No. 8961-2003

IN THE MATTER OF PAUL VAUGHAN NEWBERRY, solicitor

- AND –

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr A Gaynor-Smith (in the chair)
Mr A G Gibson
Mr G Fisher

Date of Hearing: 3rd August 2004

FINDINGS

of the Solicitors' Disciplinary Tribunal
Constituted under the Solicitors' Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors (the "OSS") by Geoffrey Williams of Queen's Counsel solicitor and partner in the firm of Geoffrey Williams & Christopher Green, Solicitor Advocates, of 2A Churchill Way, Cardiff CF1 4DW on 15th December 2003 that Paul Vaughan Newberry whose address for service was 92 Hall Lane, Upminster, Essex (now of Risebridge Road, Romford) 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 each of the following respects namely:-

(a) That he failed to maintain properly written books of account contrary to Rule 11 Solicitors Accounts Rules 1991 and Rule 32 Solicitors Accounts Rules 1998.

(b) That he drew monies out of a client account otherwise than as permitted by Rules 7 and 8 Solicitors Accounts Rules 1991 and Rule 22 Solicitors Accounts Rules 1998.

(c) That he used the funds of one party for the purposes of another party being his client.

(d) That he failed to take proper steps to verify the identity and bona fides of his clients in connection with instructions to act in investment schemes.

(e) That he acted for parties in investment schemes notwithstanding the fact that they bore the hallmarks of fraudulent transactions.

(f) That he acted improperly in a conflict of interest situation.

(g) That he failed adequately to protect funds received by him into his client bank account.

(h) That he allowed his client bank account to be utilised purely to enable clients to pay money in and have monies paid out there being no underlying transactions.

The application was heard at the Court Room 3rd Floor Gate House, 1 Farringdon Street, London EC4M 7NS on 3rd August 2004 when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr A C Smith.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Paul Vaughan Newberry of Risebridge Road, Romford, (formerly of 92 Hall Lane, Upminster, Essex) solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,222.73.

The facts are set out in paragraphs 1 to 44 hereunder:-

1. The Respondent born in 1951 was admitted a solicitor in 1988 and his name remained on the Roll of Solicitors.

2. At all material times the Respondent carried on practice as a solicitor on his own account under the style of Newberry & Co., at 92/94 Hall Lane, Upminster, Essex RM14 1AQ. Such practice ceased in January 2003 upon intervention by The Law Society.

3. Upon notice duly given to the Respondent an inspection of his books of account was carried out by Mr A Smith of the Forensic Investigation Unit ("FIU") of the OSS. A copy of the resulting Report dated 23rd December 2002 was before the Tribunal. The Report noted the matters set out below.

4. The Inspection commenced on 19th November 2001. Following the commencement of the inspection Mr Smith identified that Mr Newberry had not maintained proper books and records (paragraphs 8 and 9 below).

5. In addition Mr Smith identified that the Respondent had acted as a stakeholder in respect of fiduciary bank account transactions connected with a company known as MM SPRL (paragraphs 17 to 44 below). The inspection was suspended on 27th November 2001 so that Mr Smith could undertake a more in depth review of the MM files.

6. The files were subsequently required by the police and the Respondent was arrested on 20th June 2002 on suspicion of money laundering and charged with money laundering offences. The Respondent was subsequently acquitted.

7. Mr Smith resumed the inspection on 7th November 2002 and identified that the Respondent had still not maintained proper books and records (paragraphs 16 below).

8. At the initial interview the Respondent had said that the books and records of the firm were up to date. Mr Smith undertook a review of the books and records of the firm and he ascertained that they were not up to date in that they were not in compliance with the Solicitors' Accounts Rules as numerous receipts and payments appearing in the client bank accounts had not been entered into the clients' ledger.

9. The books and records were then written up and reconciled to 15th November 2001. The clients' ledger reflected the following position:-

   (i) clients' monies had been improperly transferred by the Respondent to the firm's office bank account.

   (ii) an overdrawn position existed in respect of seven individual client ledger accounts.

   This had led to a cash shortage on client account of £6,070.48.

