No. 6752/1994

IN THE MATTER OF ANDREW PETER MAIDEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.E. Fordham (in the Chair)
Mr. R.B. Bamford
Mr. R.P.L. McMurtrie

Date of Hearing: 2nd March 1995

FINDINGS

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

An application was duly made on behalf of the Solicitors Complaints Bureau by Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan on 4th November 1994 that Andrew Peter Maiden, solicitor of

Torquay, Devon 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 were that the respondent had -

(i) drawn money from client account other than as permitted by Rule 7 of the Solicitors' Accounts Rules 1986 and contrary to Rule 8 of the said Rules;

(ii) been guilty of conduct unbefitting a solicitor in that he failed to comply with professional undertakings.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 2nd March 1995 when the said Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan 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 save that the respondent denied in relation to allegation (ii) that he had been guilty of conduct unbefitting a solicitor.

At the hearing, the applicant handed in a small bundle of correspondence (exhibit "APM 1").

At the conclusion of the hearing the Tribunal ORDERED that the respondent Andrew Peter Maiden, solicitor of Torquay, Devon be struck off the Roll of Solicitors and they further Ordered him to pay the costs of and incidental to the application and enquiry, to be taxed if not agreed.

The facts are set out in paragraphs 1 to 8 hereunder.

1. The respondent was admitted a solicitor in September 1983 and at all material times carried on in practice with others under the style of Moore Maiden & Co. and later as Moore Manton. Until 31st December 1990 the respondent was a partner with that firm and then became a consultant until 18th April 1991, when his association with the firm terminated.

2. Upon due notice to the respondent, an inspection of the books of account of his firm was undertaken by an assistant to the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau). The books were not in compliance with the Solicitors' Accounts Rules for the reasons noted below.

3. A list of liabilities to clients as at 31st March 1991 was produced for inspection. The items were in agreement with the balances in the clients' ledger and a comparison of its total with cash held on client bank account at that date, after allowance for uncleared items, was made thus -

Amounts due to clients	£383,191.27
Cash available	361,608.89
Cash shortage	£ 21,582.38

4. The cash shortage was caused entirely by overpayments. Between July 1987 and March 1991 overpayments varying in amount between £0.40 and £9,967.91 had been made on account of eighty-one clients.

5. Whilst it was accepted that the respondent was not a partner of the firm for the entire period covered by the overpayments, he was directly responsible for a large overpayment in excess of £5,000.00 which, although due to error, remained in existence for over six months. The minimum cash shortage was rectified during the course of the inspection.

6. More importantly, the Investigation Accountant revealed that the partners and the respondent were unable to comply with various undertakings given on behalf of the firm - fifteen in all - given over a period from February 1991 to April 1991 varying in amounts and totalling £2,689,800.00. The respondent said that he only personally gave twelve out of those fifteen undertakings.

7. If the applicant accepted that the respondent had not personally given all the undertakings mentioned in the Investigation Accountant's Report then the respondent was "only" responsible for some £1.3 million in outstanding matters.

8. The wording of one of the undertakings (alleged by the respondent to have been signed by his partner Mr. Moore but bearing the respondent's reference) was worded as follows -

> "On behalf .... of H Group Plc, and in consideration of your completing the purchase of the above property today, in default of H L Limited completing the purchase and in default of R. Lucas & Sons complying with their undertaking to you we undertake irrevocably and unconditionally to remit to you the sum of £395,300.00 three months from today's date." (signed)

The submissions of the applicant

9. The applicant accepted that the breaches of Accounts Rules were not the most serious allegation facing the respondent at the hearing. If the applicant was content to adopt what the respondent himself said in mitigation, by far the more serious matter was that of breach of undertaking. It had become apparent that the respondent had become involved in a massive fraud. That was not to suggest that he was complicit in the fraud rather, it was accepted, that he was one of it's victims. Nevertheless, the respondent's role in the fraud had the effect of contributing to its perpetration.

10. The loss borne by the profession by way of the Solicitors' Indemnity Fund, was a very heavy one indeed. It was the respondent's case that Mr. Lucas was entirely to blame (the solicitor Guy Robin Lucas was struck off the Roll by order of the Tribunal on 17th December 1992 case number 6211/1992, decision number 5126). Mr. Lucas gave an undertaking to the respondent's firm and on the basis of that undertaking the respondent in turn gave his own personal undertaking and then found himself in his current predicament. The argument that the respondent could not be responsible because the fault lay elsewhere was an extremely unattractive one. An undertaking was a personal commitment to pay. It would be noted from the wording above that the undertaking explicitly provided for the default of H. L Limited. In other words, the default of Mr. Lucas was expressly contemplated in the respondent's undertaking as a matter which would trigger his own obligation. In connection with the transactions in question, the clients had required something other than Mr. Lucas's undertaking. The respondent accordingly provided his own. In retrospect, this was an exceedingly imprudent thing to do but it did absolve the respondent from any responsibility whatsoever in relation to his personal undertaking.

