

IN THE MATTER OF CHARLES EDWARD NUTTER

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K I B Yeaman (in the Chair)
Mr. D J Leverton
Lady Bonham-Carter

Date Of Hearing: 10th October 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 Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 11th May 1995 that Edward Charles Nutter of _____, Puerto Pollensa, Mallorca 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.

At the hearing the applicant sought to withdraw allegation d. the Tribunal consented thereto.

The allegations set out below are set out in the agreed amended form. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following respects namely that he had:-

- a. failed to maintain properly written books of account contrary to Rule 11 Solicitors Accounts Rules 1986 and 1991;

- b. failed to produce accounting documents for inspection upon a proper request being made contrary to Rule 12 Solicitors Accounts Rules 1986 and Rule 27 Solicitors Accounts Rules 1991;
- c. drew monies out of a client account other than in accordance with Rule 7 Solicitors Accounts Rules 1986 contrary to Rule 8 of the said Rules;

The application was heard at the Court Room No.60 Carey Street, London WC2 on the 10th October 1995 when Geoffrey Williams solicitor and partner in the firm of Cartwrights Adams and Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent did not appear and was not represented.

The respondent had, however, acknowledged receipt of the proceedings, served by the Tribunal, in his letter of the 6th July 1995. In that letter he said that he would not be attending the hearing then set for the 27th July 1995. It was clear that the respondent had not been given proper notice of proceedings and the matter was re-listed for hearing on the 10th October 1995. The respondent was notified.

The evidence before the Tribunal included the admission of the respondent in respect of the following paragraphs contained in the applicant's statements, Paragraph 1,3,4,5(in part): he disputed the rest of the statement. The Investigation Accountant, Mr Hitesh Nathalal Patel gave oral evidence.

At the conclusion of the hearing the Tribunal Ordered that the respondent Edward Charles Nutter of Puerto Pollensa, Mallorca, 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 £4,451.25p inclusive.

The facts are set out in paragraphs 1 to 11 hereunder:-

1. The respondent was admitted a solicitor in 1984. He was born on 25th October 1954.
2. At all times material to the application the respondent has carried on practice as a solicitor under the style of Charles Nutter & Co. at P O Box 118 Springfield Road, Blackpool FY1 1QQ. Such practice ceased in or about February 1993. Further the respondent carried on in practice as a solicitor in partnership under the style of Birchall Blackburn at 11 Cannon Street, Accrington, Lancashire. He ceased so to practise on or about 18th August 1993.
3. Upon notice duly given to the respondent an inspection of his books of account was carried out by the Investigation Accountant of the Law Society. A true copy of the Report of the Investigation Accountant dated 7th December 1993 was before the Tribunal.
4. The respondent told the Investigation Accountant that he had conducted his former practice assisted by a staff of two and acted for only one client, F Limited in connection with debt collecting.

5. The respondent's books were not in compliance with the Solicitors Accounts Rules. The respondent failed to provide the Investigation Accountant with copies of client bank account and client ledger account reconciliations. He said that he was not aware that they were ever done and added that he did not realise that it was a breach of the Solicitors Accounts Rules to fail to produce such reconciliations at least once every five weeks.
6. Nine of the fifteen files requested were not made available for inspection.
7. A list of liabilities to clients as at the 30th June 1993 was produced for inspection. The items were in agreement with the balances in the clients' ledger and totalled £2,896.75. The list did not include further liabilities to clients totalling £3,973.71 and the inclusion of those additional liabilities increased the total to £6,870.46.
8. A comparison of total liabilities with cash held on client bank account revealed the following position-

Liabilities to clients	£6,870.46
Cash Available	<u>2,972.46</u>
Cash Shortage	<u>3,898.00</u>