Improper Transfer

10. Mr Smith identified that the Respondent had on 1st October 2001 issued a client bank account cheque for £3,000 made payable to Newberry & Co., and deposited it into the office bank account on the same day. The transaction had not been entered on any individual client ledger account. The Respondent said he had undertaken this transaction only after he had identified costs to be taken from two client matters namely Mrs B and W deceased. The Respondent said that he had neither agreed fees with those clients nor had he rendered bills of costs prior to undertaking the transfer.

11. The Report noted that at the commencement of business on 1st October 2001 the office bank account was overdrawn by £2,549.20. Its overdraft facility was £2,500. The client bank account cheque of £3,000 had been banked on 1st October 2001 and the term "loan to co" had been written against this credit of £3,000.

12. The book keeper confirmed to Mr Smith that the Respondent had informed her of the nature of the transaction and that following this she had written the narrative "loan to co" on the bank statement.

13. The Report noted that included in the office bank account payments on 1st October 2001 had been an office bank account cheque for £2,500 for which the relevant cheque stub said "PVN Dwgs" (PV Newberry drawings). The Respondent had agreed that he had improperly transferred £3,000 from client to office bank account in order to provide adequate funds to cover his personal drawings of £2,500.

14. Following the matter being raised by Mr Smith the Respondent prepared and rendered bills of costs to the executor of W deceased for £659.46 and to Mrs B for £2,350. The executor accepted his bill but Mrs B challenged her bill as being excessive.

15. The Respondent said that he had agreed to reduce his charges to Mrs B and had drawn a client account cheque in the sum of £1,292.50 on 7th December 2001 to refund Mrs B. As he did not have sufficient funds on that date in client bank account to honour the cheque he had undertaken a transfer by cheque of that sum from office to client bank account on the same date. The Report noted however that the firm's bankers had not been prepared to honour the office bank account cheque until 17th December 2001 and the client bank account in respect of Mrs B had therefore been overdrawn for the period from 7th to 17th December 2001.

16. Mr Smith resumed the inspection on 7th October 2002 and identified that as at 30th September 2002 proper books and records of the firm had not been maintained. At that date there existed a shortage on the client bank account reconciliation of £253,358.65. Inspection was suspended again to enable the Respondent to reconcile the position and was resumed on 14th October 2002. Following additional reconciliation work the Report noted that as at 30th September 2002 a continuing shortage of £1,723.44 was in existence. The Respondent had attributed this to incorrect book keeping but pending full reconciliation the Respondent transferred the sum of £1,723.44 from office to client bank account.

<u>Fiduciary Transactions associated with the Provision of Bank Guarantees</u>

17. On 21st October 2002 the Respondent told Mr Smith that following instructions from Mr S (on whose behalf he had first acted about 8 yrs previously in a conveyancing transaction) he had acted as stakeholder in two fiduciary transactions in June/July 2000. The transactions had required him merely to receive monies and disburse the same in accordance with Mr S's instructions. Details were set out in paragraph 46 of the Report.

18. The Respondent said that he had neither undertaken any checks on Mr S nor had he questioned Mr S as to the source of the US Dollars. He added that he had not doubted Mr S in this matter. His fees for the two transactions had been £821.78.

19. The Respondent said that Mr S had introduced him to a company known as MM SPRL with an address in Belgium and that he had commenced acting for MM on 26th January 2001. Mr S had informed the Respondent that MM was a subsidiary of HSBC and the Respondent had said that he believed therefore that the company was a bona fide subsidiary of HSBC. Mr S told the Respondent that he should deal with a Mr GT, a Director of MM.

20. The Respondent confirmed that he had not undertaken any checks on the company nor any enquiries with regards to the offices of the company nor the registered office of the company nor any enquiries with HSBC. He confirmed that nevertheless he had taken instructions from Mr GT and from a Mr R, the European Manager of the company, who had sent by fax the original letter of instructions.

21. The Respondent had said that Mr S had told him of the nature of the work undertaken by MM namely:-

    (i) MM specialised in 'Off-Balance Sheet' activities.

    (ii) this Off-Balance Sheet work was not normally undertaken within banking parameters.

