

IN THE MATTER OF JOHN FREDERICK McGLASHAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J.N. Barnecutt (in the Chair)  
Mr. J.W. Roome  
Mr. K.J. Griffin

Date Of Hearing: 20th December 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 the 5th May 1995 that John Frederick McGlashan (a solicitor) whose address for service was c/o A.G. Hopper, solicitor, P.O. Box 7, Pontyclun, Mid Glamorgan, CF7 9XN 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) acted in breach of the Solicitors Accounts Rules 1991 in that he:
  - (a) failed contrary to the provisions of Rule 3 to pay into client account clients' moneys received;
  - (b)  ~~had~~ withdrawn from client account moneys other than in accordance with the provisions of Rules 7 and 8 of the said Solicitors Accounts Rules;

- (c) contrary to the provisions of Rule 11 of the said Rules, failed to ensure that the accounting records and books of the firm showed all dealings with clients' money and transactions involving the same;
- (ii) Acted in breach of his duty of good faith to his partners in that he:
  - (a) dishonestly alternatively fraudulently alternatively improperly utilised for his own purposes:
    - (i) clients moneys received by his firm in respect of costs;
    - (ii) moneys received pursuant to demands for costs but which he failed to pay into the firm's office account;
    - (iii) retained Green Form contributions received from clients;
  - (b) in acting in breach of the Solicitors Accounts Rules brought his partners into breach of the said Rules;
- (iii) By virtue of each and all of the above aforementioned been guilty of conduct unbecoming a solicitor.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 20th December 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 the respondent was represented by Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan, CF7 9XN.

The evidence before the Tribunal included the admissions of the respondent as to the facts and allegations save that he disputed in allegation (ii) para (a) that he had been dishonest or fraudulent. Exhibit "JFMcG1" was a letter from the firm of solicitors currently employing the respondent written in his support.

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Frederick McGlashan of C/o A.C.G. Hopper, P.O. Box 7, Pontyclun, Mid Glamorgan, CF7 9XN 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 £1,226.20 inclusive.

Upon application made on behalf of the respondent the Tribunal agreed that the filing of their Order with the Law Society might be suspended until the 25th January 1996 in order that the consent of the Law Society to the respondent's continued employment with his current employers might be obtained and during which period of time consideration could be given to the advisability of the respondent appealing from the decision of the Tribunal to the Divisional Court.

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

1. The respondent, aged 42 years, was admitted a solicitor in 1978. At the material times he was an equity partner in the firm of Colin Watson & Co. of 13 Bold Street,

Warrington, Lancashire. The respondent resigned as a partner in that firm and severed all connection therewith on the 14th November 1994. At the time of the hearing the respondent was employed as an assistant solicitor with the firm of Messrs. Longland Stansfield & Keeble of 2-6 Egypt Street, Warrington. The Law Society had not objected to that arrangement.

2. By letter of the 19th July 1994 the senior partner of Messrs. Colin Watson & Co. wrote to the Solicitors Complaints Bureau (the Bureau) reporting on 56 cases in which the respondent had been concerned and where misconduct applied.
3. The respondent had taken money either from office account or clients' account paid on account of costs for purported travelling expenses which had not been incurred. The amount involved was £5,206.00.
4. Money received from clients on account of costs had not been paid into client account. The amount involved was £8,310.00.
5. Money had been taken from designated deposit accounts which were for costs but the money had been retained by the respondent and not paid into the office account nor had bills been prepared in respect of moneys taken. The amount involved was £1,250.00.
6. The respondent had received money for costs but had not paid them into the office account. The sum involved was £3,250.00.
7. The respondent had received contributions from legally aided "Green Form" clients and retained them without payment into the office account.
8. The respondent's partners reported the matters above to the Bureau.
9. On the 27th July 1994 the Bureau wrote to the respondent seeking explanation. By letter of the 19th September 1994, through his solicitor, the respondent made reply, accepting that the respondent's actions were misguided and mistaken but not carried out with improper motive or dishonestly. He had resigned from the firm and made recompense to the firm in respect of the moneys involved.
10. The respondent's position was that clients' money had not been involved, save in a technical sense, and there had not been complaint from any client. The respondent had merely followed the accepted practice in the firm whereby not all moneys received were paid into office account. The respondent had introduced much business through his social contacts and had not claimed reimbursement of entertainment expenses. The respondent had lost a lot of money in respect of one dishonest client but had not sought reimbursement from the firm.
11. The partners of Colin Watson & Co. did not agree with the respondent's point of view. The relevant Committee of the Bureau decided the matter should be referred to the Tribunal, the respondent appealed against that decision but in due course the appeal was refused.

