

IN THE MATTER OF ROGER ALASTAIR MURRAY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. G.B. Marsh (in the Chair)  
Mr. J.W. Roome  
Mr. K.J. Griffin

Date of Hearing: 4th April 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 Roger Field, solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on 20th December 1994 that Roger Alastair Murray, solicitor of Bare, Morcambe 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) failed to keep accounts properly written up for the purposes of Rule 11 of the solicitors' Accounts Rules 1991;
- (ii) drawn money from client account other than as permitted by Rule 7 of the said Rules, contrary to Rule 8 of the said Rules;

(iii) utilised clients' funds for his own purposes.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 4th April 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 the respondent did not appear and was not represented.

The evidence before the Tribunal included a letter addressed to the Tribunal dated 19th March 1995 by the respondent (details of that letter are set out in this document under the heading "The submissions of the respondent").

At the conclusion of the hearing the Tribunal ORDERED that the respondent Roger Alastair Murray, solicitor of Bare, Morcambe be suspended from practice as a solicitor for an indefinite period to commence on the 4th April 1995 and they further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £3,991.14 in total

The facts are set out in paragraphs 1 to 7 hereunder.

1. The respondent, born in 1955, was admitted a solicitor in 1980. At the material times he practised on his own account under the style of Murray & Co. at 26 Sun Street, Lancaster.
2. Upon due notice the Investigation Accountant of the Solicitors' Complaints Bureau (the Bureau) carried out an inspection of the respondent's books of account. The Investigation Accountant's Report was dated 2nd August 1994 and a copy was before the Tribunal.
3. The respondent told the Investigation Accountant that he had practised alone since November 1985 and was assisted in his general practice by an unadmitted staff of one.

He said he was not a controlled trustee and was not regulated in the conduct of investment business.

4. The books of account produced by the respondent contained no entries during 1994 and the most recent reconciliations of client funds to client liabilities had been performed as at 30th November 1993. It was considered impracticable to attempt to compute the firm's liabilities to clients, but it was possible to ascertain that a minimum shortage of clients' funds of £3,090.09 existed as at 31st May 1994. That minimum cash shortage was ascertained by taking together improper transfers of £2,478.72 and debit balances of £611.37. The respondent was not in a position to replace the minimum cash shortage.
5. Between 18th March 1994 and 27th May 1994 six improper transfers of funds had been made from client to office bank account totalling £2,478.72. On 27th May 1994 £800.00 was transferred from client to office bank account which the respondent said was in respect of fees due to him, but was unable to identify the client to whom the transfer related.
6. The debit balances had been created by two transfers of disbursements in excess of funds available. Subsequently £83.00 was received into client bank account to reduce the debit balances.
7. The respondent ceased to practise following an intervention into his practice by the Law Society on 21st September 1994. The basis upon which the intervention was resolved upon was breaches of the Accounts Rules.

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

8. The applicant did not allege dishonesty but it had to be said that the improper movement of clients' monies benefitted the respondent as inevitably, if monies were transferred from client to office account, they served either to enhance the credit balance or reduce the debit balance thereon.

9. The obligation to reconcile client ledger account with client bank account was well-known and had to be carried out at least every five weeks. It was of course impossible to achieve such reconciliation in the absence of proper book-keeping entries.
10. It was accepted that the respondent had been under desperate pressure, but the provisions relating to the transfer of costs were clear. Costs could only be transferred for a specific sum relating to a specific client in respect of whom a bill had been delivered.
11. The respondent accepted that the payments in respect of which complaint had been made were improper, but he was unable to rectify the position. The debit balances referred to had been outstanding over a long period of time.
12. The applicant reported to the Tribunal that twenty-six applications had been made to the Law Society's Compensation Fund, the total amount of which was £2,559.76. There were pending applications totalling £61,099.42.

**The submissions of the respondent (contained in his before-mentioned letter dated 29th March 1995)**

13. The respondent apologised to the Tribunal for his failure to attend. He was in receipt only of Income Support and was not able to afford the fare to London.
14. The respondent accepted all of the facts set out in the applicant's statement.
15. Since the respondent began in practice on his own account in November 1985 his accountants had undertaken his firm's routine book-keeping and each year, save the previous one, the Law Society had received an unqualified Accountant's Report.

16. The respondent had undertaken almost exclusively domestic conveyancing work which had been seriously affected by the recession in the housing market. As a result he had fallen into arrears with payment of his accountants' charges and their attendance at his office to maintain his books of account became infrequent. The respondent had not received the letter notifying him of the Investigation Accountant's visit.
17. The respondent had retained the same staff for several years, but for a period of time after losing experienced staff, found it necessary to be in his office at 5 o'clock in the morning and leave late every day, including weekends.
18. The respondent also wished, although with embarrassment, to draw to the attention of the Tribunal the fact that he had developed an alcohol problem which he believed detracted from his ability to cope with the problems facing his practice. He had sought medical help and believed he was freed of that problem. He also wished to acknowledge the kind support and assistance of the Lawyers' Support Group.
19. The respondent accepted that there had been transfers of costs from client account to office account prior to the delivery of a bill. In practice all the respondent's conveyancing charges were based on a fixed quotation and additionally it was his usual practice to prepare a hand-written completion statement and account prior to completion and to hand a copy to clients upon their attending at his office for the execution of transfer deeds, a typed formal copy subsequently being delivered. The transfer of £800.00 had been made because the respondent was well aware that there were costs significantly in excess of that sum remaining in client account, and he had received a telephone call from his bank manager who was concerned that his firm's overdraft facility was to be exceeded. Although unable to identify the matters to which the sum related at the time of the Investigation Accountant's inspection, the respondent had managed to identify the clients subsequently. Whilst such transfers were breaches of the Rules, in the submission of the respondent they were not dishonest nor were they prejudicial to clients.

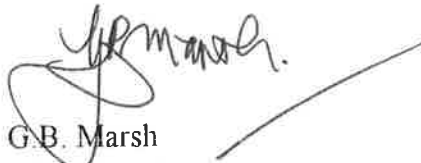
20. Following the Law Society's intervention, the respondent was unemployed and in receipt of Income Support. He had no savings or assets.
21. The respondent believed his reputation had been seriously damaged as a result of rumour and misunderstanding of (the nature of the) cause of the intervention and he was affected by a deep sense of embarrassment and shame.

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

On the evidence before them, the Tribunal did not consider that the respondent had acted dishonestly. Having said this, he had not acted with the propriety and integrity which is required of a solicitor. The Tribunal can accept that the respondent had been placed in a very difficult financial position when the down-turn in the property market led to a considerable falling off of work. The Tribunal also accepted that financial difficulties contributed to the respondent's failure to keep proper accounts. It was also clear that the respondent, at a time of great pressure and difficulty, allowed his judgment to become impaired by alcohol abuse. None of these matters, however, justify serious breaches of the rules of the profession. In all the circumstances however, the Tribunal considered the appropriate penalty in this case was that the respondent should be suspended from practice for an indefinite period of time and further that he should pay the costs of and incidental to the application and enquiry.

DATED this 23rd day of May 1995

on behalf of the Tribunal

  
G.B. Marsh  
Chairman

Findings sent to the  
Law Society on the 8th  
day of June 1995