holding a practising certificate, the Respondent allowed himself to be held out, or indeed held himself out, as a solicitor. Members of the public would no doubt believe that they were instructing a solicitor to conduct their affairs and would expect to enjoy all the safeguards which instructing a member of the solicitors' profession would bring. Instead they would have none of those safeguards. That was to be deprecated.

56. The Tribunal concludes that the Respondent, by failing to recognise and accept the responsibilities that any practising solicitor has to bear and failing to act with the

impeccable honesty required of a solicitor, should not, in the interests both of the protection of the public and the good reputation of the solicitors' profession, be permitted to remain on the Roll of Solicitors.

57. The Tribunal suggested that steps be taken to prevent the Respondent from continuing to hold himself out as a solicitor, and to assist beneficiaries of unadministered estates to bring to an end the Respondent's role as executor, and to ensure that a full accounting was enforced on the Respondent in relation to those estates. The Tribunal further suggested that its decision be published in the local press where the Respondent had continued to hold himself out as a solicitor and legal consultant.

58. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors and further ordered that he should pay the Applicant's costs. In order to save time and further expenditure, the Tribunal accepted the schedule of costs supplied by the Applicant and ordered that the Respondent should pay the Applicant's costs of and incidental to the application and enquiry in the fixed sum sought.

DATED this 4th day of July 2003
on behalf of the Tribunal

A G Ground
Chairman