No. 9025-2004

IN THE MATTER OF RICHARD PAUL BURNETT, solicitor

- AND –

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. S. N. Jones (in the chair)
Mr L. N. Gilford
Lady Maxwell-Hyslop

Date of Hearing: 11th November 2004

FINDINGS

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

An application was duly made on behalf of the Law Society by Inderjit Singh Johal Barrister employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 5th May 2004 that Richard Paul Burnett of Galmpton, Brixam, Devon, might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation was that the Respondent had been guilty of conduct unbefitting a solicitor in that he submitted false and/or inflated expenses and overtime claim forms to Allen & Partners whilst in their employ thereby compromising and impairing his integrity and his good repute contrary to Rule 1 of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jonathan Richard Goodwin solicitor advocate of 17e Telford Court, Dunkirk Lee, Chester Gates, Chester, CH1 6LT appeared for the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent as to the facts and the allegation, although he denied that he had been dishonest. Miss Pre, a Senior Investigation Officer for the Law Society gave oral evidence and Susan Margaret Allen, part-

time human resources administrative manager at the firm of Allen & Partners gave oral evidence. The Respondent addressed the Tribunal.

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

The Tribunal Orders that the Respondent, Richard Paul Burnett of Hitchin, Hertfordshire, (formerly of Galmpton, Brixam, Devon,), 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 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 25 hereunder:-

1. The Respondent, born in 1955, was admitted as a solicitor in 2000. The Respondent had been employed as a trainee solicitor from September 1998 until November 2000 and thereafter as an assistant solicitor at Allen & Partners, 5 Portland Square, Bristol, BS2 8RR. The Respondent resigned on 15th September 2001. Subsequently the Respondent was a partner at Roger Richards Solicitors, of 10 Churston Broadway, Dartmouth Road, Paignton, Devon, TQ4 6LE but he had subsequently resigned from that position.

2. The Forensic Investigation Unit ("FIU") of the Law Society carried out an inspection of Allen & Partner's books of account commencing on 10th October 2001. A copy of the FIU Report dated 30th August 2002 was before the Tribunal.

3. The Report demonstrated that Susan Allen, the administrator of the practice checked Allen & Partners office monthly timesheets. The firm's practice was to carry out spot checks from time to time. She discovered in 2001 that the Respondent had submitted inflated claims for March to July 2001 relating to his overtime, mileage and telephone calls. His monthly expenses and overtime claim forms did not tally with his original attendance notes which were completed on "initial instruction" forms or Legal Services Commission claim forms.

4. The firm estimated that the Respondent had over claimed on averaged £700 per month from March to July 2001.

5. Copies of schedules from March 2001 to July 2001 prepared by the firm were before the Tribunal. The schedules documented the Respondent's mileage, telephone calls and overtime claimed in his monthly expenses and overtime claim forms and compared them with details he originally submitted on initial instruction forms and police station attendances recorded. The FIU Officer had audited the schedules and amended the figures where they failed to correlate with the completed forms.

7. The following seven examples of claims made by the Respondent were before the Tribunal.

   A. Re: Mr L – 5/3/01

. The Respondent attended on Mr L at Weston Super Mare police station and completed an initial instruction form. The form indicated that he attended on Mr L for 54 minutes and he made no reference travelling or mileage. He commented that solicitor "was first in with Mr L". Having recorded the above the Respondent subsequently claimed 180 minutes overtime and 64 miles travelling on his expenses and overtime claim form submitted to his firm.

B. Mr S – 12/3/01
The Respondent claimed that he attended on Mr S at Newport police station. He claimed 240 minutes overtime, two advice calls and 76 miles travelling on his expenses and overtime claim form. Allen and Partners had been unable to find any initial instruction form or any other documentation to support the claim.

C. Mr M – 24/3/01
The Respondent claimed that he attended on Mr M at Bath Magistrates Court. He claimed 270 minutes overtime, one advice call and 48 miles travelling on his expenses and overtime claim form. Allen & Partners were unable to find any Court attendance form or any other documentation supporting the claim. The firm did find a Court attendance form for another fee earner dated 22nd March 2001, indicating that he was in attendance at the North Avon Magistrates Court when Mr M failed to attend.

