

IN THE MATTER OF BARRY RHODES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. R.B. Bamford (in the Chair)

Mr. J.N. Barnecutt

Mr. G. Saunders

Date Of Hearing: 18th October 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 David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead on the 3rd May 1995 that Barry Rhodes of Chatham, Kent solicitor might be required to answer the allegations set out in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The applicant filed supplementary statements on the 8th August 1995 and the 4th September 1995. The allegations set out below are those included in the original and two supplementary statements.

The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he had:-

1. failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
2. contrary to Rule 8 of the Solicitors Accounts Rules 1991, drawn money out of Client Account other than as permitted by Rule 7 of the said Rules;

3. utilised clients' funds for his own purposes;
4. misappropriated clients' funds;
5. failed to comply with a Direction made by an Assistant Director of the Solicitors Complaints Bureau acting under designated powers;
6. retained a sum for costs that he knew or ought to have known he could not justify;
7. failed to apply for a remuneration certificate pursuant to requests from a client;
8. contrary to Rule 20(1) of the Solicitors Accounts Rules 1991 failed to account for interest on funds handled by him in his capacity as a solicitor;
9. failed to apply for a deposit interest certificate pursuant to requests from a client.

The application was heard at the Courtroom, No. 60 Carey Street, London, WC2 on the 18th October 1995 when David Rowland Swift, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent did not appear and was not represented. The respondent had addressed a letter to the Tribunal dated the 9th October 1995, and a further letter dated the 15th October 1995 together with a statement dated the 16th October 1995.

In the first letter, the respondent made an application that the hearing be held in private. The respondent did not wish his family to be affected by any further media coverage of his case. The applicant did not oppose the respondent's application but remained neutral. However it was the applicant's view that the Tribunal had to look for some exceptional circumstances before it could hear a matter in private and the applicant believed that the Tribunal would be hard pressed to find such circumstances.

The Tribunal was not satisfied that there were any circumstances in which it would be right to hear the matter in private. The matter proceeded to a public hearing.

The evidence before the Tribunal included the admissions of the respondent contained in his aforementioned statement.

At the conclusion of the hearing the Tribunal ORDERED that the respondent be Struck Off the Roll of Solicitors and that he pay the costs of and incidental to the application and enquiry fixed in the inclusive sum of £3,817.75. The Tribunal further directed that the Direction made by the Solicitors Complaints Bureau on the 9th December 1994 be regarded as an Order of the High Court for the purposes of enforcement.

The facts are set out in paragraphs 1 to 9 hereunder.

1. The respondent who was born on the 10th September 1947 was admitted as a solicitor in 1972 and his name remained on the Roll of Solicitors.
2. At all material times the respondent carried on practice on his own account under the style of Watson Flint & Gunter at 35 Railway Street, Chatham, Kent. On the 21st March 1995 the Adjudication and Appeals Committee of the Law Society resolved to

intervene in the respondent's practice pursuant to the provisions of section 35 and Part 11 of Schedule 1 of the Solicitors Act 1974.

3. Upon due notice to the respondent the Investigating Accountant of the Law Society carried out an inspection of the respondent's books of account. A copy of the Investigation Accountant's Report of the 13th March 1995 was before the Tribunal and revealed that the respondent's books of account were incomplete and contained no entries after the 31st August 1994. Such entries as existed included numerous false entries. Although it was not possible accurately to compute the extent of the respondent's liabilities to his clients there was a minimum shortfall of £256,260.96 in clients' funds. The minimum shortfall included £141,713.96 improperly transferred from Client Account to Office Account for the respondent's use and benefit together with £114,547.71 improperly transferred from Client Account to Office Account purportedly in respect of costs when no bills of costs had been delivered and the sums transferred were not justified.
4. The respondent acted for Mrs. W in connection with a contentious matter. Mrs W complained to the Solicitors Complaints Bureau (the Bureau) that the standard of work was not what was reasonably to be expected. In particular that there had been delay and that the respondent had failed to advise her that she could apply for taxation of costs.
5. On the 9th December 1994 the matter was considered by the Assistant Director of the Bureau whose decision was that there had been delay and that the respondent had failed to advise his client that she could apply for taxation of costs. The Assistant Director directed that the respondent pay to Mrs W the sum of £250 in compensation for inadequate professional services within 35 days. This was notified to the respondent who appealed against the decision to the Adjudication and Appeals Committee. On the 6th April the Adjudication and Appeals Committee upheld the decision and the Direction.
6. The respondent did not comply with the Direction and did not make payment.
7. The respondent was instructed to act as solicitor in the administration of the estate of the late SP who died on the 31st January 1993. The deceased left a small estate consisting of building society and bank accounts having a total value of £17,237.06. The beneficiary of the estate was Mr. J. The respondent reported completion of the administration of the estate in September 1994 and deducted costs from the estate totalling £1498.12 although no itemised bill was delivered. Having regard to the size of the estate and the work reasonably to be undertaken the bill was excessive. The balance of the estate was paid to Mr. J. but there was no proper account in respect of interest earned.
8. On the 30th September 1994 Mr. J. wrote to the respondent requesting him to obtain confirmation of the interest earned from his bank. No certificate from the respondent's bank was submitted by the respondent who did not provide any interest calculation and did not account for interest earned.
9. On the 3rd November 1994 Mr. J. wrote to the respondent requesting him to obtain a remuneration certificate in respect of his charges. The respondent failed to do so.

