No. 8724/2002

IN THE MATTER OF PHILIP THOMAS PRESSLER and
PAMELA DAWN HIGAB, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A Gaynor-Smith (in the chair)
Mr S N Jones
Lady Bonham Carter

Date of Hearing: 20th 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 Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke of 2 Putney Hill, Putney, London, SW15 6AB on 4th December 2002 that Philip Thomas Pressler of Whittlestone Head, Nr Darwen, Lancashire, and Pamela Dawn Higab c/o JST Mackintosh solicitors, Colonial Chambers, Temple Street, Liverpool, L2 5RH 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 Philip Thomas Pressler ("First Respondent") were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

1. (i) that he failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991 (the 1991 Rules) or for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);

(ii) that contrary to Rule 8 of the 1991 Rules or Rule 23 of the 1998 Rules, he drew money out of client account other than is permitted by either of the said Rules;

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

(iv) that he deliberately and improperly utilised clients' funds for his own purposes;

(v) that he dishonestly misappropriated clients' funds.

The allegations against Pamela Dawn Higab ("Second Respondent") were as follows:-

2. (i) that she failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991 (the 1991 Rules) or for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);

(ii) that contrary to Rule 8 of the 1991 Rules or Rule 23 of the 1998 Rules, she drew money out of client account other than is permitted by either of the said Rules;

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 20th May 2003 when Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke of 2 Putney Hill, Putney, London, SW15 6AB appeared as the Applicant, the First Respondent did not appear and was not represented and the Second Respondent was represented by Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh solicitors of Colonial Chambers, Temple Street, Liverpool, L2 5RH.

The evidence before the Tribunal included the admissions of the Second Respondent and the admissions of the First Respondent limited to breaches of the Accounts Rules. The First Respondent denied dishonesty.

At the hearing the Applicant sought leave of the Tribunal to abridge the time for service upon the First Respondent of a Notice to Admit documents. The Tribunal had before it a copy of a letter from the First Respondent to the Applicant dated 16th May 2003 in which he agreed to waive the time limits as the documentation was the same as documentation previously supplied and also indicated that he did not require the Investigation Officer to give live evidence. The Tribunal granted leave to abridge service accordingly.

At the conclusion of the hearing the Tribunal ordered that the First Respondent Philip Thomas Pressler of Whittlestone Head, Nr Darwen, Lancashire 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 £7,005.93.

The Tribunal made no order in respect of the Second Respondent Pamela Dawn Higab.

The facts are set out in paragraphs 1 to 59 hereunder: -

1. The First Respondent was admitted as a solicitor in 1975 and the Second Respondent, born in 1957, was admitted as a solicitor in 1981.

2. At all material times the First and Second Respondents carried on practice in partnership under the style of Hindle Son & Cooper, solicitors, 4 Church Street, Darwen, Lancashire.

3. Upon due notice to the Respondents the Investigating Officer of The Law Society carried out an inspection of the Respondents' books of accounts and produced a Report dated 12th September 2001.

4. The Report noted that the firm's books of account were not in compliance with the Solicitors' Accounts Rules. The Report identified a cash shortage on clients' funds of £29,880.67.

5. In discussion with the Investigation Officer the First Respondent did not accept that there was a shortage. The Second Respondent said that she understood the position as described by the Investigation Officer but required an opportunity to look into the matter in more detail. She said that if there was a shortage it would be rectified and this was endorsed by the First Respondent.

6. The Report noted that the cash shortage arose as a result of two improper payments having been made from client bank account to the First Respondent's private bank accounts.

7. On 17th February 1998 and 6th August 1999 amounts of £2,373.43 and £28,881.99 respectively were paid from client bank account to the First Respondent's private bank accounts.

8. The practice was entitled to costs amounting to £1,374.75 included within the second sum transferred. The resulting shortage was therefore £29,880.67.