**The Submissions of the Applicant**

12. The applicant reminded the Tribunal of the relevant Solicitors Accounts Rules which were as follows:

**Solicitors Accounts Rules Rule 3**

"Every solicitor who receives clients' money shall without delay pay such money into a client account". With this Rule should be read Rule 9(2) (c). That provided that a solicitor should not pay into a client account money held or received by him which was expressly paid for or towards payment of the solicitor's costs in respect of which a bill of costs or other written intimation of the amount of the costs incurred had been delivered for payment or there was an agreed fee for business undertaken or sought to be undertaken.

**Rule 7** provided that there may be drawn from client account money properly required in full or part for reimbursement of money expended by the solicitor on behalf of the client or properly required for or towards payment of the solicitor's costs where there had been delivered to the client a bill of costs or other written intimation of the amount of costs incurred.

**Rule 8** provided that no money drawn from a client account under Rule 7 should be drawn except by a cheque drawn in favour of the solicitor or a transfer to a bank or building society account in the name of the solicitor.

**Rule 11** provided that every solicitor should at all times keep properly written up such accounts as may be necessary to show the solicitor's dealings with clients' money received, held or paid by him.

**Principle 20/01**

"A solicitor must act towards other solicitors with frankness and good faith consistent with his or her overriding duty to the client." Commentary 1 to the principle stated that any fraudulent or deceitful conduct by one solicitor towards another would render the offending solicitor liable to disciplinary action. This obligation clearly extended to the relationship between partners in a firm.

13. In the submission of the applicant there had been clear breaches by the respondent of both the duties of a solicitor under the Accounts Rules and of the duty of good faith to his partners. The sums involved could not be described as "small" and the activity, the subject of complaint, continued over a lengthy period of time. Although dishonesty had been denied, the applicant invited the Tribunal to take the view that it was clearly dishonest and/or fraudulent for the respondent to have acted in the way he did vis a vis his partners in that he converted to his own use substantial sums of money which were due to the firm and clearly should have been accounted for to his partners.
14. In addition the breaches of the Solicitors Accounts Rules amounted to professional misconduct of all the partners of the firm whether or not they were privy to the breaches. Although no proceedings had been taken against the other partners, the

actions of the respondent had placed his former partners in jeopardy of professional disciplinary proceedings

15. In the final submission of the applicant it was said that it was difficult not to recognise a dishonest intent on the part of the respondent when substantial sums of money received by him had not been paid into client account or office account and he had claimed inflated amounts of money which were said to be the reimbursement of expenses. The respondent had kept cash contributions made by clients aided under the Legal Aid Green Form Scheme. If it had been agreed between all partners that each partner might retain such moneys then there might not have been any difficulty, however the other sums of money were large and represented an abdication by the respondent of his responsibility to his firm and his partners. On the occasions where bills had been delivered, the clients had paid money to the firm and the respondent had kept the money. That amounted to more than impropriety. The applicant could not accept the respondent's contention that he had not acted dishonestly or fraudulently.