D. Mr J – 9/4/01
The Respondent completed an initial instruction form re Mr J who was in custody at Southmead police station. The form indicated that the Respondent did not attend the police station and advised his client over the telephone. He claimed two routine calls and one advice call. There was no reference to mileage or overtime on the initial form having recorded the above. The Respondent claimed 150 minutes overtime, 14 miles travelling and two advice calls on his expenses and overtime claim forms submitted to his firm.

E. Mr W – 1/5/01
The Respondent visited his client at HMP Usk and was driven there and back by his client's father. This was recorded in his attendance note. He subsequently claimed 76 miles travelling in his expenses and overtime claim form.

F. Mr M – 22/5/01
Fee earner GXP attended on Mr M at Trinity Road police station on 22nd May 2001 and completed an initial instruction form. It appeared that the Respondent did not attend on the client on that date. The Respondent, nonetheless claimed, expenses for 16 miles travelling, two advice calls and 90 minutes overtime on his expenses and overtime claim form for attending on the client on 22nd May 2001.

G. Mr A – 13/6/01
The Respondent attended Winchester Crown Court on 13th June 2001 for the trial of Mr A. Fee earner EH attended on 14th June 2001 when the trial was adjourned to a date to be fixed. The Respondent nonetheless claimed 200 miles travelling per day to Winchester Crown Court on 14th,15th and 16th June 2001.

8. On 14th September 2001 Mr Allen, senior partner of Allen & Partners wrote to the Respondent suspending him and requesting him to attend an internal disciplinary hearing on 17th September 2001. Mr Allen particularised in that letter, categories of claims, which appeared to have been falsely made and/or inflated. Mr Allen made it clear that if the allegations were fully made out at the hearing, the Respondent's employment would be terminated. The disciplinary hearing did not take place as the Respondent resigned on 17th September 2001.

9. Mr Allen wrote again to the Respondent on 21st September 2001 in which he confirmed the details of a telephone conversation that he had had with the Respondent on the weekend prior to 17th September 2001. Mr Allen expected a written undertaking from the Respondent that he would not take up employment in any legal capacity whatsoever in Somerset and Gloucestershire. Mr Allen also stated that, having seen the amount of overtime claimed by the Respondent in the previous two years the amount claimed falsely could have been in excess of £20,000. Mr Allen indicated that he was prepared to agree a figure of £15,000 by way of repayment. Mr Allen also indicated that he would be obliged to notify the Law Society of the circumstances.

10. The Respondent replied to the letter on 26th September 2001, expressing concern that the letters received from Mr Allen did not accord with agreement made over the telephone. The Respondent had "acknowledged substantial over-payment of expenses, inadequate record keeping and administration" and had agreed with Mr Allen to repaying in full "the monies inadvertently received". The Respondent considered that Mr Allen had "substantially overestimated the figures involved".

11. An agreement was drawn up between the Respondent and Mr Allen on 10th December 2001. In that agreement the Respondent accepted that he owed Allen & Partners the sum of £15,000 in respect of expenses and overtime incorrectly charged to Allen & Partners during his employment with the firm. The Respondent agreed to pay Allen & Partners £10,000 in full and final satisfaction.

12. In an interview with the FIU Officer, the Respondent said that his workload and heavy responsibilities affected his record keeping and caused his administration to be shambolic. He stated that at no time had he deliberately inflated his claims nor had he any intention to do this and nor was he aware at the time that his claims had been inflated. He said that it was only after he had seen the schedules prepared by the firm that he realised he had been claiming incorrectly.

13. The Respondent went on to say that when he completed his claim forms at the end of the month he would have done so by memory and inadequate records kept on bits of paper. As a result, there were problems. He accepted that the way that he had formulated his claims had been hopelessly inadequate but he said that he disputed substantially the over claim figure arrived at by the firm. He said that he checked the schedules prepared by the firm and in certain circumstances where the source documents had not been found he was sure that the claims could be supported. He accepted that he had no paperwork to support this contention. He suggested that the correct over claim could be in the region of £250 per month since December 2000. Finally the Respondent said that he had disputed the amount of the over claim with Mr Allen but agreed to pay £10,000 as he had been advised to do so and he did not want to prolong the debate.

14. On 29th August 2003 Mr JM Wright of Peter, Peter & Wright, the firm that advised the Respondent on the written settlement agreement, wrote a letter to the Law Society setting out the reasons why the Respondent had entered into the agreement. He said that the Respondent was under considerable pressure at the time and that Allen & Partners would have commenced proceedings against him had he not entered into the agreement. That would have involved the Respondent in incurring considerable expense, which he could not afford.