11. The following extract from the respondent's own correspondence gave more background to the transactions in question -

"In February 1991 both Mr. Moore and myself had discussed the forms of transaction involving a firm called the H Group in the acquisition of licensed premises. He wished to purchase public houses and restaurants from major public companies who wished to sell those premises as directed by the Monopolies and Mergers Commission. H stated that if they bought these properties "in bulk", they could be acquired at very low prices, well below their market values. They stated they had certain lines of credit, but to take advantage of the low prices, if they could obtain private investments from clients, they could then refinance many more outlets within a 3 month period. They stated that they would contract to repurchase the public house from the investor simultaneously with his completion of the acquisition. This was further backed up with an unconditional undertaking from their solicitor R. Lucas & Son stating that in the event of H not completing the repurchase within 3 months, he would repay the investor 3 months from the date of the acquisition. Mr. Moore and myself were obviously greatly puzzled as to how he could give this undertaking/guarantee, and Mr. Lucas informed us that he was the sole signatory on the J family off-shore trust which monies were not to be used in the UK unless absolutely necessary. The J family were the shareholders of the H Group. Mr. Moore then made extensive enquiries with the Law Society and the Indemnity Insurers to ascertain the outcome if Mr. Lucas did not carry out his undertaking in default of H repurchasing the properties, and in all cases I recall that there was adequate protection for the investor clients.

Also at this time, a chartered accountant and client of our firm, Mr. S S G had carried out several of these transactions (not utilising a solicitor) and had completed three or four transactions with Mr. Lucas returning the money within the 3 month period. Mr. G informed me there had been no complications and the monies were returned on the due date. The investors also received a substantial return for investing the monies. The system seemed to work well.

Mr. Moore and myself both agreed to recommend clients to invest in the scheme firstly with Mr. Lucas giving the undertaking directly to the client or their bankers. The undertaking was to ensure that the investor had a good and marketable title to the property; to hold the deeds to the clients or the mortgagees order; and in default of H completing the repurchase to repay the investor personally unconditionally. There did appear however to be an inherent problem in this scheme in that Mr. Lucas would act for the investor and H and we were therefore unwilling to let our clients enter the scheme unless we acted for them. Our clients therefore wanted our firm to give the undertaking "on the back" of Mr. Lucas's undertaking. After a detailed discussion, the partners agreed to give the undertakings in identical form to Mr. Lucas's undertaking. The system seemed acceptable to all parties, and I was given the authority by the firm to give the undertakings and deal with the day-to-day business of the investment of the client monies.

> Mr. Moore and myself attempted to borrow monies personally to invest in the scheme as we believed that as long as there was an unconditional undertaking from Mr. Lucas behind the transaction, then we and the lenders were fully protected. We felt that we could trust a fellow solicitor which proved to be sadly wrong.
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> Most clients and investors agreed that when the monies were returned to us in accordance with Mr. Lucas's undertaking, they would require us to re-invest the monies again to acquire a further public house. In most instances it was also agreed that Mr. Lucas would act as our agent by holding deeds himself, and we merely gave an undertaking to return the money "on the back" of Mr. Lucas's undertaking to do the same.
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> ..... I and my former partners may have been naive, but I feel we acted prudently in thoroughly checking out the effect of the undertakings with the Law Society and the Indemnity insurers and we felt that we could rely on another solicitor's undertaking. .....
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> It was discovered in April 1991 that there were problems with Mr. Lucas and we were informed by H that Mr. Lucas had disappeared. After further meetings with the relevant parties it became evident that Mr. Lucas would not perform his undertakings and H would not be completing their re-purchases."

12. It could thus be seen that under this scheme, the money went round and round with nobody acquiring title. The respondent, in seeking to shift the blame, missed the point that other people were relying on his undertaking. What was really happening was a gigantic fraud - none of the transactions were real ones. Criminal proceedings had been completed against Mr. Lucas and his accomplices. The respondent's actions might be described as naive, but they were effectively furthering the fraud. This was especially so because his clients, the investors, were not content with Mr. Lucas's undertaking as he was not acting for them and they were, without doubt, relying upon the personal undertaking of the respondent. It was also unattractive for the respondent to say that everything was Mr. Lucas's fault. The whole thrust of the respondent's explanation failed to recognise his personal liability. Matters have had to be put right and the losers have been compensated at a high cost to the profession.

13. It was also part of the respondent's case that he alone within the firm had been made the scapegoat for these matters. The applicant's instructions were to take proceedings against the respondent only and no allegations had been made against any of the other partners. The respondent was of course entitled to advance mitigation on his own behalf but if he sought to lay the blame upon his partners it should be remembered that they were not parties to these proceedings and could not defend themselves against counter allegations.