9. The cash shortage arose because improper transfers had been made from office bank account to client bank account totalling £3,973.71 set against which was a book difference (Surplus) of £75.71.
10. During the period 9th February 1993 to 27th July 1993 eight transfers from client to office bank account, varying in amount between £233.25p and £900.00 had been made purporting to be in respect of eight specific bills of costs. The respondent repeatedly failed to provide the Investigation Accountant with copies of those bills of costs and agreed that he had been unable to produce any documented evidence to show that the bills had been raised. The respondent told the Investigation Accountant that he had not been aware that it was a breach of the Solicitors' Accounts Rules to transfer costs before raising and delivering the relevant bills.
11. The respondent indicated to the Investigation Accountant that he would be in a position to rectify the shortage on client bank account by the 9th November 1993. The respondent had not done so.

The submissions of the applicant

12. The respondent had not carried out bank reconciliations over a period of some two and a half years. The respondent indicated that he was not aware that the Rules required that exercise to be carried out and he should have known the requirements of the Rules by which he was bound.
13. It was a bad failing not to produce accounting documents when requested. They were necessary documents and their absence prevented the Investigation Accountant from doing his job properly. It was vital that the Law Society's Investigation Accountant

was able to carry out his work and it was imperative that members of the solicitors profession deal properly with such matters.

14. As long ago as February 1994 the respondent had asserted that he had drawn bills. However relevant bills had not been produced. It was absolutely clear that money in client account remained client money until the client concerned was sent a bill. It clearly followed that to transfer money from client to office account was a serious breach because it was a wrongful utilisation of clients' monies. One payment had been made out of the Law Society's Compensation Fund in the sum of £2,023.50p. The payment had been made in respect of an F Ltd. matter debt collection in respect of which the initial complaint had been made to the Solicitors Complaints Bureau.

The submissions of the respondent

15. In his letter addressed to the Tribunal dated the 6th July 1995 the respondent said he accepted that he did not realise that it was a breach of the Accounts Rules not to produce reconciliations: he said that his accountant produced such reconciliation which had been accepted by the Investigation Accountant.
16. The respondent went on to say that he had produced six files to the Investigation Accountant: eight files had been sent to other solicitors at the request of the client and he had been unable to locate the one remaining file which had been requested.
17. The respondent had not been able to accept the conclusions reached by the Investigation Accountant. He said after his final meeting with the Investigation Accountant he examined the ledgers and discovered that the transfers about which the complaint had been made were made to cover accumulated debits on the office account. The respondent's sole client had been F Ltd and throughout the period when he practised as Charles Nutter & Co. it was accepted by F Ltd that accumulated debits would be dealt with by transfers as and when funds were received. F Ltd were specifically authorised by people instructing them "to incur solicitors' costs". The respondent's accountant had all his records and would have been able to produce bills of costs relating to the debits on office account.
18. The respondent went on to say that after his final meeting with the Investigation Accountant the respondent formed the view that all transfers had been properly carried out and therefore there was no shortage on client account to rectify.

The Tribunal FOUND the allegations to have substantiated. It was clear that the wrongful transfers from client to office account had led to a shortfall on that account, the respondent had not put the money back and a successful claim had been made against the Law Society's Compensation Fund. The Tribunal accepted that the sums of money concerned were not great, however it is fundamental that any solicitor in practice is meticulous in his compliance with the Solicitors' Accounts Rules to ensure that clients' funds are treated fairly, are not placed in jeopardy and thus the interests of the public are protected. Further it was essential that the Solicitors Accounts Rules be complied with in every respect if the good reputation of the solicitors' profession is to be preserved. The Tribunal considered the way in which the respondent kept accounts,

his misuse of clients' funds and his overall attitude to be entirely unacceptable. 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 in a fixed sum, noting that the costs were higher than they might have been because the respondent had contested the allegations and because they included the costs of the Investigation Accountant of the Law Society.

DATED this 6th day of November 1995

on behalf of the Tribunal



K I B Yeaman
Chairman

*Findings filed with the
Law Society on the 13th
day of November 1995*