**The Submissions of the Applicant**

10. The respondent had been guilty of the deliberate misuse of client funds. He did so in full knowledge that what he was doing was wrong. He had utilised clients' monies in order to keep his practice going.
11. At the date of the hearing claims had been made against the Law Society's Compensation Fund totalling £57,491.16.
12. In the matter of Mrs W. a Direction had been made by the Bureau that the respondent pay to his client Mrs W £250 being compensation in respect of inadequate professional services. The respondent had not paid that money and the applicant sought an Order from the Tribunal that would render the Bureau's Direction enforceable as if it were an Order of the High Court.
13. In the matter of the complaint by Mr. J., the beneficiary in the estate of the late SP, the respondent was asked to obtain a remuneration certificate but he did not do so nor did he apply for a deposit interest certificate as required.

**The Submissions of the Respondent (contained in his aforementioned statement dated 16th October 1995)**

14. The respondent's circumstances did not allow him to attend the hearing or to be represented. No disrespect was intended by the respondent's non-attendance.
15. The respondent was a sole practitioner and accepted full responsibility for the circumstances surrounding the Law Society's intervention into his practice.
16. The respondent had arranged for his firm's accounts to be fully computerised and had attended to the work involved in that connection together with his accountants. The respondent believed that manual records were being kept whilst the accounts were being computerised, but he had been wrong. The respondent said his client account had always been written up to comply with the Solicitors Accounts Rules since he took control of the firm, Watson Flint & Gunter, in 1978.
17. It had come as a shock to the respondent to discover that he could not meet his obligations to his clients. At no time did he intend that any client would lose any money. The respondent had co-operated with the Investigation Accountant, but he did not fully accept his report. The respondent did not believe he was responsible personally for the full losses.
18. The respondent had not benefited personally as a result of losses on client account.
19. The Investigation Accountant's Report did not reflect the full amount of fees which could have been transferred in each offending case, because in the respondent's view insufficient time was given to calculate those fees. The report did not reflect the large number of matters in which clients' monies were paid to them in full.
20. When the respondent received the original decision concerning Mrs W. and the payment of compensation to her, the respondent was incensed. He intended to appeal and then was advised that Mrs W. had appealed. The decision of the Bureau to turn

down Mrs W's appeal was not notified to the respondent until April by which time his only source of income had been withdrawn and he was claiming income support and was registered unemployed. The respondent was not financially able to settle the account and was not, he believed, in breach of the Order.

21. With regard to the probate matter of Mr.SP deceased, the respondent had not assessed the interest due to Mr. J. because his bankers had not supplied him with the information required to carry out the calculation. At no time was there a withholding of the interest. Certain estate monies had been credited to another estate during the computerisation process which made matters worse.
22. The respondent was a sole principal in a reasonably large firm with no other qualified solicitors and the pressure of work caused him to lose control of his accounting procedures. As a result he was not fully advised of the situation.
23. The respondent had destroyed his own career and that was something that he regretted deeply, he had caused his family hardship and grief and had lost the respect of his clients. As a result of the intervention the respondent was insolvent. He was assisting the intervening agents in the collection of criminal fees as they had no expertise in that field.
24. The respondent said that between his telephoning the Bureau and the intervention into his practice (the period between the 6th and 22nd March 1994) the respondent had worked out a scheme which could have prevented the Compensation Fund from having to pay out anything. By the time the respondent contacted the Bureau's accountant it proved too late and a decision had been made.
25. The respondent had developed a thriving criminal practice which took up the whole of his time and as a result he was not able to manage and administer his practice as it should have been. The respondent understood that he was likely to be struck off the Roll of Solicitors but expressed the hope that some time in the future he might be able to apply to have his name restored to the Roll.

The Tribunal FOUND all of the allegations to have been substantiated and direct that the Direction of the SCB in the case of Mrs W. should have the force of an Order made in the High Court. On the financial side, the respondent appeared to have run his practice as if monies held on behalf of clients were his own and were available for use by him in any way he thought fit. Such behaviour would not be tolerated. It was right that the respondent be Struck Off the Roll of Solicitors and that he pay the costs of and incidental to the application and enquiry.

DATED this 17th day of November 1995

on behalf of the Tribunal



Richard B. Bamford  
Chairman