Mrs HS deceased

9. The file relating to the above matter was not produced during the inspection. However, a copy will, ledger card, estate account and correspondence were examined and the First Respondent confirmed the Investigation Officer's understanding of the matter as follows.

10. Mrs S died during or around 1988 and her will gave a life interest of £29,635.53 to her sister Ms K. The amount of £29,635.53 was invested in the Halifax Building Society and the balance on the specific account had increased to £35,321.99 by the date of Ms K's death during or before August 1999.

11. The First Respondent said that he had conduct of this matter from the date of Ms K's death.

12. Under the terms of Mrs S's will, upon her sister's death certain bequests were to be made and the residue of her estate was to be paid to the Cancer Research Campaign ("CRC").

13. The Investigation Officer obtained a copy of the estate account prepared by the First Respondent from CRC. The estate account recorded (in accordance with Mrs S's will) the payments of a £4,000 bequest to Bolton Health Authority and the residue of the estate £18,311.78 to CRC. The ledger card, however, showed that neither of the above payments had been made. In addition no account had been made in respect of interest accrued during the relevant period.

14. The First Respondent said that he did not know why the bequest of £4,000 to Bolton Health Authority had not been paid.

15. The First Respondent said that the residue of £18,311.78 had been paid to CRC and the Investigation Officer confirmed this but he also confirmed that the payment had utilised funds belonging to another estate, that of CFT deceased.

16. The balance of £28,881.99 on the ledger as at 4th August 1999 was reduced to nil by a payment from client bank account which cleared through the bank on 6th August 1999 and the payment was described as "TO YOU – RESIDUE."

17. Evidence had been obtained, however, which showed that the above cheque was made payable to Royal Bank of Scotland and was deposited in an account in the names of Mr and Mrs Pressler.

18. The First Respondent said that the funds had been deposited in an account in his name as part of a tax planning exercise. He said it had been done with the full knowledge of the K and T families (the families were related) because Mr CT, the chief beneficiary under the K and CFT estates, wanted to "hide it from the Capital Taxes Office." The First Respondent added that he did not have any evidence to support his statement but he said that he could obtain a statement from Mr CT if necessary. No statement from Mr CT had been produced by the First Respondent.

CFT deceased

19. Mr CFT died on 10th May 2000 and as the sole surviving executor the First Respondent obtained probate on 31st May 2000.

20. The sole beneficiary of the estate was Mr CFT's son, Mr CT.

21. The First Respondent confirmed that, as indicated by notes on the client file, it was decided to pay a donation of £18,311.78 from this estate in order to alleviate an inheritance tax liability.

22. The First Respondent said "CT was fully aware and agreed to the donation".

23. On 28th July 2000 an amount of £18,311.78 was paid from client account to CRC and the payment was debited to the ledger account of CFT deceased.

24. The First Respondent's letter to CRC enclosing the payment of £18,311.78 referred to the estate of Mrs S. The charity was unaware of any donation from the T estate.

JH deceased

25. The First Respondent had held an Enduring Power of Attorney for Mr H since 1992. Mr H died on 28th December 1998 and his will named the two partners of the firm as his executors. The First Respondent obtained probate on 25th May 2001.

26. Mr H's ledger card recorded that on 29th January 1998 his Halifax Building Society account was closed and the balance of £2,373.43 was credited to client bank account.

27. On 17th February 1998 the ledger recorded that an amount of £2,373.43 was then paid out of client bank account with the narrative being "To Abbey National Plc".

28. The Investigation Officer was unable to ascertain from his examination of the matter file which account these funds had been lodged in.

29. Throughout the inspection the First Respondent did not provide an explanation as to where this money had gone but he agreed to write to Abbey National asking them to trace it.

30. During an interview with the partners on 5th September 2001 the Investigation Officer asked the First Respondent what progress he had made with his enquiries of the Abbey National in determining which account the amount of £2,373.43 had been lodged in.

31. The First Respondent replied that he had not received a substantive reply from Abbey National and that they had requested details of Mr H's former address.