15. In response to the Respondent's comments in a letter of 20th December 2002 Mr Allen said that the Respondent's caseload was not exceptionally large and that it had been akin to that which he had pre-qualification. He was in a similar situation to other fee earners in the firm in terms of workload. He was a capable person who kept his files in excellent order with attendances properly recorded and everything in chronological order. Mr Allen could not see any reason why the Respondent's overtime claims should be shambolic. He was of the opinion that the Respondent had deliberately inflated his claims. Mr Allen said that it was impossible to complete claims forms 'from memory' and that it was a simple task to check the original police station claim forms to work out an overtime claim. Mr Allen was of the opinion that the Respondent's contention concerning the source documents was 'nonsense' as they did not lose original documents. Overtime was paid on trust. Unfortunately the firm failed to check overtime claims against original police station attendance forms as they trusted fee earners to do things properly.

16. On 12th December 2002 the Law Society sent a letter to the Respondent inviting his response to the FIU Report and various questions, including whether he accepted that he owed Allen & Partners £15,000 in respect of incorrectly charged expenses and overtime and whether he made false overtime/mileage/expense claims for the months of March to July 2001.

17. In his reply dated 31st December 2002 the Respondent reiterated that there was no bad faith or dishonesty on his part and that inadequate record keeping and lack of assertiveness caused the problems.

18. The Respondent went on to say that after three months he was told by Mr Allen to "round his expenses off" better to reflect what he was earning for the firm, as the firm was not in a position to increase the Respondent's wages. He said that the precise mechanics of the agreement were not discussed. As a result his expenses were submitted in increments of 30 minutes to 1 hour from that date. The Respondent stated that he knew Mr Allen would check and authorise every expense sheet, so any misunderstanding could be rectified. He went on to say that the agreement was revised after a few weeks when Mr Allen told him that he should not claim overtime unless it involved a particularly long day. This was in response to the Respondent's dealings with clients who were in distant prisons. The Respondent stated that he knew that the office manager regularly tested claims.

19. The Respondent again mentioned his workload, and said that it had "grown inexorably over time" and that his record keeping and family suffered as a consequence. He said that he was not provided with adequate supervision, something he had made the partners aware of, and was not assertive enough in insisting upon more support. He asserted that completion and submission of his expense claims was given too low a priority and they had been hurriedly prepared shortly before submission. He also mentioned that the culture at the firm included irregular practices and that there was a high level of staff-turnover, some of whom left in acrimonious circumstances.

20. The Respondent also indicated that he had disagreements with Mr Allen, which had a noticeable effect and led to their relationship deteriorating over time. The Respondent said that he took advice from a senior partner of another firm of solicitors who recommended the agreement with Allen & Partners despite having seen correspondence between he Respondent and Mr Allen in which the Respondent disputed the figure being even £10,000.

21. The Respondent felt that he could not seek alternative employment until the matter had been resolved

22. The Respondent accepted that he made incorrect claims but maintained that they were not done knowingly.

23. The Respondent said that advice calls which did not lead to a police station attendance were often not opened as files because they were of low value relative to the burden placed on an over stretched manual administration system.

24. The Respondent stated that none of the claims were made up and errors occurred purely as a consequence of administrative shortcomings.

25. Mr Allen by letter of 1st September 2003 to the Law Society refuted many of the Respondent's assertions. He specifically denied the existence of the "rounding up" agreement. He claimed that completion and submission of expense claims was not a low priority for the Respondent. He denied that he told the Respondent that travel was poorly remunerated and that he should only claim overtime if he worked a particularly long day. The Respondent's workload was not too great; he had as much paternity leave as he wanted. The firm was run professionally and efficiently and that his relationship with the Respondent had been cordial until he discovered his dishonest activities.

The Submissions of the Applicant

26. The Respondent admitted the allegation save that he did not admit that he had been dishonest. The case advanced by the Law Society was one involving dishonesty. Claims had been put forward by the Respondent for work that had not been done at all, disbursements claimed had been incorrect at a time when the Respondent had access to all source documents to enable him to submit accurate and true claims.

