

IN THE MATTER OF ANDREW BROWNING,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss N Lucking (in the chair)  
Mr I R Woolfe  
Mr D Gilbertson

Date of Hearing: 25th June 2009

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority by Margaret Eleanor Bromley, solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ on 15th December 2008 that Andrew Browning, a solicitor's clerk might be required to answer the allegation contained in the statement which accompanied the application and that an Order might be made by the Tribunal directing that as from a date to be specified in such Order no solicitor, Registered European Lawyer or incorporated solicitor's practice should, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate the Respondent in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice. In a supplementary statement dated 25th February 2009 the Applicant made a further allegation against the Respondent on behalf of the Solicitors Regulation Authority.

The allegations made against the Respondent were that he:-

- (1) Had occasioned or been a party to an act or default in relation to a practice of solicitors to whom he was a clerk, which involved conduct on his part of such a nature that it would be undesirable for him to be employed by a solicitor in connection with his practice; including that he utilised funds belonging to clients for his own purposes;

- (2) Had been convicted of a criminal offence which disclosed such dishonesty that in the opinion of the Solicitors Regulation Authority it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice.

The application was heard at The Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when Margaret Eleanor Bromley, solicitor, of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ appeared for the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Applicant invited the Tribunal to proceed with the matter in the absence of the Respondent. The Respondent had returned the pre-listing questionnaire to the Tribunal on 4th February 2009 and whilst he admitted the allegations, the questionnaire had not been signed by the Respondent. The supplementary Rule 5 statement had been sent by special delivery on 25th February 2009 but was not served and was then sent by first class mail. No first class post had been returned to the Tribunal by the Post Office.

After considering the Applicant's submissions and the documents the Tribunal was satisfied that it was right to proceed with the hearing in the absence of the Respondent in the interests of the public.

#### The evidence before the Tribunal

The evidence before the Tribunal included a Rule 5 statement dated 15th December 2008 with accompanying bundle and a supplementary Rule 5 statement dated 25th February 2009 together with an accompanying exhibit.

#### **At the conclusion of the hearing the Tribunal made the following Order:**

The Tribunal Orders that as from 25th day of June 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Andrew Browning, a person who is or was a clerk to a solicitor and the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,634.55

#### **The facts are set out in paragraphs 1-11 hereunder**

1. The Respondent who is not a solicitor, was at all material times a clerk employed by Bryan Davies & Co solicitors of 409 Bearwood Road, Smethwick, West Midlands B66 4DJ.
2. The last address of the Respondent known to the Applicant was *[Removed for public access]*.
3. On 11th June 2007 an inspection of the books of account and other records of Bryan Davies & Co was commenced by a Forensic Investigation Officer of the Solicitors

Regulation Authority ("SRA"). A Forensic Investigation Report was made on 29th October 2007.

4. The Respondent, whose date of birth is 4th February 1967, was employed by Bryan Davies & Co as a bookkeeper from March 2005 to October 2005. Mr Guy Davies, a partner in Bryan Davies & Co, confirmed that the Respondent's duties would have included: responsibility for the upkeep of ledgers and the practice's financial books; dealing with the day to day banking of cash and cheques; receiving payments in from clients by way of cash and cheque; reconciling the bank statements; and preparing a monthly list of client balances for the partners. Cash and cheques received from clients, if not received directly by the Respondent, would always be handed to him by the other staff members.
5. In October 2005, the Respondent gave notice and left the firm, saying that this was due to the serious illness of his wife. On 31st October 2005, the firm employed Mr L to take over as bookkeeper. During the course of his work, Mr L found the Respondent had not carried out bank reconciliations or client ledger balance checks and, furthermore, that there seemed to be monies missing from the client account.
6. Upon investigation in consultation with firm's auditors, the firm was able to identify thirteen separate occasions between 25th July and 25th October 2005 when differing amounts of cash (varying from £49 to £770.04 and totalling £4,863.32 altogether), were deposited with Bryan Davies & Co by thirteen separate clients but were not paid into the firm's client account. In each case, the client ledger card was updated with a sum deposited shown as a credit and the description "client" applied to the ledger - according to Mr Davies, in the Respondent's handwriting. In ten instances receipts were made out to the client.
7. The client bank account statements from February to October 2005 showed that there were no records of any of the thirteen payments being made into the account. Copies of the paying in book from 21st July to 28th October 2005 which give details of sums paid in, showed that none of the thirteen sums were paid into the bank.
8. In a letter dated 12th December 2007 Mr Davies confirmed that he wrote to the Respondent on 22nd of November, 29th November and 7th December 2006 voicing his concerns and asking the Respondent to contact him as a matter of urgency. On 15th December 2006, the Respondent telephoned the firm and arranged to attend their offices on 19th December 2006 to meet with Mr Davies. He failed to keep that appointment.
9. The Respondent made no further attempt to contact the firm. In or around March 2007 Mr Davies reported the theft of monies to West Midlands Police and also to his firm's insurers.
10. The SRA wrote to the Respondent on 7th April 2008 setting out the allegations against him and seeking his explanation. No response was received and a further letter was sent by post and recorded delivery on 24th April 2008. No response was received until the 27th June 2008 when the Respondent wrote to the SRA explaining that in light of the ongoing police investigation, and advice from his solicitors to make

no comment to police questions, he was “unable to comment to yourselves at this time”.

11. On 22nd December 2008, the Respondent was convicted of theft in relation to these matters in the Warley Magistrates Court. He was committed to the Crown Court for sentence and appeared before Wolverhampton Crown Court on 26h January 2009 when he was sentenced to thirty nine weeks imprisonment, suspended for two years, and two hundred hours of unpaid work, to be completed within one year. The Judge’s remarks made it clear that the sentence was in respect of theft on thirteen occasions coming to a total of £4,863.32 over a period of some three months. A certificate of conviction from the Crown Court at Wolverhampton and the transcript of the Judge’s remarks were exhibited to the Applicant’s supplementary statement.

### **The Submissions of the Applicant**

12. The Applicant submitted that the Respondent’s conviction was in respect of the theft of these client monies. The theft had happened on thirteen separate occasions and totalled some £4,863.32 and the Respondent had pleaded guilty and had been sentenced at the Crown Court. Theft of client money must always be a serious allegation and clearly brings into doubt the suitability of the Respondent for employment by any firm of solicitors.

### **The Tribunal’s Findings and reasons**

13. The Tribunal had considered carefully all the documents before it and the submissions of the Applicant.
14. The Tribunal found the allegations to have been substantiated.
15. The Tribunal made a costs Order fixed in the sum of £4,634.55.
16. The Tribunal Orders that as from 25th June 2009 no solicitor, Registered European Lawyer or incorporated solicitor’s practice shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as The Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor’s practice Andrew Browning a person who is or was a clerk to a solicitor and the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,634,55.

Dated this 27<sup>th</sup> day of August 2009  
On behalf of the Tribunal

Miss. N. Lucking  
Chairman