32. The Investigation Officer subsequently informed the First Respondent that he had obtained evidence proving that the funds had, in fact, been credited to the First Respondent's own account with Abbey National.

33. The First Respondent replied "This has gone into an account in my name for Dr H's (Mr H's daughter) benefit. Her father wanted to give her the money without changing his will. I said I would hand her the cash when I saw her – I have not seen her yet".

34. The Investigation Officer asked the First Respondent if he had notified Dr H that he held this money for her and the First Respondent replied that he had not.

JCL deceased

35. The partners were the joint executors of Mr JCL deceased and following his death on 22nd June 1999 the First Respondent had conduct of the estate.

36. No estate accounts were on the matter file but a copy was obtained from one of the beneficiaries who had received accounts from the First Respondent.

37. The Investigation Officer noted that on 19th November 1999 an amount of £816.62 was paid from client bank account to an estate agent who had acted in the sale of Mr JCL's property. This payment, however, was recorded as £1,816.62 on the estate accounts.

38. The Investigation Officer also noted that the estate accounts recorded that an amount of £5,375 had been paid to the Benefits Agency re "refund of residency charges". The ledger cards in respect of the matter showed no such payment and the First Respondent admitted that no such payment had been made.

39. The alleged payment of this amount had been questioned by a Mrs S acting on behalf of a beneficiary of the estate and the First Respondent replied to her concerns stating "Unfortunately I do not have a receipt for the Benefits Agency. However this is not unusual or surprising."

40. The Investigation Officer further noted that although the estate accounts recorded the firm's costs in respect of the work done regarding the estate as £998.75 including VAT, funds totalling £6,282.75 had been transferred from client to office bank account in respect of two interim bills of costs and one final bill of costs (as detailed on the relevant ledger account).

41. The effect of these discrepancies was that funds totalling £5,287.50 had been transferred to the firm's office bank account unbeknown to the beneficiaries.

42. The First Respondent said that the £1,000 difference between the amount on his statement and what had actually been paid to the estate agent was an arithmetical error.

43. The Investigation Officer put it to the partners that, with the exception of £30 resulting from sundry other discrepancies, the funds that had not been paid as shown on the estate account had in fact been transferred to their office account.

44. The First Respondent told the Investigation Officer that he had no comment at that stage and the Second Respondent said that she knew nothing of the matter.

45. The matter was considered by the Professional Regulation Casework Sub-Committee on 14th September 2001 when a decision was made, amongst other things, to intervene in the practice of Hindle Son & Cooper.

46. As a result of that decision and the subsequent intervention, both the First and Second Respondents were written to separately by the OSS on 26th September 2001 for an explanation of the matters set out in the Investigation Officer's Report. The Second Respondent replied by two letters from her solicitor dated 25th September 2001 and 2nd October 2001. The First Respondent replied by letter from his solicitor dated 16th October 2001.

47. The matter was further considered by an Adjudicator on 2nd April 2002 and that Adjudicator resolved to refer the conduct of the First and Second Respondents to the Solicitors Disciplinary Tribunal. Both Respondents were informed of the Resolution by letters to their solicitors dated 9th April 2002.

48. As a result of the intervention into the firm, the Investigation Officer attended at The Law Society's agents where, together with a colleague, he examined six boxes of current files and twelve boxes of archived files relating to probate matters. As a result of that examination the Investigation Officer produced a further Report dated 19th

September 2002 which identified additional improper transfers from client to office account by the First Respondent. That further Report was considered by the Head of Investigation and Enforcement at the OSS and on 22nd October 2002 he authorised the inclusion of those further improper transfers in the matters already referred to the Solicitors Disciplinary Tribunal.

