

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10677-2010

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

HOWARD FRYER

Respondent

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Before:

Mr D. J. Leverton (in the chair)

Mr M. Sibley

Mr P. Wyatt

Date of Hearing: 14th July 2011

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**Appearances**

Mr Andrew Bullock, Counsel employed by the Solicitors Regulation Authority ("SRA") of Ipsley Court, Berrington Close, Redditch, Worcestershire B98 0TD for the Applicant.

The Respondent did not appear and was not represented.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that he:
  - 1.1 Failed to maintain properly written up books of account to show accurately the position with regard to the money held for each client contrary to Rule 32 Solicitors Accounts Rules 1998 ("SAR");
  - 1.2 Withdrew money from client bank account in breach of Rule 22(1) SAR;
  - 1.3 Improperly utilised client monies for the purpose of other clients in breach of Rule 30 SAR;
  - 1.4 Took monies for costs (in excess of which he was entitled) in breach of Rule 19(2) SAR;
  - 1.5 Failed to remedy breaches promptly on discovery contrary to Rule 7 SAR.
2. Allegations 1.2 - 1.4 inclusive were made on the basis that the Respondent was dishonest.

## **Documents**

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

### **Applicant:**

- Application dated 6 December 2010;
- Rule 5 Statement and Exhibit "SEJ1" dated 6 December 2010;
- Statement of Costs for the hearing on 14 July 2011.

### **Respondent:**

- Letter from Nigel Broadhead Mynard Solicitors of 32 Rainsford Road, Chelmsford, CM1 2QG dated 11 July 2011;
- Statement of the Respondent dated 11 July 2011;
- Report of Dr S Acharyya, Consultant Psychiatrist dated 5 July 2011;
- Medical Report of Dr Caroline Dollery dated 4 May 2011.

## **Factual Background**

4. The Respondent, born in 1953, was admitted as a solicitor on 15 January 1981. He was suspended from practice on 13 July 2010.

5. At all material times the Respondent practised as a sole principal under the style of Fryer Chandler from offices at 11-12 Railway Street, Chelmsford, Essex, CM1 1QS. The firm was intervened into on 13 July 2010.
6. The SRA commenced an inspection of the Respondent's books of account and other documents on 2 July 2010. At the conclusion of the inspection the Forensic Investigation Report ("FI Report") was produced.
7. The books of account were not in compliance with the SAR and it was ascertained that there was a minimum cash shortage of £669,417.22 on client account at the time of the inspection. £238,707.22 of clients' funds had been improperly used for the benefit of other clients and £430,710 of clients' funds had been improperly transferred from client to office bank account.

Clients' funds improperly used for the benefit of other clients - £238,707.22

8. The FI Report detailed seven payments which had been wrongly ascribed to client matters not the subject of the payment, when in fact they related to other unconnected client matters.
9. This was illustrated in the matter of "W", whereby a deficit in the client account of £178,911.31 caused by the improper utilisation of these monies was partially rectified by two amounts of £75,000 totalling £150,000 being charged to the unconnected ledger of "P".
10. The deficit on W's client account was caused by:
  - An additional amount of £37,142.50 being improperly transferred from client to office account in respect of bills of costs, when the sum of £21,573 had already been transferred in accordance with the estate accounts;
  - An allocation of £31,281.19 to the ledger when the amount received from a life policy of the deceased was £173,050.

Clients' funds improperly transferred from client to office bank account - £430,710

11. On a number of files detailed in the FI Report the Respondent had transferred monies from client to office bank account over and above the estimated or actual costs of the value of work undertaken totalling £430,710.00.
12. The FI Report detailed that the Respondent said that he had then started increasing billing and transferring funds without sending out the bills.
13. In a signed note of a meeting between the Respondent and the audit accountant at Appendix 1 of the FI Report, the Respondent admitted he had diverted funds from the file of M, estate of W deceased, into the office account by way of over-billing and then resolving the issue by diverting funds from another estate to clear the beneficiaries' sums when payable. The note went on to say that the money had apparently been used for running the practice.