27. The Tribunal was invited to apply the dual test in the case of Twinsectra -v- Yardley [2002] UKHL 12. It was accepted that the Tribunal would have to apply the standard of being sure that a member of the public knowing all of the facts would conclude that what the Respondent did was dishonest and the Respondent himself at the time knew or ought to have known that what he was doing was dishonest and wrong. The public was entitled to expect solicitors to be of the highest integrity, probity and trustworthiness.

28. The Respondent's actions damaged his own good reputation and the good reputation of the solicitors' profession. The Respondent had in correspondence given an explanation. He said that he had been under pressure. His employer's response had been that his caseload was not particularly large.

29. The Respondent had said that pressure had led to disorder in the management of his clients' paperwork. His employer had said that the Respondent's files were kept in good order and he also considered that it would be impossible accurately to complete claims solely from memory. Reference would have to be made to the various records kept when completing a claim.

30. The Respondent said that he had been told that he should increase his overtime claims so that his income would reflect the volume of work undertaken by him. His employer denied that there had been any such agreement. It was also said that it was the Respondent's practice to submit his claims on a timely basis.

31. The explanation given by the Respondent to the FIU officer that his record keeping had been shambolic and completed after the event from scrappy bits of paper was not accepted by his employer.

32. The Respondent accepted that his claims were not as accurate as they should have been.

The Submissions of the Respondent

33. The Respondent said he had enjoyed an extremely uncomfortable time listening to the way the case had been put against him. He acknowledged that he had let down both himself and his profession. He accepted that a healthy majority of what the Tribunal had heard had been factually accurate. As a result of that the Respondent felt ashamed.

34. The Respondent's young son was suffering from mental problems and the Respondent was at the time of the hearing living upon incapacity benefit (his incapacity having been caused by an injury suffered some time earlier). In view of the events which had occurred the Respondent had returned his Practising Certificate and resigned his Law Society Membership at the end of March and the beginning of April 2004.

35. The Respondent said he had always tried to do his best but had not considered it appropriate to try to return to practice as a solicitor.

36. The Respondent accepted that he had made claims that were inaccurate by being inflated and he said that if the Tribunal ruled that he should be Struck Off the Roll he would have no argument with that decision.

37. The Respondent was anxious to show that his actions had not been that of a dishonest person. The hearing could have been dealt with in the Respondent's absence but he had considered it right to appear before the Tribunal to answer any questions which might be put to him.

38. In order to make a finding of dishonesty against the Respondent it was necessary that the Tribunal should find that he had a guilty mind.

39. The Respondent's workload had grown and he became sucked in to the practices of the firm which led him to adjust his own standards. At the time he was fresh to the legal profession having previously been a police officer.

40. The Respondent had accepted an offer of employment from Allen & Partners at a modest rate of pay with view to his being given a computer at the end of a particular case. Subsequently he was offered a training contract, again at a very modest salary.

41. The Respondent had been told that different rates were claimed by different members of staff at the firm. A particular member of the firm had been aggrieved by this. The agreement reached between the Respondent and Mr Allen had not been a figment of his imagination. Again he confirmed that he had been told to "round up" his claims. After that agreement every claim for time had been rounded up to 30 minutes or 1 hour.

42. The Respondent considered that the workload he had been expected to carry was disproportionate to his position in the firm.

43. The Respondent considered that he had not been well treated by the firm and, for instance, when he received a letter of 16th June 2000 telling him what his new salary was going to be it was said that this was "following our many recent discussions" when there had been no discussions at all.

44. The Respondent said he had not been able to take paternity leave when his son was born as another member of staff was at the same time on paternity leave and yet another member of staff was about to leave. He said he would have taken paternity leave if he could have done. He did not.

45. When the Respondent went on holiday in September 2001 he took away with him some sixty to seventy five audiotapes to which he had to listen in connection with a major case.

46. The Respondent was anxious that guilt should not be implied by his resignation.

47. The Respondent had reported this matter to the Law Society himself. He had spoken to the Ethics Department. In addition he had told his prospective new employers. The Respondent had waited for six months and had been advised by the member of the Solicitors Assistance Scheme whom he consulted that he was unlikely to hear anything more. Three months later the Law Society made its move.

48. The Respondent accepted culpability. He had been swept along and had been living in fools' paradise. He recognised that his legal career had come to an end but he was deeply concerned that he should not be stigmatised as a dishonest person because that would blight his life.