    (iii) the Off-Balance Sheet work involved MM organising Bank Guarantees and Business Finance. This, he added, involved organising 'the placing of Bank Guarantees' in order that clients, who had not met the normal lending criteria of HSBC, could obtain loan finance from (the Respondent assumed) other commercial institutions.

22. The Respondent said that Mr S had told him that the reason why Newberry & Co. had been approached to handle these transactions for MM was that, being Off-Balance Sheet transactions, if a City (of London) firm of solicitors had been involved, the sensitive nature of the transactions may have become known and, as a consequence, thwart the transaction itself.

23. The Respondent said that he had believed what Mr S had told him and, when considering the possibility of 'insider dealings', he had thought that there was merit in requesting solicitors outside of the City to act in these transactions.

24. The Respondent said that, in commencing to act in this matter, he had not issued MM with a Letter of Engagement and, as a consequence, he agreed that he had not complied with the relevant Practice Rules of the Law Society.

25. The Respondent said that the essence of his involvement was that he merely "received and dispensed monies". His sole undertaking had been to hold monies on behalf of MM and to disperse the same in accordance with their instructions or those of their Agent, Mr S.

26. The Respondent had been told by Mr S he would be paid City of London rates for undertaking the work and added that he had undertaken little work for the fees he had received. He had taken his fees from monies he received from MM.

27. The Respondent confirmed that he was familiar with The Law Society's Guidelines and warning cards in relation to money laundering and banking instrument fraud.

28. The Respondent had undertaken three fiduciary transactions on behalf of MM during 2001. These related to the firm transacting the following receipts:-

    (i) Receipt of US$304,000.00 on 5th February 2001.

    (ii) Receipt of Bank Draft for Euros 537,634.00 on 20th February, 2001

    (iii) Receipt of £700,987.08 on 5th June 2001.

    Details of the transactions were set out in the Report at paragraphs 75 to 97.

29. For the first transaction the Respondent was paid the sum of £7,500, for the second transaction his fee was £10,000 and for the third transaction his fee was £18,874.41.

30. In the first transaction the Respondent's instructions were to convert the sum of US$304.000 to £s Sterling, to retain his charges and to transfer the balance of monies to H Ltd.

31. In the second transaction the Respondent was instructed to deposit a bankers draft drawn in favour of "MM Bank" in the sum of Euros 537,634 into the Respondent's client account and hold the proceeds to the order of MM.

32. The Respondent said that in accordance with those instructions he had deposited the bank draft into his firm's client bank account for clearance even though the draft was not in favour of Newberry & Co., solicitors.

33. He had received further instructions to convert the Euros to Sterling, to retain £46,000 "for this transaction", to retain his fees and to transfer the balance to H Ltd.

34. He had subsequently received instructions by fax from Mr S to disperse the required sum to H Ltd. In undertaking Mr S's instructions the Respondent allowed the client bank account to become overdrawn by £21,112.67. The Respondent said that this had arisen as a result of him being misinformed by his bankers as to the quantum of monies received in the conversion to £s Sterling. The Respondent said that the bank had granted him an interest free short term loan in order to replace the shortfall until such time as he could reconcile the position with MM. The Respondent did not show Mr S any correspondence from the bank to support this statement. The Respondent also said that while he had used utilised the loan facility he had not replaced the shortage on client bank account. He agreed that in consequence he had been in breach of the Solicitors Accounts Rules.

35. The shortage had been replaced by the Respondent from funds he had received from MM in respect of the third fiduciary transaction on 5th June 2001 on which date he had also taken his costs in respect of the second transaction.

36. The Respondent explained to Mr S the nature of the third transaction in which he said he acted for MM who in turn acted for a company known as MGC.

37. From the client matter file of MGC, Mr S identified and summarised in his Reports various documents relating the transaction.

38. Included in the documents was a letter dated 9th May 2001 addressed to "to whom it may concern" which had been issued by the Respondent by fax. The letter stated inter alia that:-

    (i) 'we (the firm) act on behalf of MM SPRL in respect of that company's transactions'.

    (ii) 'we would advise that our banking details are as follows and any transactions should be marked reference MM (details of the bank's address, sort code number and Solicitors Client Reserve Account number were outlined).

    (iii) 'If we can be of any further assistance please do not hesitate to contact us'.

