

... of appeal
against costs
dated 7.8.95

No. 6867/1995

IN THE MATTER OF CLIVE ROBERT WATERS, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)
Mrs. E. Stanley
Mr. K.J. Griffin

Date Of Hearing: 11th July 1995

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Carlton Maurice Edwards, solicitor of Southfield House, 11 Liverpool Gardens, Worthing, West Sussex on 24th April 1995 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Clive Robert Waters, of Hollesey, Woodbridge, Suffolk IP12 . a person who was or had been a clerk to a solicitor or that such other Order might be made as the Tribunal should think right.

The allegation was that the respondent had been convicted upon his own confession before Chelmsford Crown Court of six offences of theft and sentenced to a total of thirty months imprisonment.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 11th July 1995 when Harvey Silverman, solicitor and partner in the firm of Messrs. Marsh Ferriman & Cheale of Southfield House, 11 Liverpool Gardens, Worthing, West Sussex appeared for the applicant and the respondent did not appear and was not represented.

On 2nd June 1995 the respondent wrote to the Assistant Clerk of the Tribunal confirming receipt of the various papers and confirming he did not intend to be present at the hearing.

In that letter the respondent pointed out that he wished to make it clear that he was never employed by a solicitor or firm of solicitors, but was solely employed as an office manager by the firm of Messrs. Elliott, Mortlock Busby & Co. chartered accountants and as such was never in receipt of any remuneration directly from any solicitor or firm of solicitors.

The applicant invited the Tribunal to accept that it had jurisdiction to deal with the respondent. The Tribunal was referred to the Judgement of The Lord Chief Justice In the matter of a Solicitor's clerk No. C01848/87 when he said, "In my judgement, if it is shown that a person has acted as a clerk and has performed functions which are the functions, truly speaking, of a clerk to a solicitor or the functions of a solicitor himself, the mere fact that he is not a servant of the solicitor does not prevent him from coming within the words of a section." It followed that the word "employed" did not mean that there had to exist a relationship of master and servant between the solicitor and the clerk.

In its Findings relating to Stephen Lawrence Curry, a solicitor's clerk, number 6626 of 1994, (the Findings being dated 26th April 1995), the Tribunal took the view that an arrangement that existed where a company engaged and remunerated a person who worked in a solicitor's office as a clerk was not a device which could circumvent the jurisdiction of the Tribunal and the provisions of the Solicitors' Act. In that case the individual concerned undertook the work of a clerk or indeed the work which normally might have been undertaken by a solicitor and was remunerated for such work, albeit indirectly.

The respondent in this matter had been responsible for writing up and maintaining the accounts of a solicitor's firm which clearly was the work either of a solicitor himself or of a solicitor's clerk.

The Tribunal accepted the submissions of the applicant and confirmed that it had a jurisdiction to deal with the respondent.

The evidence before the Tribunal included the admissions of the respondent contained in his before-mentioned letter of 2nd June 1995.

At the conclusion of the hearing the Tribunal ORDERED that as from 11th July 1995, no solicitor should, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Clive Robert Waters of _____, Hollesley, Woodbridge, Suffolk a person who was or had been a clerk to a solicitor and they further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £4,194.46 inclusive. (that figure included the costs of the Investigation Accountant of the Law Society)

The facts are set out in paragraphs 1 to 11 hereunder.

1. The respondent was not a solicitor and was at the material times employed by Elliott Mortlock Busby & Co. accountants to A.G. Freeman & Son (the solicitors) of Clarence Chambers, Ground Floor, 28 Clarence Street, Southend-on-Sea, Essex SS1 1BD.

2. From about 1979 the respondent attended at the solicitors' offices and performed the following functions, namely -
 - (a) making entries upon client account cash books and client account cards when required; also making entries in office account cash book;
 - (b) attending to closing client account cards once a matter had been completed;
 - (c) extracting clients' account balances and agreeing with clients' account funds;
 - (d) extracting office account balances and agreeing the same.
3. On 7th October 1994 the respondent was convicted upon his own confession before Chelmsford Crown Court of six offences of theft and sentenced to a total of thirty months imprisonment.
4. The offences of theft related to the misappropriation of monies belonging to clients of the solicitors. The Tribunal had before it a copy of the Report of the Law Society's Investigation Accountant in which it was said that the books of account of the solicitors, when first produced, were not in compliance with the Solicitors' Accounts Rules as they contained a number of false entries, apparently made at the instigation of the respondent. The inspection which had taken place on 7th September 1994, had been adjourned to allow the partner in the solicitors to identify further false entries in the books. The inspection was reconvened on 19th November 1994 when it was found that the books were not in compliance with the Solicitors' Accounts Rules.
5. A list of liabilities to clients, as at 31st August 1994, was produced for inspection and totalled £407,321.91. The items were in agreement with the balances on the clients' ledger and a comparison of the total with cash held on client bank and building society accounts, after allowance for uncleared items, at that date, revealed the following position -

Liabilities to clients	£407,321.91
Cash available	<u>307,357.59</u>
Cash shortage	<u>£99,964.32</u>

6. The partners and solicitors agreed the existence of the cash shortage on the client bank account which was accounted for as follows -
 - (i) Improper Withdrawals from Client Bank Account £88,500.62
 - (ii) Book Difference - Shortage 11,463.70

£99,964.32
7. Details of the improper withdrawals from client bank account were as follows -

<u>Date</u>	<u>Individual Client Ledger Account Charged</u>	<u>Payee</u>	<u>Amount</u>
02.09.92	D.S. M	C. Waters	£10,000.00
05.11.92	J. W	C. Waters	24,822.75
21.04.93	R. D	C. Waters	25,000.00
13.05.93	P	C. Waters	14,177.87
06.08.93	Unallocated	C. Waters	<u>14,500.00</u>
	Total		<u>£88,500.62</u>

8. The solicitors told the Investigation Accountant that none of the above payments had any connection whatsoever with the noted clients' affairs or indeed with the affairs of any of their clients and accordingly, they were all improper.
9. The nefarious activities of the respondent had come to light when the solicitors' book-keeper had noticed a discrepancy on a client ledger account. She discovered from the returned paid cheque that the sum of £9,004.86 had been withdrawn from client bank account on 26th January 1994 and that the cheque had been made payable to Mr. Clive Waters.
10. On 15th February 1995 the Adjudication & Appeals Committee of the Solicitors Complaints Bureau (the Bureau) resolved to seek an Order pursuant to Section 43 of the Solicitors' Act 1974.

The submissions of the applicant

11. In the circumstances, it was right that the employment of the respondent within the solicitors' profession should be regulated.

The submissions of the respondent (contained in his before-mentioned letter dated 2nd June 1995)

12. The respondent said that the documents received by him all appeared to be in accordance with his recollection of events and he would certainly not contest any of the allegations made against him.
13. He confirmed that he consented to an Order in the terms sought by the applicant and hoped that the expense of a formal hearing would be avoided.

The Tribunal FOUND the allegation to have been substantiated, indeed it was not contested.

The Tribunal considered it right that the Order sought be made and further Ordered that the respondent should pay the costs of and incidental to the application and enquiry, to include the costs of the Investigation Accountant of the Law Society.

DATED this 9th day of October 1995

on behalf of the Tribunal

A handwritten signature in black ink, appearing to be 'D/Leverton', written over a horizontal line.

D.J. Leverton
Chairman

For the Tribunal
10th day of October 1995