### **The Submissions of the Respondent**

16. The Tribunal was invited to take the view that on the occasions where the respondent was said to be dealing with clients' money, that money belonged to clients only in a technical sense. The monies concerned were available to be transferred to office account, indeed every penny had been earmarked for the respondent's firm. The money in question belonged to the firm: it merely remained in client account pending a proper transfer to office account.
17. The Tribunal was invited to consider four main points. First, no clients' money had been involved in a true sense.
18. Secondly no clients were in any way affected. The matters before the Tribunal had always been partnership matters and there had been no complaint from any client.
19. Thirdly, no-one had suffered any loss. Sums had been replaced by the respondent on a generous basis.
20. Fourthly, the one person who had suffered loss was the respondent himself. He had lost his good name and his reputation. He had suffered shame and contrition for his actions. He had come to understand, with the benefit of hindsight, that his actions had been ill-advised. He had lost his partnership and a substantial part of his income. There followed from that, damage to the respondent's family.
21. A substantial bundle of testimonial letters in support of the respondent had been placed before the Tribunal. Every letter, including one received from the long established and reputable firm of solicitors by whom the respondent was employed at the time of the hearing, spoke of the respondent's honesty and competency as a solicitor. He was considered to be conscientious hardworking and honest. The respondent's employers said he had been meticulous in matters concerning travelling expenses and payments on account of costs and the senior partner of that firm had no reservation in describing him as a solicitor of honour and integrity, a practitioner who was extremely able in the

matrimonial field and, more importantly from that firm's point of view, highly regarded by his clients.

22. The only issue before the Tribunal was that of dishonesty. The respondent was an honest man.
23. The Tribunal was invited to apply a test in considering the question of dishonesty on the respondent's part which was "at the time was the respondent conscious that what he was doing was wrong? Was the respondent conscious that he was using someone else's funds? Would he have been embarrassed to be seen doing what he was doing?" It was suggested that the Tribunal properly could take the view that the respondent's actions had been casual, perhaps wrongly casual, but not dishonest. It was human nature for a casual act to grow into a sequence requiring no thought. It was possible to fall into a sloppy practice. There had been no hostility or disagreement in the respondent's partnership.
24. It was only when someone considered the circumstances with objectivity and hindsight and pointed out what was wrong that the respondent had come to realise that it perhaps was not fair or proper to assume that the monies which he took compensated for those which he paid out when he adopted what might have been described as a "swings and roundabouts theory".
25. The respondent had accepted the facts and the allegations. The only issue before the Tribunal was that of dishonesty. The respondent accepted that the Tribunal would impose a penalty upon him and further accepted that it would not be light. The respondent endured considerable shame having come to realise the seriousness of his actions. It was submitted on behalf of the respondent that it would be inappropriate to impose a Striking Off Order because the respondent had not acted with any dishonest intent, indeed he did not have a dishonest bone in his body.

The Tribunal FOUND all the allegations to have been substantiated.

They had given close and careful thought to the question of dishonesty. It was accepted that the respondent had proved himself to his clients to be a competent, honest, trustworthy solicitor of integrity and, indeed, he had been regarded as a pillar of the legal community in which he practised.

There was however no dispute that the respondent had taken monies to which he was not absolutely entitled. Those monies were not just loose change which had been put into his pocket. The Tribunal took the view that the respondent's actions could not be explained just as a casual and sloppy approach since he had taken the monies deliberately and, in some cases in connection with expenses, he had made a deliberate application for monies.

B. Believing the respondent to have been in all other respects an excellent and trustworthy solicitor the Tribunal regretted having to make a finding <sup>(which they did)</sup> that the respondent had acted dishonestly. The Tribunal accepted that there were varying degrees of dishonesty and that the respondent's actions could not be regarded as seriously as the deliberate stealing of large sums of clients' money by a solicitor for his

own use, for example to be spent on high living. Nevertheless the good reputation of a solicitor and indeed of the solicitors' profession was founded upon the very proper perception of the public that a solicitor was a man of impeccable honesty, integrity and probity. Even though it might be described as being at the lower end of the scale, dishonesty on the part of a solicitor leaves the Tribunal to conclude that the appropriate sanction to be imposed was that of a Striking Off Order. The Tribunal also Ordered that the respondent pay the costs of and incidental to the application and enquiry in an agreed fixed sum.

DATED this 19th day of February 1996

on behalf of the Tribunal



J.N. Barnecutt  
Chairman

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