### Failure to remedy breaches

14. At the date of the FI Report the shortage had not been replaced and the Respondent indicated in a statement made on 5 July 2010 that he could not replace it. In a later statement the Respondent said that he was looking into how he might be able to replace at least part of the shortage. The Respondent did not have enough funds to honour all liabilities to clients.

### **Witnesses**

15. None.

### **Findings of Fact and Law**

16. **Allegation 1.1: Failed to maintain properly written up books of account to show accurately the position with regard to the money held for each client contrary to Rule 32 Solicitors Accounts Rules 1998 ("SAR").**
- 16.1 This allegation was admitted by the Respondent and the Tribunal found it to have been substantiated on the facts as illustrated in the FI Report contained within Exhibit "SEJ1"
17. **Allegation 1.2: Withdrew money from client bank account in breach of Rule 22(1) SAR.**
- 17.1 This allegation related to the Respondent's practice of over-billing on matters and then transferring funds to office account prior to completion of those matters. An amount of £430,710 had been improperly transferred from client to office bank account.
- 17.2 This allegation was admitted by the Respondent and the Tribunal found it to have been substantiated on the facts and documents before it.
18. **Allegation 1.3: Improperly utilised client monies for the purpose of other clients in breach of Rule 30 SAR.**
- 18.1 This allegation related to the Respondent ultimately having to pay clients out of other clients' funds. Seven payments which totalled £238,707.22 were shown in the FI Report which had been made to clients from other unconnected clients' monies.
- 18.2 This allegation was admitted by the Respondent and the Tribunal found it to have been substantiated on the facts and documents before it.
19. **Allegation 1.4: Took monies for costs (in excess of which he was entitled) in breach of Rule 19(2) SAR.**
- 19.1 This allegation again related to the Respondent's over-estimates of the costs applicable to cases.
- 19.2 The Respondent admitted this allegation and the Tribunal found it to have been substantiated on the facts and documents before it.

20. **Allegation 1.5: Failed to remedy breaches promptly on discovery contrary to Rule 7 SAR.**

20.1 This allegation related to the shortage of £669,417 on the accounts which the Respondent initially admitted to the Forensic Investigation Officer could not be replaced. He later made a further statement which indicated that he was looking into how he might be able to replace at least part of the shortage. However no monies had been repaid.

20.2 This allegation was admitted by the Respondent and the Tribunal found it to have been substantiated on the facts and documents before it.

21. **Dishonesty**

21.1 The Applicant alleged that the allegations were made on the basis that the Respondent had been dishonest.

21.2 Mr Bullock told the Tribunal that the facts contained in the FI Report were consistent with deliberate dishonest conduct and that this was reinforced by the Respondent's admission that funds raised by over-billing had been used for running the practice. Further, in the Respondent's statement the Respondent admitted that he transferred funds in excess of work done and that the majority of bills had not been delivered to the clients concerned. He admitted to having utilised funds on other client matters to rectify the position where he had over-billed.

21.3. The Respondent's solicitor had submitted a statement made by the Respondent on 11 July 2011 together with some medical reports concerning his psychiatric health.

21.4. The Respondent had said that he was undergoing treatment for severe depression and receiving psychiatric care. He had been advised that he had been suffering from clinical depression for the last ten years and that his actions were a consequence of that illness. Indeed his clinic depression had been so severe that it could be classed as sub-suicidal. Although he had received treatment for his illness in 2001-2003 he had returned to work too soon through financial necessity.

21.5. Whilst all the allegations were admitted he made no plea to the allegation of dishonesty. He did believe that throughout his years as a solicitor he had been an honest man and that his actions during the period leading to the issues before the Tribunal were out of character and influenced by his mental state and the surrounding circumstances. Since 2004-2005 he had been involved in a venture with others that had put a significant strain on his practice and himself. The other parties to the venture had not paid the practice as agreed and by April 2007 monies owed to it totalled £144,000 plus £30,000 as subordinated loans.