49. The further Report identified the following two matters.

Mrs VS deceased - £50,000

50. Ms VS died intestate on 9th July 1999 and her daughter, Ms NCS, was appointed her personal representative.

51. On 1st March 2000 an amount of £50,000 was recorded as having been paid from client bank account and charged to Ms VS's probate ledger. Narrative on the ledger described the payment "TO ROYAL BANK OF SCOTLAND PLACED ON DEPOSIT."

52. No record was found of the funds having been returned from the bank.

53. A copy letter on the matter file from the First Respondent to Ms NCS's dated 1st March 2000 read:-

> "I confirm that I am arranging for the sum of £50,000 to be placed on deposit until such time as we are in a position to invest the funds".

54. A further copy letter found on the matter file from the First Respondent to the Manager of the Royal Bank of Scotland plc read:-

> "I enclose a cheque for £50,000 payable to Royal Bank of Scotland plc to be placed on deposit for the above named. I confirm that I would expect the monies to be on deposit for no more than two months at the very most."

55. The practice's former bankers confirmed that the £50,000 was credited to Mr I P C A Pressler's account at Royal Bank of Scotland.

Mr EK deceased - £6,000

56. No files were found in respect of this matter. However, a fee note addressed to the personal representatives of EK deceased was raised under the First Respondent's reference on 3rd May 2001.

57. The ledger account pertaining to this matter recorded that on 8th May 2001 an amount of £6,000 was paid from client bank account and charged to this matter.

58. The narrative on the ledger card recorded the payment as being "TO ABBEY NATIONAL PLC".

59. The practice's former bankers confirmed that the £6,000 was credited to Mr I P C A Pressler's account at Abbey National.

The Submissions of the Applicant

60. The Applicant drew a distinction between the two Respondents. The First Respondent had acted in a positive way and his conduct had been deliberate, improper and dishonest. The Second Respondent was before the Tribunal because she had been in partnership with the First Respondent. She had not known of his activities and the Investigation Officer had said that it would have been extremely difficult to see on the face of the accounts' ledgers what was going on. While it would not necessarily have taken a trained accountant to discover what was happening, it would have required considerable skill. It had not been discovered by the firm's reporting accountants. In the submission of the Applicant, the Second Respondent had benefited from what had happened but not in any way knowingly.

61. The essence of the allegations against the First Respondent was that he had acted dishonestly. This had to be proved beyond reasonable doubt and the Applicant would rely on the test in Twinsectra v. Yardley, namely that the First Respondent had acted with conscious impropriety and that he was aware that a reasonable man would regard his conduct as improper.

62. The Applicant drew the attention of the Tribunal to the First Respondent's explanations contained in the letter of 16th October 2001 from his solicitor, a copy of which was before the Tribunal, and also to the letter to the Tribunal from the Respondent of 16th May 2003. The Applicant had read both letters with some care but did not understand what the First Respondent's defence was meant to be regarding acting improperly and dishonestly. The First Respondent had not addressed those issues.

63. The First Respondent had known what he was doing and had known it was wrong. A solicitor of 20 years' standing could not have acted by mistake or negligence in such a way and indeed the First Respondent had not claimed that.

64. In the submission of the Applicant, even taking into account the high burden of proof and accepting that the test in Twinsectra v. Yardley was higher than the objective test in Royal Brunei Airlines v. Tan, on the facts dishonesty was made out.

The Submissions on behalf of the Second Respondent

65. Everything the Applicant had said regarding dishonesty had been directed towards the First Respondent and not towards the Second Respondent. The Second Respondent had admitted the allegations against her which flowed from the activities of the First Respondent. The Second Respondent accepted that as a partner she had a joint responsibility for compliance with the Solicitors Accounts Rules. However, the Tribunal would be aware that the Second Respondent was before the Tribunal on a matter of strict liability. There was no moral or personal liability involved.

66. The Second Respondent did not seek to absolve herself from any responsibility she had to bear but it was difficult to see how any alert solicitor could have been aware of what was happening. This was not a case of a solicitor turning a blind eye as in the case of Weston. The Second Respondent had had no means of knowing what was

happening because of the way the First Respondent had concealed his activities. Her culpability was very different.