39. The file also contained a joint Venture Agreement dated 10th May 2001 signed by Mr W on behalf of MGC and Mr GM on behalf of MM. The agreement stated inter alia that:-

(i) MM shall provide a 'Blocked Funds Confirmation' in the name of MGC for an amount of US$200 million to be exclusively used for the purchase and sale of 'Medium Term Notes, with a ten-year and one day maturity'.

(ii) MGC Limited shall place US$1,000.000.00 in an Escrow account, and that these funds shall be transferred to the Client Reserve Account of Mr Paul Newberry of Newberry & Co,. Solicitors (with the firm's bank co-ordinates being stated).

(iii) Mr Newberry shall hold in trust US$300,000.00 on behalf of MM and MGC as a fee for arranging a 'Blocked Funds' confirmation from a reputable and acceptable bank evidencing the parties to the Agreement.

(iv) Mr Newberry's agreed fees shall be 2.5% of the balance of funds and that following this, the resulting balance shall be used by MGC to fund a transaction with the 'Union Bank of Switzerland' whereby the Union Bank shall provide, at least, US$7,850,000,000.00 (US$7.8 billion) in Medium Term Notes for purchase and sale by MGC.

(v) Mr Newberry, notwithstanding that he represents MM, shall also jointly represent MGC and MM in this matter.

40. The Report set out a sequence of letters of instruction to the Respondent variously from Mr W, Mr GT and Mr S.

41. The Respondent having received and disbursed of monies on 5th June 2001, the file contained further correspondence giving rise to concern that the Respondent might not have complied with instructions in the matter. These included a letter dated 11th June 2001 from Mr W to the Respondent stating that it was the Respondent's "responsibility to protect these funds" and stating that:-

> "My (Mr W's) solicitors here in England are satisfied at this point that the funds will be recovered through the Reserve Fund maintained by The Law Society if not through NatWest. Your personal bond, according to The Law Society will not support this type of loss".

42. A letter of 14th June 2001 from Mr GT to Mr W made reference to purported "irregular", practices by supposedly legitimate bodies and persons against MM and Mr GT.

43. A further letter dated 22nd June 2001 from Gregory J Schwartz, a purported Law Firm in the United States, required the Respondent to account for the monies which he had received from MGC. The file also contained letters from the Respondent outlining his position.

44. On 21st October 2002 the Respondent told Mr Smith that the matter remained outstanding.

The Submissions of the Applicant

45. The Respondent had denied the allegations. Through his solicitors he had indicated that he would not be attending and would not be represented. In his letter of 28th July 2004 to the Tribunal the Respondent had sought the voluntary removal of his name from the Roll. While this was not a matter for the Tribunal the Tribunal was asked to

note that the Respondent had previously sought voluntary removal from the Roll, this had been granted in error and had been nullified.

46. The Respondent had been acquitted of the criminal charges and the Applicant did not allege criminality. The Applicant did however allege dishonesty on the part of the Respondent.

47. On both of Mr Smith's inspection visits he had identified a failure by the Respondent to write up his books of account.

48. In relation to the improper transfer in the sum of £3,000 the Applicant alleged that the Respondent had behaved dishonestly. He knew that he had not carried out the proper steps to facilitate the transfer of this sum from client account to office account. The transfer was for the purpose of covering the Respondent's cheque for drawings which he knew would not otherwise have cleared. The Respondent had tried to put the matter right by issuing two bills but one client challenged it. The Applicant relied on the test for dishonesty in the case of Twinsectra v Yardley.

49. The Applicant further alleged dishonesty in relation to the shortage which had arisen on client account in relation to the second fiduciary transaction. The Respondent had had funds from his bank to replace a client account shortage but he had used those funds for some other purpose so the shortage had continued for four months. This would inevitably have led to teaming and lading.

50. In relation to the third transaction the Tribunal was referred to paragraph 95 of the Report where the relevant client account ledger showed that the balance had been reduced to nil on 5th June 2001 but four days later the Respondent had paid out two sums of £5,000. This had been rectified shortly afterwards but in the submission of the Applicant the Respondent's conduct was dishonest as he must have known there was nothing available on the client ledger to pay the sum of £10,000 having zeroed off the ledger on 5th June by taking his costs.

