

IN THE MATTER OF JENNIFER ANNE CUMMINS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J.W. Roome (in the Chair)  
Mr. D.E. Fordham  
Mrs. C. Pickering

Date Of Hearing: 16th November 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 10th April 1995 that Jennifer Anne Cummins, solicitor of 1 The Balcony, Corporation Street, Corby, Northants 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 application was heard at the Court Room, No. 60 Carey Street, London WC2 on 16th November 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 Mr. David Freeman of Messrs. D.J. Freeman, solicitors of 43 Fetter Lane, London EC4 appeared for the respondent.

Before the commencement of the hearing the parties told the Tribunal that the Investigation Accountant of the Law Society had inspected the respondent's books and a shortfall in client account had been ascertained. The respondent admitted the shortfall and was desirous of having that matter dealt with by the Tribunal at the same time as the matter alleged in the before-mentioned application.

The parties had agreed the form of the allegation which was placed before the Tribunal. On the assurance of the respondent that she wished to answer that new allegation at the hearing fixed for 16th November 1995, the Tribunal consented to the addition to that allegation to that already before them and the matter proceeded accordingly.

The allegations were that the respondent had -

- (i) failed to deliver to the Law Society an Accountant's Report upon retirement from practice and accordingly had been guilty of conduct unbecoming a solicitor;
- (ii) acted in breach of the Solicitors' Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 she improperly utilised clients' money for her own purposes;

The evidence before the Tribunal included the admissions of the respondent upon both allegations.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Jennifer Anne Cummins, solicitor of Corby, Northants NN18 (formerly of 1 The Balcony, Corporation Street, Corby, Northants) be STRUCK OFF the Roll of Solicitors and further Ordered her to pay the costs of and incidental to the application and enquiry, fixed in the sum of £827.25.

The facts are set out in paragraphs 1 to 14 hereunder.

1. The respondent was 45 years of age and had been admitted a solicitor in 1985.
2. At the material times, the respondent carried on practice as a sole practitioner under the style of Jennie Martin at 1 The Balcony, Corporation Street, Corby, Northamptonshire.
3. The respondent's practice ceased on 31st August 1993. A "Cease to Hold" Accountant's Report was required for her period of practice from the end of the previous accounting period up to the date of closure, i.e. from 1st January 1993 to 31st August 1993 and had to be delivered by 28th February 1994. This was not done.
4. On 2nd September 1994, the Law Society wrote to the respondent drawing to her attention her failure to file the relevant Report, and requesting written explanation.
5. On 12th September, the respondent replied setting out the reasons for termination of her practice at 31st August 1993 and her family difficulties. She said that she had in fact recommenced in practice on 1st March 1994, but intended to cease finally on 31st October 1994 for health reasons. A book-keeper had been engaged to complete the accounts, but had not finished the work. She was taking advice from accountants in preparing the accounts in order that the Certificate and Report might be delivered.
6. The letter was acknowledged by the Solicitors Complaints Bureau (the Bureau) on 26th September. Because of the lateness in submission of the Report, the matter had

to be placed before the Conduct Sub-Committee of the Adjudication & Appeals Committee of the Bureau. The Report to be placed before the Conduct Committee was sent to the respondent on 13th October.

7. By letter of 13th October, Messrs. Halls & Marray, chartered accountants, wrote on behalf of the respondent. They were to prepare all relevant accounts during November 1994. The letter was acknowledged by the Bureau on 24th October.
8. On 26th October, the respondent wrote to confirm that she was retiring from practice and that the accountants were preparing the final Certificate. This was acknowledged on 3rd November.
9. The matter was considered by the Conduct Committee on 7th December 1994. The Committee decided to require the respondent to submit the "Cease to Hold" Report within 56 days of that meeting, failing which disciplinary proceedings would be instituted against her. The Bureau wrote to the respondent advising this by letter of 20th December 1994.
10. No Report was filed, and the respondent wrote again on 14th February apologising for the delay. She was no longer in practice. On 20th February, the Bureau wrote to remind the respondent of the intended disciplinary proceedings, in the light of her failure to deliver the Report by 15th February.
11. On 22nd February, the respondent wrote again to confirm her change of address and that she had re-married. She was still seeking advice.
12. On 8th March, Messrs. Ambrose Appelbe & Pyke, solicitors confirmed that they had seen the respondent under the Assistance Scheme, and that there were major medical problems. They confirmed that she had effectively ceased practice in August 1993, and files were handed over. She was not able to remember much by way of detail, and appreciated that disciplinary proceedings would be taken.
13. Nothing further had been heard from the respondent and the "Cease to Hold" Report had not been filed.
14. The Investigation Accountant of the Bureau had carried out an inspection of the respondent's books of account. His formal Report had not yet been prepared and was not before the Tribunal. However, he found a shortage on client account of £36,042.23. The respondent had used client money to meet her indebtedness for Value Added Tax, Income Tax, her office bank overdraft and office rent.