49. The Respondent had been of previously good character. The Tribunal was invited to take into account the letter addressed to the Tribunal by Roger Richards Solicitors dated 9th November 2004, the firm by whom the Respondent had been employed subsequent to his employment with Allen & Partners. In that letter it was confirmed that the Respondent had been open and frank about the dispute with his former employer, and the extant disciplinary proceedings. During the course of his practice the Respondent had dealt with clients well and had gained a good personal following. He succeeded in organising the firm's criminal department and relieved Mr Richards of Legal Services Commission franchising duties.

50. The Respondent's involvement with Mr Richard's firm corresponded with the implementation of a new criminal contract from the Criminal Defence Service. The firm secured a contract and passed its initial audit with flying colours. After the first practice audit some eighteen months later the firm's system and the Respondent's administration secured a "Class A" pass. The work of the criminal department quadrupled and the Respondent had been made a salaried partner.

51. Mr Richards pointed out that good quality criminal defence solicitors were hard to come by. The Respondent's removal from the practice left a gaping hole. The Respondent had also been a member of the local duty solicitor scheme.

52. During the course of his association with Mr Richards, the Respondent was responsible for claiming expenses and making payments on their Legal Aid budget. Mr Richards had no fears about his honesty or any unjustified expenses claimed by him.

53. Mr Richards said he found it hard to place any credence on allegations of fraudulent expense claims. It was his view that a proper system of accounting and management would make such claims virtually impossible. Mr Richards had no difficulty in accepting the Respondent's assurance that his expenses claims made whilst employed by Allen & Partners had made been made with the knowledge and agreement of his Principal.

54. Mr Richards said that his experience of the Respondent was that he was an industrious, trustworthy and competent lawyer. If he were able to practise Mr Richards would be happy to re-engage him. If the Respondent were to leave the profession it would lose an asset. If any untoward matters had been found then Mr Richards felt that those might have occurred because of a lack of supervision and training.

The Tribunal's Findings

55. The Tribunal found the allegation to have been substantiated, indeed it was not contested.

56. The Tribunal gave careful consideration to the representations made by both sides in connection with the allegation that the Respondent had adopted a dishonest course of conduct.

57. The Tribunal has noted that inflated claims had been made by the Respondent on what appeared to be a large number of occasions in respect of a number of different heads of expenditure claim. For instance he had "rounded up" the time spent on a case, he had charged travelling expenses when none had been incurred and he had claimed to have attended Court on an occasion when he had not.

58. The Tribunal makes no finding that inflated time claims had been authorised by the Respondent's employer.

59. As a solicitor the Respondent was aware that a solicitor is expected to act with the highest degree of probity, integrity and trustworthiness. Any claim which a solicitor knows is not accurate flies in the face of that requirement. Even if the claims were "rounded" by an agreement which the Tribunal does not find to be the case this does not absolve the solicitor from this duty. It is also noteworthy that the claims operated to the financial benefit of the Respondent. Claims would not only have to be met by his employers but might well have been carried through to claims made up the Legal Aid Fund where solicitors were in a particular position of trust having access to public funds. Alternatively such claims might wrongly have been passed onto private clients.

60. The Tribunal concludes and has no doubt that a member of the public knowing of all of the facts would consider that the Respondent had been guilty of conscious impropriety which amounted to dishonesty and the Tribunal is satisfied to the necessary high standard and that the Respondent had adopted a course of conscious impropriety that did amount to dishonesty and he himself knew that what he was doing was dishonest.

The Respondent's Mitigation

61. The Respondent did not wish to add anything to the representations he had already made.

The Tribunal's Decision

62. The Tribunal having concluded that the Respondent had acted dishonestly considered it right that it should fulfil its duty to protect the interests of the public and the interests of the good reputation of the solicitors' profession that the Respondent should be Struck Off the Roll of Solicitors. It was also right that the Respondent should bear the costs of and incidental to the application and enquiry. The Tribunal had been told by the Applicant that he had not been able to calculate his level of costs as the situation was somewhat complex. The Tribunal therefore ordered that the Respondent should pay the costs of and incidental to the application and enquiry to be subject to a detail assessment unless such costs were agreed between the parties. It was right that the costs of the Investigation Accountant of the Law Society should be included.

Dated this 20th day of January 2005
On behalf of the Tribunal

S Jones
Chairman