67. Solicitors were entitled to trust their partners. The First and Second Respondents had been in partnership for 16 years.

68. The Tribunal was asked to have sympathy with the Second Respondent. Any solicitor could find themselves in her position with a rogue partner whom they had hitherto trusted.

69. The Second Respondent found herself in the horrific position of appearing before the Tribunal in consequence of the improper activities of the First Respondent.

70. There was no suggestion that the Second Respondent had served her clients with anything other than integrity and diligence.

71. The Second Respondent practised in family and criminal law. She was a Deputy District Judge and a Chairman in the Appeals Service. She had properly notified the Lord Chancellor's Department of the proceedings and was suspended pending the outcome of those proceedings. It was hoped that following the outcome of the proceedings the suspension would be reviewed and the Second Respondent would be able to continue with her duties. It was hoped that the Tribunal would express support for her in that regard.

72. The impact of the intervention had been catastrophic. The Second Respondent's Practising Certificate had been suspended, although it had subsequently been reinstated with conditions regarding approved employment or partnership. She was currently employed by Messrs Holland & Co. in approved employment.

73. There had also been a financial impact relating to the firm's overdraft, professional indemnity insurance and the intervention costs together with the Second Respondent's loss of capital and profit in the firm. Because of the activities of the First Respondent the Second Respondent was having to deal with the financial and other consequences. The Tribunal might feel that it was unfortunate that the Second Respondent was before them.

74. Regarding penalty, the Tribunal was asked to note that no dishonesty was alleged against the Second Respondent and her personal culpability was very different from that of the First Respondent. She had only benefited because of the transfers the First Respondent had made to the office account. There were character references before the Tribunal which spoke very highly of the Second Respondent who had a great deal to offer to clients, the profession and the judiciary. There had been a great impact on the Second Respondent in relation to her position as a solicitor and her judicial appointments.

75. Penalties imposed by the Tribunal were both punishments for breaches of Rules and intended to maintain the reputation of the profession. The Tribunal might feel that while it was necessary that some penalty be imposed on the Second Respondent this should be towards the very bottom of the scale and it was suggested that justice might be done by way of a reprimand.

76. Information was given to the Tribunal regarding the Second Respondent's health.

77. It was hoped that the Second Respondent would be able to put this matter behind her and continue as a solicitor. Appearing before the Tribunal was highly embarrassing for the Second Respondent as was the local publicity which would follow.

78. In relation to the Applicant's costs and having regard to the reason that the Second Respondent was before the Tribunal, the Tribunal was asked to consider that an appropriate Order would be no Order for costs to be paid by the Second Respondent. The burden of costs should fall on the First Respondent.

79. The Tribunal was referred to the reference from the Regional Chairman of the Appeals Service who had said:-

> "Speaking personally…. I would welcome her return to chairing Tribunals if that eventually proves possible".

80. The Second Respondent was very much in the hands of the Tribunal as to whether a return to her judicial duties would be possible.

Oral evidence of Ian Holland

81. Mr Holland gave evidence in support of the Respondent. He had known her for 20 years as an opponent from a rival firm, as a friend and as an employee.

82. He spoke of her abilities as a solicitor and of her charitable activities.

83. He had been very surprised at the intervention and could not believe that the Second Respondent could have been involved in any element of dishonesty. He had entirely accepted her explanation that she had been in no way dishonest and had obtained consent from The Law Society to employ her. Her time as his employee had reaffirmed his high opinion of her.

The Submissions of the First Respondent

84. The Submissions of the First Respondent were contained in his letter to the Tribunal of 16th May 2003 and by reference in his solicitor's letter of 16th October 2001.

85. The First Respondent accepted the breaches of the Accounts Rules but denied any impropriety or dishonesty and said there had been no personal gain.

86. The First Respondent made a number of points relating to the matters set out in the Report of the Investigation Officer. He also spoke of the effect on him of the intervention which he said had had horrendous consequences.

