

IN THE MATTER OF DEREK PETER WATMOUGH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.H. Isaacs (in the Chair)
Mr. K.I.B. Yeaman
Mr. G. Saunders

Date Of Hearing: 23rd 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 Roger Field, solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on 23rd December 1994 that Derek Peter Watmough (then stated to be of) c/o Mr. R.H. Dawson of Messrs Morecroft Dawson & Garnett, Urquhart Knight & Broughton, Queen Building, 8 Dale Street, Liverpool L2 4TQ, solicitor, 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.

After the hearing the Tribunal was notified that the respondent's address was
St. Helens, Merseyside.

The applicant made a supplementary statement on 13th March 1995 containing further allegations.

The allegations contained in the original and supplementary statements are set out below.

The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in that he:

- (1) practised as a solicitor whilst not having in force a Practising Certificate;
- (2) failed to reply to a letter from the Bureau concerning his professional conduct;
- (3) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (4) drew money from a client account other than as permitted by Rule 7 of the said Rules, contrary to Rule 8 of the said Rules;
- (5) utilised clients funds for his own purposes and for the purposes of other clients;
- (6) sought to mislead a client about the professional conduct of her matter;
- (7) forged a letter purporting to emanate from another firm of solicitors.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 23rd March 1995 when Roger Field, solicitor and partner in the firm of Messrs. Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, appeared for the applicant and R.H. Dawson, solicitor and partner in the firm of Messrs. Morecroft Dawson & Garnetts incorporating Urquhart Knight & Broughton of Queen Building, 8 Dale Street, Liverpool appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent and exhibit "BPW1".

At the conclusion of the hearing the Tribunal ORDERED that Derek Peter Watmough **formerly** of C/o Mr. R.H. Dawson of Messrs. Morecroft Dawson & Garnetts, Urquhart Knight & Broughton, Queen Building, 8 Dale Street, Liverpool, but **now of** St. Helens, Merseyside, 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 £1,305.00 fully inclusive together with the costs of the Investigation Accountant of the Solicitors Complaints Bureau in the sum of £3,278.81.

The facts are set out in paragraphs 1 to 12 hereunder.

1. The respondent, born in 1947, was admitted a solicitor in 1971. At the material times he practised as a solicitor in partnership under the style of Watters & Watmough at 26 Hall Street, St. Helens, Merseyside.
2. In respect of the practice year commencing 1st November 1993 Section 12 of the Solicitors Act 1974 applied to the respondent. In respect of that year the respondent lodged an application for a Practising Certificate with the Law Society on 28th January 1994. The application was referred to the Solicitors Complaints Bureau (the Bureau) and upon investigation it emerged that the last Practising Certificate held by the respondent had been for the practice year commencing 1st November 1990 and that

the certificate had been terminated by the Law Society on 6th January 1992. Thereafter the respondent had submitted Forms PCR4 and PCR5 but he had not submitted a properly completed Form PCR1 and he had not paid a Practising Certificate fee since September 1990.

3. The Bureau wrote to the respondent on 3rd June 1994 seeking his explanation. He did not reply. A copy of the Committee report was sent to him on 13th July but he made no comments. At its meeting on 17th August 1994 the Conduct Committee of the Adjudication and Appeals Committee considered the matter and decided, inter alia, to receive a satisfactory explanation from the respondent regarding the issue of his practising whilst uncertificated within twenty-one days and his failure so to do would mean that the matter would automatically be referred to the Tribunal. The respondent was informed of the decision by letter of 14th September 1994. He did not appeal against the decision and had not provided the explanation sought.
4. Exhibit "DPW1" referred to above consisted of two letters placed before the Tribunal by the respondent. The first was dated 5th January 1993 addressed by the Bureau to the respondent in which the respondent was notified that the matter of his Practising Certificate had been considered by the Conduct Committee of the Adjudication & Appeals Committee on 25th November 1993 at which the Committee decided

- "1. Without prejudice to Mr. DP Watmough's practising uncertificated from the date of termination of his practising certificate of 5th January 1992 to present, to grant him a practising certificate for the practice year 1992/3 subject to the condition that he practise only in approved employment or partnership approved by the Committee on the ground that the Findings and Order of 23rd May 1991 made it desirable that the Society should exercise a measure of control over Mr. Watmough's position within the profession.
2. To approve Mr. Watmough's partnership with Messrs. Watters & Watmough for that purpose."