51. In relation to the fiduciary transactions the Tribunal was asked to note that this was a small conveyancing practice. The Respondent had been a facilitator of the schemes, which required a solicitor. The Respondent was not experienced in dealing with investment schemes of this type. It was typical of such schemes that those indulging in them would pick on a small firm of solicitors without the relevant expertise. The schemes were not intended to be understood. The consequences were dire and the Respondent had been well aware of The Law Society warnings. He had become ensnared in the transactions.

52. Mr Smith confirmed in his evidence that this was the usual pattern of three transactions where the first went smoothly. The second transaction was more difficult and the solicitor could not get his costs. SO was drawn into the third transaction. The third transaction was the one where the money went.

53. The Respondent had failed to question the source of substantial sums he was to receive into his client account, had failed to carry out any checks with respect to MM, had failed to issue any client care letter to MM and proceeded with knowledge of The Law Society warnings.

54. Being aware of the professional guidance it would be apparent to the Respondent that the transactions in which he was instructed involved several of the characteristics pointing towards fraudulent transactions, namely:-

(a) the sums involved

(b) the fact that in the first transaction on 5th February 2001 the Respondent was paid the sum of £7,500 simply for essentially providing banking services involving very little work.

(c) the same scenario applied in relation to the second transaction with a fee of £10,000.

(d) the fact that the Respondent was instructed to issue an un-addressed letter giving details of his client account.

(e) the reference in the joint Venture Agreement to (i) US$200,000,000 (ii) the reference to US$1,000.000.00 (iii) the reference to transfer by "SWIFT", (iv) the reference to US$7,850,000.000.00.

(f) the use of different note paper by GT the purported Director of MM.

(g) the same fee scenario with respect to the third transaction with a fee of £18,874.41.

55. It was submitted that the Respondent should have had nothing whatsoever to do with the instructions. At the very least he was on clear notice of matters requiring investigation and ethical advice before proceedings. Solicitors were under a duty to conduct only work which they could properly discharge.

56. The third transaction had led the Respondent into a dire conflict of interest. Clearly the Respondent had acted for both MM and MGC and opened a client file for MGC. He should not have acted for both for the following reasons:-

(a) The Joint Venture Agreement which was on the Respondent's file revealed that MGC was producing a substantial sum which MM was going to utilise and benefit from;

(b) That benefit was in the sum of $300,000 being 30% of the amount put in by MGC by way of a fee and a further 33.33% of the profit;

(c) The Joint Venture Agreement bore several of the hallmarks of fraud.

57. In such circumstances the Respondent was not in a position to do his best for both of his clients. MGC was investing £1,000.000. One third of it (approximately) was to be MM's fee. MM was to apply the balance towards a scheme which was on the face of it unreal. If at the outset the Respondent was unaware of the terms of the Joint Venture Agreement then the proper taking of instructions would have apprised him of the position.

58. The practical consequences of the conflict were demonstrated by the way in which the matter proceeded:-

(a) Mr GT gave the Respondent two different sets of instructions with respect to the initial payment out of the MGC funds;

(b) Under the Joint Venture Agreement the balance was to be paid out at the direction of Mr W of MCG;

(c) However on 4th June Mr GT directed the Respondent to take further instructions from Mr S who represented MM;

(d) The Respondent proceeded as directed by Mr S;

(e) Those transactions took place on 5th June 2001. On the same day the Respondent was visited by Mr W and another from MGC. Later on in that day Mr W faxed the Respondent giving instructions as to the payment out of the funds from client account;

(f) Those instructions were completely different from those given by GT;

(g) By the time they were received the monies had already been paid out on Mr S's instructions;

(h) On 8th June 2001 Mr W gave further and different instructions;

(i) On the same day GT gave the Respondent still further conflicting instructions;

(j) On 11th June 2001 Mr W wrote to the Respondent expressing concerns;

(k) There was a dispute between MM and MGC;

(l) The Respondent came under pressure from both MM and MGC. The Respondent reacted by stating that he acted only for MM. However by that time he had received the Joint Venture Agreement and he had a file open in the name of MGC.