87. He concluded by saying that he had already been severely punished whatever the finding and order of the Tribunal and said that he wished to resign and be removed from the Roll of Solicitors on the grounds of ill health.

The Findings of the Tribunal

The Second Respondent

88. The Second Respondent had admitted the allegations and the Tribunal found them substantiated. No allegation of dishonesty had been made against the Second Respondent and the Tribunal was satisfied that there had been no dishonesty on her part.

The First Respondent

89. The First Respondent had admitted the allegations but denied any impropriety or dishonesty. The Tribunal had considered with great care the points made both in the Respondent's own letter of 16th May 2003 and his solicitor's letter of 16th October 2001. The explanations given, however, did not satisfactorily explain why clients' money had been paid into the Respondent's personal accounts nor why money had been used from one estate to meet a bequest from another estate. The First Respondent had put forward no evidence from any members of the families involved to confirm his explanations. The appropriate test was the combined test set out in the case of Twinsectra v. Yardley and the Tribunal was satisfied from the documentation before it that dishonesty was proved to the high standard required. The Respondent had been a solicitor of many years' experience who had pursued a course of dishonest conduct in relation to clients' funds.

Previous appearance of the First Respondent before the Tribunal on 4th May 2000

90. At a hearing on 4th May 2000 the following allegation was substantiated against the First Respondent namely that he had been guilty of conduct unbefitting a solicitor in that he failed to disclose material information to various building societies and banks for whom he was acting.

91. The Tribunal on 4th May 2000 considered that the matter was at the lower end of the scale but also wished to make clear to the Respondent the importance of the profession's duties to lender clients and the requirement scrupulously to carry out their instructions. The Tribunal ordered that the Respondent pay a fine of £250 together with the costs of the Applicant.

92. At the hearing on 20th May 2003 serious allegations including an allegation of dishonesty in relation to clients' funds had been substantiated against the First Respondent. Clients' funds were sacrosanct and it was essential that the public could have confidence that funds entrusted to solicitors were absolutely safe. Solicitors who dishonestly used clients' funds could not expect to remain as members of the profession. The appropriate penalty would be the removal of the Respondent's name from the Roll of Solicitors.

93. In relation to the Second Respondent, the Tribunal had found no dishonesty. She had come before the Tribunal to face her responsibility for the actions of her former partner. The allegations had been made against her because of the strict Rules of liability. There were other solicitors who had found themselves in her position being totally unaware of what was being done by another partner in their practice.

Sometimes that lack of awareness arose from ignorance, sometimes from a solicitor being too busy, sometimes because a solicitor could not be bothered. In this case, however, the Second Respondent had been the victim of a partner, whom the Tribunal had now struck off the Roll, whose activities were such that the Applicant had said that they were difficult to detect and that it would have required great skill to find out what was happening. It was significant that the firm's own reporting accountants had not picked up the First Respondent's defalcations. Although the First Respondent had appeared before the Tribunal previously in May 2000, he had been dealt with leniently and the matter had not involved financial concerns so nothing in that decision would have put the Second Respondent on notice. She had been entitled to rely on the integrity of her partner. In the opinion of the Tribunal, the Second Respondent was blameless in this matter. The decision regarding the Second Respondent's future in her judicial posts was a matter for others but the Tribunal was happy to indicate its support for the Second Respondent in that regard. In the exceptional circumstances of this case the Tribunal considered that it was appropriate to make no order in respect of the Second Respondent and no order for costs to be paid by the Second Respondent. The burden of the Applicant's costs must fall on the person responsible for the proceedings, namely the First Respondent.

94. The Tribunal ordered that the Respondent Philip Thomas Pressler of Whittlestone Head, Nr Darwen, Lancashire, 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 £7,005.93.

DATED this 7th day of July 2003
on behalf of the Tribunal

A Gaynor-Smith
Chairman