

IN THE MATTER OF MORGAN RAYMOND FLYNN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. R.B. Bamford (in the Chair)  
Mrs. E. Stanley  
Mr. R.P.L. McMurtrie

Date of Hearing: 21st March 1995

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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 Complaints Bureau by Gerald Malcolm Lynch, solicitor, of 16 Warrior Square, Southend-on-Sea, Essex on 18th November 1994 that Morgan Raymond Flynn, solicitor, of Burnley, Lancashire 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 contrary to the provisions of the Solicitors Accounts Rules 1991:

- (a) dishonestly alternatively improperly utilised clients money for his own benefit and/or for the benefit of other un-entitled clients;
- (b) withdrawn from client account monies other than permitted by the said Rules and utilised the same for his own benefit and/or for the benefit of a client/clients not entitled thereto;

- (c) paid into office account moneys which included payment for unbilled disbursements and unbilled costs;
- (d) by virtue of the aforementioned had been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 21st March 1995 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdales & Janes of 16 Warrior Square., Southend-on-Sea, Essex appeared for the applicant and Graham Woodward, solicitor and partner in the firm of Messrs. Whitehead & Woodward of 37 Bloom Street, Manchester appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent including an admission of improper use of clients monies but not an intention to use such money dishonestly.

At the conclusion of the hearing the Tribunal ORDERED that the respondent, Morgan Raymond Flynn of Burnley, Lancashire, solicitor, be struck off the Roll of Solicitors and they further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,442.84 inclusive.

The facts are set out in paragraphs 1 to 5 hereunder.

1. The respondent, aged fifty-two, was admitted as a solicitor in 1970 and at the material times practised on his own account under the style of Ingham & Bridge at 15 St. James Row, Burnley, Lancashire.
2. On 26th November 1993 an Accountant's Report was delivered in respect of the respondent's practice indicating possible breaches of the Solicitors Accounts Rules. As a consequence, pursuant to notice duly given, the Investigation Accountant of the Law Society inspected the respondent's books of account and his report was dated 4th October 1994.
3. The Investigation Accountant's report revealed that there was a cash shortage on clients account of £24,937.01. After partial rectification a sum of £17,932.64 remained outstanding.
4. The cash shortage arose in the following way: (i) Improper Payments of £13,700.00 which were made in respect of three clients where money the property of one client had been paid to another client, Mr. G. (ii) The sum of £7,549.58 received from the Legal Aid Board as "on account payments" in respect of unbilled disbursements and costs for ten clients was improperly held in office bank account. (iii) There were debit balances totalling £3,589.12 in respect of nineteen clients. The largest debit balance had occurred on the account of Mr. A and the relevant account in the clients' ledger showed a Nil balance, had been charged with a payment of £795.00 to "HMPG" and on 8th June 1994 a further amount of £0.18, being a "correction". (iv) Improper transfers had been made from client to office bank account totalling £100.01.

5. An intervention into the respondent's practice had been ordered and the Law Society's Compensation Fund had made a subvention grant to the intervening agents in the sum of £17,932.64 which sum, of course, had been paid to cover the deficiency in the respondent's client account. The Tribunal was told that £1,000.00 had already been recovered and the intervention agent hoped that the deficiency on client account could be further reduced.

#### **The submissions of the applicant**

6. The respondent admitted that he had improperly utilised clients' money, however the applicant did allege that the respondent had been dishonest. He had deliberately used clients' money for an improper purpose and appreciated what he was doing at the time. He was deliberately using one client's money for the benefit of another client and in the submission of the applicant that amounted to dishonesty. In his affidavit the respondent appeared to seek to explain what had happened by saying that he lent money to Mr. G. The question that had to be asked was "whose money?", client account did not represent a fund of money available to the respondent to use as he pleased. It contained clients' money which was to be used only for specific authorised purposes.