The second letter in that bundle was dated 31st January 1994 again from the Bureau to the respondent which said

"Thank you for your communication enclosing Notice of Intention to Apply and a Certificate of Fitness.

Your application under Section 12 will be referred to the Solicitors Complaints Bureau. When your application has been dealt with by the Bureau, you will be notified in writing of the outcome and you will be issued with a PCR1, application for a Practising Certificate."

Further the respondent maintained that he did send application forms to the Law Society on 17th June 1992. It appeared the forms were not received by the Law Society. He re-submitted them on 2nd September 1992 when the matter was referred to the Adjudication & Appeals Committee who on 4th November rebuked the respondent for practising whilst uncertificated. Whilst accepting that there had been periods when the respondent had been uncertificated, the respondent had thought that

he had done what was necessary and everything had been put in order. He accepted, of course, that there had been a delay in making the application and it was also accepted that the respondent had not responded to some letters addressed to him.

5. Upon due notice to the respondent the Investigation Accountant of the Bureau carried out an inspection of his books of account. The Tribunal had before it a copy of the Investigation Accountant's report dated 29th November 1994, which, inter alia, revealed that the respondent had been in partnership with Mr. & Mrs. Watters since 1985. They conducted a general practice assisted by an unadmitted staff of four. The Investigation Accountant did not meet Mr. Watmough and Mr. Watters stated that on 21st October 1994 he and his wife had both become concerned about matters being dealt with by Mr. Watmough. He said that subsequent investigations had revealed an apparent misuse of clients' funds. Mr. Watters stated that Mr. Watmough left the office on Tuesday 25th October 1994 and had not been seen since. He added that Mr. Watmough had been reported to the Police as a missing person. (Mr. Watmough's whereabouts were subsequently ascertained and the circumstances of his being found are dealt with in the submissions of the respondent hereunder).
6. The Investigation Accountant reported that the books were not in compliance with the Solicitors Accounts Rules as they contained numerous improper entries made at the instigation of the respondent. A minimum cash shortage was agreed with Mr. & Mrs. Watters of £158,107.56 on client bank account as at 27th October 1994. That cash shortage had arisen in the following way:
- | | | | |
|------|---|------------------|--------------------|
| (i) | Improper withdrawals from client bank account - | | |
| (a) | Mr. & Mrs. F | £130,019.44 | |
| (b) | Mrs. MW deceased | <u>25,088.12</u> | £155,107.56 |
| (ii) | Personal payment from client bank account - | | |
| | Mrs. MAG, deceased | | <u>3,000.00</u> |
| | | | <u>£158,107.56</u> |
7. With regard to the improper withdrawals from client bank account in the matter of Mr. & Mrs. F, the respondent had acted for those clients in connection with a building dispute. The relevant account in the clients ledger had been credited with the receipt of £130,019.44 but the entry was undated. Subsequently, on 15th June 1994 the account was charged with a payment of £130,019.44 to Mr. & Mrs. F, reducing the balance to Nil. An examination of the client bank account statements and paying-in slips prior to 15th June 1994 did not show a receipt of £130,019.44. An examination of the stamped copy of a client bank account paying-in slip dated 5th July 1994 indicated that a total credit of £130,094.44 (comprising two cheques for £130,019.44 and £75.00) had been lodged at the bank. A review of the client bank account statements showed that only £75.00 had been lodged therein on that date. The bank confirmed that to be the case. The bank also expressed concern that the original credit appeared to have been altered.
8. In the matter of Mrs. MW, deceased, the respondent acted for Mrs. B, a co-executor of the estate with the respondent. On 6th July 1994 and 21st October 1994 the

relevant account in the clients' ledger was charged with two payments of £21,005.10 and £4,083.02 respectively thereby reducing the balance to £24,750.51. The relevant paid cheques had been signed by the respondent and the cheque for £21,005.10 had been made payable to ANA, an unconnected client, and the cheque for £4,083.02 had been made payable to a building society. The cheque made payable to the building society had been paid into an account in the name of Mr. & Mrs. F, referred to above, who were also clients unconnected with the estate of Mrs. MW deceased.