14. Finally, it would be noted that the matters complained of were of some age. The decision was first made to refer the matters to the Tribunal by the relevant Committee of the Bureau on 26th August 1992. Various appeals were made by individuals who were not parties to this application, as well as the respondent; the final appeal was not disposed of until the 31st August 1994.

The submissions of the respondent

15. The respondent's former partners had appealed successfully against the issuing of disciplinary proceedings against them. Yet in the opinion of the respondent, there was nothing to distinguish his conduct from theirs.

16. The respondent accepted that the client account was overdrawn by some £21,000.00 but he was not a partner at the time of the investigation, merely a consultant. He accepted that the client account must have been overdrawn before he resigned as a partner and apologised for that fact. The overpayments should have been immediately remedied but they were overlooked. The overpayment of some £5,452.03 cited by the Investigation Accountant in his Report related to an error on completion in a conveyancing transaction with Abbey National Building Society where the balance was to be sent to the bank. Unfortunately, the amount due to Abbey National was sent to the bank instead and the bank refused to return those monies resulting in the overpayment. The respondent's partner, Mr. Moore, was aware that the respondent had overlooked this matter and he had apologised for it. The client had been repaid in full subsequently. To reimburse the firm, the respondent was not intending to claim the capital and goodwill due to him from the firm upon his leaving in April 1991.

17. The respondent maintained all in all that allegation (i) did not warrant the issue of disciplinary proceedings against him alone. If allegation (i) were a disciplinary matter then it should take in all the other partners.

18. No client had suffered loss.

19. With regard to the undertaking, it was the respondent's contention that in circumstances such as these the application for disciplinary proceedings should not have been made against him. He explained in detail the transactions involving the undertaking under Mr. Moore's signature. Both Mr. Moore and to a certain extent Mr. Manton, were fully conversant with Mr. Lucas and his scheme. It was Mr. Moore who persuaded the respondent, based on Mr. G's experience, that the plan was a viable one. It was Mr. Moore who instigated checks at the bank and at the Law Society in connection with Mr. Lucas. In effect, Mr. Moore had given the respondent full authority actively to pursue investors and to give undertakings on their behalf. Indeed, all the partners responded with such enthusiasm to the project that they were in the process of obtaining a loan of £400,000.00 themselves from Barclays Bank raised by way of mortgage and the partners' personal guarantees when the difficulties with Mr. Lucas became apparent and the deal never went through. Indeed Mr. Moore's own undertakings amounted to £1,395,300.00 which represented 52% of the total liability, yet his appeal against the institution of disciplinary proceedings was successful.

20. This matter had caused considerable personal hardship to the respondent. He left the practice in April 1991 with a stress-related illness and moved to Devon. He was living with his wife and three children, supported by his father. He attempted to join other firms in the latter part of 1991 and beginning of 1992, but was not engaged because of the professional difficulties hanging over him. He made the decision not to pursue his career in the law until the disciplinary proceedings had been dealt with. He had

therefore, in effect, not worked since April 1991. The monies owing to him from the partners' capital account was the only capital he had. Those monies, including his share of the goodwill, could remain in his former partnership to enable it to keep afloat and to make good any shortfalls. The respondent was supported by his father. He had no source of income. He had effectively already imposed a suspension upon himself. He made no personal gain from any of the matters alleged against him. He had suffered a nervous breakdown. He wished to pursue a career as a solicitor. As the respondent did not consider it appropriate that the matters had to come before the Tribunal in the first place, he requested that the Tribunal make no Order for costs. He admitted that he was in breach of undertakings as a result of the actions of Mr. Lucas but denied that in the circumstances it amounted to conduct unbefitting.

The Tribunal FOUND the allegations to have been substantiated. The Tribunal cannot accept that it is not conduct unbefitting to fail to comply with an undertaking because others have not complied with theirs or because of any other extraneous circumstances. The Tribunal entirely accepted the applicant's view on this matter. Whilst the Tribunal had sympathy with the respondent in the predicament in which he found himself, they were unable to look upon this matter with anything other than the utmost seriousness. The respondent's equivocal attitude to his undertakings, led the Tribunal to conclude even now that the respondent does not fully appreciate the import of such undertakings. The respondent's conduct was naive in the extreme, his belief in Mr. Lucas's scheme might well have been clouded by his (and his partners) intention to profit from it themselves as potential investors. He allowed his judgment to be clouded to such an extent that the Tribunal had to question his competence as a solicitor. His actions have cost the profession very dear and were - albeit unwittingly - crucial to the fraud being perpetrated.

In all the circumstances the Tribunal concluded, reluctantly, that the respondent should no longer be allowed to remain in practice and the Tribunal imposed the ultimate sanction.

DATED this 24th day of April 1995
on behalf of the Tribunal

D.E. Fordham
Chairman

Findings filed with the Law Society on the 7th day of June 1995