21.6. It was in 2008 that he first "borrowed" money from his client account. It was his firm intention that this would be repaid from sums due to him from others or from an inheritance. He did not draw the funds for his own benefit but to keep the practice going for his staff and his family and believed throughout that the sums to be received would repay the monies owed.

- 21.7. He did not agree that the figure of £238,707.22 of client funds which had been used for the benefit of other clients should be added to the £430,710 of clients' funds that had been improperly transferred from client to office bank account. He thought that the second sum only arose because of the first so that repayment of the first sum would realise sufficient sums to correct the second.
- 21.8. The Respondent's solicitors had also submitted a medical report and psychiatric report. Both of these reports confirmed that the Respondent was suffering from depression. The psychiatrist, Dr Acharyya has first seen the Respondent in October 2001 and he was under his care as an outpatient until 2003. He was referred back to him by his General Practitioner in July 2010. The psychiatrist confirmed that he did not have any professional contact with the Respondent between mid 2009 and July 2010 and his GP had referred the Respondent to him on 6 July 2010. In her report of 4 May 2011 the Respondent's GP said that he had initially presented with alcohol dependence as a consequence of depression and anxiety. Whilst he had managed to significantly reduce his input of alcohol, he met the criteria for major depression with significant risk of self-harm.
- 21.9. Whilst the Applicant accepted that the Respondent was currently suffering from depressive illness there were three points he wished to draw to the Tribunal's attention:
- According to the chronology there was no suggestion that the Respondent had received psychiatric treatment between 2003 and 6 July 2010. He had only exhibited signs of depression in July 2010 when the investigations were under way;
  - There was no evidence before the Tribunal of any form of psychiatric illness in the latter half of 2008;
  - There was nothing within either of the medical reports now before the Tribunal that suggested that the Respondent was prevented from forming the mens rea necessary for dishonesty by reason of his illness.

#### The Tribunal's determination on the question of dishonesty

22. The Tribunal had applied the twin tests of dishonesty laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and was satisfied so that it was sure that in acting as he did, the Respondent was dishonest by the standards of reasonable and honest people and that he knew his conduct was dishonest by those same standards. The Respondent had clearly stated that he had taken the monies to help to run his practice. There was no psychiatric treatment evident during the period of the defaults on the accounts and the Tribunal was entirely satisfied that the Respondent knew what he was doing at the time that he did it. This was a serious case with substantial amounts of money involved and some £669,000 still outstanding.

#### **Previous Disciplinary Matters**

23. None recorded.

## Mitigation

24. In his statement dated 11 July 2011 the Respondent asked the Tribunal to be aware of the:
- "... deep sense of regret, remorse and sorrow that I feel for the pain and inconvenience that my actions have caused to clients, who were entitled to expect better; my former profession, colleagues and my family."
25. The Respondent admitted that his actions were wrong and he bitterly regretted them for the effect that they had had on others and wished to apologise to all concerned.
26. In mitigation, the Respondent wished the Tribunal to take into account all that was said in his Statement of 11 July 2011 and the two medical reports that had been submitted on his behalf.

## Sanction

27. The Respondent had admitted the five allegations before the Tribunal and the Tribunal had found that the overarching allegation of dishonesty was made out. In the Tribunal's view, this was a serious case of dishonesty and associated breaches of the Solicitors' Accounts Rules 1998 with substantial sums of money being taken by the Respondent and there was a significant sum of over £669,000 still outstanding. The Tribunal had found that the Respondent had known at the time of the breaches that his conduct was dishonest.
28. The only sanction appropriate in such cases, necessary for protection of the public, for maintenance of the reputation of the profession and to sustain public confidence in its integrity, was that the Respondent should be struck off.

## Costs

29. Mr Bullock submitted an application for costs in the sum of £2,406. The Tribunal allowed these in full.

## Statement of Full Order

30. The Tribunal Ordered that the Respondent, Howard Fryer of Orchard Bungalow, West Bowers Road, Woodham Walters, Maldon, Essex, CM9 6RZ, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,406.

Dated this 7<sup>th</sup> day of September 2011  
On behalf of the Tribunal

M. Sibley  
For and on behalf of D. J. Leverton, Chairman