9. The personal payment from client bank account in connection with MAG, deceased, arose in the following circumstances. The respondent acted for Mr. G and Mr. N, the executors of the estate. On 7th April 1994 the clients ledger account of Mrs. MAG, deceased, was charged with a payment of £3,000.00 reducing the balance thereon to £5,134.51. An examination of the relevant paid cheque revealed that the cheque had been signed by the respondent and drawn to cash.
10. The Investigation Accountant reported upon another matter - that of Mrs. TR for whom the respondent acted in connection with a medical negligence claim. During a recent visit by the client to the firm's offices, she produced to Mrs. Watters a copy letter addressed to Watters & Watmough dated 5th September 1994 purportedly from Messrs. Hill Dickinson Davis Campbell, solicitors of Liverpool, confirming an offer of "£17,500.00, together with costs in full settlement of the claim." Mrs. R confirmed to Mrs. Watters that the copy letter had been sent to her by the respondent. In a letter dated 2nd November 1994 addressed to Mrs. Watters, Messrs. Hill Dickinson Davis Campbell denied that the purported letter of 5th September 1994 was ever written by that firm.
11. On 9th January 1995 Mr. & Mrs. Watters wrote to the Solicitors Indemnity Fund concerning the sum of £4,500.00 which had been received by the respondent as part of the assets of the estate of MH deceased. The sum had been paid by the respondent into another estate. The Bureau sent a copy of the letter to the respondent under cover of a letter requiring an explanation (under warning) on 21st February 1995. The respondent's solicitors responded on his behalf by letter of 23rd February 1995. The respondent had paid the sum of £4,500.00 into the account of M deceased and had then paid the sum out in equal proportions to the three beneficiaries of the estate.
12. Claims upon the Solicitors Indemnity Fund at the date of the hearing had led to payments totalling approximately £200,000.00. It was believed that did not reflect the full extent of the claims which would have to be met and it was thought likely that the total sum paid out would be more.

The submissions of the applicant

13. The applicant did not suggest that the respondent directly took money. He had used one client's money to pay another client or clients who were "at his throat" following a long delay in the conduct of their matters. In one instance a payment had been made to a client to appease him in a case where his claim had been struck out for want of prosecution.

14. The respondent had sent a copy of a purported letter to a client to persuade her of progress of her matter and to stop her from pressing him for action.
15. The respondent had practised without a Practising Certificate over a long period of time. That was a serious matter and was indeed a separate offence under the Solicitors Act. It had serious consequences, an example of which was the fact that no payment could be made to an uncertificated solicitor by the Legal Aid Board.
16. A solicitor could not be unaware of the serious views that the Tribunal took of a solicitor who failed to respond to correspondence addressed to him by his own professional body.
17. It was, however, in the improper use of clients' money where the real gravity of this matter lay. Even if it was not a case where the respondent had taken for himself money from client account, he had nevertheless taken substantial monies from one client to benefit another unrelated client. He had caused an improper intermingling of clients monies.
18. The respondent was a litigation practitioner and it was accepted that in such practice from time to time a solicitor would be subjected to pressure. Even if the respondent had been subjected to substantial pressure, to produce a forged letter was reprehensible. The seriousness of what the respondent had done had perhaps been exacerbated when he produced a letter representing it to have come from another reputable firm of solicitors which inevitably was to cause embarrassment and anxiety to that firm who were in no way connected with it. In the submission of the applicant that action revealed a deceit and dishonesty which could not be tolerated in a solicitor.

The submissions of the respondent

19. It was accepted that the respondent had been guilty of the matters alleged and it was acknowledged that the allegations concerned serious matters which could not be excused. They did however reveal a tragic situation.
20. The respondent, whose father had been a solicitor, had seen his professional career in ruins. Following the split-up of his former practice, the respondent practised as a sole practitioner for eighteen months before being approached by Mr. & Mrs. Watters to join them as a partner.
21. The respondent had taken certain steps in connection with his Practising Certificate and had believed that all had been placed in order. He accepted that he had delayed in making applications and he acknowledged that he had not responded to letters concerning his Practising Certificate addressed to him by the Law Society. He knew that his non-reply would catch up with him.
22. In the years immediately prior to the hearing, the profitability of the respondent's partnership had drastically reduced reflected, of course, by a large reduction in the respondent's share of the profits. The decline in income had not been caused by lack of work, indeed the respondent's own workload was burdensome. The respondent had as a result fallen further and further behind. In particular he had not paid due attention to

the drawing of bills of costs. He had been guilty of not properly finalising matters. The fact that bills had not been prepared had contributed to the financial decline of the firm.