#### **The submissions of the respondent**

7. With regard to the improper payments, they had, as reported by the Investigation Accountant be made to one client, Mr. G. Mr. G had been a regular client of the respondent since 1985. At the end of 1993 he was engaged in a substantial refurbishment of a night club and was experiencing cash-flow difficulties. The respondent foolishly agreed to lend him a sum of money from client account on the understanding that it would be repaid in a matter of days. Mr. G's financial situation deteriorated and the respondent found himself in a position where the only way the money could be recovered was by the completion of the work and the opening of the establishment. The respondent found it hard to explain why he embarked on that course. He had no financial interest in the matter and merely wished to help a client over what he believed to be a temporary crisis. The respondent had never used clients' money in that way before.
8. With regard to the money received from the Legal Aid Board paid into office account for which no invoices had been raised, the respondent had not dealt with those matters partly because of pressure of work and partly because he was unsure of how to deal with them. The Investigation Accountant checked each case in which money was repayable to the Legal Aid Board and established that each case had been properly reported.
9. In connection with the debit balances it was said by the respondent that one had been created as a result of his confusing the names of two Asian clients. The Investigation Accountant had ascertained that the overpayments had indeed been excess payments made to clients rather than payments made on the respondent's behalf.
10. The respondent believed that the improper transfer from client to office account in the sum of £100.01 represented a mistake.

11. The respondent was unable to explain how the book difference surplus arose but it appeared to have been carried forward in his books for a number of years. The respondent had asked his accountants in 1985 to require the book-keeper who attended at his office to make the necessary postings. Each year the respondent received an unqualified Accountant's Report and as a result he paid little or no attention to the accounts.
12. The book-keeper retired in 1993 when the respondent installed a computer system. In the course of transferring the accounts to the computer a large number of problems were revealed. Also the respondent changed accountants.
13. His new accountants advised the respondent that a number of fundamental errors were being made, for example disbursements on conveyances were being transferred to the office account before they had been paid and combined damages and costs were paid into the office account.
14. The respondent had made serious efforts to resolve outstanding problems on the accounts but he found he could not find the time to deal with them. In due course it became apparent that the computer accounting system was not an effective management tool owing to the delays in posting which in practice meant that payments were made without reference to the relevant ledgers.
15. The respondent accepted that he had behaved foolishly but he had not been personally dishonest. Following the intervention into the respondent's practice he had lost his practice and was unemployed.
16. The Tribunal was invited to recognise, particularly in the light of the references submitted in support of the respondent, that he was a man of generally good character who had foolishly lent client account money on the one occasion before them and it was an isolated matter in a long and unblemished career.
17. If the respondent were to be struck off the Roll of Solicitors, it was thought that he would not work again. It was accepted that the public had to be protected from a solicitor who might not be entirely trusted to deal properly with clients' money, however the respondent intended never to go back into private practice again and the Tribunal was invited to consider that in the unusual circumstances of the case it would be appropriate to permit the respondent to retain his Practising Certificate albeit limited by a condition that he might practise only under supervision.
18. It was hoped that payment from the work in progress of the respondent's practice might make up the shortfall on client account. The respondent indicated that he would sue Mr. G for the return of the outstanding monies lent to him.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested except as to the matter of dishonesty. A solicitor who is entrusted with clients' money has a clear and invariable duty in respect of that money. He must retain it safely and deal with it properly and fairly. He must not mingle it with his own monies and he must ensure that he applies it only for an authorised purpose. This

respondent treated money entrusted to him by clients as if it was his own and made loans to Mr. G, apparently without any security, and certainly without the authority of the clients whose money he was using for that purpose. It was the respondent's submission that he had not used the money for personal gain but to assist a client who was also a friend and in that respect he had not acted dishonestly. The Tribunal recognised that that was the perspective both of the respondent and no doubt of Mr. G. The respondent had, however, not given any consideration to the view that might be taken by the client or clients whose monies were placed in jeopardy. The respondent's action represented not only a serious breach of the Solicitors Accounts Rules, but in the view of the Tribunal he had improperly utilised such monies and could not avoid acknowledging the fact that what he had done had been dishonest. The Tribunal had to point out that it was not within its jurisdiction to require a condition to be placed upon a solicitor's Practising Certificate. However in order to protect the public and to maintain the good reputation of the solicitors' profession the Tribunal considered that the imposition of the ultimate sanction was appropriate in this case and made an Order that the respondent be struck off the Roll of Solicitors. The Tribunal also ordered that the respondent pay the costs of and incidental to the application and enquiry together also with the costs of the Investigation Accountant of the Law Society.

DATED this 24th day of April 1995

on behalf of the Tribunal



R.B. Bamford  
Chairman