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

15. The applicant was aware of major health problems suffered by the respondent. She had, however, ceased her sole practice as a solicitor and had not complied with the requirement under the Solicitors' Accounts Rules to file a "Cease to Hold" Accountant's Certificate, despite a number of assurances that the matter was in hand given to the Bureau.

16. Unusually in this case the respondent had voluntarily pointed out that she was aware that there was a shortfall of clients' funds in her practice. She had particularly requested that that matter be dealt with by the Tribunal at short notice. The applicant had ascertained by telephone that the precise amount of the shortfall found by the Bureau's Investigation Accountant was £36,042.23. The respondent admitted the position and was clear that the shortfall had arisen because she had utilised clients' monies to meet personal liabilities. That was a serious matter.

**The submissions of the respondent**

17. The respondent had, after working in a local authority, joined a firm of solicitors in Corby and had worked there for a period of seventeen years (with a brief gap). She had married and had a nineteen year old son. She had during the whole of that time been a social drinker.
18. The respondent had divorced in 1982 and had qualified as a solicitor in 1985. She was immediately made a salaried partner with the firm where she had worked for seventeen years. In 1986 her daughter was born.
19. The respondent decided to set up in practice on her own in 1987, that had to be considered a brave step given her personal circumstances. She had, in common with many others, not foreseen the recession of 1990. In 1991 the respondent's drinking had become out of control and she had become an alcoholic. She had received treatment both for her drinking and for depression. In reality, the respondent had not been responsible for her actions. She was held in the thrall of alcoholism and depression.
20. Since January 1995, the respondent's alcoholism had been under control.
21. The respondent had not used clients' monies for riotous or high living. She had used the money to meet office expenses and save herself from bankruptcy. In fact the respondent had always lived very modestly.
22. The respondent had instructed her representative to notify the Law Society of her defalcations. She apologised profusely for what she had done. She deeply regretted matters and was extremely contrite.
23. The respondent had attempted to sell all her possessions, even attending car boot sales and so on, in order to raise money to meet her indebtedness.
24. The respondent hoped she might work within the solicitors' profession, albeit under supervision, in order that she might utilise some of her earnings to discharge her debts.
25. The Tribunal was invited to regard the respondent as a casualty of circumstances and they were asked to deal with her as leniently as they could.

The Tribunal FOUND the allegations to have been substantiated. They recognised that this was a very sad case. The respondent had not taken an easy route to qualification and she was to be admired for the fact that she had been admitted as a solicitor. She

had endured considerable personal difficulty and had the grave misfortune to enter practice as a sole principal at a time when the financial conditions of the country made it extremely difficult even for established practices to continue. The Tribunal recognised that the respondent had suffered from alcoholism and depression. They gave her credit for the frankness and candour of her approach and, of course, gave her credit for the fact that she made sure that the Law Society itself was aware of her defalcations. The Tribunal also accept that clients' monies were used to keep the respondent's firm afloat and not on high living.

The Tribunal could not, however, overlook the fact that the respondent was well aware that what she had done was wrong and considered it right that they impose upon her the ultimate sanction and required her to pay the costs of and incidental to the application and enquiry.

In the unusual circumstances of this case, the Tribunal wish to express the hope that the Law Society might view favourably an application by a suitable firm of solicitors to employ the respondent.

Dated this 28th day of December 1995  
On Behalf of the Tribunal



J.W. Roome  
Chairman