23. The respondent had not taken any holiday since 1990 and then he had taken only one week. The respondent made the unauthorised payments in respect of which complaint had been made in order to keep pressing clients at bay. The matters particularised in the evidence before the Tribunal reflected the total of such payments. There were no others. The respondent's making of unauthorised payments had not been carried out on a large scale basis. In the matter in which the letter had been forged, the respondent had acted for the client in a medical negligence case. Proceedings had been issued and medical reports and statements had been exchanged. Unfortunately the persons giving those reports in due course had retired and had become difficult to trace. The action had been left to slide. The client had become anxious and had become very persistent. The respondent had notified her of a purported settlement, he had not paid her any money, but it was accepted that in due course he might well have adopted that course.
24. In the matter of Mr. & Mrs. F, the respondent found himself in an extraordinarily embarrassing situation. Mr. & Mrs. F had been very close friends of the respondent. Although proceedings had been issued in connection with the building dispute the respondent had not taken proper action and an application to strike out for want of prosecution, although contested, was not successful. Monies paid to those clients were paid out of funds held on behalf of other clients.
25. On or about 21st October 1994 Mr. Watters discovered the discrepancies in client account when routine reconciliation was carried out. The respondent realised that his actions had been discovered and he left immediately without giving any indication as to where he was going. He left behind his car and his keys and did not tell his wife. For several days he was reported to the police to be a missing person. The respondent had been found by his daughter in a station cafe in London after she made a determined effort to find him. She took him back home after he had been absent for about four weeks which had, of course, proved a very distressing time.
26. Clearly the respondent had been overwhelmed with work. He had not been a person who was able to cope, talk about his problems or seek advice. In particular he had not disclosed his problems to his partners. One particular difficulty had been that the respondent had tried to undertake all kinds of work. That had been unrealistic.
27. The respondent and his wife had separated. Until his difficulties had been revealed, the respondent was a responsible member of his local community and indeed he and his wife were approved as foster parents by the local authority. He served as a lay reader in his local church. He played a part in many community organisations. He had been president of St. Helens Law Society.
28. The subject matter of the allegations before the Tribunal had been investigated by the police. It might be that criminal charges would follow upon the disciplinary proceedings and the Tribunal was asked to take account of the terrible consequences

already suffered by the respondent and those which might possibly be suffered by him in the future in connection with criminal matters.

29. The respondent was taking steps to repay the money. The Tribunal was invited to give the respondent credit for readily and speedily admitting the allegations made against him.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested.

On 23rd May 1991 the Tribunal found the following allegations to have been substantiated. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following circumstances, namely that he had:

- (i) failed to comply with directions of the Adjudication Committee of the Solicitors Complaints Bureau;
- (ii) misled, or attempted to mislead, a client as to the progress of that client's High Court claim and as to the reason for the serious delay in bringing the claim to trial;
- (iii) continued to act for a client in circumstances when he could not represent the client with competence and diligence;
- (iv) been responsible for excessive and unreasonable delay dealing with a client's claim;
- (v) being aware of acts or omissions which would or might justify a claim by his client against him, failed promptly to inform the client that he should seek independent advice;
- (vi) withdrawn;
- (vii) failed promptly or at all to reply to certain letters from the Solicitors Complaints Bureau.

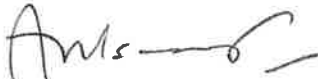
The Tribunal then said that it could not overlook the fact that the respondent did over a period of time mislead his own client. That was inexcusable. The Tribunal were able to give weight to the fact that the complaint made in respect of the respondent concerned only one client and one case. The Tribunal expressed sympathy for a solicitor who found that he had a "rogue" file. Mr. & Mrs. Watters had continued to support the respondent and bearing in mind the respondent's long and unblemished career until that appearance before the Tribunal, the Tribunal was prepared to accept that the respondent's behaviour had been uncharacteristic. The Tribunal adopted a lenient approach and imposed a financial penalty of £3,000.00.

It was a matter for great regret that the respondent again found himself appearing before the Tribunal to answer a number of allegations. It had become clear that the respondent had ceased to be able to cope. Whilst having sympathy for the extremely

difficult position in which the respondent found himself, and giving him credit for his ready acceptance of the matters alleged against him, the Tribunal could not overlook the fact that the respondent had endeavoured to alleviate the pressure of work by adopting a deceitful and dishonest course. It was right that the respondent should be Struck Off the Roll of Solicitors and it was also right that he should pay the costs of and incidental to the application and enquiry to include the costs of the Investigation Accountant of the Solicitors Complaints Bureau.

DATED this 1st day of May 1995

on behalf of the Tribunal



A.H. Isaacs
Chairman