Had the dual instructions been declined then this whole scenario could and would have been avoided.

59. In relation to allegation (g) the Applicant submitted that:-

Regardless of the status of MGC the Respondent having received the funds into his client account had a duty to ensure that they were either preserved earning interest or paid out only against proper verified bona fide instructions from a party properly able to give those instructions. The Respondent failed in such duty. In the event both MM and MGC claimed to have lost at the Respondent's hands.

60. The Respondent had behaved dishonestly in relation to allegations (b) and (c) and the investments schemes.

61. The Applicant sought costs including the cost of the Investigation Accountant in the total sum of £14,222.73.

The Oral Evidence of Mr Adrian Christopher Smith

62. Mr Smith, Forensic Investigation Officer confirmed that his Report was true and accurate on the information and documents presented to him during the inspection. The various appendices to his Report had been uplifted during his inspection visits.

63. The Respondent had confirmed to Mr Smith that the £3,000 transfer was to cover his drawings.

64. Mr Smith adopted the comments of the Applicant in relation to the fiduciary transactions. Mr Smith had seen a number of such transactions. Fraudsters would first find a sole practitioner and test the water to see if the firm was financially sound. Sometime in the future they would come back with a very easy transaction for which the solicitor was paid a relatively large fee. They would then return with a slightly more difficult transaction for which the solicitor would get a higher fee for some work, this would be followed by a transaction where the solicitor did not get his fees when the transaction cleared but was told he would get his fees the next time.

65. The third time there would be a matter of serious conflict which a solicitor could not adequately explain and the fraudsters would then make claims against The Law Society.

66. Mr Smith had felt that the Respondent had felt he was under intimidation to pay £10,000 to his client. The situation was messy and unpleasant.

67. The "victims" in such schemes were themselves fraudsters who were prepared to lose a proportion of the monies in fees and commissions. A lot of payments in such schemes went to casinos in this country to enable fraudsters to draw it out through sister casinos abroad.

68. In Mr Smiths opinion the Respondent had believed the Joint Venture Agreement but Mr Smith had never seen such a contract come to fruition.

The Findings of the Tribunal

69. The Tribunal considered carefully the documentation before it as confirmed in the oral evidence of Mr Smith. On the basis of the documents the Tribunal found the allegations proved. The Tribunal considered the issue of dishonesty, applying the test set out in Twinsectra v Yardley.

70. The Respondent had admitted to Mr Smith that he had transferred the £3,000 from client to office account in order to ensure that his drawings cheque cleared. This had been an improper transfer knowingly undertaken by the Respondent and the Tribunal was satisfied that the Respondent's conduct had been dishonest. The transfer had been made before bills had been sent to the client. When the bills had been sent one of the clients had queried the bills which had been reduced. The purpose of the Rules was to protect clients' interests and the Respondent had knowingly disregarded this.

71. The Tribunal was also satisfied that the Respondent had been dishonest in relation to the client account shortage which had arisen in the course of the second fiduciary transaction. The Respondent had been aware of the shortage and indeed received funds from the bank to cover it but had used those funds for other purposes. Likewise in relation to the third transaction the Respondent had knowingly paid out a further £10,000 from the client account when the client account balance had been reduced to nil. This inevitably meant that the Respondent had used funds belonging to other clients to make the payment and this behaviour was dishonest.

72. The Respondent's misconduct in relation to the fiduciary transactions was extremely serious. The purpose of The Law Society warnings was precisely to prevent such situations arising and the Respondent had admitted that he was aware of the warnings. The nature of the transactions clearly indicated the possibility of fraudulent transactions. The Respondent had been paid substantial fees for allowing money to pass through his client account. He had then allowed himself to be persuaded to act in a situation where there was a high possibility of a conflict of interest.

73. Conduct of this nature put the public at risk and severely damaged the reputation of the profession. The Respondent had been dishonest. In those circumstances it was right that the Respondent's name be Struck Off the Roll of Solicitors.

74. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Paul Vaughan Newberry of Risebridge Road, Romford, (formerly of 92 Hall Lane, Upminster, Essex) solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,222.73.

DATED this 21st day of October 2004

on behalf of the Tribunal

A Gaynor-Smith
Chairman